

European Cities and Migrants with Irregular Status:

Municipal initiatives for the inclusion of
irregular migrants in the provision of services

Report for the 'City Initiative on
Migrants with Irregular Status in Europe'
(C-MISE)

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Introduction

With this paper, the Global Exchange on Migration and Diversity – the learning-exchange arm of the Centre on Migration, Policy and Society (COMPAS) at the University of Oxford – aims to inform the discussions of the *City Initiative on Migrants with Irregular Status in Europe* (C-MISE or the ‘City Initiative’).¹ Organised with support from the Open Society Initiative for Europe, the City Initiative is a working group of European cities aiming to share learning, over a period of two years, on policies and practices of European municipalities in relation to the social needs of migrants with irregular immigration status in their area. COMPAS is supporting the working group in building a strong body of evidence on municipal initiatives in this field, and in developing a shared, city perspective on ways in which irregular migrants could be mainstreamed into European Union (EU) policy agendas. This paper in particular aims to provide an overview of the findings of the academic and policy literature on practices and policies that European municipalities have implemented to enable individuals with irregular immigration status to access some municipal services.

As migrants with irregular status are generally excluded from the official integration agendas of the EU and its Member States, local authorities have responded to the social challenges brought by their presence in diverse, innovative and sometimes informal ways. As a consequence, collecting information, building evidence and sharing learning on this topic is challenging because of a paucity of official documentation. A significant part of the findings presented below were drawn from the results of the COMPAS research project ‘*Service Provision to Irregular Migrants in Europe*’,² a study carried out by Dr Sarah Spencer, under the auspices of an Open Society Fellowship. She did so with Vanessa Hughes, investigating the entitlements to service provision granted at national, regional and city level to migrants with irregular immigration status in the EU; and with this author in relation to Italy. The main results of this study were published in the report *Outside and In: Legal Entitlements to Health Care and Education for Migrants with Irregular Status in Europe* (COMPAS: Oxford, 2015) and in subsequent journal articles,³ to which this paper redirects the reader to understand the national policy and legal frameworks in which municipal practices have been developing. Interviews with municipal authorities across Europe carried out as part of the study are amply referred to in this paper.

Migration is a markedly urban phenomenon. Globally, nearly half of the total population of international migrants resides in ten highly urbanized countries, of which five are in Europe.⁴ Irregular migrants are a reality in European cities and it is estimated that they represent between

¹ For more information, visit www.compas.ox.ac.uk/project/city-initiative-on-irregular-migrants-in-europe-c-mis.

² For more information, visit www.compas.ox.ac.uk/project/service-provision-to-irregular-migrants-in-europe.

³ Spencer S. & Hughes V. (2015a), *Outside and in: Legal Entitlements to Health Care and Education for Migrants with Irregular Status in Europe*, Oxford: COMPAS, available at: www.compas.ox.ac.uk/media/PR-2015-Outside_In_Mapping.pdf; The findings of the project are also summarised in Spencer S. & Hughes V. (2015b), *Fundamental Rights for Irregular Migrants: Legal Entitlements to Healthcare and School Education Across the EU28*, in *European Human Rights Law Review*, Issue 6, 604-616.

⁴ UNESCO (2016), *Cities Welcoming Refugees and Migrants*, Paris: United Nations Educational, Scientific and Cultural Organization, available at <http://unesdoc.unesco.org/images/0024/002465/246558e.pdf>.

3% and 6% of the population in cities like Ghent, Genoa and Rotterdam,⁵ reaching numbers as high as 440,000 people in London.⁶ The dimension of the phenomenon is on the rise in the context of the ‘refugee crisis’ with the EU estimating that more than 1 million people in Europe will soon become ‘rejected asylum seekers’.⁷ In their proximity to the population and the social problems caused by the marginalisation of a section of it, municipalities cannot ignore the presence of irregular migrants and some adopt inclusionary measures that aim to mitigate to an extent the marginalising aspects of EU and national immigration rules.

The first part of this paper briefly illustrates how the EU and national immigration policies and legislation have developed a largely exclusionary approach towards migrants staying irregularly in Europe. It also describes the different municipal approaches towards irregular migrants observed in cities across Europe, taking into account cities’ differing mandates (some cities in Europe are at the same time municipalities and regional authorities) and different national contexts.

The second section of this paper focuses on cities that have adopted an inclusionary approach. This section aims to explain the reasons for cities adopting such an approach; the methods used by municipalities to implement inclusive measures; and how some cities have found it necessary to challenge aspects of national rules and stimulate a change at national and European level.

Finally, the third section of this paper presents in more detail municipal practices and policies identified in more than 20 cities across Europe. Far from representing an exhaustive list, this section describes initiatives in different areas of service provision including accommodation, education and health care services; the provision of legal counselling to facilitate the regularisation, or otherwise the return, of irregular migrants; and measures aimed at providing a broader access to public services offered including the issuance of documentation and the possibility to seek the assistance of law enforcement authorities.

1. Cities and irregular migration in Europe

1.1 EU and national policies on irregular migration: an exclusionary approach

Immigration policies and legislation are a ‘shared competence’ of the EU and its Member States.⁸ Decisions concerning who can migrate and reside regularly in the EU are therefore set at the European and national levels, leaving in most cases no space for a sub-state legal or political competency over the status of third country nationals living in European cities. Local authorities equally cannot rule on the national legal entitlements of those who do not comply with EU and

⁵ Dirk Gebhardt (2010), Irregular migration and the role of local and regional authorities, in Carrera S. & Merlino M. (eds.), *Assessing EU Policy on Irregular Immigration under the Stockholm Programme*, Brussels: Centre for European Policy Studies (CEPS).

⁶ GLA Economics (2009), Economic impact on the London and UK economy of an earned regularisation of irregular migrants to the UK, London: Greater London Authority, London, available at https://www.london.gov.uk/sites/default/files/gla_migrate_files_destination/irregular-migrants-report.pdf.

⁷ European Commission (2017), Communication from the Commission to the European Parliament and the Council on a more effective return policy in the European Union - a renewed Action Plan, COM(2017) 200 final, available at <http://data.consilium.europa.eu/doc/document/ST-6943-2017-INIT/en/pdf>.

⁸ Art. 4 of the Treaty on the Functioning of the European Union (TFEU).

national immigration rules. The legal and policy framework on how to address the presence of irregular migrants are therefore set for European cities, even though the strongest impacts of such presence are most strongly felt at local level. However, municipal competences (and duties) in the socio-economic area, as we shall see below, allow cities some margin of manoeuvre in addressing the social challenges related to irregular migrants' presence.

In general, since the birth of the EU's common immigration policy, the Union's approach towards irregular migrants has been one of exclusion, focusing on prevention and enforcement. The Tampere European Council conclusions in 1999 stated that immigration and asylum policies should "ensure the integration into our societies of [only] those third country nationals who are *lawfully resident* in the Union". Art. 79 of the Treaty on the Functioning of the European Union (TFEU) – the very legal basis of EU competences over immigration – states that the EU "shall develop a common immigration policy aimed at [...] *the fair treatment of third-country nationals residing legally* in Member States, and the prevention of, and enhanced measures to *combat, illegal immigration*". Therefore, there is intentionally a disjunction between inclusive policies that apply to legally residing migrants who should be integrated and exclusionary policies that apply to irregular migrants whose stay should be prevented and combated.⁹ This is a matter of principle for the EU, and as such it guides the development of any European migration policy. Both, the EU Agenda on Integration¹⁰ and the European Council's Common Basic Principles on Integration¹¹ attach any integration effort exclusively to legal migration, reinforcing the exclusion of irregular migrants from any EU integration effort.¹²

Such exclusion is based on the principle that Member States should not tolerate irregular migrants' presence and have an obligation to expel and return them to a third country. This is a core principle for EU immigration policies which was regulated by the EU's main piece of legislation on irregular migration, *the Return Directive*.¹³ In line with this principle, the *Employers Sanctions Directive* prohibits the employment of irregularly-staying third country nationals and imposes sanctions for employers who do so.¹⁴ Member States' policies on irregular migration are based on a system of incentives to encourage return (e.g. assisted voluntary return packages), and disincentives to stay for those who refuse to return voluntarily (e.g. denying rights to access public services), including the use of coercion and detention. As a consequence, Member States generally keep to a minimum irregular migrants' access to public services. While some States do accord a level of access to health care, in particular for children, only emergency health care is ensured to

⁹ Gilardoni G., D'Odorico M. and Carrillo D. (eds.) (2015), *KING - Knowledge for INtegration Governance - Evidence on migrants' integration in Europe*, Milano: Fondazione ISMU, available at: http://king.ismu.org/wp-content/uploads/KING_Report.pdf.

¹⁰ European Commission (2005), *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions "A Common Agenda for Integration Framework for the Integration of Third-Country Nationals in the European Union"*, COM(2005)389 final.

¹¹ Council Justice and Home Affairs (19 November 2004), Doc. 14615/04 (press release).

¹² Pascou Y. (2014), *EU Immigration and Integration Policies: Friends or Foes? - KING Overview Paper n.2*, Milano: Fondazione ISMU available at: http://king.ismu.org/wp-content/uploads/Pascouau_OverviewPaper2.pdf.

¹³ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (Art. 6 para. 1).

¹⁴ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

irregular adult migrants across all EU Member States. While most States allow children with irregular status to attend school, in five EU countries there is no entitlement to do so.¹⁵

It is to be noted that this approach is based on the assumption that all irregular migrants in the EU, (including irregular entrants, over-stayers or rejected asylum seekers) are effectively and swiftly detected and returned to their countries of origin, where their social needs should be addressed. Data instead shows that Member States were able to return only about 36% of detected irregular migrants in both 2014 and 2015,¹⁶ and in many cases, low return rates are due to factors unrelated to migrants' resistance.¹⁷ This means that while EU and national rules governing irregular migrants' treatment are often based on the assumption that these migrants are in an exceptional and *temporary* condition preceding their return, they tend to apply to people whose irregularity is often a long-enduring – in some cases chronic – condition.

In these cases, exclusionary policies prohibiting access to both employment and social services can have significant social impacts on both irregular migrants and the wider population. European cities, despite their limited powers, are confronted with the challenge of finding concrete responses to those social impacts when national immigration policies largely do not address the consequences of creating a category of people with few rights or resources. It is to be noted, however, that in some instances national governments themselves have recently come to address these challenges. Although the over-riding pattern of national policies on irregular migrants' access to welfare support generally is one of exclusion, in a number of cases EU countries have been mitigating their exclusionary approach in favour of an extension of entitlements to health care and education for irregular migrants.¹⁸ Typical examples are seen in the area of health care, as in the case of Sweden's 2013 reforms that entitled irregular migrants to the same level of care provided to asylum seekers (instead of emergency care only, as prior to the reform). Similarly, Italy recently extended access to paediatric care for irregular children, and the United Kingdom (UK) allowed access to medical treatments for irregular patients who were victims of domestic and sexual violence (2015) or in need of HIV treatments (2012). Against an exclusionary approach, which is also evident (as in the UK), the direction of travel of national policies slowly seems to go towards an extension of rights at national level.¹⁹

1.2 National and local competences: the role of cities in managing irregular migrants' presence

As the criteria for defining the immigration status of a third country national are established at national and European level, European cities can be seen as 'administrative arenas', whose legal responsibility vis-à-vis immigration rules often lies in mere policy implementation. However, cities

¹⁵ Spencer S. & Hughes V. (2015a), *op. cit.*

¹⁶ European Commission (2017), *Communication from the Commission to the European Parliament and the Council on a more effective return policy in the European Union - a renewed Action Plan*, COM(2017) 200 final, available at <http://data.consilium.europa.eu/doc/document/ST-6943-2017-INIT/en/pdf>.

¹⁷ European Migration Network (2016), *The Return of Rejected Asylum Seekers: Challenges and Good Practices*.

¹⁸ Spencer S. & Hughes V. (2015a), *op. cit.*; Spencer S. & Hughes V. (2015b), *op. cit.*

¹⁹ *Ibidem*.

can enjoy different margins of discretion and autonomy²⁰ which in some countries allow them to play a role in *e.g.* facilitating regularisation for their irregular residents. Cities in Europe also have differing degrees of responsibility over the concrete provision in their territories of services in areas such as health, housing and education. Their responsibilities can include social cohesion, public safety and public health and their discretionary powers in relation to service provision allow in some cases a relatively high margin of manoeuvre in implementing national policies in this area.

Cities cannot overlook the presence in their territories of irregular migrants, their basic needs and the needs of the local population in relation to such presence. At the same time, municipalities have to struggle between the need to respect national immigration rules and constitutional and international obligations on irregular migrants' human rights in the socio-economic sphere which they may consider require more inclusive measures. Municipalities are therefore at the forefront of intricate political and legal contradictions: they should not be too inclusive of irregular migrants who are not supposed to be resident in the city but their duty of care, and the implications of exclusion, mean that they are obliged in practice to take account of their presence.²¹ In some cases the law is indeed explicit in requiring them to do so. A case in point is that of municipalities in the UK, where national legislation requires municipalities to provide a safety net for destitute children and families excluded from mainstream support because of their irregular immigration status. Municipalities are not recompensed by the national government for that provision.²²

Cities approaches and prerogatives vis-à-vis to this situation can differ significantly across Europe. This is due to varying competences in different national constitutional settings, different immigration policies of national governments, but also different political visions of local politicians.

Differing legal competencies

A first distinction among European cities concerns the differences in their legal competences. Multi-level governance systems differ significantly across Europe and even within the same country, cities can enjoy different degrees of autonomy. The *Stadtstaaten* (City-States) of Berlin, Hamburg, Bremen²³ and Vienna, for instance, are at the same time municipal entities and federal states, and as such have significantly more powers than other European cities. Moreover, despite competences over the legal status of foreign nationals being a national power, in some cases local authorities might be assigned formal prerogatives with regard to migrants' regularisation, as in the case of Spanish cities. Spanish Law provides municipalities with the possibility of proving a migrant's 'social rooting' (*arraigo social*) in Spanish society. After three years of residence and in

²⁰ Caponio T. (2014), The legal and political dimension of local integration policy - KING Project – Social Science Unit Desk Research Paper n. 9/July 2014, Milano: Fondazione ISMU, available at king.ismu.org/wp-content/uploads/Caponio_DeskResearch.pdf; Caponio, T. (2010), Conclusion. Making Sense of Local Migration Policy Arenas, in Caponio T. and Borkert M. (eds.), The Local Dimension of Migration Policymaking, Amsterdam: Amsterdam University Press, IMISCOE Report Series.

²¹ Carrera S. and Parkin J. (2011), *Protecting and Delivering Fundamental Rights of Irregular Migrants at Local and Regional Levels in the European Union*, Brussels: Committee of the Regions, available at: <http://cor.europa.eu/en/documentation/studies/Documents/protecting-fundamental-rights-irregular-migrants.pdf>.

²² Price J. & Spencer S. (2015), *Safeguarding children from destitution: local authority responses to families with 'no recourse to public funds'*, COMPAS, University of Oxford.

²³ Bremen forms a *Stadtstaat* together with Bremerhaven.

view of a positive ‘social rooting report’, irregular migrants in Spain can indeed obtain a regular status. The city of Barcelona has a policy of facilitating registration of irregular migrants in the locally administered census of the *padrón municipal*, including allowing registration for people with no fixed address (see below), and uses registration in the *padrón* as evidence proving migrants’ social rooting in Spain. Providing such a report is a task assigned to municipalities by Spanish Immigration Law, which thus formally involves local authorities in the implementation of regularisation procedures, a situation that strongly differs from countries like France or Italy, where such procedures are highly centralised.²⁴

Differing national legal and policy frameworks on services

Another distinction concerns the national political environment of different countries in Europe, and how this results in different levels of pressure over cities to comply with strict immigration rules. According to a study on the integration policies of eight different European cities, governments in North-West Europe have stricter policies and have more means to force local authorities to comply with national rules, compared to Southern Europe (at least Italy and Spain) where cities have wider margins of manoeuvre to influence regularisation processes or to develop their own approaches towards irregular residents.²⁵ This does not mean, however, that in practice cities in North-West Europe have been unable to take their own initiatives, even if in opposition with national policies.

For a comparison, the study *e.g.* reports the case of the Netherlands where, despite the ‘Linkage Law’ (*Koppelingswet*) requiring municipal service providers to check the immigration status of their clients and refuse the service to irregular migrants, the City of Amsterdam decided to make a budget reservation to subsidise elementary service provision for this part of the population to NGOs. By contrast, the study reports the cases of Turin and Milan, two cities that have shown different policy styles within the same national context. Against a backdrop of increasingly restrictive national policies, Turin resorted to the strategy of subsidising NGOs for the delivery of services, while Milan explicitly restricted access to public services only to regular residents and imposed restrictions on NGOs delivering services in the city to irregular migrants.²⁶

Differing local political framing

The last example is also illustrative of another distinction that can be noted, which relates to the different policy approaches adopted by local politicians in city councils across Europe. When cities, instead of overlooking the issue, take a stance on national policies restricting irregular migrants’ entitlements, they take diverse approaches that have been categorised in four different ‘policy frames’.²⁷

- Some cities adopted restrictive measures against undocumented residents in line with national policies, thus trying to discourage irregular migrants’ presence in their territories

²⁴ Penninx R. et al. (2014), *European Cities and their Migrant Integration Policies - Case-Studies from Eight Cities (KING Project – Social Science Unit KING Overview Paper n.6/October 2014)*, Milano: Fondazione ISMU, available at http://king.ismu.org/wp-content/uploads/Penninx_OverviewPaper6.pdf; Caponio T. (2014), *op. cit.*

²⁵ Penninx R. et al. (2014), *op. cit.*

²⁶ *Ibidem.*

²⁷ Caponio T. (2014), *op. cit.*

‘the security frame’). This approach – normally accompanied by anti-immigrants political discourse – targeted national residents with the aim of reassuring them about the respect of legality in the city and the control over unwanted immigration. An example is given by municipalities in Lombardy (Italy) during the 5th Berlusconi’s government, where the Northern League party played a crucial role. Various Lombard cities approved ordinances to *e.g.* enhance controls on buses and private houses, imposing preliminary checks on the healthiness and/or decency of a dwelling, introducing hurdles in registration procedures and impede access to legal status.

- By contrast, the humanitarian and the human rights frames²⁸ see rejected asylum seekers (humanitarian frame) or irregularly-staying migrants in general (human rights frame), as particularly vulnerable individuals, who are at greater risk of marginalisation because of their irregularity. Therefore, cities adopting this approach show an open stance towards their undocumented population and find ways to facilitate their access to fundamental services and/or obtain legal status.
- Finally, literature has identified a further approach, the deserving workers frame, which is observed in those cities where irregular migrants are primarily considered as ‘foreign workers who haven’t been able to enter legally or to keep their residence permit, even though there is a need for them in the local economy’.²⁹ For this reason, cities might implement measures favouring these workers’ stay and facilitating their regularisation with the aim of supporting the local economy. Examples of this approach are given by the cities of Turin or Cuneo in Piedmont – the industrial heart of Italy – where municipal authorities, in cooperation with the local police and a network of trade unions, assisted undocumented workers in the application and follow up procedures for the 1995 and 2003 national amnesties through the provision of information and counselling services.³⁰ It is worth noting that the literature has observed that the concept of ‘deservingness’ has been applied not only with regard to workers, but also to other groups of individuals, which are seen as deserving rights more than other groups of migrants with irregular status. Spencer (2016) has for instance described how undocumented children in Europe receive a more inclusive access to services than adults because authorities consider them as a more ‘deserving’ group.³¹

Regardless of classifications, this paper will analyse the practices and policies of cities that have shown an inclusionary approach towards their residents with irregular status.

²⁸ *Ibidem*.

²⁹ *Ibidem*.

³⁰ Caponio T. (2014), *op. cit.*; Zucchini, F. (1998), L’implementazione della politica pubblica per l’immigrazione: I casi di Torino e Brescia, in Fondazione Cariplo-Ismu (ed.), *Terzo rapporto sulle migrazioni 1997*, Milan: Franco Angeli, 173–189; Caponio T. (2007), La gestione locale delle politiche di soggiorno. Poste in gioco, attori e logiche di azione in alcune province del Piemonte, in *Mondi Migranti*, 3, 107–130.

³¹ Spencer S. (2016), Postcode Lottery for Europe’s Undocumented Children: Unravelling an Uneven Geography of Entitlements in the European Union, in *American Behavioral Scientist*, 60(13) 1613–1628.

2. Cities with an inclusionary approach

Cities in Europe are the institutions facing the everyday affairs and basic needs of local residents, including those stemming from the presence of irregular migrants. Cities that have adopted an inclusionary approach in framing their responses to such presence have taken a variety of initiatives to ensure access to some fundamental services for their irregular residents. Cities do so for a variety of reasons, ranging from the need to comply with their human rights obligations, but also the aim to protect the public interests of the wider local population. Local actions with an inclusive aim include:

- Practices ensuring access to mainstream or targeted health care and education
- Providing shelters for particularly vulnerable individuals and food for people in need irrespective of their migration status
- Addressing the underlying cause of irregular status through access to legal counselling to regularise their immigration status or secure support for voluntary returns.
- Cooperation with local law enforcement authorities to find practical solutions to irregular migrants' underreporting of crime.
- Engaging in public campaigns, targeting irregular migrants to make them aware of their entitlements in the city and the wider local population to raise awareness of the problems being addressed by the municipality.

The fourth section of this paper will describe identified practices in detail.

2.1 Why cities include irregular migrants

There is a range of reasons local authorities have given for inclusionary policies, from a political vision based on respect for human rights to more pragmatic responses to individual and social needs. In most cases, the inclusion is motivated with more than one reason, but individually have been categorised³² as:

- The need to respond to a *legal duty*: local authorities might be required by domestic legislation establishing a municipal duty of care over all the residents in need. It is for example the case of municipalities in the UK, where national legislation requires local service departments to provide a safety net for vulnerable individuals outside the mainstream services, irrespective of migration status.³³ Municipalities also need to respect international human rights law and thus are required to provide certain basic services accordingly. UNESCO's report on '*Cities welcoming refugees and migrants*', the UN 2030 Agenda for Sustainable Development and the UN New Urban Agenda, highlight that local governments are bound by 'international human rights commitments made by respective national governments' and that 'universal human rights apply to all refugees and migrants,

³² Spencer S. (2013), *City Responses to Migrants with Irregular Status*, in *Integrating Cities Conference*, Tampere (Finland) 9 - 10 September 2013, available at: www.compas.ox.ac.uk/media/PB-2013-034-City_Responses_Irregular_Migrants.pdf [last accessed 30 May 2017].

³³ Price J. & Spencer S. (2015), *op. cit.*

regardless of status'.³⁴ Based on this consideration, the City of Utrecht has for instance resorted to innovative litigation strategies before international bodies to judicially assert that the city acts in legality when providing a shelter to irregular migrants because of the Netherlands' human rights obligations.³⁵

- Humanitarian or ethical arguments: cities commit to respond to irregular migrants' basic needs and ensure their fundamental rights not only as a matter of human rights law but also for an ethical and moral imperative and a political vision of the city as a place where the fundamental rights of everyone must be respected. The City Council of Utrecht, for instance, has made a public commitment to making Utrecht a 'Human Rights City'³⁶ and it is within this framework that initiatives such as those in support of rejected asylum seekers' access to shelters are being provided.³⁷ Medical ethics are an argument often used by authorities to motivate their initiatives in the field of health care, and the humanitarian argument is also widely used to justify cities' initiatives to ensure migrants' access to education, justice and protection against violence.
- The necessity to achieve the general policy goals of the city. These objectives are often of a very *pragmatic nature* and include the need to ensure cohesion, public health and public order. Cities across Europe have taken specific actions to ensure that irregular migrants can concretely access medical assistance in order to avoid the dangers – in terms of *public health* – of a part of the population being left out of the health care system. *Public order and safety* are often reasons at the basis of inclusive practices: with the aim of *fighting crime*, Amsterdam Police has been proactively encouraging irregular migrants to report crime, and has informally committed not to prosecute the immigration status of irregular migrants who reach out to the police. With a view at *fighting domestic violence*, Gothenburg and Utrecht have been funding shelters accommodating women escaping such violence.³⁸ The reasons why cities provide accommodation to irregular migrants and rejected asylum seekers are also linked to the need to *reduce street-sleeping* and 'irregular

³⁴ UNESCO (2016), op. cit.

³⁵ Utrecht City Advisors and Klaas J (Fischer Advocaten - lawyer) (2014), The law: responding to opportunities and constraints in domestic and European legal provisions, interventions in City Responses to Irregular Migrants – Barcelona round-table seminar, 16-17 October 2014, Barcelona, Spain, final report available at www.compas.ox.ac.uk/event/city-responses-to-irregular-migrants.

³⁶ OECD's Observatory of Public Sector Innovation (2015), *Welcome to Utrecht: How citizens and the Human Rights City work together to coordinate help for refugees*, [online], available at www.oecd.org/governance/observatory-public-sector-innovation/innovations/page/welcometoutrechthowcitizensandthehumanrightscityworktogethertocoordinatehelpforrefugees.htm#tab_description [last accessed 30 May 2017].

³⁷ Utrecht City Advisors and Klaas J (Fischer Advocaten - lawyer) (2014), The law: responding to opportunities and constraints in domestic and European legal provisions, interventions in City Responses to Irregular Migrants – Barcelona round-table seminar, 16-17 October 2014, Barcelona, Spain, final report available at www.compas.ox.ac.uk/event/city-responses-to-irregular-migrants; Municipality of Utrecht (2011), Human Rights in Utrecht: how does Utrecht give effect to international Human Rights Treaties? [online] available at: www.utrecht.nl/fileadmin/uploads/documenten/bestuur-en-organisatie/internationale-zaken/2015-10-Human-Rights-Utrecht.pdf [last accessed 30 May 2017]; Moreover, because of its Human Rights' strategies, Utrecht in 2012 was named the first 'Human Rights City' by the UN High Commissioner for Human Rights, Navanethem Pillay, see www.duic.nl/algemeen/utrecht-eerste-nederlandse-mensenrechtenstad.

³⁸ PICUM (2015), *Guide to the EU victims' directive: advancing access to protection, services and justice for undocumented migrants*.

squatting' in the city, thus protecting both homeless migrants but also the general urban well-being. Barcelona has for instance provided temporary accommodation as a measure to ensure that the occupiers of an irregular settlement in 'Calle Pugcerdà' evacuate the area so that the city could dismantle the settlement which was considered a great risk for human safety.³⁹

- The necessity of ensuring efficiency in the management of service provision, including the need to keep accurate statistics, reducing pressure on emergency services and cost effectiveness. A city of Florence's initiative to ensure post-emergency continuative care for irregular migrants had the aim, *inter alia*, to avoid local hospitals prolonging migrants' hospitalisations as the only practicable solution to not refuse post-emergency care. Barcelona has facilitated registration of migrants with no fixed address in the municipal census so that the municipality could be aware of the number of people in their area and plan services accordingly.⁴⁰

2.2 How cities include irregular migrants

Adopting an inclusive approach is not straightforward for cities if national policies are particularly restrictive or, for instance, require service users to show a valid residence permit in order to obtain a service or officials and service providers to report their clients with irregular status. Cities have found innovative solutions to provide a service without breaching those rules – as in Berlin where municipal officials registering births were instructed to report irregular migrants as required by national law but only after enough time has passed that annuls the risks of arrests.⁴¹ Generally, the arrangements cities have found to overcome national obstacles often share common features.⁴²

- A common strategy is involving external actors – who are not bound by the duty to report irregular migrants – to act as intermediaries between local authorities and migrants. These normally are NGOs funded by local city councils to provide a service that the municipality would not be in a position to offer directly without being obliged to report irregular clients. Subsidising an NGO service is a particularly common practice in the areas of health care and accommodation. It is the case for example of the 'Humanitarian consultation hours', medical consultations provided by NGOs funded by municipal authorities in the German cities of Frankfurt, Dusseldorf⁴³ and Munich.⁴⁴ Similar practices in the field of health care

³⁹ Barcelona City Official (2014), Barcelona's city experience, intervention in *City Responses to Irregular Migrants – Barcelona round-table seminar*, 16-17 October 2014, Barcelona, Spain, final report available at www.compas.ox.ac.uk/event/city-responses-to-irregular-migrants.

⁴⁰ Spencer S. (2013), *City Responses to Migrants with Irregular Status*, in *Integrating Cities Conference*, Tampere (Finland) 9 - 10 September 2013, available at: www.compas.ox.ac.uk/media/PB-2013-034-City_Responses_Irregular_Migrants.pdf [last accessed 30 May 2017].

⁴¹ Barbara John, Commissioner for Foreigners in the Berlin Senate 1981-2003, interviewed by the Sarah Spencer, July 2013.

⁴² Carrera S. and Parkin J. (2011), *op. cit.*

⁴³ PICUM (2017), *Cities of rights: ensuring health care for undocumented residents*, Brussels: Platform for International cooperation on undocumented migrants, available at http://picum.org/picum.org/uploads/publication/CityOfRights_FINAL_WEB_EN.pdf.

⁴⁴ Munich City Official, interviewed by Vanessa Hughes, July 2013.

are found elsewhere in Europe, as in Oslo,⁴⁵ Warsaw⁴⁶ and Florence.⁴⁷ Cities also fund or reimburse NGOs to provide shelter for undocumented migrants, as in the aforementioned cases of Gothenburg and Utrecht's women shelters. However, *civil society organisations are not the only actors called to act as intermediaries* between irregular migrants and authorities. Rotterdam, for instance, asks midwives, general practitioners and schools to refer children for vaccinations regardless of immigration status, thus avoiding the risk of irregular migrants refraining from requesting such a fundamental medical service for their children.⁴⁸

- In other cases, municipalities have involved NGOs in the development and governance of policy and practices in this area. A relevant example is given by the City and Federal State of Berlin, which in 2010 established a *roundtable* to bring together authorities in the Berlin Senate (the executive body governing the City-State of Berlin), local NGOs providing medical assistance to irregular migrants in the city, and the local medical association. The objectives of the roundtable included moderating the debate about access to health care for undocumented migrants, agreeing on appropriate schemes to achieve concrete access to care in the *status quo* offered by the national legislation, and finding agreement on policies to improve healthcare for people without residential status or health insurance. The roundtable – which has been moderated on equal terms by the Secretary of State of the Berlin's Senate Administration for Health and representatives of the NGO *MediBüro* – has allowed an exchange of information between civil society organisations and Berlin's authorities on migrants' healthcare needs. It permitted authorities to assess the medical situation of Berlin's undocumented population on the ground and has been proving a suitable tool for cross-institutional agreement on healthcare for the target group. Besides the Senate Administration for Health and *MediBüro*, other relevant authorities in Berlin participated in the roundtable including representatives of Berlin's Interior Affairs and Sports Department, the Department for Integration, Employment and Social Affairs, the Regional Office for Health and Social Affairs, and district health office, as well as the local Medical Association and other NGOs.⁴⁹

In a rare example of a published local strategy adopted with the specific goal of addressing irregular migrants' social condition in the city, Barcelona's City Council developed a comprehensive Action Plan whose first goal is to ensure universal access to municipal public

⁴⁵ Oslo City Official (2017), City Initiative on Irregular Migrants in Europe - A survey for the Working Group's background paper, Email to the author, 2 May, personal communication.

⁴⁶ PICUM (2017), *op. cit.*

⁴⁷ Municipality of Florence (2011), *Marginali e immigrati irregolari, un progetto per garantire l'assistenza anche dopo l'ospedale*, [online press release] 12 September, available at http://press.comune.fi.it/hcm/hcm58683-1_Marginali+e+immigrati+irregolari [last accessed 30 May 2017].

⁴⁸ Garcés-Mascreñas B. (2014a), *Immigrants' equal access and equal use: a review of local policies in the domains of health care, housing, education and the labour market - KING Project – Social Science Unit Desk Research Paper n. 10/July 2014*, Milano: Fondazione ISMU, available at http://king.ismu.org/wp-content/uploads/GarcesMascrenas_DeskResearch.pdf.

⁴⁹ Former State Secretary for Health, Environment, Agriculture and Consumer Protection of the Berlin Senate interviewed by Sarah Spencer, September 2013; Berlin Senate's Official, interviewed by Vanessa Hughes, August 2013. NGO representatives, interviewed by Vanessa Hughes, July 2013; Holm A., Lederer K. & Naumann M. (Eds.) (2011), *Linke Metropolenpolitik. Erfahrungen und Perspektiven am Beispiel Berlin*, Münster: Westfälisches Dampfboot, p. 161-182.

services for its foreign residents who fall into a condition of irregularity (see more below). With the aim of identifying the measures that should be included in the Action Plan, the Municipality set up a working group headed by the the municipal Commissioner for Immigration, Diversity and Interculturality and the Department for Immigrant Care and Reception; and participated in, among others, by the local employment agency and Institute for Social Services. The working group consulted the Municipal Immigration Council, the Commission on Immigration of the local Lawyers' Association, as well as around ten organisations working in the Catalan city to assist irregular immigrants and prevent discrimination.⁵⁰

- Another strategy that local authorities have explored to challenge national policies consisted of engaging in strategic litigation before international or national courts in order to find a judicial basis to their inclusive practices. Litigation is built around the human rights obligations which national and local authorities are bound to. A relevant case is that of Italian regions which used their legislative powers to extend irregular migrants' entitlements to health care (Puglia region), housing (Campania region) or urgent social welfare benefits (Tuscany). When the Italian government challenged these regions before the Constitutional Court, in all three cases the regions used fundamental rights arguments to support the legality of their practices and found the court supporting their actions.⁵¹ A particularly innovative litigation strategy is that used by the City of Utrecht, where local authorities in cooperation with a Dutch human rights law firm, adopted the so-called '*win your case by losing it*' strategy.⁵² According to this approach, the local authority followed the national legislation in refusing a basic service – namely accommodation – to a particularly vulnerable individual, knowing that the individual through their lawyer would file a complaint against this conduct as a violation of the fundamental social rights of the individual. By doing so, the municipality exposed the national government to a condemnation by the European Committee of Social Rights. The strategy proved successful. When the Committee found the Netherlands in breach of its international obligations under the European Social Charter, the City of Utrecht effectively had a judicial decision acting as a legal backing for the City's practices in contrast with national rules⁵³ (see more details below).
- Another expedient that cities have found is attaching entitlements to local residency, rather than immigration status, thus providing some form of complementary urban citizenship. This local form of belonging is a pragmatic attempt to solve practical challenges for social cohesion and general well-being.⁵⁴ The most evident case in Europe is Barcelona's policy to

⁵⁰ Barcelona City Council (2017), *Mesura de govern per afavorir l'accés a la regularitat i prevenir la irregularitat sobrevinguda*, available at: <http://www.bcn.cat/novaciutadania/pdf/mgrregularitat.pdf>.

⁵¹ Delvino N. and Spencer S. (2014), *Irregular migrants in Italy: law and policy on entitlements to services*, Oxford: COMPAS, available at www.compas.ox.ac.uk/2014/pr-2014-irregular_migrants_italy.

⁵² Utrecht City officials and Klaas J (Fischer Advocaten - lawyer) (2014), *The law: responding to opportunities and constraints in domestic and European legal provisions*, interventions in *City Responses to Irregular Migrants – Barcelona round-table seminar*, 16-17 October 2014, Barcelona, Spain, final report available at www.compas.ox.ac.uk/event/city-responses-to-irregular-migrants.

⁵³ *Ibidem*.

⁵⁴ Dirk Gebhardt (2010), *op. cit.*

facilitate irregular migrants' registration in the municipal census (*padrón*), a condition that is made sufficient to access the services offered by the municipality to its residents. Another relevant example is the municipal ID cards released by local authorities to their migrant residents, including irregular migrants, to facilitate their access to local services. Madrid's City Council approved the creation of a City ID card for anyone who is registered in the city and does not have a valid identification document. The aim of this initiative is to ensure undocumented residents access all public services offered by the City, including health care, education, social services and employment-seeking services.⁵⁵

- Finally, cities often rely on informal solutions including unofficial internal guidelines that ensure that migrants are not concretely excluded from a service. In Athens, the municipality offers a food distribution service for people in need which is officially restricted to citizens or legal migrants, but the authorities provide more food than necessary so that the 'left over' can be offered to those with irregular status. Amsterdam police's policy not to question the immigration status of foreigners reporting a crime or not to patrol the areas around a local information and counselling centre for undocumented migrants is based on an informal decision of the police's senior management and a 'gentlemen's agreement' with the Mayor.⁵⁶

2.3 Cities shaping changes at national level

The local level is where the direct social consequences of exclusionary measures are most strongly felt. As well as adapting their own policies and practices, some cities have sought to influence policy at the national level or had that effect. Where the former, they may engage in advocacy, in litigation challenging national law, or campaigning to raise public awareness. Such an aim is *e.g.* explicit in the aforementioned Action Plan adopted by the City of Barcelona, the fifth goal of which is dedicated to '*promoting legislative amendments furthering the adoption of inclusive policies both in the Spanish State and in the European Union for people in irregular situations*'.⁵⁷

An illustrative case of local initiatives that led to a nation-wide change with regard to access to services for irregular migrants is given by the Italian experience of municipal decisions on the inclusion (or exclusion) of children with irregular status in pre-school education facilities managed municipally. After the approval of national legislation in 2009 requiring the exhibition of a valid residence permit to access, *inter alia*, non-compulsory education services in Italy, the City of Turin stated that such a requirement would not be applied for kindergartens managed by the City. The initiative sparked a heated debate across the country. Other cities, including Florence and Genoa, followed the Turinese example, while cities like Bologna decided by contrast explicitly to prohibit access to nursery schools for those children. The lively public debate and protests that followed forced the national government finally to reinterpret national legislation and the Italian Ministry of Interior to issue a circular letter in 2010 clarifying that no obligation to show a residence permit is required for registering children to public nursery schools in Italy.⁵⁸

⁵⁵ PICUM (2017), *op. cit.*

⁵⁶ Amsterdam Police officials, interviewed by Sarah Spencer, March 2013.

⁵⁷ Barcelona City Council (2017), *op. cit.*

⁵⁸ Delvino N. and Spencer S. (2014), *op. cit.*

An example of national change set forth by *municipal litigation strategies* is given by the aforementioned actions taken by Utrecht to ‘win a case by losing it’. The city of Utrecht cooperated with a Dutch human rights law firm and international NGOs to relation to several cases before the European Committee of Social Rights⁵⁹ (ECSR) against the Dutch government for the actions cities were required to take (or not take) to exclude irregular migrants from a basic service, namely a shelter. The aim of this approach has been to obtain a condemnation of cities’ exclusionary practices (and therefore of the national legislation) for the violation of the migrants’ socio-economic fundamental rights. The city’s goal was to use the Committee’s decision as a legal basis for future municipal measures geared to include irregular migrants. The city of Utrecht has been involved in several judicial proceedings⁶⁰ but at least one is worth noting because of its consequences at national level: with the cooperation of Defence for Children International (DCI), a complaint was lodged against the Dutch government arguing that the national legislation denying access to (municipal) housing for children unlawfully present in the Netherlands violated a fundamental social entitlement of irregular children. Subsequently, the ECSR condemned the Netherlands in its judgment no. 47/2008 on 20 October 2009.⁶¹ Following this decision, the Supreme Court of the Netherlands in 2012 found that the Netherlands has a legal obligation to provide adequate facilities and care for children without a residence permit, if the parents do not have the financial resources to do so themselves.⁶² As a final result, the Dutch government expanded the reception facilities in the existing family locations for asylum seekers to include minor children and their parents without residence permits.⁶³ In other two cases, the ECSR addressed the situation of irregular adults, and equally found the Netherlands in breach of their right to housing enshrined in Art. 31 of the European Social Charter.⁶⁴ Although as an immediate effect of the decisions the number of municipalities offering reception facilities to irregular migrants in the Netherlands increased,⁶⁵ national courts in this case have taken ambivalent decisions⁶⁶ vis-à-vis the ECSR’s reasoning⁶⁷ and the Dutch Council of State eventually ruled that

⁵⁹ The European Committee of Social Rights is the Council of Europe’s body tasked to judge states’ conformity in law and practice with the European Social Charter. Decisions of the ECSR can be triggered by collective complaints submitted by certain international NGOs specifically allowed to so.

⁶⁰ City Official, interviewed by Sarah Spencer, March 2013.

⁶¹ European Committee of Social Rights, 20 October 2009, *DCI v. the Netherlands*, Complaint No. 47/2008.

⁶² Supreme Court of the Netherlands, 21 September 2012, ECLI:NL:HR:2012:BW5328.

⁶³ Amnesty International (2016), *Comments by Amnesty International on the 9th national report on the implementation of the revised European Social Charter submitted by the Government of the Netherlands*, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680644ce6>.

⁶⁴ European Committee of Social Rights, *CEC v. The Netherlands*, Complaint No. 90/2013; European Committee of Social Rights, *FEANTSA v. The Netherlands*, Complaint No. 86/2012.

⁶⁵ Amnesty International (2016), *op. cit.*

⁶⁶ In a case concerning the municipality of Amsterdam, after an initial decision of the Amsterdam District Court ruling that undocumented migrants have an unconditional right to sober basic facilities (Amsterdam District Court, cases 14/3244, 14/3260, 14/2925, 14/3265 and 14/2961 of 11 July 2014), the Central Appeals Tribunal overruled this decision and by contrast stated that the municipality of Amsterdam should refuse shelter to rejected asylum seekers and direct them towards a detention centre (VBL) (Central Appeals Tribunal, cases 14/4389 WMO, 15/5095 WMO, 14/4382 WMO, 15/5094 WMO, 14/4387 WMO, 15/5093 WMO, 26 November 2015). The Appeals Division of the Dutch Council of State eventually clarified however that the municipality of Amsterdam could provide a shelter to undocumented migrants, but in doing so it would carry out an ‘extralegal benignant policy’ that does not derive from any legal or international duty of the municipal council. See Oomen B. & Baumgärtel M. (forthcoming), *Frontier cities:*

Dutch municipalities could provide a shelter to undocumented adults as an ‘extra-legal benignant policy’ (*Buitenwettelijk begunstigend beleid*) that does not derive from any legal or international duty of the municipal council. Accordingly, Dutch municipalities do not have a legal basis to offer shelter to adult irregular migrants, but are not prohibited from doing so either.

Finally, cities engage with their population through public campaigns aimed at raising awareness on why municipalities need to provide services for irregular migrants, especially when inclusive practices might seem at odds with national policies or the public debate. The municipality of Barcelona for instance carried out the ‘Anti-Rumours’ campaign (*Estratègia BCN Antirumours*) targeting all the citizens of the city (including both foreigners and nationals) and highlighting the negative impacts of exclusionary discourses and importance of policies on social cohesion. The campaign challenged the legitimacy of national policies and discourse because of their negative social impacts on migrants (including those with regular and irregular status) and the wider population, and aimed to deconstruct the stereotypes that ultimately result in migrants’ exclusion. With the engagement of 220 associations and institutions and the training of 900 volunteers, Barcelona gave a primary importance to this initiative.⁶⁸ Another example of initiatives engaging the national population is given by the French experience of the ‘*parrainages républicains*’, a non-juridical institution created in several French municipalities in the mid-2000s allowing a French citizen to act as a sponsor for an irregular migrant residing in the city. Having a mere symbolic (and not legal) nature, the *parrainages* mainly served to engage the population in showing opposition to the Sarkozy government’s repression of irregular migration.⁶⁹

2.4 Cities as international actors on migration

Cities are also trying to make their voice heard also on the international scene with regard to their concerns on the social consequences of national and European immigration rules. European cities are aware of their role in ensuring the respect of human rights in their territories and sanctioned this role in the *European Charter for the Safeguarding of Human Rights in the City*, which was adopted in Saint-Denis in 2000 and signed since then by over 400 cities. The United Nations (UN) has also recognised cities’ centrality in the protection of migrants’ rights, and in 2015 and 2016 two global agendas were adopted under the auspices of the UN sanctioning cities’ international relevance in this field. Both the *2030 Agenda for Sustainable Development* and the *New Urban Agenda* call explicitly for attention to migrants and migration in the city. The first is today’s main intergovernmental political document agreed at UN level by 193 nations. It fixes the goals of the world’s development until 2030. Its 11th goal is to ‘Make cities and human settlements *inclusive*,

The rise of local authorities as an opportunity for international human rights law, European Journal of International Law (forthcoming).

⁶⁷ It is to note that the decisions of the ECSR, although authoritative, are not legally binding for State parties, and with regard to the mentioned decisions, the Dutch government reacted with strong disagreement and refused changing its stance on shelters for adults. See Amnesty International (2016), *op. cit.*

⁶⁸ Provera M. (2015). The Criminalisation of Irregular Migration in the European Union, in *CEPS Papers in Liberty and Security in Europe*, Brussels: Centre for European Policy Studies (CEPS); PICUM (2017), *op. cit.* For more information on the campaign, visit <http://bcnantirumors.cat>; see also (in English) <https://ec.europa.eu/migrant-integration/intpract/barcelona-anti-rumours-campaign>.

⁶⁹ Garcés-Mascreñas B. & Chauvin S. (2016), *Undocumented immigrants - Between exclusion and inclusion*, in Mamadouh V. & Wageningen A. (eds.), *Urban Europe - Fifty tales of the City*, Amsterdam: Amsterdam University Press.

safe, resilient and sustainable'. Consistently, world leaders have also adopted the *New Urban Agenda* to set a new global standard for sustainable urban development. The Agenda acknowledges the crucial importance of taking into account migrants in urban processes and governance, and identifies groups that should be given particular attention, including migrants and refugees, *regardless of their migratory status*.⁷⁰

Cities are increasingly joining forces at international level to address together the challenges of managing migration locally and ensuring the respect of human rights in their territories. UNESCO has identified eight international partnerships and cooperation networks of cities with a focus on migration. These venues are geared to exchange knowledge and experiences, build strategic inter-city alliances and serve as platforms for joint-advocacy and promotion of inclusive urban policies. These networks include EUROCITIES' Working Group on Migration and Integration; the International Coalition of Inclusive and Sustainable Cities (ICCAR); the Annual Mayoral Forum on Mobility Migration and Development (a global initiative supported by the United Nations Institute for Training and Research - UNITAR); The Hague Process on Refugees and Migration (THP); the Cities of Migration initiative; the former Cities for Local Integration Policy (CLIP); the United Cities and Local Governments (UCLG); and the URBACT Network - Arrival Cities.

Most of the work done within these networks focuses on the integration of regular migrants and refugees. However, at the first forum organised by the Global Mayoral Forum on Mobility, Migration and Development in 2014, mayors adopted the *Barcelona Declaration*, which called on authorities to assure the same rights, duties and opportunities to all persons residing in their territory, and minimize exclusion of migrants in an irregular situation. The declaration states that *'Opening municipal services to migrants, those in an irregular position too, is a humanitarian priority, but it is also fundamental for social cohesion. In this sense, cities are facing the effects of irregular migration, and do so in solitude. [...] The cities claim a greater support from other governments and international organizations to tackle the challenges of irregular migration;'* and finally *'Demand that legislation has a more realistic approach in order to minimize the generation of exclusion and of persons who are in an irregular situation regarding regulatory norms'*.

In the absence of an extensive knowledge and international cooperation focused on urban practices related to irregular migration, the aim of the City Initiative on Migrants with Irregular Status in Europe is to offer a new platform where the issue of irregular urban migration is the primary focus.

3. The inclusion of irregular migrants in the provision of municipal services: overview of city practices

3.1 Shelter and support for the housing needs

Finding solutions to accommodate homeless irregular migrants is a primary concern of many European cities. The reasons for a municipality to have an interest in supporting the housing needs of their irregular residents are plentiful, diversified and include:

⁷⁰ For more information see UNESCO (2017), *op. cit.*

- the need to respect municipal duties of care and the fundamental right to a housing for all⁷¹
- protecting the life and health of homeless migrants, especially during the cold winters of Northern Europe⁷²
- avoiding irregular settlements and squatting⁷³
- ensuring public order and safety and reassuring the local population
- protecting migrant women against domestic violence, traffickers and fighting prostitution⁷⁴

The *European Charter for the Safeguarding of Human Rights in the City* states that “The municipal authorities endeavour to ensure an appropriate supply of homes and infrastructure for *all their inhabitants, without exception*, within the limits of their financial resources”.⁷⁵ Cities are particularly concerned for the situation of asylum seekers who – after being accommodated in state-run centres during the first stages of their asylum procedure – can be forced to leave their accommodation and find themselves homeless when their asylum application is rejected. Many rejected asylum seekers do not want (or cannot) return to their country of origin. The concerns are exacerbated by the increasing dimension of this phenomenon during the ‘refugee crisis’. According to EU estimates ‘with around 2.6 million asylum applications in 2015/2016 alone, and considering that the first instance recognition rate stands at 57% in the first three quarters of 2016, Member States may have more than 1 million people to return once their asylum applications have been processed’.⁷⁶ Yet, Member States encounter a variety of challenges in ensuring the return of rejected asylum seekers, and often these difficulties are unrelated to migrants’ resistance to return.⁷⁷ With a rate of only 36 % of returns being effectively carried out,⁷⁸ rejected asylum seekers are in most cases left in European cities with no means to support their housing needs.

⁷¹ European Committee of Social Rights, 20 October 2009, *DCI v. the Netherlands*, Complaint No. 47/2008; European Committee of Social Rights, *CEC v. The Netherlands*, Complaint No. 90/2013; European Committee of Social Rights, *FEANTSA v. The Netherlands*, Complaint No. 86/2012.

⁷² Gothenburg City Official (2017), City Initiative on Irregular Migrants in Europe - A survey for the Working Group's background paper, Email to the author, 23 April, personal communication; Oslo City Official (2017), City Initiative on Irregular Migrants in Europe - A survey for the Working Group's background paper, Email to the author, 2 May, personal communication.

⁷³ Barcelona City Official (2014), Barcelona’s city experience, intervention in *City Responses to Irregular Migrants – Barcelona round-table seminar*, 16-17 October 2014, Barcelona, Spain, final report available at www.compas.ox.ac.uk/event/city-responses-to-irregular-migrants; Utrecht City Advisors and Klaas J (Fischer Advocaten - lawyer) (2014), *The law: responding to opportunities and constraints in domestic and European legal provisions*, interventions in *City Responses to Irregular Migrants – Barcelona round-table seminar*, 16-17 October 2014, Barcelona, Spain, final report available at www.compas.ox.ac.uk/event/city-responses-to-irregular-migrants.

⁷⁴ Spencer S. (2013), *op. cit.*

⁷⁵ Article XVI.

⁷⁶ European Commission (2017), Communication from the Commission to the European Parliament and the Council on a more effective return policy in the European Union - a renewed Action Plan, COM(2017) 200 final, available at <http://data.consilium.europa.eu/doc/document/ST-6943-2017-INIT/en/pdf>.

⁷⁷ European Migration Network (2016), *op. cit.*

⁷⁸ European Commission (2017), Communication from the Commission to the European Parliament and the Council on a more effective return policy in the European Union - a renewed Action Plan, COM(2017) 200 final, available at <http://data.consilium.europa.eu/doc/document/ST-6943-2017-INIT/en/pdf>.

National legislation provides that the prime responsibility for the effective provision of housing services is that of municipal authorities. However, national rules aiming at incentivising voluntary returns often restrict cities' possibilities to allow access to shelters for irregular migrants and rejected asylum seekers. For this reason, this area of service provision has in some instances provoked strained tensions between different levels of governance. The leading example is the Dutch situation, where notwithstanding a national legislation explicitly excluding failed asylum seekers from accommodation services (*the Linkage Act*), municipal authorities are exploring several avenues to shelter their irregular residents, including engaging in national and international legal proceedings against the central government (see above). When the Dutch Linkage Act was approved, 170 local authorities (including Rotterdam, Utrecht, Amsterdam and The Hague) opposed this policy and decided to keep irregular migrants in social housing.⁷⁹ It is also worth noting that although rejected asylum seekers are often the main concern of municipalities, all irregular migrants' housing situation is extremely precarious, especially in countries where, as landlords can be sanctioned for renting to irregular migrants, the latter are exposed to particularly abusive renting conditions.⁸⁰

Cities across Europe have engaged in different ways to provide a response to the temporary housing needs of undocumented migrants. In some national contexts, local authorities simply rely on the ambiguity of national legislation to ensure access to shelters for homeless people irrespective of migration status.

This is the case of **Dublin**, where the City Council's Homeless services has been relying on the absence of a clear national policy on the issue to allow migrants in immediate need into Dublin's emergency shelters without investigating their immigration status. Immigration checks are later carried out to assess clients' needs, verify which kind of services they can access, and identify possible solutions to their homelessness.⁸¹ In **Genoa**, the Municipality has been providing services, including shelters and food, directly through its offices to particularly vulnerable (irregular) individuals, including unaccompanied minors, pregnant women, victims of trafficking, irregular elderly people or undocumented Roma. The municipality does so by taking advantage of 'complexities' in the Italian immigration legislation that let the municipality interpret national rules in a way that allows the local authority to provide additional services for irregular migrants particularly in need.⁸² In **Oslo**,

⁷⁹ PICUM (2004), Report on the housing situation of undocumented migrants in six European countries: Austria, Belgium, Germany, Italy, The Netherlands and Spain, Brussels: Platform for International Cooperation on Undocumented Migrants, available at http://picum.org/picum.org/uploads/file_/PICUM%20Report_on%20Housing_and_Undocumented_Migrants_March_2004_1.pdf.

⁸⁰ PICUM (2014), Housing and Homelessness of Undocumented Migrants in Europe: Developing Strategies and Good Practices to Ensure Access to Housing and Shelter, Brussels: Platform for International Cooperation on Undocumented Migrants, available at http://picum.org/picum.org/uploads/publication/Annual%20Conference%202013%20%20report%20HOUSING_EN_FINAL.pdf.

⁸¹ Dublin City Official, interviewed by Sarah Spencer, May 2013.

⁸² Genoa City Official (2017), Richiesta d'informazioni, Email to the author, 19 May, personal communication; See also Genoa City Official (2014), Irregular migrants: framing the discussion, intervention in City Responses to Irregular Migrants – Barcelona round-table seminar, 16-17 October 2014, Barcelona, Spain, final report available at www.compas.ox.ac.uk/event/city-responses-to-irregular-migrants.

the City funds an accommodation centre for overnight stays during the winter (*Vinternattilbudet*), which is managed by the Salvation Army together with the Red Cross, and was '*established as an offer to those without rights to other social services*'. As '*the question of irregular migrants has not been given much political or public attention*', no one is rejected from the centre.⁸³

However, national legislation often leaves no possibility to host individuals with irregular status in official public shelters. In this case, the most common approach used by municipalities to make shelters available to irregular migrants on their territories is providing funding to NGOs addressing irregular migrants' housing needs. Municipalities often prefer to outsource the service to NGOs rather than providing a shelter through municipal departments even in contexts where the national and public hostility is not explicit, as in the abovementioned case of Oslo.⁸⁴ In most cases, municipalities support *NGOs managing shelters* for specific categories of irregular migrants, as undocumented women, children or rejected asylum seekers.

In Sweden, for instance, an initiative of the City of **Gothenburg** addresses the administrative barriers hindering undocumented women's access to state-funded emergency shelters, by reimbursing non-profit shelters for providing a protected space for irregular women escaping violence. The Municipal Emergency Centre for Women is also tasked to provide assistance and protection to the women in cooperation with the shelters.⁸⁵ Similarly, the Municipality of **Utrecht** has *inter alia* provided funding to NGOs to manage the *Fanga Musow* shelter, which provides women and children in an irregular condition with stable accommodation, as well as financial, legal and medical assistance.⁸⁶ Utrecht also funds two more shelters, one for undocumented adults, and an 'emergency shelter' for rejected asylum seekers. For reasons of public order and crime prevention, the Mayor can prohibit police from expelling a rejected asylum seeker from the shelter, if national authorities cannot demonstrate that the individual has an alternative accommodation if expelled, thereby placing the onus of proof on the government.⁸⁷ Significantly, Utrecht's shelters are not designed only to offer a place to sleep, but are an example of a service based on a problem-solving approach. They provide a means to explore solutions to terminate guests' condition of irregularity (see below).⁸⁸ Once a viable solution is identified, municipal officers engage in informal mediations with national immigration officers to make sure the identified option is practicable. Slightly fewer than 40 NGOs were actively offering shelter to irregular migrants in Dutch municipalities in 2012-2013.⁸⁹ Cities in the Netherlands also outsource the activity of funding itself. They often fund the International Network of Local Initiatives

⁸³ Oslo City Official (2017), City Initiative on Irregular Migrants in Europe - A survey for the Working Group's background paper, Email to the author, 2 May, personal communication.

⁸⁴ Oslo City Official (2017), City Initiative on Irregular Migrants in Europe - A survey for the Working Group's background paper, Email to the author, 2 May, personal communication.

⁸⁵ PICUM (2015), *op. cit.*

⁸⁶ *Ibidem.*

⁸⁷ Provera M. (2015), *op. cit.*

⁸⁸ Utrecht City Official, interviewed by Sarah Spencer, March 2013.

⁸⁹ PICUM (2014), *op. cit.*

with Asylum seekers (INLIA), which is tasked to finance local foundations or initiatives that in turn shelter irregular migrants.⁹⁰

Municipalities also support NGOs that do not manage shelters but in other ways facilitate access to housing.

The Community of **Madrid** has been supporting a particularly innovative initiative which aims to facilitate migrants' fair access to rentals in the private housing market. The Community funds an NGO (*Provivienda*) that mediates between tenants and home owners, and checks housing conditions. *Provivienda* keeps the identity of the tenant anonymous to the landlord until a leasing agreement is signed in order to prevent discrimination and avoid landlords asking for documents (such as payment slips) that migrants are unable to produce because of their irregular status.⁹¹ Through the intermediation of an NGO, the City of **Amsterdam** has been providing monthly allowances to irregular migrants in critical need with no means to sustain themselves, consisting (in 2013) of €225 for living expenses and, if needed, an additional €225 as an accommodation allowance. The NGO receives funding from the City of Amsterdam to pay the allowances, but can do so only after municipal officials authorise individually each case.⁹²

Municipal initiatives funding shelters for irregular migrants have been at the centre of municipalities' *litigation strategies against restrictive national policies*. As we have seen above, the litigation strategies initiated by **Utrecht** led the European Committee of Social Rights to rule in three decisions⁹³ that, under the Council of Europe's *European Social Charter (Revised)*, a State Party has an obligation to provide shelters for irregular children and adults. The ESCR held that '*States Parties are required [...] to provide adequate shelter to children unlawfully present in their territory for as long as they are in their jurisdiction*'⁹⁴ and that '*shelter must be provided also to adult migrants in an irregular situation, even when they are requested to leave the country and even though they may not require that long-term accommodation in a more permanent housing be offered to them*'.⁹⁵ It is to note, by contrast, that under the European Convention on Human Rights (Art. 3), the European Court of Human Rights recently denied that the Dutch state has a positive obligation to provide a rejected asylum-seeker with emergency social assistance and shelter, if the concerned individual is not prevented to return to their country of origin, and the hosting state offers accommodation under the condition that the asylum seeker cooperates for his return.⁹⁶

Conditioning access to a shelter to the migrant's agreement to their return is indeed an expedient for some municipalities to reconcile their practice with national policies.

⁹⁰ PICUM (2014), *op.cit*

⁹¹ PICUM (2014), *op. cit.*

⁹² Amsterdam City Officials, interviewed by Sarah Spencer, March 2013.

⁹³ European Committee of Social Rights, 20 October 2009, *DCI v. the Netherlands*, Complaint No. 47/2008; European Committee of Social Rights, *CEC v. The Netherlands*, Complaint No. 90/2013; European Committee of Social Rights, *FEANTSA v. The Netherlands*, Complaint No. 86/2012.

⁹⁴ European Committee of Social Rights, *DCI v. The Netherlands*, Complaint No. 47/2008. Decision on the merits.

⁹⁵ European Committee of Social Rights, *CEC v. The Netherlands*, Complaint No. 90/2013. Decision on the merits.

⁹⁶ European Court of Human Rights, *Hunde v. The Netherlands*, Application No. 17931/16.

In the Netherlands, it is the case of **Rotterdam** where a municipal ‘bed-bath-food shelter’ has been accepting irregular homeless migrants only if unfit to sleep in the street – as certified by a medical doctor – and if they agree to cooperate for their return.⁹⁷ These conditions were confirmed to be a consequence of Courts’ rulings and coincide with the national governments’ stances. In Belgium, irregular migrants who sign in for their voluntary return can access the *De Tussenverdieping* reception centre managed by the City of **Ghent**.⁹⁸

3.2 Legal counselling and support for regularisation procedures and voluntary return

The provision of legal advice to migrants can prove key to terminate a condition of irregularity, be it through regularisation or, otherwise, the voluntary return to a country of origin. In both cases, the termination of an irregular condition is in the best interests of both the individual concerned and municipal authorities. ‘*Irregularity is never a solution*’ even for officials that have shown the most open stances vis-à-vis irregular migrants in their cities.⁹⁹ In some cases, reasons of cost efficiency are among the rationales for practices that e.g. facilitate voluntary returns of people who cannot be regularised. Although cities do not have the power to rule over regularisations or to enforce a return, they can play a crucial role in guiding irregular migrants towards their way out of irregularity through counselling activities.

Often legal counselling on immigration matters is provided within a shelter where irregular migrants are hosted. Shelters often offer more than a place to sleep, and might be staffed with professionals who can assess each individual situation, and either advise irregular migrants about their possibilities to achieve regularisation, or – whether the latter is not a viable option – advise and support their voluntary return.

The NGOs managing the aforementioned *Fanga Musow* shelter, as well as the other shelters funded by the municipality of **Utrecht**, are staffed with legal advisors who are tasked with assessing each individual situation and advise accordingly. As asylum seekers in the Netherlands are denied access to state-run accommodation centres after the first-instance rejection of their asylum application, advice in the shelter can concern their second-instance asylum procedure and may consist in identifying new grounds for protection of which the asylum seekers were not aware (e.g. risks of genital mutilation), or tracking down new evidence on an individual’s country of origin about the circumstances that forced them to flee. Advice can also focus on medical or family grounds for the achievement of a regular status. Once a solution is identified, municipal officers directly engage in informal discussions with national immigration officers to agree whether the identified option is viable. Showing a fully-fledged commitment to support one’s regularisation proves crucial even in cases where regularisation is not achievable, because it persuades the concerned individual that returning to their country of origin is their only viable option. According to Utrecht’s officers, their approach is based on instilling trust for the counselling service, so that ‘*when migrants see you have really tried, they are willing to discuss the alternative: how*

⁹⁷ Rotterdam City Advisor, interviewed by Sarah Spencer, January 2013.

⁹⁸ Ghent City Official (2017), *City Initiative on Irregular Migrants in Europe - A survey for the Working Group's background paper*, email to the author, 28 April, personal communication.

⁹⁹ Utrecht City Official, interviewed by Sarah Spencer, March 2013.

to go home'.¹⁰⁰ Accordingly, the shelters also provide counselling on voluntary return programmes. During the first 10 years of the service, shelter staff successfully helped around 800 people in obtaining a regular status, while around 100 people agreed to return to their countries of origin. In 94% of cases a solution was found in the form of a residence permit, a voluntary return, or a renewed right to care from the central government.¹⁰¹

In other municipal contexts, cities establish specific information centres for the provision of information and legal counselling on immigration matters.

An illustrative experience is that of **Ghent's Infopunt Migratie** (Info-point on migration), an information centre managed by the municipality to provide advice and information on immigration matters not only to (irregular) migrants, but to all the residents, including to Belgian citizens who wish to emigrate. Migrants, including those who are irregularly staying, can obtain information on their entitlements in Ghent and in Belgium, on work possibilities and on procedures to reunify with their families; or can be referred to other municipal departments or organisations for information, for instance, on access to services or language courses. Irregular migrants can get advice on their status and on the procedures to regularise their stay. To ensure confidentiality, the centre keeps only a minimal record of each person, including nationality, gender and immigration status. Only in exceptional cases that need a follow-up, the staff asks for a phone number, and when strictly necessary, a name. In its first six months, the centre provided advice to around 360 irregular migrants.¹⁰² **Infopunt Migratie** also operates a service of translation into Dutch of official documents, such as birth or marriage certificates, but does not advocate for individual cases with federal authorities, a service that was previously provided by the city's Integration Service and subsequently discontinued.¹⁰³ In addition to the City's information point, Ghent's municipality also financially supports an independent organisation subsidised by the Flemish Government (the Center for General Welfare – CAW) to run the '*Transithouse*' where irregular migrants can obtain immigration advice. The reason for the city financing this additional service is to ensure that migrants who are reluctant to interact with local authorities in the information point can still obtain advice.¹⁰⁴

Some municipalities instead do offer a system of intermediation between irregular migrants and immigration authorities to obtain guidance on regularisation issues.

In **Athens**, the municipal Social Services department negotiates with the Ministry of Interior on the issuance of one-year residence permits on humanitarian grounds for women who are recognised by the department as victims of violence.¹⁰⁵ More widely, the municipality of

¹⁰⁰ *Ibidem.*

¹⁰¹ Utrecht City Official, interviewed by Sarah Spencer, March 2013.

¹⁰² Ghent City Official, interviewed by Sarah Spencer, February 2013.

¹⁰³ *Ibidem.*

¹⁰⁴ Ghent City Official (2017), Background paper - a few remarks, Email to the author, 27 June 2017, personal communication

¹⁰⁵ Athens City Official, interviewed by Sarah Spencer, July 2013. Such permits are recognised in Greek legislation by Article 44 of the Law 3386/2005 amended by the Article 94 of Law 4139/2013.

Munich, in cooperation with local NGOs, has established a system of anonymous individual case reviews, known as the 'Munich model'. The Municipality has set up cooperation agreements with the NGOs for them to operate as intermediaries between migrants and immigration authorities. Irregular migrants can present their case to such organisations, which in turn can refer to a contact person within the immigration authority to obtain a consultation on the individual case. The NGOs do not mention the details of the individual concerned, thus ensuring the anonymity of the consultation. The immigration authority can assess, for instance, whether a so-called '*Duldung*' residence permit can be issued for medical or other reasons temporarily impeding the individual's ability to return to his or her country of origin, or if return is the only possible option. In this last case, NGOs can suggest that the concerned individual sign up to a programme of voluntary return that is also offered by Munich's municipality. The Municipal Department for Social Affairs manages the 'Coming Home' project, which offers to cover the costs of travel and provides a small grant for the re-integration of voluntary returnees in their country of origin. According to municipal officials, this programme also responds to reasons of cost-efficiency, since any voluntary return, beyond being more humane, is also less expensive than detaining and forcibly deporting a person. As for Utrecht, Munich's practice is based on instilling trust in migrants towards the service offered by the NGOs. The city – and law enforcement authorities – have an interest in enhancing lawful conditions and in migrants emerging from illegality. For these reasons, the local police is instructed not to patrol the areas around the NGOs offering the intermediation.¹⁰⁶

Another example of cooperation with NGOs can be found in **Barcelona** where the City Council funds social entities to provide free legal support to migrants for obtaining a regular status, renewal of residence permits, information regarding marriage with Spanish nationals or access to services.¹⁰⁷ Beyond providing information, social entities are also tasked to accompany and help migrants in managing situations where there is a risk to lose a regular status (e.g. following the loss of employment), and to mediate for them with the '*opaque and often inaccessible administration*' processing their case.¹⁰⁸ In 2011, 55 such entities were funded by Barcelona's City Council through projects. With the aim of ensuring consistency and efficiency of the service, the municipality launched the Network of Social Entities offering Legal Advice for Foreigners (*Xarxa d'Entitats Socials d'Assessorament Jurídic per Estrangers* - XESAJE). The network facilitates the circulation of information with regard to changes in laws and regulations affecting foreigners. It also organises periodical meetings with the institutions to obtain up-to-date information on the most pressing issues for both administration and users.¹⁰⁹

Finally, it is worth noting that besides cities' initiatives to inform migrants about their possibilities to regularise, several municipalities have shown an interest in distributing wider information and orientation to irregular migrants about their rights in the city.

¹⁰⁶ Munich City officials, interviewed by Vanessa Hughes, July 2013.

¹⁰⁷ Gilardoni G., D'Odorico M. and Carrillo D. (eds.) (2015), *op. cit.*

¹⁰⁸ Garcés-Mascreñas B. (2014b), *Local Integration Policies in Barcelona – KING Project – In-depth Study n.12 / October 2014*, Milano: Fondazione ISMU, available at: http://king.ismu.org/wp-content/uploads/GarcesMascrenas_InDepthStudy.pdf.

¹⁰⁹ *Ibidem*.

The municipality of **Utrecht**, for instance, in 2012 distributed a leaflet in the city called '*Without papers, not without rights!*' with the aim of informing irregular migrants about their rights, including housing, medical, work, education and legal advice. In the past, **Ghent** had funded an NGO, *Intercultureel Netwerk Gent*, to offer courses called 'Living Together and Orientation' to irregular migrants. These were intensive orientation courses addressing issues thematically and providing essential information on various topics, including return (voluntary or forced), legal assistance, residence procedures, social services, access to culture and free-time activities, or children's enrolment at school. The courses were given to small groups, in migrants' mother tongue, run periodically over a period of a few weeks.¹¹⁰

3.3 Health care

Irregular migrants face several obstacles in accessing health care services in Europe where national legislation imposes limits to the level of access that migrants with irregular status can enjoy. Emergency health care is the only level of access that is available in *all* the 28 Member States of the EU¹¹¹ and Norway.¹¹² In six EU countries emergency care is also the *only* level of care that undocumented migrants can legally enjoy. In 12 further Member States irregularly staying migrants are exceptionally entitled to some specialist services, such as care for infectious diseases, but are generally excluded from primary and secondary care services. Only in the 10 remaining states, irregular migrants are legally allowed to access *some* level of primary and secondary care.¹¹³ In countries like Spain, where access to health care for undocumented migrants has been restricted recently, tensions arose with regional authorities which instead advocate for a wider access to care. Besides legal provisions, there exist indirect barriers for undocumented migrants willing to receive medical care which can in practice nullify their legal entitlements. Such barriers include:

- requirements for uninsured patients, including irregular migrants, to pay the full¹¹⁴ or a significant part of the cost of care;
- the legal duty upon public servants in the national health services to inform immigration authorities of the irregular status of their patients (as in Germany);
- migrants' lack of knowledge as to their entitlements; and

¹¹⁰ Ghent City Official, interviewed by Sarah Spencer, February 2013. Following the incorporation and merging of *Intercultureel Netwerk Gent* in the local integration agency "IN-Gent" (partly funded by the City of Ghent), the courses '*Living together and Orientation*' were put on hold in 2016. Instead, the organisation 'Centre for General Welfare (CAW) – subsidised by the Flemish Government – organises '*reflection groups*' for undocumented migrants occasionally. At the same time, the integration agency IN-Gent is being requested to organise new initiatives for irregular migrants' orientation by the stakeholder group on irregular migrants of the City of Ghent. Cf. Ghent City Official (2017), Background paper - a few remarks, Email to the author, 27 June 2017, personal communication.

¹¹¹ Spencer S. & Hughes V. (2015b), *op. cit.*

¹¹² Oslo City Official (2017), Background paper - C-MISE initiative, Email to the author, 8 September 2017, personal communication.

¹¹³ Belgium, Czech Republic, France, Germany, Ireland, Italy, Netherlands, Portugal, Sweden and the UK. See Spencer S. & Hughes V. (2015a), *op. cit.*

¹¹⁴ In the Czech Republic, Germany, Ireland and the UK. See Spencer S. & Hughes V. (2015a), *op. cit.*

- cumbersome administrative procedures making healthcare practically inaccessible to migrants without regular status.

Local authorities often tend to be concerned with the implications of exclusions from medical treatments for public health, as demonstrated by the Spanish experience of the 2012's health care reform. Against a severe limitation of irregular migrants' entitlements to receive free treatment (beyond emergencies, pregnancy, delivery and postpartum), all Spain's Autonomous Communities reacted by approving special measures re-extending access to additional health care services at regional level, so that notwithstanding the national reform some degree of access to health care for people in an irregular situation is today provided all across the Spanish territory. Two regions, Andalusia and Asturias, provided equal access to services for undocumented migrants and Spanish nationals.¹¹⁵

In Italy, regions like Puglia or Tuscany used their legislative powers to extend irregular migrants' entitlements with regard to access to health care beyond national provisions and their actions found the support of the Italian Constitutional Court which opposed national instances to censor these regional laws.¹¹⁶ Municipalities across Europe have shown great inventiveness to support the medical needs of their irregular residents, ensuring that an extension of health care services beyond national standards is available on the territory, or simply eliminating the practical barriers to effective access to health care. Local healthcare institutions can enjoy great autonomy, which translates into numerous innovative practices but also large disparities across municipalities. In some cases, cities have adopted initiatives that help irregular migrants' overcome their obstacles to access the mainstream health care services, as *e.g.* in the case of Madrid's Municipal ID Card (see below), but more often cities adopted targeted measures that are specifically aimed at insuring a 'parallel system' of care for irregular migrants who cannot access mainstream services for their lack of documentation and medical insurance (as in the cases of Warsaw or Vienna's clinics for uninsured individuals).

As aforementioned, *cities implement actions aimed at extending the level of access to health care available on the territory to irregular migrants beyond national standards.*

In Italy, the City of **Florence**, in cooperation with the Tuscan regional government and Caritas, implemented a project to ensure continuative care for migrants who cannot be registered with the national health system. Supported by regional and municipal funding, Caritas in cooperation with municipal officers has been managing a medical facility where irregular migrants who are *e.g.* victims of car accidents or affected by serious diseases can be hosted and receive long term post-hospitalisation treatments, which otherwise would not be provided in public hospitals. As these patients are supposed to be released from hospitals after emergency treatment, the project allows them to benefit from an individually structured care pathway until full rehabilitation.¹¹⁷ Beyond obvious humanitarian aims, the project responds to efficiency needs, as it aims to avoid that local hospitals prolong irregular

¹¹⁵ PICUM (2017), *op. cit.*

¹¹⁶ Delvino N. and Spencer S. (2014), *op. cit.*; PICUM (2017), *op. cit.*

¹¹⁷ Municipality of Florence (2011), *Marginali e immigrati irregolari, un progetto per garantire l'assistenza anche dopo l'ospedale*, [online press release] 12 September, available at http://press.comune.fi.it/hcm/hcm58683-1_Marginali+e+immigrati+irregolari [last accessed 30 May 2017].

migrants' hospitalisations as the only practicable solution to not refuse post-emergency care. This project falls within the scope of activity of a wider innovative practice known as the Community Health Partnership of Florence (*Società della salute di Firenze*), a public consortium made up of municipal authorities and the local health unit, created in 2004 with the aim of improving the integration of social and health services, as well as services for disadvantaged populations, including socially excluded migrants. The consortium has been providing a structure for inter-sectoral work at local level to improve the delivery of services and programmes as a result of integrated planning and policy development.

As the in the aforementioned experience of Berlin's roundtable, Florence's Community Health Partnership is an attempt to tackle the health needs of irregular residents by developing a practice of good governance. Introduced as part of a pilot programme, the Tuscan regional government subsequently approved a law making such partnerships mandatory for all the health units of Tuscany.¹¹⁸

Municipalities also take measures to eliminate the practical barriers hindering irregular migrants' effective access to the health care services they are entitled to. One such barrier is represented by migrants' fear of approaching public health facilities because of the risk of being detected by immigration authorities. Although in most countries national legislation does not require (or prohibits) medical staff to report their patients with irregular status, in some national contexts, as in Germany, such a requirement on all public servants exposes migrants requesting health treatments to the risk of denunciation. For this reason, several German municipalities have found alternative ways to ensure that health care is provided to their irregular residents, normally through the intermediation of NGOs offering medical services.

In 2001, the City of **Frankfurt**'s Health Department agreed to work with a local NGO supporting women with an African background in the city (Maisha) to offer free medical consultations to undocumented migrants. The initiative – open to all nationalities and genders – was named the 'Humanitarian consultation hours' (*Humanitäre Sprechstunde*) and started offering medical consultations and treatments, operating as a general practitioner for undocumented migrants. The centre works in partnership with a network of specialist doctors to refer patients with more serious health concerns. Frankfurt's Department of Health and the Women Department provide funding and doctors to volunteer in the organisation, while the Department of Social Care provides medicines. Health care is provided anonymously and generally free of charge, but the centre asks contributions for treatment costs arranged according to the patient's means. The 'Frankfurt model' inspired several other major cities in Germany that have implemented similar drop-in centres including Düsseldorf and Munich. In **Düsseldorf** the organisation 'STAY!' together with MediNets has been offering similar consultations. In addition the City Council approved the introduction of an anonymous health insurance certificate and of a clearing centre at STAY!/MediNetz for people without a residence permit. These measures were accompanied by the creation of a municipal fund of €100,000. On certain conditions, migrants access the services free of cost and are either treated during the consultations or are referred to practicing doctors that have agreed to bill according to the lowest rate of the German Scales of Medical fees (GOÄ) or Fees for Dentists (GOZ); or referred to hospitals that bill fees

¹¹⁸ World Health Organization, *Italy (Tuscany Region): the Community Health Partnership of the North-West Zone of Florence*, [online], available at <http://data.euro.who.int/Equity/hidb/Resources/Details.aspx?id=5>.

directly to STAY!, which is reimbursed through the emergency fund. A substantial part of the work is however done by doctors on a volunteer basis.¹¹⁹

Another significant obstacle faced by irregular migrants who cannot register in national health insurance schemes is represented by the requirement to pay the full or a significant part of the cost of care. Besides the aforementioned German practices, municipal initiatives to reduce the impact of medical costs are observed in Dutch cities.

In the Netherlands irregular migrants are ineligible to state health insurance and are expected to pay for the ‘medically necessary’ care that they can receive. Although uninsured migrants may obtain a reimbursement from a public body called CAK, the complex bureaucratic system for reimbursement can make doctors and hospitals reluctant to treat patients without regular status. CAK does not cover all kinds of treatments, like dental care, and pharmacies require a contribution of 5 euro per prescription, which may be outside the reach of destitute patients requiring long-term treatment. Several municipalities, including Eindhoven, Amsterdam, Nijmegen and Utrecht therefore support local NGOs that provide assistance and services to uninsured migrants. These municipalities contribute to cover the costs of health services that are not covered by CAK, such as dental care and physiotherapy, and also cover the fee for pharmaceuticals that some patients are not able to afford. Local NGOs also facilitate access to dental services by connecting patients with dentists willing to serve them for a reduced fee, while in other cases they provide a note for hospitals affirming that a particular patient qualifies for CAK’s reimbursement.¹²⁰

Poland has a health system based on a national insurance scheme to which irregular migrants cannot register, meaning that they only have a clear legal entitlement to emergency care. The City of Warsaw therefore provides public grants for providing assistance to its uninsured homeless population. Grants from Warsaw City and Province currently fund 40% of the activities of an NGO, *Doctors of Hope*, which operates a health clinic with volunteer doctors who in 2015 treated around 8,000 uninsured residents.¹²¹ Similarly, the city of Vienna has been funding an NGO (*AmberMed*) to run three clinics where uninsured people, including irregular migrants, rejected asylum seekers but also homeless Austrians, could access a broad range of services that do not fall within the classification of emergency treatment. These include *e.g.* cardiologic and paediatric services, but also ophthalmologic and diabetes treatment.¹²²

Cumbersome administrative procedures are also a barrier for irregular migrants accessing healthcare.

Some municipalities have tried to address the issue in Belgium where irregular migrants cannot obtain a national health insurance but are eligible to a three-month coverage under a

¹¹⁹ PICUM (2017), *op. cit.*

¹²⁰ *Ibidem.*

¹²¹ *Ibidem.*

¹²² Vienna-based NGO representative, interviewed by Sarah Spencer and Vanessa Hughes, November 2012.

separate scheme called Urgent Medical Assistance (AMU/DMH).¹²³ However, to receive AMU/DMH coverage, irregular migrants must obtain a special medical card from local welfare centres (CPAS/ OCMW)¹²⁴ which requires demonstrating that the individual meets certain conditions – often difficult to prove for a person in an irregular situation – through a complex procedure.¹²⁵ The investigations to verify that the conditions are met normally include house visits by a social assistant and can last up to one month, irrespective of the fact that the coverage concerns urgent care. Moreover, each local CPAS/ OCMW can determine its own procedures relating to the medical card, making the situation even more confusing for both migrants and doctors. However, this has allowed certain municipalities to ease the requirements to obtain medical cards for AMU/DMH coverage, including releasing medical cards for periods longer than three months and establishing agreements with doctors and health centres to limit refusals of care due to lack of awareness of the system. In **Molenbeek**, one of the 19 municipalities forming **Brussels**, the first medical consultation is arranged and paid by the local CPAS/ OCMW as soon as an undocumented person registers and requests medical assistance, without requiring that the conditions for AMU/DMH eligibility be met, thus considerably reducing administrative barriers and allowing a rapid detection of serious illnesses. In **Ghent**, the CPAS/OCMW has eased the requirements to obtain a medical card and does not require that irregular migrants are ill at the time the card is requested. If the applicant cannot provide an address, they can rely on other types of evidence, including testimony by locals to prove residence in the city. The CPAS/OCMW of **Liège** established a mediation service to assess the administrative situation of the migrant and prepare a referral document to the mainstream care system facilitating an expedited access to care. It is one rare case of a municipal practice that replaced a service that was previously provided by an NGO.¹²⁶

An innovative solution to ease access to services offered in the municipality, including health care, for people that do not fall within national schemes or insurances is represented by the issuance of special municipal ID cards, a practical solution first applied in several US cities, including New York, San Francisco, New Haven, Los Angeles and Washington D.C (see below).

In Europe, the City of **Vienna** in 2015 created a local ID Card for migrants and refugees in the city in order to address issues of health insurance, logistics, and mobility (although it is unclear if legal residence is required in practice to obtain the card).¹²⁷ In 2016, **Madrid**'s City Council approved the creation of a City ID card that irregular migrants can obtain by simply registering their presence in the City and showing that they do not have a valid identification

¹²³ *Aide médicale urgente* (AMU) or *Dringende Medische Hulpverlening* (DMH). Despite its name, the scheme provides coverage for preventative and curative care, as well as all the medical treatments included in the basic national health insurance. See PICUM (2017), *op. cit.*

¹²⁴ *Centre Public d'Action Sociale* (CPAS) or *Openbaar Centrum voor Maatschappelijk Welzijn* (OCMW).

¹²⁵ The patient must demonstrate that he lives irregularly in that municipality, that he/she subsists on income below a certain threshold, and he must present a medical certificate provided by a doctor demonstrating medical need.

¹²⁶ Carrera S. & Parkin J. (2011), *op. cit.*

¹²⁷ UNESCO (2016), *op cit*

document. Madrid's card ensures access to all the services offered by the city, particularly health care, education, social services and employment-seeking services.¹²⁸ (see below).

Finally, municipalities have also adopted strategies to address irregular migrants' lack of knowledge as to their entitlements.

Barcelona's social entities in the XESAJE Network (see above) are also tasked with providing information about how to obtain a health card and organise special sessions for new arrivals on how to access to the health system.¹²⁹ In response to the aforementioned 2012's reform of the Spanish health system, **Madrid's** City Council launched a campaign called 'Madrid does look after you' (*Madrid sí cuida*) to inform irregular residents that they have the right to access public health care services in Madrid's Community, encouraging everyone to register in a health centre and giving details about where to report or to seek help if someone is improperly denied care.¹³⁰

3.4 Education

Although education policy is decided at national or regional level, local authorities have responsibilities for the practical management of schools on their territory. They thus have a wide margin of manoeuvre to facilitate or hinder access to educational services for both irregular children and adults. National legislation in 23 EU Member States implicitly or explicitly entitle (and sometimes require) minors in an irregular situation to attend compulsory education, but in five EU countries¹³¹ the law does not entitle these children to attend school. In practice irregular migrant children in these countries may get access to education only at the discretion of individual schools.¹³² Even where an entitlement exists, however, irregular migrant children aged between 16 and 18 are sometimes excluded, as well as children before the age of six.¹³³

As for health care, children with irregular status face a number of practical barriers that can nullify their legal entitlement to participate in national education programmes. These include enrolment procedures requiring official proofs of residence or registration in the municipal census. It is therefore evident that local authorities (and single schools) can in practice play a key role in establishing procedures that facilitate inclusion or exclusion. The experience of Italian cities with regard to pre-schooling education is elucidative of how different municipal policies can be crucial on irregular children's effective access to education.

Although Italian legislation did not impose a requirement to show a valid residence permit to enrol in public non-compulsory education services, the Mayor of **Milan** in 2007 officially instructed municipal kindergartens (age group 2,5 - 5 years) to require a valid residence permit for children's enrolment. Similarly, following the immigration reform that explicitly

¹²⁸ PICUM (2017), *op. cit.*

¹²⁹ Garcés-Mascreñas B. (2014b), *op. cit.*

¹³⁰ PICUM (2017), *op. cit.*

¹³¹ Bulgaria, Finland, Hungary, Latvia and Lithuania. See Spencer S. & Hughes V. (2015a), *op. cit.*

¹³² Spencer S. & Hughes V. (2015a), *op. cit.*

¹³³ Spencer S. & Hughes V. (2015b), *op. cit.*

required the proof of a regular residence to access public services except for compulsory-education and health services, the City Council of **Bologna** imposed the exhibition of a valid residence permit when registering children to nursery schools (age group 3 months – 2.5 years). By contrast, the Cities of **Turin**, **Florence** and **Genoa** allowed the enrolment of undocumented children by instructing municipally managed kindergartens not to require any documentation showing a regular residence. The discrepancies between municipal practices were finally solved with the intervention of the Ministry of Interior which provided a re-interpretation of the national legislation. A ministerial circular stated that national legislation allows the enrolment of irregular pupils in pre-school facilities and therefore municipal schools should not require the exhibition of a residence permit. As for the Milanese case, the Tribunal of Milan censored the decision of the Lombard cities for being discriminatory and after a change in political control of the City Council, Milan introduced an internal regulation clarifying that undocumented children can access pre-school education on the same basis as nationals.¹³⁴ Following instructions by the Mayor, in **Turin** educational facilities do not require showing a valid residence permit and irregular migrants can access all the educational services provided by the municipality, from nursery schools to training after school.¹³⁵

In **Barcelona**, the local policy of applying flexibility and permitting the registration of irregular migrants, including those with no fixed address, in the local census (*padrón*) allows irregular residents the right – attached to registration in the *padrón* – to access education. Moreover, the local City Council funds local social entities (see above) by way of projects to offer programmes in the sphere of education, including short training courses and classes in Catalan and Spanish. The social entities are also assigned the role of offering legal advice concerning recognition of educational qualifications and providing information about official channels of access to the job market.¹³⁶ In **Madrid**, the recently approved Municipal ID Card – which migrants without identification documents can request – provides access to all municipal services, including those in the field of education (see more details below).¹³⁷

Even where national law prohibits schools from asking for documentation from migrant children, many schools actually do so and discourage undocumented pupils to enrol because the school will not be able to get reimbursed by the state. In countries such as the Netherlands, Poland and Hungary, *schools argue that the state allocates funding according to the number of students enrolled, thus having a problem with the presence of children without valid documents.*¹³⁸

In the Belgian town of **Sint-Niklaas**, a solidarity fund has been established to support schools in running special projects in favour of undocumented pupils. All schools, including private

¹³⁴ Delvino N. and Spencer S. (2014), *op. cit.*

¹³⁵ Turin City Official, interviewed by Sarah Spencer, April 2013.

¹³⁶ Garcés-Masareñas B. (2014b), *op. cit.*

¹³⁷ PICUM (2017), *op. cit.*

¹³⁸ PICUM (2008), *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, Brussels: Platform for International Cooperation on Undocumented Migrants, available at <http://picum.org/picum.org/uploads/publication/Undocumented%20Children%20in%20Europe%20EN.pdf>.

schools, financially contribute to a general fund so they can support one another. Schools can raise the funding themselves through events such as school parties or barbeques.¹³⁹

Undocumented families are also excluded from economic aid for extra expenses such as books, transportation and school meals which in practice can hinder access to schools for children. Some local authorities have taken actions to address this barrier as well.

In the UK, children in need with no recourse to public funds, including irregular children, can be financially supported by local authorities under children's legislation.¹⁴⁰ In the financial year 2009/2010, 37 local authorities in the UK supported 1,729 children and families (for a total amount of £19m).¹⁴¹ The city of **Amsterdam** has been financing a foundation, 'Learning without papers' (*Leren Zonder Papieren*), which in turn has been providing financial help to undocumented families for the expenses necessary for their children's education, including school materials, sport clothes, as well as fees for school trips, if they could not afford these costs themselves.¹⁴² In the Belgian city of **Ghent**, pupils with irregular immigration status are provided with free access to public transportation ('bus pass') like any other child in the city. The 'bus passes' can be provided to undocumented children through the intermediation of their school. A social assistant within the school is responsible for filling in an application for the 'bus passes' on behalf of undocumented students and submits it to the city's Asylum & Refugee Service. In turn, the latter requests the passes every month from the local transportation company which issues the passes and – given the often precariousness of undocumented families' residence – sends them to the school instead of their homes.¹⁴³

3.5 Practices allowing a broader access to services

As we have seen, most of the inclusionary actions taken by European municipalities tend to focus on one or more specific aspects of service provision, be it with regard to legal counselling, accommodation, education, health or other. In some cases, one single city may have adopted a number of measures in different areas of service provision that altogether address comprehensively the needs of undocumented migrants. However, some municipalities have ensured a wide access to service provision by adopting one single action or policy that allowed a general access to (almost) all the mainstream services offered in the city. These actions provide more relevance to the effective residency in the municipal territory, rather than to a regular residence permit, thus creating a sort of urban citizenship for their residents. One significant example in Europe is represented by certain Spanish municipalities, like the City of **Barcelona**, with

¹³⁹ PICUM (2008), *op. cit.*

¹⁴⁰ Price J. & Spencer S. (2015), *op. cit.*

¹⁴¹ Coram - Children's Legal Centre (2013), *Growing Up in A Hostile Environment: The rights of undocumented migrant children in the UK*.

¹⁴² PICUM (2008), *op. cit.*; Defense for Children International and Stichting LOS, *Schoolfonds Leren zonder Papieren Amsterdam*, [online] available at <http://www.ilegaalkind.nl/?pageAlias=hoofd&mainId=56&id=183&setNivo=3> [last accessed 30 May 2017].

¹⁴³ Ghent City Official (2017), Background paper - a few remarks, Email to the author, 27 June 2017, personal communication.

regard to their policy of flexibility in the administration of the local census – the already mentioned *padrón municipal*. Residents' registration (*empadronamiento*), beyond being a proof of residence, is often the only condition required by national, regional or municipal rules to access universalist-style services. Registration in the *padrón* is therefore an indispensable step for people residing in Spain, no matter their administrative condition. National legislation *per se* does not preclude the possibility to register irregular migrants in the census (and instead *requires* anybody to register), but it is actually the practices of municipal authorities in the administration of the register that facilitate (or prevent) irregular migrants' effective registration. What makes Barcelona's practice particularly inclusive is the fact that it allows people with no fixed address to register, thus facilitating registration for irregular migrants living in precarious contexts. When a person has no fixed address, registration is done through the City Council's Social Services Department. Barcelona in this sense is different from other Spanish municipalities, which in some instances, as in the cities of Vic or Badalona, have instead prevented the *empadronamiento* of irregular migrants' by requiring not only proof of a fixed address but also additional requirements such as a residence permit. In 2010, more than 16,000 people with no fixed address were registered in Barcelona, 13,400 of whom were non-EU country nationals.¹⁴⁴ Many will have had irregular migration status.

In 2017, the City Council of Barcelona took a further step and adopted a comprehensive Action Plan (*Mesura de Govern*) the first goal of which is to ensure universal access to municipal public services for irregular immigrants living in the city. The Plan reinforces the importance of registration in the local *padrón* and reinstates the City's active policy of informing irregular migrants of their *obligation* to register as soon as possible when moving to Barcelona. The Plan provides for an information leaflet in seven different languages on the register and establishes information sessions and training courses for professionals who should engage with irregular migrants in the provision of services. It establishes a monitoring committee on irregular migrants' access to services and provides measures to ensure effective access to the register for people who are unable to show a valid tenancy agreement for their address. The Plan – which represents a unique example of an official measure specifically adopted to '*boost and improve the reception and inclusion processes for irregular immigrants*' – provides for a number of measures beyond those related to the *padrón*. These *e.g.* include actions to facilitate regularisations, information campaigns to publicise free legal advice services for people in irregular situations, language courses for irregular migrants, and a 12-month employment scheme with the local employment agency (*Barcelona Activa*) to facilitate inclusion in the job market (and subsequent regularisation) for migrants with irregular status.¹⁴⁵

The issuance of identification documentation

Another important example of intervention providing irregular migrants with a comprehensive access to the services offered in a city is represented by the practice of issuing Municipal ID cards to residents with irregular status. In Europe, the most relevant example is the '*DNI Municipal*' (Municipal ID) of **Madrid**, which can be provided to any resident of the city who does not hold any other identification document and is therefore aimed at providing an ID to irregular migrants.

¹⁴⁴ Garcés-Mascreñas B. (2014b), *op. cit.*

¹⁴⁵ Barcelona City Council (2017), *Mesura de govern per afavorir l'accés a la regularitat i prevenir la irregularitat sobrevinguda*, available at: <http://www.bcn.cat/novaciutadania/pdf/mgrregularitat.pdf>.

Holding a *DNI Municipal* allows a holistic access to all the services offered by the city, including basic services like health and education, but also public transportation, municipal cultural and sport centres and the local employment agency.¹⁴⁶ While the City Council of the Spanish capital approved this measure only in October 2016, this practice has been tried in the US since 2007.

The first American city adopting such a measure was New Haven (CT) with the creation of the ‘Elm City ID card’, which inspired the adoption of similar initiatives in other US cities, including New York, San Francisco, Los Angeles and Washington DC. **New York** started issuing the ‘IDNYC cards’ in January 2015 and quickly developed the largest municipal ID Card program in the country with 863,464 cardholders as of August 2016.¹⁴⁷ Such municipal cards allow these migrants to access public and also private services such as opening a bank account. New York’s IDNYC card can be used as a proof of identity for accessing services offered by municipal agencies, interacting with police officers in the New York Police Department, entering public buildings like schools, and taking the high school equivalency exam in New York State.¹⁴⁸ The municipality did not limit the possibility to obtain IDNYC cards to undocumented migrants but opened it to all New Yorkers (foreigners as well as US nationals) so that the possession of such a card would not single out irregular migrants and expose them to easy detection. IDNYC cards have features that serve other vulnerable groups, including seniors, youth, individuals who identify as transgender or gender nonconforming, and individuals experiencing homelessness.¹⁴⁹ Unlike passports, IDNYC cards convey no information about one’s country of origin and imply nothing about legal status. With this measure, US cities aimed to overcome migrants’ fear of contacting the authorities and being detected as undocumented. Allowing irregular migrants to identify themselves with the police and medical professionals was amongst the main goal of municipalities to assist in crime prevention and detection, as well as access to medical assistance.¹⁵⁰ Additionally, another goal achieved by New York’s initiative, as reported by card holders, was creating of a feeling of belonging to the city.¹⁵¹

¹⁴⁶ Costantini L. (2016), Madrid crea un ‘DNI municipal’ para los inmigrantes irregulares, *El país*, 28 October, available from http://ccaa.elpais.com/ccaa/2016/10/28/madrid/1477636316_204766.html [last accessed 30 May 2017]; Calleja I. S. (2016), Los beneficios que tendrán los inmigrantes «sin papeles» con el nuevo DNI de Carmena, *ABC Espana*, 29 October, available from www.abc.es/espana/madrid/abci-beneficios-tendran-inmigrantes-sin-papeles-nuevo-carmena-201610290249_noticia.htm [last accessed 30 May 2017].

¹⁴⁷ Daley, T. C., et al. (2016), *IDNYC: A Tool of Empowerment – A Mixed-Methods Evaluation of the New York Municipal ID Program*, Rockville: Westat, Inc., available at: http://www1.nyc.gov/assets/idnyc/downloads/pdf/idnyc_report_full.pdf.

¹⁴⁸ New York City, *IDNYC cardholder benefits guide - 8 million New Yorkers, 1 card for all of us* (leaflet), available at <http://www.ilo.org/dyn/migpractice/docs/181/Guide.pdf>, New York: NYC.

¹⁴⁹ Daley, T. C., et al. (2016), *op. cit.*

¹⁵⁰ De Graauw E. (2014), *Municipal ID Cards for Undocumented Immigrants: Local Bureaucratic Membership in a Federal System*, in *Politics & Society*, Vol. 42(3) 309–330, Thousand Oaks: SAGE Publications, available at <http://www.ilo.org/dyn/migpractice/docs/203/Article.pdf>; Maytree Foundation & Cities of Migration (2012), *Good Ideas from Successful Cities: Municipal Leadership on Immigrant Integration*, Toronto: Maytree foundation, available at http://citiesofmigration.ca/wp-content/uploads/2012/03/Municipal_Report_Main_Report2.pdf.

¹⁵¹ Daley, T. C., et al. (2016), *op. cit.*

Birth certificate

Holding an identification document is a particularly critical issue for irregular migrants, and particularly for children who are born abroad whose parents have irregular status. Birth registration is a fundamental right, recognised by the International Covenant on Civil and Political Rights¹⁵² and the Convention on the Rights of the Child.¹⁵³ Yet, irregular migrants might experience serious challenges in obtaining a birth certificate for their newborn children because they might be required to present their own identity documents in order to be able to register their child, or they may fear approaching the authorities for the risk of being detected. Obtaining a birth registration is a crucial requirement for children's enjoyment of their rights with regard to protection, nationality, and access to all the basic social, health and education services.¹⁵⁴ Cities in Europe have identified practices to overcome the practical challenges to the registration of children of irregular migrants.

In order to avoid irregular parents' lack of documentation prevents birth registrations, in **Ghent** when none of the parents are registered with the municipality because of their irregularity, the *commune* where the child was physically born (instead of the *commune* of residence as per general rule) is expected to register the birth without requesting any documentation about the legal status of the parents.¹⁵⁵

In order to avoid irregular parents being prevented from requesting birth registrations because of the fear of being denounced by public officers, the city of **Berlin** agreed with local hospitals that medical staff (who are not subject to reporting duties) would issue a document testifying the birth of babies with no records of irregular mothers' personal details. Accordingly, undocumented parents could present this document to the local Registrar of Births to request a birth certificate. In order to ensure that irregular parents would effectively be able to obtain a birth certificate once requested, Berlin's authorities also (as mentioned above) instructed Registrar officers who are subject to reporting duties to let time lapse before passing on the information to the police, thus reducing deportation risks.¹⁵⁶

The practice of issuing special ID cards falls within the more encompassing American experience of the so-called '**Sanctuary cities**'. Within this context, such initiatives are an attempt to enable undocumented migrants to emerge from their irregular status, access services, report crime to law enforcement authorities (without risking deportation), and thus contribute to the safeguarding of public health and order. Sanctuary cities are defined so for their ordinances limiting or prohibiting the proactive cooperation of municipal employees (including the local police) with the US Federal Government in its enforcement of immigration law. Municipal employees are proscribed from questioning and reporting people's immigration status to federal authorities. **San Francisco** (CA) is

¹⁵² Article 24, paragraph 2.

¹⁵³ Article 7.

¹⁵⁴ OHCHR (2014), *Birth registration and the right of everyone to recognition everywhere as a person before the law - Report of the Office of the United Nations High Commissioner for Human Rights*, (UN doc A/HRC/27/22) available at <http://undocs.org/A/HRC/27/22>.

¹⁵⁵ Ghent City Official, interviewed by Sarah Spencer, February 2013.

¹⁵⁶ Barbara John, Commissioner for Foreigners in the Berlin Senate 1981-2003, interviewed by Sarah Spencer, July 2013.

known for being one such sanctuary city since the municipality adopted an ordinance in 1989 establishing that ‘*No department, agency, commission, officer or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of federal immigration law*’; that employees may not ‘*gather [...] information regarding the immigration status of individuals in the City and County of San Francisco unless such assistance is required by Federal or State statute, regulation or court decision*’; and that that employees are prohibited from ‘*disseminat[ing] information regarding the immigration status of individuals*’. The only exception to these rules is represented by migrants who have been convicted of (or alleged to have committed) a felony, who might have their immigration status reported to federal officials.¹⁵⁷ These ordinances provide irregular migrants with the right to enjoy a general access to all the services offered by the municipality without fearing of being reported by service providers.

Crime prevention

One of the main rationales for initiatives such as the sanctuary ordinances and the municipal ID cards programmes was preventing and detecting crime and in particular addressing migrants’ fear of interacting with law enforcement authorities to report having being a victim or witness. In the case of San Francisco, this objective was made evident by the General Order (5.15) promulgated in 1995 by the San Francisco Police Department (SFPD) stating that police officers ‘shall not inquire into an individual’s immigration status’ unless the individual is arrested for committing certain crimes, or has committed such crimes in the past.¹⁵⁸ The promulgators of sanctuary rules insisted that the provision of rights to all migrants is in the interest of all residents of San Francisco because it ensures that immigrants report crimes.¹⁵⁹ The ‘*biggest government champion*’ of New Haven’s Elm City ID Cards, together with the Mayor, was New Haven’s Police Chief Francisco Ortiz.¹⁶⁰

Although municipalities in Europe normally have less control over local police bodies than in the US, a European experience comparable to that of San Francisco can be found in the ‘*free in, free out*’ practice adopted by local police in **Amsterdam**. Supported by the Mayor, the local police in the Dutch capital adopted a policy on their own initiative to favour undocumented migrants’ reporting of crime. According to the ‘free in, free out’ policy, the management of the police instructed police officers not to pursue undocumented individuals for their irregular status when they report a crime, unless they had committed a crime themselves. Accordingly, Amsterdam’s police has been organising monthly gatherings in a local support centre for irregular migrants (the *Wereldhuis*) to inform them of the policy and of their right to report a crime, reassuring them from the risk of being deported if they contact the police. Police officers have also been instructed to avoid patrolling the areas around the *Wereldhuis*. As in the case of SFPD’s General Order, the core

¹⁵⁷ Cuison Villazor R. (2009), “*Sanctuary Cities*” and Local Citizenship, in *Fordham Urban Law Journal*, Vol. 37 (2), 573-589, available at <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2338&context=ulj>.

¹⁵⁸ The General Order provided that officers ‘shall not inquire into an individual’s immigration status unless the individual has been arrested for (1) various offenses involving controlled substances, (2) is in custody after being booked for alleged commission of a felony, (3) is booked after previously having been convicted of a felony, or (4) if the [U.S. Immigration and Naturalization Service (“INS”)] makes a request for information and the individual has previously been convicted of a felony’. See Cuison Villazor R. (2009), *op. cit.*

¹⁵⁹ Carlberg C. (2009), Note: Cooperative Noncooperation: A Proposal for an Effective Uniform Noncooperation Immigration Policy for Local Governments, in *The George Washington Law Review*, Vol. 77, 740–765.

¹⁶⁰ De Graauw E. (2014), *op. cit.*

principle of Amsterdam's policy has been to instil trust in irregular migrants towards authorities. The 'free in, free out' practice was initially born only as an unwritten guideline informally adopted by the senior police management¹⁶¹ but the policy was formally approved by the Dutch state and extended throughout the country in 2016 in the context of the transposition into Dutch law of the EU Victims Directive.¹⁶²

4. Conclusions

The objective of this paper was to describe municipal initiatives taken by European cities in relation to the presence of irregular migrants in their territories. This analysis is intended to inform the discussions of the European municipalities participating in the 'City Initiative on Migrants with Irregular Status in Europe'. The need for European cities to share learning on this issue is due to the fact that EU and national immigration policies focusing on deterring the stay of irregular migrants often pay insufficient attention to the social consequences of marginalising irregular migrants, and that those consequences are most strongly felt at local level. EU policies are based on the assumption that irregular migrants are temporary but their presence in cities across Europe is a reality that return policies alone are not able to address effectively. In the words of Eurocities' Secretary General, cities, with their duty of care, '*can't choose between dealing with those residents who do or don't have the right to be on their territories. They must act when nobody else will*'.¹⁶³

Cities are faced with the challenge of having to respond at local level to the social impacts of exclusion but can be constrained by national legislation. Cities have responded to this challenge in different ways that range from adopting policies aimed at discouraging irregular migrants from residing in their territories (*security frame*) to adopting measures that instead respond to their humanitarian needs by including them in the provision of some municipal services (*human rights or humanitarian frame*). In the last case, cities in some instances have to adopt measures that seem at variance with European and national exclusionary policies, engage in strained debate and litigation, and resort to imaginative expedients in order to provide a service. The reasons for cities to do so, as described in the second section of this paper, are not only related to a humanitarian rationale but also to the legal and pragmatic needs of ensuring public order, safety, health, and, in some cases, efficiency.

The expedients found by cities with an inclusionary approach have some features in common that this paper identifies. Cities tend to involve external actors, often NGOs, to act as intermediaries between authorities and irregular migrants in the provision of a service, so that the service can be offered without exposing municipal employees to the risk of breaching national rules or migrants to the fear of detection and removal. In some cases, municipalities have engaged in litigation to obtain judicial support from international and national courts. Occasionally, cities have simply relied on the ambiguity and complexities of national legislation, while in other cases have decided to act openly at variance with it. Often, cities cannot but rely on informal decisions and guidelines,

¹⁶¹ Amsterdam Police officials, interviewed by Sarah Spencer, March 2013.

¹⁶² The principle was explicitly approved in an explanatory note accompanying amendments to Dutch criminal law adopted for the transposition into Dutch law of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime. PICUM (2015), *op. cit.*

¹⁶³ PICUM (2017), *op. cit.*

as in the case initially of Amsterdam's Police's '*free in, free out*' policy. These measures together create a sort of urban citizenship that gives relevance and attaches rights to the individual's effective residence in the city, rather than the 'legality' of their stay. The concept of urban citizenship becomes even more tangible in those cities that have implemented measures aiming to confer irregular migrants with a broader right to access their services, as in the experience of Barcelona's local census or Madrid's Municipal ID cards. By doing so, these cities aim to respond to social cohesion needs and obtain the contribution of all residents in ensuring the prevention of crime.

In its final section, this paper provided details on practices that were identified in more than 20 cities across Europe. The list is far from exhaustive because the often unofficial nature of municipal practices and policies in this area makes the collection of relevant information particularly challenging. It is for this reason indeed that cities aiming to face the challenges posed by irregular migrants' presence in their territories feel the need to share learning and experience on this subject. The 'City Initiative on Migrants with Irregular Status in Europe', and this paper, is a ground-breaking initiative to do so.



The Global Exchange on Migration and Diversity is an ambitious initiative at the Centre on Migration, Policy and Society (COMPAS) opening up opportunities for knowledge exchange and longer term collaboration between those working in the migration field.