

**BETWEEN FREEDOM OF EXPRESSION AND
DISCRIMINATORY POLICIES: IS THERE A RIGHT
TO BEG?**

By

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“By hook or crook, they must needs depart away, poor, silly, wretched souls, men, women, husbands, wives, fatherless children, widows, woeful mothers, with their young babes ... Away they trudge, I say, out of their known and accustomed houses, finding no place to rest in.”

- Thomas More, Utopia

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ABSTRACT

Following the European Union enlargement in 2007, many Romanian and Bulgarian citizens of Roma origin used the right of free movement guaranteed by the EU Treaties to enter and reside in Nordic countries. These people, who live in poverty and misery, support themselves by begging in streets. In this thesis, I will focus on some juridical dilemmas of these street beggars, who are mostly Romanian Roma and whose numbers over time have increased. The situation prompted a public debate about the legislation of begging within the EU territory and especially in the Nordic countries. Through my analysis of Sweden, Austria and Italy's legal procedures in addressing begging, I will argue that these EU states have chosen to ignore legal provisions concerning protection against poverty, while increasing the number of national or local anti-begging laws and policies. By examining court cases, I argue that even if the laws in those countries seem to be neutral, they are not. This paper contends that both the Council of Europe and the EU have a comprehensive set of rules that could be applied as protection for these people's fundamental rights; moreover, lack of respect for those rights is tantamount to ethnic discrimination. This paper then concludes with some recommendations for policies communities should apply to solve the issue rather than criminalizing and penalizing begging.

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Finally, I want to thank to all my peers for the moments that we have spent together and I am honestly looking forward to meet you in the future. Seeing you I understood that the young generation of Roma could be the engine for a change in our societies.

Budapest, June 7th 2020

Times of Corona

1. INTRODUCTION

Begging, an act which includes visible poverty, has been known as one of the oldest modalities for the poorest people in the society to sustain themselves. The act of begging has been historically debated: the discussions ranging from poverty to homelessness and to one point criminality. Modern societies did not change previously existing attitudes towards begging, and as a result, beggars are removed from cities and public spaces due to safety regulations.¹ At the national level, the dominant narratives make references to the danger posed by beggars on the account of their perceived anti-social, even criminal, behavior.

In recent years – after the enlargement of the European Union in 2007 – Western Europe has seen an enormous migration influx of East European citizens hoping to find a better life, even by begging in the streets.² They earn their living this way despite the fact that it is generally thought that the EU and its member states provide a well-established social and healthcare system meaning a place to live and enough to eat.

My thesis focuses on the judicial dilemmas and controversies around street beggars and the tacit culture of discrimination of a specific minority, which is usually most susceptible to this way of living. My discussion in this thesis is restricted to Roma beggars because as an ethnic minority, their position differs from other beggars or migrants. However, it is crucial to emphasize that not all Roma people travelling in Europe are beggars and not all beggars are Roma. In order to address the current begging problem of Roma in Europe, I have chosen to analyze court procedures in three countries, namely Sweden, Austria and Italy. I will argue that even if the laws in those countries seem to be neutral they are not. Additionally, when analyzing the “begging problem” it is important to be precise in defining begging. My claim

¹ Mäkinen Virpi, Are There Fundamental Rights For Roma Beggars in Europe?, PT 14.2 (2013), p. 202.

² Ibid. p. 202.

is that correct anthropological framing of begging is highly important for credible legal decisions. However, my analysis of court procedures shows the opposite: judicial institutions providing legal solutions against an offense that is not clearly defined.

In the first part of this thesis I will offer a brief analysis of the international human rights framework, which supports my initial claim that existing international laws protect begging as a human right. In my view, analyzing the human rights framework fits the narrative of my work, being based on a comparative analysis of court cases in three different legal systems in Europe – Sweden (Northern Europe), Austria (Central Europe) and Italy (Southern Europe). The analysis shows a clear inconsistency in handling the action of begging in the three countries surveyed, going from considering forbidding begging as being unconstitutional to penalizing the act when it endangers the public security. Furthermore, the analysis sheds light on how Italy and Sweden disregard the international human rights law framework, while Austria moves in a rather short period of time from considering begging protected under the freedom of expression argument, towards creating two different categories of begging: violent and non-violent begging. On an even more paradoxical note, Austrian courts decided in 2016 that regardless of the act whether begging is included in the non-violent category, it can still be penalized under the law.

This thesis will conclude that none of the three analyzed states use a clear definition of begging even though their legal systems forbid it in some specific circumstances. Secondly, the European Court of Human Rights needs to provide a clearer definition on how individual states should proceed in tackling the act of begging. I will conclude that the European Court of Human Rights should follow the path of the United States Supreme Court when ruling in the pending case of *Lacatus vs. Switzerland*, meaning protecting it under the freedom of expression in combination with protection of discrimination, Article 10 and Article 14 of the European Convention of Human Rights.

Although this paper will provide certain recommendations to individual states on how to solve the “begging problem”, it does not take into consideration any cases regarding trafficking, begging combined with physical violence or the ethical aspect of the right to personal space that is restricted by the presence of a beggar. Even though in the public discourse these issues are rightly widely discussed and their impact needs to be taken into account, they do not fall within the scope of this thesis.

Due to the lack of clarity and wide diversity of both legal definitions of begging and court rulings in the issue, this thesis will look into international legal instruments to establish a cohesive legal and policy approach towards the issue of begging. In order to answer the research question I use the *dogmatic approach in the jurisprudence* method. International, European, national regulations and case law will be examined in order to investigate what rights beggars have and what obligations the public has towards them. Finally, due to the importance of the Convention of Human Rights for the purpose of this thesis, particular attention will be paid to the case law of the European Court of Human Rights.

1.1 BACKGROUND

The Roma are the biggest European minority: according to estimates, there are around 12 to 15 million individuals are living in European countries. The largest Roma populations are in Eastern European countries. Although Roma are integral to its society and economy, they “frequently face prejudice, intolerance, discrimination and exclusion”.³ According to international human rights reports, Roma people are today one of the most discriminated ethnic minorities in Europe. However, even if it is obvious that Roma beggars belong to an ethnic minority, they should not be treated as a single uniform ethnic group. There are

³ See Nando Sigona and Nidhi Trehan(eds), *Romani Politics in Contemporary Europe: Poverty, Ethnic Mobilization, and the Neoliberal Order*, in *Palgrave: Macmillan*, 2010, For statistics, see <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/216>, accessed: 4 June 2020.

different kinds of Roma groups which primarily differ from each other in their language or dialect and religion.

In this thesis the discussion will be restricted to Roma beggars. Even though not all of the beggars are Roma. As an ethnic minority, the Roma's position differs from that of other beggars or migrants. Therefore, there are added causative factors to take into account when discussing the issue. Roma are exposed to structural discrimination and antigypsyism. They are classified as the lowest social group in Europe, and both historically and in the present, most are exposed to oppression and racism in all its forms.

After the enlargement of the European Union at the beginning of 2007, Western Europe saw an enormous migration wave of East European Roma people, out of which a minority (or small percentage) ended up begging on the streets.⁴ I, personally, have seen people begging in Sweden every day. They are at railway stations, outside food stores and theaters – on every corner in the center of Stockholm. I became aware of the issue while preparing a publication on the topic, and I also realized the importance of finding adequate solutions to the existent social problem when in 2018 the Supreme Administrative Court in Sweden delivered a judgment which stated that prohibition of begging was constitutional. The Supreme Administrative judgement in Sweden incentivized several other local communities to adopt anti-begging regulations. Moreover, several countries in Europe have adopted similar policies.⁵

In Germany Berlin, Bremen and Munich have passed laws making it illegal for adults to beg with children.⁶ Luxemburg banned begging if it is organized and carried out in a group, an

⁴ Mäkinen Virpi, Are There Fundamental Rights For Roma Beggars in Europe?, PT 14.2 (2013), p.201

⁵ European Roma Rights Center, Third-party Intervention, Application No. 14065/15, 19 Augusti 2016, http://www.errc.org/uploads/upload_en/file/third-party-intervention-lacatus-v-switzerland-22-august-2016.pdf page 9, accessed: 15 May 2020.

⁶ Ibid. p. 6.

allegation often levelled against Romani beggars.⁷ Finally, in 2015, the Norwegian government discussed the importance of a national framework for criminalizing begging. Even though the proposal's language was neutral, Norway's Equality Ombudsperson recognized it as targeting Roma.⁸

The fact that several countries in Europe have adopted similar regulations, even though I claim that the act of begging is protected by human rights, made me interested in the topic. As a public attorney from the Swedish Roma community I am motivated to understand the legal problems of the "begging issue" in order to bring equality to and for the people who are in the situation to beg.

⁷ Ibid. p. 6.

⁸ Ibid. p.6.

2. INTERNATIONAL LEGAL FRAMEWORK

Although begging is not recognized as a human right, there are several provisions in the International Human Rights legal framework providing protection from poverty that could serve as a basis to protect the act of begging. In order to investigate the current begging problem of Roma people in the EU territory, I need to present relevant human rights treaties which can be used as protection for their fundamental rights.

As to my main sources concerning fundamental rights, it is important to highlight that Sweden, Austria and Italy have all signed the human rights treaties which will be discussed in this thesis. The first human rights treaty, which serves as the basis for the discussion of this thesis, is The Universal Declaration on Human Rights. After the United Nations was founded, already in 1948, there was an agreement among the states to adopt The Universal Declaration on Human Rights. Several fundamental rights and liberties can be found such as protection against poverty in the Declaration as well as in other international conventions under the United Nations. The European Convention on Human Rights (ECHR) from 1950 is the second human right treaty which will be examined. Although begging *per se* is not recognized as a fundamental right, I claim that the ECHR offers protection to beggars. Finally for the purpose of the discussion on international legal framework I took into consideration two treaties governing the EU. In that respect one is governing EU (FEU) and the other institutions (FEUF). Due to the changes over the courses of time the scope of competences of the EU changed as well. That means that in certain area EU law has absolute supremacy over national laws.⁹ Accordingly, the EU is designed as an area without international borders

⁹ Judgement C 6-64 Flaminio Costa v E.N.E.L and Judgement C 26-62 van Gend & Loos v. Netherlands Inland Revenue Administration are both two pioneer cases where two important principles established: supremacy and direct effect.

where freedom, security and justice as well as free movement of persons is guaranteed. Consequently, the Union seeks to ensure free movement of persons, services, goods and capitals. These two principles allow people to move freely and reside in other EU-member state as long as they possess a valid passport or ID-card. Therefore, after the enlargement of the EU in 2007, when Bulgaria and Romania became EU member countries, the right of movement was used more often by migrants.¹⁰

2.1 INTERNATIONAL LAW

The legal framework of the United Nations (UN) provides protection of human rights. For the purpose of this thesis the following human rights treaties within the UN are relevant: The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and International Convention on Economic, Social and Cultural Rights (CESCR).

Besides the opening articles stating that all people have equal value and equal rights, the Universal Declaration of Human Rights states in article 25.1 also states that: *“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services”*. This right is additionally developed in the CESCR. Moreover, the right to free movement is akin to the principle in EU treaties, can be found in article 12 ICCPR. All these treaties entail the right to social security, the right to a sufficient standard of living including the right to housing, the right to be protected against hunger and the right to the best possible physical and mental health through healthcare. I will return to how these rights are seen by the Court while analyzing the cases.

¹⁰ Mäkinen Virpi, Are There Fundamental Rights For Roma Beggars in Europe?, PT 14.2 (2013), p.207

In addition, the concept of human dignity plays a central role in the international legal discourse. The concept has been explicitly or implicitly recognized in constitutional and international documents and has become the premier value underlying current moral and political debates. According to this notion, every human being has inalienable value of his or her own right. Thus, no human being may be treated as a mere object or as a means to an end. Further, human dignity determines the relationship between individuals and the state. In this sense, human dignity also means “the right of everyone not to be devalued as a human being or treated in a degrading or humiliating manner.”¹¹

2.2 EUROPEAN LEGISLATION

This chapter will focus on two mechanisms for the human rights protection in Europe: the Council of Europe and the EU. Accordingly, I show that the act of begging is protected in Article 10 and Article 14 in the European Convention on Human Rights. Moreover, the next chapter discuss the right of free movement within EU. As a conclusion I argue that by criminalizing or penalizing begging, individual states are putting already disadvantaged people in the society at even greater risk of stigmatization, discrimination, and poverty.

2.2.1 *EUROPEAN CONVENTION OF HUMAN RIGHTS*

The importance of the Council of Europe in the protection of rule of law, human rights and democracy cannot be imagined without the legacy of the European Convention on Human Rights (ECHR) and the work of the European Court for Human Rights (ECtHR). Even if scholars define begging differently, which will be discussed in the next chapter, the act of begging consists in asking for alms and appealing to the generosity of others to obtain help. The aim is to remedy a situation of destitution in most cases. The protection of freedom of expression under Article 10 includes written (including pictures and video) opinions as well

¹¹ Ibid. p. 206.

as oral dissemination of opinions.¹² The ECtHR has emphasized in several judgments that the freedom of expression is one of the keystones of democracy.¹³

To ask others for help must clearly be considered as a basic freedom. Why is there a difference between people who are asking for a donation to UNICEF or the church on the one hand, and a vulnerable group, on the other? For the purpose of understanding what freedom of expression entails, we can search for the answer in Comparative Constitutional Law. Namely, in 2012 the Austrian Constitutional Court offered a definition of the act of begging within the scope of protection of the freedom of expression. Accordingly, “*the freedom of speech extends to all forms of communication, including body language, and non-aggressive begging communicated a message of poverty...*”.¹⁴ Similarly, the Supreme Court of Canada has defined the act of begging as “*no less than advertising*”.¹⁵ In the US, it has been made clear that it is against the freedom of expression to prohibit citizens from this practice.¹⁶ The case law presented above support my claim that the ECHR offers protection of beggars under Article 10.

Additionally, I argue that states violate Article 14 when criminalizing begging due to the fact that it involves direct discrimination of vulnerable groups. Article 14 of the ECHR must always be applied in combination with any other right protected by the Convention. The ECtHR has developed a few principles dealing with cases concerning Roma. For the purpose of this thesis, let us consider the *Buckley v. The United Kingdom* case in which the Court determined that so-called “travelers” had been exposed to radical discrimination through

¹² Mendel Toby, Freedom of Expression: A Guide to the Interpretation and Meaning of Article 10 on the European Convention on Human Rights, in Center of Law and Democracy, p. 3.

¹³ For more information, read *Handyside v. United Kingdom*, judgment of 7 December 1976.

¹⁴ European Roma Rights Center, Third-party Intervention, Application No. 14065/15, 19 August 2016, accessed: 20 May 2020.

¹⁵ Moon Richard, Begging and Freedom of Expression, in *Constitutional Forum Constitutionnel*, vol 11, no 1, fall 1999.

¹⁶ See more: *Sims v. Schuette* <https://www.opn.ca6.uscourts.gov/opinions.pdf/13a0226p06.pdf> judgement of 14 August 2013, accessed: 15 May 2020.

planning and enforcement measures by the local UK authorities. Firstly, the Court stated that national authorities enjoy a wide margin of appreciation “*in choice and implementation of planning policies*” but in all times the authorities ought to have in mind that “*the vulnerable position of Gypsies as a minority means that some special consideration should be given to their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases*”.¹⁷

The most relevant case discussing the begging problem is the pending one, *Lacatus v. Switzerland*.¹⁸ What is particularly noteworthy is the defender’s choice to argue using references to both Article 10 and Article 14 ECHR. The case was brought to court by a Romani woman of Romanian nationality who had been convicted and fined under the Geneva’s criminal code for begging. The European Roma Rights Center (ERRC) submitted a third-party intervention to the Court.¹⁹ The ERRC in their submission argued the importance of the word “antigypsyism” which the Court should apply in order to understand the discriminatory motivation underlying the adoption and increasing enforcement of law criminalizing begging in Europe.²⁰ The ERRC added data to describe the economic situation of Roma in Bulgaria and Romania. The ERRC further argued that anti-begging laws were actually violating human dignity by creating a hostile, degrading and humiliating environment for Roma.²¹ According to their submission and research, there is a consensus among legal experts and researchers that anti-begging laws provide for violation of human rights.

2.2.2 EUROPEAN UNION

As mentioned previously, Western Europe has seen an enormous migration of East European people, hoping to find a better life by begging in the streets. One of the ideas behind the EU

¹⁷ *Buckley v. The United Kingdom*, No. 20348/92, judgement of 25 September 1996.

¹⁸ *Lacatus v Switzerland*, No. 14065/15.

¹⁹ Op. cit ERRC report.

²⁰ Ibid. p. 1.

²¹ Ibid. p. 10.

was to create a common European identity which would help strengthen the economy. Therefore, one of the proposed projects was the creation of the single market with four economic freedoms. Additionally, the economy-driven enlargement led the EU to adopt a set of secondary legislation such as the Directive that allow EU citizens to move and resident freely in another state. Unfortunately, the growth of the economy gave rise to negative developments as well. For example, the EU did not take into account the existing social problems in the poorest member states as Bulgaria and Romania while they created the regulations of the single market and the directive.²² The single market, which is regulated in the TFEU, refers to the EU as one territory without any international borders or other regulatory obstacles to the free movement of goods and services. The right of free movement for persons is specified in Articles 45, 49 and 56 TFEU. Mentioned articles of TFEU provide for principles that allow the free movement of persons which are restricted to employees, self-employed persons and those who provide services. Moreover, the requirements for the use of those rights presume that the person is economically active.²³ However, the European Court of Justice stated in the judgement of *Baumbast* that the right to move also applies to non-economically active EU citizens.²⁴ The purpose of the Directive is to strengthen the right of free movement of all citizens in the EU as long as they not become an unreasonable burden to the host country. Article 6 states that all EU citizens have the right of residence in the host member state for a period not exceeding three months, without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport. The directive is based on the assumption that such citizens can support themselves and do not rely on the host country for subsistence.²⁵ Article 7 in the directive provides the right of residence for longer than three months to the persons who fulfills the obligations

²² Mäkinen Virpi, Are There Fundamental Rights For Roma Beggars in Europe?, PT 14.2 (2013), p. 207

²³ Judgement C-281/06 Jundt p. 32.

²⁴ Judgment C-34/09 Baumbast.

²⁵ For the directive, see 2004/38/EY.

stated in the article. However, the legal differences between Article 6 and Article 7 are based on the distinction between economically active and non-economically active EU citizens.

The enlargement of EU indicated certain negative developments, as well of which I mentioned in the above sections. The migrations of Roma in other member states of the EU are a result of both push factors (especially poverty and ethnic discrimination) from the home country, and pull factors (especially free movement and better living standards).²⁶ Recent research has shown that around 17% of Roma households have indoor sanitation (toilet, bathroom, sewage connection), while around 44% of non-Roma households in the vicinity have these facilities.²⁷ Additionally, because of low levels of education, lack to professional training and discriminative practices by employers, the Roma people remain marginalized from the formal labor market.²⁸ Out of all the EU member states, the percentage of unemployment is high among Roma in Romania.

The text above describes that Roma are exposed to poverty and ethnic discrimination in their home countries. As a conclusion, I argue that by criminalizing or penalizing begging, individual states are putting already disadvantaged people in the society at an even greater risk of stigmatization, discrimination and poverty. Furthermore, as already shown throughout the chapter, the certain court decisions issued in regards to begging imply protection to beggars according to Article 10 in combination with Article 14 of the ECHR.

²⁶ Mäkinen Virpi, Are There Fundamental Rights For Roma Beggars in Europe?, PT 14.2 (2013), p. 207.

²⁷ Diagnostics and Policy Advice for Supporting Roma Inclusion in Romania Summary Report, *Achieving Roma Inclusion in Romania: What Does it Take?*, page. 17.

²⁸ Ibid. p. 11 and 14.

3. BEGGING AND COMPARATIVE CONSTITUTIONAL JURISPRUDENCE

This chapter is divided into two parts. In order to understand the begging issue I argue that the correct anthropological framing of begging is highly important for credible legal decisions. Therefore, the first part of this chapter will discuss the definition of begging. Even though the definition is unclear it seems there is an ongoing conversation on the topic among scholars.²⁹ However, my analysis of cases in Sweden, Austria and Italy shows that judicial institutions are providing legal solutions against an offense that is not clearly defined. The second part in this chapter is intended to analyze court decisions in the above mentioned countries. I shall argue that even if the laws in those countries seem to be neutral they are not. Moreover, the analysis shows a clear inconsistencies in handling begging issues in all three countries, going from considering forbidding begging as being unconstitutional to penalizing the act when it endangers the public security.

According to existing literature, begging is defined as:

- 1) asking someone for help,
- 2) asking passers-by for money in a public space, or
- 3) an income-generating activity.

However, the previously mentioned list cannot completely define the act of begging. For example, beggars may approach people not necessarily for money alone, but also for food, clothes and so on³⁰. Furthermore, begging is usually classified as either passive or aggressive begging.³¹ When referring to passive begging, scholars are classifying it as holding out a hand or a cup in order to receive money, while aggressive begging is being defined as an act which involves an intimate action, such as following a person in pursuit of receiving financial

²⁹ Lein Linda, Public Support for a Ban on Begging in Norway – A Consequence of Negative Stereotypes about the Roma Minority?, Master Thesis, University of Bergen, (2016) p. 19.

³⁰ Ibid. p. 19.

³¹ Mäkinen Virpi, Are There Fundamental Rights For Roma Beggars in Europe?, PT 14.2 (2013), p. 205.

compensation.³² Throughout my analysis of the court cases, both passive and aggressive begging will be considered.

3.1 SWEDEN

In 2010, Roma citizens from Romania and Bulgaria used their right according to the EU treaties to enter and reside in Sweden. In 2011, due to the increase of begging, the police deported 26 Roma back to their home countries. The enforcement action by the police were investigated by the Parliamentary Ombudsman, who stated in the decision that the act endangered individuals' rights and liberties. Additionally, the Parliamentary Ombudsman claimed that the action taken by the police were unconstitutional.³³

Alas, the topic was discussed again when the Vellinge Kommun prohibited begging in 2017, putting the Roma minority in a disadvantaged position. The County Administrative Board of Skåne opposed this policy, claiming that the decision was not compatible with the Public Order Act. Furthermore, the case was discussed in the Administrative Court, then in the Administrative Court of Appeal and ended in the Supreme Administrative Court. The court delivered a judgement according to which prohibition of begging was constitutional in 2018.³⁴ By applying the *margin of appreciation doctrine*, the Supreme Administrative Court concluded that prohibiting begging did not jeopardize the rights and freedoms of individuals and argued that the decision was acceptable because it limited begging to certain places in the town where there had been problems in the past or which might be problematic in the future. In addition, the Court, did not see any reason why prohibition of begging in specific geographical area of the city would be problematic from the point of individual rights and

³² Ibid. p. 205.

³³ For more information read the decision by the Parliamentary Ombudsman, number 6340-2010, 2011-06-28.

³⁴ Supreme Administrative Courts judgement 2018 ref 75, 2018-12-17.

liberties.³⁵ However, even if the Court mentioned the ECHR, it did not go into analyze the legal situation from the aspect of either article 10 or article 14 of the ECHR.

3.2 AUSTRIA

Austria has responded to a similar situation due to increased migration, and begging has been repeatedly debated before the Constitutional Court since 2012.³⁶ In a leading case, in 2012, the Constitutional Court divided begging into two categories: aggressive and non-aggressive begging. The Court annulled a provision by the state of Salzburg with the motive that an absolute prohibition of begging in public places including passive begging breached Article 10 ECHR. Furthermore, the Court compared begging to other acts and stated that the legislator tolerated various other ways of using public areas, from collecting donations to UNICEF or the church, to selling newspapers or magazines or visiting restaurants or places of public entertainment without objective justification. The Court concluded that “the freedom of speech extends to all forms of communication, including body language, and non-aggressive begging communicated a message of poverty”.³⁷ These instances were followed by further judicial decisions.

In 2016, the Constitutional Court in Austria was once again engaged in the prohibition of begging case. The town of Dornbirn (in the state of Vorarlberg) issued an administrative ordinance that prohibited begging at a local Christmas market.³⁸ The Constitutional Court dismissed the constitutional complaints. However, in an important part of the judgement, the Court stated that even passive begging could be prohibited under certain circumstances (involving expected concrete and disruptive effects on community life). The local community

³⁵ Ibid, p. 9.

³⁶ Constitutional Court judgement in Austria, VfGH 6 december 2012, G 64/11.

³⁷ European Roma Rights Center, Third-party Intervention, Application No. 14065/15, 19 August 2016, http://www.errc.org/uploads/upload_en/file/third-party-intervention-lacatus-v-switzerland-22-august-2016.pdf page 8, accessed: 13 April 2020.

had to prove in each case that such a disruptive effect was present and this had to be accepted by the Constitutional Court.

3.3 ITALY

In 1995, the Constitutional Court in Italy declared that all forms of prohibition regarding begging were unconstitutional.³⁹ Then, in the early 2000s, mayors started issuing local, administrative ordinances in order to solve the begging issue.⁴⁰ In 2017, based on an opinion by the Supreme Administrative Court, the President of the Republic declared these ordinances illegitimate because they punished all forms of begging. However, in 2018, new legislations regarding prohibition of begging were presented. Aggressive begging and begging involving children and disabled persons were forbidden at national level.

For the purpose of this thesis, I have decided to analyze two court cases from the Italian legal system. My focus with these two court cases is concerned rather with the legal definition of begging used by the Italian justice system, than with the parts involved in the case per se. In addition, both cases involve children and begging which expresses other legal issues as well. Moreover, both cases ended up in the Italian Supreme Court which will be discussed in detail.

In 2008, a Roma woman, was convicted and fined under Italian criminal code for begging. The defender used the culture argument as a strategy which the Court accepted, stating: “It is always difficult to find whether there is abuse of authority by parents...This is particularly true for some ethnic communities *where begging is a traditional way of life deeply rooted in the culture and in the mentality of the people*...It is important to consider the real situation in order to avoid *criminalising behaviors that are part of a group’s cultural tradition*”.⁴¹ The Court changed the previous decision to the milder one. However, it also ordered the Court of

³⁹ Mathias Möschel, *Law, Lawyers and Race*, 2014, p. 168.

⁴⁰ Mathias Möschel, *Law, Lawyers and Race*, 2014, p. 170.

⁴¹ Ilenia Ruggiu, *Is begging a Roma cultural practice? Answers from the Italian legal system and anthropology*, *Romani Studies*, 2016, p. 33. For more information read judgement Corte di Cassazione (Supreme Court), VI criminal section, no. 45516/2008.

Appeal to hold a new trial using another article of the criminal code. In 2012, the Italian Supreme Court still relied on the idea that begging was a Roma cultural practice.⁴² In the previous case the Court used the cultural argument the other way around. This time, the Court used the cultural argument negatively by stating: “In fact, a tradition can have an excusing effect only if it is cited by a law, according to the principle of hierarchy in the sources of the legal system”.⁴³ To sum up, in the latter case the court blamed the culture for unacceptable behavior.

3.4 DISCUSSION

In the light of the cases presented above the following can be concluded: Firstly, there is a strong need to acknowledge that none of the courts in three different countries used a clear definition of begging. Individual states have the responsibility to define the issue at hand in order to be able to give sound legal solutions. Sweden did not state a clear definition of begging in the case delivered in front of the Supreme Administrative Court in 2018. To begin with, Austria does categorize the act of begging into non-aggressive and aggressive. In 2012, the Constitutional Court ruled that non-aggressive begging was protected under Article 10 of the ECHR. However, in 2016, the same court stated that even non-aggressive begging could be prohibited under specific circumstances, without violation of human rights. Moreover, in addition to the lack of a clear definition of begging, by classifying the act into non-aggressive and aggressive, Austria has only created an even deeper confusion about on how the courts are supposed to deal with the discussed issue. Even more, it may lead to an increased discretion of legal authorities when analyzing begging cases under its jurisdiction. In the Italian example, the situation takes an extremely concerning turn. The Supreme Court has ruled in two cases (2008 and 2012) by defining begging as a part of the Roma culture. By providing such a decision that makes begging part of a minority’s culture or way of living, the

⁴² Judgement Corte di Cassazione, v Criminal Section, no. 37638/2012.

⁴³ Ibid.

Italian authorities are not only putting an additional social stigma on an already extremely discriminated ethnic group in Europe, but they are also going against the Article 14 of the ECHR focusing on discrimination and also against the principle of human dignity that is at the core of every international human rights treaty.

As shown in the above analysis of the three countries, all states have gone from considering begging as a constitutional right to, in some forms, penalizing, forbidding or criminalizing the act of begging in a relatively short period of time. Coincidentally or not, these changes took place after the enlargement of the European Union in 2007, when Romania and Bulgaria adhered to the Union.

4. CONCLUSION

The above analysis and the conclusion of the court cases coming from Southern, Central and Northern Europe combined with the international human rights framework shows that Europe needs a coherent legal definition or a principle from the European Court of Human Rights concerning tackling the issue of begging. In this regard, the *Lakatus vs. Switzerland* pending case could be the milestone for the path forward in addressing begging. The only issue is that it takes time for the ECtHR to reach a decision in this specific case. According to the mentioned ERRC third party intervention, there is a consensus among legal experts and researchers that anti-begging laws provide for violation of human rights.

In my opinion, when reaching a verdict, the ECHR should take into consideration the United States' Federal Court of Appeals decision that overturned the so-called Michigan anti-begging law due to its unconstitutionality in connection to the right to freedom of expression⁴⁴. In my view similarly should be done in the European context and begging should be protected as well under the Article 10 of the ECHR. Additionally, the Supreme Court of Canada has defined the act of begging as no less than advertising.⁴⁵

Finally, as a recommendation, a more holistic approach could provide a solution to the issue of begging. The European Union could create a commission formed of legal scholars, policymakers, law enforcement officials, NGOs protecting disadvantaged groups in the society and beggars under the Employment, Social Policy, Health and Consumer Affairs Council, in order to create a framework for how begging should be tackled as a social issue. If

⁴⁴ In the United States of America a law was passed a few years ago in the state of Michigan to prevent begging, the so called Michigan anti-begging law. The law criminalized even peacefully holding up a sign saying for example "I need help". This legislative act was however taken to Court by two men who had been arrested for breaking the law. And on August 14 of 2013 a Federal Court of Appeals declared the act unconstitutional (The case did not go to the Supreme Court of the United States.) see more: *Sims v. Schuette* <https://www.opn.ca6.uscourts.gov/opinions.pdf/13a0226p-06.pdf>, judgment of 14 August 2013, accessed: 4th of June 2020.

⁴⁵ Moon Richard, Begging and Freedom of Expression, in *Constitutional Forum Constitutionnel*, vol 11, no 1, fall 1999

European countries want to live up to their own standards and values (promoted in the European Union Treaties), they definitely means they need to stand for the protection of human rights, especially those of the most disadvantaged members of our societies.

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