Anti-begging provisions in Europe through the lens of Critical Race Theory

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"We have lived a painful history,

We know the shameful past,

But I keep on marching forward,

And you keep on coming last."

~ Maya Angelou

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Abstract

The traditional legal dogmatic method has the purpose to explain the law and use legal sources to determine, systemise and interpret *lex lata*. This thesis examines whether neutrally framed anti-begging provisions in Europe target the Romani people. The research question is further contextualised through the application of Critical Race Theory (CRT) which will offer an additional perspective that the legal dogmatic method is not able to do. CRT provides the necessary framework for reviewing the legal framework of adopted anti-begging measures in Europe. The law plays a crucial role in the construction, subordination and discrimination against racial minorities in Europe. Yet, in a recent case from the European Court of Human Rights (ECtHR) that addressed the issue of begging for the first time, the Court did not mention racial discrimination at all even though a stereotypical link exists between the Romani people and beggars in mainstream European public opinion. The thesis provides a critical legal analysis of the judgement and also examines anti-begging provisions in Sweden, Austria and Italy in order to give an more nuanced and accurate analysis of the issue of begging in Europe. To strengthen the analysis additionally, the thesis compares current anti-begging provisions with vagrancy laws ratified in late nineteenth-century America, an example that demonstrates the parallel between discriminatory laws against African Americans and the Romani people. The thesis concludes that it is crucial for courts to examine cases through the lens of CRT, a theoretical tool that will enable judiciaries to see the racial message that underlies these neutrally framed provisions and thereby comprehend that marginalisation and exclusion persist because of *antigypsyism* and the legal system itself.

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Introduction

Europe tends to believe that racism is always somewhere else (perhaps in the United States) because the continent has distanced itself from the racism that overtook Europe in the 1930s and 40s. Since this time, Europe has rebuilt itself as an upholder of human rights.[1] Even though there is an unwillingness to recognise the impact of racism, race and racism figure are central terms in the current political and social debates on equality, liberty, migration and citizenship occurring today.[2] Yet Europe's largest minority, the Roma, still face unrestricted levels of discrimination. The discrimination, or antigypsyism, that Romani people experience can be found in all facets of life: one such example of discrimination against the Romani people can be seen in the adoption of anti-begging measures, particularly those ratified following the 2007 enlargement of the European Union (EU). When Bulgaria and Romania, countries possessing a large Romani population, joined the EU together with other nations at this time, like other Europeans, members of the Roma community used their new freedom of movement to seek a better way of life. While the anti-begging measures that were made are neutrally framed, this thesis argues that they target the Romani people due to the stereotypical linking of Roma to begging, an image still present in mainstream Europe. Thus, these anti-begging measures can be compared to vagrancy laws passed the United States during the late 1880s that were neutrally framed, yet clearly used to target newly emancipated African Americans. What is common between Roma and African Americans is that racialized difference has separated them from the majority populations. Part of this racialization can be linked to the distant ancestries for each, respective group. African Americans originate from slaves that where mainly taken from West Africa. For the Roma, their origin hails from the Northern India: beginning in the

[1] Eliason, A.'With no Deliberate Speed: The Segregation of Roma Children in Europe', *Duke Journal of Comparative & International Law* (2017), vol. 27, p. 192.
[2] Harris A. H Preface. In Möschel M. 'Law, Lawyers and Race: Critical Race Theory From The United States to Europe', *London, New York: Routledge* (2014), p. xii.

eleventh century, the Roma started migrating towards the West. The Roma people's origin has created the presumption that they lack roots in Europe, an impression that keeps Roma beyond the culture imaginary in Central and Southeast Europe. The same circumstance can be said to characterise the position of African Americans whose origins inhibit them from being embraced within the American imaginary.[3] This thesis focuses on the legal system's failure to recognise the antigypsyism that underlies anti-begging measures at both the national and international levels. As will be demonstrated, Critical Race Theory (CRT) provides the necessary framework for analysing the relationship between anti-begging provisions and race.

The method chosen throughout the thesis is a traditional legal dogmatic approach to examine the main question of whether prohibiting begging is compatible with the European Convention on Human Rights (ECHR). If so, under what conditions are Member States able to forbid begging without violating the rights entailed in the ECHR? The case of *Lăcătuş v. Switzerland*[4], the first judgement issued by the ECtHR, raises the question of begging and must therefore be seen as *lex lata* and therefore the pivotal source of examination for this analysis. In addition, the thesis will also present a *de lege ferenda* perspective and arguments. An additional perspective, Critical Race Theory (CRT), will contextualise this thesis and its questions. By applying the broader analytical framework of CRT, a historical, political and sociology aspect will be included which will expose the racial message that underlies anti-begging measures. Even though public discourse often links begging to trafficking, begging combined with physical violence, or the ethnic aspect of the right to personal space that is restricted by the presence of beggars, these pertinent issues do not fall within the scope of this thesis. No other

[3] Chang, F. B, and Rucker-Chang, S. T. 'Roma Rights and Civil Rights: A Transatlantic Comparison', *Cambridge University Press* (2020), p. 6.
[4] ECtHR, *Affaire Lacatus c. Suisse*, no. 14065/15, 19 January 2021 (only available in French). Compare with the press release of the case (in English), <Lăcătuş v. Switzerland - HUDOC - Council of Europe>, viewed 23th March 2021. The judgement has however been translated to Swedish by former Supreme Court judge, Göran Lambertz, and Oskar Jansson.

international instruments are included beyond ECHR; regarding the national level litigation, this thesis will offer a brief analysis of Sweden (Northern Europe), Austria (Central Europe) and Italy (Southern Europe) which have dealt with the issue of anti-begging ordinances. Due to their different geographic locations in Europe, these nations can provide a nuanced and accurate examination of the issue of begging and anti-begging provisions.

An Overview of Critical Race Theory

When applying CRT, one of the most important aspects to consider is that legal analysis cannot be conducted exclusively from an abstract, de-contextualised and formalistic perspective. Legal analysis should instead include certain socio-historical contexts in its reasoning.[5] Scholars differ on which of the several facets contained in CRT should comprise the theory. However, one of CRT's basic tenets is firstly the issue of *colour-blindness*, a metaphor that expresses how racism is hard to address when unacknowledged.[6] The second is *interest convergence*. According to the pioneering, CRT scholar, Derrick A. Bell, interest convergence denotes the notion that black interest will only be achieved when the interest of blacks and whites converges.[7] CRT's third element acknowledge that race is a social construct and not a biological or genetic reality. Moreover, the theory also focuses on how stereotypes against minority groups change over time. Additionally, the concept of *intersectionality* is also important since this perspective exposes how individual identity can be affected by several, simultaneous factors, such as by being both black and a woman. Lastly, legal storytelling is

[5] Möschel M. 'Law, Lawyers and Race: Critical Race Theory From The United States to Europe', *London, New York: Routledge* (2014), p. 8.
[6] Delgado, R and Stefancic, J. 'Critical Race Theory. An Introduction', 2nd edn, *New York: New York University Press London* (2012), pages 7-8.
[7] Bell Jr, D A. 'Brown v. Board of Education and the Interest Convergence Dilemma' in Crenshaw, K W et al. (eds.) *'Critical Race Theory: The Key Writings that Formed the Movement'*, New York: The New Press (1995), p. 24 forward.

used as a method to express racism by applying one's own experience.[8] The following discussion expresses how CRT may be applied to anti-begging measures adopted in Europe and why it has yet to be widely applied.

[8] Delgado, R and Stefancic (2012), p. 8-10.

Chapter I: The Roma in Europe and their racialization

1.1 Begging as a result of Roma "culture": The consequences of antigypsyism

Originally from India, the Roma are the largest minority group in Europe with an estimated population of between ten and twelve million.[9] Six million Roma live in the European Union (EU) alone and seventy percent of the total European Roma population is concentrated in Central and South-Eastern Europe.[10] From the time Roma arrived in Europe around the thirteenth century, indigenous populations have viewed them with suspicion. Because many Roma are reluctant to disclose personal information for fear of repercussion, the number of individuals who self-identify as Roma is exceedingly lower than official estimates, a factor that hinders the obtainment of accurate population data.[11] In order to analyse modern anti-begging provisions, it is first important to trace some historical aspects of the Romani people in Central and Southeast Europe. As Flex B. Chang and Sunnie T. Rucker-Chang argues, one important factor is the shift in academic research from the notion that Roma cannot become part of mainstream society due to their distinct and impenetrable culture. In the last decades, this viewpoint has been replaced with critical approaches to Romani studies that in essence challenge the previous, often uninformed or blatantly stereotypical narratives shaping Roma identity and focus instead on the racism, structural discrimination and oppression Romani people face.[12]

[9] Report on the implementation of the EU Framework for National Roma Integration Strategies, at 12 COM (2014) 209 final (Apr. 2, 2014). Compare with Report on Post-2020 EU Roma Strategy: The way forward from Open Society Foundations, (May, 2019), p.4.
[10] Eliason, A. (2017), p. 193.
[11] Ibid, p. 193.
[12] Chang, F. B, and Rucker-Chang, S. T. (2020), p. 20.

It is not uncommon for Romani people to be referred to as 'Gypsies', an outdated slur accompanied by the even more outdated view of them as nothing more than exotic dancers, wedding musicians, "annoying" beggars, welfare dependents, prostitutes, and thieves.[13] In the fifteenth and sixteenth centuries, laws were passed to expel the Roma: in fact, in many countries, Roma were sentenced to death when found.[14] As a result of the hostility, structural discrimination, violence and racialization that has occurred throughout the centuries, the vast majority of the Romani people wrestle with social-economic disadvantages that prevent them from integrating into the institutional and social fabric of Europe.[15] Taking the historical context into account, anti-Roma racism or *antigypsyism* is widely present within Europe today. Iulius Rostas argues that antigypsyism is a special form of racism directed towards Roma that has at its core the assumption that Roma are inferior and deviant. Rostas further argues that antigypsyism goes beyond mere discrimination: even though individual behaviour is usually regulated by law, in the case of racism, too often the institutional and structural forms of discrimination and racism are overlooked.[16]

The effects of discrimination against Roma can be found in various areas of concern such as housing, police brutality, hate crimes, employment, health and education.[17] This thesis focuses specifically on anti-begging provisions and their underlying, racist message. Arguments have been raised by the Italian Supreme Court that begging constitutes a Roma practice, a conclusion

[13] Kóczé, A and Trehan, N. 'Racisim (neo-)colonialism, and social justice: The struggle for the soul of the Romani civil rights movement in post-social Europe', in Huggan G. & Law I. (eds.), *Racism Postcolonialism* Liverpool: Liverpool University Press (2009), p. 52.
[14] Many Roma were enslaved in the thirteenth or fourteenth century while some remained enslaved until the mid-nineteenth century. See, on this, Eliason, A. (2017), p. 194.
[15] Ibid, pages 195 – 196. See also Kóczé, A and Trehan, N. (2009), p. 51. For more detail discussion and the definition of "racialization" see Chang, F. B, and Rucker-Chang, S. T. (2020), p. 24.
[16] Rostas, I. '*A Task for Sisyphus: Why Europe's Roma Policies Fail'*, Budapest – New York: Central European University Press, (2019), pages 12 - 19. See also, European Roma Rights Center, Third-party Intervention (2016), p 4 and 6 for definition of antigypsyism.
[17] Eliason, A. (2017), p. 197.

that was reached without any anthropological analysis.[18] A misleading use of culture, such reasoning only contributes to already extant stereotypes and neither improves nor removes structural discrimination against Roma. As Ilenia Ruggiu concludes based upon an anthropological viewpoint: begging is not a part of Roma customs. In fact, begging is an economic practice that could be connected to elements of the Roma culture in that begging is a consequence of extreme poverty and antigypsyism. In itself, this circumstance does not mean that it is a Roma practice.[19]

While the brief overview above discloses many complexities concerning the Roma and the discrimination they face, it should be clear that they are routinely victimised and discriminated against based upon stereotypes. If Roma are forced to beg in order to survive, there is small reason for surprise as the discrimination brought about by *antigypsyism* creates a vicious cycle of poverty. As Mathias Möschel writes, "The example of the Roma is particularly interesting because it stands in stark contrast to the image of Europe having overcome its overtly racist past. At the same time, the case of Roma is so obvious that even lawyers cannot deny the role of law…."[20] It is with this message in mind that this thesis examines anti-begging provisions in Europe and the failure to recognise how the racist message underlying these provisions contributes to the further discrimination and exclusion of Roma. The consequences of Romani poverty – including begging – are turned against the Roma people and unfortunately feed the racist complex that already surrounds Roma in Europe today.

[18] See Ruggiu, I. 'Is begging a Roma cultural practice?: Answers from the Italian legal system and anthropology', *Liverpool University Press* (2016), vol. 26, pages 32, 33 and 35-36. See also Dorsen, N., Rosenfeld, M, Sajo. A and Baer, S. 'Comparative Constitutionalism: Cases and Materials', 3rd ed, *West Academic Publishing* (2016), p. 990 forward.
[19] Ruggiu, I. (2016), p. 48. See als pages 40-48 for further analyse. See Corte di Cassazinoe, VI crimnial section, no. 45516/2008 and Corte di Cassazinoe, v Crimnial Section, judgement no.37638 of 28 Sept. 2012.
[20] Möschel, M. (2014), p. 145.

Chapter II: Begging as a fundamental rights issue

2.1 Anti-begging measures adopted in Europe: litigation at the national level

In international litigation, the issue of Roma rights has arisen in the fields of education segregation[21], racial violence[22], forced sterilization[23] and housing rights[24]. Until recently, the question of begging has been absent from international litigation. However, on the national level cases have already dealt with the question of begging or, more precisely, the question of anti-begging provisions. These cases have one thing in common: the fact that they do not mention racial discrimination at all.[25]

In Sweden, a country many Romani people from Romania and Bulgaria have entered in use of their right to move freely based upon the rights guaranteed by the EU Treaties, several local communities have adopted anti-begging provisions.[26] In a leading case from 2018, the Supreme Administrative Court concludes in its judgement that the prohibition of begging in some geographical areas of the city is justified. The Court made its ruling by examining the national legal framework.[27] The Court weighed whether the prohibition of begging jeopardises the

[21] See e.g. ECtHR, *D.H. and Others v. the Czech Republic* (Grand Chamber), no. 57325/00, 13 November 2007 and ECtHR, *Lavida and Others v. Greece*, no. 7973/10, 31 May 2013.
[22] See e.g. ECtHR, *Assenov and Others v. Bulgaria*, no. 90/1997/874/1086, 28 October 1998; ECtHR, *Velikova v. Bulgaria*, no. 41488/98, 18 May 2000 and specially ECtHR, *Nachova v. Bulgaria* (Grand Chamber), nos. 43577/98 and 43579/98, 26 February 2004 where an Article 14 ECHR violation was found.
[23] See e.g. ECtHR, *K.H. and Others v. Slovakia*, no. 32881/04, 28 April 2009; ECtHR, *V.C. v. Slovakia*, no. 18968/07, 8 November 2011 and CEDAW, *A.S. v. Hungary*, communication no. 4/2004, 29 August 2006.
[24] See e.g. ECtHR, *Winterstein and Others v. France*, no. 27013/07, 17 October 2013 and ECSR, *Centre on Housing Rights and Evictions* (COHRE) *v. Italy*, Complaint No. 58/2009, 25 June 2010.
[25] In its report, ERRC concludes that countries such as France, Germany, Luxembourg, Norway, and the United Kingdom either have national bans on begging or local anti-begging provisions following the recent EU enlargement, European Roma Rights Center (2016), p. 5 - 6.
[26] See Civil Rights Defenders letter of appeal claiming that at least nine local communities have banned begging and an additional twenty-nine local communities plan to do so (2019). Access to the letter of appeal here: https://crd.org/wp-content/uploads/2019/11/Vellinge-o%CC%88verklagande-maskad-version-pdf.pdf.
[27] Supreme Administrative Courts judgement 2018 ref. 75, 17 December 2018.

rights and freedoms of individuals and imposes unnecessary constraints on the public. In this section, the Court applied the margin of appreciation doctrine and argued that the decision was acceptable because it limits begging to certain places in the town where there have either been problems in the past or might prove problematic in the future.[28]

Austria has responded to similar situations that have arisen due to increased migration: since 2012, begging has been repeatedly debated before the Constitutional Court.[29] In a leading case from 2012, the Constitutional Court ruled that absolutely prohibiting begging in public places (including passive begging) breached Article 10 ECHR.[30] The Court compared begging to other acts, such as collective donations for UNICEF or churches and concluded that, in the latter example, it was justified without objection. Begging should therefore also be justified because it communicates a message of "poverty". However, in its 2016 judgement, the Constitutional Court discussed the question of begging again and ruled that even passive begging could be prohibited under certain circumstances involving expected concrete and disruptive effects on community life.[31] Nevertheless, the local community had to prove in each case that such a disruptive effect was present, and this reasoning had to be accepted by the Constitutional Court.

In 1995, the Italian Constitutional Court decriminalised begging by arguing that neither public peace and public order was endangered by begging.[32] The issue of begging was discussed again in the early 2000s and has since been repeatedly debated. Numerous local administrative

[28] Supreme Administrative Courts judgement 2018 ref. 75, 17 December 2018, p. 9.
[29] Report from Romano Centro, *Antigypsyism In Austria – Incident documentation 2015 – 2017* (2017), p. 6.
[30] Constitutional Court of Austria (Verfassungsgerichtshof), VfGH 6 December 2012, G64/2011.
[31] Constitutional Court of Austria (Verfassungsgerichtshof), VfGH 14 October 2016, E 552/2016.
[32] Pailli, G., & Simoni, A. 'Begging for due process: Defending the rights of urban outcasts in an Italian town', *Seattle University Law Review* (2016), vol. 39, pages 1309-1310. See Corte Costituzionale [Corte Cost.], 28 December 1995, n. 519, Race. uff. corte cost.

ordinances prohibited begging have also been declared.[33] However, in 2017, the Supreme Administrative Court ruled these ordinances as illegitimate because they punished all forms of begging.[34] Nevertheless, in 2018, the legislator adopted new legislation which prohibited certain types of begging. These measures are made in such a fashion that they either directly or indirectly target the Roma and are mainly based on the assumption that immigration can be likened to criminality.[35]

What is quite telling is that neither of the courts from these three different countries elaborated upon the issue of discrimination; nor did the ECtHR. As will be detailed below, not seeing racism in cases in which discrimination can play an obvious role is an issue that courts seem to ignore, or at the very least, prefer not to recognise the racial element.

2.2 The ECHR case: Lăcătuş v. Switzerland

2.2.1 Facts of the case

On 19 January, 2021, the European Court of Human Rights (ECtHR) rendered its first judgement concerning the issue of begging.[36] The applicant, Ms. Lăcătus, is a Romanian national and member of the Romani community. Possessing no other means to survive beyond begging for money in the streets, Lăcătus was fined under the Geneva Criminal Act that forbids begging in public spaces. She was then sentenced to custody following non-payment of the fine.[37]

[33] Möschel, M. (2014), p. 170.
[34] Decree of 3.4. 2017 the President of the Republic – on the opinion of the Council of the State (Consiglio di Stato) first section, est. Realfonzo, pres. Torsello of 9 November 2016. Available here: https://www.avvocatodistrada.it/wp-content/uploads/2017/04/decisionemattarella.pdf.
[35] Möschel, M. (2014), p. 167 and forward.
[36] ECtHR, *Affaire Lacatus c. Suisse*, no. 14065/15, 19 January 2021.
[37] Ibid, paras 7-8 and 14.

In essence, the Court found this action to have violated Article 8 (the right to private life) ECHR. Arguing that the applicant was from an extremely poor family, unemployed, illiterate, and did not receive any financial aid, the Court held that begging was the measure she had to take in order to survive. In this vulnerable situation, the applicant had the right to convey her plight and meet her basic needs by begging.[38] The sanction imposed upon her was not proportionate.[39] However, the Court did not discuss whether the Geneva Criminal Act discriminates against Romani people.

2.2.2 The reasoning of the Court - Article 8 ECHR (right for private and family life)

The Court stated that the applicant's right to private life (Article 8 ECHR) had been interfered with due to the fact that the applicant was fined for begging and then detained for failure to pay.[40] As regards whether the interference was justified (8.2 ECHR) per the requirement that interference in accordance with law, the Court stated that the imposed fine undisputedly has a legal basis in the Geneva Criminal Act in Section 11A.

In reference to the legitimate aim, the State invoked public order and safety, the state's economic well-being and the protection of the rights and freedoms of others.[41] The Court agreed that there were at least the legitimate aim of public order and safety and the protection of rights and freedoms of others involved. The measure was therefore motivated since beggars could harass passers-by and some actions by beggars could even incite a violent reaction. Moreover, the argument was also invoked that beggars are commonly a part of a community that exploits people, particularly juveniles.[42]

[38] ECtHR, Affaire Lacatus c. Suisse, no. 14065/15, 19 January 2021, paras 107 and 117.
[39] Ibid, para 115.
[40] Ibid, para 92.
[41] Ibid, para 95.
[42] Ibid, paras 96-98.

In reference to the last requirement, namely whether the measure is necessary in a democratic society, the Court found that the Geneva Criminal Act in Section 11A was a general ban against begging, quite a radical measure that enables any court responsible for enforcing the ban to abstain from weighing other interests that may be relevant to any given case. The Geneva Criminal Act does not, however, allow for a genuine balancing of the interests that could be at stake. Nor does it differentiate among questions such as who the vulnerable persons are, the nature of begging and the place where the act of begging occurs. Even though the law itself lacked such an assessment, the Court did not answer whether a fair balance would be possible. Regardless of the answer to this question, the margin of appreciation had in any case been exceeded.[43] While the Court agreed that the state enjoyed a margin of appreciation, this margin was not as broad as the State argued. The questions of begging and who addresses the problems that begging creates garnered no real consensus as there are several ways with which States have tried to solve these issues. In spite of these obstacles, the Court stated that a general tendency (*consensus*), to a certain point, to limit begging through administrative measures does exist, yet a total ban – a solution employed in the given case – was to be seen more as an exception.[44]

The Court stated that the reason underlying the applicant's criminalised action (i.e., begging) had its roots in the fact that she was from an extremely poor family, was illiterate, unemployed and had no right to receive financial aid. Begging was a measure she had to take in order to survive.[45] The Court stated that, "Begging constituted a means of survival for her. Being in a

[43] ECtHR, *Affaire Lacatus c. Suisse*, no. 14065/15, 19 January 2021, paras 101-102.
[44] Ibid, paras 103-106.
[45] Ibid, para 107.

clearly vulnerable situation, the applicant had had the right, inherent in human dignity, to be able to convey her plight and attempt to meet her basic needs by begging"[46]

The imposed sanction, namely imprisonment, was a sanction of a serious nature that furthermore increased her need and vulnerability. Strong reasons needed to be invoked in order to provide a motivation for issuing such a serious sanction. According to the Court, the State's argument that the measure was a means for combatting human trafficking did not provide an effective way to combat human trafficking. As for the argument that this sanction protected passers-by, the more general explanation that making poverty less visible would attract investment for local inhabitants and business owners was not seen as a legitimate motivation for restricting human rights.[47] Lastly, the Court stated that it did not agree that less restive means did not exist and that the measure taken was not proportionate, therefore the margin of appreciation had been exceeded and a violation of Article 8 ECHR was concluded.[48]

2.2.3 In practice: what significance does Lăcătuş v. Switzerland have?

The judgement cannot be read as anything else than the first and small step in recognising anti-begging provision as a human rights violation. In the given case, a suspension of the begging ban was ordered by the Geneva attorney general.[49] The guidance the judgement gives in reference to policymaking is neither extensive nor strict. As was stated above, a trend could be seen (an emerging *consensus*) in the administrative sanctions utilised by the States and for such sanction the Court seemed to accept a ban.[50] Moreover, due to the applicant's vulnerability and

[46] ECtHR, *Affaire Lacatus c. Suisse*, no. 14065/15, 19 January 2021, para 107.
[47] Ibid, paras 109-113.
[48] Ibid, paras 114-117.
[49] Heri, C. 'Beg your Pardon!: Criminalisation of Poverty and the Human Right to Beg in Lăcătuş v. Switzerland' (February 10, 2021) <https://strasbourgobservers.com/2021/02/10/beg-your-pardon-criminalisation-of-poverty-and-the-human-right-to-beg-in-lacatus-v-switzerland/#more-5121>, accessed 20 March 2021.
[50] Compare with ECtHR, *Affaire Lacatus c. Suisse*, no. 14065/15, 19 January 2021, para 105.

lack of alternatives, the imposed sanction could have endangered her ability to survive, thereby impacting her human dignity in a way that exceeded the State's margin of appreciation.[51] The lesson that can be drawn from this case lies in the type of sanction: most beggars are likely to be as vulnerable and poor as the applicant. Consequently, an administrative sanction (obviously the administrative sanction in *de facto*) in which imprisonment is not an option does not violate ECHR and can be read as *lex lata*.[52] What can be questioned is not only the narrow impact the judgement has, but also the relevance of Article 8 ECHR and, more importantly, the reason not to rule separately in the case of the claim and Article 14 (non-discrimination) ECHR. Lastly, it will be argued that while Article 10 (freedom of expression) might be intellectually applicable, the reason underlying its application might have a backlash effect on vulnerable groups. Article 3 (torture) would have been better basis instead of Article 8 since applying Article 3 would have provided stronger protection to those who are the most vulnerable: beggars.

2.3 Critical Analysis of the Lăcătuș v. Switzerland judgement

2.3.1 The relevance of Article 8 ECHR (right for private and family life)

The Court motivated the relevance of Article 8 ECHR by primarily arguing that the concept of private life in Article 8 ECHR is a broad term without an exhausted definition. The Court also stated that the concept of private life could include an aspect of the person's physical and social identity.[53] Moreover, the Court stated that the definition of private life also includes the right for personal development and the right to establish and maintain relations with both other

[51] Compare with ECtHR, Affaire Lacatus c. Suisse, no. 14065/15, 19 January 2021, para 115.
[52] ECtHR, *Affaire Lacatus c. Suisse*, no. 14065/15, 19 January 2021, paras 114-115 at least if it is read *a contrario*. One issue with the judgement is related to that of the applicant's poverty. The majority's ruling lacks answers to several important questions, for instance, that of whether her vulnerable situation could be avoided, or if it is of relevance that the laws in Geneva state that there is a right to social aid and what level of poverty is required in order to have the right to beg. See Judge Ravaranis partly concurring opinion, paras 5-9.
[53] ECtHR, *Affaire Lacatus c. Suisse*, no. 14065/15, 19 January 2021, para 54.

people and the outside world. Therefore, a zone of interaction between the person and others exists that can, even within a public context, include private life.[54] The Court recalled that the concept of human dignity is often mentioned in reference to Article 3, but has also been invoked in reference to Article 8 ECHR in several judgements.[55] Lastly, the Court referred to the circumstance that human dignity is seriously compromised if the person lacks a means to survive. As for the one who begs, he or she adopts a certain way of life in order to overcome an inhumane situation.[56] While it can be argued that Article 8 is applicable, one must wonder whether Article 3 and/or Article 14 would have been a better basis since these rights cast light on the problem from further perspectives which will be discussed below.

Additionally, there is a further argument against the use of Article 8 ECHR which in essence is that the scope of it has become too broad. In Erményi v. Hungary,[57] which dealt with the question of the Convention's compatibility with premature termination of a judge's term of office in the Supreme Court, the majority concluded that Article 8 ECHR was applicable. The Court argued that the notion of "private life" includes relationships that are of a professional or business nature and the right both to establish and develop relationships with other humans cannot be excluded in principle.[58]

However, the dissenting opinion of Judge Kūris argues that the jurisprudence of the Court and its application of Article 8 has reached a level where it can cover almost anything. The risk therefore exists that Article 8 ECHR will, if it has not already, become inflated while there are already many cases from the Court in which the notion of "private life" has included aspects

[54] ECtHR, Affaire Lacatus c. Suisse, no. 14065/15, 19 January 2021, para 55.
[55] Ibid, para 56. See e.g. ECtHR, *Rachwalski and Ference v. Poland*, no. 47709/99, 28 July 2009 and *Vinks and Ribicka v. Latvia*, no. 28926/10, 30 January 2020.
[56] ECtHR, *Affaire Lacatus c. Suisse*, no. 14065/15, 19 January 2021, para 56.
[57] ECtHR, *Erményi v. Hungary*, no 22254/14, 22 November 2016.
[58] Ibid, paras 7, 10, 30 and 31.

which are public by nature and are only distantly related to privacy.[59] The same can be said in the given case since begging was in fact taking place on a public street and not in "private". The argument not to use Article 8 ECHR becomes even stronger as there is a better basis for approaching the issue.

2.3.2 The backlash effect of Article 10 ECHR (freedom of expression)

A detailed examination of Article 10 ECHR is given in Judge Keller´s concurring opinion. According to Keller, begging constitutes a form of communication that falls under the scope of Article 10 ECHR.[60] The judge argued that the applicant's vulnerable status and subsequent begging is the ultimate way to communicate her poverty, either by words or gestures. The message that was sent by her begging was a clear invitation to interact with her.[61] Judge Keller also indicated that several domestic courts have already reached the conclusion that begging is protected under the right for freedom of expression.[62] However, according to Kagiaros, the judgements from the domestic courts are too few to argue that there is a trend (*consensus*) which allows for a new expansion of art 10 ECHR. Nevertheless, Kagiaros adds the further argument (not mentioned by Keller) in support of the view that begging is a form of speech. He argues that blanket bans on begging not only affect the speaker, but also the listener, who is no longer able to receive information from the most vulnerable. A community can consequently lose any perspective on its possible indifference toward human suffering.[63] This view is shared by other scholars, such as Hershkoff and Cohen, who argue that begging is a form of speech that provides information about those who are poor and poverty in general: by

[59] ECtHR, Erményi v. Hungary, no 22254/14, 22 November 2016, paras 1 and 13.
[60] ECtHR, *Affaire Lacatus c. Suisse*, no. 14065/15, 19 January 2021, at Judge Keller concurring opinion, para 8.
[61] Ibid, at Judge Keller concurring opinion, paras 9 and 11.
[62] ECtHR, *Affaire Lacatus c. Suisse*, no. 14065/15, 19 January 2021, at Judge Keller concurring opinion, para 12.
[63] Kagiaros, D. 'Is begging speech? Assessing Judge Keller's concurring opinion in Lăcătuş v. Switzerland' (February 12, 2021) <https://strasbourgobservers.com/2021/02/12/is-begging-speech-assessing-judge-kellers-concurring-opinion-in-lacatus-v-switzerland/>, accessed 21 March 2021.

begging, information conveying that there are people who need help is sent to the community.[64] The benefit to examining the listener's perspective thereby gives the public the opportunity to gain important information that will affect the proportionality test. Put differently, an additional factor, the listener's right to information, needs to be weighed and will fall in favour of protecting speech, even though that factor it not a deciding one.[65]

However, not including Article 10 ECHR could also be seen as a benefit or, to put it more precisely , as an unnecessary risk to take. While applying Article 10 is at least intellectually tempting, utilising this argument can have a backlash effect. The same argument that was used for benefiting the use of freedom of speech by a vulnerable group can equally be raised by non-vulnerable groups. Put differently, while no problem arises when vulnerable people are the beneficiaries of a broad application to the right to speech, expanding this right can open up avenues for other, non-vulnerable groups who can then use this broadened application to legitimise their own arguments. For instance *in Lee v Ashers Baking Company Ltd and Others*[66] a bakery refused to bake a cake that expressed a message in support of same-sex marriage.[67] The bakery mainly argued that forcing them to make a cake with a message that was contrary to their own beliefs was to be seen as forced speech and would be contrary to their freedom of speech.[68] Broadening Article 10 ECHR could have the backlash of legitimising arguments of such nature. Based upon this aspect, while Article 10 ECHR is intellectually tempting, there is

[64] Hershkoff, H and Cohen, A 'Begging to Differ: The First Amendment and the Right to Beg' in *Harvard Law Review*, (1991), vol. 104, pages 898-899. In the United States of America, a law was passed a few years ago in the state of Michigan to prevent begging, i.e., the Michigan anti-begging law. The law even criminalised the action of peacefully holding up a sign saying for example "I need help". This legislative act, however, was taken to Court by two men who had been arrested for breaking the law. On 14 August, 2013, a Federal Court of Appeals declared the act unconstitutional, See U.S. Courts of Appeals, 6th Circuit: *Speet v. Schuette*, 889 F. 2d 969 (W.D . Mich. 2012). The case did not go to the Supreme Court of the United States.
[65] Kagiaros, D. (2021).
[66] Lee v. McArthur, McArthur and Ashers Baking Co Ltd [2016], NICA 39.
[67] Lee v. McArthur, McArthur and Ashers Baking Co Ltd [2016], NICA 39, paras 5-6 .
[68] Ibid, para 67. The Supreme Court upheld the bakery's refusal not to make the cake, see Lee v. McArthur, McArthur and Ashers Baking Co Ltd [2018], UKSC 49.

a danger to suggesting the use of Article 10. Neither Article 8 nor Article 10 is the best basis for addressing the question of anti-begging provisions. A better basis is to be found in Article 14 in conjunction with Article 3 and by applying Article 3 in itself.

2.3.3 Stronger protection for the most vulnerable ones - Article 3 ECHR (inhuman or degrading treatment)

The Court should have based their judgement on Article 3 instead of Article 8 ECHR, especially if one would like to strengthen the position of those who are the most vulnerable. The interpretation that anti-begging provisions should be viewed from the perspective of Article 3 ECHR provides a better basis since, by prohibiting begging, one is in fact inhibiting a person from obtaining the bare minimum necessary for survival. This factor is especially the case when there are no alternatives. However, in order to apply Article 3 ECHR, a minimum level of severity needs to be reached.[69] The level of severity is higher for torture than inhuman and degrading treatment and the act of torture needs to be deliberate.[70] In the given case, one can argue that the severity for inhuman and degrading treatment has at least been reached since anti-begging laws in fact prevent one from attaining one's livelihood. It is hard to imagine anything more inhuman and degrading than the fate of being forced to beg due to a lack of alternatives, and then being fined and incarcerated for trying to survive.

Including Article 3 ECHR would have added a new perspective which could be an arguably better basis for analysing anti-begging provisions. Furthermore, since the right is absolute, there would have been no room for excuses on the parts of States. More precisely, States would probably need in such a case to argue that the level of severity was never reached since they had offered alternative means for beggars to gain a livelihood. Theoretically, a judgment in

[69] ECtHR, *Ireland v. The United Kingdom*, no 5310/71, 18 January 1978, para 162.
[70] Ibid, para 167.

which Article 3 ECHR is breached due to anti-begging laws could force States to act. In order to keep an anti-begging law, States would have to provide alternatives to beggars in order to survive and thereby avoid reaching the level severity. This requirement would place beggars (whether they are Roma or not) in a better position since States, for instance, would provide some type of aid to ensure that the person in question cannot be seen as having been exposed to inhuman or degrading treatment.

2.3.4 Not seeing race in cases that is all about race - Article 14 ECHR (prohibition of discrimination)

No matter if Article 8 or Article 3 is the better basis, the Court could still have applied Article 14 ECHR in conjunction with one of the mentioned Articles. As was stated in the thesis overview, there is a link between anti-begging provisions and antigypsyism. This claim was also raised by the third-party intervention from the European Roma Rights Centre (ERRC), who pointed out that many states have adopted anti-begging provisions since 2007, the year when Bulgaria and Romania joined the European Union (EU) as states where many people of Roma origin live. Following EU enlargement, Roma people (similar to others) have used their right to free moment to seek better living conditions. The ERRC argued that the Court needs to view laws that criminalise begging from the context of antigypsyism and, most importantly, the Geneva Criminal Act's criminalisation of begging in fact targeted Roma people.[71]

Choosing not to address Article 14 ECHR and thereby rejecting discrimination claims is not the first instance of this type: the Court has previously rejected examination of the issue of discrimination being committed against Roma.[72] The problem with having the aspect of

[71] European Roma Rights Center (2016), p. 18, 25 and 36.
[72] See e.g. ECtHR, *Assenov and Others v. Bulgaria*, no. 90/1997/874/108, 28 October 1998; ECtHR, *Anguelova v. Bulgaria*, no. 38361/97, 13 June 2002 and ECtHR, *Winterstein and Others v. France*, no. 27013/07, 17 October 2013. See also Möschel. M, Is the European Court of Human Rights' Case Law on Anti-Roma Violence 'Beyond Reasonable Doubt'?, *Human Rights Law Review* (2012), vol. 12, pp. 479-507.

discrimination overlooked is that this neglect deprives the Roma community and their victims of full redress for the harms which have been committed against them.[73] Moreover, as Möschel argues, as concerns jurisprudence in connection with the issue of violence against Roma people, the Court has rarely referred to the racial motive that exists. Not employing Article 14 ECHR makes it impossible to take a real stand against racial discrimination or even to attempt to find a violation.[74]

Moreover, from the formalistic approach which the ECtHR applies, since no part of anti-begging provisions distinguishes among various grounds for discrimination (i.e., these measures do not declare that the provisions are only applicable to the Romani people), anti-begging provisions can therefore only be viewed as a case of indirect discrimination.[75] Perhaps having such a formalist approach oversimplifies the matter: without great effort, by merely examining the context and the application, it is possible to draw the conclusion that anti-begging laws are in fact targeting Roma people. As such, there cannot be any other explanation for them other than that of direct racial discrimination. As Mathias Möschel rightly argues, there are several example when the Court has applied indirect discrimination even though direct discrimination is much more clearly applicable if one does not apply a formalist approach and instead looks at what the law is targeting and its substance.[76] For instance, cases regarding the wearing of a headscarf or full face veil can be viewed as such in that the Court has not yet found these laws to be in violation of Article 14 or Article 9 (freedom of religion). Even though

[73] Várnagy, E. 'X and Y v North Macedonia: A Missed opportunity to improve the case law on anti-Roma custodial violence (January 27, 2021) < https://strasbourgobservers.com/2021/01/27/x-and-y-v-north-macedonia-a-missed-opportunity-to-improve-the-case-law-on-anti-roma-custodial-violence/>, accessed 20 March 2021.
[74] Möschel, M. (2012), pp. 479-507. See specially pages 500 -506 for the authors potential solutions.
[75] See e.g. ECtHR, *D.H. and Others v. the Czech Republic* (Grand Chamber), no. 57325/00, 13 November 2007, especially para 193.
[76] Möschel, M, 'The Strasbourg Court and Indirect Race Discrimination: Going Beyond the Education Domain', *The Modern Law Review* (2017). vol. 80, pages 123-127.

these laws contain neutral language, they still specifically target Muslim females and must therefore be viewed as an example of direct discrimination.[77] Lastly, what is notable is that neither the aforementioned national courts nor ECHR addresses the question of racial discrimination. The courts seem to be blindly refusing to see race in cases that definitely concern race.

2.3.5 Colour-blindness in Europe's courts

One element of Möschel's definition of "continental European colour-blindness" comprises the failure of courts to see race in cases that clearly concern race. Numerous continental European states can be seen as being racial sceptics since most states have been affected by Nazism. After World War II, throughout the European continent, viewing race as an analytical category was gradually phased out of the field of social science while courts also avoided framing both legal and social issues in reference to race. For the most part, this development can be linked to the Holocaust, which essentially led to the absence of a discourse on biological race.[78] Instead, States either attempt to eliminate race completely from legislation and public debate or label it in softer terms such as, "ethnicity" and "ethnic belonging".[79] Neither the ECtHR nor the aforementioned national courts touch upon the issue of race even though they clearly see race-related cases that consequently become an example of continental European colour-blindness. As has been demonstrated, courts seem to find it difficult to, or perhaps choose not to recognise the underlying racial discrimination that determines anti-begging measures. This inability may lie in the fact that the arguments that have been raised are not

[77] Möschel, M, 'The Strasbourg Court and Indirect Race Discrimination: Going Beyond the Education Domain', The Modern Law Review (2017). vol. 80, p. 127. See for instance ECtHR, *Dogru v. France*, no. 27058/05, 4 December 2008.
[78] Möschel (2014), p. 123. For a more detailed analysis of colour-blindness and its origin in the United States see Gotanda, N. 'A Critique of "Our Constitution Is Colorblind', in Kimberle W. Crenshaw *et al.* (eds.) *Critical Race Theory: The Key Writings that Formed the Movement*, New York: The New Press (1995), pp. 257-275.
[79] Ibid, p. 124.

strong enough to link anti-begging measures to antigypsyism. The following analysis will demonstrate how anti-vagrancy and begging legislation has historically been a tool for both controlling and incarcerating racial minorities.

Chapter III: History has come full circle: From slaves in the United States to Europe's Roma

3.1 The history of vagrancy-type laws

It can be argued that what is happening to Roma people in connection with anti-begging measures is not new: other groups have historically been subjected to such measures. In England, the *Statues of Labores* (1349-51) stated that every person with no other means of support had to work for a wage fixed at a rate preceding the Black Death; fleeing to other countries for better earnings was forbidden. The statutes also prohibited giving alms to beggars who were able-bodied yet refused to work. Underlying this vagrancy legislation was an anti-migratory policy which, beyond the problem of depopulation, was caused by the Black Death and also aimed to substitute serfdom by enforcing vagrancy statutes, thereby chaining workers to their jobs.[80]

As was stated above, the origins of vagrancy legislation are rooted in the decline of feudalism and depopulation caused by the Black Death. As Stewart argues, by looking at the history of vagrancy laws, one can conclude that these kinds of statutes have dangerous consequences for racial minorities.[81] Eventually vagrancy laws became a method to control and dismiss those who were unwanted and seen as a financial burden, nuisance, or complicit in potential criminality. Moreover, the laws were also used to prohibit foreigners from entering communities.[82] In fact, the benefit of having vagrancy laws (also the reason why they have

[80] Foote, C. 'Vagrancy-Type Law and its Administration', *University of Pennsylvania Law Review* (1956), vol. 104, p. 615. See also Chambliss, W. J. 'A Sociological Analysis of the Law of Vagrancy', *Social Problems* (1964), vol. 12, pages 67-77.
[81] Stewart, G. 'Black Codes and Broken Windows: The Legacy of Racial Hegemony in Anti-Gang Civil Injunctions', *The Yale Law Journal* (1998), vol. 107, p. 2257.
[82] Foote, C. (1956), p. 616.

been politically tolerated) is that most people agree that the police can exercise the authority to stop those seen as "unwanted" from entering "nice" neighbourhoods.[83] As Stewart concludes, the price of the majority's will is historically paid by those who are seen as the disadvantaged group in society.[84]

3.2 African Americans as the victims of vagrancy-type laws

In the United States, African Americans have been framed as undesirables and were therefore targeted by vagrancy laws, a practice that emerged during the Reconstruction era following the Civil War, when the black population technically became free. In the American South, innovative legislation was used to constrain black people and thereby prevent them from becoming "free". Southern lawmakers thus tried to re-establish control over what they saw as former property by introducing vagrancy ordinances that enforced provisions of the former Confederate states. Mississippi was the first state to pass and implement Black Codes; later, several other states issued similar Black Codes and while their substance and style varied, these laws all attempted to keep former slave in an inferior position.[85] The subsequent "Black Codes" were designed to force former slaves to work for their former masters by means of vagrancy ordinances. The likelihood of being arrested and charged kept black labourers from migrating. Legislature in Mississippi and South Carolina openly mentioned race in their vagrancy laws, a clear reference to the fact that the laws targeted former slaves.[86] As Foner observes, the other states chose not to include race in their laws in order to avoid the appearance of discrimination, yet it was still clear whom the laws targeted.[87]

[83] Stuntz, W. 'Implicit Bargains, Government Power, and the Fourth Amendment', *Stanford Law Review* (1992), vol. 44, pages 559-560.
[84] Stewart, G. (1998), pages 2258 - 2259.
[85] Ibid, pages 2260-2261.
[86] Ibid, p. 2259.
[87] Foner, E. 'Reconstruction Updated Edition: America's Unfinished Revolution 1863-1877', *New York: Harper & Row* (1988), pages 200-201.

3.2.1 From African Americans to Europe's Roma

History is only repeating itself: in Europe, anti-begging measures pose dangerous consequences for Romani people who are framed as a financial burden, nuisance, and potential criminals. Even though they, like others, are only utilising their right to free moment within the EU, they remain unwanted foreigners. Forbidding them from begging is in fact an attempt to stop them from entering countries since, once there, they would no longer have any income with which to survive. To compare this case with the US example, the abolishment of slavery in the United States made the slaves not free in *de facto* as vagrancy laws were adopted in an effort to establish total control over former slaves. Although the provisions were neutrally framed in most states, it was still clear that they mostly targeted former slaves and therefore bore an openly racist intent. The link is quite clear, and the similarities are many when comparing scenarios that occurred after the abolishment of slavery and the rise of anti-begging measures in Western Europe, the sudden increase of which can be directly linked to entry into the Union of Countries from Central and Eastern Europe, an EU-expansion that made it possible for Roma to travel to western European states to beg. Obviously, the anti-begging measure are neutrally framed, therefore their racial aspects remain hidden.

Moreover, when simply comparing the situation when slavery was abolished for either the Roma or African Americans, one can see that criminalisation became the new tool for re-enslavement. No matter whether one looks at the period following emancipation or decolonisation, the criminalisation of Roma revolves around their perceived nomadism. For this reason, policies were created with the aim of establishing sedentarisation. As a result, Roma were subjected to requirements of registration, tax inducements and enforced settlement,

measures that were taken as a part of anti-vagrancy operations.[88] The modern anti-begging measures can also been see as campaigns to stop Roma from moving, even though the non-Roma population may continue to use their new freedom of movement within the EU.

Additionally, the history of how, with each amendment, the American Constitution created a subsequent amendment, eventually leading to the Civil Rights movement, can also be compared to the modern anti-begging measures within the EU. During Reconstruction, after the American Civil War, strong disagreements arose between the Presidency and Congress itself. Lacking a unified approach to reunifying the nation, schisms also arose in the legislative body: the general objection that originated from several actors led to a narrowly constructed set of Reconstruction Amendments that were greatly influenced by the Radicals' attempt to woo conservatives into breaking the congressional impasse. What resulted was a comprise resulting in laws that only went "half-way" when it came to addressing racial issues. This means that the Thirteenth Amendment can be read as having abolished slavery, but without granting any rights. The Fourteenth Amendment only endorsed a few basic liberties instead of prohibiting racial discrimination directly while the Fifteenth Amendment may have called for voting laws yet did not take any disparate impact into account.[89] In essence, these amendments led to situation in which the Union laid out conditions for the South's re-entry that were stricter than the Union's own law of internal governance. The South was not given the same legal rights as pre-existing states (equal footing). For instance, additional conditions were raised for the newly readmitted states and federal troops were occasionally present in the South. The same could be said for the newly joined member of EU from the Central and Southeast Europe who were not given the same opportunities as older members from the northern and western

[88] Chang, F. B, and Rucker-Chang, S. T. (2020), pages 31 – 32.
[89] Ibid, pages 102-103.

parts of Europe. To mention one such example, neither Bulgaria nor Romania could join the Schengen visa-free travel within the EU. One of the main reasons for this was the fear of an influx of Romani migrants.[90] This condition strengthens the argument that even though anti-begging provisions are neutrally framed, it is clear whom they target. The concerns of Romani migrants has been present in the discussion and it is not far-fetched to conclude that if Roma cannot be stopped from travelling, the best solution is to ensure that they do not have any reason to travel in the first place by introducing anti-begging provisions that will send a clear warning to them.

3.3 Solution: Adopt the "Culture Meaning" Test to identify unconscious racism in specific cases

As has been shown, no cases, whether from national courts or the ECtHR, include an assessment of the racial message that underlies anti-begging measures. Lawrence suggests usage of the Culture Meaning Test to describe the origins of racial discrimination accurately and the nature of the injury it causes.[91] In essence, Lawrence argues that discrimination is frequently unconscious, therefore there is a need to face unconscious racism. In order to trigger judicial recognition of behaviours that are based on race, a few tests can be applied. Lawrence argues that there is a link between unconscious racism and cultural symbols which have racial symbols.[92] He further states that,

[90] Chang, F. B, and Rucker-Chang, S. T. (2020), p. 105.
[91] Lawrence C.R, 'The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism' in Crenshaw K.W et al (eds.) *Critical Race Theory: The Key Writings that Formed the Movement*, New York: The New Press (1995), p. 237.
[92] Lawrence C.R, 'The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism' in Crenshaw K.W et al (eds.) Critical Race Theory: The Key Writings that Formed the Movement, New York: The New Press (1995), p. 238.

> [I]t suggests that the "cultural meaning" of an allegedly racially discriminatory act is the best available analogue for, and evidence of. a collective unconscious that we cannot observe directly. This test would thus evaluate governmental conduct to determine whether it conveys a symbolic message to which the culture attaches racial significance. A finding that the culture thinks of an allegedly discriminatory governmental action in racial terms would also constitute a finding regarding the beliefs and motivations of the governmental actors: The actors are themselves part of the culture and presumably could not have acted without being influenced by racial considerations, even if they are unaware of their racist beliefs. Therefore, the court would apply strict scrutiny.[93]

Put differently, a court would need to analyse governmental behaviour by considering evidence in the form of the historical and social context within which the decision was reached.[94] As was discussed above, it is quite clear that anti-begging measures were passed in Western Europe when countries such as Romania and Bulgaria joined the Union. The underlying racial message was unmistakable. Even though these laws are framed neutrally, they target Roma people. By applying the Cultural Meaning Test, courts who deal with the issue of begging can easily examine the historical and social context of the period when laws were adopted and thereby conclude whether these rulings conveyed a racial message. Even if laws are neutrally framed, this factor alone does not mean that one cannot read the hidden, racial content. When a law is placed within a historical and cultural context, it becomes clear whether laws have a

[93] Lawrence C.R, 'The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism' in Crenshaw K.W et al (eds.) Critical Race Theory: The Key Writings that Formed the Movement, New York: The New Press (1995), p. 238.
[94] Ibid, p. 247.

racial meaning.[95] Moreover, in general, one can conclude the cultural meaning of begging in Europe is linked to the racial exclusion and discrimination of Roma, out of which anti-begging provisions are just one example.

[95] Compare Lawrence C.R, 'The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism' in Crenshaw K.W et al (eds.) Critical Race Theory: The Key Writings that Formed the Movement, New York: The New Press (1995), p. 251.

Conclusions

Discrimination against Romani people continues today and antigypsyism, a form of racism directed against Roma, includes institutional and structural forms of discrimination and racism that are often overlooked. This thesis has shown that anti-begging provisions in Europe in fact target the Romani people, especially those anti-begging measure adopted after 2007. Neither Bulgaria or Romania has managed to join the Schengen, namely for the reason that there is a fear of an influx of Romani migrants. This fear means that the aforementioned countries have not been given the same opportunities as members from northern and western countries in Europe. The thesis discusses how modern anti-begging provisions are comparable with the situation that arose when slavery was abolished and vagrancy laws were adopted with the aim of regaining control of African Americans or enforcing the settlement of Roma. Nevertheless, anti-begging provisions have been challenged before several national courts and even by the ECtHR: what these measures all share is the absence of recognising racial discrimination. Courts appear to cast a blind eye toward race in cases that are essentially about race, or at least, they do not want to recognise the racial element. This thesis contends that courts must examine cases through the lens of CRT, a theoretical tool that will enable judiciaries to see the racial message that underlies these neutrally framed provisions. In the judgement of *Lăcătuş v. Switzerland*, an initial step has been taken by the Court to protect the most vulnerable in our society. Yet this case also reflects how racial aspects are not included. Moreover, in order to better protect the already marginalised minorities Article 3 ECHR – an absolute right , serves the strongest foundation to challenge already existing and further adopted anti-begging measures.

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