The Government of Migration through Workfare in the UK

Towards a shrinking Space of Mobility and Social Rights?

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Abstract: This article focuses on migration within the European Union, exploring the gradual restriction of rights for ›free movers‹ in connection with the restructuring of welfare towards workfare policies. Based on analysis of secondary sources, case laws and qualitative interview material with migrant support organisations and legal experts, the author explores the intersection between welfare and migration controls in the United Kingdom to highlight the rapid erosion of social assistance and social security rights for EU migrants. The article takes this national context as a point of departure to examine wider developments in other EU countries where similar patterns of restriction both at the judicial and policy levels emerge under the mark of workfarist politics and the ›activation paradigm‹. The main argument is that measures applied in the context of the workfare reforms enhancing the vulnerability of the precarious workforce are experienced in exemplar ways by migrants, stigmatised as fraudulent benefit claimants and in fact compelled to provide their labour under increasingly precarious conditions. The inter-dependency between the proof of habitual residence, retention of worker status and entitlements to in-work benefits emerges as a central mechanism in the government of mobility at a critical moment in the ›undoing of Europe‹.

Keywords: migration, mobility, United Kingdom, workfare, habitual residence, precarity, Brexit

Two types of movements traverse the crisis ›space‹ of the European Union: a centrifugal one at the external border, represented by the member states' rejection of the many migrants and refugees escaping war, oppression and poverty; and a centripetal one at the internal border, expressed in the shrinking space of free circulation and social protections for EU migrants.

While migration studies have tended to focus on the effects of Fortress Europe at its outer frontier, the present article shifts the gaze to movements within the EU. I explore the gradual restriction of rights for ›free movers‹ in connection with the restructuring of welfare towards workfare policies by focusing on a particular national context. The United Kingdom, in line with other OECD countries, has

seen a trend of reform based on the principle of fighting ›welfare dependency‹ by moving claimants into paid work through the introduction of tougher welfare conditionality and sanctions (Gilbert/Besharov 2011). These are meant to ›motivate‹ claimants into employment, but in fact punish those who do not play by the rules, such as failing to attend an interview at the Job Centre (Patrick 2014). The reality of workfare programmes often results in reproducing »low-pay-no pay cycles« (Shildrick/Macdonald/Webster/Garthwaite 2012), where claimants moving in and out of the job market are pressured to accept poorly paid and demeaning jobs to avoid sanctions or simply to escape the humiliating and exhausting benefit systems (Greer 2015; Patrick 2014).

This article takes welfare reform as a critical background to explore the exclusion of migrants from social assistance and social security in the UK. It then refers to other cases across the EU, where migrants have been denied social rights on equal terms with citizens, to show that the restrictive policies of the UK are an example of wider trends. I follow a mixed exploratory methodology where I draw from a wider project on the regulation of labour, social rights, and economic freedoms (Schiek/Oliver/Forde/Alberti 2015), which includes interviews with experts and practitioners supporting the free movement rights of migrants as well as an analysis of case laws and secondary sources such as policies of the UK and other member states.

From a review of policy developments in the UK, it appears that mobility, residence and social citizenship rights are being eroded, not only for non-EU, but increasingly also for EU migrants. The research shows the emergence of a mechanism of welfare and migration controls based on the conditionality of *retaining worker status* for the purpose of claiming social benefits. Under this new government, the proof of ›effective work‹ or of having a ›genuine prospect of work‹ (already introduced in British policy in the 1990s) appear central to the management of migrants' workfare.

These trends are sustained by the UK government and mounting discourses in the media about the alleged burden that migrants constitute as ›welfare tourists‹ on the nation. Such rhetoric has fuelled the growth of anti-immigrant sentiment and of xenophobic parties, both contributing to the result of the UK referendum to leave the EU. In the period leading to the referendum, British media widely publicized the regressive judgments by the Court of Justice of the EU (CJEU), such as the cases of Dano[1] and Alimanovic[2] in Germany, where low-income EU jobseekers and precarious workers have been deemed unworthy of receiving state allowances. The UK

1 | Case C-333/13 Dano, ECLI:EU:C:2014:2358 (cited in Schiek et al. 2015: 51).

2 | Case C-67/14 Jobcenter Berlin Neukölln vs Alimanovic, ECLI:EU:C:2015:597 (cited in Schiek et al. 2015: 52).

government has referred to these judgments to legitimise its attempt to curtail the social entitlements of internal migrants (The Guardian 2014). The CJEU judgments are therefore considered here to show how similar policy trends determine the exclusion of migrants from social citizenship in other EU countries and not only in ›Brexit(ing) UK‹.

If the logic of differential inclusion (Mezzadra/Neilson 2013; Papadopoulos/Stephenson/Tsianos 2008) under the EU border regime is still largely based on the division between EU and non-EU migrants, we witness a transfer of similar mechanisms such as the link between employment and habitual residence from non-EU to intra-EU migration. Indeed, the interdependence between work and migration status has been at the core of migration policies across the Global North, where proof of work is the condition to obtain the right to reside for non-EU migrants and a key factor of their precariousness (Anderson 2010). A specific mode of regulating the longstanding relationship between state welfare controls and the reproduction of migrant labour force emerges as centred on the »activation paradigm«, where the emphasis laid on paid employment is combined with the rising selectivity against hitherto protected categories of migrants in terms of their access to an increasingly residual welfare state (Wright 2011).

In contrast to the narratives that deepen the ›us versus them‹ sentiment, my intent is to show the *common rationale* between the restrictions on migrant social rights through the tweaking of their worker status and the neoliberal notion of »deservingness« at the core of contemporary workfare regimes that elect paid employment as a civic obligation for all citizens (see also Chauvin et al. 2013). It is my view that measures applied in the context of the workfarist programmes enhancing the vulnerability of the precarious workforce (Greer 2015; Patrick 2014) are experienced in *exemplary ways by migrants*, stigmatised as fraudulent benefit claimants, and in fact compelled to provide their labour under increasingly precarious conditions. These restrictive measures appear strategic for the government of labour mobility in the shrinking space of free movement in the EU.

MIGRANTS WORKING IN THE UNITED KINGDOM

Before providing the policy context of the UK, it is important to have an understanding of the composition of labour force in this country and the positioning of both EU and non-EU migrants across sectors. The link between migration and welfare can in fact be better understood against the backdrop of changing segmentation of workforce along occupational, gendered, and contractual lines.

While there are about 8.3 million foreign-born in the UK, defined as those born outside of the UK (Hawkins 2017), the proportion of citizens from other EU countries has visibly increased in the last decade, with about 1.9 million EU-born workers in the UK in 2015. Among them, half of those who came in 2014 and stayed for over 12 months are from the post-enlargement EU member states (Migration Observatory 2016). Since 2008 and the impact of the financial crisis and austerity on workers, more migrants have arrived in the UK from the southern countries of the EU. Nationals of EU-14 member states accounted for half of the total of EU migration in 2014, while nationals from Bulgaria and Rumania (›EU-2‹) and the other accession countries (Croatia, Malta, Cyprus) represented 20% of the total (Vargas-Silva/Markaki 2016).

In terms of labour market patterns, the proportion of migrants in low-skill employment has increased among those arriving after 2010, especially from the EU-8 and EU-2 countries, as well as among the older EU members from Italy and Spain, Greece, and Portugal (MAC 2014: 52). Since 2013, wages of male migrants have gone down as compared to those of UK-born men. A higher amount of EU-8 migrants gather in low skilled and low paid occupations with insecure contracts (e.g. in elementary process plants, cleaning, housekeeping, and process operatives) (Rienzo 2016: 4). Many migrant women, whether from the new European migrant communities or long-term ethnic minority groups, tend to be segregated in low-wage, menial and feminised jobs at the bottom end of the service industries (May/Wills/Datta/Evans/Herbert/McIlwaine 2007).

A wide range of qualitative research shows that EU migrants tend to fill the gaps at the bottom end of the job market, experience lower payment, unpaid overtime as well as intense and long working hours while facing precarious contracts since the years of EU Enlargement (2004 for the EU-8 and 2006 for Bulgaria and Romania) (Alberti 2014; Ciupijus 2011; Cook/Dwyer/Waite 2011).

Many precarious, hourly paid and zero-hours contract jobs[3] are often taken by migrants. Polish, Lithuanians, Romanians and Portuguese are the predominant groups in low-skilled and low-paid jobs, like elementary processing and cleaning. And yet,

3 | Zero-hour contract is a relatively new category of casual employment affecting a growing amount of workers in the UK that is defined as type of employment that does not guarantee a minimum number of hours or employment protections. According to the Office for National Statistics (2017) during October to December 2016 there were 905,000 people employed on »zero-hours contracts« in their main job (2.8% of all people in employment). This is 101,000 people more than in the same quartile in the year 2015 – and still these figures are likely to be under-estimates.

migrants from outside the EU and especially post-colonial migrants from Africa and Asia[4] still constitute the majority of all low-skilled employment (60% in 2013) (MAC 2014: 34).

The relatively different labour market positions of EU migrants and non-EU migrants in the UK are influenced by the ways in which their migration status is regulated under national migration law. Since 2008, while non-EU migrants are channelled into the UK via a strict visa regime, based on skills, age, and income criteria set out by the UK Points-based system, and their legal residence tends to be bound to a work permit, EU migrants, until now, did not need a sponsor or a contract of employment to enter the UK legally. Yet, the group of EU migrants is far from being internally homogenous, since not all categories are treated equally: EU-2 in the UK have been subject to post-enlargement transitional measures that involved employment restrictions. For instance, until 2014, EU-2 could only enter either as self-employed or under the Agricultural Scheme. Beside legal barriers to the labour market, critical migration scholars have pointed out other dimensions, including the racialised and cultural constructs applied to certain EU nationals based on their alleged economic value and morality, creating a layered EU citizenship (Vianello 2012).

Understanding the position of migrants in the UK labour market helps to explain why non-UK born people have been more likely to claim so called in-work benefits (Sumption/Allen 2015). Because these migrants tend to be paid less and employed with insecure contracts, they rightly seek welfare support. At the same time, the motivations and characteristics of the migrant workforce explain why both EU and non-EU migrants in the UK are underrepresented among out-of-work benefits claimants, as compared to the British population (Sumption/Allen 2015).

Looking across the EU, migrants accounted for 1 to 5% of benefit claimants in 2014 (European Commission 2014), meaning that the rest (95 to 99%) of benefit claimants were UK nationals. Recent research confirms that the extent to which so-called non-active intra-EU migrants take advantage of non-contributory benefits is small (European Commission 2013a). Migrants do not claim benefits to the same extent than UK citizens do, mainly because they tend to be in employment more often (in 2013, activity rates were 77.7% on average for mobile EU citizens, as compared to 72% for UK nationals), and thus less likely to receive disability and unemployment benefits (European Commission 2014). Healthcare expenditure was also marginal

4 | The categories more likely to be found in low-paid work were Central and Western Africans (Ghanaian and Nigerians), Eastern Africans (especially Somalis), migrants from the Philippines and other parts of Southern and Eastern Asia, South America and the Caribbean (MAC 2014: 34)

for these groups (0.2% on average of total expenditure, see Eurostat 2016, cited in European Commission 2013a).

Having considered the stratified position of migrants in the UK labour market and their comparatively limited demand on welfare, it is critical to further explore how welfare rights are related to free movement rights, as well as to migrants' undervalued and insecure work. I thus turn to the existing provisions of benefit support to migrants in the UK and their historical antecedents at the origin of the British system of workfare and migration controls.

MIGRANTS AND THE BRITISH WORKFARE REGIME

One of the main issues at the centre of Britain's past negotiation with other member states to forestall the country's exit from the EU (EUCO 2016) (now nullified by the Leave vote), has been the quest for limiting access to in-work benefits for migrants. Political and regulatory developments in the field of EU internal migration in the UK have proceeded on the basis that there is a need to reduce the burden of alleged non-citizens on the welfare state of host countries, but this burden has never been proven. The myth of ›welfare tourism‹ is in contrast not only linked to figures demonstrating the small proportion of migrants' claims cited above, but also to the lack of evidence on the claim that migrants would move to any particular member state in order to claim social benefits. Despite the fact that the UK has been one of the countries in the EU to provide relatively generous cash benefits for working families on low income and with children, an examination of data from the CBS Minimum Income Protection Indicators (Van Mechelen/Marchal/Goedemé/Marx 2011) shows that the average income of migrants in the UK has *not* been brought up by in-work benefits to the point of constituting a pull factor. Conclusions cannot be drawn solely on the basis of economic calculations, also because transnational migration is not merely driven by the choice of »rational economic individuals dancing on the tunes of wage rates« (Rogers/Anderson/Clark 2009: 45), or responding mechanically to the degree of generosity of welfare or presence of cash benefits in a given country.

With regard to the alleged impact of migration on public welfare resources, Dustmann and Frattini's (2014) analysis of the Labour Force Survey shows that immigrants residing in the UK between 1995 and 2011 were less likely to receive state benefits or tax credits and less likely to live in social housing than UK-born citizens in the same region. These authors concluded that »especially those from EEA countries have, through *their positive net fiscal contributions,* helped to reduce the fiscal burden for native workers« (Dustmann/Frattini 2014: F595). Thus, recent restrictive

developments on welfare rights for internal migrants do not appear to arise from any factual figure of benefit abuse. They must rather be located in the context of harsher welfare rules, *including* those that apply to unemployed or precariously employed British citizens (Shildrick et al. 2012).

Since the Welfare Reform Act 2012, introduced by the Tory/Liberal Democrat Coalition, the principle of ›welfare conditionality‹, in continuity with the preceding New Labour government's idea of paid work as »the best form of welfare«, has been extended and made tougher (Patrick 2014: 706). Such conditionality means, for instance, that those claimants who fail to comply with work-related conditions for three times will lose eligibility for benefits for three years. Research shows how ›getting by‹ on benefits often involves actual hard work (whether paid or unpaid), and how the very welfare system becomes *productive of precarity* to the extent that it reinforces dynamics where people shift in and out of the job market, and claimants are pushed to accept zero-hour contracts and other ›marginal‹ jobs in order to maintain relative access to the welfare system. But how does this conditionality play out in the case of non-citizens? A consideration of the historical links between welfare and migration controls in the UK and the current regulation at EU level helps grasping the issues at stake (Cohen/Humphries/Mynott 2002).

CHRONOLOGIES OF DISENTITLEMENT

While the UK has recently voted to leave the EU, also based on alleged ›welfare tourism‹ and ›uncontrolled‹ immigration from other member states, the policy and legislative steps taken by successive governments in the last decades are indicative of a gradual pathway towards the restriction of social benefits for migrants. This happens mainly by imposing further conditionality also on internal migrants, who have to demonstrate their ›right to reside‹ to claim benefits.

Cohen, Humphries and Mynott (2002: 1) were among the first in the UK to explicitly tackle the link between migration and welfare controls, arguing that immigration controls extend beyond physical borders by involving »the restriction of access to welfare provision on the ground of immigration status«. Restrictions against categories of migrants who are subject to immigration controls, and in particular asylum seekers, are applied especially in the fields of social assistance or so-called means-tested benefits. A key step in the pattern of excluding immigrants from welfare provision has been the Immigration and Asylum act introduced by the Labour government in 1999, which established the exclusion of anyone ›subject to immigration controls‹ from recourse to public funds, including a swathe of welfare provisions, such as in-

come support, housing benefits, and council tax benefits, among others (Hayes 2002: 40). A new version of the Poor laws[5] has been applied to asylum seekers, who cover a peculiar position in the hierarchy of entitlements in the UK: While they are excluded from national welfare, their access to (indeed very low) standards of living is administered under a separated system called the ›Asylum Support Services‹ (Mayblin 2014). Since asylum seekers are excluded from the right to work in the UK (since 2002), their status perhaps represents the most extreme end of the *continuum* in the correlation between migration and welfare policy, as they are, at the same time, deprived of the right to work and excluded from the welfare system accessible to citizens (and until now, EU migrants). Synonymous to the ›benefit scroungers‹ is indeed the ›bogus asylum seeker‹, whereby an ideology of underservingness and unwanted immigration supports the paradoxical policy that asylum seekers are de facto forced into welfare dependency (Mayblin 2014: 377).

In order to understand the present mechanisms of welfare and migration controls, it is important to further clarify the distinction between two types of benefits in the UK. One class of benefits are *out of work non-contributory benefits* such as job seekers allowance, access to which has been curbed in the past years also for EU migrants through harsher rules over residency rights, whereby internal migrants have to pass an additional ›right to reside test‹ linked to proof of employment. Critically, such right to reside was introduced in 2004 by an amendment to the regulation regarding the rights to social security benefits, such as the Job Seeker's Allowance, with the aim to protect the UK's social system from alleged threats of ›benefit tourism‹ (European Commission 2013a: 166). This right was linked to the ›habitual residence test‹, which was in turn introduced in 1994 by the then Labour government to respond to concerns that EU students were coming to the UK just to access benefits (Patterson 2002: 168)[6]. What constitutes habitual residence has been historically established in common law. A milestone judgment has been the ›Shah vs Barnett Borough of London‹ case, which defines ordinary residence as »being voluntary in the UK for

5 | The Poor laws of late Medieval era (effectively in place until the setting up of the Beveridge reform modern welfare state after the Second World War) tended to differentiate individuals considered worthy of state support from those not deserving on the basis of relative engagement with paid employment (Anderson 2013; Patrick 2014).

6 | It is worth noting that its predecessor, the so-called presence test, initially introduced in 1985 by the Green Paper Reform of social security and which jeopardised EC citizens' right to ›supplementary benefits‹ (the precursor of income support and JSA), was dropped in the following policy, as it was considered a breach of the Treaty of Rome normal rule of equal access to supplementary benefits in the first six months of migrants' stay.

any settle purpose in addition to a requirement to provide proof of an acceptable period of actual residence« (Patterson 2002: 169). Those hit hardest by the changes were Black and Asian ethnic minorities, who had long settled but who had returned from extended family visits in their home countries (especially the Indian subcontinent) (Patterson 2002), which illustrates how restrictions initially introduced against EU migrant students end up affecting larger groups, including non-EU and racialised groups.

A second class of benefits in the UK are *in-work benefits,* consisting of a series of integrative social measures for people in employment, including working tax credits, housing benefits, and child-care financial support for working families whose income is relatively low. Historically created to provide a way to subsidise low wages at the bottom end of the labour market, such provisions have worked as anti-poverty measures for a large number of citizens and migrants. Until now, in-work benefits have been immediately available to workers from elsewhere in the EU, according to the core principle of EU law on the coordination of social security systems.

SOCIAL CITIZENSHIP UNDER EU LAW

The distinction between in and out of work benefits reflects the distinction in EU law between contributory and special non-contributory benefits, developed since 1971 as part of its system of coordination concerning social rights for free moving workers and citizens. Accordingly, all *workers* should have the same access to benefits of the first type. Transnational social security for EU free moving workers is currently governed by EU regulations 883/2004 on the coordination of social security systems and implemented by regulation 987/2009. The original scope of coordinating social security is to avoid discrimination for moving workers and to incentivise their mobility (Caldarini/Giubboni/MacKay 2014: 9). With regard to the free movement of *persons*, the Directive 2004/38 or Citizenship Rights Directive (CDR) establishes the general principle that EU citizens have a right to reside in another member state, no matter if they are in or out of work, as long as they have sufficient resources to not become a burden on the social assistance system of the host state and are covered by sickness insurance (EC/2004/38, Article 7).

The European Commission has confirmed this dual system reserved to persons as opposed to workers (and jobseekers who retain worker status), stating that »while EU law on the free movement of Union citizens does allow Member States to restrict access to social assistance, EU rules on coordination of social security do not allow for restrictions on social security benefits in the case of EU nationals that are workers,

direct family members of workers or *habitually resident* in the Member State in question« (European Commission 2013b: 2). Critically, for current developments in the UK as well as for the cases that we will consider below, this means that EU migrants residing in a different member state and considered economically inactive can only demand full equal treatment after establishing a ›sufficient link‹ to the host state.

According to the CRD, EU migrant jobseekers enjoy freedom of movement until it is taken away from them by the responsible ministerial office. And yet, under EU law, member states retain the right to limit equal treatment in the sphere of social assistance claims (non-contributory out of work benefits) for certain categories:

> »[…] a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances (c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months.« (EC/2014/38, Article 7 (3c))

We will see how these principles have been exploited in other instances of case law against migrant claimants such as in Germany, while it emerges that policy changes in the UK have been openly geared towards restricting the chances of migrants to retain worker status for the scope of claiming benefits.

THE MANIPULATION OF WORKER STATUS TO LIMIT THE ACCESS OF MIGRANTS TO BENEFITS

The UK has indeed interpreted the habitual residence in a gradually restrictive manner in order to curb access to welfare and their mobility for migrants. Since December 2013, a »stronger, more robust« habitual residence test has been introduced in the UK for those claiming means-tested benefits (e.g. income-based jobseeker's allowance, working tax, and child tax credits). According to the new rules, »[f]or those EEA jobseekers *or former workers* with a right to reside as a jobseeker a test is now applied where they would have to show that they had a ›genuine prospect of finding work‹ to continue to get JSA after six months« (and if applicable, housing benefit, child benefit and child tax credit) (Kennedy 2015: 3). While what constitutes compelling evidence of a genuine prospect of finding work is far from being defined, the Department of Work and Pension clarified that it may involve a written job offer

with a date of commencement (Kennedy 2015: 18).[7] The government produced a set of guidelines for front desk workers conducting those tests to help them establish whether applicants fulfil the requirements around the proof of genuine prospect of work *and* prove that the UK has become their ›habitual centre of interest‹.

This UK rule can be claimed to be partly in contradiction with Article 24 (2) of the CRD. According to the directive, first time jobseekers are one of the three categories of people from whom member states have the right to withhold social assistance benefits. »First time jobseekers« are defined under Article 14 (4) by the CRD as those who »entered the territory of the host member state in order to seek employment [...] as long as [they] are continuing to seek employment and [...] have a genuine chance of being engaged«. Since the right to claim JSA after six months in the UK depends on the proof of genuine prospect of work *also for those who are no longer first time jobseekers,* the UK regulation appears in contradiction with EU law (Schiek 2015a).

With regard to my focus on the link between migration and welfare controls, it is notable that social assistance measures appear to be increasingly bent to labour market ›activation measures‹, which emphasise the need to provide support that facilitate integration of the claimants into the job market. In the UK, such increasing conditionality becomes apparent for both citizens and migrants (Greer 2015; Patrick 2014). In the case of migrants, the situation is made more difficult by the fact that differentiating access to entitlements according to migrants' employment status is explicitly aimed *at circumventing* the looser definition of ›worker‹ under EU law, which, according to the UK Government (2014), »allows people more generous access to in and out-of-work benefits«. In line with this restrictive approach, from November 2014 onwards and after 91 days of claiming income-based JSA, EU migrants who do not prove to have an imminent job offer may lose their benefits and, crucially, their right to reside in the UK as a jobseeker (UK Government 2014). Additionally, a minimum *earning threshold* corresponding to the level at which employees start paying the national insurance contributions (about £150 per week) has been introduced in March 2014. The government aims to further ensure that benefits will only go to those who are ›genuinely working‹, thus further entrenching the workfare logics of migration controls.

It emerges that the very definition of *who qualifies as a worker* appears crucial in determining access to social benefits. The detrimental impact of such restrictive

7 | Precedent guidance in 1993 stated that ›EC work seekers with no genuine chance of finding work‹ after six months on income support, may have to leave the UK although there was no power to deport, and legal challenges were due (Patterson 2002: 163). It is worth noting that this guidance was successfully challenged in the House of Lords.

measures, especially for the many migrants employed under the increasingly popular zero-hours contracts and other so-called ancillary types of employment, has been stressed above (see also Anderson 2013).

RESTRICTIVE COURT JUDGMENTS AGAINST MIGRANTS IN THE UK AND BEYOND

Judicial and policy developments in the UK and other EU countries illustrate similar restrictive trends. Leaving beside the specificities of the UK system concerning welfare and migration controls, one can account that UK and European courts alike have played a key role in legitimising the withdrawal of rights from migrants. Interviews with policy experts and front desk practitioners offering legal support to EU migrants in the spheres of mobility and social rights provide evidence of a common tendency across the UK and other EU countries to restrict access to social protections for internal migrants (Schiek et al. 2015).

An informant from an EU rights clinic based in Brussels gave evidence of withdrawals of migrants' social and health services entitlements by UK national courts. The expert gave examples of how the most vulnerable individuals were among EU migrants out of work, who appeared to be targets of a ›punitive approach‹ because of their alleged welfare abuse. This was the case of an EU worker married with a non-EU citizen, who was denied residency rights on the basis of having used the National Health System while unemployed. The denial of residency based on ›abuse‹ of social assistance very clearly illustrates a *culture of sanctioning* that characterises the UK ›welfare to work‹ regime, reflecting the logic of »deservingness« of neoliberal welfare systems (Chauvin/Garcés-Mascareñas/Kraler 2013) as well as expectations of economic self-sufficiency.

While these principles of sanctioning, deservingness and welfare dependency are increasingly integrated into the recent regulations of welfare rights, also for internal migrants, we have seen how the roots of workfare regimes functioning as a tool of migration regulation run deeply into the history of migration and welfare controls in the UK, namely into the exclusion of non-EU migrants from access to public welfare (Cohen/Humphries/Mynott 2002). A novelty is that, while migrants who are temporarily out of work have been the first target of the attack by EU countries' governments against ›welfare tourists‹, recent case law shows a gradual erosion of rights, *also for former workers*. Within Belgium, a variety of instances concerning revocations of social benefits emerged from the interviews with the Italian ›patronato‹ INCA (a Brussels-based organisation that supports Italians working and living abroad). It

emerged how ›free movers‹ in search of work because of sudden unemployment are particularly vulnerable to the same rhetoric on welfare tourism. An Italian worker who moved to Belgium after his company closed down during the economic crisis, and who subsequently was made unemployed by his new Belgian employer, was inquired as a ›dangerous social tourist‹ despite the fact that he provided proof of searching for work and learning the local language. Nonetheless, the Belgian government considered that he had no chance of finding a job, and, after five months of unemployment, this migrant received an expulsion order, hence losing unemployment benefits both in Italy and Belgium despite having worked for many years (Interview with INCA representative, March 2015).

Other cases of EU migrants' disentitlement have been found in other EU countries. Similar to the UK case, the German approach to administrating migrants' access to social provisions has given central prominence to the proof of habitual residence and the *retention of worker statuses* for migrant claimants. There have been parallel changes in the German law of residence, according to which from December 2014 onwards, EU migrant jobseekers are legally entitled to stay for only six months unless they have financial resources to support themselves. After the six months, they must provide documentation to the foreign registration office that they have a ›genuine prospect of getting employed‹ while it is far from clear what kind of proof will be accepted (Achenbach 2015). It is worth emphasising that the foreign registration office is allowed to enquire into an EU migrant's right to stay only if there is a genuine reason for suspicion, which can (but does not need to) consist in receiving social benefits. Despite this, there have been draconian judgments for migrants living in Germany (Jacqueson/Hilten-Cavallius 2015; Schiek 2015a; Valcke 2015), including the Dano vs Jobcenter Leipzig case ruled by the European Court of Justice (CJEU) in 2013, which was exploited by the British government to ›vindicate‹ its argument to curb migrants' benefits during the pre-referendum negotiation (Caldarini/Goldmann 2016; The Guardian 2014). This judgment is illustrative of the demonisation of migrant jobseekers, as it ruled that a Romanian national in Germany was rightly denied subsistence benefits, social allowances, and a contribution to housing and heating for herself and her son. Crucially, these benefits were withdrawn also on the basis that Dano was conceived of having moved to Germany with the sole purpose of obtaining social assistance without sufficient resources to claim ›a right of residence‹ (see Schiek et al. 2015; Schiek 2015a).

In the more recent judgment Jobcenter Berlin Neukölln vs Alimanovic by the CJEU (September 2015), the same restrictive principle has been extended to restrict the right of an EU free mover *with a past employment history*. Despite being Swedish citizens of Bosnian origin, Ms Alimanovic and her daughter (16 years old)

had already obtained lawful residence in July 2010 (»unbefristete Bescheinigung der Freizügigkeit nach §5 FreizügG/EU«[8]) after they re-entered Berlin. At the same time, their social benefits were withheld on the basis that the Alimanovics had been unemployed for more than six months after having worked in Germany for less than a year. This happened, despite Ms Alimanovic and her older daughter working in temporary jobs between June 2010 and May 2011, upon return to Germany. Kramer points out in a case analysis:

> »[. . .] whereas in *Dano* the Court still refers to the ›fundamental status‹ of Union citizenship and explicitly affirms Article 24 (2) as an exception to the fundamental principle of non-discrimination, *Alimanovic* confirms a symbolic reversal by skipping any reference to Union citizenship and straightly moving to residence conditions deservingness [. . .].« (Kramer 2015)

By contrast, Schiek (2015a) emphasises how, in that context, the problem was rather revolving around the *retention of a worker status* and that the withdrawal of rights from the Alimanovics contradicts the application of the notion of ›first time job seeker‹ under EU law (see above). The contestation for Schiek is that, according to the CJEU ruling, the Alimanovics fell back on to the category of first time jobseeker after becoming unemployed, despite the fact that they had worked in the past. But the legal expert remarks the contradiction that »[while they] were no longer first-time job seekers, Germany could not rely on Article 24 (2) CRD in withdrawing their job seeker allowance« (Schiek 2015a).

Overall it emerges that, not only in the UK, but also in other countries such as Belgium and Germany, the logics of deservingness and activation under workfare regimes assume specific forms of subjectivity for non-citizens, giving rise to new forms of precariousness across the social and employment realms. Migrants appear as a true example of changes occurring in the government of welfare and labour mobility at a time of crisis, when they become ›bargaining chips‹ in the process of re-negotiating the internal boundaries of EU citizenship.

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8 | An »unbefristete Bescheinigung« was just a kind of certificate of one's freedom of movement (it has been abolished in 2013). It is different from a »Daueraufenthaltsrecht«, which corresponds to the »permanent residence« very much sought after by EU migrants in the UK, who are increasingly anxious about the impact Brexit will have on their status.

Towards a Workfare Europe with restricted mobility?

This article has tackled the relationship between migration and welfare controls for precarious migrant workers and jobseekers against the backdrop of welfare retrenchment. I focused on the case of migrants in the UK, but considered examples from other countries as indicative of similarly restrictive patterns across the EU. The overview of literature, policy developments, and qualitative research with migrant support organisations in countries like the UK, Belgium, and Germany highlight a critical intersection between activation policies under workfare measures and restrictive policies increasingly encroaching on EU migrants' mobility and residence rights. While the UK has started to strip the social rights of internal migrants well before Brexit, other member states, together with national and supranational judiciaries, also appear to be taking a regressive approach by denying rights and withdrawing subsistence benefits and employment support, even from those who previously worked (Kramer 2015; Schiek 2015a; Schiek 2015b). This contradicts the original principle of equal treatment that lies at the roots of the EU social security framework (Caldarini/Goldman 2016; Schiek 2015a).

The UK case is also a telling example of a broader trend towards a creeping erosion of rights for non-citizens, where *commonalities* between EU and non-EU immigrants subject to immigration controls demonstrate a rhetoric based on notions of deservingness, abject categories of unwanted migrants, and the reproduction of migrants' availability to work precariously, e.g. for low-wages, as conditions to access welfare benefits. A core contradiction emerges between the practice of moving people off benefits into low-paid employment under the welfare-to-work ›activation agenda‹ (Wright 2011), and the withdrawal of income-based support from mobile and vulnerable people, including single mothers and former refugees, which traps them further into the cycle of precarity (Shildrick et al. 2012). The regulatory changes of the last few years, including those around the *definition of the worker status*, the proof of its retention after periods of unemployment, and the introduction of an *earning threshold* in the UK turn migrants into the primary target of ›workfarist policies‹ (Mayblin 2014; Patrick 2014). While entitlements to social provisions are made conditional upon workers' availability to accept precarious and poorly paid jobs reinforcing a re-commodification of labour for everyone (Greer 2015), I showed how these mechanisms exacerbate work-dependency and precarity for migrants in particular.

Legal scholars such as Schiek (2015b: 50) have insisted that blurring *distinctions between worker or jobseeker* or more specifically »the mixing of rights for economically active and inactive citizens« are at the root of the problem, and make it more

difficult to prove the retention of worker status, and the cause of weakening protections for free moving workers. I am sceptical that a clearer distinction between these two categories represents a solution especially given the very unstable nature of employment and the common experience of intermittent work in current times. A paradoxical situation arises: At the same time as work becomes more precarious, uncertain, temporary, and unable to provide for one's own social reproduction, access to social protection is made dependent on the capacity to demonstrate a full worker status. Social rights appear under attack precisely for the most vulnerable migrants, pushing them to situations of in-work poverty or destitution. I thus rather suggest to interpret the productive link between limiting social protection, employment, and free movement rights as an attempt to curb *migrant agency* in the labour market. As reported more than a decade ago by the Migrant Right Centre in Ireland, migrants who did not pass the Habitual Residence Condition requirement appeared disempowered in their »ability to assert their employment rights *vis-a-vis* their employers« (MRCI 2005: 59). Rising barriers to accessing social benefits also for EU migrants not only question the link between equal treatment and principles of free movement, but critically undermine the bargaining power of these workers at the workplace and within the job market (Alberti 2016).

Welfare controls, when combined with migration controls, not only have an impact on the general position of migrants within the labour market (Anderson 2010), but they also give rise to a particular re-stratification of social citizenship inside the EU (Vianello 2012). Considering the shrinking space of free movement and social rights for migrants in the EU, I thus present a pattern of convergence between EU and non-EU migrants, whereby the link between employment and habitual residence as a mode of governing mobility is emulated from non-EU into intra-EU migration. These processes appear instrumental to the »government of mobility« in Europe (Connessioni Precarie 2014), making migrants more available, disposable, and compliant vis-a-vis their employers. It is the reproduction of a precarious workforce, with no social security cushion, under constant risk of falling into poverty, and pushed to accept lower standards that such regulatory restrictions concur to generate. Such regulatory and political contestations played on the back of migrants further question what is left of the European ›social project‹. As the idea of a social Europe further disintegrates, and with it perhaps the very EU as a supra-national political entity, the movement of migrants across borders and their claims to social rights and residency are rather likely to continue. Migration asserts itself, once again, as a social movement with an unmanageable force.

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