

MONSIEUR HEINRICH HEINE

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WESTHAFEN



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*"Alle Menschen sind frei und gleich an Würde und Rechten geboren. Sie sind mit Vernunft und gewissen begabt und sollen einander imgeiste der Bruderlichkeit begegnen."
"Der Bahnhof der Menschenrechte" – U-Bahnhof Westhafen, Berlin.*





Organizational Support from Diakonie and Caritas to Irregular Migrants in Berlin, Germany

MM41 MA Dissertation

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CHAPTER 1: Introduction

The conception of human rights based upon the assumed existence of a human being as such broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships – except that they were still human. The world found nothing sacred in the abstract nakedness of being human (Arendt, 2000:41.)

The chapter presents the field and specific topic of my study, what made me choose the particular focus and what I was curious about during the research. I also introduce the essential definitions used in my research, its geographic area and chosen organizations.

1.1 Personal motivations and research questions

My thesis examines how certain faith-based or non-governmental organizations support irregular migrants (hereafter, IM) in Berlin, Germany. I have chosen this particular topic because I am curious to learn the surviving mechanisms of the IM in situation when they have no official sources of assistance. Besides their personal or ethnic networks, only some organizations provide assistance to the IM. In this regard I was provoked by the discrepancy between state and NGO approach: state does not support the IM but encourages organizations to engage in activities helping them. Here is a quote from an authority in Berlin:

The Senate holds the view that the counselling and the welfare of people without a residence right is a genuine task of churches and NGOs. Counselling and welfare of this group of persons can only in exceptions be a task of the state [...] however the senate can encourage welfare organizations to become active [...] Senatsverwaltung für Arbeit, Integration und Soziales, 2008, quoted in Laubenthal and Pielage, 2011.)

On more personal level, the topic of 'othering', and in this case how state decides who is 'worth' getting inside the system and who is not has been another fascination for me. Lastly, I feel some empathy with the IM: life in precarious situation and the hardship to combine possibilities and desire to make a home in the EU countries are very familiar to me as well.

Thus, the guiding questions for my research are the following:

Why are IM denied their human rights, how is this denial legitimized, and what is the role of NGOs in this process? More precisely, what they do for the IM? What are the specificities of the projects? How they position themselves? And what is the role of the state in their work or how the “encouragement” by the state is expressed in the projects implemented by the organizations?

The authors that influenced me during the whole writing process are first of all, Halvar Kjærre and Hannah Arendt. Kjærre with his article “No direction home—the margins of a welfare state and the illegalised Body” (2010) triggered concern and motivation in me: concern about their hopeless situation and motivation to find out more and use the knowledge in my future work or as an activist. The article is based on the author’s fieldwork with the IM in Oslo in 2009 and 2010. Here Kjærre describes the hopeless situation of the IM and how they see and relate to their “Illegalised” bodies in their everyday lives. The passive word “illegalised” is already very descriptive of the matter: the migration regimes that put certain people in an “unwanted” category.

The article by Arendt “We refugees” (1943) was another intellectual trigger for me. I kept returning to the question of pride and shame in the cases of refugees versus economic migrants, in the twentieth century versus nowadays. In the article Arendt describes how people fleeing to the USA did not want to be called refugees, rather newcomers or immigrants because they left their previous residence with the aim to improve their lives. They came because “one fine day, it no longer suited us to stay, or for purely economic reasons” (Arendt, 1943.) Indeed, there should be pride in one’s desire to better their lives. Today I hear many people being tolerant towards refugees who flee wars, but hostile towards economic migrants. The European popular image of a person who strives for success is perceived positive but a “foreigner” attempting to higher life standards is often a contradictory figure.

Certainly, much inspiration I found also in Arendt’s writings on the statelessness and human rights. It was particularly interesting to read the chapter “The Perplexities of the Rights of Man” from the book *The Origins of Totalitarianism* (1951) where Arendt discusses the role of “The Declaration of the Rights of Man” in the protection of stateless people escaping the atrocities of

war (Arendt, 2000:31-46). The absurdity of the idea of “abstract nakedness of being human” (ibid:41,) and how one needs to belong to a sovereign state in order to have their human rights protected (ibid:32) haunted my curiosity for a long while. The apparent parallel of the situation of stateless people over sixty years ago and the contemporary IM made me wonder the evolution of human rights as a set of legal tools meant to protect a human being regardless of their residence status. These speculations resulted in a subchapter in this thesis called [Human rights of IM](#). I further built my work on the writings of authors that followed the footsteps of Arendt, such as Agamben, and more recently, Zapata-Barrero and Bigo (see [References](#).)

1.2 Terminology matters

Public discourse is one of the crucial fields where migrants are being excluded (Kjærum, 2002:523) Here the word ‘migrant’ is usually collocated with adverse designations, such as ‘threat’, ‘illegal’, ‘flood’, ‘suspected’, ‘terrorist’, ‘foreigner’, ‘consumer’, etc. It has been argued by Malkki (1995) that these words express a negative othering of immigrants. In this sense IMs are even more exposed to this kind of language than others: political authorities and journalists refer to them as ‘clandestine’, ‘illegal’ and ‘sans papiers’. People who lack documents authorizing their residence in a country are presented in large public through negative lens. In this regard, Trimikliniotis notices that IMs become targeted by press because

[...] they provide the necessary ‘shady figures’ condemned by both law and morality and moral panic is a favorite game of the media, populist politicians and far right groups. [...] The ‘illegal immigrant’ is faceless, timeless, country-less, thus characterised by his or her not being something, not being legal. (2007:357)

The term ‘illegal’ fundamentally negates Article Six in the Universal Declaration of Human Rights that every person has the right to recognition before the law. Along the same lines, Article Seven claims that everyone is authorized to equal protection by the law (United Nations. The Universal Declaration of Human Rights.) I discuss international legal tools relevant to the IM in more details in [Chapter 3](#).

Considering the above, social scientists mainly call this type of migrants ‘irregular’ with the intention to avoid discrimination and stigmatization. They clarify that no human being can be

illegal; it is the type of crossing the borders or official status of residence and/or activities that can be legal or illegal, but not the people involved in it. With this in mind, in my paper I use the term 'irregular migrant' to avoid negative labeling. Certainly, changing the terms does not alter the real situation itself, but creates grounds for a more careful and less prejudiced approach. Other terms that I find less stigmatizing are 'undocumented' and 'unauthorized.' Since many IM have passports or IDs issued by their country of origin, the term 'undocumented' might be misleading. Likewise, the term 'unauthorized migrant' emphasizes the importance of policy regulations that grant or decline a status to a migrant and thus emphasize only one aspect of their situation. Hence, I find the definition 'irregular' the most appropriate both ethically and content-wise.

1.3 Support from organizations

As I emphasized above, in the situation irregular migrants find themselves the help of NGO-s and other initiatives might be very important in their daily survival. Here I present the main aspects of such organizational work that I observed through researching their websites. I also base my argumentations on some researchers' takes on the topic.

First of all, what I find striking when researching on organizations working with irregular migrants not only in Germany but Europe overall is that only a limited number of NGOs are solely and expressively involved in the field. Similarly, there are not many international initiatives that focus on irregular migrants. Among them are [CLANDESTINO Database on Irregular Migrants](#); [PICUM - the Platform for International Cooperation on Undocumented Migrants](#); [The Global Campaign for Ratification of the Convention on the Rights of Migrants that works on the recognition of human rights of migrants](#) including irregular_ones; [UNITED for Intercultural Action](#) (European Network against nationalism, racism, fascism and in support of migrants and refugees.)

I believe, that lack of resources contributes to the lack of data on the conditions of irregular migrants. This means poorly designed policies. Within the same lines, Koser (2005) asserts that NGOs concerned with irregularity do not affect state policies. As a matter of fact, initiatives and organizations are more involved in advocating rights of migrants, rather than governance of

irregular migration. Vivid examples of this are the above mentioned PERCO and PICUM that in their reports and newsletters accentuate promotion of fundamental human rights of irregular migrants instead of their implementation in local legislations. In majority of the cases it remains only on activism level, but does not become substantial base for the formation of guidelines on governmental level.

1.4 Contextualizing irregularization of migrants in Berlin, Germany

According to a study conducted by Laubenthal and Pielage (2011), Berlin, as other big cities of Germany has a big proportion of immigrants which also means that the number of irregular migrants is high. Researchers assert that here churches and welfare organizations have a major role in supporting the IM in social services (Laubenthal and Pielage, 2011:13-14; Vogel and Aßner 2010, cited in Laubenthal, 2011:1363). Their activities concentrate on counselling, charity and healthcare (Sinn et al. 2006:168-195, cited in Schneider, 2012:29.) Majority of their political campaigns, however, are aimed for asylum policies and tolerated refugees or the situation concerning EU border crossings.

The active organizations are the following: Diakonie; Caritas; the Jesuit Refugee Service; Die Ökumenische Bundesarbeitsgemeinschaft Asyl in der Kirche e.V.; Der Deutsche Paritätische Wohlfahrtsverband; Pro Asyl; Die Malteser Werke gemeinnützige GmbH¹; Buero für medizinische Fluechtlingshilfe; Deutsches Rotes Kreuz and refugee councils, the offices for medical care for refugees. However, from these organizations I study Diakonie, the social welfare organization of Germany's Protestant churches (Diakonie Deutschland -Evangelischer Bundesverband; hereafter, Diakonie) and German Caritas Association (Deutscher Caritasverband e. V.; hereafter, Caritas).

Diakonie and Caritas are the major organizations working in the sphere. They have many local partner institutions, such as shelters and counselling services that work for irregular migrants. I define both of the organizations as non-governmental faith-based since they draw their guiding

¹ Dedicated to the work with migrants, youth and social inclusion, the association declares to belong to the Caritas Mission (see [here](#).)

principles from a religious ideology or from a certain interpretation of religious philosophy (Clarke and Jennings, 2008:6.)

CHAPTER 2: The Methods

We need first the courage of our convictions, then the courage to challenge our convictions, and finally the imagination to sustain our courage with theoretical reconstruction. If these reconstructions come at too great a cost we may have to abandon our theory altogether and start afresh with a new, interesting theory for which our case is once more an anomaly. (Burawoy, 2002:20)

This section presents the methods I used for my study. Here I reflect on the process of my work and myself as a student conducting research. I also introduce the reasons behind my choice of particular methods and organizations of study, as well as challenges I met during my enquiries.

2.1 Qualitative Approach

For the purpose of my research, I applied qualitative approach (Marshall and Rossman, 1999; Holliday, 2007; Bernard, 2011; Castels, 2012) because I believe it gave me as a researcher possibility to communicate with and acquire first-hand data from my respondents. With qualitative methods I was able to see what organizations in question offer, how their representatives handle the topic of irregularity, as well as their reactions and thoughts of the IM. The collected data allowed me to follow some patterns arising during the meetings and reflect on them in my analyses.

The methods I used were desk studies followed by semi-structured interviews and informal talks. The logic behind the chronology of the use of methods was to acquire more general knowledge on the topic at first and build my own research on that base. Eventually all the data collected I summarized and connected to the theories and philosophical debate on the issue.

From December, 2013 to March, 2014 I conducted *desk studies* that included literature review and internet explorations. My approach to the literature was to explore relatively recent publications on the topic of irregularity covering wide spectrum of the academic inquiry on it. Majority of the sources used were published after 2004. This was important for the accumulation of more up-to-date information, since a considerable part of my writing concerns migration policies and production of irregularity in the contemporary context. However, to support my argument from philosophical point, I integrated discussions from classics, such as Hannah Arendt and Giorgio Agamben as well. A substantial amount of readings included also literature on methodology and writing a master's thesis.

Internet explorations were one of the initial steps of my research: through Google search I identified the organizations that work with the IM in Berlin. Later I researched the webpages of those organizations to find relevant contact information and other available details concerning their projects. I also extensively used internet to consult the up-to-date information on the [IM related legal documents and their status of ratification by Germany](#). The compiled data is presented in a [table](#) (pp. 22-25.) Here I collected both universal and European regional legal regulations that are meant to protect the IM. My intention was to identify how the legal tools address the rights of the IM as a whole or as a specific group, e.g. migrant workers or migrant children. Quotations or indirect citations of the texts of the legal tools are presented. I also name the specific articles or resolutions from the whole documents. To make the data more suitable to the context of the thesis or to invite the readers' attention to a specific of the law, in a few places I added some personal emphasis marked as "*my emphasis*." The data on ratification of the documents by Germany is retrieved from the respective documents in the end of April and the beginning of May 2014 (see [References](#).)

After familiarizing myself with some literature on irregular migration in the EU, as well as German context, I made a *questionnaire* to guide the interviews with the representatives of the organizations (see [Annex 1](#).) It consists of seven sets of questions starting from general inquiries concerning the IM projects. It proceeds to statistics; participation process; inquiries about the social workers themselves; the source of financial support; how they communicate their actions

with the government and on which perspective they see their work—human rights or humanitarianism.

To conduct the interviews I used semi-structured method. It gave me freedom and adaptability to get the information within the research framework. I chose this tool because as Bernard indicates it is best to apply when the researcher gets to interview the informant only once and when the informants are bureaucrats—“people who are accustomed to efficient use of their time” (2011:158.) All my interviewees could be described by these features, and it was important for me during and before the interview to indicate my aim and show that I am in control of that. Meanwhile, the method allowed me to bring up new questions whenever there was the need or opportunity to find out something beyond the questionnaire. Thus, it helped me demonstrate that I am prepared and proficient. It also provided me space to navigate in between the questions and have a flow of conversation, rather than incoherent questions and most importantly, to follow my research curiosity.

From January to March, 2014 I had some *casual talks* with people working at the Diakonie headquarters’ office. During April and May, 2014 I visited the refugees protesting in the Oranienplatz camp, Berlin² and joined the demonstrations against Dublin III regulations and deportations of migrants³ for several times. During this time I had conversations about the services that the people in the camp and demonstrators—both migrants on the verge of deportation and civil activists—know to be available to the IM. I was also inquiring whether they are aware of any activities carried out by Diakonie and Caritas concerning the IM.

2.2. Pilot studies

During my internship in Oslo, Norway at the [Norwegian Social Research \(NOVA\)](#), I did some pilot studies investigating organizational support by Red Cross Oslo to the IM. I visited [Stella-](#)

² The movement started in June, 2012 ([Refugee Tent Action](#), 2014) and on April 9, 2014 the camp where about 200 refugees were living was demolished ([International Business Times](#), 2014.)

³ The permanent protest started on 14 April, 2014, in front of the House of the European Union (personal field notes, 14.06.2014.)

[Red Cross Centre for Women](#) (*Røde Kors kvinnesenter*) as a participant observer and conducted interviews there. I also had interviews at the [Health Center for Paperless Migrants](#) (*Helsesenter for papirløse migranter*) and with a Red Cross human rights consultant working with migrants. This study allowed me to gain some experience in the organizational context and improve my skills of communication and conducting interviews with such bureaucrats. I learned, for example, that after an e-mail I needed to do a follow-up call and try to insist on a meeting.

2.3 Selection of the organizations

In October and November 2013 when doing internet search for the organizations working with the IM in Berlin, Diakonie and Caritas appeared most frequently. The availability of information about the services the above mentioned organizations provide made me research and learn about them more. Thus, when it was time to pick up certain organizations for closer investigation, I chose Diakonie and Caritas. Besides, the practical reason for narrowing down my enquiries only to the two organizations is the fact that I worked as an intern at [Bread for the World](#) (*Brot für die Welt*), which has recently merged with Diakonie, currently consisting *Evangelischen Werks für Diakonie und Entwicklung*. Indeed, my internal connections helped me access the people working for Diakonie and directly responsible for the projects in question. However, from Caritas I managed to interview only one person—the representative of Malteser Migranten Medizin. Despite the fact that the Medical Center can be regarded as belonging to the [Malteser in Germany](#), in my thesis I consider it as a part of Caritas services. This is because Caritas webpage mentions the Center as being in charge for its work with the people without health insurance in Berlin (see [here](#).) In another description it is stated that Malteser is a professional association of Caritas (see [here](#).) Additionally, my interviewee from the Center defined the connection of the Malteser in Germany and Caritas in the following way: “under the Catholic church of Germany we are a part of Caritas [...] we are one, we act together [...]” (excerpt from interview with a representative of the Center, 15.04.2014.)

2.4 The interviews

One of the hardest parts of the research was to get interviews from the social workers. For that purpose initially I sent an e-mail presenting myself as an intern at Bread for the World. With

this I was intending to show my connection to a faith-based organization. However, the most effective way to get a quick interview appointment was through a colleague at the headquarters office in Diakonie. The contacts that did not respond to my e-mail request for an interview appointment were eager even to adjust their schedule to mine. Eventually, thanks to my contact at Diakonie headquarters office I got two interviews.

All the other interviews were arranged due to some insisting follow-up calls and e-mails. As a result, from Diakonie I interviewed five people and only one person from Caritas. Beside this, in order to have broader perspective on the services that could be beneficial for the IM in Berlin, I also asked various small initiatives and civil activists for interviews and managed to have two: one with a consultant from [ReachOut](#) counselling center for victims of rightwing extremist, racist or anti-Semitic violence in Berlin (held on 12.05.2014) and another with a volunteer of an initiative supporting asylum seekers in Berlin (20.05.2014.) I do not specifically analyze those two interviews since they are not a part of my targeted institutions, but I use the information gathered to construct the overall argumentation.

Thus, the following are my interviewees:

- a social worker at a Day shelter for homeless and financially deprived people (Tagesstätte für wohnungslose und mittellose Menschen) (conducted in 03.12.2013);
- a person responsible for an emergency accommodation for people without a shelter— (Notübernachtung Franklinstraße für Menschen ohne Obdach) (04.12.2013);
- a person working at the Diakonie headquarters office (01.04.2014);
- a social worker at a counseling center for immigrants and refugees from the Arab region (19.05.2014);
- one of the staff leaders working at the Regional Charitable works in Berlin and Brandenburg (23.04.2014);
- an official from Malteser Migranten Medizin (on 15.04.2014.)

I held interviews from December 2013 to April 2014. They mainly took place at the offices of the respondents and lasted from 45 to 75 minutes. Only one interview was conducted in a cafe. After presenting myself and the purpose of my project, I asked my interviewees whether they

would like me to indicate their names or exact position in the project. Many did not want to be mentioned by name, and I decided not to indicate any name and exact title at all. Instead, I present only the service they work in and their position, such as a project manager or social worker. No consent paper was asked to be signed by the interviewees, because of the small scale of the research and my fear to make people more conscious about the formal interview. Instead, I was trying to create more relaxed atmosphere that would inspire open talks, especially considering the fact that they were speaking as people on duty or representatives of an organization.

Before the interview I also inquired whether it was acceptable for them to record the talk with the purpose of more accurate data collection. Luckily only one of them refused to be recorded, saying that her English was very poor and she did not want it to be recorded.

Lastly, I analyze the interviews based on the questions raised in the thesis. The analyses are done addressing similar patterns or deviations of the given accounts. On these grounds I base my conclusions.

2.5 Limitations

Due to the above mentioned limitation concerning interview appointments, I had to abandon my initial plan to interview more people from the staff of each organization and conduct some participant observation in one of the centers. The fieldwork would give me an opportunity to see how one of the centers functions internally. In the center I also hoped to get in touch the IM that used the services and interview them.

Another challenge was to grasp less biased information from the talks because the respondents were officials presenting the organization. To encourage my interviewees report on what is beyond the policy papers and official statements was very hard, and I am not convinced I was very successful in this. To my requests to bring some examples or elaborate on some details, frequent answer was that it is available online.

Also I believe that because my interviewees had to speak English they were feeling constrained and more cautious about the narratives shared. Another limitation caused by my lack of my

German language skills was that I could not read the available recent documents reporting on the organizations' work and already conducted research on them. Meanwhile, in the majority of cases it was impossible for me to find the same documents in English.

CHAPTER 3: Political and legal aspects of irregular migration in the context of Germany

[...] security has been given priority over human rights and liberty. (Zapata-Barrero, 2012:1187)

This chapter strives to respond to the first part of my main question: why are IM denied their human rights and how is this denial legitimized? Here I present political, legal and German context of irregular migration building on the existing research, as well as including my own observations. I start with the discussion of ever-changing migration regulations that formulate the categories of regular and irregular. Ethical dilemmas and legal tools relevant to the IM are followed. I integrate philosophical argumentations of Arendt, Agamben and Zapata-Barrero along with other authors that contributed greatly to the debate.

3.1 European migration policies and irregularization of migrants

The laws and regulations of border management of EU nation states postulate that people who cross external borders of EU countries should have authorized allowance to do so. The same should be implied also to the duration of stay and activities in the given state in case of both internal and external crossing of EU borders. Thus, entry, residence and occupation are the main domains where migrants can be irregularized in the receiving country. Different academic sources indicate different pathways to irregularity. Thomsen (2010), for example, points to four trails to irregularization—through unsanctioned crossing of borders, using false documents, overstaying visas and not following visa obligations. Morehouse and Blomfield (2011), however, more comprehensively classify the IM in eight groups. Compiling those two sources, here I present nine ways to irregularization:

1. crossing the borders without any authorized documents, secretly;
2. using false documents to enter;

3. entering using actual documents, but presenting forged information in them;
4. entrance on all legal grounds but breaking some rules concerning their visa (usually this implies working without any permission) ;
5. overstaying visas, a visa-free travel period or residence permit;
6. not renewing permit, not being able to comply with residence requirements or any other reason that could cause loss of status;
7. being born into irregularity;
8. disappearing during the asylum period or not leaving the country after having one's asylum case rejected;
9. lastly, some states, among them Germany, issue the so-called 'tolerating' documents that allow migrants to stay for some period of time, but that does not grant residence, nor does it give the right to work or social benefits. In Germany the holder of the status of "suspension of removal" or *Duldung* is supposed to leave the country, but because of some humanitarian or legal issues the return is postponed for maximum six months with the possibility of extension (Parusel, 2010:35.)

Moreover, different Member States have different migration policies, and define irregularity in accordance to them. By the same token, the interplay of irregular-regular is very delicate and the likelihood that a regular migrant with the turn of events will become irregular is very high. On this background, Thomsen asserts that "far from all irregular migrants are victims" (2010:37.) Furthermore, changes of migration policy can 'create' irregularity overnight:

Immigration laws often actively and regularly 'irregularize' people, by making it quite impossible to maintain a legal status over time for some immigrants. Just as it is within the power of state to offer regularization to otherwise irregular migrants, the state also makes the decision of irregularizing migrants' status from authorized to precarious. (Thomsen, 2010:31)

Consequently, law produces outlaws, and with time people float from one category to another. Instead of mere definitions illegal versus legal or regular versus irregular, it is wiser to dig into the side processes that brought to that category a particular migrant. In other words, one should define the actors and triggers on macro and micro level. In my thesis I approach to the question of irregularity and its implications focusing on a specific geographic area—the city of

Berlin. In this chapter, for instance, I strive to identify the policies related to the IM and their human rights. The discussion is led from macro or wider European perspective moving to micro or specific German context, and subsequently to Berlin scale.

Overall, immigration policy aims at controlling the numbers and types of immigrants. Brochmann and Hagelund (2011) claim that the states are concerned about their economic sustainability which is mirrored in the policy designed for migrants as well. Those regimes are arranged on the principles of minimizing any possibility for the welfare benefits to be overused by migrants. Those who do not comply with the requirements become irregularized, and are deemed to be returned according to migration regulations.

A study shows that irregular migration reacts to market demands more fully than regular migration, and is economically more beneficial for the receiving country (Hanson, 2007:5.) Further to this, Taran (2004) argues that on the official level, national authorities produce policies to reduce irregular migration, but it is still being tolerated because of the cheap labour force that the IM provides. The toleration takes place in certain sectors of labour market. Those are the jobs that could be reduced in case of economic recession. In this condition return of the IM will take place in much higher numbers. The same grounds for the production and toleration of the “needed but unwelcome” (Appadurai, 2006:44) IM are reported to be true for Germany as well (Castañeda, 2009:1552; Schneider, 2012:15.)

Meanwhile, the immigration policy continues to be highly selective letting in only skilled professionals specialized in more flourishing fields of market. With fewer possibilities available to get visas and entry passes people search for more dangerous and less legal pathways to entry. And after being already in the country they remain confined to the irregular status and abusive employment conditions.

Smuggling occurs because borders have become barriers between jobseekers and job offers. Trafficking occurs not only when borders are barriers to labour supplies meeting demands, but when no knowledge is available about proper migration channels, when employment is itself illegal and/or underground, and where conditions of work much worse than legal minimums are tolerated or ignored (Taran, 2004:5)

The way policies are designed and regulated are the consequences how the people in authority see the issue and correspondingly formulate 'solutions' beneficial for the state. Eventually their "versions" (Jørgensen, 2012:49) are being constituted as policy. As Thomsen points out, "[...] illegal and irregular migration is a political construction and a product of managing the national interest of the state" (2010:42.) Due to this policy, the IM becomes what is called by Bauman (2004) "[a] wasted life" since the market-driven policy decides who 'deserves' to become a part of the welfare system.

Moreover, the described clichéd connotations produce even more marginalization of the IM. Through an ethnographic study of everyday experiences of the IM, Kjærre (2010) shows how the conditions of vulnerability and clandestinity make them anxious, even not in power to decide to leave. The decision to leave is very hard to make and requires mental strengths which migrants experiencing irregularized life are not being able to make. Hence, the question is "[...] whether the state really promotes return migration through disempowerment and destitution, or whether they just leave migrants with no direction home?" (Kjærre, 2010:253.) The concept of home was discussed by Malkki (1995) in the situational context when migrants are being pointed out and told to "go home!" While "home is where one feels most safe and at ease," the state less preferable than the country of *irregular residence* cannot be home (ibid, 509 emphasis added.)

The states can detent, deny the permission to social services, access to employment, healthcare, human rights protection, education, separate families and deport immigrants referring to certain rules and regulations. Migration laws that strive for elimination of irregular migration often function in contradictory and incomplete manner (Kostakopoulou, 2004:56.) Ultimately, the more restrictive are the laws of immigration, the more they create irregularity (Kostakopoulou, 2004; Taran, 2004; Sager, 2011; Jørgensen, 2012:48; Jørgensen and Meret, 2012.)

3.2 Ethical dilemmas of irregular migration

Many authors raise the question of ethics or morality in the European migration policy (Barry, 1986; George, 1992; Malkki, 1995; Kjærum, 2002; Bigo, 2004; Guild, 2004; Zapata-Barrero,

2012; Scheel, 2013.) In the early 1980s political leaders of European countries distinguished migration as a threat creating the highly selective migration regulations of EU countries, including Germany. As a result, today the right and the possibility to move are increasingly far from each other (Bigo, 2004:62.) Nation states “accept mobility of capital and mobility of rich people, of consumers in transit, of rich tourists, but they refuse the same “freedom” of movement to the poor people, to the vagabonds, to the people fleeing ecological, economic or political disasters” (ibid:63.)

Likewise, Zapata-Barrero asks the essential questions of ethical grounds for inclusion into or exclusion from a welfare system and whether in these circumstances *irregular migration* should not be seen as equally ethically justifiable (2012:1186, my emphasis.) The author compares EU states to private companies that reject to take unqualified and financially deprived individuals.

The desire to limit migration to only the well qualified, categorized as the “good/best migrants,” and to construct the category of unskilled migrants as a problematic group is entering the mainstream (and also assumes that this differentiation also implies a relationship between best/good, and easy to integrate, and bad/worst and difficult to integrate); [...] (the informal argument is as follows: “What can we do? We cannot accept everybody who wants to come in!”) (Zapata-Barrero, 2012:1185-1186.)

Scheel (2013) examines the influence of highly technologized border controlling systems as a part of a practice that brings forth a “kinetic elite.” The “elite” consists of selected people who have all the resources requested by migration authorities to be granted the necessary visa or residence permit. Thus, on the one hand, there are Individuals who are “classified as ‘low risk’.” (Scheel, 2013:590) and enjoy “a comfortable cosmopolitanism” (Kerber, 2009:84.) Yet some other people have “the paradoxical freedom” (Scheel, 2013:598) to go “anywhere except where one wants to go” (Bigo, 2007:26.)

If we observe further the moral dilemmas of current EU migration policy, we can see the effect of what is called by George (1992) a “debt boomerang.” It is how historically power, capital and other resources circulate around the globe. In this regard, Malkki (1995) writes that “the official end” of colonialism is also the beginning of the Third World and formulation of nationalism in the developed countries. Indeed, EU enlargement provides workforce for less attractive sectors

of richer nation states' labour market. With this EU nationals are given priority over third country citizens. One can see it as a type of discrimination, as it makes the authorized entrance of less educated third country nationals to the EU increasingly harder and less likely.

The vicious circle of global distribution of power and development functions in a way that disregards the losses of sending states, namely the outflow of well-educated human capital. The phenomenon of brain drain has not just a temporary effect of would-be-done investments in their fields of profession. It might as well have a more long-term effect if we consider that those are the people who become cornerstones of civil society with an eventual positive change in a country's socio-economic and political life. "Decapitalization" as referred by Zapata-Barrero (2012), also entails that the country of origin will not benefit from its investment in the emigrant's education received prior to migration. Therefore, Member States take into consideration only their own interests when designing migration policies.

[G]overnments have some duties (which might be quite extensive) towards their own citizens that they do not owe to citizens of other countries... But this does not entail that anything goes. Generally speaking, my special obligation to my family does not legitimate lying, stealing, cheating or killing on their behalf (Barry, 1986: 67.)

The barriers that Member States create to allow the minimum possible number of third-country nationals to enter take place by admission policy, visa regulations, and the rights granted to migrants to work or access to social benefits. As Kjærum notes: "[w]hat would have been considered part of far right wing policy a few years ago is now, in many cases, labeled as mainstream politics" (2002:524.) The regulations depict how state interest dominates the obligation to protect human rights and sustain power relations between developed and developing countries.

3.3 Human Rights of Irregular Migrants

Academicians trying to interpret the notion of absence of the IM's authorized residence status, phrase it as "excluded among the excluded" (Balibar, 2000), "anomic" (lacking a name) (Panagia, 2006) and those who live in a "space of forced invisibility, exclusion, subjugation, and repression" (De Genova, 2002) or in a "space of nonexistence" (Coutin, 2000.) However, despite

the lack of a regular status, the IM can demand access to minimal social rights, such as education and health care. A person's dignity as a human being should be recognized disregarding one's residence status. The IM "[...] are not merely the citizen's Other, but also other claims-making and rights-taking political beings" (Nyers, 2010:141.)

In international law there are some principles that are fundamental and cannot be ignored by any nation. Those are called "jus cogens" and the principle of equality or non-discrimination is one of those⁴ (LeVoy and Geddie, 2009:89.) Unfortunately, in reality however, as my examinations of IM related Global and EU Regional legislations show, the principle of non-discrimination is somewhat neglected by governments when IMs are considered. If we categorize IM as ethnic minority, since they are non-nationals, we can say that discrimination on the basis of nationality or race are reformulated in discrimination of IMs.

Agamben captures this notion in his philosophical theory of Homo Sacer or 'bare life'. Here he discusses how law exempts some people while including them exactly through exclusion. The dilemma is that on the one hand the life of an individual is "sacred" and out of the reach of political power, on the other hand, when being out of political coverage the life itself becomes not worth protecting. IM, like homo sacer (a person who is banned) in Ancient Roman times, is not allowed to live in the place with citizens, they have to be driven out. The 'bare life' is allowed by law to be killed "without committing homicide and without celebrating a sacrifice."(Agamben, 1998:53.)

In other words, human rights are like birth rights that are guaranteed only for citizens. Hence, citizenship is a "birthright privilege" (Zapata-Barrero and Pécoud, 2012) opposing the liberal-democratic principles stated in the Declaration of Human Rights. Legomsky explains: "Every individual needs one sovereign state to play the role of guardian angel" (1995:299-300.) Within the same lines, Arendt (2000:32) writes how, despite theoretically not being bound to a single government, Human Rights cease to have any power once a person stops being associated with the a government:

⁴ However, this does not mean that the international law does not allow differentiating between groups of people based on nationality. Such distinguishing has to be grounded in the legislation, be impartially acceptable and reasonable and be in line with the international law.

If a human being loses his political status, he should according to the implications of the inborn and inalienable rights of men, come under exactly the situation for which the declaration of such general rights provided. Actually the opposite is the case. It seems that a man who is nothing but a man has lost the very qualities which make it possible for other people to treat him as a fellow-man. [...] The abstract nakedness of being nothing but human for stateless people is their “greatest danger” because it associates them with “savages” and “beasts” and citizenship is the recognized tie with humanity. (Arendt, 2000:41)

Agamben notes that the application of human rights goes hand in hand with the notions of inhumanity that are claimed to be protected by it. When one loses ones rights as a citizen and becomes ‘sacred’ or holds a ‘bare life’, her fate is to die (Agamben, 2008:93.) This kind of abandonment by law is precisely what I see examining the case of IM:

To abandon is to remit to entrust, to turn over to such a sovereign power, and to remit, entrust, to turn over to its ban, that is to its proclaiming, to its convening, and to its sentencing...the law of abandonment requires that the law be applied through its withdrawal... The abandoned being finds itself deserted to the degree that finds itself remitted, entrusted, or thrown to this law. (Nancy, 1993:43-44)

The rights of IMs are directly connected to policies of admission and citizenship granting. Bigo states that the right and the possibility to move have never been so far from each other (2004:62.) The author states that in early 1980s political leaders of “rich countries” distinguished migration “not as opportunity, but as a danger. They accept mobility of capital and mobility of rich people, of consumers in transit, of rich tourists, but they refuse the same “freedom” of movement to the poor people, to the vagabonds, to the people fleeing ecological, economic or political disasters.” (Bigo, 2004:63)

Disregarding the criticism, there are international and regional legal regulations that are meant to protect IMs. The table below presents them with a short description of each.

<i>Global legal tools</i>	<u>The Universal Declaration of Human Rights (UDHR)</u> ⁵ entitles all human beings to basic social services, healthcare and other fundamental rights (UN, UDHR, Articles 22,23,25.)
	<u>The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)</u> ⁶ acknowledges that there should be no “distinction, exclusion, restriction or preference” on any basis, including national origin, that could lead to annulling, decreasing or harming “the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.” (UN, ICERD, Article 1(1)) By the same token, it states that signatory States “are under an obligation to guarantee equality between citizens and <i>non-citizens</i> in the enjoyment of these rights to the extent recognized under international law” (UN Committee on the Elimination of Racial Discrimination, 2002, General Recommendation No. 30, my emphasis.)
	<u>The International Covenant on Civil and Political Rights (ICCPR)</u> ⁷ states: “the law shall prohibit discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.” This right must be in force for all individuals “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth” or other status. (UN, ICCPR, Article 26 & 2(1))
	<u>The International Covenant on Economic, Social and Cultural Rights (ICESCR)</u> ⁸ asserts that a person has to enjoy satisfactory working environments, favorable living standards, possibility to get education and has to sustain highest possible standards of physical and psychological health. This applies “to everyone <i>including non-nationals, [...] regardless of legal status and</i>

⁵ Adopted in December 1948; ratified on 16 December 1949.

⁶ Adopted in December, 1965; entry into force on 4 January, 1969, ratified by Germany on 16 May 1969.

⁷ Adopted in December, 1966; entry into force 23 March, 1976, ratified by Germany on 17 Dec 1973.

⁸ Adopted in December, 1966; entry into force 3 January, 1976, ratified by Germany in 17 Dec 1973.

	<p><i>documentation</i>". (UN, ICESCR, General Comment No. 20, my emphasis)</p>
	<p>The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)⁹ states that all migrant women, including those with irregular status, are to be protected from all forms of discrimination. (UN, CEDAW, General Recommendation No. 26.)</p>
	<p>The Convention against Torture and other cruel, inhuman or degrading treatment or punishment (CAT)¹⁰ ensures that no signatory State "shall expel, return ('refouler') or extradite a person to another state where there are substantial grounds for believing that they would be in danger of being subjected to torture". (UN, CAT, Article 3)</p>
	<p>The International Convention on the Protection of the Rights of All Migrant Workers and members of their families (ICRMW)¹¹ also calls for respect for fundamental rights of migrants regardless of their residence status. In particular, it refers to the right to be free from forced labor, have highest attainable working conditions, social rights, and the right to education (UN, ICRMW, Articles 11, 25-26 & 30.)</p>
	<p>The Convention on the Rights of the Child (CRC)¹² refers that migrant children <u>should</u> be protected from discrimination of any kind. (UN, CRC)</p>
	<p>ILO documents: The ILO Declaration on Fundamental Principles and Rights at Work (FPRW)¹³ declares "freedom of association [...], the elimination of forced or compulsory labour, the abolition of child labour and the elimination of discrimination in respect of employment and occupation" (ILO, FPRW.) The</p>

⁹ Adopted in 1979; entry into force 3 September, 1981, ratified by Germany on 10 Jul 1985.

¹⁰ Adopted in 1984; entry into force on 26 June 1987, ratified by Germany on 1 Oct 1990.

¹¹ Signed on 18 December 1990; not ratified by Germany.

¹² Adopted in November 1989; entry into force on 2 September 1990, ratified by Germany on 6 Mar 1992.

¹³ Adopted in 1998.

	<p>rights set forth in the Declaration are to be protected by all ILO Member States disregarding whether they have ratified the eight fundamental conventions¹⁴ or not, though all EU Member States have done that.</p> <ul style="list-style-type: none"> - The ILO resolution concerning a fair deal for migrant workers in a global economy¹⁵ - The ILO Convention No. 97 concerning migration for employment¹⁶ - The ILO Convention No. 143 concerning migrations in abusive conditions¹⁷ - The ILO promotion of equality of opportunity and treatment of migrant workers¹⁸
<p><i>EU Regional legal tools</i></p>	<p>Charter of Fundamental Rights of the European Union (Council of Europe) CHART¹⁹ prohibits discrimination on any grounds, including that of nationality.</p> <p>The European Convention for the protection of human rights and fundamental freedoms (ECHR)²⁰ indicates that the rights and freedoms stated in the Convention shall be protected for all individuals without any discrimination, including on their residence status (The Council of EU, ECHR, Article 14.) In Germany, ECHR and the decisions of the European Court for Human Rights are consulted for the interpretation of constitutional law (German Federal Constitutional Court, Order of the Second Senate of 14 October 2004.)</p> <p>The EU Racial Equality Directive²¹ emphasizes that the rights set forth in the Directive are applicable “[...]without prejudice to provisions and conditions</p>

¹⁴ The eight conventions are identified by ILO's Governing Body as “fundamental” since they are considered the crucial principles and rights at work.

¹⁵ The Resolution is a result of The General Conference of the International Labour Organization in 2004.

¹⁶ Revised in 1949; entry into force on 22 Jan 1952, ratified by Germany on 22 June 1959.

¹⁷ Adopted in June 1975; entry into force on 09 Dec 1978, not ratified by Germany.

¹⁸ International Labour Conference, Geneva, June 1999.

¹⁹ Proclaimed in 2000; legally binding on the EU in December 2009 when the Treaty of Lisbon came into force.

²⁰ Adopted in 1950; entry into force on 3 September, 1953.

²¹ Adopted in June; 2000, entry into force on 19 July, 2000.

	<p>relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned.” (The Council of EU, RED, Article 3(2)) Meanwhile, I find it contradictory when the same document states “this prohibition of discrimination should also apply to nationals of third countries” (ibid, Recital 13.)</p>
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Overall, one of the most important but least ratified international conventions concerning IMs is the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) (Ruhs, 2012:1281). It presents the rights of migrants not based on “minimum standards,” but as those equal to nationals. However, it covers more deeply the rights of regular migrants since it does not guarantee for IM social benefits related to health care, housing, education, or employment protections, family unification and freedom of movement. With this on mind, Bosniak (2004) believes that it provides the IM only “institutionally sanctioned second-(or third-) class status” (2004:335.)

More importantly, CMW does not protect IMs from being prosecuted if claiming their rights, which inevitably will lead to becoming visible to authorities. Whilst in detention, a migrant in best cases can obtain only the remuneration for already completed work (Bosniak, 2004:337.) In other words, Member States maintain the ultimate authority to exercise the country’s immigration legislation, disregarding the human rights declared by the Convention. Article 34 in the Convention reads “[n]othing in [Part III] [...] shall have the effect of relieving the migrant workers and the members of their families from ... the obligation to comply with the laws and regulations of ... the State of employment.” (quoted in Bosniak, 2004:337.)

Hence, instead of protecting an abused IM worker, the Convention hands over the person to face further persecutions from national authorities. This, combined with the already weak possibility of an IM to demand any worker rights because of the fear to be disclosed, makes the Convention a merely beautifully constructed document that is not exercised to protect the

Human Rights if the IM. “From a human rights standpoint the convention’s failure to require some sort of progressive legalization or eventual amnesty effectively threatens to take away with one hand what has been offered by the other” (Bosniak, 2004:339.) The Convention, as a legacy of The United Nations, also has the printouts of the principles of the latter: consisting of individual Member States striving to protect their own sovereignty.

However, the Convention is ratified only by 47 States and 37 signatories are pending ratification as of 2nd of May, 2014 (UN Treaty Collection.) The majority of states that have ratified CMW are not major migrant receiving countries but rather sending ones. Some of those who have ratified it added reservation stating that in cases of disagreements they may refer to international court of justice to resolve the dispute.

Different researchers present different explanations for the failure of CMW ratification. Thus, Taran (2000) argues that a lack of awareness or promotion of CMW prevents countries from its ratification. Yet, other studies show that it is the complexity of the Convention’s text (Helton, 1991) or its overlap with other international or national laws (Bohning, 1991) that makes states reluctant to ratify. Here is the justification of Germany’s Ministry of Foreign Affairs in this regard from 2005: “Germany will continue to work in the United Nations for the strengthening of the protection of human rights for migrants. It is convinced that this protection is thoroughly guaranteed by the implementation of the basic human rights agreements” (cited in Hillman and Koppenfels, 2009:336). Another reason that Germany has not ratified the CMW is that it would be very expensive for the country to grant equal rights to all its migrant workers, disregarding their residence status (Hillman and Koppenfels, 2009.) However, as Ruhs states the perceived costs of granting the rights stated in CMW to migrants should not serve as a justification for not ratifying it (2012:1291.)

During the adoption of the CMW Germany employed the so-called “German formula”; recommendations for alternatives to the parts of the text that Germany was not approving. Those objections that did not change the articles were written down in the protocol. Eventually Germany verified the adoption of the Convention denoting their condemnations and accordingly showing their less defined standpoint on it (Hillman and Koppenfels, 2009.)

Another interesting aspect about the above listed Conventions and regulations is that when comparing EU regional documents with International ones, we can see that there is difference in approaches. For example, International Human Rights claims to protect the right of all people without distinguishing nationality, while EU documents emphasize the importance of residence status. Bell argues that the latter fails to notice the ambiguity between the residence status and ethnic discrimination, the “fluid boundaries” of irregularity versus regularity. Eventually, it has no distinct solution in the cases of discrimination of IMs and “tends to overlook” their rights (Bell, 2004:354; 360.)

Research also indicates that EU law is not solely regulating the treatment of the IM but also national legislations of single Member States (Guild, 2004; Szyszczak, 2004.) In her overview of the EU legislation on irregular migrants, Guild (2004:16-17) shows that in some cases EC law is contradicting national legislation of Member States. She defines irregular migration in the framework of EU legislation as an ‘abstract idea.’

Despite all these tools, which at first glance seem powerful, in reality, the IM refers to help organizations to get crucial services (LeVoy and Geddie, 2009.) I will discuss the profiles of the organizations and support they provide in more details in the next chapter. Meanwhile, one argument behind the Member States’ reluctance to provide essential services to the IM based on the above listed Conventions and Declarations is that letting the IM exercise their rights would mean encouraging more irregular migration (Bosniak, 2004:341.) Thus, here again state interest is dominating over willingness to protect the rights of certain categories of migrants and creates an ambiguous approach towards human rights of the IM.

3.4 Estimations of the IM Populations in Germany

Different sources indicate different estimates of the IM both for selected EU Member States, and the whole EU as one geographic unit. In some cases the numbers are quoted without a proper reference. Overstated estimates create undesired negative attitudes towards this group of migrants which makes them even more marginalized. Meanwhile, the method used for calculation of populations, census, cannot be applied to irregular migrants since it lists people’s registration address, which in this case is absent. Clandestine life and thus, impossibility to

register the IM, makes calculations of their stocks and flows in Germany for a certain period of time almost impossible. This subchapter reflects on a recent attempt and methodological challenges researchers encounter when attempting to make more precise estimations of irregular migrants in Germany.

The estimate for the number of the IM in Germany for 2010 is from 100,000 to 400,000 (Vogel, 2012:3; Schneider, 2012:6.) The studies also indicate that the majority of the IM here are young—21-40 years old. Women consist 36% of the group and they equally belong to different age groups, while men are younger (ibid). It is also projected that the majority of the IM in Germany originate from three categories of countries:

1. countries that have migration relations with Germany for considerable period of time, mainly Turkey, Russia, Yugoslavia and Vietnam;
2. the most populated countries of the world—China and India;
3. the countries from where the biggest flows of refugees originate, i.e., Afghanistan, Iran and Iraq (Schneider, 2012:81).

However, the most dominant nationalities consist only 50-60% of the whole share of irregular population in Germany, which means that the national background of the IM is very diverse (Vogel, 2012.)

Media and politicians frequently quote exaggerated numbers in order to highlight the issue and justify their actions concerning stricter border controls and impossibility to regularize all of the IM (Vogel, et. al, 2011.) Overstated numbers are also presented when discussing proposals for endorsements against employers of the IM. Human rights advocates, in their turn, overemphasize the numbers with the purpose to gain a public attention on the topic, making the phenomenon as outrageous as possible. Thus, the numbers presented to the large public are subjective though the purposes of the presenters might be different.

Meanwhile, having more accurate estimates is important not only for designing policies concerning the IM, but also for creating more tolerance and less negative attitudes in public towards them (Koser, 2005:8.) Also, I believe that with more exact numbers, support organizations can approach their missions more profoundly. Hence, at first sight, it might seem

that overstated numbers of the IM would gain more attention to the issue, but in reality it may also generate fears and less pragmatic approach to the solutions, since it resonates higher costs. However, despite the importance of having more precise numbers, there are not many serious undertakings concerning the issue by scientists (Vogel, et.al., 2011.) This is because the accepted level of accuracy of population estimations cannot be reached or the predicted numbers might be misrepresented (ibid.)

One of the recent attempts to calculate the number of the IM in Germany is based on the *multiplier method*. It suggests deduction of an unknown number by applying one multiplier to a known figure of population. To find the minimal estimates of the IM researchers identify how many percentages of the migrants suspected in crimes are irregular and apply that multiplier to the whole regular migrant population of the country (see *Table 1.*) When calculating the maximum estimate they apply the multiplier to the total citizen population (see *Table 2.*)

Table 1: Minimum estimate of irregular migrants in Germany.

Minimum estimate					
Year	Illegally present persons suspected of everybody-crimes	Registered foreign residents suspected of everybody-crimes	Multiplier	Foreign national population	Estimated minimum irregular foreign residents
2007	10 905	375 567	2.90%	6 744 879	195 845
2008	10 052	369 507	2.72%	6 727 618	183 017
2009	7 623	368 522	2.07%	6 694 776	138 484
2010	7 591	375 593	2.02%	6 753 621	136 495

Source: Vogel and Gelbrich, 2010.

Table 2: Maximum estimate of irregular migrants in Germany.

Maximum estimate					
Year	Illegally present persons suspected of everybody-crimes	Registered German citizens suspected of everybody-crimes	Multiplier	German citizen population	Estimated minimum irregular foreign residents
2007	10 905	1 801 851	0.61%	74 962 442	453 681
2008	10 052	1 782 381	0.56%	74 816 435	421 938
2009	7 623	1 723 185	0.44%	74 671 338	330 330
2010	7 591	1 679 369	0.45%	74 572 151	337 077

Source: Vogel and Gelbrich, 2010.

The data generated by this method is assessed as being very rough by its authors since there are behavioral specificities for the IM that make the estimations less trustworthy (Vogel and Gelbrich, 2010.) For instance, when caught by the police, the IM might be deported. While a regular resident will pay small fine for breaking the law, granted that this is the first such occasion. Considering this, the IM will be more reluctant to engage in criminal activities and therefore less likely to be registered in the police criminal statistics in comparison to the regular residents (Vogel, 2012.) This produces biased multiplier and hence, biased estimates.

In contrast to this, as the IM are considered to be mainly young and male, the likelihood of them to be involved in criminal activities and be suspected to be so is higher. Stereotypes also play a role here: when someone can be judged to be a foreigner based on their physical appearance or poor knowledge of the German language, they are more likely to be reported to the police as suspect in a crime and accordingly get into the police reports (Vogel and Gelbrich, 2010.) Here it is worth mentioning, that in the police records the considerable number of cases related to the IM concern falsification of documents, such as identity cards, visas and residence permits (Vogel, 2012.) Thus, consideration of different behavioral and structural dimensions of the regular populations in comparison to the IM can produce different estimates making the IM underrepresented in some cases and overrepresented in some others (ibid). Besides individual studies trying to “count the uncountable” (Vogel, et. al., 2011,) there are some databases that collect information on the IM. [CLANDESTINO](#), for example, is another recent effort to come up

with more realistic estimates on the trends of the IM in the whole EU and selected Member States, including Germany. To count irregular migrants in different Member States different methods were used in the frames of the research project (Kraler and Reichel, 2011.) The methods depend on the specificities of a given country's migration policies and legislation. For example, in countries where they practice amnesties for regularization of the IM, researchers apply *evidence based regularization data*. The method implies counting the number of people getting regular status through amnesties (Jandl, 2011:60.)

Nonetheless, the initial efforts of more systematic data collection in Europe start in the beginning of 1990s. Such cooperation and exchange of statistics was conducted by the International Centre for Migration Policy Development (ICMPD.) ICMPD's concern at first was Western Europe, but after 2001 it produces data also on Eastern European countries. Meanwhile, the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI) created the first database concerning European Union starting in 1992. However, nowadays the collection of such data is led by Eurostat, the EU Commission's statistical agency, in the frames of "Enforcement of Immigration Legislation" (EIL) Statistics. The latter provides data on the attempts of crossing Schengen borders and irregular stays separately (Jandl and Kraler, 2006.) Within this initiative, countries of the EU are legally bound to deliver figures on irregular migrants and the data is available publically. Statistics on border crossings are also collected by the EU's border agency, Frontex, within the project of Frontex Risk Analysis Network (FRAN.)

Overall, because of limitations of available information, no method by itself can be proven to provide comprehensive data on the IM populations. There are three main issues hindering the success of such endeavors. One of those is geographic, which means movement of people and the difficulty of differentiating destination country from transfer ones. Another is the unreliability of data collected based on demographic methods because of the complexities of irregular lifestyle. Lastly, the fact that policies and border regulations change overnight creates status-related changes, i.e. from regular to irregular and vice versa. This means that different

migration histories produce different visibility of migrants making them captured or invisible in any statistical database.

Being on the same page with Kraller and Reichel (2011,) I think that the solution to this problem can be combination of methods or even conducting calculations based on different methods and coming up with average number of all the estimates. Meanwhile, it cannot be neglected that carefully conducted or medium quality estimates show different patterns and dynamics of irregular migrants' lives. Those attempts are very important since less professionally calculated data is being cited in media and creating additional tensions around the IM. More realistic evaluations will contribute not only to more fair public discussion of the topic, but also to more durable solutions on inclusion issues of this group of populations.

3.4 Social rights of the IM in Germany—healthcare, education and work

Germany's policy on the IM is considered one of the less generous at the EU level. Here there is no possibility to regularize the IM's status either on individual bases, or as a specific group (Laubenthal, 2011:1361.) Their social rights are not clearly stated in the legislation (PICUM 2008; Laubenthal, 2011.) Generally the main legal act regulating the processes concerning immigrants is the "Residence Act." According to it, irregular entry and residence in Germany is considered as a criminal act and can be penalized by fine or detention (Schneider, 2012:26). The amount of fine and terms of imprisonment are not defined (ibid, 48.) In this section I present recent studies on Germany's approach to the social rights of the IM. Three main aspects of social rights are discussed shortly—healthcare, education and work.

The state guarantees the access of irregular migrants to healthcare in case of critical illness and pain, even to dental services. Yet, according to Residence law hospitals should report the cases of people without proper documents or absence of the latter (FRA, 2011:16). In 2007 the German authorities published a report stating that medical personnel are not responsible to inform the authorities about the IM anymore (Bundesministerium des Innern, 2007:48, cited by Castañeda, 2012). In 2008 the report was elaborated by local authorities in Berlin confirming that in emergency cases hospitals are not obliged to report and medical staff should not be criminalized for not transferring the data (Gross, 2009). However, the report did not become a

law, and the act requiring reporting of the IM remained. According to Castañeda (2012), the reason behind this ambiguous situation is the authorities' intention to impose fear on the IM who might seek medical care.

Meanwhile, factors that influence the health situation of the IM are limited access to healthcare services, disadvantaged financial situation, frequent change of housing and employment, poor knowledge of the receiving country's language and administrative procedures, clandestine and fearful lifestyle (Arcury and Quandt, 2007; Castañeda, 2009, Castañeda, 2012). Studies underline that being exposed to stressful environments, the IM becomes more likely to get different illnesses and when having health problems they choose not to go to hospital (McGuire and Georges, 2003; Castañeda, 2009:553; CEPS, 2010.) In case of chronic diseases or giving birth, many prefer to go back to their home countries (Jandl, 2011.) Frequently pregnant IM do not receive regular pre-natal care which can be dangerous for both the mother and the child. Besides, IM children usually do not get the necessary vaccinations because the parents are not aware of their frequency and essentiality (CEPS, 2010.) Hence, fear of detention is a serious obstacle to the IM's ability to access healthcare services even when they are eligible to it (CEPS, 2010 ; LeVoy and Soova, 2010; Øien and Sønsterudbråten, 2011.)

Moreover, the Convention on the Rights of the Child protects the right of children without any residence status to attend school. The part of the Convention concerning irregular minors was included in the reservations of the ratification by Germany, but was abandoned in 2010 (Laubenthal, 2011:1359.) Currently, majority of the German Federal states have no clear legal regulations on the access to schooling for IM children (Schneider, 2012:28.) The fact that different regions of Germany have different education policies contributed positively to better educational access of the IM. This is because adjustments are being made through administrative regulations and local interpretations of legal tools (Laubenthal, 2011:1369.) However, a study in 2010 showed that in practice attendance of school of IM children depends on the school and whether it allows the child access or not (Vogel and Aßner, 2010: 26.)

LeVoy and Geddie (2009) indicate that families in irregular situation due to economic situation or the fear of detention move from place to place which makes it difficult for their children to

have even an adequate schooling year. Moreover, it is the provision of a set of rights that can work when we talk about the right to education: if a child has the right to go to school but lives in health and mentally damaging circumstances, one cannot function in school.

When discussing labour rights of the IM in Germany, research indicate that they can bring their cases to labour courts when not being paid for the work done. Litigations in labour courts do not require residence status (BMI, 2007.) Even though majority of the IM because of the fear of being discovered do not bring their cases to the court, some successful cases still exist (Cyrus, 2004:70.)

Thus, formally the IM has the rights to medical care, attendance to school and claim for remuneration for the work done. However, the controlling policies and laws on reporting discourage migrants from claiming their available rights (CEPS, 2010; Laubenthal, 2011:1369.) The perceptions of “wanted” versus “unwanted” migrants and hence “selective investment” (Castañeda, 2012) by the state are evident in social practices and in the policy approaches of health, education and work of the IM.

CHAPTER 4: Support to the IM by Diakonie and Caritas

Officially authorities do not support us [Malteser Medical Center], but they need us, so they accept us (excerpt from interview with a representative of the Center, 15.04.2014.)

This chapter I present my independent research connecting it to the existed knowledge on the field. I follow my research questions to describe the services, their *history and functionality*, *such specificities* of the projects as the *participation process* and the concept of trust in communications between the social worker and the IM. I further reflect on the role of the state in the projects and how the organizations position themselves in this process. Lastly I share my personal impressions on the attitudes of my interviewees on the IM.

4.1 The profiles of the organizations

The mission statement of Diakonie is derived from the word 'Diakonie' which means 'service' in Greek. With this they emphasize the importance of serving disadvantaged and marginalized people as a part of Protestant Christian tradition. The importance of faith is underlined further in the description of their activities. Similarly, Caritas [states](#) that its mission is to help people disregarding their nationality, social status or religious denomination. It derives its inspiration from the Catholic tradition of the love of Jesus to the people.

Faith and humanitarianism are intertwined, since the philosophy of the latter and their exercises are shaped by the former: the principle of helping vulnerable parts of society is on the cornerstones of all major religions (Barnett and Weiss, 2008; Calhoun, 2008; Walker and Maxwell, 2009.) The idea of "protecting individuals from harm" got formulated globally as a part of international ethics which also set forth the international humanitarian law (Barnett, 2009:623.)

Secular humanitarianism in its turn began in the late 1800s, when humanitarian organizations were founded and the basis of humanitarianism was established in law (Calhoun, 2008; Walker and Maxwell, 2009). Having different strings attached to religion, institutions are in practice similar to the organizations not affiliated with the church (Thaut, 2009; Hopgood, 2010). At times it is hard to distinguish faith-based organizations (hereafter, FBO) from secular ones: the scale of their engagement in religious practices or their exercise of religious traditions is very vague to define. For instance, their employers are secular professionals which is a sign of being distant from missionary practices. Ferris states that though the headquarters of FBOs include church representatives, the people who do the daily work are professionals "not very different from their counterparts working in secular organizations" (2011:614.)

Indeed, both Diakonie and Caritas with more than one million employees and volunteers each, are among the biggest employers in Germany (Diakonie [website](#); Caritas [website](#).) The highest body of decision-makers of Diakonie is The Supervisory Board that appoints the leading staff and monitors the implementation of decisions. The Chairman of the Board is a bishop. The two vice chairmen of the total four also belong to church. The work however, is led by professional

Board of Directors members of which are secular. There is also a Committee that advises the Board of Directors on strategic planning. The Committee has members from regional and trade, as well as church associations. The highest representatives of the hierarchy of the Caritas Council are also non-secular. The president is a prelate and the CEO of Brothers of Charity Trier is a brother. Meanwhile, the employees who perform day-to-day tasks in both Diakonie and Caritas are secular, though one has to be a Protestant/Catholic church member and pay church taxes in order to be employed by the organizations.

Likewise, the main staff working in the centers I held interviews with are trained social workers paid for their job. They emphasized Christian profile of humanitarianism and said that asylum seeking is described in Bible too. More importantly, all my interviewees labeled their work related to the IM as humanitarianism rather than providing services on human rights principles. Mooney (2001) also observes that organizations involved with migrants, especially irregular ones, interpret their work as charity rather than considering these vulnerable groups of population as rights-holders.

Meanwhile in their everyday work they never bring forth the religious component of the services to their visitors. “We work in the tradition of Jesus Christ. It is deep inside my everyday work. It is our religious obligation [to help people in need], but we never try to convey people to our religious beliefs,” says my interviewee from the counselling center. She also noted that her Muslim visitors see Diakonie as church and thus sometimes have higher expectations of support.

4.2 History and functionality of the services

Malteser Medical Center (hereafter, MMC) was established 14 years ago to provide healthcare to people with no health insurance. Initially the majority of the patients were Germans, but after 2007, when medical insurance became obligatory for all the citizens, the number of German patients dropped drastically. However, from the very beginning many IM visited the center to receive medical care. Today in one location MMC provides eight branches of healthcare including gynecology, child care, psychology, dental care and emergency treatment. MMC operates three days per week, from 9:00 to 15:00. Usually the number of patients is so

high that the doctors have to stay two or three hours more to examine the patients. In cases when it is medically necessary to provide further treatment, and the facilities of the center are not sufficient or the doctors are not specialized in the specific matter, the patient is being transferred to another hospital. In these cases MMC covers the costs for the care in the new hospital.

The day shelter has different opening hours depending on the visitors they are targeting. On Mondays the Shelter is opened for everyone, on Tuesdays before the noon only women can visit the center and afterwards—everyone. On Wednesdays and Fridays the visitors are exclusively homeless people. They can take a shower here and wash their clothes. According to my interviewee many homeless people say that taking a shower behind a locked door is the only time when they are not exposed to the public eye. Besides, they can register the address of the shelter as their postal addresses. The shelter also provides a limited number of lockers upon request. For all the visitors twice a week, on Mondays and Thursdays, the shelter offers counselling services with special emphasis on the Eastern European citizens. For the latter group they provide translators and advice for better social inclusion, such as how to find a job. No child is allowed to visit the center.

The night shelter has 73 beds, 65 of which are occupied in average per night. They have also family rooms. The shelter is only a temporary solution, and they do not allow visitors to stay longer: often people stay for a few days or for a week. However, according to the social worker I interviewed, the length of the stay depends on the person and on the problems they have. People from Latin American countries, for instance, never stay more than one or two nights. As explained my interviewee, due to their connections with other people from the same region they manage to find solution from the situation very quickly. Everyone, however, should have some plan of how to find a new housing: “[...] they cannot just come and say I need to stay for an unlimited time,” says my interviewee. As a part of registration they provide counselling to the visitors with the purpose to help them find a solution to the housing problem.

There was an exceptional case with a man from Lebanon, who lived in the shelter for three and a half year with no interruption. He applied for asylum in France, but decided to leave for

Germany to make it home there. After a while he contacted his wife in Lebanon and asked her to come together with children. The pregnant wife and five children came directly to Berlin and applied for asylum here. Soon they received refugee status. Meanwhile the man was hiding from the police because of the fear to be caught and sent back to France according to Dublin III regulations. “He was very afraid and whenever he saw a policeman he would change his way,” says my interviewee. When his family got house he moved from the shelter there and applied for asylum this time in Germany. The case was rejected and he filed an appeal. Eventually after five and a half years of his stay in Berlin his case got successful resolution. My interviewee calls him “the winner of the night shelter.”

The counseling center for migrants from the Arab region advises people on the following topics: clarification of the status, language courses, assistance in finding a job, support in making a legal claims, counseling of parents, school and professional orientation of children and adolescents, intercultural mediation with schools, and eventually, assistance in finding a traineeship. They also have special counselling programs for women, such as victims of domestic violence and trafficking. As reported by my interviewee, there are only a few IM visiting the center that look for information how to regularize their status.

4.3 The specificities of the projects: the participation process

The above described projects do not directly address the IM. The shelters provide certain services to financially disadvantaged or homeless people disregarding of any background they have. The Medical Center serves people who have no medical insurance: they can have German nationality, can be migrants, asylum seekers or IM. The counselling services target regular migrants and asylum seekers or refugees. Nonetheless, the IM can make use of the services as a part of certain populations, such as financially deprived, homeless or as people without any medical insurance, or simply migrants.

This is due to the participation process in the centers that does not require registration of the visitors. The guests of the night shelter, for instance, are asked their names, dates of birth and nationality. It is not necessary to show any documents. As a required procedure, however, the

social worker talks to the person before assigning a room. This is because they have to provide grounds proving that they are homeless.

In the day shelter no self-presentation is required by the visitors. Only in cases when people want to acquire a post address, they need to provide documents in order to register. On the contrary, for the visitors of the Medical Center it is obligatory to register providing their names and dates of birth, as well as their country of origin. Again, no personification documents are requested. This is done for opening medical cards that keep records of a person's health issues to effectively provide medical care. The names can be completely made up by the visitors; however they have to remember under which name they were registered so that next time the doctors access their medical history.

Lastly, in the counseling services no personal data is required. Nevertheless, people need to reveal themselves to the counselor in order to get the specific information applicable to their cases. My interviewees mentioned that often people are reluctant to confess that they are the ones who need the advice. Instead they speak as if the required information is for a friend or a relative.

The question of statistical information of the usage of services by the IM turned out to be useless, since the centers principally are not interested in this information by the virtue of the type of services that does not require any registration. Thus, the night shelter collects data only on the age, gender and nationality of the people, but not their residence status. In day shelter they keep data only for those who requests for a postal address, and since this service is exclusively for people with residence status, they have no statistics on the IM visitor of the center. The counselling service for the people from Arabic speaking countries, however, keeps records of the residence status of their visitors. According to it, sixteen and eight IM visited the center in 2012 and 2013 accordingly. Likewise, the medical center includes the residence status of their patients: 36% of their all patients are registered as irregular for 2012.

I also asked my interviewees whether any of the centers give any priority to one group of visitors against the others. I found out that besides having some special subprojects for

counselling citizens from the newly joined EM member states, such prioritizing mainly does not exist. The medical center prioritizes its patients only based on the acuteness of their illnesses. However, my interviewee from the night shelter confessed that they try to keep several beds available for German visitors. There were cases when the house was full and some visitors who could not get a room complained on the center referring to the foreign looking people they met in the common room.

4.4 The specificities of the projects: the concept of trust

During my informal talks with refugees protesting in the Oranienplatz camp, Berlin and activists demonstrating against Dublin III regulations and deportations of migrants, I experienced the importance of trust in communication with the migrants in vulnerable position. When asking demonstrators about the IM related services, they answered that such does not exist. After insisting on the topic, they would stare at me with some examining gaze and ask whether I am an IM myself or not. I never lied to say I am, and the response was that they do not even know anyone who is irregular: “Of course there are IM in Berlin, but it is a scary thing to share such information with people who are not really close... I have no friend in that situation!” (excerpt from personal field notes, 14.04.2014, conversation with a Pakistani migrant in risk of deportation because of Dublin III regulations.)

Researchers on this topic mention that the IM construct their social networks mainly with people in the same situation or on the grounds of ethnic/regional or religious similarities (Thomsen 2010; Kjærre, 2010; Øien and Sønsterudbråten, 2011). These are opportunity-generating networks based on trust: asking for support one has to be sure that the person is reliable enough not to report on them to the police. Social networks are essential for the IM since they are not only the basis for their daily survival but also a source of information for where and how to apply for certain social services.

By the same token, when searching on internet for organizations that could assist the IM, I noticed that the information is vague and not so updated, especially if the text was in English. This is also because there is almost no project directly targeting them. Similarly, when asking around about the possible projects, even from my colleagues working in Diakonie, the usual

response would be puzzled or concerned faces. The protestors and activists I met were not aware of the matter as well. Consequently, the role of personal networks is also vital when searching for sources of help from organizations.

All my interviewees indicated that their visitors come to their offices already informed about their services and what to expect from them. To the question from where the IM learn about the available services all my interviewees responded that it is the word of mouth that works in this case. The representative of Medical Center put it in this way : “[...] they are connected with underground network which provides full information for them before they approach us” (excerpt from interview, 15.04.2014.)

I also inquired how social workers develop trust relationships with the IM the answer was that there is no need to convince them that they are trustworthy since the visitors already know that from their acquaintances. The visitors also do not demand more than it is available by the projects because they are well aware of how they function.

However, the literature also indicates that the networks of the IM are not merely about loyalty and support; they may also involve abuse and dishonesty. Lack of social rights and clandestine life make the IM vulnerable and exploitable as cheap and flexible workforce. Some people might make use of the vulnerable position of the IM to gain some profit. There are instances even when the IM try to exploit each other, forasmuch as being in the same situation they know how unprotected they are (Kjærre, 2010.) As Kjærre asserts: “In a situation where the main way if survival is based on social capital, social relations seemed to be broken by fear, shame, uncertainty, experienced racism, insecurity and negativity.” (2010:249)

Thus, the dichotomy of situation the IM find themselves in regards to networking is the following. On the one hand they need networks to survive and networking means being social, being visible in the public sphere in one way or another. On the other hand, they need to stay hidden, because any connection may entail report on them and thus deportation.

4.5 The role of the state

To find out the answer to the research question how the organizations function in relation to the government, I included a set of relevant inquiries in my questionnaire. First of all, I was curious to learn how financially dependent they are on the state. The existence and the amount of financial contribution by the state can determine to what extent it takes responsibility for the IM.

For different projects both Diakonie and Caritas receive funding from various sources—donations, public means in partnership with the Foreign Affairs Office of the German Federal Republic and the Federal Ministry for Economic Cooperation and Development, as well as [ECHO, the Office for Humanitarian Aid of the European Commission](#), and other EU grants (Diakonie [website](#); Caritas [website](#).) My interviewee who works at the Regional Charitable works in Berlin and Brandenburg of Diakonie indicated that currently the migrant related projects that the Berlin government is interested the most are related to the integration of EU citizens from Romania and Bulgaria, especially Roma people. (Berlin is the first federal state that implements strategy for the inclusion of foreign Roma.)

According to my interviewees from Diakonie, for the projects I was interested in the financial support is fully provided by the government. This is because the projects are a part of state program, and the organization is put in charge for their implementation. The projects that do not get support from the government are financed by donations and church support. The Malteser Medical Center, however, is fully sponsored by donations.

The concern here emphasized in the literature is that the need to gain financial support, as well as permission to act makes humanitarian actors engage with authorities that are behind the causes of hardship they are trying to alleviate (Cook, 2011; Barnett, 2009.) The money invested in aid through humanitarian organizations makes the latter “formal agents of states” (Barnett, 2009.) The consequences of this are dependence on states and consequently less control over the codes of conduct that define the main principles of humanitarianism—impartiality, neutrality and independence.

The importance of being independent from the state was underlined only by my interviewee from ReachOut, the center for support to victim of racist violence. She mentioned that since they are a non-governmental actor engaged in sustaining democracy, it is crucial for them to be autonomous though they are being fully financed by the authorities. One of the ways to be so is to keep the identity of the person seeking support anonymous in the reports to government. However, when the case requires additional funding, and they have to apply separately for that, it is very hard to succeed without revealing the person.

Meanwhile, the advantage of FBOs like Diakonie and Caritas is that they receive some church funding which makes them independent from governmental support for certain projects. Besides, they are connected worldwide with each other creating mighty global network (Ferris, 2011.) Both the organizations are members of the [Federal Association of Voluntary Welfare \(BAGFW\)](#) with other four associations (Arbeiterwohlfahrt (AWO); Der Paritätische Gesamtverband; Deutsches Rotes Kreuz; Zentralwohlfahrtsstelle der Juden in Deutschland.) Diakonie is also a part of [ACT Alliance](#) which is a network of more than 130 organizations working in 140 different countries. The German Caritas in its turn is a part of the international Caritas network.

4.6 The role of organizations in the denial of IM's rights

According to my interviewee at the headquarters' office of Diakonie, the primacy importance for the organization is not IM, but asylum seekers. Their shelters are overcrowded now and they invest in the improvement of the situation. "Of course, we have those people [the IM] in our minds. It [the topic concerning the IM] comes up in our discussions but not as priority. They can use other available services" (excerpt from interview, 01.04.2014.) Thus, both the Berlin government and Diakonie do not prioritize the IM as a group of vulnerable populations to support. They rather become latent recipients of help offered by projects covering broader populations.

Studies also indicate that many organizations working in the field of migration in general, being aware of the needs of the IM only indirectly include them in their projects. The main recipients of the aid remain regular migrants. Meanwhile, some substantial work is done in a way of

hidden agenda. The reason for this, according to Gibney (2000) is that the image of irregulars in the European states is connected to crime, and NGOs do not want to have direct association with them. I believe that this is primarily related to the issues of having less financial support from the states for the programs to be implemented. Even more, the fact that there are organizations financed by the local state authorities that directly help irregular migrants might imply that there is a strong discrepancy between the state and local level (Engbersen, et.al, 2006.)

I asked to my interviewee from Regional Charitable works in Berlin and Brandenburg how high their chances would be if they applied for funding for IM related projects. She responded: “If we want funding from the government, we can talk about victims of trafficking or rejected asylum seekers: this is the closest we can get to the topic [of irregular migration]” (excerpt from an interview, 23.04.2014.) Social scientists also highlight this phenomenon writing that in majority of cases if irregularity is being highlighted by non-governmental actors, than it is in the context of rejected asylum seekers on the verge to become irregular (Taran, 2004, Koser ,2005.) In many cases they are offered legal assistance if being denied from that by the state. Another group of organizations working with irregular migrants concentrate their work around trafficked people or smuggling (ibid.)

My internet exploration also showed that much of the attention and funding is given to the topic of trafficking. IOM, ILO and UNDP receive considerable amount of money and have full staff working on this topic. Even, the majority of political campaigns organized by NGOs working on the field in Berlin concern asylum policies and tolerated refugees or the situation concerning EU border crossings (Laubenthal and Pielage, 2011:13-14).

It is also important to reveal that two of my interviewees told me that it is better not to have any services directly addressing the IM because it would put them in more vulnerable and more exposed position.

They are not homogeneous and to put all them in one group and claim helping them is really a hard job. You raise expectations you cannot fulfill. In this way you protect them more than by openly addressing them. [...]There is no real possibility to help or to do

something for the IM. What are the possibilities to help them? What can I offer other than information? So why to have a specific counselling for them? I am not sure how helpful it would be (excerpt from an interview, 19.05.2014.)

Another interviewee mentioned that it would be stigmatizing for the IM if they have special programs targeting only them. It is important that there are experts in legislation to advise the IM and those services are opened for them. My interviewees were also claiming that it is not helpful to discuss in public single cases of the IM. “The authorities are scared to give wrong signals to others [refers to IM], to attract more illegal persons,” says a representative of Diakonie. They believed that having public discussions will engage different actors with their different perspectives and complicate the cases.

Thus, the IM hide themselves because of the fear to be deported, in response to this authorities and even humanitarian actors prefer avoiding them. The authorities do this with the claimed purpose not to encourage more irregular migration, and the NGOs not to be cut off financial support. The toleration is also visible in the approach of police to the centers. For example, often policemen are in the night shelter, because they bring homeless people to stay overnight, but they do not check the people there. In the Medical Center in 2001 the police and migration authorities were sitting outside and following the flow of patients, but due to lobbying pressure it stopped. “It is like an embassy: officially authorities do not support us [MMC], but they need us, so they accept us,” says the interviewee.

4.7 Impressions from the interviewees

I started my introductory chapter by discussing the language used in large publics to refer to the IM. Here I want to reflect on the language and attitudes of my interviewees as professionals working with them. However, here again I need to underline that all my interviews were talking as officials representing a specific organization or a unit of it, rather than individuals positioning themselves regarding the issue.

I was very impressed by one of my interviewees who introduced a booklet published recently about the life in irregular situation. It was a part of work done by Diakonie to improve the

image of the IM in the general public. The cover page of booklet was stating the slogan of the campaign—“Kein Mensch ist illegal” («No one is illegal”) While telling me proudly about the book, my interviewee kept using the word “illegal” talking about the IM. I believe that the process of the acknowledgement and support to the IM starts with the usage of terminology when referring to them. This is especially true when the communication is led by people who work with them, as well as by media, political leaders and scholars.

In another context, my interviewee said that there are many IM in Berlin who work and pay taxes and so their life is not different from the other citizens or regular migrants. I asked her whether she did not find it unfair that they pay taxes but cannot use any social benefits or receive a pension when they retire. The response was that we are accustomed to the “middle class way of thinking.” She added that many migrants coming from poor economic backgrounds are happy with whatever they can have, because it is much better than what they are accustomed to or could have had were they in their home countries.

To my question why Diakonie does not address any project to the needs of IM, my interviewee at the headquarters office explained:

What can we do for them?! The most important thing for the IM is healthcare. Most of them have jobs, food, and shelter. If you don't have it, you can apply for Duldung (excerpt from interview, 01.04.2014.)

However, I believe that it is hard for a person to get a Duldung status because of the restrictive migration policies described throughout my thesis. I consider that if it was so easy to regularize one's status, there would be almost no IM in Berlin: no one would prefer the hardships of being an IM to a more secure status of Duldung.

Nevertheless, in the voice of another interviewee I heard much concern about the IM that rarely but approached her for support. She told me that last year she was a part of the Härtefallkommission²² (literary translated from German 'Hardship Commission'.) She brought

²² The people who have experienced hardship and have no residence permit can apply to the commission to obtain one. The decisions are made on urgent humanitarian bases.

the case of one of her visitors to the Commission and eventually succeeded in regularizing her status. The same social worker also helped a child of an IM to get into school through her personal networks.

Conclusions

Germany has selective migration policies aiming at attracting highly qualified migrants and denying the access of less skilled third country nationals. Being concerned about their economic sustainability, the state irregularizes some migrants who do not fit into the “wanted” category. As I have discussed in my thesis there are many ways to become irregular—from unauthorized crossing of borders to being born into irregularity (Morehouse and Blomfield, 2011; Thomsen, 2010.) However, it is the entry, residence and occupation in a country, where one is not a citizen that are crucial in distinguishing the categories of regular versus irregular. The categorization is done by the ever-changing migration policies and regulations that strive to control the number and types of migrants (Bauman, 2004; Taran, 2004; Thomsen, 2010; Brochmann and Hagelund, 2011.)

I have also described that beside the condemnation of irregular migration there is also toleration of the IM by the same authorities, because they serve as a cheap labour force and can be even economically more beneficial for the receiving countries (Taran, 2004; Appadurai, 2006; Hanson, 2007; Castañeda, 2009; Schneider, 2012.) In addition, literature shows that the restrictive laws designed to eliminate irregular migration often function in contradictory way instead generating more irregularity. This is because when people have less possibilities to enter, stay or work in a country, they find irregular pathways anyway (Kostakopoulou, 2004; Taran, 2004; Thomsen, 2010; Sager, 2011; Jørgensen, 2012:48; Jørgensen and Meret, 2012.) The ethical part of my consideration is that certain discrimination towards less educated third country nationals is being apparent in the migration regulations. In the sending third countries in its turn, the selective policies cause brain drain processes hindering the countries’ development (Barry, 1986; George, 1992; Malkki, 1995; Kjærum, 2002; Bigo, 2004; Guild, 2004; Zapata-Barrero, 2012; Scheel, 2013.)

Meanwhile certain global and EU declarations and conventions claim to protect the fundamental rights of individuals disregarding any residence status they might hold (see [the Table.](#)) Although mighty at first sight, those legal tools do not become a point of departure for the authorities regarding the IM, because their foremost concern is their national interest. Often Individual Member States carry out the decisive authority to execute the country's immigration legislation, disregarding human rights declared by international legal tools (Legomsky, 1995; Agamben, 1998 & 2008; Arendt, 2000; Bell, 2004; Bigo, 2004 & 2007; Bosniak, 2004; Guild, 2004; Szyszczak, 2004; Hillman and Koppenfels, 2009; LeVoy and Geddie, 2009; Ruhs, 2012; Zapata-Barrero and Pécoud, 2012.)

I have also revealed that the fear to be disclosed as an IM with its undesired consequences of detention and deportation makes the people in this situation more reluctant to demand and consequently exercise their rights (Cyrus, 2004; LeVoy and Geddie, 2009; CEPS, 2010 ; Kjærre, 2010; LeVoy and Soova, 2010; Øien and Sønsterudbråten, 2011.) Hence, my conclusion to the first part of my question, namely *why the IM are denied their human rights and how it is legitimized*, is that national interest of the receiving countries, including Germany, dominates in the existing migration policies. Along with these regulations, the interpretation and application of human rights related legal documents is influenced by these interests as well. In addition, the lack of information on their own rights and the fear of being disclosed and consequently detained or deported in case they demand any, makes it even less possible for the IM to exercise their rights.

By the same token, my findings regarding the second part of my question, i.e. *how NGOs position themselves in the process of denial of the IM's human rights, and the role of the state in the work of organizations* are the following. In the described situation, the IM refer to the available NGOs to receive the basic social services, such as healthcare, education and shelter. The chosen organizations, Diakonie and Caritas are the major faith-based organizations working in the sphere. They function as a replacement to the state in a certain way. The state that does not fulfil its obligation to protect the human rights of the IM, financially supports the organizations and "encourages" them to do the work that they are bound to do by the very

conventions mentioned above. The data collected as a result of my interviews asserts that the projects in concern are fully financed by the government, since they are a part of state program, and the organization is in charge for their implementation. (The Malteser Medical Center, however, is fully sponsored by donations.) It is also worth mentioning, that governmental approach to the IM in Berlin can be seen in the toleration of the IM by the police in the centers. Particularly, the medical center and the night shelter I visited are not being checked or controlled by the police.

My interviews also prove that by the services the IM can benefit from, the latter are being referred to not as right holders, but as a part of vulnerable populations. The secular professionals working in the centers I visited emphasized Christian profile of humanitarianism in their everyday work and labeled it as such, rather than as providing services on human rights principles. At the same time, based on my interviews I argue that the factor of highlighting the pure philanthropic aspect of their work is connected to the religious ideology the organizations hold and not to the role-play assigned by the state.

Another important element describing the triangular relationships of the IM, Berlin authorities and the organizations in question is that the projects never address the IM directly as their beneficiaries. My observations suggest that both the Berlin government and Diakonie do not prioritize the IM as a group of vulnerable populations to support. Instead they rather become latent recipients of help offered by projects covering broader populations. Thus, the IM visit the centers as a part of certain populations, such as financially deprived, homeless or as people without any medical insurance, or simply migrants.

This raises the question whether it is done because, as clarified by my interviewees, it is the best way to protect and not to stigmatize the IM, or it is the intention of the authorities that claim to have concerns on attracting more IM in cases there is open support for them. Another reasonable explanation, emphasized by both my interviewees and the literature (Engbersen, et.al, 2006), is that the state would not fund the projects directly addressing the IM, since it might illustrate a discrepancy between the state and local level. Through internet explorations, as well as literature (Laubenthal and Pielage, 2011) I identified that the majority of political

campaigns organized by NGOs that function on the field in Berlin concern asylum policies and tolerated refugees or the situation related to EU border crossings.

Thus, the IM live in clandestinely because of the fear to be deported. In response to this authorities and even humanitarian actors prefer not to address them openly. The authorities do this with the claimed purpose not to encourage more irregular migration, and the NGOs out of the charitable principals they work or with the purpose not to be cut off financial support. My concern here is what could be the solution to such a situation? Unfortunately, so far a fair solution to the issue, e.g. open borders, or regularization of the existing IM seems naïve and utopian.

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ANNEX 1: Questionnaire

Questions regarding projects/activities on irregular migrants

General information

What do you **do** for irregular migrants?

Are those **special projects**?

Is this **directly addressed** to them?

Do you have any special projects for undocumented **women or children**?

If not, **why** (administrative related/governmental/your image)?

If yes, **some information** on them?

Some **background information (history/functionality) of the projects** that concern directly or indirectly to irregulars.

Some statistics of the participants

How many undocumented people (approximately) have come for help /overall/annually/per month/?

What is the gender proportion of the participants?

Are there children among the participants, if yes how many?

Participation process

How do they find you?

How usually do you approach them?

What are their expectations?

How do you develop *trust relationships* with them?

What do you *do for them*?

If they are irregular how do you *register* them?

What is the general *participation process*?

Social workers/the interviewee

Who are *the people working with irregular migrants*?

Some vision of how they see this group.

Financial means, interaction with the government

How much *money* do you spend on them annually and what part of your budget is it?

What is the role of the *German government* or welfare system in your work with irregular migrants?

How do you *negotiate your actions* with the authorities?

What are the *legal bases for the work* done for irregulars?

The perspective of Human Rights and faith

Is your work based on *human rights perspective*?

What about the fact that Diakonie is *faith-based organization*?

How does it affect your work with irregulars?

When designing a project or *formulating the mission* of any action related to them on which *philosophy* (point of departure) do you base it?

What is the religious component of your work (how the religious values are transferred through the program?)

Do you claim to be *neutral*? Or do you try to influence the *local legislation, engaging in negotiations* with governmental bodies?

Other issues

Beyond working with them do you have some projects/campaigns concerning the *image of this group of migrants in Germany*, how they are pictured by media and general public?

What is your *own perception of IM*?

Since you have some experience in work with them, what would be *your recommendations*?

How do you see *a solution* for them?

It seems like *it is not so much done for IM*. Would you agree with this?

If so, *why* do you think it is like this?

Do you raise those issues *with higher bureaucrats of the organization? With officials?*

What is their *reaction*?