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Introduction: Unwanted Citizens of EU Member States and Their Forced Returns within the European Union

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Introduction

Governments of countries of the Global North often segregate migrants into three main groups: welcomed and accepted (mostly high-skilled specialists or those who are wealthy); 'tolerable' because their work is needed by the host country (skilled or unskilled workers) and unwanted. The third category is fluid and its 'membership' can change according to need, convenience and time; the selection is often based on the current immigration policy priorities of different states. In most cases, the third group consists of asylum-seekers, refugees and undocumented migrants (Aas 2011; Carling 2011; Kmak 2015). However, in recent years much focus has also been placed on the categorisation 'unwanted' as applied to people who have been othered by societies (in either the 'host' country or the 'country of origin') and are perceived as a 'burden' to society itself and/or to the welfare systems of various states. In the European Union, on which this Special Issue focuses, the latter categorisation and subsequent enforcement of removals within its borders often targets the Roma community (van Baar, Ivasiuc and Kreide 2019). Another targeted group consists of migrants with criminal records – those who commit a crime on the territory of the host country. As Mantu and Minderhood (in this issue) observe, 'poverty, ethnicity and criminality are common elements on which unwantedness is constructed in public and political discourse'. It is these aspects of 'unwantedness' that the articles in this Special Issue consider in detail.

EU citizens exercising 'free movement' rights within the European Union enjoy, at least in theory, more protection from deportation or other forms of forced removal from and between EU members states[1] than third-country nationals. In practice, however, while EU Directives on freedom of movement and residence give its citizens privileges of mobility within the Union, they also – paradoxically, perhaps – expand the grounds on which exclusion can take place, as we discuss briefly below. EU citizens within the Union are subjected to the same processes of segregation as those described above and a growing number are forced to return to their countries of origin. In the UK, just to give one example, in the year

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after the Brexit referendum in June 2016, the number of removals of EU citizens increased by 20 per cent, with the overall number of EU nationals returned from the UK to their countries of origin reaching just over 5,300 in 2017 (Blinder 2017; Home Office 2017). In fact, since 2006 the UK government invested considerable resources in speeding up deportations (Kaufman 2015; Martynowicz 2016). However, this phenomenon is not limited to the UK; as Brandariz (in this issue) notes, it is widespread throughout most of the Western European countries. There, deportations and administrative removals often target citizens of the Central and Eastern European member states (see also Klajn in this issue). Even when the Covid-19 pandemic caused a complete lockdown in the spring of 2020, followed by the closure of borders within the EU, deportations and other removals did not stop and, for this purpose, the borders remained open.[2]

Removals are enforced regardless of the length of residence on the territory of the 'host' country. In many cases, it is enough that – at some point – the migrants have become *othered* by the host society or its government as non-belonging or 'dangerous'. Notions such as the 'abuse of [Treaty] rights' as a legal ground for expulsion under EU Directives can translate into harsh exclusionary state practices, exemplified in recent years by the UK's drive to remove hundreds of homeless EU citizens, despite the fact that many of them were economically active tax-payers and, as such, were meeting the threshold for legal residence on UK's territory (see, for example, BBC 2018). Other grounds for expulsion (such as the public policy grounds outlined in the EU Free Movement Directive[3]) are equally problematic in their elusive nature and are open to wide-ranging interpretations by the different EU member states. In the most recent and, perhaps, the most telling example thus far of the power of public policy over European freedom of movement, it was this exception that permitted the closure of internal borders by EU states in response to the Covid-19 pandemic (Marin 2020). Ironically, however, and as mentioned above, it has not stopped individuals being transferred across borders for the purposes of deportation.

Finally, the threat of deportation and/or removal can result from changes to the EU membership of the country of residence – a situation potentially faced by thousands of EU citizens living in the post-Brexit UK. As Marcinkowska and Elfving explain in their contribution to this issue, some residents are then placed at risk of being illegalised – deprived of their former legal residence due to administrative or legislative requirements imposed by new immigration policies. In the UK's case, EU citizens currently face such a risk as the result of the introduction (post-Brexit referendum) of an application process for leave to remain. The requirement for a new residence status applies to EU citizens regardless of the length of time in which they have lived in the country and regardless of how long they have enjoyed their prior lawful residence. While the deportation/removal and post-deportation/removal experiences of individuals sent to countries outside the EU are increasingly being documented (see, for example, De Genova and Peutz 2010; Khosravi 2018; Macías-Rojas 2016; Vathi and King 2017), less attention has been paid to EU nationals removed to other EU member states; this Special Issue therefore aims to fill the gap in our understanding of this intra-EU forced mobility.

The intra-EU deportation of European citizens fits perfectly into a broader picture of deportation processes that have been present in the Global North for a few decades now and which increasingly gain the interest of governments as well as academic researchers. These processes have been described by several scholars and are known by different terms: the 'deportation machine' (Campesi 2015; Fekete 2005), the 'deportation regime' (De Genova and Peutz 2010) or the 'deportation corridor' (Drotbohm and Hasselberg 2015) – to name just a few. One of the latest theoretical approaches in deportation studies that summarises well previous ideas while adding a theoretical rationale to them is Barak Kalir's notion of 'departheid' (Kalir 2019). The concept combines different aspects of processes present in de-

portation: the unwantedness of certain groups of immigrants, the exploitation and dehumanisation connected with several restrictions imposed on migrant mobility and the violence deeply rooted in this phenomenon – both physical and symbolic. These processes are present in law, its procedures, public institutions and in the very idea of deportation and begin at the entry to the country (and sometimes even before that moment, as borders have proliferated far beyond physical ones and far beyond Europe). Additionally, departheid exposes White supremacy and superiority as a pivotal element of this phenomenon, as it 'morally rests on a fantasy that justifies or simply naturalizes a sense of entitlement among White people in relation to racialized mobile subjects' (Kalir 2019: 27). This entitlement, accordingly, includes the power to interrupt someone's life and expel them from the country which is not 'theirs'.

With this in mind, one could ask how the concept of *departheid* could be used to understand and explain intra-EU deportation processes. After all, are we not talking mostly about White Europeans being removed to their 'countries of origin'? There is substantive evidence in the contributions to this issue that the mechanisms of deportation and the administrative removal of EU citizens are applied discriminately and that they are targeted – even if not primarily, then definitely disproportionately – at citizens of the 'new' members states from Eastern Europe (see the data provided in the contribution to this issue by Brandariz). Many of those who are targeted are what Kalwant Bhopal (2018) defined as 'Not White Enough' and not easily fitting Western European (stereotypified) ideals. The notion of whiteness here is not connected to the colour of the skin; instead – like the concept of 'race' in general – it is a relational social construct, created and recreated within social relationships and aimed at exclusion, the maintenance of power and the reproduction of inequalities (Webster 2008). Recently, the differential 'Whiteness' is also an attribute attached to people of immigrant origin, no matter their ethnicity. Thus, the very concept of Whiteness is disputable as it has many shades: some (citizens of host countries) are 'whiter' than others – usually immigrants. Historically, the attributes of 'less Whiteness' were attached to particular groups – for example, the Jewish people or the Irish people in Britain or the US in the twentieth century.[4] In particular circumstances, their presence was tolerated but perceived with suspicion (Hillyard 1993). 'White' migrants can enter Western countries because of their *whiteness* and, in the context of EU free movement, they are often chosen over people from other parts of the world (people of colour), as migration policy has always been highly racialised. However, this does not mean that they are treated as equals to the citizens of the 'host' state. While differences between the 'host' and 'migrant' groups are not necessarily visible at first sight, they are created artificially and they are still there, underlying exclusionary practices of institutionalised racism and xenophobia, now being hidden behind the seemingly neutral term of 'culture' (Fox, Moroşanu and Szilassy 2012; Webster 2008).

To understand how the process of differentiation of 'cultures' and reference to the 'peculiarities' of Eastern Europeans has developed we need to go back to the Enlightenment, when the notion of 'The East' was created in opposition to 'The West'; it was only then that the idea of Eastern Europe was invented (Wolff 1994). This process, which began in the eighteenth century, resulted in the exclusion of Eastern Europe from the so-called cultural and civilised world; Eastern Europe was 'orientalised' but as 'a close orient' or a place in between 'the civilisation and savages'. While historical, this concept seems to be embedded in Western societies' minds, still very much alive and applicable to the inhabitants of (and coming from) that region. The change throughout the ages was that, while in the eighteenth and nineteenth centuries Eastern Europe was treated as a matter of Western curiosity although with a certain type of kindness, at the beginning of the twenty-first century (and especially since the consecutive

enlargements of the EU in 2004 and 2007), citizens from those countries began to be perceived as 'invaders' of the West. Consequently, they have been othered as people who do not belong, as uncivilised strangers who could pose a threat. As Sara Ahmed (2000: 49, emphasis in the original) pointed out,

> *Strangers are not simply those who are not already known in this dwelling, but those who are, in their very proximity,* already recognised as not belonging, as being out of place. *Hence we recognise such strangers, the ones who are distant, only when they are close by; the strangers come to be seen as figures (with linguistic and bodily integrity) when they have entered the spaces we call 'home'.*

The processes of stereotypisation and racialisation occurs throughout society and the media plays an inherent and profound role in them (Fox *et al.* 2012; Radziwinowiczówna and Galasińska in this issue). These processes – and the media within them – narrow down people's identities and their lives as members of one group are all seen through the same lens by using ethno-national labels (Modood 2013). One of the side effects of the cultural racism rooted in public institutions is ascribing specific habits, practices or norms (usually undesirable) and contempt by society to particular group(s), thus rendering them undesirable. This is one way of othering of members of that group, differentiating them from 'proper', 'healthy', 'civilised' society. Court rooms and other places where legal norms are applied are not immune to such processes. Immigrants, especially from Eastern European countries, are identified not by the colour of their skin but by their 'strange-sounding' names and are then being labelled by common ascriptions (stereotypically) attached to the nationally or regionally defined group to which they belong (Aliverti 2018). However, even within this group (Eastern European) prejudice is not distributed equally, as some Eastern European nationals are treated with more suspicion than others, especially in the criminal justice system; as academic evidence shows, this is particularly the case with Romanian nationals (Aliverti 2018; Brouwer, van der Woude, and van der Leun 2018; Fox *et al.* 2012).

It is important to stress at this point that deportations and administrative removals are not the only reasons why EU nationals are regularly and forcibly moved across national borders. Many are transferred on foot of the European Arrest Warrant (EAW) proceedings,[5] which remain under-researched, at least in deportation or migration studies. The EAW was created as one of the first elements of the common EU criminal justice system and was framed in the public debate as a tool for protection against terrorists or other serious criminals (Klimek 2015). There is very clear evidence, however, of an expansionist use of the EAW by certain countries since its introduction in 2002. This has led Klaus, Włodarczyk-Madejska and Wzorek (in this issue) to conclude that it is highly questionable whether it should be used as an instrument of justice. In one example, the authors point to the fact that Polish authorities (responsible for a third of all warrants issued in the EU) used to seek extraditions with respect to offences committed in Poland and targeted mostly at perpetrators of relatively minor offences – something that represents the net-widening effect of the EAW and may contribute to the perception of Polish people as 'dangerous' and 'criminal'. In extreme cases, the warrants issued against Polish citizens in the UK included, for example, exceeding a credit card limit or a theft of a wheelbarrow (House of Commons 2013). Between 2004 and 2017, the Polish courts issued 38 815 EAWs (Ministry of Justice 2019; Klaus, Włodarczyk-Madejska and Wzorek in this issue), many of which were a source of anxiety and frustration for those subjected to the process (Martynowicz 2018). In the case of the deportation of EU citizens, the criminal law is deployed and used as an excuse to restrict or deprive them of their free-movement rights. As Mitsilegas (2018: 750) observes, 'A conviction for a serious criminal offence leads to a presumption of dangerousness and a presumption of inability to integrate, which in turn limits – and ultimately negates – EU citizenship and the rights it entails'. The same broad principle, it seems, can be applied to

those moved across borders because of convictions in their 'country of origin', as is the case in EAW proceedings. As such, we submit that the latter should be treated as another element of the ever-growing deportation machine.

All the above-described processes raise a fundamental question for the notion of 'community' in the European Union: the issue of membership and of European citizenship. Certain rights are embedded in the latter and free movement on the EU territory is of the utmost importance in the exercise of EU citizenship rights. However, the freedom of movement is not absolute and the Court of Justice of the European Union (CJEU) opened the door for the intra-EU deportation of people with criminal records, depriving even long-term residents of the right to remain in their chosen country, in which they had built their lives (Kochenov and Pirker 2013). The notion of EU citizenship, as it was interpreted and shaped by the jurisprudence of the CJEU, began to be understood as being based mostly on the vague concept of 'public security' embedded in European Union treaties. In other words, the concrete rights of individuals (in this case a right to reside in the country) are now subordinated to the general rights of the community (in fact, what appears to be the supreme right) to be safe and secure from any, even *potential*, danger (Lemke 2014). This deprivation of rights of an individual is done on a presumption of a person's dangerousness, based mostly on their previous deeds (crimes committed) and not on the real threat that they pose (Mancano 2018; Zedner 2010). As stated earlier in this introduction, this restriction of rights can also be the effect of not conforming to other norms (whether voluntarily or not) such as not sleeping rough.

All this leads to the creation of two distinctive categories of citizenship and of the rights connected to them – one for the law-abiding EU migrants who exercise all rights envisaged in EU law and the other, on the opposite site of the spectrum, for those who committed a crime or who, for whatever other reason, become 'burdensome' or non-conformist. Those in the latter category are, largely, denied their rights in the 'host' society regardless of how long they have lived there and how deeply their lives have been integrated into a society that many of them view as 'home', not as a 'host'. This construct produces

> *a model of probationary citizenship where ideal types of individuals are opposed and divided by a thin line: on the one hand, the good, economically active, law-abiding citizen; on the other, the bad, unemployed, wrongdoer* (Mancano 2018: 210).

The other side of the coin, entrenched in the notion of probationary citizenship, is that 'there is no space for inclusion and "collectively dealing with the wrong": the wrongdoers are still their (other states') wrongdoers' (Mancano 2018: 215). This assumes, for example, that the deportation of the person with a criminal conviction to the 'home' country engenders the responsibility of the 'country of origin' to deal with them even if any relationship between the two has not existed for years and the only link still remaining is that this person was born in this particular country.

So, the question is: Who is or should be responsible for an immigrant 'wrongdoer'? In general, a community (defined as both people and place) has the obligation to care for its members – even the wrongdoers (Lemke 2014). Joseph Carens' (2013) arguments regarding citizenship are applicable here. He stresses the right to be part of and to maintain membership of the community inside which a person lives. This right also extends to new members and immigrants – if someone has been a part of the community for a long time (approximately five years, in Carens' view) – they have started to morally belong to this group (Carens 2013). This right should remain regardless of the behaviour of the member and includes the right not to be expelled from the community. This is because

> *[e]very political community has people who are involved in criminal activity and who create social problems. It seems only fair that a state should deal with its own problems, not try to foist them off on someplace else. (…) they are* our *problems, not someone else's, and we should be the ones who cope with them as we do with criminals who are citizens* (Carens 2013: 105, emphasis in the original).

Unfortunately, this is not a way of understanding the 'community' that the EU leaders and CJEU judges are keen to agree upon.

The aim of this Special Issue is to consider all the challenges and practices outlined above and to analyse in depth the intra-EU forced expulsion processes while exposing the fact that these latter are not neutral in their application as they mostly target new citizens of the EU from CEE countries. We hope that the variety of perspectives represented in this issue – legal, criminological, sociological and anthropological – contribute to our understanding of intra-EU expulsion practices and their impact on those subjected to them and their families.

Notes

[1] Specifically, more stringent thresholds for removals are included in the EU Directive 2004/38 on the right of citizens of the Union and their family members to move and freely reside within the territory of EU members states (the EU Citizen's Directive).

[2] https://www.theguardian.com/world/2020/may/07/home-office-charters-plane-to-deport-eu-citizens-despite-coronavirus-rules (accessed: 28 June 2021).

[3] Directive 2004/38/EC of the European Parliament and Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

[4] This process also occurs within the host society, as the different classes separate themselves from one another, especially the upper and middle classes from the lower ones. These latter are sometimes called 'white trash' which shows perfectly a different kind of 'Whiteness', somehow less of it, that is ascribed to members of particular groups. In other words, we could say that the sense of Whiteness is connected to power and dominance in society (Webster 2008).

[5] EU Council Framework Decision (2002/584/JHA) of 13 June 2002 on the European arrest warrant and the surrender procedure between member states.

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