

Chapter 3

Contextualising Three Cities: Migrant Populations and Regulatory Frameworks



Several municipal authorities across Europe have thus taken steps to be inclusive of migrants with precarious status, their approach often contrasting with restrictive national policies. Some have a strategy to be inclusive of these residents while others have developed ad hoc responses. In the last chapter we summarised what is known from the research literature on these developments and highlighted many questions that remain to be answered. We saw that municipal approaches to migrants with a precarious status are shaped, in part, by national legal and institutional frameworks in the countries in which they are located, and by relationships between tiers of authority in multi-level governance structures. In this chapter, we therefore consider that national context in the three countries in which our cities are located, Austria, Germany and the UK, identifying the cities' differing positions within their governance structures.

3.1 Migrant Populations

We begin, however, by noting that Austria, Germany and the UK each have a long and well recorded history of migration, In the past two decades, the enlargements of the EU led to a further increase in mobility, and 2015–2016 saw a significant number of refugees from Syria, Afghanistan and Iraq. From early 2022, each of the three countries has accepted refugees from Ukraine, granting them temporary residence permits. As a result, each country has a diverse and evolving population of residents born abroad or who lack the citizenship of the country in which they are living.

At the national level in each country there are not dissimilar proportions of the population who were born abroad or who lack the citizenship of the country. In the UK, in a population of 67 million (2021), 9.6 million (around 14%) were born

abroad, including 3.4 million EU nationals.¹ In Germany around 11.8 million do not have German citizenship (2021), some 14% of the population. Of these almost 5 million are EU citizens from other EU countries (BMI, 2021; DESTATIS, 2022a).² In Austria, over 1.5 million, about 17.1% of the population, do not have Austrian citizenship (2021): 9.1% from other EU countries and 8% third country nationals.

It is, however, difficult to estimate, at national or indeed at city level, how many of these migrants have a precarious status. Precarious migrants are a diverse group, as we saw in Chap. 1, including EU citizens who have no employment; overstayers; spouses who have separated before acquiring a residence status, and rejected asylum seekers. Pathways to precarity are fluid and not reflected in official statistics; while the desire of those with an irregular status to remain undetected makes estimates even more difficult. It is nevertheless generally assumed in the literature that there is a correlation between the size of particular migrant communities with a regular status and the number of migrants with precarious status from their regions of origin. This is because they are often dependent on their support, for example regarding access to work and housing (Jandl et al., 2009; Ambrosini, 2018).

There are estimates of the number of people with an irregular status, which must be treated with caution. In the UK, the population with an irregular status was estimated at 674,000 in 2017.³ Further, 142,496 children under the age of 18 and just over 1 million adults with leave to remain were estimated to have 'No Recourse to Public Funds' (NRPF) condition attached to their immigration status, rendering them precarious if not entitled to work (Dickson et al., 2020). Research by Jolly et al. (2020) provides a more detailed perspective on the demographics of young individuals with irregular status in London, estimating that there are 215,000 children, and 117,000 young people without a regular status. Some of the 3.6 million EEA nationals who resided in the UK prior to Brexit (Sumption & Walsh, 2022) have not applied for or received a settled or pre-settled status and are thus also ineligible for welfare benefits or homelessness assistance in the UK.

Meanwhile in Germany, it was estimated in 2014 that between 180,000 and 520,000 migrants were staying irregularly (Vogel, 2015). Despite the sharp increase in requests for protection since 2015, it is thought that the number of migrants with an irregular status has increased only moderately due to relatively high recognition rates for refugee status (Von Manteuffel, 2018). It is not known how many EU citizens are living in Germany without entitlements to social welfare benefits. Simply losing one's job can lead to losing any entitlement to social benefits if they have been in Germany for less than 5 years—an outcome that especially during the

¹ See <https://commonslibrary.parliament.uk/research-briefings/sn06077/>

² At the end of 2021, the population with a migration background in Germany comprised around 22.3 million people, i.e. slightly more than a quarter of the total population. Around 53% of this group has German citizenship (DESTATIS, 2022b).

³ For an overview see <https://migrationobservatory.ox.ac.uk/resources/commentaries/recent-estimates-of-the-uks-irregular-migrant-population/>

pandemic was not uncommon (Böhm, 2021). Finally, in Austria, an estimate in 2015 set the number of those living without a regular status at between 95,000 and 254,000. Those numbers should be treated with particular caution as there is no information on how they were collected (Stiller & Humer, 2020).

3.2 Governance and Policy Frameworks

Turning to the relevant governance and policy frameworks, we see that Germany and Austria have federal systems in which the state or regional authorities have significant (and equal) delegated powers. The UK, in contrast, is a unitary authority in which significant (but differing) powers have been delegated to authorities in three of its four nations: Scotland, Wales and Northern Ireland. There is no separate authority for England. In this section we set out the responsibilities of the national and regional/federal state authorities in each country and the broad approach that they have taken on immigration and related welfare issues. We situate the responsibilities of our three municipal authorities within those governance frameworks.

As regards policies relating to migrants, it is essential to note that in each country there are areas of overlapping responsibility between authorities. National governments have primary responsibility for managing migration, determining policy and taking the lead on implementation, while delegating certain tasks to regional and local authorities. Local police forces, with differing institutional relationships to local authorities, may also have an operational role in immigration law enforcement. National governments also lead on economic and social policies, setting objectives and legal frameworks for access to services and welfare support, but here regional and local authorities can have greater delegated powers as well as direct responsibility for service delivery (CEMR, 2011). For national, regional and local authorities there is thus an overlapping responsibility for policy fields ranging from economic development and public health to social cohesion, education, policing, shelter and social care that impact upon, and are impacted by, the migrant population. In effect, while national governments have lead responsibility for policies on migration, there is a shared responsibility with sub-state tiers for policies on migrants, albeit one in which there is a clear hierarchy in the governance structure.

3.3 United Kingdom

In the UK, immigration law and regulations determine the immigration status of non-UK citizens and the conditions attached to each status in relation to their right of residence, to work, access services and obtain welfare support. Under Conservative

leadership since 2010⁴ there has been a progressive hardening of provisions restricting migrants' access to services and welfare support, but earlier Labour governments had also extended internal control measures to deter the arrival and stay of some categories of migrant including asylum seekers and those with an irregular status (DeVerteuil, 2015). This trend became more pronounced after 2010 when the Home Office instituted a "Hostile Environment" policy further restricting access to services, including private rental accommodation. The government also widened the categories of migrants which have, as a condition of their immigration status, No Recourse to Public Funds (NRPF) (COMPAS, 2021; Farmer, 2021). The NRPF rule, introduced in 1971, restricts access to a range of public funds such as social security benefits, tax credit, council housing and homelessness assistance. While some publicly funded services such as the National Health Service (NHS), education and legal aid are not included in the NRPF rule, the hostile trend was also seen beyond that rule, for instance in the extension of "overseas visitors" fees for NHS treatment (Jolly et al., 2022). An absence of firewalls preventing transfer of personal data to the immigration authorities deters migrants from accessing services to which they are entitled such as police protection from crime, as when domestic abuse victims approach the police for help:

Migrant victims and witnesses hold a very real – and justified – fear that reporting crime and disclosing abuse will lead to contact with the Home Office and potential immigration action being taken against them. (Domestic Abuse Commissioner, 2023)

Some categories of migrants are eligible for national government support. The Immigration and Asylum Act 1999 (s95) provides that destitute asylum seekers (or those likely to become destitute) are eligible for accommodation and a level of financial support while waiting for a decision (Muggeridge & Maman, 2011). This support ends 28 days after a migrant's claim and their appeal rights are exhausted (Price & Spencer, 2015). However, under section 4 of the 1999 Act, refused asylum seekers who are destitute are eligible for support from the Home Office under certain conditions.

Until the UK exited the EU in 2020, citizens from other EU countries enjoyed freedom of movement with the right to work and, with exceptions, the right to welfare benefits. From 1 January 2021, new rules required EU citizens living in the UK to apply for the EU Settlement Scheme (EUSS) if they want to be able to continue living in the country. EU citizens who are not eligible to apply or who fail to do so lose their previous residence rights as EU nationals, as well as access to social welfare programmes (Sumption & Fernandez-Reino, 2020). This can render the status of EU nationals precarious.

Meanwhile, the Education Act 1996 establishes that all children in the UK have the right to access government-funded education. Under UK law, children 'in need' (which includes those who are destitute) are entitled to accommodation and a minimal level of support—but from the local authority in the area in which they

⁴In the UK, the Conservatives were a part of a coalition government (with the Liberal Democrats) between 2010 and 15 and have formed a majority government since 2015.

are living rather than from the regular (mainstream) welfare state. As the child needs to be cared for, this can include some support for the parents as well (Children Act 1989 s17). Although not considered at the time the Act was passed, the courts have subsequently judged that this responsibility applies regardless of immigration status (Price & Spencer, 2015; Jolly, 2019). Rules governing access to healthcare permit a level of access regardless of status, for instance for the treatment of communicable diseases (on which we say more in Chap. 4).

The Welsh Parliament (Senedd Cymru) has devolved responsibility for primary and secondary legislation in specified areas of governance. Significantly for this report, these include a high level of responsibility for education, housing, health, and social care. The fact that immigration is not a devolved policy area limits, but does not remove, the power of the Welsh Parliament to vary the associated restrictions for migrants on entitlements to access services.

The Welsh Government (under Labour leadership at the time of writing) takes a more inclusive approach than its national counterpart, to the extent possible within UK law, as we shall see in more detail in Chap. 4. It “wants to make sure Wales is an inclusive country in which people from all backgrounds are welcomed and there is zero tolerance of xenophobia, racism or bigotry”.⁵ It cannot alter, but has expressed its disapproval of, some UK migration policies, such as the practice of using former army barracks in Wales to accommodate asylum seekers (Thomas & Moran, 2021). Working with local authorities, other public bodies and NGOs, the Welsh Government has developed a community cohesion strategy, funds regional community cohesion coordination teams, and has taken a series of steps to address inequality and promote good community relations. These include tackling hate crime; funding legal advice for EU citizens following Brexit; providing free bus travel for refugees in Wales; and providing guidance and funding in relation to English language tuition (ESOL—English for Speakers of Other Languages).⁶ In 2019 Wales became the first European region to declare itself a ‘Nation of Sanctuary,’ with a cross-departmental strategy to improve outcomes for refugees and asylum seekers, through ensuring access to services and legal advice (Welsh Government, 2019). It has been argued that this is richly symbolic and used strategically to compensate for the Welsh Government’s lack of formal powers in relation to immigration and asylum policies. It has, moreover, served to facilitate initiatives by other actors (Wyn Edwards & Wisthaler, 2023). The Welsh Government has also shown some recognition of the need for inclusion of precarious migrants per se, permitting access regardless of status, for instance, to the preschool family support programme that it funds in deprived areas. Wales incorporated the universal right to schooling in its devolved legislation under the Rights of Children and Young Persons (Wales) Measure 2011 (see also Trevena & Maclachlan, 2016).⁷

⁵ See Welsh Government’s Preparing Wales: <https://gov.wales/preparing-wales-brexit/community-cohesion>

⁶ See REACH: <https://reach.wales>

⁷ *Rights of Children and Young Persons (Wales) Measure 2011*, Section 1. <http://www.legislation.gov.uk/mwa/2011/2/section/1>

Coordination between the UK Home Office, Welsh Government, local authorities, and the voluntary sector is facilitated by the Wales Strategic Migration Partnership (WSMP). Funded by the Home Office, its role is to facilitate collaboration, contribute to policy development, share best practice, assist in the delivery of services to migrants and act as a two-way conduit of information between UK government departments and Welsh organisations in the field. This is a very necessary function as our study found confusion regarding precisely which policy areas relating to migrants' entitlements are devolved, and a lack of familiarity with the relevant provisions of Welsh legislation.

Within that national and regional context, Cardiff Council is a 'unitary' local authority responsible for all local government services in its area including education, housing and social services. The municipality also plays a role in providing information and signposting to services. Welsh legislation puts duties on local authorities to promote the well-being of people who need care and support; duties which vary for different categories of migrants and are subject to the restrictions on entitlements found in UK immigration law. If there is no entitlement, the local authority must nevertheless conduct a human rights assessment and provide the service if exclusion would infringe the individual's rights under the European Convention on Human Rights (ECHR). The council can also use its discretion to provide a service regardless of the outcome of that assessment. Local authority duties in Wales include supporting the development of NGO services relevant to individuals in need of care. While service provision is primarily a local authority (and, for healthcare, a National Health Service) responsibility, NGOs throughout the UK fill some of the gaps in provision, provide advice, and signpost migrants to public services to which they may be entitled.

3.4 Germany

Intense political debates on migration have been reflected in legal regulations characterised, as in the UK, by an ambivalence of exclusionary and inclusive measures (Kirchhoff & Lorenz, 2018). Following controversial political debates in the 1980s and early 1990s, German asylum law was severely restricted in 1993 by the so-called "asylum compromise" (Karakayali, 2008). At the same time, the Asylum Seekers' Benefits Act ("Asylbewerberleistungsgesetz", AsylbLG) was passed, which excluded asylum seekers from the regular social welfare system. Since the 1980s, the political debates and the legal framework have been increasingly shaped by European integration (Kirchhoff & Lorenz, 2018). The EU Eastern enlargements of the 2000s and 2010s led to an increase in mobility of EU citizens, especially from the new Southeast and Eastern European EU member states although their freedom of movement was restricted for a transitional period of up to 7 years

after accession.⁸ This development was flanked by discussions on “poverty-driven migration” and “benefit fraud”, resulting in amendments to the Free Movement Directive (2014/2015) as well as to the Act on the Regulation of Claims of Foreign Persons in Basic Support for Job Seekers (Friedrich & Zimmermann, 2014; Künkel, 2018).

Germany’s federal policy on immigration and asylum has in the past decade evolved through many legislative reforms under differing government coalitions (between 2013 and 2021 a coalition of the conservative party (CDU) and the Social democratic party (SPD)). Complex regulations now govern restrictions and entitlements to services for those with a precarious status. The regulations that determine or directly influence access to or exclusion from social benefits for migrants with precarious status include the Asylum Act (“Asylgesetz”, AsylG) and the Residence Act (“Aufenthaltsgesetz”, AufenthG), in particular the Social Welfare Code (“Sozialgesetzbuch II and XII”, SGB) and Asylum Seekers’ Benefits Act (“Asylbewerberleistungsgesetz”, AsylbLG).⁹

Third-country nationals “who do not have a right of residence or whose right of residence results solely from the purpose of seeking employment” are excluded from basic support for job seekers (Book II, Social Welfare Code; §7 I 2 SGB II). In addition, most EU citizens were excluded from benefits (under SGB XII) at the end of 2016 by the Act on the Regulation of Claims of Foreign Persons in Basic Support for Job Seekers (§23 SGB XII). This exclusion applies, among others, to non-employed people if their right of residence rests solely on seeking employment. Also excluded are EU citizens without a substantive right of residence. They have the right to freedom of movement within the EU (§20 IIa AEUV) but this was modified in 2014 to limit the right of residence for employment to 6 months if they “cannot prove that they are still seeking employment and have a justifiable prospect of being employed” (§2 II 1a FreizügG/EU). If freedom of movement is revoked, and until the person leaves the country, transition benefits are granted for a maximum of 1 month. The exclusion from social benefits ends after 5 years of habitual residence on German territory if no loss of freedom of movement has been established during this time.¹⁰

In addition, migrants without a legal residence permit, third-country nationals with protection status in another EU member state, as well as asylum seekers, and persons with particular humanitarian residence status are excluded from benefits under the Social Welfare Code. Third-country nationals with protection status in

⁸Romanian and Bulgarian nationals have had full labour market access since 2014.

⁹Apart from an extensive tightening of the Asylum and Residence Act, this also provides for the introduction of a health card for asylum seekers and refugees to improve their access to health care and thus meet the obligations of the EU Reception Directive 2013/33/EU.

¹⁰An interviewed counsellor pointed out that, due to the wording of “habitual residence”, in principle there is the possibility that this is proven by a certificate from a registration office (F11). However, people who applied for benefits on this basis without being able to prove regular employment were at risk of a retroactive determination of loss of freedom of movement, which in turn could lead to a denial of benefit claims.

another EU member state are explicitly excluded from benefits under the AsylbLG for the duration of their protection.¹¹ Migrants with an irregular status are theoretically entitled to social benefits under the AsylbLG until their obligation to leave the country expires, just like rejected asylum seekers (§1 I AsylbLG). In practice, however, they are unable to access them. This is because most authorities, according to the so-called reporting obligation (“Übermittlungspflicht”) of §87 of the Residence Act (AufenthG), are obliged to notify the Foreigners Authority if—while performing their duties—they become aware of people who do not possess a valid residence permit. This also applies to EU citizens who no longer have a substantive right of residence.

This obligation to report does not only apply to police and public authorities but also to social welfare offices. In practice, this means that people with a precarious status cannot claim even basic benefits without risking deportation (Von Manteuffel, 2018). In this regard, there was some relaxation of the rules in 2009 and in 2011. It was established, first, that humanitarian assistance to individuals without a valid residence permit (for instance by NGOs) is not punishable. In addition, medical emergency treatments with subsequent reimbursement by the social welfare office were provided for (Von Manteuffel, 2018: 35). In emergency cases, not only medical staff are subject to confidentiality, but also administrative staff in hospitals and employees of social welfare offices. They are not allowed to report any information about the person to the immigration authorities or police. In 2011, an amendment to §87 of the Residence Act exempted educational institutions from the reporting obligation. (Steffens, 2011: 283). Significantly, Hessen, the region in which Frankfurt is located, had already decided not to comply with that regulation, a decision integrated in its Education Act in 2009 (Laubenthal, 2011). The Hessen government, from 2014 a coalition of the Conservative Party (CDU) and the Green Party, does not necessarily take a more inclusive approach than the national government. Although the Hessen government declared some inclusionary measures in the coalition agreement in 2018, such as the introduction of a treatment fund to pay for urgently needed specialist and inpatient care, this measure was not due to be introduced until October 2023 (CDU Hessen and Bündnis90/Die Grünen Hessen, 2018: 18; F3).

With regards to executive competences, Frankfurt, as an independent municipality, acts as a sub-state administrative authority in relation (*inter alia*) to social affairs and health care (although social welfare payments are made by a federal agency). With the exception of asylum applications, responsibility for decisions regarding residence are, in contrast to the UK, delegated to municipal authorities which nevertheless have to follow the requirements of the national Residence Act. Frankfurt also has responsibilities in relation to implementing policies regarding protection against violence. Beyond these executive tasks, Frankfurt City Council has the autonomy to regulate Frankfurt’s own local affairs within the limits prescribed by national law.

¹¹ In acute cases of need, they are entitled to transitional benefits for a period of 2 weeks and once in 2 years (§1 IV AsylbLG).

3.5 Austria

Since the beginning of the 1990s, Austria has been undergoing a tightening of asylum and residence laws. Border security and the fight against irregular migration have been a dominant topic in public discourse for more than three decades (Wodak, 2018; Peyrl, 2018). Until late 2017, Austria had had 10 years of a federal government coalition of the centre-right Austrian People's Party (ÖVP) and Social Democratic Party (SPÖ). That was followed, until 2019, by a coalition of the centre-right Austrian People's Party and the far-right Austrian Freedom Party (FPÖ). That government introduced many restrictions to asylum and alien law, while integration requirements for individuals were increased. There was also a sharp increase in deportations, especially of EU citizens (V2; Rosenberger & Müller, 2020; Bundesministerium für Inneres, 2022). The subsequent coalition between the ÖVP and the Green Party, since 2020, has not led to further significant changes with regards to either migration or integration policies.

As of 2022 there were more than 30 different residence permits, each of which comes with different entitlements and restrictions. Among those permits are temporary statuses that are precarious because they are subject to annual renewal and bring no entitlements to social benefits or access to the labour market (AK Wien and UNDOK, 2019). EU-citizens as well as most third-country nationals only receive a permanent residence status after a minimum of 5 years continuous legal residence in Austria, during which they must have had regular employment. Without permanent status they are generally not entitled to receive any tax-based welfare benefits or homelessness aid.

Residence statuses are regulated on the one hand by the Settlement and Residence Act ("Niederlassungs- und Aufenthaltsgesetz", NAG) and on the other by the Asylum Act ("Asylgesetz"), with people falling under very different legal regimes depending on whether they have EU citizenship or are third-country nationals, as well as whether the person came as an asylum seeker or with a visa (Boztepe et al., 2021: 41; AK Wien and UNDOK, 2019). Asylum seekers pass through the asylum procedure, for which the Federal Office for Immigration and Asylum ("Bundesamt für Fremdenwesen und Asyl", BFA) is responsible. During the procedure they receive a white residence card and are entitled to basic benefits for foreigners in need of assistance and protection ("Grundversorgungsleistungen"), which include health insurance, accommodation, care, food and pocket money. The federal states (and thus Vienna) are responsible for providing these benefits, the costs being shared with the federal government. The benefits vary slightly depending on the federal state. The actual costs of living are not covered, despite an increase in basic benefits in March 2022 (orf.at, 2022).¹² In addition, asylum seekers are only allowed to work in Austria with a permit from the Public Employment Service

¹²In Vienna, in 2022, it was about 425 € per month for a single person living in private accommodation. These benefits lie well below the social welfare ("Mindestsicherung"), which in Vienna is about 977 € for a single person.

(“Arbeitsmarktservice”, AMS) which, according to participants in our study, is almost impossible to obtain.

Since the introduction of the Basic Act on Social Welfare in 2019, beneficiaries of subsidiary protection¹³ are no longer entitled to social welfare (“Sozialhilfe”). For this reason, various interviewees also classify them as people with precarious status. While they can access the labour market, if they do not find employment or lose their job they can only access basic benefits for asylum seekers. This massively increases the risk of poverty spirals. Vienna has so far used its discretion to refrain from implementing this part of the Social Assistance Act and thus continues to facilitate access to social welfare (“Mindestsicherung”) for this group of people (V9).

Asylum seekers who receive a final refusal on their application are usually instructed to leave the country.¹⁴ Until they leave, they continue to have a legal entitlement to basic benefits. Not all federal states comply with this obligation, however. Those who receive a legally binding negative asylum decision are obliged to cooperate in their departure and, if they do not, can be subject to sanctions such as placement in freedom-restricting return centres (Rosenberger et al., 2018). If deportation is not feasible or not legally permissible,¹⁵ the Federal Office for Immigration and Asylum can issue a “tolerated” status (“Duldung”) which, however, is rarely used (Hinterberger, 2018: 105).

EU citizens have the right to come to Austria without restrictions due to the Agreement on the Free Movement of Persons (“Freizügigkeitsabkommen”). If they stay in Austria for more than 3 months, they must prove their economic independence, which usually means self-employment or employment. If they work, they are entitled to social benefits after contributing to the Austrian social security system for a period. After 5 years they can obtain permanent residence status (“Daueraufenthaltsstatus”) which essentially gives them the same rights as Austrian citizens.¹⁶ If there is no proof of regular employment, EU citizens have a precarious status: they cannot claim insurance and social benefits and are threatened with deportation to their country of origin.

The residence status of third-country nationals who do not come through the asylum system is regulated by the Settlement and Residence Act (NAG). This includes immigration for the purpose of work, education, and family reunification. Immigration for lower-skilled work purposes has, in particular, been tightened (Boztepe et al., 2021: 42f; Peyrl, 2018; Hinterberger, 2020).¹⁷ Some residence

¹³Persons eligible for subsidiary protection are persons whose application for asylum has been rejected but whose life or health is threatened in their country of origin and they therefore require protection from deportation (see: <https://www.oesterreich.gv.at/lexicon/S/Seite.990027.html>).

¹⁴An objection to this can be raised at the Supreme Court level, which may or may not also lead to protection against deportation.

¹⁵For example, in the case of people whose asylum status has been revoked due to criminal convictions, but whose grounds for asylum still exist.

¹⁶An exception is the right to vote, which is granted at the municipal level only, and in Vienna, as it is also a federal state, only at local district level.

¹⁷Low-skilled workers can only come as temporary workers as part of an annually adjusted quota.

permits can be classified as precarious (SV2) as they are temporary and do not entail any entitlements to social benefits of their own, e.g. with a relatives' settlement permit ("Niederlassungsbewilligung Angehörige:r" or a "Red-White-Red Card plus" for family members of high skilled employees). Other temporary resident permits do not offer the possibility to change to a permanent residency status, e.g. the visa for pupils ("Schülervisum") (SV2; AK Wien and UNDOK, 2019).

Vienna, is not only the capital of Austria but, unlike Cardiff and Frankfurt, has the status of a federal state. Thus the city council also fulfils the functions of a federal state government. Austrian federal states are responsible for processing applications and extensions of residence status for foreign residents already living in the state, under the National Residence and Aliens Act. Asylum claims however, are processed by the national authority, the Federal Office for Immigration and Asylum.

Vienna, as a federal state and municipal authority, is responsible for the provision of welfare and homelessness assistance and for checking entitlements, according to national regulations, but allowing some variation in whether and how inclusive it chooses to be in its approach. Costs are shared between the federal state and the national government. Vienna is also responsible for the provision of education. Social and some health services are largely outsourced to the Vienna Social Fund ('FSW'—a company wholly owned by the local authority), which provides facilities for refugees and asylum seekers, including rejected asylum seekers, and some services that are important for other migrants with precarious status such as shelters for the homeless. As employment is the primary path (besides asylum) to acquiring nationally defined entitlements to insurance and social benefits, there are significant constraints on what services can be provided by public bodies. Care for people in precarious residence situations is therefore in practice very much dependent on NGOs and other civil society initiatives, some of which receive municipal financial support.

3.6 Welfare and Healthcare Systems

A key legal and institutional framework that differs in the three countries and is highly relevant to us here relates to the provision and funding of healthcare. While in Germany and Austria the health system is financed by mandatory statutory and private health insurance, the UK has a tax-financed health system, the National Health Service (NHS) which is free to users if 'ordinarily resident' in the UK. Primary care in the UK is provided by General Practitioners (GPs) who are self-employed contractors funded by the NHS. There is a parallel, small, expensive privately funded healthcare system, mostly for secondary (hospital) care. These differing national arrangements in each country effectively exclude most of those with a precarious status. A specified range of services is nevertheless available regardless of status, such as vaccination for communicable diseases (see detail below in the city chapters).

The welfare arrangements also differ, with specific divisions of labour between national and local institutions and between public and private organisations. The German and Austrian social security systems distinguish between comprehensive social insurance schemes, which are regulated and implemented by national institutions; means-tested social assistance which is based on national law but implemented by local authorities; and additional benefits and programmes for certain target groups and goals such as family policy and youth policy. A key principle is subsidiarity which sees a role for the central state to intervene only if social units closer to a social issue (individual, family and community) cannot resolve it. This has led to a strong position for social security institutions but also of non-governmental welfare organisations.

In the statutory health insurance systems in Germany and Austria, a general obligation to insure applies to all employees. Dependent family members are covered by non-contributory family insurance. In contrast, welfare benefits are not linked to prior contributions, and provide the last social safety net. The legal entitlement to welfare services exists if there is an actual emergency situation and need. The benefits are financed from tax revenues.

These systems provide cash benefits, benefits in kind and services. Compulsory insurance and national solidarity between citizens are essential principles. In both countries, the welfare state arrangement is characterised by the fact that municipal and central state tasks are performed together. While the nationally based social insurance system is geared towards covering general risks, municipal social policy covers risks in the form of means-tested individual assistance. The institutional frameworks for providing welfare support also differ significantly between the countries. Corporatist cooperation with large welfare organisations, characterised by close links, dominated for a long time. In the course of administrative reforms, the field has expanded into a “welfare mix” (Evers & Olk, 1996). In the context of activation policies, new social economy actors have increasingly gained importance alongside the non-statutory welfare organisations (Klammer et al., 2017).

In contrast, in the UK, the national, tax-funded system of social protection provides targeted, needs-based entitlements at a modest level. It provides minimum income protection for those whose immigration status grants that entitlement, with the aim of poverty relief and of encouraging a shift from welfare payments to work based income. Payments are often conditional on actively seeking work or training, but there are also in-work benefits for those in employment but receiving low pay. Unemployment benefits are low by European standards and are replaced after a period of time by a means-tested lower payment.

There is an expectation of self-reliance in the UK system, including supplementing state support with other forms of income (such as topping-up the state pension with privately funded pension contributions). Migrants in particular are expected to be self-reliant, hence the No Recourse to Public Funds (NRPF) rule excluding them from most forms of welfare support. Migrants are also less likely to work in jobs with private social insurance protections. Provision of welfare payments are the responsibility of a national government department, the Department of Work and Pensions, with a very limited supplementary role for municipalities that is

intended to be for emergency short term need (Sainsbury, 2012; Hemerijck et al., 2013). Social Services, in contrast, are provided by municipalities which have a statutory duty to safeguard and promote the welfare of vulnerable adults and children (albeit with limited resources to do so). NGOs provide supplementary support, sometimes in receipt of municipal funding or commissioned by the municipality to provide the service.

3.7 Conclusion

This chapter has highlighted some of the differences and the similarities between the countries in which our three cities are located, in particular their migrant populations, governance and national policy contexts. Each city is situated in a country with a long history of migration and is characterised by a significant migrant population. People with precarious status, who are not all included in official statistics, add a further dimension to this diversity that, as we shall see, has not yet been fully acknowledged by any of the three cities. That omission is not helped by the fact that there are no reliable estimates of the residents who have a precarious status, at national or municipal level; but from our study, evident in the following chapters, a broad picture of their characteristics has emerged.

The legal frameworks governing entitlements of this group to services differ between the three countries but have in common a mix of formal exclusion and inclusion and, with that, complexity: multiple differing immigration and residence statuses each with different entitlements and restrictions on accessing public services. In each of the three countries, notwithstanding that Austria and Germany are federal states and the UK a unitary state with elements of devolution, the regional tier of authority has legislative and policy making capacity. In each of the regions in which our cities are situated (Vienna itself also being a regional authority) we saw that this policy making capacity has been exercised, to a limited degree, to temper the exclusionary nature of federal/national law.

In each country there are differing national arrangements for funding and delivering services. In relation to healthcare, the Austrian and German systems rely on insurance funding, to which access is through employment or welfare benefits, while the UK system is tax-funded, and access mostly restricted to those who are ordinarily resident. Despite this significant difference, the outcome is very similar: the exclusion of precarious migrants from most healthcare that is free at the point of use. The systems for provision of welfare support also differ markedly including the extent to which NGOs are incorporated as major providers, as in Austria and Germany, but not in the UK.

If we now turn to each city in turn, we can show how a particular pattern of inclusion and exclusion emerges in local policy and practice, and why. For each city we begin by noting the nature of its particular responsibilities towards migrants before setting out our findings on its approach.

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