Deserving Shelter: Conditional Access to Accommodation for Rejected Asylum Seekers in Austria, the Netherlands, and Sweden

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ABSTRACT

Limitations in access to welfare services for noncitizens of a host country are structured through conditional entitlements, which require benefit claimants to meet certain conditions to access welfare services. This article explores the conditions and regulations determining access to state-organized accommodation facilities for non-removed rejected asylum seekers in Austria, the Netherlands, and Sweden and the way in which these conditions are implemented. Based on qualitative interviews with stakeholders and analysis of policy documents, I argue that qualities of deservingness, such as vulnerability and performance, determine noncitizens’ access to state-provided accommodation, which strengthens the logic of migration control.

KEYWORDS

Rejected asylum seekers; non-removed persons; accommodation; welfare services; Austria; Sweden; Netherlands

In the context of political debates on the “deportation gap,” the problem of non-removed rejected asylum seekers (NRAS) has recently moved toward the top of the political agenda in many European countries (Gibney, 2008; Schoukens & Buttiens, 2017). A prominent example of policies that aim to increase the numbers of return is the restriction of access to welfare services such as shelter. However, when policies designed to enhance migration control in the form of limitations in access to welfare services are introduced, the policies are rarely implemented to their full extent. Instead, national governments introduce conditional entitlements to welfare provisions, requiring benefit claimants to meet certain conditions in order to access these provisions. Access to entitlements is based, on the one hand on cooperation, with the claimant’s own return, which is a very widely used criterion in all EU countries (Heegaard Bausager, Köpfli Møller, & Arditidis, 2013). A second category of conditions is based on the extent of claimants’ need, determined by the presence of under-age children within a family or an applicants’ health-related problems.

In this article, I investigate the conditions governing and determining access to accommodation for NRAS and discuss how conditional welfare arrangements shape access to welfare services. I focus specifically on regulations and their implementation...
in access to state-organized accommodation facilities for NRAS in Austria, the Netherlands, and Sweden. My analysis is guided by three main questions: (a) Which conditions emerge as access to welfare benefits for NRAS is restricted? (b) Are there differences regarding the implementation of these conditions? (c) Is conditional access shaped by inclusive principles of social policy or does the logic of migration control prevail in these conditional entitlements?

My discussion of conditional access to state-led shelter is guided by the concept of deservingness (Chauvin & García-Mascarena, 2012; Spencer, 2016; van Oorschot, 2008). The literature on deservingness provides terminology, specifically vulnerability and performance (Chauvin & García-Mascarena, 2014), and criteria for assessing deservingness (van Oorschot, 2008), which help me structure my findings. These terms and criteria connect legal conditions and their implementation with ideas of morality and legitimacy of an “unwanted group” (Cantor, Wijk, Singer, & Bolhuis, 2017). I argue that when governments introduce exceptions to exclusionary policies and create conditional entitlements based on deservingness through vulnerability or performance, this leads to a mix of inclusionary and exclusionary dynamics. Performance, in the form of cooperation on return, is clearly shaped by a logic of migration control, which is the main rationale for governing access to services for NRAS. Vulnerability can create exceptions to this rationale; however, it does not fully break the logic of migration control. I also highlight the importance of implementation paths in these conditional entitlements. It is particularly relevant whether decisions about the conditions of access to welfare benefits are made by border control agencies or by welfare agencies.

This article starts with a description of NRAS, and then outlines the methods and theoretical foundations that underlie the article. I then outline the regulations governing the issue of accommodation for rejected asylum seekers in the selected countries. Based on this, I describe my findings regarding the three conditions for access to, lastly, present my final analysis and conclusions.

**Non-removed rejected asylum seekers**

In the wake of an increase in asylum applications in European countries after 2015, the topic of NRAS has moved toward the center of political debates (Rosenberger & Koppes, 2018). Non-removed rejected asylum seekers are declared “undesirable” by national policy makers (Cantor et al., 2017). However, since host countries are often unable to enforce removal and return them to their country of origin or a third country, NRAS remain in the territory of the host countries. The reasons for not removing asylum seekers vary (Lutz, 2018; Rosenberger & Küffner, 2016). Some are practical obstacles, such as a lack of travel documents, lack of cooperation from the countries of return, or a lack of transport options. Other reasons involve legal obstacles, when international human rights provisions or the risk of human rights abuse in the country of origin forbid a removal. In recent years, new policies have been introduced in European countries. The priorities of EU migration policy are based on limiting the number of irregular arrivals and increasing return rates (Lutz, 2018). These include measures to accelerate returns to the country of origin and disincentives to stay in the host country,
covering measures to restrict access to welfare benefits and to reduce the rights of NRAS. This article deals with the second form of migration policies.

A comprehensive report by Heegaard Bausager et al. (2013) on third-country nationals in European countries pending return revealed the diversity of this group: While some groups live under legal or practical conditions similar to those of irregular migrants, others lead a life similar to that of asylum seekers, having the same access to welfare services. This diversity is a result of the regulations at the European level, which guarantee only limited standards of protection. While Article 14 of the Return Directive advocates rights for NRAS relating to family unity, emergency health care, respect for situations of vulnerability, education, and documentation (Lutz, 2018), the right to accommodation is not specified. This provides EU Member-States with plenty of room for maneuver (Schoukens & Buttiens, 2017). Yet access to basic services such as health and education is largely determined by whether NRAS are offered accommodation and whether they are accommodated in a reception center or a detention center. When rejected asylum seekers are given the option to stay in reception facilities, they mostly have access to basic services provided at the center (Heegaard Bausager Köpfl Möller, & Ardittis, 2013). This makes access to state-organized accommodation an essential precondition for getting access to basic services. Rejected asylum seekers who are not provided accommodation and do not have the means to support themselves depend on charity organizations and their communities to survive and usually face a daily existence characterized by great contingencies (Kos, Maussen, & Doomernik, 2015).

**Methods**

To investigate access to accommodation for NRAS, I used data from Austria, the Netherlands, and Sweden, collected in the course of a comparative research project investigating access to welfare services for NRAS. The data consist of semistructured qualitative expert interviews with caseworkers at the national and local government levels and with representatives of NGOs in charge of making decisions (or with expertise) regarding access to welfare benefits for rejected asylum seekers. Further interviews were conducted with experts, academics, and lawyers. Between June 2016 and July 2017, we conducted 25 interviews in Austria, 21 in the Netherlands, and 27 in Sweden (a list of interviews referred to in this paper is included). In addition, we analyzed documents such as legal and policy documents and media reports. Both the interviews and the document analysis were guided by a broad understanding of conditions and did not focus exclusively on vulnerability and performance. The interviews were transcribed, coded with atlas.ti, and analyzed using method of content analysis (Hsieh & Shannon, 2005).

I used the following approach to analyze the data. First, I developed detailed descriptions of the legal conditions for access to accommodation, adding contextual information about when and how the conditions were introduced for NRAS. I then analyzed the conditions, guided by these questions: To which extent are the conditions clearly defined? and Does fulfillment of the conditions guarantee direct access to accommodation? The next set of questions concerned implementation: Which agency is in charge of taking the decision? What are the steps for taking and executing the decision?
The Netherlands and Sweden are both countries in which restrictions of access to state-organized shelter are introduced together with additional conditional welfare arrangements that allow access. In both countries, the study focuses at the national level, since this is where decisions concerning access to accommodation for NRAS are made and implemented. In Sweden, the institutional setting is centrally organized by the national Migration Agency, which is responsible for all operations concerning immigration to Sweden and for the reception of asylum seekers and NRAS. The Migration Agency offers temporary housing and organizes its distribution across the country; the agency issues an allowance for private accommodation in special cases. Similarly, the institutional setting for migrants in the Netherlands is organized centrally at the national level through three government institutions.1

Austria differs in this regard. In Austria, access to welfare services for NRAS is organized in a multilevel governance setting in which the provincial governments play a key role in the implementation of offering accommodation for NRAS. Conflicts emerge between provinces and the federal government and between provinces concerning the question of strict or generous policy implementation. Therefore, the analysis also investigates practices at the regional level, with a particular focus on Vienna, the largest province in Austria in which most NRAS arrive. In addition, in Vienna, the welfare department is responsible for implementing basic welfare support and cooperates closely with NGOs as service providers. This is also distinct from other countries in which national departments are responsible for implementation.

**Conceptualizing the deservingness of NRAS**

Regulations that aim to deny access to welfare services and labor markets to irregular migrants have been discussed as forms of internal border control (van der Leun, 2006). Migration control policies aim to make the country unattractive by restricting access to welfare benefits for unwanted groups, including irregular migrants and NRAS. However, these policies have led to a tension between notions of “welfare rights” and the aims of immigration control. Sarah Spencer has analyzed this tension between welfare rights and immigration control in the context of welfare entitlements for undocumented children. She identifies two competing policy imperatives: social and humanitarian imperatives, on the one hand, and the logic of immigration control, on the other hand (Spencer, 2016). Welfare rights are linked to the idea of equality and designed to facilitate social inclusion (Kotkas & Veitch, 2017). Migration policy is about the selection, administration, control, and deportation of noncitizens (Helbling, Bjerre, Römer, & Zobel, 2017). This tension between the two policy imperatives forms the analytical backbone of this paper, which is concerned with three conceptual debates: conditional access to welfare services, debates on deservingness, and studies on policy implementation.

Studies on the transformation of welfare systems in European countries have identified a qualitative shift, in which welfare systems move away from a Marshallian understanding and replace rights to welfare with conditional entitlements to social provisions (Dwyer, 2005; Morris, 2016). Citizens are increasingly subject to disciplinary techniques—a conditional system of rights is introduced as a vehicle for monitoring and
control (Morris, 2016). Conditional entitlements to welfare services are not representative of an entirely new paradigm for noncitizens (Atac¸ & Rosenberger, 2003; Morris, 2003). The literature shows how limited conditional access to welfare entitlements, such as access to social security and housing, has been introduced for asylum seekers and refugees (Dwyer & Brown, 2005; Könnönen, 2018).

Second, I analyze NRAS’ access to accommodations through the concept of deservingness. Spencer defines deservingness as “articulated in a moral register that relates to specific situations and to presumed characteristics and behavior of the individual concerned” (2016, p. 1615). Chauvin and Garcés-Mascareñas (2014) highlight two groups of irregular migrants who are deemed deserving. The first group is defined by their vulnerability—because of persecution in their home country, because they are minors, or because they are in need of medical assistance. From the perspective of social policy, vulnerable groups “deserve” social care and support for better societal inclusion since they lack basic resources. The second group, by contrast, is defined by their demonstration of integration and willingness to contribute as good citizens in order to become eligible for membership and are deemed “deserving” because of these characteristics. This “performance-based deservingness” can be based either on cultural integration or on economic performance.

Expanding on to this two-dimensional understanding of deservingness, we can build on van Oorschot’s (2000) finding that notions of deservingness in relation to welfare support are multidimensional (cf. Spencer, 2016). He differentiates between five central criteria when an individual’s or a group’s deservingness is assessed: control over neediness (people who are seen as being personally not responsible for their neediness are seen as more deserving), level of need (people with greater need are seen as more deserving), identity (those more similar to “us” are seen as more deserving), attitude (people who are more compliant and conforming to the standards, more deserving), and reciprocity (those who have previously contributed to our group, more deserving) (cf. van Oorschot, 2008). This last criterion is not applicable to NRAS, as they usually have not yet had an opportunity to make contributions to the social system, making reciprocity close to impossible. Also, the identity criterion is by definition a core element of the group of NRAS. As someone whose asylum application has been rejected, NRAS are not seen as part of the common identity—they are not “one of us.” Consequently I focus on the other three criteria in my study: control over neediness, level of need, and attitude. We can relate van Oorschot’s criteria to the two different sources of deservingness outlined above: vulnerability and performance. The first two criteria—control over neediness and level of need—correspond to the condition of vulnerability, including special protection needs for families with children and for persons with health issues. The third criterion—attitude—corresponds to the condition of performance, mainly cooperation with the return procedure.

Lastly, access to welfare services is not entirely defined through formal regulations but also comes into effect through the discretionary power of street-level bureaucrats (Chauvin & Garcés-Mascareñas, 2012; Goldring & Landolt, 2015). The term “street-level bureaucrat” indicates that institutional gatekeepers decide from case to case how to regulate access to public services (Lipsky, 1980). Consequently, the results of policy measures do not always correspond with the aims of legislators (Ambrosini, 2013).
Implementation processes are an outcome of both individual and organizational or contextual factors (van der Leun, 2003). State actors offer services, but multiple actors and institutions are endowed with the responsibility of implementation. Government agencies may cooperate with municipalities or charity organizations may act as service providers under the principal of the local government agencies. Moreover, state institutions are functionally differentiated and their actions are based on different policy problems and values. While welfare departments often employ social workers, whose orientation is aimed toward the welfare of their clientele, migration enforcement departments often employ persons with an orientation toward migration law enforcement (Vogel, 2015, p. 334). Studies on policy implementation have demonstrated how the street-level application of immigration policies, especially at the local governmental level, leads to diverging outcomes across welfare services (Spencer, 2017).

Case selection: Access to accommodation for NRAS in Austria, the Netherlands, and Sweden

The empirical data for this study come from three countries: Austria, the Netherlands, and Sweden. These countries exhibit similarities but also important differences, which makes a comparison interesting. The Netherlands, with its history of exclusion of NRAS and irregular migrants from welfare services, provides insights into the implementation and limits of exclusionary politics. In Sweden, NRAS and irregular migrants have well-established rights compared to other European countries; however, as a reaction to the sharp increase of asylum applications in 2015, the Swedish government issued a series of new regulations in 2016, with the aim of further controlling migration and drastically reducing the numbers of asylum requests. Austria is, on the one hand, a restrictive country regarding immigration policies and border and deportation policies but, on the other hand, generally allows NRAS to remain within the basic welfare system. The following provides an overview of the regulations in the selected case study countries.

The Netherlands was one of the first countries in Europe to implement a radical exclusion from welfare benefits for persons without documentation, including NRAS. Dutch national government officials have portrayed their migration policy and its increasing focus on return as “restrictive, yet just” (Kos et al., 2015, p. 3). With the installment of the Linking Act in 1998, which links access to welfare services to residency status, the Dutch national government established the legal grounds to limiting access to public welfare provisions to all migrants with irregular status (Kos et al., 2015; van der Leun, 2003; van Meeteren, 2014). Already in 2001, the New Aliens Act closed down all asylum seekers shelters, which are unilaterally operated by the national government, to persons with a negative decision—even when awaiting the outcome of a second application (Kos et al., 2015). The Linking Act is a typical example of “remote control” and of internal migration control to restrict claims to welfare benefits and services (van der Leun, 2003). After almost two decades of exclusion of rejected asylum seekers from welfare services it is clear that, in some areas, the policies designed to enhance migration control were not effective. The legitimacy of policies resulting from the Linking Act was challenged by a ruling of the European Court of Social Rights in 2014: The ECSR decided that the central government’s prohibition of social services to
homeless irregular migrants presented a violation of Dutch obligations under the European Social Charter (Oomen & Baumgärtel, 2018). As a result, the government had to introduce new rules, which led to exceptions for families with under-age children who must be offered accommodation services.

While Sweden has long granted unconditional access to accommodation for NRAS, the situation changed significantly in June 2016, marking a restrictive turn. As a reaction to the sharp increase in asylum applications in 2014 and 2015, the Social Democratic-Green government issued a series of new regulations with the aim of further controlling migration and drastically reducing the number of asylum requests (Lagrådsremiss, 2016). The amendment of the LMA (the law on the reception of asylum seekers) eliminated access to social benefits for rejected asylum seekers (LMA 1994, p. 137, §11 and §11a) and stipulated that the right to accommodation terminates when the expulsion decision has entered into legal force. Prior to the implementation of this law, the Swedish government had continuously expanded social rights for irregular migrants (Lundberg & Spång, 2017). The most significant change was the introduction of a new law in 2013, which granted irregular migrants access to health care on the same conditions as registered asylum seekers and the legal right to attend school (EMN, 2016). This law also granted NRAS access to accommodation and daily allowances and allowed them to remain in the reception system for extended periods following an enforceable return decision.

Within the context of western Europe, Austria has particularly restrictive asylum policies. Austrian border and asylum policies underwent a radical shift after the summer of 2015, from a policy waving asylum seekers through uncontrolled borders to a restrictive regulation: The federal government took a leading role in closing the “Western Balkan Route” and introduced an “emergency law,” which authorized Austrian border actors to reject and return asylum seekers directly at the border in an “emergency” situation (Slominski & Trauner, 2017). Nevertheless, Austria is one of the few countries in Europe in which NRAS have access to state-organized accommodation. The regulation in Austria dates back to 2004, when the Austrian national government and the provinces together passed the Basic Welfare Agreement, which regulates access to welfare services for aliens in need of protection and welfare support. Through the agreement, NRAS became an explicit target group, with equal entitlements to those of asylum seekers (Hinterberger & Klammer, 2015). Restrictive tendencies touch on the question of welfare provision for NRAS, because the federal government attempts to make services increasingly dependent on cooperation with return, which already led to tensions between the federal government and some provinces. Although in 2017 the federal government announced a cut in social services for NRAS, the law did not alter the agreement. It did, however, create measures to restrict services to NRAS by establishing so-called return centers that serve the aim of preparing a migrant’s deportation and offer only reduced welfare entitlements.

### Conditions for access to accommodation

Paralleling van Oorschot’s (2000) three dimensions of deservingness relevant to NRAS described above—control over neediness, level of need, and attitude—I identified three
conditions that allow access to state-organized accommodation in the case studies of Austria, the Netherlands, and Sweden: special protection needs for families with children, persons with health issues, and cooperation with the return procedure.

**Situation of families with children**

In all three countries, families with children under age 18 constitute a category that is granted additional rights to access state-organized accommodation. The presence of a minor in the family is the deciding factor; being a family without underage children is not enough to access these additional rights. In the Netherlands and Sweden, conditions are clearly described and implemented to exempt families with minors from restrictive regulations. In both countries, the definition of family is restricted to the nuclear and biological family. In Sweden, adults are included if they are considered to be a child’s guardian. If an “adult child” lives with a guardian and underage siblings, their removal can be considered “manifestly unreasonable” (uppenbart oskäligt), in which case they are also exempt from the new restrictive regulation (Migrationsverket SR 13/2016: 5). In both the Netherlands and Sweden, families with children do not have to fulfill the condition of cooperation with return.

In Sweden, asylum-seeking families with children are allowed to stay in reception centers after the final rejection. That means they may remain in the same facility in which they resided as asylum seekers. In the Netherlands, families with children must relocate to special family locations (Gezinslocatie, GL). The family locations, of which eight exist nationwide, shelter a total of approximately 2,000 rejected asylum seekers. The regime in a GL is stricter than in a reception center. For example, the weekly allowance is lower and people have a daily, rather than a weekly, duty to report.

Another difference between Sweden and the Netherlands concerns the way these conditions have been introduced. In Sweden, families with children were exempt from restrictive regulations from the beginning. Proponents of this exemption point to the special rights of children in Sweden, grounded in the principle that they should not be held responsible for their parents’ decisions and therefore enjoy the same rights as any other child living in the country. The law considers children to be more vulnerable than other groups. In the Netherlands, until 2012, state-operated facilities did not offer accommodation for NRAS with children. The introduction of such services in 2012 followed a 2009 ruling of the European Committee on Social Rights (ECSR) (DCI v. The Netherlands), which inspired a Dutch High Council ruling in September 2012, requiring the state to provide reception facilities to families with children when the right to accommodation in an asylum seekers center has expired (HR 2012, JV2012/258). Subsequently, since 2012, the Dutch government installed special family locations and families with underage children are no longer excluded from these facilities.

The process of implementing these regulations in both Sweden and the Netherlands is clearly defined. There are no indications that the conditions are applied arbitrarily (Interviews 5, 9, and 11). According to the regulation in the Netherlands, access to the family location terminates when the youngest child turns 18. Only in some cases families may remain in the family location even when the children pass the age of 18 (Interview 4).
According to Austrian law, rejected asylum seekers have access to shelter facilities as part of the Basic Welfare Agreement. There are, however, differences between provinces regarding policies and implementation practices. Although, as a consequence of different implementation practices, not all NRAS obtain access to accommodation; interviewees in all four provinces covered by our research emphasized that families with children always have access to accommodation and stay in the reception centers (Interviews 6 and 7). This practice does not derive from legal conditions; rather, it is a result of implementation practices in different provinces. Generally, when NRAS are assigned to one province during their asylum procedure but leave that province to go to another province, this is considered a reason for universal exclusion from services. In Vienna, however, when NRAS arrived from another province and were part of a family with children, they could be exempted from this exclusionary regulation (Interviews 1, 2, and 3). The welfare department of the city of Vienna, the Vienna Social Fund (FSW), uses its implementation power to grant services. It established a practice to extend services to cases of hardship, considering the existence of family ties in Vienna. While family has long been defined as a nuclear family in a strict sense, the practice in Vienna has moved toward wider interpretations of family to include, for example, cousins and other non-nuclear family members (Interviews 1 and 3).

**Health-related conditions**

In all three countries, health-related conditions confer the right to access to accommodation. In Sweden, health-related conditions play a role when “the person has a serious illness of temporary nature” (Migrationsverket SR 13/2016: 5). In these cases, it is regarded as manifestly unreasonable to expel persons from accommodation (Migration Agency SR 13/2016: 4). The focus is on temporality, meaning that the illness impedes deportation for a certain amount of time, such as during temporary hospitalization after an accident (Interview 9). Chronic illnesses such as HIV or chronic heart disease are not considered under this category. Also, in one case in our study, arguing that a lack of accommodation would worsen a person’s health condition and make the person more destitute was rejected during appeal at the lower administrative court (Interview 10).

In a similar manner, medical problems lead to a postponement of departure in the Netherlands when NRAS or their family members are unable to travel for medical reasons. The deportation is suspended for the period during which traveling is considered impractical and the person concerned can reside legally in the Netherlands for the period of their treatment or for a maximum of one year. The person has a right to accommodation facilities and may continue to stay in the asylum-seeking center. During this period, the condition of cooperation is not applied.

In both Sweden and the Netherlands, decisions regarding health conditions are made by the migration agency and are rigidly implemented. In interviews we conducted in Sweden, we learned about restrictive implementation with low levels of discretion: “It is only in extreme situations that you can stay in the LMA system if you don’t have children” (Interview 11). This perspective is supported by a high level bureaucrat at the SMA, who emphasized that the directives are very narrow: “The directives are so
narrow, that there is almost no one that qualifies. If they are not hospitalized, then there are not very many [options]” (Interview 9). In the Netherlands, the decision can take three months. During this period, the person does not have a right to shelter (Heegaard Bausager Köpfli Møller, & Ardittis, 2013). Furthermore, the Dutch government has developed measures designed to allow the return of persons with medical complaints to their country of origin. In such cases, the person is returned to their country of origin via medical transfer instead of a normal commercial flight (EMN, 2016).

In Austria, again we focus on Vienna, which is an exceptional case with its generous offers for NRAS compared with other Austrian provinces. In Vienna, health-related arguments do help persons to gain access to accommodation, even if another province is responsible for the individual concerned, which is otherwise considered a reason for exclusion from services. That means, in cases of vulnerability or hardship, such as pregnancy, being elderly, or seriously sick, poor health status is a valid reason to gain access to accommodation in Vienna. There are several reasons for which this can happen: in case of a medical emergency, if the treatment is only possible in Vienna, or if a person needs permanent care and one part of the care relationship resides in Vienna (Interviews 1 and 2). There are no national or regional guidelines for this provision; the decision regarding accommodation is made by the caseworkers of the city in the welfare department.

Cooperation with return as condition

Cooperation with return is a condition NRAS are obliged to meet in all three countries in order to be eligible for access to accommodation. In the Netherlands, non-removed persons who actively and demonstrably cooperate with their return have access to accommodation in a specific location called the freedom restricted location (Vrijheidsbeperkende Locatie, VBL), which is specifically intended to effectuate return and serves as an alternative to detention. In these locations, non-removed persons have a daily duty to report on weekdays and are not allowed to leave the boundaries of the municipality.

The conditions for accessing the VBL are not specified in law or administrative decrees, but are drawn up as an administrative, internal guideline (Interview 4). Decisions about granting access to the VBL are made by case managers of the DT&V. There is room for individual decision-making, since it is difficult to objectively judge criteria like compliance and expected return (Rosenberger & Koppes, 2018). In one interview with an officer from the DT&V, the ample room for interpretation seems to have an inclusive effect (Interview 5). However, a social rights lawyer we interviewed suggested that this freedom of interpretation leads to many clients being denied access to shelter in the VBL. He found that the condition of cooperation is highly ambiguous (Interview 4).

In Sweden, when NRAS cooperate with the enforcement of their deportation, it is understood as manifestly unreasonable (LMA 1994, §11) to expel them (Migration Agency SR 13/2016: 3) and as such they may stay in accommodation centers. However, there are no clearly formulated regulations about what behavior is considered
cooperative or non-cooperative and what specific conditions are considered to be manifestly unreasonable. In both cases, when NRAS are labeled as noncooperating, they are denied access to state-organized accommodation.

In Austria, the duty of cooperation with return (Mitwirkungspflicht) is a general condition for access to housing according to the basic welfare agreement. NRAS must be deemed non-removable “for legal or factual reasons” and actively cooperate in the aliens policing procedure in order to have access to basic welfare services (Interview 8). Access to accommodation is possible only if the reasons for being non-deportable do not lie in the person him- or herself—that is, in anything the person could cause him- or herself, such as “denying one’s signature, [not] handing out a passport picture, not announcing one’s identity” (Interview 8). The decision to grant or deny access to accommodation is made by federal government caseworkers who evaluate the cooperation activities and assess whether the individual is responsible for the lack of necessary documents (Interview 6). There is no clear definition of this condition (Rosenberger & Koppes, 2018), which grants the caseworker at the federal agency of migration (BFA) discretionary power. Notifying the provinces that a person is violating this duty to cooperate is considered grounds for dismissing a non-removed person from the reception system (ibid.). However, non-cooperation does not lead to dismissal in all provinces (Interviews 6 and 7). Regional bureaucrats who work in the department of welfare decide on matters of eligibility for social assistance. Consequently, differences exist not only between the legal provisions, but also between the interpretations and actions of the provinces.

Discussion

This article was motivated by an interest in how governments deal with challenging issues such as denying noncitizens with limited rights and resources access to accommodation facilities. I reviewed conditions governing access to accommodation for NRAS in Austria, the Netherlands, and Sweden; investigated their implementation; and discussed how conditional welfare arrangements shape access to welfare services. Conditional entitlements emerge as restrictive policies are introduced. Their function is to partially include the excluded by creating exceptions to exclusionary policies for groups with special attributes or performance. The first two conditions identified in this article are connected to vulnerability—one rooted in the rights of children and the second rooted in health-related issues—reflecting ideas of social inclusion. The third condition is related to performance, specifically, to cooperation with the return procedure. I found differences between the conditions regarding the clarity of the definition, their implementation, and whether they work toward inclusionary or exclusionary logics.

In all three countries, families with children under age 18 are categorized as a special group. They are exempted from exclusionary regulations and allowed access to state-organized accommodation. In the terminology of van Oorschot (2000), families with children belong to the deservingness criteria of “control over neediness”—children are considered deserving of accommodation since they are not seen as being personally responsible for their neediness. Spencer (2016) highlights in her comparative work across the European Union’s 28 Member-States the “positive perceptions of the
deservingness of children": The law views undocumented children as more deserving than their parents, since “children are seen as in need of protection and bearing no responsibility for the behaviour of their parents for breaches of immigration control” (Spencer, 2016, p. 1624). Nevertheless, we do not find universal access to accommodation for families with children under 18. In the Netherlands, in contrast to Sweden and Austria, we identified a strong migration-control aspect and limited rights for families with children in special facilities. This echoes Spencer’s findings in health care and education that “it is only in a minority of European countries that they [undocumented children] are seen as equally deserving as citizens” (Spencer, 2016, p. 1624).

Health-related conditions are a second condition determining NRAS’ access to accommodation in all three countries. Health-related conditions correspond with the deservingness criteria of “level of need” (van Oorschot, 2000). Poor health or illness makes non-removed persons more deserving of accommodation as they are assumed to be persons with greater need. Based on his analysis of the asylum policy changes in the 1990s in France, Fassin argues that “illnesses now seem to be the most successful basis of claims for many undocumented immigrants” (Fassin, 2005, p. 382) and that rights are legitimized with reference to the suffering body. However, this seems to be the case only in Austria, particularly in Vienna. By contrast, in both the Netherlands and Sweden, health-related conditions are treated as a temporary impediment for leaving the country and grant NRAS only limited rights based on their status as vulnerable persons. An illness that makes traveling impractical makes a person eligible to access accommodation facilities, and the deportation is suspended for the period during which the illness exists. In both Sweden and the Netherlands, the “conditionality of suffering” works only for the temporary cancelation of the deportation and not for granting sustainable rights.

The analysis of the implementation paths of the first two conditions identified differences based on how these conditions are implemented. Some conditions create room for discretion; others do not. The condition of families with children follows a clear definition in all three countries and leaves no room for discretion. In comparison, health-related conditions are defined very narrowly and aim mostly at bridging the time until deportability of NRAS. In Sweden, the “temporality” argument of the health condition and its implementation show that the welfare aim is compromised by the prevailing logic of migration control. In the Netherlands, the final decision of postponement is not concerned with the best way to improve the person’s health but on removing the obstacle to deportation. In both countries, health-related conditions are strongly shaped by a migration-control logic.

In Austria, by contrast, NRAS’ health status is a strong indicator of access to accommodation. Provinces have far-reaching competences for offering access to accommodation. The welfare departments of provinces, rather than migration control agencies, determine the outcome of these cases. Although there are no written guidelines, in the implementation practice, persons who have a serious illness acquire access to accommodation. This demonstrates the influence of the institutional architecture in the process of decision-making. In both Sweden and the Netherlands, accommodation is offered solely by the national migration agencies, which are controlled by the central national government. By offering these services, these agencies are relatively independent of
other actors in the political and social arena, giving the migration-control logic a stronger role in their decisions. While state authorities are strongly guided by the motivation of migration control, actors at the province level are more concerned with preventing social problems and destitution in their cities and villages (cf. Spencer, 2017).

Cooperation with return is the third condition migration agencies in all three countries use to determine NRAS’ eligibility for accommodation. The condition of cooperation relates to the deservingness criteria of “attitude” (van Oorschot, 2000). In all three case study countries, this condition is not clearly formulated. As a result, it is very difficult for NRAS to prove their cooperation. Rosenberger and Koppes (2018) conclude that the tool of cooperation “follows the stick-and-carrot idea: Cooperation with return is the stick; access to status and public services is the carrot. In contrast, non-cooperation is punished and usually leads to a denial of social benefits and/or to detention.” The tool leads to (precarious) inclusion if the behavior is accepted as cooperating—otherwise it leads to exclusion.

**Conclusion**

When national governments introduce exceptions to exclusionary policies and create conditional entitlements, at first glance these exceptions lead to a weakening of exclusionary policies and consequently to access to social services. In this article, I asked which logic prevails in this mix of exclusionary policies and inclusionary exceptions to the policies: principles of social policy or the logic of migration control? I argued that the quality of the conditions and their paths of implementation are decisive for answering this question.

The condition of cooperation with return is clearly an instrument of migration control by definition and by implementation. To meet this condition, NRAS have to actively contribute to their own deportation. It is very difficult for NRAS to meet the criteria of cooperation, since the definition of sufficient cooperation is unclear. In this context, NRAS’ access to a service as vital as accommodation is dependent on proof of their deservingness by demonstrating cooperation. When exercised through the condition of cooperation, the concept of deservingness equals submission to disciplinary techniques.

It is tempting to contrast the condition of cooperation with the condition of vulnerability by stating that the former is based on a logic of migration control while the latter is associated with principles of social policy and that, consequently, the condition of vulnerability has inclusionary effects, disrupting the dominance of the exclusionary logic of migration control. However, this is the case only when it comes to families with minors. Health-related conditions mostly only delay procedures, following a migration-control logic rather than leading to disruptions of this logic. Overall, in the context of the tensions between principles of social policy and migration-control imperatives, this study identifies an overwhelming dominance of the logic of migration control in the decision-making process as regards access to welfare services for NRAS. However, when local actors are incorporated into multilevel governance structures by providing welfare services such as accommodation, these actors can mitigate the strength of the logic of migration control in case of vulnerability. This is because, at the national level,
migration-control agencies decide on the extent of vulnerability, while at the local level, welfare agencies make decisions and design the implementation.

These findings open up various avenues for further research. It would be enticing to further investigate the relevance of implementation processes for inclusionary or exclusionary effects of policies. For example, case studies may shed light on the effect of street-level bureaucrats’ varying interpretations of their professional roles and of beneficiaries’ purposes. Another starting point for would be to examine the vagueness in the definition of the condition of cooperation, particularly when viewed from the perspective of those subjected to this definition (NRAS): How does this vagueness impact their strategies? Lastly, the analyses in this article are interesting from a broader perspective that investigates changes of welfare systems in society as a whole. As noted above, contemporary studies identify a qualitative shift from welfare rights to conditional entitlements to social provisions. For noncitizens, this shift has characterized their legal and social status for a considerable amount of time. Consequently, the conditionality of access to welfare services that shapes NRAS’ realities could point to changes in the overall welfare systems of Western societies toward citizens.

**List of interviews**

Interview 1: Team leader and caseworker at an NGO in Vienna, October 24, 2016.
Interview 2: Team leader and caseworker at an NGO in Vienna, September 29, 2016.
Interview 3: Caseworker at an NGO in Vienna, November 10, 2016.
Interview 4: Social rights lawyer in Amsterdam, February 9, 2017.
Interview 5: Policy officer, Ministry of Security and Justice and Communications officer, DT&V, March 16, 2017.
Interview 6: High-level bureaucrat at Viennese agency for social policy, October 3, 2016.
Interview 7: Head of legal counseling for asylum seekers at an NGO in Vienna, September 14, 2016.
Interview 8: High-level bureaucrat at the national migration agency in Austria, June 22, 2016.
Interview 9: High-level bureaucrat at the national migration agency in Stockholm, March 21, 2017.
Interview 10: Jurist working as legal counselor at NGO in Stockholm, January 30, 2017.
Interview 11: High-level bureaucrat at an association of local authorities in Sweden, February 2, 2017.

**Acknowledgements**

I am very grateful for the valuable work by Sabine Koppes, Victoria Reitter, and Theresa Schütze in carrying out interviews and compiling data reports on the three countries. I would like express my thanks to the participants of a research workshop in Vienna in December 2017 and Sieglinde Rosenberger for their extremely helpful feedback and comments and to Angelika Striedinger for her feedback and support.
Funding

This article is based on the research project “Inside the Deportation Gap. Social Membership for Non-Deported Persons,” supported by the Austrian Science Fund (FWF) under grant agreement number P 27128-G11.

Notes

1. The Immigrant and Naturalisation Service (Immigratie en Naturalisatiedienst, IND) is responsible for procedures regarding immigration and naturalization of aliens, including the asylum procedure. The Central Agency for the Reception of Asylum Seekers (Centraal Orgaan opvang Asielzoekers, COA) operates reception facilities for asylum seekers, including special facilities for NRAS and irregular migrants such as the freedom restricted location (VBL) and family location (GL). The Return and Repatriation Service (Dienst Terugkeer en Vertrek, DT&V) is responsible for the return and departure of persons without legal residency status.

2. Rejected asylum seekers are required to leave shelter facilities operated by the state (AZC) within 28 days of their claim for asylum being rejected.

3. European Committee of Social Rights, CEC v. The Netherlands, Complaint No. 90/2013.

4. This is based on Article 64 of the Aliens Act 2000, which does not provide a residency status but postpones departure due to health conditions (EMN, 2017).

5. There is only one facility, located in Ter Apel, with a capacity of 150 people.

References

Ambrosini, M. (2013). We are against a multi-ethnic society. Policies of exclusion at the urban level in Italy. Ethnic and Racial Studies, 36(1), 136–155.

Atac¸, I., & Rosenberger, S. (2013). Inklusion/Exklusion: Ein relationales Konzept der Migrationsforschung In I. Atac¸ & S. Rosenberger (Ed.), Politik der Inklusion und Exklusion (pp. 35–52). Götingen: V&R unipress.

Cantor, D. J., Wijk, J., Singer, S., & Bolhuis, M. P. (2017). The emperor’s new clothing: National responses to “undesirable and unreturnable” aliens under asylum and immigration law. Refugee Survey Quarterly, 36(1), 1–8.

Chauvin, S., & Garcés-Mascareñas, B. (2012). Beyond informal citizenship: The new moral economy of migrant illegality. International Political Sociology, 6(3), 241–259.

Chauvin, S., & Garcés-Mascareñas, B. (2014). Becoming less illegal: Deservingness frames and undocumented migrant incorporation. Sociology Compass, 8(4), 422–432.

Dwyer, P. (2005). Governance, forced migration and welfare. Social Policy and Administration, 39(6), 622–639.

Dwyer, P., & Brown, D. (2005). Meeting basic needs? The survival strategies of forced migrants. Social Policy and Society, 4(4), 1–12.

EMN. (2016). Returning Rejected Asylum Seekers: Challenges and good practices. Common Template of EMN Focussed Study 2016.

EMN (2017). The effectiveness of return in EU Member States. Synthesis Report for the EMN Focussed Study. Available at https://www.emn.at/wp-content/uploads/2017/12/EMN-Synthesis-Report-2017-The-effectiveness-of-return-in-EU-Member-States.pdf Accessed 15 Aug 2018.

Fassin, D. (2005). Compassion and repression: the moral economy of immigration policies in France. Cultural Anthropology, 20 (3), 362–387.

Gibney, M. (2008). Asylum and the expansion of deportation in the United Kingdom. Government and Opposition, 43(2), 146–167.

Goldring, L., & Landolt, P. (2015). Assembling non-citizenship through the work of conditional-
Heegaard Bausager, M., Köpfl Møller, J., & Ardittis, S. (2013). Study on the situation of third-country nationals pending return/removal in the EU Member States and the Schengen Associated Countries. European Commission, Home/2010/RFX/PR/1001.

Hellbling, M., Bjerre, L., Römer, F., & Zobel, M. (2017). Measuring immigration policies: the IMPIC database. *European Political Science, 16*(1), 79–98. doi:10.1057/eps.2016.4

Hinterberger, K. F., & Klammer, S. (2015). Das Rechtsinstitut der fremdenpolizeilichen Duldung. *migraLex – Zeitschrift für Fremden- und Minderheitenrecht, 3*(2015), 73–83.

Hsieh, H., & Shannon, S. E. (2005). Three approaches to qualitative content analysis. *Qualitative Health Research, 15*(9), 1277–1288.

Könönen, J. (2018). Differential inclusion of non-citizens in a universalistic welfare state. *Citizenship Studies, 22*(1), 53–69. doi:10.1080/13621025.2017.1380602

Kos, S., Maussen, M., & Doomernik, J. (2015). Policies of Exclusion and Practices of Inclusion: How Municipal Governments Negotiate Asylum Policies in the Netherlands. *Territory, Politics, Governance, 4*(3), 1–21.

Kotkas, T., & Veitch, K. (2017). *Social rights in the welfare state. Origins and transformations*. London/New York: Routledge.

Lagrådsremiss (2016). Ändring av bestämmelserna om rätt till bistånd i lagen om mottagande av asylsökande m.fl (Change of the regulations on the right to support in the law on the reception of asylum seekers), Stockholm, 3 March 2016.

LMA (1994). Lagen om mottagande av asylsökande (Swedish Reception of Asylum Seekers and Others Act), Swedish Statute Book.

Lipsky, M. (1980). *Street-level bureaucracy; Dilemmas of the individual in public services*. New York: Russel Sage Foundation.

Lundberg, A., & Spång, M. (2017). Deportability status as basis for human rights claims: Irregularised migrants’ right to health care in Sweden. *Nordic Journal of Human Rights, 35*(1), 35–54.

Lutz, F. (2018). Non-removable returnees under union law: Status quo and possible developments. *European Journal of Migration and Law, 20*(1), 28–52.

Morris, L. (2003). Managing contradiction: Civic stratification and Migrants’ Rights. *International Migration Review, 37*(1), 74–100.

Morris, L. (2016). Squaring the circle: Domestic welfare, migrants rights, and human rights. *Citizenship Studies, 20*(6–7), 693–709.

Oomen, B., & Baumgartel, M. (2018). Frontier cities: The rise of local authorities as an opportunity for international human rights law. *European Journal of International Law, 29*(1).

Rosenberger, S., & Koppes, S. (2018). Claiming control: Cooperation with return as a condition for social benefits in Austria and the Netherlands. *Comparative Migration Studies*. doi:10.1186/s40878-018-0085-3.

Rosenberger, S., & Küffner, C. (2016). After the deportation gap: Non-removed persons and their pathways to social rights. In R. Hsu & C. H. Reinprecht, (Eds.), *Migration and Integration* (pp.137–152). Vienna: Vienna University Press.

Schoukens, P., & Buttiens, S. (2017). Social protection of non-removable rejected asylum-seekers in the EU: A legal assessment. *European Journal of Social Security, 19*(4), 313–334.

Slominski, P., & Trauner, F. (2017). How do member states return unwanted migrants? The Strategic (non-)use of ‘Europe’ during the migration crisis. *Journal of Common Market Studies, 56*(1), 101–118. doi:10.1111/jcms.12621

Spencer, S. (2016). Postcode Lottery for Europe’s Undocumented Children. Unravelling an Uneven Geography of Entitlements in the European Union. *American Behavioral Scientist, 60*(13), 1613–1628.

Spencer, S. (2017). Multi-level governance of an intractable policy problem: migrants with irregular status in Europe. *Journal of Ethnic and Migration Studies*. doi: 10.1080/1369183X.2017.1341708

van der Leun, J. (2003). *Looking for loopholes: Processes of incorporation of illegal immigrants in the Netherlands*. Amsterdam: Amsterdam University Press.
van der Leun, J. (2006). Excluding illegal migrants in The Netherlands: Between national policies and local implementation. *West European Politics*, 29(2), 310–326, doi:10.1080/01402380500512650

van Meeteren, M. (2014). *Irregular migrants in Belgium and the Netherlands. Aspirations and incorporation*. Amsterdam: Amsterdam University Press.

van Oorschot, W. (2000). Who should get what, and why? On deservingness criteria and the conditionality of solidarity among the public. *Policy & Politics*, 28(1), 33–48.

van Oorschot, W. (2008). Solidarity towards immigrants in European welfare states. *International Journal of Social Welfare*, 17(1), 3–14.

Vogel, D. (2015). The challenge of irregular migration In: Triandafyllidou, Anna (Ed.), *Routledge Handbook of Immigration and Refugee studies* (pp. 333–339). London und New York: Routledge.