

# Begging for Due Process: Defending the Rights of Urban Outcasts in an Italian Town

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## INTRODUCTION

Adult begging in Italy has been decriminalized since a Constitutional Court decision in 1995<sup>1</sup> and an ensuing law, no. 205, in 1999.

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Although this contribution is a joint work, Parts I and II are specifically attributable to Alessandro Simoni and Parts III and IV are specifically attributable to Giacomo Pailli.

DISCLOSURE: Alessandro Simoni and Giacomo Pailli are representing the plaintiffs in the pending case described in this Article. The opinions expressed within this Article are those of the authors only.

1. Corte Costituzionale [Corte Cost.], 28 dicembre 1995, n. 519, Racc. uff. corte cost., *available at* <http://www.giurcost.org/decisioni/1995/0519s-95.htm>.

Nonetheless, beggars, particularly Roma ones,<sup>2</sup> are still perceived by the public as a nuisance, like an issue that should be dealt with.

Sensible to the pressure of its constituency, even Florence—a city with a tradition of openness and inclusion—has taken measures against begging and other similar street-level economic activities. Between 2007 and 2008, the first wave of city action in Florence was directed at windshield cleaners at traffic lights. Even though the policy was challenged, it produced the intended effect of removing such beggars from their posts. Today, a second wave of city action, visible since 2013 and based on a very loose municipal regulation, has taken the form of routine de facto pressure exerted by local police on beggars that aims to remove beggars from the touristic city center.

Amid the difficulties of targeting behaviors or administrative regulations rather than a law, a small team from the Law School at the University of Florence has decided to take action. The legal actions against the local administration are part of a broader “action research” on the current state of the Italian legal system with regard to the protection of the fundamental rights of specific underprivileged groups (primarily Roma immigrants of Romanian citizenship). These groups have been constantly targeted by the media and a number of political actors, and labeled as the ultimate danger to Italian society.

On the one side, the project seeks to understand how local municipalities are overcoming legal obstacles posed by national laws and the

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2. With the umbrella term “Roma,” we refer to the members of a number of very diverse groups who historically have lived in Europe and are usually considered as sharing a specific ethnic identity that altogether constitute the largest minority in the continent. Because of its widespread use, and in line with a politically correct practice, the term Rom/Roma today tends to replace the general term of Gypsy/Gypsies in the official documents in English. Roma have been for centuries the object of discrimination and persecution and, in recent times, stereotyping and stigmatization dominates. A huge linguistic and cultural variety exists within the Roma community, the boundaries of which are not clearly defined. In this specific context the authors (particularly when it comes to the parties of the currently pending cases) do not assume any specific content of Roma identity, nor did they find it relevant to specify to which specific Roma group the beggars targeted by local policies are likely to pertain. When speaking about “Roma” we simply mean persons that either claim to be Roma, or are classified as Roma/Gypsies/Nomads (*Rom, zingari, nomadi* in Italian) in the actual practice of law enforcement authorities. For a standard historical treatment, see generally ANGUS FRASER, *THE GYPSIES* (2d ed. 1995), and LEONARDO PIASERE, *ROMS: UNE HISTOIRE EUROPÉENNE* (Viviane Dutaut trans., 2011). With regard to the links between views on Roma ethnic identity and persecution, see generally LEO LUCASSEN, WIM WILLEMS & ANNEMARIE COTTAAR, *GYPSIES AND OTHER ITINERANT GROUPS: A SOCIO-HISTORICAL APPROACH* (1998). For a view on Roma discrimination specific to European legal culture, see Alessandro Simoni, *Roma and Legal Culture: Roots and Old and New Faces of a Complex Equality Issue*, EUR. ANTI-DISCRIMINATION L. REV., Dec. 2011, at 11. For an analysis of the documents produced by public institutions in Europe related to the settlement and housing conditions of Roma, see generally WOR(L)DS WHICH EXCLUDE: THE HOUSING ISSUE OF ROMA, GYPSIES AND TRAVELLERS IN THE LANGUAGE OF THE ACTS AND THE ADMINISTRATIVE DOCUMENTS IN EUROPE (Leonardo Piasere, Nicola Solimano & Sabrina Tosi Cambini eds., 2014).

Constitution by replacing legal norms with a factual police pressure against marginalized people and Roma beggars in particular. On the other side, the team has begun to challenge these policies both extrajudicially and before a court of law—an uncommon undertaking in a country with a limited tradition of public interest litigation involving academics.

The legal action started by this group of academics aimed to challenge a potentially illegal database of beggars, which was allegedly maintained by the Florence local police. The group also plans to target the local police practice of repeatedly issuing fines to beggars for “annoying” begging and will challenge the loose municipal regulation upon which such practice is supposedly based. Although the litigation is still ongoing, the Florence experience already provides empirical evidence for a view of the Italian legal system where the effectiveness of fundamental rights for specific groups appears hampered by technical loopholes in the procedural system; loopholes which, in turn, make judicial review of local regulations and local police action difficult.

In the following pages we will first present the historical background of the matter, from the nineteenth-century criminal approach to the decriminalization of adult begging under the pressure of the Italian Constitutional Court in the 1990s. Second, we turn to the local municipalities’ reaction to this change and explain how they tried to fill the space with a number of administrative measures—whose legitimacy may often still be questioned. Third, we focus on the experience of Florence by describing the mayor’s failed ordinances and the Regulation on Urban Police adopted in 2008 and currently in force. Finally, we present our ongoing work: specifically, the pending action against the alleged “database of beggars” and the activity against the potentially discriminatory police practice of fining beggars. In both cases, we will highlight how the Italian procedural system and culture seems to not support this kind of experimental public interest litigation.

#### I. THE PATH TO THE DECRIMINALIZATION OF ADULT BEGGING

Since the early days of Italy’s existence as a unified state, the criminal law legislation in force contained harsh provisions against beggars (*mendicanti*). In doing so, the newborn Italian legal system simply followed a preexisting line well-established in Continental Europe, as the machinery for the control of the urban poor developed before the French Revolution was received and replicated in the context of the new codifi-

cation of criminal law.<sup>3</sup> The “Sardinian” criminal code of 1859, extended in 1865 to the whole of the Kingdom of Italy, was still influenced by the French, and established that any “able-bodied and usual” (*valido e abituale*) beggar was subject to imprisonment, although with somewhat more lenient treatment than what occurred in France.<sup>4</sup> Being a beggar implied, moreover, a more serious punishment when other specific crimes were committed. However, from the beginning, this clear-cut “law in the books” was not accompanied by a significant level of actual enforcement. In the first legal encyclopedia of Italy, one can read a lengthy complaint about “the scarce respect of the law and regulations about begging,”<sup>5</sup> which was seen as the root cause of a long line of problems ranging from public health to the negative impact on foreigners visiting the country that were “coming among us to admire the beauties of art and nature, [but] run[ning] away disgusted by the impunity of begging.”<sup>6</sup>

This old passage well anticipates and summarizes the main lines of the situation in the following hundred years, with theoretical criminal sanction, scarce enforcement, and a strong perception that the main problem related to beggars is not their situation and state of need, but rather, their negative impact on the “visual landscape.” The new criminal code of 1889 (the “*Zanardelli* code”) also kept the French approach until the legislative landscape was eventually stabilized during Fascist times with the criminal code of 1930, which is still in force (the so-called “*Rocco* code,” from the name of Mussolini’s Minister of Justice).<sup>7</sup> The “*Rocco* code” innovated the French legislative technique by setting aside the relevance of whether a beggar was “able-bodied.” The relevant provision in the new criminal code (Article 670) simply stated:

Whoever begs in a public place or in a place open to the public shall be punished with imprisonment up to three months. The penalty is imprisonment between one and six months if the fact is committed in a disgusting or harassing way [*ripugnante o vessatorio*], or by faking deformity or disease, or using other fraudulent means to arouse the pity of others.<sup>8</sup>

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3. On foreign models in the codification of Italian criminal law see ALBERTO CADOPPI, INTRODUZIONE ALLO STUDIO DEL DIRITTO PENALE COMPARATO 60 (2d ed. 2004).

4. For a review of issues concerning begging in the history of Italian criminal law, see Alessandro Simoni, *La mendicizia, gli zingari e la cultura giuridica italiana: uno schizzo di tappe e problemi*, 3 POLIS: RICERCHE E STUDI SU SOCIETÀ E POLITICA IN ITALIA 371 (2000).

5. Alberto Errera, *Accattonaggio*, in 1 ENCICLOPEDIA GIURIDICA ITALIANA 164–65 (1884).

6. *Id.*

7. See Regio Decreto 19 ottobre 1930, n. 1398 (It.).

8. Codice penale [C.p.] art. 670 (It.) (translation from Italian).

A further provision established a separate crime of “exploitation of minors in begging.”<sup>9</sup> Severely criminalizing begging was clearly in line with Fascist political and social orientations, but the previous concern for the “visual landscape” remained, as we can see in the statements about the rationale of punishing beggars of the leading criminal law scholars of that time. We can thus read in a standard treatise of the late 1930s that “the State must not tolerate the scandal of begging, that can be judged, particularly by foreigners, as an indicator of insufficient social welfare, and thus of backward civilization.”<sup>10</sup>

But also, during the Fascist era, criminal law was not a tool frequently used against beggars, and there were few court cases where the criminal code was actually enforced. This was not due to a policy of tolerance, but rather because there were more effective means to control and reduce the number of beggars where their presence in a specific town or area was perceived as no longer acceptable. Criminal law was only one of the components of the complex legal machinery used for controlling specific social groups.<sup>11</sup> Indeed, Fascist lawmakers did not reform only the criminal code; rather, they strengthened the instruments contained in the “police laws” (*leggi di polizia*), which were aimed at crime prevention on the basis of a discretionary assessment of the danger represented by an individual. The new police law (*Testo unico di pubblica sicurezza* – Consolidated act on public security) of 1931 contained a variety of provisions of this kind. For example, the law vested the police with the authority to issue injunctions banning persons deemed “dangerous for public order and security or public morality”<sup>12</sup> from certain areas or imposing certain obligations on persons “designated by the public voice as socially dangerous.”<sup>13</sup> Police legislation at the time was extremely important in terms of social control, and has been described by a modern scholar as an “actual criminal law sub-system.”<sup>14</sup> This, however, did nothing more than refine and develop an approach that was already well-affirmed in pre-Fascist Italy, where the previous police law contained a chapter devoted to “Provisions concerning the dangerous classes of society” and a number of provisions for the control of vagrancy.

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9. *Id.* art. 671.

10. See 9 VINCENZO MANZINI, TRATTATO DI DIRITTO PENALE ITALIANO, PARTE SECONDA 267 (1939).

11. To put the legal development in context, see generally DAVID FORGACS, ITALY’S MARGINS: SOCIAL EXCLUSION AND NATION FORMATION SINCE 1861 (2014).

12. Art. 157 of the 1931 police law.

13. Art. 164 and 170 of the 1931 police law.

14. LUIGI FERRAJOLI, DIRITTO E RAGIONE. TEORIA DEL GARANTISMO PENALE 796 (2d ed. 1990).

In such a legal context, the pressure of the institutions against beggars was understandably based on the use of these flexible police rules rather than on the cumbersome process of prosecution and criminal adjudication. The “keeping at a distance” of beggars and other urban marginalized persons took place without raising any major public debate and only minimally attracted the attention of legal scholars.<sup>15</sup>

The transition from the Fascist regime to the legal system based on the 1948 Constitution of the newly born Republic of Italy did not bring any sudden change in the legal condition of beggars, because all the legislation mentioned above remained in force. Additionally, in post-war Italy, judicial decisions applying the criminal code rules about the begging of adults remained quite rare. With the social and economic advancement of the country, and the new constitutional framework, one can, however, observe the core legal issue slowly coming to the surface. In the late 1950s, the newly established Constitutional Court was first called on to assess whether Article 670 of the 1930 criminal code was in line with the new “higher law”—the 1948 Constitution.<sup>16</sup> In a first, and very short, decision issued in 1959, the Constitutional judge was called on to decide a very specific point, i.e. the compatibility of the criminal sanction against begging (Article 670) with the provision of the Constitution (Article 38) stating that “private assistance [as opposed to public welfare] is free.”<sup>17</sup> In the Court’s view the values protected by the two provisions were different: respectively, the Constitution’s right of coexistence between private and public welfare and the criminal code’s

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15. Since the early twentieth century, an open debate about the use of criminal justice to control individuals perceived as dangerous was less likely due to the dismissal of the positivist criminology previously advocated by Cesare Lombroso and Andrea Ferri. From then on, Italian criminal law thinking becomes increasingly formalistic and technical, with very little attention to the social and anthropological context in which crime generates. For a description of such transformation in the light of the policies against Gypsies, see Alessandro Simoni, *Il ‘problema di una gente vagabonda’: Retrospectiva sulla percezione degli zingari nella cultura giuridica italiana*, in LA CONDIZIONE GIURIDICA DI ROM E SINTI IN ITALIA 225 (P. Bonetti, A. Simoni & T. Vitale eds., 2011).

16. On the Italian Constitutional Court and the many differences from the U.S. Supreme Court, see generally VITTORIA BARSOTTI, PAOLO G. CAROZZA, MARTA CARTABIA & ANDREA SIMONCINI, *ITALIAN CONSTITUTIONAL JUSTICE IN GLOBAL CONTEXT* (2015); Giovanni Cassandro, *The Constitutional Court of Italy*, 8 AM. J. COMP. L. 1 (1959), and William J. Nardini, *Passive Activism and the Limits of Judicial Self-Restraint: Lessons for America from the Italian Constitutional Court*, 30 SETON HALL L. REV. 1 (1999). Basically, when a law is necessary to adjudicate a pending case but it appears to be in contrast with the Italian Constitution, and such conflict cannot be solved by way of interpretation, judges are required to raise the issue before the Constitutional Court. If the Constitutional Court finds that the challenge is grounds for relief, it may strike down the unconstitutional law with *erga omnes* and *ex tunc* effects.

17. Corte Costituzionale [Corte Cost.], 21 novembre 1959, n. 51, Racc. uff. corte cost., available at <http://www.giurcost.org/decisioni/1959/0051s-59.html> (It.) (translated from Italian).

“protection of public peace, with some reflection on public order.”<sup>18</sup> Hence, the Court found no direct or indirect conflict between Article 670 of the criminal code and the Constitution.<sup>19</sup>

The provision of the code criminalizing begging again came under the scrutiny of the Constitutional Court in the 1970s, this time with a more extensive test. Two trial judges raised the issue before the Court of whether the criminal sanction of beggars was compatible with Article 2 of the Constitution, establishing the right to the free development of the personality of the individual and the protection of fundamental rights and with Article 3 sanctioning the right to equality. According to the judges who made the referral to the Court, the criminal law provisions were clearly aimed at the discriminatory treatment of weaker and marginalized social groups (the list made by one of the judges included “gypsies, beatniks, [and the] unemployed”), and to repress alternative lifestyles. Article 670 similarly survived this attack. In 1975, the Court decided that the criminal offence was not in conflict with the Constitution and that the “citizen who does not have a work has not per se a right to publicly ask someone else to support him.”<sup>20</sup>

After this decision, from the perspective of constitutional challenges, Article 670 enjoyed twenty years of quiet life. In this timespan, enforcement remained generally low, although a slight increase in the number of cases brought to court can be observed. At a time when begging was still not part of the political and public discourse, this could be explained in several ways. Likely it was a sort of “compensation effect” linked to changes in other parts of the legal system. Most notably, it may be the consequence of the gradual abolition of the sections of police legislation that were in striking conflict with due process guarantees. In the absence of other means of “legal pressure” on marginal persons on the street, prosecution for begging might have served as a useful second option.<sup>21</sup>

This limited revival of criminally sanctioning adults for begging eventually came to its demise in 1995 when the Constitutional Court partially overruled its 1975 decision, finding that under a “reasonableness” test, “public peace and public order do not appear to be seriously put into danger by begging in the form of a simple request for

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18. *Id.* (translated from Italian).

19. *Id.*

20. Corte Costituzionale [Corte Cost.], 7 maggio 1975, n. 102, Racc. uff. corte cost., available at <http://www.giurcost.org/decisioni/1975/0102s-75> (It.).

21. As it is explained extensively in Simoni, *supra* note 4, there are reasons to believe that persons of Roma ethnicity were the primary targets of the selective enforcement of the criminal code rules about begging in the years before 1995.

help.”<sup>22</sup> As a consequence of this decision, the first section of Article 670 was removed from the criminal code. The Court, however, opted to keep, as a separate crime, the conduct described in the second section of the same article, begging made “in a disgusting or harassing way,” which was formerly an aggravating circumstance. In the Court’s view, this provision was aimed at protecting well-deserving values, such as the “spontaneous fulfillment of the duty of solidarity.”<sup>23</sup>

Legal scholars and the general public paid little to no attention to this decision. Regardless, the autonomous crime of “harassing or disgusting begging,” commonly defined as “intruding begging” (*mendicITÀ invasiva*), did not have a long life. In 1999, while approving an “omnibus law” aimed at the abolition of a number of petty crimes,<sup>24</sup> Section 2 of Article 670 was finally abolished with bipartisan support, and without introducing any administrative sanction. Thus, adult begging<sup>25</sup> was definitively brought into the realm of irrelevance from the point of view of criminal law.<sup>26</sup>

## II. BEGGING AS A SOCIAL AND POLITICAL ISSUE AND THE SHIFT TO LOCAL ADMINISTRATIVE PROHIBITIONS: THE CASE OF THE CITY OF FLORENCE

It is crucial to note that the demise of the criminal prohibition of adult begging took place in a time when begging was not a topic that raised any major debate at the national political level. This does not mean that beggars were not present in Italy. Indeed, beggars were active, particularly in urban areas, and came from a variety of backgrounds. Homeless persons with a history of alcohol abuse or mental health problems were certainly part of the “begging community,” although in Italy, one should not take the correspondence between “homeless” and “beggar” for granted. Additionally, a portion of the beggars represented groups of Italians or foreign citizens that practice certain forms of spatial mobility corresponding to the idea of “vagrant,” who sometimes practiced economic activities like music or street art. Yet, already in the

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22. Corte Costituzionale [Corte Cost.], 28 dicembre 1995, n. 519, Racc. uff. corte cost., available at <http://www.giurcost.org/decisioni/1995/0519s-95.htm> (It.) (translated from Italian).

23. *Id.*

24. Legge 25 giugno 1999, n. 205, art. 18 (It.).

25. The crime of the exploitation of begging of minors has a different history, and, in recent times, different legislative changes have been introduced with increasingly severe sanctions. With regard to the key policy issues, see Alessandro Simoni, *La qualificazione giuridica della mendicITÀ dei minori rom tra diritto e politica*, DIRITTO, IMMIGRAZIONE E CITTADINANZA, 2009(1), at 99.

26. Art. 671 of the Italian criminal code on begging by minors has been later on abolished, and replaced by a new provision in a different part of the criminal code (art. 600), with harsher sanctions. See Legge 15 luglio 2009, no. 94 (It.).

early phase of the legal developments just described, persons of Roma ethnicity represented a very relevant part of beggars on the streets.

We will not deal here with the issue of whether or not begging is part of the “Roma culture,” which is a debate that has very limited value in our view,<sup>27</sup> and, *inter alia*, reflects the uncertainties about the actual existence of a “Roma ethnic identity.” However, what is important in the context of this analysis of the legal reactions to begging in Italy is the shift in the features and visibility of the Roma presence in major urban centers. Roma beggars have always been present in Italy and, until the 1990s, included primarily members of groups that had been settled in Italy for centuries as well as immigrants from former Yugoslavia, who arrived in different waves since the 1970s.

The geopolitical changes of the 1990s instead produced a relevant mobility from Romania, a country with an important Roma minority that made emigration very difficult during socialist times. The actual dimensions of this Roma migration flow are difficult to estimate,<sup>28</sup> and figures tend to be inflated for political reasons. This is also linked to the fact that the Roma migration from Romania to Italy takes place within a broader migration flow between the two countries (Romanians are by and large the largest group of foreign residents in Italy),<sup>29</sup> which does not, of course, include only Roma.<sup>30</sup> Moreover, there is reason to believe

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27. For an anthropological view on begging, see Sabrina Tosi Cambini, *Sulla mendicITÀ oggi nelle città europee occidentali*, in *MENDICITÀ E STATO DI DIRITTO, RIFLESSIONI ED ESPERIENZE* [PROVISIONAL TITLE] (Alessandro Simoni & Giacomo Pailli eds., forthcoming 2016). On begging by Roma, see Leonardo Piasere, *Antropologia sociale e storica della mendicITÀ zingara*, 14 *POLIS: RICERCHE E STUDI SU SOCIETÀ E POLITICA IN ITALIA* 409–28 (2000). See also M.O. Jelili, *Street-Begging in Cities: Cultural, Political and Socio-Economic Questions*, 13 *GLOBAL J. HUM. SOC. SCI. SOCIOLOGY & CULTURE* 53–58 (2013).

28. The Italian research team of the EU-funded MigRom Project mapped out a detailed layout of the presence of Romanian Roma in Italy. According to the results of this preliminary stage of the research (data collected from April 2013 to January 2014), the team has estimated that at least 20,000 Roma migrated from Romania to Italy. “Due to the many difficulties in gathering data about Roma in general, and about Romanian Roma in particular, these data are most certainly incomplete and underestimated. However, they do offer important insights into the presence of these people in Italy.” *MIGROM12: REPORT ON THE PILOT SURVEY 2* (Stefania Pontrandolfo et al. eds., 2014), available at [http://profs.formazione.univr.it/creaa/files/2014/05/Report-on-the-Pilot-Survey\\_University-of-Verona1.pdf](http://profs.formazione.univr.it/creaa/files/2014/05/Report-on-the-Pilot-Survey_University-of-Verona1.pdf); see also Marianna Agoni, *Rom romeni in Italia: un quadro delle presenze*, in 6 *ITALIA ROMANI* (Stefania Pontrandolfo & Leonardo Piasere eds., 2016).

29. According to a national database, Romanian citizens are around 22.5% of the total number of foreign citizens living in Italy (in 2014, some 1,131,000 of a total of 5,014,000 foreign citizens). See *Data of the National Institute of Statistics of Italy*, <http://demo.istat.it/str2014/index.html> (last accessed Mar. 15, 2016).

30. About the life conditions, patterns of migration, experiences, motivations, and ambitions of Roma migrants from Romania to Italy, see Catalina Tesar, *Tra Torino e la Moldavia*, in *(ROM)ENI TRA L’ITALIA E TERRITORI DI PARTENZA. VITA QUOTIDIANA, RAPPRESENTAZIONI E POLITICHE PUBBLICHE* (2011); *MIGROM: REPORT ON THE FOLLOW UP SURVEY* (Stefania Pontrandolfo et al. eds., 2016).

that a huge number of Romanian citizens living in Italy, who could be considered Roma in “ethnic” terms, do not expose their ethnicity, which is often not so clear-cut.

Whatever their actual number, Romanian Roma beggars acquired an increased visibility in major urban centers due to their different begging techniques and clothing styles, which differed from the lower profiles kept by the Roma from former Yugoslavia. The sudden explosion of Roma visibility, linked to this “new style” of begging, had political consequences. At the national level, a right wing government introduced, in 2008, a package of “decrees on the nomad emergency”<sup>31</sup> that caused outrage in the international community. At the local level, policies against Roma and beggars cut across the political divide, with a broad consensus about minimizing as much as possible, the presence of Roma, now a group of “urban outcasts” regularly targeted by policing activities. While previously beggars were considered illegal immigrants and the legal tools for their removal could be easily found in immigration law, in the case of the Romanians, these possibilities were and are practically very limited because Romania is a EU member state.<sup>32</sup> This implied that efforts were to be made to find an alternative formal legal basis to “put pressure” on beggars to reduce their numbers and hopefully convince them to move to other towns—even at the expense of due process and rule of law standards.

The visibility of Roma beggars caused the mayors of major towns (a position that in Italy is increasingly used as springboard for a political career at the national level) and of all political affiliations to react to the requests made by their constituencies and the local media and take some sort of action. Considering the disappearance of criminal law provisions—and, in any case, the absence of a mayor’s power to direct the action of the national police<sup>33</sup>—many mayors tried to exploit the outer limits of the tools available to Italian municipalities in the current legal system. An interesting example, which occupied the headlines of the national newspapers for a significant time, is that of Florence, a city with a world-class historical heritage and a stable left-wing orientation in

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31. See Alessandro Simoni, *I decreti “emergenza nomadi”: il nuovo volto di un vecchio problema*, DIRITTO IMMIGRAZIONE E CITTADINANZA, 2008(3–4), at 44.

32. Citizens of Member States of the European Union enjoy the freedom of movement between Member States, subject to very limited exceptions. See Consolidated Treaty on the Functioning of the European Union arts. 49–55, May 9, 2008, 2008 O.J. (C 115) 47. See generally Sergio Carrera, *What Does Free Movement Mean in Theory and Practice in an Enlarged EU?*, 11 EUR. L.J. 699 (2005).

33. In Italy, the national police derive from various Ministries: the police from the Interiors, the *Carabinieri* from the Defense, and the *Guardia di Finanza* from the Treasury. The Mayor has no control over them, but has control over the local police, which in turn has limited competence.

its local administration, with the prior Mayor, Matteo Renzi, currently serving as Prime Minister. In 2007, under Mayor Domenici, the Municipality of Florence decided to take an energetic action against a specific form of “street-level economic activity” that was considered a hidden form of begging (i.e., the offer to clean cars’ windshields in the streets), performed basically only by young Romanian Roma. After a raging campaign by the local newspapers, the municipality adopted a strategy based on the issuance of ordinances from the mayor, a legal tool that would require the presence of an alleged “emergency situation” to which the mayor may react by introducing, on his own motion, necessary measures to “avoid serious dangers to the safety of the citizens,” without the necessity of previous approval by the assembly of the municipality (*Consiglio comunale*).<sup>34</sup>

Three different ordinances, each replacing the previous one, were issued in a very short span of time, and prohibited the activity of windshield cleaning. The first two ordinances even allowed for the possibility of applying financial fines and imprisonment for violating Article 650 of the criminal code, which penalizes breaching orders of authority “legally given for reasons of justice, public security, or public order, or hygiene.”<sup>35</sup> The reason for such “repetition” of ordinances was to keep pressure for a sufficient time notwithstanding the weakness of the legal bases, since, for reasons that would be cumbersome to explain in detail here, these ordinances were legally invalid and non-applicable on the basis of clear-cut precedents and well-affirmed statutory interpretations.<sup>36</sup> Issuing several ordinances in a row had the simple function of extending the time of uncertainty following the ordinance taking effect and the discovery of its legal shortcomings. The legal weaknesses of such instruments were so striking that the Public Prosecutor of Florence, who in ordinary circumstances does not intervene in local political issues, issued a public statement highlighting the impossibility of applying the criminal sanctions recalled by the ordinances.<sup>37</sup> In another statement made by Mr. Domenici, the mayor at

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34. The power rests upon art. 54 of the Consolidated Text on Local Municipalities. See Decreto Legislativo 18 agosto 2000, no. 267 (It.).

35. Codice penale [C.p.] art. 650 (It.). It should be also noted that, contrary to what may happen in some states in the United States, failure to pay an administrative fine in Italy does not lead to an escalation of measures into imprisonment or jail time.

36. See Alessandro Simoni & Fausto Giunta, *Il diritto e i lavavetri: due prospettive sulle “ordinanze fiorentine,”* DIRITTO, IMMIGRAZIONE E CITTADINANZA, 2007(3), at 81. Briefly, the weakness consisted in the clear absence in the circumstances of both the “emergency” and the “serious danger to the safety of citizens” requested by art. 54 of the Decreto Legislativo 267/2000 to enable the Mayor’s power to issue such orders.

37. Lettera 21 settembre 2007 ad oggetto denunce per articolo 650 cp nei confronti di “lavavetri, DIRITTO, IMMIGRAZIONE E CITTADINANZA, 2007(3), at 265.

the time, “[t]hese are the results we hoped and wanted,”<sup>38</sup> leaving little doubt about the actual strategy of the municipality, which was never aimed at *enforcing* the ordinances but simply at giving the local police an immediate short-term formal basis to put pressure on the persons in the streets by referring to the heavy sanctions mentioned in the ordinances.

The text of the ordinances and their format in the paper version are an interesting exercise in “psychological deterrence.” For example, the text of the first two ordinances contains a convoluted and unclear discourse when it comes to the legal basis (with obscure references to a number of laws and commas), and yet the plain and full text of the sanction (imprisonment) with regard to Article 650 of the criminal code, that was clearly not applicable in the case at hand. The third ordinance used a different approach, using as a legal basis a provision of the municipal police regulation in force at the time (established in 1932), which actually refers to the *prohibition of cleaning horses in the streets*.<sup>39</sup>

In practical terms, the ordinances served their intended purpose, since the “windshield cleaners” were removed from the streets or moved temporarily to other towns; yet, they slowly resumed their street-level activity in Florence in the form of “ordinary” “classical” begging with a few variations in technique and style. A part of those previously performing this activity most likely moved to other towns or to other activities, although empirical evidence of this can hardly be provided considering the absence of ethnographic studies or other reliable sources. In any case, while today at traffic lights in Florence it is possible to meet a few “ordinary” beggars, there are no more “windshield cleaners.”

The extreme “extralegal strategy” adopted by Florence is probably easily explained by the political context that, at the time, was likely to reward a left-wing administration choosing a “law and order” approach against marginal persons—a line that was otherwise monopolized by the political right. It worked, since it was applied over a relatively short period of time against a group of persons with extremely low awareness of their rights, and civil society organizations that gave priority to criticizing the administration on the media, rather than putting in place a structured legal reaction.<sup>40</sup>

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38. In Italian, *risultati sperati e voluti*. See Press Release, Ufficio stampa Comune di Firenze [Press Office of Florence] (September 21, 2007) (reporting the statements of mayor Domenici at a conference on immigration).

39. See Simoni & Giunta, *supra* note 36. The full text of all three ordinances can be downloaded from the website of the municipality of Florence, [www.comune.fi.it](http://www.comune.fi.it), or alternatively found in DIRITTO, IMMIGRAZIONE E CITTADINANZA, 2007(3), at 262, 263, and 266.

40. To be sure, there has been a legal initiative against the ordinances, which, however, proved unsuccessful. Basically, the City revoked the ordinance that was being objected to before the Admin-

However, due to its very nature, such approach could not serve as the default strategy when the administration later faced the fact that beggars did not disappear, but rather remained a regular and stabilized presence in the city. As we will see in the following sections, the pressure on marginal persons on the streets was still a priority of the administration. However, the season of the “emergency ordinances” was definitely over and, in 2008, the *Consiglio comunale*—following the correct legal procedures—abolished the old Municipal Police Regulation of 1932 and enacted a brand new Regulation on Urban Police.<sup>41</sup> This Regulation contains a provision, Article 15, with a long catalogue of “[b]ehaviors against hygiene, decency and peaceful relations,” according to which, “[e]xcept where a more serious criminal penalty applies,” it is forbidden

to engage in any behavior or conduct on public streets that may be a nuisance or a danger to other persons, and which creates an obstacle to pedestrian or car traffic, such as laying down on sidewalks or approaching cars on the streets, or disturbing persons in their homes or in the proximity of hospitals; all this, including when begging, with or without collection of signatures, or selling goods or offering services such as cleaning or washing car’s windshields or lights.<sup>42</sup>

Clearly inspired (in an almost “ethnographic” description style) by the past practices of “emergency ordinances,” this provision was the basis of a “new wave” of the “war to beggars” in the shadow of the Renaissance.<sup>43</sup> It must be noted that the provision (which has a substandard language quality for a normative text) does not forbid begging per se, but just mentions it as one of the contexts in which a “nuisance” can be produced. We now turn to the two cases that are currently under examination by the research team.

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istrative Tribunal and replaced it with a new ordinance with similar content. This move was enough to have the proceedings discontinued.

41. Regolamento di polizia urbana—Norme per la civile convivenza in città, Delibera del consiglio comunale [Resolution of City Council], 24 luglio 2008, no. 69.

42. *Id.* art. 15(e) (translated from Italian).

43. *Gli zingari e il Rinascimento. Vivere da Rom a Firenze*, or *Gypsies and the Renaissance: To Live as a Roma in Florence*, was the title of a vitriolic pamphlet of 1998 by the famous writer Antonio Tabucchi, who criticized the treatment of Roma (in that case Roma from former Yugoslavia) living in settlements near Florence.

## III. THE CASE ON THE DATABASE

On March 19, 2014, a piece appeared in the local edition of one of the main Italian newspapers, *la Repubblica*.<sup>44</sup> The article reported that the municipal authorities had told the author about the existence of a database of beggars developed by the local police, containing “the photos, number of tickets issued . . . , where they sleep, how many they are, if they suffer from any form of disability, how much do they make out of panhandling and why they do it” and a “mega map of all situations, names, last names, streets where they lie and crossroads where they stay.”<sup>45</sup> The article also contained other statements relating to the situation of beggars from the vice-mayor of Florence, who is the mayor of the city today, and the then-chief of local police, who is currently the head of legislative services for the incumbent Prime Minister.

The news appeared alarming under several points of view. First, the collection, retention, and processing of personal data is subject to data protection laws that provide strict requirements and limit the ability of public bodies to harvest such data short of a legislative justification.

Second, the news was published at a time when another worrisome activity by the local police of Florence seemed to emerge. Thanks to connections established between the team and a few Roma beggars, it was reported that during March 2014, and again at later stages, the local police issued a number of tickets for the violation of Article 15 of the aforementioned Regulation on Urban Police<sup>46</sup> against beggars of Roma origins. The brief handwritten notes on the tickets referred to “intruding begging” or to “begging with obstruction to pedestrian flow.”<sup>47</sup> In the period of March through April 2014, at least ten tickets were issued to three women of Roma origins, members of the same family group. Furthermore, two more were issued during October 2014 and another two during October 2015.

The existence of this database and the fining issue, when considered singularly, could raise per se many legal issues, but the context surrounding the implementation reinforced the feeling that Florence had put in place a scheme to target beggars. Most likely, the aim was, and still is, to remove such beggars from the public spaces at the touristic center of the city. Furthermore, all of this should be understood in light of the national discourse on Roma and beggars in

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44. *La povertà in città 220 mendicanti: ecco la mappa*, LA REPUBBLICA (Mar. 19, 2014), <http://ricerca.repubblica.it/repubblica/archivio/repubblica/2014/03/19/la-poverta-in-citta-220-mendicanti-ecco.html>.

45. *Id.*

46. *See supra* notes 41–42 and accompanying text.

47. The tickets are on file with the research team.

general, which seems unequivocally directed at identifying them as a nuisance that should be corrected or removed.

At this time, having received a formal power of attorney from the three women, the small team from the University of Florence decided to investigate both issues and explore the legal recourse available. This section will first address the database, followed by the tickets.

With reference to the database, the legal basis of the initiative is the Italian Data Protection Code (the Code),<sup>48</sup> under which “any person is entitled to the protection of their personal data.”<sup>49</sup> Personal data is defined as “any information relating to an identified or identifiable natural person [i.e. the ‘data subject’], either directly or indirectly, in particular by reference to one or more factors, including an identification number.”<sup>50</sup> The Code also identifies a special category of “sensitive data” that is entitled to a greater degree of protection, including “personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs . . . and the processing of data concerning health or sex life.”<sup>51</sup> The reference to the beggars’ disabilities that appeared in the newspaper article represents sensitive data.

The Code grants a person the right to access any personal data and allows them to be: (1) provided with the source of the data; (2) told the purpose of the data and means by which it is collected and processed; and (3) assured that personal data referring to her is corrected or deleted.<sup>52</sup>

Accordingly, the team sent a formal notice to the City of Florence, with a copy to the Italian Data Protection Authority (IDPA), requesting confirmation as to whether the local police had collected and processed any personal data referring to the three Roma women for the “database” mentioned in the news article. Furthermore, the notice required, in case of a positive answer, disclosure of the data and the origin of said data to the women. The letter requested a response within fifteen days, in accordance with the Code.<sup>53</sup>

The City never responded to the request or to subsequent requests. Nor did the IDPA take any action. The City’s silence reinforced the suspicion that there might be some truth behind the newspaper article

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48. The Data Protection Code, Decreto Legislativo [Legislative Decree] 30 giugno 2003, no. 196 (It.), was implementing a directive of the European Parliament and of the Council. *See* Council Directive 95/46, 1995 O.J. (L 281) 31 (directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data).

49. D.Lgs. 196/2003 art. 1 (translated from Italian).

50. *Id.* art. 4(1)(b).

51. *Id.* art. 4(1)(d).

52. *Id.* arts. 7–8.

53. *Id.* art. 146(2). The letter is on file with the authors.

regarding the existence of a database and, if so, that the City might not have a legal basis for it.

Things only changed when the team decided to push the matter further and began legal proceedings against the City to obtain a reply and a disclosure of the contents of this alleged database. Thereafter, the team filed a petition with the Court of Florence and requested the Court to order the City to disclose any relevant material requested and that the journalist be compelled to disclose the sources of the material collected for his article. Finally, the petition asked that some witnesses be allowed to testify.<sup>54</sup>

This action had two consequences. First, the City was now obligated to file a reply at the risk of defaulting in the legal action.<sup>55</sup> Further, due to news coverage of this petition,<sup>56</sup> the IDPA submitted a request to the City of Florence for the same information as had been requested by the team.<sup>57</sup>

During the suit, the City basically referred to the reply it had prepared for the IDPA, in which it denied the existence of the alleged database and dismissed the news article as unsubstantiated. The City hypothesized that the author of the article had confused two elements: (1) the existence of a map and documents relating to beggars, but containing no personal data; and (2) data collected by the local police during a separate, but unspecified, investigation of a possible racket involving Romanian citizens that allegedly led to unspecified arrests and convictions.<sup>58</sup>

The legal action before the Court of Florence is presently pending. Of possible interest to an American audience is that the judge in charge of the case has denied most of the plaintiffs' evidentiary requests and

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54. The petition is on file with the authors. Readers are surely not familiar with the main differences existing between United States and Italian civil procedure. By way of extreme simplification, in Italy there is no jury, punitive damages, distinction between trial and pre-trial, nor an extensive discovery process like that governed by Rule 26 of the U.S. Federal Rules of Civil Procedure. See, e.g., GIACOMO PAILLI & NICOLÒ TROCKER, *Italian Civil Procedure*, in FUNDAMENTALS OF ITALIAN LAW 163–83 (Alessandra De Luca & Alessandro Simoni eds., 2014); see also MAURO CAPPELLETTI & JOSEPH PERILLO, CIVIL PROCEDURE IN ITALY (1965).

55. However, default under Italian civil procedure does not represent either an admission of liability nor does it entitle the party to request a default judgment be issued against the defaulting party. Proceedings must be carried out *in absentia* and the plaintiff still has to prove her case. On the history of the right to privacy in Italy, see Guido Alpa, *The Protection of Privacy in Italian Law: Case Law in a Codified Legal System*, 12 TUL. EUR. & CIV. L.F. 1 (1997).

56. See, e.g., *Mendicanti, l'ultimatum del garante: "Spiegate quel database,"* LA REPUBBLICA FIRENZE (Dec. 29, 2014), [http://firenze.repubblica.it/cronaca/2014/12/29/news/mendicanti\\_1\\_ultimatum\\_del\\_garante\\_spiegate\\_quel\\_database-103975924/](http://firenze.repubblica.it/cronaca/2014/12/29/news/mendicanti_1_ultimatum_del_garante_spiegate_quel_database-103975924/).

57. The official letter of IDPA (file number U.0036772) to the municipality is dated December 17, 2014, and is on file with the authors.

58. The reply brief of the City is on file with the authors.

permitted only the journalist to testify. The judge denied all discovery requests and requests for the testimony of both the then-chief of the local police and the Mayor.<sup>59</sup> Further, subsequent to the journalist's testimony and the identification of his sources (especially those alerting him to the existence of sensitive data), the judge denied the plaintiffs' request to obtain their testimony.<sup>60</sup> Regardless of the ultimate outcome of the case, and resisting the temptation to draw conclusions from a single example, these events suggest that the Italian courts may not be supportive of this type of litigation.

The idea that the pending lawsuit might be a case of public interest, and potentially deserved different treatment, did not even surface. Discovery, a fundamental tool in U.S. litigation, normally plays a very limited role in the procedural law of Italian civil law systems. But even within such narrow limits, the judge denied every request made. In a case where the news regarding the possible existence of a database was revealed almost by chance, and where the (alleged) "database" is entirely within the sphere of control of the defendant, no discovery means essentially no possibility to effectively vindicate the plaintiffs' (and public's) rights relating to the protection of personal data.

Here, all the defendant needs to do is to continue to deny the existence of any personal data. Instead, the burden of proving the existence of the database lies with the plaintiffs, who have no realistic prospect of discharging such a burden. Additionally, the deference given to high-ranking officers of the government through the excuse of their testimony, along with the refusal to require testimony from other persons to whom the testimony of the single witness referenced (e.g., members of the local police) makes it hard for the plaintiffs to discharge their burden of proof.

Serious questions are thus raised as to whether Italian procedural and evidentiary law—and the narrow interpretation given by the courts—allows public interest litigation in cases in which the plaintiff does not already happen to have sufficient proof of the defendant's fault. Those cases deserve a higher degree of attention by the courts; otherwise, rights risk remaining simply formal declarations on the books.<sup>61</sup>

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59. Being formally the defendant, Italian civil procedure forbids the Mayor to be heard as a witness, due to the incompatibility of the position of parties and witnesses. *See* Codice di procedura civile [C.p.c] arts. 117, 228, 246 (It.).

60. The minutes of the hearing are on file with the authors.

61. Everything we have described in this Part should be read against the backdrop of the Right to Protection of Personal and Sensitive Data, a fundamental right enshrined in Articles 7 and 8 of the Charter of Fundamental Rights of the European Union (CFREU) and Article 8 of the European Convention on Human Rights (ECHR). *See* Charter of Fundamental Rights of the European Union, arts. 7–8, Dec. 7, 2000 (2000 O.J. (C 364)) [hereinafter CFREU]; Convention for the Protection of Hu-

#### IV. THE CASE RELATING TO THE REGULATION ON URBAN POLICE AND REPEATED TICKETS ISSUED AGAINST BEGGARS

Along with the information about the database, the three Roma women provided the team with several tickets issued by the local police in March or April of 2014 for alleged violations of Article 15 of the Regulation on Urban Police. The tickets contained generic references to “begging with obstruction to pedestrian flow” or to “begging in an annoying manner.”<sup>62</sup> The team, again after receiving a specific power of attorney, began a dialogue—more accurately, a monologue—with the City.

From a substantive point of view, the tickets presented several challenges. Some of the challenges pertained to the tickets themselves and included the vagueness of the descriptions of the conduct that led to the alleged infractions. Furthermore, Article 15 of the Regulation on Urban Police is also suspect because of its wording—which, in broad and vague terms, encompasses a range of behaviors with an unclear reference to begging—notwithstanding the fact that it is now a lawful activity. Thus, the regulation may have a discriminatory purpose or impact. Finally, the selective and discriminatory application of Article 15 by the local police may also be questioned. As with the database, however, the procedural aspects pose the greatest obstacle.

The Italian system of administrative fines is complex. Along with civil and criminal liability, civil law systems such as Italy’s recognize a third source of liability, “administrative liability,” that appears in state and local regulations and ordinances concerning a variety of fields that

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man Rights and Fundamental Freedoms, art. 8, Nov. 4, 1950, 213 U.N.T.S. 221 [hereinafter ECHR]. Article 7 of CFREU, titled “Respect for private and family life,” provides: “Everyone has the right to respect for his or her private and family life, home and communications.” CFREU, *supra*, art. 7. Article 8 of the same, titled “Protection of personal data,” provides:

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

*Id.* art. 8.

Article 8 of the ECHR, titled “Right to respect for private and family life,” provides:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ECHR, *supra*, art. 8.

62. *See supra* note 47 and accompanying text.

range from traffic to import/export to local police. Any such administrative power and regulation must be authorized by an enabling law.<sup>63</sup> In the present case, the legal basis is a 1981 law that provides for the decriminalization of a number of felonies and misdemeanors and establishes general criteria for administrative prohibitions and fines.<sup>64</sup>

Under this law, fines are issued pursuant to a two-step procedure. First, a ticket is issued by the public body (e.g., the local police) describing the facts, the conduct of the alleged infringer, and serving notice to the infringer of the provisions that are deemed violated.<sup>65</sup> The ticket, however, is not the fine. Typical of a civil law system, the ticket, having been drafted by a public officer, has an “increased,” or elevated evidentiary value (“public faith”).<sup>66</sup>

Once the ticket is issued, the alleged infringer may choose among the following: (1) doing nothing and waiting for the fine to be issued, (2) paying a reduced fine<sup>67</sup> within sixty days (thereby admitting liability), or (3) disputing the ticket within thirty days.<sup>68</sup> Crucial to the case at hand, the law neither expressly provides, nor prohibits, judicial review during this phase.

The second step of the procedure is a decision by the local police to either issue a fine or to dismiss the charges, based on an analysis of the ticket and of any defense filed. The amount of the fines are determined by the police, and range between € 80.00 and € 500.00, as allowed by the Regulation on Urban Police, and within the boundaries set by the

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63. For a panoramic view on the Italian system of administrative law, old but gold, see G. Miele, G. Cotzi & D. Falconi, *Italian Administrative Law*, 3 INT'L & COMP. L.Q. 421 (1954). See also Daria de Pretis, *Italian Administrative Law Under the Influence of European Law*, 1 IT. J. PUB. L. 6 (2010).

64. Legge di depenalizzazione [Decriminalization Law], 24 novembre 1981, n. 689 (It.).

65. Not all administrative fines are based on this law, which, nonetheless, provides the general principle in the field. One notable example is traffic tickets which are based on a legislative decree and do not require the two-step procedure described in the text: the ticket issued by the police for a violation of traffic law is both a notice of violation and an injunction to pay the fine. See Decreto Legislativo, 30 aprile 1992, n. 285 (It.).

66. Such increased evidentiary value is based on a theory of “public faith” for statements made by a public officer. See Codice civile [C.c.] arts. 2699–2700. Not all that is stated is covered by an increased evidentiary value. A difference is usually made between extrinsic and intrinsic elements. Only extrinsic elements, what a public officer says happened and any third party statements given to the officer, are covered. Other elements, such as the validity of the content of third party statements, may be freely evaluated by the judge. “Public faith” means that one cannot object or bring adverse evidence disputing the facts as reported by the public officer or asserting that the alleged infringer did not perform the cited act. The only recourse is to bring special and cumbersome proceedings alleging forgery of the ticket. Through forgery proceedings known as *querela di falso*, it can be objected that the ticket has been materially forged or that its content has been falsely reported (and which may also lead to criminal proceedings being brought against the forger).

67. The reduced fine is equal to twice the minimum fine, in this case € 160.00. See L. n. 689/1981 art. 16.

68. *Id.* art. 18.

previously mentioned law no. 689 of 1981.<sup>69</sup> In the case at hand, the team timely filed statements of defense on behalf of the three women against all sets of tickets arising from a number of occasions.<sup>70</sup> The City never replied to any of these defenses, nor made any decision on whether to issue the fine or dismiss the charges. Two years have passed since the date of the first ticket, and the tickets are still in limbo. The explanation is probably that the real purpose the City and local police pursue when issuing such tickets against the beggars is not to collect a fine or enforce a prohibition on a certain conduct, but rather—as already seen in the context of the “emergency ordinances”—to exercise a *de facto* physical power over the persons (beggars) with the goal of removing them from the city center. Once the beggars have left their place of begging (only to return later, often within a few hours or days), the City loses interest. Realizing that they will never be able to collect fines from indigents, the authorities are unconcerned with completing the administrative procedures and performing the actual issuance of fines.

It should also be noted that beggars typically have limited resources and seldom present a statement of defense against a police ticket. In the case at hand, where assistance was provided by the team, the City may have an additional reason for inaction on the tickets. As explained below in greater detail, the tickets are in a legal state where no judicial review is allowed. When—or if—the City makes a decision on the tickets, there will be consequences: if the City actually issues fines, the infringers (here, the three Roma women) will be entitled to challenge the fines before a court and to present all their arguments. Judging from the fact that these three women are represented by attorneys and have already brought an action on the database, the City may reasonably expect that such a challenge would be filed. In such a forum, the fines, the local police’s conduct and the Regulation on Urban Police would all be subject to judicial review, albeit with certain limitations,<sup>71</sup> and likely result in negative consequences for the City’s strategy against beggars.

Alternatively, in the unlikely event that the City accepted the arguments presented in the statements of defense and dropped the

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69. L. n. 689/1981 art. 10.

70. The statements of defense were filed twice in March 2014, once in November 2014, and again in November 2015.

71. According to L. n. 689/1981, the competent judge to hear challenges against fines is the ordinary judge. Such a judge does not have the power to strike down an illegal administrative act, but is only entitled to adjudicate on its lawfulness for the purposes of deciding the challenge: in this sense the judge may declare that the regulation is not valid, but such declaration would only have effect for the purposes of annulling the challenged fines. Jurisdiction over Art. 15, which the Regulation struck down, would lie with the Administrative Tribunal, but—for technical reasons that are beyond the scope of this short contribution—it is not possible to bring such a challenge. It is another legal loophole, in addition to that described in the text.

charges, it might induce the City and the local police to modify their behavior and, possibly, to stimulate a debate on the lawfulness of the Regulation on Urban Police itself. The City would be admitting to wrongdoing and that should be subject to consequences.

Instead of choosing one of these two roads, neither of which is particularly appealing or risk-free, the City simply chose the safest alternative: do nothing and avoid both judicial review and an admission of wrongdoing. The Italian legal system apparently allows the City to do so and deprives the three women of their right to be heard and to challenge the tickets and the local police conduct.

To analyze this point, another jump into the complexities of the Italian system is required. Normally, all public bodies are required to conclude administrative procedures within a time limit as specified by the law. If no specific time limit is set by a law, the default term is thirty days.<sup>72</sup> After the term has expired, if no special rules apply,<sup>73</sup> the failure to issue an act or decision concluding the administrative procedure is considered unlawful.<sup>74</sup> Against such “unlawful silence,” any interested party may file a petition before the Regional Administrative Tribunal for an order to the public body to issue an explicit decision.

The catch is that when a procedure concerning a fine under the law no. 689 of 1981 is involved, this mechanism does not apply. The law is silent on the matter, and in principle the thirty-day limit of Article 2 should apply. But courts are constant in stating that, in the context of fines, the law of 1981 lays down a comprehensive body of rules displacing the law no. 241 of 1990.<sup>75</sup> The courts also regularly hold that thirty days is too short to allow the public body to make a decision and apply the only other time limit found in the law no. 689 of 1981; specifically the five year statute of limitation housed under Article 28.<sup>76</sup> This means that any public body (here, the City of Florence) has five years to make a decision on whether to issue a fine based on the ticket. In the abstract, an alleged infringer would have to wait five years in order to determine whether the charges from the ticket would actually turn into a fine or be dismissed. During this period, the alleged infringer lives under

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72. Legge 7 agosto 1990, n. 241 art. 2 (It.).

73. There are cases in which silence by a public body may either mean approval or rejection of an application. These cases are provided for by the law, and normally silence has no specific meaning. See Vera Parisio, *The Italian Administrative Procedure Act and Public Authorities' Silence*, 36 *HAMLIN L. REV.* 3 (2013).

74. L. n. 241/1990 art. 2 (It.).

75. See, e.g., TAR Lazio, Roma [Regional Administrative Tribunal], sez. II, 9 giugno 2011, n. 5146, *Foro amm.* (It.); Cass. civ. [Italian Supreme Court], sez. V, 11 giugno 2010, n. 14104, *Giust. civ. mass.* 2010, 6, 901 (It.).

76. See, e.g., Cass. civ., sez. II, 23 gennaio 2007, n. 1401, *Guida al diritto* 2007, 18, 77; Cass. civ., sez. un., 27 aprile 2006, n. 9591, *Giust. civ. mass.* 2006, 4; *Foro amm.* CDS 2006, 7–8, 2144.

the “threat” that the public body could issue a fine. If it were to issue such a fine, then the alleged infringer would only have thirty days from the day it has been served upon her to challenge the fine.<sup>77</sup>

To make things worse, another line of established case law excludes the possibility for an alleged infringer to challenge the fine and seek judicial review of the local police ticket while the five year term is pending. According to the Italian Supreme Court, before the actual fine is issued, because no breach of a person’s rights has taken place, the alleged infringer has no “interest” to bring an action or to seek judicial review.<sup>78</sup>

Neither line of cases is exempt from critique, but the consequence of reading them together is that on one side, the City is under no obligation to make a decision on whether or not to issue a fine—it may simply let the time lapse until the five year statute of limitation runs out, after which the entire matter becomes moot. On the other side, the alleged infringers—the three Roma women—cannot seek judicial review against the local police ticket, the local police conduct, or challenge the legality of the Regulation on Urban Police, until a fine is issued, which most likely will never occur. As a result, the City and the local police can continue removing beggars from the city center, without the possibility of bringing this conduct under judicial scrutiny.

Luckily, this is not the whole story. Even if no ordinary or administrative court is available in Italy to hear the pleas of the Florentine beggars, this does not mean that there are no other avenues. Geographically adapting the old saying, “There will be a judge in Strasbourg,”<sup>79</sup> the legal loophole that prevents the Roma beggars from challenging the conduct of the local police before an Italian judge may entitle the three women to claim a violation of their right to access a court as provided by Article 6(1) of the European Convention of Human Rights.<sup>80</sup> Since the famous and early decision in *Golder*,<sup>81</sup> the European

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77. Decreto Legislativo 1 settembre 2011, n. 150 art. 6 (It.).

78. See Cass., sez. lav., 23 aprile 2012, n. 6344 (It.), and Cass., sez. un., 16 dicembre 2008, n. 29349 (It.), where “interest” is used in a technical sense, Codice di procedura civile [C.p.c.] art. 100.

79. “There will be a judge in Berlin” is an old saying referring to the existence of an independent judge, allegedly pronounced by a German miller in the eighteenth century facing the threat of expropriation addressed to him by the emperor Frederick the Great.

80. Art. 6(1) states:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent

Court of Human Rights (ECtHR) has repeatedly stated that every person has the right of access to court. Furthermore, this right entails that the state cannot restrict or eliminate judicial review in certain fields or for certain classes of individuals.<sup>82</sup> In the court's view, "[f]or the right of access to be effective, an individual must have a clear, practical opportunity to challenge an act that is an interference with his rights."<sup>83</sup> One, perhaps the sole, option that may be pursued in this case, is to petition the Strasbourg Court for a declaration that the women's right of access to the court for judicial review of the tickets has been violated, as well as shed light on local police behavior and on the Regulation on Urban Police. Additionally, the court might possibly indicate measures that the State should adopt to remedy such violations.

#### CONCLUSION

As we have shown, notwithstanding the decriminalization of adult begging, beggars are still perceived by the community as a nuisance that should be removed. Under pressure from its constituencies, local municipalities have passed a number of measures targeting beggars and their activities. Despite their generally unsound legal bases, all these measures empower the local police to effectively push beggars away from the public space. While some of these measures have been successfully challenged during the years, there is a wide gap between beggars and access to justice.

We are trying to fill this gap, starting with an experiment in Florence, and challenge these practices as discriminatory and against basic rule of law principles. In our path, however, we are encountering several obstacles. The case on the database showed two of them: (1) Italian judges, who often act as high-level bureaucrats, may not be culturally inclined to support public interest litigation; and (2) there are procedural limitations, particularly relating to the collection of evidence and discovery, that may effectively bar any realistic attempt to bring and win a particular case. The matter relating to tickets shows a different set of obstacles: (1) a legal loophole that prevents judicial review of the tickets, and, through that, (2) the behavior of the local police and the Regulation on Urban Police.

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strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

ECHR, *supra* note 61.

81. *Golder v. United Kingdom*, 1 Eur. H.R. Rep. 524 (1975).

82. Among the many, notable decisions, we highlight the famous *Airey v Ireland*, 2 Eur. H.R. Rep. 305 (1979), where the court stated that access to court must be substantial, not merely formal, i.e., that indigents must be allowed to have legal aid.

83. *Bellet v. France*, App. No. 23805/94, Eur. Ct. H.R. (Ser. A) at ¶ 36 (1995).

We are committed to overcoming these obstacles and limitations and to seeking ways or alternatives to ensure that the rule of law is upheld and potentially discriminatory practices and regulations are subjected to judicial scrutiny. We pledge, in future research, to carry out statistical studies to gain a better and more accurate picture of the phenomenon and of its impact, as well as to expand the scope of our analysis beyond the city of Florence to other Italian cities, and to the regulation and practices relating to begging. Our ultimate goal being to bridge the distance between Roma, beggars, and the rule of law, furthering the Access to Justice movement that was, long ago, very vibrant in Florence.<sup>84</sup>

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84. We are referring here to the monumental work of the late Mauro Cappelletti, Professor of Law at the University of Florence, the European University Institute, and Stanford University. *See generally* ACCESS TO JUSTICE (M. Cappelletti et al. eds., 1978).