3

Legal frameworks

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Work, work, work …

'Work, work, work …' is the mantra of any integration plan and programme, of any public discourse on migration and, interestingly enough, it is also the mantra of most migrants I have met, interviewed and talked with in the last ten years of research activity in the migration domain.

'Work, work, work …' because the demography of third country nationals (TCNs) in the European Union shows a population mainly concentrated in the working age (15–64 years old); because TCNs' propensity to work remains high; because the EU member states' labour markets need workforce, especially in those economic sectors that nationals tend to neglect, if they can; because the EU member states' welfare regimes need TCNs' contribution to resist the impact of an ageing native population; because the political discourse based on the paradigm 'integration through work' works in political terms, across the left/right divide; because evidence-based data of 'integration through work' show that it works, even though not as smoothly as political discourses depict it; because the dignity of people strongly depends on their capacity to be self-sufficient, to secure their livelihood and to support families and loved ones.

'Work, work, work ...', though, might be much more difficult than it may appear. First, because the labour market is not an open-access source for TCNs, who require a permit to work; second, because due to a number of reasons (fragmentation of labour markets, obstacles in skills and qualification recognition; national preference clauses, and so on) TCNs experience a mismatch between their competences and the job opportunities available to them much more often than nationals; third, because when they work, often their working conditions are worse than those of nationals. Therefore, more frequently than should be the case, TCNs are denied access to the labour market, they end up accepting unqualified jobs or resort to entering the informal labour market.

The aim of the chapter is to explore migrants, refugees and asylum seekers' integration legal framework in the European labour markets across several European countries, in the light of the notion of legal status, in order

to critically discuss if and how the very way in which TCNs' legal statuses are designed by current migration law is intended to foster integration or, on the contrary, tends to create legal peripheries. Legal peripheries are not understood, for the purpose of current analysis, as geographical spaces, but rather as immaterial spaces where the actual enforcement of rights is at odds with the formal recognition of equality, dignity and fundamental rights. Legal peripheries are immaterial spaces defined by a series of unbalanced relations that cripple the empowering and emancipatory potency of rights and of the rule of law. As will be discussed, for certain categories of TCNs, the peripheral legal status has a 'ghetto effect' and does not allow the person to move from periphery to semi-periphery and centre, creating a vicious circle of legal rights downsizing. Under this perspective, the chapter intends to contribute to existing scholarship on migrants' integration in the labour market by advancing knowledge on legal statuses, a subject that has generally attracted scant attention coupled with labour market integration.

The data this chapter is based on have been collected in the Czech Republic, Denmark, Finland, Greece, Italy, Switzerland and the UK; at the time of the analysis, six countries were EU member states and one (Switzerland) a non-EU member. These countries represent diversity under several aspects crucial to the discussion of the chapter hypothesis. They mirror the diversity of European landscapes in terms of state structure, system of government, rights enforcement and litigation, the political system, and also migration flows and migration governance regimes, labour market structure and economic parameters, rules on labour market access and working conditions, as well as Europeanisation processes. The importance of the Europeanisation of both migration (either forced and non-forced migration, even though at different pace) and labour market rules is irrefutable. Nonetheless, with regard to non-forced migration, the European common immigration policy 'shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed' (Article 79(5), Treaty on the Functioning of the European Union [TFEU]). Forced migration, that implies people seeking protection in the EU, is, on the other hand, mainly disciplined, at the European level, with the legal instrument of the Directives, that leave quite a broad space of manoeuvre to member states. Moreover, the increasingly multilevel nature of European migration governance, that incorporates international, supranational, national, subnational and even local rules, coupled with a multiplicity of actors operating at (and often also across) each level, tends to mitigate the harmonisation effort of the common European immigration and asylum policies. And this is why, in this chapter, much space will be devoted to national legislation.

The chapter uses primarily the methodology of comparative law, favouring an approach open to other sciences and consistent with the 'methodological pluralism' (Scarciglia, 2015), which implies an integration of different research methods (functional, structural, systematic and critical method) in connection with the research question (Frankenberg, 2012). Consistently with the dynamic nature of the object, a multifactor analysis is proposed, carried out with a necessarily interdisciplinary methodological approach not only in the context of legal fields but also with other complementary social sciences (Hirschl, 2014).

The chapter starts with a brief introduction on the notion of legal status, its importance in migration law and in migration governance, to develop the analysis on TCNs' integration in European labour markets along two different steps in labour market integration: accessing the labour market and working under the same conditions as nationals (and Europeans). In the conclusion, some hypothesis on how to mitigate the legal status 'ghetto effect' will be advanced.

Legal status and the ghetto effect

In legal terms, legal status is the position that a person, an entity (association, company, institution, and so on) or a good has in the legal system and the set of mutual relations that exist between the person, entity or good and the legal system. That is to say that legal status defines the standing of the person, entity or good in the society from a legal point of view. It is a relational notion, that may vary over time, and it has a vertical dimension, defining the position of the person, entity, good vis-à-vis the state, and a horizontal one, that defines the multiple relations vis-à-vis the other subjects of the legal system.

The legal status of a person can be defined as 'her legal position or conditions', that is the aggregate of rights and duties attributed to a given person, as a subject of law, in a given community (Rescigno, 1973: 211). This means that there is a triangulation of relations that include the person, the state and the members of a given community in the definition and recognition of those rights and duties.

Reframing Eric Hobsbawm's renowned reflection on identities, legal statuses 'are not like shoes, of which we can only wear one pair at a time' (Hobsbawm, 1996: 171). 'We are all multi-dimensional beings', as Hobsbawm's quote continues, makes sense also in legal terms. Each person can be contemporarily, for example, a citizen, a full-time employee, a spouse, a parent, a shareholder, and so on, without any major conflict among those statutes. But when it comes to foreigners, and more specifically, to TCNs, the question becomes thornier and more complex.

To foreigners, legal status means 'the rights afforded or denied by the State' (Sohn, 2014: 371) depending on the foreigner's entry channel on the

one hand, and 'upon the specific choices undertaken by each legal system with reference to: *a*) different kinds of legal status recognised to migrants; *b*) criteria which the migrant has to fulfil in order to obtain a specific legal status; *c*) rights and duties related to this status', on the other hand (Federico and Pannia, 2019: 18). When the overarching legal status is not the citizen one, the coexistence of several statuses may become limited or even impossible. TCN seasonal workers, for example, are often not recognised the right to family reunification in our case studies. Also, in Italy, beneficiaries of humanitarian protection (the national temporary protection regime that has undergone major changes in the last few years) cannot convert their permit into a working permit, even if they do have a job.

Moreover, in all the countries there is a 'proliferation of legal statuses' (Zetter, 2007: 175), a continuous trend towards the multiplication of extremely specific statuses, each tailored to fit a very narrowly determined case. Paradigmatic is the case of Italy, where more than 40 different legal statuses exist for foreigners. This creates a very complex 'set of requirements and rights, a normative labyrinth, which is extremely difficult to navigate' (Federico and Pannia, 2019: 32) for migrants first, but also for the multiple actors that populate the migration governance system and for the labour market actors, which quite often are hampered rather than facilitated by the legal system in the process of inclusion of TCNs in the labour market.

A further characteristic of legal statuses in all the countries we have been studying, except Finland, is their rigidity, that is to say that passing from one to another may be long, heavy in terms of documents to be attached and costly, therefore TCNs tend to remain captured in the status allocated them when they first enter the country (obviously this does not apply to the asylum seeker status, that is a transitional status that shall 'naturally' change either into a protection status or into an expulsion order), thus limiting the possibility of profiting from opportunities of advancing in the social (and legal) ladder.

Legal statuses, in fact, are not on the same level, but rather organised in a hierarchy in terms of number and wideness of rights (Federico and Baglioni, 2021). At the top, in all countries, there are refugees, beneficiaries of subsidiary protection; at the bottom, asylum seekers and short-term economic migrants, whose uncertain (for the former) and extremely temporary (for the latter) relation with the state and the community heavily impacts on the set of rights and duties coupled with their status: their family reunification rights are very limited (for asylum seekers) or totally denied (for short-term economic migrants), they rarely fully benefit from unemployment allocation (Italy and Switzerland are the two countries that are more generous towards those categories of TCNs) and tend to be excluded from education and vocational training (that are even more limited for short-term economic migrants). At the very bottom, with almost no

rights except the fundamental human rights, lie undocumented migrants, whose position is extremely vulnerable, even when, as in the case of irregular caregivers and domestic workers, their contribution to the economic and welfare system is crucial (Ambrosini, 2010; Triandafyllidou, 2013; Mullally and Murphy, 2014).

As we will argue in the concluding reflections, the intertwin between narrowness, rigidity, hierarchy creates a legal 'ghetto' effect: TCNs are captured into legal categories that are ill-suited to favour their integration into Czech, Danish, Finnish, Greek, Italian, Swiss and British labour markets and relegate them to marginal positions. Furthermore, such a vicious intertwine may also come at odds with TCNs' fundamental rights and mark a regression of the whole legal system to a pre-modern era, when a multiplicity of statuses allocated to people according to their socio-economic corporative conditions prevailed over the broader empowering status of citizens.

Rights, work and integration

If, when and how migrants, asylum seekers and refugees integrate into the labour market determines their prospects for integrating socially and economically into European societies, and it is needless to spend additional words on what literature and empirical evidence has already widely proved (Ruiz and Vargas-Silva, 2017, 2018; Marbach et al, 2018; Zwysen, 2019; Brell et al, 2020). If, when and how depend on many factors, pertaining on the one hand to external factors (economic system, legal and policy framework, trade unions and third sector activism, and so on) and, on the other, to individual ones (psychological attitude, skills and capacities, gender and gender roles in both origin and hosting societies, social capital, and so on). The legal framework, while belonging naturally to the external factors category, bridges the two levels, as it allows certain individual factors to get transposed and become relevant for the external one (through the recognition of qualifications and skills, for example). This transposition largely relies on the TCN's legal status, as her/his legal status depends a wide range of employment-related conditions and rights.

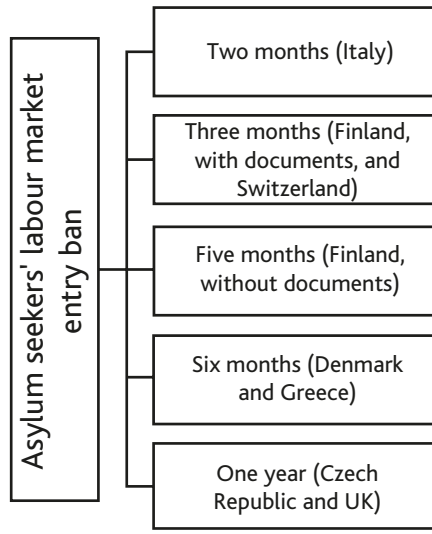
First, the very access to the labour markets. Here, the data gathered in the SIRIUS research clearly point to a major barrier that determine a crucial cleavage between national and European workers, on the one hand, and TCN ones, on the other; and other cleavages among TCNs themselves. Nationals and Europeans have free access to EU member states' labour markets, whereas TCN workers are required to have a permit to work that depends on labour markets needs for economic migrants (it is up to each member state to determine the 'volumes' of admissions that Article 79(5) of the TFEU refers to) and on their legal status in the case of forced migrants. Refugees, beneficiaries of subsidiary protection and their family members

enjoy a full right to work, and this limits the barriers to access the labour markets to other factors that are discussed in other chapters of the volume (see Chapters 4 and 7). The same applies to beneficiaries of national forms of temporary protection, but with some further restrictions: in Switzerland they must have an additional permit to work and in Italy, when the protection status expires, they cannot convert their permit to stay and work into a working permit. Much more complex is the position of asylum seekers. As already mentioned, the asylum seeker's status is necessarily time-limited and transitional (all TCNs' statuses are time-limited except for permanent residents, but they are not transitional) and this could, somehow, justify a restricted access to the labour market (the state is given the time to scrutinise the application and either grant protection or deny it and expel the TCN, before letting them enter the labour market). Decisions on asylum applications, however, may take a long time and, as already highlighted, early integration in the labour market is desirable to foster integration in European societies, to alleviate the pressure on public expenditure, and it can also contribute to address labour markets shortages (UNHCR, 2013), therefore it is reasonable that asylum seekers are able to enter the labour markets as soon as possible, and as smoothly as possible.

Asylum seekers experience time limitations in all our countries (Greece was the only exception until December 2019, when asylum seekers were allowed to work as soon as they lodged their application. But since January 2020 the new International Protection Act L.4636/2019 has introduced a six-month employment ban for asylum seekers). Some allow asylum seekers to work after a short period (Italy after 60 days, Switzerland after three months, Denmark and Greece after six months), while others prevent them accessing the labour market for at least one year (the Czech Republic and the UK – in the latter, the one-year ban from the labour market stretches for even longer periods given that only those applicants who possess high skills can enter after one year and the rest have to wait until their claim is assessed, which can take up to two or even more years). In Finland there are two different options: asylum seekers can work three months after lodging their application if they travel with valid identification documents, or after five months if they do not possess such documents. Even though not central to the reasoning of the chapter, this brief overview of the time limitations on asylum seekers accessing employment nourishes some considerations concerning harmonisation at the EU level: six (at the time of the research) EU jurisdictions present six different time limits for asylum seekers to access domestic labour markets, as clearly illustrated in Figure 3.1, with obvious impacts on the harmonisation of the integration processes.

Entering the labour market, however, can be obstructed also regardless of TCNs' statuses. In several countries the national preference clause, which may have a constitutional recognition as in the case of Article 4 of the

Figure 3.1: Asylum seekers' labour market entry ban

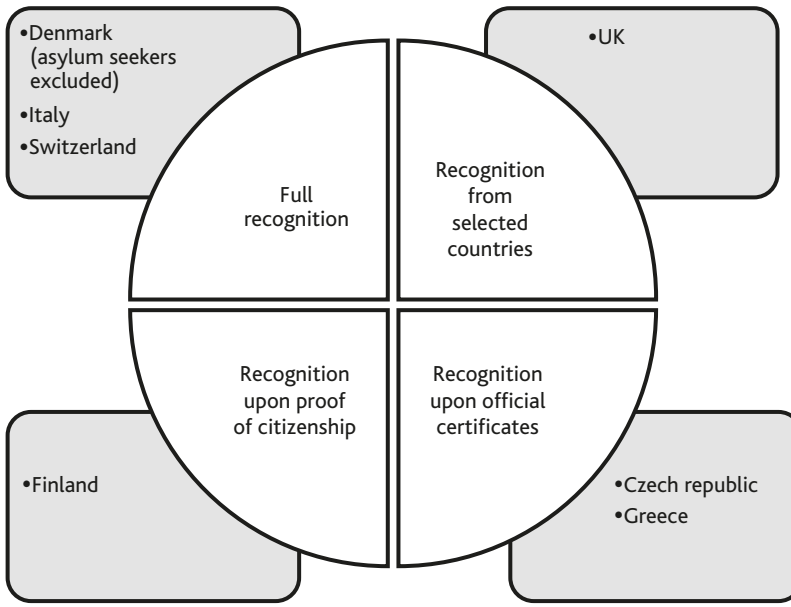


Italian constitution, or may be entrenched by specific laws, as is the case in Switzerland and in Finland, establishes that nationals and EU citizens shall have priority in accessing the labour market. This clause goes beyond the labour market test that, as already noted, is a guiding principle for granting the permit to stay and work to economic migrants, and grants that, in case of competition, nationals and EU citizens shall prevail over foreigners. Citizens first.

Accessing the labour market does not mean that TCNs are offered the job they are qualified for, or the one they strive for. As existing literature has widely demonstrated, TCNs tend to be relegated into dirty, dangerous and dull jobs that nationals and European workers try to avoid (Favell, 2009; Lim, 2021). This phenomenon is the output of a multiplicity of interrelated causes (segmentation of labour markets, discrimination, low skills, national preference clause, and so on), three of which relate to the legal framework and legal statuses: the recognition of qualifications (illustrated in Figure 3.2) and the possibility of attending both language courses and vocational training.

Only Denmark, Switzerland and Italy (with the exception of asylum seekers who are excluded from recognition in Denmark and have to provide formal evidence of their qualifications in Italy) are open to the recognition of foreign titles and qualifications, even though in Italy the recognition process is often long and complex. The UK recognises exclusively qualifications from selected countries of origin, based on a common table of conversion. In the Czech Republic and in Greece, the formal equalisation of qualifications is substantially undermined by the requirement of the official certificates issued

Figure 3.2: Recognition of qualifications of third country nationals



by competent authorities. Of course, this may be considered fair towards economic migrants, who, in principle, can plan their migration trajectory, whereas forced migrants will hardly bring proof of their diplomas, and presenting them to national authorities. In between lies Finland, where not diplomas but proof of citizenship is required to allow for fair conversions. Noticeably, in all countries where this is allowed, TCNs must apply for recognition through specific administrative proceedings. In the most favourable of cases, as in Finland, this is done during the application process. Understand and being understood in the host society is of paramount importance for integration, and surely for accessing and remaining in the labour market. It goes without saying that in no country there are barriers to admission-with-fee courses, but what happens to destitute TCN workers? Language courses are not offered for free everywhere. In this field, much space is left for collaboration with non-state entities, both non-profit and for-profit companies. Attending language courses is rarely a duty imposed on non-EU foreign workers, and where there is no duty, the state has no responsibility in organising free language courses. The duty exists solely in those countries where attending civic integration programmes is compulsory: in Denmark for all forced migrants, and as a requirement for those economic migrants applying for permanent residency; in Finland for refugees, beneficiaries of subsidiary protection as well as for short- and long-stay economic migrants some welfare benefits, such as unemployment benefits, are conditional on

participation in integration programmes that include language courses. De facto this creates a duty, whereas it is not compulsory for asylum seekers. In Italy language proficiency is requested for both integration agreements (for refugees and beneficiaries of the national short-term protection regime) and integration programmes (for long-staying economic migrants), whereas for asylum seekers some reception centres impose a duty on language course attendance. No duty exists in the Czech Republic, Greece, Switzerland (except for short-term economic migrants in those cantons where signing an integration convention is required to access social assistance) and the UK.

Vocational education and training is a relevant component of current active labour market policies, a useful tool to facilitate migrants, refugees and asylum seekers' integration into their host societies (Flisi et al, 2016). Vocational qualifications can be particularly valuable for skilled refugees and economic migrants to find adequate employment, while for illiterate and poorly educated refugees and migrants, long-term vocational programmes could be a strategic target for emancipation and advancement in the social ladder. In Greece and Finland, all migrants except undocumented people can access vocational training on the same basis as Greek and Finnish citizens (see Table 3.1). In Italy and in Switzerland, in addition to the undocumented migrant exception, asylum seekers may be restrained from vocational training either because there are no courses available in the reception centres (the Italian case), or because the course's length exceeds the asylum seeker's temporary permit to stay. In Denmark, only refugees, beneficiaries of subsidiary protection and of the Danish national form of temporary protection are entitled to vocational training, from which economic migrants are excluded, whereas in the UK, even though not formally entitled to by specific legal provisions, vocational training is open to refugees and beneficiaries of subsidiary protection (that in the UK is named humanitarian protection). By contrast, asylum seekers are excluded, but not in Scotland, where devolved legislation opens the door of vocational training also to them. Economic migrants may benefit from these measures, but with limits due to the type of visa they hold. Finally, in the Czech Republic neither asylum seekers nor short-term economic migrants nor beneficiaries of national forms of temporary protection can access vocational training, that is open to refugees, beneficiaries of subsidiary protection and long-term economic migrants, who, in case of unemployment, can participate in the retraining schemes available to nationals.

Again, this is a rather diverse scenario across countries and across statuses, that makes it more difficult, for certain categories of TCNs, to fully make good use of their eventual capacities, skills and competences. Legal barriers tend to strengthen social prejudices and contribute relegating TCN workers to unskilled, low-paid occupations. An additional brick in the wall of the 'ghetto effect'.

Table 3.1: Vocational training and education

	Refugees	Subsidiary protection	National protection	Asylum seekers	Short-term economic migrants	Long-term economic migrants	Undocumented
Czech Republic	Yes	Yes	No	No	No	Yes	No
Denmark	Yes	Yes	Yes	No	No	No	No
Finland	Yes	Yes	Yes	Yes	Yes	Yes	No
Greece	Yes	Yes	–	Yes	Yes	Yes	No
Italy	Yes	Yes	Yes	Depending on time limits	Yes	Yes	No
Switzerland	Yes	Yes	Yes	Depending on time limits	Yes	Yes	No
UK	Yes	Yes	Yes	No (yes in Scotland)	Yes (depending on visa)	Yes (depending on visa)	No

Once in the labour market, the countries considered here enforce the joint principles of equality in working conditions and benefits and of non-discrimination for all, regardless of their citizenship or length of stay in the country. In the field of non-discrimination, several European directives (Directive 2000/43/EC against discrimination on grounds of race and ethnic origin; Directive 2006/54/EC on equal opportunities and equal treatment of women and men in employment and occupation; Directive 2007/78/EC against discrimination at work on grounds of religion or belief, disability, age or sexual orientation) have played a crucial role in harmonising legislation in the different jurisdictions (Gropas, 2021). Therefore, no legal discriminations exist with reference to the principle of 'equal pay for equal jobs'. But legal statuses, nonetheless, maintain their importance for granting several connected rights, which have a very significant impact on how people work and on the 'inclusion through work' paradigm.

The first testbed of this is the right to receive unemployment benefits, summarised in Table 3.2. Switzerland and Italy are the countries that present fewer restrictions in accessing unemployment benefits: all are entitled as nationals are, except, in Switzerland, asylum seekers not allowed to work, but asylum seekers can qualify for unemployment allowances after two years of contributions – which is a tricky condition to impose on people with a temporary status. In Denmark, only refugees and long-term economic migrants holding a permanent residency permit can receive unemployment benefits. In Finland, unemployment benefits are made conditional upon permanent residency, which entails that neither asylum seekers nor short-term economic migrants are included. In Greece, refugees, beneficiaries of subsidiary protection and long-term economic migrants can access the unemployment register and receive all benefits and services as Greek citizens do, whereas asylum seekers

Table 3.2: Unemployment benefits

	Refugees	Subsidiary protection	National protection	Asylum seekers	Short-term economic migrants	Long-term economic migrants	Undocumented
Czech Republic	Yes	Yes	No	No	No	Yes	No
Denmark	Yes	No	No	No	No	Yes (but with permanent residency)	No
Finland	Yes	Yes	No	No	No	Yes (but with permanent residency)	No
Greece	Yes	Yes	N/A	Yes (after application)	No	Yes	No
Italy	Yes	Yes	Yes	Yes	Yes	Yes	No
Switzerland	Yes	Yes	Yes	After two years of contribution	Yes	Yes	No
UK	Yes	Yes	Yes	No	No	Yes (but with permanent residency)	No

can do so only after having completed the application procedure. The situation in the UK is not so different, since refugees and beneficiaries of subsidiary protections are equalised to British citizens, but long-term economic migrants must be granted indefinite leave to remain in the UK in order to claim benefits. Similarly, in the Czech Republic, solely refugees, beneficiaries of subsidiary protection and long-term economic migrants are entitled to benefits.

Similarly, retirement benefits are not granted to all TCN workers in all the countries: asylum seekers are denied retirement benefits in all countries except in Greece, Italy and Switzerland (where they are entitled to receive the part of their contribution if they had contributed to the retirement fund). Refugees, beneficiaries of subsidiary protection and of the national forms of temporary protection are recognised retirement benefits on the same basis as nationals, even though under some conditionalities. In Finland, three-year residence in the country is required, for example. Full retirement benefits are granted also to long-term and short-term economic migrants (with the three-year residence condition in Finland), except in the UK, where solely long-term economic migrants can claim pension benefits.

A third domain in which to explore the importance of legal statuses to discuss the 'integration through work' paradigm is the enforcement of the right to self-employment. This is a quite interesting domain: in self-employment

Table 3.3: Right to self-employment

	Refugees	Subsidiary protection	National protection	Asylum seekers	Short-term economic migrants	Long-term economic migrants	Undocumented
Czech Republic	Yes	Yes	Yes	No	No	Yes	No
Denmark	Yes	Yes	Yes	No	Yes (but with a specific visa)	Yes	No
Finland	Yes	Yes	Yes	Yes	Yes (but with a specific visa)	Yes	No
Greece	Yes	Yes	N/A	No	Yes	Yes	No
Italy	Yes	Yes	Yes	Yes (but de facto no)	Yes (but not seasonal workers)	Yes	No
Switzerland	Yes	Yes	Yes	No	Yes (but with a specific visa)	Yes	No
UK	Yes	Yes	Yes	No	Yes (but with a specific visa)	Yes	No

the rhetoric of the 'job-stealer foreigner' works differently, as it also has a different effect on the process of social and cultural integration through the labour market, and therefore we could expect a different pattern of rights across legal statuses (as laws are the product of political mechanisms that quite often, especially in the field of migration, respond more to perceptions of the reality than to evidences [Maggini, 2021]). In all jurisdictions refugees and beneficiaries of subsidiary and national temporary protection can work as self-employed, and the same applies to long-term economic migrants, as it can be observed in Table 3.3. The strongest restrictions exist for asylum seekers and short-term economic migrants. In the Czech Republic, also short-term economic migrants are permitted to be self-employed, whereas in Denmark, in the UK and in Switzerland, asylum seekers cannot, and for short-term economic migrants the right to self-employment is only accessible to those who have been granted a visa specifically for starting a business in Denmark, the UK or Switzerland. In Finland, self-employment is open to asylum seekers under the same conditions of employee work: after three months of residence for those who have valid travel documents, and five for those that have not. Short-term economic migrants who go to Finland to set up an enterprise need to apply for the residence permit for self-employed persons. Greece limits self-employment only to asylum seekers, whereas in Italy there is no specific restriction for asylum seekers, but a number of corollary rules that

limit asylum seekers range of rights de facto severely undermine this right, and foreign seasonal workers are not allowed to be self-employed.

Particularly interesting is the position of short-term economic migrants: in principle they are not denied the right to self-employment, that is to say that setting up a business, even for a short period, is generally welcomed in the countries discussed, but this shall be decided in advance, before the migration journey, and authorised *ex ante* by the hosting state. On the one hand, this responds to the trivial understanding that setting up a business requires a good deal of preparatory activities, but, on the other, especially in the field of small artisan businesses or care and cleaning businesses, the rigidity of legal statuses impede short-term TCN workers to become self-employed, unless undergoing a brand-new permit request. And this may lead them to prefer to turn to the irregular labour market.

To conclude: how to transform legal status into enablers?

In the previous section, solely the most common and broad legal statuses have been discussed, but, as highlighted, in each country, especially in the fields of non-forced migration and of the national forms of temporary protection, a plethora of narrow statuses exist, so that, for example, babysitters have a different status, with different rights, benefits and duties attached, than au pairs or caregivers.

If legal status is a 'technique through which the law differentiates the individuals' (Alpa, 1993: 3), and it is legitimate in principle, as it ensures that each person, entity or good is attributed a clear and peculiar position in the legal system, this differentiation shall be reasonable and fairly applicable, as all legal instruments shall. What happens to legal statuses applied to TCNs, on the contrary, is that borders between them are hard and difficult to overcome, and they are static instruments, deemed to provide for the governance of one of the most fluid and dynamic social phenomena. Not surprisingly, 'the close and static nature of legal status complicates and stiffens the migration processes, narrowing the room for social mobility and integration opportunities' (Federico and Pannia, 2019: 34). This phenomenon exacerbates the fragmentation and the sectorialisation of the TCN's position in society.

What is even more critical is that legal statuses are not equalised, but rather hierarchically structured. 'If we compare legal statuses across types of migrants, in all the countries examined here we can see the creation of a hierarchy in terms of access to rights and therefore in terms of capacity and opportunity of integration' (Federico and Baglioni, 2021: 16). As it clearly emerges from the analysis of the previous section and as anticipated in the introduction, refugees and, to a lesser extent, beneficiaries of subsidiary protection and long-term economic migrants are at the top of the hierarchy, endowed with the broader and stronger sets of rights, whereas at the bottom

of the hierarchy we find asylum seekers, and just above them, short-term economic migrants, both categories of migrants with the most restrictive access to rights and entitlements allowing them to enter an integration path. The different layers of the hierarchy, however, are inversely populated in relation to rights' broadness and strength. The lower layers of the legal and social pyramid are the most populated, and the top the least, which means that the large majority of TCNs living in the Czech Republic, Denmark, Finland, Greece, Italy, Switzerland and the UK are entrapped in a legal relation with the other members of the community and with the state that hinders their integration opportunity.

Legal processes have resulted in many forms of clustering, as this is the way the law defines the position of people, entities and goods, as already mentioned. But the dividing lines between those clusters should be porous and allow for legal and social mobility, otherwise clustering becomes segregation, and this creates ghettos. As geographers and social scientists show, '[s]egregation is the process by which a population group … is forced to cluster in a defined special area. … Segregation is the process of formation and maintenance of a ghetto' (Marcuse, 2005: 16). 'Customarily, the ghettos were enclosed with walls and gates and kept locked at night' and on particular occasions, as the *Britannica* encyclopaedia tells us. Our research seems to suggest that something similar happens with legal statuses, as they become non-spatial *loci* where TCNs are enclosed with gates made by the legal denial of certain rights, whose recognition, by contrast, would allow them to work as nationals and Europeans do. Against the aspiration of living a decent life, the ghetto effect created by the narrowness and rigidity of legal statuses contributes to pushing TCNs into irregularity, with detrimental consequences for people and communities.

Out of the hierarchy, irregular migrants are excluded from the discourse of integration via labour markets. They do not have the right to have rights, except for the very fundamental ones recognised to every human being in democratic systems. In certain countries like Italy, however, when they work, irregular TCNs are also entitled to workers' rights. Their irregular position should not exempt employers from providing fair working conditions, but we know too well that this very seldom happens and that there is an almost direct causal relation between irregularity and exploitation (Triandafyllidou and Bartolini, 2020).

SIRIUS research data clearly shed light on the critical aspects of contemporary legal statuses attributed to TCNs in the Czech Republic, Denmark, Finland, Greece, Italy, Switzerland and the UK, but at the same time they equally clearly suggest possible strategies to mitigate those criticalities.

First, simplifying and reducing the number of statuses, making each of them more comprehensive and also more easily knowable and applicable by

both migrants themselves (building on TCNs' agency in determining the legal status they strive for) and migration governance actors in EU member states. Navigating the complexity of migration laws and authorities is already a challenge (Federico and Pannia, 2021; Pannia, 2021); evidence shows that adding the intricacy and involution of legal statuses creates more barriers than enablers (Federico and Baglioni, 2021).

Second, making the transition from one legal status to another simpler, less costly in terms of fees, time and competences required, and subject to more limited conditions. Personal, social and economic factors change, and they do so even more rapidly for people involved in migration processes. If legal statuses accompany rather than hinder those transformations, the gap between how migrants could contribute to host societies and how they actually do so can be reduced, with benefits for migrants' personal wellbeing as well as for society.

Making more employment-connected rights available to a larger number of categories of people impacts on integration processes, but also on the democratic quality of our countries and of the EU. Living in the 'age of rights' (Bobbio, 1990) means recognising that democratic systems depend on people's rights.

References

Alpa, G. (2013) *Status e capacità, la costruzione giuridica delle differenze individuali*, Roma-Bari: Laterza.

Ambrosini, M. (2010) *Richiesti e respinti: l'immigrazione in Italia: come e perché*, Milan: Il Saggiatore.

Bobbio, N. (1990) *L'età dei diritti*, Turin: Einaudi.

Brell, C., Dustmann, C. and Preston, I. (2020) 'The labor market integration of refugee migrants in high-income countries', *Journal of Economic Perspectives*, (34)1: 94–121.

Britannica, 'Ghetto', Available at: https://www.britannica.com/topic/ghetto

Favell, A. (2009) 'Immigration, migration, and free movement in the making of Europe', in J. Checkel and P. Katzenstein (eds), *European Identity*, Cambridge: Cambridge University Press, pp 167–189.

Federico, V. and Baglioni, S. (2021) 'Europe's legal peripheries: Migration, asylum and the European labour market', in V. Federico and S.Baglioni (eds), *Migrants, Refugees and Asylum Seekers' Integration in European Labour Markets: A Comparative Approach on Legal Barriers and Enablers*, Cham: Springer, pp 1–18.

Federico, V. and Pannia, P. (2019) 'Migrants' legal statuses in contemporary Italy: First attempts of conceptualization', *Percorsi Costituzionali*, 1: 17–36.

Federico, V. and Pannia, P. (2021) 'The ever-changing picture of the legal framework of migration: A comparative analysis of common trends in Europe and beyond', in S. Barthoma and A.O. Cetrez (eds), *RESPONDing to Migration: A Holistic Perspective on Migration Governance* , Uppsala: Acta Universitatis Upsaliensis, pp 15–43.

Flisi, S., Meroni, E.C. and Vera-Toscano, E. (2016) 'Educational outcomes and immigrant background'. Available at: https://publications.jrc.ec.europa.eu/repository/handle/JRC102629

Frankenberg, G. (2012) 'Comparative constitutional law', in M. Bussani and U. Mattei (eds), *The Cambridge Companion to Comparative Law*, Cambridge: Cambridge University Press, pp 171–190.

Gropas, R. (2021) 'Migrant integration and the role of the EU', in V. Federico and S. Baglioni (eds), *Migrants, Refugees and Asylum Seekers' Integration in European Labour Markets: A Comparative Approach on Legal Barriers and Enablers*, Cham: Springer, pp 73–93.

Hirschl, R. (2014) *Comparative Matters: The Renaissance of Comparative Constitutional Law*, Oxford: Oxford University Press.

Hobsbawm, E. (1996) 'Language, culture, and national identity', *Social Research*, 63(4): 1065–1080.

Lim, D. (2021) 'Low-skilled migrants and the historical reproduction of immigration injustice', *Ethical Theory and Moral Practice*, 24(5): 1229–1244.

Maggini, N. (2021) 'Between numbers and political drivers: What matters in policy-making', in V. Federico and S. Baglioni (eds), *Migrants, Refugees and Asylum Seekers' Integration in European Labour Markets: A Comparative Approach on Legal Barriers and Enablers*, Cham: Springer.

Marbach, M., Hainmueller, J. and Hangartner, D. (2018) 'The long-term impact of employment bans on the economic integration of refugees', *Science Advances*, (4)9: 1–6.

Marcuse, P. (2005) 'Enclaves yes, ghettos no', in P. Varady (ed), *Desegregating the City: Ghettos, Enclaves, and Inequality*, Albany: State University of New York Press, pp 15–30.

Mullally, S. and Murphy, C. (2014) 'Migrant domestic workers in the UK: Enacting exclusions, exemptions, and rights', *Human Rights Quarterly*, 36(2): 397–427.

Pannia, P. (2021) 'Tightening asylum and migration law and narrowing the access to European countries: A comparative discussion', in V. Federico and S. Baglioni (eds), *Migrants, Refugees and Asylum Seekers' Integration in European Labour Markets: A Comparative Approach on Legal Barriers and Enablers*, Cham: Springer, pp 49–71.

Rescigno, P. (1973) 'Situazione e status nell'esperienza del diritto', *Rivista Diritto Civile*, I: 211–212.

Ruiz, I. and Vargas-Silva, C. (2017) 'Are refugees' labour market outcomes different from those of other migrants? Evidence from the United Kingdom in the 2005–2007 period', *Population, Space and Place*, (23)6: 1–15.

Ruiz, I. and Vargas-Silva, C. (2018) 'Differences in labour market outcomes between natives, refugees and other migrants in the UK', *Journal of Economic Geography*, (18)4: 855–885.

Scarciglia, R. (2015) 'Comparative methodology and pluralism in legal comparison in a global age', *Beijing Law Review*, 6(1): 42–48.

Sohn, J. (2014) 'How legal status contributes to differential integration opportunities', *Migration Studies*, 2(3): 369–391.

Triandafyllidou, A. (2013) *Irregular Migrant Domestic Workers in Europe: Who Cares ?*, London: Routledge.

Triandafyllidou, A. and Bartolini, L. (2020) 'Irregular migration and irregular work: A chicken and egg dilemma', in S. Spencer and A. Triandafyllidou (eds) *Migrants with Irregular Status in Europe*, Cham: Springer, pp 139–163.

Zetter, Z. (2007) 'More labels, fewer refugees: Remaking the refugee label in an era of globalization', *Journal of Refugee Studies*, 20(2): 172–192.

Zwysen, W. (2019) 'Different patterns of labor market integration by migration motivation in Europe: the role of host country human capital', *International Migration Review*, (53)1: 59–89.