



1 Rights and Legal Status

Asya Pisarevskaya & Peter Scholten

1.1 Introduction

This chapter discusses research that explores the role of legal status in the process of migrant integration. Rights in this chapter are understood as legal and social principles defining entitlements of people in a specific legal system. Rights of foreigners are closely linked with the legal status they have in the legal systems of the receiving country. Legal status could act both as a barrier and as facilitator in the integration process of migrants by limiting or granting rights to legal employment, welfare support, education, health care, protection, and many other areas of life (Ager and Strang 2008). In this chapter we aim to provide a synthesis of the research findings on this complex topic by looking specifically at the implications of different legal statuses, and rights linked to it for the population of post-2014 immigrants in European countries. We will review the evidence looking at variation of rights linked to the statuses of recognized refugees and persons under subsidiary protection, tolerated persons, other non-humanitarian legal statuses and migrants without a legal status (undocumented migrants). We will summarize research on relevant policies determining and assigning legal statuses and granting or limiting rights of immigrants. For instance, policies aimed at fast-tracking asylum

procedures or regularisation of undocumented migrants. These discussions are closely intertwined with questions of citizenship in a broad sense – who is considered a citizen in the European nation states and what is the role of citizenship in integration of migrants. It also explores literature on non-discrimination laws and regulations, which govern many migrant rights. Finally, the chapter reviews research examining overarching rights and obligations, territorial restrictions, and integration requirements.

Migrant rights is a well-established area of research. The differentiation of migrants’ rights according to legal status is often explored in the literature, as well as cross-country comparisons regarding the rights extended to newcomers and how these differences might be explained. Civic integration requirements, and their effects on naturalization and long-term residence status, have also received significant research attention in recent years with their increased use across Europe.

Rights are fundamental normative rules regarding what people are allowed or not allowed to do, and what obligations the state has towards them. First and for most, the democracies still have to abide by human rights, which all people are entitled to (Ambrosini 2016). As defined by the Universal Declaration of Human Rights (UDHR) there are 30 basic human rights which include, for example, right to life, freedom, equality, dignity, no slavery, no torture, equality before the law, right to fair trial, right to asylum, right to nationality, rights to marry and have a family and many others⁵. In relation to immigration, there are several types of rights that need to be distinguished: 1. Immigration rights - the rights allowing to cross international borders legally; 2. immigrant citizenship rights – which are activated once the border of the nation state is crossed and are accessed, setting out the way they will be incorporated into the nation state (Koopmans and Michalowski 2017). Migrants are only entitled citizenship rights if they have a legal status (Kraler 2019). Such legal status varies among immigrants, and their ascribed rights vary accordingly.

This chapter starts with an overview of the main topics examined by literature of the last decade in relation to legal status, rights, and non-discrimination. Then we discuss the main findings from the literature regarding the situation of post-2014 migrants in terms of legal statuses, rights, and citizenship. After that we will present the dominant policy framings and objectives that have been found by the researchers in relation to rights, legal status, and their role in shaping migrant integration process. Next, we will present, the most researched implementation practices that are aimed at expansion of migrants’ rights and facilitation of integration. The last part will look into the effectiveness of these measures in achieving policy objectives and reducing inequalities.

1.2 Research on legal status, rights and non-discrimination in integration process

The word-cloud overview of titles of recent publications (Fig.1) demonstrates that the analysed evidence deals with groups of asylum seekers, refugees and irregular migrants and focus on such issues as citizenship, naturalisation, rights, protection, legal statuses and civic integration.

⁵ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

A rich body of research documents the negative consequences of the lack of rights in a variety of integration domains such as health, employment, or housing, as discussed more extensively in the respective chapters in this report. Particularly, literature on undocumented migrants highlights how the lack of rights impedes integration and leads to exclusion and marginalisation of newly arrived migrants. The research project *INSIDE the deportation gap* (*INSIDE the Deportation Gap - Social Membership for Non-Deported Persons*, n.d.) examines how the limiting of rights for irregular migrants is used as a tool of migration control (Ataç and Rosenberger 2019). Policies regarding the change of immigration status have received increasing research attention in recent years, examining more broadly the status transitions when the reasons of migrants' stay change (European Migration Network 2016), as well as focusing on regularisation of undocumented migrants (Kraler 2019; Bonizzoni 2017; Chauvin, Garcés-Mascreñas, and Kraler 2013) or fast-tracking procedures for asylum applicants (Kagan 2017; Asylum Information Database (AIDA) 2017; Ghezelbash 2021; Reneman and Stronks 2021). Literature on regularization investigates the impact of status transitions on opportunities for migrants (Kraler 2019).

Figure 1: Key-words from the titles of the reviewed literature (excl. 'immigrant' and 'migrant' and variations of those)



Regularisation leads to large improvements in migrants' agency, for instance allowing them to open a bank account and move around the host country without the threat of deportation. Moreover, regularisation is found to drastically enlarge the employment opportunities for migrants across most European countries. Regularization allows migrants to choose better jobs in different areas of the host country and change fields of occupation. It is important to note, however, is that regularisation was not always perceived to improve employment opportunities in some countries. For example, in Poland, many migrants in informal work did not see their situation bettered by regularisation, in fact, it only added a level of bureaucracy that further limited their agency. Kraler (2019) suggests that regularisation does not create the most positive changes in employment opportunities for immigrants in countries very much impacted by economic crises. Overall, the EU is split in the impact that regularisation has on migrants: in northern EU states, including the Netherlands and Sweden, being irregular is more detrimental compared to being irregular in southern states, where there with irregular status have more opportunities and less formal exclusion. Consequently, the process of regularisation has far greater positive impact in the northern states, removing their social exclusion, than in the southern states (Kraler 2019; Chauvin, Garcés-Mascreñas, and Kraler 2013).

Studies on naturalisation and access to citizenship also often analyse these processes and formal requirements to be accepted into citizenship. The acquisition of citizenship of the receiving country often seems to be the ultimate formal step in completing the integration trajectory from

foreign newcomer to the citizen and (formally) equal member of the receiving society. The projects ‘Access to Citizenship and its Impact on Immigrant Integration’ (ACIT) (Bauböck et al. 2013) and ‘Migrant Life Course and Legal Status Transition’ (MiLifeStatus) provide important examples of evidence on these topics (‘MiLifeStatus’ 2017). There is also a consensus among researchers that legal status transition is no ‘magical device’ that guarantees integration. Formal integration is only a part of the complex and multifaceted integration process and even with citizenship of the receiving country migrants can be excluded and discriminated against by the mainstream population and state institutions. However, it is also confirmed that there are forms of citizenship that exist beyond (and sometimes despite of) limited rights and formal exclusion in the cases of irregular migrants (Chauvin and Garcés-Mascareñas 2014; 2012).

Comparative research examines different citizenship regimes (Vink 2017b) and what might have influenced the states to extend or restrict immigrants’ rights (Koopmans and Michalowski 2017). Further studies analyse the difference of migrants rights linked to various legal statuses, as well as how this differs per country (Chetail, De Bruycker, and Maiani 2016; Carmel and Paul 2013; European Migration Network 2020). Researchers also highlight the importance of distinguishing between rights and practices, arguing that looking at formal rights alone might not be an accurate representation of how these are experienced by newcomers (Huddleston 2020; Ambrosini 2016; Huddleston and Falcke 2020). There is a significant strand of literature which examines the local level implementation of certain rights, examining, or even advocating for, regimes of ‘urban citizenship’, in which undocumented migrants that are excluded from formal systems of the nation state are granted some rights in the municipalities where they live (Bauder and Gonzalez 2018; Gebhardt 2016a; 2016b; Kos, Maussen, and Doomernik 2016; ‘StatusCities Project’ 2020; Bauböck and Orgad 2020; Spencer and Delvino 2019). Civic integration requirements and their effect on regulation of migrants’ rights have been critically examined in academic literature too (Bonjour and Duyvendak 2018; de Waal 2021; Böcker and Strik 2011).

There is also a body of literature examining how migrants including rejected asylum seekers, persons in protracted asylum procedures, people with humanitarian statuses of limited time duration or restrictive conditions, and recognised refugees with limited de-facto rights slip into precarious statuses or situations for prolonged periods of time. The TRAFIG project recently published two reports on these issues using the notion of “protracted displacement” to refer to such conditions (Roman et al. 2021; Christ et al. 2021). Protracted displacement refers to a “particular social condition of insecurity, vulnerability and dependency” (Etzold et al. 2019, 14), “a specific social constellation, in which the capabilities of displaced persons to rebuild their lives after displacement and the opportunities available to do so are severely limited for prolonged periods of time” (Etzold et al. 2019, 20). Furthermore, migrants experiencing protracted displacement will have decreased levels of agency, either through marginalisation, poor networks and connections, and reduced mobility, or all three. To illustrate this, one can look at Greece during the refugee crisis in 2015. After the crossing of over 855,000 migrants through Greece to the rest of Europe in 2015, migration channels subsequently tightened up, such as the route through the Balkans. As a result, many migrants that travelled to Greece with dreams of continuing north, ended up with their mobility reduced and getting stuck for long

periods of time, such as the 23,540 asylum seekers in Greek camps awaiting their application results for many months and years.

Literature on non-discrimination law and its link to integration processes is mainly discussed within the subject area of legal studies. This research is case-law specific, that is based on previously established judicial decisions, and is less focused on integration consequences for migrants (Brinkmann 2015; de Witte 2011; Reisel 2015; Wrench 2013; Muir 2011). One article by (Añon 2016) explicitly discusses antidiscrimination laws and policies as a way to improve integration policy. While another study also focuses on the local level of governance and examines the role of cities in anti-discrimination policies (Grigolo 2011). Another key work on the topic is written by Moritz Jesse ‘The Civic Citizens of Europe’. It analyses the legal frameworks within which inclusion of immigrants into receiving societies take place, it investigates “whether the legal potential for integration in the EU is sufficient for the inclusion of immigrants” (Jesse 2017).

Figure 2: Geographical locations in the titles of reviewed literature. Bigger size – more frequency



In terms of geographical focus of the analysed studies, we can see on the word-cloud (Fig 2.) that besides studies on various European countries, there is also research on the local level, including cities like Amsterdam, Turin, Berlin, Vienna, Barcelona and Calais. The countries, most frequently represented in the research are the Netherlands, Germany and Italy.

1.3 Formal integration of migrants in terms of rights and non-discrimination

In this section we will present the findings of literature on the extent of formal integration of post -2014 migrants in the European countries. By formal integration we mean the integration into the legal systems of the receiving countries and the extent to which the rights of newly arrived migrants are equal to those of citizens.

First of all, the research evidence points that there is a great variation in Europe from country to country. Some legal statuses are regulated by the EU and therefore are present in nearly all Member States. Such rights are linked to minimum standard of rights, including civic, economic and social rights. The EU sets out how different categories of migrants have different levels of such rights, however, the member states are permitted to opt-out or be flexible with the implementation (Carmel and Paul 2013). The statuses that are linked to more than a minimum standard of rights, are regulated by different national laws and are acquired under differentiating conditions in various countries. Bloemraad and Sheares (2017) review how this differs across European countries. Evidence demonstrates that for a migrant from a poorer country, their chances of successfully gaining citizenship double if they were to apply in Sweden than in Hungary. The reasons for such difference, according to the authors, are linked to post-

colonial histories of Europe and political orientation of the governing parties. Studies have demonstrated that, from a historical perspective, **post-colonial powers** now tend to have **more open citizenship** than non-colonisers, because having strong civic relations with colonies was a key political move. Other studies have revealed that left leaning parties tend to call for more open citizenship, with right leaning parties favouring stricter citizenship allowances, such as in granting citizenship only upon the basis of language skills and high fees for application (Bloemraad and Sheares 2017).

The range of different legal statuses also varies from country to country (as described in detail in the EMN report (European Migration Network 2020). This is what is referred to as “complex stratification” (Carmel and Paul 2013) or civic stratification (Kofman 2002). A comparative analysis of the different categories of migrant rights in the EU across three dimensions of rights (economic, civic and social) demonstrated that the different categories of migrants are stratified in terms of granted rights. For example, asylum seekers have to wait between 6-12 months, according to EU directive, before being able to work, whereas posted workers must only work with the agreed upon employer for a maximum of two years. In theory, this would create a clear hierarchy of migrant statuses based upon the rights they permit. However, reality presents itself differently. This stratification is very complex, with some migrant categories having more social rights but another having more economic rights; the hierarchy is largely inconsistent.

Moreover, legal statuses bearing the same name may have different meaning in different EU countries and carry different rights and entitlements. The study of Hajer compares the Netherlands with Italy and how they treat undocumented migrants. With the dichotomous admission policy of the Netherlands, those without a legal status are entirely excluded from access, with few exceptions, such as access to emergency medical care. On the other hand, those with legal status are entitled to the full range of benefits of the Dutch welfare state. Italy, however, systematically uses emergency policies. Acquiring a residence permit does not grant very many rights, besides the right to stay on the country’s territory. However, due to the country’s high reliance on irregular migrant labour, people are able to engage in semi-formal employment and sustain themselves (Hajer 2021).

In general, what can be noted that research views legal status as the “right to have rights”⁶ (Shaheen 2021). Those migrants with the least rights are those without a legal status in the receiving countries. A large body of literature focuses on the marginalized position of undocumented migrants and their exclusion from rights guaranteeing their basic human needs. In that sense, undocumented migrants are the category deprived of most basic rights. Another vulnerable category with most limited rights are asylum seekers in protracted asylum procedures. Evidence points at the backlog in status determination and long waiting time until the administrative decision on the eligibility of these persons to remain on the territory of the

⁶ The phrase has originated from Hannah Arendt, see Arendt, H. (1949). *Es gibt nur einziges Menschenrecht [There is only one single human right]*. *Die Wandlung*, 4, 754–770. Retrieved February 25, 2018 from <http://www.hannaharendt.net/index.php/han/article/view/154/274mal.h>

receiving country for humanitarian reasons. This leads for many asylum seekers to remain without rights (in a legal limbo) for extended periods of time as they await their asylum decisions. It has been reported that long waiting times can impede their integration in the long run and cause many mental health problems due to uncertainty of their life trajectories (Kagan 2017; Reneman and Stronks 2021).

Researchers note that the general trend of the European law is that migrants' rights become more restrictive (Mourão Permoser 2017). Such trend means that it is harder for migrants to be able to successfully apply and receive citizenship rights, such as the access to education and employment. Between 1999-2009, European countries largely tightened the conditions to which migrants can access citizenship rights, however these rights, when granted, have been expanded. An investigation into this trend determined two causes for this change, the first was over the uncertainty of the concept of granting citizenship rights based on nationality or whether these rights should be granted among the "deterritorialized norms of universal human worth" (Soysal and Soyland 1994 as cited in Mourão Permoser 2017). The other cause for more restrictive rights in the EU at this time was a shift from the goal of the EU as a supranational organisation in equalising all migrant rights, to a more segmented approach where different categories of migrants would be awarded different levels of rights.

There is a consensus across literature that laws and rights are not the only quintessential element in integration process. It is also important to pay attention and understand how they are implemented and managed in everyday lives of people (Ambrosini 2016). The dichotomy between formal exclusion and informal incorporation is not as strict as it might seem. And equally so, formal inclusion does not always guarantee informal integration. Rights do provide opportunities and the lack of rights pose various obstacles for integration. However, granted rights need to be exercised and made use of, while exclusion from rights still leaves space for informal citizenship. Thus, migrants' illegality can be understood more as "a handicap within a continuum of probationary citizenship" (Chauvin and Garcés-Mascreñas 2012). This phrase means that that despite the formal exclusion that nation states enforce upon them, undocumented migrants could still strive and eventually "earn" their citizenship/ membership in the receiving society. Irregular migrants can take steps to reduce the sense to which they are perceived as illegal. By being a 'good illegal', such as though avoiding crime and paying taxes reliably, these immigrants can avoid deportations and even speed up their path to legalisation. Moreover, there is also a process by which states can aim to formalise the existence of irregular immigrants. For example, in Spain, undocumented migrants, whilst not legal residents, can register at municipalities in exchange for access to health care and education; they are 'documented illegals'.

The local level is considered very important here. Studies have discovered a dichotomy in aims of national and city-level policymakers. Often, national policies can be far stricter in granting legal status to immigrants. Whereas, at the local level, their priority is in the inclusion of their existing populations, whether they are legal or not. This is mostly the case for cities, which generally have higher populations of immigrants. Some cities, therefore, take a role as a 'sanctuary city', in which they accommodate and assist irregular migrants as far as they can

within the barriers of national immigration policy. An example of a sanctuary city is Barcelona, in Spain. The resistance against deportation of undocumented migrants, granting of city ID cards and enfranchising of non-nationals (Bauböck and Orgad 2020) demonstrate the importance and impact that the local level has in, not only shaping the rights and opportunities of immigrants but actually going against that of the national governments' (Bauder and Gonzalez 2018; Gebhardt 2016a; 2016b; Kos, Maussen, and Doomernik 2016; 'StatusCities Project' 2020).

As stated by Bloemraad and Sheares, "some citizenships are more valuable than others", as they can offer different rights and opportunities to immigrants (Bloemraad and Sheares 2017). Yet, as we have seen, in Europe, migrant categories are differentiated, with rights ascribed unevenly among such groups. However, there is not a clear hierarchy, but one of complex variations in which some groups may have full and equal health care and social security rights but have limited employment rights (for instance, seasonal workers, whose employment is restricted to only 6 months per year). Others may have right to stay for at least three years, have no employment restrictions and a right to employment assistance (refugees). A third category, for instance researchers, are restricted in the choice of their profession (that entails teaching and researching) in their employment, with only a single year guaranteed residence permit. Such specific groups present no real hierarchy, but rather a mix of granted and restricted rights that are attributed to various immigration statuses (Carmel and Paul 2013).

1.4 Framing and policy objectives in relation to migrants' rights and legal status

From the reviewed literature we can distinguish four main policy problem framings and the respective policy objectives aimed at granting or restriction of migrants' rights.

The first policy framing defines the problem of uncontrolled or unwanted immigration. It sets the objective to regain control and prevent immigrants from coming through the use of regulations limiting their rights. Restriction of rights and creation of legal obstacles for obtaining a legal status, thus is framed as instrument of immigration control (Ahlén and Boräng 2018; Ataç and Rosenberger 2019). Nation states do not grant legal status to unwanted immigrants in order to incentivize their return. Undocumented migrants are constructed in most of immigration policies through notions such as illegal, illegalized, undocumented, irregular, aliens, non-citizens, non-status migrant, which conveys the idea of criminality and undesirability (Chauvin and Garcés-Mascreñas 2012). In recent years, regularisation of irregular migrants (including rejected asylum seekers) has not been the most desirable policy solution by many European nation states, neither was the acceptance of underground presence of migrants without legally granted right to reside in the territory. Hence, return is a more popular policy objective to deal with the migrant who were not permitted to stay (Kraler 2019; Lietaert, Broekaert, and Derluyn 2017). Therefore, migrants lacking legal status that permits their stay in the receiving country, faced a threat of deportability (Chauvin and Garcés-Mascreñas 2012). Receiving states utilise the procedures of granting legal status as a mechanism of (future) immigration control. It is revealed in the form of intentional delays of asylum application procedures as a form of 'temporal deterrence' (Reneman and Stronks 2021), that national states utilize in order to discourage asylum seekers from coming.

Moreover, when looking at policies beyond the arrival and initial stay, literature regards Civic Integration Policies also as a form of immigration control. These policies regulate who and under which conditions can obtain the rights to long-term residency and national citizenship in a receiving country (Ahlén and Boräng 2018). Such policies usually include evaluations of migrants' knowledge of the language as well as of the host country's national history, traditions and values. Scientific literature regards that these policies fulfil a demonstrative function satisfying those citizens who generally oppose immigration (Goodman and Wright 2015). Through Civic Integration Policies societies seem in control of the conditions of political membership, which is both politically and rhetorically popular among the voters. While the impact of such policies on the outcomes of immigrant integration is found to be insignificant (Goodman and Wright 2015).

The second type of framing relates to the administrative problem in the situations when there are unexpectedly high numbers of asylum applications, that receiving state authorities are obliged to process. The policy objective set is to reduce the administrative backlog of cases and improve the efficiency of asylum decision making when the inflow of asylum applications is too high. Policies for the fast-tacking of asylum applications and group-based decisions are implemented to reach that objective (Asylum Information Database (AIDA) 2017).

The third policy framing can be called utilitarian from the perspective of the receiving nation states. The problem is defined in terms of economic or demographic needs that a receiving state has, and to which immigrant population can be a form of a solution. The policy objectives are set to make a selective grinding of rights to those groups of migrants that are deemed useful for the receiving state. The states, thus, choose to facilitate legal status transition to solve their problems beyond immigration. The examples of such policies can be seen in selective treatment of irregular migrants and support in transition to legal status for 'authorised' care workers, whose domestic services are in huge demand among the ageing European population (Ambrosini 2016; Bonizzoni 2017). Such 'laborization' policies are not unique to Italy, a recent study in Germany also explored the potential of this policy approach as a way to address vulnerabilities of unauthorised but resourceful immigrants (Jonitz and Leerkes 2022). EU member states usually facilitate the transition from any migrant status to work-based residence permits due to the economic benefits. For instance, international students are given some time (usually a year) after finishing their studies to look for jobs and, thus, change their legal status to highly-skilled labour migrant. Such measures allow the countries to retain international talent (European Migration Network 2016).

The fourth type of policy framing identified is human-rights based. It defines as a problem that some groups of people are deprived of exercising their human rights. The policy objective set to solve this is the legal granting of some limited rights to migrants in order to prevent destitution and extreme marginalisation. These issues are often addressed at local levels of governance, since the cities are left to deal with populations 'illegalized' by the national level legislations, i.e. rejected asylum seekers and those denied other immigration statuses (Gebhardt 2016b; Bauder and Gonzalez 2018). Some cities, called 'sanctuary cities' choose to create more inclusive and accommodative policy for their undocumented residents, even in the contexts of more

exclusionary national policy approaches. For example, Barcelona made use of the autonomy awarded to Spanish municipalities, implementing measures such as rumour dispelling and local institutions involved with providing services regardless of legal status (Bauder and Gonzalez 2018). Regularisations on the grounds of migrants’ vulnerabilities, for instance, severe health issues, also represent integration practice under the fourth type of framing (Kraler 2019).

1.5 Overview of commonly used instruments and tools of

formal integration of migrants

Mainly regulatory instruments govern legal statuses, which determine the rights granted to newly arrived migrants. Even before migrants’ arrival to the territory of the nation state, laws and directives define the rules for granting third-country nationals the right to enter via visa application procedures. Types of visas are usually linked to various purposes of entry and stay. They could be short-term and long-term, for the purposes of work, study, family, medical treatment and humanitarian assistance (Gest and Boucher 2021). The rights that migrants can exercise upon arrival are, thus, already determined at the stage of receiving a visa. After arrival, the entry visas are normally exchanged for the residence permits that further determine the conditions and rules of stay, and participation in the receiving society. However, some migrants arrive outside of regular migration procedures, that is without visas. In this section, we summarise research on instruments facilitating acquisition or expansion of rights for non-EU migrants that are relevant to their integration process.

The legal instruments on international level, such as UN Refugee Convention (United Nations 1951), allows people in search of international protection to come at the border and apply for asylum, declaring their purpose of stay as a refugee. However, every state that ratified this international convention and made it part of their legal system, has its own procedures in place to determine the process of refugee status determination, as well as a variety of humanitarian statuses that a person could receive. Some states distinguish between refugee status and subsidiary protection (Peers et al. 2015), and some other additional toleration statuses (i.e. ‘Duldung’ in Germany). They also establish directives to set the rules for fast-track procedures or group-based status determination (Asylum Information Database (AIDA) 2017; Ghezelbash 2021; Reneman and Stronks 2021), that reduce the time needed for status determination procedures in the instances of mass arrivals of migrants.

Besides status determination regulations, research also explores the legal instruments enabling a status change for migrants. EMN report provides a detailed overview of various legal possibilities enabling status change for various categories of migrants (European Migration Network 2016). All EU member states have laws allowing the change of status from and into almost all existing categories. Economic considerations are named to be the main reason behind such policies since most of the states aim to retain talent and tackle labour shortages as well as increase the cost-efficiency of their migration systems. Facilitation of integration and prevention

of irregularity are also names as reasons for states allowing status change for migrants. Change of status from educational reasons are very common in the EU member states, a status change towards remunerated activities, i.e. employment or self-employment, are most often facilitated, they usually enhance rights of migrants in terms of rights to work access, duration of stay and family reunification. France, the Netherlands, Ireland, Estonia and Lithuania and Germany all have some kind of post-education residence permits that allow successful students to look for jobs in the country of their studies. Changes from protection related statuses, i.e. asylum seeker and temporary permits for victims of trafficking, also exist in some member states. For instance, Sweden and Germany allows rejected asylum applicants to change into employment permit. However, more options of status change exist for the victims of trafficking (European Migration Network 2016).

The granting a legal status to undocumented migrants means the recognition of their right to reside on the territory of the receiving state, as well as access to some citizenship rights. Regularisation instruments differ across the EU countries and could be based on different grounds. Ambrosini (2016) highlights that unauthorised immigrant population could first be incorporated by societies and local institutions, while legal procedures of regularisation often follow this. His paper defines three ways in which legalization can occur: though recognition of danger or abuse, regularization procedures or amnesties, and assessment of special biographical condition. Recognition on humanitarian groups is an example of recognition through victimisation, and is mostly applied to forced migrants of all sorts, refugees and victims of trafficking (Ambrosini 2016). Such regularisations take place in Germany, the Netherlands, Sweden, and France, which means that any irregular migrant who is sufficiently vulnerable invokes a human rights obligation to be protected by the receiving state (Kraler 2019). Rejected asylum seekers, who for various reasons cannot be returned to their country of origin, often fall under this type of regularisations too (Kraler 2019).

Legalisation by deservingness requires migrants to demonstrate their successful socio-economic integration in the society (Ambrosini 2016). Such basis for regularisation is most used in Southern-European countries, particularly Spain and Italy, and increasingly also in Germany and France (Kraler 2019). Deservingness of stay can be based on a proof of employment and well as social integration. In France, stable relationship with a legal resident or a long-term residence can be grounds for such legalization (Ambrosini 2016). In Spain, the co-called '*arraigo social*' policy also establishes family links to legal residents and Spanish citizens as a ground for regularization. Work-related regularisations (also called '*laborizations*') require proof of paid job. In Italy, for instance, such regularisation programmes in 2009 and 2012 predominantly were searching for domestic and care workers, which resulted in 85% of the regularisation applications submitted by female domestic workers. While men working in other industries were not subject for regularizations (Bonizzoni 2017; Kraler 2019). Jonitz and Leekers (2022) describe various pathways to '*laborization*' available in Germany, including vocational toleration and employment toleration, which require either participation in a vocational training in a shortage occupation or an employment and financial self-sufficiency of foreigners for at least 18 months. Other conditions for labour-related regularization include a '*clear*' criminal record, '*clear identity*', '*Duldung*' status and German language proficiency (Jonitz and Leerkes 2022; Etzel 2021).

Another instrument of granting a legal status is linked to the special biographical conditions of migrants' lives. Legalization could be possible due to pregnancy and birth of children, or being unaccompanied minor or a child of irregular migrant. All these conditions, activate the tool of liberal protection of human rights and thus could lead states to regularize migrants (Ambrosini 2016). Biological conditions, such as severe sickness, is also linked with this regularization approach, according to the author.

The ultimate point of acquiring access rights for immigrants is naturalization, the adoption of formal citizenship of the receiving country. Citizenship status provides migrants with the same rights available to the rest of the country's citizens. As the GLOBALCIT Citizenship Law Dataset shows, the conditions to acquiring citizenship vary substantially among European countries, and the usual naturalization procedure requires a certain period of continuous residency in the country. This period ranges from 3 to 10 years. Besides, a clear criminal record, knowledge or the country's language, cultural values and periods of financial self-sufficiency are also usual conditions for granting of citizenship (Vink et al. 2021). The completion of Civic Integration Programmes and passing of the integration tests are often required not only for the citizenship but also for renewal of residence permits or access to long-term or permanent residency rights, for instance in France the Netherlands among many other Western and Northern European countries (see GLOBALCIT Citizenship Law Dataset; (Böcker and Strik 2011; Gebhardt 2016a). There are programmes of various duration for learning of the language and/or civic and cultural values of the receiving society exist in the EU countries and are obligatory to attend for some categories of newcomers from outside of the EU (often those are family migrants and refugees). However, to get access to permanent citizenship or residency, it is usually all categories of non-EU migrants are required to pass language and knowledge of society tests in the countries where Civic Integration policies are in place (Böcker and Strik 2011). Research evidence on these programmes often highlight the assimilationist, paternalistic and stereotyping character of such programmes. For instance, a study on French Civic Integration Programme found pronounced 'othering' of Muslims though the emphasis of the requirement to comply with French gender equality norms, and though the image of Muslim men as by-default aggressors and Muslim women, as potential victims of oppression (Onasch 2020). In the Netherlands, through the Civic Integration Law of 2006 the 'migrants with poor prospects' (those who fail the civic integration exam) were de-facto denied permanent residence permit and citizenship and, therefore, equal rights to participate in the receiving society (Bonjour and Duyvendak 2018). The study of Gebhardt (2016a) examining Civic Integration Programmes in the Netherlands, Germany and Sweden highlight that such national programmes aim to formalise and standardise the definition of 'successful' integration, which often conflicts with local level approaches that tend to have a more broad and inclusive perspective towards serving the need of all city residents, including immigrants. The nation-state enforcement of integration is reflected in either legal requirement of participation in those programmes and/or economic sanctions (i.e. withdrawal of benefits or necessity to pay our the debt) in the cases of failing of the integration tests.

While not representing a specific policy instrument, it is still important to mention that newly arrived migrants engage in campaigning for their rights through political movements. Such

political movements can be seen as an *informational instrument*, since they raise public awareness regarding migrants rights, and are able to create media resonance to start public and political debate on the issue (Ataç, Rygiel, and Stierl 2016). Much of the literature on such movements examines the dynamics of contestation itself, but the concrete demands and outcomes of these movements are also researched (Ataç 2016; Odugbesan and Schwiertz 2018; Rygiel 2011; Ataç, Rygiel, and Stierl 2016; Monforte and Dufour 2013). Asylum seekers in protracted asylum procedures, rejected asylum seekers, and refugees engage in protest movements by occupying public spaces, i.e. parks and churches, and demonstrating in the cities (Ataç, Rygiel, and Stierl 2016; Odugbesan and Schwiertz 2018). Civil society organizations and charities often act as supporters and mediators in those migrant movements demanding equal human rights, legal recognition, better living conditions and inclusion into wider society (Perolini 2022; Ataç 2016).

1.6 Effectiveness and Outcomes of instruments and tools related to

Rights and Legal status

Few of the reviewed studies attempted to evaluate the effectiveness of specific policies on rights and legal statuses of newly arrived migrants. In the previous sections, the synthesis of research identified four common problem framings, policy objective and approaches developed to reach them. Here we discuss for each of policy objective what outcomes are reached and whether there is evidence that that the framed problem is solved.

The problem of uncontrolled or unwanted immigration is attempted to be addressed by national policies denying non-status immigrants various rights to participation in society. Policies aim to exclude migrants without a legal status from various spheres of receiving society by limiting their rights to accommodation, employment, health care, education, and other areas important for integration. Such difficult and exclusionary conditions are expected to encourage migrants' departure from the country. The existing evidence are not conclusive in providing a clear answer whether the policy objective of return and reduction of unwanted immigration is met through limitation of irregular migrants' rights to participation. Older research suggests that conditions in the origin country, especially those related to security, have a larger influence on return decisions of migrants than conditions in the host country. Moreover, the legal status had no correlation with their decisions (Black et al. 2004). While other research found that stable and secure residence status could be the biggest factor behind return decisions, and those whose residency rights were uncertain were least likely to return (Blitz, Sales, and Marzano 2005). On the other hand, a longitudinal study in Belgium found that in some cases poor living conditions, lack of access to social welfare, health care, and employment, could serve as incentivise the return of rejected asylum applicants (Lietaert 2016).

To cope with the problem of mass arrivals of asylum seekers, many European states use fast-track, accelerated and group-based processing of asylum applications, to speed up the decisions on the future legal status of the applicants, and distinguish those who are more likely to be

granted the rights to stay from those whose chances are slim (Asylum Information Database (AIDA) 2017). There is not enough research evidence to make conclusions about the effectiveness of such procedures and whether they reach the goal of alleviating the backlog of cases. The studies analysing such procedures mainly point at the detrimental effects of such policies to human rights of asylum seekers. Kagan (2017) states that group status determination leads to refugees being dehumanised and framed as a massive security threat, and that lack of individual processing of refugee status determination causes a further decline in refugee rights. Group-based determination allows states to use nationality-based categories of people to generalize that the reasons for migration are rather economic and not humanitarian, without going into individual investigations. Another study interprets the stratified processing of asylum claims by Dutch government as a strategy of ‘temporal governance’ (Reneman and Stronks 2021). Although the study does not have a way to confirm whether this was intentional or not, but it demonstrates that the approach fast-tracked groups with low chances of admission, while those with high chances to being granted refugee status were made to wait. The authors provide an example of two asylum seekers arriving on the same day to the Netherlands, in 2016. One, from Morocco, is interviewed within a week, and days after finds out that their asylum application was rejected. The other, arriving from Iraq, is held in a reception centre, waits months, undergoes multiple series of interviews. Their asylum request is successful, but they receive it over a year and a half after their arrival in the Netherlands (Reneman and Stronks 2021). Also the report of Greek Council for refugees and OXFAM demonstrate that group-based accelerated status determination procedures are detrimental for the rights of people to seek asylum and how the new Greek law (IPA) have even further delayed the processing of asylum claims of those who arrived before January 2022 (Kafkoutso and Oikonomou 2020). Needless to say, that spending months and years in legal limbo is detrimental to immigrants integration process.

The instrument of regularization is linked simultaneously to two other types of policy problem framing. The first one aims to meet economic and demographic needs of a receiving country, such as labour shortages and aging population, and sees legally excluded migrants as wasted resource. The second one sees marginalization and lack of human rights of undocumented immigrants as a problem. As described in the previous section, regularization measures on various grounds are utilised to ‘solve’ both problems and grant rights to economic and social participation. Access to and participation in employment were identified as crucial avenues to obtaining formal membership in the receiving societies (Kraler 2019). Jonitz and Leerkes (2022) conclude that work-based regularization (laborization) allows significant numbers of rejected asylum seekers to leave the condition of liminal legality and obtain residency rights in Germany. However, Bonizzoni (2017) highlights that due to both gender biases and gendered occupations there can be inequalities between men and women in their legalization opportunities through work. Other studies highlight tensions between “vulnerability” and “performance”, as regularization policies require undocumented migrants must show both proofs of their victimization and of civic or economic integration (Chauvin and Garcés-Mascreñas 2014). From the perspective of individuals, obtaining a regular status allowed immigrants to have a greater control over their life in the receiving country. Interestingly, it was noted that the effects of regularizations are different in the countries of Europe: access to health care and legal

employment rights were regarded as the most important ‘gains’ in Italy and Spain, while in ‘northern’ European countries gaining the rights to work and study were the most notable changes (Kraler 2019).

In the reviewed literature Civic integration policies have been regarded as an indirect tool of migration control that sets more complex integration requirements for long term settlement and naturalization in the receiving countries. These policies are considered critically across the literature (Blankvoort et al. 2021; Onasch 2017; 2020; Kirk and Suvarierol 2014). However, there are few studies that thoroughly evaluate the impact of such policies. Ahlén and Boräng preliminary support for the idea that there are links between the extensions of civic integration policies and reduction in family immigration and labour immigration (Ahlén and Boräng 2018). While Goodman and Wright’s study indicates that mandatory Civic integration policies are a measure of symbolic politics and have no effect on integration (Goodman and Wright 2015). Their paper highlight that EU states vary in the way they use these civic integration measures to gatekeep citizenship. When comparing UK and Denmark in the impact of language requirements on naturalization the differences are apparent. In 2008, 40% of citizenship applicants in Denmark were rejected due to not passing the language knowledge requirements. However, in the UK, whilst over 30% of applicants failed the language requirements, only 2% were refused citizenship based on these grounds. This study suggests, however, not able to test, that civic integration policies act more as a policy of selection, as it is more difficult for already vulnerable immigrants (Goodman and Wright 2015). With regards to the evidence on link between citizenship and integration the findings of research are ambiguous. On the one hand, the acquisition of citizenship can be seen as an indication of successful integration as naturalised migrants acquire a status providing (nearly) equal rights to those of the local population. However, not all migrants have an equal interest in acquiring citizenship, and naturalisation doesn’t have the same consequences for all (Vink 2017a).

Migrant’s rights movements have also been discussed in the literature as a way to gain rights from bottom up. Migrants create spaces of autonomous existence and visibility, acting from the position of legal exclusion (Monforte and Dufour 2013), they speak against violations of human rights, demand freedom of movement, access to the labour market, and improvements to the asylum procedure (Ataç 2016). Migrants through public protest attempted to challenge power relationships, and claim their rights to stay in the country, to shelter, to works and education (Odugbesan and Schwiertz 2018). Even though such movements normally demand policy changes, they were mainly found to achieve social recognition and the relationships of solidarity between refugees and civil society supporters (Ataç 2016), by making their voices heard by the general public they redefined geographies of citizenship and political community (Ataç, Rygiel, and Stierl 2016).

1.7 Conclusion

This chapter provides a synthesis of research finding on the implications of different legal statuses and rights for post-2014 immigrants in Europe. It is clear that this is a well-established area of research, with a particular focus on the differentiation of migrants’ rights according to

status, a strong comparative dimension and a strong focus on civic integration requirements and their effects on naturalization.

One of the key topics of research are the negative consequences of the lack of rights across various domains of migrant incorporation, such as health, employment and housing. In relation to this, the literature shows that the impact of regularisation differs between Northern and Southern European countries; where the former in particular allows more opportunities within informal parts of the economy. Studies of naturalization shows that although naturalization is often seen as a final step towards full citizenship, it often is no ‘magical device’ for integration; integration is a much more complex process involving barriers to inclusion across a variety of areas such as employment, health, welfare and housing (see other chapters in this volume). However, without regularisation of naturalization, migrants often find themselves in prolonged period of precarious statuses, also described as ‘protracted displacement’.

In this context, there is a broad comparative literature, for instance differentiating between citizenship regimes with different approaches to the abovementioned topics, and different outcomes. Literature has shown that chances for migrant for acquiring citizenship can differ significantly between European countries. Post-colonial powers tend to have more open citizenship regimes than non-colonisers. Also, there are significant differences in legal statuses between countries, and the rights attached to these statuses (such as between asylum seekers and posted workers). In some cases, specific status may even have a very different meaning across countries, such as for undocumented migrants.

Research does note a general trend in Europe towards a more restrictive approach towards migrant rights. This seems triggered by uncertainty on the concept of granting citizenship rights based on nationality, and by a trend to more segmentation in Europe’s approach towards rights. However, it also seems that the dichotomy between formal exclusion and informal incorporation should be treated to sharply. Social complexity often allows for more blended outcomes such as ‘documented illegals’ or ‘probationary citizenship.’ In this context, there is also a growing literature on local forms of citizenship, including urban citizenship.

With regard to policies on legal status and rights, various policy frames can be defined. The first frames restricting access to citizenship as an approach to the problem of uncontrolled or unwanted immigration. Civic integration measures are often framed as a key part of such an approach. A second frame sees legal status and rights as an administrative issue, as a key procedural issue especially in cases of unexpected waves in the level of immigration. A third frame sees legal status and rights in a more utilitarian perspective in view of the broader economic and demographic needs of a country (or a city). This includes examples of ‘laborisation’ of migrants in relation to immediate labour needs. Finally, there is a more human-rights based frame towards legal statuses and rights.

The literature distinguishes a number of policy instruments and tools in relation to legal status and rights. This includes a variety of approaches towards the determination of status, such as differentiating long-term and short-term rights, distinguishing refugee and subsidiary status, etc.

It also includes tools for changing the status of migrants, such as in view of their integration or because of economic considerations. This also includes opportunities for granting a status to undocumented migrants, such as in terms of regularisations or amnesties. In some cases, legalisation is connected to deservingness, mostly applied in southern-european countries. This may be connected to a proof of employment or social integration. Naturalization is often seen as the ultimate point of access to rights and legal status. However, civic integration programs are often put as a condition for naturalization and can have a strong assimilationist and paternalistic character.

Finally, we have taken stock of some of the evidence on the different approaches to legal status and citizenship. In terms of rights and status as solution to the problem of uncontrolled immigration, the literature suggests that conditions in the country of origin are more influential than those citizenship policies. Also, return migration is often seen as being conditioned by a secure and safe status and position. In terms of immigration as an administrative problem, literature suggests that measures such as group status determination can lead to fast-track procedures but also to dehumanization and lack of individual processing. Regularisations are framed in relation to the frame of economic need for migrants as well as for the human rights position of migrants. Regularisation is often a significant enabler of labour market participation and provides a secure position from which to regain control over their lives.

1.8 Bibliography

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