

Chapter 1

Europe's Legal Peripheries: Migration, Asylum and the European Labour Market



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1.1 Introduction

The participation of foreign nationals in European labour markets is an effective tool that facilitates those migrants enjoying a more fulfilling life, while at the same time contributing to Europe's wealth and economic and social development. However, many norms that regulate migration and labour migration undermine this spirit by limiting, both directly and indirectly, non-EU nationals' access to European labour markets.

From a legal perspective, the integration of non-EU migrants, refugees and asylum seekers (MRAs) depends on the country in which they settle and the legal status it affords them there. Entry and settlement into European countries is subject to strict limitations for non-EU nationals, but such limitations, far from promoting an integrated European legal space, take different shapes according to the European country and migrant status. Being a so-called 'economic migrant' with a long-term permit to stay entitles the beneficiary to a broader set of rights than is the case for a migrant with a short-term permit; similarly, a refugee is entitled to a much broader set of rights than an asylum seeker; while an asylum seeker is endowed with a smaller pattern of rights and benefits to a migrant benefiting from a complementary (compared to Geneva 1951) form of protection status. Furthermore, when labour market participation is at stake, as we discuss later in this chapter, an asylum seeker or beneficiary of a complementary form of protection is endowed with different rights and opportunities across Europe: he or she can work from the time of lodging

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V. Federico, S. Baglioni (eds.), *Migrants, Refugees and Asylum Seekers' Integration in European Labour Markets*, IMISCOE Research Series, https://doi.org/10.1007/978-3-030-67284-3_1

their application with different time-ban limits depending on the country they enter (ranging from 60 days in Italy to 1 year in the UK), while they are prevented from working at all in others.

This chapter discusses to what extent specific legal frameworks of migration and asylum work as either *enablers* or *barriers* to non-EU MRAs integration in European labour markets across seven countries: the Czech Republic, Denmark, Finland, Greece, Italy, Switzerland, and the United Kingdom. It argues that, in the last decade, a plethora of legal acts and the spirit of border closure and securisation that inspires them, have created a hierarchy among migration statuses in terms of the rights and entitlements related to the labour market. This hierarchy considerably influences the degree of transferability of newcomers' work-related capabilities when they move from their country of origin to the new country of settlement. At the top of the hierarchy in terms of rights are refugees and beneficiaries of subsidiary protection, along with long-term economic migrants, who are endowed with the stronger sets of rights, including those related to accessing the labour market and workers' rights and benefits. In other words, refugees, beneficiaries of subsidiary protection and long-term economic migrants are those who are closer to nationals in terms of fundamental rights and integration into labour markets (except political rights that fall beyond the remit of our research and, importantly, except the freedom of movement and settlement reserved to EU nationals). At the bottom of the hierarchy come asylum seekers, and below them irregular migrants who can count on a much stricter set of rights and entitlements. When rights and entitlements are mentioned here with reference to labour markets, we do not only refer to accessing work but also to those services conducive to employment such as skills and the recognition of educational attainment, but also access to vocational education and training.

However, it is worth noticing the size of the migrant population to which each status applies. In fact, among the countries we examine here – except in Denmark and Switzerland – only a minority of people applying for protection are recognised by a status conferring access to a broad set of rights, including those connected to labour market participation, and even a smaller number is recognised by the Geneva convention status (asylum and subsidiary protection). Hence, most non-EU migrants who *de facto* stay in a given host country remain at the bottom of the rights hierarchy.

We can visualise the hierarchy of rights as a pyramid (Fig. 1.1). The status conferred to the very few at the top would guarantee rights leading to an almost-equal to nationals' access and use of the labour market, while the more we move down the pyramid, the fewer these rights are, although far more individuals find themselves at those lower levels of the hierarchy. Finally, we need to clarify that in this introductory chapter and throughout the book as a whole we focus on the *de jure* aspect, and do not discuss the implementation of such rights in detail (we do that elsewhere, cfr. Lillie and Bontebal 2019).

A hierarchy of rights: building legal peripheries in Europe

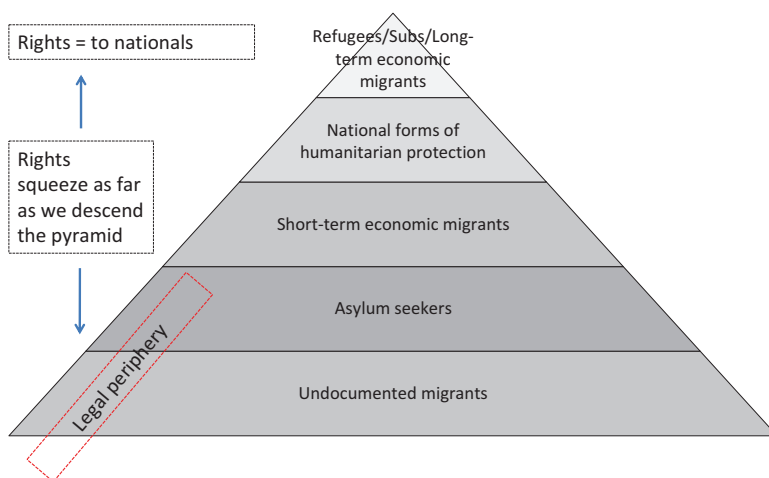


Fig. 1.1 Summarises the ‘hierarchy of status and rights’ model that the chapter discusses

A relevant consideration is the diversity of norms across states. As we discuss in Paola Pannia’s chapter in this volume, the sole convergence we notice among European countries – and in particular among those studied here – is a convergence towards limiting access and long-term settlement for all categories of non-EU migrants, including those who used to be preserved from stricter limitations, such as asylum seekers and refugees. Despite the process of harmonization at EU level and regardless of the rhetorical claim of a more cogent Europeanisation of migration governance, nation states remain the dominant actor in this field, our research suggests that policy-makers are often more concerned with responding to public opinion than providing a coherent legal framework [as discussed in Pannia’s and Maggini’s chapters].

Overall, our book contributes to debating the existence in Europe of ‘legal peripheries’ (Chouinard 2001: 187), those spaces where a gap exists between narratives of inclusion and equality, and the legal provisions and their implementation supposed to support and justify such narratives, and we do that by discussing labour market-related rights for non-EU migrants, refugees and asylum seekers.

The chapter begins with a short introduction to the selection rationale for our countries under study. It turns to some reflections on MRAs’ integration in European labour markets, distinguishing between legal provisions that grant access to those labour markets and provisions that ensure MRAs work as nationals do. Our concluding remarks point to four streams of consideration in terms of barriers and enablers to MRAs’ integration into European labour markets.

1.1.1 *Our Contexts*

The seven countries examined here provide a variety of insights into MRAs' integration in European labour markets. Despite the harmonisation effort at EU level, variety across countries persists. This is partly due to countries being affected differently by migration flows, so that numbers of refugees, beneficiaries of subsidiary and humanitarian protection and of asylum seekers on the one hand, and of economic migrants, on the other, largely differ. However, states also have different legal and political systems that impact how authorities, citizens and organizations react to migration inflows. The countries we discuss in this chapter present a diverse constitutional organization of state. In fact, they have been explicitly selected to encompass a wide spectrum of variability, while remaining in the general frame of contemporary western liberal democracies. The countries under study mirror the diversity of European landscapes in terms of the structure of the state, the system of government, rights enforcement and litigation, the political system and the cultural and socio-economic background, while allowing at the same time for systematic comparison. The cleavage between the one country belonging to the common law system (the UK) and the others that are characterized by civil law systems is nuanced, and, at the same time, enriched by intertwining with other cleavages: centralized versus federal states; symmetric versus asymmetric decentralization (or devolution); constitutional monarchies versus republics; parliamentary (in various typologies) versus semi-presidential and directorial systems of government; diffuse versus centralized (with the presence of a Constitutional Court) systems of judicial review. All countries except Switzerland and the United Kingdom are EU member states (and the UK was still part of the EU when we conducted our analyses), so they relate to the EU legal framework. Moreover, diverse mechanisms of rights enforcement and litigation among these countries add further texture to the analysis of the constitutional and legal framework.

Diversity is also the keyword in the discussion of the political systems, counting bi-party systems, pluri-party systems, even-multiparty systems, fragmented party systems; as well as in the discussion of the democratic model: majoritarian and consensus democracies, semi-direct and consociational democracies. The socio-economic background of the countries is no less so diverse, as the Czech Republic, Denmark, Finland, Greece, Italy, Switzerland, and the UK are characterized by the whole range of variation, with Greece representing the most deprived economic landscape and Denmark and Switzerland holding the most affluent positions. Diversity also describes the labour markets, *sufficit* here to recall that when the countries were chosen for our study, that is in 2016, the unemployment rate in the Czech Republic, United Kingdom and Switzerland was under 5% (and has remained so according to the last OECD available data up to December 2019), well below the EU28 average of 8.6% (which decreased to 6.1% by December 2019), while Finland had an unemployment level close to the EU28 average (as is still the case), whereas Italy and Greece were (and still are) above EU28 average: 11.7% in Italy and 23.6% in Greece (respectively 9.6% and 16.6% by December 2019).

1.2 Integration into the Labour Markets?

There is broad consensus that whether and how migrants, asylum seekers and refugees integrate into labour markets, and the time it takes for them to do so, determines not only their long-term impact on European economies but also their prospects for integrating socially and economically into European societies, and therefore their capacity to contribute to the overall wellbeing of the continent (Ruiz and Vargas-Silva 2017, 2018; Marbach et al. 2018; Zwysen 2019; Brell et al. 2020). The UNHCR experience reveals that early integration is desirable for at least three reasons: it is the most effective, efficient and meaningful method of facilitating this target group's integration into European societies; it can alleviate pressure on the public purse; it can help address current and future labour market shortages in the EU (UNHCR 2013).

We consider two main dimensions of the integration of refugees, asylum seekers and migrants into the labour markets: (i) access to the labour market (translated into a rights-language: the right to work) with its corollaries (recognition of qualifications, vocational training, etc.); and (ii) non-discriminatory working conditions (translated into a rights-language: the right to both formal and substantial equality) and its corollaries of benefits and duties deriving from being part of the labour market.

1.2.1 Accessing the Labour Market

Accessing the labour market means being entitled to work. In principle, allowing asylum seekers, refugees and migrants to work should be a win-win game: it empowers MRAs in both economic and socio-cultural terms, and it benefits the hosting societies that can profit from the skills, energy, competences and also taxes produced by MRAs' activities (Kahanec and Zimmermann 2009, 2016; Zimmermann 2014; Blau and Mackie 2016). However, due to either a real scarcity in jobs or a rhetorically constructed one, 'foreigners' (with no distinctions made between refugees and economic migrants) can often be perceived and portrayed in public discourses as 'job stealers' from native-born workers, regardless of labour market segmentation, which, in several countries, keep natives and migrants in separate labour market segments and therefore not competing for the same jobs (Ambrosini 2001; Allievi 2018).

Limits on the right to access national labour markets exist, and they are not necessarily connected with dire economic conditions since they pre-existed the last decade of economic crisis. For example, the Italian Constitution recognises the right to work for citizens only (art. 4), which means that Italian workers have preferential access to the labour market: before applying for the sponsorship of a third country national worker, employers must prove there is no relevant workforce available in the country. The same happens, for example, in Switzerland, where according to the "precedence provision" of the Federal Act on Foreign Nationals, third country

workers can be admitted into the Swiss labour market only if no Swiss citizen or foreign national with a long-term residence permit or an EU/EFTA national can be recruited. Also in Finland, law No. 1218/2013 provides for the “availability test” to grant Finnish and EU/EEA citizens priority in entering employment.

There are different limitations on the right to access the labour market: limitations based on the nationality of the worker (as it is the case of the aforementioned limits in Italy, Switzerland and Finland); limitations based on the foreign legal status (as illustrated in Table 1.1 and discussed later in this chapter) and limitations based on workers’ skills and qualifications, as is discussed later.

In principle, in none of the countries considered here are refugees, beneficiaries of subsidiary protection and of other forms of national protection limited in their access to the labour market. This means that *de jure* they can work, if they wish to do so, and they do not need further work permits. However, this does not mean that *de facto* they do access national labour markets, since they may experience other forms of constraint such as language barriers, spatial barriers (several countries adopt dispersal policies which compel refugees to live in areas where there are no available suitable vacancies, for example, and their effective mobility in the country may be more limited than nationals experience), and qualifications and skills barriers (their qualifications may not be recognised in the host countries and the skills required for specific tasks may be different from those they used to in their country of origin).

By contrast, 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 6-month employment ban for asylum seekers). Obviously, the same considerations on the *de facto* barriers persist in this case once asylum seekers are allowed to enter the labour market. It is interesting to have a graphical representation of the time barriers to asylum seekers’ entry into national labour markets (Fig. 1.2), as this may be considered one good indicator of the country’s openness to MRAs’ integration, given that evidence suggests that the sooner an immigrant or asylum seeker/refugee enters the labour market, the quicker and smoother her/his integration path would be.

Moreover, Fig. 1.2 is clear concerning harmonisation at the EU level: seven jurisdictions present six different time-limits for asylum seekers to access domestic labour markets. Actually, in Finland there are two different options: asylum seekers can work after 3 months since lodging their application if they travel with valid identification documents, or after 5 months in the case they do not possess such documents. Hence, there is no consistency across these European countries in terms of rights for asylum seekers when entering the labour market. Some allow asylum seekers to work after a short period (Italy after 60 days), while others prevent them accessing the labour market for at least 1 year (the Czech Republic and the UK, in the latter, the 1 year ban from the labour market stretches even longer periods given that only those applicants who possess high skills can enter after 1 year, the rest have to wait until their claim is assessed, which can take also a couple of years).

Table 1.1 Right to work- Sirius project countries

	Asylum seekers	Refugees	Subsidiary protection	National form of temporary protection	Economic migrants- short term	Economic migrants – long term	Undocumented migrants
Czech Rep.	YES after 1 year stay	YES	YES	YES	YES if the worker has a contract prior to entering the country	YES	NO
Denmark	YES after 6 months stay	YES	YES	YES	YES but with a work permit	YES but with a work permit	NO
Finland	YES after 3 months stay if they have travel documents/5 months without them	YES	YES	-	YES but with a work permit	YES but with a work permit	NO
Greece	YES after 6 months stay	YES	YES	-	YES subject to the labour market's demand	YES	NO
Italy	YES after 60 days from application of refugee status	YES	YES	YES	YES subject to the labour market's demand	YES subject to the labour market's demand	NO – But if they work, they have certain labour rights
Switzerland	YES, after 3 months if the labour market allows	YES	YES	YES, after request for work permit	YES if allowed by the conditions for permit to stay	YES	NO – But if they work, they have certain labour rights
UK	YES, after 12 months but only in shortage occupation list	YES	YES	YES	NO	YES with specific visa	NO

Source: Sirius project

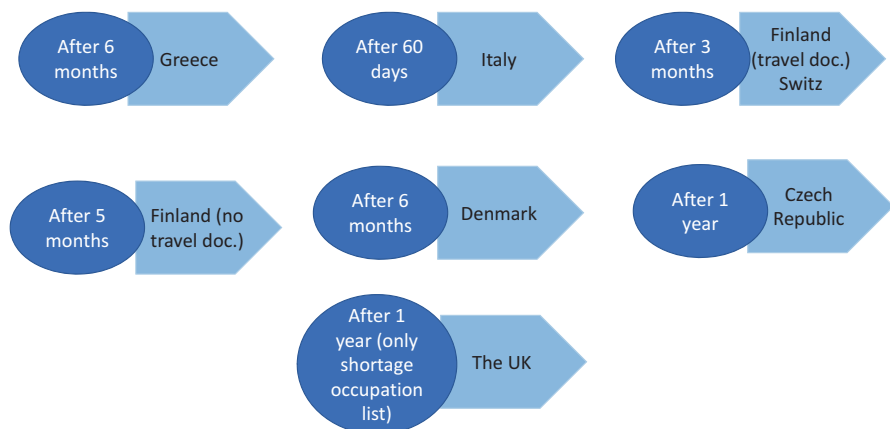


Fig. 1.2 Time limit to asylum seekers' access to national labour markets. (Source: Sirius project)

More complex is the position of so-called 'economic migrants', people who migrate to another country primarily to seek work and better life conditions, or for family reunification (as is discussed in detail in Isaakyan and Triandafyllidou in this volume). None of our countries opens its labour market unconditionally to third country nationals. Work permits are required in every country for extra EU citizens, and the possibility of working in such countries depends on the triangulation between the needs of national labour (determined on an annual basis by specific policy documents issued either by the Ministry of Interior or by the Ministry of Labour, as in Italy for example), or on a case-by case approach (as it is the case in Finland) and migrants' skills and qualifications. Curiously, but not surprisingly, limitations do not apply to highly specialised workers, who benefit from special conditions of entry, quite often beyond the implementation of the Blue Card directive 2009/50/EC. In Denmark, for example, a number of job schemes aim to attract high skilled labour and encourage quick and facilitated employment. In Finland, highly-skilled migrants receive their residence permits directly from the Finnish Immigration Service through an *ad hoc* procedure; in the UK 'Tier 1 visas' are reserved for people with exceptional talents in the fields of science, humanities, engineering, medicine, digital technology and art, or if they aim to invest at least £2 million in the country.

Finally, although irregular migrants' role in European labour markets is by definition left in the 'shadow' of policy consideration, in some jurisdictions the position of undocumented migrants is not fully overlooked. In Greece, for example, a 2016 circular opens access to the labour market in specific sectors (agriculture, domestic work, animal husbandry) to immigrants in the grey area between legality and illegality. In Italy, no formal access for undocumented migrants exists, but the law offers some forms of protection to undocumented migrants, even though a recent law (Law 199/2016) to contrast labour exploitation and exploitative labour intermediation could provide more instruments to fight against informal employment (for a further discussion of this law see: Chiaromonte et al. 2018).

1.2.2 Working as Nationals Do

The countries considered here enforce the joint principles of equality in working conditions and benefits and of non-discrimination for all workers once they have entered their labour markets, regardless of their citizenship or length of stay in the country. In the field of non-discrimination, a number of 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 harmonizing legislation in the different jurisdictions.

Yet, the formal absence of discriminations in the workplace and unequal working conditions does not naturally lead to MRAs working as nationals do, since they may encounter significant barriers that elude legal provisions focusing on formal equality (everyone is equal before the law) and on non-discrimination because they pertain to the sphere of substantial equality. However, we focus here on several aspects related to the concrete enforcement of the right to work, sometimes incorporated on framework immigration legislation, sometimes provided for in specific regulations, that contribute to overcoming substantial barriers.

Linguistic barriers are paramount; all our jurisdictions acknowledge the importance of language skills as a first step to integrating into the host society. Nonetheless, language courses are not offered for free everywhere, this is one field where space is left for collaboration with non-state entities, both non-profit and for profit companies. Moreover, attending language courses is rarely a duty imposed on MRAs. The duty exists solely in those countries where attending civic integration programs is compulsory: in Denmark for all MRAs except economic migrants, but as a requirement for those 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 programs that include language courses – and this *de facto* 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 former humanitarian protection regime) and integration programs (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 in the UK.

The recognition of qualifications and competences is crucial for MRAs to work as nationals do, yet the majority of the countries examined here lag behind what substantial equality would entail in this field, as Table 1.2 clearly shows. Only Denmark, Switzerland and Italy (with the exception of asylum seekers) are open to the recognition of foreign titles and qualifications, even though in Italy the recognition process may be long and complex, substantially jeopardising the

Table 1.2 Recognition of qualifications/skills, Sirius project countries

	Asylum seekers	Refugees	Subsidiary protection	National form of temporary protection	Economic migrants, short term	Economic migrants – long term	Undocumented migrants
Czech Rep.	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	NO
Denmark	NO	YES	YES	YES	YES	YES	NO
Finland	YES but with proof of citizenship	YES but with proof of citizenship	YES but with proof of citizenship	–	YES but with proof of citizenship	YES but with proof of citizenship	NO
Greece	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	–	YES upon evidence of formal qualifications	YES upon evidence of formal qualifications	NO
Italy	YES upon evidence of formal qualifications	YES	YES	YES	YES	YES	NO
Switzerland	YES	YES	YES	YES	YES	YES	NOs
UK	Depending from country of origin and/or qualification	Depending from country of origin and/or qualification	Depending from country of origin and/or qualification	Depending from country of origin and/or qualification	Depending from country of origin and/or qualification	Depending from country of origin and/or qualifications	NO

Source: Sirius project

legitimate expectations of migrants. The UK recognises exclusively qualifications from selected countries of origin, on the basis of 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 by competent authorities. Of course, this may be considered fair towards economic migrants, who, in principle, can plan their migration trajectory, whereas people fleeing from their country will hardly bring proofs of their diplomas, and requiring them to national authorities once in a host country sounds undoubtedly odd. 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, MRAs must apply for recognition, in the most favourable of cases, as in Finland, this is done during the application process.

Another relevant field to consider when discussing whether foreigners work as nationals do is vocational training. Vocational education and training is a relevant component of current active labour market policies, useful for easing young people's access to the labour market. It is equally a useful tool to facilitate migrants, refugees and asylum applicants' 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 investment. Does our pool of countries offer access to vocational training to third country nationals?

In Greece and Finland, all migrants except undocumented people can access vocational training on the same basis as Greek and Finnish citizens. 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 courses length exceeds the asylum seeker's temporary permit to stay. In Denmark, only refugees, beneficiaries of subsidiary protection and of temporary protection status (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.

Unemployment benefits are another important element for understanding legal barriers and enablers for MRAs' integration in the labour market. Switzerland and Italy are the countries that present fewer restrictions in accessing unemployment benefits: all are entitled as nationals are, except undocumented migrants and asylum

seekers not allowed to work in Switzerland, and asylum seekers after 2 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-time 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 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 the indefinite leave to remain in the UK to claim benefits. Similarly, in the Czech Republic, solely refugees, beneficiaries of subsidiary protection and long-term economic migrants are entitled to benefits.

Finally, we make a comparative assessment of the rights to self-employment and working in the public sector, as illustrated by Table 1.3.

Except in Greece, where the public sector is fully reserved to nationals only, in all jurisdictions refugees can both work as public officers (with exceptions of some crucial positions – high-ranking positions or extremely delicate jobs in terms of national security, for example – may be reserved for nationals) and as self-employed, and the same applies to long-term economic migrants. The strongest restrictions exist for asylum seekers and short-term economic migrants, which may be explained by the precariousness of the status for the former and by the time element for the latter.

Considering the variables described so far, not all foreign workers can enjoy the very same rights and benefits as national workers. They may be excluded from certain positions because they are reserved for nationals, or because their qualifications and skills are not recognised or not fully recognised, or because they do not speak the language fluently enough, or because they have limited access to vocational training. Lowering the barriers that prevent MRAs from working as nationals do would release important energies and capacities that could positively contribute to host societies' economic growth, social well-being and peaceful coexistence between populations.

1.3 More Barriers than Enablers? Concluding Remarks

Migrants, refugees and asylum applicants occupy a central position in public and political debates. The 'migration issue' has been the object of regular headlines in all the countries discussed in this chapter, and in the past 5 years much political tension at the EU level has stemmed from this topic. MRAs represent an asset for European ageing societies and their labour-demanding economies, as claimed by both academic and think tank literature (Benton et al. 2014; OECD 2016; IMF

Table 1.3 Right to self-employment and to work in the public sector, Sirius project countries

	Asylum applicants	Refugees	Subsidiary protection	National form of temporary protection	Economic migrants – short term	Economic migrants – long term	Undocumented migrants
CZ.	Self empl.	YES	YES	NO	YES	YES	NO
	Public sector	YES (with exceptions)	YES (with exceptions)	YES (with exceptions)	YES (with exceptions)	YES (with exceptions)	NO
DK	Self empl.	YES	NO	NO	NO	NO (unless permanent resident)	NO
	Public sector	YES	YES	YES	YES	YES	NO
Fin	Self empl. and with valid documents	YES	YES	–	YES	YES	NO
	Public sector	YES (with exceptions)	YES (with exceptions)	–	YES (with exceptions)	YES (with exceptions)	NO
Gr	Self empl.	YES	YES	–	NO	YES	NO
	Public sector	NO	NO	NO	NO	NO	NO
It	Self empl.	YES	YES	YES	NO	YES	NO
	Public sector	YES (with exceptions)	YES (with exceptions)	YES (with exceptions)	NO	YES only EU (with exceptions)	NO

(continued)

Table 1.3 (continued)

	Asylum applicants	Refugees	Subsidiary protection	National form of temporary protection	Economic migrants – short term	Economic migrants – long term	Undocumented migrants
CH	NO	YES (with exceptions)	YES (with exceptions)	YES (with exceptions)	YES (with exceptions)	YES	NO
Public sector	YES (with exceptions)	YES (with exceptions)	YES (with exceptions)	YES (with exceptions)	YES (with exceptions)	YES (with exceptions)	NO
UK	NO	YES	YES	YES	YES (with limits)	YES (with specific visa)	NO
Self empl.							
Public sector	NO (only if in Tier 2 shortage list)	YES	YES	YES	NO	YES	NO

Source: Sirius project

2016). Moreover, they have become central in the functioning of contemporary European societies, since without their contribution, for example in domestic work and care services, social structures would be very different (Ambrosini 2013). Yet, when we focus on their legal status, we realise that the central role migrants play in our societies does not reflect on their rights entitlements. On the contrary, most of them, in particular migrants with national temporary forms of protection, or awaiting an asylum decision, or living as undocumented people, hold a peripheral and often precarious position in terms of substantial rights and entitlements.

The comparative analysis of their right to be legally recognised the workers status (and subsequently a permit to stay and to work) in the European countries discussed in this chapter on the one hand, and to have a number of other rights stemming from this – first of all the rights to work as nationals do – on the other, demonstrates the legal marginalization of MRAs in European jurisdictions, despite narratives of inclusiveness. Scholars describe this phenomenon as the “production of legal peripheries or places in which law as discursively represented and law lived are fundamentally at odds” (Chouinard 2001: 187). Similarly to spatial and geographical peripheries, legal peripheries may have a detrimental effect on the wellbeing of both the people populating, physically and metaphorically, the peripheries, and also those populating the centres. Analysing how the frontiers between centres and peripheries are being built and consolidated is one of the *foci* of our research, to point out possible strategies to empower MRAs and to advance those rights aiming at social inclusion and participation in the same spaces of life as nationals do.

The first, already understood but nevertheless disturbing, finding emerging from the analysis of the status quo of MRA-related legislation and of their rights and entitlements in the policy-domain of labour in the selected jurisdictions analyses here is the deep unevenness existing among countries. On the one hand, regardless of the European competence on asylum policy, there is no proper ‘Europeanization’ of asylum policy and law; immigration remains one of those domains in which states are reluctant to devolve their authority to supranational jurisdictions. Despite the numerous limitations to national sovereignty brought in by EU membership, the crucial state prerogative of modern, post-Westphalian statehood, that is the decision about who should be admitted into the state territory and with which entitlements, still holds when non-EU nationals and asylum seekers are at stake.

More specifically, the EU fundamental principle of non-discrimination in labour markets is at odds with the reality of MRAs because of both their differentiated legal statuses (as not all legal statuses give access to the same rights) and the different approaches that countries adopt concerning each migrant status. On the other hand, this lack of homogeneity among countries makes it difficult for people, both foreign workers and employers, to understand who has the right to do what, when, how and where in Europe. Moreover, legal uncertainty favours secondary movements, i.e. refugees and beneficiaries of humanitarian or subsidiary forms of protection moving from one host country to another in search for better life and working conditions (Moret et al. 2006), which is one of the phenomena the Dublin Convention in 1990 and the Dublin Regulations II and III aim to avoid. In turn, this makes the overall migration management more complex and difficult and it can

provide arguments for political and social entrepreneurs willing to capitalise on anti-migration attitudes. In sum, the lack of homogeneity among EU member states about the rights associated to specific categories of migrants constitutes a barrier for MRAs integration in labour markets and societies, even though sometimes it may create comparative advantages for determined people or categories of people in given situations.

The second observation pertains to the complexity of the legal frameworks. In all countries examined here, the legal framework on labour market integration is the result of a complex and rapidly changing legislation and of an institutional landscape scattered in a multiplicity of actors at different levels of government, from supranational to local. Legal statuses do not equalise in terms of rights and benefits, so that being recognised as a refugee makes a difference in terms of general fundamental rights and in terms of both accessing the labour market and working as nationals do. Complexity is definitely not an enabler of integration and equality.

Thirdly, despite the differences among countries, 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. Refugees and, to a smaller 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, including those related to accessing the labour market, workers' rights and benefits. In other words, refugees, beneficiaries of subsidiary protection and long-term economic migrants are those who move closer to nationals concerning fundamental labour-related rights. However, the very important differences are that (a) they do not benefit from the freedom of movement across Europe, and (b) political rights, that fall beyond the remit of our analysis. Moreover, the legal status may allow refugees, beneficiaries of subsidiary protection and long-term economic migrants to benefit from further important opportunities of integration (language courses, vocational training) neglected by other types of migrant, strengthening their chances to join the labour market. This means that legal statuses play a crucial role in enabling people to become full members of the host societies and to contribute to the overall well-being of those societies through, among others, a full participation in national labour markets. At the bottom of the hierarchy we find irregular migrants, and just above them, asylum seekers, both categories of migrants with the most restrictive access to rights and entitlements allowing them to enter an integration path.

Legal statuses may have a strong empowering effect, and may reconcile the centre-periphery conflicts inherent to the hierarchy legal statuses create. Widening the access to these statuses or enlarging rights and benefits connected with other statuses would multiply the enabling effect of a legal status easing integration of foreign workers. It would also avoid the creation of a migrant winner-looser divide, which would be at odds with any human rights, and a solidarity-based understanding of what a modern society should be.

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