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# Working in limbo: The impact of irregular migrants’ integration into the formal and informal labor market on their potential regularization – A comparative case study of Italy and Germany

In 2015, Europe experienced a high increase in the number of newly arriving asylum seekers. Consequently, politicians are now facing the challenge of integrating these refugees into the domestic market. However, little attention is being payed to the fact that not all of these people who came to Europe seeking protection were granted asylum or another permanent residence status. Once an application for international protection is rejected and all means for appeal have been exhausted, migrants receive an order to leave the country in which they lodged the application. If they do not follow this order, their presence becomes irregular.

In some cases, failed asylum applicants nevertheless remain in the country, if their immediate expulsion would not be feasible for legal or factual reasons. In these cases, migrants are forced to remain in the legal limbo of ‘toleration’ that grants the temporary suspension of their deportation but not a legal permit of residence. Another way in which failed asylum seekers can stay in the country that rejected their application is by withdrawing from the migration authorities’ grasp by disappearing into an undocumented existence.

Over time, immigrants develop strong social ties to their country of residence, even if their residence is irregular. Many of them may find work, make friends, have families, and become active members of their social community. Meanwhile, irregular migrants constantly face the threat of imminent deportation; they are excluded from most social benefits, and since –with few exceptions- they can only work in the informal sector, they are barely protected from labor exploitation.

This paper will examine the impact of failed asylum seekers’ integration into the formal and informal labor market on the potential regularization of their stay, comparing the legal, social and political situation in Germany and Italy as two major immigration countries within the European Union. Both of these countries receive a high number of asylum seekers but grant only few of them international protection. Both in Germany and Italy a large share of former asylum applicants seem to stay in the country after their claims have been rejected. These people remain in a highly precarious social and legal situation, often for many years or even decades. To abate their vulnerability, Italy and Germany have developed distinct policy tools: Italy has introduced periodic large-scale regularization programs focused on irregular migrants’ labor market integration. Germany, on the other hand, has recently adopted a framework for the regularization of ‘hardship cases’ based on humanitarian considerations, as well as the possibility of a right to remain for tolerated migrants who show outstanding levels of integration.

This paper will explore the reasons why irregular migrants are particularly vulnerable to labor exploitation and examine existing human rights instruments to protect them from such abuse. The structural need for migrant workers and the respective role of refugees in this situation will be discussed from a socioeconomic perspective, illustrating the paradoxes of European labor migration politics with examples from Germany and Italy. The paper will provide an in-depth discussion of Italian mass regularization programs and compare them to the German legal institution of the humanitarian right to remain. A special focus will lie on the role of both formal and informal work when trying to obtain a regular status. The paper will end with an elaboration of the discussed migration policies’ moral substance, considering both the claims of individual migrants as well as the public interest in democratic societies.

# Methodology

This paper will explore the obligations of states towards irregular migrant workers with an empirical focus on rejected asylum seekers in Germany and Italy. Existing human rights provisions as well as moral considerations will constitute the basis of the discussion. The sources used for the legal analysis will be relevant provisions in international and European human rights law, including explanatory documents, as well as Italian and German domestic law. Moreover, the case law of international human rights committees and European courts as well as constitutional and administrative domestic courts will be discussed.

In the case study of Germany, empirical data on migratory movements, which the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge, BAMF*) conducts and publishes in annual reports, will be used. The case study of Italy will be based on empirical and qualitative data conducted by the Institute for Multi-ethnic Studies (*Istituto per lo Studio della Multietnicità****,*** *ISMU),* an independent organization providing studies and research on both documented and undocumented migration*.*

In the discussion of the background and impacts of migration and integration policies, relevant policy documents and position papers will be analyzed. In addition, reports of NGOs and international bodies concerning the human rights situation of irregular migrants in Germany and Italy will be taken into consideration.

Finally, sociological, political, economic and historical research as well as moral-philosophical theory will be included in the paper. Although some empirical studies will be considered, qualitative social-scientific findings will be used primarily.