

Working for Legality: Employment and Migrant Regularization in Europe

Sébastien Chauvin*, Blanca Garcés-Mascareñas** and Albert Kraler***

ABSTRACT

Recent programs to regularize undocumented migrants suggest the increasing role of employment as a requirement for foreigners to legally reside in Europe. Taking as illustrations the cases of Spain, France, Austria, Belgium and Germany, this article examines how regularization policies frame work. Employment provisions follow a civic-performance frame that breaks with the criterion of vulnerability. While secure forms of employment paying standard wages are privileged, the crisis has made such jobs even less accessible to migrants seeking to regularize or maintain their status. Residence permits granted through legalization have become increasingly temporary and conditional, often involving repeated transitions in and out of illegality. A vicious circle of “disintegration” thus threatens to set in where employment precariousness becomes both the source and the consequence of legal precariousness.

POLICY IMPLICATIONS

- The article shows how employment provisions are tightly linked to policies of “earned legalization”.
- The article shows that employment can be part of a broader regularization policy emphasizing ties to the host country.
- The article brings attention to potential conflicts between access requirements based on migrant vulnerability, and those based on migrant integration.
- The article warns against the exclusionary workings of employment-based regularization in times of economic downturn.

INTRODUCTION

Regularization is a strategic site for studying the role of employment in the political economy of migrant legality as its procedures distinguish migrants who are considered deserving of legal status from those who are not.¹ When this boundary is constructed on the basis of work, a specific form of employment usually sets the standard, thereby distinguishing between formal and informal work, salaried and independent employment, or between various skill levels (Anderson, 2010; Paul, 2012). Most European states have resorted to some form of regularization over the past two decades. Work-based regularizations have been most prominent in Southern European countries.

* University of Amsterdam, The Netherlands.

** Universitat Pompeu Fabra, Barcelona.

*** International Centre for Migration Policy Development, Vienna.

Albeit on a smaller scale, Northern and new EU member states have also regularized migrants, often on humanitarian grounds (i.e. family ties, substantial ties to the host society and ill health). A major reason for the continuing relevance of regularization is the persistent numerical significance of the irregular migrant population in EU member states. Their numbers have been estimated at between 1.8 and 3.3 million in the EU-15 in 2008, compared to between 3.1 and 5.2 million in 2002 (Kovacheva and Vogel 2009: 10).² Alongside EU enlargement, regularization can be argued to be one of the main factors explaining the decline of the irregular migrant population between 2002 and 2008 (see Kraler and Rogoz 2011: 16f).³

Since 2000, a growing body of literature has addressed regularization policies in comparative perspective (Abella, 2000; De Bruycker, 2000; Apap, De Bruycker and Schmitter, 2000; OECD Secretariat, 2000; Levinson, 2005; Papadopoulou, 2005; Sunderhaus, 2006; Greenway, 2007; Baldwin-Edwards and Kraler, 2009; Kraler, 2009). These studies have focused on three main themes: (1) rationales for regularization such as enhancing migration control, improving the socio-economic situation of migrants and increasing labour market transparency; (2) the content of regularization policies for different target groups, often distinguishing between work, humanitarian and family-based regularizations and between time-limited programs and more durable mechanisms; and (3) the impact of regularization measures, assessing their success in achieving stated purposes and their appropriateness as tools for immigration and/or labour policy.

This article examines employment as a condition for migrant regularization. We aim to go beyond existing studies of legalization in Europe by focusing on how policies construct different categories and levels of civic membership based on work. In particular, we analyse how employment has been framed in different regularization measures – as a condition for integration, as a way to enhance selective migration policies or as a guarantee of economic deservingness. By chiefly relying on a “civic-performance” frame, the criterion of employment challenges the dominant framing of the beneficiaries of regularization as vulnerable individuals to be judged according to the urgency of their needs and the severity of the dangers they face if returned (See Fassin, 2002). How do these deservingness frames interact in policy and practice?

With this question in mind, the article first examines work-based regularization programs and mechanisms in Spain, France and Austria. Its second part discusses employment provisions in non work-based regularizations in Belgium, Austria and Germany. Based on primary fieldwork supplemented by secondary analysis,⁴ these cases are taken as illustrations of the role of employment in the construction of migrant deservingness within two different regularization approaches: one dominated by the civic-performance frame in which work is often central, the other dominated by the vulnerability frame in which employment is (in theory) marginal. In both cases, we show how dominant frames are complexified by policy subtleties and challenged by economic realities. Following Roche’s (1999) typology, the selection of focal cases was guided by a ‘varied or heterogeneous’ case study logic. According to Roche, this selection method is particularly appropriate for “exploring common or distinct patterns across [a] great variance”, especially since “[c]ommon patterns in such cases are likely to indicate core and central impacts of wider relevance, precisely because they occur across diverse groups or activities” (Roche, 1999: 153). The conclusion relates the growing importance of employment in both work-based and humanitarian regularization to broader societal shifts that have rendered employment and employability key elements of deservingness and “good citizenship” for migrants as well as non-migrants.

WORK-BASED REGULARIZATIONS

Regularizations in Europe have frequently been tied to employment and economic conditions. Entry and initial stay on a tourist visa followed by post-hoc regularization on the basis of a job offer was common in the 1960s and 1970s. From the mid-1970s, stricter entry policies for labour migrants

led to regularization programs that typically included employment provisions, whether they pertained to labour-market conditions or to skills, employment history or possession of work contracts. In the 1990s and 2000s, Southern European countries frequently implemented work-based regularizations for significant numbers of migrants. The majority of the altogether 3.8 million migrants regularized in employment-based regularizations in the EU between 1973 and 2008 (representing 87% of the total number of regularized migrants) were regularized in one of the 23 employment-based programs implemented in Greece, Italy, Spain and Portugal during this period (Kraler, 2009: 23).⁵

Although involving smaller numbers, countries such as France, Belgium and Ireland have also resorted to specific forms of work-based regularization in recent years. Beyond regularizations proper, wide-scale status adjustments have taken place when citizens of new EU member states without full mobility rights were granted access to settlement and employment during transition periods. While programs such as the UK worker registration scheme were intended for new immigrants, already-present migrants also managed to regularize their stay through them (for the UK, see Dobson, 2009). Conceptually, employment conditions are closely related to sufficient financial means clauses, the desire of governments to keep migrants from becoming a public charge and policies to admit only those deemed able to support themselves.

Yet employment is increasingly seen as much more than simply a source of income – as an indicator of civic virtue and personal effort, with diverse forms of employment recognized according to their perceived value on the labour market (for an elaboration of this point, see the introduction to this thematic section). The following case studies of Spain, France and Austria reveal the variety of strategies that have been pursued in employment-based regularizations. Even if employment remains key to gaining citizenship rights in all three countries, they differ in the extent to which employment is framed as individual virtue (France), proof of “integration” (Spain) or simply as “needed” (Austria). Whereas France and Spain represent different ways immigrants’ deservingness is judged on the basis of employment, the focus of the 2007-2008 regularisation of care workers in Austria shifted to employers, who were framed as “deserving” affordable workers.⁶

Spain

Spain instituted regularization programs in 1986, 1991, 1996, 2000, 2001 and 2005, and a permanent individual mechanism thereafter. Despite some continuity, the framing of regularization in Spain has changed over the years (see Garcés-Mascreñas 2012). Until 2001 the employment situation of applicants remained secondary, when required at all. Even when proof of a job offer (1991) or a letter of intent regarding employment (1996) was required, proof of a number of years of residence was typically the main requirement. This logic was brought to its zenith in the regularization wave of 2000. As most of the documents accepted as proof of residence (work and/or residence permits, licences, tax declarations, registration with social security or registered work contracts) were difficult to obtain without a period of legal stay, numerous migrants submitted a broad range of documents bearing their name and a date. Administrative practice varied. In some provinces personal letters showing addresses in Spain, medical records, proof of cohabitation or traffic fines sufficed.

In contrast to previous programs, the 2005 regularization⁷ was above all a regularization of workers intended to combat irregular employment. In the words of the then State Secretary for Emigration and Immigration, Consuelo Rumí, the main objective was to “bring to legality jobs in the black economy” and “put an end to the social costs of illegal employment, since immigrants in an irregular situation do not pay taxes or contribute to Social Security” (*ABC*, 21 January 2005). The involvement of trade unions and employers’ confederations in policy-making explained this shift, while criticism from the opposition party Partido Popular and several EU member states arguably

contributed to the government's zeal in reminding the public that the 2005 program was only a "normalization of workers".

The change in discourse was accompanied by a change in requirements. While proof of residence continued as a criterion, proof of employment became much more central. Employers now had to request the legalization of their workers at special offices. The employment contract had to be for 40 hours per week for a minimum period of six months. The minimum period in the agricultural sector was three months, while domestic workers could personally apply for a permit if they worked at least 30 hours per week for more than one employer. In all cases, final authorization was conditional on registration in the social security system and payment of the first month's contribution to ensure that the employment bond was real and effective. The resulting permits were valid for one year and tied to a particular sector and province.

These provisions placed employers at the centre of the process. If local NGOs often played a key role in issuing – and sometimes even forging – evidence of applicants' presence during prior regularizations, in 2005 producing proof of employment remained in the hands of employers. Even further, migrants could only be regularized at the request of their employers. In the 1990s labour unions had opposed tying regularization to job offers to reduce migrant vulnerability to employers. But Spanish unions have recently become key enforcers of this very policy which they now see as a means to rein in the informal economy and impose minimal labour standards (Chauvin and Garcés-Mascareñas, 2012). Conversely, employers have accepted the role of unions in regularizing their workforces. By selecting, filtering and approving applications in the name of both workers and employers, labour unions have played a key role in the implementation process (Bruquetas, Garcés-Mascareñas, Morén-Alegret, Penninx and Ruiz-Vieytez, 2011).

Since 2005, migrant regularization has depended on formal integration in the labour market – granted either by proving a previous relationship of (illegal) employment of at least one year⁸ (in the so-called *arraigo laboral*) or possession of a (minimally) one-year contract (in the *arraigo social*). Regularization is granted on a case-by-case basis. Another novelty of the current regularization mechanism is the requirement of social integration. Proving family ties or a report from the Town Council certifying migrants' social integration is required for the *arraigo social*, the major form of regularization in recent years.⁹ The boundary between those considered deserving of access to legal status and those who are not is now constructed on the basis of both employment and social integration.

France

French governments of the 2000s pledged a tough stance on undocumented migrants, extending controls on residence status to a broad range of welfare services and bringing the annual number of deportations close to 30,000. Most rule-based regularization mechanisms were discontinued and replaced with "case by case" policies that left ample discretionary power in the hands of the local *préfectures* processing applications (Spire, 2008).¹⁰ Meanwhile, however, France has regularized more than 30,000 migrants a year during the decade – whether on employment, humanitarian, or family basis – exceeding the official number of deportations.¹¹

Employment was not absent in the legalization programs of the 1990s. Under a left-wing coalition government, the two Chevènement circulars of 1997 and 1998, which legalized 80,000 undocumented migrants, already invited prefects to consider "the existence of resources resulting from regular activity" along with the past "fulfilment of fiscal obligations" as elements of integration into French society. It also instructed government agencies to deliver "*salarié*" (employee) residence permits to regularized individuals who "manifest an intention to hold a job", leading some migrants to obtain "*salarié*" residence permits even though they had been regularized on other grounds. If employment played a role in the program, it remained both vague as a requirement and peripheral as a priority.

A decade later, in the mid-2000s, the new conservative government under President Nicolas Sarkozy tentatively initiated a policy shift towards so-called “chosen migration”, privileging migrants categorized as economically desirable. In July 2006, a new law laid a heightened emphasis on the “*salarie*” residence permit for first entries. The law of 20 November 2007 then extended “chosen migration” to regularization: Article 40 allowed “exceptional admission to residency” for certain undocumented workers sponsored by their employers. Two government decrees stipulated how it should be implemented. The first one (20 December 2007) gave nationals of new EU member states easier access to 150 occupations while non-EU foreigners could only obtain legal residency through a list of 30 high-skilled occupations that varied from region to region. Those occupations (“expert computer programmer”, “sales representative”) differed significantly from the jobs actually held by undocumented migrants (Tourette et al., 2008). A second decree (7 January 2008) added the requirement that an actual job offer be extended by the employer. The decree also allowed local *prefectures* to “exceptionally” examine “applications for legalization that match all other criteria, but are tied to a job that does not appear on the lists.” Seizing this opportunity, thousands of undocumented migrant workers primarily in the cleaning and restaurant sectors struck and occupied their workplaces in 2008–2010 with the support of the *Confédération Générale du Travail* (CGT), demanding that their employers sponsor their regularization applications (Barron et al., 2011). About 5,000 were eventually regularized between 2008 and 2010 as a result of this mobilization.

Regularization criteria were specified following negotiations between the CGT and the French government. Employment requirements became both more precise and more drastic. Besides a job offer and proven years of presence in France, the undocumented migrant’s history of formal employment became central for successful application. Although the government’s granting of employment-based permits was presented by unions as recognition of the dignity of migrant work, these permits gave migrants less freedom on the labour market than “private and family life” cards. They tied their holders to their employers and specific sectors, jeopardizing renewal in case of unemployment or shift of sector. The dual imperatives of providing a work contract and having one’s application sponsored by a single employer posed particular problems to mostly female domestic workers working long hours for multiple employers, often on an undeclared basis (Barron et al., 2009). Nevertheless, work in many sectors came to qualify as a number of *prefectures* circumvented restricted jobs lists by resorting to labour market tests, even if those tests mechanically underestimated labour shortages in sectors where undocumented migrants were already working.

The greatest number (43%) of permits granted in France continues to be on “private and family life” grounds. Nevertheless, the number of professional residence permits (for both entry and legalization) increased from 6% of all permits in 2006 to 11% in 2010, exceeding the number of those issued on humanitarian grounds (Comité interministériel de contrôle de l’immigration, 2011). Sectors and skill-levels in which undocumented migrants most often regularize saw their shares increase: construction went from 4.6 per cent of all admissions in 2001 to 13.8 per cent in 2010; unskilled admissions increased from 579 in 2000 to 3,150 in 2010. Overall, available data suggest that work-based regularizations in recent years may make up 20 per cent of all cases (SGII, 2011). Administrative practice has also been inconsistent and some de facto employment-based regularizations – for example following labour strikes – have resulted in the issuing of “private and family life” residence permits.

In November 2012, the new socialist government issued another circular following talks with a coalition of major labour unions and migrants’ rights organizations. The new regulation formalised and centralized further what up to now had been fairly decentralised administrative practices, turning them into a permanent regularization mechanism. Among other dispositions, it put an end to restrictive job lists, let migrants who had been working for more than seven years in France get a temporary permit even without a job offer, and officially allowed applicants to combine multiple part-time employment contracts to qualify. The latter measure makes regularization potentially easier for domestic workers and other categories of precarious migrants whose position on the French labour market was made more vulnerable by the economic crisis.

Austria

Regularizations became an issue in Austria in the early 1990s when admission policies were overhauled due to the massive increase of immigration from Eastern and Southeastern Europe (Kraler, 2011). The first program in 1990 involved access to work permits and therefore to residence as the latter was ancillary to employment permits before the 1992 immigration reform. In total, an estimated 30,000 persons benefited from the regularization (Kraler and Reichel, 2009: 178). In terms of its design, Austria's first regularization program was not unlike regularizations in Southern EU member states in the 1990s and 2000s. However, policy-makers subsequently evaluated the program as a failure – as unable to reduce the extent of irregular employment, and as a pull factor for new irregular inflows. The negative evaluation of this program and its ex-post understanding as an indiscriminate “amnesty” has informed Austrian policy-makers' subsequent opposition towards regularization ever since.

Despite Austria's opposition to regularization, the country implemented a major program targeting a particular category of workers in 2007–08. Known as the “care amnesty” due to its focus on care workers, it may have involved the regularization of more than 9,000 persons (Kraler et al., 2009: 52ff). In stark contrast to the Spanish and French cases discussed above, the ‘deservingness’ of individual applicants for regularizations did not play a role at all. Indeed, it was employers, rather than care workers, who were the actual targets of the program. The program is interesting for several reasons. First, like the regularization of 1990, it was based on individual employment and social security status. Second, it targeted citizens of the EU-8 who did not enjoy full mobility rights under Austria's restrictive implementation of the transition rules for new EU members.¹² The program thus never applied to third country nationals, which arguably made it easier to justify. Finally, the “care amnesty” is a showcase of how regularization can capture informal work arrangements and bring them under the ambit of the law. This was done by adjusting altogether 13 different pieces of legislation (Kretschmann, 2010: 207).

Informal care became a public issue in the summer of 2006 when cases of families who had been fined for employing irregular migrant care workers from new EU states reached the media in the midst of general election campaigning. The press subsequently reported that the families of several high-ranking politicians employed irregular migrant care workers (see *Die Presse*, 2006; Schmid, 2010: 184–185). In the debate that ensued, irregular migrant care became reframed as a wider issue of care provision – a “care emergency” (*Pflegenotstand*). Coalition parties supported the possibility of an amnesty, not least to avoid more embarrassing cases of modest-income families facing substantial fines emerging in the media. The amnesty was eventually adopted by the new centre-left government in early 2007 and extended until June 2008.

The amnesty's main objective was to legalize existing informal employment practices without significantly increasing the costs of employing care workers (Schmid, 2010: 185). It in effect created a new category of workers in private households – “domestic care workers” – for whom existing labour protection standards did not apply. The new job profile entailed a lower minimum wage for employed workers and no minimum wage for self-employed ones. While both salaried employment and self-employment were available options, 97 per cent of care workers registered as self-employed. The deregulated neoliberal employment model that emerged was hitherto unseen in the country (see Kretschmann and Pilgram, 2011).

In Austria's care amnesty, the “legality” of migrant care workers had both instrumental and symbolic value. In legalizing a specific employment model, the Austrian regularization of care workers went considerably further than other regularization schemes for domestic (including care) workers as implemented, for example, in Spain (2005) and more recently in Italy (2009). Care workers themselves were largely absent from the debate on the care amnesty. The issue was not whether individual migrants deserved to benefit from the amnesty, but whether their clients (families and their members

in need of long-term care) were framed as deserving access to affordable services – at prices well below the level necessary for migrant care workers to be included in the welfare state – and, in a sense, turning the notion of ‘deservingness’ on its head. Nevertheless, at a more fundamental level, the same neoliberal logic underlying the deservingness frame can be discerned in the case of the Austrian care amnesty, in the sense that the proven “usefulness” of individual care workers’ manpower provided them access to a full legal status, even if this – in contrast to France and Spain – was in a sense taken for granted and never explicitly articulated in public debates.

EMPLOYMENT PROVISIONS IN NON-WORK BASED REGULARIZATIONS

Employment provisions do not only inform work-based regularizations; they have been a part of humanitarian regularizations as well. These have proliferated since the 1990s, notably in Northern European countries where work-based regularization schemes have been rare or non-existent. While several EU member states have specific regularization programs for humanitarian cases, most have sought permanent status adjustment mechanisms (see Baldwin-Edwards and Kraler, 2009; EMN, 2010). Initially a response to refugee flows from the former Yugoslavia and other conflict areas, humanitarian regularization subsequently came to cover a wide range of non-refugee related humanitarian situations. These measures should also be seen in the context of increasingly exclusionary asylum policies and overall more stringent immigration regulations that make it more difficult to accommodate, through informal practice, individuals in breach of them (Squire, 2009).

Unlike work-based regularizations that typically target unregistered irregular migrants, humanitarian regularizations generally cater to irregular migrants who have gone through some sort of official procedure and who – for practical or legal reasons – cannot or are simply not removed (Baldwin-Edwards and Kraler, 2009; FRA, 2011: chapter 2). As humanitarian regularizations are rooted in national, European and international human rights law, they differ from work-based regularizations in their degree of judicialization and Europeanization through the European Convention of Human Rights (ECHR) and related jurisprudence by the European Court of Human Rights (ECtHR), in particular regarding the ECHR’s Article 8 (protection of family and private life).

Though regularizations referring to Article 8 have focused on family ties to “legal insiders” (de Hart, 2009), wider family considerations as well as length of residence have frequently been considered. Other humanitarian grounds on which individuals may be regularized include medical reasons, the rights of children and “integration” in host societies. The growing recognition of “integration” (including but not limited to labour market integration) as a potential source of legality can be observed at both national and European levels. At the European level, the ECtHR usually frames “integration” in terms of “ties to the host country” (see Murphy, 2010; Thym, 2008). While the Court has long recognized family ties to legal insiders as a potential source of legality or at least grounds for preventing expulsion, recent case law has extended the notion of “private life” to include “the network of personal, social and *economic* relations that make up the private life of every human being” [our emphasis].¹³ Yet the European Court of Human Rights has never considered employment on its own, always reading it in conjunction with other elements of integration (length of residence, ties to the country of origin, language knowledge, family ties to legal residents or citizens, etc.).

However, other institutions have considered employment as a decisive criterion in acquiring legal status. At the European level, the Council of Europe has followed this line of thinking in promoting the notion of “earned regularization” (Greenaway, 2007). Essentially, earned regularization is based on the idea that migrants’ *de facto* integration, including in employment, should be rewarded – in the Council of Europe’s proposal within a formalised points system. While the Council of Europe sees it as a pragmatic rather than a rights-based response to the long-term presence of irregular migrants, the notion of “earned regularization” has also influenced more human rights-driven understandings of

regularization. Some EU member states now use employment as a condition for acquiring the right to stay on humanitarian grounds. Below we briefly review three cases representing different ways in which employment has featured in mainly non-work based regularization procedures. The three cases selected (Belgium, Austria and Germany) represent slightly different policy responses in regard to a particular subgroup of irregular migrants – rejected asylum seekers who have not returned, which in particular differ in the extent employment is made a condition for accessing legal status.

Belgium

Belgium implemented its first regularization in 1974–75, primarily to address the unwanted consequences of the recruitment stop. Article 9 (3) of the Aliens Law of 1980 (since 2007 split into Article 9 bis and Article 9 ter) foresaw the possibility of granting foreign nationals a residence permit upon application from within the country. The article was not originally intended as a regularization mechanism but to facilitate the acquisition of regular long-term residence permits for short-term migrants who had acquired a Belgian work permit. Over time, and in particular since the 1990s, this article was increasingly used to regularize migrants who could not apply from abroad due to exceptional circumstances. These “exceptional circumstances” were generally interpreted as having a humanitarian nature.¹⁴ Regularizations on humanitarian grounds have consistently increased over the past decade. 124,928 applications based on Articles 9 bis and ter were filed and 80,570 persons regularized between 2005 and 2010 (Office des Etrangers, SPF Interieure, 2011: 56).

A series of circulars issued between 1997 and 2002 specified the conditions under which a residence permit could be granted, including family ties to a citizen or legal resident, serious medical reasons, parentage of a child possessing Belgian nationality and “unreasonably long” asylum procedures. Evidence of integration and in particular employment was also routinely considered (Bernard, 2000; Kraler, Bonjour and Dzhengozova, 2009). An exceptional regularization program implemented in 2000 followed similar criteria but specifically stressed the existence of “durable social ties” in humanitarian cases. Overall, an estimated 40,000 to 45,000 persons were regularized out of an estimated total of 55,000 applicants (Kraler et al., 2009: 193; Office des Etrangers, SPF Interieure, 2011: 49).

Belgian practice is close to line taken by the ECtHR in that employment is a supportive factor in deciding a case, neither a condition nor sufficient in itself to grant (or deny) regularization. A quasi-regularization program in 2009 followed the same line of thought. It departed from previous practice by offering two specific streams for applicants able to prove “durable local integration” (*ancrage local durable*). Both streams gave significant weight to employment. The first stream (point 2.8 A of the instruction) required general proof of employability rather than actual employment alongside other criteria such as language proficiency in one of the official languages of Belgium. The second stream (point 2.8 B of the instruction) effectively amounted to work-based regularization, and required applicants to have a job contract and two years of residence. Thus, although employment – or employability – is increasingly recognized as an additional ground upon which migrants can be regularized, these two mechanisms complement rather than replace existing avenues to regularization.

Austria

Regularization on humanitarian grounds was first introduced in the 1997 Aliens Law, largely in response to problems resulting from the 1993 immigration reform. The fact that only the authorities could initiate a regularization procedure was criticized and successfully challenged before the Constitutional Court in 2008 (Kraler and Reichel, 2009). In 2009, a new legal framework was adopted that foresaw: (1) a mandatory ex-officio examination of obstacles to removal on grounds of the ECHR’s Article 8 in any return procedure; (2) the possibility to apply for humanitarian status on the grounds of Article 8; and (3) the possibility to apply for resident permits on the grounds

of long-term residence and de facto integration. As part of the requirement to prove integration, applicants under the third option must not be a public burden and show either an employment contract or produce a declaration of sponsorship by a natural or legal person. Employment here is a condition few applicants can meet, as access to legal employment is de facto highly restricted (see below), while employers are reluctant to formally employ individuals whose restricted rights of residence might be revoked any time. Inadmissibility of expulsion on the basis of Article 8 (i.e. mechanisms 1 and 2) has thus been the foremost reason for granting residence permits on humanitarian grounds (Asylkoordination et al., 2010: 3).

In cases where the ECHR's Article 8 is invoked, "integration" and in particular employment are frequently considered – usually by the courts, sometimes as a decisive criterion (Rosenberger, 2011: 100). The paradox is that access to legal employment for the typical beneficiaries of humanitarian regularization – rejected asylum seekers – remains exceptional. It largely depends on the favourable use of discretionary powers by regional and provincial labour and immigration authorities during the required labour market test. Most asylum seekers are therefore not granted access to work. If they are, work permits are usually allowed to expire or withdrawn upon the final rejection of an asylum application. The requirement to prove "integration" thus fits with what Rosenberger (2011), following Täubig (2009), terms "organized disintegration" – the exclusion of (rejected) asylum seekers from work and other social rights. Ultimately, employment conditions in humanitarian regularizations appear as caricatures of "earned regularization" where only those who – against all odds – gain access to legal employment are rewarded with legal status.

Germany

Since the early 1990s Germany has used a wide range of measures to regularize migrants who could not be removed. In numerical terms, regularization has been insignificant while "toleration" (*Duldung*) – essentially a temporary suspension of removal – has been the standard response to the prolonged presence of irregular migrants. Like asylum seekers in Austria, tolerated persons have reduced access to employment; they are also obliged to reside in particular districts which affects their employability. Apart from toleration, specific regulations targeted particular nationalities. The Residence Act includes several permanent mechanisms for cases of hardship, old cases and children of tolerated persons, and for when removal is inadmissible on humanitarian, personal, legal or factual grounds. None of these possibilities have been used extensively (Kraler, Reichel and Dzhengozova, 2009).

Based on the existing legal framework for regularization on humanitarian grounds, the informal conference of the Ministers of the Interior in the Länder (*Innenministerkonferenz*) adopted a major regularization program for long-term tolerated persons (Ständige Konferenz der Innenminister und –senatoren der Länder, 2006) which was incorporated into immigration law in 2007. It offered a type of "earned regularization" for tolerated persons with families who had stayed in Germany for at least six years and for other tolerated persons who had been in Germany for at least eight years. To immediately benefit from the program (applications were received until May 2007), applicants had to show proof of employment and sufficient income. Given the restrictions on movement and labour market access, few applicants were able to do so (see Fiebiger et al., 2009). Applicants without work at the time were given temporary permits to find work, initially valid until 2009 and then extended to 2011. In addition, a series of accompanying measures were implemented to promote the employment of beneficiaries of regularization. Although informed by progressive intentions, the workfarist dimension of the "activation" of labour of individuals previously largely excluded from the formal labour market is not difficult to see. However, yet another contradiction became apparent at this juncture with the onset of the economic crisis, which hit people at the bottom of the labour market the hardest. Many long-term tolerated migrants now found it much more difficult to gain legal recognition through work.

CONCLUSION

Our case studies have shown that the role of employment in regularization needs to be examined not only within regularization programs and mechanisms officially based on work, but more broadly within policies that frame social integration and ties to the country of residence as key elements of earned regularization. Up until now, the “virtualization of citizenship” that renders full membership of society more precarious – and contingent on the performance of civic virtue – has been deployed in Europe mostly in ways that question the civic worth of legal migrants and their descendants, especially Muslims (Schinkel, 2010). People possessing residence permits and even citizens have been told that citizenship consists not only of papers, but also of good behaviour, cultural assimilation and subjective identification. But how long can the idea that citizenship is not just about papers be promoted for restrictive purposes without extending it in some way to precisely those residents who do not yet have papers? A systematic answer requires further inquiry into the moral economy of migrant illegality in Europe and beyond (Chauvin and Garcés-Masareñas, 2012).

In his seminal analysis of the long-term emergence of citizenship in England, Thomas Marshall (1950) showed how civil rights were won first, followed by political rights, and finally in the twentieth century, the social rights associated with the welfare state. Ironically today, when these rights are already institutionalised within EU member states, the type of “earned citizenship” pressed upon irregular migrants invites them to use their social, economic, and labour integration to claim rights more traditionally associated with core civic membership, in effect turning the historical emergence of citizenship on its head. Nevertheless, exhibiting one’s integration in society or “deservingness” is but one way to claim rights, one which often clashes with the still dominant framing of the beneficiaries of regularization as vulnerable individuals. In contrast, employment provisions follow a civic-performance frame, largely breaking with the criterion of vulnerability. Potential conflicts between these frames need to be further studied, especially when conflicting frames successively prevail as conditions for being tolerated, getting regularized or having one’s residence permit renewed.

The deservingness frame can be specified in two ways. The first revolves around cultural integration and the “culturalization of citizenship” – the restrictive redefinition of citizenship in nativistic cultural terms (Duyvendak et al., 2010). The second one measures migrants’ civic value in terms of economic integration and employment performance. At first sight both versions of deservingness may seem to be exclusive alternatives. However, in a neoliberal context dominated by workfare policies, discourses, and imperatives (Gray, 2004; Lødemel and Trickey, 2001; Krinsky, 2008), employment and self-sufficiency have been redefined as key elements of civic deservingness, thus blurring the distinction between the cultural and the economic.

This new cultural-employment nexus can present opportunities for migrants, especially in times of economic growth. But the same logic of employment-based integration can turn into a system of exclusion during recession or crisis. Indeed, while work-based regularization and renewal requirements generally privilege people with secure employment paying standard wages at the expense of those working under more precarious or informal conditions, the current economic downturn has made stable jobs even less accessible to migrants seeking to regularize or maintain their legal status. As residence permits granted through legalization become increasingly temporary and conditional, legal status grows more precarious (Goldring et al., 2009), often involving repeated transitions in and out of illegality. A vicious circle of “disintegration” threatens to set in, by which employment precariousness becomes both the rising source and the dire consequence of legal precariousness.

NOTES

1. Kraler (2009: 2) defines “regularization” as “any state procedure through which non-nationals who are illegally residing or are otherwise in breach of national immigration rules in their current country of residence are granted a legal status.”
2. For the EU-25 the number of irregular migrants was estimated at between 1.9 and 3.8 in 2008. The majority of irregular migrants thus reside in the “old” EU member states. For previous periods no estimates are available (see Kovacheva and Vogel, 2009: 10).
3. The general decline of irregular inflows after 2002 may also explain part of the decline of the irregular migrant population. However, irregular inflows are only one, and very likely not even the most important, factor for the size of the irregular migrant population (loss of legal residence and overstaying being the other two main factors, see Kraler and Reichel, 2011).
4. This study is based on the analysis of three different sets of sources: primary documents (legislation, policy documents, official reports, newspapers, etc.), interviews with a broad set of stakeholders and secondary literature. Material for this article has been largely collected in the course of earlier projects in which the authors of the paper have been involved.
5. It should be noted though that the typology developed by Kraler (2009) is quite schematic. In practice, a combination of criteria (and objectives) are relevant (see for a quantitative account of criteria applied in regularizations Baldwin-Edwards and Kraler, 2009: 35–64).
6. Austria therefore in a sense represents an ‘extreme or deviant’ case (Roche, 1999: 153). However, the logic at work also can be seen in other cases of regularization of care and domestic workers, for example in the Italian regularization of domestic workers of 2009.
7. During the three-month process, 691,655 people applied for regularization.
8. This relationship must be proven through judicial or administrative decision by the Department of Labour Inspection and Social Security. The foreign worker must denounce employers for his or her working (or having worked) illegally, or sue them in the courts for dismissal or non-payment of salary. Given the absence of documents (written contracts, pay slips, registration for social security), the main problem is proving the duration of the employment relationship (Izquierdo, 2006: 191). Often the declaration of witnesses, deemed inherently weak by both the Social Order Courts and the Employment Administration, is the only means of doing so.
9. Given the difficulties described in the previous footnote, there are fewer cases of legal status being granted on the grounds of employment stability. Based on data from the government sub-delegate’s office, Sabater and Domingo (2012) conclude that in the province of Barcelona, almost 900 new migrants applied for *arraigo laboral* (629 granted) and almost 35,000 applied for *arraigo social* (20,829 granted) between 2006 and 2009.
10. In France, *préfectures* are local offices of the national Ministry of the Interior. Each *département* has its *préfecture*, headed by a *préfet*.
11. In 2009, 31,755 residence titles were granted to migrants who had entered French territory irregularly (CICI, 2011).
12. Alongside Germany, Austria was the only country in the EU to maintain restrictions to freedom of movement of citizens of the EU-8 until May 2011, the end of the transition period.
13. ECtHR, Slivenko et al. v Latvia, No. 48321/99.10.2003, para 96.
14. Belgium, Response REGINE Questionnaire, 19 May 2008, p.3.

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