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MASTER'S THESIS

From Non-Deportability to a Form of 'Legality'?

The Reality of Stratified Access to Labor-Related Regularization
for Rejected Asylum Seekers in Germany

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Abstract

This thesis investigates to what extent regularization serves as a solution to the precarious situation facing 'non-deportable' persons in particular and to the issue of non-deportability in Europe more generally. This is especially relevant given the current limitations of the international protection regime and a growing demand for labor in the European Union (EU). Taking the German city Stuttgart as a case study, the thesis looks at factors determining – and limiting – access to labor-related regularization opportunities for 'tolerated' rejected asylum seekers. Drawing upon the concept of *civic stratification,* it explores the ways in which labor-related regularization facilitates status mobility and how opportunities to regularize relate to migrants' needs and aspirations. In order to analyze these themes, semi-structured interviews with twelve (rejected) asylum seekers and five experts of Stuttgart-based institutions were conducted. These interviews shed light on individual strategies that migrants' adopt to improve their insecure legal situation, namely through mobilizing different types of resources. Labor-related regularization seems to provide 'tolerated' persons with the opportunity to realize their aspiration to secure their stay in Germany. However, it is also demonstrated that access to regularization is highly restricted and thus not (yet) a widely applicable instrument to address neither non-deportability nor the growing skills shortage in the EU.

Keywords: civic stratification, deportability, EU migration policy, irregularity, migrants' aspirations, regularization

Acknowledgements

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1. Introduction

Since the mid-1990s, deportation of 'irregular' migrants has been deemed one of the highest political priorities in many EU Member-States (Gibney, 2008; Lietaert, Broekaert & Derluyn, 2015). [1] However, despite its political salience, the enforcement of returns and deportations remains limited. Leerkes and Van Houte (2020) highlight the significant gap between the number of 'irregular' migrants, including rejected asylum seekers, who are *supposed* to leave the country, and the number of people who *actually* leave. This return gap is reflected in a large number of 'non-removed persons' that can be defined as "third country nationals who received a deportation order which could not be implemented by state authorities" (Rosenberger & Küffner, 2016, p. 140). The 'ineffectiveness' of deportation regimes is related to, for instance, the unpopularity of deportation in local communities, the impact of international and human rights law, high costs, or bureaucratic obstacles such as the lack of identification documents (Ambrosini, 2016; Anderson, Gibney & Paoletti, 2011; Cvajner & Sciortino, 2010).

The number of refugees and thus the presence of potentially 'non-removable' people in the EU is expected to increase in the future because of ongoing political, economic and technological transformations, violent conflicts, and increasingly frequent natural disasters (Castles, De Haas & Miller, 2014; UNHCR, 2020). Wagner, Schultz and Allemann (2019) point to the limitations of the international protection regime and note that the international community has developed new instruments "to increase mobility options – such as labor mobility – for refugees and migrants in vulnerable situations" (Wagner et al., 2019, p. 57). These instruments include policies targeting rejected asylum seekers *after* their arrival, subsequently enabling them to obtain 'regular' labor migrant statuses. In times of significant demographic changes in many EU Member-States (EMN, 2015), providing access to regularization is not only seen as a way to handle the presence of 'non-removable' persons, but also as a means to fill labor market demands with those already present (Schammann, 2019; Schultz, Wagner & Allemann, 2018). For 'non-deportable' migrants, regularization may offer

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[1] 'Irregularity'/'illegality' are socially and politically constructed concepts that render a person irregular'/'illegal' (De Genova, 2002). Legally speaking, there are different categories of 'irregular' migrants which include rejected asylum seekers (who do not return or are not removable), people who enter the country legally and overstay their visa (student, holiday and work), or individuals who enter clandestinely (Bloch & Chimienti, 2011; Düvell, 2011). This thesis focuses mainly on rejected asylum seekers. The term refugee is used to describe people who are 'forced' to flee their country of residence due to various circumstances and who may become asylum seekers in the destination country (see Martin, Weerasinghe & Taylor, 2014, for a detailed account on migration in crisis situations).

opportunities to improve their marginalized position by gaining more legal security and increased access to social, economic and political rights (Bauer & Schreyer, 2019; Kraler, 2019; Landolt & Goldring, 2015; Morris, 2003; Rosenberger & Küffner, 2016).

This thesis aims to explore to what extent regularization provides an effective and lasting solution for 'non-removed' persons in particular, and to the issue of non-deportability in Europe more generally. The presence of a relatively high number of (rejected) asylum seekers, combined with a strong demand for (skilled) labor, make Germany a compelling case to investigate situations facing 'non-removed' persons, and their access to and experiences with existing regularization arrangements (Schultz, 2020). Stuttgart, capital of the federal state Baden-Württemberg, serves as a critical case study for this exploration. Stuttgart is characterized by a strong economy, a long experience with the 'integration' of migrants – almost half of the city's population has a migration background –, and a clear attitude that all newcomers should be empowered to participate in society.[2] Well-developed support networks and additional (language) programs for refugees, complementary to those funded by the national government, reflect this position. Overall, Stuttgart's liberal social and political landscape seems to provide (rejected) asylum seekers with promising opportunities, especially in light of a growing shortage of labor.[3] Stuttgart may present an example for other European cities that encounter similar developments.

In Germany, asylum seekers whose proceedings are pending are granted a temporary residence permit, the *Aufenthaltsgestattung*. If the asylum application is rejected, individuals are obliged to leave the country. Rejected asylum seekers whose return cannot be enforced for various reasons receive a *Duldung* (toleration), i.e. their deportation is temporarily suspended by the immigration authority. Hence, they are 'non-deportable', even though they are legally still obliged to leave the country.[4] In 2019, Germany hosted almost 120,000 'tolerated' rejected asylum seekers (publication of the German Parliament no. 19/12240), many of whom are likely stay in the country for the foreseeable future. People with a *Duldung* status have several options to gain right of residence, i.e. to regularize and secure their status in Germany

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[2] These aspects were stated in an interview I conducted with a representative of the city's department for integration policy. For more information on Stuttgart's integration policy and approach to the shortage of skilled labor: https://www.stuttgart.de/integration and https://www.stuttgart.de/fachkraeftesicherung [last accessed on 18/06/2020].

[3] The shortage of skilled labor in Baden-Württemberg and Stuttgart is regularly analyzed by the Chamber of Industry and Commerce (IHK): Zahlen und Fakten zum Fachkräftemangel [last accessed on 18/06/2020].

[4] For more detailed information on the asylum procedure in Germany: BAMF Asylum and refugee protection Overview [last accessed on 18/06/2020].

(EMN/BAMF, 2016; Hinterberger 2020). However, with the minimal rights granted to those with (il)legal status, they face various constraints when it comes to accessing these options. This differentiation of people according to their legal statuses results in an unequal system of *civic stratification* (Morris, 2003) in which 'tolerated' persons occupy a very low position and often experience restricted access to labor markets, education, or welfare services. Following Morris' (2003) argumentation, this thesis applies the civic stratification concept to analyze mobility through the stratified system, focusing mainly on regularization which implies a move 'upward' towards a more secure stay and access to more equal rights. Moreover, the thesis draws on Lockwood's (1996) concept of moral and economic resources and Bourdieu's (1986) notions of economic, cultural, social and symbolic capital to explore which resources migrants mobilize to achieve regularization.

The thesis makes two contributions: First, it examines how access to existing regularization opportunities in Germany is constructed and what resources are needed to successfully regularize. While there are various opportunities to regularize in Germany (e.g. for family or humanitarian reasons; Hinterberger, 2020), the thesis focuses on regularization options targeting rejected asylum seekers who are 'well integrated' and who may be granted a residence permit based on their 'integrative achievements' (*Integrationsleistungen*) (publication of the State Parliament no. 16/7435). Relevant 'integrative achievements' are commonly associated with a steady (qualified) job or regular school attendance 'guaranteeing' future employment. Because of this economic focus, the term *labor-related regularization* will henceforth be used. These regularization opportunities are popularly referred to as 'lane change' (*Spurwechsel*) because people appear to change from the 'asylum lane' to the 'economic lane' of migration (SVR, 2018).

Second, the thesis examines the usefulness of the civic stratification concept, and possibly expands it further, with a main emphasis on opportunities for status mobility for 'tolerated' people. Drawing on the experiences of twelve interviewees, it discusses how their needs and aspirations informed their decision to legalize their stay in Germany. Considering 'tolerated' migrants' aspirations is crucial to highlight their agency and the ways they manage to improve their situation within a given stratified system (Van Meeteren, Engbersen & Van San, 2009).

The thesis is based on the following research question: How is access to labor-related regularization in Germany constructed, and how do migrants experience these opportunities to regularize given their needs and aspirations? Three sub-questions serve as a guiding analytical framework:

1. Which immigration statuses and opportunities for labor-related regularization exist for (rejected) asylum seekers in Germany, and what limits their implementation?

2. Which factors and resources determine migrants' status mobility in the form of labor-related regularization?

3. In what ways do the available opportunities for labor-related regularization meet, or conflict with, migrants' needs and aspirations?

The thesis is structured as follows: chapter two outlines the theoretical framework. Chapter three explains design and methodology of the research that was based on the study of the Residence Act and qualitative interviews with key stakeholders and migrants. Chapter four analyzes the collected data and answers the sub-questions. The last chapter discusses the findings and conclusions.

2. Theoretical Background

This chapter introduces the concept of civic stratification (Morris, 2003) and highlights the relevance of resources and notions of deservingness for successful status mobility within the stratified system. It then explores how status mobility relates to migrants' needs and aspirations (Van Meeteren et al., 2009).

2.1 Status (Im)mobility in the System of Civic Stratification

EU Member-States' interest to control migration flows is reflected in migration policies that selectively restrict the global movement of people: Certain types of migration are desired and encouraged, for instance the 'legal' migration of highly-skilled professionals, leaving others' movements stigmatized and forbidden, e.g. that of 'irregular economic refugees' (Ambrosini, 2016; Baumann, 1998; Glick-Schiller & Salazar, 2013). The latter are codified by receiving states as 'illegal' migrants, often considered a burden or threat to the nation (Cvajner & Sciortino, 2010; Landolt & Goldring, 2015; Schinkel, 2009). Consequently, state borders and immigration control can be described as filters sorting out "the desirable from the undesirable, the genuine from the bogus, the deserving from the undeserving" (Bonizzoni, 2020, p. 218). Yet, border-drawing does not stop at the geographical border of nation-states, but continues inside national territories through the hierarchical categorization of people according to "different legal statuses of belonging" (Morris, 2003, p. 79). These different 'categories' of people – such as 'legal'/'illegal' migrant or citizen/non-citizen – have access to a differentiated set of social and political rights, creating an unequal system of civic stratification (Morris, 2003). Within this system, there is under specific conditions the

possibility to progress from temporary, 'irregular' statuses to more secure, 'regular' statuses, namely by accessing different regularization opportunities (Bonizzoni, 2020; Morris, 2003). The regularization of an insecure status can be described as status mobility, while the denial of access to regularization can lead to status immobility. Arguably, pathways toward 'legality' are rocky and depend largely on the availability of specific resources.

Lockwood's (1996) definition of moral and material resources and Bourdieu's (1986) understanding of capital offer a comprehensive theoretical framework to analyze the dynamics of status (im)mobility and the role of resources. According to Lockwood, the denial of full citizenship, together with the unequal distribution of material and moral resources, produce and influence societal hierarchies and the opportunity to attain one's goals. Lockwood defines *moral resources* as "advantages conferred by social standing and social networks, command of information, and general know-how, including the ability to attain one's ends through the activation of shared moral sentiments" (Lockwood, 1996, p. 536). Consequently, some social groups' advantages are not only based on better access to educational, medical and other (public) services, but on their ability to *communicate* needs more clearly and influence the choices given to them more confidently. Conversely, groups lacking in moral resources, namely those with 'low' social standing, appear to have limited abilities to attain their goals and communicate their needs. This is also true for (rejected) asylum seekers who are often portrayed negatively in public discourse (De Genova, 2013).

Bourdieu (1986) argues similarly that the social world is characterized by a set of constraints, reflected in the unequal distribution of the different types of capital which determine "the chances of success for practices" (Bourdieu, 1986, p. 242) and lead to the reproduction of social inequality. Bourdieu distinguishes between four different forms of capital: economic, cultural, social, and symbolic. First, *economic capital* is "immediately and directly convertible into money" (Bourdieu, 1986, p. 243), and can be reflected in property rights. Second, *cultural capital* refers to 'embodied' culture in the sense of cultivation or *Bildung,* i.e. a certain 'habitus' transmitted through family, as well as 'objectified' cultural goods. Moreover, it comprises educational qualifications, language proficiency and professional work experience (Van Meeteren et al., 2009). Third, *social capital* is "the aggregate of the actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintance and recognition – or in other words, to membership in a group" (Bourdieu, 1986, 249, p. 250). Fourth, similar to moral resources, *symbolic capital* represents the perception, recognition, and social value attached to properties, names, fields or persons/social groups. Lebaron (2014) argues that

symbolic capital can be positive when it results in an 'attraction', e.g. expressed in social recognition, positive reputation, care or love. For some, missing symbolic capital can become a 'symbolic burden': "any particular physical or 'symbolic' property (physical aspect, skin color, linguistic practice, religious habits, etc.) can be negatively valued in certain societies or groups" (Lebaron, 2014, p. 6541) causing rejection and stigmatization. This aspect of 'negative' symbolic capital is especially relevant in the context of migration, where 'undesired' migrants are often subjected to racism and discrimination.

For status mobility, 'tolerated' asylum seekers need a combination of resources/capital to meet the necessary requirements for regularization. Most labor-related regularization options require for instance cultural capital such as educational qualifications, language skills and employment. To find the latter, social capital, namely social relationships with relatives, 'co-ethnics', employers or others that can provide information and connections, is especially crucial (Bonizzoni, 2020). Conversely, limited availability of capital restricts peoples' chances to 'climb up' in the system of civic stratification. 'Negative' symbolic capital or lack of moral resources may affect prospects of finding employment or receiving community support. This is of importance because migrants do not only need to fulfill 'clear cut' legal requirements; they are also required to meet 'informal' and discursive conditions related to notions of deservingness.

In this context, Landolt and Goldring (2015) emphasize that migrants often "enact conditionality" (Landolt & Goldring, 2015, p. 854), i.e. migrants work actively to meet material and discursive *conditions* required to gain and exercise "the formal or substantive right to remain present within a national territory and/or to access entitlements and social goods, including the labor market" (Landolt & Goldring, 2015, p. 857). These material and discursive conditions are embedded in moral frames of deservingness. Important key elements of deservingness are employment and employability, self-responsibility, self-sufficiency and individual achievement. Besides these *labor-related meritocratic* aspects, deservingness is based on *cultural* elements, namely cultural integration, 'good character', and loyalty to national values (Bonizzoni, 2020; Chauvin, Garcés-Mascareñas & Kraler, 2013; Lockwood, 1996; Morris, 2003). In Germany, these notions of deservingness are visible in political and public discourses surrounding the 'successful integration' of refugees and their access to 'lane change'. They are, moreover, reflected in the Residence Act where 'integration achievements' such as employment and self-sufficiency, form the foundation for regularization (Hinterberger, 2020; Schammann, 2019). Consequently, not being employed or 'well integrated' means not 'fitting' into relevant frames of deservingness which may subsequently impede status mobility.

Conversely, a successful 'performance' of deservingness may enable people to access more secure legal statuses (Bonizzoni, 2020).

It can be argued that the enactment of conditionality (Landolt & Goldring, 2010), the 'performance' of deservingness (Bonizzoni, 2020) and status mobility are expressions of migrant agency. Migrants develop strategies and mobilize resources to increase their scope of action and to potentially realize aspirations to, for instance, secure their stay. Van Meeteren *et al.* (2009) argue that paying attention to aspirations and needs is important to acknowledge and understand the strategies that migrants adopt to improve their position within a given stratified context, as opposed to ascribing them a passive role as 'helpless victims'. The following chapter looks at these aspirations and explores how they relate to opportunities for labor-related regularization.

2.2 Migrants' Aspirations and Needs

Van Meeteren et al. (2009) distinguish between three groups of migrants based on their aspirations: first, *investment migrants* have the aspiration to "return and invest in a better future in their country of origin" (Van Meeteren et al., 2009, p. 890) once they have saved enough money. Second, *settlement migrants* aim at settling down in the country of residence, with or without legal residence. Third, *legalization migrants* aspire to stay in the destination country by obtaining a legal residence. For them, acquiring a legal status represents the starting point for a new and more comfortable life otherwise unachievable (Van Meeteren, 2012). Aspirations are also related to individual needs such as the need for security, political and economic stability or freedom which, in turn, are drivers for people to migrate (Crawley & Hagen-Zanker, 2019). These 'drivers' or motives often overlap and change over time: refugees or asylum seekers may not only seek protection from conflict and persecution, but also try to expand their (economic) life opportunities, especially once they have managed to reach a relatively safe place (Long, 2015; Van Hear, Brubaker & Bessa, 2009).

In this thesis, I look at the strategies of *legalization migrants* who migrated to Germany – at times with 'mixed' motives – and aspire to stay long-term. For 'tolerated' persons, their current status presents an obstacle to the realization of their aspiration to 'start a better life' as it constrains their agency, limits their access to rights, and leads to great legal and social uncertainty (Kraler, 2019; Rosenberger & Koppes, 2018). Accessing regularization opportunities can, subsequently, contribute to realizing their aspiration because it provides migrants with legal security and the possibility to stay permanently in Germany (see Bauer & Schreyer, 2019; Kraler, 2019; Landolt & Goldring, 2015; Rosenberger & Küffner, 2016 on

expected positive effects of regularization). Status mobility through regularization can then be seen as an important means to move toward the realization of migrants' aspirations. However, it has to be noted that regularization does not necessarily imply the end of precariousness as residence permits granted through legalization are often temporary and conditional (Chauvin et al., 2013; confirmed by expert of the Refugee Council). The various consequences of regularization will further be explored in chapter four.

3. Methodology

In this chapter I first explain my research design, including the methods for data collection and analysis. Second, I touch upon some ethical considerations in the context of migration research.

3.1 Data Collection and Analysis

My data collection was based on a qualitative, biographical research approach (Schmidt-Lauber, 2007). Biographical research focuses on life stories of social actors to emphasize and understand their emic perspectives and experiences (Doná, 2007; Eastmond, 2007). Biographies as reflections of the social world enable researchers to detect relationships between the wider society and personal experiences and interpretations (Leh, 2010). In biographical research, particularly in the context of migration research, interviews play a major role: "for migration studies, interviews have proved indispensable when researching vulnerable groups of people on the move, and collecting data about various aspects of irregularity, grey economic activities, and the autonomy and agency of mobile people" (Fedyuk & Zentai, 2018, pp. 171-172). Since the thesis focuses on experiences of (rejected) asylum seekers whose precarious legal status puts them in a vulnerable position, conducting biographical interviews appeared to be a suitable approach. Due to the pre-defined focus of my research question I chose a semi-structured interview format (Fedyuk & Zentai, 2018). Before conducting the interviews, I hence identified relevant aspects of (non-)deportability and regularization and summarized related questions in an interview guide (appendix A).

For the selection of my respondents, I employed the method of *purposive sampling* (Bryman, 2016), i.e. I sampled my participants in a strategic way. The decisive criteria for the sampling of my research participants was their current (il)legal status and their presumed refugee background which 'qualified' them as relevant informants for my research. More specifically, I focused on refugees who came to Germany after 2015 because two important options for 'lane change', namely vocational toleration and employment toleration, were

implemented as a result of the high influx of refugees in 2015 and are therefore only relevant for people who arrived in this period of time. The key stakeholders were identified based on their position in relevant Stuttgart-based institutions. In total, I conducted 17 interviews in February and March 2020: five interviews with experts from different institutions in Stuttgart (the City of Stuttgart, the Chamber of Industry and Commerce, the Chamber of Crafts, the Refugee Council Baden-Wuerttemberg and Return Counseling) and twelve interviews with (rejected) asylum seekers with a *Duldung* or *Aufenthaltsgestattung* (pending asylum decision). Among the twelve respondents were three women and nine men. Nine respondents were from Afghanistan, the other three were from Iran, Iraq and Nigeria, respectively. The sampled group was relatively young: nine of the respondents were between 20 and 25 years old. Ten interviewees arrived more than four years ago, two arrived in 2018 and 2017 (see Table 1 in appendix B for detailed information of respondents).

I found all of my interviewees through personal contacts, some of whom are part of my previous professional network in Stuttgart. This way of contacting potential respondents seemed appropriate due to the sensitive nature of my research interest. By way of connecting through a mutual contact, there was presumably a certain level of trust involved. I met seven of the twelve interviewees through one personal contact which resulted in a seemingly homogenous group of respondents: six of the respondents were from Afghanistan, in their early twenties and were in similar 'stages' in their legal status trajectory; some had known each other since the beginning of their stay in Germany. On the one hand this proved beneficial as I could compare individual trajectories with relatively similar 'starting points'. On the other hand my sample lacked a higher level of variety regarding country of origin, gender and age. Moreover, two contact persons worked in institutions supporting migrants and refugees, i.e. they mostly introduced me to migrants who were already connected to support networks. By solely relying on my personal network, the sample lacks for instance people who are not connected to any official support infrastructure. Due to purposive sampling it is not possible to draw generalized conclusion to the population. Yet, the research findings can offer new insights to existing theories (Barglowski, 2018; Schultz, 2020).

The data analysis in chapter four is mainly based on the interviewees' life stories that provided valuable insights on *individual* migration experiences and consequences of (non-)deportability and legal insecurity. The expert statements complement these life stories by providing an *institutional* 'meta'-perspective, namely contextual knowledge about Stuttgart's migration and integration policies, against which the refugees' personal accounts were interpreted. For the analysis, I first transcribed the recorded interviews and then analyzed them

according to the method of social scientific paraphrasing (Mayring, 2002). This method allowed for a detailed evaluation of the individual cases by highlighting their everyday experiences and embeddedness in the wider societal context (Mayring, 2002). The first step of social scientific paraphrasing involves coding which comprises labeling and systemizing core statements, themes and categories in the transcribed text (Fedyuk & Zentai, 2018). I used a concept-driven and data-driven coding approach. Concept-driven coding refers to the creation of categories based "on previous knowledge: a theory, prior research, everyday knowledge, logic, or an interview guide" (Schreier, 2013, p. 9). Consequently, I created the main categories based on the theoretical concepts previously discussed as well as my own knowledge about current discourses surrounding the topic. Subsequently, I added subcategories in a data-driven way to avoid overlooking other relevant aspects in the material that were not part of the original coding frame or prior assumptions and expectations (Schreier, 2013). The deductively and inductively generated codes were interpreted against the background of existing theories.

Ideally, interviewing and coding are continued until a point of theoretical saturation is reached, i.e. when data collection and data analysis do not generate new insights or concepts (Schreier, 2013). In the context of the thesis, theoretical saturation has not been reached. The aim of this primarily explorative research was to identify general patterns and types represented by the sampled group of people. Further research is needed to complement and/or increase the "social representativeness" (Barglowski, 2018, p. 158) of the sample.

3.2 Ethical Aspects in the Context of Migration Research

Due to their experiences, refugees are particularly vulnerable: they often suffered from physical, psychological and emotional traumas. Moreover, their insecure legal status usually entails losing autonomy as they are largely dependent on 'external' support and very limited in their ability to access or exercise rights (Doná, 2007; Eastmond, 2007; Mackenzie, McDowell & Pittaway, 2007). Trust, sensitivity and being aware of my responsibility as a researcher – also regarding potential consequences of the research for participants – are central elements of the research process. Before starting the interview, I therefore informed the respondents about the purpose, employed methods and conditions of the research, including the way the data is handled. Moreover, I underlined there was no obligation to answer all questions and that it was possible to interrupt or stop the interview at any time. This served as the basis for the participants' informed and voluntary consent (Mackenzie *et al.*, 2007; Vervliet *et al.*, 2015).

In the context of migration research, the question of *reciprocity* needs to be addressed (Mackenzie *et al.,* 2007; Vervliet *et al.* 2015). During some of the interviews I felt uneasy

because I was unable to offer respondents anything in return for participating. I gave some interviewees information about counseling centers that provide support regarding regularization options. Still, I was often aware of my own privilege, an aspect that was also raised by one of the respondents. Yet, sharing stories and 'being heard' may also be interpreted as a form of empowerment because actors take on an important role in the knowledge production about their world (Sherman Heyl, 2001).

4. '(Un)-Pickable'? Individual Experiences of Labor-Related Regularization

This chapter is based on both the analysis of the Residence Act and the conducted interviews. The first section applies the concept of civic stratification (Morris, 2003) to the German context. The second section looks at the interviewees' legal trajectories within this stratified system. It analyzes which resources migrants needed for status mobility and to which extent a lack of these resources may have impeded their chances of legal upward mobility. Lastly, it highlights how the statuses *Aufenthaltsgestattung* and *Duldung* have shaped migrants' experiences and how opportunities to regularize relate(d) to their needs and aspirations.

4.1 Civic Stratification in Germany

This section answers sub-question one: it looks at immigration statuses for (rejected) asylum seekers in Germany and existing opportunities for labor-related regularization and explores potential limitations to the implementation of these regularization arrangements.

Looking at Germany, Morris (2003) argues that "the German regime has produced a proliferation of statuses of partial membership" (Morris, 2003, p. 83) in which the Duldung represents one of the weakest statuses with minimal access to rights, reflected most clearly through its constrained access to the labor market. The Duldung can be regarded a liminal status that lies between notions of legality and illegality: it is assigned to 'irregular' migrants to mark their 'tolerated' stay, but does not equal a residence permit (Castañeda, 2010). Moreover, it does not change the fact that they are still obliged to leave the country. This means that the immigration authority can revoke the tolerated status once the basis for the suspension of deportation no longer exists (EMN/BAMF, 2016). The Duldung can therefore be described as a precarious status marked by a constant threat of deportability, i.e. the constant possibility of potentially being deported (De Genova, 2002) – despite its original function to give rejected applicants more legal security (Hinterberger, 2020; Rosenberger, Ataç & Schütze, 2018). Bauer and Schreyer (2019) use the term *margizens* to denote this marginalized limbo status

that places 'tolerated' people on a low position in the civic stratification system, just above the 'illegal' migrant and below asylum seekers holding the *Aufenthaltsgestattung*. The stratification of these 'statuses of partial membership' is illustrated in Figure 1 which I mapped based on the analysis of the interviews as well as governmental publications and legal documents (most importantly the Residence Act).
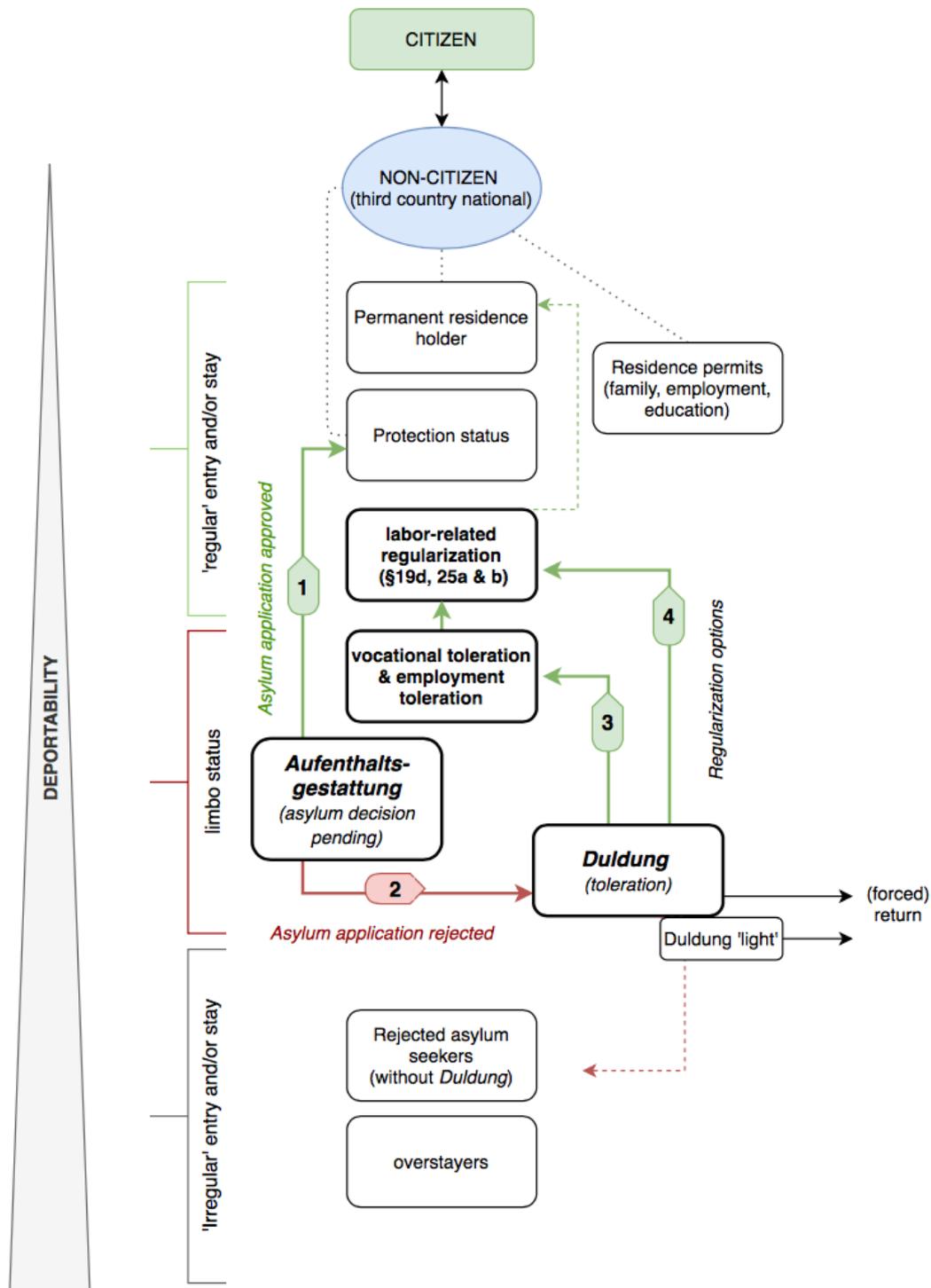

Figure 1. Opportunities for status mobility for (rejected) asylum seekers in Germany. Source: own graph.

When comparing the temporary limbo statuses *Duldung* and *Aufenthaltsgestattung* to other types of 'legal' residence permits (e.g. for family, employment or education), it becomes clear that the immigration law produces a stratified system that allocates people to different positions with varying access to fundamental rights, including the right to stay (Morris, 2003). Depending on the type of residence permit, people are subjected to a higher or lower risk of being removed from state territory. Consequently, these rights are markers of inclusion and exclusion where *citizens* have the absolute security of residence (top of the stratified system) and *non-citizens* experience the opposite, albeit to varying degrees (Bonizzoni, 2020; De Genova, 2013; these 'degrees' of deportability are symbolized by the grey arrow on the left of Figure 1).

Within this system, 'tolerated' persons can renegotiate the borders of (il)legality and advance from a time-limited and insecure status to a more secure status by accessing different options for labor-related regularization. These options comprise

> "the residence permit for the purpose of taking up employment for qualified foreigners with a temporary admission [section 19d of the Residence Act], the residence permit for well integrated young people and adolescents (section 25a subs. 1 of the Residence Act), [and] the residence permit in case of thoroughly integrated foreigners (section 25b of the Residence Act)." (EMN/BAMF, 2016, p. 26)

Furthermore, since 2016 it is possible to obtain a vocational toleration (*Ausbildungsduldung*) "if the foreigner begins or has begun a vocational qualification in a state-recognised or similarly regulated occupation which requires formal training in Germany"[5]. Since January 2020, the employment toleration (*Beschäftigungsduldung*) is granted to foreigners employed for 18 months and able to support themselves financially. In both cases, individuals have the option to 'proceed' from the vocational toleration and employment toleration to the abovementioned types of residence and further secure their status (see trajectories 3 and 4 in Figure 1).

According to Schultz (2020), the introduction of the vocational toleration can be "regarded a paradigm shift in German immigration law, granting persons in the precarious legal status of 'toleration' the possibility to get on a path to regular residence for the purpose of employment" (Schultz, 2020, p. 2; see also Schammann, 2017). All regularization options are based on the requirements of a 'clear identity', a 'clean' criminal record, self-sufficiency and the *Duldung* status. Other requirements include recognized educational qualifications,

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[5] [Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory Residence Act](#) [last accessed on 18/06/2020]. For more details on the requirements see Working paper 69 by the Federal Office for Migration and Refugees (EMN/BAMF, 2016).

employment, and German proficiency. In the newly passed "Law of Orderly Return" (*Geordnete Rückkehrgesetz*), the notion of a 'clear identity' is emphasized even more: the law introduced the 'Duldung for people with unclear identity', commonly known as 'Duldung light'. Individuals with this status are subjected to a ban on employment and are unable to access any of the labor-related regularization options (Ahlswede, 2019). Foreigners with a 'regular' *Duldung* can in principle be granted the authorization to work (EMN/BAMF, 2016). The green and red arrows in Figure 1 mark the options for up- and down-ward status mobility for asylum seekers (trajectories 1, 2, 3 and 4). Rejected asylum seekers desiring to regularize need to first move 'down' to a *Duldung* in order access labor-related regularization options later on (trajectories 3 and 4 of Figure 1). Eventually, regularization offers the opportunity to receive a permanent residence permit (dashed green arrow in Figure 1).

However, as mentioned, these labor-related regularizations are not easily accessible. Some interviewed experts highlighted that regularization access is restricted and likely to remain so. These restrictions may relate to concerns regarding the potential 'pull-effect' of such options which are assumed to create 'wrong' incentives to migrate to Germany; however, this assumption is difficult to prove (Parusel, 2014; Schultz *et al*., 2018). Hence, these concerns may be one of the reasons why regularization merely provides a solution through the backdoor even though it represents a 'human-friendly' and cost-efficient alternative to deportation which involves substantial political and financial effort without guaranteeing 'success'. Yet, dominant political and public debates still depict 'irregular' migrants as a threat to national culture and security, calling for and legitimizing the forced return of those 'unwanted migrants' (Ambrosini, 2016; Anderson et al., 2011; Coutin, 2015).

Moreover, labor-related regularization opportunities seemingly contradict the general principle of German immigration law to keep asylum and labor migration separated (Dietz, 2019). Arguably, the increasing conflation of these two forms of migration may undermine both the humanitarian principles of refugee protection and labor migration regulations (Long, 2015; Schultz et al., 2018). People migrating via existing legal channels might consequently be 'worse off' than people who apply for asylum first and 'change lanes' later on (SVR, 2018). This argumentation reflects an idea of fairness which is closely related to the *regulatory control logic* claiming "the rule of law should be consistently implemented" (Schultz, 2020, p. 9). However, policies and law are not always as clear cut as they appear to be. Policy goal ambiguity leaves room for interpretation and discretion leading to highly varying outcomes of individual legal trajectories as was demonstrated by Schultz (2020). Confronted with ambiguous policy goals, immigration officials interpret their individual cases within broader

social and political contexts where ideas of deservingness that relate to principles of employability and future economic, social and cultural 'integratability' play a dominant role (Sökefeld, 2019). Selecting and potentially prioritizing individuals adhering to these principles can be described as a form of cherry-picking or *creaming*, i.e. street-level bureaucrats "choose (or skim off the top) those who seem most likely to succeed in terms of bureaucratic success criteria" (Lipsky, 2010, p. 107). Besides political agendas prioritizing (forced) return over regularization (Sökefeld, 2019), *creaming* presents yet another potential obstacle for 'tolerated' individuals aspiring to legalize in Germany.

The next section links the interviewees' individual legal trajectories to the previously described stratified system and answers sub-question two by examining resources which determine migrants' status mobility.

4.2 The Interviewees' Legal Trajectories and the Relevance of Resources

After arriving, all interviewees applied for asylum in Germany. At the time of the interview, seven asylum proceedings were still pending after applicants had appealed their first rejection. While they were awaiting their "second interview" in court, their temporary permits to stay had been extended (see Table 1 in appendix B). Five applications were already rejected: three of the migrants received the *Duldung* (Arezo, Karim, Maria).[6] Anas recently gained a residence permit according to §19d of the Residence Act, i.e. his residence permit is based on his qualified employment, and Mehran obtained a vocational toleration. Figure 2 demonstrates the interviewees' position in the system of civic stratification. At the time of research, Anas had the most secure status (trajectory 4 of Figure 2), followed by Mehran who made a first step towards 'fully' regularizing (trajectory 3 of Figure 2). He still has a 'toleration' status, but compared to Arezo, Karim and Maria
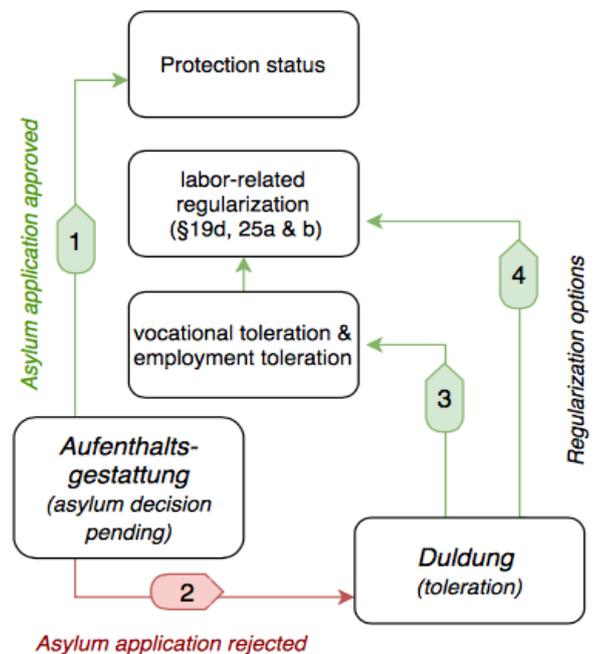

Figure 2. Interviewees' legal trajectories.
Source: own graph.

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[6] All respondents were asked to choose fictional names in order to ensure their anonymity. Four respondents let me choose for them, namely Arezo, Hassan, Karim and Obinze. The fictional names will be used to quote the interviewees.

(trajectory 2 of Figure 2) he has the 'security' to stay for the next four to five years, provided that he continues with his vocational qualification, successfully completes it and finds employment afterwards. Theoretically, Arezo, Karim and Maria have the opportunity to move 'upward' if they can meet the necessary regularization requirements. For those whose asylum proceedings were still pending, there are multiple outcomes: they can either be granted one of the four forms of protection (trajectory 1) or be rejected and receive the *Duldung* status (trajectory 2) which can be the basis for regularization (trajectories 3 and 4).

Of all the regularization options, almost all respondents and experts were aware of the vocational toleration. Of those who had not regularized yet, six named a vocational qualification as the necessary basis or their 'only chance' to secure their status. Other options such as §19d (for qualified foreigners) or §25b (for thoroughly integrated foreigners) were less known. This could be related to the requirements for these options being considerably higher than the conditions that have to be met to obtain a vocational toleration. Potential obstacles are for instance a required residence of eight years to access §25b or the proof of a recognized qualification to access §19d (Hinterberger, 2020). Some respondents mentioned other options to regularize (e.g. through marriage) or a plan B including onward migration (Anas, David, Mustafa, Obinze), but emphasized their main aspiration was to stay in Germany by means of regularizing. However, looking at their current situation it becomes clear that not all of the respondents have (yet) successfully regularized.

Drawing again upon the 'cherry picking' metaphor – which implies a critique of the selective access to regularization – the interviewees' legal trajectories may be ordered into four groups: the 'picked ones' (who are already regularized); the 'pickables' (who are very likely to regularize), the 'potentially pickables' (who are less likely to regularize) and the excluded (who do not (yet) have access to the existing labor-related regularization options). These categories serve to highlight the structural constraints that influence migrants' status mobility without denying their individual experiences and agency. These four groups differ in terms of resources that they were (un)able to mobilize to realize their goals.

These mobilized resources can be systemized based on Lockwood's (1996) definition of moral and material resources and Bourdieu's (1986) understanding of economic, cultural, social and symbolic capital (see chapter 2). Based on the interviews, *social capital* played an important role in the legal trajectories of many respondents. Their social capital consisted of 'private' and 'professional' networks. The former comprised friends, acquaintances, family members in the destination country and abroad as well as personal 'mentors' and other volunteers. Some respondents distinguished between friends from their community and

'German friends/families' that provided support throughout the process (Anas, Ali, Mehran, Hassan). The latter includes social workers, employers, teachers, and Stuttgart-based organizations providing information and support to migrants. Most respondents had a lawyer but seemed unsatisfied with the lawyers' work as they were perceived to 'lack relevant information' and were 'very expensive' (Ali, Anas, Arezo, Karim, Maria, Mustafa, Obinze). For the respondents, their social capital fulfilled various functions: their networks provided information about opportunities for employment and vocational qualifications, available services in the city, and existing regularization arrangements. Moreover, they offered moral and instrumental support, e.g. with regard to passport acquisition in the country of origin or language learning (Anas, Ramin, Hassan). It can be concluded that a strong social network was beneficial throughout the asylum procedure and afterwards for access to regularization arrangements. This is reflected in the trajectories that Anas, Hassan, Mehran, Mustafa and Ramin have demonstrated, all of who had either already regularized or were very likely to do so after the completion of their asylum proceeding. All of them had a job or a vocational qualification, spoke German well and mentioned the relevance of their social network throughout the interview. Weak social support often resulted in lacking information and affected an individual's status trajectory negatively. This aspect was also confirmed by the experts who considered the provision of 'correct' information *early on* a crucial element to facilitate easier access to regularization opportunities as it gives individuals more time to prepare for their regularization and work toward meeting the necessary conditions.

In terms of *cultural capital*, German language skills and the ability to learn German appeared determining factors for a (potentially) successful regularization. Sufficient language skills were the starting point for the acquisition and mobilization of other resources needed for status mobility, namely finding a vocational qualification or employment. Moreover, a sufficient command of the German language is an essential requirement for some of the residence permits (e.g. §19d, §25b or employment toleration). Besides language skills, existing and newly-acquired educational qualifications (e.g. university degree, high school diploma) as well as professional experience were relevant resources in an individual's legal trajectory. They either provided possibilities to gain a certain type of residence permit (Anas) or were crucial to prepare for regularization because a high school diploma is often a requirement to start a vocational qualification in Germany (Ramin, Mustafa). The lack of cultural capital in form of language skills and educational qualifications decreased chances to find a job or vocational qualification significantly (Arezo, Ali, David, Maria, Obinze; experts of Chamber of Industry and Commerce and Chamber of Crafts).

Economic capital or *material resources* were mostly gained through employment or government benefits. Economic capital was essential to pay for different services, e.g. for passport acquisition, which is a significant part of the regularization process. Generally, the ability to generate economic capital self-sufficiently was deemed very important by many respondents (Anas, Karim, Obinze, Mustafa). Employment, self-sufficiency and self-responsibility were regarded essential aspects of 'good integration' and hence a legitimate basis on which a residence permit should be granted (see Chauvin et al. 2013; Lockwood, 1996). This idea of deservingness was reflected in various statements in which the respondents questioned the issuing of residence permits to refugees who did *not* meet these conditions. That is, they did not work or start a vocational qualification, they did not go to school or learn the language, they 'slept all day' or even committed crimes (David, Raha, Hassan, Mehran, Mustafa, Obinze). When asked about her wishes for the future, Raha explained that the situation needs to improve for people

> who go to school and have properly integrated themselves into society and who want to become something […] I understand, with people who have come to Germany and do nothing, but just chill at home, or do something bad. I understand that they are rejected. They have no goal … […] They can be treated differently, but not people like us who go to school. (Raha) [7]

Other elements of 'good integration' compromised adherence to 'German' norms, values and policies (e.g. not breaking the law; having a clear goal) and the active involvement in society. The last point was also stressed by the expert of the Chamber of Industry and Commerce who pointed out that voluntary commitment is positively perceived by potential employers. Being perceived as a 'well integrated refugee' who 'deserves' to stay can consequently increase the chances to gain a secure legal status since employment/a vocational qualification are essential requirements for the regularization process (see Bonizzoni, 2020; Landolt & Goldring, 2015). It can be argued that the perception of being 'well integrated' represents *symbolic capital* or *moral resources* because it allows the refugees to activate 'shared moral sentiments' (Lockwood, 1996) thereby gaining a better social standing. The activation of moral resources is also relevant in the interaction with social workers or immigration officials who may often exercise their discretion based on these notions of deservingness (Schultz, 2020). However, in the case of (rejected) asylum seekers symbolic capital often turns into a symbolic burden that is expressed in a negative public reputation that people from specific countries are confronted with (Hassan, Obinze, Raha):

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[7] The original quotes can be found in appendix C.

> The normal population has the impression that Afghans are all bad. I have experienced this many times, I was having a conversation in a group […] I notice exactly when I say I come from Afghanistan, people move back. I notice that exactly. (Mustafa)

This negative perception affects social relations, chances of finding a job or vocational qualification and the ability to confidently influence given choices (Lockwood, 1996).

Throughout the interviews it became clear that the respondents adopted the public and political discourse on deservingness which is increasingly based on a *meritocratic* and *cultural elements* and less on notions of vulnerability (Chauvin et al. 2013). The situation in their country of origin was mainly mentioned to explain why they decided to migrate and why return was not an option. The expert of the Refugee Council highlights that this shift can also be seen in the discussion of regularization opportunities for rejected asylum seekers. These options are all tied to 'integration achievements' and not to humanitarian aspects. From the respondents' perspective it did not seem contradictory to apply for asylum first and then legitimize their stay by referring to both 'being well integrated' and 'having no choice due to the situation in their country of origin'. Within existing legal frameworks and notions of deservingness they mobilized available resources to 'work toward' status mobility and the realization of their aspirations. Their narratives can also be seen as a reflection of their 'mixed migration motives' as they seek protection and economic opportunities at the same time, and aspire to stay to fulfill both of these – and other – needs.

However, it is important to highlight that accessing labor-related regularization opportunities proves to be a difficult and lengthy process for (almost) everyone due to the high requirements. Encountered difficulties often arise from the restricted access to rights which is related to the 'tolerated' person's low position in the civic stratification system. This becomes for instance apparent in the following dilemma that was identified by the interviewees and experts likewise: A 'clear identity' is a pre-requisite for a work permit; yet, an 'unclear identity' is, in the majority of the cases, the reason why people receive a *Duldung* status (publication of the German Parliament no. 19/12502). Hence, many 'tolerated' persons "are worried they could be deported once they present identification documents, but non-cooperation in obtaining them is a reason for work permit refusal" (Schultz, 2020, p. 13). This, in turn, obstructs their access to 'lane change' since employment is one of the main requirements for labor-related regularization. The experts of the Chamber of Crafts and the Refugee Council argue that the constant fear of deportation hinders rejected asylum seekers from accessing regularization opportunities, leaving them no other choice but to go into hiding. One proposed solution to this

dilemma could be to assure 'tolerated' individuals that they will not be deported if they manage to clarify their identity within a specific time frame.

It can be concluded that the *availability* of different types of resources and the *ability* to acquire and mobilize them at the appropriate time all contribute to a successful legal trajectory. For a comprehensive analysis of relevant resources that are needed for status mobility, it is necessary to expand the concept of material and moral resources (Lockwood, 1996) by paying attention to the role of social and cultural capital (Bourdieu, 1986). The 'picked ones' appear to be especially rich in these two types of capital. Moreover, they have an 'amplifying effect' on other forms of capital: for instance, possessing cultural capital in terms of language skills or educational qualifications contributes to an increase in symbolic capital as it adds to the image of being 'well-integrated'. The question of whether the 'picked' or 'pickable ones' (namely the ones who regularized successfully or have good prospects to do so) see their needs and aspirations met is examined in the following part.

4.3 Regularization as Means to Meet Migrants' Aspirations and Needs?

This section answers sub-question three: it explores the ways in which available options for labor-related regularization meet, or conflict with, migrants' needs and aspirations. Eleven out of twelve respondents emphasized that they would like to stay in Germany and study (Raha), find a vocational qualification (Ali, David) and/or a qualified job to pursue their career goals, build up a future, and support their family at home (Anas, Karim, Ramin, Hassan, Maria, Mehran, Mustafa). The interviewees can consequently be categorized as *legalization migrants* because they aspire to stay in the country of residence by acquiring a legal status (Van Meeteren et al*.,* 2009). Their aspiration to stay legally clearly informs their decision to access existing regularization arrangements. First, unlike *investment migrants,* return is *not* aspired due to various reasons that vary from lack of alternatives due to the situation in Afghanistan and Iran (Karim, Maria Mehran, Mustafa), missing family ties in the country of origin (Ramin, Hassan), health problems (Arezo), fear of being stigmatized as a deportee (Obinze) or the wish to live in a democratic and safe country that promises equal chances and a life in dignity for everyone (Anas, Raha). Deportation, 'voluntary' return or migration to another European country seem like a 'waste of time' after having invested many years in Germany (Anas, Karim, Obinze, Ali, Mehran, Mustafa).

Second, unlike *settlement migrants,* staying irregularly is *not* an option for the interviewees because of the perceived negative implications of living in a 'legal limbo status'. Recurring themes in all interviews were the lack of security and a sense of deportability

resulting in an ever-present fear of deportation, causing 'a lot of' stress and hopelessness (see also Kraler, 2019; Rosenberger & Koppes, 2018). Some of the interviewees described that they were subjected to strict travel restrictions (Ali, Arezo, Raha, Hassan, Mehran, Mustafa). Furthermore, they mentioned having limited chances for economic upward mobility because specific 'qualified' jobs seem inaccessible for foreigners in general and asylum seekers in particular (Anas, Hassan):

> So if you are allowed to work you should not push your luck. So that is why most of the work you can get are Küchenjobs [jobs in a kitchen] or maybe Spülküche [scullery], work in the Lager, in the store, in storage, or maybe like logistics, you help with moving and if you get your driver's license driving trucks. So these are most of the work asylum seekers can get. (Obinze)

Obinze further noticed the importance of staying out of trouble in order to get his papers. The pressure to "conform" and "not cause any problems" (Arezo) is also mentioned by other respondents. This may be related to the 'negative' perception of refugees in political and public discourses and the requirement to have no criminal record in order to be eligible for regularization (Anas, Arezo, Mustafa): "Sometimes it is sad, I cannot laugh, I cannot fight. I am like a guest here, when I talk loudly, people say, you are a refugee, what do you want? If you want to stay, if you don't, go back to your country. […] This is a bit bad. But I swallow everything." (Hassan)

These consequences apply to both limbo statuses: *Aufenthaltsgestattung* and *Duldung*. However, while people are allowed to work during their asylum procedure, receiving a 'tolerated' status may result in a ban on employment leading to boredom, loss of independence, rights and motivation, and lack of prospect (Ali, Karim, Obinze, Raha). Respondents agree that the *Duldung* is a 'very bad' status, a "dead end" (Obinze), that severely affects people's mental health (Anas, Arezo, Karim, Maria, Obinze; expert of the Chamber of Industry and Commerce).

Based on their individual experiences, staying in Germany with a *Duldung* status was not desirable for the majority of the interviewees. The lack of security, the sense of deportability, limited chances for economic mobility and restricted access to rights directly contradicted the aspiration to start a new and better life in the destination country (Van Meeteren et al., 2009). For them, labor-related regularization was thus seen as an important means to realize their aspiration, i.e. to legalize their stay in Germany and settle down. Anas, who had regularized after four and a half years, highlighted that he now had the foundation for a 'normal life' because he can search for an apartment, start a family and go on vacation. Other respondents assumed likewise that having a legal status implies working normally and living

without fear (David), having an easier life (Ali) or 'being reborn' and starting a new life (Maria, Arezo). However, the aspiration to legalize may at times contradict the aspiration to study or find a job that corresponds to a person's previously acquired work experience or qualification. The conditions that have to be met for 'lane change' might 'force' people to start a vocational qualification instead of studying, or to start a vocational qualification in a field that does not reflect their actual interests (expert of Refugee Council; Obinze).

Following the respondents' life stories, it can further be argued that their aspiration to legalize was closely related to various personal needs, most importantly their need for security, in terms of protection as well as certainty regarding their prospect to stay. Besides security, other needs that were named during the interviews were self-sufficiency, freedom, fairness and the recognition as *equal* human beings (Anas, Arezo, Hassan, Karim, Mustafa, Raha, Obinze). Throughout the interviews, several respondents described encounters in which they felt as if they were not being treated equally, but rather discriminated against due to their origin and status as asylum seekers. The feeling of being 'second-class citizens' (Lockwood, 1996) is reflected in continuous implicit accusations questioning the legitimization of their stay, or being denied "a minimum standard of living" (Obinze; also Anas, Arezo, Karim, Mustafa, Ramin).

Being an asylum seeker or a 'tolerated' person in Germany has several negative consequences for the respondents' everyday lives and the realization of their aspirations and fulfillment of their needs. One strategy chosen by migrants to overcome these negative implications of living in a legal limbo is accessing labor-related regularization options, thereby improving their situation significantly. Having a secure legal status is expected to have clear implications on different levels. First, on an economic level it promises new career opportunities, the access to different sectors and potentially a higher salary. Second, on an emotional level it may result in feelings of security, more freedom and a decrease in control exercised by the authorities which eventually relieves stress. Third, on a social level it may lead to a better positioning in society, and higher symbolic capital (see also Bauer & Schreyer, 2019; Kraler, 2019; Landolt & Goldring, 2015; Rosenberger & Küffner, 2016).[8] Overall, the 'picked ones' appear to have met their needs and aspirations, regardless of the 'type' of permit they are granted (labor-related or humanitarian).

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[8] Yet, Schrover and Schinkel (2013) underline that sometimes even the possession of a *formal* status, including citizenship, does not necessarily imply that individuals are seen as 'actual' members of society. Hence, they lack *moral* citizenship. This is often related to the aforementioned discourses that depict migrants as "fundamentally different from the 'home' population" (Schrover & Schinkel, 2013, p. 130).

Concluding, even though regularization seems to be beneficial on an individual level, the overall numbers of 'tolerated' persons who successfully regularized are relatively low. This also applies to Stuttgart despite the city's liberal stance regarding migration (publication of the German Parliament no. 19/12502, p. 43). Besides factors on the social, institutional (*creaming*) and political (focus on deportations) level, this may thus also be related to the fact that accessing regularization options requires multiple forms of capital which are not always easily available. All these aspects have to be considered when examining the question of whether regularization presents a solution to the issue of non-deportability on a larger scale.

5. Conclusion and Discussion

This thesis explored to what extent regularization serves as an effective and lasting solution for the situation of 'non-removed' persons in particular, and to the issue of non-deportability in Europe more generally. Due to its high demand for labor and long experience with 'tolerated' persons Germany served as a case study. More specifically, the city Stuttgart was chosen because of its strong economy and high demand for labor, and its liberal approach to migrant integration. The thesis was based on the following research question: How is access to labor-related regularization in Germany constructed and how do migrants experience these opportunities to regularize given their needs and aspirations?

To answer the research question, I first looked at immigration statuses for (rejected) asylum seekers in Germany, namely the *Duldung* and the *Aufenthaltsgestattung*, and existing opportunities for labor-related regularization. Regarding relevant access requirements it was noted that these are mainly based on meritocratic elements (employment, education, 'good integration') as opposed to the humanitarian permits which rest on the idea of 'vulnerability' and a need for protection. Second, I examined which factors and resources determine migrants' status mobility in form of labor-related regularization. I showed that access to regularization arrangements is highly stratified and depends largely on different types of resources and a person's ability to mobilize them at the right time, rendering them more or less 'pickable' for regularization. These resources include, amongst others, the four forms of capital as defined by Bourdieu (1986): social capital, cultural capital, most importantly language, educational qualifications and work experience, economic capital, and symbolic capital or moral resources (Lockwood, 1996). In a third step, I highlighted the respondents' experiences and explored how existing opportunities to regularize related to their needs and aspirations. Overall, it became clear that their legal limbo status as well as the difficulty to access existing regularization opportunities, something enhanced or worsened by their intersecting forms of

capital, impeded the realization of their aspiration to legalize in Germany. However, once regularization was successful (or once they felt positive about their prospects to regularize) they were able to meet some of their needs, including economic mobility or the recognition as equal human being, and realize their aspirations. Hence, successful regularization relates (or is expected to relate) positively to their needs and aspirations. It implies more access to rights and more legal security.

By focusing on migrants' aspirations and needs, this thesis added to the concept of civic stratification by highlighting that individual actors are not just passively subjected to *impersonal* rules which predetermine their position in the "social universe" (Lockwood, 1996, p. 534; see also Van Meeteren, 2012; Van Meeteren et al., 2009). Migrants' status mobility can be interpreted as an expression of their ability to acquire and mobilize the 'right' resources at the 'right' time thereby improving their social and legal position (Bonizzoni, 2020). Looking at the context of labor-related regularization, it is further necessary to expand Lockwood's idea of material and moral resources. Bourdieu's conceptualization of capital offers a more comprehensive framework as *social* and *cultural* capital appear to be crucial factors for migrants' status mobility. However, it was also demonstrated that agency is limited for those who lack these forms of capital.

Overall, it can be concluded that status mobility through labor-related regularization provides 'tolerated' persons with the opportunity to realize their aspiration to secure their stay in Germany and leave the precarious condition of deportability behind them. However, as has been demonstrated with the case study Stuttgart, access to regularization is restricted and requires the mobilization of resources which are not easily available to 'tolerated' rejected asylum seekers (Bauer & Schreyer, 2019; Hinterberger, 2020; Schultz, 2020). Consequently, this type of regularization does not seem to offer a large-scale solution to the issue of non-deportability – and the skills shortage – in Germany and the EU, respectively.

Recognizing these limitations, it is important to also consider other approaches. Looking ahead, assuming the number of (prospective) refugees and asylum seekers as well as the demand for labor is likely to increase in the future (UNHCR, 2020), one research finding appears to be especially interesting: most respondents adopted the meritocratic discourse on deservingness and legitimized their stay based on their individual achievements. Some of them indicated that instead of taking the 'asylum route' they would have entered Germany via different channels if these were more accessible. Consequently, policies targeting potential asylum seekers *before* their arrival and granting them a status based on their skills may offer a policy alternative that responds to the protection gaps in the international protection regime by,

for instance, targeting subgroups whose asylum claims are likely to be rejected, i.e. who would not be 'covered' by international and regional refugee law instruments in the first place (Long, 2015; Wagner et al*.,* 2019). Pre-arrival policies can further serve to fill labor market gaps "by attracting talent from within mobile populations that are invisible to traditional economic immigration policy" (Wagner et al*.,* 2019, p. 60), and facilitate the realization of some migrants' aspirations to stay in a country 'legally'.

In the context of non-deportability, policies offering refugees and asylum seekers opportunities for labor mobility *before* or *after* arrival appear to complement each other. First, *pre*-arrival policies can potentially reduce the number of future 'non-removable' persons by enabling refugees to access economic migration pathways early on. Second, *post*-arrival policies such as labor-related regularization allow 'non-removable' persons to 'change lanes' in the destination country, thereby decreasing their deportability and fostering their social inclusion (Schultz, 2020). Moreover, both policies do justice to the fact that people's motives to migrate are 'mixed', i.e. they may at the same time seek protection and economic opportunities (Parusel, 2014; Schultz et al., 2018).

Assuming that many 'tolerated people' are not going to leave the country anytime soon (Leerkes & Van Houte, 2020) due to the situation in their home countries, but also because they have already invested many resources in their 'migration project' and aspire to stay in Germany long-term, facilitating local pathways to legal residence appears to be crucial. Offering migrants the possibility to participate as equal members in society and fostering their labor market integration can be seen as a response to meet their aspirations, but also to meet the economy's demand for more (skilled) workers. This is not only relevant for Stuttgart or Germany, but also for the wider EU context where a harmonized legal framework for regularization could provide a different approach to addressing the issue of 'irregular migration' (Hinterberger 2020; Rosenberger et al. 2018). Because the global movement of people is a complex political matter that transcends urban, regional and national borders, it demands an international approach while at the same time accounting for the truly individual and local aspects of migration as to not to exclude those who lack the 'preferred' forms of capital and are therefore perceived as less 'pickable'.

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7. Appendix

Appendix A: Interview Guide

I. Migration project and future plans - needs and aspirations

⇒ *Can you tell me a bit more about yourself and your life in Stuttgart/Germany?*

- Is this how you imagined your life to be like when you decided to leave your country of origin?
  - o Why? How? Why not?
- To which extent have your plans changed over the course of your migration?
- Why? Which experiences and impression might have played a role in that?
-
- What are your aspirations for the future? Have your aspirations been met in the past?
- Why (not)?

II. Experiences with Duldung

⇒ *How would you describe your current (legal) situation?*

- What do you think of the "Duldung"?
  - o In your opinion, what are good and bad aspects?
  - o Have you considered not to become involved in Duldung?

III. Experiences with regularization option

⇒ *Which regulations for a 'lane change' that currently exist in Germany do you know?*

- (1) Are you willing to make use of them (why /why not)?
- (2) Why did you make use of them? (if someone has already made use…)

If options are known:

- Which conditions have to be met?
- What does the access depend on?
- Have you been aware of these options before you came to Germany?

⇒ *Do you know about other's views on Duldung and the opportunities for lane changing?*
Please only refer to views of people you know personally

IV. Evaluation, identified obstacles / dilemmas and needed resources

⇒ *What would be/are the advantages and disadvantages of these regulations for you?*

- Which obstacles and dilemmas are you aware of / have you encountered?

- Which actors were involved in your (legal) migration trajectory? (volunteers, governmental actors, information centers, family,…)

- What did you need to access these options for lane change?

- What did you (potentially) lack (information, money,…)?

V. Frames of deservingness / public discourses

⇒ *What do you think a person needs in order to 'integrate' well in Germany?*

- What 'makes' a 'good' citizen?

VI. Personal data/background information

- age
- gender
- nationality/ ethnicity / place of birth or residence before coming to Germany
- duration of stay in Germany
- current legal status
- family situation
- educational and professional background/ current occupation

VII. Do you have anything else you want to add/share?

Appendix B: Table 1 - Personal Characteristics of Interviewees

	Name	Age	Nationality	Gender	Education/ occupation	Stay in years	Residence permit	Labor-related regularization option
1	**Anas**	early 20s	Iraq	male	University degree Computer Science; now employment as software developer	4,5 years	§19d	Regularized (trajectory 4)
2	**Mehran**	early 20s	Afghanistan	male	Now vocational qualification as electrician	4 years	Vocational toleration	Regularized (trajectory 3)
3	**Ramin**	20	Afghanistan	male	School degree in Germany; now vocational qualification as mechanic	4 years	Asylum decision pending, appeal	Probably vocational toleration or §25a (trajectories 3 or 4)
4	**Raha**	20	Afghanistan	female	Currently attending school	4 years	Asylum decision pending, appeal	Probably §25a (trajectory 4)
5	**Hassan***	24	Afghanistan	male	School degree, work experience as mechanic; now vocational qualification as care taker	4 years	Asylum decision pending, appeal	Probably vocational toleration (trajectory 3)
6	**Mustafa**	early 20s	Afghanistan	male	School degree; now vocational qualification as stonemason	4 years	Asylum decision pending, appeal	Probably vocational toleration or §19d (trajectories 3 or 4)
7	**David**	22	Afghanistan	male	Now employment as help in the kitchen	4,5 years	Asylum decision pending, appeal	Potentially vocational toleration
8	**Ali**	24	Afghanistan	male	No school degree; now attending school	> 4 years	Asylum decision pending, appeal	Potentially vocational toleration
9	**Obinze***	30s	Nigeria	male	University degree, experience as pilot; now employment in service sector	4 years	Asylum decision pending, appeal	Potentially vocational toleration
10	**Arezo***	late 30s	Afghanistan	female	Work experiences as sewer; now unemployed	4 years	*Duldung*, no work permit	Probably none, *potentially through youngest child*
11	**Maria**	57	Iran	female	35 years of work experience as hair dresser & cosmetics	3 years	*Duldung*, no work permit	Probably none, at time of research (no passport, no work)
12	**Karim***	25	Afghanistan	male	Work experience as mechanic; now work in bakery	1 year	*Duldung*, work permit	Probably none, at time of research (no passport, 'unqualified' work)

Fictional name chosen by me	Regularization successful = 'picked'	Regularization less likely = 'potentially pickable'
	Regularization very likely = 'pickable'	Regularization unlikely = 'excluded' (at the time of the research)

Appendix C: Original Quotes in German

Quote 1 (Raha)

Schon, also es soll nicht so sein für die Leute, die zur Schule gehen und sich richtig in der Gesellschaft integrieren und die wollen hier was werden [...] Eigentlich, ich verstehe es schon, mit den Leuten, die nach Deutschland kommen und nichts machen außer gammeln, zu Hause bleiben, was Schlechtes machen. Das verstehe ich mit denen, dass sie natürlich eine Ablehnung bekommen. Die sind auch ziellos und [...] Das kann man schon anders behandelt, aber nicht wie Leute wie wir, die in die Schule gehen.

Quote 2 (Mustafa)

Die normale Bevölkerung. Dass die so einen Eindruck haben, ja, Afghanen sind alle schlecht sozusagen. Ich hab mehrere Male erlebt, einfach ganz normal in einer Gruppe unterhalten, [...], wenn ich sage, ich komme aus Afghanistan, die ziehen sich zurück. Merke ich ganz genau (betont). Und zwar immer noch. Am Anfang mehr, aber jetzt immer noch.

Quote 3 (Hassan)

Aber manchmal bei uns traurig, ich kann nicht lachen, ich kann nicht Streit machen. Ich bin hier wie ein Gast, wenn ich laut rede, dann sagen, du bist ein Flüchtling, was willst du? Wenn du willst bleiben, wenn du willst nicht, geh in dein Land. Deswegen wir dürfen nicht streiten oder Polizei oder zu den Politikern gehen, warum in vier Jahren in Deutschland mir niemand hilft. Das ist ein bisschen schlimm. Aber manchmal, wenn ich denke selber, aber ich schlucke alles.