

focus on Best practices in labour law comparativism

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Models and practices of social and working integration
of migrants. A comparison between Italy and Spain*

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1. *Reasons for study*

The reasons for studying the Italian and Spanish practices of migrants’ integration are closely connected to a reflection on the condition of those who live and work in these countries. The systematic inequalities to the detriment of the foreign population compared to the national one – in particular, concerning placement in the labour market, income gained from work and exposure to the risk of exploitation and poverty – represent a problem that afflicts several countries, recently amplified by the pandemic emergency. In fact, the healthcare services emergency, which soon turned into an economic and social emergency, hit the lowest social strata, the most vulnerable individuals, especially workers from third-world countries.

In the Spanish and Italian labour markets, the greater frequency of fixed-term contracts and the high concentration of migrant workers in the most marginal sectors of the economy¹ have had a strong impact on the employ-

* This paper develops the report presented at the conference “*Best practices in comparative labour law*” promoted by the International Association of Labour Law Journals (IALJ), May 5th, 2023.

¹ For the Italian labour market data see MINISTERO DEL LAVORO E DELLE POLITICHE SOCIALI, *XIII Rapporto annuale. Gli stranieri nel mercato del lavoro in Italia, Anno 2023*, pp. 48–56. For

ment rate of foreigners who, during the pandemic period, it has fallen below that of the natives². The consequent employment gap has thus favored the increase and extension of poverty among foreigners, who currently live below the poverty line³.

The condition of marginality and vulnerability inherent in the status of migrants also plays a fundamental role in the spreading of inequalities. To reduce the condition of marginalization, to be discussed in the following paragraphs, the national legislative framework on immigration should provide, in addition to effective and realistic rules on access to the labour market, measures for the integration and social inclusion of migrants present in the territory.

The integration of migrants represents one of the most delicate issues of the articulated and complex debate on immigration. One of the very first social areas with which the migrant comes into contact in the destination country is the labour market; for this reason (regular) work represents a useful tool to encourage and facilitate the integration of foreigners. The Report on the protection and reception system for asylum seekers recalled this some time ago, in particular in the part which highlights that “the working condition represents a priority aspect in the integration process”⁴. It is no coincidence that the Report refers to “working conditions” to indicate that only decent work can be considered a tool of inclusion. Despite that, over the years the legislator, especially the Italian one⁵, has addressed immigration

the Spanish labour market data see OBSERVATORIO DE LAS OCUPACIONES, *Informe del Mercado de Trabajo de los Extranjeros. Estatal. Datos 2022*, Servicio Público de Empleo Estatal, Madrid, 2023, in www.sepe.es; cfr. MAHÍA, *Los efectos del COVID-19 sobre la inmigración en España: economía, trabajo y condiciones de vida*, in *Anuario CIDOB de la Inmigración 2020*, enero de 2021, pp. 75–76; TORNS, MORENO, BORRÀS, CARRASQUER, *Mercato del lavoro e immigrazione in Spagna. Disuguaglianze di genere e di etnia*, in *Cambio. Rivista sulle trasformazioni sociali*, 2012, 3, p. 80.

² See <https://www.openpolis.it/dopo-la-pandemia-non-migliorano-le-condizioni-degli-stranieri/>, May 5th, 2023.

³ According to ISTAT estimates, over 30% of foreign-only families are in absolute poverty, compared to less than 6% of Italian-only families, ISTAT, *Le statistiche dell'ISTAT sulla povertà, Anno 2022*, in <https://www.istat.it/it/files/2023/10/REPORT-POVERTA-2022.pdf>, p. 5. In Spain, more than half of foreign residents (54%) are at risk of poverty or social exclusion, see <https://www.openpolis.it/numeri/in-spagna-e-grecia-piu-della-meta-dei-residenti-stranieri-sono-a-rischio-poverta/>, June 3rd, 2023.

⁴ The Parliamentary Commission that developed the Report was established by resolution of the Chamber of Deputies of 17th November 2014, amended by resolution of 23rd March 2016 (doc. XXII-bis, no. 21).

⁵ Observing the Spanish legislation, we can notice a fluctuating trend that has alternated

policies (i.e. the measures that regulate the conditions of entry and residence) with an exclusively security and punitive approach, almost completely neglecting the measures for social integration and employment of migrants. Therefore, not only does the regulatory framework currently in force not facilitate the integration of migrants, but rather it has a profound effect on the growth of inequalities between foreigners and natives, also from the point of view of the labour market (lower wages; long working hours; humiliating, dangerous and low-paid jobs also called “3D-Jobs”).

The study of the regulatory framework on immigration of the two Mediterranean countries (Italy and Spain) is useful not only to verify the effectiveness (or otherwise) of existing measures, but also to identify gaps and/or critical issues in the regulation in force in order to promote integration and fight, at least in part, against the marginal condition of migrants.

2. *The regulatory framework: How far is the social and working integration of migrants?*

Italy, like Spain, has long been one of the main emigration countries. It was only around 1970 that Italy became a land of immigration⁶. The main cause of this transition was almost certainly due to the economic growth that enveloped the country between the 1950s and 1980s, attracting citizens from both poorer countries and Eastern Europe⁷.

In Spain, migration from non-European countries occurred a little later,

phases of opening with closing phases, not only as an expression of the different political forces that have taken turns in leading the country but also as a response to the different economic cycles. However, we must highlight a general openness of Spanish legislation towards immigrants, seeking the maximum possible equality with Spanish citizens. As proof of this, we can consider various measures adopted towards irregular immigrants, in order to promote their regularization and social and economic integration (§3). See LOCCHI, *I meccanismi di regolarizzazione permanente in Europa: una prospettiva comparata*, in *DIC*, 2021, 3, p. 151 ff.; RELANO PASTOR, *Los continuos cambios de la política de inmigración en España*, in *MI*, 2004, 3, p. 113; TRIGUERO MARTÍNEZ, *La nueva reforma de la Ley Orgánica 4/2000 sobre derechos y libertades de los extranjeros y su integración social: notas clave para su comprensión*, in *REJ*, 2009, 9, pp. 347-362.

⁶ BONIFAZI, *L’immigrazione straniera in Italia*, il Mulino, 1998, p. 73; BONETTI, *La disciplina degli ingressi per lavoro in Italia nell’evoluzione delle norme sull’immigrazione*, in COMINELLI (ed.), *Costruire la cittadinanza. Idee per una buona immigrazione*, Franco Angeli, 2004, p. 28; COLUCCI, *Storia dell’immigrazione straniera in Italia*, Carocci, 2018, pp. 29 and 49 ff.

⁷ EINAUDI, *Le politiche dell’immigrazione in Italia dall’Unità ad oggi*, Laterza, 2007, p. 54.

starting from the end of 1986. In that year, the first law on immigration and flow management was approved (*Ley Orgánica* no. 7/1986). However, it was not until 2000 that increasing flows of migrants from Latin America as well as African and Asian countries poured into Spain. In the same year, *Ley Orgánica* no. 4/2000 on rights and liberties of foreigners in Spain and social integration was approved. This law, together with Royal Decree no. 557/2011, represents the main regulatory framework⁸.

The Italian legislator intervened around the same time. The first attempts to regulate the migratory phenomenon occurred with the law no. 943 of 30 December 1986, (the so-called “Foschi” law) and with law no. 39 of 28 February 1990, (the so-called “Martelli” law), when, faced with the first signs of social urgency, the legislator could no longer postpone its intervention. Particularly decisive, in this sense, was the murder of the South African agricultural worker, Jerry Esslan Masslo, in August 1989. The episode drew attention, for the first time, to the issue of foreign workers’ rights and the limits of Italian legislation on the matter⁹. However, the two legal texts proved insufficient to regulate the migration phenomenon organically. The provisions contained therein addressed only some aspects, leaving numerous important issues unresolved relating to the access to work of third-country nationals and their integration¹⁰. Only with law no. 40 of 6 March 1998 (the so-called “Turco-Napolitano” law), later transfused into the Legislative Decree no. 286/1998 (the so-called “t.u. immigrazione”), was a real organic regulation on immigration introduced. This law intervened on multiple aspects of the migratory phenomenon, regulating not only the entry, residence and removal of foreigners but also the inclusion of migrants in the labour market. The t.u. and the subsequent implementation regulation still constitute today (with the amendments and additions made) the reference legislative source for the regulation of economic migration. However, as will follow shortly, the legislative changes that have affected the t.u. over the years have made the original *corpus* of legislation fragmented, as well as making the regular entry consequently also the integration of migrants extremely complex.

⁸ DI MAIO, *Spagna*, in BONETTI, D’ONGHIA, MOROZZO DELLA ROCCA, SAVINO (eds.), *Immigrazione e lavoro: quali regole? Modelli, problemi, tendenze, Parte I: Modelli stranieri*, Editoriale scientifica, 2022, pp. 297-299.

⁹ COLUCCI, *cit.*, pp. 79-101.

¹⁰ RUSCIANO, *Introduzione*, in VISCOMI (ed.), *Immigrati extracomunitari e lavoro subordinato. Tutele costituzionali, garanzie legali e regime contrattuale*, Edizioni Scientifiche Italiane, 1991, p. 1.

The challenging integration of migrants into the Italian social and economic context depends, most of all, on the system used for inlet flow regulation. The system calculates annually the number of migrants who can enter Italy for work reasons with a regular residence permit.

The regulation of inlet flows is articulated on two levels: the first is represented by the three-year planning document (Art. 3, paragraphs 1–3, d. lgs. no. 286/98), whose purpose is to determine the programmes and interventions on the migration phenomenon as a whole and, in particular, to define the general criteria for the subsequent annual determination of entry flows. The second is represented by the flows decree (Art. 3, paragraph 4) which establishes annually the maximum number of migrants that can be admitted into the territory for work reasons, based on the general criteria identified in the triennial programming document¹¹.

Originally, the Italian legislation (Art. 3, paragraph 4, d.lgs. 286/98) required that the triennial planning document be a legitimate condition for adopting the annual flows decree, by ensuring a dialogue between local authorities, trade unions and employers' associations representing the needs of the labour market and determining, if necessary, a quantitative and qualitative increase in admission quotas. In Spain, but not in Italy, the consultation phase with the most representative trade unions and employers' organisations is still fundamental in determining the admission of foreign workers. This phase allows for information to be published in the Catalogue of difficult-to-fill occupations (“*Catalogo delle occupazioni di difficile reperibilità*”)¹².

It was the intention of the Italian 1998 legislation that the triennial planning document represent the fulcrum of entry flow programming by establishing the criteria for determining the real labour needs required by the national labour market. Instead, the planning document was never deemed effective and has not been adopted since 2006¹³.

¹¹ See TURSÌ, *La nuova disciplina dell'immigrazione per lavoro: una ricognizione critica*, in TURSÌ (ed.), *Lavoro e immigrazione*, Giappichelli, 2005, pp. 11–13; CHIAROMONTE, *L' (in)evitabile nesso fra regolazione del lavoro immigrato e diffusione del lavoro sommerso: spunti ricostruttivi*, in CANAVESI (ed.), *Dinamiche del diritto, migrazioni e uguaglianza relazionale*, 2019, p. 249 ff.; PAGGI, *L'ingresso per lavoro: la decretazione annuale dei flussi. Criteri ed evoluzione normativa*, in GIOVANNETTI, ZORZELLA (eds.), *Ius migrandi. Trent'anni di politiche e legislazione sull'immigrazione in Italia*, Franco Angeli, 2020, p. 251 ff.

¹² DI MAIO, *cit.*, p. 305.

¹³ GOTTARDI, *Politiche migratorie e programmazione dei flussi*, in TURSÌ (ed.), *Lavoro e immigrazione*, Giappichelli, 2005, p. 139 ff.; RICCOBONO, *Immigrazione e lavoro al tempo della crisi. Aspetti*

For over fifteen years there has been a lack of a real strategy for entry planning with the flows decree admitting increasingly insignificant entry numbers, especially with regard to fixed-term and permanent employment. The drastic contraction of work permits issued (from 250,000 in 2007 to just over 30,000 in 2015–2020) has thereby hindered the *legal* recruitment of the *regular* foreign workforce¹⁴.

In this regard, it must be said that the recent d.l. no. 20/2023, converted with amendments by l. no. 50/2023, in Art. 1 has provided a planning of legal entry flows of foreign workers for the three years 2023–2025, in derogation of Art. 3 t.u. It is important to point out that this is a transitional regulation, valid only for the three years 2023–2025. The d.P.C.M. adopted based on Art. 1 increased the entry quotas for foreign workers from third countries and extended the professional categories and production sectors involved. However, although a total of 452,000 new entries were foreseen in the three years, the need identified in the Italian labour market is equal to 833,000 units. Furthermore, concerning the extension of the professional categories and the production sectors involved, although other professions such as hairdressers, electricians and plumbers, family and social health assistants, passenger transport and fishing workers have been included, it is not clear why the agricultural sector is not taken into consideration and only quotas for seasonal work continue to be allocated¹⁵.

Over the years, the inlet flow planning system has encouraged irregular entries. All foreigners arriving in Italy irregularly have little chance of integrating into society because work can only be found in an informal and undeclared labour market, so their only hope is to wait for a collective regulation which, due to the complexity of the procedure, does not provide a definitive remedy to the irregularity or even to the consequences of the

problematici e prospettive di riforma del quadro normativo, in NA, 2013, 2–3, p. 401 ff.; CHIAROMONTE, *L'ingresso per lavoro: l'irrazionalità del sistema e le sue conseguenze al tempo delle fake news e della retorica nazionalista*, in GIOVANNETTI, ZORZELLA (eds.), *Ius migrandi. Trent'anni di politiche e legislazione sull'immigrazione in Italia*, Franco Angeli, 2020, p. 268.

¹⁴ D'ONGHIA, *Il lavoro (regolare) come strumento d'integrazione e inclusione sociale dei migranti*, in CAROLI CASAVOLA, CORAZZA, SAVINO (eds.), *Migranti, territorio e lavoro. Le strategie d'integrazione*, Rubbettino, 2022, p. 53.

¹⁵ See CHIAROMONTE, *Una lettura giuslavoristica del d.l. 20/2023: le inadeguate politiche migratorie del Governo Meloni*, in DLRI, 2023, 179, 3, p. 440 ff.; D'ONGHIA, DE MARTINO, *Lavoro e immigrazione: una nuova stagione nella regolamentazione dei flussi di ingresso?*, in ADiM Blog, Editoriale, luglio 2023.

irregular status¹⁶. The regularization began in 2020 represents the most recent demonstration of this tool's inadequacy¹⁷. The latest data¹⁸ show a high number of cases still pending in the Prefectures Police and Police Headquarters (particularly in cities such as Rome and Milan) relating to emergency applications presented by irregular foreigners in 2020. This situation, primarily due to a lack of staff assigned to dealing with emergency applications, has extremely serious consequences on the life of hundreds of thousands of migrants forced to live in precarious conditions as well as social and working marginalisation.

Contrary to Italian legislative, as will be explained shortly (§3), the Spanish immigration law provides for exceptional instruments of individual regularization.

In Italy, other obstacles to the successful integration of foreigners come from the duration of the residence permit, which makes the legal status of the foreign worker highly unstable. The permanence in Italy for working purposes cannot exceed nine months for seasonal work, one year for fixed-term work and two years for permanent work (art. 5, paragraph 3-bis, d. lgs. no. 286/98)¹⁹. The foreign worker is therefore obliged to make difficult and frequent renewals of the residence permit in order to reside legally.

Additionally, there is the problem associated with the lack of flexibility of the legal status of the foreigner. In Italy, the conversion of the first-entry residence permit with a work permit on the basis of proven elements of integration is not permitted. An emblematic case is that of the asylum seeker. Pending definition of the protection application, Italian law (d. lgs. no. 142/2015) allows the asylum seeker to be employed (Art. 22, paragraph 1) without, however, the possibility of converting the residence permit into a

¹⁶ See MOROZZO DELLA ROCCA, *Le vie dell'immigrazione e quelle della regolarizzazione*, in BONETTI, D'ONGHIA, MOROZZO DELLA ROCCA, SAVINO (eds.), *Immigrazione e lavoro: quali regole? Modelli, problemi, tendenze, Parte IV: Le lezioni della comparazione*, Editoriale scientifica, 2022, p. 565 ff.

¹⁷ For All see CHIAROMONTE, D'ONGHIA, *Cronaca di una sanatoria in tempo di emergenza sanitaria: genesi, finalità e limiti*, in *DIC*, 3, 2020, p. 29.

¹⁸ For data see the document in https://erostraniero.it/wp-content/uploads/2023/11/-Ero-straniero_nota-organico-PA-e-regolarizzazione_16nov2023.pdf.

¹⁹ Despite d.l. no. 20/2023 having justifiably extended the duration of the residence permit for permanent work from two to three years (Art. 4), the problem of the length of time required for issuing the renewal of the residence permit still remains, see CHIAROMONTE, *Una lettura giuslavoristica del d.l. 20/2023: le inadeguate politiche migratorie del Governo Meloni*, cit., p. 454.

work permit (Art. 22, paragraph 2). As things stand, firstly, the asylum seeker is not encouraged to seek regular employment, because in the event of an application rejection he/she will have to leave the country and the existence of a regular employment contract would be useless. Secondly, the asylum seeker, who has been employed and has established social relations within the host community, may have his/her application for international protection definitively rejected without in the meantime having the possibility of converting a residence permit into a work permit and without the possibility of remaining legally in the country²⁰. In these cases, for instance, it would be sufficient, for a permitted residence, to recognize any roots in the territory including family ties, social ties and the foreigner's employment history in the host country.

Finally, the Italian legislation on access to the labour market does not provide for a temporary residence permit that allows foreigners entrance to Italy to seek employment. Only in this way, the foreigner wanting to work in Italy would not be required to demonstrate the existence of an employment contract before entering the country. The residence permit for job seekers could have directly or indirectly positive effects on the integration of foreigners because it facilitates their entry into the regular labour market. On this issue the Spanish legal system takes a different approach to the Italian one, recognizing a specific entry visa for job seekers (Real Decreto 557/2011, art. 175-177).

3. *Continued. The practice of “arraigo” in the Spanish legislative framework*

Coming to integration practices, the *Ley Orgánica* no. 4/2000 (*LOEx*) introduced the regularization roots procedure of foreigners on the grounds of *arraigo*. It is a tool aimed at granting a temporary residence permit to irregular foreigners who have been in this situation for at least two years and who, by demonstrating that they have means of subsistence, can access a specific residence permit. It is, therefore, an individual regularization procedure recognizing the effective social, work and family integration in Spain.

²⁰ CORSI, DALL’OGLIO, *Il quadro normativo*, in BONETTI, D’ONGHIA, MOROZZO DELLA ROCCA, SAVINO (eds.), *Immigrazione e lavoro: quali regole? Modelli, problemi, tendenze, Parte II: La situazione in Italia*, Editoriale scientifica, 2022, pp. 426-431.

The Spanish legal system does not attribute the irregular permanence of foreigners to a hypothesis of crime; in Spain, irregular foreigners are punishable by administrative sanctions. This allows foreigners, who can demonstrate roots in the territory for social, work or family reasons to obtain a permit for *arraigo* even should the stay be irregular. In Italy, on the other hand, foreigners who reside illegally can be expelled from the country under the criminal charges of clandestinity (Art. 10-bis, d. lgs. no. 286/98).

The term *arraigo* in Spanish means to settle in a place, binding oneself both to people and social contexts, hence, any form of rooting (social, family, work) presupposes the integration of the person²¹.

The form of *arraigo* that best suits the theme of integration through the tool of work is the *arraigo laboral*. In Spain, illegally residing foreigners can officially report their habitual residence to the municipal registry office and those without a criminal record, who can demonstrate they have stayed for a minimum of two years and can prove the existence of employment relationships for no less than six months, can apply for and obtain authorization to reside temporarily for a work permit. To prove the employment relationship, the foreigner must present an administrative or judicial document or any legally valid means. In this form of *arraigo*, the central element that allows integration is the existence of an employment relationship²².

The *arraigo social*, however, requires proof of residence in Spain for at least three years and the presence of a job offer or the intention to set up an independent business. Furthermore, the foreigner who requests the authorization to reside temporarily for *arraigo social* must have established stable social, family or economic ties, which can be compromised in the event of any abandonment of the territory²³.

Unlike the Italian legislation on immigration, the Spanish one values work placement and actual residence in the host country for the purpose of integrating irregular foreigners.

Arraigo is a residency authorization allowing the recognition of effective social or working integration within the territory. It demonstrates how, from time to time, the existence of certain requirements (an employment relationship, a job offer, social or economic ties) can regularize the position of

²¹ TRIGUERO MARTÍNEZ, *El arraigo y los modelos actuales jurídico-políticos de inmigración y extranjería*, in *Mig*, 2014, 36, p. 433 ff.

²² LOCCHI, *cit.*, pp. 152-153.

²³ LOCCHI, *cit.*, p. 153.

the foreigner who is present in the territory, without having to wait for extraordinary collective regularization.

A more accurate analysis of the institute brings out its advantages and disadvantages. Given that the status of irregular migrant entails the risk of social marginalization, the tool of *arraigo* allows one to regularize his/her position and begin a process of integration and social inclusion. The different forms of *arraigo* undoubtedly constitute a valid tool allowing foreigners to escape from subordinate and precarious conditions but, at the same time, the *arraigo* constitutes only a temporary residency authorization which must therefore subsequently be transformed into a more stable residence permit, meeting the criticality of ordinary legislation. Furthermore, the requirements for obtaining the *arraigo* can be difficult to achieve due to the difficult situation of the national labour market. For this reason, it would be advisable to adapt these requirements, in terms of greater flexibility, taking into account the current delicate socio-economic situation. It is worth highlighting that the *arraigo* started out as an exceptional tool and has now become an ordinary procedure towards regularizing the status of migrants meeting the requirements required by law.

As will be outlined later (§ 5), even in the Italian legal system, an individual and permanent instrument of regularization motivated by employment or residence qualified by various integration indices could have an important impact on the lives of the many migrants who live and work irregularly in the country.

4. *Continued. The residence permit for special protection in Italy and its recent reform*

Currently, the Italian legislation on immigration does not include an individual regularization mechanism; the only instrument comparable to it was the residence permit for special protection based on private and family life, introduced in Italy with d.l. no. 130/2020 within the Art. 19, paragraph 1.1, part. 3-4, d. lgs. no. 286/98. The resident permit for special protection intervened on violation risks of the right to respect the private and family life of the foreigner residing in Italy, after careful verification of the nature and effectiveness of some criteria, such as family ties, effective social integration and the length of stay in the country.

Attention to humanitarian profiles and the recognition of exceptional circumstances (links with the territory, social and family ties) brought this form of protection closer to the *arraigo* model.

The special protection system allowed foreigners who have social or family ties in Italy, or who have undertaken a serious integration process (language learning, professional training courses or employment), to apply for a residence permit for special protection, which could also be converted into a work permit. The possibility of converting the residence permit for special protection into a work permit certainly represented an advantage for the foreigner present regularly or irregularly in the territory.

Therefore, through the introduction of residence permit for special protection, the Italian legislator, slightly behind other European countries²⁴, had prohibited the expulsion of foreigners when there was a risk of violating the right to respect one's private and family life, according to a formulation that, although indirectly, recalled the provision of Art. 8 ECHR (European Convention of Human Rights)²⁵.

It is not yet clear the *ratio* of recent reform (Art. 7, d.l. n. 20/2023 converted with amendments by law no. 50/2023) that has abolished the resident permit of special protection based on the recognition of private and family life, in fact, while the migrant could acquire a residence permit to protect a fundamental right, the State could bring out foreigners present irregularly on the national territory and struggle illegal work. With the same reform, the legislator has also eliminated the possibility of converting the residence permit for special protection into a work permit deleting the letter a) of the Art. 6, paragraph 1-bis, d.lgs. no. 286/1998²⁶.

Despite the irrationality of these measures, since the residence permit cannot be denied in the presence of constitutional or international obligations (Art. 19, paragraph 1.1., the first part, d. lgs. no. 286/1998) and since

²⁴ See the case of France. BENVENUTI, CHIAROMONTE, *Francia*, in BONETTI, D'ONGHIA, MOROZZO DELLA ROCCA, SAVINO (eds.), *Immigrazione e lavoro: quali regole? Modelli, problemi, tendenze, Parte I: Modelli stranieri*, Editoriale scientifica, 2022, pp. 115-118.

²⁵ SAVINO, *Lo straniero nella giurisprudenza costituzionale: tra cittadinanza e territorialità*, in QC, 2017, 1, p. 66 ff.; CURIGLIANO, MASON, *La regolarizzazione straordinaria del 2020: una prima analisi*, in DIC, 2021, 3, p. 315.

²⁶ For the reflections on its constitutional legitimacy see COLAMARTINO, "Non ho paura. Ma ormai vivo qui". *La protezione speciale e il diritto alla vita privata e familiare nell'applicazione della giurisprudenza (con qualche spunto di riflessione sul d.l. no. 20/2023)*, in QG online, 25 September 2023, p. 25.

one of the international obligations is the right to respect private and family life (art. 8 ECHR), the reform would not change things in theory²⁷; while in practice, the administrative discretion regarding the elements to be evaluated for the issuance of the residence permit for special protection could increase and disadvantage those who, for instance, have recently started paths of integration and social inclusion, even through employment, precisely when the labor market is undergoing labour shortages in many sectors²⁸. It will still take some time to understand how (and if) this reform constitutes a further obstacle to the social and working integration of foreigners.

5. *Short conclusions*

To conclude, the Italian legal system seems to be more incomplete than the Spanish one from the profile of social and working integration of migrants. For this reason, the Italian legislative framework on migration policy would benefit substantially from the introduction of an ordinary and individual regularization mechanism which, resolving the forms of irregularity on a case-by-case basis, would allow foreigners to remedy their status at any time, on the basis of various elements which include: the job placement or promise of employment, any ties in the country, knowledge of the Italian language or other circumstances that can demonstrate a certain degree of integration. This mechanism could encourage foreigners to take legal paths, thus decreasing the degree of marginality and vulnerability that affects inequality growth. Until a few months ago, the recognition of special protection for achieved social integration in Italy was the only instrument that allowed a sort of individual regularization²⁹.

Always with the purpose of allowing greater inclusion of foreigners in the social context, a further change to the immigration rules should then concern residence permits for work reasons, the duration of which should be extended. Greater flexibility should also be sought in the conversion of

²⁷ See ZORZELLA, *La riforma 2023 della protezione speciale: eterogenesi dei fini?*, in *QG online*, 14, September 2023, p. 18; COLAMARTINO, *cit.*, p. 24.

²⁸ ZORZELLA, *cit.*, pp. 19–20.

²⁹ M. T. AMBROSIO, *L'immigrazione per motivi di lavoro tra riforma e controriforma*, in SAVINO, VITIELLO (eds.), *Asilo e immigrazione. Tra tentativi di riforma e supplenza dei giudici: un bilancio*, Editoriale scientifica, 2023, pp. 126–127.

residence permits so that foreigners can maintain the position of regularity for longer and have more stability in the host country.

Finally, even the asylum seeker who is employed with a regular employment contract should be given the possibility of obtaining a work permit while maintaining the status of asylum seeker until the procedure has been defined. At the end of a successful procedure, the asylum seeker will be able to choose whether to accept international protection or the residence work permit and should the procedure be defined with a rejection of the application, the asylum seeker will instead be able to keep the work permit and continue to reside legally in the territory.

Such an incomplete regulatory framework is counterbalanced by numerous best practices – recently reported by scholars – developed in various parts of Italy, created with the active participation of Trade Union organizations and Third sector employers' associations, from civil society to individual citizens, with the aim of promoting social inclusion of foreign workers and eliminating all forms of marginalization (for example the development of transparent agricultural supply chains)³⁰.

In particular, collective bargaining has played and could continue to play an important role. Already in the past, it offered tools for the inclusion of foreigners, helping to root the culture of inclusion in the working community, in trade union negotiations and the management of companies (for example the first clauses of the 1990s which established specific permits for temporary or literacy and professional qualification courses)³¹. The attention towards foreign workers by national collective bargaining is still present and is manifested through the activation of some good practices. In this sense, measures introduced at a decentralized level can be highlighted to encourage the participation of immigrant workers through the recognition of their cultural and religious needs or to provide administrative assistance in favour of foreign workers by bilateral bodies or to identify through observers initiatives aimed at promoting the inclusion of foreign workers within companies. In some national collective labour agreements, unpaid work permits have been adapted to guarantee the observance of religious holidays not recognized by

³⁰ D'ONGHIA, *cit.*, pp. 62–66.

³¹ CHIAROMONTE, FERRARA, *Integrazione e inclusione sociale dei lavoratori migranti: il ruolo del sindacato*, in CHIAROMONTE, FERRARA, RANIERI (eds.), *Migranti e lavoro*, il Mulino, 2020, p. 223.

national law, or even the right, at the worker's request, to work shifts that allow him/her to attend Italian language learning courses and encourage preparation for exams³².

However, integration policies cannot remain the prerogative of the private social sector but also public policies need to be implemented so that the effects are beneficial not only for migrants but for the entire community. Indeed, investing in integration means investing in services that can benefit everyone, even the territories. Reducing vulnerability factors of foreigners who live and work in Italy and promoting greater integration of the same are important challenges for the realization of "good immigration". The latter must consider migrants not only as a potential workforce but also as people, who are not only looking for employment but also for rights and inclusion and creating favourable policies can only result in economic growth and measurable improvements to the livelihoods of foreigners and the communities that host them.

³² For an accurate analysis of the topic see CHIAROMONTE, FERRARA, *cit.*, pp. 223-234.

Abstract

The essay intends to make a contribution to the articulated debate on measures of social and working integration of migrants. Through the analysis of the Italian and Spanish legislative framework on immigration, the paper aims to identify particularly significant models and practices of social and working integration of foreigners that inspire innovative and more effective solutions especially than those currently present in the Italian regulatory framework.

Keywords

Migrants, Social and working integration, Comparison of practices, Italy, Spain.

