

Socio-Legal Production of the Tourist-Seasonal Labourer for the Finnish Berry Industry

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Abstract

The article investigates the phenomenon of precarious labour within the Finnish wild berry industry, focusing on the socio-legal dimensions that enable short-term “just-in-time” migration, primarily from Thailand, for the berry season. Since the initial 2005 recruitment of Thai citizens to engage in forest berry picking for the Finnish berry industry, the industry has become heavily reliant on migrant labour. At the same time, the pickers’ situation exemplifies a case of unregulated labour, as pickers are categorised as a group outside of labour laws in Finland. By asking how this “non-work”—berry picking without labour rights—has repeatedly been justified on a policy level, the article provides a case study that unpacks the creation of a racialised migrant labour force through a statecraft of differential inclusion, in an arrangement regarded to advance rural economies. Empirically, the article draws on an analysis of policy documents through which a particular kind of temporary migration corridor is administered.

Keywords

deregulated labour; differential inclusion; Finland; seasonal migration; unregulated labour; wild berry industry

1. Introduction

“Foreign wild berry pickers pick berries in Finland from July to September/October. The pickers are not entrepreneurs, nor do they have employment contracts with berry purchasers,” stated the Finnish employment authority’s public service announcement, on August 8 (TE Services, 2019, translation by the author), about the arrangement through which between 2,000 and 4,000 citizens of Thailand travel annually to Finland to forage wild berries that grow uncultivated in the forests. The Finnish wild berry industry is

dependent on migrant labourers, who pick up to 90% of the industry's raw materials. Physically hard and very low-paid, commercial picking is not considered attractive to most people in Finland. Formally, the arrival of the not-entrepreneurs-nor-employee-labourers is arranged through Schengen visas. Given their unregulated labour market status, the pickers are excluded from the protection of Finnish labour laws. This article investigates how such an arrangement has been justified on a policy level in the context of a "heavily regulated social democratic labour market" (Rye & Scott, 2018, p. 7) of a Nordic welfare state.

This article contributes to discussions about precarity and the global division of labour (Hedberg, 2022) by examining the role of the state in advancing precarious, deregulated labour. Importantly, deregulated labour has been identified as one of the central tendencies that contribute to migrants' precarious labour market positions in urban settings (e.g., Wills et al., 2009), and many discussions about gig work in the platform economy revolve around it (e.g., Krzywdzinski & Gerber, 2020; Maury, 2023). Through shifting attention from metropolises and digital platforms to a rural context, the article addresses precarity concerning seasonal migrant labour in a non-timber forestry sector that bears resemblance to European agricultural food production, a realm in which the "loosening and lowering" of labour protections has been characterised as "a race to the bottom" (Rye & Scott, 2018, pp. 7–8). A growing number of seasonal migrant workers take on European fruit and vegetable production tasks, and "seasonal agricultural workers fill jobs shunned by local workers because of the low wages, hardship, long hours and poor living conditions" (Augère-Granier, 2021, p. 6). The article examines one version of this race to the bottom by analysing a case of state-administered "regulated precarity" (see Siegmann et al., 2022). As the following analysis will show, wild berry picking in Finland is formally presented as a special case, even to the extent that its official labour conditions differ from that of neighbouring Sweden (the only other EU country hosting a similar industry; see Axelsson & Hedberg, 2018; Hedberg, 2013, 2021, 2022; Iossa & Selberg, 2022; Krifors, 2020), whose pickers are required to partake in formal employment relationships. Yet, while state-facilitated, non-contractual employment, and the wild berry sector at large, might appear exceptional, this analysis emphasises a broader pattern of legitimising cheap and deregulated migrant labour.

Empirically, the article draws on an analysis of legislative texts and policy documents that define the practice of administering a temporary corridor (Krifors, 2020) for "just-in-time" migration (Mezzadra & Neilson, 2013) for purposes that serve the Finnish berry industry, and that determine the labour conditions for berry pickers of mainly Thai origin. By answering the question of how the wild berry picking arrangement is facilitated and legitimised in the research material, I address the dynamics of justifying and normalising (Helén & Tapaninen, 2013) cheap and unregulated migrant labour, as well as empirically discuss a topic that has been largely left untouched by previous academic research. The empirical analysis concerns an arrangement in which foraging or picking wild berries is understood as distinct from garden berries (which are subject to different regulations). Hereafter, wild berries will be referred to as just berries, and in the analysed materials, they are also referred to as both forest berries and natural products.

The article is structured as follows: First, I present the theoretical framework of the analysis, which stresses the role of the state in a setting that critical migration studies has characterised as a differential inclusion. Second, I discuss further the context of berry picking in Finland, and then present the analysed material and methods. I proceed to a two-part analysis, one focussed on mobility-related definitions and justifications, and the other on labour-related definitions. Finally, I conclude by arguing that the berry-picking arrangement exemplifies how migrant precarity is actively shaped by state policies, and hence is not an exceptional

aberration. Consequently, the analysis puts forward an exemplary case in which the differentiation function of borders is used deliberately, and amplified in policy-making.

2. Statecraft of Differential Inclusion

A repeated observation in critical migration studies has been that border regimes produce precarious labour (e.g., Anderson, 2010; Rigo, 2011) as conditional, temporary, or lacking legal statuses to increase migrant workers' dependency on their employers, narrow their bargaining power, and limit their access to rights (e.g., Iossa & Selberg, 2022; Könönen, 2018; Wills et al., 2009). One preeminent articulation of this is the concept of differential inclusion (e.g., Mezzadra & Neilson, 2011, 2013) that points to the selective inclusion of migrant workers in a society and its sphere of rights, regardless of their physical presence in the nation-state space. The scholarship on differential inclusion, which has brought to the fore “differentiation within the same legal and political space” (Rigo, 2011, p. 207), also grounds my analysis of the berry-picking arrangement. While the emphasis of many analyses of differential inclusion has been on the “legal production of illegal and deportable subjects” (Mezzadra & Neilson, 2013, p. 132), and the lived experiences conditioned by continuous struggles to secure and/or maintain an authorised status, the case of berry picking underscores how facilitating mobility is an integral part of differential inclusion. By invoking the notion of statecraft of differential inclusion, I scrutinise the particularities of the regulatory space when it comes to berry industry-linked mobility.

Taking into account statecraft of differential inclusion permits scrutiny of the possibility that a deregulated labour market status does not simply co-occur with border governance, but that it can also be a consequence of deliberate continuous processes that produce a regulated precarity (Siegmann et al., 2022). In other words, while it is unquestionable that the various mechanisms of migration governance render those whose mobility is controlled to be a particularly exploitable labour force in a capitalist mode of production, crafting a flexible and informal labour force that serves a particular purpose might be a consequence of intentional policy measures. This links to the important observation by Wills et al. (2009, p. 30), who emphasises that the deregulation of labour relates to an active production of societal divisions that are not (at least completely) beyond the reach of politicians and policymakers. Consequently, a study of the regulatory space (policies stated in legislation as well as in various bureaucratic practices; see Axelsson et al., 2021) allows one to identify the specific mechanisms that instrumentalise certain forms of mobility.

At the same time, statecraft of differential inclusion is interlinked with broader structural phenomena, such as global supply-chain capitalism (Tsing, 2015), a migrant division of labour (Wills et al., 2009), and a form of racial capitalism that constitutes a supposedly “racially inferior stock for domination and exploitation” (Robinson, 1983/2000, p. 26). Furthermore, such structures potentially contribute to naturalising racial/ethnic hierarchies of labour, as Holmes (2012) argues in *Fresh Fruit, Broken Bodies*. In the case of wild berry foraging, in particular, these are likely to be entangled with cultural-contextual elements.

3. Local Berries, Migrant Pickers

“People have always picked berries in Finland” say Pouta et al. (2006, p. 286) when describing the significance of wild berry picking in Finland. Berries that require no cultivation have traditionally been used for human consumption, and hold significant cultural value, for instance, wild berries are featured in several

Finnish colloquialisms and proverbs. Furthermore, the Right of Public Access (the freedom to roam) means everyone can access both publicly—and privately—owned forests, and exercise the right to pick berries, mushrooms, and plants under certain conditions (Tuunanen et al., 2012). It is customary to present the Right of Public Access as an ancient tradition (cf. Pouta et al., 2006), or at least a consuetudinary law whose application has persisted, unchallenged, for centuries (cf. Tuunanen et al., 2012). However, historical research stressing the Right of Public Access as a 20th-century institution has also shown that the framing of berries as an open resource was stabilised at the end of the 19th century, with the justification that “berries could be provided to retailers, export markets, and the evolving berry-refining industries” (La Mela, 2014, p. 285). Today, recreational berry picking remains a somewhat popular (although declining) pastime. Meanwhile, the popularity of commercial picking, particularly for industrial purposes, has faded amongst Finnish households. Turtiainen and Rantanen (2020, p. 62, translation by the author) describe the situation as follows: “The number of Finnish commercial pickers has decreased, among other things, due to ageing and urbanisation, nor has the low price paid for wild berries attracted new commercial pickers.” Consequently, Finnish berry-purchasing companies have increasingly resorted to using foreign labour; since the late 1990s, the industry has to some extent relied on pickers from Russia, the Baltic countries, and Ukraine. In 2005, the first pilot group of less than one hundred Thai nationals was invited by one Finnish company emulating a business model already established in Sweden (Hedberg, 2013). In subsequent years, the number of Thai citizens arriving in Finland for berry picking increased steadily, and the industry grew dependent on the Thai labour force. The emergence of the current-scale commercial berry branch in Finland can only be explained by the contribution of Thai labourers (Rantanen & Valkonen, 2011, pp. 8–9). In practice, the Finnish berry-purchasing companies—similar to their Swedish counterparts—rely on profit-driven recruitment chains in Thailand (Eerbeek & Hedberg, 2021) to invite and host short-term labour for the berry season.

While there is considerable scholarly literature about wild berry picking in Sweden, the Finnish field is fledgling. Thus far, the involvement of foreign pickers has been described as making the harvesting of berries “more efficient” due to “the fact that foreign (in particular Thai) pickers are hard-working” (Turtiainen & Rantanen, 2020, p. 62, translation by the author). On the one hand, “hard-working” is a racial stereotype, commonly connected to East Asian people (Osanami Törngren et al., 2023, p. 322). On the other hand, Turtiainen and Rantanen (2020, pp. 62–63) also acknowledge that “Thai pickers are motivated more than other groups by the fact that they have invested more money in the picking journey than other groups of foreigners.” Since the pickers are compensated by the amount of berries they forage, and they have invested in the costs of overseas travel, the incentive to “work hard” is indeed high. The Finnish media has featured individual pickers’ successes, profiling the income they have gained from berry picking (e.g., Vaarama, 2021), but contradictorily, have also repeatedly framed the position of Thai pickers as exploitation (Alho & Helander, 2016, p. 149), similar to descriptions from Sweden (Axelsson & Hedberg, 2018). In 2022, the Supreme Court of Finland sentenced one berry-purchasing entrepreneur to prison for 26 charges of human trafficking, following a police investigation that began in 2016. Later in 2022, the Finnish police announced new criminal investigations concerning human trafficking in the berry branch, and an official misconduct charge against a high-ranking Ministry of Economic Affairs and Employment (MEAE) official. Another significant indication that the labour conditions leave something to be desired are the claims made by the pickers themselves.

Throughout the time in which Thai seasonal migration has supported the Nordic berry industry’s needs, the pickers have spoken up for their rights in several instances. Axelsson and Hedberg (2018) list occasions of protests and strikes in 2009 and 2013 in Sweden, and they also note that returning pickers have demanded

justice and unpaid compensation through public protests in Thailand. In Finland, public awareness increased when the so-called group of 50 berry pickers rose up against their host company, demanding unpaid compensation for berries picked in the 2013 season. Their protest is recorded in journalistic work (e.g., Nikkanen, 2016), and the 50 pickers brought a civil suit against the berry company for unpaid compensation. Ultimately, the administrative court ruled in favour of the company in 2017—the aforementioned 2022 human trafficking verdict resulted from a trafficking investigation, rather than picker-led action against labour conditions. Furthermore, recent journalistic accounts of berry picking conditions, as well as about the debt-bound position of seasonal migrants financing their travel, underscore the persistence of the problems the pickers face (The Isaan Record, 2023). In February 2024, while this article was being finalised, returned migrants in Thailand were organising as The Network of Thai Berry Pickers in Sweden and Finland, making claims to the Thai, Swedish, and Finnish governments (The Reporters, 2024). Importantly, the pickers' organising—and, at least to some extent their contacts with the Nordic authorities—has been facilitated over the years by activists from the Thai diaspora in Finland (United Nations, 2023).

In both Finland and Sweden, the state has also attempted to regulate the position of foreign berry pickers. Even if this article's focus is on the regulatory frameworks in Finland, it is not insignificant to note that the Finnish legislative framework differs from that in Sweden, where pickers are required to have employment contracts. Despite this, Axelsson and Hedberg (2018) describe the situation in Sweden as regime shopping, in which posted workers remain outside of Swedish jurisdiction due to the use of a subcontractor model. The analysis that follows highlights some aspects of the Finnish regulatory framework. To provide an overview of the regulatory measures taken by the government, it's worth noting that in 2014, the MEAE introduced the practice of the Letter of Intent, in which berry-purchasing companies were requested to commit to certain standards in their operations (e.g., to ensure that the pickers are charged only "reasonable recruitment costs"). After the improving position of berry pickers was mentioned in the Government Programme of 2019, Finland enacted the Act on the Legal Status of Foreigners Picking Natural Products, or the so-called Lex Berry, which through a separate statute enshrined in law roughly similar principles to those stated in the Letter of Intent. After the exposure of the suspected official misconduct in the MEAE in 2022, the Ministry revised its stance and proposed to include wild berry pickers in the Seasonal Workers Decree, which would have led to the requirement of contractual employment. However, due to a variety of reasons—some of them relating to legislation techniques—the proposal was not supported by some of the other key ministries. Despite the ongoing development of different regulatory stages, roughly 2,000–4,000 Thai citizens have since arrived on Schengen short-term visas to pick berries for the Finnish berry industry (on issuing visas see Zampagni, 2016). Of the on-average 9,000 visas issued annually by the Finnish Embassy in Bangkok during the last decade, roughly one-third have been issued for berry picking (European Commission, n.d.). An exception to this are the years under Covid-19 restrictions: In 2020 and 2021, the Finnish Embassy in Bangkok issued less than 4,000 visas per year, of which between 2,000 and 3,000 were issued to berry pickers.

4. Analysing Legislative and Administrative Documents

My analysis draws on legislative, policy, and administrative documents that mention the involvement of citizens of Thailand in wild berry picking in Finland. Authorities are obliged to ensure their conduct is in line with legislative documents and authoritative texts, while reports, memos, and recommendations have a more informative role. Some of the documents are publicly available, but others I have obtained through

requests according to the principle of public access to official documents. This has resulted in an archive consisting of approximately 1,000 pages (the number of titles is open to interpretation). All the analysed documents were written in Finnish, hence, the citations provided in the article are my translations.

The earliest documents, dated between 2004 and 2007, bring forth the berry industry's interest in inviting foreign pickers from Thailand to Finland and state the prerequisites for this. Since 2007, distinct reports and recommendations have also been issued in response to observed exploitation in the berry branch. The first governmental report on foreign berry pickers, by a Ministry of the Interior (MOI) coordinated working group in 2007, addresses the issue in response to the distress of a group of Ukrainian students who had come to Finland to pick berries, and were left without the funds to return to their country of origin. In 2009, the Minority Ombudsman—the authority at the time tasked to advance the legal protection of foreigners—stated in their recommendation to the Ministry for Foreign Affairs (MFA) that attention should be given to the fact that pickers, mainly from Thailand, take the main economic risk in the industry, and consequently, several pickers have ended up in debt because of that. In 2014, an MEAE report identified that multiple actors in both Finland and Thailand benefit from this seasonal migration, stating that “the only one taking on a personal risk is the picker.” Consequently, the authoritative documents concerning the pickers' entry to Finland, as well as attempts to regulate the contractual arrangements between pickers and the berry purchasers, to some extent seem to respond to the observed problems. In addition, Thai berry pickers are also mentioned in strategy and other documents concerning the natural products sector, and Finnish food exports. The newest documents in my archive are from spring 2023 when the MFA adjusted the guiding principles for issuing visas to third-country nationals for berry picking.

My analysis of this research material is informed by the methodology of interpretive policy analysis, an approach that underscores how the formation of policies is underpinned by both contextual and sociopolitical understandings. My analysis method is informed by the approach adopted by Helén and Tapaninen (2013) in their study of family reunification-related migration policies. Drawing on analytics of governmentality, they seek to capture how a certain migration policy-related practice is “understood, conceptualized, and reasoned” (Helén & Tapaninen, 2013, p. 154) in practices of migration management. The processual approach they describe also characterises the research at hand: The documents I have analysed capture a dynamic discussion in a contested field. From this, I have identified conceptualisations and reasonings that justify existing practices.

5. A Universal Common and Other Visa Requirements

While there are several examples of agribusinesses that rely on a labour force made “flexible” through illegalisation (e.g., Holmes, 2012), the berry pickers are formally granted a temporary status (comparable to that of a tourist) as they arrive in Finland on Schengen short-term visas. The ground rules for Schengen visas are laid out in the joint European Visa Code (see Zampagni, 2016), but applying the visa policy requires active involvement from the state, that issues the visas. In what follows, I scrutinise the policy documents' justifications for the temporary state-administered just-in-time migration to the requirements for entering the country.

Since 2004, the MFA has issued an annual document guiding Finnish consulates on how to issue visas for foreign nationals for forest/wild berry picking. The guiding documents provide specifications for consular

officials dealing with visa procedures (cf. Zampagni, 2016), but they also specify the legal grounds for issuing visas for berry picking. To begin with, the documents from 2004 and 2005 reveal that Finland has previously issued visas to foreign nationals subject to visa requirements from areas nearby (mainly Russia and Estonia) to pick forest berries. However, the document (2004) also state that berry-purchasing companies have approached the authorities with requests to recruit pickers from abroad, or at least from Thailand (2005), because a sufficient labour force is not available in Finland or areas nearby. In addition, the documents refer to the fact that the Aliens Act exempts certain branches of seasonal work from requiring a residence permit.

At this time, a certain legal provision (Finlex, 2004, 81 §, subsection 1, para. 4) specified that certain fields of seasonal work be exempt from a working right-providing permit. Whether or not this applied to the berry pickers' situation is addressed through multiple documents in conflicting ways. In 2007, the MFA guiding document explicitly named the legal provision as the grounds on which wild berry picking was categorised. Two years later, in 2009, the document stated: "The legal provision in question does not apply to wild berry picking, because it is not conducted as employment," and the 2010 document added a specification that wild berry picking is "work done through the Right of Public Access." This roughly corresponds with the MOI-coordinated report on wild berry picking from 2007, which stated that the "Aliens Act provision 81 §, subsection 1, paragraph 4, that allows working without a residence permit, applies only to contractual employment." Interestingly, in 2012, the named Aliens Act section was revived in the MFA guiding document, which again stated that "regarding wild berry picking, Aliens Act provision 81 §, subsection 1, paragraph 4, applies." The following year, this was complemented by a general reference to the Schengen Visa Code, and the named legal provision remained as the justification for issuing Schengen visas for berry picking until it was removed from the guiding document for the 2015 picking season. In summary, the interpretations of the legal grounds for the entry of the non-worker, and non-entrepreneur pickers varied almost biannually; nothing indicates that this would be a consequence of alterations in other legislation and authoritative texts; and distinct authorities presented conflicting interpretations of the matter.

From 2016 on, justifications for the arrangement are linked to the Right of Public Access. The definition provided ("picking wild berries belongs to the Right of Public Access in Finland. It is regarded that realising this right might also entail separate travel from abroad") seems to characterise berry picking as a universal common right. Or, the definition supposedly admits that the usufructuary right and the Right of Public Access apply to all foreigners, regardless of how (or if) their status in Finland has been authorised. Yet, given that people arriving in Finland for industrial berry picking are required to present an invitation letter from a berry-purchasing company as part of their visa application—as well as to fulfil some of the standard requirements in the Visa Code—the companies (or the staffing agencies and local brokers they use; see Hedberg, 2021) to have a role in determining who is able to enter Finland for berry picking. In 2016, the guiding documents also established an explicit interpretation of the Visa Code, and the Regulation 562/2006 sections on sufficient means of subsistence; the guidelines state that these legal provisions make it possible "to use a Schengen Visa for seasonal work." In 2023, the MFA document stated: "The Visa Code does not specifically regulate a situation in which a third-country national arrives in a member state to pick natural products on the grounds of the Right of Public Access." In other words, the reference to the Right of Public Access—and the possibility to travel to Finland from abroad to realise one's Right of Public Access—remained in the document, while the interpretation of the Visa Code was altered. Overall, the shifting references to the Visa Code contained similar contradictions as those identified in the

aforementioned Aliens Act provision discussion, while the Right of Public Access remained a central element for legitimising the berry-picking arrangement.

Regarding the general requirements of the Visa Code, the MFA annual guiding document stated the aim of preventing unauthorised work and irregular migration, in other words, pickers arriving on short-term visas are allowed to enter because they are not expected to overstay their visas. Furthermore, the MFA document mentioned a requirement to prevent human trafficking. In 2009, the document acknowledged specificities regarding the foreign pickers' situations, stating that "currently, some of the pickers have become indebted, which exposes them to human trafficking-related phenomena." This became another recirculated sentence, which in 2014 was complemented by the requirement to "aim to ensure" that the pickers would receive a daily net income of EUR 30. The sum was also considered to cover the Visa Code requirement for sufficient funds to enter Finland (EUR 30 between 2006 and 2023). Since 2015, berry-purchasing companies, together with MFA and MEAE representatives, co-signed a Letter of Intent (indicating intention, not a binding commitment), where they voluntarily consented to the aim of ensuring pickers received a daily income of EUR 30, but from which lodging and other costs could be deducted. Until the enactment of Lex Berry in 2021, these were the only state-provided principles regarding the pickers' income level; meanwhile, the pickers were also seen as being "exposed to human trafficking-related phenomena." The legislative history of the Lex Berry continued to name the Visa Code requirement for means of subsistence as the only determining criteria for the pickers' income, which according to the government bill HE 42/2021 meant "at least 30 euros daily minimum income after earning the flight ticket and the costs for lodging during the stay" (Finnish Government, 2021). Interestingly, the sum regarded as the minimum requirement to enter the country seemed to align with the minimum compensation amount.

The shifting and circular legal definitions that I have now presented underscore a governmental determination to facilitate a consistent supply of temporary labour for the wild berry industry in Finland. These ongoing alterations also bring forth the exceptionality of the arrangement, since the practices do not seem to comply with existing legislation. A document released during the Covid-19 pandemic-related restrictions explicates an incentive for the arrangement. Under pandemic-related travel restrictions, the Government of Finland allowed pickers from Thailand to enter Finland with a separate decision in July 2020. At the time, Thailand was also categorised as one of the countries from where "travel for work and other essential purposes" was allowed. A joint MEAE and MFA document from 2020 stressed the need for the exemption to apply to berry pickers, as it stated—in an exceptionally straightforward manner—that allowing their mobility is a necessity. First, it explained that "in procuring raw materials for the berry industry, foreign pickers are rarely replaceable with domestic pickers." Further, under the sub-heading "The Impacts of the Restrictions," the document argued for the economic significance of companies purchasing and processing berries, and stated that the berry companies are among the few bigger employers of their regions that otherwise are "the most difficult areas regarding employment and unemployment." In other words, the need for a migrant labour force is connected to the needs of economically deprived areas with a high prevalence of unemployment of locals, some of whom are potentially employed by the industry in the processing stage of the production chain. This perspective of (un)employment, and the supposed necessity of permitting the entry of migrant pickers, can be also considered as an example of a situation where the deregulation of labour and subcontracting devalues the price of labour to the extent that it is hard to find local people to carry out the labour (see Wills et al., 2009, p. 4). At the same time, mere economic interest does not sufficiently formally justify this allowance for exceptional mobility. The aforementioned application of the

Visa Code in the context of the Right of Public Access formed the formal justification. This also reflects the epistemic characteristics of migration governance, where fragmentation and frantic changes are the norm (Tazzioli, 2019). I suggest the patchwork-like epistemic pattern contributes to the possibilities of amplifying differentiation in the labour market, which in this case, plays a part in contributing to the pickers' unregulated labour market status.

6. Legislating “Non-Work”

Besides the regulations surrounding their entry to Finland, another critical point that raises concerns about the status of berry pickers is their formally non-existent labour market position. While the question of an unregulated labour market position links directly to labour protection, the issue can be regarded from an even broader perspective: Besides the residency-based social security that short-term visitors are not entitled to, a wage worker status conditions societal inclusion in Finland in many ways (see Bendixsen & Näre, 2024). For instance, even with current attempts to crumble the collective bargaining model, it remains a central arena for wage workers' political participation.

In this section, I discuss the rationale for categorising berry picking as “non-work,” and the unregulated labour market status of the berry pickers, which seems to differ from all other groups of workers. In comparison, when platform gig workers' status as independent contractors has been questioned as bogus self-employment (see Maury, 2023), the debate concerns the categories of employer and entrepreneur, none of which are currently seen to be formally applicable to the berry pickers' situation, according to the interpretations put forward by the employment authority and cited at the beginning of this article, for instance. The chosen point of departure for the prevailing legislation—the Act on the Legal Status of Foreigners Picking Natural Products, the *Lex Berry*—was to leave the unique status unaltered. Admittedly, the government bill HE 42/2021, which is the most central document in legislative history for legal interpretation, described the nature of the berry-picking activity by referring to the pickers as “entrepreneurs of a kind” on one occasion. However, a discussion about the pickers fulfilling any legislative requirements imposed on entrepreneurs in Finland is completely non-existent. Instead, the possibility of categorising the pickers as formal wage employees is frequently raised in policy documents, and throughout legislative history.

To begin with, the nature of the berry picking arrangement is, on a formal level, tied to a question of taxation, which is informed by bill HE 42/2021: “Income Tax Act 89 § guides arranging picking [of natural products] as non-contractual employment” (Finnish Government, 2021). The referred legal provision stated that income derived from certain natural products is tax-free for the picker, “unless the income should be regarded as a wage.” This perhaps tautological definition was already raised in a 2007 report coordinated by the MOI, which stated: “Forest berry picking does not usually happen under contractual employment, because in that case, the income gained from picking wild berries would be regarded as taxable employment ipso jure the Income Tax Act 89 §” (MOI, 2007, p. 4). The exemption in the Income Tax Law is again often linked to the right to Right of Public Access. For instance, bill HE 42/2021 addressed tax exemption under the heading “Right of Public Access,” which is regarded as the legal grounds for berry picking; furthermore, the bill acknowledged that that tax exemption concerns mainly natural products that the Right of Public Access permits people to pick (with the only specification being the regulations concerning the spring growth of spruce trees). What is not stated in discussions about the berry picking arrangement is that the tax exemption of natural products

through an amendment to the Income Tax Act was enshrined decades after the juridical recognition of the Right of Public Access, which has existed as a consuetudinary law since the 1920s. Yet, the Right of Public Access underpins discussions of taxation (even when some of the stakeholder comments about the draft HE 42/2021 bill strongly contested the application of the Right of Public Access to commercial berry picking; see Peltola et al., 2014) and consequently, shaped the definition of non-employment. The connection to the Right of Public Access also invited associations between commercial berry picking and what is usually regarded as a recreational activity or a side hustle among Finnish people, and as such, is notably different from the daily volumes generated by commercial picking for the industry. For instance, in parliamentary hearings on the Lex Berry, berry picking was also presented as an opportunity for Finnish young people to gain extra income, and previous research has also underscored that wild berry picking is, traditionally, “an activity practised mainly by children, women, and elderly people” (La Mela, 2014, p. 273). In other words, it is relatively easy to conflate a tax-exempt activity for commercial purposes with traditional forms of unvalued labour.

A question that interlinks with the taxation issue is what comprises “constituent elements of contractual employment,” and whether an agreement between the involved parties should be regarded as contractual wage employment. As the format of employment contracts is not restricted in Finland, it is possible to regard certain cases as having evolved to constitute an employment relationship without this being formally explicated. In 2006, six companies that were hoping to invite pickers from Thailand requested a prospective taxation authority decision, to ensure that inviting the pickers would not be regarded as employment. The question was framed by stating that persons arriving from a faraway country would therefore not be familiar with the boreal forests and their berries, and consequently, need more guidance than pickers arriving from nearby areas. Aligning with the information provided by the berry companies, the Central Tax Board decision in 2006 stated that: “The berry pickers pick berries on their own account, and sell the berries to a buyer they choose.” When questioning this interpretation that the berry companies were not responsible for adhering to employer obligations, the Central Organisation of Finnish Trade Unions requested from the Labour Council (an independent authority under the MEAE tasked to provide expert statements on the applications of labour law) a statement on contractual employment in the industry in 2010 and 2014. The Labour Council investigated the issue by reviewing the evidence provided by the Central Organisation of Finnish Trade Unions, and the berry companies’ descriptions of pickers’ “agency” which state that “the pickers can sell their berries to whomever,” and concluded that, mainly for this reason, constituent elements of contractual employment are not fulfilled. An MEAE-commissioned report in 2014, however, critiqued the decisions by the Central Tax Board and the Labour Council and remarked that they were grounded on material provided to the authorities, which states the pickers have the freedom to sell berries to whomever they want, and that, in practice, this is not the case. Nevertheless, the Labour Council decisions were referred to as guiding documents in bill HE 42/2021 and defined the lay of the land for Lex Berry.

In 2021, the debated freedom to choose the buyer became a legislated right. The Lex Berry stated that “a picker has the right to sell the natural products they have picked to a party they choose” (see Finlex, 2021, § 4, subsection 1). Interestingly, a parliamentary committee report on the law proposal stated that “natural products are usually picked in the countryside, and there is not necessarily public transport connections to the campsites where the pickers are staying, and the pickers do not have an actual possibility to sell...to another buyer” (Employment and Equality Committee, 2021). Relatedly, what was not addressed in the documents was the observation made in natural products policy documents on the lack of infrastructure for

receiving picked berries. For instance, a 2018 report from the natural product sector described recent developments in berry infrastructure:

Purchasing berries has changed in a radical manner, roughly during the last decade: before berries were received by several village shops and market squares in municipal centres, but nowadays, this type of purchasing has diminished to be almost nonexistent, and the purchasing companies organise logistics according their own picker-camps [foreign pickers house]. (Ristioja & Lapin ELY-keskus, 2018, p. 12)

Records from a parliamentary reading addressing the law proposal also highlighted this issue. The pickers' legislated freedom to sell the berries to a party of their choosing was regarded as unfair from the perspective of the berry companies. In response to this, the chairperson of the responsible parliamentary committee suggested that a pre-emptive purchasing right comes "with a great likelihood that the constituent elements of employment would be met." In other words, the reasoning for the unregulated status of the berry pickers relies on the fact that the pickers are free to sell the berries to whomever. While there are contradictory views about whether this is possible in practice, the enacted law states the freedom to choose the buyer as the berry pickers' right. The imaginary market serves as a guarantee for fulfilling the pickers' rights—without ideas of individualism and (neo)liberal freedom (Hall, 1983/2021), such reasoning would be unintelligible.

Finally, this reasoning takes for granted the contemporary geographical reconfiguration of the reserve army of labour, enabling a foreign-born labour supply (in the case at hand, from the Global South) that translates into a migrant division of labour (Wills et al., 2009). Arguing against a model of contractual employment, bill HE 42/2021 states that lost tax exemption is a potential negative consequence of contractual employment. The bill does not elaborate on this further, but a likely explanation is that the pickers are paid so little that it's assumed they are not eligible to pay taxes. The bill also remarks that "Finnish pickers usually lack an incentive to sell their berries to the industry, but sell directly to consumers" (Finnish Government, 2021). Reports from the natural product sector note a significant price difference between consumer and industry "markets," and multiple natural product policy documents repeat that "Berry companies are dependent on a foreign seasonal labour force." While the rationale for permitting unregulated work does not explicitly address that the pickers usually are very poor, their willingness to accept working conditions that "Finnish pickers usually lack the incentive for" is taken for granted. Similarly, stakeholder comments supporting the law proposal note that, "according to the understanding of the Occupational Health and Safety Administration, operating within contractual employment could in practice make the pickers' situation more difficult" (Regional State Administrative Agency for Northern Finland, 2020). Amongst other points, the statement on the law proposal elaborates that a potential consequence of contractual employment—applying the Labour Hours Restriction Act to berry pickers—might restrict the pickers' income. I argue that when the Occupational Health and Safety Administration—the authority tasked to monitor health and safety in working life in Finland—is concerned about the pickers' income in this manner, then that statement can not be extricated from racialised assumptions about foreign pickers. Systems of representation are significant tools for creating differentiation, i.e., shaping positionalities that mediate how people are incorporated in the processes of capitalist production and exchange (see Hall, 1983/2021). The way the foreign, i.e., Thai pickers are implicitly framed in policy documents could be characterised using Holmes' (2012, p. 183) words about perceptions "that certain categories of ethnic bodies belonged in certain occupational positions."

7. Conclusion

Irregular and precarious labour is not that uncommon in agrifood production. But from the strawberry fields in the US to the tomato farms in Mediterranean Europe, the case of the Nordic forest berry pickers nonetheless stands out due to certain particularities. Instead of a borders cape entailing a life-threatening journey across a desert or a sea, the mobility and temporary presence of the precarious living labour for the wild berry industry is partly enabled through governmental measures that facilitate a regular migration route. Concomitantly, the berry pickers' mobility is, of course, dependent on the temporary migrants' resources and travel investments.

In this analysis, I have considered how the legitimacy of a very low-paid, precarious migrant labour force that operates beyond the reach of Finnish labour laws is socially constructed in the context of a Nordic welfare state's policies and legislative texts. I have shown that the analysed documents resort to shifting, inconsistent, and circular justifications to make the unregulated position of the pickers compliant with existing legislation. From the Occupational Health and Safety Administration stating that the pickers are better off without labour hour legislation, to the MFA issuing visa instructions that moderately caution about "human trafficking-related phenomena," the analysed materials suggest a bureaucratic pattern of racialisation, in which the perceived poverty of a particular ethnic group serves as a justification for poor labour conditions (Holmes, 2012; Robinson, 1983/2000). At the same time, the fact that the wild berry industry in Finland is largely located in economically deprived rural areas is also used to justify the arrangement. Consequently, the Finnish wild berry arrangement exemplifies a case of statecraft of differential inclusion, in which migrant precarity is actively shaped by state policies.

Borders are indeed devices of inclusion (Mezzadra & Neilson, 2013) and a technology of differentiation (Rigo, 2011), not least in terms of labour. The analysis presented here underscores how the function of borders to facilitate a flexible and informal labour force can be deliberately utilised in order to enable the exploitation of that temporary labour force (which cannot afford to reproduce itself in the context in which the labour takes place). In the Global North, processes of racialisation—together with the "bureaucratic possibilities" provided by practices and epistemic habits of migration governance—enforce a migrant division of labour, in which levels of precarity are also unequally distributed.

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Conflict of Interests

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Data Availability

Contact the author for all data.

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