

Immigration Policies and the “Unbearable Lightness” of Integration: The Case of Pre-Entry Integration Requirements in Europe

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«The man who finds his country sweet is only a raw beginner;
the man for whom each country is as his own is already strong;
but only the man for whom the whole world is as a foreign country is perfect»
(Todorov 1999, 249-250, quoting the XII century's theologian Hugh of St. Victor)

1. INTEGRATION AS A “DUTY” IN EUROPEAN IMMIGRATION COUNTRIES

In the framework of European policies on immigration and acquisition of nationality the imposition of civic and linguistic “integration tests” on migrants who want to legally reside or to become nationals of European States can be regarded as a well-established trend (Guild, Groenendijk, Carrera 2009; van Oers, Ersbøll, Kostakopoulou 2010; Strick, Böcker, Luiten, van Oers 2010; Joppke 2012; Locchi 2012; Cuttitta 2016). In fact, since the 2000's decade, both at EU and national level (especially in the “older” European immigration countries), specific provisions promoting or imposing an evaluation of the knowledge of national language and/or principles and values have been adopted, in order for migrants to obtain an entry visa, a residence permit or nationality by naturalization. In

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some cases, in addition to the language proficiency requirement, dedicated civic education courses are provided for; sometimes migrants have to pass a final test, in order to assess the level of knowledge and skills considered to be useful for an effective integration in the host society¹. This normative trend is based on the idea of a double conditionality: language and civic knowledge conditions the integration of migrants in the host society and integration is a condition of migrants' legal entry and/or stay (and, later, of the acquisition of nationality by naturalization).

The EU legislation on immigration deals with the issue of migrants' integration measures and conditions in three Directives: the Directive 2003/86/EC on family reunification (see below, Section 2.1), the Directive 2003/109/EC on long-term residents, and the Directive 2009/50/EC on highly qualified employment. If the 2009 Directive only derogates from the 2003 Directive on family reunification – by stating that the integration conditions and measures referred to therein may only be applied after the persons concerned have been granted family reunification – the Directive on long-term residents allow Member States to require migrants who aspire to obtain a permanent status to comply with integration conditions².

As already mentioned, several States already opted for mandatory integration programmes in their national laws: while only six countries, as we will discuss in more detail later, impose migrants integration requirements before they enter the national territory (Austria, Denmark, France, Germany, the Netherlands, and the United Kingdom), a larger number of EU States developed post-arrival mandatory integration measures or conditions, which migrants have to comply with in order to reside and stay on the territory (Austria, Belgium-Flemish Region, Belgium-Wallonia Region, Bulgaria, Germany, Denmark, France, Italy, Latvia, the Netherlands)³; lastly, a significant number of States have already established integration requirements for the acquisition of a long term or permanent residence permit (the requirement to demonstrate integration skills for the acquisition of such a status is not applicable in Belgium, Finland, Poland, Ireland, Slovakia, Spain, and Sweden; see Pascouau 2014, 91). Citizenship tests are also widespread in European countries' nationality laws, raising a very interesting

¹ Mandatory integration programmes – which show a great variety of measures, conditions and sanctions among EU States – must be distinguished from voluntary integration programmes – which can be joined by migrants on a voluntary basis and are not associated to sanctions weighing on the residence permit or status in the case of a negative evaluation.

² Art. 5.2. In addition, if a person who is a long-term resident in one Member State applies for a residence permit in a second Member State, the second Member State may, under art. 15.3 of the Directive, require the person concerned to comply with integration measures, in accordance with national law, provided he has not already been required to comply with integration conditions in order to be granted long-term resident status.

³ National provisions on integration measures know many differences, with regard to mandatory or voluntary participation of refugees, reasons for exemptions, the content of the integration programmes, the regime of sanctions and remedies, costs and fees.

debate over the citizenship model implied by the use of tests for naturalization and, in particular, the potentially illiberal character of some State practices (although differentiated in contents and procedures, citizenship tests have been introduced in Austria, the Czech Republic, Denmark, Estonia, France, Hungary, the Netherlands, Spain, and the United Kingdom; see Van Oers 2014).

The strengthening of the idea of integration as a condition for migrants to access to a more stable legal protection and full national membership is directly connected to the crisis of European multiculturalist and differentialist policies, which were set in the 80's and 90's and have been thereafter challenged by a different conceptualization of social cohesion, more focused on the need for integration with respect to some constitutive elements of national community. Even if it is not correct to refer to a EU common policy on the integration of migrants – since national States still retain their sovereignty on the issue – it is yet possible to identify the main characters of what can be depicted as the “European model of integration” of migrants in the host societies. In fact, on the one hand, many normative and policy instruments have been lately adopted at EU level with a view to promote integration, which is a mandate assigned to the European Union by several fundamental legal acts and documents (the Amsterdam and Lisbon Treaties, the EU Charter of Fundamental Rights, the multi-annual programmes for Justice and Home Affairs, the Europe 2020 Strategy). On the other hand, many EU States' integration policies have been converging on common paradigms and tools, including language and civic integration tests; interestingly, this convergence seems to have taken place more in terms of sharing policies and strategies than complying with legally binding EU normative acts, in light of what has been described as «discursive isomorphism» (Kostakopoulou 2010, 938).

This “horizontal transfer” among national States is largely based on the crucial role of policy instruments and soft law, such as the Common Basic Principles on Migrant Integration⁴, the European Integration Fund, Handbooks on Integration and the European Website on Integration, «through which member states have been encouraged to stimulate migrants to learn about their host society's language, institutions, and culture» (Bonjour 2014, 205); this phenomenon is particularly evident in the field of pre-departure integration requirements, with the Dutch policy serving as a model that has inspired other Member States (Goodman 2011, 250-252). As Bonjour (2014, 212) points out, the negotiations that led to the adoption of the 2003 Directive on family reunification represent a crucial episode in this regard: in fact, the Directive's art. 7.2 – which allows Member States

⁴ The “Common Basic Principles” for immigrant integration policy in the EU, adopted by the Council in 2004, plays a decisive role as a common framework for orienting policy and legal development at national level. The Principles contain some important statements, such as: «integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of EU Member States, and implies the respect for the basic values of the European Union»; in addition, «employment is a presented as a key part of the integration process and is central to the participation of immigrants in the host society»; see Council of the European Union 2004, 19-20.

to require migrants to comply with integration measures – was introduced at the initiative of some countries (Germany, Austria, the Netherlands) with a stricter approach towards immigration (Groenendijk 2004).

Legal scholars, sociologists and political theorists, for a long time now, have critically examined the ambiguities of the concept of integration, with particular reference to the shifting from its promotional potential to its punitive effect. In fact, integration appears to have been converted from a goal of national and European policies aimed at the promotion of immigrants' rights and respect of their diversity, into a condition, a duty, which migrants must comply with, with serious consequences on their right to stay in the case of a negative evaluation.

The coexistence of two different strategic objectives – a promotional one, oriented to the integration of legal immigrants, and a repressive one, aimed at fighting against illegal immigration – has always characterized national and EU migration policies. However, the recent trend in most EU immigration countries shows that this binary logic does not simply mean that the two objectives are juxtaposed, but rather that the integration programmes and the securitarian apparatus are mutually implied, with integration being converted from a right and an opportunity into an «alibi de la précarité du séjour» (Lochak 2004).

Therefore, the elements of the relation between (formal) legal inclusion and (substantial) social integration seem reversed: the access to an increasingly stable right to stay is no longer conceived of as a precondition for both a growing familiarity with the cultural and linguistic context and socio-economic inclusion, but, on the contrary, these last conditions are framed as devices aimed at selecting future migrants, residents and citizens (Council of Europe: Parliamentary Assembly 2014). This paradoxical situation has been recently stigmatized by the Council of Europe's Commissioner for Human Rights by highlighting that «the current approach of focusing on migration control as a top priority of European states risks stalling or even undermining integration efforts at the time when we need them the most to maintain Europe's high levels of social cohesion, protection and security» (Council of Europe: Commissioner for Human Rights 2016, 9).

The diffusion of integration tests in the field of immigration and nationality policies raises some important questions, starting, as already noted, from the meaning of the very concept of integration: in fact, what does integration really imply?

On the one hand, the question is intimately connected to the important debate on cultural identity in contemporary societies and, in particular, on the fluidity and porosity of migrants' identity in multicultural contexts. In this regard, Amartya Sen has very effectively expressed the multiplicity of personal identity's overlapping dimensions:

«There are a great variety of categories to which we simultaneously belong. I can be, at the same time, an Asian, an Indian citizen, a Bengali with Bangladeshi ancestry, an American or British resident, an economist, a dabbler in philosophy, an author, a Sanskritist, a strong believer in secularism and democracy, a man, a feminist, a hetero-

sexual, a defender of gay and lesbian rights, with a nonreligious lifestyle, from a Hindu background, a non-Brahmin, and a nonbeliever in an alterlife (and also, in case the question is asked, a nonbeliever in a “before-life” as well). This is just a small sample of diverse categories to each of which I may simultaneously belong – there are of course a great many other membership categories too which, depending on circumstances, can move and engage me» (Sen 2007, 18).

The multifaceted nature of identity has inevitable consequences also in terms of the integration of these complex selves in likewise complex societies, in so far as determining contents and limits of integration becomes a really controversial operation. A good example of the difficult recognition of this complexity is the attitude toward multilingualism in Europe: while multilingualism is generally perceived as something positive and usually promoted by both EU and national institutions as an added value in increasingly globalised societies, things change when it comes to the integration of migrants. In fact, although migrants are often proficient in many more languages than nationals, «their plurilingualism is not usually recognised or acknowledged», and rather considered «as an obstacle in the process of the acquisition of the dominant language, in a process of participation and integration»; in opposition to the dominant discourse on the importance of multilingualism in the contemporary world, «migrants have to adapt to a monolingual policy [...] that promotes monolingualism as the norm» (Van Avermaet 2009, 20). Concerns and doubts about the use of language integration tests as repressive tools in migration policies have also been expressed by the Council of Europe, which has strongly stigmatized the risk of language integration requirements having the effect of precluding, rather than facilitating, mobility and integration (Council of Europe 2014, 20-22; on language integration and migration policies, see Piergigli 2013, Strazzari 2015).

On the other hand, the definition of the concept of integration is also demanding since it requires both academics and policy makers to qualify different, although not easily distinguishable, conditions and processes, such as assimilation, insertion, interaction, and, precisely, integration. In this respect, while the ambiguity of the words used by policy makers and legislators is a symptom of the uncertainties about the meaning of “national identity” in contemporary European States, the notion of integration, at least in the mainstream version sanctioned by immigration laws, seems indissociable from cultural homologation (Zagrebelsky 2007, 124).

Another problematic aspect concerning the process of integration is the one related to its temporal dimension, which is not adequately taken into account by integration programs based on integration tests, especially with regard to pre-entry integration requirements. Integration, in fact, is best conceivable as an ongoing process, marked by the increasing degree of migrants’ social attachment to the host society (Schnapper 2007). Sayad, for example, raised doubts about integration being voluntarily oriented or supported, preferring to see integration as a conflictual process being ascertainable only a posteriori: according to the

distinguished sociologist of migration processes, using an approach that is both moralistic and “technicistic” to a social problem such as migrant’s integration ultimately provokes its neutralization on a political level (Sayad 2002, 287-288).

2. PRE-ENTRY INTEGRATION REQUIREMENTS IN EUROPE: A CONTROVERSIAL TOOL FOR MIGRATION RESTRICTION?

2.1. *Rationale and national solutions*

In light of the many ambiguities inherent in the concept of integration, an even more problematic aspect is that of pre-departure/pre-arrival measures, especially in family reunification domain (Human Rights Watch 2008; Carrera, Wiesbrock 2009; Guèvremont 2009; Goodman 2011; Groenendijk 2011). In particular, the paper will focus on those European countries that have been designed integration measures as selective tools, but it must be stressed that many States also provide future immigrants with a different kind of pre-entry measures, aimed at giving newcomers useful tips and information to help them to undergo integration in the new reality⁵.

The idea of using language skills as a selection requirement in immigration policies is not a new one, with several European countries having experimented for a long time language selection, especially for migrant workers or ethnic migrants; however, the pre-entry integration requirements currently implemented in Europe differ from these previous experiences, in so far as now language and civic knowledge is considered necessary also in relation to family reunification, raising many ethical and legal problems (Groenendijk, 2011).

The harshest criticism against pre-departure integration measures focuses on the disclosure of their real goal, which is migration restriction rather than migrant integration (Goodman 2011). Therefore, these measures should be read in connection with the restrictive turn in the immigration policies of most European countries since the beginning of the XXI century, and namely as tools expected to contribute to the selection of the most “integrable” – and thus adaptable and “useful” – migrants. As pointed out with regard to the British experience, «integration as a tool of immigration policy, while it may be based around civic rather than racial forms of belonging, is nonetheless linked to discourses of exclusion, and remains liable to manipulation» (Wray 2016, 150).

This restrictive trend has also affected family migration, which is suspiciously framed, by the political and legal discourse, as a phenomenon “imposed” by international, supranational and national fundamental principles and rights,

⁵ Austria, the Flemish Region of Belgium, the Czech Republic, Denmark, Greece, Norway and Sweden, for example, provide pre-entry information on immigration country’s language and society: for all migrants (Austria, Flemish Region, Czech Republic), only resettled refugees (Denmark, Sweden, Norway) or only for migrant workers (Greece).

and therefore unmanageable by socio-economic selection procedures: national measures aimed at restricting income, age, and housing requirements for family migration must be considered in this light. Another problematic aspect related to family migration refers to cultural concerns, especially with regard to personal and marital choices of second-generation immigrants in European countries. On the basis of the continuously high incidence of transnational marriages (between a person, born in a Western country, from foreign parentse, grown up in that same foreign country, who then migrates for family reasons) and small numbers of ethnic intermarriages with Western-country natives, both policy makers and the general public almost automatically link immigrants' personal choices in family matters and cultural integration in the host society. The assumption on which this "logic of suspicion" is based is that the strong influence of traditional (usually intended as underdeveloped) non-Western norms forces young people with migrant background to reproduce "failing" values, customs and lifestyle patterns (Sterckz 2015).

If, from a theoretical perspective, the rationale of pre-entry integration requirements is under scrutiny because of its problematic connection with restrictive trends in migration policies, at the legal level a controversial point surrounding their introduction in national legislation is the compliance with EU law and, in particular, with Directive 2003/86/EC on family reunification.

The 2003 Directive, in establishing common rules for exercising the right to family reunification in EU Member States, determines the conditions under which family reunification is granted, as well as the rights of the family members concerned. Among the many requirements for the exercise of the right to family reunification, applicable to both the foreigner already residing in Europe and the family member still residing abroad, art. 7.2 of the Directive mentions integration measures, which migrants may be asked to comply with in accordance with national law⁶. Also art. 4.1, in dealing with minor children whose primary residence is not with the "sponsor" who already lives in Europe, allows Member States to verify their degree of integration before authorising entry and residence, in order to be sure of the children's capacity for integration at early ages and ensure that they acquire the necessary education and language skills in school.

After the adoption of the 2003 Directive, six European States have introduced pre-entry integration requirements on the basis of art. 7.2, namely the Netherlands (2005), Denmark (2006, but the law entered into force in 2010), Germany (2007)⁷, France (2008), the United Kingdom (2010), and Austria (2011).

⁶ Art. 7 also specifies that, with regard to refugees and/or family members of refugees, the "integration measures" may only be applied once the persons concerned have been granted family reunification. In all EU countries that have opted for pre-entry integration tests, family members of refugees are thus exempted, as are family migrants who have completed a certain level of education in the host country.

⁷ Germany was the first European country (with the 1990 *Aliens Act*) to introduce the obligation, for family migrants, to fulfil integration conditions: foreign children between 16 and 18 years old, in fact, were required to prove either basic language proficiency or, on the basis of the

Soon, however, it was evident that the measures introduced by national States were likely to raise serious doubts as to the conformity with the Directive and, especially, with the Directive's aims.

In its 2008 Report on the application of the Directive, the EU Commission pointed out the controversial aspects of pre-entry integration measures, clarifying that – since the objective of such measures should be to facilitate the integration of family members – «their admissibility under the Directive depends on whether they serve this purpose and whether they respect the principle of proportionality [...] Their admissibility can be questioned on the basis of the accessibility of such courses or tests, how they are designed and/or organised (test materials, fees, venue, etc.), whether such measures or their impact serve purposes other than integration (e.g. high fees excluding low-income families)» (European Commission 2008, 7-8).

In 2011 a public consultation was launched, with the aim to collect opinions from the different stakeholders (EU institutions, national, regional and local authorities, intergovernmental and non-governmental organisations, academia, civil society organisations, etc.) on how to have more effective rules on family reunification at EU level and to provide factual information and data on the application of the Directive. The Commission, in reasserting that integration measures were among those Directive's optional provisions that leave too much discretion to Member States, dedicated a specific question to this aspect, asking stakeholders if, on the one hand, these measures efficiently serve the purpose of integration and which integration measures are most effective in that respect, and, on the other hand, it could be useful to further define these measures at EU level. With regard to pre-entry measures, the Commission was interested in deepening the issue of the possible safeguards to be introduced in order to ensure that national measures do not de facto lead to «undue barriers for family reunification (such as disproportionate fees or requirements) and take into account individual abilities such as age, illiteracy, disability, educational level» (European Commission 2011, 4-5).

The Commission's Green Paper received 120 contributions, including 24 from Member States (European Commission 2012). On the topic of pre-entry integration measures the opinion were diversified. On the one hand, Member States defended the idea of integration as a matter of national competence and generally opposed EU binding rules on integration measures⁸, with the Netherlands even asking for a series of amendments to the Directive so as to introduce additional restrictions on family migrants and a more binding integration policy stressing

child's education and way of life to date, the ability to integrate into the German way of life; see Seveker and Walter 2010.

⁸ It must be specified that Bulgaria, Finland, Portugal, Romania, Slovakia, as well as Turkey, expressed their clear opposition to pre-entry integration requirements on the grounds that they compromise the right to live as a family, particularly for those with fewer financial resources and qualifications.

migrant responsibility. On the other hand, international organisations, social partners and NGOs strongly criticized pre-entry integration measures on the basis of little evidence for effectiveness and possible human rights violations, while expressing some concerns on the accessibility to post-arrival ones. Integration measures, especially language tests, were also contested by many individuals who responded to the public consultation, in view of the abuse of such tests for limiting family reunification.

Despite the serious criticism addressed to national measures, the six EU States are still implementing pre-entry integration requirements in the context of migration policies, although showing considerable variability. Austria, Germany and the United Kingdom, for example, introduced only language requirements for spouses/partners (in Austria, also for adult children), while Denmark, France and the Netherlands ask family members (in France, also children aged 16) to undergo both language and civic integration tests. While in all six countries family migrants' knowledge of language is tested at a very basic level (generally the A1 of the Common European Framework of Reference for Languages), differences concern both the preparation for the test and the connection between the test and the residence permit (Bonjour 2014, 217-218). As for the first aspect, while France provides for free courses on language and fundamental values, none of the other countries does the same and family migrants are to find and finance these courses themselves. Furthermore, France is the only country where the law imposes an obligation of effort, rather than an obligation of result, in so far as family migrants do not have to pass a test in order to be admitted to the national territory, but they are only asked to participate in a test of their skills and, in the case of an insufficient evaluation, in a course that is offered for free. According to Bonjour, this different approach to pre-departure integration can be explained in terms of the specific French domestic context, marked by a strong left-wing opposition to restrictive migration policies and a more cautious attitude of governments towards negative judicial decisions (Bonjour 2010). On the contrary, Austria, Denmark⁹, Germany, the Netherlands, and the UK require that applicants pass the test before they are granted a residence permit.

In its recent Action Plan on the integration of third country nationals the EU Commission has tried to clarify that pre-departure/pre-arrival integration measures may have a positive potential as tools useful to speed up migrants' integration in their future environment. In fact, according to the Commission, while «the innovative use of technology, social media and the internet needs to be harnessed at all stages of the integration process [...]», pre-arrival measures could also help preparing receiving communities for the arrival of third country na-

⁹ Anyway, it must be noted that in Denmark family migrants are allowed to enter the national territory with a 28-days short-term visa to take the test; once in Denmark, they can extend this special visa to three months and they are allowed to follow a course for the preparation of the test. If the test is not passed within three months, the residence permit is refused and the applicant must leave Denmark.

tionals, «contributing to building empathy and understanding to overcome prejudices and fostering an open and welcoming attitude» (European Commission 2016, 5-6). For these reasons the Commission commits to launch projects supporting pre-departure and pre-arrival measures for local communities, as well as to engage with Member States to strengthen cooperation with selected third-countries on pre-departure measures.

2.2. *Compliance with fundamental principles and rights*

Pre-entry integration requirements have been scrutinized and challenged by both legal scholars and courts with respect to the possible violation of fundamental principles and rights.

A first controversial aspect refers to the principle of non-discrimination, which must be taken into account with regard to the exemptions from pre-entry integration requirements included in national legislation, usually related to age, physical and mental capacity, nationality and educational background (Pascouau 2014, 40). In fact, while some exemptions can result in the infringement of the non-discrimination principle, treating different situations in the same way (namely, applying the mandatory integration requirement) can also have a discriminatory effect.

As for the first aspect (like cases treated alike), both the Netherlands and Germany include exemptions on behalf of third country nationals coming from some Western countries, or from countries considered to be “close” to Europe (for example: Australia, Canada, Japan, New Zealand, South Korea and the United States), in consideration of those countries’ alleged political and cultural proximity and, therefore, on the presumption that migrants from those countries will be easily integrated in the host society (Bribosia 2012). This kind of provisions appears to be in conflict with important international documents, including the ECHR, because of the disproportion between the goals pursued and the means used, as well as the application of an afflicting measure (the pre-entry integration test) on the basis of race and national origin.

As for the second aspect (unlike cases treated alike), it must be observed that illiterate persons, or migrants with very little skills in written language comprehension, are generally not exempted from pre-entry integration tests (see, for example, the Bibi and Ali case, discussed later in this Chapter).

A second problematic point is represented by the integration measures’ proportionality, which has also been highlighted, as already noted, by the European Commission. Again in 2014, the Commission stressed the necessity for integration requirements on family members to be reasonable and proportionate to the objective of integration measures, which is to facilitate the integration of migrants’ family members: therefore, national requirements «may not amount to an absolute condition upon which the right to family reunification is dependent» (European Commission 2014, 15).

A third problem is related to the fundamental right to the respect for family life, sanctioned by international conventions, EU law and many national constitutions. Although academic scholars have been warning for a long time about the serious threats posed by pre-entry integration requirements to the right to respect for family life and family reunification, the UK Supreme Court recently took a very cautious position on the matter. With a 2015 decision, in fact, the Court unanimously dismissed Mr. Bibi and Mr. Ali's claim that pre-entry English test breaches their right to a private and family life (*R v Secretary of State for the Home Department*, 18 Nov 2015; on the decisions involving aspects of family migration that have been heard by the Supreme Court in recent years, see Wray 2013, 838-860). The two appellants – both British citizens married to foreign nationals who couldn't speak English and wished to join them in the UK – claimed that the pre-entry requirement was unreasonable, disproportionate and discriminatory, breaching their right to a private and family life under art. 8 of the ECHR. The Supreme Court, upholding earlier rulings by the High Court and the Court of Appeal, found that the pre-entry measure, as such, did not disproportionately interfere with the ECHR, but that problems may arise in single cases due to the way in which that same measure is applied: the Court, in particular, focused on the way in which the Guidance for the application of the pre-entry test is drafted¹⁰. Therefore, the deputy President of the Supreme Court, Lady Hale, suggested that «the appropriate solution would be to recast the Guidance, to cater for those cases where it is simply impracticable for a person to learn English, or to take the test, in the country of origin, whether because the facilities are non-existent or inaccessible because of the distance and expense involved»; in particular, «the guidance should be sufficiently precise, so that anyone for whom it is genuinely impracticable to meet the requirement can predictably be granted an exemption» (*R v Secretary of State for the Home Department*, para. 55)¹¹.

Although the ECtHR has not dealt with the legitimacy of pre-entry integration requirements so far, its decisions have marked the limits of States' powers

¹⁰ See Home Office 2015. In fact, although the Guidance considers “exceptional circumstances” exemptions to the English language requirement (art. 7), only a small number succeed in entering the country through these routes, since the Guidance is drafted in very strict terms. The impracticability of acquiring the necessary tuition and practice or of accessing a test centre, as well as financial impediments, for example, are not enough. Furthermore, since July 2014, applicants who are resident in a country with no approved A1 English language test are expected to travel to another country to take such a test; only where they can demonstrate in their visa application that it is not practicable or reasonable for them to do so will they be exempt from the requirement prior to entry to the UK.

¹¹ Those granted an exemption could be required to undertake, as a condition of entry, to demonstrate the required language skills within a comparatively short period after entry to the UK. Indeed, in the present case, the two foreign husbands were in highly problematic situations: while Mr. Ali, who lived in Yemen, had no formal education and could not reach the required level in the knowledge of English because of the lack of approved test centres in Yemen, in the case of Mr. Bibi, who was a resident of Pakistan, the nearest approved test centres were at least 70 miles away; in addition, both men would have to learn computer skills.

in the field of family migration. In fact, if it's true that the ECHR does not directly protect the family members' right to entry and stay on the territory in order to join the migrant who already resides in Europe, art. 8 of the ECHR undoubtedly represents a strong limitation on State sovereignty, by asking national States to balance migrants' right to respect for family life and public interests involved in immigration control. Therefore, the Court has been clarifying the elements that States must take into account in managing family migration, such as migrants' ties with both the country of origin and that of residence and the family situation. Compared to the ECtHR's case-law on aliens' expulsions under art. 8, the Court's decisions on state refusals of entry for family reunification purposes certainly leave to States a wider margin of appreciation; on the other hand, that same art. 8's case-law on the limits to expulsions, although elucidating the indicators of migrants' "social attachment" to the host society, is not likely to depict a clearly defined concept of their integration under the ECHR¹².

Recently the Strasbourg Court's decision *Biao v. Denmark*, 24 May 2016, dealing with the complex link between migration national policies and right to a family life, gave an important contribution to the conceptualisation of integration in the European legal space. The case was raised by Mr. Biao, a naturalised Danish citizen of Togolese origin, and his Ghanaian wife, who could not settle in Denmark having being refused, by the Danish authorities, to access family reunion, as they did not comply with the "attachment requirement" under the relevant domestic law¹³. Although the Court mainly focused on the legitimacy of legal differences between "Danish nationals of Danish ethnic origin" and "Danish nationals of non-Danish ethnic extraction", the ascriptive and «rather speculative» arguments on "integrability", which were at the basis of the different legal treatment, have been strongly called into question. In fact, on the one hand, it's very hard to identify, in general, the conditions to which «it can be said that a Danish national has created such strong ties with Denmark that family reunion with a foreign spouse has a prospect of being successful from an integration point of view»: since the length of nationality does not seem to be sufficient, the Court opted for a more concrete approach, so as to appreciate substantial aspects such as the length of residence, proficiency in the Danish language and knowledge of Danish society, the requirement of self-support. On the other hand, the

¹² See *Abdulaziz, Cabales and Balkandali v. The United Kingdom*, 28.05.1985; *Ahmut v. The Netherlands*, 28.11.1996; *Gül v. Turkey*, 14.12.2000; *Sen v. The Netherlands*, 21.12.2001; *Tuquabo-Tekele a. o. v. The Netherlands*, 1.12.2005; *Osman v. Denmark*, 14.06. 2011.

¹³ The "attachment requirement", under the Danish law, means that the person must not have stronger ties with another country (Ghana, in the Biao case). The two applicants also complained that a 2003 amendment to the *Aliens Act* – exempting those who held Danish citizenship for at least 28 years from the attachment requirement – resulted in a difference in treatment between those born Danish nationals and those, like Mr Biao, who had acquired Danish citizenship later in life. The Court found that the Government had failed to show that there were compelling or very weighty reasons, unrelated to ethnic origin, to justify the indirect discriminatory effect of the 28-year rule, and that there had been a violation of art. 14 read in conjunction with art. 8 of the Convention.

Court also criticized the arguments advanced by the Danish Government with regard to the alleged “marriage pattern” of Danish nationals of non-Danish ethnic origin, which reflected a negative attitude towards their lifestyle, largely based on biased assumptions and social prejudice, and contributed to «hampering the integration of aliens newly arrived in Denmark». In his concurring opinion, Judge Pinto de Albuquerque even more explicitly highlighted the risk of using cultural arguments in order to limit what is to be considered a fundamental right descending from art. 8, that is the right to family reunification¹⁴; in view of that, and since the Convention does not allow any differentiation of treatment of both nationals and lawfully resident aliens on the basis of their ethnic origin, birth, nationality or length of nationality for the purpose of family reunification, the Court is called to take a coherent stand, «like a boat sailing against the wild current of populist rhetoric».

On the contrary, the CJEU has ruled on integration requirements on several occasions. In 2006, with *Parliament v Council*, 27 June 2006, the Luxembourg Court found that art. 4.1 of the 2003 Directive (on the integration conditions to which EU States may subordinate the entry of children over 12 years) cannot be regarded as violating the fundamental right to respect for family life, the principle of the best interests of the child and that of non-discrimination on grounds of age. On the other hand, the Court stressed the need for interpreting the restrictive provisions of the Directive according to the ECHR fundamental rights. This position was reasserted with *Chakroun v Minister van Buitenlandse Zaken*, 4 March 2010 (on income requirements for family reunification), while *Imran v Minister van Buitenlandse Zaken*, 10 June 2011 (on the refusal of a provisional residence permit to an Afghan migrant who did not pass the civic integration test) was a missed opportunity to assess the compliance of Dutch integration conditions with EU law: the Court, in fact, deemed the ruling unnecessary because, in the course of the proceedings, the Dutch government granted a permit to the Afghan woman whose husband had initiated the case.

In 2013 the application by a Turkish national who requested a visa for the purpose of family reunification with her spouse, also a Turkish national already residing in Germany, was the occasion for the Court to rule on the legitimacy of the pre-entry language requirements imposed by Germany (*Dogan v Bundesrepublik Deutschland*, 10 July 2014). However, again the Luxembourg judges did not consider the compliance of the national measures with the 2003 Directive, answering only to the first question referred by the Administrative Court of Berlin, concerning the interpretation of the Additional Protocol to the Association Agreement between the European Economic Community and

¹⁴ According to the Portuguese judge, «concerns about cultural tensions, social exclusion and professional maladjustment in Europe serve, most of the time, the hidden purpose of closing down European societies to the most vulnerable and the least well-off. It is well known from experience that the most vulnerable family members, such as those who are ill, disabled, elderly, poorly educated, living in developing or conflict or post-conflict countries, have the greatest difficulty in meeting integration and knowledge-based requirements».

Turkey. Anyway the CJEU's decision is surely relevant to the broader issue of language and civic pre-entry integration tests as tools for immigration control. In fact, the Court noted that a national restriction on Turkish nationals' freedom of establishment in national territory is prohibited, unless «it is justified by an overriding reason in the public interest, is suitable to achieve the legitimate objective pursued and does not go beyond what is necessary in order to attain it». Furthermore, while assuming that German pre-entry integration requirements were justified by «overriding reasons in the public interest», such as the prevention of forced marriages and the promotion of integration, «it remains the case that a national provision such as that at issue in the main proceedings goes beyond what is necessary in order to attain the objective pursued, in so far as the absence of evidence of sufficient linguistic knowledge automatically leads to the dismissal of the application for family reunification, without account being taken of the specific circumstances of each case». Therefore the Court concluded that the EU-Turkey Association Agreement precludes a national measure that imposes on Turkish migrants, who wish to enter national territory for the purposes of family reunification, the condition of demonstrating beforehand a basic knowledge of the State's official language.

Recently the Dutch legislation on pre-entry requirements has been also referred to the CJEU, with regard to the application of two foreign citizens (K, an Azerbaijani national, and A, a Nigerian national) who contested the rejection of temporary residence permits by the Dutch authorities, even after they had invoked health and psychological problems as reasons for exemptions. With *Minister van Buitenlandse Zaken v K and A*, 9 July 2015, the Court finally ruled on the legitimacy of pre-entry integration requirements under art. 7.2 of the 2003 Directive: after having reasserted that, in the context of family reunification other than that of refugees and their family members, the 2003 Directive does not preclude Member States from subjecting the granting of entry visa and residence permits to pre-entry integration measures, the Court also warned that art. 7.2 must be interpreted strictly. This means that – since authorisation of family reunification is the general rule – the margin given to the State must not be used in a manner that would undermine the objective and effectiveness of the Directive (namely, the promotion of family reunification). Therefore, in accordance with the fundamental principle of proportionality, national integration measures can be considered legitimate, under art. 7.2 of the Directive, only if they are capable of facilitating the integration of the migrant's family members. The application of these general principles to pre-entry civic and language integration test led the Court to state that, on the one hand, the requirement to pass a pre-entry integration test at a basic level may ensure foreigners to acquire knowledge that is undeniably useful, but, on the other hand, this requirement must not undermine the aim of family reunification. Consequently, the application of that requirement must not «systematically prevent family reunification of a sponsor's family members where, despite having failed the integration examination,

they have demonstrated their willingness to pass the examination and they have made every effort to achieve that objective». Furthermore, «specific individual circumstances, such as the age, illiteracy, level of education, economic situation or health of a sponsor's relevant family members must be taken into consideration». The Court has also considered the financial aspects, concluding that, if the Member States are free to require foreigners to pay various fees related to integration measures as well as to determine the amount of those fees, «the level at which those costs are determined must not aim, nor have the effect of, making family reunification impossible or excessively difficult».

In conclusion, the case of pre-entry language and civic integration requirements seems to be at the forefront of the very complex conceptualisation of integration in the pluralistic societies of contemporary immigration countries, showing the ambiguities of policy orientations and legislation that try to keep together the need for selecting “useful” persons (as migrants) and the obligation to protect fundamental rights and freedoms of migrants (as persons).

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