Chapter 5
"Enchanted with Europe": Family Migration and European Law on Labour-Market Integration

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5.1 Introduction

During the last 15 years, the number of third-country nationals (TCNs) and mobile EU citizens living in the EU has increased from 34 million to 57 million, and EU Member States have experienced some common trends in what concerns integration of migrants, refugees and asylum seekers (MRAs). First of all, intra-EU mobility has grown, in terms of numbers and diversity (Kahanec and Zimmermann 2016; Lafleur and Stanek 2017). Second, the labour market integration of TCNs has come to the top of the EU agenda (ibid; Recchi 2015). However, Member States differ greatly in their policies on integration and citizenship acquisition as well as on reception and protection of refugees and asylum seekers. As noted by Geddes et al. (2020: 8), 'the EU does not have a comprehensive migration policy'. Finally, lengthy asylum procedures and low return rates of MRAs without appropriate permit to stay have led a considerable part of the MRA population to be in an irregular or insecure status (ibid; Kahance and Zimmermann 2016).

In this fluid milieu, scholars stop to view MRAs as holders of the fixed permit to work or stay but start to acknowledge the fragility – or 'fluidity' – of their status (Engbersen and Snel 2013). From this point of view, 'labour migrants' should not only be considered as those who enter the EU with the permit to work on pre--determined jobs but also a larger stream of refugees, asylum seekers and statistically dominating beneficiaries of family reunification (Geddes et al. 2020; Kahanec and Zimmermann 2016).

Family migrants, who actually make 40% of all TCNs in the EU (OECD 2019), represent a diverse MRA category with 'fluid boundaries' (Engbersen and Snel 2013). This group is comprised of a large range of people who enter the EU as

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dependent migrants to reunify with their EU-based family members, who may be either EU citizens or TCNs who migrated earlier (Castro et al. 2019; Geddes et al. 2020; Peña & Neufeld 2017; OECD 2017, 2019). This group includes skilled MRAs while marital ties and emerging social networks often provoke the 'fluidity' of their status: supported by their families, MRAs can get better access to jobs and employment-related educational resources, often benefiting from both the informal market and authorized work, and resuming or confirming the status of the skilled migrant (Castro et al. 2019; Costello 2016; Engbersen and Snel 2013; ETUC 2018; Isaakyan 2015). When discouraged by their families and diasporic communities, such MRAs may alternatively end up disqualified and unemployed (OECD 2019).

Studies note that TCNs, in general, and family migrants, in particular, encounter a number of legal barriers in their labour-market integration (LMI) across all EU 27 countries. The main LMI barriers for MRAs are insecure status (which also applies to legal economic migrants) and unrecognized qualifications. In this reference, the EU primary law represented by a number of directives: the *Family Reunification Directive* (2003/86/EC),[1] *Long-Term Residence Directive* (2003/109/EC),[2] *Free Movement Directive* (2004/38/EC),[3] *Blue Card Directive* (2009/50/EC),[4] and revised *Qualification Directive* (2011/95/EU).[5] These directives respectively concern the rights of family members of TCNs legally staying in the EU, long-term residents and their family members, family members of EU citizens, high-skill TCNs who come to the EU for qualified employment, and beneficiaries of international protection. However, these directives only provide guidelines to Member State. While the above mentioned barriers are mostly regulated on the national level and Member States differ significantly in their approaches (ETUC 2018). It is within this context that we may ask to what extent the European Court of Justice/ECJ (as the EU law enforcement organ) can help to foster harmonization.

This is not an easy question to answer because at the core of the EU constitutional basis lie two competing discourses: 'national security' versus 'free movement of people'. The EU is seen as a 'fortress' but also as a 'space without borders'. The theme of free movement becomes the red line in all EU documents and discourses on labour-market integration, stressing an unrestricted mobility throughout Europe for employment and a respective mobility of services such as recognition of professional qualifications. A deeper insight leads to see this enchanting project as limited mostly to intra-EU mobility (Recchi 2015).

It is within this context that the majority of studies argue that labour market integration on the EU level does not exist (ETUC 2018; Huddleston et al. 2015). Nevertheless, the EU has taken several steps in seeking to streamline, coordinate

[1] See Council (2003a).

[2] See Council (2003b).

[3] See Council (2004).

[4] See Council (2009).

[5] See European Parliament (2011).

and support the policies and practices of MRA integration across the continent (Kumric and Zupan 2016; Manko 2017; O'Cinneide 2012).

It is true that the ECJ does not support all MRA cases, and many of their claims are eventually refused. There are, however, a number of cases resolved by the ECJ in favour of the MRA-plaintiff (Jesse 2016; Leneartz 2015). And although their nuances are not precisely understood and are often interpreted differently by Member States, such ECJ decisions form the EU case-law platform for LMI. In this connection, legal studies scholars note on the 'intersectionality' of the ECJ's judgements, meaning that the ECJ considers a variety of EU Directives (or various sources of the EU primary law) while making a decision (Kortese 2016; Lenaertz 2012, 2015).

In the light of the discussion above, the chapter looks at barriers and enablers to skills recognition at the EU level by investigating the role of the ECJ in interpreting the rights of TCNs and their access to the labour market. We focus on the role of family reunification and EU citizen mobility provisions which tend to affect the court decisions in rather unexpected ways. We ask the following two research questions. Under what conditions are the permit to work for insecure TCNs and the recognition of TCNs' outside-the-EU qualifications supported by the ECJ? What role does the factor of family migration play in such decisions?

The following theoretical resources inform our work. First, we acknowledge the above-mentioned 'fluidity' of migration, which conveys the instability of the TCN's status. Given this, the ECJ often operates on the principle of 'intersectionality', taking into consideration various sources of EU primary law. In this connection, we finally assume that the 'free mobility' factor (which affects all EU discourses) and the 'family ties' factor (which is recognized in literatures as the most supportive of LMI) should presumably interact with the ECJ's decisions.

The discussion of our findings illuminates that the ECJ case-law on European LMI is affected by the overall EU atmosphere of 'positive contagion' by – or ideological attraction to - the idea of free movement (European Citizenship), which particularly crystalizes in the LMI of family migrants. This leads us to see family migration as a potential area of investment; whereas, at the same time, pointing to a complex interplay between intra-EU mobility, family reunification, gender bias and European case-law. While using the factor of family building in support of the TCN's claim, the ECJ in some cases reproduces gender bias in its reference to 'relational dependency' – a factor that often works to the detriment of even financially independent female MRAs and becomes a 'negative symbolic contagion' for European LMI.

The chapter has the following structure. Section 5.2 provides the background information on the family migration in the EU. It starts with an overview of family migration as a prevailing type of European immigration. In particular, it introduces the 'dependent migrant' (to be shown later as a specific group of ECJ plaintiffs). Then we briefly discuss the EU Family Reunification Strategy and the main LMI barriers that family migrants face when in the EU, posing the question about what the ECJ can practically do to assist such MRAs in confronting the LMI barriers.

In reference to this question, the *Professional Qualifications Directive (PQD)* and the *European Qualifications Framework (EQF)* are discussed in Sect. 5.3, which also analyzes ECJ cases that make precedent for evaluating foreign qualifications. This section argues that recognition of foreign qualifications stumbles over the MRA's permit to stay, the nuances of which are explored in Sect. 5.4. Looking at the ECJ case-law in relation to migrants who try to confirm on their permit to work, Sect. 5.4 points to the 'relational dependency' factor as the one that may not always act in favour of the (female) MRA when the case about her status transfer is assessed in court.

The chapter ends with the discussion of complex relations between qualifications, free mobility, law and gender (Sect. 5.5). It shows that some social forces (marriage to a EU national) may support the ECJ's decision in favour of the MRA, while others (dependency of the relationship) may actually work in the opposite direction, implying that the European space is not open for everyone.

5.2 Family Migration in the EU: Tendencies and Laws

5.2.1 'Dependent Migrants': Statistics and Basic Concepts

As observed by Eurostat (2019), 40% of the 37 million TCNs in the EU (that is, almost 15 million) are dependent migrants – or married adult MRAs who join their spouses abroad.[6] (Their incidence obviously wins the comparison with the 1.3 million MRAs who have entered the EU within the international protection scheme (European Parliament 2017a, 2017b).) Over the last 10 years, family migration associated with spouses' mobility has become the prevailing form of EU immigration (ibid). As noted by Geddes et al. (2020), 'family migration is a major component of immigration flows to the EU' (p. 29) and 'a key migration route' (p. 83).

According to the OECD Factsheet from 2018, such family migrants make 40% of all permanent migrations in the OECD countries (OECD 2018). This percentage has been relatively robust over the last 5 years (Chaloff 2013; OECD 2018), surpassing 30% of intra-EU mobility, 20% of refugees and asylum seekers, and 10% of economic (labour) migrants (ibid). Moreover, the inflows of family migrants to the EU become more and more dynamic with time. Thus almost 2 million family migrants have migrated to the OECD countries over the last 3 years, 1.6 of whom through the family reunification category (ibid).

Family migrants enter the country of destination (CoD) as 'dependent migrants' either simultaneously arriving with their principle migrant spouses (*accompanying*

[6] In this research, we do not include or refer to minors who are either biological children of principle migrants or international adoptees by EU citizens (although these two categories also fall under the overall umbrella of family migration.) By 'family migrants', we only mean married adults who are within the active working age and to whom the issue of LMI is at the moment related directly.

family migration), or later joining their long-term spouses who come to the CoD earlier as MRAs (*family reunification*), or migrating as newly-wedded spouses of residential foreigners and nationals (*family formation*).[7] In the EU, they all fall under the umbrella of Member States' national family reunification schemes, which are in theory informed by the European Family Reunification Strategy (Geddes et al. 2020).

Although marriage/family migration is an articulate migrant group, it conveys the characteristics and realities of other migrant types such as 'labour migration' and especially 'high-skill migration' (OECD 2018). In the EU, family migrants represent 40% of all MRAs. While their share specifically in the EU labour migration is also almost 40%, although a little lower than compared with 2000, mostly because of difficulties related to the recognition of their qualifications (Chaloff 2013).

5.2.2 EU Family Reunification Policy: Directives 2003/86 and 2004/38

The phenomenon of family reunification directly relates to the question of labour market integration since migrating spouses (dependent family migrants) should also have the right to work in the country of destination, thus adding to the EU workforce (Acosta Arcarazo 2009, 2010; Groenendijk 2007; Groenendijk et al. 2007; O'Cinneide 2015; Staiano 2017).

The multitude of cross-border marriage patterns in Europe leads toward a recognition of the overall EU Family Reunification Policy. The Family Reunification Policy consists of two Directives: the Family Reunification Directive 2003/86[8] and the European Citizens' Rights Directive (also known in press as the Free Movement- or EU Citizenship- Directive).[9] The reunification of family members of TCNs is covered by the provisions in the Family Reunification Directive 2003/86. As for TCNs who are overseas spouses of intra-EU mobile citizens, the EU Citizenship Directive 2003/38 comes into force.

Van den Broucke et al. (2016) explain that beneficiaries of the Family Reunification Strategy can be divided into two basic reunification categories, which have implications for their employment. The Family Reunification Directive entitles married spouses and unmarried under-age children of non-EU nationals who reside legally for at least 1 year in a Member State to reunite with them exactly in this Member State. Within this scheme, the reunifying family members (dependent migrants) have the right to work and access educational and vocational programmes immediately upon arrival, and also the right for the independent permit to stay after

[7] See Ibid.

[8] See: Council (2003a).

[9] See: Council (2004).

the 5 years of their legal residence. This directive does not cover the reunification of family members of refugees and EU nationals.[10]

The research conducted by Van den Broucke et al. (2016) shows that the reunification of overseas TNCs with their EU national spouses is covered by the European Citizenship Directive if the EU national sponsor has experience of intra-EU mobility. His/her family members can join him/her in the EU and live or travel with him/her all the time. In other words, if the EU national sponsor has worked, is now working or going to move to another Member State, his family members will be allowed to join him/her in the EU – given that they reside in a place of the sponsor's basement. Otherwise, the should apply under the national law.

Scholars argue that there is no European law on the harmonization of reunification procedures for TCNs who are family members of non-mobile EU nationals (Barbulescu 2017; Geddes et al. 2020; Van den Broucke et al. 2016). Such cases are often decided within the national law framework and are not resolved positively by the ECJ (Lanaertz 2015). There is, however, a special survival tool applied by such couples: to preserve the family integrity, the EU-national spouse finds a job in another EU Member State to where he/she can invite his/her TCN family for living and working.[11] Studies show that, although 'salient', the overall ides of Free Movement remains 'controversial' (Lafleur and Stanek 2017: 2015) because member states 'create hierarchies of family migrants by imposing conditions that define their eligibility, waiting periods and also integration measures (Geddes et al. (2020: 215).

Although the European Citizenship Directive remains fragmented and not applicable to all MRA categories, in those cases where it works it provides for the status that is equivalent to 'permit to work' – a strong factor that affects the rest of the labour market integration.

[10] The only entry condition is sponsorship, or the adequate financial support of the principle migrant of his/her incoming family. However, such nuances as the sponsor's financial threshold (for inviting his/her overseas-based family to the EU) and the composition of his/her immediate family are decided individually by national laws of Member States (Acosta Arcarazo 2009; Bonjour 2014; Block and Bonjour 2013; Bonjour and Vinck 2013; Van den Broucke et al. 2016). Moreover, the Directive grants Member States optional provisions to extend some parameters while restricting others. Member States differ a lot along this family reunification continuum, while the ECJ cannot force them to modify these additional parameters.

[11] This European Citizenship Directive makes the process of family reunification fast and effective– yet fragmented because some categories of MRA (such as long-term residents, specific visa holders and non-mobile EU nationals) are marginalized within this scheme as sponsors. Neither does this Directive clarify whether the EU-national sponsor's periods of study or vocational training in another EU country can count toward his/her intra-EU mobility experience.

5.3 Recognition of Professional Qualifications

As noted by a senior *DG Empl* officer, 'Everything starts from job search and skill match, where of vital importance are professional qualifications, which often remain unrecognized by the Member State'.[12] Within this pessimistic context, we may further ask if nothing at all can be done on the EU level, or if there are still any loopholes in EU law on LMI for TCNs. One such loophole is European citizenship and associated intra-EU mobility.

5.3.1 The European Space but for Whom?

In 1979, the Lebanon-issued medical degree of the Lebanese dental surgeon Dr. Tawil-Albertini was recognized in Belgium but later rejected in Ireland in 1986. In 1982, Hugo Fernando Hocsman, a Spanish doctor with all his degrees and professional qualifications from Argentina, was authorized to practice in Spain as part of the bi-lateral agreement between these two countries, but was later denied an opportunity to practice in France in 1992.

We may ask why the ECJ supported Hocsman's claim against France but opposed Tawil-Albertini's appeal against Ireland if they both had had their foreign degrees recognized in the EU. Why did the principle of mutual recognition work for Hocsman but not for Tawil-Albertini? The answer is: Hocsman was a EU national while Tawil-Albertini was not. Neither was the latter married to a EU national. Their ECJ cases, which have paved the platform for the 2005 Professional Qualifications Directive (PQD), point to the huge discrepancy between recognition services provided to EU citizens and those provided to TCNs.

Recognition refers to the 'free movement' rhetoric in the EU policy, which became an essential part of EU law after its endorsement in 1992 by the Amsterdam Treaty [TFEU Articles 4(2)(a), 20, 26 and 45–48]. The main freedom granted to EU citizens and their family members within this framework is the freedom of movement of professionals, which includes their fundamental right to move to and work in another Member State on the principle of Equal Treatment with nationals of that Member State (Papagianni 2014; Stetter 2008).[13] This freedom leads directly to a number of other freedoms such as establishment and service provision [TFEU Article(49)] – or the right to settle and to develop career so that the person would be able to provide professional services in a new Member State. This further conveys

[12] Interview held in Brussels on 12 December 2018 as part of the SIRIUS research. Available at: https://www.sirius-project.eu/sites/default/files/attachments/SIRIUS%20WP3%20-%20D3.2_0.pdf

[13] The constitutional basis of the EU has been paved by the Treaties of Maastricht (1992) and Amsterdam (1999) have paid the, with the Maastricht Treaty focusing on human rights while the Amsterdam Treaty dealing with the EU employment and immigration policies.

the idea of the harmonization and mutual recognition of academic and professional qualifications by Member States, without which the freedom of establishment would not be possible (Maciejewski et al. 2019).

These ideas are further elaborated on in a number of EU Directives, including the EU Citizenship Directive 2004/38/EC on the free movement of EU nationals and their family members (which is also part of the European Family Reunification Strategy) and the Professional Qualifications Directives (PQD) 2005/36/EC and 2013/55/EU.

5.3.2 Professional Qualifications Directive and European Case-Law on Recognition

Evaluating the labour market situation in the EU, it is important to note that training standards for regulated professions actually differ across Member States. However, the Professional Qualifications Directive (PQD), which is the primary EU law on the recognition of professionals' qualifications, simplifies the recognition process.[14] The directive even makes the recognition automatic for some regulated professions including doctors, dentists, nurses, midwives, pharmacists, veterinary surgeons and architects. In other cases, the principle of mutual recognition is applied. The only problem is that the PQD provisions are applicable only to qualifications received in the EU.

To be more specific, the main rule of the PQD is the automatic assessment of EU-based qualifications in the absence of significant differences between educational systems and professional requirements in two Member States (Kortese 2016). The mutual recognition principle ensures that the qualifications obtained according to the laws and regulations in one Member State are to be recognized as such in another Member State. In such cases of mutual recognition, additional accreditation and minimum training period apply. As for the non-EU based qualifications of EU citizens, they are recognized automatically in the case of 'second recognition', meaning that it has been recognized by another Member State where the person has also practiced for at least 3 years (which is seen in the *Hocsman* case). The automatic mutual recognition thus often becomes synonymous to the automatic 'secondary recognition' (Ibid).

However, cases of significant discrepancies between Member States' educational systems and professional requirements may involve support from the *European Qualifications Framework (EQF)* for lifelong learning. The main EU reference framework for evaluating qualifications and credentials that enable education and employment within the EU, the EQF was established in 2008 and revised in 2017 to guide the Member States' National Qualifications Frameworks. As noted in the EQF Brochure (Thyssen 2018: 5), it is a European 'translation device between

[14] For more on the PQD provisions, see: European Parliament (2013).

different qualifications systems and their levels’. As stated by Devaux (2013: 3), ‘the general objective of the EQF is to promote lifelong learning, increase employability, mobility and the social integration of workers and learners’. In Member States, formal credentials are assessed against the EU benchmarks from the EQF by either national or regional coordinating mechanisms. Informal credentials are usually assessed by employers through alternative methods such as job interview (CEDEFOP 2018).

Kahance and Zimmermann (2016: 440) point to a number of serious ‘recognition problems’. In line with this, studies and policy reports agree that neither the PDF nor the EQF provides any imperatives – or even clear guidelines to Member States – on how to assess overseas qualifications of foreign nationals or the absence of such in refugees and asylum seekers (Devaux 2013; Kortese 2016; Thyssen 2018). In its latest bi-annual update on the *European Inventory of Formal and Informal Learning*, CEDEFOP (2018) notes that, in reference to overseas credentials, many EU Member States still have serious problems with their validation systems and coordinating mechanisms, which prove to be successful mostly on the level of intra-EU mobility.

For the recognition of outside-the-EU qualifications of EU citizens and their family members, there is abundant ECJ case-law, including the iconic precedents such as *Vlassipoulou v. Germany (1991)* and the above-mentioned *Hocsman* v. *France (2000)* and *Tawil- Albertini v. Ireland* (1986), among many other cases that were considered by the ECJ before the adoption of the first PQD. Although they mostly refer to the recognition of cases that fall under the mutual recognition, they provide the case-law guidance for the recognition of TCN degrees. For example, the case of Irene Vlassipoulou v. Germany (about a Greek lawyer who held degrees and professional experience from both Greece and Germany and who tried to practice in Germany)[15] gives the precedent on evaluating all circumstances of the person’s career in the EU – thus supporting the idea of a multi-faceted evaluation with emphasis on prior professional experience in any part of the EU for the EU citizen or for a person with derivative (equal treatment) status.

This rule applies to the evaluation of TCN qualifications of EU citizens, which is further illuminated by the earlier discussed case of Hugo Fernando Hocsman v. France.[16] According to TFEU Article 49 and the *Vlassipoulou* precedent, the ECJ confirmed, in *Hocsman*, on the rule of the second within-EU recognition for the EU citizen or a person with the derivative (equal treatment) status specifically in relation to TCN qualifications. However, the ECJ-rejected case of *Tawil Albertini* shows that the second within-EU recognition does not apply to un-naturalized TCNs who are not family members of EU citizens.[17]

These cases had enabled the consequent PQF 2005 and its modernized 2013 version, whose Article 3(3) provides that ‘qualifications obtained by EU nationals and issued by a third country shall be regarded as evidence of formal qualifications by

[15] See: Case C-340/89 Vlassipoulou [1991] ECR I-2357.

[16] See: Case C-238/98 (2000) Hocsman ECR I-6623.

[17] See: Case C-154/93 Tawil-Albertini [1991’ECR I-451.

the Directive, if the holder has three years' professional experience in the profession concerned on the territory of the MS which initially recognized this qualification' (Kortese 2016; European Parliament 2013). This means that the EU-national would only benefit from this second-recognition procedure if he/she moves to a different MS.

While TCNs (with EU qualifications) definitely fall under the PDF, they become excluded from its beneficiary list when they aim at the recognition of qualifications received outside the EU. In this case, they become subjected to national laws and may be placed under strict conditions of evaluation (Kortese 2016; Maciejewski et al. 2019). As professionals, they may in some cases be recognized under the EU law, subjected, however, to 'a patchwork of secondary legislation [Directives]' that determines their EU status (Jesse 2016: 146). Among the Directives that grant the equal treatment in the recognition of professional qualifications to TCNs are the Long-term Residence Directive[18] and the European Citizenship Directive, which apply to TCNs who are family members (spouses). In such cases of family reunification, TCNs must undergo the above mentioned second within-EU recognition (as supported by the EU primary law in the face of the PQD and TFEU, and also by the EU case-law in the face of the *Vlassipoulou* and *Hocsman* cases). Marriage thus becomes an important factor of recognition because it changes the status.

5.4 The 'Relationship of Dependency': A Loophole for a Fluid Status?

5.4.1 Looking at the Zambrano *Case*

The recognition procedures show that, for TCNs, everything stumbles over their status in the country of destination. MSs have different entry bans on MRAs and different citizenship and immigration approaches. Because of the existing contradictions within their immigration policies, one and the same TCN may appear both as an irregular and regular migrant, who is both prohibited and allowed to work.

For example, the Columbian national Ruiz Zambrano came to the EU as an asylum seeker and soon married a Belgian citizen of the Colombian origin. His application for asylum in Belgium was soon refused, and in spite of his non-refoulment due to dangerous political situation in his country of origin, he had no permission to work in Belgium. He had still managed to work in that MS for 6 years (2001–2006), during which he had regularly and officially paid all taxes, and his Belgian-national son and daughter were born (Hailbronner and Thym 2011). However, the *Belgian*

[18] Directive 2003/109 gives the long-resident status to TCNs who have been legally residing, without an interruption, in an EU MS for at least 5 years. The acquisition of this status is subject to evidence of the applicant's financial resources and integration exams established in the MS. See: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003L0109

Office National de L'Emploi rejected his claim for unemployment benefits and created a strong case for his expulsion from the country. Zambrano's consequent appeal to the ECJ was based on 'a derived right of residence as the ascendant of minor children who are nationals of a Member State' and was supported by the Court (ibid).

The revolutionary Zambrano case, which took place in 2011,[19] illuminates the ECJ's acknowledgement of factor of relational dependency between the plaintiff and his/her EU family. If Ruiz Zambrano had left the country, he should have taken his children with him because they were his dependents. This would mean that they would not be able to exercise their right of free movement around the EU. With emphasis on the 'citizenship of the Union as intended to be the fundamental status of nationals of the Member States' (Case C-34/09, EU:C:2011:124, para 41), the ECJ concluded its judgment with the recognition that 'Article 20 TFEU precludes national measures that have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union' (Case C-34/09, EU:C:2011:124, para 42).

The 'relationship of dependency' between the TCN and his/her EU-national minor children, which had become the key factor influencing the ECJ's decision in favour of the plaintiff, should be assessed both in financial (or care-providing) terms as well as from the point of view of European citizenship (which is in itself rather restrictive as applied not to anyone) (Hailbronner and Thym 2011). Thus in order to fit the requirements of Article 20, the minor children should be first of all directly dependent on the plaintiff in physical and emotional terms. At the same time, they should be EU citizens (or Member States' nationals) either by birth or through naturalization. If any of these two conditions is missing, the relational dependency becomes no more than a 'hypothetical' factor, and it would support more the idea of expulsion (in lines with the 'national security' rhetoric) rather than the idea of free movement (in favour of the 'one-Europe-for-all') (Lenaerts 2015).

5.4.2 Broken Relational Dependency

An example of the broken relational dependency is the Lida case (2012), which was rejected by the ECJ as 'falling outside the scope' of the TFEU provisions on EU citizenship (Adam and Van Elsuwege 2012: 176–183; Lida Case 2012, *para 56*). In that case, Mr. Iida, a Turkish national and a legal migrant in Germany, whose permit to work was expiring, applied for a permit to stay as the husband and father of EU citizens. However, both German authorities and the ECJ denied his claim on the basis of separation. This meant that his German-national wife and daughter were not dependent on him either in financial- or EU-mobility terms as living in Austria (another MS) and already exercising their Article 20 right (Lenearts 2015).

[19] See: Case C-34/09, EU:C:2011:124 (Ruiz Zambrano). For case analysis, see also: Lenaertz (2012, 2013, 2015).

There have been recently many cases (including the K.A. et al. Case C-82/16), where the ECJ confirms on the relational dependency as a way to avoid violation of the fundamental EU citizenship right, and successfully advises Member States on considering all circumstances around this complex LMI factor that work in favour of the TCN and his/her labour market participation (Progin-Theukauf 2018).

However, the gender bias illuminated by the 2017 Chavez-Vilchez et al. case[20] adds to the 'big puzzle' around both the European citizenship and the TCN status (Progin-Theukauf 2018). Although the Venezuelan national Mrs. Chavez-Vilchez completely fitted the relationship of dependency as the other of a EU national daughter and her main care-provider, the ECJ had rejected her claim. In fact, Mrs. Chavez-Vilchez and seven other TCN women whose claims were simultaneously considered and rejected had been lawfully living with their Dutch families in the Netherlands for years. As (former) asylum seekers, they were balancing between regular and irregular status for years. All eight women had, in their full custody and maintenance, minor Dutch-national children from Dutch-national men (Khan 2017). However, their claims were rejected by both the Dutch authorities and by the ECJ on the grounds of inadequate dependency factor: by the decision of the ECJ, the care provider is always the man unless he is imprisoned or institutionalized (placed in a mental institution) (Lenearts 2015).

The comparison of the *Zambrano* and *Chavez-Vilchez* cases shows that the EU citizenship- and family provisions create a non-playing field for women, where the father is considered indispensable as a career and provider for the children while the mother is not, even in spite of her financial eligibility.

5.5 Case-Buffers: Law and Gender

5.5.1 The Contagious Attraction of European Citizenship

The Chavez-Vilchez case adds to the overall rather pessimistic situation for dependent female MRAs in the EU, who reunite with their husband-sponsors. Even though independent financially (as the Chavez-Vilchez case demonstrates), female MRAs continue to experience various kinds of socio-economic barriers in their integration, including the 'double labour market disadvantage'. Because of their frequently unrecognized credentials and insecure status, they are sidelined in the job market against local women, while the lack of specific professional experience and impeded access to additional training fosters their marginalization also in relation to foreign men (Castro et al. 2019; Dumont 2007; Rubin 2008; OECD 2017). Such women are, in fact, among the 'most vulnerable populations for labour market integration' (Kahanec and Zimmermann 2016: 4). Often having restricted access to job postings, they also suffer from various forms of indirect discrimination in relation

[20] C-133/15 ECLI:EU:C:2017:354 (10 May 2017).

to employment (ENAR 2013; UNHCR 2016), which is illuminated by a number of ECJ-rejected claims (Groenendiijk 2007; Romic 2010; Rubinstein 2015).[21]

Yet in spite of all this fragmentation of European integration and free movement, there is still a powerful unionization tool for recognition and labour market accession. Thus the exception to laws that create barriers and hierarchies for family migrants (and other TNCs) is the segment of the EU free movement framework that 'guarantees rights of family reunion for all mobile EU citizens' (Geddes et al. 2020: 83).

The 'EU legitimacy tools' of free movement and intra-EU mobility 'go together in the legitimization of the integration process' (Recchi 2015: 47). From this angle, the free movement regime has become 'the single piece of EU legislation that most explicitly alludes to a federalization of the Union' (ibid: 43).

When some attractive potential facilitates choices of people, including court judges, its effect is akin to moral (or symbolic) contagion, about which sociologists of post-modern consumption often write (Argo et al. 2008; Nemeroff and Rozin 1994). According to their approach, the moral contagion (or moral contamination) takes place when symbols that are attached to the subject [such as a piece of law or a directive] make very strong influence upon human action – the influence that, by its strength, resembles contagion (ibid). For example, we can see from the discussion above and also from literatures on integration that the idea of European citizenship (with accent on free movement) becomes both attracting attention and positively contagious (as affecting EU law in favour of the TCN). Argo et al. (2008: 692) explain that positive contagion occurs because people want to be close to something for which they have strong positive feeling and attitudes'.

From this point of view, the work of the ECJ in respect to TCNs' obviously becomes positively contaminated by the European Citizenship Directive, as many of the ECJ's pro-MRA decisions demonstrate. When ECJ considers cases of MRAs, the decision is, in fact, often taken as a result of *intersectionality,* meaning that the issue can be interpreted by more than one directive (Kortese 2016; Romic 2010). This produces the effect of *legislative contamination,* which means that the Court's decision can be influenced by an article from an additional directive. *Positive contamination* means that the decision is in favour of the plaintiff, which is due to the additional application of the European Citizenship Directive in our case. Among the examples of such positive legislative contamination is the *Zambrano* and *Hocsman* cases.

These two cases show that the legislative positive contagion with the EU may work for TCNs through the principles of 'relational dependency' and 'second recognition'. This can be illuminated by the functioning of recognition loopholes.

[21] The European Anti-Discrimination Policy is actually represented through the two Directives – the *Racial Equality Directive 2000/43* and the *Employment Equality Directives 2000/78* – which identify three main forms of discrimination: direct discrimination, indirect discrimination and harassment. And there is a huge divergence in national cultures of the EU MSs on criteria for classifying something as indirect discrimination (Niessen et al. 2016; Tymowski 2016). As a result, indirect discrimination is often justified by exceptional cases (ENAR 2015).

5.5.2 Thoughts on LMI, Marriage and Gender

These loopholes take place as supported by various bi-lateral agreements and historical alliances that can make the first EU recognition easier for TCNs. For example, the Baltic States automatically accept foreign papers issued in Russia, Ukraine, Uzbekistan, Belarus, Kyrgyzstan and Moldova. Qualifications from these countries are, in many cases, also accepted in such former socialist states as Bulgaria and Romania (which belong to the EU periphery).

TCNs from India, Pakistan and a large number of African countries, which constitute the British Commonwealth, may benefit from the *Commonwealth Professional Qualifications Comparability Programmes*, also known as *Commonwealth Recruitment Protocols* (Keevy and Jansen 2006). Commonwealth countries promote harmonization in the recognition of professional qualifications, as based on established common standards. To some extent, 'education and training routes and qualifications in a number of professions are standardized and transferrable with cross-recognition among Commonwealth countries' (Commonwealth 2019).[22] This applies to professional qualifications for a number of both regulated and unregulated professions (financial, legal, health and technological qualifications) as well as general certificates of secondary education.[23]

Such harmonization may work together with the principles of 'intra-EU mobility' and 'second recognition' for a large number of skilled TCNs. For example, a Russian or Ukrainian woman can easily receive the first EU recognition in such a state as Lithuania or Estonia, and then marry a EU national living anywhere in Europe. This means that, as the spouse of a EU-national, she will be automatically granted the right for the EU second recognition. A similar example could be a Pakistani woman who holds a university degree or a professional qualification from Pakistan, marries a diasporic Pakistani man who is also a British citizen, reunites with him in the UK and easily receives the UK recognition of her qualifications as her first EU recognition. This would mean that, she could then find a job anywhere in Europe as a beneficiary of mutual recognition. The EU family migration patterns are, in fact, dominated by female spouses of EU nationals or of TCN permanent residents (Chaloff 2013). Making 60–80% across Europe, such women hold high levels of education from their countries of origin (Ibid; OECD 2018), and many of them could definitely benefit from the herein emerging complex patterns of skill- and family migrations.

In reality, there are not, however, many cases of female MRAs challenging the PQD because they remain marginalized within their families and ethnic communities and lack motivation as well as financial and informational resources in order to make an appeal (ENAR 2013; ETUC 2018; FRA 2013, 2017). The gender bias that penetrates all layers of European societies (ENAR 2013; FRA 2013) may also affect the ECJ's decisions [as the *Chavez-Vilchez* case shows].

[22] See: http://www.commonwealthofnations.org/sectors/business/human_resources/

[23] See Ibid.

5.5.3 Conclusive Remarks

As Geddes et al. (2020: 92) conclude in reference to the intersections between free movement and family migration, 'the development of the EU capacity in the area of family integration fits with an understanding of the EU as sovereignty-enhancing rather than sovereignty-denuding (Geddes et al. 2020: 92).

Having examined some of the ECJ cases - both in direct and indirect relation to insecure status and recognition of qualifications of TCNs – we argue that, in spite of the overall implementation of LMI by MSs, the ECJ can still do something tangible to help TCNS overcome the main LMI barriers. The legislative loophole that clearly crystallizes in its rulings is the factor of free mobility and family building. Marriage becomes supportive in the process of recognition while having minor children may help the TCN to transfer his 'fluid' status into a stable permit to work.

Using this loophole, the Court operates on the principle of intersectionality of EU Directives, which creates the effect of positive contagion, or enchantment, with intra-EU mobility. This enchantment works in favour of the married TCN such as the dependent family migrant. Marriage thus becomes an important area to invest under certain conditions.

However, the intersectionality and symbolic contagion do not work in the same way in the recognition of professional qualifications and in the status transfer. Here we can observe two different forms of legislative intersectionality and symbolic contagion. In the Recognition of TNC qualifications of TCNs, a number of Directives (on Long-Term Residence, Family Reunification and PQD) work together to support free movement from various angles – and produce the effect of multi-vector positive contagion with Europe. On the contrary, in the 'status' cases, the Long--Term Directive becomes surpassed by the MSs immigration policies. This creates the effect of negative legislative contamination, which is reflected in the ECJ's decisions.

Summing up, the work of the ECJ illuminates a complex interplay between European law, marriage migration, free movement and gender. The complexity is added by the gendered asymmetry in the above mentioned EU citizenship- and family provisions. These provisions end up, inadvertently, creating LMI barriers for some TCNs while facilitating the LMI of others.

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