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Integration (of Immigrants) in the European Courts' Jurisprudence: Supporting a Pluralist and Rights-Based Paradigm?

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Abstract
The concept of integration is the subject of various immigration policies but is still lacking a proper legal definition. In view of the abiding interest of the EU Member States to preserve their sovereignty over immigration, it is at serious risk of being instrumentalised for this purpose. Taking such circumstances into account, this article reflects on the model of integration resulting from the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights and questions the capacity of the two courts to advance a pluralist and rights-based paradigm of integration. On the one hand, it acknowledges the progressive enhancement of the protection of the immigrants' fundamental and human rights. On the other hand, it points out the contradictions of a narrative that appears intrinsically incompatible with the very idea of pluralism by conceiving integration primarily as civic and cultural assimilation and placing most of the integration burden on the immigrants' side.

Keywords Immigration · Integration · Family reunification · Expulsion · Court of Justice of the European Union · European Court of Human Rights

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Introduction

The seamless flow of immigrants coming from third countries to the European Union is posing major challenges of integration.[1] Although being the subject of various immigration policies, the concept of integration is still lacking a proper legal definition. In this context of uncertainty, the notion of integration is at serious risk of being transformed into a tool for preserving the Member States' sovereignty over immigration. This is especially true when it is used to strategically select the most socio-economically and culturally desirable immigrants by excluding all those persons who are not supposed to fit well/assimilate into a pre-established national (or European) cultural, civic, and social model.[2] However, such a paradigm appears at odds with an idealistic view, which conceives integration as a process of reciprocal adjustment between immigrants and members of the receiving country, whereby all people participate on an equal footing into a pluralist society and may enjoy a full package of fundamental rights.[3]

With a view to addressing such a controversial EU conception of integration, this article proposes to investigate how the jurisprudence of the Court of Justice of the European Union (hereby CJEU or Luxembourg) and the European Court of Human Rights (hereby ECtHR or Strasbourg) has shaped and used this concept. In doing so, it questions the capacity of the two Courts to improve the EU legal framework in such a way as to develop a pluralist and rights-based paradigm of integration. Following a 'law in context' approach,[4] this article provides an in-depth legal examination of the relevant CJEU and ECtHR case law, thus combining EU law and European human right law sources. Contextually, it considers the practical effects of those rulings in the social context in which they exert their legal force. The decision of considering the international legal standards developed by the ECtHR is intended to offer

[1] The term 'third-countries' refers to countries that are not members of the European Union as well as countries or territories whose citizens do not enjoy the EU right to free movement, as defined in Article 2(5) Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) 2016 [OJ L 77].

[2] Arguably, this is the result of the current EU immigration law and policy framework on integration, as discussed by the author in Matteo Bottero, 'Integration (of Immigrants) in the European Union: A Controversial Concept' (2022) 24 European Journal of Migration and Law 516.

[3] This definition of integration is inspired by the work of Liz Fekete, 'Enlightened Fundamentalism? Immigration, Feminism and the Right' (2006) 48 Race & Class 1; Silvia Adamo, 'What Is "A Successful Integration"? Family Reunification and the Rights of Children in Denmark' (2016a) 152 Nordisk Juridisk Tidsskrift 38; Anna C Korteweg, 'The Failures of "Immigrant Integration": The Gendered Racialized Production of Non-Belonging' (2017) 5 Migration Studies 428; Willem Schinkel, *Imagined Societies a Critique of Immigrant Integration in Western Europe* (Cambridge University Press 2017); Willem Schinkel, 'Against "Immigrant Integration": For an End to Neocolonial Knowledge Production' (2018) 6 Comparative Migration Studies 31; Mikkel Rytter, 'Writing Against Integration: Danish Imaginaries of Culture, Race and Belonging' (2019) 84 Ethnos 678; Lea M Klarenbeek, 'Reconceptualising "Integration as a Two-Way Process"' (2021) 9 Migration Studies 902; Adrian Favell, 'Immigration, Integration and Citizenship: Elements of a New Political Demography' (2022) 48 Journal of Ethnic and Migration Studies 3.

[4] Robert Cryer and others, *Research Methodologies in EU and International Law* (1st edn, Hart Publishing 2011) 86–88.

a different perspective on integration, especially in view of the Court's exceptional authoritative power and influence within the EU legal and political spheres.

In the following, this article begins by briefly discussing the existing literature on integration, emphasising the limited amount of legal scholarship in this area of study. The core of the analysis is then divided into two parts. The first one focuses on the CJEU's approach in cases concerning family reunification and long-term residence. The choice of these domains is related to the progressive development by the Luxembourg Court of a legal concept of integration through the interpretation of the Family Reunification Directive 2003/86/EC (FRD)[5] and the Long-Term Residents Directive 2003/109/EC (LTRD),[6] which have been adopted by the EU legislator with the express purpose of facilitating integration. The second substantial part investigates the ECtHR's jurisprudence on the right to private and family life in cases of entry in/expulsion from the host state and the application of the principle of non-discrimination. This step in the analysis looks at several judgements in which the Strasbourg Court advanced its legal concept of integration by attaching increasing relevance to the degree of social integration of the immigrants concerned. Throughout the article, the progressive enhancement of the protection of the immigrants' fundamental and human rights is acknowledged along with the contradictions of a narrative that conceives integration primarily as civic and cultural assimilation and places most of the integration burden on the immigrants' side. The main findings are collected in the conclusion, where trying to find possible ways to improve the current state of play, a critical reflection on the capacity of the two Courts to advance a pluralist and rights-based narrative on integration is carried out.

In view of the privileged status accorded by EU law to mobile EU citizens (and indirectly also their family members), the term 'immigrant' in this contribution does not include EU citizens (nor their family members) who migrate across borders. It only refers to the so-called third-country nationals (TCNs), namely, those persons who enter or reside in the territory of an EU Member State while not being EU citizens nor enjoying the EU right to free movement. This wide formulation encompasses voluntary migrants, migrants moving for the purpose of family reunification, refugees, and beneficiaries of other forms of international protection.

Integration in the 'Law'

Following the unprecedented flow of immigrants coming to Europe in recent years, including millions of refugees displaced by the war in Ukraine, integration has assumed an increasingly central role in political discourses. The related

[5] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification 2003 [OJ L 251].

[6] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents 2004 [OJ L 16].

national and EU policies have attracted a great deal of scholarly attention, mainly in the areas of sociology, political science, economics, political economy, and political philosophy. Scholars in these social sciences have elaborated a theoretical framework on the concept of integration by taking into account not only the States' interest in preserving their sovereignty in the field of immigration but also the immigrants' rights and prerogatives. The existing literature has acknowledged the multidimensional nature of integration and considered a variety implications in relation to the immigrants' nationality, wealth, social class, educational level, ethnicity, culture, religion, age, and gender.[7]

While being traditionally addressed by those social sciences, the concept of integration is, at least in the EU, the subject of only limited research in the field of law. The exceptional work of a few authors, such as those mentioned in the course of the following analysis, is therefore especially valuable. Still, legal scholarship has not yet managed to develop an independent theoretical framework on the legal concept of integration. And arguably, a proper and unambiguous legal definition of integration does not emerge from the current EU immigration law framework either.[8] The existing legal framework formed by the EU Treaties, the Charter of Fundamental Rights of the European Union (CFREU), the European Convention on Human Rights (ECHR), and various instruments of secondary EU legislation[9] and of international human rights

[7] Given the extensive literature on integration in the social sciences, a detailed review would be beyond the scope of this research.

[8] Clíodhna Murphy, 'The Concept of Integration in the Jurisprudence of the European Court of Human Rights' (2010) 12 European Journal of Migration and Law 23, 25; Sergio Carrera, 'Integration of Immigrants in EU Law and Policy: Challenges to Rule of Law, Exceptions to Inclusion' in Loïc Azoulai and Karin de Vries (eds), *EU Migration Law: Legal Complexities and Political Rationales* (Oxford University Press 2014) 149; Clíodhna Murphy, Mary Gilmartin and Leanne Caulfield, 'Building and Applying a Human Rights-Based Model for Migrant Integration Policy' (2019) 11 Journal of Human Rights Practice, Oxford University Press 445, 446; Bottero (n 2).

[9] Not only the FRD and the LTRD but also Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (Temporary Protection Directive) 2001 [OJ L 212]; Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (Blue Card Directive) 2009 [OJ L 155]; Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) 2011 [OJ L 337]; Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (Single Permit Directive) 2011 [OJ L 343]; Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes, or educational projects and au pairing 2016 [OJ L 132]; Directive 2021/1883/EU of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC (new Blue Card Directive) 2021 [OJ L 382/1].

law[10] contains a wide catalogue of rights and provisions that support integration. However, the notion of integration is not properly defined in any of these instruments. Yet, since many of the rights and obligations enshrined therein are directly related to the existence of a certain degree of integration, it is precisely this legal definition that would produce tangible effects on the legal position of the persons concerned.

In this legal vacuum, the concrete interpretation given by the CJEU and the ECtHR becomes particularly important because, even more than positive legislation, it has the ability of endowing the notion of integration with legally enforceable rights (for the immigrants) and obligations (for the states). As shown in the following jurisprudential analysis, the European Courts have shaped and used the concept of integration as a criterion for granting individual rights and imposing related state obligations. By implication, the resulting legal concept of integration has become the yardstick for regulating the exercise of those rights and the respect of those obligations. This questionable outcome requires a critical analysis of the rationale behind the European Courts' construction of the integration concept, as well as of the modalities in which the latter exerts its legal effects. In this way, the model of integration advanced may be clearly discerned and understood. In performing this analysis, the present research draws inspiration from arguments of sociology, political science, and political philosophy in order to develop a theoretical notion of integration that is used as a benchmark against which the European Courts' jurisprudence is tested.

Court of Justice of the European Union

In its 2015 judgement in *Demirci* concerning the application of social security rules on Turkish workers in the Netherlands, the Court of Justice's First Chamber firmly declared that 'the acquisition of the nationality of the host Member State represents, in principle, the most accomplished level of integration'.[11] This concept was reaffirmed 2 years later by the Grand Chamber in *Lounes*, when it recognised how naturalisation implies a deeper degree of integration into the host society.[12] In effect, the acquisition of nationality of the Member State in which the immigrants are resident (along

[10] UNHCR, Convention Relating to the Status of Refugees 1951; OHCHR, International Convention on the Elimination of All Forms of Racial Discrimination, Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965 entry into force 4 January 1969, in accordance with Article 19 1965; OHCHR, International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49 1966; OHCHR, International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27 1966.

[11] *Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen (Uwv) v MS Demirci and Others* [2015] CJEU Case C-171/13, ECLI:EU:C:2015:8 [54].

[12] *Toufik Lounes v Secretary of State for the Home Department* [2017] CJEU C-165/16, ECLI:EU:C:2017:862 [58]. Ilke Adam and Daniel Thym, 'Integration' in Philippe De Bruycker, Marie De Somer and Jean-Louis De Brouwer (eds), *From Tampere 20 to Tampere 2.0: Towards a new European consensus on migration* (European Policy Centre (EPC) 2019) 80.

with the acquisition of EU citizenship) provides them with a legal status that allows to remain in the country permanently without the risk of deportation and grants them access to employment opportunities, social benefits, and political participation on an equal footing with their fellow citizens. In light of these entitlements, naturalisation is arguably the most valuable legal instrument to facilitate the integration process and to create a pluralist society where fundamental rights, as well as social, economic, and political rights, are guaranteed equally to everyone. Despite the great relevance acknowledged to naturalisation in the integration process, an encouraging approach in this sense has not been pursued consistently by the Court in its rulings on family reunification and long-term residence. The legal concept of integration emerging from the CJEU's jurisprudence in these domains is the subject of the following analysis.

Family Reunification

The EU rules on the exercise of the right to family reunification by TCNs are laid down in the Family Reunification Directive 2003/86/EC (FRD). This Directive, inter alia, allows the Member States to introduce a series of 'integration requirements', which have been interpreted by the Court of Justice over the years. The first ruling of the CJEU on the FRD, *European Parliament v. Council* of 27 June 2006, originated from an action for annulment brought by the European Parliament, which challenged the validity of Article 4(1)(6) FRD limiting the admission of children older than twelve and fifteen, and of Article 8 FRD allowing the imposition of waiting periods before family reunification.[13] The Grand Chamber eventually dismissed the action, without finding any incompatibility with the fundamental right to family life nor with the principle of non-discrimination on grounds of age. Nonetheless, by interpreting the aforementioned conditions in light of the directive's general objective of facilitating integration through effective family reunification, it recognised the existence of an individual right to family reunification for spouses and minor children. At the same time, it circumscribed the Member States' margin of appreciation in the application of integration conditions by declaring the correspondent positive obligation to authorise family reunification once the conditions are met.[14] The judges in Luxembourg further specified that Member States must interpret the concept of integration according to fundamental rights and general principles of EU law.[15]

[13] *European Parliament v Council of the European Union* [2006] ECJ Case C-540/03, ECLI:EU:C:2006:429.

[14] Ibid 60 and 69. Kees Groenendijk, 'Pre-Departure Integration Strategies in the European Union: Integration or Immigration Policy?' (2011) 13 European Journal of Migration and Law 1, 7; Carrera (n 8) 177; Kees Groenendijk, 'Recent Developments in EU Law on Migration: The Legislative Patchwork and the Court's Approach' (2014) 16 European Journal of Migration and Law 313, 330–331.

[15] Moreover, when restricting the right to family reunification, Member States must take due account of the best interest of the child and of the specific circumstances of the sponsors and their family members, such as the solidity of family relationships, the duration of residence in the host state, and the existence of family, cultural, and social ties with the country of origin. *European Parliament v. Council of the European Union* (n 13) 63–64 and 70.

After more than a decade, this rights-based approach was revived in a series of judgements on the reunification of minor children TCNs with their families. In *A & S*, by giving priority to the best interest of the child, the Court's Second Chamber ruled out any possibility for the host state to prejudice the right to family reunification of an unaccompanied minor refugee, who applied for asylum before she came of age, with her first-degree relatives in the ascending line.[16] Another decision of the Second Chamber on a Netherlands State Secretary's rejection of an application for family reunification, namely, *E v. Staatssecretaris*, confirmed the 'positive obligations' on Member States to give effect to the individual rights enshrined in the FRD. In their action, EU countries are expected to advance the directive's aims and to uphold fundamental rights and the principles laid down in the CFREU, such as respecting the right to private or family life (Article 7 CFREU) and having regard to the child's best interests (Article 24 CFREU).[17] The more recent case *B M M and Others* was decided along the same lines, also covering situations where the age of majority is reached during the court proceedings.[18] Oddly enough, no reference to immigrant rights was made by the Second Chamber in its ruling in *Noorzia*, where the Austrian law setting at 21 the minimum age for family reunification of spouses was deemed compatible with the FRD's purpose of preventing forced marriages and ensuring better integration.[19] Besides, the CJEU never called into question the provision enshrined in Article 4(5) FRD that allows Member States to require the sponsor and their spouse to be of a minimum age, which may not exceed 21 years. This rule appears controversial insofar as it sets a minimum age for the reunifying spouse, which is higher than the age of majority in a Member State. It might also be considered discriminatory against young spouses on grounds of their age for it fails to take their individual situation into due account.

With regard to the integration condition laid down in Article 7(1)(c) FRD of having sufficient financial resources to avoid recourse to the social assistance system of the host state, in its 2010 judgement in *Chakroun*, the Court ruled in favour of a strict interpretation. This requirement has to be compatible with the subjective right to family reunification and the directive's objectives and effectiveness, as well as the rights and the principles enshrined in the ECHR and the CFREU.[20] As a result, the

[16] *A and S v Staatssecretaris van Veiligheid en Justitie* [2018] CJEU Case C-550/16, ECLI:EU:C:2018:248 [43, 58, and 64]. Kees Groenendijk and Elspeth Guild, 'Children Are Entitled to Family Reunification with Their Parents C-550/16 A & S Court of Justice of the European Union – EU Immigration and Asylum Law and Policy' (*EU Immigration and Asylum Law and Policy*, 26 April 2018) https://eumigrationlawblog.eu/children-are-entitled-to-family-reunification-with-their-parents-c-550-16-a-s-court-of-justice-of-the-european-union/ Accessed 20 Oct 2020

[17] *E v Staatssecretaris van Veiligheid en Justitie* [2019] CJEU Case C-635/17, ECLI:EU:C:2019:192 [45–56].

[18] *B M M and Others v État belge* [2020] CJEU Joined Cases C-133/19, C-136/19, C-137/19, ECLI:EU:C:2020:577.

[19] *Marjan Noorzia v Bundesministerin für Inneres* [2014] CJEU Case C-338/13, ECLI:EU:C:2014:2092 [15–16]. Daniel Thym, 'Towards a Contextual Conception of Social Integration in EU Immigration Law. Comments on P & S and K & A' (2016) 18 European Journal of Migration and Law 89, 101; Esther Gómez-Campelo and Marina San Martín-Calvo, 'The Right to Family Reunification in the EU and the Case-Law in Accordance Therewith' (Lawyers4Rights 2020) 39–40.

[20] *Rhimou Chakroun v Minister van Buitenlandse Zaken* [2010] CJEU Case C-578/08, ECLI:EU:C:2010:117 [43–44].

CJEU prohibited the definition of a standard minimum income level for family reunification without carrying out a case-by-case examination and excluded the access to any form of special assistance from the computation of the resources coming from national social assistance schemes.[21] Emphasising once again that 'authorisation of family reunification is the general rule', the Court adopted a similar approach in *O & S*, where it stressed that the individual assessment by national authorities must necessarily have due regard to the interests of the children concerned.[22] In turn, the 2016 decision in *Khachab* did not prevent Spanish authorities from basing the granting or denial of family reunification on a prospective assessment of the sponsor's likelihood to retain sufficient resources.[23]

The legitimacy of both pre-entry and post-entry integration requirements adopted ex Article 7(2) FRD was also subject to the CJEU's jurisprudence.[24] After declaring two references inadmissible as a consequence of the granting of family reunification prior to

[21] Ibid 48 and 52. Keith Puttick and Cordelia Carlitz, 'Inequalities of Family Members of EEA and Non-EEA Nationals: "Integration" and Barriers to Family Reunification in the Post-Lisbon Era' in Sonia Morano-Foadi and Micaela Malena (eds), *Integration for Third-Country Nationals in the European Union: The Equality Challenge* (Edward Elgar Publishing 2012) 286–287; Clíodhna Murphy, *Immigration, Integration and the Law: The Intersection of Domestic, EU and International Legal Regimes* (1st edn, Routledge 2013) 174; Groenendijk, 'Recent Developments in EU Law on Migration' (n 14) 331; Kees Groenendijk, 'Legal Migration' in Philippe De Bruycker, Marie De Somer and Jean-Louis De Brouwer (eds), *From Tampere 20 to Tampere 2.0: Towards a new European consensus on migration* (European Policy Centre (EPC) 2019) 65.

[22] *O and S v Maahanmuuttovirasto and Maahanmuuttovirasto v L* [2012] CJEU Joined Cases C-356/11 and C-357/11, ECLI:EU:C:2012:776 [74].

[23] *Mimoun Khachab v Subdelegación del Gobierno en Álava* [2016] CJEU C-558/14, ECLI:EU:C:2016:285.

[24] As discussed elsewhere by the author, Article 7(2) FRD permits the implementation at the national level of contested integration requirements that often work as tools of immigration selection and control. Bottero (n 2) 531–534. For an overview and critique of the variety of integration conditions and measures adopted by the EU Member States, see Fekete (n 3) 4; Groenendijk, 'Pre-Departure Integration Strategies in the European Union' (n 14) 1, 11, 14–19 and 27; Micaela Malena and Sonia Morano-Foadi, 'Integration Policy at European Union Level' in Sonia Morano-Foadi and Micaela Malena (eds), *Integration for Third-Country Nationals in the European Union: The Equality Challenge* (Edward Elgar Publishing 2012) 57 and 59; Puttick and Carlitz (n 21) 289–290; Murphy, *Immigration, Integration and the Law* (n 21) 54–57 and 66–67; Carrera (n 8) 169 and 185; KM (Karin) de Vries, 'The Integration Exception: A New Limit to Social Rights of Third-Country Nationals in European Union Law?' in Daniel Thym (ed), *Questioning EU Citizenship: Judges and the Limits of Free Movement and Solidarity in the EU* (Hart Publishing 2017) 270; Antje Ellermann and Agustín Goenaga, 'Discrimination and Policies of Immigrant Selection in Liberal States' (2019) 47 Politics & Society 87, 96; Ilona Bontenbal and Nathan Lillie, 'Policy Barriers and Enablers – A Comparative Approach', *Policy Barriers and Enablers: WP3 report* (SIRIUS [D32] (770,515) Horizon 2020 2019) 43; Roxana Barbulescu, *Migrant Integration in a Changing Europe: Immigrants, European Citizens, and Co-Ethnics in Italy and Spain* (University of Notre Dame Press 2019) 19–24 and 209; Murphy, Gilmartin and Caulfield (n 8) 449; Silvia Adamo, '"Please Sign Here": Integration Contracts Between Municipalities and Foreigners in Denmark' (2021) 23 Journal of International Migration and Integration 321, 321; Thomas Bredgaard and Rasmus Lind Ravn, 'Denmark: From Integration to Repatriation' in Béla Galgóczi (ed), *Betwixt and between: Integrating refugees into the EU labour market* (ETUI—European Trade Union Institute 2021) 76–77; Tamar de Waal, *Integration Requirements for Immigrants in Europe: A Legal-Philosophical Inquiry* (Hart Publishing, Bloomsbury Publishing Plc 2021) 18–30; Silvia Adamo, 'The Danish Legal Framework for Migration: Between a Humanitarian Past and a Restrictive Present' in Marie-Claire Foblets and Jean-Yves Carlier (eds), *Law and Migration in a Changing World*, vol 31 (Springer International Publishing 2022) 290–291.

the end of the proceedings before the European judges,[25] the Court delivered the important *K & A* ruling on 9 July 2015. In the case at issue, the Netherlands pre-entry civic and language integration exams were, in principle, upheld for their ability to facilitate the integration of the sponsor's family members.[26] However, the Court failed to take into account that pre-entry integration exams potentially support integration only with respect to those TCNs who actually manage to pass the exams while contextually excluding those who fail to do so. These requirements have therefore an intrinsically selective nature, which has the effect of weighing more the right to family unity of the successful examinees than that of the poor-performing ones. Precisely because of their filtering feature, they have been widely used (in combination with post-entry integration requirements) by countries like the Netherlands, Denmark, Germany, France, and Belgium as contested tools of immigration selection and control.[27] To balance this controversial outcome, the legitimacy of those measures was made conditional on their strict interpretation and the respect of the principle of proportionality.[28] The Court further reassured that integration measures must not aim at filtering immigration flows, and it prohibited those measures which fail to take account of special individual circumstances or set too high examination fees with the effect of excessively complicating or preventing family reunification.[29] In the same vein, in the subsequent *C and A v. Staatssecretaris* and *K v. Staatssecretaris*, Netherlands legislation was allowed to reject applications for autonomous residence permits of persons (notably spouses migrating for family reunification purposes) who failed a post-entry civic integration test on national language and society, as long as those measures respected the principle of proportionality.[30]

This outcome was not achieved, exceptionally, in a series of cases involving Turkish immigrant workers and their family members. In the 2014 decision in *Dogan*, the German law denying visa for the purpose of family reunification to an illiterate applicant who inevitably failed the required pre-entry language test was considered disproportionate to the objective of integration.[31] Following the opinion of Advocate General Mengozzi,[32] the Court condemned the automatic character of the national provision,

[25] *Bibi Mohammad Imran v Minister van Buitenlandse Zaken* [2011] CJEU Case C-155/11 PPU, ECLI:EU:C:2011:387; *Aslihan Nazli Ayalti v Federal Republic of Germany* [2013] CJEU Case C-513/12, ECLI:EU:C:2013:210.

[26] *Minister van Buitenlandse Zaken v K and A* [2015] CJEU Case C-153/14, ECLI:EU:C:2015:453 [45–48, 52–54]. Steve Peers, 'Integration Requirements for Family Reunion: The CJEU Limits Member States' Discretion' (*EU Law Analysis*, 9 July 2015) http://eulawanalysis.blogspot.com/2015/07/integration-requirements-for-family.html Accessed 30 Mar 2022

[27] Groenendijk, 'Pre-Departure Integration Strategies in the European Union' (n 14) 1, 11, 14–19 and 27; Malena and Morano-Foadi (n 24) 57 and 59; Puttick and Carlitz (n 21) 289–290; Murphy, *Immigration, Integration and the Law* (n 21) 54–57 and 66–67; Ellermann and Goenaga (n 24) 96; Bontenbal and Lillie (n 24) 43; Barbulescu (n 24) 20, 24 and 209; Murphy, Gilmartin and Caulfield (n 8) 449; de Waal (n 24) 20–25.

[28] *Minister van Buitenlandse Zaken v. K and A* (n 26) paras 50–52.

[29] Ibid 57–58 and 64.

[30] *C and A v Staatssecretaris van Veiligheid en Justitie* [2018] CJEU Case C-257/17, ECLI:EU:C:2018:876; *K v Staatssecretaris van Veiligheid en Justitie* [2018] CJEU Case C-484/17, ECLI:EU:C:2018:878.

[31] *Naime Dogan v Bundesrepublik Deutschland* [2014] CJEU Case C-138/13, ECLI:EU:C:2014:2066.

[32] *Naime Dogan v Bundesrepublik Deutschland, Opinion of Advocate General Mengozzi* [2014] CJEU Case C-138/13, ECLI:EU:C:2014:287 [60].

which did not take account of the particular circumstances of the case. Notably, since the spouse of a Turkish worker was involved, the disproportion of the Danish requirement had to be assessed in light of the 'standstill' clause set out in the 1970 Additional Protocol[33] to the 1963 EU-Turkey Association Agreement,[34] which prohibited the introduction of 'new restrictions' on the freedom of establishment such as the one in the case at issue.[35] Along the same lines, in the *Genc* case, the Danish measure requiring the reunifying child of a Turkish worker to have, at least potentially, sufficient ties with Denmark for a successful integration, was considered as an unjustified 'new restriction' contrary to the 'standstill' clause set out in Decision 1/80 of the EU-Turkey Association Council.[36] Besides failing to take the personal situation of the child into account, the Danish law imposed a disproportionate additional bureaucratic requirement to apply for family reunification within 2 years from the date of the father's acquisition of a permanent residence permit.[37] In *A v. Udlændinge- og Integrationsministeriet*, the Danish requirement for family reunification of a Turkish couple to have greater overall attachment to Denmark than to Turkey was also deemed as an unlawful 'new restriction' under Decision 1/80 of the EU-Turkey Association Council. As strongly affirmed by the Court, the Danish measure was not suitable to improve the integration prospects of the reunifying spouse. Since coexisting ties with the country of origin and the host Member State are not mutually exclusive, the persistence of relevant ties with the country of origin does not affect the immigrant's integration prospects in the host state.[38] Just like in *Dogan* and *Genc*, however, the Luxembourg Court was careful not to undermine the Member States' discretion to concretely define their integration objectives and never questioned the discriminatory nature of the integration conditions imposed on Turkish workers and their families.[39] A similar approach was followed in the recent ruling in *Udlændingenævnet*,[40] where the CJEU declared the Danish language test for foreign

[33] Article 41(1), Additional Protocol and Financial Protocol signed on 23 November 1970, annexed to the Agreement establishing the Association between the European Economic Community and Turkey and on measures to be taken for their entry into force—Final Act—Declarations 1970 [OJ L 361/59].

[34] Agreement establishing an Association between the European Economic Community and Turkey (Ankara Agreement) 1963 [OJ L 361/29].

[35] *Naime Dogan v. Bundesrepublik Deutschland* (n 31) paras 36–38. Steve Peers, 'The CJEU Transforms Family Reunion for Turkish Citizens' (*EU Law Analysis*, 12 July 2014) http://eulawanalysis.blogspot.com/2014/07/the-cjeu-transforms-family-reunion-for.html Accessed 30 Mar 2022

[36] Article 13, Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association 1980. In light of Denmark's 'opt-out' in the field of EU immigration policy, the Court could not challenge those integration conditions on the basis of the FRD and the LTRD.

[37] *Caner Genc v Integrationsministeriet* [2016] CJEU Case C-561/14, ECLI:EU:C:2016:247 [38 ss.]. Silvia Adamo, 'Keeping up with the (Turkish) Family: Integration Requirements for Family Reunification in Genc' (*EU Law Analysis*, 26 April 2016b) http://eulawanalysis.blogspot.com/2016/04/keeping-up-with-turkish-family.html Accessed 30 Mar 2022

[38] *A v Udlændinge -og Integrationsministeriet* [2019] CJEU Case C-89/18, ECLI:EU:C:2019:580 [39–40].

[39] Sarah Ganty, 'Silence Is Not (Always) Golden: A Criticism of the ECJ's Approach towards Integration Conditions for Family Reunification' (2021) 23 European Journal of Migration and Law 176, 187, 194–195, 199.

[40] *Udlændingenævnet (Examen linguistique imposé aux étrangers)* [2022] CJEU Case C-279/21, ECLI:EU:C:2022:1019.

nationals to constitute an unlawful restriction against a Turkish worker for not taking account of his reunifying spouse's ability to integrate into Danish society.

Long-Term Residence

The Long-Term Residents Directive 2003/109/EC (LTRD) regulates the status of TCNs who are long-term residents, namely, those who lived legally in the territory of a Member State for at least 5 consecutive years. Just like the FRD, also the LTRD was adopted with the aim of fostering integration but envisaged the possibility for the receiving Member States to impose certain integration requirements and conditions on TCNs for the issuing of a long-term residence permit and to limit social assistance and social benefits.[41] The jurisprudence of the Court of Justice on the LTRD followed the line dictated by the Grand Chamber's judgement of 24 April 2012 in the *Kamberaj* case,[42] which was substantially decided through a rights-based approach. The case involved the refusal, by virtue of the law of the Autonomous Province of Bolzano (Italy), to grant an Albanian national holder of a residence permit for an indefinite period the same housing benefit accorded to EU citizens.[43] On that occasion, the exception provided for by Article 11(4) LTRD of limiting social assistance and social protection to 'core benefits' was interpreted by the Court strictly in such a way as to exclude housing benefits. In other words, the CJEU included housing benefits under the category of 'core benefits', thereby granting long-term resident TCNs equal treatment with EU citizens in that respect. It did so by making direct reference to Article 34(3) CFREU on the right to social and housing assistance for a decent living and emphasising that equal treatment is the general rule in the sectors listed in Article 11(1) LTRD.[44] A similar proactive approach was taken by the Second Chamber in *Commission v. Netherlands*, where it condemned the disproportionately high fees imposed by Netherlands legislation for the issue of a long-term residence permit. According to the European judges, those excessive charges were liable to disproportionately restrict the *effet utile* of the LTRD, whose main purpose is the integration of long-term resident TCNs, thereby hindering the exercise of the rights conferred to the latter immigrants. A few months later, in its decision

[41] Articles 5 and 15(3) LTRD and Article 11(4) LTRD, respectively.

[42] *Servet Kamberaj v Istituto per l'Edilizia Sociale della Provincia autonoma di Bolzano (IPES) and Others* [2012] CJEU Case C-571/10, ECLI:EU:C:2012:233.

[43] For the record, the CJEU did not find any discrimination based on racial or ethnic origin, but only on grounds of nationality. In turn, in the 2008 *Feryn* case, an employer's public declaration that his company did not wish to recruit 'immigrants' was considered as a manifest racial discrimination in breach of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin 2000 [OJ L 180/22]. *Centrum voor gelijkheid van kansen en voor racismebestrijding v Firma Feryn NV* [2008] CJEU Case C-54/07, ECLI:EU:2008 -05,187.

[44] *Servet Kamberaj v. Istituto per l'Edilizia Sociale della Provincia autonoma di Bolzano (IPES) and Others* (n 42) paras 80, 86, 90 and 92. Murphy, *Immigration, Integration and the Law* (n 21) 181–182; Groenendijk, 'Recent Developments in EU Law on Migration' (n 14) 332; Kees Groenendijk, 'Equal Treatment of Workers from Third Countries: The Added Value of the Single Permit Directive' (2015) 16 ERA Forum 547, 557; de Vries (n 24) 274–275.

in *Singh*, the Court reiterated the LTRD's objective to foster the integration of long-term resident TCNs through the approximation of their status to that of EU citizens.[45] It then further narrowed down the Member States' powers to exclude certain categories of TCNs from the scope of the directive on the basis of their formally temporary residence permit.[46]

Not least of all, the integration requirements imposed on immigrants in connection to their long-term resident status came to the attention of the CJEU in the *P & S* case, which was decided by the Second Chamber on 4 June 2015.[47] In stark contrast with the Advocate General Szpunar's opinion,[48] that ruling legitimised Netherlands legislation obligating two long-term resident TCNs to pass a civic integration examination on Dutch language proficiency and knowledge of Netherlands society, under pain of a fine. The only limit to the Netherlands' discretionary power concerned the amount of the fine, whose legitimacy was made conditional on its compatibility with the LTRD's objectives and effectiveness.[49] Such an outcome originated from a controversial understanding of the concept of integration, the realisation of which was presupposed in the 'forced' acquisition of knowledge of the host-state language and society.[50] At the same time, it was based on the questionable assumption that the lack of local language proficiency and knowledge of the host society automatically indicated the absence of integration, even though the immigrants concerned were both long-term residents and legally resided in the Netherlands for over 10 years. In support of these conjectures and to justify the different treatment reserved to TCNs vis-à-vis Member State nationals, the Court relied on a 'comparability test', according to which the denial of equal treatment did not result in unlawful discrimination since TCNs and Member State nationals were not in a comparable situation.[51] This issue of comparability was repurposed in wider terms in the *Alo & Osso* judgement, where two Syrian nationals, beneficiaries of subsidiary protection status in Germany, were given a different treatment compared to German citizens with respect to social assistance and residence conditions.[52] Such an exception to Articles 29(1) and 33 of the recast Qualification

[45] *Staatssecretaris van Justitie v Mangat Singh* [2012] CJEU Case C-502/10, ECLI:EU:C:2012:636 [45].

[46] In the case at issue, Netherlands legislation excluded an Indian spiritual leader who was granted an ordinary fixed period residence permit from the scope of the LTRD on the basis of Article 3(2)(e). However, the CJEU clarified that Article 3(2)(e) LTRD covers only situations in which the residence is necessarily of a temporary nature, such as those of au pairs, seasonal workers, or posted workers. Consequently, it included spiritual leaders, ministers of religion, artists, athletes, social workers, researchers, and other TCNs in similar situations within the directive's scope.

[47] *P and S v Commissie Sociale Zekerheid Breda and College van Burgemeester en Wethouders van de gemeente Amstelveen* [2015] CJEU Case C-579/13, ECLI:EU:C:2015:369.

[48] *P and S v Commissie Sociale Zekerheid Breda and College van Burgemeester en Wethouders van de gemeente Amstelveen, Opinion of Advocate General Szpunar* [2015] CJEU Case C-579/13, ECLI:EU:C:2015:39.

[49] *P and S v. Commissie Sociale Zekerheid Breda and College van Burgemeester en Wethouders van de gemeente Amstelveen* (n 47) paras 50–54.

[50] Ibid 47–48.

[51] Ibid 41–43. Thym (n 19) 93 and 104; de Vries (n 24) 279–282.

[52] *Kreis Warendorf v Ibrahim Alo and Amira Osso v and Region Hannover* [2016] CJEU Joined Cases C-443/14 and C-444/14, ECLI:EU:C:2016:127 [52–53].

Directive 2011/95/EU,[53] which prescribe equal treatment as regards access to social assistance and free movement, was motivated on grounds of the immigrants' non-comparable situation with regard to integration purposes.[54]

Unlike most of the Court of Justice's rulings on national restrictions to the TCNs' right to family reunification and long-term residence status, those concerning the legitimacy of civic integration tests, while presuming the ability of such measures to facilitate integration, were devoid of any discussion on human rights.[55] The Court's reluctance to build the concept of integration upon equal treatment between immigrants and EU citizens clearly indicates its propensity for an assimilationist — rather than a human rights-based — approach. From its viewpoint, the acquisition of basic knowledge of the host state's language and society is considered as the necessary condition for proving to be sufficiently 'integrated' to deserve the rights of family reunification and those following the acquisition of the long-term residence status. In essence, the European judiciary did no more than follow the same questionable rationale adopted by the EU legislator in the drafting of the FRD and LTRD,[56] and it even extended the latter's reach to legitimise pre-entry integration tests. More generally, this rationale, which requires immigrants to 'integrate into' the receiving society, appears intrinsically incompatible with the very idea of pluralism for it presupposes that the immigrants need to subject themselves to the norms and standards of a leading culture (that of the receiving society).[57] While failing to recognise that the immigrants, once arrived, constitute an integral part of the same society,[58] this line of reasoning implicitly considers the immigrants as 'hierarchically inferior' in terms of social standing in comparison to the members of the receiving country (the 'natives'). In fact, only the immigrants are required to undergo an integration process with a view to becoming 'well-integrated' in accordance with a social standard defined by the 'natives', which in turn are dispensed from any integration issue.[59] And even after achieving this status they would still remain at a lower social standing

[53] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (n 9).

[54] More specifically, the residence conditions for TCNs beneficiaries of subsidiary protection implying such a difference in treatment were driven by the purpose of German law to avoid potential social tensions arising in the event of concentration of welfare-dependent immigrants in certain geographic areas, which was supposed to have negative consequences in terms of integration. *Kreis Warendorf v. Ibrahim Alo and Amira Osso v and Region Hannover* (n 52) paras 54 and 58.

[55] Thym (n 19) 100–101 and 110; Clíodhna Murphy, 'Membership without Naturalisation? The Limits of European Court of Human Rights Case Law on Residence Security and Equal Treatment' in Daniel Thym (ed), *Questioning EU Citizenship: Judges and the Limits of Free Movement and Solidarity in the EU* (Hart Publishing 2017) 293.

[56] The rationale underpinning the FRD and LTRD has been analysed in detail by the author in Bottero (n 2) 529–535.

[57] Fekete (n 3) 11; Rytter (n 3) 681–684.

[58] Schinkel, *Imagined Societies a Critique of Immigrant Integration in Western Europe* (n 3) 2; Korteweg (n 3) 428–429 and 439.

[59] Schinkel, *Imagined Societies a Critique of Immigrant Integration in Western Europe* (n 3) 3 and 103; Schinkel, 'Against "Immigrant Integration": For an End to Neocolonial Knowledge Production' (n 3) 4–5; Klarenbeek (n 3) 910.

vis-à-vis the 'natives', which are never judged in light of their degree of integration.[60] This paradigm of integration is not only inconsistent with a pluralist notion of integration but also manifestly discriminatory, for it fails to place immigrants and members of the receiving country on an equal footing.

European Court of Human Rights

The jurisprudence of the ECtHR, despite not having directly binding force within the EU legal framework, is endowed with authoritative power on all EU Member States by virtue of the latter's accession to the ECHR.[61] This widely recognised authority has had a significant influence on the CJEU which, on several occasions, referred to the case law of the Strasbourg Court as a major source of human rights law.[62] In this respect, the field of integration was no exception. The areas in which the ECtHR focused its interpretative activity on the concept of integration concerned the respect of Article 8 ECHR on the right to private and family life in entry and expulsion cases and of Article 14 ECHR on the prohibition of discrimination.

Entry in the Host State

The original approach of the ECtHR with regard to the admission of TCNs in the host state for the purpose of family reunification (Article 8 ECHR), developed since its 1985 landmark decision in *Abdulaziz*,[63] entailed the application of the so-called elsewhere test.[64] In the case at issue, whereby the UK denied reunification of lawfully and permanently resident non-national spouses with their husbands, the Court considered whether the applicants could enjoy their right to family life elsewhere, namely, in their countries of origin. Given the absence of any real obstacles to do so, the ECtHR found no violation of Article 8 ECHR

[60] Rytter (n 3) 687; Klarenbeek (n 3) 907.

[61] It is recalled that, while all EU Member States are already parties to the ECHR, the EU has not acceded yet despite the legal obligation contained in Article 6(2) TEU. Nonetheless, by virtue of Article 6(3) TEU, the EU is bound to uphold the fundamental rights guaranteed by the ECHR as general principles of EU law.

[62] Sionaidh Douglas-Scott, 'A Tale of Two Courts: Luxembourg, Strasbourg and the Growing European Human Rights Acquis' (2006) 43 Common Market Law Review 629; Daniel Thym, 'Residence as De Facto Citizenship? Protection of Long-Term Residence under Article 8 ECHR' in Ruth Rubio-Marín (ed), *Human Rights and Immigration* (Oxford University Press 2014) 127.

[63] *Abdulaziz, Cabales and Balkandali v The United Kingdom* [1985] ECtHR Applications no. 9214/80; 9473/81; 9474/81.

[64] Georgios Milios, 'The Immigrants' and Refugees' Right to "Family Life": How Relevant Are the Principles Applied by the European Court of Human Rights?' (2018) 25 International Journal on Minority and Group Rights 401, 412–413; Sergio Carrera and Zvezda Vankova, 'Human Rights Aspects of Immigrant and Refugee Integration Policies: A Comparative Assessment in Selected Council of Europe Member States' (Council of Europe Issue Paper 2019) 10.

taken alone, although it eventually stated the violation of Article 8 ECHR in conjunction with Article 14 ECHR on the grounds of sexual discrimination. While reaffirming the contracting states' sovereign power to control the entry of TCNs into their territory, the Court further specified the content of Article 8 ECHR as a source of 'positive obligations' on the states themselves to ensure the 'effective "respect" for family life'.[65] Yet, it did not mention the existence of any direct right to family reunification in favour of the applicants. More than a decade later, the same approach was followed in cases *Gül* and *Ahmut*, where the ECtHR did not find any violation of Article 8 ECHR in the refusals by Switzerland and the Netherlands to grant reunification of Turkish and Moroccan children with their parents.[66] In those decisions, the judges in Strasbourg took into account the already high degree of cultural and linguistic integration of the children concerned in their home country.[67]

In the following years, the 'elsewhere approach' had progressively given way to an assessment of whether granting family reunification was 'the most adequate means' to develop family life.[68] Such an overturning originated from the *Şen* judgement of 2001, in which the refusal by the Netherlands authorities to admit a 9-year old Turkish girl for family reunification with her parents and siblings was deemed in contrast with Article 8 ECHR.[69] While considering the child's cultural and linguistic integration in Turkey, the Court marked her young age and degree of dependence on her parents and also that her two brothers were deeply 'integrated' in the Netherlands society, where they were born, grew up, and went to school. In light of the particular circumstances of the case, which prevented the relocation of the entire family in Turkey, it concluded that the admission of the girl into the Netherlands was 'the most adequate means' to develop family life with her parents.[70] A similar approach was adopted in *Tuquabo-Tekle*, where the ECtHR imposed a positive obligation on the Netherlands to allow the entry of an Eritrean 15-year-old child for reunification with her mother, stepfather, and siblings.[71] In turn, in its 2013 decision in *Berisha*, the Court found no violation in the Swiss authorities' rejection of the request for family reunification of three

[65] Nonetheless, the ECtHR clarified that Article 8 ECHR does not envisage a general obligation on the contracting states to respect the choice by married couples as to where to reside and settle. *Abdulaziz, Cabales and Balkandali v. The United Kingdom* (n 63) paras 67–68.

[66] *Gül v Switzerland* [1996] ECtHR Application no. 23218/94; *Ahmut v The Netherlands* [1996] ECtHR Application no. 21702/93.

[67] *Gül v. Switzerland* (n 66) para 42; *Ahmut v. The Netherlands* (n 66) para 69. Incidentally, the ECtHR rejected any application of the 'elsewhere approach' in cases involving refugees, where it emphasised the latter's intrinsic vulnerable position and the 'insurmountable obstacles' they would face in establishing family life in their country of origin. *Mengesha Kimfe v Switzerland* [2010] ECtHR Application No. 24404/05; *Tanda-Muzinga v France* [2014] ECtHR Application no. 2260/10; *Mugenzi v France* [2014] ECtHR Application no. 52701/09.

[68] Puttick and Carlitz (n 21) 280; Cathryn Costello, Kees Groenendijk and Louise Halleskov Storgaard, 'Realising the Right to Family Reunification of Refugees in Europe' (Council of Europe Issue Paper 2017) 21; Milios (n 64) 415–416.

[69] *Şen v The Netherlands* [2001] ECtHR Application no. 31465/96.

[70] Ibid 37–40.

[71] *Tuquabo-Tekle and Others v The Netherlands* [2005] ECtHR Application no. 60665/00.

Kosovar children on account of the latter's social and linguistic integration in their home country.[72]

When deciding cases involving the children's right to family life, the ECtHR has recently given increasing relevance to the 'best interests of child' principle.[73] This trend resulting from the Grand Chamber's decisions in *Neulinger and Shuruk* and *Jeunesse*,[74] and from the rulings dealing with refugees in *Mugenzi* and *Tanda-Muzinga*,[75] further restricted the contracting states' margin of appreciation in matters relating to the entry and residence of immigrants. The judgement in *Jeunesse* is particularly important as for the first time a breach of Article 8 ECHR was recognised in a case concerning family reunification of a spouse. In reaching this conclusion, the Grand Chamber stressed that the Netherlands' rejection of a Surinamese national's residence permit application failed to take due account of the 'practicality, feasibility and proportionality' of her children's relocation to Suriname, given their integration in the country where they were born, raised, and educated.[76]

Finally, the importance of family reunification in facilitating integration and preserving social cohesion within the host society was reaffirmed by the Grand Chamber in its decision of 9 July 2021 in *M.A. v. Denmark*.[77] On that occasion, the Danish authorities' refusal to grant family reunification to a Syrian refugee beneficiary of temporary protection with his wife, for non-compliance with section 7(3) of the Danish Aliens Act imposing a 3-year waiting period before initiating the application, was deemed contrary to Article 8 ECHR. The Court ruled against the absence of any individual assessment of the circumstances of the persons concerned and the lack of balance between the interests of the applicant in being reunited with his wife as soon as possible and those of the Danish State of immigration control and ensuring effective integration.[78]

[72] *Berisha v Switzerland* [2013] ECtHR Application no. 948/12. Inter alia, the ECtHR considered the children's 'good integration' in Switzerland as less important and took account of the not irreproachable conduct of the applicants.

[73] This principle has assumed a rather ambiguous meaning in the ECtHR's jurisprudence, as sometimes the best interest of the child is to remain in their homelands, while in other cases, it is to be reunited with their family members in the new host state.

[74] *Neulinger and Shuruk v Switzerland* [2010] ECtHR Application no. 41615/07; *Jeunesse v The Netherlands* [2014] ECtHR Application no. 12738/10.

[75] *Mugenzi v. France* (n 67); *Tanda-Muzinga v. France* (n 67).

[76] *Jeunesse v. The Netherlands* (n 74) para 120. Notably, in defining the scope of the human right to respect for family life in such a way as to prohibit the refusal of a Contracting State to grant a residence permit, the ECtHR referred to the CJEU decision in *Murat Dereci and Others v Bundesministerium für Inneres* [2011] CJEU Case C-256/11, ECLI:EU:C:2011:734. *Jeunesse v. The Netherlands* (n 74) para 111. Considerations of the 'best interests of child' guided also the Court in firmly condemning the detention of children in cases *AB and Others v France* [2016] ECtHR Application no. 11593/12; *RK and Others v France* [2016] ECtHR Application no. 68264/14; *Bistieva and Others v Poland* [2018] ECtHR Application no. 75157/14.

[77] *MA v Denmark* [2021] ECtHR Application no. 6697/18 [165].

[78] Nonetheless, the ECtHR was careful not to question the rationale of a 2-year waiting period such as that accorded by Article 8(1) FRD. Ibid 192, 194–195. Thomas Gammeltoft-Hansen, Mikael Rask Madsen and Henrik Palmer Olsen, 'The Limits of Indirect Deterrence of Asylum Seekers' (*Verfassungsblog*, 12 July 2021) https://verfassungsblog.de/the-limits-of-indirect-deterrence-of-asylum-seekers/ Accessed 20 Jan 2022; Nikolas Feith Tan and Jens Vedsted-Hansen, 'How Long Is Too Long? The Limits of Restrictions on Family Reunification for Temporary Protection Holders' (*EU Immigration and Asylum Law and Policy*, 27 September 2021) https://eumigrationlawblog.eu/how-long-is-too-long-the-limits-of-restrictions-on-family-reunification-for-temporary-protection-holders/ Accessed 24 Feb 2022

Expulsion from the Host State

The concept of integration has assumed a greater significance in terms of protection against expulsion, given that any decision to expel those TCNs who are considered by the Court as 'well-integrated' from a contracting state is likely to interfere with their private or family life.[79] This argument was raised for the first time in the *Berrehab* case of 1988, where the ECtHR declared the expulsion of a Moroccan national who lived for several years in the Netherlands, where he also started a family, contrary to Article 8 ECHR for hindering his family life with his young daughter.[80] Since then, the Court in Strasbourg increasingly protected TCNs with long-term residence status, and especially the so-called second-generation immigrants, in view of their high level of integration in the host country. In practice, it imposed 'negative obligations' on host states under Article 8 ECHR not to expel 'well-integrated' immigrants.

When assessing the compatibility under Article 8 ECHR of expulsion measures against TCNs convicted of criminal offences, however, the Court opted for a much criticised case-by-case approach.[81] As a result, in *Moustaquim*, the deportation of a Moroccan national from Belgium after several criminal offences was judged in contrast with the applicant's right to respect for family life.[82] The Court took into account the latter's great attachment to the host country, where he had spent all of his life, received his schooling, and lived with his parents and siblings. Similarly, deep integration into the host state's social fabric motivated the decisions against deportation in *Beldjoudi* and *Mehemi*, where the Algerian applicants, convicted criminals, did not have any links with their country of origin, included *in primis* knowledge of the language, apart from nationality.[83] In turn, in a series of cases, the ECtHR found no violation of Article 8 ECHR despite the applicants' high degree of integration in the host state and gave prominence to the seriousness of the offences committed. It did so whenever it recognised the existence of substantial ties with the country of origin, such as the retention of certain family relations, knowledge of the language, and the regular return for holidays or other reasons, and when the applicants did not manifest a wish to acquire the nationality of the host state.[84]

[79] Hélène Lambert, 'The European Court of Human Rights and the Right of Refugees and Other Persons in Need of Protection to Family Reunion' (1999) 11 International Journal of Refugee Law 427, 441; Murphy, 'The Concept of Integration in the Jurisprudence of the European Court of Human Rights' (n 8) 24; Puttick and Carlitz (n 21) 283–284; Thym (n 62) 112–113; Murphy, 'Membership without Naturalisation? The Limits of European Court of Human Rights Case Law on Residence Security and Equal Treatment' (n 55) 288; Milios (n 64) 417.

[80] *Berrehab v the Netherlands* [1988] ECtHR Application no. 10730/84.

[81] In his dissenting opinion in *Boughanemi*, Judge Martens defined the Court's approach as a 'lottery' and a 'source of embarrassment' for its unpredictability. *Boughanemi v France* [1996] ECtHR Application no. 22070/93. Charlotte Steinorth, 'Expulsion of Long-Term Immigrants and the Right to Respect for Private and Family Life' (2008) 8 Human Rights Law Review 185, 186–187; Murphy, 'The Concept of Integration in the Jurisprudence of the European Court of Human Rights' (n 8) 27.

[82] *Moustaquim v Belgium* [1991] ECtHR Application no. 12313/86.

[83] *Beldjoudi v France* [1992] ECtHR Application no. 12083/86; *Mehemi v France* [1997] ECtHR Application no. 25017/94. The ECtHR reached the same conclusion in *Nasri v France* [1995] ECtHR Application no. 19465/92; *Ezzouhdi v France* [2001] ECtHR Application no. 47160/99.

[84] *Boughanemi v France* (n 81); *C v Belgium* [1996] ECtHR Application no. 21794/93; *Bouchelkia v France* [1997] ECtHR Application no. 23078/93; *El Boujaïdi v France* [1997] ECtHR Application no. 25613/94; *Boujlifa v France* [1997] ECtHR Application no. 25404/94; *Dalia v France* [1998] ECtHR Application no. 26102/95; *Baghli v France* [1999] ECtHR Application no. 34374/97.

Since its 2001 judgement in *Boultif*, the ECtHR developed a list of criteria to be taken into account in expulsion cases when assessing, inter alia, the applicants' degree of integration in terms of social, cultural, and linguistic ties with both their home and host country. These criteria include the duration of the applicants' stay in the host country, their family situation, and the difficulties for spouses to relocate in their country of origin, along with the nature and seriousness of the offence, the time elapsed since the commission of the offence, and the applicants' conduct in the meantime.[85] The case at issue concerned the Swiss authorities' refusal to renew the residence permit of an Algerian national married to a Swiss citizen. The Court had to resolve the issue of finding a fair balance between the applicant's right to respect for his family life and the maintenance of public order.[86] By applying once again the 'elsewhere test', it eventually found a violation of Article 8 ECHR in the fact that the applicant's wife could not be expected to relocate in a country with which she had no ties.[87]

A few years later, the landmark decision of the Grand Chamber in *Üner* added two further criteria to be considered when assessing the proportionality of an expulsion measure, namely, the best interest of the child and 'the solidity of social, cultural, and family ties' with both the home and host countries.[88] The Court put strong emphasis on the immigrants' social integration into the host society, granting protection under Article 8 ECHR also to their 'private life' lato sensu in the host country, regardless of the existence of a family life.[89] Nonetheless, after clarifying that Article 8 ECHR does not entitle long-term immigrants of any 'absolute right not to be expelled',[90] it eventually found no violation in the expulsion (along with a 10-year exclusion order) of a long-term Turkish immigrant from the Netherlands, where he lived since the age of 12 and where he had also founded a family with a wife and two children all of Netherlands nationality. In their balancing exercise, the judges in Strasbourg gave more weight to the seriousness of the criminal offences committed.[91]

In analogous cases, the ECtHR attached increasing relevance to the immigrants' integration in receiving societies when deciding on the possibility to provide protection under Article 8 ECHR, by taking into consideration

[85] *Boultif v Switzerland* [2001] ECtHR Application no. 54273/00 [48].

[86] Ibid 47.

[87] On the basis of the *Boultif* criteria, in its decision in *Amrollahi*, the ECtHR deemed the expulsion from Denmark of an Iranian national for his desertion from the army incompatible with Article 8 ECHR. The same result followed in *Keles* with regard to a 'fully integrated' Turkish national in Germany. In turn, in *Aoulmi*, the seriousness of the offences committed led the ECtHR to legitimate the expulsion measure against a 'well-integrated' Algerian national in France. *Amrollahi v Denmark* [2002] ECtHR Application no. 56811/00; *Keles v Germany* [2005] ECtHR Application no. 32231/02; *Aoulmi v France* [2006] ECtHR Application no. 50278/99.

[88] *Üner v The Netherlands* [2006] ECtHR Application no. 46410/99 [58].

[89] Ibid 59.

[90] Ibid 55.

[91] The same approach in favour of deportation of long-term immigrants was followed in *Omoregie*, involving a Nigerian father of a young child, in *Balogun*, involving a Nigerian national who lived in the UK since the age of three, and in *Munir Johana*, involving an Iraqi national who lived in Denmark since the age of four. *Darren Omoregie and Others v Norway* [2008] ECtHR Application no. 265/07; *Balogun v The United Kingdom* [2012] ECtHR Application no. 60286/09; *Munir Johana v Denmark* [2021] ECtHR Application no. 56803/18.

additional factors, such as inclusion in the labour market, education, and linguistic knowledge. In *Slivenko*, to safeguard the applicants' 'private life', the Grand Chamber ruled against the expulsion of a Russian family from Latvia by reason of their established 'network of personal, social, and economic relations', including employment and education.[92] Similarly, in *Radovanovic*, the imposition by the Austrian authorities of a residence prohibition of unlimited duration was deemed disproportionate in light of the applicant's high degree of integration in Austria, where he lived for several years with his family and received his schooling.[93] In *Maslov*, the applicant's language and education integration in the host country, in combination with the fact that he could not speak Bulgarian (his home-country language), led the Court to acknowledge that his 'principal social, cultural, and family ties' were in Austria and hence that the expulsion measure was in breach of Article 8 ECHR.[94] The ECtHR ruled in favour of the 'well-integrated' applicants also in cases *Kolonja*, *Paposhvili*, and *Abdi*, considering inter alia the moderate severity of the offences committed.[95] In the recent judgement in *Savran*, even the serious gravity of the applicant's criminal offence was not retained sufficient to justify an expulsion and permanent exclusion order, in view of the immigrant's ties with the host country and troubled medical condition.[96]

Conversely, in several other decisions, the ECtHR looked not only at different aspects of integration in the host country but also at the existence of any link with the country of origin, with a view to discerning possible reasons that would make appear the immigrants' relocation materially feasible. By doing so, its balancing assessment leaned towards the states' interests of public order and immigration control rather than the respect of the applicants' private and family life. Thus, in *Kaya*, the absence of labour market integration, along with the presumption that the applicant could speak the language of his home country, was decisive in legitimising the deportation of a Turkish national from Germany following a criminal conviction.[97] In light of the persistent ties with the country of origin, oftentimes the Court did not even consider the applicants' education and labour market inclusion,[98] or cultural and linguistic integration,[99] sufficient to grant them protection

[92] *Slivenko v Latvia* [2003] ECtHR Application no. 48321/99 [96].

[93] *Radovanovic v Austria* [2004] ECtHR Application no. 42703/98.

[94] *Maslov v Austria* [2008] ECtHR Application no. 1638/03 96.

[95] *Kolonja v Greece* [2016] ECtHR Application no. 49441/12; *Paposhvili v Belgium* [2016] ECtHR Application no. 41738/10; *Abdi v Denmark* [2022] ECtHR Application no. 41643/19.

[96] *Savran v Denmark* [2021] ECtHR Application no. 57467/15.

[97] *Kaya v Germany* [2007] ECtHR Application no. 31753/02. Given the ascertained 'low degree of integration' in the UK, despite 22 years of residence, the deportation measure against a Nigerian national was also confirmed in *Ndidi v The United Kingdom* [2017] ECtHR Application no. 41215/14.

[98] *Sisojeva and Others v Latvia* [2007] ECtHR Application no. 60654/00; *Sarközi and Mahran v Austria* [2015] ECtHR Application no. 27945/10.

[99] *Antwi and Others v Norway* [2012] ECtHR Application no. 26940/10; *Kissiwa Koffi v Switzerland* [2012] ECtHR Application no. 38005/07; *Krasniqi v Austria* [2017] ECtHR Application no. 41697/12.

under Article 8 ECHR. Notably, in *Bajsultanov*,[100] *Salem*,[101] *Külekci*,[102] and *Khan v. Denmark*,[103] even the expulsion decisions against long-term or so-called second-generation immigrants were not overruled on account of their supposed poor integration and possibility to return to their home country.[104]

On some occasions, paradoxically, despite recognising the immigrants' integration into the host society under all points of view, the Court found no issue as regards their relocation with all their family in their country of origin. In *Onur*, the expulsion of a Turkish national resident in the UK for 19 years, with British partner and three children, no relevant links with Turkey, and several health problems, was deemed proportionate and 'necessary in a democratic society' on account of the violent offences committed by the applicant.[105] The case *Trabelsi*, involving a Tunisian man born and raised in Germany with his family, was also decided in favour of the expulsion measure in view of the applicant's serious criminal convictions and the persistent links with his country of nationality.[106]

All the above-mentioned cases of expulsion are emblematic of the arbitrary and unpredictable but also problematic approach adopted by the ECtHR. More specifically, the presumption, shared with the CJEU, that the acquisition of knowledge of the host state language and society demonstrates a high degree of integration attests the Court's controversial understanding of the concept of integration leaning towards an assimilationist model. Particularly, the idea that integration means having stronger social, cultural, and family ties with the host country than with the home country basically implies that immigrants have to renounce their language, cultural identity, family, and social relationships in their home country in order to be acknowledged as 'well-integrated' and benefit from the protection of Article 8 ECHR. This emphasis on granting rights

[100] The case concerned the expulsion from Austria of a Russian husband and father of two children for his lack of German language competence, employment, and significant social or cultural ties to the host state. *Bajsultanov v Austria* [2012] ECtHR Application no. 54131/10.

[101] In this case, the Court considered the absence of labour integration and good knowledge of the host state's language. *Salem v Denmark* [2016] ECtHR Application no. 77036/11.

[102] The case involved a Turkish young man who was born in Austria and committed several criminal offences. *Külekci v Austria* [2017] ECtHR Application no. 30441/09.

[103] The case involved a Pakistani national, born and raised in Denmark, who committed serious violent offences. *Khan v Denmark* [2021] ECtHR Application no. 26957/19.

[104] The cases *AW Khan* and *AH Khan* concerning two Pakistani brothers expelled from the UK are particularly interesting as they concluded with opposite outcomes. In the first case, the Court found a violation of Article 8 ECHR, since AW Khan had strong ties with the UK where he entered at a very young age, he did not have continuing ties to Pakistan, and he did not reoffended after his release from prison. In the second case, AH Khan, unlike his younger brother, was 'less integrated' into British society due to his marriage in Pakistan, long criminal record, and limited contact with his family in the UK; therefore, his deportation was deemed legitimate. *AW Khan v The United Kingdom* [2010] ECtHR Application no. 47486/06; *AH Khan v The United Kingdom* [2011] ECtHR Application no. 6222/10. For a critique of the ECtHR's approach in these two cases, see Murphy, 'Membership without Naturalisation? The Limits of European Court of Human Rights Case Law on Residence Security and Equal Treatment' (n 55) 297–298.

[105] *Onur v the United Kingdom* [2009] ECtHR Application no. 27319/07 [62].

[106] *Trabelsi v Belgium* [2014] ECtHR Application no. 140/10.

— even fundamental rights — only to 'well-integrated' immigrants is built on a conception of integration as the immigrant's individual process of assimilation into the 'superior' cultural, civic, and social model of the receiving state. This paradigm is evidently misaligned with an idealistic view that conceives integration as a process of reciprocal adjustment between immigrants and members of the receiving country, placing all people on an equal footing and granting them a full package of fundamental rights. Furthermore, it testifies the Court's poor understanding of the reality whereby immigrants maintain multiple meaningful ties with different countries and should never be required to renounce any of those in order to fully enjoy their human rights to private and family life.[107] In particular, the ECtHR often fails to recognise all those not uncommon situations whereby long-term residents and so-called second-generation immigrants maintain their original nationality or some sort of tie with their country of origin. Admittedly, one cannot deny that even labelling those persons as 'immigrants' has in itself a discriminatory connotation, especially considering that they feel more at home in the receiving country than in theirs or their parents' country of origin.[108] Especially with regard to the so-called second-generation immigrants, this label is totally inappropriate given that these people are not 'immigrants' as such, as they have not immigrated at all.[109]

Prohibition of Discrimination

Besides focusing on possible violations of Article 8 ECHR, the Strasbourg Court's case law in the field of integration had particular regard to the anti-discrimination principle enshrined in Article 14 ECHR. Notably, the relevance of Article 14 ECHR in protecting integration prerogatives became evident in cases where discriminatory national rules or practices had the effect of hindering family reunification and the right to education.

In its landmark decision of 24 May 2016 in *Biao v. Denmark*, the Grand Chamber dealt with the complicated relationship between the prohibition of discrimination and the integration of immigrants in the receiving countries.[110] The case at issue concerned the Danish authorities' refusal to grant a residence permit to a Ghanaian citizen for family reunification with her Danish husband born in Ghana and with Togolese origins. This rejection followed from the fact that the applicants did not meet the requirements, imposed by the Danish Aliens Act, of having stronger aggregate ties to Denmark than to their country of origin (so-called attachment requirement) or holding Danish citizenship for at least 28 years (so-called 28-year rule). According to the Danish legislator, those requirements were both designed to realise a more integrated society by selecting those naturalised

[107] Murphy, 'The Concept of Integration in the Jurisprudence of the European Court of Human Rights' (n 8) 34–35; Ruth Rubio-Marín, 'Integration in Immigrant Europe: Human Rights at a Crossroads' in Ruth Rubio-Marín (ed), *Human Rights and Immigration* (Oxford University Press 2014) 100; Murphy, Gilmartin and Caulfield (n 8) 450.

[108] Korteweg (n 3) 432–434; Schinkel, 'Against "Immigrant Integration": For an End to Neocolonial Knowledge Production' (n 3) 4.

[109] Schinkel, *Imagined Societies a Critique of Immigrant Integration in Western Europe* (n 3) 104.

[110] *Biao v Denmark* [2016] ECtHR Application No. 38590/10.

citizens with strong ties to Denmark and hence with better integration prospects.[111] However, the judges in Strasbourg, while stigmatising those prejudiced assumptions, clarified that integration cannot be merely presumed from the length of residence or nationality and noted that Mr Biao was, indeed, successfully integrated into Danish society, since he had resided in Denmark for 11 years (2 of which as a Danish national), had a Danish son, Danish language proficiency, knowledge of Danish society, and self-sufficiency.[112] As a result, the Grand Chamber declared the Danish law indirectly discriminatory against Danish citizens of foreign ethnic or national origin and acknowledged the violation of Article 14 ECHR in conjunction with Article 8 ECHR.[113]

In a number of judgements, the ECtHR dealt also with the ability of the non-discrimination principle to protect the immigrants' prerogatives of social and educational integration. This issue emerged in a series of important cases concerning the difference in treatment between Roma and non-Roma children with respect to schooling arrangements, whereby the Court found a disproportionate prejudice to the Roma children's chances of integrating in the host society and hence discrimination against their right to education on account of their race or ethnic origin.[114] Similarly, in *Ponomaryovi*, the judges in Strasbourg recognised an unjustified detriment to the applicants' prospects of social and educational integration resulting from the

[111] Ibid 75–80.
[112] Ibid 125–126.
[113] Ultimately, the ECtHR did not admit the justification put forward by the Danish government for such an indirect discrimination. It did so by considering that, in accordance with established case law (in primis the ECtHR decision in *Gaygusuz*), a difference in treatment on the ground of nationality could only be motivated by 'very weighty reasons'. *Gaygusuz v Austria* [1996] ECtHR Application no. 17371/90 42; *Biao v. Denmark* (n 110) para 93. KM (Karin) de Vries, 'Rewriting Abdulaziz: The ECtHR Grand Chamber's Ruling in Biao v. Denmark' (2016) 18 European Journal of Migration and Law 467, 472–473 and 476; Mathias Möschel, 'The Strasbourg Court and Indirect Race Discrimination: Going Beyond the Education Domain: The Strasbourg Court and Indirect Race Discrimination' (2017) 80 The Modern Law Review 121; Fulvia Staiano, 'Racial Stereotypes in Family Reunification Law: The Case of Biao v. Denmark before the European Court of Human Rights' (*Centre for Criminal Justice and Human Rights*, 10 February 2017) https://blogs.ucc.ie/wordpress/ccjhr/2017/02/10/racial-stereotypes-family-reunification-law-case-biao-v-denmark-european-court-human-rights/ Accessed 8 Mar 2021; Costello, Groenendijk and Halleskov Storgaard (n 68) 23–24; Murphy, 'Membership without Naturalisation? The Limits of European Court of Human Rights Case Law on Residence Security and Equal Treatment' (n 55) 303; Carrera and Vankova (n 64) 11–12; Iulia Motoc and Razvan Proca, 'Family Life and Immigration—Developments in the Case-Law of the European Court of Human Rights and the Court of Justice of the European Union' [2019] SSRN Electronic Journal 13–14; de Waal (n 24) 69.
[114] In all these cases, the ECtHR found a violation of Article 14 ECHR in conjunction with Article 2 of Protocol No. 1 on the right to education. *DH and Others v the Czech Republic* [2007] ECtHR Application no. 57325/00; *Sampanis and Others v Greece* [2008] ECtHR Application no. 32526/05; *Oršuš and Others v Croatia* [2010] ECtHR Application no. 15766/03; *Sampani and Others v Greece* [2012] ECtHR Application no. 59608/09; *Horváth and Kiss v Hungary* [2013] ECtHR Application no. 11146/11; *Lavida and Others v Greece* [2013] ECtHR Application no. 7973/10. Sonia Morano-Foadi and Karin de Vries, 'The Equality Clauses in the EU Directives on Non-Discrimination and Migration/Asylum' in Sonia Morano-Foadi and Micaela Malena, *Integration for Third-Country Nationals in the European Union: The Equality Challenge* (Edward Elgar Publishing 2012) 33–34; Möschel (n 113) 121 and 124; Murphy, 'Membership without Naturalisation? The Limits of European Court of Human Rights Case Law on Residence Security and Equal Treatment' (n 55) 303; Carrera and Vankova (n 64) 12.

Bulgarian legislation, which required two Russian nationals to pay education fees on account of their nationality and immigration status.[115]

In the end, it is remarkable that, throughout all these cases in the framework Article 14 ECHR, the jurisprudence of the ECtHR has advanced a 'positive' conception of integration in terms of non-discrimination between immigrants and nationals of the host state in the enjoyment of family reunification and the right to education. This approach is expected to effectively foster a process of cultural, social, professional, and educational integration. Still, the underlying paradigm of integration appears rather controversial insofar as it merely concerns the immigrants and their efforts/duty to assimilate to the pre-established cultural, civic, and social model of the receiving country.

Conclusion

This analysis has shown that the European Courts have shaped and used the concept of integration as a criterion for granting individual rights and imposing state obligations. In this way, the CJEU and, even more so, the ECtHR effectively advanced a rights-based paradigm of integration. The CJEU acknowledged the individual right to family reunification for spouses and minor children and the subjective rights connected to the long-term residence status, along with the correspondent positive obligations of the Member States to that effect. In following a rights-based approach, it stressed the Member States' obligations stemming from the CFREU and the general principles of EU law. It also leaned towards a strict interpretation of the integration measures and conditions contained in the FRD and LTRD, in accordance with the principles of proportionality and *effet utile*. In a few occasions, it even recognised the utmost importance of naturalisation within the integration process. The ECtHR gradually broadened its interpretation of the right to private and family life enshrined in Article 8 ECHR by attaching increasing relevance to the immigrants' social, cultural, and linguistic integration in the receiving society. As a consequence, it came to recognise both positive obligations on the contracting states to authorise family reunification and negative obligations not to expel 'well-integrated' immigrants, especially in the event of long-term residence. The ECtHR further protected the immigrants' integration prerogatives by prohibiting discriminatory national rules or practices having the effect of hindering family reunification and the right to education for breach of Article 14 ECHR.

Notwithstanding the progress made, this article argues that there is still considerable room for improvement, especially with regard to the appropriateness of certain approaches followed by the European Courts when assessing the integration of immigrants in the host country and deciding on family reunification and expulsion cases. First, the rationale that requires immigrants to 'integrate into' the receiving society runs counter to the principle of equality between TCNs and EU citizens and appears intrinsically incompatible with the very idea of pluralism. This because it implicitly considers the immigrants at a lower social

[115] *Ponomaryovi v Bulgaria* [2011] ECtHR Application no. 5335/05.

standing vis-à-vis the 'natives' and assumes that they need to subject themselves to the norms and standards of a leading culture (that of the receiving society). The presumption that the 'forced' acquisition of knowledge of the host state language and society necessarily facilitates integration, or that integration means that immigrants have stronger social, cultural, and family ties with the host country than with their home country, attests the Courts' controversial understanding of the concept of integration and their propensity for an assimilationist — rather than a human rights-based — approach.

Second, the idea put forward by the CJEU and the ECtHR that the fundamental rights of family reunification and those following the acquisition of the long-term residence status, on the one hand, and the human rights of entry for family reunification and protection against expulsion and discrimination based on nationality, on the other hand, should be earned and deserved through a demanding integration process reinforces the paradigm of integration as an individual path that the immigrant has to undertake in order to be rewarded with fundamental and human rights. This approach inevitably places most of the integration efforts and burdens on the immigrants' side, disregarding the responsibility of the host states in this respect, as well as the possibility that other actors, also private, can partake in the integration process. At the same time, the increasing relevance given by the ECtHR to social integration did not go as far as to recognise actual immigrant rights to family reunification or against expulsion. As a result, the European Courts' approach implicitly devaluates and limits the scope of the rights, values, and principles enshrined in the CFREU and the ECHR, which are thereby deprived of their universal and unconditional character.

Third, the CJEU failed to recognise that integration requirements are deliberately designed to control immigration flows and intrinsically marked by a selective character. Those applicable before the entry into the receiving country do not facilitate the family reunification of all immigrants, but only of those who succeed in civic and language tests. In turn, integration measures and conditions applicable post-entry work as a filter for the unsuccessful TCNs by preventing their access to the EU right to family reunification or the long-term residence status. In practice, all these requirements operate as a tool of exclusion and discrimination against specific categories of immigrants, such as those coming from Muslim majority, African, and Middle Eastern countries, women, older persons, adults illiterate or with learning disabilities, and individuals belonging to poorer social classes, which are less socio-economically and culturally desirable.[116] Besides overlooking such effects, in legitimising both pre-entry and post-entry integration requirements, the Court missed the opportunity to foster a different narrative that disconnects the concept of integration (and of national integration measures and strategies) from

[116] Groenendijk, 'Pre-Departure Integration Strategies in the European Union' (n 14) 1; Moritz Jesse, 'Third-Country Nationals, Integration and Access to Employment and Occupation under EU Law' in Sonia Morano-Foadi and Micaela Malena (eds), *Integration for Third-Country Nationals in the European Union: The Equality Challenge* (Edward Elgar Publishing 2012) 148 and 165; Murphy, *Immigration, Integration and the Law* (n 21) 56–57; Carrera (n 8) 152–153; Ellermann and Goenaga (n 24) 98; Ganty (n 39) 191–192 and 199; Bottero (n 2) 534.

the states' interest in preserving their sovereignty over immigration and in regulating access to rights and social benefits.[117]

Fourth, the application by the ECtHR of the 'elsewhere test', involving an arbitrary evaluation of the immigrants' possibility to reintegrate into their country of nationality in order to grant them protection under Article 8 ECHR, is unable to grasp the reality of immigrants who are (according to the logic of the Court) 'well-integrated' but still maintain meaningful ties with their home country. This kind of concerns would be addressed, in turn, by placing more emphasis on the immigrants' connections to a state, in accordance with the so-called 'connections approach'.[118]

Fifth, when considering the wide margin of appreciation left to contracting states in matters relating to the entry and residence of TCNs, the balancing exercise of the Strasbourg Court was often puzzling and involved mainly considerations of a political nature. Still, it is difficult to understand the juridical grounds of a decision that balances the exercise of the fundamental rights to private and family life and the principle of best interest of the child against national interests of immigration control and public order.[119]

In conclusion, even in view of the European Courts' jurisprudence, the concept of integration still remains rather blurry and controversial. Admittedly, both the Courts have advanced a different paradigm geared towards the protection of the immigrants' fundamental and human rights. And arguably, they are endowed with the power to further extend the interpretation of the human rights enshrined in the CFREU and the ECHR. As emphasised by President of the ECtHR Robert Spano in his lecture on 2 December 2021 at the University of Copenhagen, to push forward this new narrative, it is essential to reflect on the binary relationship between rights of individuals and corresponding duties of the states.[120] In this sense, besides granting protection against expulsion, the right to private life could be interpreted as covering further aspects of social, civic, economic, and labour integration.[121] With regard to cases of expulsion of long-term and so-called second-generation immigrants convicted of criminal offences, the adequacy of such a drastic measure has to be questioned in light of the responsibility of the host state for the education and social involvement of those persons.[122] More broadly, the development of a narrative centred on the human rights of individuals would require a rethinking of the

[117] The need of separating the rules governing the allocation of residency and citizenship rights to immigrants from integration strategies is strongly advocated and further elaborated in de Waal (n 24) 122–133.

[118] Hugo Storey, 'The Right to Family Life and Immigration Case Law at Strasbourg' (1990) 39 International and Comparative Law Quarterly 328, 337–338. Cynthia S Anderfuhren-Wayne, 'Family Unity in Immigration and Refugee Matters: United States and European Approaches' (1996) 8 International Journal of Refugee Law 347, 360–362.

[119] Similar concerns have been expressed by Steinorth (n 81) 195; Murphy, 'The Concept of Integration in the Jurisprudence of the European Court of Human Rights' (n 8) 42.

[120] Robert Ragnar Spano, 'What Role for Human Duties, Obligations and Responsibilities in Our European Human Rights Discourse?' (University of Copenhagen, Faculty of Law, 2 December 2021).

[121] Thym (n 62) 139.

[122] This argument was put forward in 1995 by Judge Morenilla when expressing his partial dissent in *Nasri v. France* (n 83). Murphy, 'The Concept of Integration in the Jurisprudence of the European Court of Human Rights' (n 8) 35.

well-established international and EU law principle that endows states with the sovereign right to regulate the entry of immigrants into their territory.[123] Until then, and until the notion of integration remains intertwined with that of assimilation, there is still a long way to go before the EU concept of integration will support the realisation of a more pluralist society inspired by the principles of equality, non-discrimination, and respect of fundamental rights.

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[123] This principle, enshrined in Article 79(5) TFEU, has been firmly recognised by the ECtHR since *Abdulaziz, Cabales and Balkandali v. The United Kingdom* (n 63) para 67. Thomas Spijkerboer, 'International Migration Law and Coloniality' (*Verfassungsblog*, 28 January 2022) https://verfassungsblog.de/international-migration-law-and-coloniality/ Accessed 30 Sept 2022.

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