Towards a Contextual Conception of Social Integration in EU Immigration Law. Comments on *P & S* and *K & A*

Daniel Thym
Department of Public, European and International Law, Faculty of Law, University of Konstanz, Universitätsstraße 10, 78464 Konstanz, Germany
Research Centre for Immigration & Asylum Law, University of Konstanz, Universitätsstraße 10, 78464 Konstanz, Germany
daniel@thym.de

Abstract

Integration policy instruments disclose how European societies define themselves in response to migration. Pre-departure civic integration tests are emblematic of a new focus on social cohesion and have been a bone of contention in political and academic circles. That is why the ECJ's long-awaited verdicts on Dutch integration requirements for spouses and long-term residents are a milestone in the construction of an EU immigration policy. This contribution critically analyses the rationale and implications of the *P & S* and *K & A* rulings at different levels starting with doctrinal ambiguities on the part of judges when interpreting secondary legislation. On this basis, it relates the outcome of both cases to the broader constitutional context in terms of human rights, the doctrine of individual statutory rights and non-discrimination guarantees – together with a contextual outlook on factors influencing the reorientation of integration policies.

Keywords

Court of Justice integration – European Union – family reunion – human rights – immigration law – long-term residents – third-country nationals

1 The Significance of Social Integration

Integration policies are a controversial topic which have caused heated debates in many Member States and academic circles in recent years. This widespread attention is no coincidence, since corresponding rules reflect changing self-perceptions of European societies in response to cross-border movements. Integration measures, such as the famous pre-departure language requirements for family reunion, are rightly perceived – both by their critics and their opponents – as symbols for the broader orientation of national and European migration policies. Their impact transcends the individual cases to which they apply: they are hallmarks of how 'we' define ourselves in an age of migration. That is why the two judgments on integration measures in the context of family reunion and for long-term residents discussed below are significant. They demonstrate how the Court approaches questions of social integration in EU migration law.

At an intermediate level of abstraction, it is possible to distil two potentially opposing approaches to migrant integration, the first one concentrating on equal rights as an end in itself irrespective of the actual degree of social integration, while the second approach focuses on social interaction on the ground regarding questions such as knowledge of the local language, civic tests, labour market participation or other criteria. Debates on migrant integration at the European level can be described, by and large, as a struggle between the rights-focused standpoint and the broader social or cultural outlook,[1] which came to the fore during negotiations on the Family Reunion Directive and the Long-Term Residents Directive. It is this second, contextual approach that has now been embraced by the ECJ.

The argument will begin by presenting the Court's core findings in *P & S* and *K & A* (Section 2). On this basis, this contribution will discuss intricate doctrinal issues raised by both judgments together with practical issues concerning

1 See K. Groenendijk, 'Legal Concepts of Integration in EU Migration Law', 6 *European Journal of Migration and Law* (2004) 111–126; and S. Carrera (2009), *In Search of the Perfect Citizen? The intersection between integration, immigration and nationality in the EU*, Leiden: Martinus Nijhoff, chapter 3.

proportionality and fees (Section 3). It will continue with an explanation, at an intermediate level of abstraction, why the outcome of both cases reflects the broader constitutional setup of EU immigration policy which, arguably, is often neglected by academic analyses (Section 4). The inherent openness of the integration concept brings us to a contextual analysis of the Court's position in relation to broader political debates about social integration, which can be conceived as reflecting a more inclusive approach to immigration policy (Section 5).

2 Two Judgments after Years of Debate

It took the ECJ more than 10 years to resolve the controversial question how national immigration measures are to be assessed in the context of the Long-Term Residents Directive[2] and the Family Reunion Directive[3] after two previous references had been declared inadmissible, since applicants were granted family reunion.[4] Although *P & S*[5] and *K & A*[6] concerned Dutch rules, the significance of both judgments stretches far beyond the Netherlands. The Court's conclusion applies directly to all other Member States with integration requirements and is emblematic of the state of EU immigration policy more generally. In retrospect, the rather peculiar *P & S* case established the decisive line of argument taken up in *K & A* on the central question of pre-departure language requirements.

2.1 *Long-Term Residents: P & S*

The domestic scenario which gave rise to the *P & S* case was rather specific, since the Netherlands had introduced a language requirement for acquiring long-term residence status in 2007 which did not apply immediately to those already residing in the country who, instead, could be obliged to learn the local language after acquiring the status. On the basis of this interim arrangement,

2 Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16/44), hereinafter 'Long-Term Residents Directive' or 'Directive 2003/109/EC'.

3 Directive 2003/86/EC on the right to family reunification (OJ 2003 L 251/12), hereinafter 'Family Reunion Directive' or 'Directive 2003/86/EC'.

4 Cf., the German reference in ECJ, *Ayalti*, C-513/12, EU:C:2013:210 and the Dutch reference in ECJ, *Imran*, C-155/11 PPU, EU:C:2011:387.

5 See ECJ, *P & S*, C-579/13, EU:C:2015:369.

6 See ECJ, *K & A*, C-153/14, EU:C:2015:453.

both P and S, who live in different cities and do not seem to know each other, acquired long-term resident status in 2007 and 2008 respectively without having passed a language test and were obliged to learn the language. Non-compliance with this collateral duty did not affect long-term resident status, but could be sanctioned through a system of fines of up to EUR 1000 which would have to be paid in addition to registration fees of EUR 230 for tests. Both P and S were compelled by domestic authorities to pass the integration test within a period of 5 to 6 years after having acquired long-term resident status by 30 June 2013 – an obligation they challenged in domestic courts. The *Centrale Raad van Beroep* (Higher Social Security Court) referred the dispute to the ECJ.

In his opinion, Advocate General Szpunar presented an almost ideal-typical vision of the equality-based outlook on migrant integration mentioned at the outset citing core arguments upon which proponents of this approach usually build their argument: he reiterated the political promise, made by the 1999 Tampere European Council, of rights 'as near as possible to those enjoyed by' Union citizens[7] and referred to the academic reconstruction of migrants' rights as 'denizenship'.[8] On this basis, he concluded the proportionality assessment with the assumption that compulsory civic integration tests do not (!) serve the aim of social integration, especially in the case of long-term residents,[9] since mandatory courses neglect other elements of social integration which may exist even without language skills.[10] In other words, AG Szpunar perceived civic integration tests to be instruments of migration control restricting access and complicating the peaceful and mutually beneficial integration of migrants into host societies.

In its judgment of 4 June 2015, the ECJ rejected this position, thereby effectively aligning itself with the opinion of Advocate General Kokott on the *K & A* case discussed below which she had delivered in March 2015 two months after the opinion of AG Szpunar on *P & S*. Judges stressed first that the case did not concern the acquisition of long-term resident status and that, therefore,

7 See AG M. Szpunar, *P & S*, C-579/13, EU:C:2015:39, para. 28.

8 AG Szpunar, *ibid*., para. 30 referring to T. Hammar (1990), *Democracy and the Nation-State*, Avebury: Gower.

9 AG Szpunar, *ibid*., paras 89–90.

10 AG Szpunar, *ibid*., paras 91–94; the exact conclusion on proportionality remained unclear, since paras 89–90 can be read to deny the abstract aptitude of integration tests to promote migrant integration (i.e., the first step of the proportionality assessment would fail), while paras 91–94 seem to indicate that the ensuing weighing exercise resulted in a negative verdict (i.e., the final step came to a negative conclusion).

Article 5(2) Directive 2003/109/EC did not apply to the case at hand.[11] It continued, in response to an explicit question posed by the referring court, that special rules on civic integration tests for migrants that do not apply to nationals do not amount to unlawful discrimination on grounds of nationality, since the two scenarios cannot be compared.[12] The ECJ's second chamber then analysed the Dutch rule, which is not covered by an express provision in the Directive, in light of the effective realisation of the aims pursued by the legislature, i.e., the promotion of integration.[13]

In doing so, the judges embraced a different vision of social integration. The ECJ rejected the idea put forward by AG Szpunar that integration tests amount to a restriction with the potential of complicating migrant integration. Instead, judges perceived the Dutch civic integration tests as instruments facilitating integration in the interests of both the long-term resident and societies at large, thereby contributing to the realisation of the objectives pursued by the EU legislature:

> [I]t cannot be disputed that the acquisition of knowledge of the language and society of the host Member State greatly facilitates communication between third-country nationals and nationals of the Member State concerned and, moreover, encourages interaction and the development of social relations between them. Nor can it be contested that the acquisition of knowledge of the language of the host Member State makes it less difficult for third-country nationals to access the labour market and vocational training.[14]

Having recognised the principled legitimacy of integration tests, the Court limited state discretion by obliging them to take account of individual circumstances[15] and to not charge excessive fees or fines.[16] The judges did not indicate that the individual situation of either P, who had medical issues, or S may oblige the Netherlands not to insist upon an examination, whereas it invited the domestic court to conclude that the level of fees and fines was

11 ECJ (note 5), paras 30–31, 34–38.

12 ECJ (note 5), paras 30–31, 39–43 in line with AG Szpunar (note 7), paras 51–52.

13 AG Szpunar (note 7), paras 63–77 examined in much more depth the (controversial) scope of Union law; see Section 3.2.

14 ECJ (note 5), para. 47 and the ensuing conclusion, in para. 48, that mandatory civic integration tests pursue that aim.

15 See ECJ (note 5), para. 49.

16 See ECJ (note 5), paras 50–54.

excessive. As a result, the Dutch civic integration test can be maintained as a matter of principle. It will have to be amended primarily with regard to fees and fines, while experts of Dutch immigration law will have to assess whether the hardship clause satisfies the ECJ's standards.

2.2 *Family Reunion: K & A*

The *K & A* judgment delivered on 9 July 2015 by the same chamber of the Court concerned one of the most controversial issues of migration policy in recent years: pre-departure language requirements as a precondition for family reunion. The Netherlands was among the first to introduce the condition, which has since been emulated by countries across Europe.[17] It applies to most third-country nationals and requires them to pass a test at an embassy or consulate in the country of origin in order to prove that they have a basic knowledge of Dutch society and speak and can read basic Dutch at the entry-level A1 of the Common European Framework of Reference. Dutch law provides for a hardship clause in cases of mental or physical disability or in cases where an individual could not be expected to pass the test despite their best efforts.[18] Dutch authorities rejected both K and A's argument that their medical or psychological problems came under the hardship clause, although A was granted a temporary residence permit for other purposes, since the children were already living in The Netherlands with their father.[19] The *Raad van State* (Council of State) referred both cases to Luxembourg.

In her opinion, Advocate General Kokott presented a collection of arguments as to why the notion of 'integration measure' in Article 7(2) Directive 2003/86/EC should not be construed – notwithstanding the opinion of AG Szpunar to the contrary – as excluding pre-departure language tests.[20] This conclusion was important, since a different outcome would have entailed that pre-departure language requirements were impermissible. AG Kokott then turned to a proportionality assessment based on the assumption, in line with the later *P & S* judgment discussed above, that civic integration tests can support migrant integration and that social integration from day one of residence justifies pre-departure tests even if they are proven to be less effective than

17 For an overview, see E. Guild, K. Groenendijk and S. Carrera (eds) (2009), *Illiberal Liberal States. Immigration, Citizenship and Integration in the EU*, Farnham: Ashgate.

18 See ECJ (note 6), paras 25–26.

19 See ECJ (note 6), paras 28–38, where we do not obtain further detail on the medical background of each individual applicant.

20 Contrast AG Kokott, *K & A*, C-153/14, EU:C:2015:186, paras 19–32 to AG Szpunar (note 7), paras 42–48.

language courses in the country.[21] This position did not entail, however, that failure to pass the test would always result in the rejection of family reunion, since individual circumstances have to be taken into account.[22] In addition, fee levels appeared problematic.[23]

In its judgment, the Court defended a similar position, although it gave far fewer doctrinal arguments justifying that outcome than AG Kokott. Judges found that Article 7(2) should be read as covering pre-departure integration measures,[24] but emphasised, in line with *Chakroun*, that the provision should be construed narrowly and remained subject to a proportionality test in light of the integration objective.[25] Having reiterated the contextual outlook on migrant integration put forward in the *P & S* ruling cited above,[26] the ECJ concluded that civic integration tests support migrant integration as long as they do no systematically prevent family reunification: '[The domestic measure] must be aimed not at filtering those persons who will be able to exercise their right to family reunification, but at facilitating the integration of such persons within the Member States.'[27]

Again, the Court continued that state discretion is not absolute, since Member States are obliged to introduce or maintain a hardship clause taking account of 'specific individual circumstances, such as the age, illiteracy, level of education, economic situation or health'[28] – a requirement which the Dutch clause did not seem to meet.[29] Moreover, the Court concurred with AG Kokott that fees of EUR 110 for a preparation pack and EUR 350 for each test appeared disproportionate, although it referred the final decision back to the domestic court. Like *P & S* discussed above, the judgment in *K & A* sanctioned the Dutch practice as a matter of principle, while insisting upon hardship clauses for specific individual circumstances and appropriate fee levels. In short, the Court found a typical compromise solution.

21 See AG Kokott (note 20), paras 34–35.
22 See AG Kokott (note 20), paras 40–46.
23 See AG Kokott (note 20), paras 40–54.
24 See ECJ (note 6), paras 45–48.
25 See ECJ (note 6), paras 50–52.
26 ECJ (note 6), para. 53 refers to ECJ (note 5), para. 47.
27 ECJ (note 6), para. 57.
28 ECJ (note 6), para. 58.
29 See ECJ (note 6), paras 61–63.

3 Deciphering the Doctrinal Foundations

It is noticeable that judgments of the Court's second chamber pursue a style of reasoning which is shorter than comparable judgments of other chambers, not only in the cases discussed above. Arguably, this trend of the second chamber towards the apodictic reflects the background of the five judges the majority of whom come from south-western Europe, where the French judicial style has traditionally been influential. Judge Bonichot who participated in both decisions once complained that ECJ judgments are 'quite long and written in a discursive style'.[30] The brevity in the second chamber's style of reasoning may result in clear outcomes, but can complicate the identification of the impact on similar scenarios.

3.1 *Family Reunion: Of Measures and Conditions*

The meaning of the term 'integration measure' exemplifies the second chamber's peculiar style of reasoning, since the judges hardly bothered to explain their conclusion that the term can cover pre-departure instruments and is not limited to post-entry measures. This outcome was far from evident, since academic observers, including the Commission at one point,[31] had defended a different reading of the Directive.[32] From a constitutional theory perspective, it pertains to the responsibility of courts to opt for the solution they consider most convincing when different doctrinal interpretations can be defended – and in our case the position defended by the ECJ is unequivocal: Article 7(2) Family Reunion Directive covers pre-departure integration tests.

The twofold systemic reference, by the ECJ, to the heading of Chapter IV and the special rules for refugees in Article 7(2)(2)[33] together with the arguments

30 J.-C. Bonichot (2013), 'Le style des arrêts de la Cour de Justice de l'Union européenne', *Justice & Cassation*, p. 253 (own translation of: 'assez longs, rédigés sur un mode discursif'); besides the French judge the ECJ's second chamber comprises president Silva de Lapuerta from Spain, judge Arabadjiev from Bulgaria, judge Da Cruz Vilaça from Portugal and judge Lycourgos from Cyprus.

31 See the reference to the Commission's written submission to ECJ, *Imran* (note 4), mentioned in ECJ (note 6), para. 40.

32 See the overview in K. Hailbronner and T. Klarmann (2016), 'Family Reunion Directive 2003/86/EC', in: K. Hailbronner and D. Thym (eds), *EU Immigration and Asylum Law. Commentary on EU Regulations and Directives*, 2nd edn, München: C.H. Beck/Hart, Article 7 margin nos 34–40; the original argument seems to go back to K. Groenendijk, 'Family Reunification as a Right under Community Law', 8 *European Journal of Migration and Law* (2006) 215–230, at 223–225.

33 See ECJ (note 6), paras 45–49.

put forward by AG Kokott[34] show that doctrinal arguments in the continental tradition, such as the wording, general scheme and objective, can be important factors influencing the outcome of ECJ judgments. Thus, one of the lessons academic observers may want to draw from the judgment is the significance of doctrinal construction in the Continental European civil law tradition which defines the legal heritage of most ECJ judges and characterises many judgments on immigration and asylum, particularly in scenarios of statutory interpretation.[35] Arguably, this influence of doctrinal reasoning prevalent on the continent is sometimes underestimated by academic analyses in the Anglo-Saxon common law tradition.

3.2 *Long-Term Residents: Scope of Union Law*

In *P & S*, the Court assumed that the Dutch measure was not covered by an express provision in the Directive. Civic integration tests for long-term residents did not affect the status, since the Netherlands had established a corollary obligation not covered by any provision of Directive 2003/109/EC. This meant that the Court was entering a potential minefield. In a supranational union based on the principles of conferral and subsidiarity, the scope of EU legislation is – like in any federal system – sensitive terrain relating directly to the vertical balance of power. A broad interpretation of the scope of Union law leaves Member States less room for autonomous action. It is this concern over state autonomy which feeds the epic disputes between domestic constitutional courts and the ECJ on questions such as *ultra vires* or constitutional identity.[36] Most recently, the application of human rights in the EU Charter to domestic measures not covered by secondary legislation became the centre of attention.[37] Arguably, this background explains a certain indecision on the ECJ's part in the *P & S* judgment.

AG Szpunar was aware of this difficult terrain when he elaborated on the scope of the Charter and general principles over several paragraphs.[38] Careful

34 AG Kokott (note 20), paras 19–32 also refer to disparate language versions, the objectives pursued by the legislature and, like the Court, the general scheme of the Directive.

35 See K. Hailbronner and D. Thym (2016), 'Constitutional Framework', in: Hailbronner and Thym (note 32), margin nos 10–20; and generally R. van Gestel and H.-W. Micklitz, 'Why Methods Matter in European Legal Scholarship', 20 *European Law Journal* (2014) 292–316.

36 See F.C. Mayer (2009), 'Multilevel Constitutional Jurisdiction', in: A. von Bogdandy and J. Bast (eds), *Principles of European Constitutional Law*, 2nd edn, Oxford: Hart, pp. 399, 404–409.

37 See D. Thym, 'Separation versus Fusion – or: How to Accommodate National Autonomy and the Charter?', 9 *European Constitutional Law Review* (2013) 391–419.

38 See AG Szpunar (note 7), paras 63–77.

reading of the judgment shows that the ECJ seems to have evaded the issue altogether, since the judges applied neither the Charter nor the principle of proportionality, as suggested by AG Szpunar. Instead, the judges relied solely on the principle of *effet utile* that Member States must not jeopardise the achievement of the objective pursued by the Directive.[39] That doctrinal distinction between proportionality and *effet utile* may appear meticulous, but it may have repercussions in scenarios where the thematic connection between national immigration rules and Directive 2003/109/EC is less evident than in the case of civic integration tests.[40] In such cases, the ECJ may decline jurisdiction if domestic measures are not covered by express Treaty provisions without which general principles do not apply either.[41] While the acquisition and loss of long-term resident status seems to have been fully harmonised, rights and obligations accompanying this status are not covered automatically by the Directive.[42] In future, the ECJ may want to explain the scope of Union law more carefully, thereby guiding domestic courts in the application of general principles in related scenarios.

3.3 *Implications for Administrative Practices*

It is in the nature of the multi-level legal system that supranational rules often establish a framework whose attributes have to be specified by national legislation and administrative practices. The judgments under discussion are a case in point, since anyone familiar with decision-making by practitioners will understand that the abstract necessity, in the *K & A* case, of a hardship clause taking account of 'specific individual circumstances, such as the age, illiteracy, level of education, economic situation or health'[43] can be realised in various ways. German administrative law, for instance, recognises at least three alternative avenues for such an exception which will in practice result in different outcomes: a general rule connecting the civic integration requirement to an individualised examination of whether it can be required; a typology of exceptions laid down by the legislature; a hardship clause sensu stricto

39 See ECJ (note 5), para. 45.

40 *P & S* evaded a general statement on the scope of Union law and concentrated on the thematic linkage between the national rules in question and the integration objective.

41 Cf. ECJ, *Mlamali*, C-257/13, EU:C:2013:763 (only available in French) on Directive 2003/109/EC; and the careful distinction between border control activities (not) covered by Union law in ECJ, *Zakaria*, C-23/12, EU:C:2013:24, paras 39–42.

42 This is pertinent for equal treatment in areas not covered by Article 11, where, arguably, general principles do not apply; see D. Thym (2016), 'Long-Term Residents Directive 2003/109/EC', in: Hailbronner and Thym (2016) (note 32), Article 11 margin nos 7–11.

43 ECJ (note 6), para. 58; similarly, see AG Kokott (note 20), paras 40–46.

for exceptional scenarios without a direct impact on the general obligation to pass the test.[44] At a more abstract level, the above-mentioned quotation from the judgment does not explain the relative weight of family unity and what kind of efforts one expects individuals to undertake.[45] *K & A* did not give clear direction in this respect.

Experience with ECJ case law indicates that we cannot necessarily expect judges in Luxembourg to provide more specific guidelines for how the hardship clause is to be applied domestically.[46] In response to a series of follow-up references to ECJ case law on the export of study grants by outgoing nationals, the Court gave some further instruction, while emphasising that 'Member States enjoy a broad discretion in deciding which criteria are to be used when assessing the [Court's formula].'[47] Domestic courts should not hesitate to refer similar questions on civic integration tests and assume the responsibility to develop their own set of criteria if the ECJ relegates authority to the domestic arena. The same applies to domestic legislatures choosing between different options of how to implement *K & A*. Arguably, Luxembourg will not interfere as long as the implementation is bona fide.

Both the *K & A* and the *P & S* cases took issue with the level of registration, application and non-compliance fees in the Netherlands. That was hardly surprising given the significant sums involved and the fact that they could build upon a number of earlier judgments in which the Court had found the Netherlands to be in violation of EU law, since the domestic fee level transgressed the discretion the ECJ grants Member States as a matter of principle.[48] Unfortunately, it is difficult to distil clear guidance from the case law, since the Court's criticism of the Dutch practice was never combined with a clear

44 See D. Thym, 'Sprachkenntnisse und Ehegattennachzug', 34 *Zeitschrift für Ausländerrecht und Ausländerpolitik* (2014), 301–306, at 304–305; and the comparative study by A. Böcker and T. Strik, 'Language and Knowledge Tests for Permanent Residence Rights', 13 *European Journal of Migration and Law* (2011) 157–184, at 159–170.

45 For corresponding ambiguities of the ECtHR case law on first admission, see P. Boeles, M. den Heijer, G. Lodder and K. Wouters (2014), *European Migration Law*, 2nd edn, Antwerp: Intersentia, pp. 223–229.

46 Cf., on Turkish nationals ECJ, *Dogan*, C-138/13, EU:C:2014:2066; and G. Milios, 'Family Reunification for Third-Country Nationals', 17 *European Journal of Migration and Law* (2015), 127–146, at 134–138.

47 ECJ, *Thiele Meneses*, C-220/12, EU:C:2013:683, para. 37; and the comments by D. Thym, 'The Elusive Limits of Solidarity', 52 *Common Market Law Review* (2015) 17–50, at 45–49.

48 See, in particular, ECJ, *Commission v. the Netherlands*, C-508/10, EU:C:2012:243; and, most recently, ECJ, *CGIL & INCA*, C-309/14, EU:C:2015:523.

indication of what level would be appropriate.[49] What is certain, however, is that state discretion is limited: Member States must not charge prohibitive fees. The Court should be applauded for insisting upon charges which reflect the level of cost and do not present an additional hurdle.

4 Constitutional Context

It had often been argued that general principles of Union law would serve as a trajectory for enhancing rights of third-country nationals and for approximating them to rules for Union citizens.[50] Such predictions have been vindicated on many occasions, including in the *P & S* and *K & A* judgments where the Court used the principles of *effet utile* and proportionality to limit state discretion in the field of social integration. Nevertheless, an alternative trend is also discernible, not least in the *K & A* ruling where human rights were not even discussed. Arguably, this outcome reflects the broader constitutional setup of immigration and asylum policy which is sometimes overlooked by academic analyses. General principles, including human rights, do not automatically support a pro-migrant outcome.

4.1 *Migration, Citizenship and Human Rights*

Surprisingly, many contributions by legal academics start with a reminder of a political statement by heads of state or government – not the 'constitutional framework and founding principles'[51] laid down in the EU Treaties. To be sure, the European Council had promised in Tampere that long-term residents should have rights 'as near as possible to those enjoyed by' Union citizens,[52] but this declaration of intent was never legally binding and elapsed with the conclusion of the 1999–2004 period.[53] Moreover, Member States developed a more nuanced position during the legislative procedure leading to the adop-

49 See Thym (2016) (note 42), margin nos 5–6.

50 See, by way of example, A. Wiesbrock, 'Granting Citizenship-related Rights to Third-Country Nationals', 14 *European Journal of Migration and Law* (2012) 63–94, at 74–87; and D. Acosta (2011), *The Long-Term Residence Status as a Subsidiary Form of EU Citizenship*, Leiden: Martinus Nijhoff, chapter 9.

51 ECJ, *Accession to the ECHR*, Opinion 2/13, EU:C:2014:2454, para. 158.

52 See European Council, Presidency Conclusions of the Meeting on 15/16 October 1999 in Tampere, para. 21.

53 Note that Recital 2 of Directive 2003/109/EC does not, as a factual statement echoing what had been said in 1999, necessarily perpetuate the Tampere objective as a guideline for interpreting Directive 2003/109/EC; see Thym (2016) (note 42), margin no. 15.

tion of the Family Reunion Directive and the Long-Term Residents Directive whose rules on integration measures encapsulate a different outlook on integration, which has now been embraced by the ECJ in the *P & S* and *K & A* judgments. It can be fascinating to analyse contextual factors explaining this change of direction,[54] but a legal argument supporting or rejecting the new approach to migrant integration needs to be embedded into the broader constitutional landscape.

From a constitutional perspective, the argument for equal rights of Union citizens and third-country nationals had never been particularly strong. Special rules for Union citizens are based on directly applicable guarantees to transnational mobility at Treaty level and are buttressed by the concept of 'fundamental status'[55] the Court considers Union citizenship to be destined to be. By contrast, Treaty rules governing migration law within the area of freedom, security and justice pursue different objectives and leave more discretion to the legislature.[56] This does not entail that third-country nationals have no guarantees on their side: on the contrary, they can invoke human rights under the EU Charter, which generally takes pride in presenting itself as an avant-garde catalogue.[57] Human rights are crucial whenever it comes to correcting legislative choices in light of the Treaties, for instance with regard to civic integration, and it is regrettable, for this reason, that the second chamber failed to discuss human rights.[58]

With regard to long-term residents, this silence is understandable given that even a rejection of long-term resident status, which was not at stake in *P & S*, would not usually oblige the person to leave the host society, since she would continue to benefit from a legal residence status without which long-term resident status cannot be obtained.[59] Article 8 ECHR does not apply to such scenarios, since it provides, in accordance with settled ECtHR case law, a safety net against expulsion and cannot usually be relied upon to obtain a 'better'

54 See Section 5.2.

55 ECJ, *Grzelczyk*, C-184/99, EU:C:2001:458, para. 31.

56 See D. Thym, 'EU Migration Policy and its Constitutional Rationale. A Cosmopolitan Outlook', 50 *Common Market Law Review* (2013) 709–736, at 718–725.

57 Cf., Recital 4 and, by way of illustration, the prohibition of reproductive cloning in Article 3(2)(d) or equal treatment of gays and lesbians in Article 21(1).

58 Similarly, the same chamber in ECJ, *Noorzia*, C-338/13, EU:C:2014:2092 confirming a minimum age of 21 for family reunion of spouses did not mention human rights.

59 See Article 4(1) Directive 2003/109/EC.

residence permit.[60] For that reason, human rights did not mandate a different outcome to the *P & S* case.

In the case of family reunion, the situation is different, because the rejection of a residence permit for purposes of family reunion can potentially be corrected in light of Article 8 ECHR whose interpretation guides the reading of Article 7 EU Charter.[61] However, this does not mean that family unity must necessarily be realised in Europe and the ECtHR has been reluctant to recognise a human right to first entry for purposes of family reunion.[62] Only a handful of cases typified by exceptional circumstances have been successful so far.[63] Against this background, it becomes apparent that human rights do not generally prohibit pre-departure civic integration tests, although they could be relied upon to insist upon the introduction of hardship clauses to comply with the proportionality test in special circumstances.[64] To be sure, the ECJ came to a similar conclusion in *K & A* on the basis of an abstract proportionality test, but it would have been preferable if it had explained to the public that a rejection of family reunion can be compatible with human rights as laid down in the EU Charter, provided that there is a hardship clause.

4.2 *Statutory Interpretation Based on Individual Rights*

On the basis of the human rights considerations mentioned above, a doctrinal ambiguity in the *K & A* judgment comes to the fore. In line with both AG Kokott and AG Szpunar, the Court embarked upon an abstract proportionality

60 This was confirmed by the Grand Chamber in ECtHR, judgment of 15 January 2007, No. 60654/00, *Sisojeva v. Latvia*, para. 91 rejecting a different interpretation by the ECtHR's first section; see D. Thym, 'Respect for Private and Family Life under Art. 8 ECHR in Immigration Cases', 57 *International and Comparative Law Quarterly* (2008) 87–112, at 98–99; to cite the judgment of the first section and to ignore the Grand Chamber, as Acosta (note 50), pp. 214–215 did, misinforms the reader about the impact of human rights.

61 On parallel interpretation, see Article 52(3) EU Charter; and ECJ, *McB*, C-400/10 PPU, EU:C:2010:582, para. 53.

62 For a reliable overview, see Boeles et al. 2014 (note 45), pp. 223–229.

63 See, most recently, in a scenario involving earlier stays in the country, ECtHR, judgment of 14 June 2011, No. 38058/09, *Osman v. Denmark*.

64 This solution had been defended by both the German *Bundesverwaltungsgericht* (Federal Administrative Court), judgment of 30 March 2010, Case 1 C 8.09, paras 21–28; and the UK Court of Appeal, judgment of 12 April 2013, *Bibi v. SSHD* [2013] EWCA Civ 322.

assessment without specifying the underlying rationale.[65] Arguably, such abstract appraisal is too simple. If proportionality is essentially about the adequacy of a measure in light of the aim pursued, the outcome is inherently relational: it depends on the comparative weight of countervailing public policy objectives and private interests.[66] This sounds abstract, but can have practical repercussions for family reunion. Given that the ECHR does not guarantee a human right to first admission for purposes of family reunion, a human rights-based proportionality test in light of Article 8 ECHR may result in a different outcome to a statutory assessment if we accept that Directive 2003/86/EC 'imposes precise positive obligations with corresponding clearly defined individual rights' which are '[g]oing beyond those provisions [of the ECHR]'.[67] In other words, individual rights in EU legislation can be more generous than human rights.[68]

Against this background, the silence of the *K & A* judgment on human rights may be read as a signal that the Court relied primarily on statutory standards and corresponding proportionality requirements, in line with the reasoning in *Chakroun* where it had built a rigorous argument on the basis of individual statutory rights.[69] If that were correct, the *K & A* judgment would rest on similar doctrinal grounds as the *Chakroun* ruling, only the outcome was less 'migrant-friendly'. Indeed, such an argument based on statutory rights could explain both the outcome of the *K & A* decision and the reasoning without recourse to human rights. On the basis of such legislation-centred interpretation, it did not come as a surprise that the Court upheld civic integration tests as a matter of principle. Why? In contrast to human rights, the scope of individual statutory rights is ultimately determined by the European legislature when drafting legislation,[70] which, in the case of family reunion, explicitly acknowledged the legitimacy of national integration measures in Article 7(2) Directive 2003/86/EC. It is this statutory provision which the ECJ was asked to

65 See ECJ (note 6), paras 51 et seq.; AG Kokott (note 20), paras 33–47; and, for the *P & S* case, AG Szpunar (note 7), paras 63–75 who mentioned different doctrinal foundations for proportionality (human rights, general principles) without distinguishing between them.

66 For further comments in the context of immigration and asylum law, see Hailbronner and Thym (2016) (note 35), margin nos 24–26.

67 ECJ, *Parliament v Council*, C-540/03, EU:C:2006:429, para. 60.

68 See also J. Bast (2011), *Aufenthaltsrecht und Migrationssteuerung*, Tübingen: Mohr Siebeck, pp. 101–111.

69 See ECJ, *Chakroun*, C-578/08, EU:C:2010:117, para. 41; and Groenendijk 2004 (note 1), pp. 329–330.

70 See Hailbronner and Thym (2016) (note 35), margin no. 15.

interpret. Academic observers and the Commission may not like this provision, but it is difficult to overturn the outcome of the legislative process by means of statutory interpretation.

4.3 *Non-Discrimination*

Most readers will be interested in *P & S* and *K & A* primarily because of their significance for integration policy. This focus should not detract from another important aspect of both judgments: non-discrimination. In *P & S*, the second chamber reiterated that special immigration rules do not usually amount to non-discrimination in comparison to nationals, since 'those situations are not comparable'.[71] This conclusion seems to build on the general principle of equal treatment, enshrined in Article 20 of the Charter, although the precise legal basis for the test remained ambiguous.[72] This confirms indirectly that – notwithstanding persistent criticism by academics[73] – Article 18 TFEU cannot be relied upon by third-country nationals.[74] Instead, abstract principles of equal treatment take over which allow for justification under more flexible requirements.[75] The rejection on the part of the judges, in *P & S*, of any meaningful non-discrimination analysis due to a lack of comparability signals that equal treatment may not become the new gold standard for supranational rules on immigration and asylum.

This impression was confirmed by the *K & A* judgment in relation to which AG Kokott had discussed the differential treatment of spouses from different states of origin, since the Netherlands exempted nationals of some countries,

71 ECJ (note 5), para. 43 in line with AG Szpunar (note 7), paras 51–52.

72 ECJ (note 5), paras 39–43 mentioned Article 11(1) Directive 2003/86/EC in response to the question by the Dutch court, while indicating that the provision was not applicable *ratione materiae*; instead, *ibid*., para. 41 invoked settled case law on the general principle of equal treatment, although it remained unclear whether the domestic rules in question came within the scope of Union law in the first place; see Section 3.2.

73 See, by way of example, C. Hublet, 'The Scope of Article 12 of the Treaty of the European Communities vis-à-vis Third-Country Nationals: Evolution at Last?', 15 *European Law Journal* (2009), 757–774, at 761–774.

74 See ECJ, *Vatsouras & Koupatantze*, C-22/08 and C-23/08, EU:C:2009:344, para. 52; and ECJ, *Khalil*, C-95/99–C-98/99 & C-180/99, EU:C:2001:532, para. 40.

75 See S. Iglesias Sánchez, 'Fundamental Rights Protection for Third Country Nationals and Citizens of the Union', 15 *European Journal of Migration and Law* (2013) 137–153, at 149–151; and E. Bribosia (2012), 'Les Politiques d'intégration de l'Union européenne et des États Membres à l'épreuve du principe de non-discrimination', in: Y. Pascouau and T. Strik (eds), *Which Integration Policies for Migrants? Interaction between the EU and its Member States*, Nijmegen: Wolf Legal Publishers, pp. 51–66, at pp. 53–64.

such as the United States and Canada, from the pre-departure civic integration test. AG Kokott considered that differentiation to be unproblematic[76] and the Court did not even discuss the issue in its judgment despite the invitation of AG Kokott to do so. This outcome may well be compatible with ECtHR case law which has occasionally been strict in relation to social benefits, but emphasised more recently that states benefit from a margin of appreciation in the field of immigration law.[77] This indicates that the accusation of racial discrimination which has been voiced in relation to differentiated pre-departure integration tests might, as in *Kamberaj*,[78] fall on deaf ears in Luxembourg.[79] By not taking up the issue in *K & A*, the Court indicated that equality-based reasoning will not define its immigration case law.

5 Competing Conceptions of Immigrant Integration

It was mentioned at the outset that one can distil two potentially opposing approaches to integration policy, the first one concentrating on equal rights as an end in itself, while the second approach focuses on social interaction on the ground. The *P & S* and *K & A* judgments presented the Court with the perfect opportunity to clarify its standpoint on the basis of two opposing opinions by AG Szpunar and AG Kokott highlighting the two routes which the Court could have taken. The outcome was surprisingly clear: without hesitation, both judgments embraced a contextual outlook emphasising the broader social, economic and political dimension of migrant integration in line with Dutch integration policy,[80] although support was mitigated by the need for a hardship clause. This section shows why this outcome suits the broader state of affairs of EU immigration policy.

76 See AG Kokott (note 20), para. 20.

77 See ECtHR, judgment of 27 November 2011, No. 56328/07, *Bah v. the United Kingdom*, para. 47; Bribosia (note 75), pp. 55–61; and the comparative analysis by S. Saroléa (2006), *Droits de l'homme et migrations*, Brussels: Bruylant, pp. 483–598.

78 See K. de Vries, 'Towards Integration and Equality for Third-Country Nationals? Reflections on *Kamberaj*', 38 *European Law Review* (2013) 248–258, at 254–256.

79 Cf., S. Peers (2004), 'Family Reunion and Community Law', in: N. Walker (ed.), *Europe's Area of Freedom, Security and Justice*, Cambridge: Cambridge University Press, pp. 143–197, at pp. 145–149; and M.-B. Dembour, 'Still Silencing the Racism Suffered by Migrants . . .', 11 *European Journal of Migration and Law* (2009) 221–234.

80 See note 14 above and accompanying text.

5.1 *Ambivalence of the Integration Concept*

From a sociological perspective, the concept of 'integration' is inherently open-ended, since it describes processes defining social cohesion or supporting fragmentation. It is very much an umbrella concept that can be given different meanings. Even legal positivists will recognise that the abstract notion of 'integration' is in itself hardly capable of sustaining a specific policy approach. It needs to be given substance – as recognised early on by the ECJ.[81] This means that it remains the responsibility of the EU legislature (or Member States when EU legislation leaves them discretion) to define appropriate instruments. Again, this emphasis on the conceptual openness of the term 'integration' may sound abstract, but it has practical implications. It implies that the ECJ's abstract conclusion, in the context of the Long-Term Residents Directive, that 'the principal purpose [of the Directive] . . . is the integration of third-country nationals'[82] does not define a clear policy guideline, since it does not state how integration is to be achieved. This is why the *P & S* and *K & A* judgments were so important: they obliged the Court, as hard cases, to define its standpoint on integration.

Along similar lines, abstract invocations of the recitals of the Family Reunion and Long-Term Residents Directives do not resolve the puzzle, since those recitals do not unequivocally define the underlying conception either. To be sure, Recital No. 12 of Directive 2003/109/EC seems to subscribe to an equality-based reasoning, but it is directed primarily at Article 11.[83] By contrast, Recital No. 4 refers to the Directive as a whole when it states that the integration of third-country nationals 'is a key element in promoting economic and social cohesion'.[84] Few people would question that statement, but it crucially does not explain *how* the linkage between integration and social cohesion shall be construed. More specifically, it could be read as embracing civic integration tests as a means to foster social cohesion. The Family Reunion Directive sends out similarly mixed signals emphasising the need for integration without opting for a specific methodology.[85]

---

81 See ECJ (note 67), para. 70, also emphasising the need for human rights compliance.

82 ECJ, *Commission v. the Netherlands* (note 48), para. 66; similarly, see ECJ, *Kamberaj*, C-571/10, EU:C:2012:233, para. 90; and ECJ (note 5), para. 46.

83 After a general introduction, recitals usually refer to specific articles – and a description of Article 11 does not necessarily say much about Article 5.

84 C. Hauschild, 'Neues europäisches Einwanderungsrecht', 23 *Zeitschrift für Ausländerrecht und Ausländerpolitik* (2003) 350–353, at 351, reports that the plurality of contradictory recitals was a deliberate choice.

85 Contrast the equality-based Recitals No. 4 and 15 to the more contextual Recital No. 2 as well as Articles 4(1)(5), 4(5) and 7(2) on social cohesion and restrictions.

This ambivalence inherent in the integration concept entails, for our purposes, that academic reconstructions are trapped in a logical circle if they presuppose a certain meaning of integration,[86] although a different solution to the outcome of the *P & S* and *K & A* cases can certainly be defended by means of critical analysis.[87] If the abstract notion of 'integration' does not define how migrant integration is to be achieved, the solution agreed upon by the EU legislature arguably presents a compass for Luxembourg. That is why the substantive rules of Directive 2003/86/EC and Directive 2003/109/EC are crucial precisely because they indicate how social integration is to be achieved, in the eyes of the EU legislature, in the context of the instruments in question – and this solution includes integration measures 'in accordance with national law'[88] irrespective of whether academic observers like it or not. This is not to say that state discretion is absolute. It simply means that the EU legislature acknowledged the relevance of contextual factors such as language skills or civic education for integration policies in line with a general trend at national and European level.[89] It is this reconceptualising of the integration concept which has now been accepted by the ECJ.

5.2 *Migrants as Equal Members of Societies*

Basic legal concepts, such as social integration, cannot be understood by means of doctrinal interpretation alone. They convey a set of normative values and express basic choices of societies, which change over time.[90] From a constitutional theory perspective, debates about the meaning and reconfiguration of such essentially contested concepts can be described as a process of jurisgenesis when the interpretation of the law interacts with broader societal debates.[91]

86 See, by the of example, Milios (2015) (note 46), pp. 132, 138 who does not question or explain the assumptions upon which his critique of the ECJ rests.

87 See the solid arguments by D. Acosta, 'Civic Citizenship Reintroduced?', 21 *European Law Journal* (2015) 200–219, at 208–209; and S. Peers, E. Guild, K. Groenendijk and V. Moreno Lax (2012), *EU Immigration and Asylum Law* (*Text and Commentary*), Vol. 2, 2nd edn., Leiden: Martinus Nijhoff, p. 297.

88 Article 7(2)(1) Directive 2003/86/EC and Article 5(2) Directive 2003/109/EC.

89 See the excellent summary of core developments by Carrera (2009) (note 1), chapter 3; and T. Gross, 'Integration of Immigrants: The Perspective of European Community Law', 7 *European Journal of Migration and Law* (2005) 145–162, at 149–160.

90 See L. Bosniak, 'Persons and Citizens in Constitutional Thought', 8 *International Journal of Constitutional Law* (2010) 9–29.

91 See S. Benhabib (2004), *The Rights of Others: Aliens, Residents, and Citizens*, Cambridge: Cambridge University Press, chapter 5; and F.I. Michelman, 'Law's Republic', 97 *Yale Law Journal* (1988) 1493–1537.

Arguably, the reorientation of migrant integration policy is the outcome of such a process. By subscribing to a more contextual approach in the *P & S* and *K & A* rulings, the ECJ sanctioned this trend and gave it new momentum. Residence rights and equal treatment are important factors in EU integration policy, but they do not define it single-handedly. Broader social and economic considerations are also relevant, since such a contextual outlook 'greatly facilitates communication between third-country nationals and [nationals and] encourages interaction and the development of social relations between them'.[92] Academics exposing such trends are bystanders identifying structural changes; their observations can serve as bases for critical studies even if they do not participate directly in the doctrinal reconstruction of the law.[93]

At EU level, a more contextual outlook on integration policy has been promoted by EU institutions ever since the adoption of the Common Basic Principles and corresponding Commission Communications.[94] Moreover, the Treaty of Lisbon confirmed the significance of national integration policies through the introduction of Article 79(4) TFEU. All of these developments support the more contextual outlook of the ECJ even if they do not necessarily require that Member States introduce pre-departure tests.[95] It seems to me that this re-orientation can be presented as an integral part of a growing awareness that migrants should become equal members of European societies whose self-perception changes in response to migration. To be sure, civic integration tests have been introduced, in some countries at least, in response

92 ECJ (note 5), para. 47 and the ensuing conclusion, in para. 48, that mandatory civic integration tests pursue that aim.

93 Cf., D. Kostakopoulou, S. Carrera and M. Jesse (2009), 'Doing and Deserving: Competing Frames of Integration in the EU', in: Guild, Groenendijk and Carrera (2009) (note 17), pp. 167–186; S. Bonjour, 'The Power and Morals of Policy Makers', 45 *International Migration Review* (2011) 89–122; and A. Staver, 'Free Movement and the Fragmentation of Family Reunification Rights', 15 *European Journal of Migration and Law* (2013) 69–89.

94 See Common Basic Principles (CBP) for immigrant integration policy, Council doc. 14615/04 of 19 November 2004; the Common Agenda for Integration, COM(2005)389 of 1 September 2005; and the European Agenda for the Integration of Third-Country Nationals, COM(2011) 455 of 20 July 2011.

95 The argument by AG Szpunar (note 7), para. 93 that the Common Basic Principles oppose pre-departure examinations seems farfetched, since the CBP were, as an abstract policy framework, never meant to define specific instruments; see Recitals Nos. 5, 6 to the CBP, *ibid.*, as well as AG Kokott (note 20), para. 34.

to right-wing populist pressure,[96] but this does mean that language requirements are intrinsically linked to a nationalism which conceives states as closed and culturally homogenous clubs.[97] One reason why such an ethno-cultural viewpoint will not dominate legal rules is the European Union. Supranational immigration legislation lays down clearly defined individual rights together with extensive equal treatment guarantees in the same way that it allows Member States to promote social integration. Human rights and integration policies promoting social cohesion can be compatible. In its case law, the ECtHR similarly emphasises the significance of 'the solidity of social, cultural and family ties with the host country'.[98]

Arguably, this substantive reorientation of societal self-perceptions in response to migration includes the offer of equal membership by means of naturalisation, which officially turns 'migrants' into 'citizens'. Many Member States began changing their nationality laws in the late 1990s and early 2000s by extending or introducing ius soli rules allowing long-term residents to acquire nationality.[99] In a recent judgment, the ECJ's first chamber concluded, in the context of rules relating to Turkish nationals, that 'the acquisition of the nationality of the host Member State represents, in principle, the most accomplished level of integration'.[100] Against such a background, it is arguably outdated to associate EU immigration law with the concept of 'denizenship', which conceived of migrants as outsiders who should be granted certain rights short of membership.[101] Thus, AG Szpunar should arguably have invoked

96 See Carrera (2009) (note 1), pp. 440–448; Acosta (2011) (note 50), pp. 189–195; D. Acosta and J. Martire, 'Trapped in the Lobby: Europe's Revolving Doors and the Other as Xenos', 39 *European Law Review* (2014) 362–379, at 363–366.

97 See C. Joppke (2010), *Citizenship and Immigration*, Cambridge: Polity Press, chapter 4; and D. Thym, 'Citizens and Foreigners in EU Law', 22 *European Law Journal* (2016) Section 4.3 (forthcoming).

98 Standard formulation used first in ECtHR, judgment of 18 October 2006, No. 46410/99, *Üner v. the Netherlands*, para. 58; for more detail, see D. Thym (2014), 'Residence as *de facto* Citizenship?', in: R. Rubio-Marin (ed.), *Human Rights and Immigration*, Oxford: Oxford University Press, pp. 106, 138–143.

99 This general trend towards inclusion does not imply that there were no counter-reactions or occasional tightening of conditions for access to nationality; this statement is about a general trend over the years; cf., Joppke (2010) (note 97), chapter 4; and R. Hansen, 'A European Citizenship or a Europe of Citizens? Third-country nationals in the EU', 24 *Journal of Ethnic and Migration Studies* (1998) 751–769.

100 ECJ, *Demirci et al.*, C-171/13, EU:C:2015:8, para. 54.

101 Hammar 1990 (note 8) regarded 'denizens' as an intermediate category of long-term residents with the rights short of citizenship.

'citizenship' – not 'denizenship'[102] – as the new load star guiding the integration of third-country nationals into host societies as potential nationals of the Member States. Civic integration tests can be perceived as an integral part of such an inclusionary outlook.

6 Conclusion

Civic integration tests are a symbol for the re-orientation of integration policies at domestic and European level in recent years. For this reason, the *P & S* and *K & A* judgments discussed in this contribution are a fascinating case study for the state of EU immigration law and the role of the Court of Justice. The outcome of the *K & A* case on pre-departure examinations may be a disappointment for many observers with a pro-migrant outlook, but it arguably reflects broader constitutional and social developments in recent years. It shows that the ECJ will not easily overturn legislative decisions, while insisting that state discretion is not absolute. As is often the case in Union law, judges opted against a textual interpretation of the Family Reunion Directive and emphasised instead that the objective of migrant integration should be conceived of in a contextual manner taking account of social, economic, cultural and political practices, including language skills. This departure from the equality-based integration concept for Union citizens arguably replicates the constitutional structure of EU immigration law, which leaves a principled discretion to the legislature to define migration and integration policies within the limits prescribed by human rights.

A trend towards the apodictic in the style of reasoning of the second chamber complicates the doctrinal reconstruction of the judgments, but it seems that the silence on human rights in both cases reflects a primary preoccupation with the concept of individual statutory rights laying down stricter requirements than Article 8 ECHR. At the same time, the judgments indicate that non-discrimination does not play a prominent part in the adjudication of the EU's immigration acquis. Arguably, the rather lenient approach of the ECJ replicates an inherent ambivalence of the concept of 'integration' both in academic debates and legislative recitals. It is very much an umbrella concept that needs to be given substance and both judgments can be read as an acknowledgment, on the part of the ECJ, that the legislature wanted to

102 AG Szpunar (note 7), para. 30 referring to Hammar *ibid*.

permit the introduction of domestic integration requirements. In this respect, the *K & A* and *P & S* rulings sanction the general tendency of migrant integration policies in recent years, which can be construed positively as a recognition that migrants are becoming equal members of societies on the basis of a new self-perception.