



FAMILY REUNION LEGISLATION IN EUROPE:

IS IT DISCRIMINATORY FOR MIGRANT WOMEN?



EUROPEAN NETWORK
OF MIGRANT WOMEN

By
Eleonore Kofman
Social Policy Research Centre
Middlesex University, UK

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Project coordinator: Selmin Çalışkan
Graphic design: Leanda E. Barrington-Leach
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EUROPEAN WOMEN'S
LOBBY
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The European Network of Migrant Women (ENoMW) is coordinated by the European Women's Lobby (EWL), the largest umbrella organisation of women's associations in the European Union. The ENoMW was launched in 2010 in the framework of the EWL project 'Equal Rights. Equal Voices. Migrant Women in the European Union'. The ENoMW is currently an Associate Member of the EWL. The EWL benefits from the financial support of the European Union PROGRESS Programme. This project has also been supported by the European Programme for Integration and Migration (EPIM) of the Network of European Foundations (NEF). For more information on the EWL, please visit www.womenlobby.org.



Family migration is overall the most significant route of entry, especially for settlement purposes, into European states. In the past 10 to 15 years attitudes towards family migration have changed from being seen as favouring integration through its capacity to engender stability to one where the supposedly traditional values transferred by migrants, and especially migrant women, threaten national values and result in separate lives and the reproduction of inequalities. Migrant lives and multiculturalism have become politicised and the subject of considerable public and media debate. An increasing number of European leaders have proclaimed the threats posed by multiculturalism.

What is of particular concern is that stereotypical and homogeneous images (low levels of education, outside of and often unwilling to enter the labour market, subordinate and oppressed) and practices (forced marriage) of migrant women, often without much evidence, have been used as arguments for the imposition of blanket policies, especially in relation to age of marriage and pre-entry tests (Kofman 2011; Scholten et al. 2011). Halleh Ghorashi's (2010) analysis of migrant women in the Netherlands, especially Muslim women, applies more broadly to varying degrees. She comments that migrants, including highly educated refugees, are deemed not to have the required skills to become active participants in Dutch society. They therefore need particular attention due to their oppressed and marginalised position.

In terms of European policy developments concerning family reunification, the Family Reunification Directive 2003/86/EC was the first major directive on legal migration adopted by the Council under Article 63 EC Treaty. The Directive applies to all states (though a number took a long time to transpose the Directive into national legislation) apart from Denmark, Ireland and the UK which opted out from it. In some countries nationals benefit from more favourable conditions than third country nationals but in many instances the tightening of conditions for all have meant that some nationals have used

their EU mobility rights to move to another state and bring in family members through this more favourable and less demanding route. Several of the more restrictive states managed to modify articles which would allow them to maintain and introduce demanding conditionalities, especially around integration measures (see MIPEX 3 results). On the other hand, formal restrictions on entry to the labour market have been eased and separation and divorce recognised as a reason to grant an autonomous permit.

The latest MIPEX 3 findings concluded that:

Countries with restrictive definitions of the family tend to also impose burdensome conditions on the sponsor. Those with inclusive definitions often limit conditions out of respect for family life. Applicants must prove a 'stable and sufficient' income, often vague and higher than what nationals need to live on social assistance. An increasing number of countries impose language or integration conditions, extending these to spouses before arrival (see INTEC and PROSINT projects). Families tend to acquire both a secure residence permit and equal rights, but in order to obtain an autonomous residence permit, they face significant waiting periods and conditions.

Overall, MIPEX concluded that procedures in the EU have become more favourable in five, but less so in eleven countries. Countries (recently Greece, Luxemburg, Spain) now provide basic rights and residence security, often to comply with EU law. Because these are minimum standards, few go back on them, but fewer go any further. Decision-makers mostly disagree on how to apply conditions to family reunion. Countries with favourable policies (Belgium, Portugal, Sweden) try to set income or housing requirements based on what all residents are expected to meet in society. But increasingly, established countries of immigration are asking immigrants to fulfil conditions that many nationals do not have to: higher marriage ages (Denmark, Germany, Netherlands, UK) higher incomes (Austria, Denmark, the Netherlands), and more tests for spouses

abroad (Austria, Denmark, France, Germany, the Netherlands, UK), mostly with higher fees and little support.

These developments are increasingly being challenged in national courts and at the European Court of Justice. Firstly, on March 4th 2010, the European Court of Justice ruled against two basic premises in Dutch pre-entry conditions, in the so-called Chakroun-case¹, declaring that it could not differentiate between family reunification and formation. This had implications for the age of marriage and the income conditions for sponsoring spouses. Secondly, in the UK the Supreme Court² (12 October 2011) ruled at the end of a series of appeals that increasing the age of marriage to 21 years for marriage from abroad was disproportionate. Although a higher percentage of forced marriages occurred between 18 and 21 years, overall this only concerned 3% and had a disproportionate effect on this age group. The third challenge concerns a ruling of 16 August 2011 in which the Central Appeals Tribunal in the Netherlands held that the civic integration requirement for Turkish nationals and their family members is in violation of the EU-Turkey association agreement. Following the CRvB's ruling Turkish nationals (and their family members) who apply for a provisional residence permit (MVV) are no longer required to take the basic civic integration exam abroad.

Family Migration

Family migration is complex. It may involve both the reunification of family members, whether the family relationship arose before or after the Third Country national's entry, or involve a family member joining an EU citizen. Especially amongst skilled migrants, the family member may be accompanying rather than joining them at a later stage (see table 1).

¹ C-578/08J

² R (on the application of Quila and another) (FC) (Respondents) v Secretary of State for the Home Department (Appellant) R(on the application of Bibi and another)(FC) (Respondents) v Secretary of State for the Home Department (Appellant) [2011] UKSC 45 (12 October 2011)

Table 1 - Composition of Migratory Flows (2007)
 % of flow of permanent migrants

Country	W	AF	F	H	O	FM	Total
Austria	1	1	40	11	0	46	100
Belgium	6	0	35	7	0	50	100
Denmark	15	6	18	5	5	50	100
France	6	0	59	4	10	20	100
Finland	9	-	36	12	4	39	100
Germany	6	0	23	3	4	64	100
Italy	31	2	40	3	2	22	100
Netherlands	5	0	47	24	0	24	100
Norway	8	0	50	12	0	30	100
Portugal	29	0	62	0	0	9	100
Sweden	0	0	37	28	0	35	100
Switzerland	2	0	21	5	2	70	100
UK	29	14	18	9	6	24	100

Source: SOPEMI 2008.

W: Work
 AF: Accompanying family of workers
 F: Family (reunification and formation)
 H: Humanitarian
 O: Other
 FM: Free movement

The share of family migrants varies considerably between states. In many Northern European countries, the proportion has declined, as in Denmark where it dropped dramatically from 27% in 1996 down to 9% in 2006 due largely to the strictest conditions of any European state. It has also decreased in countries that have introduced pre-entry language tests (see following section). In Southern European states, the proportion has risen sharply with a growing settled migrant population.

Most countries only recognise spouses and children under a specified age (18 in many countries but only up to 15 years in Denmark and Germany). Bringing in children may encounter innumerable problems of income and adequate housing. Many are forced to leave their children behind, either because of an inability to meet the requirements or, for women working in private households in particular, who may not have their own accommoda-

tion (see section on resources).

Parents are even more difficult to reunify since many countries restrict this to cases of parents who are over 65 years old, living alone or dependant. Unlike EU migrants, a Third country migrant cannot call upon their parents in contingencies or emergencies, and especially their mothers, to assist them whilst pregnant or while their children are young (see section on separated children and care arrangements).

Despite the significance of different forms of family migration, we still have relatively little comparative knowledge of how policy measures affect families where one or more members may be of migrant background. The ICMPD (2010) report *Civic Stratification, Gender and Family Migration Policies in Europe* analysed and evaluated the development of family migration policies, on the one hand, and how migrants challenge and cope with the constraints

imposed by such policies, on the other hand. The project covered a range of countries with different histories of immigration, including Austria, Czech Republic, Denmark, France, Germany, Italy, The Netherlands, Spain and the UK. A previous EU FP4 project FARE Family Reunification Evaluation Project had also examined experiences of migrants prior to the implementation of the Directive. Others (Wall and José 2004) have explored how immigrant families with different immigration statuses and resources combine work and care.

Integration Measures

As previously noted, the Directive has permitted the introduction of integration measures. The growth of the citizen population of migrant origin has been one of the key reasons for the tightening of conditions of entry applied to both citizen and non-citizen sponsors.

Another factor in the recent changes has been the focus on so-called failed integration in which stereotypical migrant women and their traditional practices become the basis for the development of immigration legislation applicable to spouses. So what starts out as a concern about forced marriage of a minority becomes a cornerstone of family migration measures, as in Germany, Netherlands and the UK, all of which have introduced pre-entry tests, increased the age of marriage and in some cases the probationary period for spouses. Pre-entry tests thus add another stage of integration measures (language and knowledge of society) to those previously introduced for applicant for citizenship and long-term residence permits.

Pre-Entry Tests

Pre-entry tests, as well as the raising the age of marriage, have often been introduced on the grounds of protecting women from forced marriage, patriarchal control or enabling them to be more independent and participate in the labour market. Renewal of a temporary permit may depend on fulfilling certain conditions, such as having passed a language test or participated in an Introduction programme (Denmark, Germany, the Netherlands, UK). This can be a particular problem for low skilled migrants and migrant women who may have problems in participating in integration programmes and family responsibilities. Only in some, especially Nordic countries, are courses provided free by municipalities with attention to the needs of different mi-

grant groups. Thus costs of courses and tests may represent a considerable burden. Generally the tests are taken in the country of origin although in Denmark these are taken after entry. Failure to pass means the applicant cannot enter or cannot stay.

From the results of the INTEC (Strik et al. 2010) and PROSINT (Lechner and Lutz 2011; Scholten et al. 2011) projects, one might want to argue that language learning is best in the country. Two-thirds of respondents in a consultation exercise conducted in the UK (2007-2008) by the UK Border Agency thought so, and of course many countries already impose language and knowledge of society tests at the end of the probationary period or in order to acquire a permanent residence permit.

Table 2 - Level and Introduction of Tests at Different Stages

Country	Pre-entry	Permanent residence	Citizenship
Austria	A1 2011	A2 2003	A2 language/society
Denmark	A1 +KOS	B1 Danish or A2 Danish and B1 English 2002 (active citizenship test 2011)	B2 2005 +KOS 2007
France	No need to pass to enter	A1.1 2007	Interview 2005 + adherence to Republican principles
Germany	A1 2007	B1 2005	B1 2000 + KOS 2008
Greece		A2	A1
The Netherlands	A1.1 2006 A1 2011	A2 2010 (2007 must pass)	A2 2003 language & society, portfolio 2007
Norway		Course 300 hours	Course 300 hours
UK	A1 2010	B1 or, if lower, progression of one level 2007	B1 language 2004, KOS 2007

Source: Strik et al. INTEC 2010.

KOS Knowledge of Society

Following the implementation of pre-entry tests, the number of applicants for spousal visas has generally declined. In Germany, the number of migrants granted spousal visas declined unevenly, especially from Turkey and Thailand. It should however be noted that the numbers had started to decrease before the introduction of pre-entry tests in 2007. Pass rates varied considerably between those who attended Goethe Institute courses and those who did not and between countries. In 2009, amongst Turkish applicants, 92% of those who attended the Goethe Institute passed compared to

64% of external candidates who constituted 80% of candidates overall. Worldwide, the gap was less with 74% and 61% respectively and with 73% of external candidates (cited in Lechner and Lutz 2011).

Generally the consequences of the pre-entry tests have led to greater selectivity in that those who are less educated and living in rural areas are likely to have higher failure rates but are also less likely to apply. The changes in the composition of applicants in the Netherlands following the Integration Act Abroad did not result in few women but rather a notable increase in the level of education of those who applied, which

might reflect self-selection.

The aim of the Dutch government, as exemplified in its recent decision to increase the level of the pre-entry test from A1.1 to A1 in April 2011, has clearly been to increase the educational level of those entering. It is estimated that this will have considerable impact on the pass rate of less educated migrants and open up a gender gap. For example at the moment 90% of men and 88% of women pass the pre-entry tests but at the higher level this would drop to 79% and 71% respectively.

Table 3 - Spousal visas granted in Germany

Country	2005	2007	2009
Turkey	12,323	7636	6905
Kosovo	-----	2811	2849
Russia	3448	2451	2157
India	1017	1203	1765
Syria	-----	395	1498
Morocco	1637	1257	1413
Thailand	2474	1653	1325
Total	40,933	32,466	33,194

Source: Bundesministerium des Innern 2007, p. 271; BT-DS 16/11997, p. 14; BT-DS 17/1112, p. 6 cited in Lechner and Lutz 2011.

Table 4 - Characteristics of applicants for temporary residence permits before and after the Integration Abroad Act (in %)

Sex	Before Integration Abroad Act	After Integration Abroad Act
Men	38	33
Women	62	67
Education		
Low	34	28
Average	46	39
High	20	33
Nationality		
Turkish	18	18
Moroccan	18	14
Chinese	4	7
Thais	2	5
Brazilian	3	5
Ghanians	10	3
Other	46	48

Source: (Significant 2009: 61-62).

Long-term residence and citizenship

The gender dimension in terms of who is being targeted is fairly clear in relation to pre entry- tests (Kofman 2011). Yet despite the focus on the supposed need for integration measures to tackle the subordination of women and their supposed absence from public spaces, there have been few studies of gendered aspects of integration in relation to long-term residence permits and citizenship. Various conditionalities for accessing permanent residence and citizenship have become common across European states. As Samek Ludovici (2010) notes, 23 out of 31 European countries have linguistic requirements as part of their integration regulations in 2009. Language courses are provided by 19 countries and in 8 countries language courses are obligatory. In 15 countries a language test is required when applying for permanent residency and citizenship. In certain countries (especially the Nordic ones) introduction programmes and language training are provided free of charge by municipalities, while in others immigrants have to provide for the language training themselves, which are offered by private training organisations, often at high cost. However, very few Member States carry out in-depth evaluations of these activities. Interviews with providers of language and knowledge of society courses and with migrant associations and law centres have indicated that older migrant women and those from certain nationalities may find it particularly difficult to pass the tests. In the UK (Ryan 2010), respondents commented that it was difficult for women who had previously not learnt the language and particularly so for those over 45 years, especially if they lacked formal education. Another respondent thought 65 years was too old for the age of exemption. In the Netherlands it was found that one of the reasons women were unable to complete courses was because of childcare responsibilities but this could too easily be interpreted as lack of commitment. In Germany, one study (Grunert 2011) found that after participating in an integration course the majority of female attendants found a full- or part-time position. However it

is more likely for female participants to find a full- or part-time position if they have a German partner, which leads to the assumption that contacts to Germans seem to have a great impact on the employment situation rather than the qualification level (Lechner and Lutz 2011).

In the UK many of the countries with significant marriage migration or refugee-producing countries have low rates of passing the Knowledge of Life test eg. Afghanistan, Bangladesh, Kosovo and Turkey with rates of under 50% for permanent residence. The major problem is that the failure to pass the test means that they do not acquire full social rights or an autonomous permit. In countries such as Austria, Denmark, Germany, and the Netherlands, teachers and other respondents felt the integration requirements for permanent residence was difficult for those, such as women, with low levels of formal education (Strik et al. 2010).

The INTEC study concluded that there was broad consensus about the limited effect of language and integration policy on the actual integration of migrants and there were other factors, such as lack of opportunity in the labour market, discrimination and negative attitudes of society which could be just as crucial. It also recommended that more research be undertaken on migrants who were unable to comply with integration measures and were therefore unable to enter a country or obtain permanent residence and citizenship, and one might add, acquire an autonomous residence permit and its associated rights.

Dependency and Access to Autonomous Residence Permits

Dependency is a key concept of family migration and constructed in several ways. Firstly, it defines the way that rights and obligations of the family member are constructed in relation to the sponsor. The family member does not have an independent right of residence and their rights are defined by the rights exercised by the sponsor. Certain family members are only allowed in if they are totally dependent

on the sponsor, for example children and parents. During the period before a spouse is able to access welfare benefits in her own rights, she has no recourse to public funds in the UK. She is only entitled to work-related benefits, such as maternity pay. The length of time taken to gain an autonomous status is another problem. The permit may be at a lower status ie. temporary rather than the permanent status of the sponsor.

The breakdown of the relationship during the aptly named 'probationary period' has very serious consequences, which may result in the deportation of the spouse. Very problematically this period of dependence has been extended in a number of states³, for example now three years in Germany. In others, such as the UK, a recent consultation on family migration has suggested increasing it from the current two years to five years. This will not only make family migration more onerous but also lock migrants into abusive relationships for a very long time.

Although states may allow domestic violence as grounds for separation without leading to deportation, the spouse has to declare this to a public authority and may have no means of support. So whilst a successful campaign was mounted in the UK in 2002 to have domestic violence recognised as a ground for obtaining an autonomous settlement status, for a significant number of women, the existence of the 'no recourse to public funds' requirement in immigration and welfare law, prevents them from making use of the domestic violence rule as they cannot access safe housing or benefits to escape domestic violence. As a result, they are faced with a stark choice-leave and face destitution or stay and risk their lives. Many women's refuges find it difficult to take them in and this is getting worse as they are losing their grants during a period of recession and public expenditure cuts - women are suffering disproportionately from

³ The Council of Europe recommended in a recent report that individual legal status should be granted to migrant women who join their spouses through family reunion, if possible within one year of their date of arrival, as recommended in many previous Assembly resolutions;

these cuts. A survey by the Women's Aid Federation Northern Ireland for 2005-2007 found that 72 women and 46 children had been assisted by its refuges. 57% had come through family reunification and 29% through independent economic routes. It also included a number of Eastern European women (O'Hara 2007). According to the United Kingdom Border Agency, about 1 500 women apply every year for indefinite leave to stay on these grounds. Numbers awarded settlement status has risen from 300 women who were granted settled status on grounds of domestic violence in the UK in 2006 to 700 women in 2009 (Home Office 2010: 89).

Access to Labour Markets

Studies of labour market integration of migrant women are generally not disaggregated according to the route of entry ie. family, labour, student, asylum (Munz 2007). In some countries there are equal or even higher proportions of foreign-born non-OECD female migrants in skilled occupations as the native-born (Hungary, Portugal, UK). The overall outcome in terms of the labour market is one of high levels of over qualification and deskilling compared to native-born women (table 1.16 SOPEMI 2006)⁴. A number of studies however argue that the different employment opportunities depend on the combination of different immigration and welfare regimes in different member states (Adsera and Chiswick 2004; Biffl 2008).

Certainly formal restrictions against participation in the labour market have been eased. The Directive only allows for a year during which entry to the labour market may be denied. This, however, does not mean that qualifications are recognised and in certain countries, for example France, many jobs, especially in the public sector, remain closed to non-EU nationals. Recognition procedures may be lengthy, bureaucratic and expensive (Samek Ludovici 2010). An example of good practice was the German "Integration

⁴ Over 3 times the percentage of migrant women are over qualified for the jobs they undertake compared to native-born women in Austria, Germany, Greece, Italy and Sweden.

by qualification (EQUAL programme) which offered tailored courses and counselling, skills and language training or in Sweden Work Place Introduction which targeted those without Swedish work experience and especially migrant women. MIPEX III commended Germany for some of the best targeted measures for labour market integration, except in recognising qualifications.

Women as Sponsors and Resources

As a condition of being a sponsor, the Directive (article 7(1)) states that member States may require the applicant to provide evidence of stable and regular resources of themselves and their family without recourse to social assistance. In some states there is no specified amount of resources (Cyprus, Finland, Germany, Spain and the UK) and the application may be judged according to individual circumstances. Portugal seems to be the only state to have lowered its income requirement to take account of the current recession. Many states, in particular in Northern Europe, do demand specific levels of resources (income and/or housing). Thus access to resources is crucial in terms of women sponsoring either partners or children. Yet the resources they have at their disposal, especially through employment, are far less than for men.

In Southern Europe, the informal work many women undertake can rule out formal family reunification, as formal employment contracts are a prerequisite for using the family route. In Northern European states, income or housing criteria mean that women have to work full-time in order to earn the equivalent of the defined minimum income or to be able to afford to maintain housing of a suitable standard. In some countries there is no housing norm (Ireland, Netherlands, Slovenia and Sweden) but income in effect covers this.

The Netherlands demands a legal minimum wage but for a Dutch national being independent means the equivalent of social assistance for a single person, yet most non-migrant women are not independent since two-thirds of working females only work part-time.

Even working full-time women may earn less. Tighter regulations have led to fewer women acting as sponsors.

The state may demand housing of a certain size in relation to the family or that it is occupied exclusively rather than shared, as in the UK, and in this way forces the sponsor to move to a more expensive abode or to work longer hours to earn enough to obtain the level of housing required eg. same size as the norm for someone living in the region, as is the case in France. Because these housing norms take into account the number of people, it may lead to the family having to decide which child to bring in, and by the time they can afford it, the child is too old - 15 years in Denmark and Germany and elsewhere 18 years.

In Denmark, which is the most restrictive of all states, the housing conditions stipulate that the accommodation must either be owned or rented on a long-term lease for three years beyond the period of the reunification. Sub-letting is not acceptable and the accommodation must conform to prescribed minimum size ie. 20 sq. metre per person. There is no income condition but the family must be self-supported, meaning families who do not receive public assistance under the Act of Active Social Policy or the Integration Act for at least 12 months prior to the application being processed, will be considered self-supportive. In addition the sponsor must provide a bank guarantee in case of any assistance required from the local authority. This has to last for 4 years and in 2011 will be for about €8500. So when the Danish authorities say they do not envisage the tests as reducing the level of immigration, it is because the criteria are already very stringent and family migration has dropped drastically in the past decade.

Separated Children and Care Arrangements

Problems arising from lack of resources, or being able to demonstrate that they have stable and regular income, may result in women being separated from their children who are left behind in the country of origin. In some instances, as noted previously, they

may be able to reunify some but not all of their children. We should also consider difficulties of bringing in other family members, such as parents, to assist whilst women are pregnant or to help provide childcare and physical and emotional support. It isn't merely a matter of bringing in parents or others for settlement but also for visits. This contrasts sharply with the rights of migrants from EU states who may avail themselves of this much needed support.

Conclusion

Family migration policies are too often dominated by negative stereotyping of migrants who are presented as a homogeneous group, often unable or unwilling to integrate. The criteria applied to family reunification policies, especially in relation to pre-entry tests are increasingly designed to limit and reshape flows rather than with a concern of whether such policies are effective or respect human rights. Furthermore, a number of countries have deployed the argument of the need to protect migrant women against forced marriages to impose both pre-entry tests and raise the age of marriage in a way which is totally disproportionate and which renders forced migration primarily an immigration issue.

However, the European Women's Lobby and European Action Against Poverty have argued for integration to be treated within a rights-based perspective. This also means recognising the diversity of family migrants. Furthermore, the Parliamentary Assembly of the Council of Europe, in its report on the integration of immigrant women in Europe insisted on granting an autonomous status to the spouse and children of the principal right holder at the earliest opportunity in order to guarantee and protect their rights fully and facilitate their social integration and avoid confining them to the domestic sphere.

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EUROPEAN NETWORK OF MIGRANT WOMEN

THE EUROPEAN NETWORK OF MIGRANT WOMEN (ENoMW) IS AN INNOVATIVE NETWORK BRINGING TOGETHER MORE THAN 100 NON-GOVERNMENTAL AND NON-PROFIT ORGANISATIONS FROM 16 EUROPEAN COUNTRIES TO DEMOCRATICALLY REPRESENT THE CONCERNS, NEEDS AND INTERESTS OF MIGRANT WOMEN AT EU LEVEL.

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