Gender, civic stratification and the right to family life: problematising immigrants' integration in the EU

Albert Kraler [a];Paola Bonizzoni [b]

[a] International Centre for Migration Policy Development (ICMPD), Vienna, Austria [b] Dipartimento di Studi Sociali e Politici, Università degli Studi di Milano, Milan, Italy

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Gender, civic stratification and the right to family life: problematising immigrants' integration in the EU

Albert Kraler[a] and Paola Bonizzoni[b]*

*[a]International Centre for Migration Policy Development (ICMPD), Vienna, Austria;
[b]Dipartimento di Studi Sociali e Politici, Università degli Studi di Milano, Milan, Italy*

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Across Europe, family-related migration has moved to the centre of public debates about migration and integration and associated debates about multiculturalism and diversity. In these debates the migrant family is problematised as an obstacle to integration, as a site characterised by patriarchal traditions and other illiberal practices and characterised by problematic gender relations; and the migrant family is problematised as a failing institution unable to provide adequate care and support to sustain their frail members. In this context the migrant family is increasingly seen as an institution which is at least partly responsible for educational failure of young migrants, youth delinquency[1] and other ills young migrants are associated with. However, there is also the opposite view which celebrates the alleged cohesiveness of migrant families, which is contrasted to the supposed 'decline' of the 'traditional' family in many Western societies (Fukuyama 1998).

Because of its quantitative significance family-related migration is increasingly also seen as an unsolicited and, by implication, unwanted migration, characterised by inflows of lesser-skilled ethnic minority members and seen as being in contradiction with selective migration policies and migration management. It is no coincidence then that many of the new integration measures for recent immigrants such as compulsory integration courses or integration tests focus on family migrants. Rather than simply providing practical support and orientation to migrants these programmes seek to promote specific notions of 'the good citizen' (Schmidt 2007). A relatively new trend, pioneered by the Netherlands, is the introduction of pre-entry tests, justified as a mechanism to prepare (family) migrants for the country of immigration and to ensure a minimum level of knowledge about the country.

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*Corresponding author. Email: paola.bonizzoni@gmail.com
[†]This a column of about ten pages in length aimed at generating debate among our readers. How many of us have an idea that is not yet ready for publication as a fully fledged scientific article per se, but that we would relish the opportunity to present and discuss? The Revue aims to provide such a forum. Once sown, who knows who will bring the seeds of an idea to fruition? In any case, we welcome your contribution on any topic likely to spark discussion. As usual we remind you that papers relating to contemporary political events will not be considered for publication. Please send your articles to the following address: Mino Vianello, Via Brennero 36, 00141 Roma; mino.vianello@uniroma1.it.

Pre-entry tests have also been justified as a means to combat forced marriages, through targeting lowly-educated (future) spouses who are believed to be the main victims of such practices. In effect, however, pre-entry tests are used as a selection mechanism, with the little-concealed overall aim of curtailing family-related migration.

Family migration derives its political significance from the fact that it has become one of the main (and sometimes the only) legal means to find admission in European countries: it is quantitatively by far the largest admission channel for third-country nationals in most western and northern European countries, except the UK, with its large labour migration programme; but also in southern European countries family-related migration is on the rise, even though the high share of family-related admissions have to be seen in the context of large-scale irregular migration and considerable *de facto* admission of labour migrants through occasional regularisation programmes.

Forms and patterns of family-related migration are diverse. In long-standing countries of immigration, marriage migration (the formation of new families through marriage with partners from abroad) has overtaken 'classic forms' of family reunification involving families already formed and separated by migration. In southern European countries, by contrast, marriage migration is less significant and classic forms of family reunification altogether more important. The increase of marriage migration reflects, on the one hand, the growth of transnational marriages between persons with an immigrant background and spouses from the country of origin, and, on the other hand, the growth of binational marriages between non-migrants and partners from abroad.

The right to family reunification – a contested right

Underpinned by human rights considerations, granting migrants the right to family union has traditionally been justified as promoting the wellbeing of migrants and their integration into receiving societies (ILO 1999, para 472, Lahav 1999). As a right, family reunification has been derived from a conception of the family as a 'superior good' which states ought to protect. As such, the obligation of states to guarantee the unity of the family and to promote the family life of citizens and migrants has been enshrined in a number of instruments under international law, including the Universal Declaration of Rights (1948), the European Convention of Human Rights (1950), the International Covenant on Civil and Political Rights (1966) and a number of other conventions and declarations. However, only in the European Union has the right to family reunification been established as a genuine right.

The establishment of family reunification as a right under European Union law limits the power of states to deny this kind of entry: as in the case of refugees, liberal principles constrain the power of the state to restrict this kind of migration.

Yet despite the establishment of a right to family reunification, states still dispose of considerable power to control family-related migration through a range of conditionalities, notably integration conditions, income and housing requirements. Also, contrary to the initial expectations, European legislation on family-related migration has failed to contribute to greater harmonisation or higher standards of rights for all. Thus, the Family Reunification Directive (2003/86/EC) with its 27 derogation clauses establishes only very weak common standards and ironically has led a number of states to downgrade their policies to the minimum standards defined

by the directive. The directive is also a far cry from family reunification rights of EU nationals and their family members, consolidated in directive 2004/38/EC and providing a much wider scope of rights, including a much wider definition of family members eligible for family reunification. Nationals of EU member states who are not living or not having recently lived in another EU member state, however, are not covered by the directive, nor are they covered by the family reunification directive applicable only to third-country nationals. As a result, there is a growing gap between different categories of persons with very different rights to family reunification and overall a growing fragmentation and differentiation of rights to family reunification. In contrast to the postnational citizenship thesis that social and civic rights are increasingly decoupled from formal citizenship in Western countries of immigration (Soysal 1994), citizenship still matters. Indeed, universal human rights, including the right to family reunification, are mediated through national citizenship, but do not supersede or replace citizenship rights.

What does the state 'do' when regulating family-related migration?

In regulating family-related migration, states do not just exercise a quantitative control over migration. Rather, state regulations actively construct and condition the family, by distinguishing migrants eligible for admission from those who are not and by defining a variety of conditions prospective immigrants have to meet. Family admission is generally restricted to a narrowly conceived nuclear family (i.e. spouses and minor children), even if concrete rules vary considerably between countries and according to the legal status of the sponsor.[2] Additional requirements include proof of financial or social dependency in the case of children and parents, minimum income requirements, housing conditions, the proof of future cohabitation, or proof of 'active' family ties (i.e. not having being separated for too long). Dependency is a core principle in family migration policies. Dependency is constructed in three main ways: (1) as legal dependency through making residence rights of secondary migrants dependent on those of sponsors; (2) as financial dependency, notably by requiring the sponsor (rather than the family as a whole) to dispose of a certain minimum income or, albeit this is increasingly less common, by denying family members access to employment; (3) finally, dependency is also constructed as social dependency, for example through requiring children to be of minority age or requiring parents to be over 65 and/or dependent on care by sponsors.

A fundamental tenet of contemporary migration management is the classification of persons involved in migration into different categories (short or long-term migrants, citizens, citizens of EU member states and of the European Economic Area, citizens of other privileged states, refugees, etc.) and the related differential allocation of rights that go along with these status positions. In the context of family migration, the ensuing hierarchy of stratified rights or 'civic stratification'[3] (Morris 2002, Kofman 2003) results in highly differential rights to family reunification: thus, rights to family union are not equally enjoyed by all migrants; rather, they are highly dependent on the legal status of those seeking family reunion as well as other factors such as class and gender.

The restrictions and conditions tied to family migration constrain migrant choices and have concrete consequences on family migration strategies, consequences which are not necessarily limited to the more immediate implications of

these restrictions (allowing or refusing entry). Thus, the consequences of restrictions and conditions often work in more subtle and indirect ways. Thus, minimum income requirements often have the effect of making migrants avoid anything that would risk meeting these requirements, such as changing a job, moving elsewhere or changing to part-time employment. It is also an important rationale for leaving family members behind, in addition to a variety of other considerations such as avoiding disrupting children's schooling in countries of origin and availability of child care in the country of immigration in the case of children or availability of employment in the case of partners. The often resulting long-term separation of family members, in particular when children or the elderly are involved, is often experienced as an extremely distressful experience as the growing body of literature on the theme of care drain and care chains shows (Bettio *et al.* 2006, Piperno 2007). The evidence collected by this study, although not representative, suggests that separation of close family members and resulting transnational family arrangements are quite widespread, particularly for southern European countries covered by the study (Italy and Spain). In this respect, recent restrictions of family-related admissions, notably as far as income and housing requirements are concerned, issues related to immigrants' access to child care facilities in the receiving countries, the situation of children left behind and the experiences of children reunifying at an advanced age after long periods of separation raise a number of important issues.

Immigration policies prescribe 'legitimate' modes of family life, and at the same time influence the way families are – but also should be – 'performed' (Strasser *et al.* 2009): both the normative model of 'good family' life underlying family migration and integration policies as well as the lived reality of family lives are highly gendered. The gendered nature of policies towards family migration, however, has so far received relatively little attention despite the fact that they are often based on gendered assumptions of dependency and traditional concepts of gender roles (Bhabha and Shutter 1994). Indeed, the very notion of family migration is highly gendered, based, as it is, on the assumption that it involves largely dependent women migrating and minors. While there are indeed more women than men immigrating as spouses, men too are increasingly involved in family migration as dependent family members. Reflecting the understanding of family-related migration as feminised migration, the 'male-as-breadwinner' model still informs policy, even if in more indirect ways than in the past (see van Walsum and Spijkerboer 2007). While generations of feminists have questioned the sharp division between 'the social' and 'the economic' and the reproductive and economic spheres, the traditional view of 'the family' as belonging to the reproductive sphere still informs debates on family-related migration. As a result, family-related migration is often constructed as being in contradiction to selective labour migration policies. Indeed, the admission of family members seems to badly reconcile with policies aiming at the selection of prospective migrants on the basis of specific labour needs.

Changing patterns of family-related migration

One of the most important recent trends in family-related migration is the growth of bi- and transnational marriages. The rise of transnational marriages reflects the transition of western European countries of immigration from a labour recruitment to a settlement phase, as well as the growth of second (and sometimes third)

generations. The tacit expectation – partly informed by assimilation theory – was that intermarriage would increase and co-ethnic marriages (and thus transnational marriage migration) would decrease over time. Although the general trend of an increase of intermarriage among the second generation can indeed be empirically observed, the increase is much less than has been expected. Even if some degree of co-ethnic marriage preferences was expected, the preference for marriage migrants from abroad (rather than co-ethnics or natives raised in the country of immigration) is a source of political controversy. Transnational marriage is a contested phenomenon because it involves chain migration and marriage migrants represent a large and growing share of inflows, but also because it is associated with practices seen as problematic and contradictory to cultural integration such as arranged and forced marriages, which in public debates are rarely distinguished. The net result of this inability (and unwillingness) to distinguish forced from arranged marriages according to the degree of coercion or voluntariness involved has been a problematisation of 'ethnic marriages' in general. Consequently, several of the countries covered by this study have used migration policy as an instrument in the fight against marriages,[4] largely ignoring debates questioning whether immigration law is an appropriate tool to address coerced marriages. Although often argued in terms of protection of young migrant women brought in as spouses, policy-makers are often adamant that one of the main objectives of increased age levels is not mainly to protect young girls, but to restrict marriage migration and reduce overall levels of migration.

Binational marriages involving citizens and spouses of foreign nationality have also significantly increased over the past decades as a result of the growth of immigrant populations and the related increase of intermarriage, increasingly globalised educational and career trajectories and the growth of long-distance tourism and short-term business travel and the emergence of globalised marriage markets and associated institutions such as internet dating or professional marriage agencies.

The gendered nature of transnational and binational marriages is mirrored by the debates about the 'quality' of these marriages. Female marriage migration is frequently discussed in terms of 'mail-order brides' and framed in a trafficking perspective; in particular binational marriage relationships are often viewed as suspicious and 'sham', not only by immigration authorities but also by friends, relatives and the closer family. However, the suspicion is much greater in the case of male marriage migrants, whose marital relationships with native women are much more likely to be seen as marriages of convenience than those of female marriage migrants marrying a citizen.

Conclusions

This research project has shown how the ability of migrants to re-constitute their families and to reproduce transnationally is increasingly stratified: contemporary family migrations thus have to be seen in the context of a proliferation, fragmentation and polarisation of different statuses and related bundles of rights with regard to admission, residence, work, social rights and other domains. Conditions attached to family reunification, narrow rules on the eligibility for family reunification and the often tedious practical administration of family

reunification means that access to family reunification is highly uneven. In designing conditions for admission as family members due account of the different social positioning of individuals should be taken. As has been demonstrated in this study, resources and resource requirements have different implications for men and women, in particular if child care obligations are involved.

Acknowledgement

Notes

1. Someone will probably remember President Sarkozy's declarations (see *Corriere della Sera*, 17 November 2005) regarding the violent '*banlieu*' riots, whose roots could be traced, in his view, to polygamy and other similar 'tribal traditions' of immigrant families.
2. Thus, although a growing number of European states allow for reunification with partners in a long-standing relationship and/or same-sex partnerhips, a marital relationship is still the most accepted definition of a legitimate relationship. Children usually include biological children, adopted children and step-children, but in some countries they cannot be rejoined if older than 15 (Denmark) or 16 (Germany). If the sponsor is an EU citizen enjoying mobility rights, however, eligible family members also include relatives in direct ascending or descending line provided they are financially supported by the sponsor. In addition, other relatives are also eligible, if they are financially supported by the sponsor and have already been financially dependent on the sponsor before admission or have lived in cohabitation with the sponsor.
3. Civic stratification can be conceptualised as the hierarchy of stratified rights resulting from processes of exclusion and inclusion which classifies and sorts out migrants and the realisation of rights formally associated with these locations (Morris 2002).
4. Thus, age of marriage for sponsors and spouses has been increased in the Denmark, Germany, the Netherlands and the UK supposedly to protect girls from forced marriages and the desire to slow down the continual inflow of new migrants into communities deemed to be living apart or in parallel lives.

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