

Family Reunification Requirements: A barrier or facilitator of integration?

Summary

Country Report Austria

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1. Introduction

This paper provides a summary of the Austrian findings of the study ‘Family reunification: barrier or facilitator to integration?’¹ The overall objective of the study was to gain a better understanding of the various interlinkages between family reunification and integration. In particular, the study investigated the impact of integration and other admission requirements on families involved in family reunification, while also investigating other ways how integration and family reunification relate to each other.

While family reunification is now a European issue and is, to some extent, harmonised at the European level, there is no single legal regime governing family reunification. Importantly, the right to family reunification is conceived as a right of the sponsor, i.e. of migrants or citizens bringing in a family member. In this context, it is important to differentiate between three main categories of sponsors – (1) EU nationals, (2) Austrian nationals² and finally (3) third country nationals (hereafter: TCNs) – for whom different legal regimes apply. Family reunification is understood in a broad sense as involving pre-existing family units separated by migration or families migrating jointly as well as family formation, i.e. the formation of new families through marriage. In addition, family retention, i.e. protection from expulsion because of family ties, is also explored.

The study addressed three **key questions**:

- (1) Does the obligation to fulfil certain integration requirements hinder or promote family reunification?
- (2) Do the conditions for family reunification promote or hinder integration?
- (3) In what sense is family reunification beneficial for integration?

In order to render the reports comparable, the study focused on four admission requirements: accommodation, income, age and integration. While EU Member States have reached a certain common understanding of the meaning of integration as reflected in the form of the Common Basic Principles on Integration,³ the concept of integration remains highly contested among policymakers, practitioners and academics. In conceptual terms, it is difficult to pin down what exactly constitutes

1 The project was coordinated by the Irish Immigrant Council and involved partners from 7 EU Member States. (Austria, Bulgaria, Germany, Ireland, the Netherlands, Portugal and the United Kingdom). The research on Austria was implemented by the International Centre for Migration Policy Development (IC-MPD). The project received funding under the European Integration Fund and was implemented between September 2011 and March 2013. Both national reports as well as the comparative study are available at <http://familyreunification.eu>.

2 This is a simplification of the legal distinction between EU citizens who have realised their freedom of movement rights (*Freizügigkeitsberechtigte*) and those who have not. Among the former may be citizens who have returned to their country of citizenship from another EU member state and thus fall under freedom of movement legislation.

3 Council of the European Union (2004): Press Release. 2618th Meeting. Justice and Home Affairs Council. Brussels, 19 November 2004. 14615/04 (Presse 321), http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/82745.pdf.

‘successful integration’. As critics have noted, integration is neither a stable condition nor a linear process. Both in academic and wider public debates integration is often imagined as involving the integration of newcomers into that society, which in turn is typically constructed as a homogenous entity. From a scientific perspective, such an understanding of integration is problematic in two ways. First, differentiation and fragmentation are key characteristics of modern societies. In other words, diversity rather than homogeneity is the essential condition of modern societies. Second, and following from the former, integration then becomes a societal and systemic rather than an individual question; namely, how different components of societies are integrated, i.e. ‘held together’ and relate to each other and how individuals are able to participate in different societal domains. Analytically, the study, therefore, focuses on four key dimensions of societal integration: employment, education, social inclusion and language skills.⁴

The study followed a mixed-methods approach, combining original empirical research with legal analysis, document analysis and an extensive review of the existing literature. The desk research included, amongst others, an analysis of legislation and legislative proposals, case law, parliamentary enquiries and statistics. The empirical research involved expert interviews with different types of stakeholders (government representatives, practitioners, social partners, MP’s, etc.) and one NGO expert focus group. Additionally, twenty-one qualitative interviews were conducted with individuals involved in family reunification. In order to reflect the legal complexity, the sample aimed to include different statuses of family sponsors. Due to the geographic limitation of the sample (all interviewees lived in Vienna), the comparatively small size of the sample, and the qualitative methodology applied, the findings are not representative. Although it does not provide quantifiable results, the empirical research, nevertheless, provides robust findings regarding challenges often faced by different categories of individuals involved in family reunification as well as strategies adopted by them in view of such challenges. Interpreted in the light of the legal regulations and an analysis of structural factors impacting on integration, the research findings thus allows to draw evidence based conclusions regarding the three main research questions outlined above.

We are grateful to all research participants for sharing their experiences, insights and views on family reunification. Without them the study would have not been possible.

4 It should be noted that the role of language in integration remains subject to considerable academic controversy.

2. Legislation on family reunification and the legal position of admitted family members

Family reunification is regulated by the **Residence and Settlement Act 2005** (*Niederlassungs- und Aufenthaltsgesetz 2005*, as amended) and the **Asylum Act 2005** (*Asylgesetz 2005*, as amended) and forms part of administrative law. Both acts have been subject to frequent amendments, and as a result, have become increasingly complex. This has given rise to growing concerns about the accessibility and clarity of the legal regulations and their implications on the legal protection of individuals. Thus, while a core principle of general administrative procedural rules is that individuals should be enabled to understand and access their rights and obligations on their own behalf, critics note that this is gradually less the case, rendering it more difficult to act without legal support.

The Residence and Settlement Act regulates the entry and stay of family members of third country nationals, EU nationals and citizens; the reunification of families sponsored by refugees and beneficiaries of subsidiary protection is regulated under the Asylum Act. For applicants under the Asylum Act, more favourable provisions apply. While the Residence and Settlement Act does not differentiate between family reunification and family formation, family reunification provisions of the Asylum Act are solely applicable to the reunification of pre-existing families. Generally, the legal **status of the family member depends on the legal status of the sponsor**. This not only concerns the primary legal category of the sponsor (i.e. whether the sponsor is a citizen, EU national or TCN), but also the type of residence permit a TCN sponsor has (e.g. temporary vs. permanent, with access to employment or without, etc.). The entry of family members of third country nationals under the Residence and Settlement Act is subject to a yearly quota, set at 4,660 in 2012.⁵ Though highly contested in principle, the quota system has lost much of its practical relevance in the past years.

The reunification of family members of third country nationals and Austrian nationals who did not realise their mobility rights is subject to **general admission criteria**, comprising health insurance, accommodation according to local standards, economic self-sufficiency and the fulfilment of a language requirement at the level of A1 before migrating to Austria (exceptions apply in rare cases). After arrival, A2 proficiency level must be attained within two years (exceptions apply in rare cases). The level for self-sufficiency was set at 1,221,68 € in monthly disposable income for a couple and an additional 125,72 € for each minor-aged child in the household in 2012 after deduction of renting costs, alimony payments and other regular payments, e.g. loan instalments. A lump sum of 260.35 € is deducted from these regular payments (“freie Station”) as a general allowance. Thus, a couple with one minor child, which has average monthly housing expenses of 656.21 €⁶, would have to have a monthly net

5 Exemptions apply; for a detailed discussion, see the full version of the national report, Chapter 2.

6 This amount represents the average household expense total according to the consumer survey of

income of 1,617.54 € (12 times a year) to meet the income requirement. The amount is very close to the net median income in Austria of 1,777 € a month.

Following the ruling of the CJEU in *Dereci* (Case C-256/11 of 15 November 2011), Turkish citizens, provided they declare their intent to work, are exempted from these requirements. Permanent residence and citizenship require B1 proficiency and a civic integration test.⁷ Families reunifying under the Asylum Act are exempted from general admission criteria; however, their family relationship must be convincingly documented, which in practice may pose barriers to actual reunification. Family members of EU citizens are equally exempted from general admission criteria, though they are required to be able to prove economic self-sufficiency. Since no minimum threshold applies, the income criterion is assessed on an individual basis, in contrast to family members of Austrian and third country nationals.

2009/2010 and includes regular expenses for energy. In Vienna, however, only rent plus general service charges are considered for the calculation of the minimum income. It is unknown what the practices in other provinces are.

7 Only the citizenship tests require knowledge on Austria.

3. Policy Development and political debate on family reunification in the past decade

While almost all migration to Austria in the post-WWII period has involved a family dimension in one way or the other, Austria lacked an explicit framework for family reunification before the adoption of the Residence Act in 1992.⁸ The Residence Act contained specific provisions for family reunification, and most importantly, established family reunification as a right – though a highly conditional one. Since then, family reunification provisions have been subject to numerous reforms, and have become more complex, partly reflecting the increasing Europeanisation of migration policy and the related differentiation between the different legal regimes for citizens without mobility rights, EU citizens and third country nationals.

The evolution of policies in the past decade is characterised by both liberalising and restrictive tendencies. Thus, the right to family reunification as such is now uncontested and more firmly established than it was in the beginning of the 1990s or even a decade ago. In addition, the dependence of family members on sponsors, which has been criticised particularly in view of domestic violence, has been greatly reduced. Thus, access to an independent residence title before the initial five year period of residence was made easier in cases of domestic violence or guiltless divorce. Also, restrictions in the access of TCN family members to the labour market in the initial period of residence were gradually relaxed in the course of the decade, thus indirectly also reducing the financial dependency of family members on sponsors and facilitating the acquisition of an independent employment-based residence title. On the other hand, new conditions such as integration requirements have been added and have – as indeed other conditions – become more demanding over the course of the past decade. Thus, the level of language proficiency required after entry is higher and has to be proven earlier, while barriers to long-term residence have been considerably increased. The introduction of pre-entry tests in 2011 also means that initial immigration requires more efforts and resources on the side of the applicant, while for instance illiterate applicants or applicants not literate in the Roman alphabet face even greater challenges. In addition, differences in the scope of family reunification for third-country nationals, Austrian citizens without mobility rights and EU nationals have become more pronounced over the past decade as a result of the tightening of conditions for family members of Austrian and third country nationals.

A major feature of the political debate on family reunification in the past decade has been its linkage to integration, and in particular, perceived problems regarding integration. While the discussion goes back to the 1990s, and individual municipalities and provinces have implemented integration programmes from the early 1990s onwards, tangible policies on the national level only followed after a change of

⁸ Before the entry into force of the Residence Act in 1993, a provision under the Passport Act of 1969 (*Passgesetz 1969*) that obliged authorities to take into account the personal circumstances of applicants was the main provision used to admit family members.

government in 2000 with the introduction of integration (i.e. language) conditions in an immigration reform in 2002. While the legislative proposal framed integration conditions as general measures applicable to all current and recent immigrants from third countries, integration conditions very much targeted family members, both in practice and in public debates. The focus of integration conditions on family members is even stronger in regard to the pre-entry test introduced in the 2011 immigration reform, from which highly skilled migrants (holders of a Red-White-Red Card) are exempted. The latter was introduced as part of a broader reform that introduced a point-based admission system for skilled and highly skilled migrants. In this context, the distinction between ‘wanted migration’ and ‘unwanted migration’ became increasingly important, with family migration being associated with the (unwanted) immigration of low-skilled persons considered as problematic in terms of integration. Other recurrent topics in public debates are sham marriages and concerns about the abuse of family reunification provisions, notably in regard to family reunification with citizens and EU nationals. As a result of this focus on bi-national marriages involving third country nationals with an uncertain residence status (such as asylum seekers or rejected asylum seekers), bi-national couples are now systematically screened for suspect cases.

Table 1, below, summarises the most important policy developments in the past decade in terms of general admission requirements (income, integration, accommodation) and the age limit for (both) spouses.

Table 1: Chronology of policy developments - general and specific admission criteria 2002-2012

Year	Policy measure
2002	<ul style="list-style-type: none"> • Introduction of the Integration Agreement (A1 level within 5 years and optional literacy courses) • Introduction of ‘residence certificates’ (issued after 5 years of residence, providing full access to employment)
2005	<ul style="list-style-type: none"> • Harmonisation of the income requirement at the federal level¹ • Amendment of the Integration Agreement (A2 level within 5 years and precondition for naturalisation and permanent residence, optional literacy course) • ‘Permanent Residence EC’ replaces ‘residence certificate’ • Introduction of independent residence titles for family members in cases of violence and one-sided divorces • Reduction of waiting time for labour market access from 5 years to 1 year for family members of TCN
2009	<ul style="list-style-type: none"> • Amendment of the income requirement stating that the requirement is only met after the deduction of all regular payments (rent, instalments, etc.) • Amendment of the minimum age for spouses (from 18 years to 21 years), applicable to the sponsor and family member equally²

Year	Policy measure
2011	<ul style="list-style-type: none"> • Introduction of the language requirement before entry (A1 level before application) • Amendment of the Integration Agreement (A2 level within 2 years, B1 as precondition for naturalisation and permanent residence, no literacy course) • Introduction of immediate labour market access for family members of TCN who obtain a Red-White-Red Card Plus in the realm of a reunification procedure

1 The bottom line reference now refers to the guaranteed minimum level of monthly allowances for retired persons. The rates are adapted to inflation each year. Previously, the social welfare levels in the respective regional provinces were taken as the minimum level. In part, these were considerably lower than the allowances for retired persons. For further discussion, see Section 2 of this paper and Chapter 2 of the long version of the national report.

2 The age limit only applies to spouses and registered partners of Austrian nationals without mobility rights and those of third country nationals (including the sponsor), except Turkish citizens with intent of employment.

4. Administrative competences for the implementation of the right to family reunification

Generally, the responsibility for administering family reunification is divided between consular posts abroad on the one hand, and, depending on the law applicable, competent provincial authorities responsible for immigration or asylum authorities on the other. Federal provinces and municipalities also play an important role in the implementation of integration policy.

With few exceptions, applications must be lodged at the competent consular post abroad. Generally, newborns aged less than six months holding a third country nationality, family members of EEA nationals with mobility rights and Swiss nationals are exempted. In addition, family members of Austrian nationals may apply inland, provided the family member entered the country legally. He/she is, however, not entitled to wait for the decision inland. Turkish nationals enjoy certain privileges if they fall under the Association Agreement. Consulates, though not competent to take material decisions on applications, are responsible for verifying the identity and information presented by the applicant. In this context, consulates may make additional inquiries. **Even if applicants have good prospects to obtain a title on grounds of family reunification or formation, no entrance visa may be issued** if the consulate has reason to believe that the individual's entry might pose a threat to public order or security. In practice, **no effective legal remedy exists to challenge such a decision**. While a decision could theoretically be challenged before a public law court, its occurrence is highly unlikely in practice, given that visa applicants need to personally challenge a decision (sponsors cannot challenge a decision in their stead) and given the difficulties entailed by geographic distance, the long duration of the procedure (about two years) and the costs involved, notably those resulting from the obligation to hire a lawyer. Moreover family reunification under the Asylum Act is subject to additional challenges with regard to the visa procedure. The issuance of an entry visa for family members depends on a positive prognoses decision of the Federal Asylum Office. In a nutshell the authority assesses the applicant's probability to obtain a residence status on grounds of an asylum-related family reunification claim. However, the decision has no legal character and thus cannot be challenged by individuals.⁹

First instance decisions regarding asylum-related claims for reunification are processed inland by the Federal Asylum Office, which is directly subordinate to the Ministry of the Interior. Following a legal amendment from July 2012, several previously separated competences (e.g. first instance in asylum-related matters and the previously diffused responsibilities for the issuance of expulsion orders) will soon be centralised in a single administrative body, the Federal Office for Migration and Asylum. Second instance decisions are taken by the Asylum Court, which also functions as a high court

⁹ The application for reunification according to the Asylum Act (§ 35 Asylum Act, as amended) is lodged only once having entered Austria on grounds of an entry visa. Thus, the visa procedure precedes the reunification procedure.

in administrative matters. Administrative competences regarding first instance decisions related to the Residence and Settlement Act are delegated to the federal states, whereas the court of second instance is located in the Ministry of the Interior. There is a **right of appeal in first and second instance**. Negative second instance decisions may be taken before the public law courts, although access to these has been restricted for asylum-related claims since the Asylum Court became operative. Thus, 'simple' judicial errors cannot be rectified before the high courts.

In terms of integration policy, the Ministry of the Interior is responsible for its coordination, both horizontally between relevant actors at the national level and vertically with relevant sub-national entities (provinces and municipalities), following the adoption of the National Action Plan on Integration (NAPI) in 2010. The area of integration policy most directly related to family reunification as a legal basis for admission is the administration of the so-called Integration Agreement. Here, the Austrian Integration Fund is the main body charged to oversee curriculum development, certification of course providers and subsidies to course participants.

5. Case law

The judicial activity of Austria's public law courts has been an important driver of family reunification policies, with jurisprudence both necessitating legal amendments of existing legislation and responding to the constantly evolving legal framework addressing family reunification. The **Austrian courts of public law may be generally characterised as responsive to the jurisprudence of the ECtHR and CJEU**. By referring cases to the CJEU, such as in *Sahin* (C551/01 of 19 December 2007) and *Dereci* (C-256/11 of 15 November 2011), the courts also actively solicit jurisprudence at the European level, thereby contributing to the implementation of European law at the national level. Jurisprudence on the basis of Article 8 ECHR has been especially important in shaping rules on family reunification in the past decade, notably in obliging authorities to systematically refer to this provision in all family reunification and return decisions.

Generally, the **legislator has considerable room for manoeuvre** in translating jurisprudence into relevant legislation and/or administrative practice. Two examples illustrate this point. In 2009, the Administrative Court ruled that legislation did not specify that monthly expenses should be added to the required income, thus the practice of adding regular payments to the minimum threshold was ruled to be unlawful (VwGH 2008/22/0711 of 3 April 2009). While the ruling could be read as a recommendation to refrain from adding regular expenses to the required income, a subsequent legal amendment explicitly stated that the required income should be understood as a net sum, i.e. as the sum *after* the deduction of all regular payments.¹⁰ Conversely, the far-reaching implications of the CJEU ruling in *Dereci* in principle would suggest an adaptation of the legal framework in the light of the ruling. The Ministry of the Interior, however, opted for only adapting the administrative practice by instructing implementing authorities accordingly. It argued that no sufficiently general rules can be followed from the ruling in *Dereci* which would allow reflecting the judgement in legislation and that ultimately, the implications of the ruling need to be assessed case by case.

¹⁰ Some legal experts argue that the CJEU's ruling in *Chakroun* (C-578/08, a Dutch case) suggests that the Austrian practice is not covered by the Family Reunification Directive.

6. Impact of family reunification requirements on the ability to achieve family reunification

Does the obligation to fulfil certain conditions promote or rather hinder family reunification? The research findings suggest that admission requirements, the precarious legal position of some sponsors and difficulties resulting from administrative practices may negatively impact the ability of applicants to realise family reunification and, as a result, may also have negative repercussions on family life. Moreover, the increasing differentiation between different categories of sponsors in terms of rights and conditions attached to family reunification has socially selective effects.

6.1 Family reunification of third country nationals via the Asylum Act

Chapter V of the Reunification Directive states that refugee families shall be granted **facilitated access** to reunification. Thus, general admission criteria such as income, housing and integration conditions do not apply to families reunifying under the Asylum Act. Yet, the findings from the empirical research show that individuals encounter a range of challenges, a result of which makes access to family **reunification problematic**, not least because of the double-edged administrative competences (consular posts and the asylum authority inland) for granting an entry visa. As experiences shared by experts and refugees interviewed for this project suggest, serious doubts may be raised on whether the right to the protection of family and private life is sufficiently guaranteed for this particularly vulnerable group.

In particular, to benefit from the provisions of the Asylum Act, the family relationships of spouses and registered partners must predate the flight from the country of origin; otherwise, the ordinary procedures under the Residence and Settlement Act apply, meaning that applicants will have to fulfil all material conditions. The definition of family members eligible for family reunification under the Asylum Act encompasses a smaller circle of family members than the definition of eligible family members of other categories of sponsors (TCN, citizens, ‘mobile’ citizens and EU/EEA nationals) as defined under the Residence and Settlement Act. As in the case of ‘ordinary’ sponsors under the Residence and Settlement Act, siblings are excluded from the circle of eligible family members, which is particularly an issue in respect to unaccompanied minors. Individuals interviewed for the study generally consider the **narrow definition of the family** and the restrictions to family reunification and exclusion of family formation as a considerable barrier to their family life.

Apart from being able to show eligibility for family reunification, the **family relationships must be verifiable**. In practice, this may involve considerable difficulties for applicants. Not all documents required are always available in the applicants’ respective countries of origins or can only be obtained under significant efforts, frequently involving a considerable financial burden. Sometimes documents provided by applicants are not accepted by the examining authority. Moreover, the application involves costly journeys to the capital or neighbouring countries for lack of diplomatic

representations in the home country. In recent years, DNA-testing has become established as an instrument to examine family ties, particularly in asylum-related cases. Though introduced as an optional method to prove family ties, DNA testing is often the only way to provide sufficient proof of family ties and risks substituting other means to provide evidence of family relationships. As a consequence, **biological definitions have become privileged** over more socially framed **family definitions**.¹¹

Asylum or subsidiary protection status forms the precondition to any reunification under the Asylum Act. As asylum procedures themselves may take a long time, the ensuing **period of separation** of family members can be substantial. One interviewee, for instance, had to wait seven years until his children could join him, while an unaccompanied minor had to wait two and a half years for reunification with his mother. For both refugees and beneficiaries of subsidiary protection, maintaining **transnational family** ties represents a great **challenge**, as visits to the country of origin may lead to the withdrawal of the protection status. In several interviews, sponsored individuals pointed out that they were not subject to persecution themselves, but their legal categorisation as refugees made it hardly possible to stay in touch with important family members in their home countries (e.g. visit elderly parents, sick family members or simply persons one is strongly attached to).

6.2 Family reunification of family members of third country nationals and EU-nationals without mobility rights via the Residence and Settlement Act

Third country nationals seeking reunification under the Residence and Settlement Act have to fulfil the general admission criteria. Since the criteria also apply to the reunification of family members of EU-nationals who have not exercised their mobility right (essentially Austrian nationals), the analysis presented below are equally valid for the latter, unless stated differently.

In applications for family reunification under the Residence and Settlement Act, applicants also have to provide proof of the family relationship. Interviewees reported the list of required **documents** to be extensive and further had the impression that authorities were unable to cope with non-standard situations, for example, if certain documents were not available in particular countries. The efforts required to obtain the necessary documents, including travel, procuring documents from relevant authorities, and organising certified translations of foreign language documents were viewed as a complex and economically burdensome process. Many considered the range of documents required and methods of inquiry deployed by the authorities an intrusion into their private lives (e.g. on-site interviews by officials before entry in the country or checks on conjugal life in private homes once residence permit was issued).

The **income** criteria are generally portrayed as an objective bottom line and a necessary measure to prevent people from 'immigrating into the welfare system' by policymakers. By contrast, participants of the NGO focus group questioned the objectivity of the criteria. In particular, they criticised that structural inequalities (such

¹¹ This, for example, runs contrary to developments of the past decades in family law, which increasingly has turned to social family definitions.

as the gender pay gap) and the concrete circumstances of individual applicants and their families are largely disregarded by the legal framework and equally insufficiently considered in administrative practice. By and large interviewees managed to fulfil the income requirement.¹² Several interviewed families had used a declaration of liability for their family members (this is possible only for Austrian nationals) or procured a pre-contract for family members, so the prospective salary would be added to the sponsor's income by the examining authorities. In order to meet the income criteria, however, sponsors were often forced to adapt their career or educational plans, as changing jobs or reducing employment to pursue further education would have risked their ability to meet the requirements. Thus, the indirect effects of income criteria can be expected to be considerable. Several interviewees felt that requiring a particular income level unduly interfered in the private matters of individuals and further stated that, in their view, different living circumstances would require different income levels.

Accommodation was not an important subject of discussion, neither among experts and policymakers, nor among individuals interviewed. In practice, it seemed important to individuals to acquire networks in order to obtain information on the housing market. Several respondents reported they had been helped by close relatives in order to meet the requirement. Some remembered that they had to provide a minimum of eleven square metres for each member of the household, although the law itself does not refer to any standardised size. Rather, the provision explicitly refers to local standards, which in practice may vary from neighbourhood to neighbourhood.

In the view of the Ministry of the Interior, the **language requirement** provides a chance rather than a barrier for immigrants, since learning the language at the earliest stage possible, including before entry, would enable greater social participation. From a linguistic perspective, the efficacy of such a requirement remains highly questionable, as experts have argued. The testing does not consider the very unequal starting conditions of individuals (e.g. illiteracy or geographic distance to teaching or testing centres). Its objectivity is, thus, questionable. Finally, there are reasons to believe that language is learned best in the country where it is spoken. Comparatively few family members were confronted with the pre-entry test, but these received incorrect information at their respective embassies and were subject to severe inconveniences caused by the lack of infrastructure in the home country (e.g. teaching and testing centres).

Only one person in the sample was personally concerned by the **age requirement**, though anecdotal evidence in several interviews suggests that the age limit poses a more general barrier to the reunification of young adults. In the one case mentioned above, family reunification was eventually permitted on humanitarian grounds because of pregnancy.

6.3 Family reunification of EU nationals with mobility rights

12 The interview sample only included cases of successful family reunification and a few cases still pending. According to policymaker interviews, it is rare that applicants do not meet income conditions. It can be assumed, however, that applicants not meeting the conditions are unlikely to apply for family reunification in the first place.

EU nationals enjoying mobility rights and their third country national family members largely reported to have encountered no difficulties. However, even if no administrative hurdles were encountered, the process of migration was often portrayed as more difficult than initially imagined. This raises issues about the impact of more stringent requirements applicable to Austrian and third country nationals involved in family reunification, and in particular, about the interplay between inherent challenges involved in moving to another country and any additional requirements families need to satisfy.

In some of the cases regarding EU nationals, jobs had been previously arranged and the employer had provided support for settlement (e.g. interim housing, language course sponsoring and information about administrative procedures). However, in one case a family did not move for professional reasons, and found itself in a more disadvantageous position in planning for their settlement.

6.4 Overall assessment of the procedure

When asked to assess the procedure retrospectively, the **waiting time and separation** from the family was frequently mentioned as some of the most problematic aspects, particularly for refugee families. Also, there was a widely shared impression of **administrative discretion** and humiliating treatment by authorities. Executive power reaches far into the most private sphere of individuals, as the striking reports about police checks to detect 'sham marriages' demonstrate. These were perceived by respondents as 'pulverizing' experiences and reckless intrusions into privacy. Support played an important role for many interviewed families throughout the procedure, though sources and forms of support are heterogeneous.

7. Impact of family reunification on integration

Available research on migrant integration generally highlights the importance of structural factors in shaping patterns of social inclusion and participation. This implies that policies on integration solely focused on migrants themselves, such as integration conditions built into migration law, are likely to miss important factors contributing to social inclusion and participation, and may at times even have adverse effects on individuals. While the National Action Plan on Integration in principle provides a comprehensive framework for integration and also considers the role of the native population and the state, the main **emphasis** is largely placed **on efforts expected from migrating individuals**, reflecting similar tendencies in other EU countries. Much less emphasis is placed on addressing discrimination and social exclusion. The focus on individual level characteristics such as low qualifications, high unemployment and lack of language skills as major causes for ‘unsuccessful integration’ are mirrored by related immigration conditions that seek to filter out those deemed difficult to integrate or make immigrants subject to specific conditions thought to address such deficiencies.

The **residential security of family members** after arrival **depends on meeting** a number of criteria. Two strands can be identified as paradigmatic in this regard: firstly, **economic self-sufficiency**, which, in terms of policy, is realised by the obligation to fulfil the income requirement until the family member qualifies for permanent residence or citizenship and, secondly, German **language proficiency**, which in the past years has increasingly become represented as a central condition of successful participation in Austrian society. In this context, language acquisition is promoted via two instruments: compulsory courses and examinations. In cases of non-compliance, individual migrants face sanctions, including administrative fines and ultimately termination of residence. While experts agree that language courses can support the learning process, and also integration more generally, there is considerable controversy about the level of language proficiency that can be reasonably expected, about the link between language skills and security of residence and about the sustainability of language skills obtained in language courses. Thus, linguists argue that language proficiency and the possibility to communicate in the language of the host country generally need to be seen as the outcome of power relations and consequently have to be understood as an effect, not the cause of social marginalisation or inclusion.

The results of the empirical research suggest that integration requirements can produce paradoxical, frequently even counter-productive, outcomes with regard to the actual promotion of integration. First and foremost, interview partners and experts alike viewed the legally induced precariousness of residence security as problematic (e.g. living under constant threat of expulsion, strong preoccupation with fulfilment of requirements, difficulties to plan ahead). Secondly, many respondents reported they had to change their initial plans, for example, drop further education or change to more ‘lucrative’ jobs that are not associated with their initial professional background, in order to comply with the income criterion. Evidence from the interviews, expert statements, previously conducted large-scale studies as well as qualitative surveys have repeatedly

pointed out to the widespread phenomenon of de-skilling among immigrants. Reasons are manifold (discriminatory labour market, lack of adequate screening of skills after arrival, etc.), but the pressure to fulfil the income requirement seems to be a significant factor contributing to the dynamics of deskilling and the lack of possibility to take the necessary time to find an adequate job commensurate to one's skills. Moreover, once employed in a low-skilled segment, vertical job mobility becomes less likely over time. Nearly all interviewed families could access labour market in theory, but had experienced discriminatory encounters in their working environment or during their search for employment or vocational training. Further, the necessity to earn a specific amount of money implied full-time employment in many cases for the family member too, which in turn posed barriers to pursue further education or, as frequently expressed, get involved in additional language courses. The situation was described as even more difficult if young children formed part of the household. Because coverage of public childcare facilities is still limited, particularly for children below the age of three, but also due to gendered divisions of labour, women largely remain in charge of child-raising and household matters. Interview partners reported difficulties in taking care of the child while working and learning the language simultaneously, which cumulated in dropouts from work and/or language courses. Many interview partners also regarded the lack of sufficient language proficiency as a factor narrowing their job opportunities. Migrants' views of (compulsory) German classes were ambivalent, ranging from very positive memories to rather negative ones, mostly related to an impression that the courses failed to convey relevant knowledge. Some families reported being put under pressure by the authorities (e.g. they had received official letters stating that learning the language was compulsory, otherwise family members had to fear deportation), while others feared contact with authorities because they felt themselves to be insufficiently proficient in German, despite having successfully completed the Integration Agreement. In regard to refugees and beneficiaries of subsidiary protection, state-funded integration language courses are available only after a protection status has been granted. Thus, apart from children attending school, asylum seekers do not have systematic access to language courses. Yet, language proficiency is also an important criterion in assessing applications for humanitarian stay in the case of rejected asylum seekers and their family members.

8. Conclusion

Austria's family migration policy in the past decade shows both liberalising and restrictive tendencies. Legally, family reunification has become increasingly complex and differentiated along different status categories. As the study sought to show, the legal framework governing family reunification and its effects on integration needs to be seen against the background of the broader opportunity structures for economic, social and political participation in society.

As research findings from Austria suggest, integration measures built into migration law seem unable to address the life realities of family migrants and, in many cases, exacerbate rather than resolve underlying tensions. The research findings also suggest that one-size-fits-all solutions (such as making admission or upgrading of one's legal status dependent on standardised tests) risk ignoring individual needs, life phases and potential as well as being blind to structural inequalities the framework relies upon and sustains.

For more information and references please consult the Austrian country report published as:

Albert Kraler, Christina Hollomey, Christoph Hurich, Alexandra König, Gerhard Muzak (2013): Family Reunification – a barrier or facilitator of integration? Country Report Austria. Available at www.familyreunification.eu and <http://research.icmpd.org/2012.html>.

This summary reflects the main outcomes of the Austrian report of a comparative study on the family reunification policies in six EU Member States: Austria, Germany, Ireland, the Netherlands, Portugal and the United Kingdom. The study not only looked into the requirements, but also how they are applied in practice and how this is perceived by the family members. It also offers insight into the way family reunification policies have been developed during the last decade and the arguments governments have used to justify new restrictions. Based on statistics and interviews, the authors drew conclusions on the impact of the conditions applied. As at the EU level family reunification is regarded as beneficial for the integration of migrants, the study answers the question as to whether the national policies actually promote or hinder family reunification and contribute to the integration of migrants.

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