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INTEGRATION FOR THIRD-COUNTRY NATIONALS IN THE EUROPEAN UNION

The Equality Challenge



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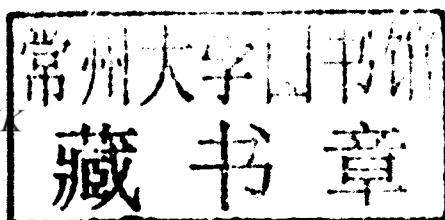
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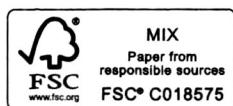
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Integration for Third-Country Nationals in the European Union

The Equality Challenge

This book is dedicated to the Bahá'í refugees in Europe, hoping they will enjoy in their country of asylum those rights they were deprived of in their fatherland.

Contributors

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Cordelia Carlitz is a PhD candidate at the University of Constance, Germany. Previously, Ms. Carlitz was a research fellow at the Center for International and European Law on Immigration and Asylum at the University of Constance, Germany. Her main areas of research include family reunification, integration and social rights of migrants. Ms. Carlitz writes her PhD thesis on family reunification law. She has gained practical experience with migration issues volunteering as a refugee counsel for a non-governmental refugee advisory service in Essen, Germany.

Stephen Davies is currently Policy Officer for the European Migration Network within the Immigration and Integration Unit of the European Commission's Directorate General for Home Affairs. His main responsibilities with regard to the European Migration Network (EMN) is to ensure that its objective of providing up-to-date, objective, reliable and comparable information on migration and asylum, at European and Member State level, with a view to supporting policymaking in the EU, is met. In particular, by providing an EU-policy aspect to the EMN's many activities. These activities involve also collaborations with colleagues within the EU institutions on migration-related issues, such as on integration, as well as with the Commission's Directorate General's Eurostat and

Research and Innovation and with the Fundamental Rights Agency, plus with other relevant (non-EU) entities.

Madeline V. Garlick is the Head of the Policy and Legal Support Unit in the Bureau for Europe of the Office of the United Nations High Commissioner for Refugees (UNHCR). Prior to this, she led the EU Policy Unit at UNHCR's Liaison Office to the EU from 2004 to 2009. Ms Garlick holds a Master of Laws (LLM) in International Law from Cambridge, UK, as well as BA (Hons) and LLB (Hons) degrees from Monash University, Melbourne, Australia. She is qualified as a barrister and solicitor in Victoria, Australia. From 1996 to 1999, she worked in Bosnia and Herzegovina with the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), and later the Legal and Human Rights Unit of the Office of the High Representative (OHR), specialising in legal work on the property rights of displaced persons. She subsequently served in Cyprus, with the UN Secretary General's Good Offices mission, as part of the team that facilitated negotiations between the Greek Cypriots and Turkish Cypriots 1999–2004. She has also served as a member of the Editorial Board of the Refugee Law Reader since 2006.

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Dr Maria Kontos is Senior Research Fellow at the Institute of Social Research and Lecturer at Goethe University, Frankfurt am Main. She has been principal investigator and coordinator in several EU research projects. She has published on migration and integration policy, migration and gender, welfare policy and care, labour market integration of migrants, self-employment and ethnic entrepreneurship, quality of life and family businesses of migrants, and biographical methods. Among her recent publications are the co-edited volumes *Self-employment of Women and Minorities. Their Success or Failure in Relation to Social Citizenship Policies* (VS Verlag, Wiesbaden 2008), *Women in New Migrations. Current Debates in European Societies* (Jagiellonian University Press, Cracow, 2010) and *Female Migrants in Europe. Paradoxes of Integration* (Springer, Amsterdam, forthcoming). Her current research is on the impact of public migration discourses on the integration processes of migrants, and the development of qualitative and gender sensitive indicators of social integration.

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Dottoressa Sonia Morano-Foadi is a Reader in European Law and Director of the Centre for Legal Research and Policy Studies at the School of Law, Oxford Brookes University. Her research combines empirical

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At present, she is the leader of the Women, Gender and Agency (WGA) project. Saarinen has published on feminist theories, mobilisation against gender violence and organising in transnational settings, and on migration.

Mr Adriano Silvestri has been working since 2009 with the European Union Agency for Fundamental Rights, where he coordinates the team responsible for asylum, migration and borders. Prior to that he spent 14 years with UNHCR, where he was in charge of refugee protection activities in Armenia (1993–1995) and the Russian Federation (1995–1999) and was responsible for refugee law training activities in Austria (2000–2004). Before joining the European Union Agency for Fundamental Rights (FRA), Adriano Silvestri was at the Division of International Protection Services with UNHCR in Geneva.

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Planning this volume has been as challenging as writing it. The proposal was drafted while visiting the Centre for Bahá'í Studies in Acuto, Italy, which is situated in the hills near Rome. The editors of the book were inspired by the beautiful setting and the spiritual atmosphere of this magical place.

On a more personal level, we thank our families, who have assisted and encouraged us in this endeavour.

Foreword by the Standing Committee for the Social Sciences of the European Science Foundation

In recent decades the geography and dynamics of migration have undergone a transformation. Global mobility patterns have diversified and intensified, to a large extent in response to economic forces and political change, but additionally inflected by government policies vis-à-vis migration, including the provision of incentives or imposition of constraints for various categories of migrants.

The social, cultural and political questions and challenges posed by migration flows and processes since the latter half of the 20th century are numerous, diverse and evolving. In the past decade alone the Standing Committee for the Social Sciences of the European Science Foundation (ESF) has observed and responded to an expanding research and policy interest in a wide spectrum of migration-related issues. The ESF has supported research on these issues in multiple ways, from Strategic and Exploratory Workshops to International Conferences and European Collaborative Research Projects.

A major part of the rationale for an ESF Strategic Workshop on migration research in September 2011 on 'New approaches for researching the determinants of migration processes' (International Migration Institute, Oxford),¹ was that research on migration is fast-growing and fragmented over numerous disciplines. Researchers have approached migration-related issues, including the integration of migrants, from a wide variety of methodological and theoretical perspectives. A significant amount of research has focussed on the social, cultural and economic impacts of migration on sending and receiving societies and on labour market and social conditions of migrant workers. For example, a developing area of study supported by ESF is the nexus between transnational

¹ See ESF Strategic Workshop: New approaches for researching the determinants of migration processes, available at <http://www.imi.ox.ac.uk/events/past-events> (last accessed 20 July 2012).

migration, cultures of care and inequalities in affluent and ageing Western societies. Other agendas aim to understand better the multi-level drivers of migration processes, their relative importance, mutual interactions and feedback effects.

Central to much new research on migration in the humanities and social sciences has been the recognition that migration and integration processes involve a fundamental transformation of spaces, identities and conceptions of home and belonging. Integration is not a simply a process of more or less successful assimilation of migrants into host cultures; rather, migration and integration set in motion processes of mutual adaptation and dialogue between cultures, which can be rich and rewarding for all involved, but which are also highly sensitive and complex regarding issues of identity and intercultural communication. A recent ESF-COST project 'Cultural Literacy in Europe Today'² proposed the closer study of practices of cultural production (e.g. literature) of migrants as a heuristic to gain more insight into migration, migrants, integration and the politics of representation, communication and translation.

Research supported by ESF has also shown how integration patterns among the 'second generation' (children of migrants) vary widely and unpredictably between ethnic and cultural communities and from country to country in Europe. The European Collaborative Research Project 'TIES' (The Integration of the European Second Generation)³ exposed the complexity of the challenges ahead for the nations of Europe as they absorb workers and asylum-seekers from beyond the borders of the EU. This research suggested that, so far, there is no single integration model that performs well in all of three key dimensions of life (education, employment, sense of belonging and identity) for any of the ethnic communities studied.

A very material determinant of the degree of integration of migrants in host countries is the legal framework, at national and – in the case of Europe – supra-national level. The ESF Exploratory Workshop 'In/equality for Third Country Nationals: Implementation and Effects of EU Directives on Migration and Asylum' held in Oxford in June 2010 which resulted in the present volume explored the implementation and effects of EU directives on migration and asylum for various categories of third-country nationals, from asylum-seekers through to highly-skilled migrants, and in all cases, their families. This research agenda is critical not only in illuminating and addressing tensions and contradictions

² See <http://www.esf.org/?id=6795> (last accessed 20 July 2012).

³ See <http://www.tiesproject.eu/> (last accessed 20 July 2012).

between various lines of EU policy (e.g. equality and anti-discrimination policy versus asylum and migration policy), but also in highlighting discrepancies between the formal rights and the lived experience of migrants in diverse national settings. Perhaps most importantly, the comparative, socio-legal approach of the research programme proposed by the editors and authors of this book recognises the need to interrogate the notion of integration itself and to cross-examine legal, political, social and cultural conceptions of integration and their combined impact on individuals and communities. Indeed, integrating analysis of migrant populations and the institutional framework which governs their flows is a major challenge for future research.

As indicated above, research on migration and integration is flourishing but remains conceptually and methodologically multifarious, making it difficult to achieve a more comprehensive understanding of the relevant phenomena. In an increasingly interconnected and interdependent world, there is a need for new questions, new perspectives and renewed scholarly debate on how to understand and potentially manage the transnational movement and integration of people so as to secure the potential positive effects while mitigating the negative outcomes. The challenges for further theoretical and empirical research on migration and integration have been summed up in the 2009 Position Paper of the Standing Committee for the Social Sciences of the ESF:

Governing migration and integration in Europe is an arduous task due to the complex and dynamic nature of the phenomena and the enormous diversity of realities and practices within Europe. From a research point of view this combined multiplicity is an opportunity rather than a problem. The wide variety in contexts, experiences and policies provides a natural laboratory to learn to understand the economic, social, cultural and political causes and ramifications. A cross-European research effort could uncover the crucial mechanisms and separate them from the contingencies, identifying points of intervention that not only address the driving forces but also fit the specific context in which they are applied. Strengthening the evidence base is a necessary condition to increase the efficacy of the interventions.⁴

⁴ Pieter Hooimeijer, *Vital Questions* (IREG 2009), p.37, available at http://www.esf.org/fileadmin/links/Social/Publications/SCSSpositionPaper_2009-11.pdf (last accessed 20 July 2012).

Preamble

**Madeline V. Garlick, Stephen Davies and
Adriano Silvestri***

According to the European Commission, the number of migrants from non-EU Member States is around 20.2 million, representing about 4 per cent of the Union's population.¹ This is a significant figure which reflects the increased diversity of European society.

At a time of economic instability and difficulty in many European countries, however, there is a risk that public attitudes towards third-country nationals may be negatively affected, making their integration in the European Union more difficult. Cuts in services, such as integration programmes including language training, as well as higher unemployment generally, may reduce the opportunities for migrants and refugees to be socio-economically self-sufficient. Public views of migrants and refugees may be shaped by this perceived or actual lack of participation in or contribution to the host society.

The European Commission, in the 2011 'European Agenda for the Integration of Third Country Nationals',² emphasises the need for a positive attitude towards diversity, based on strong guarantees for fundamental rights and fair treatment as well as the mutual respect of different cultures and traditions. It also recommends strengthened efforts to combat discrimination and to give migrants instruments to become acquainted with the fundamental values of the EU and its Member States. Thus, sound strategies and dialogue between host societies and third-country nationals could tackle xenophobia, meaning fear of the foreign, where it

* The views expressed are purely personal and do not necessarily reflect the views of the European Commission, the UNHCR and the FRA.

¹ Figure from the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'A European Agenda for the Integration of Third-Country Nationals', 20 July 2011, COM(2011) 455.

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 20 July 2011, COM(2011) 455 final.

emerges. Racism and prejudice, by contrast, require clear responses and strong leadership to communicate messages in favour of tolerance and cohesion. These basic elements are crucial in shaping public perceptions and fostering positive integration measures.

EU immigration policy aims to ensure non-discrimination and integration of third-country nationals. In recent years, the EU legal framework has been reinforced by the legally binding status of the Charter of Fundamental Rights, acquired through the entry into force of the Treaty on the Functioning of the European Union (also known as the 'Lisbon Treaty'). The Charter applies both to EU citizens and third-country nationals. Its Title III addresses the principle of equality, and Article 21(1) states that:

any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

Among secondary legislation, the recently adopted Single Permit Directive (2011/98/EU) defines a common set of rights to legally residing third-country national workers based on equal treatment with nationals of that Member State.

The integration of third-country nationals remains a key policy priority for the EU, with equality one important component. Although the Union does not possess legal competence to adopt binding legal measures on integration,³ it has in recent years developed a framework for EU cooperation through *inter alia* the exchange of experiences, policy coordination, monitoring of results and financial support via the European Integration Fund and the European Refugee Fund. Member States have also confirmed their commitment to further developing the idea of integration as a 'driver for economic development and social cohesion, in order to better enhance migrants' contribution to economic growth and cultural richness.'⁴

³ Article 79(4) of the Treaty of the Functioning of the EU, permits the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, to establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

⁴ Conclusions of the Council and the Representatives of the Governments of the Member States on Integration as a Driver for Development and Social Cohesion, Council document 9248/10.