HIGHLIGHT

# Integration Through Residence Conditions? The Beneficiaries of Subsidiary Protection Confronted With the Janus-faced National Integration Policies

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Under the terms of Art. 79, para. 4 TFEU, integration of third country nationals legally residing in a Member State should fall under the category of complementary competences. Then, the EU is entitled to support, coordinate or supplement the action of the Member States, but it can neither impose the direction of national policy choices nor modify or harmonize existing legislations. The States have therefore retained sovereignty in this field and the CJEU has ruled out any attempt by the EU to encroach on this domain: in *Germany and others v. Commission*,[1] the Court acknowledged that EC labour and social policies could have a spillover effect on the legal regime of third country nationals, but highlighted their extremely tenuous link with integration. The Community was therefore prevented from adopting binding rules in this field.

This background has favoured the gradual emergence of various forms of conditionality, whereby the failure to fulfill the integration requirements imposed at national level may result in a restriction of the rights provided by EU law. Two main examples can be identified.

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[1] Court of Justice, judgment of 9 July 1987, joined cases 281/85, 283/85, 285/85 and 287/85, *Germany and others v. Commission*, para. 22.

On the one hand, some key EU sources on regular migration allow national authorities to prescribe specific duties of integration on the migrants.[2] These integration conditions usually take the shape of language and civic education exams, which the third country national has to take (and pass) in order to fully enjoy the related status or right. The CJEU has acknowledged the compatibility of these exams with EU law,[3] provided that they respect the general principles of the EU legal order and do not amount to a leeway allowing for forms of control over (and selection of) migration flows.

On the other hand, the development of an appropriate integration policy can be invoked by national authorities to justify a derogation to EU law. From this point of view, in *Alo and Osso* the CJEU was asked to establish whether a residence condition imposed by German law on beneficiaries of subsidiary protection who were recipient of social assistance was compatible with the Directive 2011/95/EU.[4] The Court stressed the importance of the principle of equality: if the situation of a beneficiary of subsidiary protection is objectively comparable to that of other legally resident third country nationals, so far as the objective of a full integration is concerned, the Member State must ensure him/her the same treatment. Otherwise, a residence condition represents *per se* a justified restriction to the freedom of movement,[5] because it is deemed to facilitate social inclusion in the host Member State.

These examples share a common element. In both situations, the Court calls for a case by case approach: integration requirements are not absolute; instead, it is for the national courts to determine whether they comply with the general principles of EU law in practice. However, national judicial authorities are confronted with a demanding task, which places at risk the coherence of national integration policies and the full effectiveness of EU law.

In fact, the meaning of integration is far from easily identifiable: too wide and fuzzy notions can dramatically increase the national authorities' discretionary powers and the

[2] Directive 2003/109/EC of the Council of 25 November 2003 concerning the status of third-country nationals who are long-term residents and Directive 2003/86/EC of the Council of 22 September 2003 on the right to family reunification.

[3] Court of Justice, judgment of 4 June 2015, case C-579/13, *P. and S.*; judgment of 9 July 2015, case C-153/14, *K. and A.*

[4] Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

[5] Art. 26 of the Geneva Convention on status of refugees of 28 July 1951 provides that the freedom of movement includes the right to choose the place of residence in the State that has granted that protection. Directive 2011/95/EU affords to beneficiaries of subsidiary protection the same rights as those enjoyed by refugees.

heterogeneity of national laws, to the detriment of a coherent approach to integration policies.[6]

Moreover, the case law of the CJEU shows a certain degree of inconsistency. In *Alo and Osso* the Court upheld the lawfulness of the residence condition only on the basis of the principle of equality, but failed to provide the referring court with any guidance on the criteria for a (strict) proportionality test.[7] From this point of view, the Court departed from its precedents on integration exams, where it underlined that such measures on integration conditions should be carefully scrutinised in light of the principle of proportionality, in order to avoid unnecessary restrictions to the rights conferred by the EU legal order.[8] In the same vein, factors such as the social and economic context of the area involved and the duration and territorial scope of the residence condition can have a significant impact on the freedom of movement of migrants and may influence the balancing of the opposing interests at stake.

This is particularly important, since integration conditionality should favour regular migrants' social inclusion rather than pursuing the Member States' unconcealed ambitions of control and security. In this respect, the self-restraint of the Court reflects the *Janus*-faced paradigm of integration policies for regular migrants: a positive side, namely the promotion of social and economic inclusion, and an *impositive* one, where the "managerial" aspirations of the Member States on migration emerge.[9] However, despite its many inconsistencies and constraints deriving from the principle of conferral of competences, the case law of the CJEU strives to reconcile two different needs: bringing back integration conditionality to its primary objective, namely the successful completion of the integration process, and securing compliance with general principles of EU law.

[6] S. CARRERA, *The Nexus between Immigration, Integration and Citizenship,* in *CEPS*, 10 April 2006, www.ceps.eu.

[7] Court of Justice, judgment of 1st March 2016, joined cases C-443/14 and C-444/14, *Alo and Osso*.

[8] The exams must be focused on basic notions and fundamental language skills. Also, national authorities must display make any effort to guide migrants towards the completion of their integration process, including the organization of courses. Lastly, factors such as disabilities, the level of education and training, illiteracy, the cultural background of the country of origin, age have to be taken into consideration.

[9] D. KOSTAKOPOULOU, S. CARRERA, M. JESSE, *Doing and Deserving: Competing Frames of Integration in the EU*, in E. GUILD, K. GROENENDIJK, S. CARRERA (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Burlington: Ashgate, 2009, p. 167 *et seq*.