

A Re-definition of Belonging?

Immigration and Asylum Law and Policy in Europe

VOLUME 20

Editors

Elspeth Guild

*Kingsley Napley Solicitors, London,
Centre for Migration Law, Radboud University Nijmegen*

Jan Niessen

Migration Policy Group, Brussels

The Series is a venue for books on European immigration and asylum law and policies where academics, policy makers, law practitioners and others look to find detailed analysis of this dynamic field. Works in the series will start from a European perspective. The increased co-operation within the European Union and the Council of Europe on matters related to immigration and asylum requires the publication of theoretical and empirical research. The series will contribute to well-informed policy debates by analyzing and interpreting the evolving European legislation and its effects on national law and policies. The series brings together the various stakeholders in these policy debates: the legal profession, researchers, employers, trade unions, human rights and other civil society organizations

A Re-definition of Belonging?

Language and Integration Tests in Europe

Edited by

Ricky van Oers

Eva Ersbøll

Dora Kostakopoulou

MARTINUS
NIJHOFF
PUBLISHERS

LEIDEN • BOSTON
2010

This book is printed on acid-free paper.

Library of Congress Cataloging-in-Publication Data

A re-definition of belonging? : language and integration tests in Europe / edited by Ricky van Oers, Eva Ersbøll, Dora Kostakopoulou.

p. cm. — (Immigration and asylum law and policy in Europe, 1568-2749 : v. 20)

Includes index.

ISBN 978-90-04-17506-8 (hardback : alk. paper)

1. Naturalization—European Union countries. 2. Language policy—European Union countries. 3. Acculturation—European Union countries. I. Oers, Ricky van. II. Ersbøll, Eva. III. Kostakopoulou, Theodora.

KJC6044.R4 2010

342.2408'3—dc22

2010001600

ISSN 1568-2749

ISBN 978 90 04 17506 8

Copyright 2010 by Koninklijke Brill NV, Leiden, The Netherlands.
Koninklijke Brill NV incorporates the imprints Brill, Hotei Publishing,
IDC Publishers, Martinus Nijhoff Publishers and VSP.

All rights reserved. No part of this publication may be reproduced, translated, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission from the publisher.

Authorization to photocopy items for internal or personal use is granted by Koninklijke Brill NV provided that the appropriate fees are paid directly to The Copyright Clearance Center, 222 Rosewood Drive, Suite 910, Danvers, MA 01923, USA.

Fees are subject to change.

PRINTED IN THE NETHERLANDS

Contents

About the authors	xiii
Preface	xvii
Introduction	1
Dora Kostakopoulou	
1.1 The European Dimension	11
1.2 Plan of the Book	18
Chapter 1 All You Need to Know to Become an Austrian: Naturalisation Policy and Citizenship Testing in Austria	25
Bernhard Perchinig	
1.1 Introduction	25
1.2 The Political Debate on Naturalisation	29
1.3 The Nationality Act of 2006	33
1.4 Empirical Analysis	35
1.5 Methodology	37
1.6 The Content of the Test	39
1.6.1 The Federal Level	39
1.6.2 The Provincial Level	40
1.6.3 Explaining the Differences	44
1.7 Naturalisation Statistics and Citizenship Testing	47
1.8 Conclusions	49
Chapter 2 Citizenship Tests in the Netherlands, Germany and the UK	51
Ricky Van Oers	
2.1 Concepts of Citizenship	53
2.1.1 Liberal Citizenship	54
2.1.2 Republican Citizenship	56
2.1.3 Communitarian Citizenship	57
2.2 Towards More Demanding Ways of Integration Testing	58
2.2.1 From a Liberal to a Communitarian Understanding of Citizenship: The Case of the Netherlands	58

2.2.1.1	A proposal for amending the Dutch Nationality Act	58
2.2.1.2	1998: a new bill is proposed	60
2.2.1.3	Replacement of the naturalisation test	62
2.2.2	Encouraging Community Cohesion: The Debate in the United Kingdom	64
2.2.2.1	The Nationality, Immigration and Asylum Bill	64
2.2.2.2	The Nationality, Immigration and Asylum Bill in Parliament	65
2.2.2.3	The New and the Old	66
2.2.2.4	Sufficient knowledge of life and language in the UK	67
2.2.2.5	Path to citizenship	68
2.2.3	Failed Liberalisation: The German Debate	70
2.2.3.1	A Red-Green proposal for reform	70
2.2.3.2	Discussion of the coalition Bill in Parliament	71
2.2.3.3	The debates surrounding the Immigration Act	74
2.2.3.4	Introducing citizenship tests in certain <i>Länder</i>	75
2.2.3.5	Testing integration: the proposals of the <i>Länder</i>	77
2.2.3.6	Testing integration: the government proposals	78
2.2.4	Conclusions	81
2.3	The different citizenship tests	83
2.3.1	Content of the knowledge of society tests	87
2.4	Effects of the Knowledge Requirements	91
2.4.1	The Netherlands: Falling Numbers	91
	Results of the Dutch naturalisation test	93
2.4.1.1	'Problem Categories'	94
2.4.2	The United Kingdom: steady rise	96
	Results of the <i>Life in the UK</i> test	97
2.5	Effects of the German Knowledge Requirements	98
	Results of the German <i>Einbürgerungstest</i>	100
2.6	Conclusions	101

Chapter 3 On Trial in Denmark	107
Eva Ersbøll	
3.1 Introduction	107
3.2 Danish immigration	108
3.2.1 Trends in Danish immigration	108
3.2.2 Danish Aliens Policy	109
3.3 Integration programmes	110
3.3.1 The Introduction of An Integration Act	110
3.3.2 Integration Programmes	112
3.4 Danish Language Courses for Adult Foreigners	115
3.4.1 Legislation on Danish Language Courses	115
3.4.2 Content of Danish Language Courses and Tests	117
3.4.3 Target Group	118
3.4.4 Fees	119
3.4.5 Statistics	120
3.5 Access to Permanent Residence and the Right to Family Reunification	121
3.5.1 Third-country Nationals	121
3.5.2 Union Citizens	124
3.6 The Integration Test	126
3.6.1 Background	126
3.6.2 Target Group	127
3.6.3 Content of the Test	127
3.6.4 Attitudes Towards the Test	128
3.6.5 Statistics	128
3.7 The Immigration Test	128
3.7.1 Background	128
3.7.2 Target Group	129
3.7.3 Test Level, Content and Procedures	130
3.8 Language Test Requirements as a Condition for Naturalisation	132
3.8.1 Background	132
3.8.2 The Naturalisation Procedure	133
3.8.3 The Language Requirements for Naturalisation	134
3.8.4 Target Group	136
3.8.5 Public and Political Debate	137
3.8.6 Statistics	139
3.8.7 To sum up	141
3.9 The Citizenship Test	142
3.9.1 Background	142
3.9.2 The Citizenship Test	142

3.9.3	Development of the Test	143
3.9.4	The Citizenship Test and the Textbook	144
3.9.5	The Target Group	144
3.9.6	Public and Political Debate	145
3.9.7	Statistics	147
3.9.8	To sum up	148
3.10	Conclusion	148

**Chapter 4 Integration Measures in France: An Evolving Process
between Integration and Migration Issues 153**

Yves Pascouau

4.1	The Evolving Nature of Integration Measures	156
4.1.1	Widening the Scope of Integration Measures	157
4.1.1.1	The concept of republican integration applicable to long-term residence applications	157
4.1.1.2	The creation of an integration contract applicable to any residence permit application	159
4.1.1.3	The creation of an integration contract for the family in cases of family reunification	161
4.1.2	Strengthening the Content and the Effects of Integration Measures	163
4.1.2.1	The content of the integration contract	163
4.1.2.2	The effects of the integration contract	167
	Integration contract	167
	The integration contract for the family within the framework of family reunification	171
4.2	The Establishment of Integration Measures in the Country of Origin	172
4.2.1	Framing the Project	173
4.2.1.1	Political objectives	173
4.2.1.2	Legal barriers	175
4.2.2	Implementing the Project	177
4.2.2.1	Evaluation of the knowledge level	177
4.2.2.2	Consequences of the evaluations	179
4.2.2.3	Exemptions	181
4.3	Conclusion	182

Chapter 5 Integration Tests in Germany. A Communitarian Approach?	185
Ines Michalowski	
5.1 Why and under what Circumstances were the Tests Introduced?	186
5.2 The Existing Integration Requirements	191
5.3 A Closer Look at the Content of German Integration Requirements	196
5.4 Results of Existing Evaluations and Effectiveness of the Measures	200
5.4.1 Discussion of the Effectiveness of Integration Requirements in Germany	204
5.5 Discussion: Integration Requirements and Cultural Assimilation	206
Chapter 6 Ethnic Citizenship – Can it be Obtained and Tested? ...	211
Judit Tóth	
6.1 Introduction	211
6.2 Acquisition of Citizenship	212
6.2.1 Examination of applicants	216
6.2.2 Debates on the Examination	221
6.2.3 Statistics	224
6.3 Required (Pre)integration of Refugees	226
6.4 Covert Integration of other Third-Country Nationals	229
6.5 Free Movement for Supposedly Integrated Persons	231
6.6 Half-hearted Policy	233
6.7 Who are we?	234
6.8 Conclusions	237
Chapter 7 Latvian Integration Policy: Lost in Translation	241
Kristine Kruma	
7.1 Introduction	241
7.2 Context and Challenges for Latvian Integration Policies	243
7.2.1 The Influence of the European Union	246
7.2.2 Russia’s Influence	247
7.2.3 Integration Programme	248
7.3 Main Issues of Integration	249
7.3.1 Naturalisation and the Issue of Non-citizens	249
7.3.2 Latvian Language as Single State Language	254
7.3.3 Education Reform	256

7.4	Current Discussions on Integration	258
7.4.1	Stagnating Naturalisation Numbers	258
7.4.2	Long-term Citizenship Policy	261
7.4.3	The Position of New Immigrants	261
7.4.4	Obstacles to the Integration of Society	264
7.5	Conclusion	266

Chapter 8 Language and Integration Requirements in Belgium: Discordances Between the Flemish Policy of ‘Inburgering’ and the Federal Legislators’ View(s) on the Integration of Newcomers and Migrants		271
Marie-Claire Foblets and Zeynep Yanasmayan		
8.1	Introduction	271
8.2	The Belgian Case	273
8.2.1	Federal Institutions and Instruments	274
8.2.1.1	Advisory bodies	274
8.2.1.2	Successive amendments of the Nationality Code	276
8.2.1.3	The political dynamics behind citizenship policies: ‘ethnos’ vs. ‘demos’	278
8.2.2	Wallonia	280
8.2.3	Brussels-Capital	281
8.2.4	Flanders	283
8.3	Flanders and Inburgering	285
8.3.1	A Review of Official Inburgering Policy	285
8.3.2	The Public and Political Debate	290
8.3.3	Implementation and its Measurable Effects	293
8.3.3.1	The number of newcomers in Flanders	293
8.3.3.2	The social characteristics of the immigrants	294
8.3.3.3	Enforcement and sanctions	294
8.4	Peculiarities of Belgium	295
8.4.1	A Hybrid Approach: Mixing Multiculturalism and Civic Integration in Flanders	296
8.4.2	Discordance between Flemish Inburgering and the Belgian Nationality Code	298
8.4.3	Flemish Policy of Inburgering in the Light of the Dutch Example	300
8.5	Concluding Remarks	301

Chapter 9 Mapping the redefinition of belonging in Europe	307
Ricky van Oers, Eva Ersbøll and Dora Kostakopoulou	
9.1 The rationale for the introduction of language and integration tests	312
9.2 The effects of the language and civic integration requirements	321
9.3 Broadening the debate: human rights and pluralism	326
Annex 1 Levels of language proficiency in the Council of Europe's Common European Framework of Reference	333
Index	335

About the authors

Eva Ersbøll is a Senior Research Fellow at the Danish Institute for Human Rights in Copenhagen. She is a lawyer and formerly a legal assistant to the Danish Parliamentary Ombudsman and an analyst to the Commissioner of the Council of the Baltic Sea States on Democratic Institutions and Human Rights, Including the Rights of Persons belonging to Minorities. Her PhD is on Danish Nationality in an International and Historical Perspective. She has published on a number of other topics, including Union citizenship, nationality law in Europe, equality and non-discrimination, the rights of the child and the rights of elderly persons suffering from dementia.

Marie-Claire Foblets Marie-Claire Foblets, Lic. Iur., Lic. Phil., Ph. D. Anthropol. (Belgium). Professor of Law and Anthropology at the Universities of Leuven (Louvain), Brussels and Antwerp. She held various visiting professorships, i.a. at ParisI/Sorbonne. She is member of the Royal Academy of Sciences and Arts in Flanders, honorary member of the Brussels bar, and currently chair of the Institute for Migration Law and Legal Anthropology at the Law Faculty in Louvain (Leuven). She has done extensive research and published widely on issues of immigration, integration and nationality law in Belgium. In the field of anthropology of law, her research focuses on the application of Islamic family laws in Europe, and more recently on accommodation of cultural and religious diversity in State law (i.a.: FOBLETS, M.-C., *Les familles maghrébines et la justice en Belgique. Anthropologie juridique et immigration*, Paris, Karthala, 1994; FOBLETS, M.-C. (ed.), *Familles – Islam – Europe. Le droit confronté au changement*, Paris, L’Harmattan, 1996 (coll. Musulmans d’Europe); FOBLETS, M.-C. (ed.) *Femmes marocaines et conflits familiaux en immigration. Quelles solutions juridiques appropriées?*, Antwerp, Maklu, 1998; FOBLETS, M.-C. & J.Y. CARLIER, *Le nouveau Code marocain de la famille. Son application en Europe* [The Family Code in Morocco. Its application in Europe], Brussels, Bruylant (2005); FOBLETS, M.-C., *Recht op maat. Culturen in de rechtbank*. [Culture(s) in the courtroom. Justice made to measure], Antwerp, Maklu (forthcoming).

Dora Kostakopoulou is Jean Monnet Professor in European Law and European Integration at the University of Manchester.

Kristine Kruma has obtained a master degree in international law at Lund University and is currently doctoral student at this university. Since 1999, she has been lecturer at the Riga Graduate School of Law and since May 2007 judge of the Constitutional Court of Latvia. She has participated in different courses in the universities of Aarhus, Umeo, Oslo, Helsinki, Galway and Turku. She has been stagiaire in the Legal Service of the European Commission and visiting-scholar at both the Max Planck institute in Heidelberg and the Centre for Migration in Nijmegen. She is a member of the editorial board of the Baltic Yearbook of International Law. Since 2006, she has been a member of the Odysseus Network a group of experts in migration and asylum law. She has published on issues of citizenship, migration and general international and EU law issues.

Ines Michalowski is a senior researcher at the Social Science Research Center in Berlin (WZB). She holds a joint PhD from the Institute for Political Science in Paris and from the University of Münster in Germany. During the academic year of 2008–2009 she was a fellow at the Transatlantic Academy in Washington, D.C. Her publications include *Integration als Staatsprogramm. Deutschland, Frankreich und die Niederlande im Vergleich*, Münster: LitVerlag, 2007 and, together with Uwe Hunger, Can M. Aybek & Andreas Ette (eds.) *Migrations- und Integrationsprozesse in Europa. Vergemeinschaftung oder nationalstaatliche Lösungswege?*, Wiesbaden: VS-Verlag, 2008.

Ricky van Oers is a PhD researcher at the Centre for Migration Law of the Radboud University of Nijmegen, the Netherlands. Her research concerns the introduction and effects of formalised citizenship tests in Germany, the Netherlands and the United Kingdom. She participated in the NATAC-project, coordinated by Rainer Bauböck, which focused on comparing the way in which 15 EU Member States regulate the acquisition and loss of nationality. Furthermore, she conducted research into the implementation of the Directives on family reunification (2003/86/EC) and on long term residents (2003/109/EC) in the EU Member States. For a list of publications please consult www.ru.nl/rechten/oers.

Yves Pascouau has obtained a Ph.D. in law from the University of Pau et des Pays de l'Adour and research assistant at the Centre for European Studies (Centre de documentation et de recherches européennes) at the faculty of Law in Bayonne. His main researches deal with European Migration and Asylum Issues. He is also conducting a research within the Institut d'Etudes Européennes de Bruxelles (ULB-Université Libre de Bruxelles). This study,

financed by the Communauté française de Belgique through an ARC project, concerns mandatory integration measures in the Member States of the European Union.

Bernhard Perchinig (PhD, University Vienna) is a political scientist and Senior Research Fellow at the Institute of Urban and Regional Research of the Austrian Academy of Sciences and lecturer at the Institute for Political Sciences at Vienna University. His main research interests are citizenship policies, antidiscrimination policy, European migration policies and urban integration. Next to his academic work he has served as a consultant to i.a. the European Commission, the Council of Europe, the Fundamental Rights Agency, the Migration Policy Group (Brussels) and the International Organisation for Migration (IOM).

Judit Tóth (PhD) is Associate Professor of Law at the Department of Constitutional Law, University of Szeged. As partner in the CHALLENGE research project (www.libertysecurity.org), she is leading the research on enlargement of the European Union and its ramifications. She has rich experience in academic work as research fellow at the Hungarian Academy of Sciences, at the Institute for Political Sciences from 1990 to 2001, and since 2002, the Institute for Minority and Migration Issues. She has been teaching in Szeged since 1995, and as law practitioner she has been giving legal advice to the Parliamentary Committee, the Prime Minister, and the Minister of Justice since 1986 and currently also to the Ombudsman. She has published widely on comparative constitutional law, migration law and enlargement policy.

Zeynep Yanasmayan is a PhD candidate at the Faculty of Social Sciences of the Catholic University of Leuven (KUL). She holds an MscEcon degree on Security and Citizenship from the University of Wales, Aberystwyth and an MA degree on European studies from the Free University of Brussels (ULB). Her major research interests revolve around integration and citizenship policies, Turkish minorities in Europe and diaspora politics.

Preface

Language and integration tests are a topical issue in various European Union Member States. Several Member States have introduced language and integration courses in their domestic legislation. Immigrants have to pass language and integration tests in order to prove that they have acquired a certain level of knowledge, sometimes even before entering the country. Although the modalities of the integration tests and courses vary among the Member States, the introduction of the tests reflects a change in ideas about the relationship between legal status and integration. Furthermore, there appears to be a trend in several Member States towards formalisation of the language and integration tests before naturalisation. Between 2002 and 2008, Austria, Denmark, France, Germany, the Netherlands and the UK introduced 'knowledge of society' as a condition for naturalisation. In certain Member States, the informal language test upon naturalisation has recently been replaced by a formalised test, prepared and conducted by language institutions.

Since these developments are rather recent, little is known about the effects of the introduction of the formalised testing schemes on the behaviour of potential applicants and on the selective effects of those new tests. Whether the introduction of such new ways of testing has in fact contributed to the integration of immigrants into the host society, which is often the official aim of these policies, or whether the tests function as a mechanism for selection and exclusion is unknown. Knowledge of these effects is all the more relevant since the formalisation of the tests has often coincided with an increase in the level of required knowledge of the language and of the host society or with the introduction of other obstacles, such as high fees or a six-month waiting period after a candidate has failed a test. The aim of this book is to exchange information concerning the reasons for introduction, the content and the effects of the language and integration tests. Experts from Austria, Belgium, Denmark, France, Germany, Hungary, Latvia, the Netherlands and the UK have analysed the policies affecting the integration of newcomers and/or future citizens in their respective countries. Is the introduction of the language and integration tests the result of a redefinition of belonging?

This book is the outcome of the seminar, '*Language and Integration Tests for Newcomers and Future Citizens*', organised by the Centre for Migration Law of the Radboud University Nijmegen on 15 February 2008. The book

forms part of CHALLENGE, a research project financed by the European Commission under its sixth framework programme. Publication of this book has been made possible with financial support from the European Commission, for which we are grateful.