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**Between Integration Provision and Selection Mechanism. Party Politics, Judicial Constraints, and the Making of French and Dutch Policies of Civic Integration Abroad\***

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## **Abstract**

Both the Netherlands and France have recently introduced civic integration abroad policies, which stipulate that family migrants are to learn about the language and customs of the host society, before being admitted to the country. The Dutch program however is much more stringent than the French. While France requires only participation in an evaluation and course that are organised and financed by the French state, the Dutch government has made entry conditional upon passing a test and does not offer courses. In this article, I propose two explanations for the significant differences between the modalities of the Dutch and French civic integration abroad programs. The first is related to party politics, that is to the positions adopted by political parties and the relations between them; the second to the different judicial constraints that weigh upon family migration policies in France and in the Netherlands.

## **1. Introduction**

Until recently, no country in Europe or in the world had imposed integration requirements on family migration, that is on the admission of foreigners who come to join a partner, parent or child. The Dutch centre-Right Balkenende government was the first, in 2005, to introduce such a requirement for family migrants.<sup>1</sup> The French right-wing Fillon government followed suit in 2007.

The civic integration abroad programs introduced by the Dutch Law on Civic Integration Abroad<sup>2</sup> and the French Law on Migration Control, Integration and Asylum<sup>3</sup> are similar in broad outline: they require family migrants to familiarise themselves with the language and customs of the host society before being granted entry. These Dutch and French policies are part of a broader European trend towards the introduction of compulsory civic integration programs. Most of these programs sanction failure to comply with a cutback in social benefits or with the refusal to grant

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<sup>1</sup> K. Groenendijk, "Integratie en uitsluiting in het Nederlands vreemdelingenrecht", in P. Boeles & G. G. Lodder, eds., *Integratie en Uitsluiting* (Den Haag: Sdu Uitgevers, 2005), pp. 9-32 on 12.

<sup>2</sup> *Wet van 22 december 2005 tot wijziging van de Vreemdelingenwet 2000 in verband met het stellen van een inburgeringsvereiste bij het toelaten van bepaalde categorieën vreemdelingen (Wet Inburgering in het Buitenland)*.

<sup>3</sup> *Loi n° 2007-1631 du 20 novembre 2007 relative à la maîtrise de l'immigration, à l'intégration et à l'asile*.

permanent residence status.<sup>4</sup> Civic integration abroad takes the fusion of migration control and immigrant integration to a whole new level, by making entry rights conditional on participation in or successful completion of the programs.

In France as in the Netherlands, the introduction of civic integration abroad was a response to a growing concern for the societal consequences of past and present migration flows. Both French and Dutch politicians perceived the process of migrant incorporation as failing, to the extent that the cohesion of society as a whole was endangered and that state intervention was necessary to restore the minimum conditions for society to function harmoniously.

However, while French and Dutch politicians defined the ‘problem’ they were confronted with in very similar terms, the modalities of the civic integration abroad policies implemented to solve this problem are significantly different. In the Netherlands, family migrants are required to pass a test. The government provides neither courses nor learning material. In France, in contrast, applicants are obliged to participate in the program, not to achieve certain results. Courses are organised by the government, free of charge for the applicant. In other words, the Dutch civic integration abroad program is much more restrictive than the French.

This begs the question: how can we explain that in France and in the Netherlands, political discourses about the ‘problem’ of immigration, integration and social cohesion that were much alike resulted in civic integration abroad policies that are strikingly different?

To answer this question, I have analysed the parliamentary debates pertaining to civic integration abroad that took place in the Netherlands between June 2004 and April 2005, and in France between July and October 2007. My data selection comprised the legislative proposals and explanatory memoranda presented by the government, as well as records of commission meetings and

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<sup>4</sup> D. Jacobs & A. Rea, “Open Forum: The End of National Models? Integration Courses and Citizenship Trajectories in Europe”, *International Journal on Multicultural Societies* 9/2 (2007): 264-283; S. Goodman, “Integration Requirements for Integration's Sake? Identifying, Categorizing, and Comparing Civic Integration Policies”, *Journal of Ethnic and Migration Studies* (forthcoming).

plenary debates about these proposals in both Chambers of Parliament.<sup>5</sup> Starting from a constructivist approach to the study of policy-making<sup>6</sup> I investigated how Dutch and French politicians framed the ‘problem’ of immigration, integration and social cohesion, and how the civic integration abroad policies they designed were intended to contribute to solving this ‘problem’. The first section of this paper presents the findings of this analysis. In the second half of the paper, I discuss two hypothetical explanations for the difference between the Dutch and the French programs. The first explanation pertains to party politics, that is to the positions adopted by the parliamentary parties and the relations between them; the second to the judicial constraints that weigh upon family migration policies in France and the Netherlands.

## **2. Same ‘problem’, different solution: the making of French and Dutch civic integration abroad policies**

### *2.1 The ‘problem’ of immigration, integration and social cohesion*

Both in France and in the Netherlands, recent political debates about migration and integration have been characterised by an atmosphere of crisis and failure. The way Dutch and French politicians perceive the ‘problem’ at hand is strikingly similar. They fear that, as a result of past and present immigration flows and failing immigrant integration, their societies are disintegrating into distinct, isolated, even hostile groups. A French UMP deputy raised the spectre of “different cultures and ethnicities living together on the same territory while preserving their specificities, thus resulting in

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<sup>5</sup> The French data was collected from the *Dossier Legislatif* on *Loi n° 2007-1631* on the website of the *Assemblée Nationale* ([http://www.assemblee-nationale.fr/13/dossiers/immigration\\_integration\\_asile.asp](http://www.assemblee-nationale.fr/13/dossiers/immigration_integration_asile.asp)), the Dutch data from the parliamentary online search engine (<http://parlando.sdu.nl/>), under *Kamerstuknummer* 29700 and through complementary keyword search.

<sup>6</sup> D. A. Schön & M. Rein, *Frame reflection : toward the resolution of intractable policy controversies* (New York: BasicBooks, 1994); M. Hajer, “Discours-coalities in politiek en beleid: De interpretatie van bestuurlijke heroriënteringen in de Amsterdamse gemeentepolitiek”, *Beleidswetenschap* 3/3 (1989): 242-263; P. A. Hall, “Policy Paradigms, Social Learning, and the State. The Case of Economic Policymaking in Britain”, *Comparative Politics* 25/3 (1993): 275-296.

the formation of ghettos, the juxtaposition of antagonist blocs”.<sup>7</sup> In the Netherlands, the first Balkenende government described the situation as follows:

Differences in ethnic origin, ways of life and habits are placing a burden on daily contacts and on residing, working and living side by side. Moreover, differences in ethnic origin increasingly correlate with differences in education, labour participation and involvement in criminality. It triggers centrifugal forces in society and leads to the physical, social and mental separation of population groups. Isolation leads to misunderstanding, then to mutual repugnance and finally to ever sharper oppositions.<sup>8</sup>

The ‘problem’ then, is perceived to affect society as a whole: ethnic and cultural diversity presents a threat to the very cohesion of society.

More specifically, this ‘problem’ of social cohesion is defined as a problem of migrant groups. French and Dutch politicians are worried that migrants are oriented towards their own group, culture and identity, rather than to society as a whole. The French government describes this phenomenon as “*communautarisme*”, which consists of a “*repli*”, i.e. a “drawing back” and which results in “fear of the other”, in “indifference, violence and refusal of the other”.<sup>9</sup> The Dutch government mirrors these views closely, in stating that “the marginalisation of certain groups of the population” increases the risk of “turning away from society, anti-western feelings, segregation and delinquency”.<sup>10</sup> Migrants are considered both the actor and the victim of the ‘problem’. On the one hand, they are the ones who are allegedly “pulling back into their community”<sup>11</sup>, “turning away from society and reverting to archaic norms and values”.<sup>12</sup> On the other hand, they are seen to be the ones to suffer from

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<sup>7</sup> *Assemblée Nationale* (further : AN), *Amendement No 59*, 14 September 2007.

<sup>8</sup> *Tweede Kamer* (further: TK) 28375 (5): 15-16, 3 July 2002.

<sup>9</sup> AN, plenary debate 10 February 2004; AN, *Question orale No 81*, 23 October 2002.

<sup>10</sup> TK 29700 (6): 4, 6 December 2004; TK 29700 (3): 17, 21 July 2004.

<sup>11</sup> AN, plenary debate 10 February 2004.

<sup>12</sup> TK 29700 (6): 47, 6 December 2004.

“marginalisation” and “isolation”<sup>13</sup>, from being “locked up in communautarist schemes”.<sup>14</sup> When speaking about migrants as victims, Dutch and French politicians refer primarily to women of migrant origin: to their perceived exclusion, dependency and vulnerability, and to the suppression and violence they are thought to be subjected to within their families and communities.

In politicians’ perception of the ‘problem’ of migration, integration and social cohesion, both socio-economic and cultural aspects play a role. Indeed, it is precisely the idea that socio-economic disadvantage in the fields of labour, education and housing overlaps with ethnic and cultural difference, that socio-economic gaps and cultural cleavages are mutually reinforcing each other, which is cause for concern. When specifying the differences in values and customs they find problematic, politicians in France and the Netherlands refer first to matters related to gender, family and sexuality – forced marriages, domestic violence, child rearing, polygamy and, in the Netherlands, homosexuality – and second to issues regarding religion and church-state relations. It is in these respects that groups of migrant origin – and more particularly, though rarely explicitly mentioned, of Muslim faith – are deemed most worrisomely different from the host society.

## *2.2 The solution: civic integration abroad*

As a partial solution to a ‘problem’ of social cohesion defined in very similar terms, French and Dutch politicians have chosen to introduce civic integration abroad programs. Both programs require family migrants to familiarize themselves with the language and customs of the host country, before being granted admission. The specific modalities of the French and Dutch programs are crucially different however: this difference is related to the objectives pursued through civic integration abroad.

The French civic integration abroad policy, entered into force on 1 January 2008, stipulates that family migrants’ knowledge of the “language and values of the Republic” will be evaluated before they are granted entry to France. Both written and oral knowledge of the French language at a very modest level is evaluated in an individual interview which takes no more than twenty minutes. The

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<sup>13</sup> TK 27083 (44): 6 & 9, 21 June 2004; TK 28198 (5): 6, 4 October 2002.

<sup>14</sup> AN, plenary debate 19 September 2007.

knowledge of Republican values is tested orally through a ten minutes interview in a language that the foreigner understands. These values are defined as “in particular, equality between men and women, *laïcité*, the rule of law, the fundamental freedoms, the security of persons and property, as well as the exercise of citizenship that is permitted notably through obligatory and free education”. Should this evaluation reveal insufficient knowledge, then the applicant is obliged to follow a language course of at least 40 hours or a three hour course about the Republican values.<sup>15</sup> These courses are organised by the *Office Français de l’Immigration et de l’Intégration* (OFII)<sup>16</sup>, a governmental agency, and are free of charge for the applicant. Admission to France is conditional not on the applicant achieving a certain level of knowledge, but on his or her satisfactory participation in the evaluation and the course.

The objective of this policy, according to the government and the right-wing majority in Parliament, was threefold. First, it offered family migrants the possibility to prepare their migration, so as to avoid their being “utterly disoriented” when arriving in France.<sup>17</sup> Second, the new program would “globally improve the integration process”, since conditioning admission to France on the evaluation would provide the government with strong leverage to ensure effective participation in the integration courses. The pressure instruments at the government’s disposal once migrants had entered France were much less efficient.<sup>18</sup> Finally, the government saw the new program as a means to “evaluate the motivation of the foreign candidate who wishes to come to France”.<sup>19</sup> It emphasised that entry would be made conditional not on the results obtained but on the “assiduity” of the candidate in

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<sup>15</sup> *Code de l’entrée et du séjour des étrangers et du droit d’asile* (CESEDA) L211-2-1 & R311-30-1 through R311-30-11; *Arrêté du 1er décembre 2008 relatif à l’évaluation dans leur pays de résidence du niveau de connaissance, par les étrangers, de la langue française et des valeurs de la République et aux formations prescrites dans ces domaines conformément aux articles R. 311-30-1 à R. 311-30-11 du code de l’entrée et du séjour des étrangers et du droit d’asile (partie réglementaire)*.

<sup>16</sup> The *Agence nationale de l’accueil des étrangers et des migrations* (ANAEM), which was initially entrusted with this mission, merged into the OFII in 2009.

<sup>17</sup> *Projet de loi No 57 relatif à la maîtrise de l’immigration, à l’intégration et à l’asile*, 4 July 2007.

<sup>18</sup> AN, *Rapport No 160 fait au nom de la Commission des lois constitutionnelles, de la législation et de l’administration générale de la République sur le projet de loi relatif à la maîtrise de l’immigration, à l’intégration et à l’asile*, 12 September 2007.

<sup>19</sup> *Sénat*, plenary debate 3 October 2007.



following the courses, since this willingness to make an effort “in itself presents a guarantee for integration”.<sup>20</sup>

The Dutch civic integration program entered into force on 15 March 2006. It introduces a new entry criterion for family migrants: they have to possess a sufficient knowledge of Dutch language and society. Unlike the French program then, the Dutch policy imposes an obligation of result, rather than an obligation of means. Applicants’ level of knowledge is tested through an oral exam conducted over the telephone from Dutch Consulates and Embassies abroad, using voice recognition software. The language test mainly consists of repeating sentences and answering short questions. The knowledge of Dutch society tested in the exam would cover “legislation and democracy, the history and culture of the Netherlands, religion in the Netherlands, the geography and population of the Netherlands, housing and transportation, upbringing and education, health care, work and income, the first period of newcomers in the Netherlands and the practicalities of the civic integration abroad program”.<sup>21</sup> The Dutch government does not provide either courses or learning material. It has however compiled a practice pack which can be purchased at 70,40€ and which consists of a film and a picture booklet about Dutch society, an exhaustive list of questions that may arise during the knowledge of society test, and a set of mock language tests. Applicants are charged 350€ each time they take the exam.

The government declared that the purpose of the new civic integration abroad policy was fourfold. First, integration abroad would enable family migrants to “get by” better as of their arrival. Second, it would allow them to make a more deliberate and better informed choice on moving to the Netherlands. Third, it would ensure at the earliest possible stage that both the migrant and his or her family member in the Netherlands were aware of their responsibility for the integration of the newcomer in Dutch society, and of the active efforts that were expected of them.<sup>22</sup> Fourth and finally,

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<sup>20</sup> AN, *Commission des lois constitutionnelles, de la législation et de l’administration générale de la République, Compte rendu No 7*, 25 July 2007.

<sup>21</sup> TK 29700 (6): 2, 6 December 2004.

<sup>22</sup> TK 29700 (3): 5-6, 21 July 2004; TK 29700 plenary debate: 4002, 22 March 2005.

the integration requirement would work as a “selection mechanism”: only those with the “motivation and perseverance” necessary to integrate successfully in the Netherlands would be admitted.<sup>23</sup>

It is in this explicit selective purpose that the Dutch civic integration abroad policy differs most crucially from the French. Civic integration abroad is, by its very nature, a tool aimed both at improving integration and at selecting immigration. These two aspects are balanced differently however in the two countries studied here: integration weighs heavier in France, while selection is more prominent in the Netherlands.

Many have questioned whether the French civic integration abroad program indeed aims at improving integration. As we shall see below, if French left-wing politicians criticised the program, it was because they thought its purpose was predominantly if not exclusively to reduce immigration. Similar views have been expressed by academic observers.<sup>24</sup> In part, these observations are accurate. Indeed, the French government implicitly acknowledged that civic integration abroad is a selection tool, in stating that it aims to “reward the efforts of those who really wish to integrate”, while denying entry to those who “refuse to take the test and follow the course”.<sup>25</sup> Moreover, as left-wing politicians and academics have rightly pointed out, the law which introduced civic integration abroad was explicitly framed by the French government as part of president Sarkozy’s overall strategy to limit *l’immigration subie* – i.e. family migration – in favour of *immigration choisie* – i.e. labour migration.<sup>26</sup> However, in the report about the legislative proposal written by UMP-deputy Mariani, civic integration abroad was not placed under the heading of “controlling family migration” – where the

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<sup>23</sup> TK 29700 (3): 6 & 11, 21 July 2004.

<sup>24</sup> S. Carrera & A. Wiesbrock, “Civic Integration of Third-Country Nationals. Nationalism versus Europeanisation in the Common EU Immigration Policy”, CEPS report, October 2009 (available online on [www.ceps.eu](http://www.ceps.eu)), p. 14-15; Y. Pascouau, “Integration Measures in France: An Evolving Process between Integration and Migration Issues”, in R. van Oers, E. Ersbøll & D. Kostakopoulou, eds., *A Re-Definition of Belonging? Language and Integration Tests in Europe* (Leiden: Brill, 2010), pp. 153-183 on 174.

<sup>25</sup> AN, plenary debate 18 September 2007.

<sup>26</sup> AN, *Commission des lois constitutionnelles, de la législation et de l’administration générale de la République, Compte rendu No 7*, 25 July 2007.

sharpening of the income requirement was discussed – but under the heading of “favouring integration”.<sup>27</sup> In the debates about civic integration abroad, UMP rapporteur Mariani explicitly stated that “our objective is not to limit family reunification”<sup>28</sup> and the French government emphatically presented the evaluation and courses abroad as a service offered to family migrants by the state, as an “additional means given to strangers who wish to settle in France to prepare their integration”.<sup>29</sup> The modalities of French civic integration abroad policies show that this was more than hollow rhetoric. Not only did the French government set a lower barrier for entry than the Dutch, with an obligation of means instead of result; it also put the means to fulfil the entry criterion at the disposal of the applicants, by offering courses for free. In comparison to the Dutch program, the balance between improving integration and restricting immigration in the French civic integration abroad policy leans clearly towards integration, not only in governmental discourse but also in the material policy provisions.

The Dutch government on the other hand elaborated at length on the problematic nature of family migration. It stated that “the large scale immigration of the last ten years has seriously disrupted the integration of migrants at group level. We must break out of the process of (family) migration which time and again causes integration to fall behind”. In particular, the integration process was thought to have been “held back by the fact that a large number of second generation migrants opts for a marital partner from the country of origin”. According to the government, “an important part of these [family migrants] has characteristics that are adverse to a good integration into Dutch society. Most prominent among these – also in scale – is the group of marriage migrants from Turkey and Morocco”.<sup>30</sup> Both in terms of their chances on the labour market and of their cultural orientation, these family migrants were deemed unlikely to fit into Dutch society.

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<sup>27</sup> AN, *Rapport No 160 fait au nom de la Commission des lois constitutionnelles, de la législation et de l'administration générale de la République sur le projet de loi relatif à la maîtrise de l'immigration, à l'intégration et à l'asile*, 12 September 2007.

<sup>28</sup> AN, plenary debate 19 September 2007.

<sup>29</sup> *Sénat*, plenary debate 3 October 2007; cf. AN, plenary debate 18 September 2007.

<sup>30</sup> TK 29700 (3): 2-4, 21 July 2004.

Therefore the Dutch government, unlike the French government, explicitly presented its civic integration abroad criterion as a “selection mechanism”. The criterion would select not on education, income or origin – this would infringe on the right to family life guaranteed by the European Convention on Human Rights – but on “motivation and perseverance”. Since the government would not assist applicants in preparing for the exam, a substantial investment of time and resources would be required on their part. This was deemed not only acceptable but even recommendable, because appealing to the “personal responsibility” of the persons concerned would “yield the best results”.<sup>31</sup> Moreover, “the foreigner might also face difficulties in the integration process after arrival in the Netherlands, which it will be up to him to overcome”.<sup>32</sup> Those unable to attain the required level of knowledge through their own means while abroad were expected to “experience serious problems integrating once in the Netherlands” and would therefore “not be granted permission to settle in the Netherlands”. Although reduction of immigration was “not a primary goal”<sup>33</sup>, as a “side-effect”, the new integration requirement was expected to result in a decrease of family migration flows by an estimated 25%.<sup>34</sup> The government welcomed this prospect: “A reduction of the inflow of migrants whose integration in the Netherlands can be expected to lag behind will alleviate the problem of integration”.<sup>35</sup>

Thus, the balance between integration and selection is crucially different in the French and Dutch civic integration abroad policies. While the Dutch program is explicitly intended to assuage the ‘problem’ of social cohesion by reducing the inflow of ‘problematic’ migrants, the emphasis in the French program lies on putting new means at migrants’ disposal to improve their integration. Since French and Dutch politicians defined the ‘problem’ of migration, integration and social cohesion in such similar terms, and since the French governmental majority’s stated overall objective was to limit family migration, described as *immigration subie*, the question is: how can we explain this difference?

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<sup>31</sup> TK 27083 (44): 24, 21 June 2004.

<sup>32</sup> TK 29700 (3): 13-14, 21 July 2004.

<sup>33</sup> TK 29700 (6): 43, 6 December 2004.

<sup>34</sup> TK 29700 (3): 14-15, 21 July 2004.

<sup>35</sup> TK 29700 (3): 6, 21 July 2004.

### 3. Between integration and selection: explaining the difference

An extensive body of academic literature explains differences between national migrant incorporation and citizenship policies by referring to ‘national models’, that is to “long-standing national cultural understandings and legal frameworks of national identity, citizenship, and church-state relations”.<sup>36</sup> In this literature, the Netherlands have been described as a prototypical ‘multicultural’ or ‘pluralist’ country<sup>37</sup>, characterised by “acceptance of immigrant populations as ethnic communities which remain distinguishable from the majority populations with regard to language, culture, social behaviour and associations over several generations”.<sup>38</sup> France on the other hand is presented as the ideal-type of the ‘assimilationist’ model, where “immigrants are expected to give up their distinctive linguistic, cultural or social characteristics and become indistinguishable from the majority population”.<sup>39</sup>

As Joppke has rightly pointed out however, this classic account of ‘national models’ is of little use in understanding the difference between Dutch and French civic integration abroad policies.<sup>40</sup>

Integration requirements at entry may be characterised as assimilationist in nature, to the extent that

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<sup>36</sup> D. Jacobs, & A. Rea, *International Journal on Multicultural Societies* 9/2 (2007): 278; cf. R. Brubaker, *Citizenship and nationhood in France and Germany* (Cambridge: Harvard University Press, 1992); S. Castles, “How nation-states respond to immigration and ethnic diversity”, *New Community* 21/3 (1995): 293-308; A. Favell, *Philosophies of integration : immigration and the idea of citizenship in France and Britain* (Basingstoke/New York: Macmillan/St. Martin's Press, 1998); H. Entzinger, “Changing the rules while the game is on; From multiculturalism to assimilation in the Netherlands”, in M. Bodemann & G. Yurdakul, eds., *Migration, Citizenship, Ethnos: Incorporation Regimes in Germany, Western Europe and North America* (New York: Palgrave MacMillan, 2005), pp. 121-144; R. Koopmans, P. Statham, M. Giugni & F. Passy, *Contested Citizenship. Immigration and Cultural Diversity in Europe* (Minneapolis/London: University of Minnesota Press, 2005), pp. 31-73.

<sup>37</sup> R. Koopmans e.a., *Contested Citizenship*, pp. 31-73; H. Entzinger, “The Rise and Fall of Multiculturalism: The Case of the Netherlands”, in C. Joppke & E. Morawska, eds., *Towards Assimilation and Citizenship: Immigrants in Liberal Nation-States* (Basingstoke/New York: Palgrave Macmillan, 2003), pp. 59-86.

<sup>38</sup> S. Castles, *New Community* 21/3 (1995): 301.

<sup>39</sup> S. Castles, *New Community* 21/3 (1995): 297-298; cf. R. Brubaker, *Citizenship and nationhood in France and Germany*.

<sup>40</sup> C. Joppke, “Beyond National Models: Civic Integration Policies for Immigrants in Western Europe”, *West European Politics* 30/1 (2007): 1-22 on 19.

they push immigrants to “renounce their own identity(ies) and differences”, so as to “disappear into the presumed unity of the nation”.<sup>41</sup> The assimilatory pressure exercised by the Dutch program, with its obligation of result, is much more compelling than the French requirement to participate.

The inadequacy of the classic ‘national models’ explanation makes the question all the more puzzling: how can we explain that, based on a highly similar definition of the social problems resulting from migration and integration, the ‘multicultural’ Netherlands adopted a much more restrictive civic integration abroad policy than ‘assimilationist’ France?

### *3.1 Party politics*

Another type of explanation for tendencies in and differences between national migration policies to be found in the academic literature – though somewhat less well-established than the ‘national models’ hypothesis – centres on the positions adopted by political parties and the (power) relations between them.<sup>42</sup> This approach seems promising in explaining the disparity between the Dutch and the French civic integration programs.

Indeed, a crucial difference between the parliamentary debates about civic integration abroad in France and in the Netherlands lies in the position adopted by the left-wing opposition. In both countries, there was consensus across the political spectrum as to the definition of the ‘problem’ at hand as one of a disruption of social cohesion due to failing incorporation of migrants. From there however, views and positions diverged significantly between the Left and the Right in France, whereas there was broad parliamentary support for the government proposals in the Netherlands.

In the Dutch Parliament, all political parties shared the government’s view that family migration, in particular marriage migration from Turkey and Morocco, had very problematic

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<sup>41</sup> E. Guild, K. Groenendijk & S. Carrera, “Understanding the Contest of Community: Illiberal Practices in the EU?” in E. Guild, K. Groenendijk & S. Carrera, eds., *Illiberal Liberal States. Immigration, Citizenship and Integration in the EU* (London: Ashgate, 2009), pp. 1-25 on 16.

<sup>42</sup> Cf. T. Bale, “Turning round the telescope. Centre-right parties and immigration and integration policy in Europe”, *Journal of European Public Policy* 15/3 (2008): 315-330; T. Perlmutter, “Bringing Parties Back In: Comments on ‘Modes of Immigration Politics in Liberal Democrat Societies’”, *International Migration Review* 30/1 (1996): 375-388.

consequences for the migrants themselves, for their partners and children, and for society at large. Thus the Social Democrats concur that “marriage migration (...) may lead to a serious delay in integration”, and the far-Left Socialist Party agrees that the choice of second and third generation migrants for a partner from their parents’ country of origin contains the “risk of a recurring reproduction of marginalisation from generation to generation”.<sup>43</sup> Almost all political parties were in favour of making the admission of family members conditional on integration requirements and of shaping this requirement as an obligation of result, not just of participation. Only the Greens objected, first because they thought a language could much more effectively be learned in the country where it was commonly spoken and second because they considered it unacceptable that “the reduction of the freedom of choice due to family pressure” be “replaced by a reduction of the freedom of partner choice by the government”.<sup>44</sup> Again except for the Greens, all parties accepted that the integration abroad requirement would make family migration impossible for a substantial number of candidates, and no-one insisted that the government provide applicants with courses or learning material. The Social Democrats felt that, since applicants made a voluntary choice to move to the Netherlands, it was legitimate to ask them to make efforts to prepare their integration.<sup>45</sup> Together with the orthodox-Christian party SGP, they did file a motion however to ask the government to make sure that “adequate learning material” would be available and accessible.<sup>46</sup> Their objective was not so much for the government to produce the material, as to supervise its availability and quality. The fact that the motion was rejected did not dissuade either the SGP or the Social Democrats from voting in favour of the Law on Civic Integration Abroad. The only parties to vote against the law were the Greens and the Socialist Party; the latter withheld their support because they were not convinced of the trustworthiness of the technology and method of examination. Only the Greens rejected the legislative proposal on principled grounds.

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<sup>43</sup> TK 29700 plenary debate: 3885 & 3901, 16 March 2005.

<sup>44</sup> TK 29700 plenary debate: 3895, 16 March 2005; TK 29700 plenary debate: 4028, 22 March 2005.

<sup>45</sup> TK 29700 plenary debate: 3886, 16 March 2005.

<sup>46</sup> TK 29700 (25), 22 March 2005.

The French left-wing opposition took a completely different stance: they did not have a good word to say about the government proposals. The Socialist Members of Parliament and their colleagues on the far-Left argued that the French language and values could much more effectively be learned in France.<sup>47</sup> They therefore did not believe that the integration abroad requirement would improve the integration of migrants in France, and accused the government and the parliamentary majority of having two other, implicit goals. First, in spite of the government's explicit denial, the parliamentary Left was convinced that civic integration abroad aimed at reducing family migration. Thus a Socialist deputy stated that the requirement had "no other purpose than to deny the right to family reunification to as many people as possible" through an "accumulation of unfounded administrative harassments".<sup>48</sup> The Left feared that the criterion would be especially difficult to fulfil for women and for poor and less educated foreigners. Second, both the Socialists and the parliamentarians on their Left blamed the government and the UMP for exploiting the issue for electoral gain. Thus the Socialist deputy Lesterlin:

the (...) message that you are charged to convey, in this extraordinary session so conveniently opened six months before the municipal elections, is addressed (...) to a popular electorate, to whom you are saying: "Rest assured; we will get rid of those women in boubou for you, and of those ill-bred kids hanging around in your neighbourhoods".<sup>49</sup>

The Greens stated that the government was "trying to have people believe that immigration presents a danger. (...) In truth, you produce this scare-crow to make people forget the infamies of your government".<sup>50</sup> The fact that the courses would be offered to applicants for free could not mollify the French opposition. The Socialists declared that rather than speaking of the "beneficiaries" of the integration program, they would speak of its "victims" and demanded that the program not be

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<sup>47</sup> AN, plenary debate 18 and 19 September 2007; *Sénat*, plenary debates 2 and 3 October 2007.

<sup>48</sup> AN, plenary debate 18 September 2007.

<sup>49</sup> AN, plenary debate 19 September 2007.

<sup>50</sup> AN, plenary debate 18 September 2007.



presented as a “privilege” but as the “additional condition for the deliverance of a visa” that it really was.<sup>51</sup> The far-Left emphasised that integration was “a duty of the country towards foreigners” and filed an amendment to the effect of the state covering all costs – including transport and lodging – an applicant would have to make to participate in the evaluation and the course.<sup>52</sup> In the *Assemblée Nationale* as well as in the Senate, the left-wing opposition defended amendments eliminating the two articles about civic integration abroad from the legislative proposal and eventually voted against the law unanimously.<sup>53</sup>

The much broader political support for civic integration abroad in the Netherlands than in France may explain at least in part why the Dutch program is significantly more stringent than the French. There was almost consensus among Dutch politicians that such far-reaching measures were called for. How should this significant difference in political constellations in turn be understood?

In part, it may be the result of different political cultures. Dutch politics are traditionally characterised by ‘consensus government’<sup>54</sup>, that is by a relatively small difference between the roles of coalition parties and opposition parties. In contrast, the French majoritarian election system is conducive to clear Left-Right cleavages, and it is less common in France than in the Netherlands for an opposition party to vote in favour of a government proposal. Such an explanation is not entirely satisfactory however: even in France, the left-wing opposition regularly votes in favour of government proposals, as it did for instance in the case of the Law forbidding ostensible religious signs in public schools. Its resistance to civic integration abroad cannot be explained merely as a matter of political culture. Similarly, in the Netherlands, the political support accorded to civic integration abroad was

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<sup>51</sup> AN, *Amendement No 162*, 17 September 2007; *Sénat*, plenary debate 3 October 2007.

<sup>52</sup> AN, *Amendement No 91*, 17 September 2007; *Sénat*, plenary debate 4 October 2007.

<sup>53</sup> With the exception of the centre-Left *Groupe du Rassemblement Démocratique et Social Européen* in the Senat, which voted 7 in favour, 8 against and 1 abstention. AN, *Analyse du scrutin No 33*, 23 October 2007 ; *Sénat Scrutin No 15*, 23 October 2007.

<sup>54</sup> R.B. Andeweg & G.A. Irwin, *Governance and Politics of the Netherlands. Second Edition* (Basingstoke/New York: Palgrave Macmillan, 2005), p. 220-235.

broad even for Dutch standards, and cannot simply be accounted for by referring to the Dutch culture of consensus.

Academic literature suggests that the rise of the far-Right on the political scene may have played a role. It is broadly accepted – even a “common wisdom”<sup>55</sup> – among migration scholars that electoral successes of the far-Right may decisively influence policies, even if these parties don’t enter government, because they cause mainstream parties to adapt their positions so as to regain their voters’ favour.<sup>56</sup> Indeed, to understand Dutch politicians’ approach to this issue in the years following the turn of the century, one must take into account the profound shock caused by the electoral success of the populist Pim Fortuyn in 2002. Until then, the extreme-Right had played a relatively small role in Dutch politics: its electoral successes had never exceeded the three seats in the House of Representatives obtained by the *CentrumDemocraten* in 1994. Fortuyn’s LPF, three months after its foundation, gained 26 seats in May 2002, making it the second biggest party in the House of Representatives. Because Fortuyn’s program had combined stark anti-immigrant positions with fierce criticism of Dutch mainstream politics, his success was interpreted as a vote of no-confidence against the entire political establishment. After what has come to be referred to as the ‘Fortuyn-revolt’, the legitimacy and representativeness of the Dutch political system as a whole were at stake in the debates about migration and integration policies. All political parties sought to distance themselves clearly from positions and policies adopted in the past, so as to let their electorate know that their discontent had been heard and understood.<sup>57</sup> This explains the all but consensual parliamentary support for the government’s proposal to introduce civic integration abroad.

In France, the extreme-Right also knew an unprecedented electoral success in 2002. For the first time, Jean-Marie Le Pen made it to the second round of the presidential elections, gaining 16.9%

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<sup>55</sup> T. Bale, “Politics matter: a conclusion”, *Journal of European Public Policy* 15/3 (2008): 453-464 on 457.

<sup>56</sup> T. Givens & A. Luedtke, “The Politics of European Union Immigration Policy: Institutions, Salience, and Harmonization”, *The Policy Studies Journal* 32/1 (2004): 145-165 on 152; M. A. Schain, “The extreme-right and immigration policy-making: Measuring direct and indirect effects”, *West European politics* 29/2 (2006): 270 – 289 on 287.

<sup>57</sup> S. Bonjour, *Grens en gezin. Beleidsvorming inzake gezinsmigratie in Nederland, 1955-2005* (Amsterdam: Aksant, 2009), pp. 243-244.

of the votes in the first round and thereby defeating the left-wing candidate Jospin. Perhaps the shock was not quite as great as in the Netherlands however: the *Front National* had obtained around 10% of votes in national elections since 1984, and had reached peaks of around 15% in 1986, 1995 and 1997. Moreover, the political situation stabilised quickly in France, with Le Pen and his *Front National* losing voters mostly to Nicolas Sarkozy and obtaining their ‘normal’ ten percent of the votes in the European elections of 2004 and in the presidential elections of 2007. The civic integration abroad proposal took place five months after these presidential elections, i.e. in a situation where the threat of the extreme right appeared contained.

In contrast, the political situation in the Netherlands has remained unstable until the present day, with new populist politicians and leaders coming to the fore to fill the empty space left by Pim Fortuyn and his LPF. The most successful among these, Geert Wilders, left the right-wing Liberal party in September 2004 and reached his first peak in the polls – 13 seats in Parliament – as an independent politician in November 2004<sup>58</sup>, when the House of Representatives was right in the middle of its discussions about civic integration abroad. This continued pressure from the far-Right may explain why the Dutch Left, unlike the French Left, embraced the government proposal.

In addition to the normalisation of the electoral situation in France, which contrasts with the protracted instability in the Netherlands, I see one further element which may have contributed to shaping the French left-wing rejection of civic integration abroad: the judicial norms which govern the field of family migration in France. As we shall see below, the French Constitutional Council protects the right to family reunification. This judicial recognition of the value of family life may have contributed to the moral conviction of the political Left that family life should not be obstructed, and thus strengthened its resolve to oppose civic integration abroad.

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<sup>58</sup> Synovate / De Politieke Barometer, *Archief weekpeiling 2004*. Retrieved 3 May 2010 from <http://www.politiekebarometer.nl/peilingen.cfm?jaar=2004>.

### 3.2 Judicial constraints

In a report about integration policies in Europe presented in December 2006, UMP-deputy Mariani had proposed that France draw inspiration from the practice of the Netherlands, Germany and Denmark, and introduce an “integration test abroad” for family migrants.<sup>59</sup> In a speech he delivered on 5 March 2007 in Marseille, Nicolas Sarkozy, then candidate for the presidential elections, adopted this idea, stating that he wanted to introduce a requirement of integration abroad after the Dutch example, so that “applicants for family reunification will be subjected, in our consulates, to a ‘test’ demonstrating their basic knowledge of the French language”.<sup>60</sup> Clearly then, the right-wing majority in France originally intended to shape civic integration abroad as an obligation of result, instead of an obligation of means. However, by the time the government submitted its legislative proposal to Parliament, the test had been replaced by an obligation to participate in an evaluation and course. According to media reports, a “person closely involved” stated that the government had refrained from imposing a test to prevent any risk of being condemned by the Constitutional Council or by the European court.<sup>61</sup>

In a similar vein, during the legislative debates, members of the governmental majority in the *Assemblée Nationale* presented a number of amendments that would have made the French civic integration abroad policy much more similar to the Dutch. Two UMP deputies proposed that admission be made conditional on passing a test, rather than on merely participating in the evaluation and the course.<sup>62</sup> Two other amendments were submitted by the UMP to the effect of charging applicants for the costs of the evaluation and course, possibly to be refunded after satisfactory

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<sup>59</sup> *Rapport d’information No 3502 déposée par la délégation de l’Assemblée Nationale pour l’Union Européenne sur les politiques d’intégration des migrants dans l’Union européenne, présenté par M. Thierry Mariani.*

<sup>60</sup> N. Sarkozy, *Déclaration sur le bilan de la politique de l’immigration et l’aide au développement*, Marseille, 5 March 2007. Retrieved 26 January 2010 from: <http://discours.vie-publique.fr/notices/073000867.html>.

<sup>61</sup> P. Lafitte, “Avant de rejoindre votre conjoint... apprenez le français d’abord”. *France 24*, 18 December 2008. Retrieved 26 January 2010 from: <http://www.france24.com/fr/20081218-francais-pays-origine-regroupement-familial-immigration-anaem-pays-bas-turquie-maroc-mali>.

<sup>62</sup> AN, *Amendement No 64*, 14 September 2007; AN, *Amendement No 84*, 17 September 2007.

participation.<sup>63</sup> The government however advised against the adoption of these amendments, because “the Constitutional Council would most certainly censor a provision that would thus infringe upon the right to family reunification”. For the same reason, UMP rapporteur Mariani also emitted a negative advice, but he expressed his regrets at having to do so, especially where the financial contribution was concerned. He declared that “once again, it appears that if we want to push further on this subject, a constitutional reform will be necessary”. All four amendments were withdrawn, but not before the deputies had made the government promise to come back to their proposals in future debates.<sup>64</sup>

Thus, it appears that judicial constraints have played an important role in shaping the French civic integration abroad requirement. Both France and the Netherlands are bound by the European Convention on Human Rights (ECHR, 1951), which guarantees the right to family life in its article 8, as well as by the EU Directive on family reunification of 2003.<sup>65</sup> Article 8, as interpreted by the European Court of Human Rights in Strasbourg, does not grant a right to family reunification: however, it obliges states to strike a fair balance between the interest of individuals in living with their family, and the general interest of the host society. Thus far, the Court has granted states quite some leeway in defining and protecting this general interest.<sup>66</sup> The EU Directive exhaustively lists the conditions that may be imposed on family reunification. It allows for member states to include integration measures in these requirements.<sup>67</sup>

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<sup>63</sup> AN, *Amendement No 70*, 17 September 2007; AN, *Amendement No 83*, 17 September 2007.

<sup>64</sup> AN, plenary debate 19 September 2007.

<sup>65</sup> Directive 2003/86/EC.

<sup>66</sup> S. van Walsum, “Recente ontwikkelingen – Vreemdelingenrecht en gezinsleven. Deel I: Internationaal recht”, *Migrantenrecht* 19/4 (2004): 136-146.

<sup>67</sup> Doubts have been raised by law scholars as to the compatibility of the obligation of *result* imposed by the Dutch civic integration abroad policy with article 7 of the Directive, which stipulates that “Members states may require third country nationals to comply with integration measures”, especially since the Dutch government does not offer courses. The European Court of Justice has yet to pronounce itself on this question. (K. Groenendijk, “Family Reunification as a Right under Community Law”, *European Journal of Migration and Law* 8/2 (2006), 215-230 on 224). In a report of 2008, the Commission – without directly criticising the Netherlands – affirmed that integration measures should serve no other purpose than “to facilitate the integration of family members” and expressed doubts as to the admissibility not so much of an

In France, in addition to these European judicial norms, the ‘right to a normal family life’ is considered a *‘principe général du droit’*, that is the equivalent of a constitutional right, protected as such by the Constitutional Council. The Council has proceeded to confirm the existence of a “right to family reunification”, which is conditional on “restrictions related to the protection of public order and public health which present objectives of constitutional value”.<sup>68</sup> With this explicit recognition of the ‘right to family reunification’, even if by no means unconditional, the French Constitutional Council has gone further than the Court in Strasbourg has so far chosen to do. Groenendijk has stated that the Strasbourg Court “in its case law on article 8 ECHR, starts from the principle of state sovereignty in immigration matters. Article 8 sets certain limits to the exercise of that sovereignty”.<sup>69</sup> The reasoning of the Constitutional Council appears to be the reverse: it grants the individual a right to family reunification which the French state may restrict under specific conditions. Henri Labayle confirms that the Constitutional Council has shown “greater constancy and vigilance” in its jurisprudence than the European Court of Human Rights.<sup>70</sup>

In the Netherlands, no such constitutional protection exists. The Dutch courts, in family reunification cases, refer only to article 8 of the European Convention on Human Rights and, in recent years, to the EU Directive of 2003. In the interpretation of the Dutch government, it would infringe upon these European norms to deny the possibility of family migration to “specific groups” of foreigners.<sup>71</sup> Therefore, the civic integration abroad requirement was designed so that any applicant

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obligation of result, but of “high fees excluding low-income families” and the absence of procedural safeguards to ensure the right to appeal negative decisions. (*Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification*, COM(2008) 610 final, p. 7-8)

<sup>68</sup> *Conseil Constitutionnel, Décision 93-325 DC*, 13 August 1993, sub 70 and 74. The Constitutional Council derives the right to live a normal family life from the tenth paragraph of the preamble of the 1946 Constitution which states that: “*La Nation assure à l’individu et à la famille les conditions nécessaires à leur développement*”, i.e. “the Nation provides the individual and the family with the conditions necessary for their development”.

<sup>69</sup> K. Groenendijk, *European Journal of Migration and Law* 8/2 (2006): 219.

<sup>70</sup> H. Labayle, “Le droit des étrangers au regroupement familial, regards croisés du droit interne et du droit européen”, *Revue Française du Droit Administratif* 24/1 (2007): 101-119 on 105-106 and 114.

<sup>71</sup> TK 29700 (6): 6, 6 December 2004.

with “sufficient motivation” should be able to fulfil it, without selecting on income, education, origin or gender. The government rejected two parliamentary proposals because they were deemed in breach of article 8 of the European Convention: first, the right-wing Liberals’ suggestion to raise the level of the language test, and second the Social Democrats’ amendment requiring literacy in the applicant’s own language, rather than a basic level of Dutch language skills.<sup>72</sup> However, the government expected neither the obligation to pass the test, nor the lack of state involvement in providing courses or learning material, nor the exam fees to infringe upon the right to family life as protected by the European Convention and the Court in Strasbourg. The weight of the interests at stake for Dutch society, so it argued, justified this limitation of individuals’ right to family life.<sup>73</sup> In its advice to the government about the legislative proposal, issued prior to the parliamentary debates, the Council of State had concurred with this view.<sup>74</sup> Thus, it appears that the French Constitutional Council sets more constraining standards for the protection of family life than the Court in Strasbourg, and that this constitutional protection, which is absent in Dutch law, may explain in significant part why France has implemented a more lenient version of civic integration abroad than the Netherlands.<sup>75</sup>

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<sup>72</sup> TK 29700 (6): 18, 6 December 2004; TK 29700 plenary debate: 3886-3887 & 3897, 16 March 2005.

<sup>73</sup> TK 29700 (3): 17, 21 July 2004; TK 29700 (6): 47-48, 6 December 2004.

<sup>74</sup> TK 29700 (4): 6, 13 April 2004.

<sup>75</sup> Pascouau suggests that, beside this constitutional norm, the EU Directive 2003/86 on the right to family reunification also worked as an ‘obstacle’. Whether article 7, paragraph 2 of the Directive allows for an obligation of result is subject to debate (see footnote 66). Pascouau states that “on the basis of these legal assessments and uncertainties”, the French government chose to refrain from imposing an obligation of result. (Y. Pascouau, “Integration Measures in France”, p. 176) I have found no support for this view in the parliamentary debates: on the contrary, the government and the rapporteur emphasised on several occasions that the Directive allowed for an obligation to pass the test, and that the Commission had confirmed this view. (AN, Rapport No 160, 12 September 2007, p. 66; AN, plenary debate 19 September 2007; *Sénat*, plenary debate 3 October 2007). It may be that doubts about the conformity of an obligation of result with the Directive did play a role in the decision-making process within the government, but that the government chose to deny this in public, either out of solidarity with the Dutch government, or out of unwillingness to acknowledge that European judicial norms were constraining the sovereignty of the French state in matters of migration. My data does not allow me to confirm or disprove this hypothesis.

This interpretation is in line with the well-established argument that the courts' defence of individual migrants' rights is among the primary reasons why "liberal states accept unwanted migration", as Joppke put it.<sup>76</sup> More specifically, it appears to corroborate Joppke's thesis that governments' room for manoeuvre is limited primarily by individual rights stemming from *domestic* legal sources<sup>77</sup> and not, as Soysal or Sassen would have it, by international legal norms.<sup>78</sup> It is questionable however, whether it is the type of norm which is invoked – domestic or international – that determines the impact of the judiciary on policy-making, or rather the type of legal system in which legal norms are invoked. Guiraudon has shown that the Dutch courts have played a less important role in the extension of rights to migrants over recent decades than their German and French counterparts.<sup>79</sup> Bonjour has recently confirmed that the Dutch judiciary has until now granted substantial leeway to the government to impose conditions upon family migration, thus exerting a much less constraining influence on policy development than the one ascribed to the courts in countries like Germany, France and the United States in academic literature.<sup>80</sup> This fits with the findings of comparative studies of judicial review, which have characterised the Dutch legal system as close to the British parliamentary model. Since the Dutch Parliament is traditionally considered sole

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<sup>76</sup> C. Joppke, "Why liberal states accept unwanted migration", *World politics* 50/2 (1998): 266-293; cf. W. A. Cornelius, P. L. Martin & J. F. Hollifield, "Introduction: The Ambivalent Quest for Immigration Control", in: W. A. Cornelius, P. L. Martin & J. F. Hollifield, eds., *Controlling Immigration: A Global Perspective* (Stanford: Stanford University Press, 1994), p. 3-41; V. Guiraudon, *Les politiques d'immigration en Europe : Allemagne, France, Pays-Bas* (Paris: L'Harmattan, 2000); C. Joppke, *Immigration and the nation-state : the United States, Germany, and Great Britain* (Oxford/New York: Oxford University Press, 1999); J. F. Hollifield, "The Politics of International Migration. How Can We 'Bring the State Back In'?", in C. Brettell & J. F. Hollifield, eds., *Migration Theory. Talking Across Disciplines* (New York/London: Routledge, 2000), pp. 137-186.

<sup>77</sup> C. Joppke, *World Politics* 50/2 (1998): 270-271.

<sup>78</sup> Y. Soysal, *Limits of citizenship. Migrants and postnational membership in Europe* (Chicago: University of Chicago, 1994): 149-151; S. Sassen, "Beyond Sovereignty: De-Facto Transnationalism in Immigration Policy", *European Journal of Migration and Law* 1/2 (1999): 177-198.

<sup>79</sup> V. Guiraudon, *Les politiques d'immigration en Europe*, pp. 220-221.

<sup>80</sup> S. Bonjour, *Grens en gezin*, pp. 312-317.



and supreme legislator, the Dutch courts are not entitled to review whether legislation is in accordance with the Constitution. The French legal system, in contrast, is one where the balance of power between courts and politics leans further towards the courts, with the responsibility for ensuring the constitutionality of legislation entrusted to a judicial body.<sup>81</sup> In Lijphart's comparison of judicial review in 36 countries, France (after 1974) is classified as a country with a "medium-strength" judicial review, and the Netherlands as a country with "no judicial review".<sup>82</sup> However, Koopmans has pointed out that since the 1950s, the Dutch courts have come to scrutinise the compatibility of legislation with international human rights law, much in the same way as courts in other countries verify the constitutionality of legislation. Thus, the Dutch system of legal review has come to resemble that of European countries with a constitutional model of legal review, such as France, quite closely.<sup>83</sup> It remains to be ascertained whether Dutch courts have indeed granted politicians more leeway in shaping migration policies than courts in other western countries, and whether this should be interpreted as the result of a Dutch judicial culture or tradition. All in all, the comparative impact of judicial review on immigration policies in European countries offers fruitful ground for further research.

Beside the question of the comparative strength of judicial review, there is also the question of how politicians deal with the scrutiny of the courts. Since civic integration abroad is a highly innovative policy, neither the Court in Strasbourg nor the French Constitutional Council has thus far pronounced itself on integration requirements abroad for family migrants. The French and Dutch governments have therefore made an assessment of the admissibility of their reform proposals, based on existing jurisprudence. They could not predict the line the courts would adopt with absolute certainty. In this regard, it is striking that the Dutch government chose to "seek out the limits of the

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<sup>81</sup> T. Koopmans, *Courts and Political Institutions. A Comparative View* (Cambridge: Cambridge University Press, 2003), pp. 23-24, 35, 69-84.

<sup>82</sup> A. Lijphart, *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries* (New Haven/London: Yale University Press, 1999), p. 226.

<sup>83</sup> T. Koopmans, *Courts and Political Institutions*, p. 84.

ECHR”, as minister Verdonk put it.<sup>84</sup> She consciously took the risk that her new policy would meet with judicial disapproval. The French government, on the contrary, chose to avoid this risk. The Dutch boldness and French prudence in anticipating on judicial review is most likely related to the very strong political support for the government proposals in the Netherlands, which contrasts with the contentions of the reform in France.

#### **4. Conclusion: the interplay between party politics and judicial constraints**

This analysis of the parliamentary debates yields two plausible explanations for the fact that, in response to highly similar definitions of the societal ‘problem’ caused by continuous immigration and ‘failing’ integration, French and Dutch politicians implemented two very different types of civic integration abroad policies.

First, as a result of the profound shock caused by the electoral success of the populist Pim Fortuyn in 2002, which had a lasting destabilising influence on Dutch politics, there was very broad support for a stringent civic integration abroad requirement among Dutch political parties. Only the Greens rejected the principle of granting admission to family members only if they passed the integration test. In contrast, the French left-wing opposition was adamantly opposed to compulsory civic integration abroad. Second, due to the constitutional protection of the right to family reunification, a protection that does not exist as such in the Netherlands, the French judiciary leaves less room for imposing restrictive conditions upon family migration than the Dutch. In particular, setting a requirement of result rather than participation, or charging the applicants for the costs of the course and evaluation – provisions that were part of the Dutch program, and favoured by the French governmental majority – would, according to the French government, have been censored by the Constitutional Court.

Party politics and judicial constraints do not operate in isolated spheres: they connect and influence each other in intricate ways. For instance, it is striking how often French left-wing Parliamentarians, in their opposition to civic integration abroad, mention the right to family

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<sup>84</sup> TK 29700 plenary debate: 4021, 22 March 2005.

reunification or the right to a normal family life, often without referring to any specific legal source. In doing so, they invoke more than a judicial standard: they express the moral weight they attach to granting French residents the possibility of living with their foreign family members. In contrast, in the Dutch parliamentary debates, no reference was made either to a right to family reunification, or to the moral implications of imposing restrictions on family life. Thus, it may very well be that the way in which the French Constitutional Court has upheld the right to family reunification as a *judicial* norm has contributed to the weight accorded to family life in French political discourse as an *ethical* norm. This may explain in part why the French Left resisted the introduction of civic integration abroad so fiercely.

Furthermore, governmental majorities may feel emboldened to seek the limits of what judicial norms will allow, at the risk of crossing these limits, when their reform proposals enjoy broad political support. In this sense, the Dutch government's position was strong, which is reflected in the confidence with which it consciously opted for a course which was not unlikely to lead to a confrontation with the courts. In contrast, the French government, defending a proposal which was politically controversial, chose a much more prudent approach, steering clear of judicial grey areas.

Thus, this comparative case study shows the value of an interdisciplinary approach to the study of migration policies, combining the insights of law and political sciences: it is the *interplay* between party politics and judicial constraints that has shaped the making of French and Dutch policies of civic integration abroad.