

# Autonomy through precedent

## Citation for published version (APA):

de Somer, M. P. L. A. (2017). *Autonomy through precedent: a longitudinal analysis of the EU Court of Justice's Case Law on family reunification*. Maastricht University.  
<https://doi.org/10.26481/dis.20170626mds>

## Document status and date:

Published: 01/01/2017

## DOI:

[10.26481/dis.20170626mds](https://doi.org/10.26481/dis.20170626mds)

## Document Version:

Publisher's PDF, also known as Version of record

## Please check the document version of this publication:

- A submitted manuscript is the version of the article upon submission and before peer-review. There can be important differences between the submitted version and the official published version of record. People interested in the research are advised to contact the author for the final version of the publication, or visit the DOI to the publisher's website.
- The final author version and the galley proof are versions of the publication after peer review.
- The final published version features the final layout of the paper including the volume, issue and page numbers.

[Link to publication](#)

## General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal.

If the publication is distributed under the terms of Article 25fa of the Dutch Copyright Act, indicated by the "Taverne" license above, please follow below link for the End User Agreement:

[www.umlib.nl/taverne-license](http://www.umlib.nl/taverne-license)

## Take down policy

If you believe that this document breaches copyright please contact us at:

[repository@maastrichtuniversity.nl](mailto:repository@maastrichtuniversity.nl)

providing details and we will investigate your claim.

# Valorisation Addendum

## Societal Relevance

The knowledge valorization of the present research resides in the manner in which an enhanced understanding of the Court's precise role and autonomy in European integration processes can inform broader discussions on the EU's democratic legitimacy or finality which, themselves, carry a strong social relevance. Writing in 2016-17 against the background of the Brexit vote and an increased recourse to national decision-making mechanisms and fora in response to EU-level developments (e.g., resistance to the CETA agreement by the Walloon parliament, the Dutch referendum on the EU-Ukrainian association agreement), such discussions are now as topical as they have ever been.

To the extent that the findings of the present research point towards a strong, or strengthened, judicial autonomy in a field as politically and sovereignty sensitive as family reunification immigration, they provide evidence of a CJEU role of furthering EU rights, and with that, European integration processes. As was established on the basis of an analytical comparison of Member States' preferences during the legislative drafting stages with the eventual outcomes of the Court's case law, such furthering of EU rights has gone beyond the original policy and political intentions on family reunification law that were registered in the Council.

This evidence can inform discussions on the European Union's finality and democratic accountability in a number of ways. It is beyond the scope of this valorisation addendum to explore all of them. Instead, two different ways of integrating the findings of the present study into such debates generally speaking, and what conclusions to draw from them, are presented. In this manner, the valorization addendum seeks to provide illustrations of how these findings can be informative for the indicated broader debates, both within academia as well as in the public arena. A second subsection further explores the different sets of target groups of these findings and briefly discusses dissemination activities and future opportunities.

As a first implication for broader debates on the EU, the research findings could feed into perspectives and criticisms on the democratic credentials of the EU's decision-making processes, or, the EU's democratic input legitimacy. Put differently, they could be used in support of critical appraisals of the participatory or representative quality of the decision-making processes leading up to EU laws. These processes, and their democratic qualities, have been the subject of academic and public criticism for years and on a number of different grounds. Amongst them, a recurrent point of critique relates to the stronger legislative power and role of the executive branches of government in EU decision-making compared to the reach and sway afforded to the European Parliament. At the risk of simplifying, the criticism in this respect holds that the connections or chains of accountability linking policy-making actors to citizens is of a better quality within parliamentary fora compared to the state of affairs within executive branches. To allow for a comparatively stronger role of executive for a in EU decision-making processes is, accordingly, one of the ways in which the democratic accountability and legitimacy of the EU can be chided. Arguably, even stronger critiques

or concerns could be voiced, along similar lines, in respect of CJEU's role and autonomy to, as documented in the present study, move legislative outcomes beyond what was originally intended. More specifically, whereas issues of democratic accountability can certainly be laid at the door of the EU's executive branches, such issues are of course even more at stake in respect of the EU judiciary which by its very design and set-up, and like other judiciaries of course, is meant to be outside of and independent from majoritarian politics. Concerns around the possible political and legislative effects of the decisions made by a non-elected judicial body are for instance also at the heart of legal analyses and criticism of potential judicial activism, or Court decisions which thread too much or too far in political or policy-making spheres (see e.g., Adams et al., 2013).

A second and more positive reading of the research findings in the context of broader questions on the EU's democratic legitimacy and finality is also available however. A strong autonomy of the judiciary, as registered in the present study, especially in a fundamental rights sensitive area such as family reunification immigration, is in itself in line with the role of Courts as watchdogs in democratically governed societies. The role of courts, and the upholding of rule of law standards more generally, can be regarded not only as an expression of distrust in majoritarian politics and decision-making (such as in the above reading), but also as a means by which such processes are safeguarded, e.g., by protecting the democratic rights of individual citizens. In a different vein, it can also be pointed out that at least some of the legislative outcomes that were generated, over time, through CJEU rulings aligned with the political preferences put forward by the European Parliament in the context of the EU-level negotiations. Where Council dominance in decision-making processes disabled the eventual translation of these EP preferences into legislative rules in the first instance, judicial processes, at least to some extent, provided for a correction afterwards. To the extent that Court rulings, hence, end up re-inserting the policy preferences of the European Parliament in EU law they can, at least to some extent, also be interpreted as providing a corrective mechanism for the identified inequity between the EP's and Council's weight within the EU's decision-making processes.

These are but some of the ways in which the results of the present study can be incorporated into debates on the EU's democratic accountability or legitimacy generally speaking and how they can, accordingly, further inform them. It is outside of the scope of this addendum to explore them all, or to provide a final evaluation of what, amongst the different sets of readings, is ultimately the most convincing or important one. What has been attempted is to provide an illustration of some of the possibilities for fruitful cross-engagement with such broader debates on the democratic nature or finality of the EU project.

### **Target Groups for the Research Results and Dissemination**

Beyond scholars exploring the role of the EU Court of Justice specifically or European integration processes more generally, the research results and their broader implications for debates on the nature and finality of the EU is of use to both policy leaders at national or EU level as well as to those working within the broader surroundings of the policy-making environment, e.g., in think tanks or in organisations representing civil society interests. The challenges the EU has been confronted with in the last years, ranging from the refugee

emergency to the Brexit vote, have given rise to a renewed interest in understanding, debating and discussing the EU project's credentials, set-up and finality. Both at national and at EU level, politicians or opinion leaders no longer shy away from questioning or addressing larger questions on the shape and future direction of the EU. The debates and campaigns leading up to the Dutch and French elections in the first half of 2017 provide good examples. At EU level, the European Commission's White Paper on the Future of Europe (2016), outlining five scenarios for the EU's future development, is but one illustration of how policy leaders at the highest echelons are perceiving the added value, or even need, of renewed reflections on the EU's set-up and finality. Mirroring these trends, an increased interest in broad questions on the EU project, its past, present and future, is also found within the policy-oriented research of think tanks and civil society organisations with an increased writing output and events organised around such themes as 'reconstructing Europe' (CEPS Ideas Lab 2016) or the 'EU@60 – Countering a regressive Europe' (EPC flagship publication written at the occasion of the EU's 20<sup>th</sup> anniversary).

The results of the present research, as outlined in the above subsection, can feed into and further inform these debates in multiple ways. In order to secure their dissemination, the results have already been presented at various conferences and workshops, including workshops geared at policy-makers and government officials such as the 2013 final conference of the inter-university Marie Curie INCOOP project within which this PhD was embedded.<sup>21</sup> In addition, they were also published as open access papers and policy notes, for instance, in the format of CEPS policy briefs.<sup>22</sup> Further dissemination is foreseen in the format of a commercial publication of the dissertation monograph as a whole.

---

<sup>21</sup> Further workshops included, *inter alia*, the ECPR and UACES general conferences in 2012 and 2013, the MACIMIDE kick-off conference in Maastricht in 2014 or, more recently, in the context of a Francqui Chair seminar on EU Citizenship held in Leuven in March 2017.

<sup>22</sup> Carrera, S., De Somer, M. & Petkova, B. (2012). 'The CJEU as a Fundamental Rights Tribunal. Challenges for the Effective Delivery of Fundamental Rights in the Area of Freedom Security and Justice'. CEPS Papers in Liberty and Security in Europe. No. 49/2012; De Somer, M. (2012). 'Trends and Gaps in the Academic Literature on EU Labour Migration Policies'. CEPS Papers in Liberty and Security in Europe. No. 50/2012.