

The debate about integration in Germany and the new Immigration Act

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First of all I would like to thank the organizers for inviting me and giving IOM Germany the opportunity to be represented. In our point of view the German debate about the immigration bill cannot be understood without reflections about the history of migration in Germany. Therefore I would like to start my input with a brief overview about the German history of migration, before I will explain the actual debate about the immigration bill.

1. Overview about Migration in Germany

In the 19th century, Germans were often the largest group of emigrants worldwide. With beginning industrialization Germany began to attract foreign workers which came into Germany from Poland, Austrian Galicia, Ukraine and Italy. National Socialism and its “Third Reich” resulted in mass expulsions and flows of refugees from Germany. At the end of the war, 7.6 million forced labourers, prisoners of war and foreign detainees in concentration camps were being deployed as labourers, many did not survive.

With the Fifties, the “Wirtschaftswunder“ started: The German private Sector was booming and recruited workers from Italy, Greece, Spain, Portugal, former Yugoslavia and later on Turkey. Until now, their German term is “Guest worker – Gastarbeiter” and the definition “Guest Worker” itself implies what was expected of these people: to help rebuild the country’s economy for a few years, but then to return home as quickly as possible. They were employed in unskilled jobs where few linguistic skills were needed. Most of them earned their living in mining and the metal and automobile industries, while women were often employed in textiles. They began to stay for longer and their families started to join them in increasing numbers.

Under pressure from the oil crisis in 1973 and rising unemployment, the Federal Government imposed a ban on the recruitment of foreign labour in November 1973, which today, 31 years later, is still in force and allows working for nationals from Non-EU Member States only in exceptional cases and under stringent restrictions.

The coalition between the Social Democrats and the Greens (“Red-green Coalition”) took power in autumn 1998 and has implemented the following reforms:

The reform of the citizenship and nationality law (2000) links citizenship to the place of birth (jus soli). The requirement is that one parent must have been legally resident in Germany for eight years. On attaining his or her majority, the child must choose between his or her German or foreign citizenship.

In February 2000, Chancellor Schroeder announced the **Green Card Initiative**, a work and residence permit launched for foreign specialists in information and communications

technology (ICT). For the first time since the ban on recruitment of foreign labour was imposed in 1973, an official body was publicly calling for targeted recruitment. Since 2000, more than 15.300 work permits have been issued for five years with working and residence permit.

In summer 2000 the Federal Government set up a **Council of Experts on Migration and Integration** to Germany, in order to refresh the political debate with “practical solutions and recommendations for new policies on foreign nationals and immigration”. It consists of independent politicians, academics, and representatives of the business community and civil society and is led by Prof. Rita Süssmuth, former Minister for Women in Germany and now Member of the Global Commission on Migration. The Commission presented a report in July 2001 and another one in October 2004. For the first time, a comprehensive immigration strategy was presented and gave rise to intense debates about migration and integration policies.

In August 2001, the Federal Interior Ministry presented the first draft of an **Immigration Act** which took account of the views of the Commission but also of a host of other associations and parties. This law intended the fundamental reform of the current legislation governing the status of foreign nationals in Germany. Among other things, it planned to reshape the legislation on freedom of movement for EU citizens and changes to the asylum procedure. A draft immigration bill was first presented by Interior Minister Otto Schily on August 3, 2001 and approved by the cabinet on November 7, 2001. The bill was passed by the governing majority in the lower house of parliament, but approval of the bill by the upper house on March 22, 2002 was declared null and void by the federal constitutional court on December 18, 2002 as a result of a procedural error in the voting.

The bill was resubmitted for passage in January 2003. The same month the cabinet approved a related regulation on integration courses for foreigners as well as an implementing regulation for the bill itself. The immigration bill was passed again in the lower house on May 8, 2003. It was rejected by the conservative majority in the upper house (governments of the federal states, the *Länder*) in a vote taken on June 20. The bill must have the approval of the state governments to pass. Compromise has been finally reached on July 9, 2004.

These days, around 82.4 million people live in Germany; 7.3 million of them are of foreign nationality; 56.4% of these foreigners have been in Germany for more than 10 years; and 1.6 million of them were actually born in Germany. Around 3.2 million Muslims live in Germany (90 % of Turkish origin, 10 % arab muslims).

Since 2003, German newspapers are full of concerns about the demographic need:

The population of Germany is becoming older and will considerably decrease in the 21st century. The birth rate has been dropping steadily over the past 30 years.

The overall employment rate of women, (their share in top positions in society, politics and economy) and the birth rate are all below European average. Without further immigration to Germany, and with women having the same amount of children, the population in Germany is expected to decline from 82 millions to less than 60 millions in 2050 (the number of gainfully employed people would decrease from 41 million today to 26 million). A general aging of the population is expected.

Already now the security systems are breaking down (f.e. nursing staff for elderly and handicapped people is being recruited from abroad, often from East-European countries). In the near future, Germany will not only have immigration – it will benefit from immigration.

2. Summary of the new Immigration Act¹

Immigration made easier for highly-skilled workers

The Immigration Act represents an improvement of the current legal situation first of all with regard to labour migration. For example, after graduating from university, students will be able to remain in Germany for another year while they look for a job. And it will be easier for highly-qualified workers to move to Germany, making the country more competitive in the global market for the brightest minds. In addition, self-employed persons who want to invest in Germany and create jobs here will find it easier to immigrate. This gives the federal German states the opportunity to promote their regional economies, because regional needs may be given special consideration when deciding on immigration rulings.

One-stop application process

In the area of labour immigration, the most important innovation is the simplification of administrative procedures: Instead of having to go through two separate application processes (one for residence permits and another for work permits), a residence permit application to the responsible foreigners' authority will suffice. The foreigners' authority will then send the application to the local government employment agency to decide whether to grant permission to work, which is then noted on the residence permit. This means that applicants need to deal with only one agency: their local foreigners' authority ("one-stop government").

European standards with regard to humanitarian concerns

The new legislation also makes significant improvements to the right of residence for humanitarian reasons. In this area, the Act is based on the Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees, adopted by the Council of the European Union on 30 April 2004. Non-state and gender-related persecution are explicitly recognized as grounds for granting refugee status. If there exist legal obstacles to deportation (e.g. threat of torture in the country of origin), the affected person "shall" receive a residence permit. Further, a residence permit "may" be issued if the affected person is unable, through no fault of his or her own, to return to his or her country of origin. This legal basis will significantly reduce the problem of successive suspensions of deportation orders.

A new mechanism for dealing with hardship cases addresses a long-standing demand on the part of charitable organizations, churches and refugee associations, as well as the states: In future, the German states will be able to set up committees to rule on hardship cases. These will be able to issue residence permits for humanitarian reasons when all other legal means have been exhausted. The decisions of these hardship committees will be in the nature of exceptions; this mechanism to deal with hardship cases is not intended to open a new possibility of legal recourse.

New measures offered to promote integration

Another key element of the Immigration Act are its provisions on integration. Possibilities for integration determine the limits of immigration. The Act places support for integration on a completely new footing. For the first time, all new immigrants, whether of ethnic German origin or not, will be entitled to a basic offering of integration support measures. However, those who lack even minimal German language skills are obliged to participate. In addition,

¹ Summary taken from the MoI webpage, www.bmi.bund.de

the Act provides that foreigners already living in Germany may be required to attend integration classes if they are receiving social benefits or are otherwise determined to have a special need for integration. Recipients of social benefits who fail to fulfil such requirements may have their benefits reduced. Because this provision affects roughly 300,000 foreigners already living in Germany, classes will be expanded to accommodate an additional 50-60,000 participants annually over the next five to six years.

These integration classes will be organized and paid for at the federal level. This extraordinary relief measure for the German states is anything but self-evident; carried out centrally by the Federal Office for Migration and Refugees in Nuremberg, this enormous task will require the creation of new and more efficient structures for integration, especially at this time of limited budgets.

An appropriate response to security concerns

Following a thorough analysis of the current legal situation, the Immigration Act incorporates new provisions capable of meeting today's security challenges. Current law has not proved adequate to take the necessary legal measures quickly and effectively with regard to foreigners who pose a special threat. The Kaplan case is only one example of how long and complicated judiciary and administrative procedures can hinder the effectiveness of the rule of law.

A major innovation in this area is the provision with regard to deportation orders, proposed by Federal Minister of the Interior Otto Schily in response to demands made during the legislative process to speed up the process of expulsions and deportations of foreigners posing a special threat. The Act allows the state's interior ministries to issue deportation orders that take immediate effect without prior notification or warning in order to avert a potential terrorist threat. Based on the information in its possession, the acting authority must assess the threat a particular foreigner poses to internal security. This assessment must be based on factual evidence; mere suspicion is not enough. In cases of special national interest, the Federal Ministry of the Interior can assume responsibility and issue a deportation order. Appeals for legal protection against such deportation orders may be addressed only to the Federal Administrative Court, regardless of whether the order was issued at the state or the federal level. This will result in consistency of rulings and administrative practice with regard to deportation orders.

Further, the grounds for expulsion will become stricter, for example allowing "hate preachers" to be expelled: foreigners who incite hatred against segments of the population or attack the dignity of others through malicious slander in a way capable of disrupting public order and security.

Under the new law, those foreigners in particular will be subject to regular expulsion who in the past actively supported terrorist activity. These include persons who received training in Afghan terrorist training camps years ago and now appear to lead law-abiding lives. Such past activity is of course relevant only in conjunction with an existing threat. In addition, leaders of banned groups are as a rule to be expelled. Persons convicted of human smuggling and sentenced to prison must be expelled; human smugglers given suspended sentences or fined are as a rule to be expelled.

The new law makes it possible to keep better watch over dangerous foreigners in Germany who cannot be deported due to obstacles such as the threat of capital punishment or torture in their countries of origin.

- Such persons are required by law to report at least once a week to their local police station.
- They may reside only within the district for which their local foreigners' authority is responsible.
- Such persons may be required to reside in a designated town or city or in designated housing.
- Such persons may be forbidden from using certain means of communication or communications services.

A special difficulty in dealing with extremists of foreign origin is that they often have permanent residence status in Germany. Members of associations that are now illegal have often become naturalized citizens in order to avoid measures under foreigners' law. That is why it is important that the Federal Office for the Protection of the Constitution conducts background checks of persons applying for naturalization. The Immigration Act requires that a standard check of anti-constitutional activity be carried out before a foreigner's application for naturalization is approved and before a foreigner is issued a permanent residence permit. This measure will prevent foreigners known to the security authorities to be a threat from gaining permanent residency.

The legislation goes into effect on 1 January 2005

The Immigration Act goes into effect on 1 January 2005. By that date, the responsible agencies are required to have familiarized themselves with the new provisions in order to ensure that the legislation can be implemented seamlessly. After the intensive negotiations necessary to pass the law, the Federal Ministry of the Interior is looking forward to its successful application in legal praxis.

3. Press Statement of IOM Germany:

With regard to the upper house of parliament's decision on July 9, 2004 to adopt the German Immigration Act, Bernd Hemingway, Chief of Mission IOM Germany, declares:

„I welcome today's decision of the upper house of parliament (Bundesrat) to adopt the Immigration Act and to implement the compromise as from January 2005.

I am very much pleased that the lengthy discussions came to an end since this paradigm shift renders possible to take up the important work on future-oriented migration and integration issues.

The German Federal Republic is in need of a migration management structure that is embedded in the European framework. The approval of the Act was an indispensable step towards the establishment of such a structure. IOM will continue to be a strong and reliable partner for the Federal Republic in all areas of migration management.

We particularly appreciate the reorganisation of labour migration issues. As a world-wide operating organisation active in the field of labour migration we learned from many years of experience that the integration of labour migrants into national labour markets benefits all stakeholders. Cosmopolitanism is of advantage to the German economy as well as to Germany in general.

I consider it a substantial progress that integrative measures can be better coordinated and that the principle to offer support from the state and to request an active participation from the migrant into society is to be implemented.

The right to participate in an integration course is a politically eligible signal! The European harmonisation of asylum and refugee policy is also supported by the approval of the Geneva Convention on Refugees persecuted for gender-specific and non-statal reasons.”