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Continuity and Change: Immigration Policies in Germany from the Sixties to the Present

Mehmet Okyayuz

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Continuity and Change: Immigration Policies in Germany from the Sixties to the Present

Mehmet Okyayuz

Preliminary Remarks

The following text is not by far intended to provide a detailed political and legal analysis of developments and priority shifts of immigration policies in Germany since the recruitment period of the 1960s. Rather than that, special attention will be given to the historic-social context (e.g., in the sense of attitudes of official political actors towards the “foreigner question”) in whose framework debates concerning migration/migrants have been (or are still) ongoing. Hereby perceptions of integration and participation of foreigners, together with perceptions of socio-political order and multiculturalism underlying and steering the flow of the debates will be of interest. Formulated in an ideology-critical way, it shall be read “between” the lines of written and oral statements in order to show tendencies within the process of the relation(s) between the foreigners and the political sphere (reflected in the wide scope of responsibility and action of the bourgeois state) on the one hand, and the social sphere (reflected in the wide scope of action of social actors) on the other hand. A special emphasis shall be hereby given to the structural dimension of immigration policies best seen within the context of their possible functionalization as a mechanism to solve social tensions. The topic of this article is by no way specific for Germany because an important aspect of the above-mentioned structural dimension is the increasingly promoted global cross-linkage of politics and policy-making. Immigration policies, especially in their form as asylum procedures and practices, are currently carried on as part of Europe-wide coordination activities including countries at the periphery of Europe. A concrete example for this development is an attempt to build up at least seven

refugee reception and removal centers in Turkey within the framework of measures for the EU integration process. Despite this global dimension of immigration policies in a narrow sense and migration movements in a broader sense, there are still some important historic-social and theoretical reasons remaining for employing the “German case”, as it is done in this text.

Firstly, the experience of organized mass labor migration having started in the midst of the 1950s of the last century to the industrialized Western European countries was factually a Turkish-German one. The number of Turkish citizens and/or people having a Turkish background living and working in Germany is higher than in all other Western European receiving countries together. Besides this quantitative dimension, we can state ongoing controversial debates on integration, identity, multiculturalism, freedom and security hard to find elsewhere in such an intensity. Starting with the German reunification in 1991, a lot of political actors saw the necessity to (re-) construct a new (or a new-old) German identity thought to be “lost” within the framework of developments after World War II having resulted in the establishment of two “Germanies”. For those actors the migrants are somehow the counter-image of such a “new” identity.¹

Secondly, the mass recruitment of a foreign labor force on the basis of bilateral agreements was a relatively new experience for Germany. This migration movement resulted in social dynamics (such as family reunification), which should be “conducted” via political and legal means. Hereby, the long tradition of thought emphasizing the uniqueness of the state as an idealized sphere of distributing justice and balancing out social conflicts, as we can see it in the conservative attitude of Adam Müller’s “political romanticism” of the early 19th century, and in the extensive philosophical and theoretical research on state law² finding its most comprehensive expression by Hegel in his *Philosophy of Law*, and under German fascism in Carl Schmitt’s relocation of the state as the main agent of the political, enabled a very fast establishment of political and legal regulations later being incorporated into the Immigration Law of 1965, which was the first systematically formulated and in itself closed legal framework in Germany regulating the relation between the foreigner and the bourgeois state. Having mentioned above historico-social experience

¹ Penitsch (2003, p. 17).

² Jann (1989, p. 39).

and the tradition of state law, it seems plausible to evaluate Germany as one, if not the main actor, of Europe-wide coordinated immigration policies.³

The Recruitment Period of the 1960s: Immigration Policies in the Form of Labor Market Policies

After its integration into the political-institutional framework of a “free” Europe evaluated as the “antithesis” of the Eastern European socialist states under the leadership of the Soviet Union, Federal Germany’s primary aim was to rebuild its traditional industrial sectors. Until the mid-1950s, this aim could be realized to a broad extent by employing a labor force from its former Eastern territories and from those coming from Eastern Germany. The canalizing of this “national” labor force mentioned above, industrial sectors were accompanied by an extensive capital and technology transfer from the USA to the Western European countries,⁴ altogether resulting in an increase of consumptive needs enabling the establishment of new industrial sectors. Thus, in the mid-1950s, the demand for a labor force could no longer be supplied via the mentioned labor markets. A short-term solution could be provided by transferring the labor force from the agricultural to the industrial sector due to the relatively higher wages in the industrial sector compared to agricultural production.⁵ This time a lack of labor force occurred in the agricultural sector and consequently demands for a stately organized recruitment and employment of foreign labor force – concretely “the temporary employment of Italian agricultural workers”⁶ – were articulated for the first time in 1955 by parts of the professional organization of the *Farmers’ Union of Baden-Württemberg Province* (Bauernverband Baden-Württemberg).

In addition to the above-mentioned, economic preconditions for opening the labor market and providing access to a foreign labor force with the recruitment and employment of Italian workers in the agricultural sector, demographic changes such as the increase of the older population (of an age of 65

³ Niblett (2005, p. 43).

⁴ According to Mandel (1982, p. 11), this transfer of resources increased from approximately 72 billion USD to an amount of 60 billion USD in 1967.

⁵ Dohse (1981, p. 148).

⁶ Meier-Braun (1979, p. 18).

and above)⁷ and the decrease of the working population (of an age between 15 and 65) as a result of World War II, and furthermore social and political changes such as the reduction of the weekly working time to 45 hours in 1956⁸ and the re-organization of a Federal German army in the mid-1950s⁹ paved the way for the later bi-lateral recruitment agreements between Germany and countries like Italy (1955), Spain (1960), Greece (1960), Turkey (1961), Morocco (1963), Portugal (1964), Tunisia (1965) and (the former) Yugoslavia (1968).¹⁰

The foundations of the first legal regulations in the field of immigration policies were laid under above-mentioned conditions, which were to a great extent (if not solely) determined by the economic needs of a “new” Germany trying to compete with the other traditional industrialized countries such as Great Britain and France. In the mid-1950s, the wide-spread term “economic miracle” did reflect Federal Germany’s attempt to organize its economy in a framework of free competitive market mechanisms under the guidance of Ludwig Ehrhard, who started his career as Minister of Economics in the Bavarian cabinet, later in the federal government in the same position, and who finally became Chancellor between the years 1963 and 1966.

Despite the mentioned liberal economic priorities of the economic structuring of Germany, favoring the state remained important for “conservative” politicians like Ehrhard. In this context, the emphasis on a “Social Market Economy” accentuating differences from a “pure” competitive economy may be understandable. The orientation towards a market economy was one of the steps that Germany did undergo to break with the past having culminated into fascist dictatorship. But, improvements on the level of living and working con-

⁷ The estimations concerning the number of people having been killed during World War II is – on the lowest level – around 30 million. According to Borrie, the regional distribution is as follows: Western Europe – 7.8 million, Eastern Europe (without the consideration of the Soviet Union) – 5.6 million and the Soviet Union – 17 million. Not included is the number of persons killed in the concentration camps of the German fascist dictatorship. Borrie (1970), Spanier (1969, pp. 93–94).

⁸ Hammer (1976, p. 14).

⁹ The re-organization of the army (Bundeswehr) cannot be underestimated in terms of partially draining out the labor market. Thus, the number of persons being employed there increased from 125,000 in 1957 to 450,000 in 1965. So, having this precondition for the opening of the German labor market in mind (among others), it is in no sense coincidental that, in the time period of the early 1960s up to the recruitment stop in 1973, recruitment of a foreign labor force determined by the needs of the entrepreneurs was very fast and without any decisive “disturbance” coming from possible interventions from social actors such as labor unions.

¹⁰ In the short-lasting recession period of 1966/67, the number of foreign laborers surpassed one million, reaching a climax of 2.6 million in 1973, the year when a recruitment stop was planned and executed. (Spies 1982, pp. 6–7), O’Brien (1988, p. 115).

ditions for the native population, which honestly have to be stated, went not parallel with developments concerning legal regulations determining the relation between the foreigners and the state. Here, a radical “break” with the past, as it was often articulated in the public and expressed in the Basic Law of Germany formulating basic and individual rights against an overwhelming powerful state cannot be stated.

Rather than being an extension of individual rights the legal regulations in the early 1950s until the passing of the first systematic Aliens’ Law of 1965 did inherit continuities both on an administrative and political level, which can be moderately named “authoritarian” in the sense of prioritizing the interests of the main political actor (which is the state) and the economic actors by – at the same time – evaluating the interests of the foreigners as secondary. Thus, the social aspects of migration, such as integration, is factually not a topic of these recruitment years. The power of bureaucracy continued in the form of delegating extensive responsibilities to the Immigration Bureaus, which can be most clearly seen in the field of residence permits. According to the regulatory contents of the *Foreigner Police Decree* of August 8, 1938, which continued to be valid until 1965, foreigners who applied for a residence permit had to prove that they were “worthy of the hospitality shown them”. Later, in the Aliens’ Law of 1965, this term was replaced by the formulation of the “interests of the Federal Republic of Germany”.¹¹ This change which can be evaluated as a (little) step in disfavor towards an idealized organic state conceptualization was nevertheless not a step in favor of the foreigner in the sense of a qualitative improvement of a relocation of the relation between the foreigner and the state.

Thus, the Aliens’ Law of 1965 did continue to prioritize the interests of the state in accordance with the economic needs formulated by the entrepreneurs. The rotation principle was the key word for a temporary and economically determined functionalization of immigration policies during the 1960s. Foreign workers should be employed and sent back according to the necessities of the labor market. This was clearly stated as the backbone of recruitment policies in a meeting organized by the *Federal National Association of German Employers* (Bundesvereinigung Deutscher Arbeitgeberverbände) in 1966.¹² In the center of such an economically determined approach the temporary character of im-

¹¹ Franz (1984, p. 82).

¹² Okyayuz (1999, p. 32).

migration policies was emphasized, and the contents of the bilateral agreements did also not include any social notions, because both receiving and sending countries evaluated the employment of the recruited labor force as a sort of developmental model aiming at wiping out socio-economical differences between developing and developed countries. The workers should be ideally skilled in the receiving countries and after their return they should function as “human capital” in the sense of contributing innovatively to their home economies. The precondition of such a developmental approach to labor migration would have been a consequent handling of the above-mentioned rotation model in addition to possibilities provided for the foreign laborers in order to improve professional skills. None of these preconditions were realized in practice; what happened was the emergence of social dynamics such as family reunification starting to a great extent during the mid- and late 1960s. Thus, the basis for implementing social immigration policies was already prepared during these times, but the contents of immigration policies in this recruitment period (which was in fact no longer a pure recruitment period) did remain economically determined.

The most important obstacle in implementing a social immigration policy was the insistence on the rotation model and the unwillingness to accept that more and more labor migrants began to see Germany as their country of residence, that they had begun to become settlers. Thus, the right of family reunification, maybe the most important factor of integration during this period, being under the protection of the Basic Law,¹³ was handled in such a bureaucratic manner that it was difficult to provide a feeling to the foreigners that they were accepted by the German state and society. In 1966, Ulrich Freiherr von Gienanth, the chairman of a working group called *Foreign Workers* organized under the umbrella of the *Union of German Employers* (Bund Deutscher Arbeitgeber) formulated the wide-spread understanding of integration (in a broader sense) and family reunification (in a narrow sense) in the context of immigration policies with these words: “The great advantage of employing foreigners lies in the fact that they constitute a highly mobile labor force potential. It can have very dangerous results to limit this mobility through an extensive settlement policy” (Der Arbeitgeber 1966). The political-legal foundations for such an understanding were laid in the formulations

¹³ This can be derived from two parts of the Basic Law. In a general sense from Article 20c, Clause 1, where Germany is defined via its social state principle, and concretely from Article 6, where the marriage institution and the protection of the family is mentioned.

of the *Principles Concerning Foreigners Policy* (Grundsätze zur Ausländerpolitik), whose aim was to “prevent the harmful impacts of an increasing number of family relatives of foreign workers moving in an disorganized way to Germany”.¹⁴ With the speech of “harmful impacts”, the possible increasing amount of expenditures of the local institutions for the foreigners resulting from demands for bigger housing facilities, for more kindergarden and school locations and expanded health and transportation opportunities were meant.¹⁵ The “social costs” of foreign labor force employment was something which was not foreseen during the 1960s, and consequently political actors on all levels had difficulties to adapt their immigration-theoretical conceptualizations to this factual situation resulting from uncontrollable social dynamics.

The political-legal framework and the surrounding “official” discourse on immigration and integration was mainly carried out by political and economic actors locating immigration policies around the possibility of functionalizing them in the sense of solving internal problems and providing the best possible efficiency for the economic sphere. Social actors (such as labor unions) remained in general outside these processes of policy-making until the 1970s. It is not astonishing that under these circumstances the opinions and strategies of the foreigners themselves were not considered as worthwhile to constitute guidelines within the process of establishing policy contents, or to be sincerely discussed in public. The fact that there was no need for any legitimation of political decision due to the exclusion of foreigners from public participation played another important role besides above-mentioned economic priorities for the lack of social notions during these years. Until the beginning of the 1970s – setting political elections on local, regional and federal levels aside – foreigners were even excluded from elections to labor union committees.¹⁶

Another point significant for enabling/disabling and/or easing/hardening processes of integration is the educational aspect. Rather than providing support based on the different socio-cultural backgrounds of the school children, which was later tried to be done through the establishment of research areas such as *Migrantenpädagogik*, a fast absorption “of foreigners into normal German classes as quickly as possible” was demanded by the *Standing Conference of State Ministers of Educations* (Ständige Bildungsministerkonferenz) in

¹⁴ AstA-Auslandsreferat der Universität und Evangelische Studentengemeinde Stuttgart (1972, p. 141).

¹⁵ Bech/Faust (1981, pp. 112–113).

¹⁶ Geiger (1982, pp. 169–189).

1964. Under these circumstances, it does not astonish that the failure rate of foreign pupils until and throughout the 1970s was very high compared to those of the German children.¹⁷ The highly selective German school system, which could and can be observed in general for the whole generation of school children, became one of the most significant integrational barriers for migrant children in the past and continues to be one in the present.

Germany's attempt to make a radical break with its past based on the trauma of the socio-historical experience with fascism may be considered successful for a lot of spheres of state and society. The expansion of basic rights formulations within legal texts, a continuing transparency within the relation of the citizen and the state, the democratization (that means the de-hierarchization) of the universities as a result of critical approaches coming in particular from the students, the consideration of social rights ... this list of developments within the framework of a "new" Germany can be without doubt continued. However, developments in the sense of a positive legalization and in the sense of an increasing importance of a civil understanding of state and society constituting a qualitative break from an authoritarian past did not include the foreigners during this period. They remained part of continuing traditions most significantly expressed in the above-mentioned prioritization of the interests of the state in accordance with the economic needs of the economic actors.

Emphasis on the Social Dimension in the 1970s

Starting with the mid-1970s, one can state demands for a step-by-step return to the rotation policies of the 1960s, whose realization would have factually meant nothing else than "immigration policies in the form of labor market policies".¹⁸ In this context the *Memorandum of the State Government of Baden-Wuerttemberg* (Denkschrift der Baden-Württembergischen Landesregierung), published at the beginning of 1975, should be mentioned, in which – among others – policies aiming at promoting the return of foreigners to their native countries through purposeful material, legal and ideal measures, and the limitation of the duration of stay of foreigners planned to be prospectively recruited to a maximum of five years was demanded. Thus, the catchphrase of the "guest-worker" (Gastarbeiter) being used a long time in the immigra-

¹⁷ Boos-Nünning et al. (1976).

¹⁸ Okyayuz (1993, pp. 119–121).

tion-political debate, which can be taken as the reflection of the rotation policies of the 1960s were somehow backed politically. It was not earlier than in the beginning of the 1990s that a turning away from this term took place; it was then replaced with the commonly used term “persons with migration background”.

Despite above-mentioned demands for a rigid practice concerning the treatment of foreigners, the 1970s do nevertheless mark a period after World War II in which for the first time the social dimension of (labor) migration was openly debated in public. The living and working conditions of the (labor) migrants were – maybe for the first time in such an intensity – debated in public. Thus, the important and unique thing was the inclusion of the future perspectives of the migrants themselves. The discourse “about” the foreigner was gradually replaced through the debate “with” him.¹⁹ In these years, the problem of integration made its appearance as a non-preventable social dynamic because of the far-reaching influx of family members to their relatives abroad; rather than being seen in a very limited sense as the “problem” of specific social groups, it was increasingly perceived and evaluated within the framework of the whole society.

The relatively high organizational grade of the foreigners in the labor unions is one of the most significant manifestations of the mentioned/underlined social dimension of those years. In 1974, 25 % of all foreign laborers were organized in the labor unions, whereby this share increased to 33.6 % by 1981. The share in the total organizational grade was 8.1 %.²⁰ These data can be interpreted as the “material” reflection of this socialization process within the framework of the problem of integration.

Another significant indication for the social dimension is the “intervention” of the “second generation” migrants in debates concerning their own future perspectives, which have been increasingly observed since the mid-1970s. This generation developed a sense for their own environment that the generation of their mothers and fathers was still not able to do because of structural reasons (such as missing knowledge of the language and the socio-cultural and political conditions of the receiving countries). This development, which took place parallel to and in union with the situation in the labor unions, forced the policy actors to react. One of the gains of these developments was the mul-

¹⁹ Barth (2007).

²⁰ Frey (1982, p. 393).

ti-layered use of the term “integration”, nowadays being often interpreted solely in its cultural and ethnic dimension. The problem of integration touched upon in the preliminary remark is hereby part of such a mono-factorial perception of what integration might be.

Finally, the debates about possibilities of social and political participation of the foreign population at local and regional level should be pointed out. Even if the conditions of such a participation are currently realized to a limited extent solely in a few countries, the debates in the 1970s nevertheless had severe impacts on the establishment of political and legal instruments such as immigrants’ councils (*Ausländerbeiräte*) starting to work in the beginning of the 1980s. The importance of these councils does not consist of their mere existence due to the fact that they are and always have been “powerless and marginal” and are in no way “institutionalized channels of access to the political process”.²¹ But, they are (or may hopefully be) initial instruments of a process leading to social participation forms independent from a formal citizenship status enabling the foreigners to be the determining parts of political decision-making processes in matters of their own concern. The focus hereby should be on processuality rather than on stating certain time periods and/or “events” as negative or positive, the more so because Germany’s effort is not only to implement “new” immigration policies as a sort of political-technical practice but also to overcome deep-rooted approaches as mentioned in the part of this text dealing with Germany’s conceptualization of the “state”.

The last point refers to the interactive relationship between social commitment and politics, which was expressed by the content of the memorandum of the Federal Official in charge of Immigrants, Heinz Kühn, published in September 1979. In this text the social dimension of (im)migration reflected in all above-mentioned forms with the special emphasis on the integration topic was taken into account for the first time at an official level. This can be clearly seen through the demands for the acknowledgement of a factual immigration process having taken place since the late 1960s within the context of family reunification, for the naturalization option of foreigners and for giving (active) electoral rights on local level.²² The basic essence of these demands consisted in dismantling the state’s disposition over the foreigners resulting from the contents of the Aliens’ Law by accepting them as a minority actively

²¹ Koopmans/Statham (1999, p. 666).

²² Kühn (1979).

participating in the social life of the host countries. Furthermore, for the first time in the German post-war period, the “instrument” of double citizenship, which is currently (again) not part of the official immigration-political agenda, was introduced as an important integral part of immigration policies in the debates on legal policy.²³ The demands of the Kühn-Memorandum were also articulated by social actors such as the mentioned labor unions; but also churches, certain groups within political parties, the German Lawyers Association, student groups, initiatives, platforms and discussion groups “discovered” the issue of migration and migrants. Refugees having fled from conservative-military dictatorships such as the one in Chile played an important role in this process of social mobilization, attempting to promote public debates concerning the underlying reasons forcing people to leave their home countries. The “socialization” of the issue was somehow completed by “historizing” it, whereby both aspects draw attention from the “political” to the “social” sphere. In concrete terms – before and after the contents of the Kühn-Memorandum were published – these social actors raised the voice for concrete integration programs instead of assimilation “which works toward making foreign workers and their families into Germans”.²⁴ “[C]harging that the recruitment policy to date has been structured nearly exclusively according to the political criteria of the labor market”,²⁵ for programs promoting the living together of foreigners and Germans rather than living side-by-side, for the acknowledgement of different national identities and finally for a sort of “positive discrimination” in favor of the foreigners in order to secure social equality.²⁶

Since the Memorandum is one of the most important cornerstones and points of contentions of current developments in the sphere of immigration policies with special emphasis on integration, some remarks will be made in the following chapters of this text.

Despite all these developments, which can be evaluated as quite positive for the integration process of the foreigners in the long run, the immigration law as the fundament of immigration policies remained still valid in the form of an “exceptional legal framework system”. If one measures its criteria with the standards of classical liberal legal norms, it is not possible to speak of a leg-

²³ Okyayuz (1993, p. 200).

²⁴ Christlich-Demokratische Union (1977, p. 3).

²⁵ Arbeiterwohlfahrt (1973, p. 8), O'Brien (1988, p. 123).

²⁶ Arbeiterwohlfahrt (1973, p. 13).

alization process in favor of the migrants within the sphere concerning the relation between foreigner and the bourgeois state. The three central categories of law and the administration of justice – legitimacy, commitment to norms and legal compliance – are essentially not present in the contents of immigration laws.²⁷ In none of the legal regulations having emerged since the ratification of the “first” post-war immigration law of 1965, we can state qualitative improvements concerning these categories; at best, partial quantitative corrections (such as the extension of legal compliance for the migrants or – formulated the other way round – the narrowing of the broad disposition permission of the immigration bureaus over the foreigners) were made from time to time.²⁸ But, nevertheless, besides all above-mentioned critical points, these corrections should be indeed annotated positively to draw a preferably differentiated picture of the situation. The 1970s might be characterized as a period of continuity and change, in which we can state a parallel of two (categorically different) conflicting dynamics.

On the one hand, we can state the continuity of an understanding concerning the relation between the “foreigner” and the state emphasizing and prioritizing issues such as the stabilization of the “system”, the preservation of “structures” and an understanding of policy-making as an autonomous “sphere in itself” that is quasi-untouchable by social actors. One of the main reasons for this continuing rigidity in implementing immigration policies was the fear of disorder resulting from “a wave of wild cat strikes” led in large part by foreigners²⁹; Turkish workers in particular played an important role during the strikes taking place in the Ford factory in Cologne.³⁰ These events of the early 1970s are – among others – are indicators of the fact that the image of the foreigners as obedient and quiescent did not match the realities.³¹ But rather than trying to handle this reality in the sense of embedding it into solution mechanisms aiming at evaluating the foreigners as an active part of the totality of the “social”, measurements such as a recruitment stop for foreign workers from non-EC countries in 1973 only weeks after the above mentioned strikes,³² the “disclosure of illegal employment of foreigners” because of their blocking

²⁷ Okyayuz (1993, pp. 90–91).

²⁸ *Ibid.* (pp. 150–152).

²⁹ O'Brien (1988, p. 118).

³⁰ Hildebrandt and Olle (1975).

³¹ Tsiakalos (1983, pp. 79–91).

³² O'Brien (1988, p. 118).

of the jobs for Germans,³³ the deportation of foreigners “who had fallen back on unemployment compensation or social welfare” even if they possessed work and residence permits³⁴ or the reduction of “the maximum age at which children of foreigners could enter Germany from 20 to 17” in 1978 were undertaken.³⁵

On the other hand, demands for a comprehensive social integration of labor migrants could no longer be excluded from the immigration-political agenda; and parts of this agenda were reflected in the sense of attempting to establish improvements within the sphere of aliens’ rights as reflected most concretely in the Kühn-Memorandum. But the increasing impacts of such demands only represent one aspect in shaping immigration policies in the sense of introducing for the first time issues such as social integration. The other aspect, which should be taken into consideration, and which exceeds the limits of the responsibilities of the nation-state after World War II, was Germany’s integration into a network of international relations, emphasizing – among others – the importance of human rights. The rigid treatment of foreigners did basically not suit this context. Reminiscences of a fascist past could easily harm or even destroy Germany’s new-gained reputation among the Western allies. The sensitivity of the issue can be most clearly “read” from the words of Chancellor Helmut Schmidt reproaching “the cynical exploitation of certain latent hostilities toward foreigners” as irresponsible.³⁶ It might be not too exaggerated to state that the roots of an in-togetherness of internal and external factors, and additionally – after the 1990s – the in-togetherness of migration movements and globalization,³⁷ which are currently significantly shaping migration flows in general and immigration policies in particular, were laid in these years.

³³ Dohse (1981, p. 321).

³⁴ *Ibid.* (pp. 336–341).

³⁵ Bundesministerium für Arbeit (1977).

³⁶ Thränhardt (1984, p. 124).

³⁷ Okyayuz (2005, p. 241).

The Turn of the 1980s: Limitation of Immigrant Influx and Return Promotion Instead of Integration?

Starting with the 1980s the social dimension of migration, e.g., migration in its specificity as an expression of social dynamics, was increasingly embedded into the framework of a debate on the “foreigner problem”. Perceptions and conceptions in the field of immigration policies brought into the debate from now on encompassed policy-steering instruments such as the prohibition of the moving in from children to their mothers or fathers living solitarily in Germany, and the implementation of a compulsory residence permit even for children younger than 16 years.³⁸

Hereby, the fundamental position of such concepts was the “efficient” limitation of the further immigration of foreigners to Germany and the promotion of their willingness to return to the countries of their origin.³⁹ Parallel to this, an improvement of the economic and social integration of the foreigners having lived for years in Germany was also part of the debate.⁴⁰

But even before, starting with the mid-1970s up to the early 1980s, the policy-steering instrument of influx suspensions to certain regions, cities and city quarters was enforced. The reasoning (of the Federal Ministry of Labor and Social Order in 1976) underlying this policy proceeded on the assumption that the number of foreigners exceeding a predefined percentage within the total population would put a strain on the “social infrastructure”.⁴¹ Obviously, as early as in those years, parts of the official political actors began to assume that the integration process had failed. In this context, solutions were sought at the administrative-political level. In the 1990s, we will again meet a similar understanding, which will be evaluated throughout this text.

The above-mentioned developments in conjunction with a steadily increasing use of terms such as “foreigner control” and “immigration control”⁴² in the public migration debate show priority shifts within the sphere of the socio-

³⁸ Staatsministerium Baden-Württemberg (1981).

³⁹ With the Programme for Financial Return Aids (Programm für finanzielle Rückkehrhilfen) from 1.12.1983, which found its expression in the “Law for the Promotion of the Return Willingness of Foreigners (“Gesetz zur Förderung der Rückkehrbereitschaft von Ausländern”), the willingness to return started to be sanctioned institutionally (BT [Bundestags]-Drucksache X/351).

⁴⁰ Bundesministerium des Innern (1982, p. 73).

⁴¹ Rist (1980, p. 83).

⁴² Bojadzijev/Mulot/Tsianos (2007).

political perception of migration/migrants and the implementation of immigration policies. The migrants having begun to actively participate in planning strategies concerning social and immigration policies since the 1970s, or – at least – having shown the will to do so, were somehow downgraded to “objects of policies”. Parallel to this development, one can state a Europe-wide development of institutionalized migration/migrant research. What took place was a “scientification” of the “foreigner problem”. Of course, research based on an objective-scientific basis is to be appreciated by all means. The migration centers having been built up since the 1980s have currently been doing research in fields such as migrants’ pedagogics or multilingual education; and as such they account for a diversification of migration and the migrant population and finally for the social dimension of migration mentioned above. Nevertheless it should be noticed that the point of departure of this development, which can be evaluated as quite positive from the standpoint of the migrants themselves, is located within the framework of the above-mentioned premises of the immigration-political approaches of the 1980s. Since the migrant population is bound to the immigration law, whose standards are not or only partially subject to “normal” legal state norms, their living and working condition are always “exceptional”. Thus, a legalization process, of which the results are normally positive for the native population, can mean the contrary for the migrants. In this context, also a “scientification” in the field of migration research can have these negative results for the migrants. These remarks should be interpreted as an example for the “reading between the lines” as mentioned above.

The immigration-political priority shifts having taken place in the 1980s did find their expression also at the level of political statements. Thus, the former Prime Minister of Berlin, Richard von Weizsäcker, proclaimed the following commentary in June of 1981: “Either return to the home country ... or stay in Berlin; this has to include the decision to become German on the long run. [...] Berlin must stand the wall. But our city cannot stand fences we build up by ourselves”.⁴³

These words depict a drifting away from the option of naturalization (and thus from the option of double citizenship), having been formulated in the Kühn Memorandum from 1979. They set the preference in favor of an integration model, where the foreigners are accepted as building stones of social-

⁴³ Gesemann (2009, p. 315).

structure formation and development solely under exclusion of their own identity.

Quite a few statements corresponding to that of von Weizsäcker from the point of meaning can be stated in that decade. Thus, in a statement to the press in November 11, 1981, Chancellor Helmut Schmidt said that there is agreement on the point “that Germany is not an immigration country and shall not be so”.⁴⁴ Following up these words, the Federal government decided on its immigration-political tenets dated February 1982, that “only by means of a consequent and efficient policy of migration influx limitation [...] an indispensable acceptance of the German population concerning the integration of foreigners” could be ensured. And continuing: “This is of absolute necessity for the preservation of social harmony”.⁴⁵ In such a manner the leitmotif of a non-immigration country “had been already established at the end of Helmut Schmidt’s chancellorship [...] and can be identified as the basic principle of Federal German immigration policies until the late nineties”.⁴⁶ Until now, altogether with the problem of double citizenship, the question of immigration (migrants’ influx) is the controversially conducted central topic of immigration policies in Germany.

By reading the following inventory of developments starting with the 1990s, the fact shall be taken into consideration that meanwhile a third and even forth migrant generation is growing up in Germany, one made up of people who hardly know anything about their home countries, and the majority of whom are even in possession of the German citizenship. Even if Germany factually has become an immigration country, the mainstream conceptualization consisting of a denial of this fact is still determining the guiding principles of immigration policies today. First attempts to change this situation (after the hopeful Kühn Memorandum) can be seen in the contents of the first draft of the actual Immigration Law of 2005, which was formulated in 2002. The principles formulated under the overall control of Rita Süßmuth (Süßmuth Commission) allowed for the acknowledgement of the thesis of Germany being an immigration country and for the possibility of double citizenship.⁴⁷

⁴⁴ Bundesministerium des Innern (1998, p. 10).

⁴⁵ Bundesregierung (1982, p. 7).

⁴⁶ Hell (2005, p. 81).

⁴⁷ This is the most far-reaching attempt to date to change immigration-political perceptions and concepts valid until now. So far, it is the last attempt in a series of similar ventures. For example, in March 1992, the former Federal Official in charge of Immigrants, Cornelia Schmalz-Jacobsen, raised demands “whereupon children of labor migrants born in Germany

At this point, it might be useful to make some remarks within the European context. Some countries such the United Kingdom have been accepting the instrument of double citizenship for a long time by evaluating it as a necessity for living together; additionally, their colonialist past had practical impacts in establishing forms of “multiculturalism” without necessarily using this term.⁴⁸ Germany, on the other hand, together with countries like Austria and Luxemburg, “has taken a more restrictive view of dual nationality, especially when it arises during the naturalization of non-nationals”.⁴⁹ Germany’s negative approach is in general located around four arguments, whereby certain continuities concerning the prioritization of the political over the social can be stated as the driving force. Firstly, a loyalty conflict between the individual and his belongings to different countries is mentioned. Accordingly, this is claimed to be hardening a successful integration process of the foreigners. Secondly, legal uncertainties are mentioned concerning issues such as inheritance law. Thirdly, an unequal situation between “normal” and naturalized citizens are claimed to have arisen. Fourthly, international regulations, which Germany did sign in the past (such as the 1963 Council of Europe Convention on the Reduction of Cases of Multiple Nationality), are claimed to build up legal mechanisms against double or multiple citizenship.⁵⁰

Germany represents an “ethnocultural exclusionist citizenship regime”. As a result, a big number of the German-born people with a migration background have still the status of foreigners lacking full political rights whereas countries such as Great Britain and Sweden offer a much easier access to “full social and political rights”.⁵¹

Germany’s argumentative patterns are mainly politically motivated, but there are some sociological “facts” which could be used as counter-arguments. Nowadays, at least one fifth of the non-national population is born in Germany, and if speaking of issues such as loyalty to the country of nationality, it would be a mere hypothetical construction to start from such a loyalty conflict. The reality is that the big majority of these people would have no problems carrying two or more passports. Loyalty is not a theoretical issue but a result of

should automatically receive the German citizenship without having to give up the own one” (Okuyuz [1993, p. 15]). For the detailed content of these demands, see *Süddeutsche Zeitung* (1992, p. 2).

⁴⁸ Hansen (2002).

⁴⁹ Green (2005, p. 921).

⁵⁰ Green (2005, p. 922).

⁵¹ Koopmans/Statham (1999, p. 661).

concrete living and working conditions, which are centered in concreteness around Germany as the factual new home for future life. In current years, these aspects of an ongoing social reality going beyond political statements has increasingly become part of scientific research mostly supporting the idea that double citizenship would cause no danger for the interests of the state by – at the same time – being aware of the limits of such instruments. The debates on citizenship, naturalization and integration do more and more (and again) include debates on double citizenship as one of the possible instruments not to enable but to ease integration.⁵²

The fact that some important central citizenship rights, such as social rights, are – by all the critiques throughout this text – more or less factually available for all inhabitants of Germany independent from the issue of citizenship/nationality has led to formulations such as “post-national” citizenship, seeming to underestimate formal citizenship.⁵³ But, the rights in the social state’s framework should be completed through the political and legal rights. Only within this totality can a real re-shift to the social be seen as a potential. A “re-socialization” of immigration policies through an active social participation of the foreigners themselves, touched upon in the previous chapter, can only be achieved by including legal rights. The discourse of a “post-national” citizenship should be enriched through/with the help of a political and legal framework giving the foreigners a secure status to be not only named as part of the society but to be it factually.

The above-mentioned claim of the importance and significance of formal citizenship preferably in the form of double/multiple citizenship can be concretized by emphasizing the fact that it is a precondition for gaining certain rights. Having access to full voting rights and to civil servant positions as a *Beamter* (a special state employment status being somehow a prerequisite for middle- and high-ranking positions) are only some of the issues enabling a person to become “part” of the society. Evaluated from this standpoint, citizenship/double citizenship is strongly related to the issue of integration. But rather than evaluating it as a step towards integration, by the political authorities it was seen as a final point of a successful integration process.

Shortly after the passing of the law at the beginning of 2003, the Constitutional Court nullified it in December of the same year. Finally, on January 1,

⁵² For a detailed view see, among others, Faist (2004), Hagedorn (2001), Koslowski (2000).

⁵³ Soysal (1994), Joppke (1999).

2005, the current Immigration Law came into effect though no longer containing the integration-political suggestions of the Süßmuth Commission. The concrete contents will be gone into below.

The discourse of a possible “foreigner and immigration control” does mark conceptualities, which refer to a process moving away from the social level to a political-administrative one. The reduction of the influx age from 18 to 16 years concerning adolescents aiming at joining their parents is one example for such a shift. Since the beginning of the controversies on the actual Immigration Law, there have been (and are still) also demands for a further reduction from 16 to ten years.⁵⁴ One of the most important reasons why family (re-) unification has always played an important role in all immigration-political debates since the beginning of foreign labor recruitment policies in the mid-1950s consists of the fact that it was one of the social dynamics which – from the very beginning until now – could not be administered. The more it had been tried, countermeasures were taken against this dynamic since the end of the 1970s/the beginning of the 1980s by means of using nearly all legal and political instruments.

Consequently, not only, Europe or worldwide economic crisis symptoms of whom first signs can be detected in the context of the petrol crisis in 1973 and of whom the preliminary culmination point of those years was reached at the beginning of the 1980s, but also can similar developments be stated in most of the other Western European receiving countries such as Austria, Belgium or Switzerland.

These developments towards a more restrictive practice of legal regulations concerning migrants were based on three premises, which are, to a big extent, still valid until now:

- The first of these premises started from the point that (and this is even more the case nowadays) the integration of the “foreign fellow citizens” has failed to a big extent.⁵⁵ The above-mentioned multilayered approach of the 1970s attempting to anticipate a holistic perception of integration was replaced by a one-sidedly cultural- and ethnical-defined integration debate. It seemed (and seems) to be forgotten in the flow of this debate that integration always means disintegration at the same time. Disintegration in the sense that only somehow “integ-

⁵⁴ Welt-Online (2003).

⁵⁵ In this context the sensational heading of the weekly journal *Der Spiegel* (1997) shall be remembered: “Dangerously Alien, The Failure of the Multicultural Society (Gefährlich fremd, Das Scheitern der multikulturellen Gesellschaft)”.

rated” persons can understand the society in which they live to the extent that they again can disintegrate themselves. The first migrant generation was, evaluated from such a point of view, neither integrated nor disintegrated. They “solely” lived and worked.

- The second premise was based on the more or less openly articulated hypothesis that the receiving countries were still “not prepared” enough to cope with social tensions and conflicts resulting from the influx of new immigrants.
- The third hypothesis was based on a discourse of identity and culture as factors of difference, not unity. As a result of this premise (altogether with changes in the global agenda such as the renaissance of new conservatism, of nationalism, of the decline of the Soviet Union and furthermore of the shifting away from egalitarian social policies to neoliberal policy conceptualizations) the migrants were increasingly functionalized as a means for constructing something like a European identity. The counter model of such a European identity was located especially among the Muslim migrant community, independent from the fact of how these migrants themselves would define their own identity.

From the 1990s to the Present:

Political-Administrative Approaches to “Manage” the “Foreigner Problem”

Since the beginning of the 1990s, we can state attempts to “solve” the “foreigner problem” at a political and administrative level. Legal debates on citizenship, on the social and political participation of migrants and on regulations concerning residence and work permits were held in order to solve the problems of persons evaluated as not capable of or willing to integrate themselves into the host societies. Whether with them or against them does not hereby play a significant role within the flow of the current debates.⁵⁶

Concerning the case of Germany lately, the main focus is on the Turkish migrant population being “registered” as non-European since the assault on the Twin Towers of the World Trade Center in New York and their destruction in September 11, 2001. This situation may be reflected the best within the framework of the process of Turkey’s EU access negotiations, and the hereby invoked debate on European basic values and cornerstones that Turkey, and as

⁵⁶ Barbieri (1998).

such Turkey's rooted population abroad, are accused of having nothing in common with.

In such a manner the former SPD Member of the Federal Parliament, Martin Neuffer, evaluated Turkey's rooted population in Germany in 1986 as a group of persons who could not be integrated: "The boat is full and he answered the question, whether Germany was an immigration country or not".⁵⁷ But even before, since the end of the 1970s, representatives – again of the SPD – had been articulating similar slogans.⁵⁸

Starting with the beginning of the 1990s this sort (and similar sorts) of political conceptualizations concerning social order founded the headstone for the institutionalization and legalization of social dynamics of migration. The latest developments, such as the fact that persons from the former socialist countries after their decline immigrated to the Western European countries in general, those Russians of German ethnical origin (Aussiedler) immigrated to Germany in particular and furthermore the emerging debate on asylum policies (having found first results in the latest regulations of the Refugee Law of 1993), altogether with attempts to differentiate between political and economic asylum seekers and to predefine which countries could be stated as "secure" and which could not, were added to the migration agenda.

Despite initiating a sincere and differentiated debate on the new (old) "global migration" issue, meaning the reasons for the emergence and the development of a phenomenon, which actually is one of the determining factors within international relations, we have to state priority shifts towards a management of migration by means of political and legal instruments since the 1970s. Nevertheless, from the point of view of the official policy actors there are in fact important reasons for such shifts. The most important ones can be listed as follows:

- Economic and demographic changes resulting in an increased demand for qualified labor force;
- The inability of existing mechanisms and instruments (such as the former Immigration Law from 1991) to promote the integration process of the migrants;
- Demands for an easing of naturalization;
- The fight against illegal (im)migration;

⁵⁷ For a comment of Neuffer from 1982 with similar meaning, see Neuffer (1982).

⁵⁸ Fakten Fiktionen (2009).

- Demands for a re-organization of the administrative responsibilities of the Immigration Bureaus;
- Demands for a harmonization of immigration policies at the European level;
- Demands for a redefinition and reclassification of the different migrants groups according to their political and legal status.

At this point, we have to note honestly that at the beginning of the period, where the above-mentioned priority shifts took place, legal improvements for the migrants were also demanded to be realized. Throughout the acting period of the Federal Government composed of social democrats and members of the “green” party from 1998 to 2005, the focus of prospective immigration policies was laid on the integration of the migrants living in Germany for a long time on the basis of extended political and legal rights. The beginning of this coalition marks a – indeed short-lasting – renaissance to “socialize” the “foreigner problem” again rather than to “manage” or “solve” it solely on an administrative level. Important evidence for this claim can be seen in the fact that the topic of double citizenship was also thrown into the debate again.

But actually, after the failure of all these “social” attempts in the sense that the suggestions and demands of the Süßmuth Commission and later the contents of the law in 2003 were thrown out by the Constitutional Court, once more the priorities have changed meaning that the strand of the 1980s was renewed. Since the beginning of the twenty-first century, the composition of the actors as well as the focus on basic questions have changed. Additionally, new actors have “entered” the debate and are significantly determining the flow of the debates. Institutes claiming academic standards such as the “Institute for Economic Research” in Berlin, as well as representatives of the Chambers of Commerce and Industry, are drawing the main attention of their immigration-political perceptions and conceptions to demographic and economic points, and to the prevention of the immigration of a new unqualified foreign labor force manifesting itself, for example, in the – still unfinished – “green card” debate. “Foreigner control” was replaced by the term “controlled” immigration, meaning lastly the extension of the disposition competence of the immigration bureaus over the migrants.

Throughout the publicly led debate on migration and integration, which is meanwhile dominated by the actors mentioned above, it seems not to be difficult to assess xenophobic and even racist notions focussing on the point that

persons of non-European origin are – first and foremost – a threat for the European countries and societies, and as such have the duty to prove their suitability for these locations.⁵⁹ This seems to be also reflected in the new Immigration Law (together with its latest modifications dated from July 2007). If all its contents would be practiced, Germany would become, according to a statement of Pro Asyl, “less attractive, colder and hostile to integration”.⁶⁰

With regard to this “coldness” raised by Pro Asyl, the fact that it is used to try to “solve” the issue of integration at the level of administrative measures is of determining significance. Obligatory language courses and the introduction of a points system measuring qualification are only a few of these measures.⁶¹ We have to admit that the knowledge of the language of the society where people live is undoubtedly of great – more than this: of existential – importance for successful integration. Integration, however, is on the other hand a complex social process whose “realization” is determined by a multitude of factors. A reduction of this multitude to the administrative level is not by far enough to accommodate this complexity.

Conclusion: Changing Priorities and the Continuing Debate on Multiculturality and Integration

The course of the above-mentioned framework-conditions and their contentual priority shifts since the 1970s in unity with a socio-political atmosphere of intolerance and a bad conjunctural situation established a political and ideological context, in which nearly all attempts to “socialize” the “foreigner problem” have failed. The thesis of a “failed integration” brought into debate in Germany in the 1990s, widespread by the media, seems to be actually also accepted in most of the other Western European receiving countries. Even in – evaluated from the point of immigration-political framework-conditions and their practice – “liberal” countries such as the Netherlands or in countries such as the United Kingdom, where practiced “multiculturality” seems to be part of the social reality until now, voices demanding more restrictive policies can be heard louder and more affirmative from day to day.

⁵⁹ Müller (2005).

⁶⁰ ProAsyl (2007, p. 1).

⁶¹ Müller (2005).

The (im)migrants themselves are criticizing these priority shifts. Hakkı Keskin from the Turkish Community in Hamburg is summarizing this critique under four main points:⁶²

- The actual regulations of the Immigration Law and their repressive practical character are cementing the Immigration Law in the form of a defensive law (directed towards the migrants).
- The priorities of the contents of the Immigration Law are determined in favor of the economic interests of the German entrepreneurs.
- The migrants are classified as “good”, “useful” or “less useful”. In this context for the migrants classified as “less useful” it will be more difficult from day to day to secure their residential status.⁶³
- Factually, it will be more difficult to get an unlimited/residence permit or German citizenship. Formerly, a “basic knowledge of the German language” was sufficient for getting citizenship; whereas nowadays an “adequate” one is demanded.

But not solely the living and working conditions of the “long-established” labor migrants will have worth according to this critique; also the conditions of the qualified ones which are planned to be recruited will be similarly bad as a result of the unequal relation between migrants and the bourgeois state based on the broad disposition competence of the immigration bureaus over the foreigners. They will continue to miss equal rights as compared to the German population. Their stay will continue to be temporary. Furthermore, the fact that a possible “green card” procedure is only planned to temporarily crack the recruitment stop of 1973 rather than having stringency in itself can be evaluated in the sense that a principally new immigration policy is not on the agenda. Thus, the cornerstones of a “guest-worker policy” of the 1960s based on a rotational system with timely limited working contracts did not change in principle.

The discourse about an aspired “multicultural society”, having been proclaimed in the 1970s by social scientists, pedagogues, representatives of social institutions, as well as by parts of the political elite in order to constitute an integration process of the whole society, is nowadays mainly done at the level of the self-identity building of specific social groups. In this context, we can speak of an ethnification of structural problems, finally resulting in similar coun-

⁶² Keskin (2003).

⁶³ In times where the “green card” debate, dealing with a highly qualified foreign labor force, is ongoing, one can state that these “less useful” groups of persons will consist mainly of “classical” labor migrants having lived for years in Germany.

ter-reactions from the migrants themselves; a vicious circle disabling real integration.⁶⁴

Since the 1980s, a time period in which the social dimension of migration was neglected step-by-step in favor of administrative legal measures, the main focus within the context of immigration-political debates was on the integration of the migrants into the host countries. Hereby, integration was more and more evaluated in the sense of being a predefined and static category by emphasizing a one-sided active and willful orientation of the migrants towards the host countries in the sense of a total acceptance of these host countries' norms and values. As a precondition for such an acceptance, the knowledge of culture and language of the host countries is seen to be essential. Undoubtedly, such knowledge – as mentioned above – is necessary for the social and political participation of the migrants, as well as for their possible success in economic affairs. On the other hand, one should consider that such knowledge does not “automatically” create something like sympathy or empathy of the migrants for the host countries, or even something like a social “nearness” of German citizens with a migration background with their new home countries. That means, this knowledge can ease social integration and political identification, and maybe it can even create such things to a certain extent; but it can never deliver a “guarantee” for this.

However, integration being understood in a holistic sense should not be limited to demands directed toward the foreigners to learn certain languages, to be useful in economic life, to act socially peaceful and to live according to legal norms.

The migrants, who – despite all structural difficulties – begin to develop their own integration strategies, accept this one-sided debate on integration less and less. They demand changes in the perception and attitudes of receiving countries towards migration and migrants. Not least their calls for a new debate on integration are growing ever louder.

The portrayed priority shifts of immigration-political contents since the 1970s found their results in a paradigmatic change from a critical perception and conceptualization of integration (with associated debates concerning the question of what culture is or might even be) to an administrative-technical one. Until now, questions on the preconditions and methodological practice for, and the social carriers of, “right” integration are not answered. These and

⁶⁴ Bienfait (2006).

other – similar – questions, which can be solely answered within the framework and in due consideration of historico-social processes, are currently pressed into the context of administrative-legal procedures. This approach does in no way encourage the migrants to put their own experiences in the center of everyday living and working conditions. And the other way round; they will not be encouraged to perceive their factual living and working conditions as such from the point of view of their consciousness. But, this is the only way “real” integration can work.

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