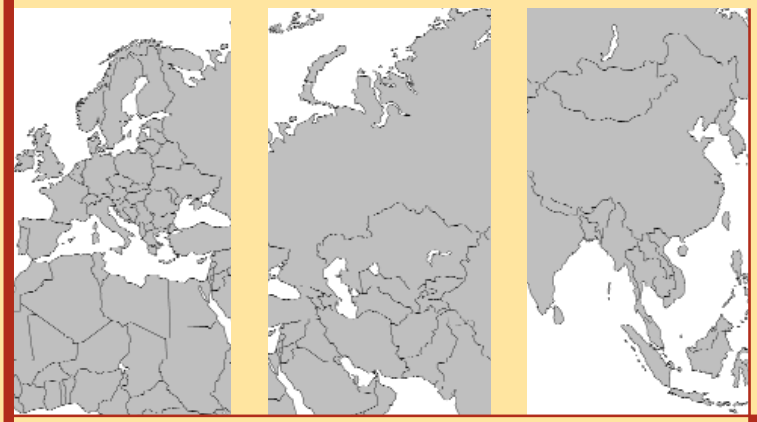

Current Immigration Debates in Europe: A Publication of the European Migration Dialogue

Jan Niessen, Yongmi Schibel and Cressida Thompson (eds.)

Germany

Norbert Cyrus and Dita Vogel

MPG

Jan Niessen, Yongmi Schibel and Cressida Thompson (eds.)

Current Immigration Debates in Europe:
A Publication of the European Migration Dialogue

Germany
Norbert Cyrus and Dita Vogel

for

DGB Bildungswerk

With the support of the European Commission
Directorate-General Justice, Freedom and Security
September 2005

The Migration Policy Group (MPG) is an independent organisation committed to policy development on migration and mobility, and diversity and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

This report is part of a series of 16 country reports prepared as a product of the European Migration Dialogue (EMD). The EMD is a partnership of key civil society organisations dedicated to linking the national and European debates on immigration and integration. It is supported by the European Commission, Directorate-General Justice, Freedom and Security, under the INTI funding programme.

The individual reports on Austria, Belgium, the Czech Republic, Denmark, Finland, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Switzerland, and the UK are available from MPG's website, together with a preface and introduction. See Jan Niessen, Yongmi Schibel and Cressida Thompson (eds.), Current Immigration Debates in Europe: A Publication of the European Migration Dialogue, MPG/Brussels, September 2005, ISBN 2-930399-18-X.

Brussels/ Düsseldorf, September 2005

Germany

Norbert Cyrus and Dita Vogel[1]

Preliminary remarks

Since 1 January 2005, the 'residence act' has provided the framework for entrance, residence, return and integration of third-country nationals. It was introduced by the so-called immigration act that changed legal basis for immigration policies in many respects. While the new law brought some more substantial changes in the field of *integration* policies, there were no significant differences in the field of *immigration* (Renner 2004). As the outline will show, labour market related arguments score high on the political agenda, in particular when turned *against* immigration.[2]

Chapter 1, making the case, deals with (1.1) the debate on immigration policies, (1.2) the debate on integration policies, and (1.3) the issue of brain drain. Chapter 2 reviews the relevance of scientific expertise and the impact of societal 'stakeholders' in the field of immigration policy.

1. Making the case

Immigration policy in Germany

Immigration and the short-term employment of third-country nationals has a long and complex history in Germany. There is no doubt that immigration and integration issues have been of major political importance in recent decades. The issues are shrouded in controversy, appearing frequently in the mass media and they have even had a considerable impact on the outcome of elections.

1.1 The immigration debate and policies

In this section, we will first introduce the debate, then highlight the most important innovations in the new German immigration law. Finally, we will comment on the debates and legal development concerning illegal migration and migration enforcement.

From foreigners' law to immigration law?

In Germany, the public discourse on immigration issues used to revolve around alternating key words: German versus foreign, temporary versus permanent, labour versus welfare migration. A long history of predominantly anti-immigration rhetoric prevented general reforms and deepened the anti-immigration political culture. Since

[1] This report is based on information up to 12 July 2005

[2] A first access to relevant information – also in English language – is offered by the website of the Federal Ministry of the Interior (www.zuwanderung.de). In the preparation of the report, the authors made extensive use of policy summaries in the journal 'Migration und Bevölkerung' (MuB), summarizing current policy developments in its monthly issues, the overview in the biannual Migration Report edited by the Council on Migration (Bade and Münz 2000; Bade and Münz 2002) (Bade, Bommes et al. 2004), the expertise by the Sachverständigenrat for Immigration and Integration (Sachverständigenrat für Zuwanderung und Integration 2004), the reports by the Commissioner of the Federal Government for foreigners' issues (Beauftragte der Bundesregierung für Ausländerfragen 2002) and of other recent publications.

the 1980s, anti-immigration feelings have been manipulated by conservative parties to win national and state elections (Meier-Braun 2002:148).

Even though the competent federal authorities followed a consistent strategic approach to prevent immigration, the reality of the situation has generated rather *ad hoc* responses to problems as they arise. A lot of these legal and administrative changes have substantially influenced the volume and composition of immigration.

Immigration policy is historically shaped by three political periods: The first period in migration policies took place in 1973 with the announcement of the *recruitment stop*. This was justified as a response to an economic recession and the oil crisis. As a consequence, immigration for the purpose of employment stopped completely. Subsequent immigration was dominated by the influx of family members and refugees. Since this announcement of the *recruitment stop*, labour migration and the need for migrant labour have become 'taboo'. Instead, the existing demand has been met with immigrants that came to the country through other means – as asylum seekers and family migrants (Cyrus and Vogel 2000).

The second shift in immigration policy responded to the political situation of 1989. As a first measure, the government tried to cope with the increasing immigration from Central and Eastern Europe (CEE) by increasing border control and through inter-governmental agreements for the temporary employment of workers from the region. The government also tightened the asylum law, introduced regulations to admit a quota of Jewish refugees and a law on the admission of ethnic Germans. The debate during this period was characterised by the efforts to reduce the admission of refugees and asylum seekers and to regulate temporary recruitment of CEE-workers. Programmes for the temporary employment of seasonal workers or contract workers were introduced in 1991. These were designed to meet the needs of more special demands, so called exceptions from the recruitment stop (Cyrus 1994; Rudolph 1996; Marshall 2000).

Over time, acceptance of the stable resident foreign population has increased. Indeed, in the late 1980s, the federal government conceded that the foreign residents that were once recruited as 'guest-workers' and their families would stay permanently and should be integrated into German society. Unfortunately, it seems that during the 1990s, integration efforts focused only on this particular group (BMI 1997).

During the 1990s, the immigration debate was characterised by a persistent struggle between anti-immigration and pro-immigration protagonists in particular fields, including:

- naturalisation law;
- labour immigration;
- family reunion;
- the asylum procedure;
- the protection of refugees;
- integration measures in areas such as language training, education, segregation, family reunion;
- the immigration of unaccompanied minor refugees;
- treatment of civil war refugees and their access to the labour market;
- treatment of refugees suffering from trauma;

- the granting of an independent residence rights to the spouses of immigrants who are being mistreated; and
- the acceptance of asylum seekers not only because of being politically persecuted but also for mistreatment of women.

(Federal Governments' Commissioner,
Beauftragte der Bundesregierung für Ausländerfragen 2002)

The increasing significance of the European integration contributed to the development of a more inter-cultural approach in public institutions. Thus, while a tough public anti-immigration rhetoric dominated, the policies were rather pragmatic and more moderate (Bade & Bommes, 2000).

After the passing of the 1990 foreigners' law and the amendment of the basic law provision concerning the right of political asylum in 1993, the conservative government focussed on the efforts to tighten the legislation concerning asylum seekers in order to prevent further immigration, but stopped further revisions to the immigration laws. Then when a red-green government was first elected in 1998, it was faced with expectations to introduce paradigmatic changes in the field of migration and integration and to administer the 'normalisation' of migration policies, i.e. the overt acknowledgement of the fact that Germany had already turned into a country of immigration (Bommes, 2001). The red-green government introduced a bill that facilitated a more liberal policy on naturalisation based on the *jus solis* principle. However, Christian Democrats successfully campaigned against this reform in a state election (Vitt & Heckmann, 2000: 249f). When Social Democrats suffered severe electoral losses, this and other projected reforms were abandoned for the short-term.

Labour market integration only gained public acceptance following the introduction of a work permit scheme (or Green Card programme) for IT-specialists[3] in 2000. The debate about the 'Green Card programme' (Kolb, 2004) paved the way for a cultural change that would deem a new immigration law with regular channels for labour immigrants as necessary. The introduction of a special programme for the recruitment of old people's nurses for private households (2002) also stimulated the reappearance of the debate on the existing and future demand for labour migrants, and in this climate, the Federal Minister of the Interior appointed an Independent Commission on Immigration (see chapter 2). Accepting the arguments of the Independent Commission, chaired by Rita Süßmuth (Unabhängige Kommission Zuwanderung 2001), political and social elites in all fields recognised that immigration is an inevitable aspect of globalisation and should not be prevented, but managed properly - at least for some categories deemed as 'wanted immigrants'. The debate thus shifted from the conflict between immigration versus non-immigration to the contrast between immigration labelled as wanted versus unwanted. All relevant experts have underlined a future need for immigrant labour.

The independent commission drew attention to the ageing society and the future labour market gap, and commissioned studies on the need for labour immigration in a situation of high unemployment (see chapter 2). In the debate surrounding the new immigration act, the issue of labour market needs was prominent. Because of this principally more open debate, migration experts of different academic affiliation and with different political backgrounds concurringly spoke of a paradigmatic shift in migration policies and debates (Vogel & Wüst, 2003). The term 'Zuwanderung' (an untranslatable term, literally 'to-migration', signifying migration into the country with

[3] The Federal Republic of Germany's IT-Specialists Temporary Relief Program, see: www.bma.bund.de.

no connotation of recruitment and permanence) has become more acceptable than the term 'foreigner's' policy (*Ausländerpolitik*), a term which had been dominant in the debate, while using the term immigration (*Einwanderung*) still has the connotation of active recruitment for settlement which is not an accepted notion in Germany. The main aims of the reforms suggested by the report were the simplification of legislation, the opening up of labour immigration, the fostering of integration, and the prevention of unwanted immigration.

Shortly after the publication of the commission report in summer 2001, the Ministry of the Interior launched an immigration bill that made some use of commission's results, but was in many details much more restrictive. The debate on the initially more 'open' or 'liberal' proposals of the commission and the immigration bill of the Ministry of the Interior coincided with the terrorist attacks of 11 September 2001. Consequently, security issues were emphasised in the debate on immigration and as a result, policing immigration gained relevance (Hirsch, 2005). For tactical reasons the Christian Democratic party who had promoted very similar provisions before, began to criticise the provisions of the Immigration Act as too liberal. In order to gain votes (Bosbach & Marschewski, 2002), even more restrictive features were demanded.[4] After a divided vote in the second chamber of Parliament, the new law was first enacted in July 2002 but was then revoked after a challenge on procedural grounds by the Christian Democratic party before the Constitutional court in December 2002.

In 2002, the red-green coalition managed to stay in government after a narrow election victory. However, for major reforms in areas such as immigration, it still needed (and needs) agreement from the opposition thanks to the Christian Democratic majority in the second chamber. In this situation, the red-green government brought the immigration bill into Parliament again and started negotiations with Christian Democrats behind closed doors. After extended negotiations with limited information to the public, they finally agreed on a new immigration law and voted accordingly in parliament. The "Law for Managing and Containing Immigration and for the Regulation of the Residence and Integration of EU-Citizens and Foreigners" came into force in January 2005.

The 'Law for Managing and Containing Immigration and for the Regulation of the Residence and Integration of EU-Citizens and Foreigners' is the most important development in the recent debate on immigration and integration. With this third period, or phase in the debate, the legislator has finally recognised that immigration is inevitable and it requires solid pro-active management. For the first time, some channels for labour market immigration are provided not as an exception, but as a regular option. It is, however, important to note that while these options offer the legal basis for labour market immigration, the implementation of such measures is subject to political will. The terminology and the legal framework changed – although not as much as originally planned – but actual policy instruments remained basically the same (Vogel & Wüst, 2003).

The passing of the new immigration law was welcomed by most relevant stakeholders, including employers' associations and trade unions, churches, welfare associations and other NGOs concerned with acceptance of refugees, immigration and/or integration. However, many humanitarian actors did deplore its restrictive stance and criticised a number of different specific issues: a central critique focused on its failure to address the needs of immigrants already residing in Germany. The

[4] For more on the conservative party's tactics to exploit immigration issues in a populist manner (to gain votes in elections) see Meier-Braun (2002), Thränhardt (2000).

plan that the newly introduced language and integration courses should be reserved only for newly arriving immigrants although many of the already residing immigrants need qualified assistance was a key issue of concern, as was the tightening of the requirements for naturalisation. Another complaint concerned the provision that immigrants with a tolerated status could be accommodated in *de-facto* detention centres.

At the same time, most relevant actors perceived the general outline of the immigration law as a decisive step towards a modern immigration policy that settled the dispute on immigration and paved the way for a less polarised and politicised treatment. The hope that anti-immigration arguments will loose relevance with the new immigration law caused actors to support the legislation and to postpone critique.

For the moment, the passing of the immigration law has settled the public quarrel between anti-immigration and pro-immigration parties. The current legal framework is not considered final, but it is an important step towards the appropriate management of migration. Experts expect that the further 'Europeanisation' of immigration policy will definitely require further revisions to the current national legal framework because some important elements of the policy remained unsolved: *"The reform of the naturalisation law requires continuation. The implementation of EU-directives concerning the freedom of movement of EU-citizens and their relatives, concerning family related immigration, concerning the residence rights of long-term immigrants; concerning measures against discrimination; concerning the organisation of the asylum procedure and concerning the definition of refugee status is still pending. (…) The new residence act can be predicted a period of validity that will not exceed two years from the moment of its coming into force"* (Renner 2004: 266). However, debates on immigration do not raise a lot of public interest at the moment.

Recent experiences indicate that the German authorities still show significant reluctance to accepting immigration. The 'fate' of the 'Expert Council on Immigration and Integration' provides a good example of this reluctance. This high ranking council that consisted of six representatives of political bodies and interest groups appointed by the Federal Minister of the Interior in 2003 recommended a more liberal approach to immigration policy (Sachverständigenrat für Zuwanderung und Integration 2004; see chapter 2), including a proposal to institute a quota of 25,000 for labour market immigration per annum. The public rejected the proposal. The main argument was that immigration is not acceptable in a situation of high unemployment. It was not long before the Federal Minister announced the dissolution of the Expert Council. This incident highlights the reality in Germany today - legislation that provides immigration channels *de-jure,* along side politicians who are unwilling to actively make *use* of such opportunities – public opinion won't allow it. Indeed, the CDU/CSU coalition declared in June 2005 that it would campaign against immigration in the 2005 federal elections. An anti-immigration climate is still dominant in this debate.

Immigration law

It is common – and technically misleading – to use the term immigration law to refer to the legal framework for the immigration of third-country nationals to Germany. In reality, the law that regulates the entry and stay of third country nationals is the *residence act*. The residence act was introduced as article one of the immigration act, which is made up of the Residence Act (AufenthG), the Act on General Freedom of Movement for EU Citizens (Freedom of Movement Act/EU) and amendments to additional legislation. The final content of the residence act is a political compromise

and does not break with the previous regulations, rather it integrates and re-arranges already existing regulations, and largely reframes the terminology. Most important is the continuation of the recruitment stop (Davy 2004; Renner 2004). However, the introduction of some *new* elements signals also that the legislator provides a framework that would enable a more liberal immigration policy if wanted. According to the Federal Office for Migration and Refugees (BAMF) (see www.zuwanderung.de) the most important innovations include:

- The introduction of a legal provision for regular admission of high-skilled and self-employed immigrants.
- Foreign students may remain in Germany for one year following graduation to find a job commensurate with their academic degree.
- Persecution by non-state actors is recognised as a ground for granting refugee status under the Geneva Convention. Protection from gender-specific persecution is also specifically anchored in the residence act, which states that threat to life, health or liberty which is based solely on a person's sex may also constitute persecution due to membership of a particular social group.
- The regulations for persons under subsidiary protection have been improved: If a ban on deportation has been issued, such persons are to receive a residence permit unless it is possible and reasonable for the foreigner to go to another country, or if the foreigner has violated obligations to cooperate or has committed human rights violations or any other serious crimes. However, first experiences show that authorities are reluctant to issue residence permits on this ground.
- The residence act allows the German states (Länder) to set up hardship commissions, which may petition the supreme authority at state level in individual cases of special humanitarian concern. The supreme authority may then order that a residence permit be issued, even if the usual requirements for such a permit are not met. Such commissions may be called on only when a foreigner is legally required to leave the country after having exhausted all appeals and has not committed any serious crimes. Those federal states that set up such a hardship commission have to specify the commission's procedures and composition and further requirements by ordinance. Berlin and Hamburg have already introduced such hardship commissions.
- The regulations concerning the age limit for the subsequent immigration of children were reframed (for more information see this chapter, below).
- Security issues are more prevalent. This is particularly evident in the tightening of deportation rules. Moreover, before issuing a permanent settlement permit or deciding on an application for naturalisation, the authorities will make a standard request for information on any anti-constitutional activities by the person in question.
- A legal basis for the integration of newly arriving and already residing immigrants was introduced and the sharing of financial burdens related to integration measures between federal and state authorities has been adjusted.
- The framework concerning the entry and stay of EU-citizens was simplified. Immigrants with EU-citizenship are no longer required to apply for residence permission, but they do have to notify the competent offices of the stay.

- EU-directives concerning the temporary protection of refugees, the mutual recognition of decisions, the return of immigrants, and the Schengen Implementation Agreement, were implemented.
- For the first time a language test for non-ethnic German family members accompanying ethnic Germans has been introduced in the law. Since 1 January 2005, the non-ethnic German family members have to demonstrate a basic knowledge of German.
- The institutional responsibility was re-arranged and concentrated with the Federal Office for Immigration and Refugees (BAMF).
- The administrative responsibilities for the admission of third country nationals to the labour markets in Germany were re-arranged.

This overview of innovations presented by the Federal Ministry of Interior (see www.zuwanderung.de) indicates that the immigration act is concerned not only with the immigration of third-country nationals but also of ethnic Germans and EU-citizens. This indicates that the German legislator has for the first time provided a legislative framework for controlling and restricting *immigration* as a whole. The new law also contains measures to promote the *integration* of legal immigrants in Germany and it no longer distinguishes strictly between ethnic Germans and third country nationals. However, due to their legal position, EU-citizens remain exempted from requirements other immigrants have to fulfil, such as the statutory requirement to participate in an integration course.

The relevant provisions for the immigration of third country nationals are mostly introduced in the residence act. It is important to note that the terminology was completely revised and efforts were made to streamline the structure of residence titles. The legislator argues that instead of five types of residence permits (as previously existed), there are now only two types: the (temporary) residence permit and the (permanent) settlement permit. Moreover, the residence titles refer now to the purpose of stay. Before, one and the same residence title was granted for different categories of immigrants, for instance students and migrant workers. Now, the residence title is explicitly linked with the purpose of stay. The federal Ministry of the Interior explained: *"The right of residence is no longer oriented on residence titles but on the purpose of residence"* (www.zuwanderung.de). With respect to the purpose of immigration the residence act distinguishes between:

- residence for the purpose of training (part three, §§ 16-17 residence act);
- residence for the purpose of employment (part four, §§ 18-22 residence act);
- residence that serves humanitarian purposes and international legal commitments (part five, §§ 22-26); and
- residence for family reasons (part six, §§ 27-36 residence act).

In the areas of immigration opportunities for family reunification and formation, the 'exceptional' acceptance of economic immigration, and refugees, the residence act preserves the status quo. The only real innovation is the introduction of explicit opportunities to immigrate for work (Davy 2004; Renner 2004). However, since the legislator continues with the recruitment stop and proceeds with a restrictive admission policy, the *opportunities* introduced by the residence remain small – particularly for low- and semi-skilled immigrants.

All in all, the legislation procedure of the immigration act lasted five years. In the end, the negotiations on additional amendments and final formulations took place in

the ‘conciliation committee’ (consisting of representatives from Bundestag and Bundesrat) behind closed doors. In the interest of public opinion, the negotiations focussed simply on the question of whether or not the bill would be enacted. The *content* of the final draft of the act was pushed into the background.

Family formation or reunification

The European Council Directive of 25 November 2003 on the right to family reunification (European Council 2003) sets the standards for immigration policies. Among other things, the Directive lays down the principles for family reunification. It defines which immigrants are entitled to make use of the opportunities (a sponsor that holds a residence permit for one year or longer (Art. 3, 1) except of refugees) and designates the categories of relatives that should benefit (family migration of nuclear family, i.e. spouse and minor children).

Similar to other countries with an immigration tradition, immigration for the purpose of family formation or unification is among the most important gates of entry in Germany. In 2003, 76,077 persons received a visa for the purpose of family reunification or formation (Sachverständigenrat für Zuwanderung und Integration 2004) in Germany. The residence act deals in part six in ten sections (§§ 27–36 residence act) with residence for family related reasons.

The residence act distinguishes between the immigration of EU-citizens, German citizens and ‘foreign’ residents. Several observers have directed their attention to the fact that the German legislation provides a more liberal framework for EU-citizens than for nationals. *“It is noteworthy that the family of a German citizen is exposed to an unfavourable treatment compared to families of an EU-citizen of another Member State living in Germany”* (Renner 2004: 269; see also Sachverständigenrat für Zuwanderung und Integration 2004; Göbel-Zimmermann 2005).

Section 29 of the residence act is concerned with the family migration of third country nationals. The applicant has to possess a settlement or residence permit and sufficient residential space. The term family is restricted to the nuclear family (spouse and minor children).

In particular the subsequent immigration of children was a sensitive issue in previous debates. In order to avoid postponed family unification that was said to create serious integration problems, conservative politicians demanded to lower the age of children entitled to subsequent family migration to 12 years, with a number of exceptions for older children and for established immigrants. During the slow negotiations on the immigration act the political opposition succeeded in reducing the age limit for the subsequent immigration of children of immigrants to 12 years. Although this demand was introduced in the draft residence act, the final version of the residence act contained the already established provision that sets a demarcation line with the age of sixteen years. Section 32 of the residence act distinguishes between minor children below 16 years and older minors. As a rule, minor children (who are younger than 16 years old) receive a residence permit on the condition that both parents (or the single mother or father) possess a residence or settlement permit (§ 32, 3 residence act). Youth at the ages of 16 and 17 receive a residence or settlement permit only if they speak German or if their previous education and living situation indicates that they will integrate without problems (§ 32, 2 residence act). Moreover, the minor child of other resident third country nationals may receive a residence permit provided the particular circumstances of the individual case make it necessary in order to protect the well-being of the child (§ 32, 4 residence act). The

conditions set for children older than 16 years comply with the derogations granted in Article 7 of the EC Directive.[5]

Section 36 of the residence act stipulates that other family members may receive a residence permit provided that the granting of the residence permit is necessary to avoid an extraordinary hardship.

The introduction of language requirements for ethnic Germans

In connection with the new immigration law, language requirements for family members of ethnic Germans and for Jewish quota refugees from the former Soviet Union have been strengthened. Family members of ethnic Germans will have to demonstrate some knowledge of German in order to be accepted. From 2006, Jewish immigrants will need to have a good knowledge of German and enough assets to live without social assistance in Germany (MUB 1/2005). With this measure, the executive aims to reduce the high levels of unemployment and welfare dependency rates among immigrant groups.

Integration courses for newly arrived immigrants

Debates have frequently emphasised the need for immigrants to learn German and accept German law (there has been no real opposition to these ideas). However, broader requests for adjustment to a so called German 'Leitkultur' (leading culture) - as pushed by a Christian Democrat politician – have faced strong resistance, among others because the substance of the concept is vague and linked to demands of cultural assimilation in a narrow sense that is not compatible with the German legal tradition or federalism.

The new residence act has introduced considerable changes in the field of integration. Among others, *newly arrived* permanent immigrants (currently family migrants and ethnic Germans), will have both the right and obligation to participate in integration courses (see section 1.2 for more information on integration courses).

Labour market related immigration

The new immigration law initially intended to waive the recruitment stop and to open channels for labour market immigration. The main arguments brought forward were the increasing demographic gap, the ageing of society and also the existence of specific labour market shortages. The specific labour market shortages were localised mainly in labour market segments with a demand for high-skilled workers (Unabhängige Kommission Zuwanderung 2001: 87). The initial draft of the residence act foresaw the introduction of a points-system for labour market related immigration (§ 20 residence act), but in more recent legislation, this particular provision - that some experts perceived to be the main innovation (Hönekopp 2004) - was eliminated thanks to fierce resistance from the Christian Democrats.

Even the symbolic introduction of the provision with a quota of zero for the first years did not help to pass the legislation procedure and the negotiations in the 'conciliation committee'. High unemployment is given as the main reason for this rejection.

[5] "By way of derogation, where a child is over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by the existing legislation on the date of implementation of this Directive." (Art. 4) Since the foreigners' law contained the same restrictions the conditions are covered by the directive.

Against this background, the federal Ministry of the Interior underlines: *"The ban on recruiting foreign labour remains in effect for unskilled, semi-skilled and even skilled workers"* (www.zuwanderung.de). Consequently, new immigration is still dependent on family formation and reunification, humanitarian reception and the local administration of exceptional procedures for economic immigrants (Cyrus & Vogel 2000).

Generally, a permit is needed for all labour market related immigration. Although the new law is advertised as being more transparent, it still regulates the labour market admission in a complex way. The framework is given in the residence act. It refers to the 'Employment ordinance – foreign countries' and to implementation procedures. The Employment ordinance specifies concrete categories of situations, professions, and countries for which employment is possible. Implementation in the foreigners' authorities and the employment agency ensure that specific categories and general rules apply to the individual case.

Table 1: Residence act provisions concerning labour market related immigration

<table>
<tr><td>Basic principle</td><td colspan="4">Provided that all general conditions for residence titles apply, labour migration may be admitted under consideration of the labour market situation and the demands to reduce unemployment effectively.</td></tr>
<tr><td>Category</td><td>Employment in jobs without particular qualification (§18)</td><td>Employment in jobs with required qualification (§ 18)</td><td>Highly qualified immigrants (§ 19)</td><td>Self-employed (§ 21)</td></tr>
<tr><td rowspan="3">Criteria</td><td>Basic conditions:
* International Agreement
* Ordinance that regulates the procedure for admission</td><td>Basic conditions:
* Ordinance that regulates access for the particular profession
* Public interest in particular case</td><td>1) Scientists
2) Teachers and scientific staff
3) Specialist (minimum salary)</td><td>1) Economic interest or regional demand
2) Expectation of positive economic impact
3) Convincing business plan</td></tr>
<tr><td>Concrete job offer</td><td>Concrete job offer</td><td>Concrete Job offer</td><td>Involvement of other bodies, professional bodies or trade chambers in the participation process</td></tr>
<tr><td colspan="3">1. Individual labour market test
a) no negative impact on the labour market
b) no other privileged worker is available
2. The Federal Employment Agency ascertain for particular professions after examination of 1a and b that the admission is
justifiable in terms of labour market and integration
3. Ordinance or international agreement that stipulates that the consent of the Federal Employment Agency is not necessary</td><td>Residence permits for applicants only provided that a pension insurance exists</td></tr>
</table>

Residence status	Temporary Residence status	Settlement permit Requirements: 1. Integration and sufficient means for living without public assistance 2. Consent of the superior state authorities, provided that the states stipulated	Temporary residence permit for three years
	Extension is possible (with the same requirements as for the first application)		Settlement permit: without requirement according to § 9, 2, provided the self-employment proved to be successful and has sufficient means for living

Source: (Sachverständigenrat für Zuwanderung und Integration 2004: 217)

Section 21 of the residence act relates to the immigration of self-employed immigrants (or entrepreneurs). A third country national may receive a residence permit for the purpose of carrying out self-employment provided that the applicant possess the necessary financial means (§ 21, 1,3) *and* a higher economic interest or particular regional demand exists (§ 21, 1,1) *and* the economic activity promises to have a positive impact on the economy (§ 21, 1,2). The law explicitly explains that the conditions of an existing economic interest and promising positive impact are fulfilled when the applicant invests at least €1,000,000 and creates ten jobs. In these cases the examination needs to be tough and relevant bodies (professional bodies etc.) needs to be consulted (§ 21, 1,3).

Section 19 of the residence act regulates the settlement of highly qualified persons. In particular cases a settlement permit (allowing the unlimited stay from the beginning) can be granted for a highly qualified person provided the case is mentioned in the *Employment Ordinance – foreign countries.* Highly qualified persons are in particular scientists with special expertise, teachers or scientists in leading positions, specialists, and managers with particular professional expertise and a minimum salary (§ 19, 2,1-3). The legislator justifies this exemption with the expectation that the applicant will easily integrate and can make a living from own efforts (§ 19, 1 residence act).

Section 18 of the residence act regulates residence for the purpose of employment. As a rule, the admission of foreign workers has to take into account the requirement of national competitiveness (”economic location Germany“ *Wirtschaftsstandort Deutschland*), to consider the situation on the labour markets and the necessity to effectively combat unemployment (§ 18, 1 residence act).

While the “Employment Procedure Ordinance“ further regulates the access of third country nationals already residing in Germany (see section 1.2), the “Employment Ordinance - foreign countries“ specifies employment possibilities for new immigrants (Beschäftigungsverordnung 2004) (see table 2).

Table 2: Admission Categories to the labour markets in Germany according to the Employment Ordinance – foreign countries 2004

Employment Ordinance – foreign countries		
General pattern	Legal provisions	Concerned professions and categories
Part 1: Employment without the requirement of consent from Federal Employment agency	§§ 1- 16	Professional training; highly qualified; managers; scientists, researchers and engineering; business people, particular professional groups; journalists; volunteers; holiday earners; short term delegates; participants of international sports events; international transport business; sea fare and aviation; trade in services; special short term activities.
Part 2: Employment without a qualification that requires the consent of the Federal Employment agency	§§ 17-24	Seasonal workers; showmen assistant; au pair employment; domestic workers; domestic workers accompanying diplomatic staff; artists; training schemes linked with education.
Part 3: Qualified employment that requires the consent of the Federal Employment Agency	§§ 25-31	Temporary employment of language teachers and specialty cooks; IT-experts and scholars; senior staff and specialists; social workers with command of German language for jobs with immigrants; care workers, international exchange of personnel and projects abroad
Part 4: Consent to other employment	§§ 32-37	Ethnic Germans; citizens from particular states (Andorra, Australia, Israel, Morocco, Canada, Monaco, New Zealand, San Marino, USA); Assembling of pre-fabricated houses; long-term posted workers; frontier workers.
Part 5: Consent for employment on the basis of international agreements	§§ 38-41	Contract for services; guest-worker programmes for employment with training elements; other inter-governmental agreements

Source: (Beschäftigungsverordnung 2004); own compilation.

In some cases, the residence permit will be issued by the competent Foreigners' Office without a labour market test. In other cases, the consent of the Federal employment service is required (§ 18, 2 residence act). In particular the admission for low-skilled jobs require the consent of the Federal Employment Agency (see table 2).

A closer look reveals that the already established approach is kept with some small modifications, but more systematically. Under the new legislation, the already established line is still pursued. An important issue is however, as already mentioned, a change in the rhetoric and juridical assessment. Some of the previously labelled 'exemptions from the recruitment stop' are now introduced as officially acknowledged regular channels for the employment of foreign migrant workers – in particular for high-skilled immigrants - while other programmes, in particular those concerning the employment in low-skilled jobs, remain subject to the recruitment stop and have to pass the labour market test (Feldgen 2003).

Implementation procedure of labour immigration

Until the end of 2004, third country nationals that were interested in working in Germany needed both a residence permit from the foreigners' office and a work permit from the Federal Labour Agency. Since 2005, they only need a residence permit from the foreigners' office. It includes information whether they are allowed to work or not.

Applicants have to deal only with one authority – the local foreigners' office. The introduction of this so-called 'one-stop agency' does not mean that the Federal Employment Agency is no longer involved in the permission process. The Federal Employment Agency is still the authority that has to conduct the labour market test and to check whether the declared conditions of work and pay comply with the statutory conditions. However, it must be said, the Federal Employment Service stays in the background. The applicant deals only with the foreigners' office personally.

After application, the foreigners' office has to conduct a sequence of checks. The foreigners' office examines whether:

- the applicant fulfils the personal requirements for the admission to entry and employment (if for instance previous deportation exclude him or her from entry);
- the employment applications correspond with any provision that allows a labour market related immigration;
- the provision from the employment ordinance that allows the admission requires the consent of the Federal Employment Agency. Where the consent is not required (chapter 1 of the Employment Ordinance – Foreign Countries) the foreigners' office has to examine if the conditions are met and the required expertise from other bodies – for example the chamber of commerce - has to be organised. If the consent is required the Foreigners Office passes the application to the local office of the Federal Employment Agency which performs the required procedures: A so-called labour market test examines whether a privileged worker (i.e. a German or EU-citizen or another privileged third country national) is available; the conditions of work and pay are checked to make sure that they comply with tariff or local standards; and the impact on the local labour market performance and the economy is assessed). After a minimum of four weeks the local employment agency informs the foreigners' office whether the consent is granted or not. On the basis of this notification the Foreigners' Office prepares the decision and informs the applicant. The applicant has the opportunity to appeal to the administrative court (Feldgen, 2003; Barth, 2005).

The procedure does not foresee a special fast-track procedure for high-skilled applicants. But, since the employment of high-skilled persons falls into the category of employment that does not require the consent of the Federal Employment Office, the Foreigners' Office has the opportunity to respond quickly to the application. In particular, when important local employers are involved the application procedure has a chance to be processed more quickly. On the other hand, the new procedure has practical disadvantages for migrants. While the new procedure has some advantages for immigrants seeking their first residence permit from abroad, other immigrants may suffer disadvantages as the procedure takes longer and is more often negative because the overworked and control-minded foreigners' offices are

the responsible agencies. As the decision process is mainly decentralised, this may differ from region to region. Research has shown for the old procedure that hierarchical structures (bureaucrats which have no personal contacts with applicants) and strict monitoring ensure a more restrictive implementation of exceptions as long as the ruling opinion favours a reduction in immigrant employment (Cyrus & Vogel, 2003). According to this observation, an even more restrictive implementation can be expected with the new procedures.

A centralised processing system is used for some programmes that open admission on a quantitatively larger scale but on a strictly temporary basis with no options for extension (seasonal workers; contract for services). The general legal framework follows a special track for centrally managed categories of temporary labour recruitment.

Considering the few opportunities for legal migration, illegal migration takes place in an environment of tension between high incentives and increased bureaucratic control and enforcement.

Illegal immigration debate and control policy

Illegal migration has only gained major public attention since the early 1990s. With the fall of the Berlin Wall, the fear of massive uncontrolled immigration rose. The resources of border patrol were increased and the capacities to control in the interior expanded. Unwanted immigration was presented as a security issue, as a threat to public order, while NGOs pointed to the violation of human rights linked to exclusively restrictive measures. Some left wing NGOs initiated campaigns against the expulsion of tolerated[6] refugees and for legalisation programmes. However, there is a broad consensus among politicians against regularisations. The political debate has accordingly focused on the demand that illegal immigrants should not be deprived of their basic rights. For example, the DGB-Bildungswerk published a booklet informing on the labour law entitlements of illegal immigrants (DGB-Bildungswerk 2002). Recently, a campaign led by Catholic organisations focussed on the protection of basic rights of illegal immigrants (www.forum-illegalitaet.de), namely the right to send children to school, the right for treatment in cases of sickness and accidents and for legal protection. This campaign led to a manifesto, which was signed by a large number of leading Christian activists, politicians, migrations experts and others. It is very modest in its demands, calling for a debate and asking for humanitarian measures to complement the current restrictive course (www.forum-illegalitaet.de/Aktuell/Manifest.pdf).

However, recent legislative measures still neglected the issue of protecting social rights of illegal immigrants and took place only in the field of law enforcement. Besides some enforcement clauses in the new residence act (namely expedite removal of foreigners connected to terrorist organisations and for ‘hate preachers’ in Islamic mosques), there were two major juridical reforms in 2004 concerning the legislation on the employment of foreign migrant workers in Germany.

The first important project was the ‘law on combating illegal employment’ by Germans and foreign nationals that passed the Parliament in July 2004. The law had evoked heated controversies, mainly because employers of domestic workers should become subject to inspection and punishment. Public protest pushed the legislator

[6] Toleration is not a recognised residence status, but a formal exemption from deportation (exceptional leave to remain). It is usually prolonged for short periods, but may in total last for many years. It includes the right to a low level of social provisions, but no right to work or subsidiary labour market access.

to stipulate that labour inspection will not control private households. Secondly, in October 2004 German Federal Parliament passed a new law defining for the first time 'trafficking into human beings for the purpose of labour exploitation' as a criminal offence. A prison sentence between six months and ten years awaits anybody "who gets another person - by making use of a predicament or a state of helplessness that is linked to the stay in a foreign country – into slavery, serfdom or debt bondage or gets the person to take up or proceed with an employment with him or a third person that is in obvious discrepancy to the working conditions of a person that conducts the same or a similar employment". This reform ensured that norms that are codified in the 'UN-Convention against Trans-national Organised Crime' and the two amended Protocols against 'human smuggling' and 'human trafficking' were implemented into national law (Albrecht & Fijnaut 2002; Cyrus 2004).

The introduction of a penal code provision 'trafficking for labour exploitation' complies with the general line recommended in a recent International Labour Organisation (ILO) study on forced labour of foreign migrant workers in Germany (Cyrus 2005). The encompassing examination revealed that exploitation of migrant workers takes place frequently and is widely underestimated in Germany. However, the study underlines that the effective combating of human trafficking and labour exploitation is less a problem of legal shortcomings but rather a problem of insufficient implementation of legal norms: Unscrupulous employers even manage to benefit from legal provisions. Measures for the effective protection of victims are still lacking.

This development is also featured in the most current debate in the field of migration control, titled the 'visa affair' in the media. A parliamentarian commission is currently (spring 2005) investigating problems of visa management in the Ministry of Foreign Affairs, headed by the once-popular Green Minister Joschka Fischer. In several decrees, the Ministry of Foreign Affairs had relaxed visa control towards Ukrainian nationals, provided that they were covered by an insurance securing the costs of health emergency services and deportation. According to information in the media, the procedures and embassy staff were not trained to administer the new regulation, which led to a situation where the embassy in Minsk was not able to cope with increasing numbers of visa applications. Commercial services that were later perceived to be illegally by German politicians manipulated and channelled the access to a visa by selling insurances and manipulating waiting lines. The opposition saw an opportunity to dis-credit a Minister who was popular far beyond his green electorate. The debate was highly polemical. Ukrainians who applied for visas were stereotyped as forced prostitutes and illegal labour migrants, and green politicians have been accused of assisting trafficking, which has led to forced prostitution and labour.

1.2 The integration debate

According to the EU Directive on the status of long-term immigrants *"the integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion"*. The Directive emphasises that *"the main criterion for acquiring the status of long-term resident should be the duration of the residence in the territory of a Member State"* (European Council 2003: 44). However, the further explanations underline that the notion long-term immigrant applies only to immigrants with a *legal* status while asylum seekers, de-facto refugees, tolerated or illegal immigrants remain excluded from the opportunity to gain a safe residence status through the criterion of the duration of residence. The Directive stipulates that a regular residence of five years renders immigrants a more favourable residence right and offers protection against expulsion or deportation.

Moreover, long-term residents are entitled to all social programmes, like citizens, and should not be subject to discrimination. Further, the host state is required to take up measures to promote the integration, to secure equal treatment and to prevent social exclusion and to reduce the risk of poverty and other dangers.

The German integration debate developed in the context of a large population with an immigrant background. There are ethnic Germans with immediate access to German citizenship, but also a large foreign population without German citizenship, but with secure residence rights. Short-term and pendular migration is substantial, and there is also a substantial minority of long-term residents without secure residence rights, namely *de facto* refugees and humanitarian entrants. The integration debate concerns only the immigrants already residing in the country or entering in the future with a *regular* residence status. The main political objective with respect to 'tolerated persons' is their return.

The issue of immigrants' integration is explicitly tackled in the reports on social cohesion (Federal Republic of Germany 2003: 34-36; 2004). The reports concede that immigrants are at a higher risk of suffering from poverty and social exclusion. The reports consequently refer frequently to immigrants as particular group exposed to a higher risk of social exclusion. With respect to labour market integration it is said that: *"Migrants have an increased risk in the labour market. Their persistently high unemployment is mainly based on deficits in their linguistic skills and their academic and vocational qualifications. The proportion of the foreign unemployed without completed vocational training was 72.5 per cent in 2003, twice as high as among Germans (36.2 per cent). Children of foreign origin have comparatively poorer educational qualifications, in spite of considerable efforts, and therefore have a higher risk of exclusion. The focuses and main tasks of integration policy are therefore offers for teaching the German language and promoting integration at school and work"* (Federal Republic of Germany 2004: 9; see also Bundesintegrationsbauftragte 2005: 81-89). The issue of *failed integration*, referring to foreign immigrants as well as ethnic Germans, is a constant concern, and it has been for approximately 30 years. Accordingly, the Expert Council proposed measures for "subsequent integration" (Sachverständigenrat für Zuwanderung und Integration 2004). Consequently, immigrants already living in the country should be for instance granted the right to participate in the newly introduced language and integration trainings.

It is important to mention that the German immigrant policy still follows two objectives. Integration policy is followed for long-term immigrants. Immigrants with a tolerated residence status are required to return. In order to promote their return, legal and administrative measures aim at preventing their integration (*a non-integration policy*). These measures include the ban on employment, subsistence in kind, residence and travel restrictions. Immigrants' associations and NGOs criticise the restrictions. Organised protests against them had so far little effect, except for some individual cases.

Non-integration policy

Until the end of the 1980s the German foreigners' policy viewed the status of immigrants as temporary. It promoted return of foreign nationals. As a consequence, the foreigners' policy remained fragmented, dispersed and did not develop a comprehensive approach for the integration of immigrants. Integration programmes were only introduced for newly arriving immigrants of the category of ethnic Germans. As a consequence a considerable share of immigrants, including the group of immigrants once recruited as workers and their family members, have

an ambivalent integration balance (see Krüger-Potratz, 2004; Meier-Brauns, 2002). It is important to note that a considerable share of immigrant population is well integrated, and they belong to middle-class. But another significant share of foreign population suffers from enormous social problems. The children of immigrant families are considerably underrepresented in higher education and over-represented in schools for pupils with learning difficulties (Sachverständigenrat für Zuwanderung und Integration 2004: 273f; Wagner & Powell, 2003). Further, the unemployment rate among immigrants is far greater than the average. The integration failure is attributed to the reluctance and unwillingness of these immigrants – in particular of Turkish and other Islamic nationalities – to integrate and assimilate. However, few take into account the fact that these groups were (and partly are) the target of special policy measures that might be described as 'non-integration policy' measures. It was only in the 1990s with the adoption of the 1990 foreigners' act that the integration of the legally and permanently residing immigrants (once recruited as workers) became the official aim of the foreigners' policy. However, other immigrant groups with an insecure residence (i.e. toleration or temporary residence title) the policy kept the 'non-integration policy' with the goal of promoting return.

Immigrants that stay with 'a toleration' are the most affected by the non-integration policy. About 230,000 tolerated immigrants are currently living in a state of limbo as tolerated foreign nationals. Many of these immigrants have lived in Germany for ten years or even longer, and the number of children in this situation is also high. Tolerated immigrants are subject to several special measures that aim to prevent the integration of these persons into the German society. Access to the labour markets is subject to restrictions (labour market test) and as a result, very few immigrants have regular access to formal employment. In regions with high unemployment, the restrictions constitute a de-facto prohibition of work. Youth immigrants with toleration are only allowed to participate in professional training when it can be demonstrated that no other 'privileged person' can be placed in the training programme (Bundesintegrationsbeauftragte 2005: 49, 98, 383-389).

The new residence act has made this situation even worse. A provision of the new employment procedure ordinance stipulates that the granting of a work permit should be refused in cases where tolerated foreign nationals are responsible for creating obstacles for their expulsion (i.e. deliberate hiding of identity or destroying passport). In this environment, the foreigners' offices can reject applications for work permits even if the applicant, the tolerated person has already been employed for years (see Kühne, 2005). Meanwhile, the Ministry of the Interior has stipulated that the refusal of work permission should not be based on suspicion, but on concrete evidence. This incident shows the importance of the level of implementation and interpretation of the act.

Against this background of a non-integration policy, it is no surprise that the tolerated immigrants and their children showed an extremely bad integration balance and became highly visible. In Berlin for example, the debate on integration failure refers frequently to the group of immigrants from Lebanon, a group that includes a high share of tolerated persons (Ohliger and Reiser, 2005: 20). While integration failures are often attributed to the *failure of integration policies*, a more accurate interpretation would acknowledge that they are in fact a *side-effect* of *non-integration policies*.

In the course of the debates on the new immigration acts, a one-time status adjustment (or regularisation) for tolerated persons was discussed but not introduced (Kühne, 2005). Most recently, in June 2005 the Federal Ministry of Interior proposed that families of tolerated immigrants with children who were born or grew up in Germany should be granted a residence title for humanitarian reasons. The main

argument was that the children did not develop deep cultural or linguistic links to their parents' country and that their home is Germany. But this status adjustment should be restricted to children and their families. Christian Democratic politicians rejected this proposal, and instead the introduction of a programme for the return of tolerated refugees from Afghanistan and Iraq was announced.

There have been numerous status adjustment measures for particular national groups in the past, usually requiring the belonging to a national group that had not been able to return for a long time, and some indicator of integration (years of labour-market tested employment). The official line and dominant discourse indicates that the only way to solve the problem of unwanted immigration lies in the return of these persons. This is also true for refugees who stay in Germany for more than ten years. The main argument is that the public acceptance of immigration is only given when the authorities can show that they are effectively managing immigration. Moreover, it is said that the granting of residence permits to unwanted immigrants would reward illegal activities and thus discriminate against those who are law-abiding and counteract the general objective of law compliance.

When authorities become aware of undetected immigrants without status, they are expelled and released for a controlled 'voluntary' return, or deported. The return policy is rather easy to implement in the case of immigrants without a residence status as long as no obstacles can be made to refuse the return (Vogel 2000).

However, in the case of Geneva-convention refugees, stateless persons, de-facto immigrants and those without documents, the return demand often fails. One problem is that many immigrants cannot be forced to return because they do not possess valid passports. In some cases the countries of origin refuse to issue documents with the argument that the authorities cannot substantiate the identity of the person. In some countries, in particular the former states of the Soviet Union, the registration files are poor and what is more, these countries are often not interested in accepting former inhabitants of a nationality or ethnicity that became a minority after national independence. In other cases, countries generally refuse responsibility for former inhabitants. In other cases, the unsafe situation in the country of origin does not allow – with reference to the Geneva Convention – the deportation (the immigrant is granted temporary protection). And finally, some of the immigrants declare a false identity and do not present any documents at all in order to counteract expulsion or deportation. As a matter of fact, there are many cases when the favoured return policy cannot be enacted.

The federal government argues that the states should make use of the newly introduced opportunity of the hardship commission in order to solve the problem. However, the hardship commissions are clearly designed to deal with small number of single cases of individual hardship and are not appropriate to solve the problem of such a large group.

Currently, the problems of tolerated persons have been made worse with the coming into force of the residence act and the Employment Processing Ordinance (Beschäftigungsverfahrens-verordnung 2004). Section 11 of this Ordinance stipulates that tolerated foreigners should not be allowed to work in case they have entered the country in order to gain access to social benefits or in case that a tolerated foreigner can not be deported and the reasons for this can be attributed to the tolerated persons. According to this provision a tolerated person can be made responsible in case the persons deliberately created an obstacle against expulsion by hiding their true identity or nationality or by making false declarations (Kühne, 2005). NGOs and advice centres currently observe that the foreigners' offices refer

to this provision and refuse tolerated persons a residence permit that entitles to take up employment. As a consequence, even immigrants that lived for years in Germany and previously had worked with a work permit loose the permission to work and fall back on social benefits. The number of tolerated persons is still high (over 230,000), and this group is targeted by non-integration policies regardless of their length of stay.

Integration policy

On the other hand, immigrants with a regular residence status are required to integrate into the host society (integration policy). There is broad agreement for this policy, and for the idea that it is a mutual duty of state and immigrants to promote this development. However, there is not as much consensus what this means. Further, it has been found that the distinction between foreign immigrants and Ethnic Germans is not helpful.

Integration and language courses

Integration courses focus on language acquisition (600 hours) and a limited introduction to the German civic order (civics education) (30 hours) (see Barth, 2005). In 2005, the integration courses are projected to cater for about 60,000 participants. They are publicly financed with a contribution by the immigrants themselves that is waived for low-income earners. Earlier immigrants with secure residence status can be obliged to participate if they are unemployed – but they do not enjoy an individual right to participate in such courses. The participation of already residing immigrants is only possible in case of free course places and serves therefore as a means to fill vacant places.

At the same time, the administration of language courses has been reorganised. The responsibilities of the federal office for the recognition of asylum seekers have been broadened, and it has been renamed the 'Federal Office for Migration and Refugees'. This agency takes a lead in the selection of integration course suppliers – an important market - and the screening of applicants with the help of different local offices in the different states and communities. Language schools deplore the bureaucratic requirements that they are forced to comply with in order to conduct courses (Barth, 2005).

Dealing with an Islamist threat

At the moment, there is a debate on the threat caused by Islamist organisations in Germany. Polls among young immigrants produced the image that youths of Turkish migration background are more likely to adhere to Islamist fundamentalism (Heitmeyer, Müller et al. 1997; Heitmeyer, Müller et al. 1997; Heitmeyer, Dollase et al. 1998).

Incidents such as the terrorist attack of 11 September 2001 and the recent murder of Theo van Gogh in the Netherlands have fuelled the debate (see Leiprecht, 2005). In addition, the following events in Germany have contributed to this perception:

- The legal struggle of a Muslim teacher who wanted to wear her headscarf in front of class;

- The legal struggle over the extradition of the Islamist preacher Kaplan to Turkey (misleadingly labelled 'deportation');
- Cases in which young Turkish women who refused to accept a family arranged marriage were killed by own relatives; or
- The general debate on the general violation of women's rights in Islam.

The consequence of this one-sided portrayal of Islam there is a trend to explain integration problems of immigrants with their reluctance to accept 'Western' values and their propensity to retreat to 'parallel societies'. The politically coined term 'parallel society' suggests that immigrants actively and deliberately segregate, refuse to acquire basic cultural techniques (language, education) and thus provoke high rates of unemployment and require high rates of social assistance.

Education

The comparative PISA study[7] positioned Germany in the lower ranks causing debates on the deficiencies of the highly segregated German school system. Looking at the causes of Germany's poor achievement, it soon became clear that children with a blue collar or migrant background – more generally labelled as 'education distanced class' - were of particular concern. The second and even the third generation of children from immigrant families often drop out of school or receive only low high school grades. While there is an ongoing discussion on improving strategies to integrate migrants at school, public debates often attribute this integration failure to the foreign cultural background and the distance of immigrant parents towards education in general.

Anti-discrimination law

The German basic law generally demands the equal legal treatment of inhabitants and sets standards that prohibit discrimination on the basis of race and gender. However, Germany still has no special anti-discrimination law. First draft bills failed to gain support (MuB 5/02), and the EU Directive on discrimination was not implemented as required until July 2003. The European Commission has instituted proceedings against Germany and other countries, and under this pressure a new bill was brought into parliament in January 2005, concerning not only discrimination on the basis of race or ethnicity, but also on the basis of world view (Weltanschauung), age, gender, disability and sexual identity (MuB 1/05). Employer associations have lobbied against it as 'workfare for lawyers', and it faces strong resistance from the opposition and also some coalition politicians, so that it will probably undergo some changes before finally passing.

Naturalisation policy

When the power shifted to the red-green government 1998, the new government launched a new naturalisation act with a provision for a *jus soli* element and limited dual citizenship.[8] After fierce protest initiated by the Christian Democratic Party on the eve of a state election, the opportunity for dual citizenship was reduced to a temporary status for the second generation with the obligation to decide on one citizenship between the age of 18 and 23. Besides the (preliminary) acquisition by birth, German citizenship can be acquired by adult immigrants who fulfil the statutory

[7] Programme for International Student Assessment of the OECD

[8] Coalition Agreement concluded between the Sozialdemokratische Partei Deutschlands and BÜNDNIS 90/DIE GRÜNEN, Bonn, 20 October 1998, excerpt in Federal Ministry of the Interior (2000: 166-167).

conditions including minimum length of stay, level of language ability, own means for living and no criminal records. After the enactment of the law, naturalisation issues stirred little public attention (see Bundesintegrationsbeauftrage 2005: 339-348).

But the law also foresees a peculiar provision with unintended consequences: an automatic withdrawal of German citizenship in case a German citizen acquires another citizenship and has not asked for prior permission. This provision caused considerable problems: The technical problem is that this provision stipulates the *automatic* loss of citizenship. It does not require that a public authority nullifies the German citizenship in an official bureaucratic act. As a consequence, whoever takes up another citizenship is no longer a German citizen in legal terms, but the authorities do not know this, and the person possesses a German passport. Currently, some 10,000 persons may be concerned. The most important group stems from Turkey. It was a well-known practice of Turkish citizens to renounce Turkish citizenship in order to acquire German citizenship - and to regain it afterwards as a second citizenship without informing German authorities (MuB 2/05, 2).

Prior to elections, foreigner's authorities wrote to new citizens in order to inform them about the situation and ask them to inform the authorities if they have acquired another citizenship. If they had, they had to apply for a residence title with the foreigner's authorities again, before they could reapply for German citizenship.

Regularisation schemes

Although the perception is that Germany does not deal with 'illegal' immigrants, the reality is different. The concept of regularising illegal immigrants is conventionally very narrow, meaning the direct transitions of individuals from illegality to a regular residence status. There are no such regularisations in Germany. However, such a narrow understanding leads to a misrepresentation of the political reality in Germany. A closer investigation shows that Germany possesses regulations that imply regularisation, although most of them are fairly limited in scope.

In Germany, some form of toleration is always the first step to a regular status. It provides for a temporary residence that is not 'illegal' but still not 'regular'. It offers no automatic right to status adjustment. However, there have been a number of status adjustment programmes for long-term tolerated immigrants, and there are some individual status adjustment options as well. Thus, status adjustment can be seen as a second step of a regularisation procedure. In addition, some legal changes imply that formerly illegal workers become legal, and can thus be seen as a functional equivalent to regularisation.

A short overview serves at illustrating this approach:

1) Toleration

- The granting of a residence permit for special purposes, mainly on humanitarian grounds, is an instrument to regularise asylum seekers after they have entered the country illegally.
- Issuing of a formal toleration (relief from removal, exceptional leave to remain) is the main instrument of individual regularisation. Formally, it bridges the time until expulsion or deportation. However, 'toleration' is granted for rejected asylum applicants, *de-facto* refugees but also for individuals in peril situations or trafficking victims. For the time of toleration the authorities take care of accommodation in 'camps' or 'special hostels'.

Tolerated immigrants receive basic social assistance to make a living, often only partly in cash and partly in kind. The problem with a formal toleration is that it is not equivalent to a regular residence title, but foreign nationals can live for ten years or even longer in Germany on the basis of a formal toleration. Tolerated immigrants have only limited access to the formal labour markets. After a waiting period they may apply for a work permit to take up formal employment. The work permit is only issued when no other privileged worker (i.e. German, EU-citizen or other foreign national with a better residence status) can be placed.

- In some cases, no formal toleration is issued while the authorities register and de facto tolerate the presence of foreign nationals, for example as an extended time for voluntary return.

2) Status adjustment

Kay Hailbronner underlined: *"…under German law persons who are clandestine, respectively not even in the possession of a toleration, have no possibility to ask for regularisation"* (Hailbronner, 2000: 271). In other words: Only those persons that have already contacted public authorities and are registered by the foreigners' offices qualify for the participation in regularisation schemes. The Federal Ministry of the Interior counted ten 'amnesty programmes' between 1991 and 2000. The main requirement for these 'status adjustment' programmes (Altfallregelungen) was a tolerated status, no criminal record and employment.

Table: Status Adjustment programmes in Germany

Year	Programme and target group
1991	Regulation governing long-lasting cases of Chinese scientists, students and other trainees who entered before 1 November 1998; Christians and Yezidis from Turkey who entered before 1 January 1989; Ethiopian and Afghan nationals who entered before 31 December 1988; Iranian and Lebanese nationals, Palestinians and Kurds from Lebanon, and Tamils from Sri Lanka who entered before 1 January 1989 Provided there is no ground for expulsion present other than that they have been homeless or have drawn social assistance or youth benefits for a longer period of time
1991	Regulation governing long-lasting cases for rejected asylum seekers from former Eastern bloc (Poland, Hungary)
1993	Regulation governing the right to stay of nationals from Angola, Mozambique and Vietnam who entered the GDR as contract workers up to and including 13 June 1990 on the basis of inter-governmental agreements
1993	Regulation for long-lasting asylum cases on the basis of the asylum compromise of December 1993 for asylum seekers from Afghanistan, China, Iraq, Iran, Laos, Libya and Myanmar (Burma)
1994	Regulation governing the right to stay for Pakistani nationals who belong to the Ahmadiyah sect and entered Germany before 1 January 1989
1994	Regulation governing the right to stay for Turkish nationals belonging to the Yazidi sect who entered after 31 December 1989 and whose asylum application was rejected before 1 July 1993

1996	Regulation for cases of hardship regarding foreign families who lived in Germany for many years and had entered before 1 July 1990, if their lives have since that time centred on Germany and if they have integrated into the German economic, social and legal order. Altogether 7,856 persons were regularised.
1999	Regulation governing the right to stay of the victims of a arson attack in Lübeck
1999	Regulation governing the right to stay for rejected asylum seekers and expellees from other countries than the Federal Republic of Yugoslavia and Bosnia-Herzegovina. At least 18,258 applicants were regularised
1999	Regulation for rejected asylum seekers who have been staying in Germany for a long time. This regulation is to refer to individuals who have not left Germany despite the rejection of their application for asylum due to reasons they cannot be held responsible for.
2000	Regulation governing the right to stay for civil war refugees from Bosnia-Herzegovina and Kosovo, in particular traumatised persons from Bosnia-Herzegovina.
2005	

Source: Hailbronner, 2000; Bundesausländerbeauftragte 2000 and (Beauftragte der Bundesregierung für Ausländerfragen 2002; Cyrus, 2004).

A last opportunity for status adjustment of individual cases was introduced with the coming into force of the new residence act. This provision entitles Federal States to introduce a hardship commission that may review individual regularisation applications of foreign nationals in a particular situation of hardship and with precarious residence status (toleration).

3) Functional equivalents

While there is no regularisation in the strict sense in Germany, there is the legalisation of mobility and migration practices. Insofar as these legal changes imply that the same persons who worked illegally in the past work legally after the change, they can be interpreted as a functional equivalent to regularisation, although no individual migrant gets the right to regular status on the basis of prior migration experience. Two examples:

- One example is the already mentioned introduction of the seasonal worker programme in 1991. This scheme opened the opportunity that foreign migrant workers worked for a limited time in agriculture and other seasonal occupations. In effect, when the scheme was first applied, there were strong indications that nearly all seasonal workers had worked illegally in Germany before.
- A programme for domestic workers, launched in 2000, can also be interpreted as a functional equivalent to regularisation. It was introduced in reaction to illegal employment in private households. However, there weren't many who decided to participate in this scheme because of the restrictive conditions.

This approach allows German politicians to strictly reject any demands for regularisations while still leaving a way to deal with long-term residents without a regular status.

1.3 Brain drain? No real debate

Brain drain arguments are mentioned in connection with migration issues, but they are not significant enough to warrant the term 'debate' (Sachverständigenrat für Zuwanderung und Integration 2004). For decades, the migration of highly skilled workers from developing countries was exclusively seen as a one-way street resulting in a tremendous loss for the country of origin. This view is recently challenged: *"[…] from a realistic point of view it seems to be more appropriate to support brain circulation and 'brain gain' strategies pro-actively than to stick to old defence strategy trying to avoid "brain drain" which has been unsuccessful for decades"* (Hunger 2003; Hunger 2004: 221).

As a rule, the perspective of countries of origin is hardly considered in the German immigration debate. However, some arguments are used to provide additional support for other receiving-country-oriented arguments.

In all political parties, you find the argument that the promotion of peace and security is a worthwhile but difficult task to prevent reasons for refugee movements (Vogel & Wüst 2003:268).

Incidentally, country-of-origin related arguments are used to highlight Germany's efforts in the field of foreign and development aid. The Ministry of the Interior, for example, is the lead ministry in migration issues. Interior Minister Schily commented the decline of asylum applications as a success of political efforts of the federal government, concerning on the one hand substantial financial aid to contain the effects of emergencies and civil wars in the countries of origin, and on the other hand because of the new immigration law and the connected debate that signalled that the abuse of asylum was no way to get into Germany. Refugee organisations rather related the decline of asylum applications to the ever-stricter asylum legislation and stricter border controls in the framework of the European Union (MuB 2/05,1).

2. Basing policies on evidence and consultation

As a consequence of the highly politicised and ideologically loaded debate on immigration policies, the influence and relevance of independent expertise in immigration issues is rather modest. The reference to scientific expertise in the political discourse is highly selective. Those findings that recommend a more liberal and coherent immigration policy are widely ignored. Research that deals with problems related to integration and immigration receive much more attention. To give an example: While the debate about school teachers' ability to wear head-scarves caused considerable attention in the public and among scholars, the simultaneous (critical) examination of the legal framework for the regulation of immigration did not raise much public interest and remained the concern of few specialised scholars (Renner, 2004: 267).

2.1 Making use of knowledge

There is some distance between political actors and researchers in the field of immigration. This is demonstrated by the way they deal with the question of immigration research in the context of the new immigration law. The draft of the immigration law provided paragraphs that stipulated the establishing of a 'Federal Institute for Population and Migration Studies' (§ 75, 2 draft residence act) and the appointing of an 'Expert Council on Immigration and Integration' (§ 76, draft residence act). In the final version of the residence act both paragraphs have been deleted. Consequently, the Expert Council that the Federal Minister of the Interior had appointed on the legal basis of a decree, lost public funding and was dissolved at the end of 2004. Instead of establishing a comprehensive migration research institute, the legislator commissioned the Federal Office for Migration and Refugees – a subaltern authority that is subject to the ministerial directions – to carry out research in the field.

There are federal research institutes concerned with some questions of migration and integration. The 'Federal Institute for Population Research' (Bundesinstitut für Bevölkerungsforschung) is generally responsible for surveying the demographic situation and responding to information requests by legislative and executive bodies. The (bigger) 'Institute for Employment Research' (Institut für Arbeitsmarkt- und Berufsforschung) is closely linked to the Federal Employment Agency and fulfils similar needs in the labour market. Among others, it also deals with labour market integration of immigrants.

The most *institutionalised* procedure to include expert knowledge and stakeholders' interest in the *legislation* process is through expert hearings. They can be induced by the parliament or parliamentary committees on local, state and federal levels. Experts are proposed by the political parties and give oral and written statements.

For the more important issues, the Parliament instituted a so-called temporary Enquete-commissions consisting of members of the Parliaments and appointed scholars.

In some areas, scientific advisory committees of Ministries prepare in regular intervals reports that sometimes include data on immigrant population. One example is the sixth report on families (Bundesministerium für Familie 2000).

Ministries are also contracting studies on specific subjects, but it is by no means common practice to initiate substantial legal changes with an evaluated experimental

phase and to complement the introduction of new legislation with independent scientific evaluation.

Experts are unhappy about the lack of knowledge used to facilitate informed and transparent decisions in the field of migration. Decisions are not based on methodologically sound evaluations, and it is considered highly problematic that policy and science have to rely on administrative data and analysis (Sachverständigenrat für Zuwanderung und Integration 2004: 443).

In a comparative perspective, it is problematic that German population registers only differentiate by country of citizenship between Germans and foreign nationals. With high ethnic German migration and increasing naturalisation rates on the one hand, and high numbers of foreign nationals born in Germany on the other hand, these data loose their value as an indicator of migration processes, but they are still used as main indicators of migration processes in the political debate. There are no data based on the place of birth (Vogel, 2003). The recent debate, moreover, tends to emphasise that the best indicator for immigrant population is mother tongue. It is therefore argued that immigrants are better identified not by citizenship or place of birth but by language competence and a reform of statistics should thus reflect the use and competence of languages.

In the course of the introduction of the new immigration law, there were substantial efforts to gather knowledge more systematically and find a broad consensus with the help of organised consultations including stakeholders. The Federal Ministry of the Interior, as the lead ministry, set up an independent commission on immigration (Unabhängige Kommission Zuwanderung, 2001). The political parties in the national parliament also worked on the topic with their own expert commissions in the wake of the first bill. The Independent Commission did not exclusively gather migration experts but consisted of representatives of relevant interest groups: Aside from academic migration experts, representatives of churches, welfare organisations, trade unions, employers association and parties represented in the Federal parliament were also present.[9] The commission invited and heard about one hundred experts[10] and finally presented proposals for a re-structuring of immigration management in Germany (Davy, 2001). The Federal Ministry managed to get agreement from all stakeholders *except* the Christian Democratic Party for the proposal. The independent commission achieved a broad consensus among its members that immigration is necessary for both demographic and economic reasons and due to the high integration of Germany in a globalised world. Shortly after the report of the commission, the Ministry of the Interior introduced the bill of a new immigration law, making extensive use of the commissions recommendations in some fields and neglecting them completely in others.

Among others, the law initially foresaw the appointment of an independent permanent expert council on integration and immigration (Zuwanderungsrat). In anticipation of the law, six experts were appointed, among them three university professors, two experts proposed by the employer associations and the union, and one from the federation of local communities. When they delivered their first yearly report in 2004 (www.zuwanderungsrat.de), parties had already agreed to foresee no permanent expert council like in the former bill. In the final version of the residence act that passed the Parliament the paragraph concerning the labour market related

[9] For the members of the Commission and their affiliation see the report of the Unabhängige Kommission Zuwanderung (2001: 2f).

[10] For an enumeration of the heard experts and their affiliation see the report of the Unabhängige Kommission Zuwanderung (2001: 290ff).

immigration with an eligibility check on the basis of a point system was deleted. Accordingly, the main legitimation for the introduction of the council on integration and immigration - that was foreseen by the law to assess the labour market situation and to recommend limits for the point-based immigration – was no longer given. While the report contained nearly 500 pages with detailed analysis of different migration policy issues and 160 recommendations, press coverage mainly focussed on the recommendation to allow a quota of 25,000 labour market immigrants. This recommendation was fiercely attacked. In autumn 2004, the parliament cut the budget of the expert council to zero. The council was dissolved at the end of 2004.

The story of the expert council can be considered typical for the German way of dealing with expert knowledge and advice: There is a great reluctance to institute permanent *independent* structures and enable data collecting, independent of administrative needs. Experts will be heard frequently, but policy adaptation follows a completely different agenda. Expert advice may be heard – as seen in the results of the Hartz Commissions on labour market reforms. However, this is generally only the case if commissions work out recommendations along clearly defined political lines - following the political agenda rather than developing truly independent advice.

2.2 Including stakeholders

A rough review of the current situation shows that the debate on immigration issues is characterised by a juxtaposition of often contradicting subjects and objectives that change over time. As a rule it can be said that public policy was dominated by a restrictive anti-immigration attitude - the perception that immigration is detrimental for Germany. However, it must be said that the dominating rhetoric of restriction obscures the reality - the policies implemented in the field of immigration and integration are often more pragmatic (Bade & Bommes, 2000). German political culture is characterised by strong jurisdiction and implementation at the local level. Both influences of these influences have had a softening effect, making the reality less restrictive than the rhetoric would suggest. In this situation, it is difficult to get an adequate portrayal of the situation by naming only some national stakeholders.

The formation and implementation of German immigration policy is characterised by its vast institutional diversity.[11] The Federal Constitution has decentralised competences and it enforces the subsidiary principle. Because of this, the implementation of measures in the field of immigration are similarly fragmented and dispersed. This is largely the result of the nature of German federalism and the fact that immigration has always been treated as a by-product of other policies.

German legislation guarantees considerable rights for established immigrants, most importantly in the areas of employment and social benefits. Foreign workers, after gaining access to the labour market, enjoy equal treatment and participate both actively and passively in the works councils. Third country nationals with lawful residence may also enjoy access to some social benefits when particular conditions are met (Davy, 001: 320ff). All laws and administrative interpretations of laws are subject to review by courts. In Germany, it is mainly the administrative jurisdiction, which is in charge of immigration related matters. Administrative courts have frequently corrected administrative decisions on immigration cases, sometimes resulting in a need to amend general ordinances. In some cases the administrative

[11] The Independent Commission spoke of “shattered competencies” (Unabhängige Kommission Zuwanderung 2001: 204).

courts have appealed to the European court and afterwards set the standard of European law.

The main administrative bodies competent for the granting of residence permits are the 660 foreigners' authorities at the municipal level. These bodies are increasingly bound by rules and ordinances of the *Länder* and closely cooperate with other community offices as residence registration offices or welfare offices, and other agencies such as the federal employment agency. The local level has the ability to influence the outcomes of laws by exercising discretion and independently allocating personnel to tasks, thus setting implicit priorities. Independent local bodies are also responsive to local pressures generated by individual persons.

The administration of federal integration funds is under the central control of the Federal Office for Migration and Refugees, the former Federal Office for the Recognition of Asylum Seekers. This agency is a new actor in the field. While it was originally foreseen that it should take over more central tasks in the field of immigration, namely in the management of labour market oriented immigration, this is currently not the case (this task remains decentralised). However, this agency may develop into a more central actor in the field of immigration in the future.

In accordance with the *subsidiary principle,* most public programmes are not implemented by public authorities, but by welfare associations. Some of these organisations spend additional funds (their own funds) on social work for third country nationals. The biggest welfare organisations have united on federal and state level in a 'league' of welfare organisations[12] in order to coordinate activities and to negotiate with public authorities. Welfare organisations have some modest influence on the implementation level and engage on behalf of their clients. Besides this operational co-operation with the interpretative level of public authorities, the league and its members try to accompany and influence the decision making process with coordinated statements (and joint lobbying), similar to other NGOs.[13] Among immigrant organisations, and particularly associations with Turkish background, have gained some influence and administer integration programmes.

Enforcement of all laws including laws concerning immigration questions is generally the task of the *Länder* (state) police. Police are subject to state legislation and work for the state government with little influence from the central government. Thus, the state police forces are also responsible for all immigration related crimes and for arresting foreigners without residence permits.[14] In the last decades however, federal agencies such as customs and border patrol increasingly engage in the field of enforcement and contribute considerably to the apprehension of third country nationals that do not abide by the law.

Within this policy arena, there is the cross-cutting institution 'Commissioner of the Federal Government for Migration, Integration and Refugees' (Beauftragte der Bundesregierung für Ausländerfragen 2002 and 2005) and similar Commissioners at the state and local levels. As a rule the commissioners have no legislative or interpretative legal powers. As a cross-section agency, the commissioners have to

[12] AWO, Caritas, DPWV, DRK, Diakonie.

[13] For instance the Catholic Bishops Congregation, the Synod of the Evangelic Churches, the trade unions, the employers association, immigrant organisations, alliances of independent organisations active in the field of immigration policy like the Intercultural Council.

[14] It should be noted that illegal residence is considered a crime under the German Aliens Law, while illegal work is considered to be a regulatory offence only. The *Länder* criminal police have specialised departments responsible for illegal work and foreigners without status.

examine public activities and to provide advice on the rights of foreigners. The commissioners regularly prepare reports on foreigners' issues, make proposals in the field of immigration policy and politics and comment on ongoing developments. At the federal and state levels, the institutions have a good reputation. But their influence is rather modest and rests on diplomatic skills in a highly complex and difficult policy arena (Federal Ministry of the Interior 2000: 59; Sachverständigenrat für Zuwanderung und Integration 2004: 244-253).

Corresponding with the complexity of the policy field, the channels of lobbying are diverse. The most important and viable channel is direct communication with legislators and interpreters via established networks. In the field of labour market policy, the social partners make extensive use of their networks to influence legislation and the implementation rules. In the field of humanitarian immigration, the protagonists, including churches, welfare organisations, human rights organisations and the trade union umbrella organisation (DGB) have developed similar approaches.

Public awareness campaigns are also used to lobby for changes. However, because of the sensitivity of the subject, actors struggle hard to influence the public. Most actors publish frequent press releases on migration issues, organise conferences or workshops, prepare publications and sometimes launch expensive advertisement campaigns or even collections of signatures.[15]

The political decision-making in Germany can be characterised as corporatist (Katzenstein, 1987; Glaab & Sesselmeier, 2005). The set up of commissions of experts and/or stakeholders who have to work out reform proposals in particular contested policy fields is a very common approach in Germany. In the last few years the federal governments appointed for example commissions for an examination of demographic change, globalisation; the reform of the industrial relations, the reform of social insurance system and migration to Germany. Accordingly, much of the more pragmatic implementation of immigration policy was negotiated and designed by corporatist arrangements aside public audience (Bade & Bommes, 2000: 166f). The existence of this decision making structure leads to the perhaps dissatisfactory conclusion that this corporatist network is the decisive actor. Immigration policy in Germany is characterised by the existence of a number of corporatist networks related to particular aspects of immigration (integration, labour market issues, education, humanitarian aspects etc.). As a rule it can be said that the network concerned with economics and labour market issues has more weight than those concerned with the 'soft' aspects of the humanitarian dimension. Accordingly the vested interests of the social partners seem to have more weight than the human rights concerns of NGOs and churches.

Conclusion

Immigration is a sensitive topic in Germany. This is largely due to high levels of domestic unemployment. It is a topic fuelled by emotion, easily (and often) exploited to produce political discontent. In this environment, political parties are wary about taking a liberal position. An overview of recent developments in German *immigration policies* indicates that the government is once again reluctant to make any major changed. Aside from the high levels of unemployment, this reluctance has been influenced by the traditional anti-immigration stance and short-sighted policies aimed

15 The Christian Democratic Party used 1999 the classical instrument of collection of signatures to oppose to the scheduled new Naturalisation Act.

at winning elections in a highly competitive political environment. Indeed, elections are now characterised by neck-and-neck-races between the large political blocks.

As a consequence, the pro-immigration voices have either fallen silent or have been reduced to silence. The Expert Council appointed by the Federal Minister of the Interior was abolished at the end of 2004 – one indication that pro-immigration voices are not heard, and independent expertise are not highly regarded. The 'window of opportunity' for a more active and open immigration policy that had been opened around the turn of the millennium is now closed again.

However, behind the still dominant anti-immigration rhetoric, the government has managed to introduce (in accordance and cooperation with state governments) a sophisticated juridical framework for the management of immigration. As indicated above, the new legislation offers opportunities for family reunification and formation; humanitarian and political residence of refugees and asylum seekers[16] and – for the first time – for labour market related immigration.

The current situation shows that Germany already relies and will in the future become more and more dependent on immigration. The demographic gap and the ageing of the society will inevitably lead to a demand for immigration. The future projections indicate not only that brains will be needed in high-skilled labour market segments but also hands, mainly in the area of carers. However, as long as the economic situation is characterised by low growth rates, increasing unemployment figures and pessimistic forecasts, the anti-immigration climate will remain. Currently, immigration policy proceeds with a tendency to disguise the already ongoing labour immigration by managing temporary recruitment programmes. Accordingly, the legislation identified priority groups and proposed specific policies for particular categories:

- The gates of entry for the purpose of family formation and reunification remain almost the same.
- The framework for the reception of asylum seekers and refugees was slightly adjusted with the introduction of a provision that acknowledges the specific gender related reasons for women to seek refuge in Germany. However, there are still no regular immigration channels for refugees. Consequently, in order to enjoy the protection schemes, asylum seekers and refugees have to enter the country illegally.
- The changes concerning labour market related immigration are rather modest with respect to the *de-facto* situation, but considerable with respect to the *de-jure* situation. The new legislation for the first time since 1973 introduces labour market related immigration. It became – in legal terms - a regular and legitimate feature of immigration policy. However, only a few relevant political actors currently dare to say openly that Germany needs immigration. The previous debate was closely linked to labour market demands and concentrated exclusively on high-skilled immigrants.

  This special labour migration regime sets a framework for temporary labour migration and permanent settlement. But legislation distinguishes sharply between desired, useful and inevitable labour immigration.

  - *Desired immigrants* are self-employed and highly skilled immigrants can obtain a permanent settlement permit from the beginning. However, the

16 Although, it should be noted that the policy aims at preventing the entry of these groups in accordance with the general 'Fortress Europe' policy.

requirements for these desired immigrants are currently so high that there will be probably not many immigrants in this category.

- *Needed immigrants* are skilled immigrants who receive a residence permit that may offer a permanent stay provided that the immigrant will satisfy particular conditions.
- *Inevitable immigrants* are migrant workers who are admitted only temporarily for jobs in low-skilled segments of the labour markets and have to leave the country after expiry of the contract. For this category, the recruitment stop is still valid (Feldgen 2003). On the other hand, the current demand for low-skilled workers is already satisfied by the temporary labour programmes (mainly in agriculture and catering), by the (ab)use of the freedom of self-employed and the freedom of services and - of course – by illegal immigration. Thus, there is no relevant actor openly lobbying for immigration of low-skilled workers.

The current situation is characterised by segregation and exclusion for those with an immigrant background. The situation is made worse by a policy that deliberately excludes immigrants and their families with a 'toleration' in spite of the fact that many cannot return. Another important factor affecting immigrants is the reduction in public education funds. Only recently, with a more sincere immigration policy, the pro-active and publicly co-funded integration courses have been expanded to offer language improvement and orientation. However, many categories of immigrants remain excluded (importantly, the already immigrated nationals and EU-citizens are excluded from integration courses).

The excluded immigrant population, and in particular the second generation, requires investment in schooling, professional and further training. During the 1990s, immigrants remained underrepresented in training courses organised by the Federal Employment Agency. Immigrants were only recently integrated more comprehensively in regular programmes. According to some lawyers the current residence act is not compatible with the future EU-law. Renner argues that the residence act will not be valid for more than two years. However, it is also possible that the German government will manage to influence the European decision making procedure in so far that the German law will fit.

References

Albrecht, H.-J. and C. Fijnaut, Eds. (2002). The Containment of Transnational Organized Crime. Comments on the UN Convention of December 2002. Freiburg i.Br., edition iuscrim.

Bade, K. J. and M. Bommes (2000). Migration und Politische Kultur im 'Nichteinwanderungsland'. In: Migrationsreport 2000. Edited by K. J. Bade and R. Münz. Frankfurt am Main und New York, Campus: 163-204 (also available in english: Immigration and Poitical Culture in a Non-Immigration Country. The 'German' Model revisited, in: Hollifield, James F.; Thränhardt, Dietrich (eds.): 2001, Magnet Societies).

Bade, K. J., M. Bommes, et al., Eds. (2004). Migrationsreport 2004. Frankfurt a.M. New York, Campus.

Bade, K. J. and R. Münz, Eds. (2000). Migrationsreport 2000. Frankfurt a.M. New York, Campus.

Bade, K. J. and R. Münz, Eds. (2002). Migrationsreport 2002. Daten - Fakten - Analysen. Frankfurt a.M. New York, Campus.

Barth, W. (2005). Zuwanderungsbegrenzungsgesetz verabschiedet: Wie geht es weiter mit der Integration. In: Migration und Soziale Arbeit 2/2005: 107-115.

Beauftragte der Bundesregierung für Ausländerfragen (2002). Bericht der Beauftragten der Bundesregierung für Ausländerfragen über die Lage der Ausländer in der Bundesrepublik Deutschland. Berlin: Selbstverlag.

Bundesintegationsbeauftrage (2005). Bericht der Beauftragten der Bundesregierung für Migration, Flüchtlinge und Integration über die Lager der Ausländerinnen und Ausländer in Deutschland. Berlin: Selbstverlag.

Bundesministerium für Familie, Senioren, Fruaen und Jugend (2000). Familien ausländischer Herkunft in Deutschland. Leistungen – Belastungen – Herausforderungen. Sechster Familienbericht. Berlin: Selbstverlag.

Beschäftigungsverfahrensverordnung (2004). "Verordnung über das Verfahre und die Zulassung von im Inland leenden Ausländern zur Ausübung einer Beschäftigung (Beschäftigungsverfahrensverordnung - BeschVerfV) vom 22. November 2004." Bundesgesetzblatt I: 2934.

Beschäftigungsverordnung (2004). "Verordnung über die Zulassung von neueinreisenden ausländern zur Ausübung einer Beschäftigung (Beschäftigungsverordnung - Besch-V) vom 22. November 2004." Bundesgesetzblatt I: 2937.

BMI (1997). Aufzeichnungen zur Ausländerpolitik und zum Ausländerrecht in der Bundesrepublik Deutschland. Bonn., Bundesministerium des Innern.

Bommes, M. (2001). Bundesrepublik Deutschland: Normalisierung der Migrationserfahrung. In: Einwanderungskontinent Europa: Migration und Integration am Beginn des 21. Jahrhunderts. Edited by K. Bade. Osnabrück, Rasch: 49-60.

Cyrus, N. (1994). "Flexible Work for Fragmented Labur Markets. The Significance of the New Labour Migration Regime in the Federal Republic of Germany." In: Migration - A European Journal of International Migration and Ethnic Relations(26): 97-124.

Cyrus, N. (2004). "Aufenthaltsrechtliche Illegalität in Deutschland. Sozialstrukturbildungen - Wechselwirkungen - Politische Optionen. Expertise für den

Sachverständigenrat Zuwanderung und Integration Nürnberg. Berlin (www.zuwanderungsrat.de)."

Cyrus, N. (2004). Towards a dual approach for the asserting labour standards for the (irregular) employment of migrant workers. In: CLR-News 4/2004: 22-33.

Cyrus, N. (2005). Menschenhandel und Arbeitsausbeutung in Deutschland. Bericht für das Sonderaktionsprogramme zur Bekämpfung der Zwangsarbeit des Internationalen Arbeitsamtes, _Genf [www.ilo.org/public/german/region/eurpro/bonn/download/menschenhandelendfassung.pdf] (Trafficking and labour exploitation in Germany. Report prepared for the International Labour Office (ILO). Geneva: ILO (www.ilo.org).

Cyrus, N. and D. Vogel (2000). Immigration as a side effect of other policies - principles and consequences of German non-immigration policy. In: Migration Pathways. A historic, demographic and policy review of four European countries. Edited by A. Triandafyllidou. Brüssel, Europäische Kommission: 9-37.

Cyrus, N. and D. Vogel (2003). "Work-permit decisions in the German labour administration: an exploration of the implementation process." In: Journal of Ethnic and Migration Studies. Special Issue:From guardians to managers: Immigration policy implementation in Europe 29(2): 225-255.

Davy, U., Ed. (2001). Die Integration von Einwanderern. Rechtliche Regelungen im europäischen Vergleich. Frankfurt am Main und New York, Campus.

Davy, U. (2004). "Einwanderungspfade und Integrationspfade." In: Zeitschrift für Ausländerpolitik und Ausländerrecht(7): 231-236.

DGB-Bildungswerk (2002). Rechte aus dem Arbeitsverhältnis. Arbeitnehmer und Arbeitnehmerinnen ohne Aufenthalts- und/oder Arbeitserlaubnis. Schriftenreihe Migration und Arbeitswelt No. 11 Dez / 2002, Düsseldorf: DGB-Bildungswerk (www.joerg-alt.de/Hilfe/DGBBildungswerk.pdf)

European Council (2003). "Council Directive 2003/86/EC of 22 September 2003 on the right to family reunifiation." Official Journal of the European Union(L 251): 12-18.

European Council (2003). "Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-counrty nationals who are long-term residents." Official Journal of the European Union(L 16): 44-53.

Federal Ministry of the Interior (2000). Policy and Law Concerning Foreigners in Germany. Berlin: Federal of Ministry of the Interior.

Federal Republic of Germany (2003). National Action Plan against Poverty and Social Exclusion 2003-2005. Berlin.

Federal Republic of Germany (2004). Strategies to Enhance Social Integration. National Action Plan against Poverty and Social Exclusion 2003-2005. Update 2004. Germany's Contrtribution to the First European Social Protection and Social Inclusion Report. Berlin.

Feldgen, D. (2003). "Zugang zum Arbeitsmarkt nach dem Zuwanderungsgesetz." In: Zeitschrift für Ausländerpolitik und Ausländerrecht (4): 132-139.

Glaab, M. and Sesselmeier, W. (2005). Experimentierfeld Deutschland? Reformstrategien auf dem Prüfstand. Gutachten für die Abteilung Arbeit und Sozialpolitik der Friedrich-Ebert-Stiftung. Bonn.

Göbel-Zimmermann, R. (2005). Die Freizügigkeit der Unionsbürger und ihrer Familienangehörigen unter besonderer Berücksichtigung der Unionsbürgerrichtlinien und des Freizügigkeitsgesetzes/EU. In: Migration-Online, 17.05.2005 (www.migration-online.de/beitrag._cGlkPTIzJmlkPTI5MDQ_.html)

Heitmeyer, W., R. Dollase, et al., Eds. (1998). Die Krise der Städte. Analysen zu den Folgen desintegrativer Stadtentwicklung für das ethnisch-kulturelle Zusammenleben. Frankfurt am Main, Suhrkamp.

Heitmeyer, W., J. Müller, et al. (1997). "Desintegration und islamischer Fundamentalismus: über Lebenssituation, Alltagserfahrung und ihre Verarbeitungsform bei türkischen Jugendlichen in Deutschland." In: Aus Politik und Zeitgeschichte(B 7/8): 17-31.

Heitmeyer, W., J. Müller, et al. (1997). Verlockender Fundamentalismus. Türkische Jugendliche in Deutschland. Frankfurt am Main, Suhrkamp.

Hirsch, B. (2005). Der “Krieg gegen den Terror” und das deutsche Ausländerrecht, in: Migration und Soziale Arbeit 2/2005: 116-121.

Hönekopp, E. (2004). Arbeitsmarktentwicklung, Arbeitskräftebedarf und arbeitsmarktorientierte Einwanderungssteuerung. In: Cyrus, Norbert (ed.), Zwischen dosierter öffnung und verschärfter Kontrolle. Arbeitsmöglichkeiten für Migrantinnen und Migranten in Deutschland, Berlin: Friedrich Ebert Stiftung, 24-36.

Huber, B. (2005). Das neue Ausländerrecht. In: Migration und Soziale Arbeit Nr. 2/2005: 100-106.

Hunger, U. (2003). "Brain drain oder brain gain: Migration und Entwicklung." In: Migration im Spannungsfeld von Globalisierung und Nationalstaat. Leviathan Sonderheft. Edited by D. Thränhardt und U. Hunger,: 58-75.

Hunger, U. (2004). ""Brain Gain". Theoretical Considerations and Empirical Data on a New Research Perspective in Development and Migration Theory." In: IMIS-Beiträge(24): 213-221.

Katzenstein, P. J. (1987). Policy and Politics in West-Germany: The Growth of a Semisovereign state. Philadephia.

Kolb, H. (2004). "Covert Doors: German Immigration Policy between Pragmatic Policy-Making and Symbolic Representation." In: IMIS-Beiträge(24): 129-136.

Kühne, P. (2005). Aufenthalts- und Lebensperspektive: Weiterhin brüchig. Flüchtlinge im neuen Zuwanderungsrecht. In: Migration und Soziale Arbeit 2/2005: 122-131.

Krüger-Potratz, M. (2004). Bildungspolitik, Schule und Schulsozialarbeit in der Einwanderungsgesellschaft. In: Treichler, A. and N. Cyrus (eds.): Handbuch Soziale Arbeit in der Einwanderungsgesellschaft, Frankfurt: Brandes und Apsel: 204-230.

Leiprecht, R. (2005). Populismus und Polarisierung in den Niederlanden. In: Migration und Soziale Arbeit 2/2002: 141-152.

Marshall, B. (2000). The New Germany and Migration in Europe. Manchester and New York, Manchester University Press.

Meier-Braun, K.-H. (2002). Deutschland, Einwanderungsland. Frankfurt am Main, Suhrkamp.

Ohliger, R.; and U. Reiser (2005). Integration und Migration in Berlin. Zahlen – Daten - Fakten. Berlin: Beauftragter des Senats für Integration und Migration.

Renner, G. (2004). "Vom Ausländerrecht zum Zuwanderungsrecht." In: Zeitschrift für Ausländerpolitik und Ausländerrecht(8): 266-275.

Rudolph, H. (1996). "The new Gastarbeiter system in Germany." In: New Community 22: 282-300.

Sachverständigenrat für Zuwanderung und Integration (2004). Migration und Integration - Erfahrungen nutzen, Neues wagen. Jahresgutachten 2004, Nürnberg: BAFL.

Unabhängige Kommission Zuwanderung (2001). Zuwanderung gestalten - Integration fördern. Bericht der Unabhängigen Kommission Zuwanderung. Berlin: Bundesministerium des Innern.

Vitt, V. and Heckmann, F.: Dokumentation. Migration und Migrationspolitik in Deutschland 1998-2000. In: Bade, K. and R. Münz (eds.): Migrationsreport 2000, Frankfurt am Main: Campus, 223-278.

Vogel, D. (2003). Die Niederlande als Einwanderungsland. Rahmenbedingungen, aktuelle Politik und Stand der Integration von Allochthonen. In: Einwanderungsland Niederlande - Politik und Kultur, edited by D. Vogel. Frankfurt a.M., IKO-Verlag: 23-58.

Vogel, D. and A. Wüst (2003). Paradigmenwechsel ohne Instrumentenwechsel? Kontinuität und Wandel im Politikfeld Migration. In: Sozial- und Wirtschaftspolitik unter Rot-Grün, edited by M. Seeleib-Kaiser and A. Gohr. Wiesbaden, Westdeutscher Verlag: 265-286.

Wagner, S. and J. Powell (2003). Ethnisch-kulturelle Ungleichheit im deutschen Bildungssystem – Zur Überrepräsentanz von Migrantenjugendlichen an Sonderschulen. In: Wie man behindert wird, edited by Cloerkes, G., Heidelberg, 183-208.

Migration Policy Group
Rue Belliard 205, box 1
B-1040 Brussels
Tel. +32 2 230 5930
Fax. +32 2 280 0925
email: info@migpolgroup.com
www.migpolgroup.com