

Germany

Amendment Act marks continued hostility towards foreigners and second generation immigrants

Decades of restrictive handling of asylum and migration rules have, in Germany as in the rest of the EU, led to a large number of asylum seekers and migrants living permanently without a secure legal status. Forced into illegality, undocumented migrants are economically marginalised and often excluded from basic social services that help to meet a decent standard of living with regard to housing, food, clothing, health care, legal advice, education and training. As a result of this structural violation of migrants' basic rights in Europe, the *sans papiers*, asylum and migrant rights groups in Germany and other EU countries are demanding the regularisation of undocumented migrants and rejected asylum seekers living in the EU without a secure residency status.

Germany has now introduced the possibility of regularisation for a certain group of these *de facto* residents, as well as introducing a plethora of amendments to existing residency and family reunion laws in the name of EU harmonisation. However, the overall reform package introduced with the Immigration Amendment Act, which came into force on 28 August this year and claims to implement eleven EU migration and asylum Directives, (1) was received by migrant communities and asylum rights associations with serious criticism. For one, the legal changes continue to favour highly-skilled workers over and above refugees and those deemed economically worthless for the economy. Then the government presented the law as a straightforward implementation of EU law into national law, whilst legal experts argue it fails to do just that. Furthermore, certain restrictions in family reunification procedures are presented as an instrument in the fight against trafficking and forced marriages, which is perceived by human rights campaigners as cynical as it fails to implement typically humanitarian and generous aspects of the EU Directives whilst introducing unrelated immigration restrictions. However, it was particularly the restriction of family reunion and compulsory integration courses which created discontent in the migrant communities and are criticised as hostile towards the integration of Muslims. Turkish associations have therefore announced legal action with the Federal Constitutional Court to test the new rules.

Regularisation of *de facto* residents

The Amendment Act (2) reforms existing laws on residency, freedom of movement, asylum procedures, the foreigners' database and citizenship. With regard to the regularisation of long-term undocumented *de facto* residents, the Amendment Act follows a decision by the regional interior ministers' conference in November last year, (3) which for the first time introduced the possibility of large-scale regularisation in Germany. The regional regulation grants third country nationals who have been living without interruption for six (families) or eight (individuals) years the right to apply for a residency permit until 17 May 2007. Applicants had to prove they could support themselves financially, whilst families with small children were granted certain exceptions with regard to employment. Although the introduction of residency rights for long-term *de facto* residents is generally seen as a positive move by the government towards the integration of foreigners, the preconditions applied to qualification are so strict and exceptions and exclusions in practice so far-reaching that it is estimated that only half of the estimated 170,000 to 190,000 migrants concerned will be able to receive residency (4). Preliminary statistics have shown that depending on the situation in the employment market in the

different regional states, the acceptance quota is between 2.7% and 31.5%. (5) The low acceptance quotas are explained by the various criteria for exclusion, particularly the precondition of finding work.

The residency provision passed by the regional interior ministers' conference was taken over by the Amendment Act and is thereby now regulated at the federal level, with one important difference, namely, that applicants initially do not have to be employed to receive a residence permit until the end of 2009. Until then, they are given time to support themselves financially and their situation will be reassessed. The federal regulation, however, also restricts the application to a time limit. According to the Federal Interior Ministry, the regional regularisation has led to 14,750 persons receiving a residency permit so far and a further 28,000 received the status of toleration with the possibility to seek employment; 25,000 applications have not yet been decided on. (6) The new application deadline under the federal regulation was set for 31 September 2007.

Disqualification criteria stop large-scale regularisation

Alongside the above named restrictions, if applicants are found by the aliens' authorities to have committed an act that constitutes a reason for deportation, they can be excluded from the regulation. These acts are, however, typically violations of asylum or citizenship regulations that only third country nationals are able to commit: for example, applicants who are found not to own a passport, can be, and already have been, excluded. (7) Given that it is difficult or impossible for many refugees to obtain a passport from their embassies, and given that more than half of the target group for the residency regulation do not have identity documents – that often being the reason they cannot be deported and that they received the status of toleration – this exception is perceived as cynical by refugee groups. Another case documented by the Bavarian Refugee Council is that of an asylum seeker who travelled twice to a neighbouring town without permission from the aliens' authorities and was fined 1,800 EUR, which disqualified him from the residency regulation. (8) The aliens' authorities are also given discretionary powers to find that an applicant in the past has not cooperated sufficiently with the authorities in their attempt to deport him or her, which constitutes a reason to exclude persons from the residency regulation.

An inherent problem with these reasons for disqualification is not only that the acts that constitute a violation can only be committed by asylum seekers and third country nationals, thereby not constituting actual criminal law violations in the traditional sense. It is also problematic that an aliens authority's assessment of the violation is sufficient to find someone "guilty", as the violation does not have to be tested in court; a mere procedural offence is given the status of a criminal offence under aliens law. Furthermore, even though the violations are defined as "reasons for deportation", asylum seekers are still excluded from the residency regulation if no deportation order is issued as a result of the offence. (9)

Pick and choose from EU law – the race to the bottom

The Amendment Act claims to implement the EU Council Directive on the definition of refugee status, content of refugee status, and subsidiary protection (hereafter Qualifications Directive) (10). All major asylum rights organisations in

Germany, however, argue that important protection provisions of the Qualifications Directive are not implemented: the comprehensive Articles defining refugee status (Chapters 2 to 4 Qualifications Directive), for example, are squeezed into one paragraph, whilst subsidiary protection principles (Chapters 5 and 6 of the Qualifications Directive) are added to the existing text with only a few sentences. Similarly, the Qualifications Directive criteria for refugee protection are transposed as "additional" provisions, rather than applied directly. Critics argue this violates the principle of EU law offering substantive rights rather than merely guidelines for the interpretation of existing national laws. (11) Last but not least, Article 15(c) of the Qualifications Directive, (12) which defines "serious harm" as a qualification for subsidiary protection, is transposed but simply omits the words "indiscriminate violence". This criterion for qualification of subsidiary protection particularly concerns civil war and internal armed conflict. Such a drastic shortening of the legal text and deliberate omissions clearly weaken protection standards and fall short of the Qualifications Directive. Continued exceptions and discretionary powers of asylum authorities to define reasons for exception from protection, such as the unwillingness of asylum seekers to cooperate, furthermore stand in contradiction to substantive protection rights. (13) Finally, references to religious persecution and conscientious objectors, as laid down in the Directive, are not explicitly transposed.

Dublin II and "integration" used to increase deportation powers

Apart from the Qualifications Directive, the existing Dublin II Regulation, (14) which allocates responsibility for examining an asylum application to Member States and obliges them to take back applicants who are irregularly in another Member State, is also taken as an opportunity by the German government to implement restrictive changes in its Asylum Procedures Law. Given that the necessary implementation of EU Directives is the proclaimed aim of the Amendment Act, the reference to Dublin II indicates that EU law is generally taken as an opportunity to introduce unrelated restrictive changes in national law: Dublin II is a directly applicable EU Regulation that came into force in 2003 and for the past seven years, law-makers have not found it necessary to change national laws in order to apply the Regulation. The main change introduced here is the abolition of the possibility to apply for an emergency procedure to stop a deportation. An asylum applicant falling under Dublin II is now treated under procedural law as having an "unfounded application" which leads to the immediate invocation of a deportation order, automatically excluding any emergency measures that could put a stop to the deportation. (15) Alongside increasing deportation powers, the refusal of entry of asylum seekers is facilitated by changing existing law that lays down that it has to be *certain* that an asylum seeker is entering from a safe third country, to that there are *indications* to that effect. This weakening of the text, however, considerably increases the possibility that entry is refused whilst the responsibility of another Member State has not been established and therefore works against the proclaimed aim of the Regulation to stop the "refugee in orbit" phenomenon.

More deportation powers are also introduced under amended residency provisions related to integration measures. If foreigners are found to be hostile to integration, they can be sanctioned and deported. Already the 2005 Amendment Act increased constitutionally questionable powers to deport so-called "hate preachers", i.e. fundamentalist imams. (16) These powers are further increased, as orders can be issued to persons who are found to create or increase hatred amongst children or youth towards members of other ethnic minorities, persons who stop others "in a despicable manner" from taking part in

economic, cultural or societal life, and persons who force or attempt to force a person into marriage. Whilst the intention to foster integration, protect victims of abuse and combat racial hatred, can only be welcomed, it is questionable that these aims will be achieved by way of deportations. The introduction of evidence-based procedures to identify abuse, the improvement of substantive rights, and the support of migrant organisations promoting emancipation and equality rather than fundamentalist viewpoints, on the other hand, might help to achieve them. (17) Furthermore, the failure to clearly define the violations that constitute reasons to deport provides aliens' authorities with far-reaching interpretation remits.

Victims of torture, health care, travel restrictions

The Amendment Act fails to explicitly implement any of the provisions contained in the Reception Conditions Directive, which defines minimum standards for the reception of asylum seekers. (18) This means that the rights of victims of torture are not protected by national law as laid down in Article 20 of the Directive, which says that "Member States shall ensure that, if necessary, persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment of damages caused by the aforementioned acts."

This implies that applicants who are found to have suffered these forms of violence must first receive psychological and other medical support before being forced into the regular asylum trajectory. In order to assess if the applicant falls under this provision, Member States have to implement proper procedures to identify victims of torture and violence, which many EU Member States have so far failed to do. Asylum rights groups in Germany are also demanding the suspension of all accelerated airport procedures for asylum seekers who might be victims of torture and violence and grant them entry until their case has been assessed. (19)

Furthermore, the right to "necessary" health care (Article 15(1) Reception Conditions Directive) only applies to "acute" illnesses in the national law regulating social security for asylum seekers in Germany. The comprehensive rights for persons in need of special care as laid down in Articles 15(2) and 17-20 of the Reception Conditions Directive are also not implemented. (20) Finally, social security provisions for asylum seekers are worsened by the Amendment Act. As in most EU Member States, asylum seekers are granted less social security than the minimum standard applicable to citizens. The period in which asylum seekers receive less, however, is restricted to a time period, which has now been increased from 36 to 48 months.

The Reception Conditions Directive unfortunately followed the example set by Germany and fails to uphold a citizen's right to freedom of movement within a state (21) for asylum seekers, as it allows Member States to confine asylum seekers in designated areas (Article 7). However, German law sanctions "repeated violations" of the travel restriction ban with up to one year imprisonment or a fee amounting up to Euro 2,500 (i.e. constituting a criminal offence), whilst the Reception Conditions Directive only allows sanctions "applicable to serious breaching of the rules of the accommodation centres as well as to seriously violent behaviour" - a much stronger definition than "a repeated violation". Furthermore, the Directive mentions sanctions only in relation to the "Reduction or withdrawal of reception conditions", which fall under procedural and not criminal law. A case is therefore made by legal experts that these criminal law sanctions violate EU norms and should be abolished. (22)

The right to family life restricted

As mentioned above, the most controversial issue surrounding the Amendment Act is family reunification and compulsory integration measures. Under the new law, family reunification is

made dependent on language tests, an assessment whether the marriage is "genuine" and economic means testing of the resident spouse. Similar to legal changes introduced in the Netherlands last year and recent French proposals, spouses may now only join their partner if, on arrival in Germany, they would not be obliged to follow an integration course. In practice, this means they have to have "adequate" knowledge of the German language, which in turn puts a *de facto* stop to family reunification if the spouse in question cannot speak German and is not able to successfully follow a German language course in his or her country of origin. The German law-makers have thereby twisted the non-binding Article 7(2) of the EU Family Reunification Directive, (23) which holds that "Member States may require third country nationals to comply with integration measures, in accordance with national law", into an obligatory precondition that is furthermore applied even *before* entry. Particularly controversial was the exclusion of those countries from this provision that Germany has visa agreements with. These typically include industrialised countries such as the USA, Canada, Israel and Japan.

Next to structural barriers to learning the German language in migrants' countries of origin, asylum advocacy groups point out: "Not only are people from middle and lower class backgrounds discriminated here by law, but also people from specific countries of origin, because the Amendment Act explicitly excludes citizens of the USA, Canada, Israel and Japan from this regulation, as it finds "the immigration of citizens of these states lies in Germany's special migration-political interest."" (24) The reference to Germany's migration-political interest refers to the reasoning used by the government when it justified the move with the argument that the immigration of citizens of the exempt states lies in Germany's interest and that "existing privileges [are granted] on grounds of special close economic relations" between Germany and the named states. (25) Again, legal experts argue the restrictions will lead to violations to the right to family life as laid down in the EU Directive, Articles 6(1,2) of the German constitution and Article 8(1) of the European Convention of Human Rights.

Forced "integration", citizenship and the construction of national culture

Integration-related measures form a large part of the legal changes, the term "integration" being used 70 times in the amended Residency Act. New measures allow for integration courses to be made compulsory and introduce sanctions if they are not followed. Now not only the participation but the "successful participation" in integration courses is made a precondition for residency and other rights and the aliens' authority can order foreigners to take part in integration courses by "administrative fiat" (*Verwaltungszwang*). Receiving social benefits is now a reason for authorities to demand participation in an integration course, as is an identified "special need of integration".

The compulsory approach towards integration has also led to strong criticism and concerns about the cultural bias of the Amendment Act, which migrant groups argue is hostile towards integration rather than promoting social cohesion or supporting migrants through the provisions of useful information. Particularly the arbitrary wording of "in special need of integration" is criticised as indirectly referring to Muslims. A perceived failure to integrate and the belief that "integration" can be enforced through courses teaching a "national culture", rests on ideological foundations that many argue has racist tendencies. As studies on the nature of fascism and new far-right tendencies in Europe have pointed out, (26) after the discrediting of race theories in the post-fascist era, many sociologists and far-right thinkers have since reconstructed 19th century thought on racial variation by substituting "race" with "culture", whereby it is

often assumed and sometimes actively promoted that fundamental and incommensurable differences exist between "cultures" (Huntington's clash of civilisations theory is but one example). 'Culture', in popular and academic discourse, has come to define ethnically and religiously distinct groups as, if not inferior, then certainly *different* from each other, which in turn is often used by authorities to explain social conflict in today's industrialised societies. This position typically mystifies actual political and economic power structures within and across states, the contestation of which often takes cultural forms. When using the term "national culture" today, which cultural integration courses do, it cannot be ignored that European "culture", certainly German "culture", has historically been defined by Europeans as superior to other cultures and it comes as no surprise that a far-right ideologue, Henning Eichberg, who fights against the "global American TV civilisation" and for a "German Germany", helped to coin the term "national culture" in post-war Germany. "Identity is always collective identity", he wrote in 1978, "it constitutes itself on grounds of demarcation, insight into the Other, the foreign and its idiosyncrasies".

A worrying development here is that under the new immigration rules, public authorities are not only given powers but are obliged to notify the aliens' authorities and exchange personal data of foreigners who are identified by them as "in need of special integration", without defining what this "need" entails, again providing authorities with unchecked powers of interpretation. The potential of this provision to lead to racial discrimination makes it a highly questionable and likely to violate racial equality principles. The data protection violations committed in the reporting of such identification needs is another denial of foreigners' privacy rights in a long list of unchecked data collection mechanisms (e.g. SIS II, Eurodac and the German Central Foreigners' Register AZR).

Further restrictions in the citizenship law will make it more difficult for foreigners to naturalise. Apart from "sufficient" knowledge of the language and the "legal and societal order and living conditions in Germany", young people under 24 years of age who apply for citizenship (typically second generation migrants who were born and brought up in Germany) are no longer excluded from the obligation to prove they can support themselves financially before qualifying. Moreover, spouses or partners of German citizens are now obliged to speak German before qualifying for naturalisation. The Turkish community will particularly feel the effect of the novel imposition of language tests on spouses before they qualify for family reunification as well as the requirement for spouses of German citizens to speak German before qualifying for citizenship. In their joint position on the Amendment Act, Turkish associations criticise the above restrictions as "neither necessary with regard to integration politics, nor reasonable, and [the language requirement for spouses of German citizens will lead] to different legal positions within the family". (27)

Anti-trafficking veneer

The government presented the reforms as a step up in the fight against human trafficking. Rather than following guidelines by anti-trafficking NGOs or the Council of Europe in this respect, who generally recommend strengthening the human rights of trafficked persons, improving identification mechanisms, and prevention by means of facilitating legal migration routes, the German government finds restricting family reunification an adequate tool to counter trafficking and forced marriages. A new provision gives authorities the power to refuse family reunification if they suspect that the marriage exists for the sole purpose of migration or residency ("*Scheinhe*"). This, together with increasing the minimum age for spouses to qualify for family reunification from 16 to 18 is argued to protect women from trafficking and forced marriages. (28) In their common

declaration against the Amendment Act, Turkish associations warn that the provision legitimises existing prejudices and gives the authorities powers to violate the privacy of those concerned. They also see a danger that it "will lead to the recurring and unlawful refusals of entry." (29) Although the law foresees a temporary residency permit for victims of trafficking, this is only under the precondition that she or he collaborates in criminal proceedings against the perpetrator. Furthermore, the minimum reflection period for the victim is merely one month, which the authorities can handle at their discretion. The minimum period recommended by the EU Experts Group on Trafficking in Human Beings is three months. (30)

The proposed policy has no basis in evidence as parliamentary questions (31) revealed: the police do not yet register cases of forced marriages separately and there is no concrete empirical evidence to prove that the right to family reunification enables or enhances forced marriages. (32) The government's reference to "practitioners" claiming that marriage on false grounds (*Scheinehe*) is a "problem" is not only vague but curious, given that practitioners in the anti-trafficking field have demanded for years now that the phenomenon of trafficking is partially created and certainly exacerbated by restrictive immigration legislation. The legal right to migrate and, moreover, the right to work in countries of destination would protect potential victims from abuse as they are not so dependent on irregular entry channels. The improvement of working conditions and the rights of undocumented workers in sectors that are notorious for being linked to the trafficking industry (e.g. sex industry, low-income agricultural and garment sector) is another practical and much-cited demand by practitioners. Even the IOM is urging states to provide more legal immigration channels in an effort to combat trafficking. "It is [the] tension between the intense demand for labour and services on the one hand, coupled with too few legal migration channels on the other that creates opportunities for intermediaries. When the demand is for cheap labour and cheap services specifically, the human trafficker steps into the breach," Ndioro Ndiaye, Deputy Director General of IOM, recently observed. (33)

The government's reasoning is cynical also because despite intense lobby efforts by NGOs and recently the Council of Europe through its Campaign to Combat Trafficking in Human Beings, Germany has not yet ratified the Council of Europe's *Convention on Action against Trafficking in Human Beings*, which is due to enter into force. (34) Anti-trafficking organisations have urged governments to ratify as the Convention as it is not exclusively an instrument for combating organised crime, (35) but could ensure better protection of the rights of trafficked persons by providing governments with comprehensive guidelines on how to combat trafficking. But rather than introducing sound protection mechanisms for victims of trafficking or forced marriage, which would allow for a stronger position of people to escape slavery-like working and living conditions, the Amendment Act remains restrictive in its approach.

Global migration management: selecting the useful, waging war against the unwanted

In line with the by now common call for more flexible labour migration routes necessary to ensure Europe's competitiveness in the global and fast-changing market economy, Germany has made another attempt to combine conservative electoral politics with neo-liberal flexible labour demands. Through the partial implementation of EU Directives 2004/114/EC (36) and 2005/71/EC (37), residency and mobility of foreign students and researchers are made more flexible. However, third country nationals still have to earn 85,000 EUR per annum if they want to qualify for a residency permit; independent investors now have to invest 500,000 EUR instead of 1 million and create at

least five new staff positions instead of ten in order to qualify for residency. At the same time as introducing more flexible rules concerning highly skilled workers, powers for authorities to pass sanctions against undocumented workers and employers using undocumented migrants' labour are increased with fines and up to one year imprisonment. (38) Furthermore, research institutes have to sign an agreement to take over any costs related to the possible return of the third country nationals employed by them; a provision which trade unions argue violates the EU Directive 2005/71/EC. (39) The trade union umbrella organisation *Deutscher Gewerkschaftsbund* (DGB) has demanded lowering the minimum wage for qualifying for a residency and work permit, improving the perspectives for foreign students to receive a long-term residency permit, and facilitating the immigration of highly qualified workers by way of a points system. (40) Germany's restrictive approach to labour migration, expressed in unfavourable reception conditions and denial of family reunification, has reportedly kept would-be immigrants away, (41) but liberalisation attempts continue to be sabotaged by the conservative parties who pander to, or promote, nationalist and racist sentiments.

Conclusion

In summary, it can be said that the Amendment Act will have far-reaching consequences for migrants and refugees living in Germany as well as German nationals with an ethnic minority background. Whilst for long-term *de facto* residents with an insecure residency status, the Amendment Act contains certain improvements when compared to the regional residency regulation, the residency regulation contains a series of exemptions which when scrutinised, are disproportionate and lie in the decision power of individual aliens' agencies, therefore providing wide remits for refusal. Legal experts particularly criticise the failure to implement EU Directives concerning asylum and migration. The scope and nature of the critique make it likely that the legality of the Amendment Act will be tested in courts and the failure to implement EU Directives within the given timeframes might also lead to fines imposed by the EU Commission. The strong opposition to the Amendment Act, not only by asylum and migrants' rights groups but especially the Turkish community, indicates the extent to which the German government has failed to promote integration and yet further alienate the estimated 7 million foreigners living in Germany. The joint declaration by Turkish organisations points out that "integration processes should not be shaped by threatening sanctions or the threat of ending residency, but have to convince with their content. The integration courses cannot be degraded to an instrument of sanction. Instead of threatening with sanctions, those who successfully follow these courses should receive a residency permit and be naturalised much more swiftly." (42)

In the context of the debate that dominated the EU in 2000/2001 on the economic need to accept more labour immigration, former French interior minister Jean-Pierre Chevènement once said that if EU governments wanted to succeed in liberalising their immigration laws, "public opinion needs to be enlightened and convinced, and more so in countries of recent immigration than others". (43) Germany's successive failed attempts at immigration law reform might indicate that it is not only the general public that is "in need of enlightenment" but rather the governments themselves. The 2005 Immigration Amendment Act led to the introduction of far-reaching security measures as more liberal proposals were watered down in the parliamentary process. Similar to the recent changes, the proclaimed aims of the Amendment Act of 2005 were the facilitation of skilled labour immigration, the integration of foreigners and the inclusion of EU guidelines in asylum law. In reality, however, the asylum law in particular was considerably restricted and labour immigration was enabled only for

entrepreneurs with vast amounts of starting capital. (44) Both the 2005 and the 2007 Acts promote a general hostility towards asylum seekers and a utilitarian approach to migrants by reducing their contribution to society as a whole to their economic usefulness. By reducing the human factor to the economic factor and combining selective entry with an inhumane treatment of poor refugees and undocumented migrants from the global South, the host society itself is damaged. The current treatment of migrants as well as human labour fosters social, economic and racial exclusion, in its turn leading to social fragmentation and racial tension affecting society as a whole. The fact that the regularisation of long-term *de facto* residents has been "bought" with the parallel introduction of restrictive measures that are generally hostile towards integration, will impact negatively on the social climate in Germany and the relationship between migrants and their not so welcoming host society.

Footnotes

1. Namely, EU Directives 2002/90/EC (28.11.02), 2003/86/EC (22.9.03), 2003/110/EC (25.11.03), 2003/109/EC (25.11.03), 2004/38/EC (29.4.04), 2004/81/EC (29.4.04), 2003/9/EC (27.1.03), 2004/83/EC (29.4.04), 2004/114/EC (13.12.04), 2005/71/EC (12.10.05), 2005/85/EC (1.12.05)
2. Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union [Law Implementing European Union Residency and Asylum Directives], BT-Drucksache 16/5065, 23.04.07. The government's white paper of 28 March became final on passing the second and third reading by the Lower House of German Parliament on 14 June.
3. The Decision (Bleiberechtsbeschluss der IMK vom 17.11.06) was passed at the interior ministers' conference in November last year and is published at <http://www.stmi.bayern.de>
4. Pelzer, M. (20.5.07) Wenig Humanität - viele Restriktionen. Bleiberecht für Geduldete [Little humanity – many restrictions. The right to remain for those with toleration status], in *Tendenz*, published at <http://www.linksnet.de/>
5. *Süddeutsche Zeitung*, 26.6.07. A full statistical overview is published at <http://www.bleiberechtsbuero.de/>
6. Bundesministerium des Innern (29.8.07) Reform des Zuwanderungsgesetzes ist in Kraft getreten [Reform of Immigration Act in force], published at <http://www.bmi.bund.de/>
7. See <http://www.bleiberechtsbuero.de/?p=145> for a case study.
8. See <http://www.bleiberechtsbuero.de/?p=161> for a case study.
9. See Kabis, M. (March 2007) Passlosigkeit und Verletzung von Mitwirkungspflichten als Ausschlussgrund für ein Bleiberecht nach dem IMK Beschluß vom 17.11.2006 [The failure to own a passport and the violation of the obligation to cooperate as reasons for exclusion for a right to remain according to the IMK Decision from 17.11.07], published at <http://www.proasyl.de/>
10. OJ L 304/12, 30.9.04
11. See PRO ASYL et al. (March 2007) "Gemeinsame Stellungnahme zu dem Entwurf des Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union in der Fassung vom 8. Februar 2007", [Common position paper on the draft law on the implementation of residency and asylum guidelines of the European Union, version 8 February 2007] available at <http://www.proasyl.de/>
12. Article 15(c) defines serious harm as a "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict" (OJ L 304/19, 30.9.04).
13. Article 24(2) of the Qualifications Directive grants persons who qualify for subsidiary forms of protection a residence permit, "which must be valid for at least one year and renewable, unless compelling reasons of national security or public order otherwise require." Article 25(3) AufenthG, however, still outlines exceptions, such as the unwillingness to cooperate with the authorities or if the removal to a third country is "possible and reasonable". This provides asylum authorities with the discretion to refuse residency for refugees who qualify for subsidiary protection and is not in accordance with the text of the Qualifications Directive.
14. OJ L 50/1 (25.2.03).
15. See Marx, R. (16.5.07) Stellungnahme zum Entwurf eines Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union vom 23. April 2007 BT-Drs. 16/5065 [Position on the draft law on the

implementation of residency and asylum Directives of the European Union], p.36, published on <http://www.ramarx.de/>

16. See Pelzer, M. (2005) *Fremden-Polizeirecht: Anti-Terrorismus und Zuwanderungsgesetz* [Aliens Police Law: Anti-terrorist legislation in Germany's new Immigration Act], in *Bürgerrechte & Polizei/CILIP*, issue 80 (1/2005), pp. 21-26.
17. See a detailed analysis of and opinion on these provisions by the trade union position paper *Deutscher Gewerkschaftsbund* (15.5.07) *Stellungnahme zum Entwurf des Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union*, beschlossen vom Bundeskabinett am 28. März 2007, published at <http://www.bilisim.de/>
18. Council Directive 2003/9/EC (27.1.03), OJ L 31/18, 6.2.02.
19. PRO ASYL et al. (March 2007) (id.), page 8-9.
20. PRO ASYL et al. (March 2007) (id.), page 8.
21. Article 13 of the Universal Declaration of Human Rights states that "Everyone has the right to freedom of movement and residence within the borders of each state."
22. Marx, R. (16.5.07) (id.), page 43.
23. 2003/86/EC (22.9.03), OJ L 251/1
24. Flüchtlingsrat (Refugee Council) Baden-Württemberg press release (6.7.07), *Teuer erkaufter Kompromiss hilft zu wenig Geduldeten* [Costly compromise helps too few with status of "toleration"], published at www.fluechtlingsrat-bw.de/
25. BT-Drucksache 16/5201 (id.).
26. Heni, Clemens (2007) *Salongfähigkeit der Neuen Rechten. "Nationale Identität", Antisemitismus und Antiamerikanismus in der politischen Kultur der Bundesrepublik Deutschland 1970-2005* [Acceptance of the New Right. "National identity", Anti-Semitism and Anti-Americanism in the Federal Republic of Germany 1970-2005", Tectum Verlag, Marburg.
27. <http://www.tgd.de/index.php?name=News&file=article&sid=687&theme=Printer>
28. BT-Drucksache 16/5065 (id.), p. 152.
29. Türkische Gemeinde in Deutschland et al., Joint press release (10.7.07), published at <http://www.tgd.de/>
30. Report of the Experts Group on Trafficking in Human Beings, 22.12.04, European Commission, Directorate-General Justice, Freedom and Security.
31. BT-Drucksache 16/5201 (27.4.07), published at <http://dip.bundestag.de/btd/16/052/1605201.pdf>
32. BT-Drucksache 16/5498 (25.5.07), published at <http://dip.bundestag.de/btd/16/054/1605498.pdf>
33. Published at www.iom.int
34. Seven countries have so far ratified: Albania, Austria, Georgia, Moldova, Romania, Slovakia and Bulgaria.
35. See NGOs urge to ratify Convention, Joint press release by La Strada International et al. (3.5.2007), available at <http://lastradainternational.org>
36. OJ L 375/12, 32.12.04.
37. OJ L 289/15, 3.11.05.
38. BT-Drucksache 16/5065 (id.), page 49, amending the Law Combating Illegal Employment (Schwarzarbeitsbekämpfungsgesetz) from 23.7.04 (BGBl. I p. 1842).
39. For a detailed critique of the transposition of this and other labour-related norms, see *Deutscher Gewerkschaftsbund* (15.5.07) (id.).
40. *Deutscher Gewerkschaftsbund* (15.5.07) (id.).
41. See *Financial Times* (19.4.00) Indian IT specialists lukewarm over Germany's invitation or Kolb, H. (2003) 'Ein Jahr "Green Card" in Deutschland: Ein Blick zurück - ein Blick nach vorn' in *Hunger & Santel* (eds.) *Migration im Wettbewerbsstaat*, Leske + Budrich, Opladen.
42. Türkische Gemeinde in Deutschland et al. (id.).
43. *The Guardian* (28.7.00) Europe 'should accept' 75m new migrants
44. See *Statewatch* bulletin (Vol. 15 no 2, March-April 2005, pages 17-18) for a detailed outline of the 2005 Act.

**This article first appeared in Statewatch
bulletin, Vol 17 no 3/4
ISSN 1756-851X**