

Statement regarding developments in Germany concerning migrants' rights

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Ladies and gentlemen,

First of all thank you very much for inviting me here.

With this statement, I would like to inform you regarding the recent developments in Germany concerning migrants' rights.

On January 1<sup>st</sup> 2005 migration legislation was adopted in Germany which limits the rights of migrants, especially with regard to the perpetuation of residence permits, family unification and citizenship law.

On August 28<sup>th</sup> 2007 the second change to this immigration law introduced even more restrictions with respect to the above mentioned areas.

I shall now concentrate my remarks on some essential features:

We unfortunately have to be aware that reluctant semantic steps forward of some political parties stating for example "yes we are an immigration country", "but not in the classical sense" or the re-naming of certain laws (the "foreigners' law" for instance became the "residence law") did not have positive sociological effects in Germany. The sociological climate is decisive for a pluralistic integration policy.

General Questions

The area in question is extremely complex and is frequently and unsystematically changed by the legislative.

The new regulations set up a line of defence, the rights of migrants are generally left to the discretion of the authorities while the provisions not in favour of the migrants are designed as binding rules.

While evaluating the migration law, the legislative followed restrictive tendencies even in cases of contradicting judgements.

Politically promised improvements concerning the evaluation did not take place. We fear that the legal basis for "Kettenduldung" (practice of not deporting foreigners without granting them a residence permit) will be utilized much more often after the introduction of the new changes.

An ideological u-turn took place concerning family unification of German citizens. Until now, the law tried to exclude German nationals from the cruelties of legislation directed at foreigners. For instance, husbands and wives of German nationals do not pay for prolonging their residence permit and are granted an unlimited (concerning time and content) working permission immediately.

The legislative has now found out about the "not real" German, who are financially not well off. It is tried to introduce separation lines between "real"/"not real" Germans and between "poor"/"rich" Germans.

As soon as an unspecified regulation is specified or applied in favour of the persons in question (for instance "sufficient language skills"), the law-maker finds a new unspecified regulation providing authorities who do not want to naturalize foreigners with extra

instruments of denial: The law-maker tries to introduce “knowledge about living conditions” as a precondition for naturalization. What are “living conditions”?

### **Citizenship law**

The restrictions introduced in this area do not stem from directives of the EU.

A short while after the reunification, national voices became heard more loudly in Germany. Terrible assaults in Rostock-Hoyerswerda, in Mölln and in Solingen followed. Migrants and refugees were burnt alive. The world laid a critical eye on Germany.

To prevent Germany from loss of international reputation, the Federal Republic of Germany introduced a right to naturalization. The architect of this regulation was the then Minister for Interior Affairs, Dr. Schäuble, who also currently holds this office.

The majority of German politicians has never really accepted this reluctant and tactically motivated move. Thus, they try to render this regulation actually ineffective by introducing high hurdles (for instance qualified language skills) and conditions hard to define (for instance thought tests).

There are only two exceptions from this ongoing process: the so-called “children’s naturalization” and the shortening of the preconditional time of legal stay which were both introduced by the former government.

### Abolishment of special regulations for young people up to 23 years

The abolishment of privileges granted to people under the age of 23 serve the aim of factually completely abolishing the right to naturalization.

Our youth, which suffer most from discrimination in the areas of education, job training and in the working sector in general, has to prove that they are working or in a job training program when applying for naturalization.

It should be well known that many people cannot find a job or enter a job training program because of discrimination.

### Residential Regulations upon Loss of the German citizenship

Since January 1<sup>st</sup> 2000, the German citizenship is lost if another nationality is accepted by the bearer without previous permission. The loss occurs by law in the moment another citizenship is granted.

Countrywide, approximately 50.000 people – predominantly persons of Turkish origin – are affected by this fundamental change of the law.

Until the residence law entered into force on January 1<sup>st</sup> 2005, there was no regulation how to deal with the affected persons.

The treatment of those former German citizens is a scandal in terms of integration policy: people, who showed by their naturalization that they had become part of the German society, are not only legally foreigners now but were awarded a much less qualitative residence permit compared to the status they had before gaining the German citizenship.

A temporary rule is needed for all those who were not informed about these consequences by the authorities. Other people affected by this regulation need at least to be granted the same status they had before naturalization.

The regulations in the foreigners’ law must be changed in the sense that former German nationals get the highest possible status for foreign residents, the “Niederlassungserlaubnis”. Moreover, the naturalization of retired persons should be possible without language examinations and permitting double citizenship.

Art 38 para. 1 s.1 creates two categories of German citizens, who are treated differently upon loss of citizenship. This infringes upon Art. 116 para. 1 of the German constitution which

states that “German citizens are Germans” and upon the general rule of equality provided for in Art. 3 para. 1 of the constitution.

## **Integration**

### Restrictions concerning Family Unification

#### - History of the Family Unification Directive:

The Minister for Interior Affairs of the former government pressured to make the EC-Directive concerning family unification more restrictive. This Directive violates the right to have and maintain a family. Positive elements within the scope of this Directive were not utilized.

#### - The condition of “simple” German language knowledge concerning family unification of German citizens and of foreigners (Art. 30 and 28 para. 1 s.4 of the draft of the residence law):

According to the draft, family unification shall only be possible if the husband or wife coming from a foreign country has certain knowledge of the German language. Naturally, it is good if such knowledge is existent before immigration. But there are many regions in the world where the attendance of language courses is either impossible or unaffordable for average people. The right to found a family should also apply without restriction to people who have less education and financial resources.

It is not for the legislature to restrict the suitable poor partners for marriage to EU citizens.

The right to family life belongs to the first generation of fundamental freedoms. To pose the successful attendance of integration courses of a special level as a precondition for family unification infringes upon the German constitution and upon the obligations of Germany under international law.

#### - Family unification for German nationals abroad:

Under special circumstances, German citizens can be advised to unify their families abroad.

The given reasons for the draft law say: “Special circumstances do exist concerning persons, who can bear the burden of family unification abroad. This applies especially to double citizens concerning the state of their second nationality and to German nationals who have lived in the country of origin of their husband or wife and speak the local language.”

With this regulation, two classes of German nationals are created: “real” and “not real” Germans. This must be understood as an ideological fight against double citizenship.

This regulation violates Art. 11 in conjunction with Art. 6 and Art. 2 of the German constitution. Art. 8 of the ECHR should also be mentioned here.