SMU | Dedman School of Law

SMU Law Review

Volume 53 | Issue 2 Article 10

January 2000

Fifty Years of the Basic Law - Migration, Citizenship, and Asylum

Kay Hailbronner

FIFTY YEARS OF THE BASIC LAW—MIGRATION, CITIZENSHIP, AND ASYLUM

*Dr. Kay Hailbronner**

I. INTRODUCTORY REMARKS

GERMANY has one of the largest immigration populations in the world. In 1998, approximately 7.32 million foreigners were living in Germany, making up approximately nine percent of the total population.[1] Compared to other European countries, Germany ranks fourth after Luxembourg, Switzerland, and Belgium.[2] The number of foreigners has increased from 686,000 in 1960 to 7.32 million in 1998, which is an average yearly increase of 200,000 to 300,000 people. Most foreigners come from Turkey (28.8 percent), the Federal Republic of Yugoslavia (9.8 percent), Italy (8.4 percent), Greece (5 percent), Poland (3.9 percent), Croatia (2.9 percent), Bosnia (2.6 percent), and Austria (2.5 percent). Only 25.1 percent of all foreigners living in the Federal Republic of Germany were EU citizens. The percentage of foreigners from former Yugoslavia has been constantly rising and achieving a new peak with the large number of Kosovo-Albanians taking up a permanent residence in Germany immediately before or during the recent military conflict.

In 1997, about 30 percent of all foreigners had already lived in Germany for twenty years or longer, 40 percent for more than fifteen years, and almost 50 percent for more than ten years. Today, almost two thirds of all foreign children born to immigrants were born in Germany and will spend most of their youth there. Statistically, they are registered as foreigners even although they may well be third generation Germans.

Naturalizations have never been prevalent, however, due to some efforts to facilitate the naturalization procedures, they have substantially increased. The rate of naturalizations in Germany has increased from 0.3 percent to 1.2 percent since 1996, which means that 1.2 percent of the foreign population *acquired* citizenship. Asylum seekers account for a large part of the immigration into Germany. In 1992, at the peak of the asylum seeker movement, Germany, with 438,000 asylum seekers, admit-

* Law School, University of Konstanz, Germany; LL.M., Montreal, Canada.

1. *See Beauftragte der Bundesregierung für Ausländerfragen*, 18 DATEN UND FAKTEN ZUR AUSLÄNDERSITUATION 7 (1999). See annex thereto for a discussion of the share of foreigners in the population of the European Union (EU).

2. For the statistical survey, see *Mitteilungen der Beauftragten der Bundesregierung für Ausländerfragen*, DATEN UND FAKTEN ZUR AUSLÄNDERSITUATION (1998); B ZAHLEN, BUNDESMINISTERIUM DES INNERN, AUSLÄNDER IN DEUTSCHLAND, Statistiken, Fakten (1997).

ted the majority of all asylum seekers coming to the EU. Although Germany has reformed its law, it is still one of the primary destinations of asylum seekers. In 1998, 98,700 asylum seekers were registered in Germany, compared to 21,800 in France, 4,700 in Italy, and 57,700 in Great Britain.

The fathers of the Basic Law could hardly foresee such a development. Nobody could have imagined such a large immigration into a country destroyed by the war and deeply shattered by its recent history. No one could have predicted that Germany, with its record of human rights violations and genocide, would become a major European country of immigration. And yet, it was precisely this history of totalitarianism, war, separation and the expulsion of large parts of the German population from Eastern Europe that prompted the constitutional rules for migration, asylum, and citizenship. Anybody who was persecuted on political grounds was granted a right of asylum. Unlike many other basic rights, the right of asylum was granted without any limitation or statutory reservation. The freedom of movement of all Germans, including those Germans living outside the Federal Republic, became the constitutional basis for German nationals and persons suffering expulsion due to their German ethnic origin. This freedom, however, was not granted without limits. The fathers of the Constitution were aware of the danger of a large, uncontrolled migration. Therefore, freedom of movement was granted, but granted subject various to restrictions, so as not to cause financial burdens on the community from such migration.

With respect to the migration of foreigners, the Basic Law of the newly founded republic made no explicit provisions. Therefore, admission and residence of aliens remained within the prerogative of the legislature and the executive. This does not mean that the Basic Law is completely silent on issues of migration and the rights of aliens. Basic human rights and institutional guarantees, similar to the provisions under which special state protection is given to marriage and family, quickly became an important constitutional guideline for issues of family reunion and expulsion. As a rule, however, the Basic Law reserved some important constitutional rights to Germans. These rights include: the freedom of movement, the right to choose occupation and profession, and the right to assemble peacefully and to form associations. Foreigners were not included in such constitutional guaranties. However, with the development of Germany into a de facto immigration country, constitutional attempts have been made that provide long-term residents with the same constitutional rights afforded German citizens.

Citizenship remains a major concern of the Basic Law since German nationality law had been one of the major instruments of totalitarian rule used to dispel ethnically and racially unwanted Germans. On the other hand, the law had to make provision for the large number of Germans living outside the Federal Republic. German nationality thus became an indispensable element of German unity beyond the territorial division.

II. MIGRATION

The Basic Law had very little reason to be particularly concerned about foreigners, primarily because there were so few in Germany. Further, refugees were almost immediately admitted to German citizenship, due to their ethnic, cultural, or linguistic affiliation to Germany. This affiliation, in terms of an ethno/cultural community, allowed such refugees to be treated as part of the German "nation."[3] By reserving some constitutional rights, the Basic Law has opted for a distinction between general human rights granted to anybody and constitutional rights reserved to citizens. In accordance with traditional theory, migration and the legal status of aliens, with exception of political asylum, were left to the discretion of the legislature.

The distinction between human rights and constitutional rights reserved to Germans has, however, never played a significant role in promoting a restrictive policy for two reasons. First, there has never been a serious constitutional attempt to limit Parliament's ability to grant equal or similar statutory rights to resident aliens. With the recruitment of foreign labor and the gradual, although not planned, development of Germany into a "de facto" immigration country, social rights of aliens, equal treatment in social insurance, as well as a right to assemble and to form associations were extended to foreigners without any major political problems. The Constitutional Court interpreted Article 2 of the Basic Law, as giving everyone a right to self-fulfillment via a subsidiary human rights clause. This permitted aliens seeking to challenge statutory or administrative restrictions of their legal rights to have access to the Constitutional Court.[4]

Second, the Basic Law is open to international laws as reflected in its Article 25, which grants priority status for the general rules of public international laws as well as outlines its commitment to international treaties. Overtime, this openness has become a substantial factor in establishing a constitutional framework for determining migration issues.[5]

The implications of public international law are by no means free of conflicts. There have been and are still divergent opinions on the interpretation of international treaties, which are relevant to migration issues. A recent example of this are the various interpretations of the term "inhuman treatment," which is contained in Article 3 of the European Con-

3. See GRUNDGESETZ [Constitution] [GG] art. 116(1), which states: Deutscher im Sinne dieses Grundgesetzes ist vorbehaltlich anderweitiger gesetzlicher Regelung, wer die deutsche Staatsangehörigkeit besitzt oder als Flüchtling oder Vertriebener deutscher Volkszugehörigkeit oder als dessen Ehegatte oder Abkömmling in dem Gebiete des Deutschen Reiches nach dem Stande vom 31. Dezember 1937 Aufnahme gefunden hat; *cf.* KAY HAILBRONNER ET AL., STAATSANGEHÖRIGKEITSRECHT: KOMMENTAR, art. 116, no. 5 (2d ed. 1998) [hereinafter HAILBRONNER, STAATSANGEHÖRIGKEITSRECHT].

4. *See* BVerfGE 35, 382 (399); BVerfGE 49, 168; BVerfGE 78, 179 (196); *cf.* MICHAEL SACHS, GRUNDGESETZ: KOMMENTAR 139 (1996).

5. For the minimum standard of protection of aliens, see BVerfGE 59, 280 (283); BVerfGE 63, 332 (338); BVerfGE 60, 253 (303); BVerfGE 67, 43 (63).

vention on Human Rights.[6] On the whole, however, international legal norms, as interpreted by the European Court of Human Rights (in matters of protection of the family or of aliens facing torture or inhuman treatment), were incorporated into German legal theory and practice. Although, under the Basic Law, international treaties do not have the rank of constitutional law, the Constitutional Court has constantly applied a doctrine of presumption in favor of compliance with the international law obligations of the Federal Republic.[7]

Finally, the European integration, based upon Article 23 of the Basic Law, had, by far, the largest impact on migration and asylum issues. This was true not only with the establishment of the freedom of movement for union citizens and their relatives, but also with the transfer of sovereignty in almost all matters of immigration and asylum. The Amsterdam Treaty has irrevocably put an end to the national immigration and asylum policy.[8] We do not yet know what a European immigration policy will eventually be like in five or ten years time. The Amsterdam Treaty has only now just become effective, and it will require tremendous efforts to implement, due to the unanimity requirement and the five-year term of the member states. It is evident that, even at the present state, when there is still a German migration policy, European implications are predominant for any major political decision in migration and asylum issues. This will also affect, if not determine, the Basic Law parameters for migration and asylum law.

III. GERMAN MIGRATION LAW AND POLICY

If we take a closer look at the German migration policy, we will find a similar pattern of development toward a more or less unwanted immigration. This is due to guest-worker recruitment, subsequent family reunification, and somewhat uncontrolled, economically-driven, mass migration movements.[9] One could forever speculate whether it would have been possible and morally acceptable to maintain a rotation system, as originally planned. However, with the admission of large numbers of recruited workers, and subsequently, their family members, immigration did occur though every German government has insisted that Germany is not an immigration country. These governments seem to be saying merely that Germany's migration policy is not directed toward immigration. Germany, a "reluctant land of immigration," as Philip Martin has

6. For the jurisprudence of the Federal Administrative Court (FAC) decision of April 15, 1997, see *NVWZ: Neue Zeitschrift für Verwaltungsrecht*, NEUE JURISTISCHE WOCHENSCHRIFT 1127 (1997). For the controversy between the European Court of Human Rights and the Federal Administrative Court, see KAY HAILBRONNER, DIE ÖFFENTLICHE VERWALTUNG 617, 620 (1999) .

7. *See* BVerfGE 6, 309 (362); BVerfGE 41, 88 (120).

8. For a survey, see Kay Hailbronner, *Emigration and Immigration Law*, 1 EUROPEAN J. OF MIGRATION AND L. (1999), 68 NORDIC J. OF INT'L L. (1999).

9. *See* Philip Martin, *Germany: Reluctant Land of Immigration*, GERM. J., AM. INST. FOR CONTEMPORARY GERM. STUDIES (1998).

called it,[10] had difficulties legally coping with large numbers of migrant workers who had remained in Germany for so long that Germany could properly be described as their homeland, even though the vast majority of them remained foreign citizens.

The Aliens Law of 1965 was still very much preoccupied with the legal status of aliens under the aspect of protection of public order and security. Rights of aliens and immigration were more or less disregarded, while the unique situation of permanent residents and their family members was not even recognized.[11] Aliens were considered temporary visitors and were permitted to remain in the country so long as neither market needs nor the general interest to prevent immigration outweighed this allowance.

However, with the Aliens Law of 1990,[12] different categories of aliens, such as temporary visitors, students and seasonal workers, permanent residents, family members, and humanitarian refugees receiving temporary protection. Although the law still did not provide for an immigrant status it indirectly acknowledged an immigrant status by providing for individual rights to obtain a permanent resident status and by substantially reducing administrative discretion to terminate the residence of long term aliens or those who had been born or brought up in Germany.

The Constitutional Court has played a significant role in the development of a diversified pattern of residence rights, primarily by using the Basic Law's protection clauses in favor of marriage and family and by using general constitutional principles of proportionality. In 1987, the Court dealt with residence permits, which required a spouse to wait three years before being allowed to receive one.[13] The Court argued that, although Article 6 of the Basic Law, which protects marriage, did not establish an individual rights of family reunification for foreign spouses or children in the Federal Republic of Germany, the courts and alien authorities were obliged to properly consider the protection of marriage and family in every decision on family reunification. Therefore, the three-year waiting period requirement, enacted to check the growing family reunification, was considered unconstitutional. The Court, however, did not challenge a one-year waiting period in order to prevent sham marriages, nor did it challenge the requirement that family reunification is only possible if a foreigner has already spent a period of eight years in Germany.[14] The Court explicitly rejected any quota regulations with regard to family reunification. It argued that treatment of family

10. *See id.*

11. For a survey of the historical development, see GÜNTER RENNER, AUSLÄNDERRECHT IN DEUTSCHLAND: EINREISE UND AUFENTHALT 27 (1998) [hereinafter RENNER AUSLÄND].

12. *See generally* GÜNTER RENNER, AUSLÄNDERRECHT IN DEUTSCHLAND: KOMMENTAR (7th ed. 1999) [hereinafter RENNER KOMMENTAR]; KAY HAILBRONNER, AUSLÄNDERRECHT: KOMMENTAR (20th Supp. Aug. 1999).

13. *See generally* BverfGE 76, 1.

14. *See id.* at 65.

members, according to a "waiting-in-line principle," would hardly be compatible with the constitutional protection of marriage and family under Article 6 of the Basic Law, since such a principle would not allow for sufficient consideration of the individual circumstances of every case.[15] This decision has been the basis of numerous court decisions on the implications of Article 6 of the Basic Law regarding questions of entry, residence, and expulsion.[16]

The protection granted, under constitutional principles, has been gradually extended to any kind of family relationship, including adopted minor children or the right of a father to maintain a family relationship with his illegitimate child.[17] Although the Court has always insisted that marriage or family does not grant an unlimited right of residence or of family reunification, the constitutional requirement to draw a proper balance between private and public interests substantially contributed to reducing the traditional concept of a state's sovereign right to decide on the entry and residence of foreigners. Eventually, the new Aliens Law of 1990 granted the right of family reunification without any waiting period but still subject to certain conditions. In general, the requirements for the subsequent immigration of dependents are: (1) that a foreigner who has been living in Germany maintain a residence permit or a right of unlimited residence; (2) that there be sufficient living space for the family; and (3) that the maintenance of the dependents be secured from the gainful employment of the foreigner, their assets, or other means of their own.

Spouses of first generation foreigners, who held rights of unlimited residence, and who had been living in Germany, and who held residence permits when the new Act came into effect, will be granted a residence permit, provided the marriage already existed and was confirmed at the time they came to Germany.[18] Foreigners of the second and following generations (i.e., those born or raised in Germany) may also bring their spouses to Germany, provided they have an unlimited residence permit or a right of unlimited residence, have lived in Germany for eight years, and are of age. While typically foreigners had no legal rights to come to Germany, in order to join their foreign spouse, they may now be admitted at the discretion of the competent authorities. This, however, is conditioned upon the spouse having a residence permit or a residence title for specific purposes and that the general requirements for the immigration of dependents (such as providing for sufficient living space and independent means of support) are fulfilled.[19] Foreigners may be admitted, in order to join a family member who holds a residence title granted for exceptional reasons, only on urgent humanitarian grounds.

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15. *See id.* at 65-66.

16. *See* RENNER AUSLÄND at 438; GÖBEL-ZIMMERMANN, ZEITSCHRIFT FÜR AUSLÄNDERRECHT UND AUSLÄNDERPOLITIK 170 (1995).

17. *See* BVerfGE 80, 81; HANS D. JARASS & BODO PIEROTH, GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND: KAMMENTAR (2d ed. 1992).

18. *See* § 18 para. 1, no. 3.

19. *See* § 18 para. 2.

Until they reach the age of sixteen, unmarried children from non-EU states are legally entitled to immigrate, in order to join their parents living in Germany. This requires that both parents lawfully reside in Germany.[20] However, on urgent humanitarian grounds, children may be permitted to immigrate subsequently in order to join parents holding an exceptional residence title. In special cases, unmarried children may immigrate subsequently until they attain age eighteen or come to Germany to live with a single parent.[21]

A major issue of concern with respect to the German migration policy has been the rights of spouses after a divorce or separation. Originally, spouses lost their right of residence in this situation. The new Aliens Law of 1990 provided for an independent residence right for spouses, regardless of separation or divorce, if the marriage lasted for at least four years or if the husband died during the marriage. A hardship clause has been introduced in cases where it would be unacceptable to terminate the residence of a husband. This provision is continuously challenged by human rights advocates, who argue that women, in particular, are risking a loss of residence right if a divorce occurs.

The Federal Administrative Court was recently faced with the issue of whether unmarried and homosexual couples should receive the same constitutional protection as is granted to married couples. The Federal Administrative Court decided that while quasi-marriages cannot be brought under the constitutional protection of marriage, they still may enjoy the constitutional protection given to families.[22] The exact implications of this decision are yet to be examined. The European Parliament, as well as the European Commission's proposals on a European Union Policy on migration, have suggested the inclusion of unmarried couples into the scope of family reunion for EU citizens when the host member state recognizes the legal status of unmarried couples for its own nationals.[23] The question arises whether equal treatment would substantially raise the number of foreigners arguing for a right of family reunification. In order to enjoy equal treatment, a formal registry procedure appears to be an indispensable requirement for a privileged residence right.

General constitutional principles on proportionality[24] have frequently been used by the Constitutional Court to curtail the administrative power to refuse a renewal of a residence right or expel a foreigner for reasons of public order. In 1979, the Federal Administrative Court had already pointed out that a foreigner after many years of lawful residence could

20. *See* § 20 para. 2.

21. *See* § 20 para. 3-5.

22. *See* BVerfGE 100, 287; *see also* ADMINISTRATIVE APPEAL COURT OF HESSEN, NEUE ZEITSCHRIFT FÜR VERWALTUNGSRECHT 55 (1994); WEGNER, DIE NICHTEHELICHE LEBENSGEMEINSCHAFT IM DEUTSCHEN AUSLÄNDERRECHT 106 (1998).

23. *See* Communication from the Commission to the Council and the European Parliament of July 1, 1998, COM(98)403 final, at 9; Proposal for a Council Regulation of July 22, 1998, COM(98)394 final, at 12.

24. *See generally* BVerfGE 35, 382; BVerfGE 49, 168; BVerfGE 50, 166; BVerfGE 51, 386; *see also* RENNER, AUSLÄNDERRECHT, at 603.

not be expelled for minor offences. There must be serious reasons to deprive a foreigner of his economic and social existence established in Germany.[25] A large jurisprudence dealing with the issue of balancing the legitimate interests of foreigners with public order has deeply influenced the new provisions on expulsion in the Aliens Law of 1990. The general power to expel a foreigner for public order violations has been substantially restricted in cases where foreigners enjoy a secure residence status or an unlimited residence permit. The law now provides for a complicated system of protection for foreigners who were born in Germany or who immigrated as children of migrant workers. Generally speaking, only serious offenses may justify expulsion.[26] The Parliament, however, has not yet followed a recommendation put forward by the European Parliament and supported by a minority of the judges of the European Court of Human Rights,[27] whereby foreigners, born or brought up in the host country, enjoy absolute protection against expulsion. Even in cases involving very serious criminal offenses, the European Court of Human Rights has seriously restricted the right of contracting states to expel foreigners who have lost their ties with their home country.[28]

The jurisprudence of the Federal Administrative Court and Constitutional Court, however, did not fundamentally challenge the Basic Law's distinction between the basic rights of Germans and the human rights granted to everyone. Despite this, numerous attempts have been made to argue that the Basic Law could not possibly have foreseen the development of Germany into a "de-facto" immigration country. And that, therefore, the constitutional distinction between foreigners and Germans has become obsolete.[29] The Constitutional Court has never taken up this line of argument. A somewhat more moderate approach promotes a gradual constitutional assimilation of foreigners with immigrants eventually obtaining equal constitutional rights. Article 3 of the Basic Law, which grants equality before the law, was used to argue in favor of a constitutional recognition that Germany had become a country of immigration and that its immigrants should receive equal social and, at least on the regional level, political rights. The predominant constitutional theory, however, has insisted that in spite of Germany's development into a de-facto immigration country, there was no obligation to provide for a

25. *See* BVerfGE 59, 112 (114); *see also* HAILBRONNER, AUSLÄNDERRECHT, at 362.

26. See generally sections 47 and 48 of the Aliens Law.

27. *See generally* Beljoudi v. France, 234 Eur. Ct. H.R. (ser. A) (1992).

28. *See generally* Moustaquim v. Belgium, 193 Eur. Ct. H.R. (ser. A) (1991); Berrehab v. Netherlands, 138 Eur. Ct. H.R. (ser. A) (1988). For a comparative study of law and practice in European countries, see GROENENDIJK ET AL., SECURITY OF LONG-TERM RESIDENTS (1998).

29. For a comprehensive discussion of the constitutional rights of aliens, see Karl Doehring & Josef Isensee, *Die staatsrechtliche Stellung der Ausländer in der Bundesrepublik Deutschland*, 32 VERÖFFENTLICHUNG DER VEREINIGUNG DEUTSCHER STAATSRECHTSLEHRER 7, 50 (1974); Josef Isensee & Paul Kirchhoff, *Handbuch des Staatsrechts der Bundesrepublik Deutschland* 664 (1992); C. Tietze, *Constitutionalism, Universalism and Democracy—a comparative analysis*, *in* LAW AND MEDICINE IN GERMANY 199 (1999).

constitutional rights assimilation of foreigners.[30] It was rightly argued that the Constitution did not prohibit the granting of equal rights, but the factual situation of foreigners did not, as a matter of "superior constitutional principles," imply a "constitutional rights assimilation."

The Constitutional Court, in a landmark decision of October 31, 1990, which involved the granting of political rights on the communal level to foreigners in Hamburg, struck down the Hamburg law as unconstitutional. The Hamburg Law provided foreigners with the right to vote in local elections.[31] The court argued that, according to Article 20 of the Basic Law, all public authority emanates from the people. This provision requires that the "people," within the context of the Constitution, is comprised of all German citizens. The Court explicitly refused the argument that the factual immigration into Germany changed the constitutional concept of democracy and the exercise of political rights by the people. The Constitutional Court recognized that there is a basic democratic requirement of convergence between those possessing political rights and those persons subject to the exercise of state power. This convergence, however, is a task for the legislature. By reforming the citizenship law, the legislature can react to factual changes in the population of the Federal Republic of Germany.

As a reaction to the fact that Germany has become a de facto country of immigration, there have been increasing demands by political parties in the *Bundestag*, particularly by the Liberal Party and the Social Democratic Party, for an immigration law.[32] The basic idea behind such a demand is that the previous political doctrine, whereby Germany is not a country of immigration, is to be replaced by a comprehensive immigration policy. Such a policy would set different quotas and create special categories of immigrants, possibly in combination with an overall limitation of immigration. Another goal of such drafts concerns a policy of integration for those persons who would receive immigrant status. By establishing a special immigrant status, immigrants would then be granted special rights and obligations. They should, therefore, also receive individual rights for financial assistance, a special residence permit, and the right of naturalization.

Enactment of an immigration law that with respect to immigration itself is to be regulated by quota, is an illusion. In the best case, a large bureaucracy will administer quotas which have no practical relevance at all for factual immigration. In the worst case, the creation of an immi-

30. *See, e.g.*, Josef Isensee, *Die staatsrechtliche Stellung der Ausländer in der Bundesrepublik Deutschland*, 32 VERÖFFENTLICHUNGEN DER DEUTSCHEN STAATSRECHTSLEHRER 50, 81 (1974).

31. *See generally* BVerfGE 83, 60; BverfGE 83, 37 (discussing the Statute of Schleswig-Holstein).

32. For a discussion of the different legislative proposals, see Kay Hailbronner, *Aus Politik und Zeitgeschichte*, BEILAGE ZU ADAS PARLAMENT, B 46/97; *Das Manifest der 60*, DEUTSCHLAND UND DIE EINWANDERUNG (Klaus J. Bade ed., 1994); EINWANDERUNGSLAND BUNDESREPUBLIK DEUTSCHLAND IN DER EUROPÄISCHEN UNION, SCHRIFT DES INSTITUTS FÜR MIGRATIONSFORSCHUNG (A. Weber ed., 1997).

grant status will create substantial attraction and induce economic migrants to move to Germany and apply for an immigrant status. As a matter of fact, there will be a substantial immigration, with or without immigration legislation, by way of family reunification, admission of refugees, and freedom of movement within the European Union, particularly from the newly acceding eastern European states. There is no possibility whatsoever of preventing or substantially regulating such immigration. Every serious economic analysis shows that, in the foreseeable future, there will be no demand for unskilleed labor in a situation of high unemployment in Germany, as well as in almost all western European neighboring states.

It is also questionable whether the goal of better regulation of immigration may be achieved by utilizing quotas and the establishment of an immigrant status. The real reason for such skepticism is that the legal and political scope of discretion is substantially lower than would be necessary for the effective control and limitation of further economically unwanted immigration and not because of EU laws and policy. Contemporary Germany is in a much different situation than the Germany of forty years ago when a rapidly expanding economy urgently needed new labor. Immigration control based on economic factors would have to substantially change the legal and political parameters, restricting, for instance, family reunification or humanitarian admission of de facto refugees or the individual constitutional right of asylum seekers. Proponents of an immigration legislation have indicated that they are prepared to accept such conclusions. If there is to be more effective control of immigration, it would have to be precisely determined according to a point system based on professional qualifications, where categories of de facto immigrants would be restricted in order to replace such immigrants with economically better suited immigrants. Otherwise, every immigration legislation would simply remain an illusion, and not be applicable due to a permanent exhaustion of quotas. The coalition agreement between the Social Democratic Party and the Greens did not address the idea of controlling immigration by quotas in spite of previous legislative proposals and resolutions by the Social Democratic Party.

There is a legitimate interest in giving foreigners immigrating into Germany a perspective guaranteeing their gradual integration into the political and social system of Germany. To that extent, Germany's migration policy lacks rules. It is necessary to provide clear guidelines concerning the integration policy and to provide a perspective of acquiring equal rights by the foreign population living permanently in Germany. The correct way is by changing the citizenship laws as well as facilitating naturalization. Likewise, policies which increase the possibility of improving the educational level and professional training of foreigners must be implemented to guarantee equal opportunities of these foreigners.

IV. CITIZENSHIP

Unlike migration, the regulatory competence for citizenship has remained within the sovereignty of member states. The Amsterdam Treaty has made it clear that the political structure, as well as citizenship, do not fall within the competence of the European Union. There have been arguments in connection with the recent reform of the citizenship law that a substantial increase of dual nationals, by introducing a *jus soli* for children of immigrants, may violate the basic principle of community law to respect the interests of the community and the other member states.[33] It is argued that an increase in the number of German citizens, as a result of the German citizenship reform, has substantial consequences, such as enlarging the personal scope of application of the Union treaty by granting Union citizenship to a substantial number of former third country nationals. A closer analysis of the European Court's rulings shows that this argument is without merit. In *Micchelettí*,[34] the court clearly emphasized the right of every member state to regulate its own citizenship law and the obligation of every other member state to recognize such regulations. Thus, an Italian-Argentine dual national, born in Argentina and living in Argentina, must be recognized as a Union citizen by Spain. The somewhat casual remark of the Court, that every member state is entitled to determine its own citizenship "subject to community law" can hardly be used as an argument against the extension of German citizenship to children born in Germany to immigrant parents. Acquisition of nationality by *jus soli* has been introduced in a majority of EU member states.[35] There is no solid basis for the assumption that community law is implicitly based on the *jus sanguinis* principle.

The Basic Law, in Articles 16 and 116, has relatively little to say on the content of citizenship legislation, except that nobody may be deprived of German citizenship. The Basic Law, however, makes clear that loss of citizenship against one's will may only occur pursuant to law and only if the person affected does not thereby become stateless.

Again, German history has clearly been at the cradle of this provision.[36] The drafting history shows that the clause was intended to prevent any repetition of legislative or administrative acts, similar to Nazi legislation depriving Jews of their German citizenship.[37] Applied today in a very

33. *See* Rupert Scholz & Arnd Uhle, *Staatsangehörigkeit und Grundgesetz*, 21 NEUE JURISTISCHE WOCHENSCHRIFT 1510, 1514 n.58 (1999).

34. Case C-369/90, Michelettiv Delegación del Gobierro en Cantabria, 1992 E.C.R. I-4239; *see also* Andreas Zimmermann, *Europäisches Gemeinschaftsrecht und Staatsangehorigkeitrecht der Mitgliedstaaton unter Berüksichtigung der Probleme mehrfacher Staatsangehërigkeit*, 30 EUROPARECHT 54 (1995).

35. *See* F. Sturm, DAS STANDESAMT 225 (1999); GÜNTER RENNER, ZEITSCHRIFT FÜR AUSLÄNDERRECHT UND AUSLÄNDERPOLITIK 49 (1993); Kay Hailbronner, *Einbürgerung von Wanderarbeitnehmern und doppelte Staatsangehörigkeit*, BADEN-BADEN (1992).

36. For a comment on the Basic Law's provision on citizenship, see GÜNTER RENNER, ZEITSCHRIFT FÜR AUSLÄNDERRECHT UND AUSLÄNDERPOLITIK 50 (1993).

37. *See generally* KAY HAILBRONNER, STAATSANGEHÖRIGKEITSRECHT: KOMMANTAR (1998) [hereinafter HAILBRONNER, STAATSANGEHÖRIGKEITSRECHT].

different context, the general prohibition of deprivation of German citizenship raises extremely difficult issues of interpretation. There are a number of different theories on where to draw the line between a constitutionally admissible involuntary loss of German citizenship and the unconstitutional deprivation of citizenship. The Constitutional Court has decided that the loss of German citizenship, as a result of an intentional acquisition of a foreign nationality, is constitutionally admissible. It may well be confronted with the issue of depriving German citizenship under the new citizenship law, in connection with those dual nationals who, having acquired German citizenship by birth on German territory (*jus soli*), cannot show that, by the age of twenty-three, foreign citizenship has been renounced.

The July 15, 1999 law, reforming the nationality law of 1913, passed by the *Bundestag* and *Bundesrat*,[38] with the consent of the *Bundesrat*, does not change the basic rule that German nationality is acquired by descent. As a matter of fact, the principle of acquisition of nationality by descent is an inherent part of all western European countries as well as the United States. The major point of reform is that, in the future, children born in Germany to foreign parents acquire German citizenship by birth, provided that one parent has been a permanent resident in Germany for at least eight years and has a permanent residence permit. It follows that with the acquisition of German nationality by *jus soli* children of immigrants will typically acquire dual citizenship because they will acquire one or more of the nationalities of their parents. Contrary to a previous draft of the federal government the current law does not provide for a permanent dual nationality. According to the "option model," dual nationals, who acquired German nationality by *jus soli*, must chose between Germany and their foreign nationality when they reach the age of adulthood. German nationality is lost automatically if a dual national cannot show the renunciation of their foreign citizenship by the age of twenty-three. There are exceptions for those persons who may, for legal or factual reasons, not be able to renounce their citizenship, such as when a home state makes renunciation dependent on unacceptable conditions.

The option can be exercised only by *jus soli* nationals, while other dual nationals, such as children of mixed marriages or even children of a *jus soli* dual national, do not have to opt. This may lead to somewhat strange results when the parents lose their German nationality by the age of twenty-three, while their children never lose their German nationality, even if they move out of Germany immediately after birth.

The law also provides for substantial facilitations of naturalization. Foreigners with a secure residence permit have a right to acquire German citizenship after eight years of residence instead of the fifteen-year wait period for those without secure resident permits. This right is dependent upon a sufficient knowledge of the German language and a formal com-

38. BGBl. II S. 1618 (1999).

mitment to respect the Basic Law. The principle to renounce foreign citizenship is maintained although there are various exceptions. A major exception applies when renunciation of foreign citizenship would result in serious economic or financial disadvantages. The new law also provides for a special rule concerning renunciation of foreign citizenship for Union citizens. Subject to reciprocity, Union citizens may be naturalized without being obliged to give up their former nationality.

The extension of German citizenship to children born on German territory to foreigners means a substantial conceptual change. For proponents of the reform legislation, it is a modernization of a historical dimension. For adversaries, it is a fundamental change endangering the identity of the German nation. These adversaries see the legislation as a form of revolution, by which the government selects the people from which it derives its legitimacy, as opposed to the people electing the government.[39]

German nationality law is based upon the pre-revolutionary nationality law of 1914. The general argument in the political debate has been that German nationality law is antiquated—a relict of an exaggerated nationalism. As a matter of fact, German nationality law has been repeatedly amended not only because of the prohibition of gender-related discrimination, but also as a consequence of the factual development of Germany into a country of immigration. The Aliens Law of 1990 and 1992 had already created rights of naturalization for the first generation of recruited migrant workers as well as for the second generation of immigrants born or brought up in Germany.[40] The usual identification of German nationality law with ethnicity is frequently based upon a superficial knowledge or misunderstanding of German nationality law. The equation of the German people with ethnical affiliation was introduced by Nazi legislation depriving Jews of German citizenship. After the Second World War, the distinction of the term "German" from the term "German citizen" has served as an instrument for granting freedom of movement and fundamental rights to all persons who were expelled because of their cultural and ethnic affiliation with the German nation. With the liberalization of immigration laws in the former Soviet Union, approximately 200,000 "ethnic Germans" and their descendants made use of that privileged access to German citizenship every year. However, those numbers have substantially declined, by now, to approximately 100,000 per year.

Additionally, the concept of German citizenship based on descent has served as an important link for all Germans, whether they were lucky enough to live in the Federal Republic of Germany or whether they became citizens of the newly established German Democratic Republic, which was desperately trying to get its nationality law recognized.

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39. *See* RUPERT SCHOLZ & ARND UHLE, NEUE JURISTISCHE WOCHENSCHRIFT 1510 (1999).

40. See sections 85-91 of the Aliens Law; *see also* HAILBRONNER, STAATSANGEHÖRIGKEITSRECHT, at 505.

The migration movement, which, since the recruitment period, had largely changed the composition of the population in Germany, did produce results in German nationality law well before the reform of 1999. In 1997, approximately 42,000 Turkish nationals were naturalized, a large part of them being dual nationals.[41] This shows that dual nationality is not such a fundamental novelty in German citizenship law, as is sometimes argued.

Nevertheless, the acquisition of German nationality by *jus soli* will fundamentally change the basis of German nationality. One may well argue under what conditions *jus soli* can be considered sufficient criteria for admission to the community of citizens. Traditional immigration societies like the United States do not have to deal with this question. There is no alternative to identification with a community almost exclusively founded and developed by immigrants. In Germany, like in many other western European countries, the situation is somewhat more complicated. Language, culture, and traditional values do play a substantially larger role in shaping the "identity" of the nation than is the case in a society which has always been multi-, or should I say, "pluricultural."

It is not only legitimate, but also politically desirable to consider carefully the implications of a reform of nationality law for the concept of "nation." In the German situation it is, however, important to recognize that the elements determining the identity of a nation, like German language, culture, and tradition cannot be interpreted statically. The identity of the nation can only be maintained if factual changes of the population are duly taken into account. Identity is also defined by a consensus on fundamental values and principles on living peacefully together, as laid down in the Basic Law. Or, to put it differently, exclusion of a substantial part of the population from the political and implicitly social community increases the danger of segregation. Only those foreigners who are accepted in the political community can be expected to act responsibly and to engage fully in the political and social life of the Federal Republic.

Therefore, constitutional objections based on the concept of nation and the principle of democracy[42] are unfounded. The Basic Law does not contain explicit criteria for the regulation of German citizenship law. This does not mean, however, that the legislature is not subject to certain constitutional requirements in determining who may acquire German citizenship. From the concept of nation and democracy, as laid down in the Basic Law, fundamental requirements may be derived for the reform of German citizenship law. Arguing from a historical perspective of German citizenship law that *jus soli* acquisition of German citizenship is constitutionally prohibited because it does not constitute a part of the traditional German citizenship law, does, however, amount to an unac-

41. *See generally Bericht der Bundesbeauftragten für Ausländerfragen*, DATEN UND FAKTEN ZUR AUSLÄNDERSITUATION (1999); DAS STANDESAMT 211 (1999).

42. *See, e.g.*, Scholz, *supra* note 33, at 1510.

ceptable *petitio principii*.[43]

The concept of the German nation is not fixed by traditional criteria of citizenship. The Constitutional Court has convincingly stated that the Basic Law allows the legislature to determine the criteria for acquisition and loss of German citizenship. By changing the citizenship law, the legislature may react to changes in the composition of the population of the Federal Republic of Germany in order to take account of the basic democratic principle that the population permanently living on German territory should be able to exercise its political rights.[44] One may even argue that, under the principle of democracy, the legislature must not remain inactive in the face of a growing gap between those possessing political rights and those living permanently on German territory. The Constitutional Court, therefore, indicated that rather than extending political rights to foreigners, German citizenship law may be extended to foreigners who have established permanent residence on German territory and are, therefore, subject to the state in a similar way as German citizens.[45] It follows that a basic constitutional criteria must be that foreigners acquiring German citizenship are subject to the state in a similar way as are native German citizens. One may derive from this principle further criteria concerning a genuine link to Germany. There can be little doubt, however, that the granting of German citizenship to persons born on German territory, provided that their parents have established themselves permanently in Germany, does constitute a sufficient link for acquisition of German citizenship.[46]

We have to acknowledge that we do not yet know whether the new nationality legislation will contribute to achieve the goals connected with the extension of German citizenship. Further we will not know the answer for decades. However, some of our neighboring states in western Europe have gone similar ways, by granting nationality in extension of the *jus sanguinis* principle.[47] Evidence from the experiences in France, Belgium, and the Netherlands does not indicate that reform of nationality law has been a complete success. However, it is not altogether discouraging either. The risks of a temporary or permanent dual nationality, with respect to legal uncertainty, conflict of loyalties, and multiplication of political rights, have not substantially materialized.

The final test will be whether a reform of nationality law will contribute to the maintenance of the elements stabilizing the "identity" of the nation. The law would be a fundamental failure if it would lead to the establishment of national ethnic minorities with privileged political and social rights. The reform legislation makes clear that together with the requirement of sufficient German language knowledge and a commit-

43. *See id.*
44. *See* BVerfGE 83, 37 (52).
45. *See id.*
46. *See* Kay Hailbronner, *Neue Zeitschrift für Verwaltungsrecht* (1999).
47. *See* Sturm, *Das Standesamt* 225 (1999); KAY HAILBRONNER, EINBÜRGERUNG VON WANDERARBEITNEHMERN UND DOPPELTE STAATSANGEHÖRIGKEIT (1992).

ment to the principles of the Basic Law, admission to the political community is dependent on the intention to integrate into German society.

There are also objections to the reform legislation based on constitutional arguments against the duty to opt.[48] The requirement to opt, from the age of eighteen to twenty-three, in favor of one of the different nationalities does not violate the constitutional provision against deprivation of German citizenship. The clause must be interpreted on the basis of German historical experience with the arbitrary deprivation of citizenship. Loss of citizenship related to intentional and voluntary acts to opt for a permanent affiliation to a foreign state at the age of adulthood can hardly be equated to acts which the founders of the Basic Law had in mind when drafting Article 16 of the Basic Law.

V. ASYLUM

The amendment of the Constitution in 1993, providing the basis for the reform of the asylum law, has been almost as controversial as the reform of the citizenship law, only with different political proponents and adversaries. Following a serious political crisis in 1992, with 438,000 asylum seekers and more than two-thirds of all asylum seekers registered in the member states of the European Union, major political parties finally agreed to change Article 16 by providing for the individual rights of persons who had been persecuted for political reasons to enjoy asylum in the Federal Republic of Germany.[49] Whereas Article 16(a)(1) of the Basic Law still provides for an individual right to enjoy asylum in Germany, Article 16(a)(2) incorporates the concepts of "safe third country" and "safe country of origin" in the constitution. Since all EU member states and countries neighboring Germany are deemed safe third countries, the constitutional right of asylum in principle is no longer applicable to refugees who come to Germany by land. According to Article 16(a)(3), the list of safe countries of origin must be approved by Parliament. The amendment of the Constitution and its subsequent restriction of the right of asylum has been confirmed in all essential parts by three Federal Constitutional Court decisions of May 14, 1996.[50]

Simultaneously, the law of asylum procedure was subsequently amended, providing for a detailed regulation on the right of asylum. Under the new provisions, both the request for recognition as a victim of persecution and the need for protection against deportation to a state in which the refugee is facing persecution are taken into consideration when an asylum application is processed. In addition, a new status was introduced for persons fleeing war and civil war situations. This status for civil war refugees has only recently been applied with regard to Kosovo-Albanians because the federal government and the *Länder* have not been

48. *See, e.g.*, Scholz, *supra* note 33.

49. Kay Hailbronner, *Current Asylum Issues in Germany*, 4.6 UCL, Center for German and European Studies (Aug. 1995).

50. Vol. 94, 49, 115, 166; Frowein/Zimmermann, 1996, 753.

able to agree on the payment of housing and welfare costs for those granted temporary protection. The law also provides for the possibility of ordering a temporary deportation waiver for groups of people staying within the country, either based on a reason of public international law or on humanitarian grounds. To extend the validity of the deportation waiver, the agreement of the Federal Ministry of the Interior must be obtained.

Finally, according to Section 53 of the Aliens Act, the federal office for the recognition of foreign refugees must examine whether the applicant is facing a risk of torture, death penalty, or any violation of the rights laid down in the European Convention on Human Rights. If the risk of being returned to his or her country of origin exists, an asylum seeker is granted a tolerated residence by the aliens office.

The law on asylum procedure has also introduced a special accelerated procedure for airport cases, which is used for asylum seekers coming from safe countries of origin or those without valid passports. In such cases, applicants awaiting a decision on entry into the territory must remain at the airport. A decision on entry must be reached within two days or the applicant will automatically be allowed to enter the territory. If the claim is rejected as manifestly unfounded, entry is refused. The applicant may, however, file an appeal with an administrative court within the next three days with suspensive effect. If the administrative court does not reach a decision within fourteen days, the applicant is allowed to enter the country.

Based on the amendment of the constitutional law, the Asylum Procedure Act also provides for a substantial reduction of judicial remedies and court injunctions. Asylum seekers arriving from safe third countries cannot challenge in court the safety of a safe third country. In addition, according to paragraph 4 of Article 16 a of the Basic Law the implementation of measures terminating a persons sojourn in case of a manifestly improper asylum application may be suspended by a court only when serious doubts exist as to the legality of the measures.

The constitutional amendment depriving asylum seekers arriving from "safe third countries" has been criticized heavily as a factual abolishment of the individual right of asylum granted in Article 16, Section 1. Since Germany is surrounded by safe third countries, no asylum seeker could theoretically reach Germany claiming access to the asylum procedure except by air or sea or parachuting from an airplane. Nevertheless, approximately one hundred thousand asylum seekers are registered every year in Germany due to the fact that, in most cases, the safe third country clause cannot be applied since the safe third country, through which an asylum seeker has arrived, cannot be properly identified. Asylum seekers usually destroy all documents indicating their travel route and will argue that they have no precise knowledge how they got into Germany. In such cases return is impossible due to the lack of a country which would be willing to accept an asylum seeker. It may be easier to grant access to the

asylum procedure in such cases rather than referring the asylum seeker to the legal status of a tolerated person.

For basically the same reasons, the internal EU systems[51] for attributing one EU country's exclusive responsibility for processing asylum seekers (Dublin Agreement) have not functioned satisfactorily. Within the EU system, however, there are clear rules as to which state is exclusively responsible (primarily the state which has issued a visa or a residence permit; lacking a residence permit or visa, it is the state of first entry). The Dublin Agreement frequently cannot be applied due to the lack of willingness of asylum seekers to identify their travel route. The situation may eventually change once the somewhat exaggerated requirements concerning proof of an asylum seeker's nationality and his or her travel route are facilitated and bureaucratic barriers overcome.

The most essential step in the direction of a system of exclusive competence, however, will be the introduction of a European data system, laid down in the Eurodac Draft Convention. Once a Eurodac Regulation[52] is in operation, every EU member state will be obliged to register every foreigner claiming asylum and other foreigners to be found illegally in the country. On the basis of an easily accessible fingerprint identification system, it would be possible, within a very short time, to find out whether a foreign person claiming asylum has been registered elsewhere for an asylum application, regardless of any travel documents or statements concerning the travel route. It will, however, take a long time until such a system can be fully operative, particularly since those states that are geographically close to countries of origin of asylum seekers will not be particularly interested in ensuring the efficient functioning of such a system.

A more fundamental objection, however, to the safe third country concept is that it challenges, to some extent, the idea underlying traditional refugee law—that everybody who has somehow managed to get to a safe country will have access to the asylum procedure.[53] The safe third country concept defers the responsibility for dealing with the refugee problem to those European countries bordering crisis areas. With the enlargement of the European Union, this will include Poland, Hungary, and the Slovak and Czech Republics. It is frequently argued that these countries are not able to cope with large numbers of refugees.

The political objections raised against the safe third country concept make clear that a European and even an international regime of coping with refugee movements is needed. It is obvious, that in the long run, no viable solution can be found in simply deferring responsibility. This clearly calls for the establishment of a European system of distributing

51. For a description of the Dublin system, see Kay Hailbronner & Claus Thiery, 34 COMMON MKT. L. REV. 957 (1997).

52. *See* Proposal for a Council Regulation (EC) concerning the establishment of "Eurodac" for the comparison of the fingerprints of applicants for asylum and certain other aliens, COM (99)260 final, CNS 99/0116.

53. For a discussion of the safe third country concept see Hailbronner, *Immigration Control*, *in* 4 BERGHAHN 199 (Hailbronner/Martin/Motomura eds., 1998).

burdens and attributing responsibility for processing refugees. On the other hand, the idea underlying the Geneva Convention of 1951, which has been upheld for many decades, until the collapse of the Soviet Union, whereby protection may be found in far distant regions, cannot be maintained anymore. The situation of Kosovo Albanians shows that, even in a situation of ethnic cleansing and massive violations of human rights, the solution cannot be permanent admission of large numbers of refugees. Only temporary protection, primarily in the region, should be granted to prevent the expulsion and resettlement of large populations. On the other hand, some of the ideas underlying the Geneva Convention and, particularly, the distinction between individual political persecution and a general situation of massive human rights violations, do not sufficiently reflect the realities of today's migration movements.

The individual right of asylum, granted by the Basic Law and maintained even in the recent constitutional amendment of 1993, has generated substantial restrictions to such an extent that one may argue that Article 16, Section 1 amounts to hypocrisy. It would have been wise indeed not to disguise the fact that an individual right of asylum in Germany, as in most other western European countries, can no longer be maintained, even if it is assumed that only a relatively small percentage of asylum seekers are indeed fulfilling the criteria required for recognition as political refugees. As a constitutional individual right, every foreigner should obtain, from the individual right of asylum, at least a claim to access to an asylum procedure, a temporary residence permit, and possibly a judicial remedy in case of a refusal of an application. It is doubtful that this system will survive much longer. It has already suffered substantial erosion by the referral to alternative protection in a safe third country. It will eventually be replaced by a European system of monitoring; granting temporary protection; military and political intervention, in case mass refugee movements are generated; and, finally, burden sharing for those who will not be able to return. One of the prominent clauses of the Basic Law the right of political asylum, will eventually become obsolete. It has already been replaced, to a large extent, by other concepts. It would have been more convincing had *Bundestag* decided to abolish the concept of an individual right of asylum and replaced it by a general commitment to a European international regime of granting refugee protection, thereby leaving it to the legislature to enact the necessary laws and regulations. The historical commitment of Germany to the idea of protection against totalitarian regimes could thus have been upheld in a modified way and adapted to the reality and rules of today's world. This does not mean disrespect for the founders of the Basic Law.

The Basic Law, although undoubtedly one of the most impressive political achievements in modern German history, is man-made and, like any other human product, is subject to a change of circumstances. To recognize the need for constitutional reform is to recognize that a requirement

for maintaining the spirit and basic humanitarian content of the Basic Law, after fifty years of its existence, is indispensable.

ANNEX:

The following table shows the share of foreigners in the population of the EU States, as well as in Norway and Switzerland in 1992:

State	Overall population	of those foreigners	%
EU countries			
Belgium	10,068,300	909,200	9.0
Germany	80,974,600	6,495,800	8.0
Denmark	5,180,600	180,100	3.5
France	56,652,000	3,596,600	6.3*
Greece	10,350,300	200,300	1.9
Great Britain	57,221,900	2,019,700	3.5*
Ireland	3,563,300	89,900	2.5
Italy	56,950,300	913,600	1.6
Luxemburg	400,600	128,600	32.1
Netherlands	15,239,200	757,400	5.0
Portugal	9,864,600	121,600	1.2
Spain	39,048,000	393,100	1.0
Austria	7,795,800	517,700	6.6
Finland	5,055,000	46,300	0.9
Sweden	8,692,000	495,900	5.7
further information:			
Switzerland	6,908,000	1,243,600	18.0
Norway	4,299,200	154,000	3.6

* It has to be taken into account that in France and Great Britain there are in addition a great number of persons having domestic resident status who have immigrated from the former colonies.

The number of foreigners, broken down by nationality, has recently developed as follows:

Nationality	30.9.1978		31.12.1982		31.12.1993	
		%		%	1000	%
Total	3,981,100	100	6,495,500	100	6,878,100	100
Europe	3,642,300	89.5	5,361,900	82.5	5,678,400	82.6
EU States	1,444,100	36.3	1,507,300	23.2	1,535,600	22.3
of those:						
France	61,200	1.5	90,900	1.4	94,200	1.4
Greece	305,500	1.7	345,900	5.3	352,000	5.1
Great Britain and	67,000	1.7	107,100	1.6	111,700	1.6
Northern Ireland						
Italy	572,500	14.3	557,700	8.5	563,000	8.2
Netherlands	105,600	2.7	113,600	1.7	113,900	1.7
Portugal	109,900	2.8	96,900	1.5	105,600	1.5
Spain	188,900	4.7	133,800	2.1	133,200	1.9
Austria	159,300	4.0	185,300	2.9	186,300	2.7
Turkey	1,165,100	29.3	1,854,900	28.6	1,918,400	27.9
Poland	48,000	1.2	285,600	4.4	260,500	3.8
former Yugoslavia	810,200	15.3	1,026,200	15.8	1,238,900	18.0
of those:						
Fed. Rep. of Yugoslavia	**		915,600	14.1	929,600	13.5
Bosnia-Herzegowina	**		19,900	0.3	139,100	2.0
Croatia	**		82,500	1.3	153,100	2.2
Slovenia	**		8.1	0.1	14,400	0.2
Macedonia	**		**		2,600	0.1

Nationality	31.12.1994		31.12.1995		31.12.1996	
		%		%		%
Total	6,990,500	100	7,173,800	100	7,314,000	100
Europe	5,780,200	82.7	5,917,100	82.5	6,000,800	82.1
EU States	1,554,600	22.4	1,808,400	25.5	1,836,600	25.1
of those:						
France	97,000	1.4	99,100	1.4	101,700	1.4
Greece	355,600	5.1	359,600	5.0	362,500	5.0
Great Britain and	113,800	1.6	112,500	1.6	113,400	1.6
Northern Ireland						
Italy	571,900	8.2	586,100	8.2	599,400	8.2
Netherlands	112,900	1.6	113,100	1.6	113,300	1.6
Portugal	117,500	1.7	125,100	1.7	130,800	1.8
Spain	132,400	1.9	132,300	1.8	132,500	1.8
Austria	185,100	2.6	184,500	2.6	184,500	2.6
Turkey	1,965,600	28.1	2,014,300	28.1	2,014,300	28.1
Poland	263,400	3.8	276,800	3.9	276,800	3.9
former Yugoslavia	1.,98,000	18.6	1,350,200	18.8	1,353,300	18.5
of those:						
Fed. Rep. of Yugoslavia	834,800	11.9	797,600	11.1	754,300	10.3
Bosnia-Herzegowina	249,400	3.8	316,000	4.4	340,500	4.7
Croatia	176,300	2.5	185,100	2.6	202,000	2.8
Slovenia	16,200	0.2	17,300	0.2	17,800	0.2
Macedonia	22,300	0.3	34,000	0.5	38,800	0.5

Nationality	30.9.1978		31.12.1982		31.12.1992	
		%		%		%
Africa	79,500	2.0	283,900	4.4	302,100	4.4
of those:						
Morocco	28,900	0.7	80,300	1.2	82,800	1.2
Tunisia	19,200	0.5	28,100	0.4	28,100	0.4
America	102,700	2.6	168,800	2.6	176,500	2.6
of those:						
Brazil	4,800	0.1	13,300	0.2	14,600	0.2
United States	71,600	1.8	104,400	1.6	107,800	1.6
Asia	147,200	3.7	598,800	9.2	644,600	9.4
of those:						
Afghanistan	1,900	0.0	41,500	0.8	46,500	0.7
Iran	19,500	0.5	99,100	1.5	101,500	1.5
Japan	12,200	0.3	26,500	0.4	27,100	0.4
Lebanon	6,800	0.2	53,500	0.8	55,100	0.8
Pakistan	17,900	0.4	32,300	0.6	34,400	0.5
Sri Lanka	1,200	0.0	43,900	0.7	46,500	0.7
Viet Nam	2,700	0.1	85,700	1.3	95,500	1.4
Australia and Oceania	6,100	0.2	8,400	0.1	8,800	0.1
Stateless	30,100	0.8	21,900	0.3	20,900	0.3
Unclear, no information	47,800	1.2	54,100	0.8	45,900	0.7

Nationality	31.12.1994		31.12.1995		31.12.1996	
		%		%		%
Africa	292,100	4.2	291,200	4.1	298,700	4.1
of those:						
Morocco	82,400	1.2	81,900	1.1	82,900	1.1
Tunisia	27,400	0.4	26,400	0.4	25,700	0.4
America	179,700	2.6	183,100	2.6	189,500	2.6
of those:						
Brazil	15,700	0.2	16,800	0.2	18,400	0.3
United States	108,300	1.5	108,400	1.5	109,600	1.5
Asia	662,400	9.5	705,400	9.8	745,800	10.2
of those:						
Afghanistan	51,400	0.7	58,500	0.8	63,100	0.98
Iran	104,100	1.5	107,000	1.5	111,100	1.5
Japan	27,100	0.4	27,300	0.4	28,100	0.4
Lebanon	54,300	0.6	54,800	0.8	55,600	0.5
Pakistan	34,500	0.5	36,900	0.5	37,900	0.5
Sri Lanka	49,400	0.7	54,600	0.5	58,300	0.8
Viet Nam	96,700	1.4	96,000	1.3	92,300	1.3
Australia and Oceania	8,900	0.1	9,900	0.1	10,100	0.1
Stateless	20,100	0.3	19,900	0.3	18,600	0.3
Unclear, no information	47,200	0.7	48,000	0.7	50,400	0.7

** No information