Mapping of policies affecting female migrants and policy analysis: the German case

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Introduction

This report aims at mapping and analyzing policies relevant for the social integration of female migrants, especially those who entered Germany in the last decade. New female migrants are a divers group with respect to migration motives, legal status and ethnic origin. After recruitment of foreign workers was stopped in 1973, registered immigration from non EU countries into Germany has been possible only within the framework of family formation or unification, humanitarian considerations, contractual, seasonal or specific vocational work, and to attend higher education. Moreover, there is an immigration flow of ethnic Germans from Central and Eastern European countries and Jews from the countries of the former Soviet Union. From 1998 to 2002 the largest immigration flow came from Poland comprising 11 % of all immigrants entering Germany, other large groups were those from the Russian Federation (8.4 %), Kazakhstan (6.2 %). The percentage of immigrants from EU countries (15) decreased to 14 % (Sachverständigenrat für Zuwanderung und Integration 2004). Moreover, as in many other European countries, there are also a considerable number of undocumented migrant men and women, estimates ranging between half to one million people (Alt 2004a; Sinn, Kreienbrink, and von Loeffelholz 2006).

The percentage of female migrants in registered immigration flows to Germany is higher at 40 % in 2002 than in emigration flows (37 %) (Beauftragte der Bundesregierung für Migration Flüchtlinge und Integration 2004: 18). Most frequently, migrants entering Germany in the framework of family formation or unification are female adults from Turkey, the states of the former Yugoslavia, the Russian Federation, Morocco and Thailand; they enter Germany as wives of Germans or wives of foreigners with residence rights in Germany. In some of the ethnic groups currently entering the country females are the majority. In 2002, 74 % of the immigrants from Thailand were female, due to marriage immigration from this country; in the same year, migrants with a high percentage of females entered the country from Estonia (68 %), Peru (67 %) Lithuania (65 %), the Philippines (64 %) and Cuba (62 %) (Beauftragte der Bundesregierung für Migration Flüchtlinge und Integration 2004: 27).

In this paper we shall discuss the effects of general labour policies as well as specific policies targeting migrants on the integration processes of migrant women, especially those who are from non EU countries and do not belong to the groups of ethnic Germans and the Jews from the countries of the former Soviet Union[1] equated to Germans. The analysis will concentrate on the objectives of the laws, their implementation and the debates that take place with specific focus on their impact on the integration processes of migrant women. Another focus will be on the harmonization of the German law with European law and its influence on integration conditions for migrant women. In the first part of the paper, we present the effects of general policies, especially policies affecting sectors where new female migrants concentrate, like the domestic sector (1.1.1.) and the sex industry (1.1.2), as well as policies regulating unemployment benefits (1.2.) and re-entering the labour market (1.3) and policies combating irregular work (1.4). In the second part of the paper we discuss the impact of policies targeting migrants on the social integration of migrant women: immigration, residence and integration policies (2.1. and 2.2), implementation of EU policies aiming among others at the integration of migrants in the labour market (2.3), policies giving access to political rights (2.4), anti-racism and antidiscrimination policies (2.5), policies combating illegal immigration (2.6) and policies combating human trafficking (2.7). In the third part we outline the specific institutions charged with the creation and implementation of migrants' integration policies and in the fourth part we briefly describe the non-governmental institutions that influence social policy on the one hand and on the other hand, through their activities, have a direct impact on the social situation of migrant women. Finally we shall discuss the reciprocal and cumulative effect of these policies.

[1] Ethnic Germans are legally entitled to German citizenship, and Jews from the former Soviet Union acquire the settlement permit (Niederlassungserlaubnis), which is not limited temporally or spatially (on the different legal statuses see chapter 2.1.) upon arrival. Although they often lack adequate language competencies and have problems in integrating into the labour market, we have not included these groups in the analysis, because the legal framework secures legal stability and thus the preconditions for integration in society (Federal Ministry of the Interior 2005).

1. General policies and their effects on female migrants

In the last decade, under the pressure of persisting high unemployment and economic stagnation that deteriorated due to rising fiscal costs of the German unification in 1990, German governments started the largest social policy reform in the history of the Federal Republic (Wunsch 2006). Main targets of the reform are the flexibilization of the labour market, the reduction of the non-wage labour costs, the reduction of the unemployment costs and the establishment of control in sectors of the economy in which informal work flourishes. Flexibilization of the labour market is expected to make the labour market capable to absorb the unemployed. An important means to achieve this is the liberalization of the legal framework for fixed-term contracts, agency work, dismissal protection, minor employment and collective labour agreements. The low wage sector of the labour market as well as the opportunities of the unemployed to re-enter the labour market have been greatly influenced by this reform.

1.1 Policies regulating employment in sectors with high participation of migrant women

Migrant women entering Germany in the last decade are confronted with a tight labour market, shrinking production and a decreasing number of regular jobs, offering to newcomers little opportunities for good jobs (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration 2005a). Main sectors open to female newcomers are the domestic, hotel and restaurant sector, the agriculture and the sex industry[2]. Especially the informal sectors of domestic and sex work have attracted many among recent female migrants (Alt 2003; Alt 2004b). The target of policies addressing these sectors is to regularize and control the informal work. In the following we shall discuss the effect of these efforts on the social integration of migrant women.

1.1.1 Policies regulating domestic and care work

In the 1990s domestic services were 'discovered' as a sector with high potential for new employment opportunities, as in this sector the work was organized informally while the demand for paid domestic help increased (Hartz 2002). Since the 1990s labour market and taxation policies have been developed aiming to offer incentives for the regularization of domestic services. In Germany, "minor employment" (geringfügige Beschäftigung), i. e. employment for only a few hours a week, and up to a certain salary were free of social insurance contributions until 1999. Initially anchored in the **Law for the Promotion of Employment (Arbeitsförderungsgesetz)**, later in the **Employment Law (Beschäftigungsgesetz)**, and since January 1st, 2001, in **the Part-Time and Fixed-Term Employment Law (Teilzeit- und Befristungsgesetz)**[3] "minor employment" is based on the male breadwinner model: originally, it was intended to enable wives who left employment upon childbirth and were insured through the fully employed husband, to enter part-time employment (Klammer, Ochs, and Trautwein-Kalms 1998; Ochs 1999). The number of people engaged in minor employment increased in the 1990s; in 1997, 5.6 million people were registered as minor employed; two-thirds of them were women (Ochs 1999). In 1999 the reform of the law on minor employment repealed the exception of minor employment from social insurance contributions. Employers are now obliged to pay a contribution to the pensions and health insurance although the worker is not entitled to benefits

[2] These sectors are also the main sectors for the employment of irregular migrants (Krieger, Ludwig, Schupp and Will 2006). The reason for the concentration in these sectors of new female migrants, regulars or irregulars, are that due to the working and payment conditions these sectors are less attractive for natives and long term migrants. Concerning production as major labour market for migrant men and women in the 1960s and the 1970s, in 2004, the percentage of migrant men and women in this sector (39 %) was still higher than the percentage of German men and women (33,1 %) (Beauftrage der Bundesregierung für Migration, Flüchtlinge und Integration, 2005: 90); however, due to the restructuring processes, this sector does not represent any more an accessible labour market for new comers.

[3] The Part-Time and Fixed-Term Employment Law also introduces the prohibition of discrimination for part-time-work.

(apart from a very small amount that is added to the pension), merely to strengthen the social insurance institutions economically.

On April 1st, 2003 the maximum salary for minor employment was increased from 325 € to 400 €, the provision regarding working hours was removed, and the employer's contribution to the social insurance scheme was raised (§ 8 Social Code IV). A new employment category, the "mini-job", as well as an in-between zone for employment relations with wages from 400 € to 800 € as well as progression of social insurance contributions were established (§ 20 para. 2 SGB IV). At the same time, however, private households were charged with lower social insurance contributions than employers in other sectors. In this way, economic incentives for formalizing employment in the domestic sector were created.

In the early 1990s, following the French model, a further incentive for the formalization of informal domestic work, the service voucher (Haushaltsscheck) was introduced. The service voucher aims at reducing the administrative burden of households acting as employers (Jaerling 2003). With the declaration of employment via the service voucher, a central insurance institution (Bundesknappschaft) takes charge of the administrative tasks related to minor employment in the household such as calculating and regulating the payment of social and accident insurance contributions, as well as taxes. In the beginning, this scheme covered employment relationships with wages higher than 630 DM, as employment relationships below this limit were free of social insurance contributions. As of 2003, however, only minor employment is covered by the service voucher system (§ 28b para. 4 clause 1 SGB IV).

In 1990, with the reform of the **Law for Income Taxation (Einkommenssteuergesetz)** the federal government introduced a tax deduction scheme for households employing a domestic worker. According to this scheme, up to 18,000 DM could be deducted from income tax. Initially, the scheme applied to families with at least two children under the age of ten or with a person in need of care, but was expanded in 1997 to all households (Weinkopf 2003). In 2002, this regulation was abolished as it was broadly criticized as the "domestic servants' privilege" for the wealthy. Instead, a new incentive was created: people employing domestic help in the minor employment framework may declare a tax deduction for the maximum of 10 % of their income or 510 €. In the case of employing a fully-insured domestic worker, deductible expenses amount to 2.400 € per year **(§ 35a Tax deduction for expenditures for employing for domestic work and for the use of domestic services. Steuerermäßigung bei Aufwendungen für haushaltsnahe Beschäftigungsverhältnisse und für die Inanspruchnahme haushaltsnaher Dienstleistungen)**. If there is a disabled or aged person in need of care in the family, the amount that can be deducted from the earnings constituting the basis for the calculation of the taxes to be paid, is set at 924 €, regardless of the character of the employment relations **(§ 33a para. 3 Extraordinary expenses in special cases. Außergewöhnliche Belastung in besonderen Fällen).**

However, the incentives incorporated in the reform of minor employment and taxation contributed only to a modest increase of regular employment in the domestic sector, from approximately 34.000 in 1997 to 39.800 in 2000 (Jaerling 2003: 5). At the end of March 2004, from the 7.206.201 minor employment relations registered at the Bundesknappschaft, only 47.054 were located in households (Deutscher Gewerkschaftsbund Bundesvorstand 2004: 4). Despite a series of attempts to create formal employment opportunities in households, this modest number as well as anecdotal evidence suggests that there must be a fairly large number of undeclared work relations in the domestic sector. Estimations refer to approximately two million undeclared domestic workers (Sievers and Bunzenthal 2004), whereas almost 2,9 million households employ a domestic helper (Schupp 2002)

A further effort to create declared work in the domestic services was the policy of some communal administrations that backed up Domestic Service Agencies as an effort to create jobs for unemployed women. In these Agencies, domestic workers are employed full-time while their working hours are allocated to several households. At the end of the 1990s there were approximately 100 of these professional Domestic Service Agencies in Germany (Bittner and Weinkopf 2000; Jaerling 2003); in 2005, only a few more, namely 120. The output of the Domestic Service Agencies in terms of job

creation are rather low in relation to the estimated need for domestic services, as only 10 % of these Agencies have more than 30 employees (Becker 2005).

The regularization of work in the domestic sector has been debated in relation to the reduction of unemployment, as well as in relation to the solution of the care problem and affordable domestic help in families with elderly people (Jaehrling 2003). Only marginally the long term impact of these regulations on the social situation of the women working in this sector, most of them migrants, became an issue. However, women's organizations have pointed out the need for the working women's access to social insurance in their own right. In the middle of the 1990s, an alliance between the trade unions, and women's organizations in the Catholic and Protestant Churches, started a campaign to limit the burgeoning minor employment by reducing the maximal permissible wage to 100 or 200 DM, and making any work relation with higher wages subject to social insurance. The alliance criticizes current developments in the minor employment sector concerning the effects these regulations might have on the chances of unemployed women to reintegrate into the labour market in combination with the new unemployment laws. The alliance is concerned that in combination with the new law for unemployment benefits which came into force in 2005, i. e. the so called Hartz IV Law (see chapter 1.2) many unemployed women may be compelled to enter minor employment in domestic work. Another point of concern is that the new regulations may reduce the chances for public support of the Domestic Service Agencies that are the appropriate alternative for creating regular employment in the domestic sector, because they can bundle several few-hours-jobs to a full time job. Furthermore, the new regulation might be utilized to organize the care of children through so-called "day mothers" and thus prevent the expansion of day care facilities, which would also be able to create regular employment opportunities (Deutscher Gewerkschaftsbund Bundesvorstand 2004).

New recruitment program for domestic workers from CEE

The policies discussed above, aiming to regularize part time irregular domestic work were drafted with people in mind who are entitled to work in Germany - whether German, EU nationals, or permanent residents from non EU countries. However, in the care sector for elderly people, mostly undocumented live-in migrant women from Central and Eastern Europe (CEE) are occupied full time. It was not until the police raid in 350 households in Frankfurt in 2001, and the deportation of undocumented domestic helpers, that policy was conceived to take into account the undocumented work of migrant women in this sector (Tießler-Marenda 2002). The police raid, in which the well known journalist Frank Lehmann was found as an employer of an Eastern European care worker, resulted in a huge and emotional nationwide debate. Lehmann's following campaign for an opening of formal recruitment procedures of household helpers from other countries, as well as his negotiation with the Labour Minister had a big impact on fast track legislation. In an attempt to regularize the irregular work in this segment of the labour market the German government modified **the Regulations for Exceptions from the Recruitment Stop (Anwerbestoppausnahmeverordnung ASAV)** and **the Regulation for the Work Permission (Arbeitsaufenthlatsverordnung AAV)** on January 30th, 2002 and on February 4th, respectively. The new regulations provide a legal basis for recruiting full-time "domestic helpers" (Haushaltshilfen) from several CEE countries (§ 4 Abs. 9a of the ASAV and the § 4 Abs. 4a AAV). The German professional care-givers have developed an opposition towards the idea of recruiting care-givers abroad. Therefore attention was paid that only domestic helpers could be recruited. Recruitment agreements were signed with the accession countries Poland, Slovenia, Hungary, Slovakian Republic, and Czech Republic, as well as Bulgaria and Romania (Bundesagentur für Arbeit. Zentralstelle für Arbeitsvermittlung (ZAV) 2005). With the new Immigration Act, the regulations about work permits are brought together in the **Employment Ordinance (Beschäftigungsverordnung)**. According to § 21 of this ordinance, recruited domestic helpers may be employed full-time for a period of up to three years (see also chapter 2.6). However, this regulation turned out to be of limited success, as only a small number of employers and migrant domestic workers have opted for regularization of the work relationship by using the channel of formal recruitment. For the migrant women, the reason for opting for irregular employment is that the regularization is related to a reduction of net income, as taxes and insurance contributions have to be paid. In 2002, the first year the regulation was in force, only 1102 domestic helpers were recruited abroad (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration 2004: 137).

The need of households to obtain affordable care for the elderly or disabled and the incapability of the existing Care Insurance (Pflegeversicherung) to adequately cover the costs of officially organized care are at the core of the debates that followed the raid in 2001. Although Care Insurance subsidizes the costs for the employment of household help[4], the costs of documented work exceeds by far the costs of irregular work that is offered mostly, although not exclusively, by undocumented migrant women. For most households in need of care work, undocumented employment of migrant women thus remains the solution to the care problem (Griep 2005).

1.1.2. Policies controlling prostitution

On January 1st, 2002 the **Prostitution Law (Gesetz zur Regelung der Rechtsverhältnisse der Prostituierten / Prostitutionsgesetz -ProstG)** came into force. This law changed §§ 180a and 181a of the **German Penal Code** abolishing the idea of prostitution as "offending good morals". Consequently, the contract between a prostitute and her client about the payment for sexual services has become legally enforceable. However, the client did not become entitled to sue for "bad" or no services. The new law targets to create better working conditions and social insurance for women voluntarily working in prostitution. With the new law, prostitutes have the choice of working on their own as self-employed or as employees with a work contract that gives them access to official health care, unemployment and pension funds and enables them to organize in unions. In this way, the law scopes on the decrease of the social discrimination and exploitation as well as on preventing the exposition of sex workers to violence and organized criminality. The exploitation of or unreasonable influence on prostitutes as well as activities of preventing a sex worker from abandoning prostitution remain punishable (§ 180a para. 1 clause 1 and § 181a Penal Code). The new law thus legalizes prostitution and brings regulation into this informal sector while at the same time aiming at doing justice to the idea that prostitution makes women vulnerable.

The consequences of the new law and its implementation are not as impressive as expected: The new law has hardly motivated women in prostitution to regularize their work, as most of them prefer to stay anonymous and not to declare prostitution as their vocational activity to the social insurance services or the tax authorities. Most of them seem to share the social values that condemn prostitution, and to regard work in the sex industry as a limited period in their life that will enable them to earn the money for realizing their biographical plans. Moreover, a major obstacle to the regularization of sex work appears to be taxation: by declaring their occupation, sex workers risk to be confronted with unaffordable back-dated tax liabilities. The Social Security Organizations report that so far nobody has declared membership under the vocation of prostitute. The organizations assume that prostitutes would be insured under other vocations (Bündnis 90 / Die Grünen Bundestagsfraktion 2004; Mitrovic 2004).

Debates on the implementation of the new law through the Federal Employment Agency are controversial. Participants of the 8th Conference on Prostitution in October 2003 in Berlin criticized that the Job Centres (Labour Agencies) continue to discriminate sex work as they do not place people into sex jobs out of moral considerations. Sex work, however, should be treated as any other job. "Hydra", a self-organization of prostitutes in Berlin reports that Job Centres in Berlin reject to support prostitutes who try to start self-employment in prostitution and apply for the benefits of the Start Up Allowance Scheme.[5] Further demands are that not only official support in finding a job as a prostitute should be possible but also the offer of training schemes to unemployed who are willing to enter sex work (Mitrovic 2004). Other critics, however, assume a certain eagerness of the Labour Agencies to force women into prostitution, as brothel owners can now address the Labour Agencies for recruiting prostitutes and, at the same time, the Job Centres are obliged to present high rates of unemployed

[4] The care benefits (Pflegegeld) paid according to the Social Law IX (§ 37 SGB XI) amount to between 205.- € and 665.- € per month plus 460.- € per year for demented patients.
[5] The Start Up Allowance Scheme for unemployed starting in self-employment provides the self-employed with a grant for the duration of three years (see point 1.3).

placed in employment.[6] On the other side, there are some support programs for prostitutes wishing to leave the sex industry and re-train for other professions, as for example offered by the job Centre in Esslingen (Baden-Württemberg) and by the Project ProFridA established by the Diakonisches Werk Westfalen, a regional welfare organization of the Protestant Church and financed by the European Social Funds and the federal state Nordrhein-Westfalen (Diakonisches Werk der Evangelischen Kirche von Westfalen 2006).

A main criticism of the new law is that the situation of migrant prostitutes, who make up almost half of the estimated 400.000 prostitutes in Germany, cannot be improved with it, as most of them live and work in Germany undocumented and cannot benefit from the legalization of the work (Bündnis 90 / Die Grünen Bundestagsfraktion 2004).[7] The still valid authorization of communal and regional administrations to declare areas as prohibited and areas as free to prostitution is in many cases "predominantly used to trace migrant sex workers without any permit of residence and to deport them" (Mitrovic 2004: 5). Another impact of the new law on the situation of migrant women is that with the change in the law, prostitutes are no longer obliged to have regular health controls by the health authorities. The abolition of compulsory health controls, however, is assumed to have negative effects on the situation of migrant women in prostitution; it is mostly these women who have benefited from such compulsory services, because these points of contact with the authorities also meant a break on the heavy controls procurers exercise over these women (Mitrovic 2004).

The service workers union Ver.Di expected more prostitutes to become member of the union after legalization. The union developed a model employment contract for sexual services (Bündnis 90 / Die Grünen Bundestagsfraktion 2004). But these efforts met with skepticism on the part of the sex workers. In the demands for an amendment of the law formulated by Ver.Di migrant women are not visible. It is the self organizations of prostitutes and organizations working for the defense of the human rights of undocumented migrant women who formulate demands concerning the improvement of the situation of migrant women in the sex sector. "Hydra", the Association of Prostitutes, formulated the demand for more radical changes like the elimination of issues related to prostitution from criminal law, in order to achieve complete normalization of prostitution.[8] The association also pleads for the abolition of the right of the local and regional authorities to declare per decree specific areas as prohibited for prostitution and for taking into account the need for improvements for migrant prostitutes (Schwethelm 2006).

On the other side, the conservative party CDU, after being re-elected in 2005, has evaluated the law as a "misleading signal", wishing to retain the status of prostitution as "offending good morals". The Minister for Family, Senior Citizens and Youth ordered an evaluation of the new Prostitution law in order to proceed to an amendment.

1.2 Unemployment policies

In 2004, the unemployment rate of migrants was twice as high (20,5 %) as for Germans (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration 2005a: 95). Unemployment rates are an index for the situation of migrants who are eligible for unemployment benefits, i.e., migrants who are in possession of a settlement permit or a residence permit that does not exclude long term stay by binding the migrant to a strictly temporary stay (§ 7 SGB II para. 1, clause 4) and have been allowed or could be allowed to enter paid employment (§ 8 SGB II para. 2). On the other hand, asylum seekers

[6] The case of a young woman in Berlin "who was told that she faces suspension of her government relief benefits if she refuses to take a „job" as a prostitute in a Berlin brothel" (Chapman 2005) was widely presented in the media.

[7] In 2004, the situation changed for the great number of undocumented prostitutes from the accession countries, as they now have the opportunity to legalize their stay in Germany.

[8] Especially the entire abolition of the § 181a Penal Code, that makes poncing punishable

and migrants with a temporary suspension of deportation[9] are not eligible for unemployment benefits, as they are subsidized according to the **Asylum Seekers' Benefits Act (*Asylbewerberleistungsgesetz*)**. Migrant women who enter Germany for domestic work on the basis of the limited permission of stay of at the most three years **(§ 21 Employment Ordinance/Beschäftigungsverordnung)**, are also not eligible for unemployment benefits, as they have to leave the country if they are unemployed. The unemployment benefit policies are of relevance mainly for those "new" female migrants who have entered Germany in the framework of family unification.

The coalition of Social-Democrats and the Green Party who came into government in 1998 introduced a broad reform of the policy for the support of the unemployed and their reintegration into the labour market. Known as "Hartz Reform" – the name of the head of the commission that developed the reform proposals – it entailed a series of laws, with the main target to reduce the costs of unemployment and the costs of labour and to reinforce labour market flexibility. The low wage sectors of the labour market are to be expanded, so that the demand for labour can increase and unemployment diminish. Northern American principles of social policy served as a model for these reforms, especially the turn from the welfare to the "workfare" regime.

In sum, the labour market policy reform entails the reduction of social benefits, and the introduction of new structures and rules that increase the pressure on the unemployed to adapt to the demands of the labour market. The spirit of the reform being "support and challenge" (Section 1 of the Social Code II), the activation of the unemployed relies on obliging them to accept certain jobs; benefits may be granted (§ 14 Social Code II), while obligations of the unemployed are enforced (§ 2 Social Code II). Before the reform of the labour market policy the unemployed had a legal claim for unemployment benefits for up to two years, depending on the duration of their previous employment and their age, with benefits amounting to 60 to 67 % of their net salary in the last three months of employment. These benefits were then followed by the "Unemployment Help", which amounted 53 to 57 % of the last net salary and could be granted as long as unemployment lasted **(Employment Promotion Act/Arbeitsförderungsgesetz)**. Through the reform, the duration of unemployment benefits (now "Unemployment Benefit I") is reduced to one year in most cases, depending on the duration of the previous employment and the age of the unemployed.[10] Unemployment Benefit I amounts to 60 % of the former income, 67 % if the unemployed has dependent children. Unemployment Help has now merged with Social Help (Social Code II), resulting in Unemployment Benefit II. The amount of Unemployment Benefit II depends on standardized need assumptions, the number of dependent family members, costs for housing and other specific needs, but also on the income of family members and if one has savings or other assets.[11]

Hartz IV (Social Code II) introduced new instruments and rules that were expected to support the quick integration or reintegration of the unemployed into the labour market. § 15 SGB II obliges the recipient to meet an "integration agreement" with his/her personal officer.[12] This "agreement" fixes the measures for integration into the labour market that are granted to the unemployed, the kind of efforts he/she has to make for integrating into the labour market and how he/she will prove that she has made them. The decision for the benefits is made by the officer of the labour agency; there are no rights that can be claimed by the unemployed (Frings 2005: 48). The unemployed are obliged to deploy considerable efforts for finding employment (§ 2 SGB II) and the labour agency can demand that the unemployed take any job, even jobs beneath their qualification and previous work experience. All jobs are regarded as reasonable, as long as they do not offend legality, for example they do not foresee a payment of less than 30 % of the usual wage or the wage scale.

The measures for integrating unemployed into the labour market focus mainly on the creation of the so-called one-euro-jobs. These are jobs additionally created in sectors of public interest, offered by the

[9] A temporary suspension of deportation is granted to rejected asylum seekers or migrants who are not eligible for a residence permit, but who cannot be deported due to humanitarian or other grounds.
[10] For unemployed over 55 years of age, the duration is 18 months
[11] The regular rate for one person is 345 € in the old federal states and 331 € in the new federal states.
[12] For receivers of Unemployment Benefit I such an agreement is voluntary (§ 35 SGB III)

public administration or welfare organizations. The unemployed is obliged to accept such an offer, earning one euro per working hour, in addition to unemployment benefit (§ 16 SGBII para. 3). The one-euro-jobs, however, rarely lead to a regular job. Institutions that offer them do not create additional permanent jobs, and the one-euro-jobs are also not conceived to help enhance the qualification of the unemployed. The policy thus generates a process of repositioning the unemployed in the lower wage segments of the labour market.

The risk of marginalization through the regulations of the law is much higher for migrant women who frequently have a low level knowledge of German and can hardly defend their position in communicating with Labour Office officers. Concerning the gender specific implications of the labour market policy, in § 1 para. 3 SGB II the equal treatment of men and women is fixed as a basic principle for the implementation of the law. Gender specific disadvantages should be taken into account and counter acted. However, the law does not explicitly refer to the differing living conditions of men and women. Instead, the task of implementing gender equality has been delegated to the labour administration, which has to involve the local Commissioners for Women's issues in the process (Frings 2005).

The reform of the law regulating unemployment benefits has been in the focus of public debates of recent years. It has been criticized that the new laws, on the one hand, have increased poverty in society and on the other hand have broadened the criteria of eligibility thus burdening the public budget more than was expected. Therefore, some corrections have been carried out or are planned, trying to limit the number of eligible people. Moreover, experts on constitutional law dispute the legality of the Hartz IV law; up to ten paragraphs of the constitution may be violated. For instance, it is doubted that the 345 € per month would enable a "life in dignity", the employees have paid higher amounts in contributions to the unemployment insurance than they are allotted in return, and the allocation of the unemployed in one-euro-jobs would take place by force.

1.3 Social policies for re-entering the labour market

The main instruments for reintegrating the unemployed into the labour market are vocational training, the job creation scheme and the promotion of self-employment. The target of vocational training measures for unemployed is to strengthen their employability and to terminate unemployment.[13] The participation in a training course may be granted at the discretion of the Labour Agency official, the unemployed has no legal claim for it. In deciding about the participation of unemployed in training courses, the labour agency has a special responsibility to support specific social groups like women (§ 8 Social Code III), women re-entering the labour market (§ 8b Social Code III), families (§ 8a Social Code), and persons who need specific support (§ 11, para. 2, clause 1, No 3 Social Code). However, the objective of the law may prevent the placement of an unemployed person in a training course, as the main target of the policy is the termination of unemployment and the placement in a job. § 3 para. 1 SGB II: "Measures that enable the immediate placement in employment have priority". This means, qualification measures cannot be granted if the unemployed can be placed in any job. Only when the immediate placement in a job is not possible, a training course may be considered. In this way, the number of unemployed participating in vocational training has decreased considerably in recent years. The financial means allocated to training measures is also decreasing, while integration measures focus on one-euro-jobs (Frings 2005). For migrant women, language training may be of high relevance for integrating into the labour market. The labour agency can require an unemployed migrant to participate in the integration courses offered to newcomers (see chapter 2.2); however, this is omitted in many cases because of the priority of job placement over training (Frings 2005). The lack of language competencies is a considerable barrier for utilizing existing vocational qualifications in the labour market. Overcoming the devaluation of existing knowledge and competencies becomes impossible for the migrant.

[13] In order to be eligible for participation in a training course, the course must be considered necessary for the reintegration into the labour market, and there must have been a consultation with the labour agency official (§ 77 Social Code III).

Job creation measures are aimed to maintain the employability of the unemployed. The labour agency has to finance job creation measures if this strengthens the prospects for the integration of the unemployed in the labour market (§ 260 para. 2 Social Code III). However, the implementation of the job creation measures scheme has been considerably reduced in recent years. From September 2004 to September 2005, the reduction amounts to 60 % (Stascheit and Winkler 2006: 487). As of 2004, measures are to be supported only in order to combat high unemployment in problem areas of the regional and vocational labour markets. The created jobs must be of public interest and they must be additional, i. e., they should not replace existing jobs (§ 260 para. 1, No 1 Social Code III).

Although the genuine task of the labour agencies (until 2002: Labour Offices) has been to promote the reintegration of unemployed in dependent work, policy for supporting self-employment initiatives of unemployed by a so-called Bridging Allowance was introduced as early as 1986 in the **Law for the Promotion of Employment (Arbeitsförderungsgesetz)** (§ 55a). This scheme of an active labour market policy secured the continuation of unemployment benefits and social security contributions for the new entrepreneur and his/her family during the first 6 months of self-employment. Whether this benefit is granted, again is at the discretion of the labour agency official.[14] With the amendment of the Social Code III in 2002, the Start-Up Allowance (Ich-AG), a further scheme was introduced supporting the unemployed entering self-employment. The Start-Up Allowance (§ 421 Social Code III) however, is not calculated according to the unemployment benefits received, but is set across the board for all recipients: in the first year at 600 € per month, in the second at 360 € and in the third at 240 €. When the income from self-employment exceeds 25.000 € per year, the Allowance is stopped. Although the Start-Up Allowance is regarded to be the most successful instrument of the labour market policy reform, together with the Bridging Allowance it is limited until July 1st, 2006. The current coalition plans a reform that will combine the two schemes, at lesser expense to the public budget. Although migrants have developed high rates of self-employment and their rate of unemployment is twice as high as among native residents, migrants have rarely participated in the Bridging Allowance (Kontos 1997), or in the Start-Up Allowance scheme. In the Federal State of Northern Rhine/Westphalia, the participation of migrants in the Start-Up Allowance scheme amounts to only 4.1% (G.I.B. Gesellschaft für innovative Beschäftigung NRW 2004). A Start-UP Allowance is only available to those receiving benefits in accordance with Social Code III (in the first year of unemployment), not for those receiving benefits in accordance with Social Code II (Hart IV).

1.4 Policies combating undeclared work

It is estimated that about nine million people are engaged in undeclared work in Germany, out of which about two million are employed in the domestic sector (Schneider and Enste 2000; Schneider 2004; Willeke 2004). More natives than migrants tend to involve in undeclared work (Worbs, Wolf, and Schimany 2005: 11); however, in construction and agriculture undeclared work is conducted mainly by undocumented migrant men while in domestic work, and the sex industry, undeclared work is conducted mainly by migrant women. Undeclared work is defined as work without registration in the social security system, or while receiving unemployment or social benefits without informing the labour agency or social benefits office about the job; in the case of foreigners, it can be work without an official residence and work permit. Income from undeclared activities was evaluated in 2004 by the Institute for Applied Economic Research as amounting to approximately 16,7 % of the gross national product whereas estimates from the Institute for Economic Research amount to approximately 11 %. Nevertheless, these estimates are evaluated as too high by the Association of the Self-employed and the German Association for Trade BDS/DGV (BDS/DGV 2004).

The **Law for combating illicit work and tax fraud related to illicit work (Gesetz zur Bekämpfung der Schwarzarbeit und damit zusammenhängender Steuerhinterziehung, SchwarzArbG)**, that

[14] After the reform of the labour market policy in 1998, the scheme was integrated in Social Code III, § 57. (Wießner 2001).

came into force on August 1st, 2004, has turned undeclared work into a criminal offence.[15] It is also considered a criminal offence to employ an undeclared worker. The penalty in case of violation of the law ranges from 1.000 € to 300.000 €. Undeclared work while acquiring unemployment or social benefits can lead to a prison sentence of up to three years. § 10 and 11 of the law refer to the special case of employing undocumented migrants (see chapter 2.6). Besides the main law against undeclared work, there are several other laws that entail components of combating undeclared work.[16] Occupying undocumented migrants under working conditions below those offered to German citizens for performing the same or equivalent jobs is fined or punished with a prison sentence of up to three years. However, minor employment in households has been characterized only as an administrative and not as a criminal offence. Nevertheless, concerning the employment of female migrants in domestic and care work, the working conditions for migrant women in households can, in many cases, be evaluated as worse than those offered to German citizens; for instance, when the migrant woman lives in the same household, is paid with a low salary (remuneration in kind included) and is charged with the care of the person for more hours per day than are legally allowed, which is ten hours per day. The care responsibility in many cases actually extends to 24 hours a day (Griep 2005).

The Customs Administration is in charge of law implementation and is authorized to initiate controls. Customs officers and their collaborators, to which the Federal Labour Agency belongs, are allowed to enter work premises at any time; to check all people present for personal and other documents; to interrogate them regarding their work; to stop their work, and to examine documents of the firm(s) involved. Construction, where many male migrants work, is the main sector controlled by the customs authority. In contrast, private households cannot be entered by customs authorities without previous notification and the private domestic services have rarely been the target of controls (Kappus 2004). The raid against households occupying undocumented migrant women in 2001 caused a vivid public discussion concerning the appropriateness of raiding private households as a means of combating undeclared work. The government reacted to the public debate with lifting the recruitment stop for domestic workers from CEE countries (see chapter 1.1.1). In this sector, the current strategy of the Customs Administration is to prosecute the mediators of undocumented work, rather than prosecuting single private persons who employ undocumented immigrants for meeting care needs in the family (Griep 2005).

One of the goals of the new law is a pedagogical one: to raise the collective awareness for the wrongfulness of undeclared work. So far, the general perspective on undeclared work is morally neutral, as this is considered advantageous for both parties involved, the employers and the employees. Except in extreme situations – human beings being trafficked and/or people working under exploitative conditions – offenders are difficult to be identified. The acceptance of undocumented work performed by female migrants in the domestic sector, especially the care of elderly people, is rather high. The Law against undeclared work is criticized with the argument that mainly the high non-wage labour costs and the high taxes are responsible for the reliance on undeclared work, and that therefore policy should rather focus on a reform in these fields.[17]

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[15] According to *the Law for Combating Illicit Work*, that took effect on February 5th, 1995 and was in force until 2004, undeclared work was merely considered an administrative offence.

[16] The SGB III, § 404, Clause. 2, No 3 and No.4 are about the employment of foreigners who have no permit to work from the Labour Agency as this is prescribed by § 284 Abs 1 to be a breach of the rule infringement. SGB IV, § 8a, in combination with § 28a and § 111 para. 1, clause 2, provides for a fine when the employee in domestic work has not been registered in the social insurance scheme. StGB, § 266a, Clause 2 provides for up to five years' imprisonment or a fine for an employer who has not paid the social insurance contribution for an employee or has made incorrect or incomplete declarations. According to the AO, § 370, No 2, an employer who has not declared an employment may be sentenced for tax-evasion. Mediating for the employment of workers from non-EU countries violates the mediation monopoly of the Labour Agency and may be sentenced for assistance to tax-evasion. *Aufenthaltsgesetz* § 96 and § 95 provide for up to five years' prison or fine for those who assist illegal immigration.

[17] The German Association of Hotel and Restaurant Owners (Deutscher Hotel- und Gaststättenverband, DEHOGA) – an economic sector in which many migrant women and men work undeclared – demands political action to decrease the value-added tax in this sector, to keep holidays, Sundays and night shift free of taxation and to combat the initiative of minimum wage policy.

2. Policies targeting migrants

2.1 Migration and naturalization policies, policies regulating residence and work

The Immigration Act

The conditions for social integration of migrant women are determined by the immigration laws regulating the legal status of migrants. From January 1st, 2005 on, the **Aliens Act**, in force since 1991, was replaced by the **Immigration Act**. The reform of the Aliens Act was triggered by representatives of economic associations demanding the liberalization of immigration as well as by concerns about the demographic development. Main issues in public debates were the need of the economy for highly qualified labour as well as the increasing awareness of the irreversibility of immigration and the need for integration policies. The unfavorable development of the economy and the persistent high unemployment rates were reasons for the eventual reform of the law without the envisioned liberalization of immigration. Components of the Immigration Act are the **Residence Act (Act on Residence, Gainful Employment and Integration of Foreigners in the Federal Territory) and the Act on the General Freedom of Movement for EU Citizens.** Together with the Immigration Act, laws regulating the acceptance of asylum seekers and refugees and naturalization have been changed.

Main objectives of the Immigration Act are to control and restrict immigration and to attract the better educated; to facilitate the integration of newly admitted foreigners (see chapter 2.2.), and to reduce the different legal statuses to only two: residence permit and settlement permit. However, the time-limited residence permit may be supplemented with varying employment limitations and thus still creates a range of different legal statuses (Frings and Knösel 2005). The settlement permit entails no time or spatial restrictions and grants the right to take up gainful employment without having to undergo further approval by the Federal Labour Agency. In the majority of cases the settlement permit is issued after five years of registered residence. There are exceptions, however, as for highly qualified people or for people accepted by the Federal Republic of Germany for special political reasons (e. g. Jews from the former Soviet Union) who receive the settlement permit immediately upon entering the country.

The Residence Act maintains the principle of the "recruitment stop" that was declared in 1973 and the exceptions from this stop that have been anchored in the **"Regulation for Exceptions from the Recruitment Stop"** of September 17th, 1998 and are now regulated by the **"Employment Ordinance"** of November 22nd, 2004. For the time being, exceptions from the recruitment stop are foreseen for the following vocational categories:

- Self-employed (§ 21 Residence Act). A residence permit may be issued to migrants who plan to become self-employed, given there is public interest in the self-employment project in question. After three years a settlement permit may follow.
- Highly qualified (§ 19 Residence Act.) In the private sector it is the salary that indicates high qualification (at least double the income limit for the assessment of compulsory health insurance contributions). As for the scientific sector, the position must be of a senior member in the scientific community. Immigrants of this category receive a settlement permit immediately upon entering the country.
- Specific vocational groups of qualified workers (§ 18 Residence Act). Residence permits are granted for specific vocations that are determined by legal ordinance (§ 42 Residence Act). Such vocations are language teachers and specialty cooks (§ 26 Employment Ordinance), IT specialists and academics (§ 27 Employment Ordinance), managers (§ 28 Employment Ordinance), social workers for migrant groups (§ 29 Employment Ordinance), qualified employees of international projects (§ 31 Employment Ordinance), and also health care workers (§ 30 Employment Ordinance). Residence permits for language teachers and specialty cooks are limited to five respectively four years with the option to renew for only three years. The residence permit for the other vocational categories does not entail any restrictions.

- Non-qualified migrants for employment in specific sectors. For this category, residence permits are issued only under exceptional circumstances and if the Federal Labour Agency and the Labour Administration of the country of origin have met an agreement for the recruitment of workers in these special sectors (§ 18 para. 2 Residence Act).

    - Seasonal workers in agriculture and forestry as well as in hotels and restaurants or in fruit and vegetable processing industries
    - Assisting personnel in fairs, culture and entertainment
    - Au pairs
    - Domestic workers for households with ill, disabled or old persons.
    - Domestic workers in households of foreign diplomats. (§ 18–§ 23 Employment Ordinance)

The residence permits for all these categories are time-limited. The regulation of not granting a new permit, unless the migrant has interrupted his/her stay for a certain time indicates that the principle that is at stake is the expulsion through rotation and not the option of integration. For domestic workers the maximal duration of the permit is three years. The change of employer within this period is possible. After the expiration of the three year permit, a new permit can not be issued unless the migrant has been abroad for the same period of time. Au pairs receive a one year permit.

Thus, most immigrants who regularly enter Germany for work come as "exceptions". There is hardly any public debate criticizing the legally fixed rotation system constructed through these regulations. However, the Commissioner of the Federal Government for Migration and Integration has stressed in her reports the need to put an end to the legally fixed rotation system that characterizes the legal framework for the recruitment of workers (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration 2005a: 398). Besides the rotation system, the Residence Act entails a further mechanism preventing the integration of new migrants into both labour market and society: the "Priority Principle" prioritizing Germans and migrants equated to them – EU citizens, recognized refugees including Jews from the countries of the former Soviet Union, and migrants from non EU countries with a settlement permit – to non privileged migrants. For issuing a residence in combination with a work permit, the Aliens Office requests approval from the Federal Labour Agency (§ 39 Residence Act), which is given only if the job the migrant has applied for cannot be filled by a member of the prioritized groups. The latest changes in the Employment Regulation of February 2006 have generalized this check by the Federal Labour Agency: after three years of residence and work of a non EU-Citizen, it must be checked whether his/her job can still not be performed by any member of the above mentioned privileged groups. In this way, a range of migrants may suffer the loss of their job due to the "priority principle". As the priority principle is implemented, the substitution of employed migrants without settlement permits with unemployed natives, or unemployed migrants equated to German citizens must be expected. While the Trade Unions criticize the discrimination in the treatment of migrants without settlement permits and the low remuneration for work done by them, they nevertheless support this privilege.

A considerable part of women's immigration into Germany takes place in the framework of family reunion or family formation. According to § 28 Residence Act, family members (spouse, underage child) of German citizens are legally entitled to a residence permit. This is also the case for the parent of an underage German child. In these cases the residence permit is combined with a work permit. Family members of non German citizen migrants receive a residence permit if the migrant has a residence or settlement permit, sufficient accommodation space and does not claim social benefits for his/her family members. However, the Residence Act entails elements that can be mobilized to prevent the immigration and integration of immigrating spouses. According to § 95 para. 2 No. 2 of the **Residence Act** "fictitious" marriages for the purpose of getting a residence permit in Germany are considered punishable. The immigrating spouse receives the residence permit only if there is no suspicion of a fictitious marriage. In the last years, an increasing number of immigrating spouses are confronted with the suspicion of fictitiousness of their marriage. This has caused the critic of the Federal Commissioner who stresses that the administration utilizes improper criteria for judging the fictitiousness of a marriage (backwardness of the country or region of origin, difference in age,

especially if the wife is older) (Beauftragte der Bundesregierung für Migration Flüchtlinge und Integration 2005a).

At the same time, in relation to the **Aliens Act**, the Residence Act entails some slight improvements in the integration conditions for immigrating spouses. Until 2000, § 19 of the Aliens Law linked the residence title of a migrant spouse to an ongoing marriage for a period of four years. During this period, the residence entitlement of immigrating spouses, mostly women, is related to the maintenance of their marriage, and they loose their residence permit if the marriage is terminated. Women's organizations have been demanding for a long time that this rule should be eliminated and that spouses should receive an autonomous residence permit. In 2000 this period of dependency was reduced from four to two years. As a result of the endeavors of women's organizations, a hardship rule was incorporated in the new Immigration Law (in the § 31 para. 2 Residence Act). This rule takes into account that migrant women should not be forced to bear inhumane treatment within their marriage in order to avoid losing their legal status (Frings and Knösel 2005: 73).

The new law has brought a considerable improvement for the integration of women victims of gender specific persecution. § 60 para. 1 of the Residence Act now recognizes the threat of persecution by non state actors and the threat of injury, or loss of life or freedom as legitimate reasons for granting a person refugee status, even if these threats are not related to political but rather to gender specific persecution. Moreover, gender specific persecution may be recognized as a reason for granting asylum (§ 1 para. 1 Asylum Procedure Act). With this, German legislation has been harmonized with Council Directive 2004/83/EC of 29th April 2004.

Integration prospects of undocumented migrant women

Despite the general ban for new immigration, in response to the demands of the labour market a great number of migrant women and men enter the country for employment without a valid residence and work permit. The integration of these undocumented but needed migrants would require the legalization of their status. German law, however, does not provide for the legalization of undocumented migrants, although some regulations - extremely limited in scope - imply a kind of regularization (Cyrus and Vogel 2005).

The practice of "temporary suspension of deportation", according to Section 60a, para. 2 of the Residence Act (Duldung), is applied in cases in which migrants loose the right of residence and a deportation is not possible because of legal or other reasons. Approximately 220.000 foreigners in Germany fall into this category, among them women and children who have been granted a series of short extensions of "temporary suspension" over periods of several years, the extensions are mostly between one and three months, rarely for half a year. For the most part these persons are rejected asylum seekers who cannot be repatriated on humanitarian grounds. The Immigration Act is intended to end the practice of issuing successive suspensions of deportation. The Immigration Act also provides the possibility of a political decision to grant a residence permit in the case of "hardship", i. e., in the case a migrant cannot be expelled, on humanitarian or other grounds. However, this is a marginal possibility that depends on the policy of the federal states who are required to set up "hardship commissions" (§ 23 Residence Act).

Finally, on the basis of the right for immigration in the framework of family reunion (§ 28 Residence Act) and in combination with §§ 1592 ff of the Civil Code regulating the recognition of fatherhood, in case of the recognition of fatherhood of an illegitimate child by a German citizen the child gets German citizenship and thus legalization is opened to the undocumented migrant mother. For some years there has been a public discussion about the likelihood of misuse of this possibility (Holm 2006: 100). Therefore, the Conference of the Ministers of Interior ordered a survey on this question. According to this survey, between April 2003 and end of March 2004, 1694 migrant women have been issued a residence permit in this way. The Ministers of Interior suggested that through a reform of the Civil Code the administration should receive the right to contest the recognition of fatherhood within a limited period. The Federal Commissioner has opposed the revision of the Civil Code. One of the arguments is that the discussion of this topic entails the risk that general suspicion arises against

unmarried foreign or bi-cultural parents (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration 2005a).

Acquiring German citizenship

The **Nationality Act (Staatsangehörigkeitsgesetz)** came in force in 2000. The main innovation was to incorporate the principle of ius soli (the right of the birth place) in the Law, as children of migrants who were born in Germany may, under certain conditions, receive the German citizenship (§ 4 Nationality Act). Naturalization of adult migrants has also been liberated. The number of years one must have lived in Germany to become eligible for naturalization was reduced from 15 (§ 85 Aliens Act) to eight (§ 10 Nationality Act). Moreover, successful participation in an integration course (see chapter 2.2.) shortens the period of residence in Germany needed for acquiring the German citizenship from eight to seven years (§ 10 para. 3 StAG, Nationality Act). Other criteria are the declaration of allegiance to the free and democratic order and the ability to earn his/her living and the living of his/her family (§ 10, Nationality Act). Moreover, he/she must have sufficient knowledge of the German language (§ 11 Nationality Act). Naturalization also requires renouncing one's previous citizenship. Exceptions to this rule are now spelled out. Refugees and victims of political persecution are not obliged to have applied for the renunciation of their citizenship. Citizens of EU countries do not need to give up their citizenship if in their countries there is a corresponding treatment of German citizens applying for naturalization (§ 12 Nationality Act).

Migrant women entering the Federal Republic as family members may become eligible for German citizenship, as they may receive both the residence and work permit. However, conditions for their social integration are not optimal, given the high unemployment rate and the existing restrictions to learn German. Under these circumstances, many undocumented migrant women will rarely be able to circumvent the barriers of illegality and develop the conditions that are a prerequisite for the acquisition of German citizenship.

2.2 Integration policies addressing migrants

Until recently, integration policies in Germany have been fragmented and uncoordinated relying on concepts of policy actors on various levels of policy. The new Residence Act introduces an integration policy on the federal level for the first time and takes care to concentrate all competencies in this sector on the Federal Office for Migration and Refugees (BAMF). A core aspect of this integration policy is the participation of newcomers in a course program covering both the German language and orientation on the German legal system, history and culture. Through the integration course migrants are supposed to acquire "a sufficient command of the language" so that "they can act independently in all matters of everyday life without the assistance or intervention of another person" (§ 43, para. 3 German Residence Act). This means the proficiency to use the language independently for communication.[18] The language course encompasses a maximum of 600 units; each unit consists of 45 minute teaching. The orientation course consists of 30 teaching units.

The integration courses are obligatory for all new migrants, i. e. first-time applicants for residence permits, if their stay is not of short duration (§ 44, para. 1, Residence Act). Thus the integration policy mainly addresses newcomers with the perspective for a longer stay. Migrants already living in Germany may also apply for participation in these courses without being entitled to it (§ 44, para. 4 Residence Act). Participation in the courses is obligatory also for migrants who receive Unemployment Benefit II, when the Labour Agency requires them to participate in such a course. Also the Aliens Office may assume a need for integration measures (§ 44a, para. 1 Residence Act). The need for courses specifically designed for female migrants is acknowledged in the specifications

[18] "Also known as B1 within the Common European Framework of Reference language assessment scheme" (BAMF Concept for a nation-wide integration course, 2005: 4).

of the Regulation for the Implementation of Integration courses.[19] At the end of the course participants take a final examination. The successful participation in the integration course influences the legal status of the migrant. According to § 8, para. 3 Residence Act non-participation in the course may influence the extension of the residence permit. Recipients of unemployment benefit who are not responding to the invitation to take an integration course, may have their benefits cut (§ 44, para. 3). On the other hand, as already mentioned, successful participation in an integration course shortens the period of residence in Germany needed for acquiring the German citizenship (§ 10 para. 3 StAG).

The Federal Office regards the integration policy by integration courses as a great success. From January to mid-August 2005, participation in the language courses was as follows: 34.000 participants were new immigrants, 26.000 were ethnic Germans, 74.000 were voluntary participants without eligibility, i. e. migrants living in Germany for longer than 2 years, and almost 10.000 were required by the Labour Agencies to participate. With this, participation in the integration courses was much higher than the participation in the previous language courses offered by the federal government with around 21.000 foreigners and 75.000 ethnic Germans. (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration 2005b: 19).

The Federal Office has also been charged with the administration of specific integration courses for female migrants (Beauftragte der Bundesregierung für Migration Flüchtlinge und Integration 2005a: 188). So far, these courses have been implemented in the bigger cities. According to an evaluation of an officer of the Federal Office (Griesbeck 2005: 200), by being obliged to participate in the courses, migrant women would become enabled to participate in society in a way which may previously have been "prevented by patriarchal family structures". The courses are intended to give an introduction to institutions of society that enable integration and participation, like sports clubs, and initiatives aiming at integration of the unemployed in the labour market. They aim at empowering migrant women and helping them discover their new society. Out of the newly arriving female migrants, only those entering the country on the grounds of family formation and unification participate in these courses. Female migrants placed in domestic work though the Labour Agency are not eligible for integration courses as they are merely entitled to a time-restricted stay. Moreover, they are required to prove basic proficiency in the German language in advance of recruitment.

However, there are concerns that the focus of integration policy on the newcomers will eventually lead to a shift of financial resources from integration measures for migrant residents to integration measures for newcomers and will finally result in the diminishing of running integration programs for migrant residents, among these also programs for the counseling and training of women (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration 2005a).

Assimilationist elements in the integration policies

After September 11th, 2001, issues of terrorism and Islamic extremism became dominant in debates about the integration of migrants. The focus shifted towards the cultural adaptation of migrants (Bundesministerium für Familie, Senioren, Frauen und Jugend 2000)[20], dismissing the idea of social inclusion via social and civic rights. Islam is now considered to be a serious impediment to integration[21] and the function of ethnic communities is criticized as ghettoizing "parallel societies" that entail serious risks for social cohesion. The question of women's rights soon became the focal point of these debates. The murder of Theo van Gogh in the Netherlands and a series of so called "honor murders" of young Muslim women executed by their own relatives because they have been considered to disrespect the moral rules of the traditional society, fuelled the discussion about the acceptance of women's rights as a central aspect of cultural adaptation. The issue of "forced marriages" developed

[19] According to § 13 of this regulation, courses for special target groups such as parents, women, or young people can be established.

[20] This trend was already visible in the Aliens Act of 1991, that viewed migrants as a "potential danger for society" (Bundesministerium für Familie, Senioren, Frauen und Jugend, 2000: 42)

[21] See among others, the resolution of the Christ Democratic Party passed during the 18th Party Convention in July 2004 under the title "In the Interest of Germany: Support and Challenge Integration, Combat Islamism!"

major symbolic relevance in the context of this discussion about cultural integration, which has lead to demands for a law providing for stricter punishment. By raising the minimal age requirement from 18 to 21 for the immigration of spouses of immigrants or naturalized foreigners and by adding the requirement of basic proficiency in the German language, the draft of a law against forced marriages recently presented by the Federal Minister of the Interior aims at preventing forced marriages of migrants with spouses in their country of origin and subsequent immigration to Germany. Apparently, apart from limiting immigration, the law is intended to deploy a symbolic effect, enforcing cultural adaptation and assimilation (Rath 2006).

The demand on cultural integration affected the conditions for the integration of migrant women in the labour market. Several conflicts arose as employers refused to tolerate Muslim women wearing headscarves during working hours. Aside from some cases in the trade sector (Beauftragte der Bundesregierung für Ausländerfragen 2002: 229), the struggle of a Muslim public school teacher who wanted to wear a headscarf while teaching received great attention in the media. The Supreme Administrative Court decided that the headscarf deploys an influence on the students as a religious symbol that is incompatible with the principle of religious neutrality in public institutions. The Federal Constitutional Court confirmed that the prohibition of the headscarf during teaching would be principally permissible; however, the Federal States should create clarity by establishing corresponding laws for all religious symbols. Some federal states did establish such laws confirming the prohibition of the headscarf during teaching in public schools. For instance, in Berlin, the **Law for Child Care (Kinderbetreuungsgesetz)** of January 27th, 2005 (called **Neutrality Law "Neutralitätsgesetz")** prohibits the demonstration of religious or ideological features both in public schools and in some legal institutions (Piening 2005: 188).

Integration policy thus bears a repressive character which is on the one side related to the assimilationist claim gleaming through the principle of "support and challenge" ("Fördern und Fordern") that is attached to the integration policy. (Beauftragte der Bundesregierung für Ausländerfragen 2002; Beauftragte der Bundesregierung für Migration Flüchtlinge und Integration 2005a: 177). On the other side, the concept of the "capacity of society to receive and integrate foreigners" is central for integration policy (Federal Ministry of the Interior downloaded 25th June 2006). Integration policy thus seems to be utilized as another instrument to legitimize efforts of limiting immigration. The appointed Commission for Immigration was asked to investigate the limits of this capacity; however it rejected the notion that the capacity of society to integrate migrants smoothly might be limited (Sachverständigenrat für Zuwanderung und Integration 2004: 23). Along the same line, the Commissioner of the Federal Government emphasized the dependency of successful integration on the willingness of the political and social actors and not on an abstract "integration capacity of society" (Beauftragte der Bundesregierung für Migration Flüchtlinge und Integration 2005a: 178).

Although after September 11th, 2001, issues of terrorism and Islamic extremism are dominant in the debates about the integration of migrants, integration via social and civic rights is also postulated, by the Federal Association of the Organizations of Free Welfare and the Commissioner of the Federal Government for Migration and Integration. These policy actors developed a joint paper on Integration Policy[22] pointing out policy measures that should frame the residence and social rights, improving access to education and the labour market and thus following the recommendations developed for integration policies on the EU level.

[22] „Anforderungen an eine moderne Integrationspolitik. Gemeinsames Positionspapier der in der BAGFW zusammengeschlossenen Spitzenverbände der Freien Wohlfahrtspflege und der Beauftragten der Bundesregierung für Migration, Flüchtlinge und Integration, 23.10.2003." (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration und Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege 2003)

2.3 Implementation in the national context of EU employment policies aiming at the integration of migrants in the labour market

The EU-Equal program (2002-2006) has the main objective to combat inequality on the labour market and unemployment. Program priorities in Germany have been employability (to combat discrimination and promote equality in the workplace, to facilitate integration or re-integration into the labour market, to promote tolerance and mutual understanding between Germans and ethnic minorities), entrepreneurship (to support excluded groups, to professionalize third sector companies and their services), adaptability (to develop innovative teaching methods for "non traditional learners", to promote inclusive working practices and adaptability, to encourage life long learning), and equal opportunities for both women and men (to support job desegregation, reducing gender gaps and overcoming stereotypes of "women's and men's work") (www.equal.de).

Migrants, asylum, empowerment, start-ups, life long learning, have been important themes for several of the 109 Development Partnerships under the shelter of Equal in Germany. Projects offer support for integration in the labour market, like vocational training, support for starting business, and for sustaining business. The Equal projects have taken into account the specific needs of migrant women and have attracted female participants. Interesting for our analysis is that the integration concepts that underline these projects deviate from the official integration concepts. In particular, by practicing an inclusionary strategy towards migrant men and women without a stable legal status, they construct an integration concept that is not restricted to the national frame.

- The Development Partnership "Integration of migrants in the labour market" in the Rhein-Main and Rhein-Neckar regions focused on five activities: Counseling migrants, placing migrants in traineeship, giving language training, assisting young migrants in vocational planning, training migrants as "integration assistant". The target group consisted of migrants who had acquired a vocational qualification prior to immigration. Between 66 % and 80 % of the participants coming from 13 different nations, including CEE countries, were migrant women (www.equal.de). The projects did not explicitly exclude migrants without a legal status in Germany as there was no control of the legal status of participants, either from the project coordinators or from the supervising Ministry. Even if this tolerance towards the legal status was not intended, the result is that undocumented migrants were not excluded from attending qualification courses enabling them to strengthen employability[23].
- The EU-Commission recommended directing 5,4 % of the measures to asylum seekers and refugees. The project "Language and Culture mediators in the Health and Social services" (Albrecht, Borde, and Durlanik 2005) aims to aid people with insecure legal status to integrate in the German labour market as well as into the labour market of their country of origin after returning there. The participants are asylum seekers whose application for asylum was rejected but who cannot be expelled for humanitarian reasons, having received a temporary suspension of deportation; 90 % of them were women. Moreover, the Equal program explicitly included victims of trafficking in the target groups. IOM Germany conducted the project "Promoting reintegration of victims of trafficking" (equal.cec.eu.int/equal/jsp/). This project targets empowerment of national actors working with trafficking victims and vocational training of the victims. The integration context for the victims of trafficking that the project constructs is, in contrast to the official integration concept, a double one: the labour market of Germany but also the labour market of the country of origin, as the participants are entitled only to a short term stay in Germany.

Looking at the rather inclusionary character of the German EQUAL projects towards asylum seekers and migrants with a temporary suspension of deportation, we should nevertheless stress that this is rather the result of a coincidence, or rather of an error (Vollmer 2004)[24], as German legislation does not generally give labour market access to asylum seekers.

[23] Information from a coordinator of a Equal project

[24] Concerning the procedure of setting up the EQUAL programme in Brussels, Bastian Vollmer writes about the priority area referring to the asylum seekers "[…] this priority was introduced following an intervention by the Dutch and Swedish representatives during the drawing up of the programme in Brussels […] the German

2.4 Policies providing access to political rights and participation and enabling migrants to establish associations

The legal framework for the civic participation of migrants in Germany is established by the **German Constitution** and a number of specific laws and regulations (Marx 1987). According to the Constitution, foreigners in Germany enjoy civic rights, exceptions here are the right of unrestricted mobility, occupational liberty, the right to elect, the right of employment in public services and the right to form political parties and organizations. However, the human rights as codified in the international human rights conventions were the grounds for the codification of the Fundamental Rights in the Constitution. These fundamental rights apply to everybody, and in conjunction with the principle of non-discrimination, also codified in the Constitution, they allow migrants a restricted level of participation in civic life. Moreover, according to § 5 of the Constitution, foreigners enjoy the freedom of speech, of press and of information.

Participation in elections and political parties

The political participation of non-citizens from non-EU countries is restricted with respect to voting rights and eligibility for public offices (Menke 1992; Robbers 1994). EU–citizens enjoy active and passive voting rights in elections of the local and European parliament. Foreigners are not excluded from membership in political parties, although they do not possess the right to membership. The parties regulate the membership of foreigners in their organizations individually (Robbers 1994).[25] The rate of participation in political parties is very low at 3,4 % (MARPLAN 2001). When they are not eligible to vote, foreign citizens are excluded from the internal party procedures of appointing candidates for political offices. Nevertheless, in recent years the parties discovered naturalized migrants as a part of the electorate and started efforts to integrate immigrants in their organizations (Assimenos and Shajanian 2001). Hence, most parties have established particular committees for integrating migrants, especially those of Turkish origin.

The municipal foreigners´ advisory councils

Beginning in the early 1970s, local urban communities with a high percentage of foreign citizens created the means of political representation of foreigners in the form of "foreigners' advisory councils". Some federal states (Hessen, NRW, Rheinland-Pfalz) anchored these councils in the Municipal Law. Therefore, structure and character of the advisory councils may differ between federal states, sometimes consisting only of foreigners, sometimes also including members of the municipal administration, the members of the councils being in some cases appointed by local authorities and in others elected by locally registered foreigners (Beauftragte der Bundesregierung für Ausländerfragen 2002). The political influence of the foreigners' advisory councils is extremely narrow. In some municipalities the council has the right to deliver a resolution on the record of the local council but they are not allowed to make non-committal statements (LAGA 2002; LAGA 2004).

The participation of foreigners in the elections for these councils is very low. The analysis in NRW showed that the 2004 poll in this federal state was between 2,1 % and 31,9 %, with an average of 12,28 %. The relatively high turnout in the municipality of Lünen (31,9 %) can be explained by the fact that here the council was granted better conditions for the representation of migrants in the city council. Assessing the impact of these policies on the integration process of new female migrants, we should take into account that the councils are constituted mainly by migrants from the former guest workers nationalities (90 %). The percentage of women in the councils is 23,9 %, though in nine municipalities only men were elected and in three the women had the majority. The social groups best represented in the councils are the white-collar workers with a share of 30,7 % and the blue collar

representative agreed to such a priority inadvertently, since opening the labour market for asylum seekers via EQUAL clearly runs against German legislation." (Vollmer 2004)

[25] Only the Bavarian CSU explicitly denies access to immigrants without German citizenship. All other political parties allow membership of immigrants without German citizenship.

workers with a share of 29,9 % (LAGA 2004). New female immigrants should hardly be found in the advisory councils or among the migrants who participate in the elections.

Participation in works committees in business enterprises

A field in which migrants were quickly granted participation rights is the field of co-decision in business enterprises. The **Industrial Constitution Law (Betriebsverfassungsgesetz)** as of 1972 grants foreign workers both the active and passive voting right in the works committees, the central institution for worker's participation (Öztürk 2002). Since the reform of the Industrial Constitution Law in 2001 it has become one of the tasks of the works committees to promote the integration of immigrant workers in the company and to combat racism and xenophobia (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration, 2004: 312). The election turnout is quite high at 70 %. Only 4,8 % of the committee members are migrants, while their share in the staff amounts to 8,5 % (Marplan 2001). Considering that new female migrants are rarely employed in the sectors where the Industrial Constitution Law is applied, we can infer that there is little participation of this category in the works committees or the election for these.

Participation in ethnic associations

Foreigners are not legally excluded from participation in German associations. It is the associations that decide about the admission of foreigners. However, most importantly, their participation in self-organizations should be examined. The Constitution warrants the freedom to assemble (Art. 8) and the right to establish associations (Art. 9) only to German citizens. However, the **Association Law** grants the freedom of establishing associations to everybody, nevertheless subjecting associations of foreigners and foreign associations[26] to specific restrictions (§ 14) (Ott 1991). Moreover, a range of international conventions ratified by the Federal republic (for instance the **European Convention of Human Rights, Art. 11, para. 19**, the **International Pact/Convention of Civic and Political Rights**, the **European Convention of Human Rights and Fundamental Freedoms of the European Parliament)** also grant foreigners the right to establish associations. In December 2001, in response to the terrorist attacks of September 11th, 2001, the Minister of the Interior reformed the Associations Law and lowered the threshold which allows the government to prohibit specific foreigners' associations by canceling the so-called religious privilege of associations.[27] At the same time, the associations of EU citizens were granted equal rights as the associations of German citizens (§ 14 para. 1 clause 2 Association Law) (Beauftragte der Bundesregierung für Ausländerfragen 2002: 171). Furthermore, the Residence Act (§ 47) prohibits activities of foreigners' associations when the security or the interests of the Federal Republic are endangered and when the activities support or cause the use of violence. It also restricts activities when these harm the peaceful cohabitation of German and foreign citizens.

Associations founded in the 1960s and 1970s by the "guest workers" have been suspected of communism and have been observed by the "Office for the Defense of the Constitution". In the 1990s the observations focused primarily on the Moslem associations which were suspected of islamist activities (Caglar 2004). From being perceived as a latent threat to public order (Dohse 1985; Herbert 1986) in the last decades, German authorities began to discover the associations as supportive of the social integration of immigrant populations (Blaschke 1996) while at the same time immigrant

[26] Associations of foreigners are the associations of migrants that have been established in Germany under the German law. Foreign associations have been established under the law of another country and underlie other regulations than the associations of foreigners.

[27] According to § 2 para. 2 no 3 of the Association Law in the form valid until 8th December 2001, the Association Law could not be applied to religious associations. Hence the Association Law did not entail the possibility of prohibiting radical religious associations, while this was the case for all other associations. This Section has been abolished in September 2001. The cancellation of the religious privilege in the Association Law enables the prohibition of a religious association in the case that this association appeals to violence or if it is suspected to deploy activities opposing the constitution.

associations began to demand recognition and support from the German authorities. Moreover, the Commissions assigned to provide the federal government with appropriate information about integration issues, have emphasized the importance of strengthening the support of associations (Bundesministerium für Familie Senioren Frauen und Jugend 2000; Sachverständigenrat für Zuwanderung und Integration 2004). On the other hand, the immigrant associations received more attention in the framework of the civic society pushed by the crisis of the welfare state and the need to redefine the relation between public services and individual citizens (Böhnisch and Schröer 2002). Today, immigrant associations are supported locally and on the level of the federal states by several programs that aim to promote the integration of immigrants (Cyrus 2005b: 19).

It is difficult to assess the impact of these policies on the integration process of "new female migrants" because of aspects inherent in the research so far. The research on immigrants´ association concentrates on the ethnic groups from the former recruitment countries. Very few papers refer to Polish migrants for instance (Pallaske 2000; Sopart 2000).[28]

2.5 Anti-racism, anti-discrimination, equal opportunities and affirmative action policies.

Due to the National-Socialist past, the German Constitution is concerned with minorities and refugees. **Article 3 (1) of the Constitution** states: "All people are equal before the law." Article 3 (3): "No person shall receive preferential treatment or be discriminated against on the basis of sex, parentage, race, language, homeland and origin, faith or religion or political opinion." To protect migrants from possible racist attacks by ultra right wing groups, the **Law against Incitement of the People (§ 130 Penal Code)** provides for prison sentences between three months and five years in such cases. According to this law, even the act of giving instructions to discriminate may be regarded as illegal under § 185 para. 26, Penal Code (Chahrokh, Klug, and Bilger 2004).

Considering measures of positive action, in Germany, migrants are discussed as "foreigners" rather than under the minority concept; "national minorities" are autochthonous ethnic groups residing on the national territory. The application of the "European Framework Convention on Minorities" is restricted to the autochthonous Danish, Sorbian, Friesians and German Sinti and Roma populations. Along the same line, the "ethnic German Immigrants", entitled to enter Germany and privileged with specific integration arrangements, are not regarded as an ethnic minority. Positive action measures are oriented towards the autochthonous minorities and focus on cultural issues including language and education (Chahrohk et al. 2004: 47).

On 17th June 2005 the **Anti-Discrimination Law** drafted by the Social democratic and Green Party coalition passed the Bundestag. This law intended to implement in national law labour and civil law elements of EU directives concerning antidiscrimination measures: 2000/43/EC of 29th June 2000 implementing the principle of equal treatment regardless of racial or ethnic origin, 2000/78/EC of 27th November 2000 establishing a general framework for equal treatment in employment and occupation, 2002/73/EC of 23rd September 2002 that amends the 1976 directive on equal opportunities for men and women concerning access to employment, vocational training and promotion as well as working conditions, and 2004/113/EG of 13.12.2004 concerning the equal opportunities for men and women in areas other than that of employment.

The Antidiscrimination Law took into account the characteristics that were included in these directives: discrimination on grounds of race, gender, age, disability, ideology and sexual orientation. In the civil law part, the antidiscrimination law added to the race and ethnic origin mentioned in the EU directives the characteristics of gender, age, disability, religion, and sexual orientation. The law defined both direct and indirect discrimination as well as giving instructions how to discern

[28] Research is characterized by a linguistic bias: interviews are made in the German language, so that it is very likely that mainly migrants educated in Germany participated in the research. Furthermore, the gender perspective is rarely provided (Cyrus 2005b).

discrimination. Positive action for the support of disadvantaged groups was explicitly allowed. The law provided for the establishment of an Antidiscrimination Office that was to reside in the Ministry for Family, Senior Citizens, Women and Youth. The Upper House of the German Parliament rejected this law because it included a larger number of social groups than were named in the EU directive. It was thus passed on to the Mediation Committee, which postponed discussion on the law, with the result that it failed entirely as the SPD-Green government resigned and new elections were appointed. In May 2006 the coalition of Social Democrats and Christ Democrats presented an Equality law in the Bundestag that transposes the EU Antidiscrimination Directives into national law. In this version, the full range of discriminatory categories beyond ethnic origin was maintained only in bulk business and private assurance.

2.6 Policies combating illegal immigration

Illegal immigration is related to entering the German territory either without valid documents or with fake documents or it can result from the expiration of the visa or limited stay permission. Policies combating illegal immigration can be policies penalizing it as well as policies offering possibilities of legalization of illegal or potentially illegal immigration. According to the Residence Act both entering and staying in the country without legal authorization constitute criminal offences. Legal consequences of these offences vary and may lead to a prison sentence (Krieger, Ludwig, Schupp, and Will 2006). Foreigners without a legal status have to leave the country (§ 50 Residence Act). The control authorities are obliged to terminate the stay of the unauthorized foreigner with expulsion or deportation (§ 15, § 57 Residence Act). When deportation is not possible, because the foreigner is not in possession of a passport or when he/she is not identifiable, the foreigner may be given a temporary suspension of deportation. The goal, however, is to bring the illegal foreigner out of the country. Legalization is possible only under changed conditions, for instance the marriage to a German citizen or to a foreigner with a legal status in Germany (Krieger, Ludwig, Schupp, and Will 2006).

Undocumented immigration is subject to several other laws. § 10 of the **Law for combating illicit work and tax fraud related to illicit work** provides for the punishment of those who employ undocumented immigrants, i.e. foreigners who do not possess a permit from the Labour Agency (see chapter 1.4). The **Social Code III (SGB III)** also includes regulations aiming to combat the illegal employment of immigrants and with it illegal immigration. According to § 284 para. 1 clause 1 SGB III, foreigners may only take up work when they have a permit from the Labour Agency. According to § 404 para. 2 No 3 of this law, employing a foreigner against the § 284 para. 1 of the same law, i. e. without permission from the Labour Agency is prohibited. According to § 404 para. 2 No 4 foreigners working without permits from the Labour Agency are punished with a fine.

The reform of the **Regulation for Exceptions from the Recruitment Stop and the Regulation for the Work Permit** in 2002 aimed at combating undocumented immigration for employment in the domestic sector. It opened not only the possibility of legally recruiting foreign labour for this specific segment of the labour market, but also the possibility to legalize existing employment of undocumented migrant women, as the employer can apply for recruiting a specific person. She/he can also apply for the recruitment of more than one person, who will work in rotation, thus taking into account the existing practice of alternation in one job of two or more undocumented migrant women each one working for three months, the period of validity of the visa, and the one being replaced by the other when returning to the country of origin for the subsequent period of three months. Many migrant women have entered this alternation system in order not only to circumvent the risk of illegal stay after the expiration of their visa, but also in order to be able to take care of their own families in the country of origin. Nevertheless, through the EU membership of most of the CEE countries with which recruitment agreements were signed, the possibility for domestic workers from these countries to autonomize from the short or longer lasting rotation procedures is opened, as far as these were dictated by the legal framework. Migrant women from the new EU countries in CEE may now receive EU-Work permits for the duration of the transition period. After 12 months of regular stay and work in Germany, they may receive an unlimited EU-work permit (Bundesagentur für Arbeit. Zentralstelle für Arbeitsvermittlung (ZAV) 2005).

The public debate on undocumented immigration is characterized by the dichotomy of defending the social order via controls and expulsion of irregular migrants, vs. protecting their human rights. At the core of the debates on the human rights of undocumented migrants are the issue of exploitation as well as the issues of health care and the schooling of children, as some of the undocumented have brought their families into Germany (Cyrus 2005b; Cyrus 2005a). There is a strong engagement for the human rights of illegal immigrants on the part of the churches. They support organizations that offer anonymous health care[29] and encourage the idea of developing funds for the health care of undocumented immigrants. The churches and NGOs for migrant protection campaigned also for the legalization of individual undocumented migrants within the framework of the so called "Hardship regulation". An issue that arises in this context is the criminalization of the helpers as supporting illegal immigration.

2.7 Policies combating trafficking in human beings

Germany is not only a destination country, but also a transit country through which people are trafficked. According to criminal statistics, in 2000, police registered 1197 victims of trafficking of which 1174 were women. The number of undetected cases is estimated to be much higher. The number of discovered cases of trafficked persons has recently been decreasing (Ackermann 2005) which cannot be explained with a real reduction of trafficking, but is due to the reduction of the personnel capacity of the police stations and at the same time the more sophisticated methods that the traffickers employ. Almost 90 % of the detected victims come from CEE countries, with Ukraine at the top followed by Russia, Belarus, Lithuania, Latvia and Poland (Joo-Schauen and Najafi 2002).

The **Criminal Code of 1998** (§ 180b para. 1 and § 181 para. 1) penalized trafficking in human beings related to sexual exploitation and forced prostitution. The revision of the Criminal Code of February 11th, 2005, implementing the directive of the European Council (2002/629/JI) from 19th of July 2002, introduces a broader understanding of the phenomenon of trafficking in human beings , supplementing the § 232 Human trafficking for the purpose of sexual exploitation with the § 233 Human trafficking for the purpose of labour exploitation. Other important changes are: the will of the victim is no longer to be considered, it is not a precondition that trickery, threat or violence have been exercised. Thus the German law has incorporated the broader definition of trafficking adopted by the "UN-Convention against Transnational Organized Crime" and the two amending protocols against human smuggling and human trafficking (Cyrus and Vogel 2005).

A central issue in the legal treatment of human trafficking is victim protection. § 25 para 4 of the Residence Act provides for a transient residence permit on urgent humanitarian or other personal grounds or because of a public interest in the stay of the foreigner. Public interest is constituted when the victim is required to testify in court or for continuing investigations into criminal offences. The residence permit is limited to the period that the victims are needed for testifying in court. The discretion of the Aliens` authorities is restricted by the **Council Directive 2004/81/EC of 29th April 2004** on the "Residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities". Article 8 of the directive provides for the issuing of a residence permit if the presence of the victim is relevant for the investigation and if the victim has declared the willingness to cooperate with the investigating authorities, has entirely broken the relationship to the perpetrators and does not constitute a danger to public safety and order. Victims of trafficking may receive permission to take up a specific job for the duration of their stay in Germany for the purpose of testifying in court.

In these cases, a six-month-residence permit may be issued according to § 26 para. 1 Residence Act and may be renewed for the same duration if the preconditions remain fulfilled. Family reunion is not possible and law does not provide for the stabilization of the residence status, as it is assumed to be of

[29] The Malteser Dienst in Berlin

only temporary nature. Therefore, trafficking victims have no claim for integration assistance and participation in integration courses. Conform to the EU directive, a free legal adviser and translator may be claimed. However, a conflict with the EU Directive arises concerning the level of benefits received: Benefits are granted according to the **Asylum Seekers Benefits Law** assuming a low standard of needs, due to the temporary stay and lacking need of integration. On the contrary, the EU directive aims at both social and economic integration even for a short period of time, so as to enable the full cooperation of the victim with the authorities (Frings 2006).

In public debates several actors, such as the counseling centres for victims of human trafficking, both those run in association with church groups control as well as autonomous ones, and, interestingly, the Association of German Police Officers (Bund Deutscher Kriminalbeamter) have been lobbying for a decoupling of the residence permit duration from the duration of the legal proceedings for the victims.[30] In this way the victims will better cooperate with the police, they will be less exposed to the influence of the perpetrators and their credibility will be strengthened (Bündnis 90/Die Grünen im Landtag Nordrhein-Westfalen 2006; Rudat 2006). A further problem arises concerning the accommodation of the victims. Having entered the country illegally, victims of trafficking may be assigned to the initial reception centres for asylum seekers maintained by the federal states in accordance with a nation-wide system of distribution. Applied to trafficking victims, however, this distribution system conflicts with the rules of the EU directive mentioned above. According to the EU directive, victims of trafficking need specific psychosocial consultation and specialized institutional treatment. Moreover, they must be accommodated respecting the issue of their safety from the perpetrators, as § 15a para. 1 clause 5 mentions reasons related to family relations as well as other compelling reasons that have to be taken into account.

Despite the broadened understanding of trafficking that characterizes the revision of the penal code, the law on human trafficking has been implemented mainly in the area of sexual exploitation, and not in the area of labour exploitation, for instance in the domestic sector. Considerable activities for the support and protection of female trafficking victims have been developed by women's rights organizations, including counseling and information of female migrants, refugees, and minority women. Campaigns aiming to improve social policy towards victim protection have been designed.

To assist in the abatement of the trafficking of women, since 1999 the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth supports the nationwide "Federal working group against trafficking in women and violence against women in migration processes" (Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozeß e. V. KOK), which was founded in 1987 by 35 women's organizations. The Federal States Ministries, the Federal Criminal Police Office as well as the specialized advisory services working on the improvement of the legal and social situation of trafficking victims participate in this working group. Its tasks include ensuring the flow of information, analyzing how to effectively combat the trafficking of women, developing joint activities and proposals, and preparing German statements in the context of international organizations. One of the working group's achievements has been the composition of proposals concerning the administrative regulations related to the residence permit that trafficking victims may receive based on the Residence Act. Another achievement has been the development of a co-operation concept for the protection of victim-witnesses in trials which is currently being discussed in the Conference of Ministers for Internal Affairs. This special witness protection concept builds on institutionalized co-operation between the police and the specialized advisory services. Furthermore, KOK has been responsible for decisions about the content of a campaign against the trafficking of women and the information material designed to be distributed in the main countries of origin of the victims. On the agenda for the future are topics like the implementation of the witness protection concept, job opportunities or training for women who remain in Germany for several years to serve as witnesses, issues of funding counseling centers, and the planned law to improve the siphoning-off of extra profits.

[30] Supplying victims of trafficking with a residence permit independent of the duration of the legal proceedings is already in practice in Italy, Spain, the Netherlands and Belgium.

Policy addressing the phenomenon of trafficking seems, however, to be strongly geared toward the repatriation of trafficking victims, regardless of the conditions they might find in their countries of origin. There are two repatriation programs implemented by the IOM financing either the return to the country of origin or further migration to a third country. In 2002 and 2003, 12.000 migrants, asylum seekers, refugees and, among others, trafficking victims have been repatriated (Sachverständigenrat für Zuwanderung und Integration 2004: 61).

In spring of 2005 human trafficking became a topic of high public interest in Germany. Due to relaxed visa controls towards Ukrainian nationals, the Minister of Foreign Affairs became the target of severe criticism from conservative groups, as this policy was suspected to facilitate trafficking between this country and Germany. Moreover, current discussion focuses on the assumption that during the World Cup between 9 June and 9 July 2006 there will be an increase in the trafficking of women for sexual exploitation. The Parliamentary Assembly of the Council of Europe (PACE) has expressed its concern that between 30.000 and 60.000 women and girls might be the object of trafficking for the purposes of sexual exploitation during the World Cup. Several nation wide campaigns were launched by the Women's Associations against trafficking in women during the event.

3. Specific institutions designing migration and migrants' integration policies

Until recently, integration policy in Germany has been fragmented. Not only various federal ministries, like the Ministry of the Interior, the Ministry of Labour, the Ministry for Families, Senior Citizens, Women, and Youth, and the Ministry of Education have been active in shaping the integration policy (Beauftragte der Bundesregierung für Ausländerfragen 2002), but also agents of the civic society, like the welfare organizations connected to the churches or trade unions. The new Residence Act from 2005 established structures for a coordinated integration policy. According to this law, the Ministry of the Interior must systematize the integration policy and enhance the integration program for the Federal Republic (§ 45 Residence Act). A Working Group "Integration" has been established to see this process through, comprising representatives of different ministries. The law also provides for the involvement of NGOs in the process of establishing an integration program.

In the framework of this coordination task, the Federal Government Commissioner for Migration, Refugees and Integration (Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration) plays an outstanding role. The office of the Commissioner was established as early as 1978 and has constantly shaped the debate on migration and aliens' issues in Germany. § 93 of the Residence Act, defines the tasks of the Commissioner for Migration, Refugees and Integration: to promote the integration of migrants with permanent residence in the Federal Republic, to guarantee conditions that allow the tension-free co-habitation of ethnic groups, to combat discrimination against migrants, to initiate and support integration programs, and to provide information about the procedures for naturalization. Concerning legislature on the integration of migrants, the Commissioner is required to be involved in the process as early as possible (§ 94, Residence Act) and to supply the federal government with suggestions and comments. In 1997, the office of the Commissioner was transferred to the Ministry for Families, Senior Citizens, Women and Youth. In 2005, the Commissioner was accorded the status of Minister of State and was assigned directly to the Office of the Federal Chancellor. The Commissioner adopts a comprehensive concept of integration that takes into account issues of social inclusion and social rights, equal treatment as well as issues of active participation of migrants in public life.

Besides the Commissioner of the Federal Government, the commissioners for foreigners and for integration of the federal states and the municipalities are main nodes in the coordination of integration policy. [31] The commissioners on the federal state and the municipality level have different organization structures, but they are, nevertheless, well connected in a nation wide network. Most

[31] Outstanding actors include, on the federal states level, the Minister for Generations, Family, Women, and Integration in North-Rhein/Westfalia and, on the municipal level, the Office for Multicultural Affairs in Frankfurt am Main.

federal states have developed integration concepts and guidelines for integration. Almost all of them define integration as equal opportunity of participation in social, economic and cultural life and they stress the common responsibility of the commissioners for the integration process and the relevance of social networks in the local level for the realization of the integration policy. The integration concepts of the commissioners address all groups of migrants who have a legal status and a longer perspective of stay. The commissioners express their concern for the exclusion of certain groups of refugees who have been granted a "tolerated" status in lieu of a permission of stay, and who are assumed not to have needs associated with integration. (Beauftragte der Bundesregierung für Migration Flüchtlinge und Integration 2005a).

By virtue of the Residence Act of 2005, § 75, and the § 5 of the Law for Asylum Procedures[32], the Federal Office for the Recognition of Foreign Refugees received additional competencies and was renamed Federal Office for Migration and Refugees. The Office is now in charge of the coordination of information regarding the labour migrants, the development and realization of the "integration courses", advising the federal government concerning integration policy, doing research on migration, administrating the admission procedures for ethnic Germans, distributing the Jews immigrating from the states of the former Soviet Union into shelters, and administrating the Central Aliens Register[33] as well as the programs for the voluntary repatriation of refugees. The BAMF is responsible for the organization of integration courses that aim to support knowledge about, respect for, and identification with the values of the democratic state, while maintaining cultural identity (Griesbeck 2005) (see chapter 2.2).

4. Bottom up activities

As we have shown, with the exception of EU employment policies, the top down integration policies hardly address the largest groups of new female migrants, those who work, documented or undocumented, in domestic and other services and in prostitution. Policies do address those who immigrated as family members, but fail to offer them opportunities for integration into the labour market. Anti-trafficking policy is well established but offers only a restricted framework to the victims of trafficking to integrate, as it presupposes the repatriation of the victims and not their integration. Bottom up activities of non governmental organizations that address either migrants in general, new female migrants, or specific groups among the latter fill to some extent the policy vacuum by campaigning for rights and integration conditions and by offering integration support to migrant women.

As early as the 1950s, an important part of social integration policy was implemented by the welfare organizations, these being the main institutions carrying out social work. On the confessional basis, the organizations took charge of different migrant groups. The catholic Caritas Association (Deutscher Caritasverband e. V.), originally assisted only migrants from Catholic countries, the Diakonisches Werk**,** the welfare organization of the Protestant Church, originally supported the Greeks and the Workers' Welfare was in charge of the Muslim and Yugoslavian migrants. In the course of the economization in the social sector, the separation of target groups was given up in the beginning of the 1990s. Instead, all social work institutions must be opened to all migrants. The social work departments of Caritas and Diakonisches Werk now offer assistance to all migrants irrespective of nationality and religion. Some sections are specialized in assisting migrant women. Among their clientele are also several undocumented migrants. These, however, are not explicitly included in the statutory defined target group. Nevertheless, the social workers of the welfare organizations try to offer as much support as possible (Krieger, Ludwig, Schupp, and Will 2006).

[32] As of 2002 also by the decree of the Minister for Labour.

[33] The Central Aliens Register is a data base consisting of general files, i.e. files containing data on foreigners residing in the Federal Republic and visa files containing all visa files submitted to the German diplomatic missions abroad. (Federal Ministry of Interior, 2005)

As mentioned above, the churches take a central role in campaigning for the human rights of the irregular migrants and have achieved some improvement, such as the introduction of the hardship commissions that can decide about the stay of an irregular migrant. From the beginning of the migrant workers recruitment, German trade unions have represented the interests of migrant workers even beyond issues of work relations. Following the general trend, the participation of migrant workers in trade unions has been decreasing in the last decades. Trade unions in industries with high participation of "new" migrants like construction and agriculture, find considerable difficulties trying to organize the seasonal and undocumented migrant workers.[34] After the legalization of prostitution in 2002, Ver.Di, the service sector union, has established a working group to address migrant and non-migrant women working as prostitutes. However, especially with migrant women, little success has been made. More successful in reaching and supporting new female migrants are women's organizations which have emerged in recent years within the framework of the feminist movement and in association with the women's rights and human rights movement spurred on by ecclesiastical welfare organizations. The number of these rather small organizations is very high. There are 42 counseling centres alone for victims of trafficking, 20 of which are run by the Protestant Church (Kühn 2006). Similar to the churches, these organizations have also influenced federal policy in favour of migrant women, especially by campaigning for an autonomous residence status of immigrating spouses, and by achieving the reduction of the time of dependent residence permits from four to two years. At the same time they offer concrete support, advice, and information. To name only some of them:

- The Working group and counseling centre against international sexual and racist exploitation (Arbeitsgemeinschaft gegen internationale sexuelle und rassistische Ausbeutung) **Agisra e.V.** (www.e-migrantinnen.de) was established in 1993 as an information and assistance office for female migrants and refugees who are victims in a double sense: due to the situation in their country of origin they become victims of sexual exploitation, forced labour, humiliation, inhuman treatment or violence in the family, while at the same time they become victims of discrimination or racialization on the grounds of the legal framework in the hosting society. The organization offers assistance anonymously and free of charge.

- **FIM e. V**. (www.fim-frauenrecht.de) (Women's rights are human rights) started its activity in Frankfurt/Main in 1980 when Thai women in Germany raised awareness concerning the phenomenon of sex tourism and women trafficking. Today, FIM is a consultation centre for female migrants and their families from all over the world.

- **Franka e. V.** (www.franka-kassel.de) has been active since 2001 supporting female migrants who have become victims of trafficking and sexual exploitation, which are usually connected to illegality, threatening, unlawful detention, violence and humiliation. Franka e. V. is a member of the Diakonisches Werk in Kurhessen-Waldeck.

- **Doña Carmen e. V**. (www.donacarmen.de) in Frankfurt addresses migrant prostitutes, offering counseling and help and lobbies for the improvement of the situation of migrant prostitutes.

- **Ban Ying e. V**. (www.ban-ying.de) Coordination Centre in Berlin was founded in 1988. It runs a shelter for women from Southeast Asia and a counseling centre for victims of trafficking. The goals of Ban Ying are the prevention of trafficking and the improvement of the living conditions of migrant women. Further target groups are migrant women exposed to domestic violence and migrant domestic servants in diplomats' homes. There is a focus on the support of women from Southeast Asia, in particular women from Thailand and the Philippines by offering social and legal counseling in their native language. Counseling and accompaniment is offered for the victims of trafficking.

- Goals and objectives of **Amnesty for Women (**www.amnestyforwomen.de) Hamburg, are to support female migrants, to enforce human rights and laws protecting women, to improve the legal situation of

[34] In order to cope with this situation, the construction and agriculture trade union initiated the establishment of a separate "Migrant Workers Association" in order to be able to better address the undocumented male migrant workers in construction.

female migrants, and to establish both public and official recognition of gender specific grounds for seeking refuge. Support and counseling (both social and legal) in the migrants' native language: Polish, Portuguese, Russian, Spanish, Tagalong and Thai are offered. Amnesty for Women provides information regarding the acquirement of an autonomous legal status, naturalization, divorce laws, laws on child custody and family law. The centre serves as a meeting point for women of all nationalities

- Target groups of **JADWIGA (**www.jadwiga-online.de) Counseling Centre for Female Victims of Trafficking in Munich, are female victims of trafficking and illegal job placement. Services offered are: individual native language counseling for female victims of trafficking, assistance in a crisis, arranging social, legal and medical assistance, support and accompaniment of witnesses during criminal proceedings, counseling in prison or for those in custody pending deportation

- The women's counseling centre **FIZ** in Stuttgart was founded in 1988. It offers support to migrant women who came from Asia, Africa, Latin America and Eastern Europe to Germany in order to marry. It is an organization founded in association with the Diakonisches Werk of the Protestant Church and aims to offer support on issues related to legal status, family violence, and intercultural communication. Also, women forced into prostitution are a target group of FIZ.

RESPEKT (www.respekt-berlin.de) is an association of several counseling centres and women's organizations. Its goal is the support of the domestic workers. However, the activities of RESPEKT have been dwindling in recent years.

SOLWODI e. V. (www.solwodi.de) is an organization of the Catholic Church (Caritas) which has offices in ten cities in different federal states. Solwodi was founded in 1985. It offers psychological, social and legal counseling, assistance, access to medical treatment and care, safe-anonymous housing to women who have become victims of trafficking, forced prostitution, forced marriage, female circumcision, sex tourism, labour exploitation and other forms of violence. Victims who choose to participate in legal proceedings against traffickers receive accompaniment in legal proceedings, and are offered support in terms of education and training. In some cases, the organization can also offer financial support.

5. Summary/Discussion

Migrant women who have been entering Germany in the last decade are a highly diverse group, encountering different conditions of integration according to different legal statuses. Both the legal framework and specific labour market demands create different integration conditions for women entering the country in the course of family reunion and family formation, women entering the country for employment in marginal sectors of the economy, such as the domestic sector, agriculture, and restaurants, undocumented migrant women employed in these marginal sectors and women asylum seekers or refugees. The integration prospects of this diverse group of migrant women are embedded in the legal framework that has been revised in recent years and, as we have shown in this paper, is rather unfavorable to their integration processes. The legislations governing the legal status of migrants (Residence Act) and the conditions of entering the labour market (Social Code II and III) create unfavorable conditions for the integration of non-EU migrants and especially of migrant women and thus induce marginalization processes. The so called Hartz reforms and the Residence Act target the same goal, i.e. adapting the labour force to the needs of the labour market and reducing the expenses for unemployment and social benefits (Frings 2005). The new policies seem to be aiming at the deregulation of the labour market while at the same time transforming irregular into regular work so as to increase the tax income of the state. A major objective of policies targeting labour markets with high migrant women participation seems to be the regularization of informal work in a deregulated framework. The Hartz IV Law and the Residence Act entail instruments for steering the unemployed and specifically unemployed migrants towards the low wage segments of the labour market and cut down on immigration. Particularly the specific interconnection of divergent requirements in the two main legal frameworks creates precarious situations for migrants. The labour

market laws push unemployed migrants into precarious work and minor employment, while the Residence Act demands normal insured work for granting residence and settlement permits. Under these circumstances, the long-term impact of the labour market laws will be that migrant women may be robbed of the conditions that enable them to renew their residence permits. Thus the predicaments in the labour market may have negative effects on the legal status of migrant women. On the other side, the priority principle favoring German and other EU citizens and equated migrants to them in accessing the labour market creates a channel to marginalization of third country migrants.

With the reform of the migration legislation, integration gains a central position in immigration policy, which at the same time becomes integration policy. However, the new integration policy is limited in scope. It is conceived as an initial support in learning the language and gaining insight in basic structures of society and does not take into account the long-term or continuous need for integration support migrants might have. Moreover, it selectively addresses mainly those who enter the country as family members. The migrant women recruited for employment in the domestic services are not targeted by this integration policy, as they are considered not to have the perspective of a long-term stay. The Residence Act and the Employment Ordinance create a rotation model without integration perspective for migrant women in domestic sector, working in Germany for a period of three years at most and then having to leave the country. This policy counteracts and abruptly interrupts social integration processes. The European labour market policies implemented in Germany, however, do address new female migrants with a precarious legal status by developing a double option of integration: integration into the German labour market and integration into the labour market of the country of origin.

When assessing integration policies addressing the old migrant populations, the paradoxical effect of the hegemonial women's rights discourse on the integration policies comes to the fore. On the one hand, this discourse has become the basis for some crucial improvements in the legal framework for women's integration: gender related persecution is now recognized as a reason for asylum; the conditions for an autonomous residence permit for spouses, mostly females, have been considerably improved. On the other hand, women's rights discourse is instrumental in the assimilationist integration policy that has been recently adopted by the German government. Combating forced marriages, honor murders and trafficking in women becomes not only the basis to claim cultural assimilation but also the basis for restricting immigration of women and expulsing undocumented female migrants.

The law for combating human trafficking and forced prostitution seems to be turning into an instrument of "precarious legalization and subsequent expulsion" of migrant prostitutes, as sex work of migrant women is easily equated with forced work. Women identified as trafficking victims receive a permission to stay in Germany only for the period they are needed as witnesses in a process against the perpetrators. Main target of policy is the return of the victims to the country of origin regardless of their biographical plans and the feasibility of a successful return.

Considerable groups of new female migrants are not addressed by the official integration policy, as they are thought to stay only temporarily in Germany. Others are not target group of integration policy because they are not registered officially as residing and working in Germany. The undocumented migrant women working in the domestic and other sectors rarely have the possibility to legalize their stay and to integrate in society as visible members, but rather have to accept the status of illegality and to adapt their biographical plans to this situation. NGOs support minimal integration despite illegality and especially the Churches, who formulate suggestions for policies and stress the need for legalization procedures, taking into account the human rights of undocumetned migrants. It is also interesting that organizations of those who implement policy dealing with the new female migrants, and especially the Association of Police Officers who implement core tasks of the anti trafficking policy vote for a regular legal status for the victims of trafficking. This is to provide the victims with the opportunity to act without fear of repercussion by the perpetrators. Organizations that emerged from the women's movement and the welfare organizations of the churches offer support in the form of advice and information, strengthening the precarious integration processes of the new female migrant women in the margins of society. These organizations fill a considerable policy vacuum and

bear a great deal of the responsibility of society for the integration of migrants who, while they are needed in the labour market are ignored by policy.

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