verband binationaler
familien und partnerschaften

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About the Association of Binational Families and Partnerships (IAF)

Since 1972, the Association of Binational Families and Partnerships (IAF) represents the interests of binational families and partnerships throughout Germany. We support the social and legal equality of people regardless of their skin color or their cultural origin. We work as a non-profit organisation in more than 20 cities in and outside of Germany. Counseling women and men regarding all issues of binational marriages and relationships is one focus of our work. We use legal restrictions and the various forms of disadvantage and discrimination as an opportunity to inform the public and to provide a basis for dialogue between the organization and the federal government. One of our most important tasks is to highlight the chances and possibilities that arise when people of different cultures live together. In doing so, we rely on the experience of our members and pass on this knowledge in the form of publications, events, and training courses. Advocating a holistic approach to transnational and globalised forms of (family) life, we aim at contributing to a culture of acceptance through various projects on intercultural topics. We are a member association of the German nondenominational welfare association (DPWV), the German women's council (DF), and the European Conference of binational/bicultural Relationships (ECB). We are also represented in the Association of German Family Organisations (AGF) e.V., the European Coordination for Foreigners' Right to Family Life (CoordEurop) and in the German National Coalition for the Implementation of the UN Convention on the Rights of the Child.

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Human rights infringements in the context of family migration policies in Germany

1. Introduction

Family migration, more commonly referred to as family reunification, occurs when a foreign family member of a citizen or a resident foreigner migrates in order to join them in their country of residence. In many European states, in part due to few other migration opportunities, family migrants make up a considerable share of overall migration. However, family migration has also often been a very contested issue, and especially in the past ten years, increasingly restrictive policies are being introduced all over Europe with an aim to stop "abuse" of family migration and reduce overall family migration inflows.

2. A rights-based approach to family migration

Family migration is based on human rights: The fundamental right to the protection of marriage and family life is enshrined in various international human rights documents.[1] Furthermore, for European states such as Germany, binding and enforceable obligations regarding the protection of marriage and family arise from Articles 8 and 12 of the European Convention on Human Rights (ECHR).[2] In addition, the German constitution

[1] The Universal Declaration of Human Rights protects the family in Article 16: "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Similar articles exist in the International Covenant on Civil and Political Rights (Art. 23), the International Covenant on Economic, Social and Cultural Rights (Art. 10), and the European Social Charter (Art. 16), all to which Germany is a signatory party. In the Convention on the Rights of the Child (CRC), not only the family as a societal unit is protected, but concrete references are made to the situation of family migration: its Article 9 pronounces that "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child (...)" while Article 10 continues "In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner." Even though the CRC only applies to family migration of parents and minor children, since it is a binding instrument and has been ratified by 194 parties (Germany is among them), "its authority has been more weighty than almost any other international instrument" (Lahav 1997: 359).

[2] Article 8 ECHR, entitled "Right to respect for private and family life" reads "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the

contains a similar article concerning the special importance of the family: Article 6.1 of the constitutional Basic Law (*Grundgesetz*, GG) states that "Marriage and the family shall enjoy the special protection of the state." While this right to the protection of the family does not directly amount to a binding universal right to family migration, it does provide a strong "humanistic and moral basis for countries to allow family migration" (Lahav 1997: 354).

When government policies and/or their implementation through the relevant authorities make family migration difficult or impossible for individuals, these are effectively robbed of their human and constitutional right to the protection of marriage and family. Unfortunately, in Germany both of the policies and their implementation have grown increasingly restrictive in recent years. We thus criticize that:

a) The human right to the protection of marriage and family is infringed through excessively restrictive family migration policies.

b) Certain (national, ethnic, socio-economic) groups are treated differently regarding their family migration rights by law and/or through administrative practices than others. These individuals are thus disadvantaged in their access to their basic right to the protection of family. This differential treatment amounts to **discrimination** that is incompatible with the basic right to equal treatment and freedom from discrimination.

This report illustrates some of these **German policies and practices** regarding family migration that our association is confronted with in our daily work that **infringe on the basic right to the protection of marriage and family.**

3. Document difficulties

One major administrative practice violating the human right to the protection of family is the questioning of the authenticity of the documents necessary for the family migration application (e.g. identity documents, birth

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protection of the rights and freedoms of others" while Article 12 ECHR protects the right to marry: "Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

certificates, marriage certificates, non-marriage certificates). Especially the authenticity of documents issued in certain African and Asian countries (e.g. India, Iraq, Gambia, Nigeria, Pakistan, Sudan) are very regularly questioned by the authorities. In order to authenticate the questionable documents or the information provided therein, the German authorities (mainly the representations abroad) often demand additional documents, notarisations and even let "trust counsels" carry out highly intricate verification inspections in the local surroundings of the incoming spouse. These practices lead to both severe delays in the family migration procedure (and during this time, often a *de facto* separation of the family members) and increased costs the individual families need to bear. In severe cases, when the authorities cannot be satisfied in the verification of documents, family migration is inhibited altogether.

In our view, this practice infringes upon the international human right to the protection of marriage and family and the German constitutional protection of the family. Additionally, it also amounts to an untenable discrimination according to country/region of origin of the incoming family member, since only documents from certain states are doubted in their authenticity.

4. "Marriage-of-convenience-inspections" (*Scheinehenüberprüfungen*)

Another administrative practice in the context of spousal migration that inhibits individuals from fully enjoying their right to the protection of marriage and family is that of so-called "marriage-of-convenience-inspections." Apart from the fact that we consider it highly questionable that the government in a secular state morally proscribes the "correct" reasons for marriage in this way, the individual consequences of these practices are appalling. Individual couples considered "suspicious" of leading a marriage of convenience, that is a marriage concluded for the sole or main purpose of obtaining a residence permit, are subjected to inspections. These inspections include separate interviews on (partly, very private matters of) the relationship and house visits. For the affected couples, these inspections, often invading their private and intimate spheres, are frequently perceived to be very humiliating and highly distressing. Furthermore, this practice also leads to delays in the

family migration procedure during which the spouses are separated and unable to continue or build up their family life. In case of a "negative" evaluation of their relationship, the authorities reject the application to family migration and the only recourse for the affected couple is to appeal the decision by bringing a case to an administrative court. The fact that the responsible courts frequently assess the relationship positively and grant residence permits proves the fact that obviously many "authentic" couples are erroneously accused of leading a marriage of convenience. In these cases the infringement of the right to marriage and family is violated in a particularly harsh manner.

We consider all administrative practices trying to evaluate the "authenticity" of marriages to violate the human right to privacy (Art. 12 UDHR) and the right to the protection of marriage and family as enshrined in international human rights documents and the German constitution. Moreover, these practices are highly discriminatory since "suspicious" couples are singled out according to certain "indicators" including the spouses' previous marriages or (failed) attempts to enter Germany, if a large sum of money was paid or a large difference exists between the couples.

5. Since 2007: Pre-entry language requirement

In 2007, on top of these burdens relating to documents and marriage-of-convenience-inspections, new restrictive measures were introduced. All third-country national applicants for spousal migration must prove German skills (equivalent to level A1 of the Common European Frame of Reference for Languages, CEFR) in their country of origin in order to qualify for an entry visa.[3] This new policy is a significant hurdle for many incoming family members and thus further restricts the access to the individual human right to the protection of marriage and family. Especially when no German courses are available nearby, the prior education of the incoming spouse is low (e.g. illiterates), or the couple lacks the financial resources necessary to follow a German course (and possibly relocate temporarily to the city where a course can be attended), the language

[3] § 30 Abs. 1 S. 1 Nr. 2 AufenthG and § 28 Abs. 1 S. 4 AufenthG [Residence Act]

requirement might pose a virtually insurmountable hurdle for transnational couples wishing to reunite in Germany. It is highly critical that even in cases of particular hardship, the law contains no exceptional provisions (*Härtefallklausel*) – while at the same time, spouses of high-skilled migrants, researchers and entrepreneurs as well as spouses of migrants from within the EU and from favoured OECD countries (e.g. Australia, Canada, Israel, Japan, New Zealand, South Korea, USA) are exempted from fulfilling this language requirement.

This strong stratification of rights along national and occupational criteria amounts to an intolerable discrimination that must be abolished from a rights-based perspective. The transnational families of German citizens and third-country national residents living in Germany, especially when they have a socio-economically weak and/or low-educated background, are over-proportionally targeted and affected by this restrictive policy instrument.

6. Since 2007: Income requirement for "ethnic minority" Germans

Prior to 2007, only foreign residents had to fulfil an income requirement in order to sponsor the immigration of their family members, while all German citizens were exempted from this condition: no income had to be proven in order for family members of German citizens to receive an entry and residence permit in Germany. In 2007, the government changed this law[4] – now, in exceptional cases, namely when the authorities deem it acceptable that the couple can live in the incoming spouses' country of origin, German spouses can be obliged to fulfil the income requirement, just as foreign residents are if. When is it deemed acceptable to demand German citizens go abroad in order to live with their spouse? In the commentary of the law, German citizens that have lived in their spouses' country of origin and speak the local language as well as dual nationals are mentioned as possible cases. It is thus clear and has also been stated by government representatives that this provision is specifically aimed at German citizens with an ethnic minority background marrying spouses from

[4] § 28 Abs. 1 Satz 3 AufenthG

their (parents') country of origin. Even if the income requirement might be demanded relatively infrequently in practice, this policy is a crass discrimination on ethnic grounds and creates second-class citizens based on migration background. It is in breach not only of Art. 3 GG guaranteeing equality and non-discrimination but also of Article 5(2) of the European Convention on Nationality, which prohibits discriminating between citizens by birth and naturalised citizens[5]. In our practical work we have experienced that this provision creates a great deal of uncertainty, anxiety and frustration among transnational couples and families.

7. Recommendations

The Association of Binational Families and Partnerships (IAF) calls on the government of the Federal Republic of Germany to provide all individuals residing in Germany with access to their right to marriage and family by

- Abolishing the administrative practice of rejecting documents (e.g. birth certificates, marriage certificates) from specific countries as potentially counterfeit as well as the related practice of intricate verification proceedings through "trust counsels"
- Abolishing the administrative practice of subjecting certain "suspicious" couples applying for family migration to humiliating and distressing "marriage-of-convenience-inquiries"
- Abolishing the excessively restrictive and discriminatory condition of a pre-entry language requirement
- Abolishing the discriminatory practice of potentially obliging German citizens with ethnic minority background to fulfil an income requirement

Literature

Lahav, G. (1997). International Versus National Constraints in Family-Reunification Migration Policy. *Global Governance, 3*, 349-272.

[5] Article 5(2) of the European Convention on Nationality (1997) reads "Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently."