

ZENTRUM FÜR EUROPÄISCHE RECHTSPOLITIK

an der Universität Bremen

ZERP

Klaus Sieveking / Johanna van Lindert

**EU- and Non-EU-Nationals in Germany 1994
Legislation, Jurisdiction and Policies**

Reports on Non-EU-Nationals and on the Free Movement of Workers
in Germany 1994 to the Commission of the European Union

ZERP-Diskussionspapier 4/95

IMPRESSUM

Herausgeber/	Zentrum für Europäische
Redaktion/	Rechtspolitik an der
Vertrieb:	Universität Bremen
	Universitätsallee, GW 1
	28359 Bremen
Schutzgebühr:	DM 10,-- (zzgl. Versandkosten)
Nachdruck:	Nur mit Genehmigung des Herausgebers
ISSN:	0947 - 5729

Bremen, im Mai 1995

Inhaltsverzeichnis

Vorwort	1
List of abbreviations	3
A. REPORT ON NON EU-NATIONALS IN GERMANY 1994	5
1. Migratory patterns and socio-demographic trends.....	5
2. Flow regulation policies	9
2.1 International agreements	11
2.1.1 Legislation.....	11
2.1.2 Policies	12
2.2 Asylum and refugees.....	13
2.2.1 Legislation.....	13
2.2.2 Drafts.....	15
2.2.3 Jurisdiction	16
2.2.4 Policies	20
2.3 Illegal immigration	23
2.3.1 Legislation.....	23
2.3.2 Policies	24
2.4 Repatriation to the home country	24
2.4.1 Legislation.....	24
2.4.2 Policies	25
2.5 Return of a foreigner to Germany	25
3. The Labour Market.....	26
3.1 Legislation	26
3.2 Drafts	28
3.3 Jurisdiction.....	28
3.4 Policies	28
3.5 Labour market figures	31
3.5.1 Employment.....	31
3.5.2 Unemployment.....	33
3.5.3 Illegal work.....	34
4. Integration policies.....	35
4.1 The Federal Commissioner for Foreigners	36
4.2 Human rights	37

4.2.1	Drafts	38
4.2.2	Jurisdiction	38
4.3	Naturalization	39
4.3.1	Drafts	39
4.3.2	Jurisdiction	40
4.3.3	Policies	42
4.4	Foreigner and Asylum Law.....	43
4.4.1	Legislation.....	43
4.4.2	Drafts	50
4.4.3	Jurisdiction	56
4.4.4	Policies	64
4.5	Social Security Benefits and related Tax Regulations	67
4.5.1	Legislation.....	67
4.5.2	Drafts	69
4.5.3	Jurisdiction	70
4.5.4	Policies	72
4.6	Education.....	74
4.6.1	Legislation.....	74
4.6.2	Jurisdiction	77
4.6.3	Policies	78
4.7	Women	81
4.8	Data Protection.....	81
4.8.1	Legislation.....	81
4.8.2	Discussion on Data Protection Policies	83
4.9	Crime	83
4.9.1	Drafts	84
4.9.2	Policies	84
4.10	Kurds.....	84
4.11	Discrimination.....	87
4.12	Miscellaneous	87
4.13	Racism and Xenophobia.....	88
4.13.1	Drafts	89
4.13.2	Jurisdiction	90
4.13.3	Policies	91

B. REPORT ON THE FREE MOVEMENT OF WORKERS IN GERMANY 1994	97
1. Entry, Residence, Departure and Association Agreement EEC-Turkey	97
1.1 Entry	97
1.1.1 Legislation.....	97
1.1.2 Drafts.....	99
1.1.3 Jurisdiction	100
1.1.4 Policies	101
1.2 Residence	102
1.2.1 Legislation.....	102
1.2.2 Jurisdiction	102
1.2.3 Policies	102
1.3 Departure.....	103
1.3.1 Jurisdiction	103
1.3.2 Policies	104
1.4 Association Agreement EEC-Turkey	105
1.4.1 Legislation.....	105
1.4.2 Jurisdiction	105
1.4.3 Policies	109
2. Equality of treatment	110
2.1 Legislation	110
2.2 Drafts	112
2.3 Jurisdiction.....	112
2.4 Policies	113
3. Employment in the public services	115
4. Family members.....	115
4.1 Jurisdiction.....	115
5. Establishment, provision, students.....	116
5.1 Establishment.....	116
5.2 Provision and education policy.....	116
5.2.1 Legislation.....	116
5.2.2 Policies	118
6. Social security	119
6.1 Legislation	119
6.2 Drafts	119
6.3 Jurisdiction.....	120

6.4 Policies	123
7. Miscellaneous.....	124
APPENDICES	127
A. Survey of the Legislation in 1994	127
1. Gesetze.....	127
2. Verordnungen.....	133
3. Erlasse	133
4. Gesetzesvorhaben	134
5. Anordnung der Bundesanstalt für Arbeit	138
6. Rechtsvorschriften der Bundesländer	138
B. Publications (a selection).....	147
1. Aufsätze.....	147
2. Bücher.....	168
C. Standing Committee of Experts on International Immigration, Refugee and Criminal Law. Proposals for the Amendment of the Treaty on European Union at the IGC in 1995, March 1995 - Excerpt -	174

Vorwort

Seit vielen Jahren berichtet das ZERP über die rechtliche, politische und soziale Situation von Ausländern in Deutschland. Anknüpfungspunkt ist die jährliche Berichterstattung an die Europäische Kommission. Im Rahmen des Netzwerkes "RIMET" ist über wesentliche Entwicklungen der Lage der ausländischen Arbeitnehmer und ihrer Familien zu berichten. In dem zweiten Netzwerk "Free Movement of Workers" sollen die maßgeblichen Wirkungen der Freizügigkeitsregelungen und des freizügigkeitsspezifischen Sozialrechts, einschließlich der Umsetzung der zu diesen Fragen ergangenen Rechtsprechung des Gerichtshofs der Europäischen Gemeinschaft in Bezug auf die Wanderarbeitnehmer aus der Europäischen Union und ihre Familien in den Blick genommen werden. Im Zentrum beider Berichte, die hauptsächlich Tatsachen zusammentragen sollen, steht die jeweilige Entwicklung von Gesetzgebung, Rechtsprechung und (Integrations-) Politik gegenüber den jeweiligen Ausländergruppen. Die Berichte wurden vertragsgemäß in englischer Sprache erstellt. Nachdem bislang die deutschen Fassungen der Berichte veröffentlicht wurden, sollen diesmal die Fassungen auf Englisch publiziert werden. Auf diese Weise kann - so ist zu hoffen - auch ein bislang ausgeschlossener Leserkreis im Ausland erreicht werden. Dies erscheint unter dem Gesichtspunkt der besseren gegenseitigen Information innerhalb der EU vorteilhaft.

Inzwischen erstattet die Bundesbeauftragte der Bundesregierung für die Belange der Ausländer dem Deutschen Bundestag jährlich einen Bericht über die Lage der Ausländer in der Bundesrepublik Deutschland (erstmals für das Jahr 1993). Auch die Europäische Kommission ist dazu übergegangen, im Rahmen des Netzwerks "RIMET" jährlich eine Zusammenfassung der einzelnen Länderberichte zu veröffentlichen. Angesichts dieser veränderten Situation und auch aus Gründen stärkerer Konzentration der im ZERP vorhandenen Forschungskapazitäten wird es künftig keine Berichte mehr aus dem ZERP über Ausländerrecht und Ausländerpolitik geben.

Den hier vorgelegten Berichten (einschließlich der Anhänge A. und B.) wird aus aktuellem Anlaß ein besonderer Anhang C. hinzugefügt. Er enthält den die Drittstaatsangehörigen betreffenden Auszug aus dem Vorschlag des "Standing committee of experts on international immigration, refugee and criminal law" (Utrecht), den dieses aus Anlaß der Konferenz zur Änderung des Vertrages über eine Europäische Union ("Maastricht II") vorgelegt hat. Das ZERP möchte mit dieser Veröffentlichung seine wissenschaftlichen Aktivitäten im Bereich der Rechtsstellung von Drittstaatsangehörigen auch rechtspolitisch untermauern.

Bremen, Oktober 1995

Klaus Sieveking

List of abbreviations

AuslG	Ausländergesetz
AsylVerfG	Asylverfahrensgesetz
BGBI	Bundesgesetzblatt
BSG	Bundessozialgericht
BR	Bundesrat
BT	Bundestag
BVerfG	Bundesverfassungsgericht
BVerwG	Bundesverwaltungsgericht
Drs	Drucksache
DVBl	Deutsches Verwaltungsblatt
ECHR	European Convention on Human Rights
ESMV	Europees Steunpunt Migranten
EuZW	Zeitschrift für Europäisches Wirtschaftsrecht
EWS	Europäisches Wirtschafts- und Steuerrecht
FAZ	Frankfurter Allgemeine Zeitung
FR	Frankfurter Rundschau
GG	Grundgesetz
IBW	Informationen Bildung Wissenschaft
InfAuslR	Informationsbrief Ausländerrecht
info also	Informationen zum Arbeitslosenrecht und Sozialhilferecht
ILPA	Immigration Law Practitioners Association
MNS	Migration News Sheet
NJW	Neue Juristische Wochenschrift
NVwZ	Neue Zeitschrift für Verwaltungsrecht
NZZ	Neue Zürcher Zeitung
OLG	Oberlandesgericht
OVG	Oberverwaltungsgericht

S	Seite
SaBl	Sammelblatt
SGb	Die Sozialgerichtsbarkeit
VG	Verwaltungsgericht
VGH	Verwaltungsgerichtshof
wib	Woche im Bundestag
WK	Weser Kurier
ZAR	Zeitschrift für Ausländerrecht und Ausländerpolitik

A. REPORT ON NON EU-NATIONALS IN GERMANY 1994

1. Migratory patterns and socio-demographic trends

- * The population of Germany is shrinking. In 1993 Germany had a deficit of 98,000 in the number of births needed for societal reproduction. 798,500 children were born and 987,300 people died.
109,100 of the new-born children have immigrant parents. In 1993, the total birthrate was 1.3% less than in 1992. However, it was for Germans 1.9% less, for immigrants, in contrast, 3% more than in 1992 (FAZ 21.5.1994).
The migration surplus decreased from 788,000 persons in 1992 to 471,000 in 1993.
In 1993, 987,000 (in 1992 1.208 million) foreigners crossed the German border of which were 323,000 asylum-seekers.
- * The Federal Office for Statistics stated that 6.878 million immigrants lived in Germany at the end of December 1993. Compared with December 1992, this amounts to an increase of 6%. This also represented a decrease compared to the period of 1991/92 in which the increase was 10%.
Today 8% of the entire population are immigrants: 97% live in the old federal states and 3% in the new.
- * At the end of 1993, the biggest part of the 6.9 million immigrants was Turkish¹:
1.918 million (28%) were from Turkey,
930,000 (14%) had the Yugoslavian citizenship,
563,000 (8%) were from Italy,
352,000 (5%) from Greece, and
261,000 (4%) from Poland.
- * 3.72 million (57.3%) of the immigrants are male, 2.78 million (42.7%) female.

¹ Source: Ausländerzentralregister (AZR).

1.52 million (23.4%) of the immigrants are younger than 18 years old whereas 326,542 (5.1%) are older than 60.

- * By the end of 1991, 25% of the immigrants had lived in Germany for over 20 years. Two thirds of the Turkish immigrants, 72% of the Italian, and 86% of the Spanish had lived there over 10 years.²

Given the long period of residence, the residence-status of most immigrants is relatively precarious.

In 1991, only 863,000 immigrants had a residence-entitlement (Aufenthaltsberechtigung), the best legal status.

1.48 million immigrants had a permanent residence permit (unbefristete Aufenthaltserlaubnis).³

- * In the first half of 1993, 328,000 immigrants left Germany. Compared to the preceding year this represents an increase of 17% of immigrants leaving the country.

Emigrants of German Descent

- * The number of people applying to enter Germany as emigrants of German descent totalled 182,562 for the first 10 months of 1994, that is 90% of the total for the same period in 1993 (SZ, 2.11.1994).

Most of these emigrants arrived from the former USSR (17,756), a few were from Poland and Romania. According to the Federal Commissioner for German Emigrants, the decrease in the number of people leaving is due to the fact that many "Russian-Germans" do not do their utmost to go to Germany. This may be a consequence of Germany's policy to support German settlements for Russian-Germans abroad (FAZ, 4.4.1994).

Political Asylum/Refugees

- * The Federal Office for the Acknowledgement of Foreign Refugees started to change the basis of its statistics. Since May 1994 the data in the statistics has only referred to persons and

² Source: Statistisches Bundesamt.

³ Source: Ausländerzentralregister (AZR).

not as in the past also to procedures. The requests will be subdivided. The total of all requests and the amount of first requests will be reported (ZAR 3/94).

- * Since the new Asylum Law became effective on 1 July 1993, the number of asylum applications has fallen by more than 50%. The decrease is most significant in the case of Bulgarian and Romanian asylum-seekers. Bulgaria and Romania are considered "safe countries". The fall in the number of asylum-seekers has been chiefly influenced by the principles introduced through the 1993 Law.
- * A total of 127,210 persons applied for asylum in 1994, which is 60.6% less than in 1993 when 322,599 persons sought asylum. A majority of the asylum-seekers, 30,404 (1993: 73,476), came from the Federal Republic of Yugoslavia (Serbia and Montenegro). The next largest group, 19,118 (1993: 19,104), came from Turkey, followed by a group of Rumanians numbering 9,581 (1993: 73,717), and Bosnia-Herzegovinians with 7,297 (1993: 21,240). The smaller groups were made up of citizens from: Afghanistan with 5,642, Sri Lanka with 4,813, Togo with 3,488, Iran with 344, Vietnam with 3,427 and Bulgaria with 3,367 asylum-seekers.
58,043 (45.6%) of the asylum seekers came from the former Eastern bloc.
In 1994 the largest decrease in asylum-seekers were those from Bulgaria (1993: 22,547) and Vietnam (1993: 10,960).
- * The Federal Minister of Interior, Mr. Kanther, attributed the decline to the new Asylum Law. At the same time, he warned that a tendency for the figure to increase was reappearing. Whereas during the summer the monthly figure was about 9,000, the figure for November 1994 rose to 12,056, and for December 1994, it was 12,186. In an implicit attack against the Federal States governed by the opposition party, the Social Democrats (SPD), he warned them against unilaterally deciding to decree a halt to the deportation of certain nationalities of rejected asylum-seekers (SZ, 7.1.1995, FAZ, 7.1.1995).
- * The Federal Office for the Acknowledgement of Foreign Refugees registered 12,186 asylum requests in December 1994. Most of them (3,321) came from former Yugoslavia, 2,326

asylum-seekers came from Turkey, 377 came from Togo and 366 from Rumania.

For the whole year 1994 352,572 asylum-requests were registered: 7.3% were acknowledged, 67.6% were rejected (FAZ, 7.1.1995).

The large number of processed applications was due to a large number of "old requests".⁴

- * Due to the AFIS-system (automatic finger-print system) about 10,000 multiple applications have been uncovered since July 1993.
- * More and more foreigners have been deported. In 1993, 36,358 foreigners were deported, almost 20,000 more than in 1992. In addition, due to the new 1993 Asylum Law, more and more asylum-seekers are in remand pending deportation. About 5,000 asylum-seekers were in remand pending deportation in July, 1994 (FAZ, 29.7.1994).

Illegal immigration

- * The number of illegal immigrants arrested at the German-Polish border is on the increase again. In February 1993, more than 3,100 persons were arrested for illegal entry. The figure then dropped and went down sharply after the new Asylum Law. The monthly figure fell to 863 in August, but rose to 909 in September. It remained at this level in October before falling to 737 in November, and to 654 in December. According to the speaker of the Federal Border Police (BGS), it will be necessary to wait a few months before being able to draw any conclusions about causes of the fluctuation in illegal movement across the border.

Equally significant is the increase in the number of illegal immigrants coming from the Czech Republic. This figure also fell from the high point of 1,800 reached in February 1992 to

⁴ Further information about the development of the amount of asylum-seekers: Pollern, Hans-Ingo von, Die Entwicklung der Asylbewerberzahlen im Jahre 1993, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 29ff.

720 in September 1993. Since October 1993, the monthly figure has been exceeding 1,000 and reached 1,600 in January 1994 (SZ, 2.2.1994).

2. *Flow regulation policies*

- * Although immigration has taken place in Germany, the Government does not recognize this fact officially, i.e. there are no official position and set of official measures or office to accompany it that is referred to and recognized as German immigration policy. Outside government circles, many recognize that Germany is now de facto an immigrant country and strongly suggest that the Government develop immigration policy to deal, for example, with cultural differences on both sides. Some have been pleading for an Immigration Law: to acknowledge the fact that immigration takes place in Germany and to show that immigrants are welcome. Corresponding to social chances, the immigration policy should bring about equal rights for foreigners.⁵
- * In November 1994, there was a symposium on immigration policy, organized by the German National Foundation (Deutsche Nationalstiftung). Among others, the trade unions, employers, parties and the churches were represented. At the symposium, advantages and disadvantages of an Immigration Law were discussed. Supporters of an Immigration Law do not want to increase the immigration with a law, but make immigration regulations uniform, codify an integration concept, and remove grievances. Vehement criticism was stated on the situation of war-refugees in Germany and on the Government policy towards emigrants of German descent. Almost all agreed that integration of foreigners who lived in Germany should be supported by such measures as naturalization should be

⁵ Cf. Hoffmann, Lutz, Die unaufhaltbare Einwanderung, in: Mehdi Jafari Gorzini, Heinz Müller (Hrsg.), Handbuch zur interkulturellen Arbeit, Wiesbaden 1993, S. 174ff.; Billerbeck, Rudolf, Überlegungen zur Einwanderung, in: Zeitschrift für Sozialreform 1994, S. 209ff.

facilitated and citizenship based on ius soli (Die Zeit, 11.11.1994).

- * The German National Foundation (Deutsche Nationalstiftung) published in a resolution ideas on naturalization and immigration policy (ZAR Aktuell, 6/94).⁶
- * The Federal Commissioner for Foreigners favours a policy which is based on the facilitation of naturalization, a right to immigrate, and developing policy. This has something to do with the Federal Government's refusal to reform its policy on foreigners: German citizenship has been based on the principle of ius sanguinis, even immigrants of the second generation cannot give birth to a German child. They remain foreigners. Germany is inhabited by millions of individuals who originally came from other countries; many of them have lived here for over a decade and in the meantime started families. They are called immigrants. Thus Germany is an immigrant country. Everyone who denies this, is calling millions of immigrants intruders (Die Zeit, 14.10.1994).
- * The "Kronberger Kreis", a group of liberal economists, called for an immigration policy in which immigration should be limited from 200,000 to 300,000 foreigners per year. At this level, one third of the deficits in births required for societal reproduction in the next 30 years could be compensated. The other one third of deficits should be compensated by decreasing the payments and increasing the contributions in the social system, the last one third by increasing the birth rates (FAZ, 11.11.1994).
- * Deputies of 70 states met in October 1994 in Wien to talk about the gangs that smuggle people across the border (Schlepperbanden). The Centre on Migration Policy in Wien estimates that in 1993 between 250,000 and 350,000 "illegal immigrants" entered West-Europe this way. According to the meeting, it will be necessary to co-operate international in the

⁶ Among the managing board of the foundation are Prof. Kurt Biedenkopf, Prof. Kurt Masur and Helmut Schmidt. Cf. Schoger, Kristina, Zuwanderer und Politik. Ein deutsch-französischer Vergleich, Berlin 1994 and Neue Wanderungssituationen erfordern neue Antworten, in: Katholischer Lagerdienst-Brief ausländischer Flüchtlinge, 14.1.1994.

combat against these organized gangs. One major reason for these desperate attempts to cross the border has been extreme poverty in third world countries (NZZ, 1.11.1994).

2.1 *International agreements*

2.1.1 Legislation

Much of the international traffic has been legally regulated based on the following international agreements:

- * On 19 April 1994, Germany accepted with the Law, Protocol Nos 9 and 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Gesetz zu dem Protokoll Nr. 9 vom 6. November 1990 sowie zu dem Protokoll Nr. 10 vom 25. März 1992 zur Konvention zum Schutze der Menschenrechte und Grundfreiheiten vom 19.4.1994, BGBl. II, S. 490).
- * Germany accepted procedural guidelines regarding the relief of clearance at the common borders with the Agreement of 29 July 1992 between Germany and Poland (Gesetz zu dem Abkommen vom 29.7.1992 zwischen der Bundesrepublik Deutschland und der Republik Polen über Erleichterungen der Grenzabfertigung, 3.2.1994, BGBl. II, S. 265).
- * Announcement of the Agreement on the Amendment of the German-Lithuania Guestworker Agreement from 27 June 1994 (BGBl. II, S. 1249).
- * Law in accordance with the European Agreement dated 8 March 1993 on the Establishment of an Association between the European Union as well as their Member States and the Republic of Bulgaria, 7 October 1994 (Gesetz zu dem Europa-Abkommen zwischen der Europäischen Gemeinschaft sowie ihren Mitgliedstaaten und der Republik Bulgarien vom 7.10.1994, BGBl. II, S. 2753).
- * Law in accordance with the European Agreement dated 1 February 1993 on the Establishment of an Association between the European Union as well as their Member States and Rumania, 7 October 1994 (Gesetz zu dem Europa-Abkommen

zwischen der Europäischen Gemeinschaft sowie ihren Mitgliedstaaten und Rumänien vom 7.10.1994, BGBl. II, S. 2957).

- * Law in accordance with the European Agreement dated 4 October 1993 on the Establishment of an Association between the European Union as well as their Member States and the Slovakian Republic, 7 October 1994 (Gesetz zu dem Europa-Abkommen zwischen der Europäischen Gemeinschaft sowie ihren Mitgliedstaaten und der Slowakischen Republik vom 7.10.1994, BGBl. II, S. 3126).
- * Law in accordance with the European Agreement dated 4 October 1993 on the Establishment of an Association between the European Union as well as their Member States and the Czech Republic, 7 October 1994 (Gesetz zu dem Europa-Abkommen zwischen der Europäischen Gemeinschaft sowie ihren Mitgliedstaaten und der Tschechischen Republik vom 7.10.1994, BGBl. II, S. 3320).
- * Announcement of the German-Czech Agreement on the small Border Traffic on Walking Roads and in Tourist Areas, and on the Frontier crossing in special Cases (Bekanntmachung des deutsch-tschechischen Abkommens über den Kleinen Grenzverkehr auf Wanderwegen und in Touristenzonen sowie über den Grenzübertritt in besonderen Fällen, vom 2.12.1994, BGBl. II, S. 3844).
- * The ministers of interior of Germany and the Czech Republic signed an agreement regulating the granting of asylum. Asylum-seekers who enter Germany "illegally" from the Czech Republic, can be sent back within half a year after entrance. In return the Czech Republic is to receive 60 million marks to improve the border security and build an infrastructure for asylum-seekers (FAZ, 4.11.1994, NJW 1994, Heft 48, S. 33).

2.1.2 Policies

The following policies have recently been established and have a significant impact on regulating immigrant traffic.

- * In reply (BT-Drs. 12/8440) to a motion of members of the German Parliament, the CDU/CSU, the SPD and the F.D.P.

(BT-Drs. 12/7767), the Federal Government declared that the German-Czech relationship should be extended. In 1990 and 1991, 14 border passages were created. Since 1992, 4 other passages have been opened. Furthermore, Germany and the Czech Republic agreed to open 10 additional border passages in the next ten years. The visa requirement for border crossing for Czechs is no longer required since then border crossing has increased. Especially in the Czech Republic, German tourism has increased. Besides the English language, the German language is the most important foreign language at schools in the Czech Republic (wib 15/94 - XIX/470).

- * The German Government and Vietnamese leadership came to an agreement on the repatriation of the 40,000 "illegal" Vietnamese living in Germany. In the next 4 years, at least 20,000 of them are to be repatriated to Vietnam. Many of these Vietnamese were sent to East-Germany to work in the seventies. They have often been the target of German neo-Nazi's. Some 95,000 Vietnamese live in Germany, about 40,000 "illegally".

In return Germany promised to begin economic aid again. Economic contacts are to be intensified as well. In 1995 and 1996, Vietnam will receive 100 million marks each year (NZZ, 13.1.1995).

2.2 *Asylum and refugees*

2.2.1 Legislation

The following legislation based on international agreement regulates the processing of applications for political asylum and dealings with refugees.

- * Germany accepted with the Law of 27 June 1994 the Dublin Agreement dated 15 June 1990 concerning the Determination of the responsible State in regard to Verification of Asylum in a Member State of the European Union (Gesetz zu dem Übereinkommen vom 15. Juni 1990 über die Bestimmung des zuständigen Staates für die Überprüfung eines in einem Mitgliedstaat der Europäischen Gemeinschaften gestellten

Asylantrages (Dubliner Übereinkommen) vom 27. Juni 1994, BGBl. II, S. 791).

- * The ministers of interior of Germany and Bulgaria signed an agreement on the repatriating of German and Bulgarian citizens. Both countries obliged themselves to take back even the citizens who do not have a valid passport, if their nationality can be proven by such documents as driving permits, statements of firms, etc. According to the Ministry of Interior, about 12,000 Bulgarian citizens are consequently obliged to exit Germany (FAZ, 10.9.1994).
- * The Federal Minister of Interior ordered that citizens from Togo, Benin, Burkina Faso, Ivory Coast and Niger are required to have a visa. According to the Ministry of Interior, Togo is on the third place of the important home countries of asylum-seekers (FAZ, 6.12.1994).
- * According to the first order of Article 29a AsylVerfG of 6 October 1994, Gambia is not classified as a safe country anymore. This decree becomes invalid on 13 April 1995 (Erste Verordnung zu Artikel 29a des Asylverfahrensgesetzes, vom 6.10.1994, BGBl. I, S. 2850).

Some of the federal states have introduced additional legislation to regulate these matters, thus creating variations in policy at the level of the federal states.

Brandenburg

- * Amendment of the Order on the Internal Distribution and Assignment of Asylum-Seekers (Erste Verordnung zur Änderung der Verordnung über die landesinterne Verteilung und Zuweisung von Asylbewerbern, vom 29.4.1994, GVBl. II, Nr. 26, 318).

Hessen

- * Order on Determination of the Discretionary Powers according to the Asylum Law (Verordnung zur Änderung der Verordnung zur Bestimmung von Zuständigkeiten nach dem Asylverfahrensgesetz, vom 11.3.1994, GVBl. I, 162).

- * Order on the Distribution of foreign Refugees (Verordnung über die Verteilung ausländischer Flüchtlinge, vom 10.5.1994, GVBl. S. 272).
- * Order on the Implementation of the Asylum-Seeker-Benefits Law (Verordnung zur Änderung der Verordnung zur Durchführung des Asylbewerberleistungsgesetzes, vom 5.7.1994, GVBl. I, S. 286).

Mecklenburg-Vorpommern

- * Law on the Admission of foreign Refugees, Emigrants of German Descendants to Mecklenburg-Vorpommern and on the Implementation of the Asylum-Seeker-Benefits Law (Gesetz über die Aufnahme von ausländischen Flüchtlingen, Aussiedlern und Spätaussiedlern im Land Mecklenburg-Vorpommern sowie zur Durchführung des Asylbewerberleistungsgesetzes, vom 28.6.1994, GVOBl. M-V, S. 660).
- * Amendment of the Implementation of the Asylum Law (Landesverordnung zur Änderung der Landesverordnung zur Durchführung des Asylverfahrensgesetzes, vom 18.7.1994, GVOBl. M-V, S. 778).

Sachsen-Anhalt

- * Order on the Authority of the Court in Asylum Procedures (Verordnung über die gerichtliche Zuständigkeit in Asylverfahren, vom 7.6.1994, GVBl. LSA, S. 624).

2.2.2 Drafts

Policy is constantly on the verge of being incrementally changed. Below are some of the most recent efforts to effect change.

- * The Committee on Labour and Social Affairs of the "Bundestag" claimed that the Federal Government should plead for an integrative policy of the Member States towards asylum seekers and immigration. A motion by the CDU/CSU and the F.D.P., against the votes of the SPD and the PDS/Linke Liste was passed. The motion reaffirms the stance that Germany is not an immigrant country, therefore there is no need for immigrant

policies. It is argued that by aiding developing countries, Germany can remove reasons for people fleeing from extreme poverty in those countries.

- * The Bündnis 90/Die Grünen put forth a motion (BT-Drs. 12/6687) in which they call for residence permits for Kosovo-Albaners to avoid deportation. Furthermore, the expulsion stop for Croatish refugees should be extended. The situation in the home country is still not safe.
- * The Ministry of Interior and the Ministry of Family Affairs will draft a bill in which civil war refugees will be given similar status as asylum-seekers, with regards to the police records department and in the placing of social security contributions as well (FAZ, 8.6.1994).

2.2.3 Jurisdiction

The following court decisions have shaped policy:

- * The Federal Constitutional Court (BVerfG) ruled that the persecution and the combat of activities, such as separatist activities, out of political conviction, can be seen as political persecution. Even then, when the state defends with this persecution its own political identity. This Court ruling shifts the burden of proof to the state. This is also true when the person in question is, e.g., a sympathizer or supporter of a separatist organisation. According to the Court, the actions of the Turkish state against the Kurds are relevant grounds for asylum (Article 16, Paragraph 1 GG) (BVerfG, Beschluß vom 9.12.1993 - 2 BvR 1638/93, InfAuslR 3/93, 105).
- * The Federal Constitutional Court ruled that if there are severe doubts on the lawfulness of the refusal to entry, one has to examine the lawfulness of the judgement, i.e., the judgement of "evidently not reasonable" (offensichtlich unbegründet) of the Federal Office. A lower Court dismissed an asylum request as evidently not reasonable, imputing that there was no political persecution. But given the possibility that a person can be apolitical, but still be politically persecuted, that is, when measures are taken against a person, as a member of a group this becomes relevant grounds for asylum (asyllerheblichen Merkmalen). Exactly for this reason the case was sent back to

the lower Court (BVerfG, Beschuß vom 2.12.1993 - 2 BvR 1475/93, InfAuslR 3/94, 109 und NVwZ-Beilagen 2/94, 11).

- * The Federal Constitutional Court ruled that an effective information exchange between different offices which are responsible for the asylum request, on the one hand, and the housing, on the other, is absolute necessary. If an asylum-seeker gets another address from the Foreigner Office, and he does not inform the Federal Office, it can only be to his/her disadvantage, when the consequences had been explicitly pointed out (BVerfG, Beschuß vom 10.3.1994 -2 BvR 2371/93, NVwZ-Beilagen 4/94, 25).
- * The Federal Constitutional Court ruled that even in "rapid proceedings" (Eilverfahren), the Court should examine exhaustively the conclusion of "evidently not reasonable" (offensichtlich unbegründet), drawn by the Federal Office. If the Court wants to confirm the judgement of the Federal Office, it has to show why the conclusions on the asylum-seeker's application in rapid proceedings is not suitable for accepting the judgement as evidently not reasonable (BVerfG, Beschuß vom 28.4.1994, DVBl, 1994, 921).
- * The Federal Administrative Court ruled that Kurds from Turkish territory are only entitled to asylum in Germany if they are unable to find an alternative place of asylum within Turkey. This ruling overturns an earlier decision of the Administrative Court of Bavaria to grant, in the first instance, asylum in Germany to six members of a Kurdish family. In the opinion of the Federal Administrative Court the Bavarian Court had not carried out a sufficient inquiry to find out whether there was an alternative place of asylum for the family inside Turkey, e.g. in Ankara or Istanbul (BVerwG, Az.: 9 C 434/93, Migration News Sheet, 6/94, 3).
- * The Federal Administrative Court has ruled that rejected asylum-seekers are not immune to expulsion because there is a civil war in their country. The Court considered that there are established facts of political persecution only when the State has misused its powers to persecute its citizens or when it neglects to prevent such persecution. In a civil war, there is no territory under effective power and control of the State. The State presents itself as a military combating party. The German Law

concerning foreigners, of course, allows for possibilities of protection for war refugees in concrete cases of danger of life, physical integrity or freedom. This ruling upholds the decision to refuse asylum to persons who have fled the civil war in Sri Lanka (BVerwG, Az.: 9C48.92, Migration News Sheet, 2/94, 6).

- * The Federal Administrative Court ruled that it is necessary to examine the circumstances in the home country, especially the influence of the state's political aims on judicial practice: this is particularly relevant in totalitarian states where punishment, because of unauthorized residence in a foreign country (in this case the Vietnamese in Germany), may take on a political character (BVerwG, Urteil vom 15.3.1994, DVBl. 1994, 927).
- * According to the Federal Administrative Court, the recognition of political persecution on grounds of religion legitimated by penal norms is only applicable, when those norms also lead to a religious sacrifice in private life and internal communal life, i.e., leading the person in question into a quandary. Given the possibility of such circumstances, it is necessary to investigate how these penal rules are handled in jurisdiction (BVerwG, Urteil vom 26.10.1993 - 9 C 50.92, InfAuslR 3/94, 119).
- * According to the High Administrative Court, a couple who married in Turkey only by the "Imam marriage", do not fulfil the conditions of Article 26 I AsylVfG (family asylum). According to Article 12 of the Geneva Convention, the personal status of a refugee is uniform to the law of the country where s/he lives. On the one hand, in Turkey the "Imam marriage" is not legally recognized. Therefore family status and thus family asylum is not granted. On the other, an "Imam Marriage" can lead to political persecution on grounds of kinship (BGH, Urteil vom 5.7.1993 - 13 A 10564/92, NVwZ 1994, Heft 5, 514).
- * The Administrative Court of Berlin has ruled that Vietnamese nationals do not risk imprisonment if sent back to their home country even if they have violated their country's law of leaving without authorization. According to the Court's reasoning, they have thus no grounds to claim asylum. Of 4 cases known to the German Embassy in Hanoi, none of those concerned were persecuted when sent back to Vietnam (Az.: VerG 32 X 3/93, Migration News Sheet, 1/94, 6).

- * The Administrative Court of Mannheim has recognized the asylum claim of a Kosovo-Albanian family of three. At the same time, it ruled that there was no general political persecution by the Serbian State of Kosovo-Albanians on account of their ethnic origin. In its ruling, the Court acknowledged that the Serbian State has, in many ways, been trying to manoeuvre the power relationship between the Serbian population and the ethnic Albanians of Kosovo. One example of state discrimination towards this ethnic group is that police misconduct towards this population often goes unpunished. The Court came to the conclusion that, in principle, especially those Kosovo-Albanians demanding independent Republic of Kosovo may be politically persecuted and incriminated by the Serbs for separatism. Such Kosovo-Albanians have a recognized right to asylum if they are able to improve individual persecution (Az.: A 148 1959/93, Migration News Sheet, 3/94, 6).
- * The Administrative Court of Frankfurt ruled that in the procedure pursuant to Article 18a AsylVfG, the principles of Article 104 GG (the slightest violation of the freedom of a person, and therefore an order of acceleration) should be considered. The temporary refusal of entrance, pursuant to Article 18a AsylVfG and the temporary housing in a transit area, should only be maintained as long as it is compelling. According to the protection of Article 104 GG, the measures of Article 18 AsylVfG should be superseded when it is recognizable that the request for rapid proceedings (Eilantrag) will be granted (VG Frankfurt a.M., Beschuß vom 10.8.1993 - 5 G 20156/93.A(2), NVwZ-RR 1994, Heft 8, 468).⁷
- * The Administrative Court of Koblenz ruled that the request of an asylum-seeker who travelled from a safe third country into Germany cannot be dismissed as evidently not reasonable (offensichtlich unbegründet). Either, pursuant to Article 34a AsylVfG, a deportation to a third country has to be ordered and the request should be dismissed pursuant to Article 26a

⁷ For further details on Article 18a AsylverfG, see Huber, Bertold, Prozessuale Besonderheiten asylrechtlicher Eilverfahren auf Gestattung der Einreise, Neue Zeitschrift für Verwaltungsrecht 1994, S. 174ff. and Bruns, Marco, Die Neuregelung der Einreise von Flüchtlingen über die Flughäfen, Informationsdienst zur Ausländerarbeit 4/1993, S. 30ff.

AsylVfG, or the request should be dismissed as "unnoticeable" pursuant to Article 29 II AsylVfG. In the second case, only deportation to another Member State is allowed, not to the home country (VG Koblenz, Beschuß vom 2.3.1994 - 3 L 830/94, NVwZ-Beilagen 4/94, 31).

- * In opposition to Article 16a I GG, the term "refugee" in Article 1 A No. 2 of the Geneva Convention does not claim for a political persecution according to the basic right of asylum. Substantiated fear ("good reasons") of persecution in the home country, as stipulated in the Convention, is sufficient (VG Frankfurt a.M., Urteil vom 28.3.1994 - 9 E 11871/ 93.A, NVwZ-RR 1994, Heft 6, 358).

2.2.4 Policies

- * In a motion of the deputies of all parliamentary parties (BT-Drs. 12/8261), the Federal Government was asked to give a statement on the two recommendations for the Asylum Law of the parliamentary Assembly of the European Council (wib 15/94-XIX/ 469).
- * Since enforcement of the new Asylum Law on 1 July 1993, the number of asylum applications has dropped by more than 50%. This is considered to be mainly due to the application of the principles of safe-country and third safe-country in accordance with the new Asylum Law. A person can only claim asylum if s/he did not enter Germany via a third safe country. All neighbouring countries of Germany are third safe countries, which means that only arriving by plane fulfills the prerequisites to entitlement to seek political asylum; a stop over by plane in a third safe country, nullifies the fulfillment of this condition and thus entitlement to seek asylum in Germany.
- * Those who are engaged in working with refugees, are critical of the new practices which are orientated in the first instance towards deportation and scare tactics, claiming that the motives of fleeing the home country are thrust into the background.⁸

⁸ For more information on Article 16a GG and third safe countries, see Voßkuhle, Andreas, "Grundrechtspolitik" und Asylkompromiß, Die öffentliche Verwaltung 1994, S. 53ff. and Wollenschläger, Michael,

As a rule the asylum-seeker receives the first hearing before getting the possibility to inform him/herself on the procedure. Often s/he does not know that this hearing is of fundamental importance. The protocol of the hearing, which is orally translated, has to be signed by the asylum-seeker. Amendments or adding information to the protocol is not allowed.

Another reason that the procedure is considered to be not functioning appropriately is that procedural errors are often being committed by administrative staff and processing legal casework is further complicated by the short time available. Names and reference numbers are changed by mistake. There are mistakes in the sending of summons and decisions. Such small errors have significant consequences: when decisions are sent to the former address, the sending to the former address still can be legally seen as delivered. If the document cannot be delivered, the delivery with the task to post has been effected, even if the sending comes back as non-deliverable (Article 10 AsylVerfG). Therefore it is possible that the asylum-seeker, without knowing that the application has been dismissed, is confronted with the expiration of the period of appeal and with deportation (FAZ, 2.8.1994).

- * The parish of the Cathedral of Magdeburg (Sachsen-Anhalt) announced on 21 June 1994, that church sanctuary would be granted to war refugees, war resisters and deserters from former Yugoslavia who are threatened with expulsion. It is "inhuman" to send them back to their country of origin as long as peace is not re-established. The community will also receive asylum-seekers from other countries who are not protected from expulsion.

An informal network of some 200 Protestant and Catholic Churches has been set up at both the local and national level to provide sanctuary for rejected asylum-seekers threatened with expulsion. Since the new Asylum Law came into force on 1 July 1993, the authorities are making more efforts to deport those whose applications have been finally rejected: 5,583 were repatriated in 1990; 10,798 in 1992; and 35,915 in 1993. In

Schramm, Alexander, Artikel 16a GG, das neue "Grundrecht" auf Asyl?, Juristen Zeitung 1994, S. 61ff.

Germany, neither the secular nor the canon Law allows for the concept of church sanctuary. Bishop Engelhardt, Chairman of the Council of Protestant Churches argues that it is precisely the churches' task to draw attention to whether the secular authorities may have made mistakes. The police have so far been reluctant to enter a church by force to seize asylum-seekers. The German Minister of Interior, Mr. Kanther (CDU), has uttered severe criticism on statements by the Chairman of the German Roman-Catholic episcopates conference, Monsignor Lehmann. Mr. Kanther has reminded the churches that they do not have the right to hide asylum-seekers from the police if the Court determined that they should leave the country.

- * The Council of the Protestant Church in Germany (EKD) declared in 10 theses on church sanctuary, that church sanctuary should not lead to a principle quarrel between the state and the church. The reason to help asylum-seekers can be found in the Bible and can be seen as the duty of a Christian. Church sanctuary should not act as a legal institution, only the state can grant the right to asylum. But the decision to deport an asylum-seeker should be reviewed when the life of the asylum-seeker is claimed to be threatened. When Christians act against the law by helping asylum-seekers, they are individually responsible for their actions. But also those Christians can ask for the church's assistance (FAZ, 12.9.1994).
- * According to the Federal Government, it is not possible to rescind the visa obligation for citizens of Bosnia and Herzegovina, because that would lead to an uncontrollably large number of entries (BT-Drs. 12/6817).
- * The situation of the asylum-seekers and refugees has become worse in Europe. More and more countries have restrictive asylum policies and have intensified border controls. For these reasons the Parliamentary Assembly of the European Council claimed that uniformity of an asylum procedure, in the interest of the persons in question, and in order to share the responsibilities and avoid bilateral contracts (Das Parlament, 29.4.1994).
- * The Federal Commissioner for Foreigners, Mrs. Schmalz-Jacobsen, pointed out the necessity of protection for refugees under age who come to Germany without adults. German

Asylum Law is designed for adults and does not do justice to the situation of children and youths. About 6,500 children and youths without adults live in Germany. According to the Commissioner, only a few of them can give motives for fleeing their home country which fulfil the criteria of political persecution. The Commissioner proposed to establish "clearing places" for the initial care and the clearing of the residence status of the children. Until such cases are processed, the children should be given a status independent from the asylum procedure (FAZ, 19.4.1994).

- * According to the Minister of Interior, Mr. Kanther, the new Asylum Law has contributed to domestic peace in Germany. He referred to the decrease of the amount of asylum-seekers and the increase of deportations as indicative of a "positive decision". The Minister introduced his first official asylum-experience report on 9 March 1994 (Das Parlament, 11.3.1994).
- * A deputy of the Commission for Refugees of the United Nations strongly requested an emergency-quota for refugees from countries granting asylum first. The Netherlands and Denmark already have such a quota (Die Zeit, 16.12.1994).

2.3 *Illegal immigration*

2.3.1 Legislation

- * On 20 December 1993, Switzerland and Germany signed an Agreement on the readmission of foreigners who illegally entered their respective territories. This Agreement will also apply to persons who entered one of the two countries clandestinely after having applied for asylum in the other one. The Agreement entered into force on 1 February 1994. The ReadMission agreement on persons without authorization of entry is modelled on the policy lines of a similar convention signed on 29 March 1991 between the Member States of the Schengen Group and Poland. The determining condition is no longer the illegal crossing of the frontier, but the previous stay in the other country and the fact that the foreigner is not authorized to remain in the country where s/he is.

- * Germany and the Czech Republic have come to a compromise on the repatriation of illegal immigrants. Refugees can be deported without asylum-proceedings within three days after illegal border crossing. The Federal German Government also offers the possibility of financial support to the Czech Republic in its efforts to decrease illegal immigration (FAZ 19.3.1994).

2.3.2 Policies

- * In Bremen, there was a conference on the situation of "illegal immigrants" organized by the local welfare offices and the Senator for Foreigners Integration (14.12.1994).

2.4 *Repatriation to the home country*

2.4.1 Legislation

- * There has been very little new legislation or regulations regarding repatriation. On 25 April 1994, Bonn signed an Agreement with the Croatian Government on the gradual repatriation of Croatian war-refugees. The agreement concerns, in particular, those who originate from liberated regions of Croatia where there is now peace. Those from occupied or destroyed regions will not be repatriated before 1995. The Croatian vice-president assured that those who fled from their military duties between August 1990 and September 1992 would in any case be granted amnesty. Pro-Asyl, an organisation in support of refugees, expressed concern for those deserters and war-resisters who will not benefit from the announced amnesty (SZ, 26.4.1994).

Hamburg

- * The Senate of Interior of Hamburg gave out an Order on the Repatriation of Croats in two Phases (Behörde für Inneres, Weisung Nr. 2/94).

2.4.2 Policies

- * The Federal Government sees in the financial support of refugees who return to their home countries an important contribution to the development of these countries. Agreements about financial support are, among others, made with Vietnam, Eritrea, Chile, Croatia and Slovenia. In, for example, Vietnam 505 enterprises with 6,000 working places are established with German financial support for repatriation. Mr. Spranger, Minister for Economic Co-operation and Development, produced a concept for a refugee policy which is embedded in the development aid and co-operation. These measures are seen as preventive of large influxes of refugees. Bonn pays, above and beyond the hundred million marks to the European Union, 490 million marks for its refugee policy (FAZ, 13.4.1994).

2.5 *Return of a foreigner to Germany*

- * The Federal Administrative Court ruled that for the establishment of "special cases of severity" according to Article 16, Paragraph 2,1 Foreigner Law 1990, it will be necessary to compare the concrete individual case with the legal types described in Article 16, Paragraph 1.

Therefore, all circumstances should be considered. It is the aim of the "severity clause" in Article 16 Foreigner Law to allow for the possibility of a return to Germany in those individual cases which correspond to this legal valuation. If the return to Germany is the only possible option for a special group, this will not be deemed sufficient for consideration of severity. The individual case should correspond in a special peculiarity with the explicit covered cases (BVerwG, Beschluß vom 30.5.1994, - 1 B 207.93, InfAuslR 10/94, S. 345, NVwZ-RR 10/94, S. 614).

3. The Labour Market

3.1 Legislation

The following recent changes in legislation regulate traffic across borders and conditions within countries related to employment of foreigners.

- * An amendment to the German-Swiss Agreement on the Exchange of foreign Workers (stagaires) between Germany and Switzerland, Article 7a, will be added, which declares that employment exchange is to be free of charge and costs (Bekanntmachung der Vereinbarung zur Änderung der deutsch-schweizerischen Vereinbarung über den Austausch von Gastarbeitnehmern (stagaires) zwischen der Bundesrepublik Deutschland und der Schweizerischen Eidgenossenschaft vom 30.5.1994, BGBl. II, S. 779).
- * Amendment to the Law to combat the illicit Work and to amend other Laws. With this amendment it will be easier to establish illicit work. Furthermore, companies who employ a non-German worker without the required work permit are not complying with this order and shall be threatened with fines. As a further penalty is to exclude these companies from bidding for a public contract (Gesetz zur Änderung des Gesetzes zur Bekämpfung der Schwarzarbeit und zur Änderung anderer Gesetze vom 26.7.1994, BGBl. I, S. 1792).
- * Amendment to the Employment Promotion Act Article 13, Paragraph 3, No. 2, will also be valid for workers of the European Union or for citizens of states who signed the Agreement of the European Economic Domain (Beschäftigungsgesetz 1994 vom 26.7.1994, BGBl. I, S. 1786).
- * Amendment to Employment Promotion Act with respect to the Construction Industry (Gesetz zur Änderung des Arbeitsförderungsgesetzes im Bereich des Baugewerbes vom 20.9.1994, BGBl. I, S. 2456).
- * Law to Amend the Industrial Code and other Occupation Rules (Gesetz zur Änderung der Gewerbeordnung und sonstiger gewerberechtlicher Vorschriften, vom 23.11.1994, BGBl. I, S. 3475).

- * Law to Amend the Employment Promotion Law concerning the Construction Industry (Gesetz zur Änderung des Arbeitsförderungsgesetzes im Bereich des Baugewerbes, vom 20.9.1994, Bundesarbeitsblatt 12/1994, S. 28).
- * Ordinance regarding Employment Exchange from non-public Employment referral Agencies (Arbeitsvermittlerverordnung - AVerMv, 11.3.1994, BGBl. I, S. 563).
- * First Ordinance on the Amendment of the Employment Referral Ordinance from 1 October 1994 (BGBl. I, S. 1946).
- * The Federal Ministry on Building and Space Control issued an Order in which the exclusion of companies bidding for a public contract, when they employ illegal workers, is mentioned (Bundesanzeiger, 26.4.1994).
- * The Eleventh Order to Amend the Work Permit Regulation (Elfte Verordnung zur Änderung der Arbeitserlaubnisverordnung vom 30.9.1994, BGBl. I, 1994, S. 2792).
- * The Second Amendment to the Regulation on Exceptions to Recruitment Stops (Zweite Verordnung zur Änderung der Anwerbestoppausnahme-Verordnung vom 30.9.1994, BGBl. I, 1994 S. 2794).
- * Announcement on the Implementation of Agreement No. 167 of the International Labour Organization on Labour Protection in the Building Trade (Bekanntmachung über das Inkrafttreten des Übereinkommens Nr. 167 der Internationalen Arbeitsorganisation über Arbeitsschutz im Bauwesen, vom 29.11.1994, BGBl. II, S. 3862).

Niedersachsen

- * The Federal State of Niedersachsen favours a policy which allows foreigners to work for the police. The Minister of Interior issued an order permitting the employment of non-German police officers. These police officers are to be given the special task of being contact persons for ethnic groups, and assist local police departments in becoming acquainted with differences in their foreign cultures (FAZ, 12.2.1994).

3.2 Drafts

- * The political party Bündnis 90/Die Grünen put forth a motion (BT-Drs. 12/6325) in which they call for a change of rules for work permits. Since the issuance of the Federal Labour Office of 5 March 1993, the status of a foreign worker with a basic work permit, which is limited and only valid for that specific employment position has decreased. In the past, the work permit was extended for the period of employment. The new policy however, underlines the importance of public Labour Referral Office to try in at least the first four weeks of referral effort to place Germans or privileged foreigners. The Bündnis 90/Die Grünen have called upon the Federal Government to instruct the Federal Office to extend the work permit of a foreigner and not to the condition on the availability of a privileged person.

3.3 Jurisdiction

- * According to the Labour Court of Siegburg, xenophobic remarks can, when they are not covered by Article 5 I GG, lead to special cause for dismissal. It is the duty of the employer to act when workers insult colleagues, and depending on the "gravity" of the attack employees may even be dismissed without warning (ArbG Siegburg, Urteil vom 4.11.1993 - 4 Ca 1766/93, NZA, Heft 15/94, 698).
- * Employees who are drivers and will be part of the border crossing traffic, who work for an employer in Germany before 1 September 1993, do not need a work permit according to Article 9 of the Work Permit Ordinance of 3 August 1993 (BSG, Urteil vom 10.3.1994 -7 RAr 44/93, NZS, Heft 8/1994, 378).

3.4 Policies

- * The European Union wants to restrict the issuance of work permits. The Ministers of Interior of the Member States agreed on a common policy on the eligibility for work permits for political economic and social reasons.

In the future work permits for persons from non-EU-countries are only to be issued when the employment position cannot be filled by a citizen of the Member State. Excluded from this rule are refugees and asylum-seekers according to the Refugee Convention of Geneva, and citizens of EFTA-countries and other countries which have an agreement with the European Union on labour rights (FAZ, 21.6.1994).

- * Mr. Norbert Blüm, the Federal Minister for Labour and Social Affairs, stated that it is necessary to limit the increase of workers, at least where the increase is foreseeable. He suggested starting such policy by limiting immigration of foreigners as well as those of German descent. Mr. Blüm sees this group to be contributing to unemployment in Germany (FAZ, 17.9.1994).
- * The Bündnis 90/Die Grünen (BR-Drs. 12/8397) asked the Federal Government to clarify whether or in which cases the ordinance issued by the Federal Labour Office (Bundesanstalt für Arbeit) in March 1993, making the lengthening of the work permits for non EU-nationals become more difficult, is a violation of the protection against unlawful dismissal and a violation of the "Betriebsverfassungsgesetz".

In connection with this query, the deputies of parliament requested detailed information on the amount of workers which were displaced because of this order (wib 15/94 - III/256). The Federal Government's response to the inquiry (BR-Drs. 12/8512), was that the said order does not violate the "Betriebsverfassungsgesetz", because the norm of the order addresses only to the employer and the works council. Moreover, the ordinance does not violate the protection against unlawful dismissal either.

- * The Federal Constitutional Court ruled that the Law on the International Second Ship Register is not a violation of the Constitution. German shipowners can hereby make wage agreements with foreigners according to the conditions of their home-country. Since these wage levels as a rule are lower than those determined by collective agreement in Germany, German trade unions are worried about how this influences the effectiveness of their role as a social partner (FZ, 26.10.1994).

"Illegal foreign workers"

- * The phenomenon of the "illegal" non-German day-labourer exists in many German cities. Mostly they enter Germany as tourists and work for wages below normal levels (about 7 marks per hour). The trade union for workers in the construction industry estimates that in the construction trade alone about 500,000 of these "illegal" workers are employed (WK, 23.8.1994).
- * In an attempt to push back the number of these "illegal" workers, with the support of some 1,000 policemen, about 2,000 officials in the Federal Labour Office carried out a nationwide action in mid-November against the employment of "illegal" or undeclared workers. A total of 2,664 German and 325 foreign employers were checked and questioned, of whom 468 were accused of employing foreigners without work permits (SZ, 25.11.1994).

Construction workers

- * The trade union IG Metall criticized the frequent construction contracts (Werkverträge) that are based on wages beneath the standard wage agreement. Also the President of the German Craft Union, Mr. Späth, condemned the unfair concurrence on the labour market, caused by construction contracts, he has called for an European guideline to ease this problem. There has been an increase in foreign construction workers in Germany since the opening of the borders within Europe, especially from EU-Members, such as Portugal, Greece, Great-Britain and the Benelux-countries (FAZ, 11.11. and 24.11.1994).
- * The Federal Government replied (BT-Drs. 12/7784) to a motion of SPD members of parliament (BT-Drs. 12/7117) on the correct taxation of East European construction enterprises that contract out working brigades (Werkvertragsunternehmen). According to the Federal Government since January 1993, construction enterprises have been exempted from applying for a certificate for the Financial Office. This means there is no mechanism to gather information on who draws up contracts with whom.

Altogether, about 500,000 people work "illegally" in Germany.

Bremen

- * The Commissioner for Foreigners of Bremen spoke of a need for more foreigners in public service. At the moment 2.5 % of the workers in public service are foreigners (WR, 30.10.1994).

3.5 *Labour market figures*

3.5.1 Employment

- * The Federal Minister of Labour is reserving 88 million marks for the integration of foreign workers and their relatives. The money is mainly meant for vocational and language training, especially for women and young foreigners.
- * At the end of 1993, about 2.2 million foreigners had a job in Germany and paid social insurance contributions. 2,150,000 of them worked in the old federal states, which formerly constituted West Germany. Foreigners represented approximately 9.4% of the labour force in the old federal states, and almost 1% in the new federal states.
The foreigners occupied 14.2% of the jobs in mining, in construction 13.1%, and in private service 10.3%.⁹
- * Turks form the biggest contingent of foreigners (631,800) with socially secured regular employment (-3% compared to 1992).¹⁰
- * 58% of the work permits were given for a single fixed-term contract, 25% for continuation of employment and 17% for renewed employment.¹¹

⁹ Source: Ausländerzentralregister (AZR).

¹⁰ Source: Bundesanstalt für Arbeit.

¹¹ Source: Bundesanstalt für Arbeit.

Construction work

- * The employment of construction workers under temporary contract for labour/services decreased in 1993. According to the Federal Labour Office, this is due on the one hand to the large influx of contingents, especially from Poland and the Czech Republic in 1992, which subsequently lead to an admission stop for these countries. In 1993, the same situation arose with workers from Romania. On the other hand, the Labour Market Protection Clause was applied for the first time. Curbing employment of foreign workers in areas and trades, particularly in the construction trade, in which levels of unemployment or short-time work or temporary lay-offs are above average.¹²
- * According to an arrangement between Germany and Russia, 2,000 construction workers a year can be exchanged. The conditions are narrowly defined. Candidates should be under 40 years old, should have vocational experience of a minimum of two years and speak sufficient German. The construction worker is not allowed to remain in the country for longer than 12-18 months (Spiegel, 1.8.1994).
- * The Federal Government responded to an inquiry put forth in Parliament by the Social Democrats (BT-Drs. 12/6759) about the position of construction workers (Vertragsarbeitnehmer) hired under the former GDR regime. Foreign workers who were recruited by governmental agreement were not secured residence permits after German unification, as foreign workers were in the old federal states. Most of the construction workers of the former GDR came from Vietnam. On the 30 December 1993 8,904 Vietnamese lived in Germany. 6,396 of them have received residence-authority (Aufenthaltsbefugnis), 2,508 have a more precarious status: "tolerated" (geduldet). From the 698 Angolans, 201 have a residence-authority, and 497 are tolerated. From the 229 Mozambicans, 178 have a residence-authority, and 51 are tolerated. The Federal Government does not agree with the assumption that the limitation of space in case of a toleration, has consequences in finding a job. Only a limited work permit is issued to persons who are "tolerated", i.e., only for jobs in the issuing federal state. However, there is an

12 Source: Bundesanstalt für Arbeit.

agreement between the federal states that former GDR-construction workers can search for jobs in other federal states; and should they find a job, they will also be issued a residence-authority.

The Vietnamese Government has been reminded that according to international Law, every country is responsible to "take back" its own citizens. The German Government has proposed a repatriation agreement (BT-Drs. 12/6926).

- * In 1993, the central office for work exchange in Frankfurt exchanged 5,800 foreign workers from nine partner countries. Most of them came from the Czech Republic (1,600), Hungary (1,400), and Poland (900). 27% of the foreign workers were employed in the hotel and restaurant trade.

Seasonal work

- * In 1993, the number of seasonal workers decreased by 15% to 181,000. 79% of these people came from Poland. Most of them have come for over years for the harvest to Germany. They earn only a low wage. Employers have to apply for a work permit for a seasonal worker who is not a citizen of the Member States. In the first half year of 1994, there were 17,000 applications for work permits (Weser Kurier, 16.8.1994).

3.5.2 Unemployment

- * The unemployment rate among the non-German labour force was about 15.1% in 1993 (in 1992: 12.4%), almost twice as high as the total rate in Germany (7.6%).¹³ According to the Federal Labour Office, this is due to the vocational qualifications of foreigners and the low level of proficiency lacking in the German language. In several industries the chances for foreigners to find work are better because the Germans are not prepared to do the jobs available

13 Source: Bundesanstalt für Arbeit.

there, for example, in the cleaning business and the textile industry.¹⁴

According to the Federal Labour Office, the number of unemployed decreased in November 1994. By the end of November 1994, there were 2,449,900 unemployed in the old federal states (7.9%), compared to 2,454,400 the previous year; 402,197 of them are non-German citizens. In the new federal states 980,448 people are jobless (13%), 11,259 of them are foreign citizens (Sozialpolitische Umschau, Nr. 514/1994).

- * In 1993, unemployment among foreign women had a slightly higher increase than among men. The average jobless rate among women in 1993 was +29% (117,000); compared to 39% (227,400) of the non-German male labour force.
- * Among the non-German labour force the Italians had the highest unemployment rate (18.3%), followed by the Turks (12.4%), the Greeks (17.4%), the Yugoslavians (11%), the Spanish (10.8%) and the Portuguese (9.7%).
- * Unemployment among the immigrants of German descent was also relatively high. At the end of 1993, 9,500 were unemployed, 73% more than in 1992 (52% of them were women).¹⁵

3.5.3 Illegal work

- * According to the SPD, the illegal work in the construction industry is on the increase. This is due to Construction Work Agreements (Werkvertragsabkommen) with the Central and East European countries, these countries drag also a lot of "illegal workers" along. The Law to combat illicit work (26.7.1994, BGBl, I, S. 1792) is a response to these practices. The "illegal" workers work under bad conditions and beneath normal wages.

¹⁴ Cf. Zühlke-Robinet, Klaus, Arbeitsmarktpolitik für Ausländerinnen und Ausländer in Hamburg, in: Zeitschrift für Sozialreform 1994, S. 375ff.

¹⁵ For more information about the unemployment rates in August 1994, see Sozialpolitische Umschau, 430/1994.

- * The number of crime court cases and fines levied against employers for having employed illegal workers increased in 1993 from 46,000 to 75,000.
- * Illegal work has been discussed in the German "Bundestag" (BT-Drs. 12/8071). According to the Government (BT-Drs. 12/8265), there are no exact data on the extent of illegal work. One cause for concern is the subsequent loss in social insurance contributions. For every 10,000 illegal working places, the loss in social insurance contributions is about 197 million marks (94 million marks in pension contributions, 64 million marks in health insurance, 32 million in unemployment insurance and about 7 million in accident insurance). The Federal Government wants to take measures against illegal work. In the first 3 months of 1994 the construction industry was subjected to investigations. As a result 8,334 persons were found to be working without a valid work permit. In an effort to curb the employment of illegal workers a law foresees sanctions which exclude companies which employ a non-German worker without a necessary work permit from placing of a public order (Gesetz zur Änderung des Gesetzes zur Bekämpfung der Schwarzarbeit und zur Änderung anderer Gesetze vom 26.7.1994, BGBl. I, S. 1792).¹⁶

4. Integration policies

The New Coalition's Plans for Integration Policies

According to the coalition's agreement (between CDU, CSU and F.D.P.) of November 1994 the New Coalition in Bonn is planning to introduce a new Federal Nationality law. The coalition, however, maintains that the integration of immigrants within German culture will be its leading goal. Equally, whilst Bonn intends to take further part in European attempts to create a joint immigration policy for Europe which is based upon the equal distribution of the immigration

¹⁶ More to social insurance and illegal work, cf. Diebold, Annemarie; Schürer, Peter, Sozialversicherung bei Arbeitnehmerüberlassung, NZS, 1994, S. 296.

burden amongst Member States, it nevertheless feels that for the present further national regulation is necessary and appropriate.

The proposal includes a 'Kinderstaatszugehörigkeit' clause under which children born in Germany will receive German nationality either if one parent is German, or if both parents have been legally settled in the Republic for ten years prior to the birth. - Nationality law will be altered and the Office of the Federal Commissioner for Foreigners will legally regulated.

4.1 The Federal Commissioner for Foreigners

- * In 1993, the Federal Commissioner for Foreigners published a report about the situation of foreigners in Germany (BT-Drs. 12/6960). This report consists of an analysis of the demographics of the foreign population, including a survey of education levels, work history, and social insurance. It also summarizes the rules for residence and naturalization and gives information about the violent attacks against foreigners.

According to the report, 25% of all foreigners had been residing in Germany for more than 20 years, at the end of 1991. 1.5 million of the foreigners are under the age of 18, and another million between the age of 18 and 25. Only 2.1% of foreigners are aged over 60.

As for the labour market, foreigners still continue to take up low-skilled jobs. 23.5% of the foreigners were skilled workers, compared with 48.5% among Germans. The rate of unemployment among foreigners increases faster than among Germans.

The Federal Commissioner made several recommendations:

- legal measures should be developed against xenophobic attacks;
- the rules determining eligibility for an independent residence permit for foreign wives should be changed;
- foreigners who grew up in Germany should be granted an unrestricted residence permit;

- the criteria for naturalization should be made less restrictive.
- * According to a survey of the Federal Commissioner for Foreigners, the Law concerning the permission of foreigners to stay in Germany leaves much to be desired compared to the laws of other European countries. For example, naturalization, dual nationality, child reunification (Kindernachzug) and an independent residence permit for married women.
This is true despite the necessity of such regulations to deal with the relatively large population of non-Germans in this country. Compared to other European countries, Germany is in third place (8.5%) with the highest number of foreigners, after Switzerland (18.4%) and Belgium (9.1%). It is, however, assumed that the number of foreigners would be much lower if it were not for the restrictive policies on naturalization (Weser Kurier, 31.8.1994).
- * The Federal Commissioner for Foreigners claimed for an obligation of the Foreigner Office to give advice. Should the offices violate this duty, foreigners are entitled to restoration (Herstellungsanspruch) (SZ, 2.9.1994).

4.2 Human rights

Human rights are for the most part laid down in Constitutional Law, in the European Convention on Human Rights and in the United Nations Charter for Human Rights. There are, however, laws at different levels that address issues of human rights.

Brandenburg

- * In Brandenburg, the rights for Sorbs to develop their ethnic and cultural identity are laid down in a law (Gesetz zur Ausgestaltung der Rechte der Sorben im Land Brandenburg, vom 7.7.1994, GVBl. I, S. 294).

4.2.1 Drafts

- * The issue of minority protection was of paramount significance in policies in 1994. The common constitution committee of the "Bundestag" and "Bundesrat" has put forth the proposal, among other amendments, to lay down minority protection in the Basic Law: the state respects the identity of the ethnic, cultural, and laid language minorities (Article 20b GG).

It is the federal states which have been pushing to secure minority protection at the constitutional level. The protection of the Sorbs, Danes and Friesians has already been laid down in the Constitutions of the federal states. These ethnic groups are also demanding protection from the German Basic Law. In particular the gypsies, who have lived in Germany for 600 years, demand recognition in the Federal Basic Law.

The Christian Democratic Union (CDU) rejects such proposals, it is afraid that non-Germans could then claim civil rights. In particular the CDU wants to avoid making dual nationality possible. The SPD, F.D.P., PDS and Greens support the proposal recommended by the common constitution committee to protect minorities. But because the CDU/CSU reject the proposal, the two third majority, which is necessary to amend the Basic Law, cannot be achieved (wib 15/94-I/283).¹⁷

4.2.2 Jurisdiction

- * The Federal Constitutional Court has ruled in two cases, that according to the basic right of freedom of information, a foreign tenant has the right to put a parabolantenna on the house. The basic right of freedom of information (Article 5 I 1 GG) includes

¹⁷ Cf. Hahn, Michael, Die rechtliche Stellung der Minderheiten in Deutschland, in: Jochen Abr. Frowein/Rainer Hofmann/Stefan Oester (Hrsg.), das Minderheitenrecht europäischer Staaten, Berlin 1993, S. 62ff.; Sieveking, Klaus, Zur Frage eines Antidiskriminierungsgesetzes gegen ethnische Diskriminierung - Thesen, in: Zeitschrift für Sozialreform, 4/94, S. 259ff.; Wollenschläger, Michael, Rechtsfragen eines Konzeptes gegen Ausländerdiskriminierung, in: Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 10ff.

all sources of information, which are accessible in Germany. When any technical arrangement is necessary to get specific information, the basic right covers also the procurement and use of the technical receptional-equipment. According to the Federal Court, the lower Courts have to embrace the special needs of foreigners for information, in case of conflicts between landlords and tenants. The importance of the right of freedom of information will be misjudged if the landlord's interests of property take precedence over the right of freedom of information.

Also in a second case were a foreign tenant wanted to put a parabolantenna on the house because he could not receive any Portuguese programme on his television, the Court decided that the right of freedom should be embraced (BVerfG, 9.2.1994, 1 BvR 1687/92 and 9.6.1994, 1 BvR 439/93, NJW 1994, 2143).

4.3 Naturalization

The issue of naturalization and dual nationality was of paramount significance in policies. The present minimum residence time for naturalization is 8 years. Dual nationality is only possible in exceptional situations. Several political groups and parties, however, claim to amend the Naturalization Law.

4.3.1 Drafts

- * The SPD presented a bill (BT-Drs. 12/4533) in which a big part of the foreign population should be given the possibility to receive dual nationality. This bill was rejected, however, by the "Bundestag". 1.4 million people with two nationalities live in Germany at the moment. The present minimum residence time for naturalization is 8 years. (FAZ, 29.4.1994)

An amendment of the Naturalization Law cannot be expected in the legislative period.¹⁸

¹⁸ Cf. Kiliç, Memet, Deutsch-türkische Doppelstaatsangehörigkeit?, StAZ 1994, S. 73ff.; Münch, Ingo von, Darf es ein bißchen mehr sein? -

- * A bill was presented to amend the rules dealing with granting citizenship (BT-Drs. 12/5684). According to this bill, children born in Germany of parents who live in Germany (also children of non-married parents) are automatically granted German citizenship (*ius soli*).

It also foresees naturalization for special groups: foreigners who live in Germany for a minimum of 8 years; refugees and recognized asylum-seekers after 5 years of residence; husbands and wives of Germans; foreign children who were born abroad but live permanently in Germany. The bill also foresees dual nationality (Infodienst Ausländerintegration, Oktober 1994).

4.3.2 Jurisdiction

- * According to the Council of Europe's Agreement on Dual Nationality and Military Service (BGBl. II, 1969, S. 1953), a man who has two nationalities is required to do the military service in the country where he has his main (*gewöhnlichen*) residence. Until the age of 19, he can fulfil the military service in the other country by doing voluntary military service during the same period as was assigned in the country he has his residence (VG Frankfurt a. M., Urteil vom 15.7.1993 - II/1 E 1851/90, NVwZ-RR 1994, Heft 3, 165).
- * The Federal Administrative Court ruled that according to Article 116 II 1 GG, not only children but all descendants (in this case a grandchild) of former German citizens, who were deprived of their citizenship on political, racist or religious reasons within the period of 31 January 1933 to 8 May 1945 are entitled to German citizenship through naturalization. This fulfils the policy of reparation (Wiedergutmachung) of illegal actions committed under the regime of national socialism (BVerwG, Urteil vom 11.1.1994 - 1 C 35/ 93, NVwZ 1994, Heft 6, 569 und InfAuslR 5/94, S. 193).
- * The Federal Administrative Court ruled that Article 32, Paragraph 1 of the Agreement on the Rights of Stateless Persons

Gedanken zur Mehrstaatigkeit, NJW 1994, S. 1199ff.; Wollenschläger, Michael, Schraml, Alexander, *Ius soli und Hinnahme von Mehrstaatigkeit*, Zeitschrift für Rechtspolitik 1994, S. 225ff.

is directly applicable to the order of benevolence which acts upon the discreditation of naturalization (Article 8, Paragraph 1 RuStAG). The order of benevolence is not liable to postpone the developing political interests of the state, in case of a naturalization request of a stateless person from a developing country, who has legal residence in Germany for vocational training (BVerwG, Beschuß vom 23.12.1993 - 1 B 61.93, DVBl, 1.5.1994, S. 526).

- * The Federal Administrative Court had to decide whether a Palestinian can be naturalized (Article 86 Foreigner Law) if he works for the Democratic Front for the Freedom of Palestine (DFLP). Since 1 July 1993 naturalization can be rejected when a person has endangered the security of Germany. The security of Germany is in danger when, e.g., terrorist organisations commit violent acts in Germany. The DFLP has, however, limited its attacks to targets in the Near East; they have not committed any violent acts in Germany. Moreover, participation of the complainant in violent acts could not be established. Therefore, the Court ruled that the complainant was entitled to be naturalized (BVerwG, Urteil vom 31.5.1994 - 1 C 5/93, NJW-Informationen, Heft 25/94).
- * According to the Federal Administrative Court in order to establish foreign national status (Article 25, Paragraph 1 RuStAG), it has to be comparable to the German national status. This is not in reference to the rights and duties of a person, but to the national status itself (its effectiveness, security, and the duration). Pursuant to Article 25 RuStAG, the foreign national status can only be granted by a sovereign state which is defined by International Law. According to International Law, the mandated territory Palestine has not been designated a sovereign state.

Therefore, the Palestinian national state is not recognized by German Law as a foreign national state pursuant to Article 25 RuStAG (BVerwG, Urteil vom 28.9.1993 - 1 C 25.92, DVBl, 1.5.1994, 519 and InfAuslR 3/94, 102).

- * The Federal Administrative Court ruled that a claim to naturalization (Articles 86,1, 86,3 and 85,2 Foreigner Law) can exist even if there is a reason for deportation (Article 46,1 Foreigner Law).

This decision holds only under the condition that the safety of Germany, according to Article 46,1 Foreigner Law 1990, and the existence and functionality of the state shall be maintained. Violent acts and threats by foreign terror organisations are considered to endanger the safety of Germany. To fulfil the reasons for deportation, according to Article 46,1 Foreigner Law 1990, the foreigner should personally present a danger for the safety of Germany (BVerwG, Urteil vom 31.5.1994 - 1 C 5.93, InfAuslR 11-12/94, S. 405).

- * The Administration Court of Bremen ruled that a child who is born before 1993, i.e. before Article 4 I RuStAG became effective, is not entitled to any claims contained in this new article. In Article 4 I RuStAG a child born to a German parent is entitled to German citizenship after birth provided the parents were married. A child born to an unmarried couple whose father is German, is recognized to have German nationality when the fathership is legally established (VG Bremen, Beschluß vom 8.2.1994 -V 604/93, NVwZ-RR 1994, S. 545).

4.3.3 Policies

- * There were several proposals and actions to reform the politics of naturalization and dual nationality.
In front of the "Berliner Reichstag" a monument with the signatures of citizens pleading for dual nationality, lead by the initiative "Referendum Dual Nationality" was uncovered. This monumemt was to serve as a symbol of protest against a decision made by the "Bundestag" in April 1994 not to reform the rules about naturalization. At the same time, it was to point to voices of protest against Mr. Herzog, the candidate for the Federal President. Mr. Herzog had said in several interviews that dual nationality should only be possible in exceptional situations.
- * Statistics show us that reform of naturalization is necessary. Caseloads of applicants for naturalization are increasing, while types of applicants are also becoming more diverse. The current rules do not provide sufficient guidelines to deal with this diversity. For example, according to the Statistic Office in Hessen 14,500 persons became naturalized in Hessen in 1993.

This is an increase of 22% compared to the previous year. Two thirds of these persons were entitled to be naturalized because they are granted citizenship through the Basic Law although they are not designated as possessing the German nationality (e.g., persons who are of German descent: "AussiedlerInnen") (NJW1994, Heft 30).¹⁹

4.4 *Foreigner and Asylum Law*

4.4.1 Legislation

The following pieces of legislation were enacted or became effective nation-wide in 1994:

- * Law to Amend the Penal Code, the Penal Rules of Court and other Laws: according to this law, it will be a matter of discretion if an adolescent foreigner who lived in Germany and has a permanent residence permit is to be deported should s/he have committed one or more crimes, according to Article 47, Paragraphs 1 and 2.
Article 47, Paragraphs 1 and 2, No. 1 are not valid for minor foreigners (Gesetz zur Änderung des Strafgesetzbuches, der Strafprozeßordnung und anderer Gesetze (Verbrechensbekämpfungsgesetz), BGBl, I, S. 3186).
- * On 1 December 1994, the Combat-Crime Law became effective. The possibility to deport foreign drug-dealers will be facilitated. The gangs that smuggle people across the border (Schlepperbanden) will be punished harder (Sozialpolitische Umschau, Nr. 505/1994).
- * Order to Amend the Ordinance on the Implementation of the Foreigner Law. Benin, Burkina Faso, Ivory Cost and Niger will be cancelled in Appendix 1 of the Foreigners Act Directive

¹⁹ For more on the issue of naturalization, see Hobe, Stephan, Das Staatsvolk nach dem Grundgesetz, Juristen Zeitung 1994, S. 191ff.; Rittstieg, Helmut, Einbürgerung von iranischen Staatsangehörigen, Informationsbrief Ausländerrecht 1994, S. 32ff; Ziemske, Burkhardt, Verfassungsrechtliche Garantie des Staatsangehörigkeitsrechts, Zeitschrift für Rechtspolitik 194, S. 229 ff.

(Verordnung nach Artikel 3 Abs. 4 des Ausländergesetzes zur Änderung der Verordnung zur Durchführung des Ausländergesetzes, vom 29.11.1994, BGBl. I, S. 3546).

- * First Order on the Amendment of the Ordinance regarding Temporary Residence for Working Purposes (Erste Verordnung zur Änderung der Arbeitsaufenthaltsverordnung, vom 15.8.1994, BGBl. I, S. 2115).
- * Ministry of Justice ruling on the authority of the inferior Courts regarding detention, according to the Foreigner Law and the Asylum Law (18.2.1994, GBl. vom 3.3.1994). According to this order, the authority of the Inferior Courts for judicial procedures pursuant to Article 57 Foreigner Law and Article 59, Paragraph 2 AsylVerfG will conform to Articles 2 and 3 of the ruling.

The following legislation pertinent to matters of foreigners and asylum-seekers was passed or became effective in 1994 in the indicated federal states:

Baden-Württemberg

- * Order to Amend the Order on Authority and Cost Bearing with regard to Asylum-Seekers as provided for in the Asylum-Seeker Benefits Law (Verordnung der Landesregierung zur Änderung der Verordnung über Zuständigkeiten und Kostenträgerschaft nach dem Asylbewerberleistungsgesetz, vom 19.9.1994, GBl. S. 560).
- * Order of the Federal State Government of Baden-Württemberg and its Ministry of Interior to Amend the Jurisdiction on Foreigners and Affairs concerning Asylum seeking (Verordnung der Landesregierung und des Innenministeriums zur Änderung der Ausländer- und Asyl-Zuständigkeitsverordnung, vom 4.7.1994, GBl., S. 356).
- * Announcement of the Ministry of Interior on the Repeal of the Administrative Order concerning Deportation of Foreigners by the Municipalities of Stuttgart and Karlsruhe (Bekanntmachung des Innenministeriums über die Aufhebung der Verwaltungsvorschrift zur Wahrnehmung der Abschiebung von Ausländern durch die Regierungspräsidien Stuttgart und Karlsruhe - Zentrale

Abschiebebehörden (ZAB-VwV), vom 18.10.1994, GABl. S. 830).

Berlin

- * The deputies in Berlin decided to expedite the processing of visa applications by facilitating "advance consent" (Vorabzustimmung). Provided that the legal conditions of a claim to a residence permit for family members of a foreigner in Germany are fulfilled, the "advance consent" for a visa should be given, without requiring the condition of "personal severity" (like e.g. pregnancy, having a child, etc.). The "advance consent" should not be handed out to the foreigner, who lives in Germany, neither to his/her family member, but to the German representative agent abroad (InfAuslR 6/94, S. 242).

Hamburg

- * The Senate of Interior of the Federal State of Hamburg ordered using Article 32 Foreigner Law in favour of Pakistani citizens belonging to the Ahmadiya religion. The Senate argued that since the said Pakistanis entered Germany and applied for asylum before 1 January 1988, have lived in Germany without interruption and worked legally, there are no reasons for deportation according to Articles 45-47 Foreigner Law (especially crimes). If the asylum procedure has been ended by taking back the request until 31 October 1994, then Article 32 will be in favour (Behörde für Inneres, Weisung Nr. 3/94).
- * The deportation stop of civil war refugees from Bosnia-Herzegovina has been extended till 31 March 1995 by Order of the Senate of Interior of the Federal State of Hamburg. The deportation stop of Iranian Kurds has been extended till 31 December 1994 (Behörde für Inneres, Weisung Nr. 1/94, 4/94 and 5/94).
- * Order No. 6/94 of the Office of Interior to decrease the burden of the federal states which are over proportionately burdened with the influx of civil war refugees (Behörde für Inneres, Weisung Nr. 6/94).

- * Order No. 7/94 of the Office of Interior on the residence rules for Yeziden from Turkey (Behörde für Inneres, Weisung Nr. 7/94).
- * Order on the residence rules for Pakistani citizens, who belong to the Ahmadiyya religious community (Behörde für Inneres, Weisung Nr. 8/94).
- * The Office of Interior of Hamburg ordered a deportation stop for Kurds from Turkey (Anweisung der Behörde für Inneres, vom 13.12.1994).

Hessen

- * Order on the Amendment of the Order on the Authority of the Foreigner Offices (Verordnung zur Änderung der Verordnung über die Zuständigkeiten der Ausländerbehörden, vom 23.9.1994, GVBl. Hessen, I, Nr. 22/1994).
- * Hessen stopped the deportation of asylum-seekers, who came to Germany before 1 May 1987. The deportation stop will last for 6 months (NZZ, 6,7. 11.1994).

Mecklenburg-Vorpommern

- * Order determining offices capacities according to the Foreigner Law and the Residence Law/EWG (Landesverordnung über die zuständigen Behörden nach dem Ausländergesetz und dem Aufenthaltsgesetz/EWG, vom 18.7.1994, GVOBl. M-V, S. 779).

Niedersachsen

- * Order according to Article 32 Foreigner Law on the Granting of Residence Authorities to Members of the Ahmadiya religious Community from Pakistan (Anordnung nach Artikel 32 des Ausländergesetzes zur Erteilung von Aufenthaltsbefugnissen an Angehörige der Ahmadiyya-Glaubensgemeinschaft aus Pakistan, RdErl. d. MI vom 21.6.1994, Nds. MBl. Nr. 28/1994).
- * Order on the Compensation for Rental Costs of Asylum-Seekers (Kostenerstattung nach dem Aufnahmegesetz; Kosten für die Anmietung von Wohnraum für Asylbewerberinnen und Asylbewerber, vom 22.9.1994, Nds. MBl. S. 1355).

- * Order on the Reception and Housing of Asylum-Seekers. Determination of the lump sum for personal and real administrative Expenses for the years 1994 and 1995 (Aufnahme und Unterbringung von Asylbewerberinnen und Asylbewerbern; Festsetzung der Pauschale für persönliche und sächliche Verwaltungsausgaben für die Jahre 1994 und 1995, vom 29.9.1994, Nds. MBl. S. 1355).
- * Order on the Housing of Asylum-Seekers, Persons granted Asylum and foreign Refugees (Unterbringung von Asylbewerberinnen und Asylbewerbern, Asylberechtigten und ausländischen Flüchtlingen; Abbau nicht mehr benötigter Wohnheimkapazitäten und Auslastung der Flüchtlingswohnheime, vom 11.10.1994, Nds. MBl. S. 1450).
- * Order to Centralize Authority in Matters of Deportation (Zentralisierung von Zuständigkeiten bei der Durchführung von Abschiebungen, vom 4.2.1994, Nds. MB1. Nr. 13/1994, 396).
- * Decree on Health Examinations of Asylum-Seekers according to Article 62 AsylVerfG (Gesundheitsuntersuchungen von Asylbehrenden nach Artikel 62 des Asylverfahrensgesetzes, Nds. MBl. Nr. 33/1994).
- * Asylum-seekers who are in remand pending deportation shall pay 116 marks for each day, they are in prison. As a substitute also jewels or other valuables can be confiscated (NJW, 1/1994, S. 30).
- * Because the Embassy of Bosnia and Herzegovina do not allow for reduced fees for processing passport applications for people who are on welfare, the Ministry of Interior of Niedersachsen issued a new order in which those people unable to pay fees are given the possibility to receive a passport substitute according to Article 39 Foreigner Law (Stimme 6/1994, S. 8).

Nordrhein-Westfalen

- * Law on the Implementation of the "Asylum-Seeker-Benefits Law", Fourth Amendment to the "Law on the Reception of Refugees" and the Amendment to the Law of Federal State Reception (Gesetz zur Ausführung des Asylbewerberleistungsge- setz, Viertes Gesetz zur Änderung des Flüchtlingsaufnahmeger- gesetzes und Zweites Gesetz zur Änderung des Landesaufnahmeger- gesetzes, vom 29.11.1994, GV.NW. S. 1087).

The word "asylum-seeker" will be replaced by "foreigner" in Article 1 of the Ordinance on the temporary departure of an asylum-seeker from the area of residence permission (Verordnung zur Änderung der Verordnung über das vorübergehende Verlassen des Bereichs der Aufenthaltsgestattung durch Asylbewerber, vom 11.1.1994, Nordrhein-Westfalen, GVBl. NW, S.26).

The Basic Law at the communal level has been amended. An advisory board for foreigners has to be formed in communes with more than 5,000 foreigners (Gesetz zur Änderung der Kommunalverfassung, vom 17.5.1994, GVBl. NW, Nr. 34, S. 270).

Rheinland-Pfalz

- * Ordinance regarding the Implementation of Procedures according to the Asylum Law and the Reception Law of the Federal State of Rheinland-Pfalz (Landesverordnung zur Durchführung des Asylverfahrensgesetzes und des Landesaufnahmegergesetzes, vom 29.9.1994, GVBl. S. 377).

Saarland

- * Law No. 1342 on the Rearrangement of Regulations concerning Foreigners (Gesetz Nr. 1342 zur Neuregelung ausländerrechtlicher Regelungen vom 23.6.1994, Amtsblatt des Saarlandes vom 25.8.1994).
- * Amendment to the Ordinance regarding administrative Capacities according to the Asylum Law, the Foreigner Law and Residence Law EWG (Verordnung zur Änderung der Verordnung über Zuständigkeiten nach dem Asylverfahrensgesetz, dem Ausländergesetz und dem Aufenthaltsgesetz/EWG, vom 29.11.1994, Ambtsbl. S. 1614).

Sachsen

- * Order of the Ministry of Interior to Amend the Order on Authority in Matters of Integration (Verordnung des Sächsischen Staatsministeriums des Innern zur Änderung der Eingliederungszuständigkeitsverordnung, vom 2.11.1994, Sächsisches GVBl. S. 1624).

- * Amendment to the Law on the Reception and Housing of Asylum-Seekers, Persons granted Asylum and other foreign Refugees in Sachsen (Berichtigung des Gesetzes zur Aufnahme und Unterbringung von Asylbewerbern, Asylberechtigten und anderen ausländischen Flüchtlingen im Freistaat Sachsen, vom 11.11.1994, SächsGVBl. S. 1630).
- * Sachsen was the first federal state to set up a law which establishes the Office of Commissioner for Foreigners (Gesetz über den Sächsischen Ausländerbeauftragten, vom 9.3.1994, Sächsisches GVBl. S. 465).
- * Sachsen brought out a Law on the "Integration of Foreigners of German Descent and on the Implementation of the Federal Law on Expellees and other Laws on War Consequences (Sächsisches Gesetz über die Eingliederung von Aussiedlern und zur Durchführung des Bundesvertriebenengesetzes, vom 28.2.1994, Sächsisches GVBl. S. 359).
- * Law on the Reception and Housing of Asylum-Seekers, Persons granted Asylum and other foreign Refugees in Sachsen passed on 28 February 1994 (Gesetz zur Aufnahme und Unterbringung von Asylbewerbern, Asylberechtigten und anderen ausländischen Flüchtlingen im Freistaat Sachsen, vom 28.2.1994, Sächsisches GVBl. S. 357).

Sachsen-Anhalt

- * Ordinance on the Data transfer for Asylum-Seekers (Verordnung über die Datenübermittlung für Asylbewerber vom 31.8.1994, GVBl. LSA Nr. 43/1994).

Schleswig-Holstein

- * Order of the Federal State of Schleswig-Holstein to amend the Foreigner and Asylum Ordinance (Landesverordnung zur Änderung der Ausländer- und Asylverordnung, vom 10.2.1994, GVOBl. Sch.-H., S. 145).

Thüringen

- * Ordinance on the Implementation of the Asylum-Seeker-Benefits Law (Thüringer Verordnung zur Durchführung des Asylbewerberleistungsgesetzes, vom 11.11.1994, GVBl. S. 1214).

4.4.2 Drafts

There were several proposals to reform the Foreigner Law and the Asylum Law:

- * The Social Democrats in the "Bundestag" presented a bill (BT-Drs. 12/7014) aimed at improving the rights of married foreign women by granting them an independent right of residence after two years of marriage. At present, the period is four years of marriage and three years in hardship cases (Article 19 Foreigner Law). This has placed unreasonable dependence of foreign women on their husbands. Violent husbands and people exploiting women have been able to exercise power over foreign women who fear that divorce may lead to expulsion and an uncertain future.

Further, the SPD aims to eliminate the residence requirement for hardship cases.

As for the right of return of children of foreigners who reluctantly leave Germany with their parents, the SPD proposes that those aged between 15 and 23 years should be given the right to return to Germany for up to 8 years after their departure. Moreover, the SPD wants to liberalize the conditions for foreigners in Germany who wish to be joined by their family members and their spouses.

There is a similar bill being proposed in the Federal State of Nordrhein-Westfalen (BR-Drs. 36/94) which aims to amend Article 19 Foreigner Law.

- * The "Bundestag" rejected a proposal of the coalition party, PDS/ Linke Liste, to give married foreign women independent residence permission (BT-Drs. 12/6291). The three main parties SPD, CDU/CSU and F.D.P. claimed to have rejected the PDS/Linke Liste's proposal on the grounds that only women were considered, i.e. the bill was not sexually neutral.

- * The PDS/Linke Liste claimed that in decisions on family reunification of children to relatives other than the parents, the "child's well-being" (Kindeswohl) should have priority. Therefore, the Federal Government has been called upon to draft legislation regarding this matter. At this time according to the Foreigner Law, local offices are not obliged to consider the "child's well-being" as a criterion in family reunification. Expulsion of children is a significant problem facing many cities. Only in the city of Cologne, more than 100 children are threatened with expulsion (wib 11/94-II/426).
- * "Pro Asyl" is an organisation which represents the interests of asylum-seekers. In an effort to instigate policy reform concerning asylum-seekers in Germany, the organisation "Pro Asyl" drew up a draft to amend the Asylum Law and the Foreigner Law. It proposed, among others, the following amendments to the Asylum Law:
 - 1) To change the rule regarding safe third countries: Since past has shown that designated safe third countries have not been safe, consideration of the rule of safe third countries while executing asylum procedure does not fulfil the condition for a fair and complete asylum procedure. According to "Pro Asyl", asylum-seekers who enter Germany from a safe third country should be allowed to enter Germany if there are serious doubts whether asylum-procedures in the third country will fulfil the minimum of guarantees of the Refugee Convention of Geneva. Moreover, asylum-seekers who enter Germany from a third safe country, should be permitted to stay in Germany if a member of the family already has a residence permit or a provisional residence permit (Duldung). The Federal Office for the Acknowledgement of Foreign Refugees (Bundesamt für die Anerkennung ausländischer Flüchtlinge) should examine - independent of the issue of political prosecution - if human rights of the foreigner will be violated outside of Germany.
 - 2) Article 25 Asylum Law regulating the guidelines for hearings should be amended: At the earliest on the 7th day after the formal request, the foreigner should be given a hearing. Before being heard the asylum-seeker should be given access to counselling. With the asylum request

formulas should be given in the language the asylum-seeker prefers.

- 3) Article 29a Asylum Law regarding safe home countries should be voided. The examples of Gambia, Senegal and Rumania show that the so-called safe countries are not safe.
- 4) Article 18a Asylum Law regarding airport-procedure should be voided. The time limits in this Article do not allow for the following of correct procedure.
- 5) Article 43b Asylum Law should be amended. Not before the asylum application procedure has been absolved, should there be contact to offices in the home countries for passports.
- 6) The rules about the delivery of documents (Article 10 Asylum Law) should be amended. According to current regulations, if the document cannot be delivered to the person in question, the delivery with the task to post has been effected, even if the sending comes back as non-deliverable (Article 10 AsylVerfG). Such policy allows for the likelihood that the asylum-seeker, without knowing that the application has been dismissed and that subsequently time allowed for protest is expiring, is suddenly confronted with deportation.
- 7) Article 6 Asylum Law regarding the office of the Federal Commissioner for Matters of Asylum should be voided. It is argued that the office of the commissioner has been a hindrance in the asylum request procedure.
- 8) The living in assembly camps as stipulated in Article 53 Asylum Law is inhuman and is conducive to provoking racism and xenophobia and should therefore be abolished.
- 9) The Asylum Law should be amended to include a right to legal counselling. Every asylum-seeker should have the opportunity to get legal advice from an independent counsellor. It is suggested that this should be publicly financed.

Amendments in the Foreigner Law:

- 1) Article 53, Paragraph 6 and Article 55, Paragraph 4 Foreigner Law should be annulled. According to these

articles, even in situations of concrete danger deportation is permitted, provided that the danger can be identified as common for the general population.

- 2) Article 54 Foreigner Law should be amended to allow for federal state discretion in regard to ordering a deportation stop, without the confirmation of the Federal Minister of Interior.
- 3) Grounds leading to remand pending deportation (Article 57 Foreigner Law) should be amended. "Pro Asyl" rejects the current policy concerning remand pending deportation as a method to secure deportation. Asylum-seekers cannot be assumed to be criminals. There should be basic legal advice and care available for those in remand pending deportation.
- 4) Civil war refugees should be granted a separate legal status which secures legal residence status and the right to family reunion.
- 5) Article 100 Foreigner Law (regarding transitional regulations) should be amended.

Furthermore, "Pro Asyl" has called for the striking of the Asylum-Seeker-Benefits Law (Asylbewerberleistungsgesetz). Instead, the Federal Benefits Law should be amended so that foreigners do not need a separate law. "Pro Asyl" claims that according to the European Asylum Policy, the "Bundestag" should be informed and have the chance to give their approval before the European ministers come to an agreement (FAZ, 30.9.1994).

- * Article 32 Foreigner Law, concerning the reception of war and civil war refugees, came into force on 1 July 1993. This article came into force without a specific arrangement with Article 32a, 1 Foreigner Law, therefore it became impossible to apply Article 32a Foreigner Law. The "Bundesrat" introduced a bill (BR-Drs. 12/8412) in which Article 32 Foreigner Law has been changed: when an arrangement pursuant to Article 32a, 1 Foreigner Law has been made, the federal state will pay half of the costs incurred by reception. The Federal Government does not agree with this bill (wib 15/94 -II/452).
- * The "Bundesrat" decided to reintroduce those bills again, for which a decision was not made in the last legislative period. Because of the principle of "discontinuity", bills for which a

final decision has not been made within a legislative period, are removed from the legislative agenda. The long list of initiatives of the federal states which will be proposed again, contain proposals to divide costs proportionally between the federal state and the central Government in matters of housing of civil war refugees and to establish a claim for an independent residence permit for divorced foreign women.

- * Hessen wants to give refugees who have lived in Germany for a long time the right to stay. The Minister of Interior of Hessen proposed to give refugees after eight years of legal residence in Germany a permanent right to stay; for families, he suggests the minimum period to be five years (FAZ, 26.11.1994).
- * The Chairman of the CSU in Munich, Mr. Gauweiler, exposed the basic thoughts of an "Immigration-Limitation-Law". The accent of this law is on the limitation. According to Mr. Gauweiler, the Federal Government should declare how many people can be employed and based on this estimation policy should be made. Restrictive measures will lead, so Mr. Gauweiler, to security and integration. He goes further to recommend that instead of the costs of unemployed foreigners in Germany, policy should be aimed at improving conditions in the home country. In a paper of the CSU, the following sentence was laid down: "With the expense of social welfare for one Albanian refugee for the period of one year, a small company with several jobs in the home country can be created. (FAZ, 30.11.1994).
- * The "Bundesrat" proposed (BR-Drs. 870/94), upon request of the Federal State of Brandenburg, to organize differently in the future the reception of civil war refugees. According to the present law, the federal states can arrange quotas for the reception and distribution of refugees in the Federal Territory. But refugees already residing in the Federal States-Territory are included in the figure when filling the quotas. This practice leads to fluctuations in the reception capacity for asylum-seekers (NJW 1994, Heft 48, S. 33).
- * The "Federal States-Chamber" (Länderkammer) of the "Bundesrat" put forth a bill in which foreign married persons should get an independent residence permit after divorce, in cases of

severity, even if the marriage did not last for three years (FR 26.11.1994).

- * The Bündnis 90/Die Grünen motioned (13/107) to amend the Foreigner Law. Its position is the following. The practice of remand pending deportation should be limited. Foreigners who cannot be deported for legal, human, or political reasons should not be remanded pending deportation.

As a rule remand pending deportation should last for only three months. Remand pending deportation for sick persons and minors should be abolished. A request to retain in custody pending deportation should only be issued when other means are not available to insure departure. Furthermore, for those who are legally in remand pending deportation, provisions should be made, there should come rules which allow them to have contacts with persons outside the facility where they are being held custody (wib 1/95 -II/10).

Bremen

- * The Senator on Culture and Foreigner Integration presented a draft designating that foreign crew members who are employed for a long time on German ships get a more secure residence status pursuant to Article 27 Foreigner Law. At the moment, crew members of sea vessels are treated unequally: some get a residence-authority, others a residence permit (Tischvorlage zur Sitzung des Bund-Länderausschusses "Ausländische Arbeitnehmer" am 27.4.1994).

Hessen

- * The Federal State of Hessen drew up a bill (BR-Drs. 1036/94) to amend the Foreigner Law and the Asylum Law. Former Asylum-seekers and de-facto refugees who have lived in Germany for 8 years, would be entitled to a residence-authority. Should they be a family with children, the residence-authority can be given after 5 years. Asylum-seekers who come from countries with a common high acknowledge-rate, or belong to groups with a high acknowledge-rate, would be entitled to asylum and granted permission of residence (NJW 50/94, S. 36).

Rheinland-Pfalz

- * The Federal State of Rheinland-Pfalz drafted a bill to amend Article 100 Foreigner Law. The amendment foresees permission of residence pursuant to Article 30 Foreigner Law, to be given in general after 8 years and for foreigners with at least one minor child, after 4 years. With the amendment, the possibility would be made to grant residence for humanitarian reasons to foreign families who have been residing in Germany for several years while awaiting the termination of the asylum application procedure. Furthermore, a deportation stop for half a year is ordered for those who fulfil certain conditions (NVwZ 1994, Heft 8, S. 777).

4.4.3 Jurisdiction

The following court decisions have shaped the Foreigner Law and the Asylum Law:

Residence

- * The Federal Constitutional Court (BVerfG) ruled that the family protection in Article 6 GG overrules the interests of the state to restrict immigration in cases of family members. When a community of life between a foreigner and German child (i.e. the foreigner acknowledged the child as the father) only can exist in Germany (because the child has also a relation to the mother), it is the duty of the state to protect the family and insure the entitlement to a residence permit (BVerfG, Beschl. vom 10.8.1994 - 2 BvR 1542/94, NJW 1994, Heft 48, S. 3155).
- * The Federal Constitutional Court ruled that although the community of life - which is protected by Article 6 GG - came into existence only after the father violated residential rules, this does not mean that national interests take precedence over private interests of a foreign non-married father protected by Article 6, Paragraphs 1 and 2 GG. Because of the subsequent development of a community of life, which is constitutionally protected by Article 6 GG, a new situation arises. The decision of the Lower Court does not show that national interests justify

deportation of the father (BVerfG, Beschuß vom 10.8.1994 - 2 BvR 1542/94, InfAuslR 11-12/94, S. 394).²⁰

- * The Federal Administration Court ruled that for the establishment of a case of special severity, according to Article 20, Paragraph 4, No. 2 Foreigner Law²¹, it is necessary that only the parent who lives in Germany has the possibility to take care of the child. Therefore, it is necessary to investigate if the situation for the child who lives in a foreign country has changed, and that a repatriation of the parent to the home country is an unreasonable demand. The fact that Germany has a high rate of unemployment should also be considered (BVerwG, Beschuß vom 24.1.1994 - BVerwG 1 B 181.93, InfAuslR 5/94, 183).
- * The Federal Administrative Court ruled that according to the Foreigner Law that was in effect until 31 December 1990, the Foreigner Office was not obliged to grant a construction worker (Werkvertragsarbeiter) (permanent) residence in order to seek work on the common labour market, even if the construction worker had been contracted out for several years (BVerwG, Beschuß vom 18.5.1994 - 1 B 198.93, InfAuslR 9/94, S. 313).
- * When a foreign woman, whose foreign husband has completed his studies in Germany, is given a temporary residence permit for the purpose of studying, she has no claim to an extension of permission of residency pursuant to Article 19 Foreigner Law after a divorce, even if the residence permit had given her the possibility to live with her husband in a community of life (BVerwG, Beschuß vom 12.4.1994, DVBl. 1994, 933, InfAuslR 9/94, 312).
- * The Higher Administrative Court of Munich ruled that the formulation in Article 23 I No. 3 Foreigner Law constitutes a claim to a residence permit for a foreign parent who does not

²⁰ For more information on measures available to foreigners to complain in the area of the protected German basic rights, cf. Felix, Dagmar; Jonas, Walter, Die falsa demonstratio im Rahmen der Verfassungsbeschwerde, in: JA 9/94, S. 343.

²¹ Article 20 AuslG describes the rules for children who live in a foreign country and have a parent in Germany.

have legal custody of his child(ren) (Personensorgerecht), but contributes substantially in the caring of the minor child(ren). Also, the non-married father is protected by Article 6 I and II GG, when he lives together with the child and the mother (VGH München, Beschluß vom 31.1.1994 - 10 CS 93.2882, NVwZ 1994, Heft 8, S. 810).

- * The Administrative Court of Cologne decided that family members of a woman married to a foreign student in Germany, are to be granted permission of residency if the married woman does not come from a developing country, or if she does come from a developing country then she must possess a university degree from a country other than Germany. Depressions and mental crises due to separation do not give cause to apply an exceptional rule, because the circumstances are, according to the Court, self imposed and the consequences were inevitable. Only non predetermined, special circumstances can lead to an obligation for Germany to admit extended family members. In the case of hardship two aspects are significant:
 - 1) it should be unpredictable;
 - 2) the foreigner should be not responsible for the case of hardship.

With respect to emotional hardship due to separation the two foreigners are according to the Court, responsible for the fact that they cannot live together and it is normal that they shall suffer from the separation. Depressions and crises that result from this situation are therefore predictable. It was according to the Court, their own decision to start a family, although they have not succeeded in being capable of living together (VG Köln, Urteil vom 5.7.1994 - 12 K 1114/93, InfAuslR 10/94, S. 360).

- * The Administrative Court of Hessen ruled that the reasons for an independent residence permit for married couples after three years of marriage can only be found in cases of special severity according to Article 19, Paragraph 1, No. 2 Foreigner Law. Special severity can mainly only be found in actual problems or in problems that may most likely arise after repatriation. Circumstances of the past, especially those related to causes of the divorce, can only then be accepted as grounds to apply for an application when they should result in consequences of the

clause of special severity which influence the state of well-being of the person when returning to the home country (e.g. a severe mental illness) (VG Hessen, Beschuß vom 26.4.1994 - 13 TH 2676/93, InfAuslR 9/94, S. 313).

- * The Regional Court of Hamburg ruled that the special Court for Matters of Guardianship (Vormundschaftsgericht) is not authorized to intervene in the deportation of a child, by prohibiting the Foreigner Office access to the child. In this case the Local Court as a guardianship-Court forbade the Foreigner Office to deport a minor child to Yugoslavia and to separate him from his grandfather and guardian. This decision was thereby repealed by the Regional Court (Landgericht Hamburg, Beschuß vom 11.7.1994 - 301 T 104/94, InfAuslR 10/94, S. 363).
- * The rules on extending permission of residence to family members (Familennachzug) for foreigners pursuant to Article 17 Foreigner Law do not apply to unmarried couples. Also with respect to unmarried couples, Article 17 Foreigner Law is not applicable (VGH Kassel, Beschuß vom 4.5.1993 - 13 TH 163/93, NVwZ-RR 1994, Heft 1, 55).
- * The title of a residence permit pursuant to Article 23, Paragraph 1, No. 3 Foreigner Law does not presuppose that the foreign parent and the German child live together all the time in a single dwelling. Family life also can be considered to exist, when the child lives most of the time with the other caring parent (Beschuß vom 8.7.1993 - 11 S 855/93, NVwZ 1994, Heft 6, 605).
- * Having children of young age who are born in and integrated into German society and who know the home country of the parents only through visits, can be a reason for giving the parents permission of a residence-authority (Amtsgericht Hamburg-Harburg, Urteil vom 24.11.1993 - V 2 E 2260/91, InfAuslR 5/94, 187, NVwZ-RR 1994, Heft 8, 466).

Deportation

- * The Federal Administrative Court ruled that the term of the politically prosecuted person according to Article 51, Paragraph 1 Foreigner Law (which corresponds with the term of refugee laid down in Article 33 GK), presupposes a prosecution of the state, the effective control of the territory by the state, which

cannot be presupposed in all instances under circumstances of civil war. Moreover, a common rule of International Law, which forbids the deportation of civil war refugees does not exist (BVerwG, Urteil vom 22.3.1994 - 9 C 443.93, InfAuslR 9/94, S. 329).²²

- * The Federal Administrative Court ruled that normally there is no native possibility to escape, in case of immediate prosecution of the state. It is only then necessary to examine if there is a possibility in the home country to find asylum, when there are concrete clues that the foreign state is a state which prosecutes only in special areas. Germany is not obliged to prove that a native possibility exists to find asylum. The asylum-seeker should declare that s/he is in a hopeless situation all over the country, s/he only have to stated her/his own experiences (BVerwG, Urteil vom 10.5.1994 - 9 C 434/93, NVwZ 11/94, S. 1123).
- * The Federal Administrative Court has cancelled the deportation stop for Vietnamese ordered by the Court of Appeal because several facts in the judgement of the risk for penalty have been ignored. For example, it did not consider the information of the Foreigner Office. Therefore, the Court of Appeal should examine again whether it is necessary to stop deportation (BVerwG, Urteil vom 23.8.1994 - 9 c 3/93 and 9 C 37/94, NVwZ 11/94, S. 1089).
- * The Constitutional Court of Berlin (Verfassungsgerichtshof) ruled that it is not incompatible with the constitutional principle of proportionality to deport a foreigner who has committed a crime, according to Article 45 Foreigner Law, with the aim to deter other foreigners from committing crimes. A Vietnamese man was condemned to a prison sentence for professional tax-receiving and subsequently deported (VerfGH Berlin, Beschuß vom 12.7.1994, VerfGH 94/93, DVB1. 15.10.1994, S. 1189).
- * The Higher Administrative Court of Bavaria (Verwaltungsgerichtshof) ruled that making hashish available to minors is not a sufficient reason for deportation (Bayerischer VerwGH, Urteil vom 26.7.1994 - 10 B 93.138, InfAuslR 11-12/94, S. 396).

²² Cf. Uerpmann, Feststellung des "kleinen Asyls" nach Artikel 51 I AuslG 1990 in Übergangsfällen, in: NVwZ 11/1994, S. 1078.

- * The threat of deportation to a child can be an illegal violation of the custody rights and can endanger the well-being of the child. Under these circumstances the Foreigner Office should not separate the child from the persons with the custody rights. The well-being of the child takes priority over other considerations especially since Germany ratified the UN-Convention on the Rights of the Child (Beschluß vom 22.2.1994 - 607 VII E 717, InfAuslR 6/94, 236).
- * Deportation may be carried out pursuant to a crime, according to Article 51, Paragraph 3 Foreigner Law. The gravity of a crime depends on the criminal facts, circumstances, and the kind and length of the sentence. The qualification of a crime as a major or minor offence, pursuant to Article 12 StGB, is not decisive. The words "particularly grave crime", pursuant to Article 51, Paragraph 3 Foreigner Law, should be interpreted restrictively (VG, Baden Württemberg, Beschluss vom 30.12.1993 - 12 S 2559/93, InfAuslR 4/94, 135).
- * The Federal Administrative Court ruled that Article 47, Paragraph 1, No. 1 Foreigner Law is not in contradiction with the principle of "protection of dignity" pursuant to Article 1, Paragraph 1 GG.

According to Article 47, 1 Foreigner Law, a foreigner is to be deported if s/he committed a crime and the length of the sentence is at least 5 years. Deportation in such cases is compelling. A foreigner who committed a crime has thus rendered her/his own conditions for deportation. The Court went further in its ruling to reprimand foreigners who commit crimes for they give a bad example to other foreigners which consequently serve as a justification for a general preventive measure (BVerwG, Beschluss vom 30.12.1993-1 B 185.93, BayVB1. 1994 Heft 17, 536).

- * The Federal Administrative Court ruled that the protection of deportation according to the Basic Law, does not imply that without further ado Article 48, Paragraph 1 Foreigner Law should be applied. National legislators have the authority to set their own deportation conditions within the limits of the Basic

Law (BVerwG 1 B 62.93, Beschuß vom 29.9.1993 - InfoAuslR 2/94, S. 45).²³

Remand pending deportation

- * The Federal Constitutional Court ruled that it is not compatible with the constitutive principle of proportionality, that only the fulfilment of the peculiarities of Article 52, Paragraph 2, Nos 1-5, leads automatically to the order of remand pending deportation. Therefore, in the procedure of remand pending deportation one should officially examine what the likelihood is of the foreigner in that individual case evading deportation (BVerfG, Beschuß vom 13.7.1994 - 2 BvL 12/93 und 2 BvL 45/93, InfAuslR 10/94, S. 343).
- * The Higher Regional Court of Frankfurt/Main ruled that according to stipulated usage of remand pending deportation, the behaviour of a foreigner in Germany (especially according to the Foreigner Law) should be acknowledged in the evaluation whether grounds for remand pending deportation exist, but this is not pertinent the question of duration of detention. The duration of detention depends only on the period of time which the Foreigner Office needs to execute deportation. The first order of detention for a period longer than 3 months, is only admissible, when it is due to the foreigner that the Foreigner Office needs more than 3 months to execute the deportation (OLG Frankfurt/Main, Beschuß vom 11.5.1994-20W 200/94, NVwZ 1994, Heft 8, S. 827).

²³ For more information about the operation of the Asylum Law, see Renner, Günter, Der Asylkompromiß und seine Folgen, Neue Zeitschrift für Verwaltungsrecht 1994, S. 452ff.; Renner Günter, Asylrecht in Deutschland nach der Grundgesetzänderung, Neue Justiz 1994, S. 241ff.: Rennert, Klaus, Fragen zur Verfassungsmäßigkeit des neuen Asylverfahrensrechts, Deutsches Verwaltungsblatt 1994, S. 717ff. and Roeser, Thomas, Stattgebende Kammerentscheidungen des Bundesverfassungsgerichts zum Grundrecht auf Asyl, Europäische Grundrechte Zeitschrift 1994, S. 85ff. More information on the hindrance to deport according to Article 53 Foreigner Law, cf. Heinhold, Hubert, Abschiebungshindernisse nach Artikel 53 Ausländergesetz in der Praxis des Bundesamtes und der Gerichte, in: InfAuslR 11-12/94, S. 411.

- * Remand pending deportation is only legal when detention is necessary to effectuate deportation. It is not allowed as a substitute for detention, neither to facilitate the work of the Foreigner Office (OLG Frankfurt am Main, Beschluß vom 3.3.1994 - 20 W 90/94, InfAuslR 6/94, 239).
- * It is disproportionate to order more than 3 months remand pending deportation in a youth prison for a young foreigner whose asylum is denied. Especially when the young foreigner did not commit a crime, and s/he did not attempt to prevent deportation by, e.g., refusing to co-operate with the authorities in the procurement of valid travelling documents (OLG Frankfurt am Main, Beschluß vom 10.1.1994 - 20 W 477/93, NVwZ-Beilagen 3/94, 24 und InfAuslR 4/94, 147).

Military duty

- * The fact that a person is a Muslim who has to follow special religious convictions, does not implicate that a case of special severity exists which leads to deferment of military duty. Deferment of military duty is also not justifiable on the grounds that a person has to fulfil his duty in another country (i.e. Tunisia) (VG Hamburg, Urteil vom 26.1.1994-3 W 2411/93, NVwZ, 1994, Heft 8, S. 816).

Commitment to pay the costs of living for a foreigner

- * The Administrative Court of Munich ruled that Article 84 Foreigner Law does not give the Foreigner Office the authority to claim that it will commit to pay the costs of living of a foreigner (Verpflichtungserklärung) without legal standing. Article 14, 1 Foreigner Law describes the conditions under which the Foreigner Office can submit such a commitment. The Foreigner Office is not allowed to grant the status of "toleration" (Duldung) conditioned on such commitment; a commitment of financial support of a foreigner is only possible for a foreigner with a residence permit. Acceptance of a commitment to pay the costs of living, according to Article 84 Foreigner Law implies that the Foreigner Office guarantees a foreigner a legal position which would not have been granted without the commitment to paying the said costs of living, but for which a legal standing

had not existed (VG München, Urteil vom 1.9.1994 - M 15 K 93.2743, InfAuslR 11-12/94, S. 402).

4.4.4 Policies

- * An issue this year was the situation for foreigners in remand pending deportation. In most of the federal states persons who are to be deported are treated like criminals. They are often kept in custody together with criminals in prisons, although remand depending deportation should not have the character of punishment.
Many of the persons are kept for months in remand pending deportation because the Foreigner Offices are not able to expedite deportation. Under such circumstances rejected asylum-seekers in Kassel revolted.
The Federal Commissioner for Foreigners called for changes in procedure concerning remand pending deportation. In his view each individual case should be reviewed before an individual is taken into custody. According to the Commissioner, the problem of rejected asylum-seekers going into hiding is a problem of lesser weight than that of unnecessarily imprisoning innocent people for many months (FAZ, 15.8.1994, Spiegel, 1.8.1994).
- * Current policy has lead to other rebellious incidences as well. In July 1994, foreigners protested in Berlin with a hunger strike against the conditions in remand pending deportation. The strike stopped after strikers were promised improvements. The Senate of Berlin delegated authority to the police in matters regarding remand pending deportation. After the hunger strike police management wanted to hand over such decisions to the courts, but the Senate decided to leave the authority in the hands of the police (FAZ, 11.10.1994).
- * The Federal Ministry of Interior gave out a report on the first experiences with the Asylum Law (Bericht des Bundesinnenministeriums über erste Erfahrungen mit den am 1. Juli 1993 in

Kraft getretenen Neuregelungen des Asylverfahrensrechts, Asyl-Erfahrungsbericht 1993).²⁴

- * The "Paritätischer Wohlfahrtsverband e.V." advocates rescinding the Asylum-Seeker-Benefits Law (Asylbewerberleistungsgesetz), which reduces social assistance benefit levels for asylum-seekers (Parität aktuell, 4/1994).²⁵
- * After the periods for deportation stops of several federal states expired and an agreement between the ministers of interior, at the beginning of December 1994, did not succeed (the only agreement reached was the extension of the deportation stop period until the 20. January 1995), the Federal Minister of Interior, Mr. Kanther, announced that he opposed the plans of the SPD-governed Federal States calling for a general stop of the deportations of several groups from Turkey and former Yugoslavia (ZAR Aktuell, 6/1994).
- * Professor Groenendijk from the Netherlands called attention to a decision of the General Assembly from 19.3.1993, in which the Assembly confirms that according to the UN-Convention Against Race Discrimination, every Member State is obliged to submit reports on its Foreigner Law and its application. The convention also obliges the Member States to combat private discrimination against foreigners (InfAuslR 11-12/94) .

Bremen

- * In Bremen, there is a discussion to establish democratic representation of immigrants. The coalition in Bremen chose the option of electing a foreigner advisory board. Other federal states have developed several models of foreigner advisory boards. For example in Hessen, there are such advisory boards in all communities.

²⁴ Cf. Hailbronner, Kay, Reform des Asylrechts. Steuerung und Kontrolle des Zuzugs von Ausländern, Konstanz 1994.

²⁵ Cf. Röseler, Sibylle, Sachleistung für alle Flüchtlinge?, in: NVwZ 11/94, S. 1084.

Sachsen-Anhalt

- * The "Landtag" Sachsen-Anhalt spoke out for integrating non-EU foreigners into communal elections. Three political parties, the SPD, the Bündnis 90/Die Grünen and the PDS called upon the governing party in the Federal State of Sachsen-Anhalt to bring in this initiative to the "Bundesrat" (NJW 1994, Heft 47, S. 40).

Policy debates/controversies concerning foreign youth

- * A Federal study group commissioned by the youth offices of the federal states issued a resolution in form of a discussion paper on the assistance of young refugees (Vorlage Nr. 713, Beschuß der Bundesarbeitsgemeinschaft der Landesjugendämter auf der 77. Arbeitstagung vom 12. - 14. Oktober 1994 in Kassel). In this paper the study group suggests that foreign minors without parents in Germany can only be deported after information of the authorized public youth office. Minors only get financial assistance if they have a legal residence status, or if their being in Germany is officially tolerated (Duldung). The study group suggests that "normal residence" (gewöhnlicher Aufenthalt) can be accepted, provided that the minor states that s/he does not wish to live temporarily in Germany. Furthermore, it is suggested that common housing be set up to accommodate the younger refugees while personal, legal and economic situation is being clarified.²⁶
- * An unknown gang of organized criminals has up till now "hired" a group of some fifty Rumanian children between the age of 8 to 13 to rob pedestrians in Bonn. Each child has to collect 1000 marks a day. Those who do not receive a residence permit in Germany have to go back to their country. Those who refuse will be detained until repatriation is possible. This regulation does not apply to children under 16. Minors, regardless of their nationality, enjoy special legal protection. In consultation with the Government of the Federal State of Nordrhein-Westfalen and the Rumanian Government, an exception has been made:

²⁶ C. Koehn Anne; Zieger, Matthias, Können junge Asylbewerber Leistungen der Jugendhilfe beanspruchen?, in: InfAuslR 10/94, S. 364, Bell, Roland, Abschiebung von Kindern ohne die Eltern?, in: ZAR 4/94, S. 183.

minor Rumanians who are in Germany without parents will also be included in the so-called "readmission agreement" of November 1992 between Rumania and Germany (ESMV, 12/1994, S. 3).

- * The Federal Minister of Interior, Mr. Kanther, instructed the border security offices to apply the "airport procedure" (Flughafenverfahren) also to minors. According to this regulation, a decision to deport should be made within 19 days. But this period is much too short for local courts to make decisions regarding issues of guardianship and secure the rights of a child. Therefore the Ministry for Youth, Family and Health of Hessen contends that Mr. Kanther's order should be reconsidered (FAZ, 17.9.1994).

4.5 Social Security Benefits and related Tax Regulations

According to the Federal Statistic Office, more than 2.3 million persons drew public assistance at the end of 1992. Of these 15.5% were foreigners in the new federal states and more than one third of these recipients were foreigners in the old federal states. This means that in the old federal states, 28.9% more foreigners drew public assistance.

At the end of 1992, 439,275 households with 792,596 children were dependent on social aid for a living. Almost 35% of these households had a foreign head-of-household (wib 15/94-III/225).

Compared to German recipients whose most important reason for getting public assistance is unemployment, most foreigners received assistance for "other reasons" in particular while awaiting the processing of political asylum requests.

4.5.1 Legislation

At the national level:

- * On 24 June 1994, a new law entered into force: the Law regulates income tax for people who cross the border in order to

commute to work (so-called "Grenzpendler"), who earn at least 90 % of their income in Germany or at the most 12,000 marks in a foreign country, and have their residence in the foreign country. With this law such commuters have the possibility to deduct the subsistence costs in support of a spouse as well as in support of a child (Kinderfreibetrag) from the taxable income (Gesetz zur einkommensteuerlichen Entlastung von Grenzpendlern und anderen beschränkt steuerpflichtigen natürlichen Personen und zur Änderung anderer gesetzlicher Vorschriften (Grenzpendlergesetz 24.6.1994, BGBl. I, S. 1395)).

- * The Law regulating the child allowance has also been amended. Of relevance for foreigners is Article 1, Paragraph 3. Foreigners are only entitled to claim allowance for children, if they have a residence-entitlement or a residence permit. Foreigners with a residence permit, who were sent to Germany for temporary work but who are working for an employer who lives abroad are not entitled to claim allowance for children. Should a spouse of the latter mentioned category of foreigners have a residence permit or a residence-entitlement and be in employment which is liable to subscription according to the Federal Labour Office (Bundesanstalt für Arbeit), or which is exempt from contribution according to Article 169c No. 1 Work Promotion Act (Arbeitsförderungsgesetz) then s/he is entitled to the child allowance benefit.
In the past, foreigners without a residence-entitlement or residence permit who could not be deported according to Articles 51, 53 or 54 Foreigner Law (Ausländergesetz) were also eligible to receive a child allowance (Bundeskindergesetz vom 31.1.1994, BGBl. I, S. 701).
- * The Social Law has been amended in relation to the protection of social data (Gesetz zur Änderung von Vorschriften des Sozialgesetzbuchs über den Schutz der Sozialdaten sowie zur Änderung anderer Vorschriften. Zweites Gesetz zur Änderung des Sozialgesetzbuchs vom 13.6.1994, BGBl. I, S. 1229).
- * Germany approved by Law the supplementary Agreement of 22 December 1992 to the Agreement of 20 October 1992 between Germany and the Swiss Confederation on Unemployment Insurance. Employees commuting between Germany and Switzerland, who are citizens of third countries will be treated

as citizens of the convention countries. Thus, they will be entitled to claim unemployment insurance from their home country, if they worked in another country but become unemployed (Gesetz zu dem Zusatzabkommen vom 22.12.1992 zum Abkommen vom 20.10.1982 zwischen der Bundesrepublik Deutschland und der Schweizerischen Eidgenossenschaft über Arbeitslosenversicherung, 31.3.1994, BGBl. II, S. 430).

At the level of the federal states:

Hessen

- * Law on the Adaptation of Public Health Regulations in accordance with the European Economic Domain and to amend the Law regulating the Medical Profession (Gesetz zur Anpassung von Vorschriften des Gesundheitswesens an das Abkommen über den Europäischen Wirtschaftsraum und zur Änderung des Heilberufsgesetz, vom 11.10.1994, GVBl. S. 597).
- * Ordinance issued on the authorization of the Public Office for the Guarantee of Payment according to 9, II Federal Expellee Law (Anordnung über die zuständige Behörde für die Gewährung von Leistungen nach § 9 Abs. 2 des Bundesvertriebenengesetz vom 27.1.1994, Hessen GVBl. S. 58).

4.5.2 Drafts

Baden-Württemberg

- * The Federal State of Baden-Württemberg drafted a bill to amend the Asylum-Seeker-Benefits Law and other orders on foreigners and asylum-procedures. Article 2 AsylbLG is contested according to the fact if the social benefits claim refers to benefits in kind or to benefits in cash. Some courts interpreted Article 2 AsylbLG to designate those individuals who do not receive a reply the asylum application after 12 months generally have a claim to cash benefits. According to the Federal State of Baden-Württemberg, this will lead to conflicts between the asylum-seekers, because these persons eligible for benefits in cash are housed together with asylum-seekers who receive benefits in kind. Therefore Baden-Württemberg wants to amend Article 2 AsylbLG to designate all asylum-seekers living in common

housing to be eligible only for benefits in kind (BR-Drs. 535/94).²⁷

4.5.3 Jurisdiction

- * Foreign women who have brought up their children in Germany are also entitled to recognition of child care periods for fulfilment of minimum contributory periods in old-age insurance benefits schemes (Erziehungszeiten) even if they only have a temporary residence permit. This was decided by the Federal Social Court (BSG) in a ruling issued on 7 June 1994. The decision was based on a case of a Jordanian woman who accompanied her husband to Germany where she gave birth to nine children (between 1972 - 1984). Her husband did not obtain a permanent residence until 1980, i.e., after the birth of their seventh child. Referring only to the period in which a permanent residence permit was in existence the Regional Social Security Office (Landesversicherungsanstalt) only wanted to recognize the period of care of one year per child for the last two children (Az.: 5RJ 16/93, Migration News Sheet, 7/94, 3).²⁸
- * The Federal Social Court ruled that the granting of asylum does not create a retroactive claim for a child allowance. Once asylum has been granted, a claim to a child allowance is only established from that point on (BSG, Urteil vom 15.12.1992 - 10 RKg 11/92, SGb 2/94, 85).
- * The Federal Social Court ruled that a foreigner who has been in Germany over a longer period of time will be considered to have her/his "normal residence" (gewöhnlicher Aufenthalt) in

²⁷ More to the operation of the Asylum-Seeker-Benefits Law: Deibel, Klaus, Geldleistungen im Rahmen des Asylbewerberleistungsgesetzes, Zeitschrift für Sozialhilfe und Sozialgesetzbuch ZfSH/SGB 1994, S. 359; Knösel, Peter, Erste Anmerkungen zum Asylbewerberleistungsgesetz in Theorie und Praxis, Informationsdienst Ausländerrecht 1994, S. 68ff.; Kunkel, Peter-Christian, Das Asylbewerberleistungsgesetz in Konkurrenz mit Sozialleistungsgesetzen. Neue Zeitschrift für Verwaltungsrecht 1994, S. 352ff.

²⁸ Cf. Funk, Winfried, Ausland und Ausländer im Recht der Kindererziehungszeiten, Vierteljahresschrift für Sozialrecht 1994, S. 119ff.

Germany only if s/he had during this time a residence- entitlement, or a temporary residence permit. A foreigner's claim to recognition of child care periods is restricted to persons with a temporary or permanent permission of residence (BSG, Urteil vom 27.1.1994 - 5 RJ 16/93, InfAuslR 9/94, S. 317).

- * The Federal Administrative Court ruled that the housing of asylum-seekers is not an administrative task of the communities, but a task of the federal state (BVerwG, Beschluß vom 8.3.1994 - 7 B 141/93, NVwZ 1994, Heft 7, 694).
- * The Administrative Court of Freiburg (VG Freiburg, Beschluß vom 10.2.1994, 4 K 163/94, VB1BW 1994, 291) rejected the claim of an asylum-seeker to the right to receive his social assistance in cash rather than in kind. The Court ruled that if the social assistance in kind is not sufficient, there can only be a claim to a better composition of the assistance in kind.

The Administrative Court in Mannheim ruled to the contrary in favour of granting an asylum-seeker the right to receive his social assistance in cash rather than in kind. The Court underlined that the case in question dealt with an asylum-seeker who had lived more than a year in Germany; after a period of one year social benefits in kind (in the form of food parcels) can only be made in special cases after individual examination. This ruling contradicts a provisional administrative guideline (Verwaltungsvorschrift) set by the Minister of Interior of Baden-Württemberg which authorizes the payment of social benefits in kind to asylum-seekers, even during the second year of stay in Germany if they live in common housing (VG Freiburg, Beschluß vom 2.3.1994 - 5 K 156/94, InfoAuslR 2/94, 94).

- * The Higher Administrative Court of Munich ruled that the declaration in front of the Foreigner Office to pay the cost for living of a foreigner, pursuant to Article 84 Foreigner Law, does not give an own legal claim of the foreigner against the person/office who declared to pay. The meaning of the declaration is to give the public office, which paid the public money, a legal public restitution claim (VGH München, Beschluß vom 23.2.1994 - 12 CE 94.101, NVwZ-RR1994, Heft 8, 450).
- * The Administrative Court of Berlin ruled that Muslims who are on welfare, are entitled to get money from the Social Office for

the costs of a ritual washing of a dead body (VG Berlin, Urteil vom 3.11.1992 - 8 A 286/89, NVwZ 1994, Heft 6, 617).

- * Article 4a TierSchG, an animal protection Law, is according to the High Regional Court (OLG), not unconstitutional, even if the right to freedom of religion is considered. Indeed, the killing of animals that have not been anaesthetized is forbidden in Article 4a, Paragraph 1 TierSchG, but with reservations (Article 4a, Paragraph 2 TierSchG). According to the Court, these restrictions are especially to allow for the exercise of rituals of specific religious groups. In this case, the person in question did not have the permission of the authorized office to kill animals without anaesthetization. Therefore, he acted illegally by killing an animal without anaesthetization (Beschluß vom 27.2.1992 - 1 Ss OWi 652/91, NVwZ 1994, Heft 6, 623).
- * In an earlier case, a complainant (a person belonging to the Islamic religion) brought his grievance to Court since he had applied for the special permission to kill animals without narcotization, pursuant Article 4a, Paragraph 2 TierSchG but was denied permission. In the Islamic religion no compelling rules exist, which either forbid the killing of anaesthetized animals, or to eat the flesh of animals which had been anaesthetized. This is also true as far as special maxims of the Koran and the Islamic tradition are considered.
The request was therefore dismissed on the grounds that it was not evident that the complainant belongs to a special religious group in which the eating of non-anaesthetized flesh is necessary (VG Koblenz, Urteil vom 16.3.1993 - 2 K 1874/92, NVwZ 1994, Heft 6, 615).²⁹

4.5.4 Policies

- * A problem for older foreigners is the old-age pension. According to the Association of German Pension Insurance (Verband Deutscher Rentenversicherungsträger), the pension

²⁹ On the issue of the killing of animals without anaesthetization, see Brandhuber, Klaus, Die Problematik des Schächtens im Licht der aktuellen Rechtsprechung, Neue Zeitschrift für Verwaltungsrecht 1994, S. 561ff.

levels for foreigners average 960 marks monthly. In 1989, foreigners paid (newer data are not available) 12.8 billion marks in contributions, but drew only 3.7 billion marks.³⁰

- * Due to the Law passed in 1984, hundreds of thousands Yugoslavians lost a part of their pension claims. According to this law (Haushalts-Begleitgesetz), a claim to a pension is only possible for those who paid within the last 5 years contributions for at least 36 months to the pension insurance (FR, 4.11.1994).³¹
- * According to a survey of the Centre for Turkish Studies, Turks who live in Germany save on average more money than Germans. On average they save 14.6% of their earnings (Germans save about 12%). The 1.9 million Turks in Germany live in households with an average of 4.1 persons. The monthly net income is about 3650 marks. Totally they earn about 20 billion marks a year, they save about 3 billion marks.
- * The amount of claims at the Federal Insurance Office from Poland, the former USSR and the Czech Republic for compensation for doing forced labour during World War II has increased. In individual cases this has lead to pension payments to insured persons living abroad.
- * It has become common place in several insurance companies that foreigners have to pay higher premiums for car insurance. The companies claim without sufficient evidence that foreigners have a higher risk of getting a car accident. The Federal Board of Control of Insurances (Bundesaufsichtsamt für das Versicherungswesen) considers such practices to be discrimination on grounds of nationality and wants to take measures against them. The Federal Government, however, does not want to enact a law to prevent such discriminatory practices (FAZ, 1.6.1994).

30 More to the situation of older foreigners, see Wendell, Marion, "Nur Allah weiß, was aus mir wird...", Informationsdienst zur Ausländerarbeit 4/1994, S. 60ff.

31 C. Häupler, Klaus, 30 Jahre deutsch-türkisches Sozialversicherungsabkommen, in: Mitteilungen der Landesversicherungsanstalt Oberfranken und Mittelfranken, Nr. 10/94, S. 433.

Hamburg

The Foreigner Commissioner Hamburg criticizes the Federal Child Allowance Law. According to that law, foreigners with a residence-authority (Aufenthaltsbefugnis) are not entitled to child allowance; only persons with a residence permit (Aufenthaltserlaubnis) or residence-entitlement (Aufenthaltsberechtigung) are entitled. The Commissioner considers this an ungrounded discriminatory practice which affects a significantly large foreign population of 110,000 who only have a residence-authority in the city-state of Hamburg.

4.6 *Education*

Almost 10% of the pupils and students in public and private primary, secondary and higher educational institutions in Germany are foreigners. More than one million foreign pupils attended schools for general education and vocational schools in 1992. 86% of the foreign pupils and students came from Greece, Italy, the former Yugoslavia, Portugal, Spain and Turkey. Almost 80,000 of these young foreigners completed schooling for general education in 1992. 44.4% completed the "Hauptschule", 26.3% intermediate secondary school, 7.8% received the upper secondary leaving certificate (giving access to university studies), and 0.6% attended colleges of higher education. 16.5% left the "Hauptschule" without a final exam. Compared to all "Hauptschule" pupils who left without a final exam (8.7%), the dropout rate of foreign pupils is twice as high. In the last decade the number of foreign students completing the intermediate secondary school and those who completed the upper secondary school has doubled (FAZ, 3.3.1994).

4.6.1 Legislation

At the federal level:

- * The Guidelines laid down by the Federal Ministry for Women and Youth, for the Implementation of Social Integration

Programmes (in areas of language, education and employment) of young refugees and young emigrants of German descent, have been amended (RL-GF-SB, 1.1.1993; GMBI. 1992 Nr. 46, 21.3.1994; GMBI. 1994, S. 440).

- * The Guidelines of the Otto-Benecke-Foundation for supporting young Emigrants of German Descent and young Refugees, for the Preparation and the Realization of University Studies have been amended (RL-GF-H, 1.1.1993; GMBI. 1992 NR. 46; 21.3.1994 GMBI. 1994, S. 441).
- * Switzerland and Germany have signed an Agreement in which they reciprocally acknowledge university achievements and examinations (NZZ, 22.6.1994).
- * Law passed to the Convention dated 21 December 1979 on the Recognition of Studies, Diplomas and Degrees in higher Education in Member States of the European Region (Gesetz zu dem Übereinkommen vom 21.12.1979 über die Anerkennung von Studien, Diplomen und Graden im Hochschulbereich in den Staaten der europäischen Region vom 2.9.1994, BGBl. II, S. 2321).
- * The Law regulating the German Legal Profession for Judges has been amended. The amendment has to do with the acknowledgement of exams in jurisprudence or law of Germans of the former GDR who had completed exams in a foreign country (e.g., the former USSR) (Änderung des Deutschen Richtergesetzes vom 24.6.1994, BGBl. I, S. 1374).
- * The Federal Office amended the Regulation regarding the Promotion of individual Training and Retraining to Improve existing Skills. In the past, only foreigners who had a permanent residence permit were eligible for state employment promotion programmes. With this new amendment, also those foreigners who presumably can be employed for a minimum of 4 years will be referred to (re)training programmes (Anordnung des Verwaltungsrats der Bundesanstalt für Arbeit zur Änderung der Anordnung über die individuelle Förderung der beruflichen Fortbildung und Umschulung vom 16.3.1994, ANBA NR. 3/1994, S. 295).
- * Announcement of the Enforcement of the European Agreement on the Academic Acknowledgement of Academic Degrees and University Certificates (Bekanntmachung über den Geltungs-

bereich des Europäischen Übereinkommens über die akademische Anerkennung von akademischen Graden und Hochschulzeugnissen, vom 29.11.1994, BGBl. II, 3862).

At the federal state level:

Baden-Württemberg

- * Law on the Agreement between the German Federal States on the Authorization to use Academic Titles of foreign Universities (Gesetz zu dem Abkommen zwischen den Ländern der Bundesrepublik Deutschland über die Genehmigung zur Führung akademischer Grade ausländischer Hochschulen und entsprechender ausländischer staatlicher Grade vom 29.10.1992, vom 12.12.1994, GBl. A. S. 644).

Brandenburg

- * An Ordinance was issued on the Procedure to Approve foreign Titles and the use of foreign Titles (Verordnung über das Verfahren der Zustimmung und die Form der Führung ausländischer Grade, vom 30.8.1994, SaBl. Nr. 46, S. 3591).

Niedersachsen

- * An Ordinance was issued on the Integration of German Descendants in Schools and Vocational Training Programmes as well as in University Admission and the Acquisition of Study Qualifications in Higher Education (Eingliederung von deutschen Aussiedlerinnen und Aussiedlern in Schulen und Berufsausbildungen, Hochschulzugang und Erwerb von Studienqualifikationen, MBl. S. 1359).
- * Amendment on the Ordinance regarding University Admissions and the Admissions Procedure for the supplementary Programme "instruction for non-native German speaking students" at the University of Oldenburg (Änderung der Ordnung über Zulassungszahlen und Zulassungsverfahren für den Studiengang "Ergänzungsstudium für den Unterricht für Schüler nichtdeutscher Muttersprache-Ausländerpädagogik" an der Universität Oldenburg, Nds. MBl. Nr. 34/1994).

Sachsen

- * Ordinance regarding university admissions examination for applicants of German descent (Gemeinsame Verordnung des Sächsischen Staatsministeriums für Wissenschaft und Kunst und des Sächsischen Staatsministeriums für Kultus über die Erweiterte Abschlußprüfung zum Erwerb der allgemeinen Hochschulreife für deutsche Aussiedler nach zweijährigem Sonderlehrgang, vom 3.6.1994, GVBl. Nr. 34, 1024).

Sachsen-Anhalt

- * An Ordinance was issued regarding the Use of a foreign Academic Title (Verordnung über das Genehmigungsverfahren zur Führung ausländischer Grade und entsprechender ausländischer staatlicher Grade oder Titel vom 16.5.1994, GVBl. LSA, S. 604).

4.6.2 Jurisdiction

- * The Federal Administrative Court ruled that according to Article 4, Paragraphs 1 and 2 GG, an Islamic girl does not have to go to coeducational sports lessons, if the sports lessons are not separated for girls. The Court argued that the Koran prescribes stringent rules for clothing which will be violated should the girl wear conventional sports clothing in coeducational sports lessons. Such a situation is also likely to bring about feelings of guilt in the child. The Court bases its ruling on the principle that the value of coeducational sports lessons does not take precedence over the practice of freedom of religion (BVerwG, Urteil vom 25.8.1993 -6 C 8.91, InfAuslR 2/94, 59).³²

³² More to the issue of freedom of religion and integration of foreigners in schools: Albers, Hartmut, Glaubensfreiheit und schulische Integration von Ausländern, Deutsches Verwaltungsblatt 1994, S. 984ff.

4.6.3 Policies

Education-related policies have been at the core of integration efforts.

- * The Federal Government reported on the situation of (foreign) youth in Germany (BT-Drs. 12/6836). The following is a brief summary of facts mentioned in the report.

1,944,532 foreigners between the age of 14 and 28 live in Germany. 1,866,905 of them live in the old federal states. 32% of the foreign youth come from Turkey and 17% from former Yugoslavia. 60.1 % of the foreigners between the age of 10 and 15 who lived in Germany in September 1990 were born in Germany, 44.6% for the group between 16 and 18 years of age, and only 5.1 % for the group between the ages of 25 and 29.
- * Only 37% of the foreigners between 15 and 18 years of age do an apprenticeship. The rate is 70% among Germans.

The level of educational achievement for young foreign women is 50% less than for men. According to the President of the Federal Labour Office, Mr. Jagoda, the integration of the foreign youth in education and paid work has nevertheless been fundamentally improved (FAZ, 29.1.1994).
- * Of the over 100,000 foreigners who study at German universities more and more (meanwhile 40%) have completed their former education in Germany and most of them were born in Germany.

Almost 80% of the Turkish students were at German schools. They are children for the most part of the second generation guest worker. According to survey findings on the situation of Turkish students in Germany which were introduced by the State Secretary in the Federal Education Ministry, 57% of the Turkish students interviewed declared that they work together with German just as well as with Turkish students. But one fourth of the Turkish students felt discriminated: they said for example, that they got worse marks for the same achievements (FAZ, 8.6.1994).
- * The education committee of the Ministry of Education in the city-state of Bremen decided that Turkish shall be acknowledged as an examination language at secondary schools in Bremen. Also the lessons in two languages shall be promoted.

- * About 18,000 foreigners who study at German universities, academies and high schools received financial support from the Government in 1992 (wib 3/94-XV/111, 9.2.1994).
- * Asian and African academics from Göttingen started a project for returners. With returner-offices in African and Asian countries and student service seminars in Germany, the aim is to motivate the foreign students to return to their home country. In Africa and Asia there is a need for experts. The Project's goal is to stop the brain-drain in the third world (Weser Kurier, 6.9.1994).
- * The federal ministry on women and youth started in 1992 an action programme against aggression and violence. In 30 centres of high levels of violence, projects were promoted with the aim to decrease violence (preventive and reactive) among youth. The first results show that the youth in these projects could be held off from participating in riots (2.3.1994, wib 4/94-XVII/102).
- * The Trade Union and the Employer Union of the metal industry (IG Metall und Arbeitgeberverband Gesamtmetall) do not want to teach the apprentices only qualifications in specialized knowledge of metallurgy, but also teach them humane and tolerant social behaviour. Such programmes were directed at reducing xenophobia and racism (FAZ, 15.7.1994).
- * Despite economic problems the Humboldt Foundation was able to give 458 research scholarships to young scholars of 86 countries in 1993. 54% of the foreign guest scholars were European. The General Secretary of the Foundation criticized the elimination of the child allowance to supplement the awards. Such allowances are relevant for 67% of the scholars who come with their families. The dropping of the child allowance may allow for financial hardship.
- * The discussion about cultural conflicts at schools, especially between members of the Christian and the Islamic religion continues. Triggered by the decision dated 25 August 1993 of the Federal Administrative Court on coeducational sport lessons

of a Muslim pupil (InfAuslR 1994, S. 59 and DVBl 1994, S. 163), a remarkable debate on constitutional questions started.³³

- * The "Vereinigung der deutschen Staatsrechtslehrer" discussed at a conference in October 1994 in Halle/Saale the mission of education and educational measure of schools in a liberal constitutional state.

Mr. Bothe stated the education aim of multiculturality, which means the educational consideration for children from other cultures according to the principle of tolerance and pluralism in Article 3,3 and Article 4 of the Federal Constitution (GG), and the minority protection of some constitutions of the federal states.

Also the guarantee of men's and women's dignity in the Federal Constitution, in the Law of the European Union, and in the International Law form a basis for the educational aim of a multicultural society.³⁴

- * In all federal states general education schooling is also compulsory for foreign children. Children of asylum-seekers, however, are subject to different laws in the federal states. In some federal states there is compulsory schooling for children of asylum-seekers, other federal states offer instruction for children of asylum-seekers although it is not compulsory. If the instruction is given in a second language to assist pupil learning varies from federal state to federal state.
- * In Cologne, there is an advisory board on the qualification of the adolescent generation of foreigners (BQN). Aim of this advisory board is to utilize the experiences on education of young migrants for enterprises. Deficits in information as well in enterprises that educate people, as in foreign families should be reduced (Stimme, 11/94, S. 17).
- * In 1993, 133,962 foreigners studied at German universities. That is 7.5 % more then in the year before (FAZ, 22.10.1994).

³³ Cf. Albers, Sieveking, in: Barwig, u.a.(Ed.), Vom Ausländer zum Bürger, Baden-Baden 1994, S. 195ff, 316ff Füssel, Hans-Peter, Multikulturelle Schule?, in: Kritische Justiz, 4/1994, S. 500ff.

³⁴ Cf. Pauly, DVBl. 1995, S. 25ff; Schulze-Fielitz, DVBl. 1994, S. 991

- * There was a conference at the University of Heidelberg on intercultural education. Only 5.7% of the Turkish children attended a Gymnasium. Mr. Öymen, a Turkish consul in Germany, reported that the first German-speaking university in Istanbul was founded. Each year about 30,000 Turks return to Turkey from Germany. A possibility now exists for them to educate themselves in the German language (Nachrichten aus der Türkei, 24.10.1994, S. 3).

4.7 Women

- * Ministries for Women's Affairs in the federal states called for the application of asylum for cases of prosecution particular to women. The numerous cases of raped women in former Yugoslavia show how women in particular are victims because of their sex but are without recourse to justice or protection in their own countries and therefore how asylum is the only source of protection (Weser Kurier, 18.6.1994).
- * There were several proposals to amend Article 19 Foreigner Law and give foreign women an independent residence permit (see 4.4.2).

4.8 Data Protection

4.8.1 Legislation

- * A Law regulating Data Protection was amended. Article 71, Paragraph 2 is particularly relevant to foreigners. Paragraph 2 of Article 71 deals with the transmission of social data of a foreigner. In addition to the items in Article 68 Foreigner Law, it is also allowed to transmit social data of foreigners in situations mentioned in Article 71. Despite the amendment there is minimal substantive change (Gesetz zur Änderung von Vorschriften des Sozialgesetzbuchs über den Schutz der Sozialdaten sowie zur Änderung anderer Vorschriften, Zweites

Gesetz zur Änderung des Sozialgesetzbuches - 2. SGBÄndG vom 13.6.1994, BGBI. I, S. 1229).³⁵

- * The central register on foreigners (AZR) located in the Federal Office of Administration (BVA) had existed for 40 years without a legal basis. With the Law dated 2 September 1994, the central register of foreigners was rendered a legal basis.

The AZR is a centralized system of information on about 8 million foreigners and can be referred by the authorities dealing with foreigners.

In the recent law the central register obtains a wider use: it can be used as an information system for authorities who deal with foreigners and by the police and the intelligence service. In addition, the AZR system is to systematize the data of foreigners wanted by officers of the Federal Criminal Office (BKA) as well as information on "suspicious" foreigners. Wider use of the central register on foreigners is objectionable, however, according to commissioners for Data Protection. In their view it can be seen as a violation of the Constitution. According to Mr. Giessen, the Commissioner for Data Protection of the Federal State of Sachsen, foreigners are to be treated differently from Germans "just because they are foreigners (...) the constitutionally imposed separation between the police and the authorities who ensure respect of the Constitution is de facto lifted" (Gesetz über das Ausländerzentralregister (AZR-Gesetz) vom 2.9.1994, BGB, I, S. 2265).³⁶

Ordinance issued on the Report of statistical Data on the private Job Placement (Private Arbeitsvermittlungs-Statistik-Verordnung, PrAVV vom 1.10.1994, BGBI. I, S. 1949).

³⁵ Cf. Klässer, Wilfried, Sozialgeheimnis - Neu gefaßt, Deutsche Rentenversicherung 1994, S. 413ff., Klässer, Wilfried, Sozialdatenschutz nach dem zweiten Gesetz zur Änderung des Sozialgesetzbuches - 2. SGBÄndG, Recht der Datenverarbeitung 1994, S. 117ff.; Schöning, Udo, Der neue Sozialdatenschutz, Die Angestelltenversicherung 1994, S. 201ff.

³⁶ Cf. Angelika Schriever-Steinberg, Das Ausländerzentralregistergesetz, in: NJW 1994, Heft 50, S. 3276.

4.8.2 Discussion on Data Protection Policies

- * The commissioners for Data Protection criticize the AFIS-system (automatic finger-print system). The AFIS-system, whose aim it is to identify double requests of an asylum-seeker under different names, violates the personal integrity of an asylum-seeker. Asylum-seekers' identities are without any doubt registered in the system. Moreover, the finger-print data are not only used by officers working with foreigners but also by the police.
- * In June 1994, there was a conference on data protection for foreigners organized by the Commissioner for Data Protection in Hessen.
- * On 6/7 November 1994, there was a meeting on data protection in Mülheim/Ruhr organized by the Union of Bi-National Families (IAF), the German Union on Data protection (DVD), the Institute of Information and Communication-Ecology (IKÖ) and Pro Asyl.³⁷

4.9 *Crime*

The number of criminal offences increased by 2.7% in 1993. The percentage of foreigners who committed a crime in 1993 was 36.2% (in 1992, 32.2%); this includes offences in violation of asylum procedure and the Foreigner Law. Excluding the latter type of offences, the crime rate among all foreigners is 29.7% (NZZ, 31.5.1994). The Federal Commissioner for Foreigners, Mrs. Schmalz-Jacobsen, demands that foreigners should not be mentioned separately in the crime statistics. To speak about crime of foreigners implies that nationality has something to do with crime. There is no foreigner crime, but there are individual foreigners who are criminal. Besides, a further difference should be made between foreigners who live in Germany and those who are, for example, tourists.

³⁷ Cf. Dronsch, Gerhard, Datenschutz für Ausländerinnen und Ausländer, Forum 3/1994, S. 17ff.

4.9.1 Drafts

- * The SPD presented a bill to the "Bundestag" to amend the law to combat illegal drug dealing and other forms of organized crime (BT-Drs. 12/6784).

4.9.2 Policies

- * The CSU presented a paper proposing 20 head-lines that should be part of a governmental programme. One head-line made was that foreigners who are liable to prosecution should generally be deported (FAZ, 16.7.1994).
- * According to the Federal Traffic Minister, foreign lorries should be treated equally as German lorries when they violate the Traffic Laws. These violations should also be registered according to the point system (FAZ, 3.8.1994).
- * The speaker of the Sachsen Ministry of Interior called upon the Federal Government to establish a convention between Germany and the Czech Republic granting more independence to the police authorities near the border to combat crime there. Current regulations have made it difficult to react quickly to border-crossing crimes. It is highly likely that such a convention will be soon agreed upon (NZZ, 20.5.1994).

4.10 Kurds

- * According to the political debate in the German "Bundestag" (BT-Drs. 12/6828), one main role Germany should play is to give Kurds who come to Germany the opportunity to develop according to their ethnic identity. This point was emphasized in a motion made by the coalition party PDS/Linke Liste (BT-Drs. 12/6563) in response to the question of Germany's attitude towards the violation of human rights of Kurds in Turkey. It is the general opinion of the "Bundestag" that Turkey should solve its ethnic conflicts democratically. The Federal Government maintains, however, that it is not its task to show other countries how to solve internal problems.

Because of the violation of human rights in Turkey, several groups demand that arms supplies to Turkey should be stopped. But the Federal Government sees no compelling reason to stop the flow of arms to Turkey. According to the Federal Government, it was not simply culture centres as purported which were closed in Germany, but points of support for the PKK. There is no discrimination against Kurds in Germany, they have the same rights as other foreigners in Germany. Furthermore, the Federal Government stated that the ban on the PKK in Germany has lead to an active discussion about the political views of Kurds.

- * In view of the increasing acts of violence being committed in Germany by PKK-members, the Federal Government is calling for a policy of expelling any PKK-member accused of such. The Federal Government does not accept violent acts against the law, no matter from which side, and no matter by which reason. This statement came on a interpellation of the PDS/Linke Liste (BT-Drs. 12/7280) on the connection between the problem of the Kurds in Turkey and that of the Kurds in Germany. The Government stated that acts against the law in Germany cannot be justified with proceedings in other countries (BT-Drs. 12/7826). In 1994, there were several demonstrations and blockades organized by Kurds in Germany. Some of these actions ended with the imprisonment of several participating Kurds. The Minister of Interior said that these Kurds would be punished severely and in case of criminal acts, deported. But Mr. Jelpke (PDS) claimed that the Federal Government is an accomplice in the violation of the human rights of the Kurds in Turkey, when they deport Kurds (FAZ, 29.9.1994).
- * Between the German Federal Government and the Federal States Governments which are Social Democrats, a conflict has arisen concerning the policy towards Kurds. The Social Democrats want to stop the expulsion of Kurds fearing that they are in danger of persecution at their return.

Against this background the federal states which are ruled by the SPD (except Bremen and Hamburg) halted the repatriation of Kurds for at least 6 months. Support of such a measure crossed party lines: the Speaker of Interior of the Federal Democrats (F.D.P.) in the "Bundestag" as well as the Vice-President of the CDU/CSU in the "Bundestag", Mr. Geissler, have spoken out in

support of the action taken to suspend, for a six-months period, the expulsion of Kurds. According to Mr. Geissler, Turkey does not respect human rights or its own laws. It is "absurd" to differentiate between safe and dangerous areas in Turkey for Kurds. Therefore, Kurds who commit crimes in Germany should be penalized in Germany and not be deported. The Federal Minister of Interior, Mr. Kanther, however, insisted that there were areas in Turkey where Kurds could live without fear of persecution. In those areas repatriation should be possible (NZZ, 21.5.1994).

- * The Senate of Bremen decided to stop the expulsion of Kurds till 31 October 1994. If any Kurds are expelled the expulsion will be limited to 10 provinces in south and south-east Turkey. Kurds who commit crimes will continue to be deported (Weser Kurier, 6.7.1994).³⁸
- * Despite Minister of Interior, Mr. Kanther's position favouring deportation to designated areas, the Federal Government decided to stop the deportation of the Kurds and examine the situation of human rights in Turkey till 20 January 1995. According to the Foreigner Law, the federal states are authorized to stop deportation of certain citizens for the period of six months. After the six months period, the fate of the individual(s) in question is determined by the Federal Minister of Interior and the ministers of interior of the Federal States. The Federal Minister of Interior, Mr. Kanther, expressed his opposition to an extension of the halting of deportations of Kurds and refugees from former Yugoslavia, in force in the Federal States governed by the Social Democrats (SPD). According to Mr. Kanther, a general halt to deportations for certain groups is contrary to the basic principle of German federal asylum policy of examining each individual case. He therefore called upon the federal states to proceed with the deportation of asylum-seekers involved in crime. The Minister of Interior of Schleswig-Holstein, Mr. Bull, announced that he intended to introduce in the "Bundesrat" a legislative amendment which will allow the majority of the federal states to effectively

³⁸ More to the issue on deportation of acknowledged asylum-seekers, Hopfauf, Axel, Zur Frage der Abschiebung anerkannter Asylberechtigter, Neue Zeitschrift für Verwaltungsrecht 1994, S. 566ff.

force the Federal Minister of Interior to accept a general halt to deportations (MNS, 12/94, S. 5, FAZ, 15.12.1994).

4.11 Discrimination

- * Foreigners are not only the victims of violence, they are also discriminated against in economic life as consumers and as employees.

They have to pay, for example, higher rates for car insurance; banks do not give them credits, or if they do, then at higher rates; they only find housing in unattractive areas; and, last but not least, they have difficulties finding paid work, because employers prefer German workers. An Iranian man, for example, who wanted to rent a car, was told that only people with a German passport could rent cars. Otherwise in order to rent cars foreigners would be required to have a credit card. This kind of discrimination often remains unnoticed, either because the victims do not complain fearing further consequences, or because there is no Anti-Discrimination Law to pursue prosecution (Die Zeit, 26.8.1994, WK, 4.5.1994).

- * Discrimination against foreigners is widespread. An illustrative case is that of a Muslim Turkish woman not even being allowed to work as a cleaning person in an Evangelical child care facility. According to a Bavarian Church Law, one has to belong to the Christian church. The diocese decided to rescind this rule on the grounds that the church cannot preach tolerance and at the same time prevent tolerance by such rules (FR, 4.11.1994).

4.12 Miscellaneous

- * A head council (Zentralrat) of Muslims has been founded. This council heads 15 Islamic umbrella organizations in which over 1,200 communities are represented. This means that about 70% of all Muslims who live in Germany are represented. The range of tasks go from the establishment of community centres to

questions regarding Muslim religion lessons at German schools (FAZ, 1.12.1994).

- * More and more foreigners are involved in German political parties and parliaments at the federal states and federal levels. There are, for example, two deputies of Turkish descent who were recently elected to the "Bundestag"; the city of Bielefeld has a Turkish mayor; and the SPD has 6,900 foreign members, 3,700 of which come from Turkey. Mr. Cem Ozdemir is the first Turkish-born deputy of the "Bundestag", representing the Green party. Political participation does not, however, include the right to vote in local or national elections for which German citizenship is required (WK, 1. and 15.12.1994).
- * Efforts to extend political rights to include voting rights are sprouting up around the country. One example is the effort of the Turkish community in Essen (an association of Turkish unions with about 17,000 members) demanding the right to take part in local elections. "The Turkish population can not and do not want to accept any longer that they are second class citizens at the political and the social level" (Nachrichten aus der Türkei, 17.10.1994, S.2).
- * According to a survey commissioned by an association concerned about workplaces commonly filled by foreigners (Verband der Initiativgruppen in der Ausländerarbeit, VIA), most young foreigners consider the SPD their favourite party. 61% of the interviewed foreigners would vote for the SPD, 27% would vote for the Bündnis 90/Die Grünen, and 7.5% for the CDU/CSU. According to the Centre on Turkey Studies in Essen, 69% of the interviewed persons regarded the right to vote as an important issue (FR, 29.12.1994).

4.13 Racism and Xenophobia

According to statistics compiled by the Federal Crime Office (BKA) and the Federal Office on Internal Security (Bundesverfassungsschutz), the number of attacks against foreigners increased drastically at the beginning of the 90's. In the late 80's, there were between 200 and 300 offences yearly against foreigners. These were followed by a sharp rise in the number of offences: in 1991, there

were almost 2,500, in 1992 more than 6,000, and in the first half of 1993 already 3,500 offences against foreigners. Reasons for the increase are, amongst others, the attention in public debate given to problems caused by asylum-seekers, police mishandling of foreigners, and the handling of riots against foreigners. In the last case, press coverage of the riots encouraged new riots, the so-called "copycat riots" (WZB-Mitteilungen, März 1994, S. 26ff.).

4.13.1 Drafts

- * The CDU/CSU and the F.D.P. presented a bill (BT-Drs. 12/6853) containing a series of harsh penalties to combat xenophobic attacks. Laws against the propagating of racial or ethnic hostility (Volksverhetzung) and racial discrimination regulations will be further developed. The bill includes a system of preventive detention for up to a week. The maximum prison sentence for causing bodily harm is to be increased from 3 to 5 years. The prison sentence in case of a particularly serious act of arson would be able to be increased to 10 years.
The bill also presented the possibility to expedite the criminal proceedings, especially the less evidence.
According to the bill, the deportation of foreigners accused of a criminal act should be facilitated.
The "Bundesrat" which is controlled by the opposition party, the Social Democrats, voted against the bill. The Social Democratic Party could not support some of the measures included in the bill which could restrict civil liberties.
- * The issue of revisionism in reference to the Holocaust has become quite controversial in the last couple of months as a result of two distinct rulings: one, in March 1994 by the Federal Appeals Court (Bundesgerichtshof) that the mere negation of the Holocaust is not, in itself, sufficient to constitute the incitement of racial hatred; the other, of the Federal Constitutional Court (BVerfG) on 26 April 1994, which upheld the ruling of a lower Court to authorize the ban of meetings of revisionists on the grounds that the denial of what took place in Auschwitz was too great an insult for Jewish community.

- * A motion of the coalition party PDS/Linke Liste (BT-Drs. 12/2084) about material compensation for victims of xenophobic attacks was dismissed (BT-Drs. 12/6245).

4.13.2 Jurisdiction

- * The Federal Court of Justice (BGH) ruled that also a person who assumes the racist motives of other persons as his own, acts out of "lower motives" (niedrige Beweggründe). The defendant argued that he was "only" trying to impress a group of right extremist men, when attempting to kill a Rumanian asylum-seeker (Urteil vom 7.9.1993 - 5 StR 455/93, NJW 1994, Heft 6, 395).
- * The Administrative Court of Munich ruled that foreigners who want to stay in Germany have to put up with anger expressed in public by special groups. The Basic Law does not protect foreigners against Germans who criticize them. According to the Court, there will always be several groups who do not sympathize with foreigners. These groups have the right to state their opinion in public. The Court came to this decision in connection with a case in which the question of whether the extreme rightist organization, NPD's, permission to demonstrate against a project to build a mosque in Karlstadt was legally admissible (Az.: 21 CS 94.2521, Weser Kurier, 29.9.1994, Die Zeit, 9.8.1994).³⁹
- * The slogan "Ausländer raus" (foreigners go home), is according to the Higher Regional Court (OLG), an act of public incitement. In a first Court decision, the Regional Court of Paderborn ruled that "Ausländer raus" does not constitute public incitement (Volksverhetzung). In this case, three right-winged men were therefore acquitted. But the Higher Court in Hamm decided that the slogan "Ausländer raus" is an attack on human's dignity and can therefore constitute public incitement. The outcry contains an unmistakable threat to enforce the removal of foreigners from Germany, by violent means as well.

³⁹ Cf. Frommel, Monika, Fremdenfeindliche Gewalt, Polizei und Strafjustiz, Kritische Justiz 3/94, S. 323ff.

Consequently, citizens of foreign nationality are denied their unlimited right to life (SZ, 3.11.1994, MNS, 12/94, S.9).

4.13.3 Policies

- * The Federal Office on Internal Security has registered a total of 670 incidents of violence by right-wing extremists from the beginning of 1994 until mid-June, 69 less than during the same period the previous year. 2,429 other violations were registered "with proven or suspected right-wing extremist motives" (SZ, 23.6.1994).
- * In an announcement by the Federal Government (13/83, 13/82) it was reported that in October 1994, 181 xenophobic crimes took place, 7 acts of arson and 20 attacks against persons. A month earlier, 207 xenophobic crimes had been registered (wib 18/94 -II/3).
- * Since October 1990, 15 foreigners died in police custody or during the deportation proceedings (BT-12/8583). In most cases the cause was suicide (wib 17/94 -II/455, S. 33).
- * The Federal Government sought information in a reply (BT-Drs. 12/6810) to parliamentary inquiry: according to statistics provided by the Judicial Administration of the Federal States (Landesjustizverwaltungen), 7,076 judicial inquiries for right-wing and xenophobic offences were started in the third quarter of 1993. In 3,724 of the inquiries, the offences were against foreigners. 2,250 of these inquiries dealt with the spreading of propaganda of unconstitutional organisations, 1,916 inquiries dealt with cases of incitement of racial or ethnic hatred, 172 cases were inquiries into breach of public peace, 25 into murder or second-degree murder, 305 into bodily harm, 67 into acts of arson; and lastly 217 dealt with claims of anti-Semitism.
- * Formal charges against Germany pursued by the Commission for Human Rights for violence against foreigners, have been dropped. The UN recognized the condemnation of violence voiced by the German Federal Government (FAZ, 24.2.1994).
- * The Federal Government confirmed in reply (BT-Drs. 12/8269) to a motion by the PDS/Linke Liste (BT-Drs. 12/8011) that the former representative of the Press Office of the Federal

Government, Mr. Hans Werner Müller, did make xenophobic remarks. Mr. Müller expressed in a pamphlet concerning dual nationality that Germany is slowly developing into another country, which will soon perhaps resemble a Turkish province. Furthermore, he claimed that because of the million Turks (and other foreigners), unemployment, the housing shortage, and crime are getting worse. At the same time, it was discovered that Mr. Müller is the author of a book entitled "The Invasion of the Poor", which is published under the pseudonym Jan Werner (wib 15/94 -II/448, 14.9.1994).

- * In a reply (BT-Drs. 12/7215) to parliamentary inquiry of the PDS/Linke Liste (BT-Drs. 12/7140), the Federal Government rejected criticism towards the Minister for Economic Aid to Developing Countries. In an interview the Minister claimed that along with foreigners also international organized crimes, illegal workers, higher unemployment, abuse of social security benefits, and an aggravated housing shortage is imported. The Federal Government found that his claims were justified. For example, the increasing violence is evidenced lately with the riots of the extremist Kurds in Germany.
- * More and more, Vietnamese citizens who live in Germany are becoming victims of xenophobic attacks. Also several Vietnamese citizens have in particular been subject to police abuse. In Berlin and Bernau, there are judicial inquiries to see whether charges against police officers are substantiated. The inquiries have not been very successful since the Vietnamese are afraid to testify, fearing further repression by the police and right-wing extremists. Two policemen were summoned to Court for maltreatment of Vietnamese citizens while on duty. The German-Vietnamese Friendship Union accused several policemen in Berlin of having sexually mistreated Vietnamese citizens (FAZ, 18.7.1994).
- * The General Management (Betriebsorganisation) of the SPD gave out a statement condemning attacks on Turkish residences. It condemned the attacks and demanded that legal measures be taken so that attackers can be punished. Furthermore the organization demands communal suffrage for all foreign citizens and the possibility for dual nationality (Nachrichten aus der Türkei, 4.10.1994).

- * Salif Keita, a singer from Africa, declared that he does not want to come to Germany anymore for performances because of the xenophobia and attacks against foreigners. Salif is the first well-known musician who spoke about boycotting Germany. Since then black musicians in London and Amsterdam claimed at anti-racism campaigns for a boycott against Germany (FAZ, 12.10.1994).
- * German leaders, especially the former President, Mr. Weizsäcker, have expressed indignation and shame following an anti-foreigner riot by young right-wing extremists in Magdeburg on 12.5.1994. Although the riot broke out at about 3.30 p.m., the police did not manage to establish order until about midnight. Other than not intervening in the attack, eyewitnesses claimed that the police were more interested in arresting the foreigners. Despite allegations that most of the attackers were known by the police, some already have committed acts of violence, all 49 of the suspected right-wing extremists arrested, except one, were quickly released that same day. It was not until 4 days later, that the investigating judge finally decided to charge the arrested youth who caused the riots. In a second similar incident in Rostock, again police in an east German town were accused of not intervening to protect foreigners from being attacked by right-wing extremists (SZ, 17 20.5.1994).
- * The Federal Government decided to report all of its measures and plans against violence and xenophobia (Offensive gegen Gewalt und Fremdenfeindlichkeit). The first interim report has been published. It addresses the issue of violent youth and maintains that the riots against foreigners led by youths can not only be stopped by short-term education programmes. It is necessary to improve the conditions and future prospects for these young adults. In particular, vocational prospects and thus being independent are of primary importance. Such are the preconditions to developing self-confidence, which is an essential element of education. This will promote the relationship with foreigners. It is important to create places for youth groups in the new federal states, in which they can spend their free-time.

Another issue is integration. The furtherance of integration serves as an important instrument of violence prevention and improves the living together. Focus of such measures:

- integration of foreign women;
- securing passage from school into employment (especially for the second and third generation of foreign workers);
- bilingual instruction;
- to improve proficiency in the German language;
- to promote the integration between Germans and foreigners;
- social work in the form of counselling services.

The Federal Government claims to be improving all preventive and repressive measures of the police. Police protection against xenophobic attacks is not under federal jurisdiction, but it is in the hands of the authorities at the federal states level. Special investigation units have been developed at the latter level.

A new category "xenophobic offences" has been designed to gather and evaluate the data of xenophobic crimes.

The Federal Office on Internal Security has strengthened its working units which observe right-wing extremist activities and terrorist tendencies (Sozialpolitische Umschau, 24.1.1994, Nr. 27/1994).

- * The Petition Committee received several citizen complaints in which xenophobia and right-wing extremism in Germany is criticized. The petitioners demanded strict application of the law and harder penalties to combat revisionist and xenophobic attacks (wib 13/94-XXII/103).
- * The last week in September 1994 was designated the "week of the foreign citizen". The week started with the demand to give foreigners more rights and to take actions against xenophobia and racism. More than 3,000 events took place in the whole country. Highlights during these events were when the Federal Commissioner for Foreigners called for the right to dual nationality and the deputy of the Evangelical church pleaded for foreigners' right to take part in communal elections (FAZ, 26.9.1994).

Documented incidences of racism and xenophobia in federal states:

Berlin

- * The state prosecutor demanded that between 10,500 and 14,400 marks should be paid by the police in redemption for the bodily harm caused by the police to Iranian students.

An eye-witness reported to have seen policemen treating the foreign students like "animals". Besides, one of the Iranian students was derided because of his religion at the police office (FAZ, 14.9.1994).

Hamburg

- * Over 20 policemen in Hamburg were suspended from their duty because of xenophobic motivation. There will be a judicial inquiry on charges of bodily harm, deprivation of liberty and intimidation with xenophobic motives (FAZ, 14.9.1994).

Nordrhein-Westfalen

- * The Minister of Interior is satisfied about the results of the campaign against xenophobia. The Federal State gave 17,5 million marks to the communes after the attack in Solingen. The communes decided themselves how the money should be used. The money was used for 1,140 projects. About one fourth of these projects was newly created, the others existed already (FAZ, 29.3.1994).
- * In Essen, more and more customers want a German taxi-driver. The taxi-exchange fulfils these wishes. According to the manager, it has nothing to do with xenophobia, but with language-problems. The manager receives backing from the Union of the Traffic Trade Nordrhein. The manager of this union refers to a judgement in 1984, where a taxi-exchange was allowed to fulfil the wish of a customer for a German driver. According to this judgement, the customer is discriminating and not the taxi-exchange (Die Zeit, 15.4.1994).

Sachsen

- * The special commission of the Criminal Office of Sachsen has cleared up several cases of xenophobic crimes. A total of 22 suspects were interrogated (FAZ, 9.9.1994).

Schleswig-Holstein

- * There was an act of arson on a synagogue in Lübeck. It was the first time since World War II, that a synagogue was set on fire (Die Zeit, 1.4.1994).

B. REPORT ON THE FREE MOVEMENT OF WORKERS IN GERMANY 1994

1. Entry, Residence, Departure and Association Agreement EEC-Turkey

1.1 Entry

1.1.1 Legislation

- * Germany accepted by Law on 27 June 1994 the Dublin Agreement dated 15 June 1990, about the Determination of the State responsible for the Verification of an Asylum Application in a Member State of the European Union (Gesetz zu dem Übereinkommen vom 15. Juni 1990 über die Bestimmung des zuständigen Staates für die Überprüfung eines in einem Mitgliedstaat der Europäischen Gemeinschaft gestellten Asylantrages (Dubliner Übereinkommen) vom 27. Juni 1994, BGBl. II, S. 791).
- * Law to the Treaty dated 24 June 1994 on the Membership of Norway, Austria, Finland and Sweden to the European Union (Gesetz zu dem Vertrag vom 24.6.1994 über den Beitritt des Königreichs Norwegen, der Republik Österreich, der Republik Finnland und des Königreichs Schweden zur Europäischen Union vom 2.9.1994, BGBl. II, S. 2022).

According to the German Government, the compromises that were made are of interest as well for the European Union as for the joining countries. The parliamentary EU-Committee mentioned that the membership of these countries will strengthen the democratic and economic structures of the Union. The Committee sees entry of the new Member States also as a positive step for the social and the ecological policy. These statements were unanimously supported by all committee members, with abstention of the PDS/Linke Liste. The deputies expect a positive impulse for promoting women issues, because the joining countries have a long tradition of active promoting of equal rights (wib 13/94-XIX/450).

- * On 19 April 1994, Germany accepted by Law Protocol Nos 9 and 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Gesetz zu dem Protokoll Nr. 9 vom 6. November 1990 sowie zu dem Protokoll Nr. 10 vom 25. März 1992 zur Konvention zum Schutze der Menschenrechte und Grundfreiheiten vom 19.4.1994, BGBl. II, S. 490).
- * Law dated 7 October 1994 accepting the European Agreement, of 8 March 1993 on the Establishment of an Association between the European Union as well as their Member States and the Republic of Bulgaria (Gesetz zu dem Europa-Abkommen zwischen der Europäischen Gemeinschaft sowie ihren Mitgliedstaaten und der Republik Bulgarien vom 7.10.1994, BGBl. II, S. 2753).
- * Law dated 7 October 1994 accepting the European Agreement, of 1 February 1993 on the Establishment of an Association between the European Union as well as their Member States and Romania (Gesetz zu dem Europa-Abkommen zwischen der Europäischen Gemeinschaft sowie ihren Mitgliedstaaten und Rumänien vom 7.10.1994, BGBl. II, S. 2957).
- * Law dated 7 October 1994 accepting the European Agreement, of 4 October 1993 on the Establishment of an Association between the European Union as well as their Member States and the Slovakian Republic (Gesetz zu dem Europa-Abkommen zwischen der Europäischen Gemeinschaft sowie ihren Mitgliedstaaten und der Slowakischen Republik vom 7.10.1994, BGBl. II, S. 3126).
- * Law dated 7 October 1994 accepting the European Agreement, of 4 October 1993 on the Establishment of an Association between the European Union as well as their Member States and the Czech Republic (Gesetz zu dem Europa-Abkommen zwischen der Europäischen Gemeinschaft sowie ihren Mitgliedstaaten und der Tschechischen Republik vom 7.10.1994, BGBl. II, S. 3320).

The following are adaptations of previously existing relevant federal states legislation to be in accordance with international treaties:

Bayern

- * Law on the Adaptation of the Bavarian Law to the Agreement, of 2 May 1992 on the European Economic Domain (Gesetz zur Anpassung des Bayerischen Landesrechts an das Abkommen vom 2.5.1992 über den Europäischen Wirtschaftsraum (EWR-Anpassungsgesetz) vom 24.5.1994, GVBl. S. 392).

Nordrhein-Westfalen

- * The Government of Nordrhein-Westfalen gave public notice of the Agreement dated 19.6.1990 on the Implementation of the Schengen Agreement (Bekanntmachung zu dem Übereinkommen vom 19. Juni 1990 zur Durchführung des Übereinkommens von Schengen vom 14. Juni 1985 zwischen den Regierungen der Staaten der Benelux-Wirtschafts-Union, der Bundesrepublik Deutschland und der Französischen Republik betreffend den schrittweisen Abbau der Kontrollen an den gemeinsamen Grenzen. GVBl. S. 76).
- * Public Announcement of the coming into force of the Agreement dated 19 June 1990 on the Implementation of the Schengen Agreement (Bekanntmachung zu dem Übereinkommen vom 19. Juni 1990 zur Durchführung des Übereinkommens von Schengen vom 14. Juni 1985 zwischen den Regierungen der Staaten der Benelux-Wirtschaftsunion, der Bundesrepublik Deutschland und der Französischen Republik betreffend den schrittweisen Abbau der Kontrollen an den gemeinsamen Grenzen, GV. NW, S. 264).
- * Public Announcement of the Enforcement of the Agreement on the European Economic Domain (Bekanntmachung des Inkrafttretens des Abkommens über den Europäischen Wirtschaftsraum, vom 19.6.1994, GV. NW, S. 317).

1.1.2 Drafts

- * The Federal Government produced a bill on the Subscribing of Greece to the Schengen Convention of 19 June 1990 (Entwurf eines Gesetzes zu dem Übereinkommen vom 6.11.1992 über den Beitritt der Griechischen Republik zu dem Schengener Übereinkommen vom 19.6.1990, BT-Drs. 221/94 vom 18.3.1994).

- * The Federal Government has produced a bill to the Protocol of 26 April 1994 on the Consequences of the coming into force of the Dublin Agreement for special Instructions of the Implement-Agreement to the Schengen Agreement ((Bonner Protokoll, BR-Drs. 877/94) The determinations of the Schengen Agreement are in some points not equal to those of the Dublin Agreement.) Therefore, the "Bonner Protokoll" determines that the rules of the Dublin Agreement supersede the rules of the Schengen Agreement. The rules on asylum procedure laid down by the Schengen Agreement should not be applied as soon as the Dublin Agreement becomes effective (BT-Drs. 13/24). According to the Schengen Agreement, the country to which the asylum-seeker arrived first, is responsible for the asylum-request. In the Dublin Agreement the responsibility of a country expires when the applicant was in another Member State for at least 6 months before he applied for asylum. In that case the State in which the foreigner was first living has responsibility for the asylum proceedings (EuZW, 24/1994, S. 742, wib 18/94-II/4, S. 11)).

1.1.3 Jurisdiction

- * The Regional Court in Frankfurt a. M. ruled that a clause in a sports club in which only a limited amount of foreigners can take part in league matches is not incompatible with the principle of free movement, pursuant to Article 48 EGV.
Nr. B 9.3 litb Wettspielordnung (Match Rules) does not violate European Law, because the limitation of foreign players is not based on economic grounds but on sports grounds, i.e., the limitation is justified by the sports grounds. This was the first time that a national Court of a Member State decided on the compatibility of a foreign clause with the right on free movement (LG Frankfurt a. M., Urteil vom 18.1.1994 - 2/14 O 392/93, EuZW, 16/1994, S. 511, EWS 11/1994, S. 405).⁴⁰

⁴⁰ Cf. Harald Kahlenberg, Zur EG-rechtlichen Zulässigkeit von Ausländerklauseln im Sport, in: EWS 12/1994, S. 423 and Palme, Christoph; Hepp-Schwab, Hermann; Wilske, Stephan, Freizügigkeit im

1.1.4 Policies

- * The "Bundesrat" discussed a message from the European Commission to the European Parliament on the immigration and asylum policies. Among others the following recommendations were made in this message:
 - to harmonize the immigration policies;
 - to create an European observation post on the trend of immigration;
 - to harmonize the legal position of citizens of third countries who have a continuous residence, they should be given a permanent residence permit;
 - to define a common minimum standard on legal rights for citizens of third-countries;
 - to create favourable economic, social, and cultural conditions for integration.

The "Bundesrat" welcomed European Commission's message, because it initiates a discussion in which strategies to combat growing immigration problems can be developed. Furthermore, this way integration of legal immigration to the European Union can be reinforced. The "Bundestag" rejected the proposal to grant the same legal status to citizens of third countries as those of Union citizens. This would lead according to the "Bundestag", to an uncontrolled migration to the European Union (EuZW, 20/1994, S. 614).⁴¹

- * In January 1995, the German-Czech Agreement on the Effects of Migration and the German-Polish Guestworker-Agreement were announced.

Profisport - EG-rechtliche Gewährleistungen und prozessuale Durchsetzbarkeit, in: JZ, 7/1994, S. 343.

⁴¹ Cf. Ogata, Sadako, Plädoyer für eine umfassende europäische Flüchtlingspolitik, in: Europa-Archiv, 15/1994, S. 431, Weidenfeld, Werner; Hildenbrand, Olaf, Wie kann Europa die Immigration bewältigen, in: Europa-Archiv 1/1994, S. 1. On the question of the legal position of non-EC-nationals, see several contributions in: Barwig, u.a., Vom Ausländer zum Bürger, Baden Baden 1994, S. 423-561.

1.2 Residence

1.2.1 Legislation

Mecklenburg-Vorpommern

- * Ordinance issued determining Authorization of Offices according to the Foreigner Law and the Residence Law/EWG (Landesverordnung über die zuständigen Behörden nach dem Ausländergesetz und dem Aufenthaltsgesetz/EWG vom 18.7.1994, GVBl. M-V, S. 779).

Schwerin

- * Ordinance issued determining Authorization of Offices according to the Foreigner Law and the Residence Law/EWG (Landesverordnung über die zuständigen Behörden nach dem Ausländergesetz und dem Aufenthaltsgesetz/EWG, vom 18.7.1994, GVBl, S. 779).

1.2.2 Jurisdiction

- * The Federal Administrative Court ruled that a Greek citizen who worked in Germany before the accession of Greece to the European Union, and who has been permanently unemployed in Germany since the accession of Greece to the Union, has no right to an European residence permit.

As a rule, a foreigner who lives on social welfare should not get a residence permit. Only in exceptional situations the Foreigner Office has the discretion to grant a residence permit. The question if there is an exceptional situation is subject to judicial review. The public and private interests should be weighed against one another (BVerwG, Urteil vom 29.7.1993 - 1 C 25.93, BayVbl. 1/1994, S. 24).

1.2.3 Policies

- * For several years Portuguese citizens have had the smallest unemployment-rate among foreigners in Germany. In June

1994, almost 5,800 (10.7%) Portuguese citizens were unemployed. Until now, the reasons for this have not been explained.

- * The Federal Commissioner for Foreigners published an overview of the residential rights and immigration in 14 European countries.

Germany has the highest amount of foreigners (6,878,000), followed by France (3,597,000) Great-Britain (2,420,000) and Switzerland (1,260,000). Percentually, the amount of foreigners is the highest in Switzerland (18.4%), Belgium (9.1%) and Germany (8.5%). These percentages are, however, not comparable in every respect because they refer to different periods when drawing. Moreover, comparisons makes a difference if naturalization is based on the principle of *ius sanguinis* or *ius soli* (ZAR aktuell 5/1994).

1.3 Departure

1.3.1 Jurisdiction

- * The Federal Constitutional Court ruled that there is not sufficient reason to stop deportation only on the grounds that there was an act offending a person's dignity in the past. Deportation may only be stopped if there is reason to believe that the danger of violation of human rights exists. It is the responsibility of the German Court to investigate if the criminal charges or prosecution which the person expects in her/his home country constitute a basis for a constitutional claim of protection of human dignity. There is no reason to believe that the danger of violation of human rights exists in Greece. Greece has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms. Therefore, the offices underlie the control of the European Court of Human Rights (BVerfG, Beschluß vom 31.5.1994 - 2 BvR 1193/93, NJW 44/1994, S. 1883). See also 1.3.2.
- * The Federal Administrative Court ruled that deportation of a resident of a state of the European Establishment Agreement pursuant to Article 3,3 of this Agreement, after more than ten

years of legal residence in another state of the Agreement, is only possible if national security is threatened or if certain cases of public order or morality require protection. But this does not imply that Article 48, Paragraph 1 Foreigner Law should be applied without serious consideration (BVerwG 1 B 71.93, Beschluß vom 8.10.1993 InfAuslR 1/94, S. 13).

- * The Higher Administrative Court of Kassel ruled that the deportation of a Greek person, who lived for over 20 years in Germany, is illegal. The Greek should be deported after imprisonment. But according to the German-Greek Agreement, Greeks who live for a minimum of 10 years in Germany, can only be deported if their presence is of grave endanger to the public order and security. In the case under view, there were no reasons to presume that the Greek endangered the public order (VGH Kassel, Az.: 12 UE 723/94, NJW 33/1994, S. 29).

1.3.2 Policies

- * In a communiqué on its position presented to the Federal Constitutional Court (BVerfG), the UNHCR has expressed the opinion that Greece can not be considered a "safe country" for asylum-seekers. Asylum-seekers who travel via Greece to Germany and are refused entry and sent back without further examination may not be safe. Despite the fact that in the new Asylum Law all Member States of the European Union are considered to be "safe countries", including Greece, the UNHCR feels that there is no guarantee that asylum-seekers refused entry into Germany will benefit from "effective protection" when sent back to Greece. There are many known cases of asylum-seekers being sent back to and then out of Greece to other countries through which they transited back to the country of persecution. If Germany wants to continue such practices, the UNHCR suggests that the Federal Government first obtain from Athena "formal guarantees" on the effective protection for the persons concerned before sending them back to Greece (SZ. 25.3.1994).
- * At the end of January 1995, we were told by a member of the Italian Consulate in Stuttgart, that there were problems with the authorities in Baden-Württemberg who decided to expel Italians

but did not comply with the rules of the European Community Law. This has to be investigated.

1.4 Association Agreement EEC-Turkey

1.4.1 Legislation

Berlin

The Administration of Interior in Berlin issued an Order against the discriminatory treatment of Turkish citizens according to the Resolution of the Association Council EWG/Turkey No. 1/80 (Resolution No. 1/80). In the future, Article 6 of the Resolution should also be acknowledged when a decision has to be made about the issuance of a residence permit for a Turk who had been living and working legally in Germany prior to application in the past (e.g. after a divorce, when the marriage was the reason for the residence permit) (Weisung Nr. 90 der Berliner Staatsverwaltung für Inneres vom 18.2.1994 - IV GEN 08960/1c).

1.4.2 Jurisdiction

- * The European Court of Justice decided that Article 6, Paragraph 1 of Resolution No. 1/80 does not give a university graduate, a right to renew his work-permit for his first employer even though the said person had a residence approval (Aufenthaltsbewilligung) for two years and work-permits for purposes of vocational training for longer than one year for one employer and about ten months for another employer.

A Turkish citizen who fulfills the conditions of Article 7, Paragraph 2 of Resolution No. 1/80, and therefore can apply for every position of employment offered, can also according to this rule, apply for a prolongation of the residence permit.

With this decision the Court specifies Article 6:

Entitlement to a renewal of a work permit exists after one year of occupation for the same employer. But when the place of

employment changes, one loses this claim and has to apply as a first-time applicant a new.

In a comment on this judgement, Mr. Rolf Schuler pointed out that following the Kus-judgement, the Court is stating that the reason for the first permit to entry and of residence is irrelevant. The fact that the complainant was granted a residence permit for studying purposes does not contradict the right to apply for a job. In consequence, Articles 19, 21 and 28 Foreigner Law are modified by Article 7 Resolution No. 1/80 (EuGH, Urteil vom 5.10.1994, Rs C-355/93, Eroglu/Land Baden-Württemberg, EuroAs 11/94, S. 10).

- * The Federal Administrative Court ruled that also property delicts, like tax evasion, can be grounds for general preventive deportation of a Turkish citizen. This ruling is valid in spite of Resolution No. 1/80 (BVerwG, Beschluß vom 22.11.1993 - BVerwG 1 B 184.93, InfAuslR 3/94, S. 100).
- * The Administrative Court of Stuttgart ruled that if a foreigner was given a reliable residence status before the AAV (Working Residence Directive) became effective, the prolongation of a residence permit complies with the Foreigner Law. An unemployed foreigner who cannot find employment cannot appeal to Article 6, Paragraph 1 of Resolution No. 1/80.

A Turkish couple who had lived almost 20 years in Germany, live in housing for the homeless. Since 1991 the man has been unemployed. The wife is also not in paid work. The residence permit was not extended. The requests for delay were dismissed. It was argued that being homeless endangers public order and security (Article 14, Paragraph 1 of Resolution 1/80).

According to Mr. Rittstieg, the decision fails to take account of the long period of residence of the couple. In such cases the basic right to free development of the personality (Article 2, Paragraph 1 GG) applies. After the long period of living in Germany the couple is deeply rooted in the German society (VG Stuttgart, Beschluß vom 11.2.1994 - 4 K 74/94, InfAuslR 5/94, S.175, with an annotation by Mr. Rittstieg).

- * The Federal Administrative Court ruled that the claim to unlimited access to the labour market of a family member of a Turkish worker in Germany, pursuant to Article 7, Paragraph 1 of Resolution No. 1/80, is not applicable when the Turkish

worker (on which the claim depends) leaves Germany permanently (BVerwG, Beschuß vom 23.12.1993 - BVerwG 1 B 63.93, InfoAuslR 5/94, S. 169).

- * The Administrative Court of Baden-Württemberg ruled that a Turkish citizen who was given permission for temporary residence on grounds of her assistance in a household, but who does not possess a work permit, does not have legal work (Article 6,1 of Resolution No. 1/80) (VGH Baden-Württemberg, Urteil vom 15.7.1993 - 1 S 948/93, InfAuslR 3/93, S. 89).
- * The Federal Court of Baden Württemberg ruled that general preventive measures can be taken for Turkish citizens who are to be deported from Germany, in spite of Resolution No. 1/80. In a comment to this decision by Mr. Rittstieg, it is argued that the Court should have considered that in the jurisdiction of the European Court, EU-foreigners cannot be deported on the grounds that the only aim is to deter other foreigners.
Therefore, the expulsion of EU-foreigners are not considered to be acceptable. Pursuant to Article 14, Paragraph 1 of Resolution No. 1/80, which is identical to Article 48,3 EGV, Article 3,1 of the guidelines in 64/221/EWG and Article 12,1 Aufenth-G/EWG, the limitations to the usage of deportation should also be valid when Turkish persons are involved (VGH Baden-Württemberg, Beschuß vom 11.11.1993 -13 S 2080/93, InfoAuslR 4/94, S. 127, InfoAuslR 6/94, S. 219, with an annotation by Mr. Rittstieg).
- * The Higher Administrative Court of Hessen ruled that a Turkish citizen can only be protected from deportation by Article 14 of Resolution No. 1/80, if s/he fulfils the conditions of Article 6 of this Resolution. The decisive point of time for the judgement (when a Turkish citizen fulfils the conditions) is that of the exemption of the decree in which the extending of residence permit has been dismissed (VGH Hessen, Beschuß vom 15.12.1993 -12 TH 2030/93, InfAuslR 5/94, S. 173).
- * The Administrative Court of Berlin ruled that "regular labour market", according to Article 6, Paragraph 1 of Resolution No. 1/80, includes every professional occupation which is remunerated. This occupation can be practised by any technical qualified person, independent of the area of the practice or the aim one has. The membership of a Turkish person to the regular

labour market does not exclude the possibility that s/he is also studying (VG Berlin, Urteil vom 7.2.1994 - 28 A 76.92, InfAuslR 11-12/94, S. 390).

- * The Administrative Court of Sigmaringen ruled that Article 7, Subparagraph 1 of Resolution No. 1/80, can form a legal base for claims to a residence permit, if the family reunification is thereby permitted. A Turkish citizen, who fulfills the condition of Article 7, Subparagraph 2 of Resolution No. 1/80, is entitled to a residence permit (VG Sigmaringen, Urteil vom 27.1.1994 - 6 K 293/92, InfoAuslR 6/94, S. 221).
- * The Higher Administrative Court of Baden-Württemberg ruled that a Turkish citizen, who was given a residence permit on false grounds, i.e., the marriage was fictitious, has no right to a residence permit pursuant to Article 6, Paragraph 1 of Resolution No. 1/80, even if s/he had a working permit and a residence permit for over one year (VGH Baden-Württemberg, Urteil vom 31.1.1994 - 1 S 1053/93, InfoAuslR 5/94, S. 171).
- * The Administrative Court of Baden-Württemberg ruled that a Turkish citizen who becomes unemployed by his/her own fault e.g. by committing a crime, has no claim to the rights based on Article 6,1 of Resolution No. 1/80.

This decision raises important legal questions. There is no necessary causal relationship between unemployment and committing a crime. Committing a crime does not always automatically lead to unemployment. Administrative decisions have been made since Resolution No. 1/80 making it necessary to update this jurisdiction; Article 14 of the Resolution should be considered in this matter (VG Baden-Württemberg, Beschuß vom 18.10.1994 - 13 S 2391/94, InfAuslR 1/1995, S. 2, with an annotation of Mr. Rittstieg).

- * Foreigners who are born in Germany or came to Germany as minors, and have legally resided in Germany for at least 8 years may apply for permission of entry for additional family members for family reunification. According to Mr. Hans Heinz Heldmann, a lawyer in Frankfurt, this rule is a violation of the special status of Turkish citizens. Therefore, he asked the European Commission to examine if this rule violates the Association Agreement with Turkey and Article 8 ECHR.

According to Mr. Heldmann, Turkish employees who have the right to free movement, pursuant to Article 6 of Resolution No. 1/80 should be treated as employees pursuant to Article 48 EGV. This means that they also have the right to family reunification. The same interpretation can be drawn from Article 8 of the European Convention on the Human Rights.⁴²

1.4.3 Policies

Nation-wide:

- * On 25 April 1994, there was an ETUC (Confederation of the European Trade Unions) conference in Istanbul. The chairman of the section for foreign workers of the German Trade Union (DGB) demanded the same rights for Turkish workers as for citizens of the European Union.
- * More attention has been paid to the issue of social rights of Turkish citizens with a permanent residence permit. There are several open questions as far as the interpretation of Resolution Nr. 1/80 is concerned.⁴³

Locally:

Berlin

- * Turkish citizens who live in Berlin are affected more often by discrimination in public life than by xenophobic violence. According to a survey of the Foreigner Commissioner of Berlin, Mrs. Barbara John, 51% of the interviewed Turkish citizens complained about the unequal treatment at work, while house hunting and in contacts with the police. Among the younger generation between the age of 18 and 25, the number of complaints was even higher.

More and more young Turkish citizens prefer also the German citizenship. 62.3% of the interviewed Turkish citizens between

⁴² Cf. Heldmann, Heinz, Familiennachzug für Türken in Deutschland, InfAuslR 1/1995, S. 1.

⁴³ For more information see Sieveking, in: DRV 1994, S. 40 and in: NZA 1994, S. 213.

18 and 25 called for easier access to naturalization (FR, 5.3.1994).

2. *Equality of treatment*

2.1 *Legislation*

- * A Circular publicly announced the Agreement between the Federal Government and the Governments of the Federal States on the Co-operation in Matters of the European Union about the Implementation of Article 9 of the Law on the Co-operation of the Federation and the Federal States in Matters of the European Union (Rundschreiben über die Vereinbarung zwischen der Bundesregierung und den Regierungen der Länder über die Zusammenarbeit in Angelegenheiten der Europäischen Union in Ausführung von § 9 des Gesetzes über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union vom 12.3.1993, ABI. Nr. 15, S. 854).
- * On 24 June 1994, a new Law entered into force: the Law establishes special Income Tax Regulations for people (called Grenzpendler) who commute across the Border for Business or Employment Purposes. The law is relevant for those who earn at least 90% of their income in Germany or at most 12,000 marks in a foreign country, and have their residence in the foreign country. With this law commuters who fall under this description may deduct subsistence-costs for the spouse as well as a child allowance (Kinderfreibetrag) from the tax (Gesetz zur einkommensteuerlichen Entlastung von Grenzpendlern und anderen beschränkt steuerpflichtigen natürlichen Personen und zur Änderung anderer gesetzlicher Vorschriften, Grenzpendlergesetz, vom 24.6.1994, BGBl. I, S. 1395, cf. the report on the comment of the EC-Commission (4.5.1994) from the federal minister of finances, in: RIW 10/1994, S. 885).
- * Amendment to Employment Promotion Act. Article 13 Paragraph 3, No. 2 explicitly includes the eligibility of workers of the European Union or citizens of states which are signors of the agreement on the European Economic Domain in the

employment promotion programmes (Beschäftigungsförderungsgesetz 1994 vom 26.7.1994, BGBl. I, S. 1786).

- * Members of the European Union who work in Germany but live in a foreign country can receive financial assistance according to the Labour Promotion Act (Arbeitsförderungsgesetz). The Federal Labour Office will implement this new rule (BR-Drs. 12/8321) immediately. Declined applications are to be reviewed again. This new regulation especially affects those workers who live in the Netherlands and work in Germany and have often had problems of being referred to take part in vocational (re)training measures promoted by the Government. Their applications to participate in such programmes have often been rejected while the applications of co-workers who live in Germany and work in the same company have in comparison, often been referred for participation (wib 15/94 - III/256, S. 17).
- * Citizens of Member States of the European Union (Union citizens) who live in the Federal Republic of Germany, the European elections which took place on 12 June 1994, could choose for the first time whether to participate in the elections of the European Parliament in their home country or in Germany. This new possibility for Union citizens of voting for candidates who have been nominated in Germany is established by the "Third Law to amend the European Voting Law" (Drittes Gesetz zur Änderung des Europawahlgesetzes 8.3.1994, BGBl.I, S. 419). With this law Germany adapted existing laws to comply with the Maastricht-Convention giving Union citizens the right to vote and determining eligibility for European elections. The following are further adaptations concerning European elections in German Law in compliance with the Maastricht-Convention:
 - Second Law to amend the European Voting Law (Zweites Gesetz zur Änderung des Europawahlgesetzes vom 28.1.1994, BGBl. I, S. 142).
 - Twelfth Law to amend the Federal Voting Law of 10 May 1994 (BGBl. I, S. 993).
 - Announcement on the coming into force of Article 1, No. 1 of the Second Law to amend the European Voting Law of 20 April 1994 (Bekanntmachung über das Inkrafttreten des Artikels 1 Nr. 1 des Zweiten Gesetzes zur Änderung des Europawahlgesetzes vom 20.4.1994, BGBl. I, S. 852).

- Announcement of the new Version of the European Voting Law dated 8 March 1994 (Bekanntmachung der Neufassung des Europawahlgesetzes vom 8.3.1994, BGBl. I, S. 423).
- Announcement of the new Version of the European Voting Rules of 2 May 1994 (Bekanntmachung der Neufassung der Europawahlordnung vom 2.5.1994, BGBl. I, S. 957).

2.2 *Drafts*

- * Bill for the Adaptation of the Labour Law regulations to EC Law (Gesetzentwurf zur Anpassung arbeitsrechtlicher Bestimmungen an das EG-Recht, BR-Drs. 353/94).

2.3 *Jurisdiction*

- * The European Court of Justice (EuGH, Urteil vom 9.8.1994 - Rs C-43/93, Raymond Vander Elst/ Office des Migration Internationales) ruled that according to Articles 59 and 60 of the Convention, it is not allowed to levy charges on an enterprise of a Member State, which operates in another Member State, for employees of third countries. This decision clarified a case of an Belgian enterprise which engaged also Moroccan employees while operating business for a certain period in France. The immigration office in France demanded that those citizens of third countries, even if they have a legal permit to stay in Belgium, apply for a work permit and pay those costs. But the Court ruled that such demands contradict Articles 59 and 60 of the EWGV.

This decision shall reinforce the harmonization pressure in regards to the admission of citizens of third countries. It can also give the "Entsende-Richtlinie" the decisive impulse.⁴⁴

⁴⁴ Cf. Daniel-Erasmus Khan, in: EUZW, 19/1994, S. 602/603). More on the issue of the "Entsende-Richtlinie": Junker, Abbo, Arbeits- und Sozialrecht in der Europäischen Union, in: JZ 6/1994, S. 277-286.

- * The Court of Justice ruled in the case Volker Steen v Deutsche Post C-132/93 of 16 June 1994 that European Community Law does not preclude a national Court from examining the compatibility with national constitutional Law which, in a situation unconnected with any of the situations contemplated by European Community Law, treats national workers less favourably than EU-nationals.

This seems an invitation to all national supreme and constitutional Courts to find unlawful any provision of National Law which puts national workers in a worse position than EU-workers. In the area of family reunion many Member States have more restrictive provisions than those of European Community Law. If national Courts are willing to follow the Court of Justice's suggestion then this could lead to increased harmonization of family reunion rights in the EU (ILPA, September 1994).⁴⁵

2.4 *Policies*

- * Under instruction of the Federal Government, a proposal was put forth for Council Guidelines detailing Voting Regulations and Eligibility for Communal Elections for EU Nationals who live in a Member State other than that of their Nationality (Unterrichtung durch die Bundesregierung, BR-Drs. 294/94 vom 6.4.1994, Vorschlag für eine Richtlinie des Rates über die Einzelheiten der Ausübung des aktiven und passiven Wahlrechts bei den Kommunalwahlen für Unionsbürger mit Wohnsitz in einem Mitgliedstaat, dessen Staatsangehörigkeit sie nicht besitzen - KOM(94) endg.; Ratsdok. 5744/94).
- * After the policy of containment of construction-agreements with Poland and other eastern European countries, more and more English construction workers work in the German construction industry. Dutch agencies contract out British construction workers as cheap employers to German construction firms. German firms ignore the labour regulations on working time and holiday entitlements; by contracting out these workers they also

⁴⁵ Cf. Götz, Volkmar, in: JZ 21/1994, S. 1061.

skirt unemployment insurance contributions. Such practices allow the Dutch and German firms to make large profits, while the British workers earn less than the German workers for the same work. About 100,000 construction workers, especially British and Portuguese, work in German construction industry under these circumstances.

As members of the European Union the Portuguese and British workers can move around freely and work legally in other Member States (FAZ, 10.9.1994, WK, 31.8.1994).

- * The Trade Union IG Metall criticized contracts for services in the construction industry (*Werkverträge*), since they set wages beneath the standard wage agreement. The Trade Union does not condemn "*Werkverträge*" as such, but only when the wages thereby set beneath the standard wage agreement. Also the President of the German Craft Union, Mr. Späth, condemned the unfair competition on the labour market caused by construction contracts, he called for an European guideline. Since the opening of the borders within Europe a lot of EU-nationals, especially from Portugal, Greece, Great-Britain and the Benelux-countries, have come to Germany (FAZ, 11.11. and 24.11.1994).⁴⁶
- * 26 political parties were admitted to the European elections in Germany in 1994. The number of valid votes was 35,422,414. The SPD got 32.2% of the votes, the CDU 32%, Die Grünen 10.1%, the CSU 6.8%, the PDS 4.7%, the F.D.P. 4.1% and the REP 3.9% (Wirtschaft und Statistik 7/1994, S. 483, cf. appendix 3).
- * An issue of scientific discussion is the discrimination of nationals. Although discrimination of nationals is not a topic of European Community Law, Article 3 German Basic Law (which is applicable to discrimination of nationals) refers to Community Law.⁴⁷

⁴⁶ Cf. Schüren, Peter; Diebold, Annemarie, Sozialversicherung bei Arbeitnehmerüberlassung, in: NZS 6/1994, S. 241.

⁴⁷ Cf. Schilling, Theodor, Gleichheitssatz und Inländerdiskriminierung, in: JZ, 1/1994, S. 8.

3. Employment in the public services

There are police officers who work in Nordrhein-Westfalen (Polizeivollzugsbeamte) and are originally from Turkey, Spain, Greece, Italy or another European country. But those officers received German citizenship before they started training in the police academy. According to the law in Nordrhein-Westfalen, German citizenship is required in order to be an officer. In some circumstances, the Ministry of Interior makes exceptions and allows a foreigner to be a police officer. The condition in such cases is that the foreigner speak both the German and the home-country language perfectly and be familiar with the foreign mentality. Up till now, 10 exceptions have been made; those persons have been officially nominated as public officials and have taken the oath that all public servants take (DGB-Informationsblatt für ausländische Arbeitnehmer).

4. Family members

4.1 Jurisdiction

- * The Federal Administrative Court ruled that it is sufficient for a family member (pursuant to Article 1, Paragraph 2, II, No. 2 AufenthG/EWG) of a person who has the right of free movement pursuant to Article 1, Paragraph 1 AufenthG/EWG, when s/he receives payments which can be seen as means for subsistence. In addition to this, there is a regular cash benefit which covers at least a part of the means for subsistence. The ruling referred to a case in which it was questioned whether 330 marks monthly support from a father to his dependent child was sufficient. According to the existing rules concerning the means of subsistence, this can be seen as sufficient (BVerwG, Urteil vom 20.10.1993 - BVerwG 11 C 1.93, InfoAuslR 3/93, S. 82, NVwZ 4/94, S. 379).

5. Establishment, provision, students

5.1 Establishment

- * Attorneys at law licensed in another Member State can after passing a law exam work as a lawyer in Germany. Since the introduction of the aptitude test in Germany in the beginning of 1991, about 12 foreign lawyers have taken such a test.

Due to proposed EU guidelines such aptitude tests will probably soon disappear. According to a draft of a new guideline, everyone who is established as a lawyer in an EU-Member State can practice law in another Member State under the title of the home country. After three years of practising law, s/he can get the title of the country of residence (NJW 29/1994, S. 1846).

5.2 Provision and education policy

5.2.1 Legislation

- * A new Law about the Authority to call yourself a Physiotherapist also includes Citizens of Member States of the European Union, provided that they have completed an equivalent occupational programme in the Member State (Gesetz über die Berufe in der Physiotherapie vom 26.5.1994, BGBl. I, S. 1084).
- * A Law was passed in compliance with the Convention dated 21 December 1979 on the Recognition of Studies, Diplomas and Degrees concerning Higher Education in States belonging to the European Region (Gesetz zu dem Übereinkommen vom 21.12.1979 über die Anerkennung von Studien, Diplomen und Graden im Hochschulbereich in den Staaten der europäischen Region vom 2.9.1994, BGBl. II, S. 2321).
- * There was an Agreement between the Government of Germany and the Government of France recognizing the simultaneous Acquisition of the German University Entrance Qualifications and the French Baccalauréat (Abkommen zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der

Französischen Republik über den gleichzeitigen Erwerb der Allgemeinen Hochschulreife und des französischen Baccalauréat, vom 31.5.1994, BGBl. II, S. 1293).

- * Law on the Adaptation of the Regulations concerning the Licensing of Chemists and the Training and Qualifications Regulations to the European Community Law (Gesetz zur Anpassung des Apothekerrechts und berufsrechtlicher Vorschriften an das Europäische Gemeinschaftsrecht vom 23.8.1994 (BGBl. I, S. 2189).
- * Law to adapt to the European Agreement dated 6 November 1990 on the Accreditation of the Duration of Studies at Universities equally (Gesetz zu dem Europäischen Übereinkommen vom 6.11.1990 über die allgemeine Gleichwertigkeit der Studienzeiten an Universitäten, vom 25.10.1994, BGBl. II, S. 3606).
- * Announcement on the Enforcement of the European Agreement on the Accreditation of Academic Degrees and University Certificates (Bekanntmachung über den Geltungsbereich des Europäischen Übereinkommens über die akademische Anerkennung von akademischen Graden und Hochschulzeugnissen, vom 29.11.1994, BGBl. II, 3862).

Hessen

- * An Ordinance was issued on the Acknowledgement of Teaching Credentials for Nationals of the European Union issued at Educational Institutions of Member States (Verordnung über die Anerkennung des Lehrerdiploms von Angehörigen anderer EU-Mitgliedstaaten, vom 17.9.1994, GVBl. I, S. 438).

Sachsen-Anhalt

- * An Ordinance was issued on the Procedure to request Permission to use foreign Academic Titles (Verordnung über das Genehmigungsverfahren zur Führung ausländischer akademischer Grade und entsprechender ausländischer staatlicher Grade oder Titel vom 16.5.1994, GVBl. LSA, S. 604).

5.2.2 Policies

- * Universities and researchers in Holland and Germany want to co-operate more. Both countries made a college agreement in 1993. As a result a joint university curriculum German-Dutch, with studyperiods in Nordrhein-Westfalen and Holland are to be developed. The universities of Münster and Nijmegen will be the first to co-operate in such a programme.

Since then the development of the co-operation of the colleges between both countries has been making progress. A further goal is to stimulate more co-operation in postgraduate work.

Free study capacity in the foreign country shall be used and a common curricula shall be planned. Mainly, academic exchange is to be facilitated. This will also require a reciprocal acknowledgement of the admission qualifications, an exemption or lowering tuition for German students in Holland and the acknowledgement of exams and the study advancement according to the law of the home country.

- * The "Bundestag" declared that a strict dividing line between common and vocational education is not up to date. Therefore, it shall be necessary to make a stronger connection between the two education programmes of the European Commission, i.e., SOKRATES (KOM (93) 708 endg.) and LEONARDO (KOM (93) 686 endg.). Both programmes are significant for stronger co-operation among EU Member States.

The German Parliament wishes a more clear streamlining of both programmes for the important target groups. Fundamentally, the "Bundestag" supports the new elements in both programmes, as well as the extension of the information exchange, wider acknowledgement of studies at universities, and the development of teaching and training units (wib 10/94 - XV/128, 25.5.1994).

- * The Council of Ministers decided to sponsor the European programme "Youth for Europe" with 105 million ECU instead of the 157 million ECU which the European Commission had requested. The Chairwoman of the "Bundestag" committee for Women and Youth, Mrs. Edith Niehuis, called the decrease of the funds outrageous and not understandable, considering the new programme had new focal points. Projects against racism

and xenophobia should receive more attention (zwd-Chronik 10-11/1994, S. 24).

- * The results and perspectives of the European vocational training programme PETRA (Partnership in Education and Training) were discussed at a conference in Berlin in November 1994. German participation in the PETRA II-programme amounted to about 20% (IBW 11/94, S. 132).

6. *Social security*

6.1 *Legislation*

- * An Announcement was given on the Enforcement of the European Agreement on the Guarantee of Medical Care for Persons with a Temporary Residence (Bekanntmachung über den Geltungsbereich des Europäischen Übereinkommens über die Gewährung ärztlicher Betreuung an Personen bei vorübergehendem Aufenthalt, vom 23.11.1994, BGBl. II, S. 3858).

6.2 *Drafts*

- * A bill was drafted by the Federal Government representing a Third Law on the Implementation of the Insurance Policy Guidelines issued by the Council of the European Union (Gesetzentwurf der Bundesregierung, BR-Drs. 23/94 vom 24.1.1994, Entwurf eines Dritten Gesetzes zur Durchführung versicherungsrechtlicher Richtlinien des Rates der Europäischen Gemeinschaften, Drittes Durchführungsgesetz/EWG zum VAG).⁴⁸
- * A bill was drafted by the Federal Government representing the Sixth Law to amend the Tax Consulting Law (Gesetzentwurf der

⁴⁸ Cf. Hofmann, Claus; Scholz, Wolfgang, Soziale Sicherung in der Europäischen Gemeinschaft, in: Kompaß 1/1994, S. 1ff

Bundesregierung, BR-Drs. 794/93 vom 5.11.93, Entwurf eines sechsten Gesetzes zur Änderung des Steuerberatungsgesetzes).

- * A bill was drafted to establish a general legal framework for labour protection and safety. It constitutes a total assumption of the guideline 89/391 EWG. The dual work protection system (i.e., not only the state but also holders of accident insurances have authority in the shaping and the realization of prevention measures) will hereby be improved (Arbeitsschutzrahmengesetz, BT-Dr 12/6752, ZRP, 5/94, S. 203).⁴⁹

6.3 *Jurisdiction*

- * The Federal Social Court (BSG) ruled that a person who moves to a country of the European Union can keep his/her claim to German unemployment benefits, provided that s/he moved out of Germany during the time s/he worked in Germany (BSG Kassel, 11 RAr 1/93, vom 9.2.1994, EuroAS 3/1994, S. 13).
- * The Federal Labour Court presented the European Court with the following questions:

Does the interpretation of EWG No. 574/72, Article 18 I-V of 21 March 1972 by the European Court mean that the employer is debarred from the evidence of an accused fact, on which for certain or with a sufficient probability it can be concluded that unfitness for work cannot be submitted? If the answer is in the affirmative, does this order violate the principle of proportionality?

In this case (i.e., the elaboration of the Paletta decision) the complainant is an Italian citizen. From February 1974 until April 1991 he was employed (living together with his wife and children) in Germany. From July 1989 till 12 August 1989 he spent his holidays which had been granted by his employer in Italy. During the holidays all family members reported that they were sick. The complainant reported himself to his employer that he was sick as of 7 August 1989. He sent the company sickness fund five written medical notifications in the Italian

⁴⁹ Cf. also the guideline 94/33/EC on youth work protection, in: Bundesarbeitsblatt 11/1994, S. 5.

language. The employer, i.e. the defendant, refused to pay wages for the days absent from work due to the acclaimed sickness. Because there were doubts as to whether the employee was truly unfit for work. The complainant and his family members had also fallen sick while on holiday repeatedly in previous years. The Labour Court asked the European Court if the EWG-orders concerning social security contributions are applicable. According to the European Court, the provider (also if it is the employer and not a social insurance agency), is bound both factually and legally to recognize medical statements made in the official residence or the place of actual residence, provided that the provider does not let the person be examined by a doctor of his own choice. Consequently, the Labour Court recognized the complaint. In the appeal the Federal Labour Court presented the European Court again with the questions mentioned above (BAG, Beschluß vom 27.4.1994 -5 AZR 747/93, EuZW, 11/1994, S. 326, ArbuR, 6/1994, S. 239).⁵⁰

- * The Federal Social Court decided that also payments of a foreign pension scheme can constitute grounds for cancellation of claims to unemployment benefits. In the case at issue, the Italian old-age pension is similar to the German old-age pension (i.e., payments under Public Law), pursuant to Article 118 I No. 4 AFG. (BSG, Urteil vom 8.7.1993 - 7 Rar 64/92, NSZ, 1/94, S. 28).
- * The Social Court of Hamburg ruled that those who do not come back within a designated three month period to Germany, do not automatically lose their claims to unemployment benefits. The Labour Office has the power of discretion to examine if there are special circumstances that justify continuing unemployment benefits (SG Hamburg, 6.1.1994 -13 AR 1507/92, info also 2/94, S. 77).
- * With a decision dated 9 February 1994, the Federal Social Court decided that the Federal Labour Office should also give unemployment benefits to unemployed persons who do not live in Germany, provided that the unemployed lived in a Member

⁵⁰ Cf. Steinmeyer, Heinz-Dietrich, Die Austauschbarkeit arbeitsrechtlicher und sozialrechtlicher Gestaltungsformen und das Europäische Gemeinschaftsrecht, in: Arbeitsrecht in der Bewährung. Festschrift für Otto Rudolf Kissel, München 1994, S. 1165.

State during their last employment in Germany and that s/he registers at the labour office in that country and makes her/himself available for employment (BSG, Urteil vom 9.2.1994 - 11 Rar 1/93, EuroAS 3/1994, S. 13).

- * The Federal Social Court presented the European Court with the following questions:

- Should the health insurance agency treat a request for payment because the insured person is unfit to work, which came in the last day in a designated period (according to Article 25, Paragraph 1 and Article 69, Paragraph 1 c EWGV 1408/71) like a request on prolongation of the period (according to Article 25, Paragraph 4 EWGV 1408/71). Even if the prolongation was explicitly first applied for after the exemption of the rejected decision for the required payments? If not, is it allowed to extend the time period, if the request was applied for after the time limit had expired?
- Does the matter of discretion of the insurance agency (according to Article 25, Paragraph 4 EWGV 1408/71) presuppose that the unemployed worker was hindered by a force beyond his/her control from coming back within the three-month period (pursuant to Article 25, Paragraph 1 and Article 69, Paragraph 1c EWGV 1408/71)? Or is it within the scope of the matter of discretion to examine if circumstances of force majeur exists?
- Should force majeur (pursuant to Article 25, Paragraph 4 EWGV 1408/71) be accepted, if the disabled unemployed person cannot come back to the state in which the insurance agency is located within the three months period because of his/her illness, although the said person was able to travel?

Summarized the question is: what health insurance coverage exists for an unemployed person who was granted permission (Article 69 VO 1408//7) to look for a job in another Member State within a limited time, when the designated period expires and the said unemployed person cannot return to Germany because of illness (BSG, vom 15.7.1993 - 1 RK 20/92, SGb 1/94, S. 25, EuZW, 5/94, S. 156)?

6.4 Policies

- * The Federal Audit Office criticized The Federal Ministry on Labour, because the latter did not examine if or to what extent the pension reform of 1992 is compatible with the European Union Law. Pension claims from clients abroad have increased by 100-500 percent since the reform (FAZ, 27.10.1994).⁵¹
- * The issue of long-term care insurance (Pflegeversicherung) received a lot of attention in 1994. It is a matter of dispute as to whether the benefits are to be classified as health insurance benefits and therefore, according to the Federal Law, cannot be transferred within the European Union.⁵²
In the opinion of Mr. Eichenhofer the benefit should be characterized as a disability benefit, pursuant to Article 37 ff VO/EWG No. 1408/71. In our opinion the new benefit comprises elements of health insurance for invalidity as well as for old age provision.
- * The Federal Minister of Labour, Mr. Norbert Blüm, introduced a concept for labour and social policy for the future German EU-presidency. It concentrates on the following topics:
 - combating unemployment as well as illicit and illegal work;
 - defining priority issues of the social action programme of the EU, i.e., establishing at the EU-level works councils and legal work protection standards for part-time work and for those who have a limited employment contract;

⁵¹ Cf. Döring, Diether, Zu Alterssicherung von Zuwandern in den Ländern der Europäischen Union, in: Sozialer Fortschritt 10/1994, S. 239; Eichenhofer, Eberhard, Offene europarechtliche Fragen des Rentenreformgesetzes, in: SGb 8/1994, S. 353 and Kölzsch, Martin, Auswirkungen des EWR-Abkommens, Änderungen im Versicherungs- und Beitragsrecht der Rentenversicherung, in: DAngVers 4/1994, S. 139; Schulte, Bernd, Perspektiven der Alterssicherung in der Europäischen Union - Zwanzig Thesen, in: ZIAS 3/1994, S. 240.

⁵² More to the the issue of care-insurance, Eichenhofer, Eberhard, Europarechtliche Probleme der sozialen Pflegeversicherung, in: VSSR 4/1994, S. 323 and Richard Giesen, Pflegeversicherung und Europäisches Gemeinschaftsrecht, in: SGb 2/1994, S. 63.

- establishing labour protection for those who work in foreign companies or work temporarily in another Member State, in particular to enforce uniform work conditions of the working place (Sozialpolitische Umschau, Nr. 281/1994).
- * The European Committee of the "Bundestag" discussed the White Book on social policy put out by the EU Commission. Various political parties represented in the "Bundestag" stated their position on this matter. The SPD thinks that prevention should be of central importance. The SPD called upon the Federal Government to be oriented towards the principle of subsidiarity. The social programmes should moreover not be reduced but should adapt to new demands.
The F.D.P., in contrast, rejects a harmonization of social security systems. For example, due to the competition with Asiatic countries, it is not efficient to transfer the German social system to countries like Portugal.
The CDU/CSU emphasized two components of the White Book. On the one hand, consolidation of the European social policies, and, on the other, the new dynamic which can be seen as basis for the development of the social policy. The CDU/CSU also rejects harmonization of the social security systems. Aim of a social policy can only be convergence. Therefore, social and economic components must be co-ordinated (wib 3/95 - III/10).

7. *Miscellaneous*

- * With the law amending Article 28 Paragraph 1 Subparagraph 3 of the German Constitution (Law of 27 October 1994) basic legal requirements were met to give migrant workers from the Member States the right to vote and to stand for elections on the local level. This amendment is due to the jurisdiction of the Federal Constitutional Court of 1993 on the question of voting rights for migrants living in Germany with a permanent residence permit. Since the community's direction on the voting rights for citizens of the Member States on local elections has passed (ABl. EG 1994 No L 368, 38) the federal states will have

to adapt their general regulations on voting rights on the municipal level.

- * Although the European Union contributes to the development of the cultures of the Member States, while guaranteeing cultural diversity of the several nations, the fact that the financial contribution of the European Union to promote the development of the music has been very low deserves mention. The principles of the European Market, such as the free movement of persons and services, will not however influence, at least, German music life as much as one might expect. The number of foreigners in German orchestras and choirs has always been high (about 25%); also at music schools, the percentage of foreigners (13%) is twice as high as at other highschoools and universities. For these reasons, a significant change incurred by an influx of foreigners is not expected (FAZ, 30.1.1995).
- * The issue of Union citizenship and international protection of human rights is a topic of scientific discussion in Germany (cf. Hobe, Stefan, Die Unionsbürgerschaft nach dem Vertrag von Maastricht, in: Der Staat, 1993, S. 245-268; Kirchhof, Paul, Verfassungsrechtlicher Schutz und internationaler Schutz der Menschenrechte: Konkurrenz oder Ergänzung? in: EuGRZ 1994, S. 16.).
- * The European Court decided that the national copy right must also comply with Anti-Discrimination Laws in Article 7 I EWGV (now Article 6 I EGV). This means that it can be seen as discrimination when special rules of copy right in a Member State are only applicable for national artists and not for citizens of other Member States. This decision has consequences for German jurisdiction (cf. Loewenheim, Ulrich, Gemeinschaftsrechtliches Diskriminierungsverbot und nationales Urheberrecht, in: NJW 16/1994, S. 1046).
- * The duty of social equality (based on the Order 1408/71/EWG) is not only valid for citizens of Member States but also for refugees or stateless persons who live in a Member State, provided that they are employees or self-employed. Therefore, German Law should be examined as to whether social equality is guaranteed.

Against this background it should be examined whether this legal directive has consequences for the German Asylum Law.⁵³

- * The issue of minority protection was of paramount significance in policies in 1994. The common constitution committee of the "Bundestag" and "Bundesrat" has put forth a proposal, among other amendments, to secure minority protection in the Basic Law; it should read: the State respects the identity of the ethnic, cultural, and laid language minorities (Article 20b GG).

The wish to anchor minority protection in the Federal Basic Law comes from the federal states, especially from the old federal states. The protection of the Sorbs, Danish and Friesians is laid down in the Basic Law of the Federal States. They also demand protection in the Federal Basic Law. The Gypsies, for example, have demanded respect in the Federal Basic Law. Generations of Gypsies have lived in Germany for 600 years.

The coalition party CDU/CSU rejected these proposals for fear of non-Germans claiming civil rights with this Article. The CDU wants to avoid the possibility of a claim on the basis of this Article to dual nationality. The SPD, the F.D.P., the PDS and Die Grünen recommended the proposal of the common constitution committee to protect minorities. But because the CDU/CSU rejects the proposal, the two thirds majority, necessary to amend the Basic Law, cannot be achieved (wib 15/94-I/283).⁵⁴

⁵³ Cf. Rittstieg, Helmut, Sozialrechtliche Gleichstellung von Flüchtlingen auf Grund von Europarecht, in: InfAuslR 1/94, S. 40.

⁵⁴ Cf. Hahn, Michael, Die rechtliche Stellung der Minderheiten in Deutschland, in: Jochen Abr. Frowein/Rainer Hofmann/Stefan Oester (Hrsg.), das Minderheitenrecht europäischer Staaten, Berlin 1993, S. 62ff.; Sieveking, Klaus, Zur Frage eines Antidiskriminierungsgesetzes gegen ethnische Diskriminierung - Thesen, in: Zeitschrift für Sozialreform, 4/94, S. 259ff.; Wollenschläger, Michael, Rechtsfragen eines Konzeptes gegen Ausländerdiskriminierung, in: Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 10ff.

APPENDICES

A. Survey of the Legislation in 1994

(This appendix contains all the legislation, for both reports RIMET and Free Movement)

1. *Gesetze*

1.1. Europäische Union

Bekanntmachung über das Inkrafttreten des Abkommens über den Europäischen Wirtschaftsraum (EWR-Abkommen) und des Anpassungsprotokolls zu diesem Abkommen vom 6. April 1994 (BGBI. II, S. 515)

Gesetz zu dem Übereinkommen vom 15. Juni 1990 über die Bestimmung des zuständigen Staates für die Überprüfung eines in einem Mitgliedstaat der Europäischen Gemeinschaften gestellten Asylantrages (Dubliner Übereinkommen) vom 27. Juni 1994 (BGBI. II, S. 791)

Gesetz zu dem Vertrag vom 24. Juni 1994 über den Beitritt des Königreichs Norwegen, der Republik Österreich, der Republik Finnland und des Königreichs Schweden zur Europäischen Union vom 2. September 1994 (BGBI. II, S. 2022)

Gesetz zur Änderung des Grundgesetzes (Artikel 3, 20a, 28, 29, 72, 74, 75, 76, 77, 80, 87, 93, 118a und 125a vom 27.10.1994 (BGBI. I., S. 3146)

Siebzehntes Gesetz zur Änderung des Abgeordnetengesetzes und Vierzehntes Gesetz zur Änderung des Europaabgeordnetengesetzes vom 4. November 1994 (BGBI. I, S. 3346)

1.2. Ausländer- und Asylrecht

Gesetz über das Ausländerzentralregister (AZR-Gesetz) vom 2. September 1994 (BGBl. I, S. 2265)

1.3. Arbeit-, Sozial- und Steuerrecht

Neufassung des Bundeskindergeldgesetzes vom 31. Januar 1994 (BGBl. I, S. 168), Berichtigung vom 23. März 1994 (BGBl. I, S. 701)

Neufassung des Bundeserziehungsgeldgesetzes vom 31. Januar 1994 (BGBl. I, S. 180)

Gesetz zur Änderung von Vorschriften des Sozialgesetzbuchs über den Schutz der Sozialdaten sowie zur Änderung anderer Vorschriften (Zweites Gesetz zur Änderung des Sozialgesetzbuchs - 2.SGBÄndG) vom 13. Juni 1994 (BGBl. I, S. 1229)

Gesetz zur einkommensteuerrechtlichen Entlastung von Grenzpendlern und anderen beschränkt steuerpflichtigen natürlichen Personen und zur Änderung anderer gesetzlicher Vorschriften (Grenzpendlergesetz) vom 24. Juni 1994 (BGBl. I, S. 1395)

Beschäftigungsförderungsgesetz 1994 (BeschFG 1994) vom 26. Juli 1994 (BGBl. I, S. 1786)

Gesetz zur Änderung des Gesetzes zur Bekämpfung der Schwarzarbeit und zur Änderung anderer Gesetze vom 26. Juli 1994 (BGBl. I, S. 1792)

Gesetz zur Änderung des Arbeitsförderungsgesetzes im Bereich des Baugewerbes vom 20. September 1994 (BGBl. I, S. 2456)

1.4. Bildung / Beruf

Gesetz über die Berufe in der Physiotherapie (Masseur- und Physiotherapeutengesetz - MPhG) vom 26. Mai 1994 (BGBl. I, S. 1084)

Abkommen zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Französischen Republik über den gleichzeitigen Erwerb der Allgemeinen Hochschulreife und des französischen Baccalauréat vom 31. Mai 1994 (BGBl. II, S. 1293)

Gesetz zur Änderung des Rechtspflegergesetzes und anderer Gesetze (Artikel 2 und 3) vom 24. Juni 1994 (BGBl. I, S. 1374)

Gesetz zur Anpassung des Apothekerrechts und berufsrechtlicher Vorschriften an das Europäische Gemeinschaftsrecht vom 23. August 1994 (BGBl. I, S. 2189)

Gesetz zu dem Übereinkommen vom 21. Dezember 1979 über die Anerkennung von Studien, Diplomen und Graden im Hochschulbereich in den Staaten der Europäischen Region vom 2. September 1994 (BGBl. II, S. 2321)

Gesetz zu dem Europäischen Übereinkommen vom 6. November 1990 über die allgemeine Gleichwertigkeit der Studienzeiten an Universitäten vom 25. Oktober 1994 (BGBl. II, S. 3606)

Gesetz zur Änderung der Gewerbeordnung und sonstiger gewerberechtlicher Vorschriften vom 23. November 1994 (BGBl. I, S. 3475)

1.5. Melderecht / Wahlrecht

Zweites Gesetz zu Änderung des Europawahlgesetzes vom 28. Januar 1994 (BGBl. I, S. 142)

Drittes Gesetz zu Änderung des Europawahlgesetzes vom 8. März 1994 (BGBl. I, S. 419)

Bekanntmachung der Neufassung des Europawahlgesetzes vom 8. März 1994 (BGBl. I, S. 423)

Erstes Gesetz zur Änderung des Melderechtsrahmengesetzes (MRRG) vom 11. März 1994 (BGBl. I, S. 529)

Bekanntmachung über das Inkrafttreten des Artikels 1 Nr. 1 des Zweiten Gesetzes zur Änderung des Europawahlgesetzes vom 20. April 1994 (BGBl. I, S. 852)

Bekanntmachung der Neufassung der Europawahlordnung vom 2. Mai 1994 (BGBl. I, S. 957)

Zwölftes Gesetz zur Änderung des Bundeswahlgesetzes vom 10. Mai 1994 (BGBl. I, S. 993)

1.6. Verbrechensbekämpfung

Gesetz zur Änderung des Strafgesetzbuches, der Strafprozeßordnung und anderer Gesetze (Verbrechensbekämpfungsgesetz) vom 28. Oktober 1994 (BGBl. I, S. 3186)

1.7. Internationales

Gesetz zu dem Abkommen vom 29. Juli 1992 zwischen der Bundesrepublik Deutschland und der Republik Polen über den Autobahnzusammenschluß und den Bau von Grenzabfertigungsanlagen für den neuen Grenzübergang im Raum Görlitz und Zgorzelec vom 7. Januar 1994 (BGBl. II, S. 67)

Bekanntmachung über die Zuständigkeit für Ausnahmeregelungen nach dem deutsch-chilenischen Abkommen über Rentenversicherung vom 14. Januar 1994 (Bundesanzeiger Nr. 22 vom 2. Februar 1994)

Bekanntmachung über den Geltungsbereich des Übereinkommens gegen Diskriminierung im Unterrichtswesen vom 25. Januar 1994 (BGBl. II, S. 324)

Bekanntmachung über die Fortgeltung der deutsch-jugoslawischen Verträge im Verhältnis zwischen der Bundesrepublik Deutschland und der ehemaligen jugoslawischen Republik Mazedonien vom 26. Januar 1994 (BGBl. II, S. 326)

Gesetz zu dem Abkommen vom 29. Juli 1992 zwischen der Bundesrepublik Deutschland und der Republik Polen über Erleichterungen der Grenzabfertigung vom 3. Februar 1994 (BGBl. II, S. 265)

Gesetz zu dem Zusatzabkommen vom 22. Dezember 1992 zum Abkommen vom 20. Oktober 1982 zwischen der Bundesrepublik Deutschland und der Schweizerischen Eidgenossenschaft über Arbeitslosenversicherung vom 31. März 1994 (BGBl. II, S. 430)

Gesetz zu dem Protokoll Nr. 9 vom 6. November 1990 sowie zu dem Protokoll Nr. 10 vom 25. März 1992 zur Konvention zum Schutze der Menschenrechte und Grundfreiheiten vom 19. April 1994 (BGBl. II, S. 490)

Bekanntmachung der Vereinbarung zur Änderung der deutsch-schweizerischen Vereinbarung über den Austausch von Gastarbeitnehmern (stagiaires) zwischen der Bundesrepublik Deutschland und der Schweizerischen Eidgenossenschaft vom 30. Mai 1994 (BGBl. II, S. 779)

Bekanntmachung der Vereinbarung zur Änderung der deutsch-litauischen Gastarbeitnehmer-Vereinbarung vom 27. Juni 1994 (BGBl. II, S. 1249)

Bekanntmachung über das Inkrafttreten des Zusatzabkommens zum deutsch-schweizerischen Abkommens über Arbeitslosenversicherung vom 1. Juli 1994 (BGBl. II, S. 1193)

Gesetz zu dem Europäischen Übereinkommen vom 16. Oktober 1980 über den Übergang der Verantwortung für Flüchtlinge vom 30. September 1994 (BGBl. II, S. 2645)

Gesetz zu dem Europa-Abkommen vom 8. März 1993 zur Gründung einer Assoziation zwischen den Europäischen Gemeinschaft sowie ihren Mitgliedstaaten und der Republik Bulgarien vom 7. Oktober 1994 (BGBl. II, S. 2753)

Gesetz zu dem Europa-Abkommen vom 1. Februar 1993 zur Gründung einer Assoziation zwischen den Europäischen Gemeinschaft sowie ihren Mitgliedstaaten und Rumänien vom 7. Oktober 1994 (BGBl. II, S. 2957)

Gesetz zu dem Europa-Abkommen vom 4. Oktober 1993 zur Gründung einer Assoziation zwischen den Europäischen Gemeinschaft sowie ihren Mitgliedstaaten und der Slowakischen Republik vom 7. Oktober 1994 (BGBl. II, S. 3126)

Gesetz zu dem Europa-Abkommen vom 4. Oktober 1993 zur Gründung einer Assoziation zwischen den Europäischen Gemeinschaft sowie ihren Mitgliedstaaten und der Tschechischen Republik 7. Oktober 1994 (BGBl. II, S. 3320)

Bekanntmachung über das Inkrafttreten des Übereinkommens Nr. 167 der Internationalen Arbeitsorganisation über Arbeitsschutz im Bauwesen vom 29. November 1994 (BGBl. II, S. 3862)

Bekanntmachung des deutsch-tschechischen Abkommens über den Kleinen Grenzverkehr auf Wanderwegen und in Touristenzonen sowie über den Grenzübertritt in besonderen Fällen vom 2. Dezember 1994 (BGBl. II, S. 3844)

Bekanntmachung der deutsch-bulgarischen Vereinbarung zur Änderung der Vereinbarung über die Beschäftigung von Arbeitnehmern bulgarischer Unternehmen zur Ausführung von Werkverträgen vom 27. Dezember 1994 (BGBl. 1995 II, S. 90)

2. Verordnungen

2.1. Ausländerrecht

Erste Verordnung zur Änderung der Arbeitsaufenthalteverordnung vom 15. August 1994 (BGBl. I, S. 2115)

Elfte Verordnung zur Änderung der Arbeitserlaubnisverordnung vom 30. September 1994 (BGBl. I, S. 2792)

Zweite Verordnung zur Änderung der Anwerbestoppausnahmeverordnung vom 30. September 1994 (BGBl. I, S. 2794)

Erste Verordnung zu § 29a des Asylverfahrensgesetzes vom 6. Oktober 1994 (BGBl. I, S. 2850)

Verordnung nach § 3 Abs. 4 des Ausländergesetzes zur Änderung der Verordnung zur Durchführung des Ausländergesetzes vom 29. November 1994 (BGBl. I, S. 3546)

2.2. Arbeit

Verordnung über Arbeitsvermittlung durch private Arbeitsvermittler (Arbeitsvermittlerverordnung - AVerMv) vom 11. März 1994 (BGBl. I, S. 563)

Erste Verordnung zur Änderung der Arbeitsvermittlerverordnung vom 1. August 1994 (BGBl. I, S. 1946)

Verordnung über die Meldung statistischer Daten der privaten Arbeitsvermittlung (Private Arbeitsvermittlungs-Statistik-Verordnung - PrAVV) vom 1. August 1994 (BGBl. I, S. 1949)

3. Erlasse

Änderung der Richtlinien des Bundesministeriums für Frauen und Jugend für die Vergabe von Zuwendungen (Beihilfen) zur

gesellschaftlichen, d.h. zur sprachlichen, schulischen, beruflichen und damit in Verbindung stehenden sozialen Eingliederung junger Aussiedler und junger ausländischer Flüchtlinge "Garantiefonds - Schul- und Berufsbildungsbereich - (RL-GF-SB)" vom 1.1.1993 (GMBI. 1992 Nr. 46) vom 21. März 1994 (GMBI. 1994, S. 440)

Änderung der Richtlinien des Bundesministeriums für Frauen und Jugend für die Gewährung von Zuwendungen an die Otto Benecke-Stiftung e.V., Bonn, für die Vergabe von Beihilfen durch die Otto Benecke-Stiftung e.V. an junge Aussiedler und junge ausländische Flüchtlinge zur Vorbereitung und Durchführung des Hochschulstudiums - "Garantiefonds - Hochschulbereich - (RL-GH-H)" vom 1.1.1993 (GMBI. 1992 Nr. 46) vom 21. März 1994 (GMBI. 1994, S. 441)

Runderlaß des Bundesministeriums für Raumordnung, Bauwesen und Städtebau über die Gemeinsame Regelung betreffend Ausschluß von Unternehmen von der Vergabe öffentlicher Aufträge bei illegaler Beschäftigung von Arbeitskräften vom 4. April 1994, Bundesanzeiger vom 26. April 1994

4. *Gesetzesvorhaben*

4.1. *Grundgesetz*

Gesetzentwurf der Fraktionen der CDU/CSU, SPD und F.D.P., BT-Drs. 12/6633 vom 20.01.94, Entwurf eines Gesetzes zur Änderung des Grundgesetzes (Artikel 3, 20a, 20b, 28, 29, 72, 74, 75, 76, 77, 80, 87, 93, 118a und 125a) - Siehe auch textidentischen Entwurf der Bundesländer Rheinland-Pfalz und Sachsen, BR-Drs. 886/93 vom 03.12.93 - Für erledigt erklärt am 02.09.94.

Gesetzentwurf des Bundesrates, BT-Drs. 12/7109 vom 17.03.94, Entwurf eines Gesetzes zur Änderung des Grundgesetzes (Artikel 3, 20a, 20b, 28, 29, 72, 74, 75, 76, 77, 80, 87, 93, 118a und 125a) - Für erledigt erklärt am 30.06.94.

Beschlußempfehlung des Ausschusses nach Art. 77 des Grundgesetzes (Vermittlungsausschuß), BT-Drs. 12/8423 vom 02.09.94, zu dem Gesetz zur Änderung des Grundgesetzes (Artikel 3, 20a, 28, 29, 87 und 118a) - Drucksachen 12/6633, 12/8165, 12/8399 -, Gesetz zur Änderung des Grundgesetzes (Artikel 74, 125a) - Drucksachen 12/6633, 12/8165, 12/8399 -, Gesetz zur Änderung des Grundgesetzes (Artikel 75, 76, 77, 80 und 125b) - Drucksachen 12/6633, 12/8165, 12/8399 - Vom Parlament angenommen am 06.09.94, Zustimmung des Bundesrates am 23.09.94

4.2. Internationales

Gesetzentwurf der Bundesregierung, BR-Drs. 23/94 vom 14.01.94, Entwurf eines Dritten Gesetzes zur Durchführung versicherungsrechtlicher Richtlinien des Rates der Europäischen Gemeinschaften (Drittes Durchführungsgesetz/EWG zum VAG)

Gesetzentwurf der Bundesregierung, BR-Drs. 221/94 vom 18.03.94, Entwurf eines Gesetzes zu dem Übereinkommen vom 6. November 1992 über den Beitritt der Griechischen Republik zu dem Schengener Übereinkommen vom 19. Juni 1990 (Gesetz zum Beitritt der Griechischen Republik zum Schengener Übereinkommen)

Gesetzentwurf der Bundesregierung, BT-Drs. 12/7621 vom 19.05.94, Entwurf eines Gesetzes zu dem Europa-Abkommen vom 4. Oktober 1993 zur Gründung einer Assoziation zwischen den Europäischen Gemeinschaften sowie ihren Mitgliedstaaten und der Tschechischen Republik

Gesetzentwurf der Bundesregierung, BT-Drs. 12/7622 vom 19.05.94, Entwurf eines Gesetzes zu dem Europa-Abkommen vom 4. Oktober 1993 zur Gründung einer Assoziation zwischen den Europäischen Gemeinschaften sowie ihren Mitgliedstaaten und der Slowakischen Republik

Entwurf eines Abkommens zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der

Tschechischen Republik über die Rücknahme von Personen an der gemeinsamen Staatsgrenze (Rücknahmeabkommen), Stand: 08. September 1994

Abkommen zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Tschechischen Republik über die Zusammenarbeit hinsichtlich der Auswirkungen von Wanderungsbewegungen, Stand: 08. September 1994

Gesetzentwurf der Bundesregierung, BT-Drs. 13/24 vom 18.11.1994, Entwurf eines Gesetzes zu dem Protokoll vom 26. April 1994 zu den Konsequenzen des Inkrafttretens des Dubliner Übereinkommens für einige Bestimmungen des Durchführungabkommens zum Schengener Übereinkommen (Bonner Protokoll)

4.3. Ausländergesetz

Gesetzesantrag des Landes Nordrhein-Westfalen, BR-Drs. 36/94 vom 13.01.94, Entwurf eines Gesetzes zur Änderung des Ausländergesetzes

Gesetzentwurf der SPD, BT-Drs. 12/7014 vom 09.03.94, Entwurf eines Gesetzes zur Änderung des Ausländergesetzes

Gesetzentwurf des Bundesrates, BT-Drs. 12/8412 vom 01.09.94, Entwurf eines Gesetzes zur Änderung des Ausländergesetzes

Gesetzesantrag des Landes Brandenburg, BR-Drs. 870/94 vom 19.09.94, Entwurf eines Gesetzes zur Änderung des Ausländergesetzes (§ 32a - Abs. 10 und 11)

4.4. Soziales / Arbeit

Gesetzentwurf der Bundesregierung, BT-Drs. 12/6752 vom 03.02.94, Entwurf eines Gesetzes über Sicherheit und Gesund-

heitsschutz bei der Arbeit (Arbeitsschutzrahmengesetz - ArbSchRG)

Gesetzentwurf der Bundesregierung, BR-Drs. 353/94 vom 29.04.94, Entwurf eines Gesetzes zur Anpassung arbeitsrechtlicher Bestimmungen an das EG-Recht

4.5. Strafrecht

Gesetzentwurf der Fraktion der SPD, BT-Drs. 12/6784 vom 04.02.94, Entwurf eines Zweiten Gesetzes zur Bekämpfung des illegalen Rauschgifthandels und anderer Erscheinungsformen der Organisierten Kriminalität (2.OrgKG)

Gesetzentwurf der Fraktionen der CDU/CSU und F.D.P., BT-Drs. 12/6853 vom 18.02.94, Entwurf eines Gesetzes zur Änderung des Strafgesetzbuches, der Strafprozeßordnung und anderer Gesetze (Verbrechensbekämpfungsgesetz). Vom Parlament angenommen am 21.09.94, vom Bundesrat am 23.09.94 zugestimmt

4.6. Steuerrecht

Gesetzentwurf der Bundesregierung, BR-Drs. 794/93 vom 05.11.93, Entwurf eines Sechsten Gesetzes zur Änderung des Steuerberatungsgesetzes

4.7. Sonstiges

Unterrichtung durch die Bundesregierung, BR-Drs. 294/94 vom 06.04.1994, Vorschlag für eine Richtlinie des Rates über die Einzelheiten der Ausübung des aktiven und passiven Wahlrechts bei den Kommunalwahlen für Unionsbürger mit Wohnsitz in einem Mitgliedstaat, dessen Staatsangehörigkeit sie nicht besitzen - KOM(94)endg.; Ratsdok. 5744/94

5. Anordnung der Bundesanstalt für Arbeit

Anordnung des Verwaltungsrats der Bundesanstalt für Arbeit zur Änderung der Anordnung über die individuelle Förderung der beruflichen Fortbildung und Umschulung -(A Fortbildung und Umschulung) - (1. Änderungsanordnung zur A Fortbildung und Umschulung) vom 16. März 1994 (ANBA 1994, S. 295, Neufassung, S. 303)

6. Rechtsvorschriften der Bundesländer

Baden-Württemberg

Verordnung des Justizministeriums über die Zuständigkeit der Amtsgerichte in Haftsachen nach dem Ausländer- und Asylverfahrensgesetz vom 18. Februar 1994 (GBI. S. 139)

Verordnung der Landesregierung und des Innenministeriums zur Änderung der Ausländer- und Asyl-Zuständigkeitsordnung vom 4. Juli 1994 (GBI. S. 356)

Verordnung der Landesregierung zur Änderung der Verordnung über Zuständigkeiten und Kostenträgerschaft nach dem Asylbewerberleistungsgesetz vom 19. September 1994 (GBI. S. 560)

Bekanntmachung des Innenministeriums über die Aufhebung der Verwaltungsvorschrift zur Wahrnehmung der Abschiebung von Ausländern durch die Regierungspräsidien Stuttgart und Karlsruhe - Zentrale Abschiebungsbehörde - ZAB-VwV) vom 18. Oktober 1994 (GABI. S. 830)

Gesetz zu dem Abkommen zwischen den Ländern der Bundesrepublik Deutschland über die Genehmigung zur Führung akademischer Grade ausländischer Hochschulen und entsprechender ausländischer Grade vom 29. Oktober 1992 vom 12. Dezember 1994 (GBI. A. 644)

Bayern

Gesetz zur Anpassung des Bayerischen Landesrechts an das Abkommen vom 2. Mai 1992 über den Europäischen Wirtschaftsraum (EWR-Anpassungsgesetz) vom 24. Mai 1994 (GVBl. S. 392)

Berlin

Weisung Nr. 90 der Berliner Senatsverwaltung für Inneres vom 18.2.1994 - IV Gen 08960/1c, Ausländerrechtliche Sonderregelungen aufgrund des Assoziationsratsbeschlusses - ARB - Nr. 1/80, InfAusR 1994, S. 180

Rundschreiben der Staatsverwaltung für Inneres in Berlin vom 22.2.1994 - III C 2-0345/3.3, Erklärung der Vorab-Zustimmung bei nachzuholendem Sichtvermerksverfahren, InfAuslR 1994, S. 242

Verwaltungsvorschriften zur Änderung der Ausführungsvorschrift für die Gewährung von Leistungen nach den Vorschriften des Asylbewerberleistungsgesetzes vom 13. Mai 1994 (ABl. S. 1598)

Brandenburg

Erste Verordnung zur Änderung der Verordnung über die landesinterne Verteilung und Zuweisung von Asylbewerbern vom 29. April 1994 (GVBl. II, S. 318)

Gesetz zur Ausgestaltung der Rechte der Sorben (Wenden) im Land Brandenburg (Sorben [Wenden]-Gesetz - SWG) vom 7. Juli 1994 (GVBL. I, S. 294)

Verordnung über das Verfahren der Zustimmung und die Form der Führung ausländischer Grade vom 4. Oktober 1994 (GVBl. S. 784)

Bremen

Nutzungs- und Entgeltordnung für Übergangswohneinrichtungen der Stadtgemeinde Bremen vom 10. Februar 1994 (BremABl. S. 47)

Hamburg

Weisung Nr. 1/94 der Behörde für Inneres vom 14.03.1994.
Betr.: Verlängerung des Abschiebestopps für Bürgerkriegsflüchtlinge aus Bosnien-Herzegowina

Weisung Nr. 2/94 der Behörde für Inneres vom 26.04.1994
Betr.: Rückführung der gemäß Weisung Nr. 8/93 geduldeten Kroaten

Weisung Nr. 3/94 der Behörde für Inneres vom 21.06.1994
Betr.: Bleiberechtsregelung gemäß § 32 AuslG für pakistanische Staatsangehörige, die der Ahmadiyya-Glaubensgemeinschaft angehören

Weisung Nr. 4/94 der Behörde für Inneres vom 09.08.1994
Betr.: Aussetzung von Abschiebungen irakischer Kurden über Bagdad

Weisung Nr. 5/94 der Behörde für Inneres vom 14.09.1994
Betr.: Verlängerung des Abschiebestopps für Bürgerkriegsflüchtlinge aus Bosnien-Herzegowina

Weisung Nr. 6/94 der Behörde für Inneres vom 04.11.1994
Betr.: Sofortmaßnahme zur Entlastung überproportional belasteter Länder bei der Aufnahme von Bürgerkriegsflüchtlingen nebst Anl. 1: Umlaufbeschluß der Ständigen Konferenz der Innenminister und -senatoren der Länder vom 15. März 1994

Schreiben der Behörde für Inneres an das Einwohner-Zentralamt vom 13.12.1994, Betr.: Vorläufiger Abschiebungsstopp für Kurden aus der Türkei

Weisung Nr. 7/94 der Behörde für Inneres vom 16.12.1994
Betr.: Bleiberechtsregelung für Yeziden aus der Türkei

Weisung Nr. 8/94 der Behörde für Inneres vom 16.12.1994
Bleiberechtsregelung für pakistanische Staatsangehörige, die der
Ahmadiyya-Glaubensgemeinschaft angehören

Hessen

Anordnung über die zuständige Behörde für die Gewährung von Leistungen nach § 9 Abs. 2 des Bundesvertriebenengesetzes vom 27. Januar 1994 (GVBl. S. 58)

Verordnung zur Änderung der Verordnung zur Bestimmung von Zuständigkeiten nach dem Asylverfahrensgesetz vom 11. März 1994 (GVBl. I, S. 162)

Verordnung über die Verteilung ausländischer Flüchtlinge vom 10. Mai 1994 (GVBl. I, S. 272)

Verordnung zur Änderung der Verordnung zur Durchführung des Asylbewerberleistungsgesetzes vom 5. Juli 1994 (GVBl. I, S. 286)

Verordnung zur Änderung der Verordnung über die Zuständigkeit der Ausländerbehörden vom 23. September 1994 (GVBl. I, S. 428)

Verordnung über die Anerkennung des Lehrerdiploms von Angehörigen anderer EU-Mitgliedstaaten vom 17. September 1994 (GVBl. S. 438)

Gesetz zur Anpassung von Vorschriften des Gesundheitswesens an das Abkommen über den Europäischen Wirtschaftsraum und zur Änderung des Heilberufsgesetzes vom 11. Oktober 1994 (GVBl. S. 597)

Mecklenburg-Vorpommern

Gesetz über die Aufnahme von ausländischen Flüchtlingen, Aussiedlern und Spätaussiedlern im Land Mecklenburg-Vorpommern sowie zur Durchführung des Asylbewerberleistungsgesetzes (Landesaufnahmegergesetz - LAufnG-M-V) vom 28. Juni 1994 (GVOBl.M-V S. 660), berichtigt am 15. Juli 1994 (GVOBl.M-V S. 780)

Landesverordnung zur Änderung der Landesverordnung zur Durchführung des Asylverfahrensgesetzes vom 18. Juli 1994 (GVOBl.M-V S. 778)

Landesverordnung über die zuständigen Behörden nach dem Ausländergesetz und dem Aufenthaltsgesetz/EWG vom 18. Juli 1994 (GVOBl.M-V S. 779)

Niedersachsen

Gesetz zur Änderung des Niedersächsischen Meldegesetzes vom 10. Januar 1994 (Nds.GVBl. S. 1)

Gesetz zur Änderung des Aufnahmegergesetzes vom 10. Januar 1994 (Nds.GVBl. S. 9)

Zentralisierung von Zuständigkeiten bei der Durchführung der Abschiebung, Bekanntmachung des Innenministeriums vom 4.2.1994 (Nds.GVBl. S. 396)

Anordnung nach § 32 des Ausländergesetzes zur Erteilung von Aufenthaltsbefugnissen an Angehörige der Ahmadiyya-Glaubensgemeinschaft aus Pakistan, Runderlaß des Innenministeriums vom 21.6.1994 (Nds.MBl. S. 1099)

Gesundheitsuntersuchungen von Asylbegehrenden nach § 62 des Asylverfahrensgesetzes, Runderlaß des Sozialministeriums vom 18.7.1994 (Nds.MBl. S. 1281)

Änderung der Ordnung über Zulassungszahlen und Zulassungsverfahren für den Studiengang "Ergänzungsstudium für den Unterricht für Schüler nichtdeutscher Muttersprache - Ausländerpädagogik" an der Universität Oldenburg, Bekanntmachung des Ministeriums für Wissenschaft und Kultur vom 25.8.1994 (Nds.MBl. S. 1312)

Eingliederung von deutschen Aussiedlerinnen und Aussiedlern in Schule und Berufsausbildung; Hochschulzugang und Erwerb von Studienqualifikationen, Erlaß des Kultusministeriums vom 23. September 1994 (Nds.MBl. S. 1359)

Kostenerstattung nach dem Aufnahmegesetz; Kosten für die Anmietung von Wohnraum für Asylbewerberinnen und Asylbewerber, Runderlaß des Innernministeriums vom 22. September 1994 (Nds.MBl. S. 1355)

Aufnahme und Unterbringung von Asylbewerberinnen und Asylbewerbern; Festsetzung der Pauschale für persönliche und sächliche Verwaltungsausgaben für die Jahre 1994 und 1995, Runderlaß des Innenministeriums vom 29. September 1994 (Nds.MBl. S. 1355)

Unterbringung von Asylbewerberinnen und Asylbewerbern, Asylberechtigten und ausländischen Flüchtlingen; Abbau nicht mehr benötigter Wohnheimkapazitäten und Auslastung der Flüchtlingswohnheime, Runderlaß des Innenministeriums vom 11. Oktober 1994 (Nds.MBl. S. 1450)

Nordrhein-Westfalen

Verordnung zur Änderung der Verordnung über das vorübergehende Verlassen des Bereichs der Aufenthaltsgestattung durch Asylbewerber vom 11. Januar 1994 (GV.NW. S. 26)

Bekanntmachung zu dem Übereinkommen vom 19.Juni 1990 zur Durchführung des Übereinkommens von Schengen vom 14. Juni 1985 zwischen den Regierungen der Staaten der Benelux-Wirtschaftsunion, der Bundesrepublik Deutschland und der

Französischen Republik betreffend den schrittweisen Abbau der Kontrollen an den gemeinsamen Grenzen vom 18. Februar 1994 (GV.NW. S. 76)

Gesetz zur Änderung schulrechtlicher Vorschriften (Rechtsgrundlagengesetz) vom 17. Mai 1994 (GV.NW. S. 243)

Bekanntmachung des Inkrafttretens des Übereinkommens vom 19. Juni 1990 zur Durchführung des Übereinkommens von Schengen vom 14. Juni 1985 zwischen den Regierungen der Staaten der Benelux-Wirtschaftssunion, der Bundesrepublik Deutschland und der Französischen Republik betreffend den schrittweisen Abbau der Kontrollen an den gemeinsamen Grenzen vom 14. Juni 1994 (GV.NW. S. 264)

Gesetz zur Änderung der Kommunalverfassung vom 17. Mai 1994 (GV.NW. S. 270) - § 17a -

Bekanntmachung des Inkrafttretens des Abkommens über den Europäischen Wirtschaftsraum (EWR-Abkommen) vom 19. Juni 1994 (GV.NW. S. 317)

Gesetz zur Ausführung des Asylbewerberleistungsgesetzes (AGAsylbLG), Viertes Gesetz zur Änderung des Flüchtlingsaufnahmegesetzes und Zweites Gesetz zur Änderung des Landesaufnahmegesetzes vom 29. November 1994 (GV.NW. S. 1087)

Rheinland-Pfalz

Landesverordnung zur Durchführung des Asylverfahrensgesetzes und des Landesaufnahmegesetzes (AsylVO) vom 29. September 1994 (GVBl. S. 377)

Saarland

Gesetz Nr. 1342 zur Neuregelung ausländerrechtlicher Regelungen vom 23. Juni 1994 (Amtsbl. S. 1214)

Verordnung zur Änderung der Verordnung über Zuständigkeiten nach dem Asylverfahrensgesetz, dem Ausländergesetz und dem

Aufenthaltsgesetz/EWG vom 29. November 1994 (Amtsbl. S. 1614)

Sachsen

Entwurf für eine Verordnung der Sächsischen Staatsregierung zur Durchführung des Asylbewerberleistungsgesetzes (DVAsyl-LG)

Gesetz zur Aufnahme und Unterbringung von Asylbewerbern, Asylberechtigten und anderen ausländischen Flüchtlingen im Freistaat Sachsen (SächsGVBl. S. 357)

Sächsisches Gesetz über die Eingliederung von Aussiedlern und zur Durchführung des Bundesvertriebenengesetzes sowie anderer Kriegsfolgegesetze (Sächsisches Aussiedlereingliederungsgesetz-SächsAEG) vom 28. Februar 1994 (SächsGVBl. S. 359)

Gesetz über den Sächsischen Ausländerbeauftragten (SächsAusl-BeauftrG) vom 9. März 1994 (SächsGVBl. S. 465)

Gemeinsame Verordnung des Sächsischen Staatsministeriums für Wissenschaft und Kunst und des Sächsischen Staatsministeriums für Kultus über die Erweiterte Abschlußprüfung zum Erwerb der allgemeinen Hochschulreife für deutsche Aussiedler nach zweijährigem Sonderlehrgang (EAVO) vom 3. Juli 1994 (SächsGVBl. S. 1024)

Verordnung des Sächsischen Staatsministeriums des Innern zur Änderung der Eingliederungs-Zuständigkeitsverordnung vom 2. November 1994 (SächsGVBl. S. 1624)

Berichtigung des Gesetzes zur Aufnahme und Unterbringung von Asylbewerbern, Asylberechtigten und anderen ausländischen Flüchtlingen im Freistaat Sachsen vom 11. November 1994 (SächsGVBl. S. 1630)

Sachsen-Anhalt

Verordnung über das Genehmigungsverfahren zur Führung ausländischer akademischer Grade und entsprechender ausländischer staatlicher Grade oder Titel (AkkGrT-VO) vom 16. Mai 1994 (GVBl.LSA S. 604)

Verordnung über die gerichtliche Zuständigkeit im Asylverfahren vom 7. Juni 1994 (GVBl.LSA S. 624)

Verordnung über die Datenübermittlung für Asylbewerber (AsylDÜVO) vom 31. August 1994 (GVBl.LSA S. 944)

Schleswig-Holstein

Landesverordnung zur Änderung der Ausländer- und Asylverordnung vom 10. Februar 1994 (GVOBl. Sch.-H. S. 145)

Thüringen

Thüringer Verordnung zur Durchführung des Asylbewerberleistungsgesetzes vom 11. November 1994 (GVBl. S. 1214)

B. Publications (a selection)

1. Aufsätze

Das Abkommen zwischen der Bundesrepublik Deutschland und der Republik Chile über Rentenversicherung, Mitteilungen der Landesversicherungsanstalt Oberfranken und Mittelfranken 3/1994, S. 73f.

Acker, Sabine, Die Alterssicherungssysteme in der EU, AuS 3-4/1994, S. 16ff.

Adam, Heribert, Fremdenfeindlichkeit, Einwanderungspolitik und Multikulturalismus in Kanada und Deutschland, Leviathan 1/1994, S. 60ff.

Adamy, Wilhelm, Menschenrechte in der Arbeitswelt und internationaler Handel, Arbeitsrecht im Betrieb 1994, S. 531ff.

Akbulut, Nazire, Zur aktuellen Lage türkischer Studentinnen an der Freien Universität Berlin: Lebensbedingungen, Eigenbild, Vorurteile, in: Interkulturell 1/2/3/-1993, S. 235ff.

Akmann, Torsten, Die Zusammenarbeit in den Bereichen Justiz und Inneres als "3. Säule" des Maastrichter Unionsvertrages, Juristische Arbeitsblätter 2/1994, S. 49ff.

Albers, Hartmut, Glaubensfreiheit und schulische Integration von Ausländern, Deutsches Verwaltungsblatt 1994, S. 984ff.

Alexy, Hans, Minderheitenschutz und Grundgesetz - Zur Rechtsstellung von Zuwanderern, Informationsbrief Ausländerrecht 1994, S. 301ff.

Allkemper, Ludwig, Wege zur Verbesserung des Individualrechtschutzes im Vorabentscheidungsverfahren nach Artikel 177 EG-Vertrag, Europäisches Wirtschafts- & Steuerrecht 1994, S. 253ff.

Bade, Klaus J., Wanderers Elend. Migration als Gestaltungsauftrag, Evangelische Kommentare 1/1994, S. 13ff.

Bade, Klaus, Was man tabuisiert, kann man nicht gestalten, Frankfurter Rundschau vom 21.November 1994

Balze, Wolfgang, Die Richtlinie über die Arbeitszeitgestaltung, Europäische Zeitschrift für Wirtschaftsrecht 1994, S. 205ff.

Bartsch, Hans-Jürgen, Die Entwicklung des internationalen Menschenrechtsschutzes 1991 - 1993, Neue Juristische Wochenschrift 1994, S. 1321ff.

Bebber, Frank van, Kein Monopol der Wohlfahrtsverbände, EG Magazin 4/1994, S. 36f.

Bell, Roland, Abschiebung von Kindern ohne die Eltern, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 183

Bercusson, Brian, Social Policy at the Crossroads: European Labour Law after Maastricht, in: Renaud Dehoussé (Ed.), Europe After Maastricht, München 1994, S. 149ff.

Bieback, Karl-Jürgen, Diskriminierungs- und Behinderungsverbote im europäischen Sozialrecht, Die Sozialgerichtsbarkeit 1994, S. 301ff.

Bieber, Roland, Die Abkommen von Schengen über den Abbau von Grenzkontrollen, Neue Juristische Wochenschrift 1994, S. 294ff.

Billerbeck, Rudolf, Überlegungen zur Einwanderung, Zeitschrift für Sozialreform 1994, S. 209ff.

Blomeyer, Wolfgang, Der Einfluß der Rechtsprechung des EuGH auf das deutsche Arbeitsrecht, Neue Zeitschrift für Arbeitsrecht 1994, S. 633ff.

Borchmann, Michael, Änderungen im deutschen Europawahlrecht, Neue Juristische Wochenschrift 1994, S. 1522f.

Borchmann, Michael, Neue Bund-Länder-Vereinbarung über die Zusammenarbeit in Angelegenheiten der Europäischen Union, Europäische Zeitschrift für Wirtschaftsrecht 1994, S 172f.

- Brandhuber, Klaus, Die Problematik des Schächtens im Licht der aktuellen Rechtsprechung, Neue Zeitschrift für Verwaltungsrecht 1994, S. 561ff.
- Brandt, Kerstin, Der Europäische Gerichtshof (EuGH) und das Europäische Gericht erster Instanz (EuG) - Aufbau, Funktion und Befugnis, Juristische Schulung 1994, S. 300ff.
- Brenner, Michael, Möglichkeiten und Grenzen grundrechtsbezogener Verfassungsänderungen, dargestellt anhand der Neuregelung des Asylrechts, Der Staat 1993, S. 493ff.
- Brunner, Karl-Michael / Jost, Gerhard / Lueger, Manfred, Flüchtlingsunterbringung in einer Kleingemeinde: Eine Fallstudie zur sozialen Dynamik von Migrationsprozessen, Soziale Welt 1994, S. 125ff.
- Brunner, Manfred, Kraftakt gelungen, EG Magazin 11/1993, S. 36
- Brunns, Marco, Die Neuregelung der Einreise von Flüchtlingen über die Flughäfen, Informationsdienst zur Ausländerarbeit 4/1994, S. 30ff.
- Buczko, Gerhard, Ausländer in der Rentenversicherung, Die Angestelltenversicherung 1994, S. 99ff.
- Cassese, Sabino, Der Einfluß des gemeinschaftsrechtlichen Verwaltungsrechts auf die nationalen Verwaltungssysteme, Der Staat 1994, S. 25ff.
- Classen, Claus Dieter, Europäische Integration und demokratische Legitimation, Archiv des öffentlichen Rechts 1994, S. 238ff.
- Classen, Claus Dieter, Asylrecht in Frankreich: Zur Bedeutung der verfassungs- und völkerrechtlichen Vorgaben, Die Öffentliche Verwaltung 1994, S. 227ff.
- Clever, Peter, Ängste abbauen, Bundesarbeitsblatt 2/1995, S. 21ff. (Teil II)
- Clever, Peter, Vorsichtige Kurskorrektur?, Bundesarbeitsblatt 1/1995, S. 10ff. (Teil I)

- Conrad, Sabine, Der Europäische Sozialfonds, Zeitschrift für Sozialhilfe und Sozialgesetzbuch ZfSH/SGB, 1994, S. 409ff.
- Deibel, Klaus, Geldleistungen im Rahmen des Asylbewerberleistungsgesetzes, Zeitschrift für Sozialhilfe und Sozialgesetzbuch ZfSH/SGB 1994, S. 359
- Detterbeck, Steffen, Staatshaftung für die Mißachtung von EG-Recht, Verwaltungs-Archiv 1994, S. 159ff.
- Deubner, Christian / Kramer, Heinz, Die Erweiterung der Europäischen Union nach Mittel- und Osteuropa: Wende oder Ende der Gemeinschaftsbildung?, Aus Politik und Zeitgeschichte, Beilage zur Wochenzeitung Das Parlament B 18-19/94 vom 6.Mai 1994
- Deutscher Caritasverband, Erfahrungsbericht zur Situation von Asylsuchenden und Flüchtlingen in Deutschland, September 1994
- Dieball, Heike, EuroAS-Stichwort: Sexuelle Belästigung am Arbeitsplatz, Europäisches Arbeits- und Sozialrecht 3/1994, S. 7ff.
- Diebold, Annemarie / Schüren, Peter, Sozialversicherung bei Arbeitnehmerüberlassung, Neue Zeitschrift für Sozialrecht 1994, S. 296ff.
- Donk, Ute, Der Dolmetscher als Hilfspolizist - Zwischenergebnis eine Feldstudie -, Zeitschrift für Rechtssoziologie 1994, S. 37ff.
- Döring, Diether, Zur Alterssicherung von Zuwanderern in den Ländern der Europäischen Union, Sozialer Fortschritt 1994, S. 239ff.
- Dronsch, Gerhard, Datenschutz für Ausländerinnen und Ausländer, Forum 3/1994, S. 17f.
- Düring, Markus, Das neue Wahlrecht für Unionsbürger bei den Wahlen zum Europäischen Parlament, Neue Zeitschrift für Verwaltungsrecht 1994, S. 1180ff.

- Ebenroth, Carsten Thomas / Hübschle, Wolfgang, "Bestand" und "Ausübung" gewerblicher Schutzrechte. Europäisches Wirtschafts- & Steuerrecht 1994, S. 109ff.
- Eichenhofer, Eberhard, Europarechtliche Probleme der sozialen Pflegeversicherung, Vierteljahresschrift für Sozialrecht 1994, S. 323ff.
- Eichenhofer, Eberhard, Internationales Sozialrecht - Versuch einer Grundlegung, Vierteljahresschrift für Sozialrecht 1/1994, S. 1ff.
- Eichenhofer, Eberhard, Offene europarechtliche Fragen des Rentenreformgesetzes, Die Sozialgerichtsbarkeit 1994, S. 353ff.
- Europäisches Parlament (EP), Straßburg, Beziehungen zwischen der Europäischen Union und dem Europarat / Beitritt zur EMRK, Entschließung vom 15. Dezember 1993 - Dok. A3-0408/93, Europäische Grundrechte-Zeitschrift 1994, S. 82f.
- Everling, Ulrich, Das Maastricht-Urteil des Bundesverfassungsgerichts und seine Bedeutung für die Entwicklung der Europäischen Union, Integration 3/94, Beilage zur Europäischen Zeitung 7-8/1994, S. 165ff.
- Felix, Dagmar / Jonas, Walter, Die falsa demonstratio im Rahmen der Verfassungsbeschwerde, Juristische Arbeitsblätter 1994, S. 343ff.
- Felix, Dagmar, Kindergeldansprüche von Ausländern nach dem Bundeskindergeldgesetz, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 124ff.
- Fijalkowski, Jürgen, Berlin als multikulturelle Stadt, in: Werner Süß (Hrsg.), Hauptstadt Berlin, Band 1: Nationale Hauptstadt - Europäische Metropole, Berlin 1993
- Fijalkowski, Jürgen, Die Bundesrepublik und das Migrationsproblem: Historische Erfahrungen und aktuelle Herausforderungen, in: Manfred Knapp (Hrsg.), Migration im neuen Europa, Stuttgart 1994 (Internationale Beziehungen Bd. 5)

- Friedrich, Klaus, Das Abkommen über den Europäischen Wirtschaftsraum, *Der Betrieb* 1994, S. 313ff.
- Frommel, Monika, Fremdenfeindliche Gewalt, Polizei und Strafjustiz, *Kritische Justiz* 1994, S. 323ff.
- Funk, Winfried, Ausland und Ausländer im Recht der Kindererziehungszeiten, *Vierteljahresschrift für Sozialrecht* 1994, S. 119ff.
- Füssel, Hans-Peter, Multikulturelle Schule?, *Kritische Justiz* 1994, S. 500ff.
- Gärtner, Rudolf, EG-Versicherungsbinnenmarkt und Versicherungsvertragsrecht, *Europäisches Wirtschafts- & Steuerrecht* 1994, S. 114ff.
- Gersdorf, Hubertus, Funktionen der Gemeinschaftsgrundrechte im Lichte des Solange II-Beschlusses des Bundesverfassungsgerichts, *Archiv des öffentlichen Rechts* 1994, S. 400ff.
- Giesen, Richard, Pflegeversicherung und Europäisches Gemeinschaftsrecht, *Sozialgesetzgebung* 1994, S. 63ff.
- Glauben, Paul J., Unterbringung von Flüchtlingen als Pflichtaufgabe der kommunalen Selbstverwaltung, *Die Öffentliche Verwaltung* 1994, S. 821ff.
- Glombik, Manfred, Der Rentner im Binnenmarkt, *EG Magazin* 4/1994, S. 38f.
- Goos, Wolfgang, Kommt der Europäische Betriebsrat?, *Neue Zeitschrift für Arbeitsrecht* 1994, S. 776ff.
- Gorenflos, Walter, Wanderer und moderne Nomaden - auf dem Weg ins 21. Jahrhundert, *Zeitschrift für Ausländerrecht und Ausländerpolitik* 1994, S. 137ff.
- Götz, Volkmar, Auf dem Weg zur Rechtseinheit Europa?, *Juristen Zeitung* 1994, S. 265ff.
- Gümen, Sedef, Der westliche Diskurs aus einem kritischen Blickwinkel, *Informationsdienst zur Ausländerarbeit* 4/1994, S. 87ff.

- Gutmann, Rolf, Schutz des Familienlebens nach der Europäischen Menschenrechtskonvention, Arbeitsrecht im Betrieb 1994, S. 469ff.
- Haberland, Jürgen, Der Asylkompromiß vom 6. Dezember 1992 - ein Jahr danach, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 3ff.
- Hahn, Michael J., Die rechtliche Stellung der Minderheiten in Deutschland, in: Jochen Abr. Frowein / Rainer Hofmann / Stefan Oeter (Hrsg.), Das Minderheitenrecht europäischer Staaten, Berlin 1993, S. 62ff.
- Hailer, Thomas, Die unwillkommenen Nachbarn, EG Magazin 1-2/1994, S. 46f.
- Hassenstein, Bernhard, Die Tragweite verhaltens-anthropologischer Aussagen für rechtswidriges Verhalten, abgehandelt am Beispiel: Brandanschläge auf Ausländer-Unterkünfte, in: Klaus Letzgus u.a. (Hrsg.), Für Recht und Staat, Festschrift für Herbert Helmrich zum 60. Geburtstag, München 1994, S. 1093ff.
- Hauk, Andreas, Sachleistungen für Asylbewerber, Neue Zeitschrift für Verwaltungsrecht 1994, S. 768ff.
- Häupler, Klaus, 30 Jahre deutsch-türkisches Sozialversicherungsabkommen, Mitteilungen der Landesversicherungsanstalt Oberfranken und Mittelfranken Nr. 10/1994, S. 433ff.
- Hausmann, Hartmut, Was wäre, wenn, EG Magazin 4/1994, S. 38ff.
- Heine, Wolfgang, Mindestsicherung - vor allem im Alter, Kompaß 1994, S. 49ff.
- Heinze, Meinhard, Europäische Einflüsse auf das nationale Arbeitsrecht, Recht der Arbeit 1994, S. 1ff.
- Heinze, Meinhard, Probleme der Mitbestimmung und Betriebsverfassung bei einer grenzüberschreitenden Umstrukturierung von Unternehmen im Binnenmarkt, Zeitschrift für Unternehmens- und Gesellschaftsrecht 1/1994, S. 47ff.

- Heldmann, Hans Heinz, Familiennachzug für Türken in Deutschland, Informationsbrief Ausländerrecht 1995, S. 1ff.
- Heyder, Udo, Zum Gesetz über das Ausländerzentralregister, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 153ff.
- Hillgenberg, Hartmut, Flüchtlinge als Herausforderung für Europa, Europa-Archiv 1994, S. 537ff.
- Hobe, Stephan, Das Staatsvolk nach dem Grundgesetz, Juristen Zeitung 1994, S. 191ff.
- Hoch, Martin, Türkische politische Organisationen in der Bundesrepublik Deutschland, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 17ff.
- Hoffmann, Lutz, Die unaufhaltbare Einwanderung, in: Mehdi Jafari Gorzini / Heinz Müller (Hrsg.), Handbuch zur interkulturellen Arbeit, Wiesbaden 1993, S. 33ff.
- Hofmann, Claus F. / Scholz, Wolfgang, Soziale Sicherung in der Europäischen Gemeinschaft, Kompaß 1/1994, S. 1ff.
- Holz-Dahrenstaedt, Andrea, Asyl in Österreich - Ein sicheres Drittland?, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 174ff.
- Hopfauf, Axel, Zur Frage der Abschiebung anerkannter Asylberechtigter, Neue Zeitschrift für Verwaltungsrecht 1994, S. 566ff.
- Hösle, Vittorio, Realitivismus, Historismus, Multikulturalismus, Zweiwochendienst 1994, S. Vff.
- Huber, Bertold, Prozessuale Besonderheiten asylrechtlicher Eilverfahren auf Gestattung der Einreise, Neue Zeitschrift für Verwaltungsrecht 1994, S. 138f.
- Ibsen, Hans Peter, Zehn Glossen zum Maastricht-Urteil, Europarecht 1994, S. 1ff.

- Jarass, Hans D., EG-Kompetenzen und das Prinzip der Subsidiarität nach Schaffung der Europäischen Union, Europäische Grundrechte-Zeitschrift 1993, S. 209ff.
- Junker, Abbo, Arbeits- und Sozialrecht in der Europäischen Union, Juristen Zeitung 1994, S. 277ff.
- Just, Wolf-Dieter, Petrus und das Wort vom Gehorsam gegen Gott, Frankfurter Rundschau v. 4. November 1994
- Kahl, Bruno, Europäische Union: Bundesstaat - Staatenbund - Staatenverbund (Zum Urteil des BVerfG vom 12. Oktober 1993), Der Staat 1994, S. 241ff.
- Kaufmann, Otto / Köhler, Peter A., Invaliditätssicherung in den Ländern der EG, Die Angestelltenversicherung 1993, S. 218ff.
- Kılıç, Memet, Deutsche-türkische Doppelstaatsangehörigkeit?, Zeitschrift für Standesamtswesen 1994, S. 73ff.
- Kirbach, Roland, Nicht mehr nach Hause, Die Zeit vom 25. November 1994
- Kirchhof, Paul, Verfassungsrechtlicher Schutz und internationaler Schutz der Menschenrechte: Konkurrenz oder Ergänzung?, Europäische Grundrechte-Zeitschrift 1994, S. 16ff.
- Klässer, Wilfried, Sozialdatenschutz nach dem Zweiten Gesetz zur Änderung des Sozialgesetzbuches - 2.SGBÄndG, Recht der Datenverarbeitung 1994, S. 117ff.
- Klebes, Heinrich, Noch Chancen für ein europäisches Minderheitenrecht? Zum Stand der Arbeiten im Europarat, Integration 3/94, Beilage zur Europäischen Zeitung 7-8/1994, S. 176ff.
- Klein, Eckart / Haratsch, Andreas, Neuere Entwicklung des Rechts der Europäischen Gemeinschaften, 2. Teil, Die Öffentliche Verwaltung 1994, S. 133ff. (1. Teil: 1993, S. 785ff.)
- Klein, Eckart, Der Einfluß des Europäischen Gemeinschaftsrechts auf das Verwaltungsrecht der Mitgliedstaaten, Der Staat 1994, S. 39ff.

Knobbe-Keuk, Brigitte, Das Urteil des EuGH im Falle Werner zur Besteuerung der Grenzgänger - ärgerlich, aber nicht das letzte Wort, Deutsches Steuerrecht 1994, S. 425ff.

Knösel, Peter, Erste Anmerkungen zum Asylbewerberleistungsgesetz in Theorie und Praxis, Informationsbrief Ausländerrecht 1994, S. 68ff.

Koch, Richard, Berufsbildung in Europa: Grundstrukturen der Mitwirkung der Sozialpartner in den Mitgliedstaaten und auf der Gemeinschaftsebene, BWP 2/1994, S. 26ff.

Kokott, Juliane, Deutschland im Rahmen der Europäischen Union - zum Vertrag von Maastricht, Archiv des öffentlichen Rechts 1994, S. 207ff.

Költzsch, Martin, Auswirkungen des EWR-Abkommens. Änderungen im Versicherung- und Beitragsrecht der Rentenversicherungen, Die Angestelltenversicherung 1994, S. 139ff.

Kommission der Europäischen Gemeinschaften, Stellungnahme vom 4.5.1994, Deutsches Grenzpendlergesetz EG-vertragswidrig?, Europäisches Wirtschafts- & Steuerrecht 1994, S. 267f.

König, Christian, Die Europäische Sozialunion als Bewährungsprobe der supranationalen Gerichtsbarkeit, Europarecht 1994, S. 175ff.

Kugelmann, Dieter, Verfassungsmäßigkeit der Flughafenregelung des § 18a AsylVfG, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 158ff.

Kühnhardt, Ludger , Menschenrechte, Minderheitenschutz und der Nationalstaat im KSZE-Prozeß, Aus Politik und Zeitgeschichte, Beilage zur Wochenzeitung Das Parlament B 47/94 vom 25. November 1994, S. 11ff.

Kunkel, Peter-Christian, Das Asylbewerberleistungsgesetz in Konkurrenz mit Sozialleistungsgesetzen. Neue Zeitschrift für Verwaltungsrecht 1994, S. 352ff.

Langohr-Plato, Uwe, Tendenzen zum Gleichbehandlungsgrundsatz in der betrieblichen Altersversorgung, Monatsschrift für Deutsches Recht 1994, S. 19ff.

Leinemann, Wolfgang / Schütz, Friedrich, Wirkungen der IAO-Abkommen auf das Recht der Bundesrepublik Deutschland, Zeitschrift für Arbeitsrecht 1994, S. 1ff.

Lenz, Carl Otto, Der europäische Grundrechtsstandard in der Rechtsprechung des Europäischen Gerichtshofes, Europäische Grundrechte-Zeitschrift 1993, S. 585ff.

Lenz, Carl Otto, Rechtsschutz im Binnenmarkt, Neue Juristische Wochenschrift 1994, S. 2063ff.

Lohre, Werner / Rehwald, Rainer, Arbeitserlaubnis für ausländische Arbeitnehmer, Arbeitsrecht im Betrieb 1994, S. 218ff.

Lörcher, Klaus, Die Arbeitszeitrichtlinie der EU, Arbeit und Recht 1994, S. 77ff.

Löwenheim, Ulrich, Gemeinschaftsrechtliches Diskriminierungsverbot und nationales Urheberrecht, Neue Juristische Wochenschrift 1994, S. 1046ff.

Lüdke, Hendrik, Inländerdiskriminierung in ausländerrechtlichen Vorschriften - Reichweite der Singh - Entscheidung des EuGH, Neue Zeitschrift für Verwaltungsrecht 1994, S. 1178ff.

Mäder, Werner, Gesundheitspolitische Aspekte der EG-Entwicklungs zusammenarbeit, Sozialer Fortschritt 1994, S. 24ff.

Mäder, Werner, Soziale Bürgschaft in der Europäischen Union, Zeitschrift für Sozialhilfe und Sozialgesetzbuch ZfSH/SGB, 1994, S. 178ff.

Magiera, Siegfried, Die Grundgesetzänderung von 1992 und die Europäische Union, Jura 1994, S. 1ff.

Mahrenholz, Ernst Gottfried, Das Volk, abgewickelt, Der Spiegel 14/1994, S. 37ff.

Majoros, Ferenc, Die Nachbarschaftsverträge der Bundesrepublik Deutschland mit Ungarn und der Tschechoslowakei, Berichte des Bundesinstituts für ostwissenschaftliche und internationale Studien 14/1993

Maydell, Bernd von, Die soziale Sicherheit im Jahr 2000: Möglichkeiten und Probleme - einschl. der internationalen Harmonisierung, Die Angestelltenversicherung 1994, S. 357ff.

Meessen, Karl, Maastricht nach Karlsruhe, Neue Juristische Wochenschrift 1994, S. 549ff.

Menzel, Ulrich, Global und im Dickicht der Städte: Stammesverhalten . Zur "Ethnisierung" internationaler Beziehungen. Frankfurter Rundschau vom 22.8.1994

Meyer auf der Heyde, Achim, Der Einsatz der Strukturfonds der EU nach der Reform II in der Förderphase 1994 - 1999, Nachrichtendienst des Deutschen Vereins für öffentliche und private Fürsorge 1994, S. 136ff.

Müller, Britta, Ausländer in Rostock, zwei Jahre nach den Krawallen in Lichtenhagen, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 172ff.

Münch, Ingo von, Darf es ein bißchen mehr sein? - Gedanken zur Mehrstaatigkeit, Neue Juristische Wochenschrift 1994, S. 1199ff.

Nanz, Klaus-Peter, Schengener Übereinkommen und Personenfreiheit, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 99ff.

Nettesheim, Martin, Auslegung und Fortbildung nationalen Rechts im Lichte des Gemeinschaftsrechts, Archiv des öffentlichen Rechts 1994, S. 261ff.

Neue Wanderungssituationen erfordern neue Antworten, in: Katholischer Lagerdienst-Brief Ausländische Flüchtlinge Nr. 3 vom 14. Januar 1994, S. 1ff.

Oberheim, Rainer, Die Eignungsprüfung für EU-Rechtsanwälte, Neue Juristische Wochenschrift 1994, S. 1846f.

- Ogata, Sadako, Plädoyer für eine umfassende europäische Flüchtlingspolitik, Europa-Archiv 1994, S. 431ff.
- Ohlemacher, Thomas, Gewalt gegen Ausländer, WZB-Mitteilungen 63, März 1994, S. 26ff.
- Oppermann, Thomas, Die Dritte Gewalt in der Europäischen Union, Deutsches Verwaltungsblatt 1994, S. 901ff.
- Otte, Wolfgang, Die Aufenthaltsbeendigung nach dem Ausländergesetz, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 108ff.
- Özkara, Sami, Berufberatung und Elternarbeit, Informationsdienst zur Ausländerarbeit 4/1994, S. 76ff.
- Palme, Christoph / Hepp-Schwab, Hermann / Wilska, Stephan, Freizügigkeit im Profisport - EG-rechtliche Gewährleistungen und prozessuale Durchsetzbarkeit, Juristen Zeitung 1994, S. 343ff.
- Partsch, Karl Josef, Neue Maßnahmen zur Bekämpfung von Rassismus und Fremdenhaß, Europäische Grundrechte-Zeitschrift 1994, S. 429ff.
- Penski, Ulrich, Bestand nationaler Staatlichkeit als Bestandteil der Änderungsgrenzen in Artikel 79 III GG, Zeitschrift für Rechtspolitik 1994, S. 192ff.
- Peschel, Jürgen, Berufliche Qualifizierung im regionalen Strukturwandel - Nutzung europäischer Förderungsmittel. Das TURN-Netzwerk zur Förderung regionaler Qualifizierungs- und Beschäftigungsprojekte, Gewerkschaftliche Bildungspolitik 1994, S. 178ff.
- Philips-Slavkoff, Elisabeth, Wer hat in der Union das Sagen?, EG Magazin 1-2/1994, S. 49ff.
- Pitschas, Rainer, Integrationsprobleme des Polizeirechts in Europa, Neue Zeitschrift für Verwaltungsrecht 1994, S. 625ff.

Pollern, Hans-Ingo von, Die Entwicklung der Asylbewerberzahlen im Jahre 1993, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 29ff.

Randzio-Plath, Christa, Frauenförderung und die EU-Strukturfonds, WSI-Mitteilungen 4/1994

Reichert, Eugen, Dokumentation der Abkommen (Internationale Sozialversicherung), Bundesarbeitsblatt 2/1994, S. 20ff.

Reifner, Udo, Bargeldloser Zahlungsverkehr und Diskriminierungsverbot, Juristen Zeitung 1994, S. 454ff.

Reissenberger, Michael, Rückfahrkarte nach Maastricht, EG Magazin 11/1993, S. 34

Reiter, Markus, Armseligkeit vor den Toren der EG, EG Magazin 1-2/1994, S. 48

Renck, Ludwig, Rechtsfragen des Religionsunterrichts im bekennnisneutralen Staat, Die Öffentliche Verwaltung 1994, S. 27ff.

Renner, Günter, Asylrecht in Deutschland nach der Grundgesetzänderung, Neue Justiz 1994, S. 241ff.

Renner, Günter, Ausländerintegration, ius soli und Mehrstaatigkeit, Zeitschrift für das gesamte Familienrecht 1994, S. 865ff.

Renner, Günter, Der "Asylkompromiß" und seine Folgen, Neue Zeitschrift für Verwaltungsrecht 1994, S. 452ff.

Rennert, Klaus, Fragen zur Verfassungsmäßigkeit des neuen Asylverfahrensrechts, Deutsches Verwaltungsblatt 1994, S. 717ff.

Rhode, Andreas, Subsidiarität - katholische Soziallehre und Europarecht, Bayerische Verwaltungsblätter 1994, S. 488ff.

Rittstieg, Helmut, Einbürgerung von iranischen Staatsangehörigen, Informationsbrief Ausländerrecht 1994, S. 32f.

- Rittstieg, Helmut, Sozialrechtliche Gleichstellung von Flüchtlingen auf Grund von Europarecht, Informationsbrief Ausländerrecht 1994, S. 40f.
- Roeser, Thomas, Stattgebende Kammerentscheidungen des Bundesverfassungsgerichts zum Grundrecht auf Asyl, Europäische Grundrechte-Zeitschrift 1994, S. 85ff.
- Röger, Ralf, Ein neuer Informationsanspruch auf europäischer Ebene: Der Verhaltenskodex vom 6. Dezember 1993 für den Zugang der Öffentlichkeit zu Kommissions- und Ratsdokumenten, Deutsches Verwaltungsblatt 1994, S. 1182ff.
- Rohn, Stephan / Sannwald, Rüdiger, Die Ergebnisse der Gemeinsamen Verfassungskommission, Zeitschrift für Rechtspolitik 1994, S. 65ff.
- Roth, Wulf-Henning, Verbraucherschutz über die Grenzen, Recht der Internationalen Wirtschaft 1994, S. 275ff.
- Rumpf, Olav, Wann erlischt das Aufenthaltsrecht nach Artikel 6 I des Beschlusses Nr. 1/80 des Assoziationsrates EWG - Türkei, Neue Zeitschrift für Verwaltungsrecht 1994, S. 1189ff.
- Sander, Günther, Lernen in Europa - Lernen für Europa: Die internationale und interkulturelle Dimension in der Hochschulausbildung, Gewerkschaftliche Bildungspolitik 1994, S. 174ff.
- Sarninghausen, Hans-Cord, Nachbarrechte gegen Unterkünfte für Asylbewerber im öffentlichen Baurecht, Neue Zeitschrift für Verwaltungsrecht 1994, S. 741ff.
- Sauer, Jürgen, Ermessensleistungen an Ausländer nach § 120 Absatz 1 Satz 2 BSGH, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 168ff.
- Schaub, Günter, Der Rechtsschutz im Arbeitsrecht vor dem Gerichtshof der Europäischen Gemeinschaften, Neue Juristische Wochenschrift 1994, S. 81ff.

- Schaub, Günter, Europäisierung des deutschen Arbeitsrechts, Neue Zeitschrift für Arbeitsrecht 1994, S. 769ff.
- Schillig, Theodor, Gleichheitssatz und Inländerdiskriminierung, Juristen Zeitung 1994, S. 8ff.
- Schlüter, Jürgen, Einigung auf EU-Mindestvorschriften, Bundesarbeitsblatt 11/1994, S. 5ff.
- Schmidt, Hermann, Das Prinzip der Partnerschaft in einem offenen europäischen Raum für Berufsausbildung und Qualifizierung, BWP 2/1994, S. 24ff.
- Schmidt-Aßmann, Eberhard, Empfiehlt es sich, das System des Rechtsschutzes und der Gerichtsbarkeit in der Europäischen Union zu verwirklichen?, Juristen Zeitung 1994, S. 832ff.
- Schmitt, Jochem, Höhe des Schadensersatzanspruchs bei diskriminierender Entlassung einer Arbeitnehmerin, Wirtschaftsrechtliche Beratung 1-2/1994, S. 42ff.
- Schneider, Jens-Peter, Effektiver Rechtsschutz Privater gegen EG-Richtlinien nach dem Maastricht-Urteil des Bundesverfassungsgerichts, Archiv des öffentlichen Rechts 1994, S. 294ff.
- Scholl, Heinz / Schieffer, Martin, Überlegungen zu einer Novellierung des Asylbewerberleistungsgesetzes, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 131ff.
- Scholz, Peter, Das Abkommen über den Europäischen Wirtschaftsraum, EWR-Abkommen - ein Meilenstein für die künftige Entwicklung Europas, Die Angestelltenversicherung 1994, S. 63ff.
- Schöning, Udo, Der neue Sozialdatenschutz, Die Angestelltenversicherung 1994, S. 201ff.
- Schotten, Thomas, Der Zugang von Unionsbürgern zum deutschen Beamtenverhältnis, Deutsches Verwaltungsblatt 1994, S. 567ff.

- Schriever-Steinberg, Angelika, Das Ausländerzentralregistergesetz, Neue Juristische Wochenschrift 1994, S. 3276f.
- Schröder, Meinhard, Das Bundesverfassungsgericht als Hüter des Staates im Prozeß der europäischen Integration, Deutsches Verwaltungsblatt 1994, S. 316ff.
- Schulte, Bernd, Perspektiven der Alterssicherung in der Europäischen Union - Zwanzig Thesen -, Zeitschrift für internationales Arbeits- und Sozialrecht 1994, S. 240ff.
- Schulze-Fielitz, Helmuth, Auf dem Wege zu einer offenen Gesellschaft europäischer Staatsrechtslehrer, Deutsches Verwaltungsblatt 1994, S. 991ff.
- Schwachheim, Jürgen F., Zugangsfiktion (§ 10 II AsylVfG) und behördliche Belehrung: Eine kritische Betrachtung der jüngsten Rechtsprechung des BVerfG, Neue Zeitschrift für Verwaltungsrecht 1994, S. 970ff.
- Schwarze, Jürgen, Europapolitik unter deutschem Verfassungsrichtervorbehalt, Neue Justiz 1994, S. 1ff.
- Schwarze, Jürgen, Grundrechte der Person im Europäischen Gemeinschaftsrecht, Neue Justiz 1994, S. 53ff.
- Sieveking, Klaus, Auswirkungen des Assoziationsrechts der EG auf das nationale Sozialrecht, Deutsche Rentenversicherung 1994, S. 40ff.
- Sieveking, Klaus, Die Anwendung des Assoziationsratsbeschlusses Nr. 3/80 auf türkische Staatsangehörige in Deutschland, Neue Zeitschrift für Sozialrecht 1994, S. 213ff.
- Sieveking, Klaus, Die sozialrechtliche Stellung von Flüchtlingen in der Bundesrepublik Deutschland, Vierteljahresschrift für Sozialrecht 1994, S. 45ff.
- Sieveking, Klaus, Zur Frage eines Antidiskriminierungsgesetzes gegen ethnische Diskriminierung - Thesen, Zeitschrift für Sozialreform 1994, S. 259ff.

Simitis, Spiros, Europäisierung oder Renationalisierung des Arbeitsrechts, in: *Arbeitsrecht in der Bewährung*, Festschrift für Otto Rudolf Kissel, München 1994, S. 1097ff.

Sitte, Ralf / Ziegler, Astrid, *Die EU-Strukturfonds nach der Reform*, WSI-Mitteilungen 4/1994

Söllner, Alfons, *Asylpolitik im "deutschen Frühling"*, Informationsdienst zur Ausländerarbeit 4/1994, S. 45ff.

Sporrer, Anna, *Europäische Grundrechte für Frauen?*, Streit 1/1994, S. 3ff.

Stadie, Holger, *Unmittelbare Wirkung von EG-Richtlinien und Bestandskraft von Verwaltungsakten*, Neue Zeitschrift für Verwaltungsrecht 1994, S. 435ff.

Steck, Brigitte, *Geplante Entsende-Richtlinie nach Maastricht ohne Rechtsgrundlage*, Europäische Zeitschrift für Wirtschaftsrecht 1994, S. 140ff.

Steineck, Alexander, *Soll die Europäische Union Einwanderer aus Drittstaaten nach Bildungsmerkmalen auswählen?*, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 177ff.

Steinmeyer, Heinz-Dietrich, *Die Alters-, Invaliditäts- und Hinterbliebenensicherung Selbständiger in den Mitgliedstaaten der Europäischen Gemeinschaft*, Neue Zeitschrift für Sozialrecht 1994, S. 103ff.

Steinmeyer, Heinz-Dietrich, *Die Austauschbarkeit arbeitsrechtlicher und sozialrechtlicher Gestaltungsformen und das Europäische Gemeinschaftsrecht*, in: *Arbeitsrecht in der Bewährung*, Festschrift für Otto Rudolf Kissel, München 1994, S. 1165ff.

Streit, Arnold, *Das Abkommen über den Europäischen Wirtschaftsraum*, Neue Juristische Wochenschrift 1994, S. 555ff.

Studentenjobs treiben das Vermittlungsergebnis der ZAV (Zentralstelle für Arbeitsvermittlung) nach oben, Frankfurter Allgemeine Zeitung vom 23. März 1995

- Ukrow, Jörg, Unmittelbare Wirkung von Richtlinien und gemeinschaftsrechtliche Staatshaftung nach Maastricht, Neue Juristische Wochenschrift 1994, S. 2469f.
- Vedder, Christoph, Rechtswirkungen von Assoziationsratsbeschlüssen - Die Kus-Entscheidung des EuGH -, Europarecht 1994, S. 203ff.
- Voß, Ulrike / Wenner, Gregor, Der EuGH und die gemeinschaftsrechtliche Kompetenzordnung - Kontinuität oder Neuorientierung?, Neue Zeitschrift für Verwaltungsrecht 1994, S. 332ff.
- Voßkuhle, Andreas, "Grundrechtspolitik" und Asylkompromiß, Die Öffentliche Verwaltung 1994, S. 53ff.
- Waas, Bernd, Mittelbare Diskriminierung und § 23 Abs. 1 KSchG, Europäisches Wirtschafts- & Steuerrecht 1994, S. 47ff.
- Waas, Bernd, Zur mittelbaren Diskriminierung von Frauen in der Rechtsprechung von EuGH und deutschen Gerichten, Europarecht 1994, S. 97ff.
- Walker, Wolf-Dietrich / Lohkemper, Wolfgang, Die vorgeschlagene EG-Richtlinie über die Haftung bei Dienstleistungen und ihre Bedeutung für Haftungsfragen im Arbeitsbereich, Recht der Arbeit 1994, S. 105ff.
- Walwei, Ulrich, Arbeitsverwaltungen im Europäischen Binnenmarkt, Arbeit und Beruf 1994, S. 101ff.
- Wedell, Marion, "Nur Allah weiß, was aus mir wird...", Informationsdienst zur Ausländerarbeit 4/1994, S. 60ff.
- Wegner, Jörg, Ältere Ausländer - Zwischen Wiederkehr und Einbürgerung, sozialer Not und Aufenthaltsbeendigung, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 118ff.
- Weidenfeld, Werner / Hillenbrand, Olaf, Wie kann Europa die Immigration bewältigen?, Europa-Archiv 1994, S. 1ff.

- Welte, Hans-Peter, Das Abkommen über den Europäischen Wirtschaftsraum - Freier Personenverkehr, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 80ff.
- Wirmer, Anton, Die Richtlinie Europäische Betriebsräte - Ein zentraler Baustein europäischer Sozialpolitik, Der Betrieb 1994, S. 2134ff.
- Wittkowski, Ralf, Der "MP Travel Line" - Konkurs im Lichte der "Francovich-Rechtsprechung" des EuGH, Neue Zeitschrift für Verwaltungsrecht 1994, S. 326ff.
- Wollenschläger, Michael / Schraml, Alexander, Artikel 16a GG, das neue "Grundrecht" auf Asyl?, Juristen Zeitung 1994, S. 61ff.
- Wollenschläger, Michael / Schraml, Alexander, Ius soli und Hinnahme von Mehrstaatigkeit, Zeitschrift für Rechtspolitik 1994, S. 225ff.
- Wollenschläger, Michael, Rechtsfragen eines Konzeptes gegen Ausländerdiskriminierung, Zeitschrift für Ausländerrecht und Ausländerpolitik 1994, S. 10ff.
- Yenisey, Feridum, Ausländische Strafmaße im türkischen Strafrecht - zum neuen Artikel 10a Türkisches Strafgesetzbuch -, Informationsbrief Ausländerrecht 1994, S. 9ff.
- Zachert, Ulrich, Neues zur europäischen Arbeits- und Sozialpolitik?, Arbeitsrecht im Betrieb 1994, S. 226ff.
- Zender, Andrea, Jugendarbeitsschutz und Kinderarbeit im internationalen Vergleich - Europäische Union, Finnland, Österreich, Schweden, Schweiz, Türkei, Zeitschrift für Sozialhilfe und Sozialgesetzbuch ZfSH/SGB 1994, S. 64ff.
- Ziemske, Burkhardt, Verfassungsrechtliche Garantie des Staatsangehörigkeitsrechts, Zeitschrift für Rechtspolitik 1994, S. 229ff.
- Zühlke-Robinet, Klaus, Arbeitsmarktpolitik für Ausländerinnen und Ausländer in Hamburg - dargestellt am Beispiel der Eintritte ausländischer Arbeitnehmerinnen und Arbeitnehmer in

- Fortbildungs- und Umschulungsmaßnahmen, Zeitschrift für Sozialreform 1994, S. 375ff.
- Zuleeg, Manfred, Der rechtliche Zusammenhalt der Europäischen Gemeinschaft, Zeitschrift für Europäisches Privatrecht 1/1993, S. 475ff.
- Zuleeg, Manfred, Die Europäische Gemeinschaft als Rechtsgemeinschaft, Neue Juristische Wochenschrift 1994, S. 545ff.
- Zuleeg, Manfred, Die Rechtsprechung des Europäischen Gerichtshofes zum Arbeits- und Sozialrecht im Streit, Arbeit und Recht 1994, S. 77ff.
- Zuleeg, Manfred, Die Rolle der rechtsprechenden Gewalt in der europäischen Integration, Juristen Zeitung 1994, S. 1ff.
- Zuleeg, Manfred, Die Verfassung der Europäischen Gemeinschaft in der Rechtsprechung des europäischen Gerichtshofs, Betriebs-Berater 1994, S. 581ff.
- Zuleeg, Manfred, Ein Gericht jenseits von Gesetz und Recht?, Frankfurter Allgemeine Zeitung vom 17. März 1994
- Zuleeg, Manfred, Mit der Geltung der EuGH-Urteile steht und fällt die Rechtsordnung der Gemeinschaft, Versicherungswirtschaft 1994, S. 368f.

2. *Bücher*

Allein im Exil. Unbegleitete minderjährige Flüchtlinge in der Bundesrepublik Deutschland, Mitteilungen der Beauftragten der Bundesregierung für die Belange der Ausländer, Nummer 3, Bonn, April 1994

Die Arbeit der Caritas mit Migranten - Rahmenkonzept -, Zeitschrift für Caritasarbeit und Caritaswissenschaft 12/1994 (Sonderdruck)

Die Ausländerbeauftragte des Senats von Berlin (Hrsg.), Rückkehrhilfe (Ratgeber für Interessenten und Beratungseinrichtungen) Berlin 1994

Die Ausländerbeauftragte des Senats von Berlin (Hrsg.), Bericht zur Integrations- und Ausländerpolitik, Berlin, März 1994

Die Ausländerbeauftragte des Senats von Berlin (Hrsg.), Iraner in Berlin, Berlin 1994

Die Ausländerbeauftragte des Senats von Berlin (Hrsg.), Polen in Berlin von Grzegorz Zietkiewicz, Berlin, Juni 1994

Die Ausländerbeauftragte des Senats von Berlin (Hrsg.), Spanier und Portugiesen an der Spree von Patricia Cerdá P.-Hegerl, Berlin, Juli 1994

Auswärtiges Amt (Hrsg.), 2. Menschenrechtsbericht der Bundesregierung, Bonn, Stand: Oktober 1993

Bade, Klaus J. / Troen, S. Ilan (Hrsg.), Zuwanderung und Eingliederung von Deutschen und Juden aus der früheren Sowjetunion in Deutschland und Israel, Bonn 1993

Bade, Klaus J., Ausländer, Aussiedler, Asyl, München 1994 (Beck'sche Reihe)

Bade, Klaus J., Homo Migrans, Essen 1994

Barwig, Klaus / Bauer, Dieter, R. (Hrsg.), Asyl am Heiligen Ort, Ostfildern 1994

- Barwig, Klaus / Brinkmann, Gisbert / Huber, Bertold / Lörcher, Klaus / Schumacher, Christoph (Hrsg.), Vom Ausländer zum Bürger. Problemanzeigen im Ausländer-, Asyl- und Staatsangehörigkeitsrecht, Festschrift für Fritz Franz und Gert Müller, Baden-Baden 1994
- Barwig, Klaus / Brinkmann, Gisbert / Huber, Bertold / Lörcher, Klaus / Schumacher, Christoph (Hrsg.), Asyl nach der Änderung des Grundgesetzes, Baden-Baden 1994
- Bericht der Beauftragten der Bundesregierung für die Belange der Ausländer über die Lage der Ausländer in der Bundesrepublik Deutschland 1993, Bonn, März 1994
- Bremische Landesmedienanstalt (Hrsg.), Ausländer und Medien, Dokumentation einer Tagung am 28. Oktober 1993, Bremen, März 1994
- Bryde, Brun-Otto (Hrsg.), Das Recht und die Fremden, Baden-Baden 1994
- Budde, Ludwig / Koch, Helmut / Sahin, Hüsnü (Hrsg.), Freunde statt Fremde, Hückelshoven 1994
- Bundesministerium für Arbeit und Sozialordnung (Hrsg.), Der Staat hilft den Opfern von Gewalttaten, Bonn, Januar 1994
- Cruz, Antonio, Carriers' Liability in the Member States of the European Union. Hrsg. von der Kommission der Kirchen für Migranten in Europa, 1994 (Aktualisierte vergleichende Übersicht über die Maßnahmen gegen Luftverkehrsunternehmen in den fünf EU-Mitgliedstaaten)
- Deutsche Vereinigung für den Datenschutz (DVD) (Hrsg.), Datenschutz für MigrantInnen, Bonn, 5/1994
- Europa im Schaubild, Europa wird eins, Transcontact Verlagsgesellschaft, Bonn 1994
- F.D.P.-Fraktion im Deutschen Bundestag (Hrsg.), Ausländer im Recht, Anhörung der F.D.P.-Bundestagsfraktion zum Ausländergesetz von 1990, Siegburg, März 1994

Forschungsinstitut der Friedrich-Ebert-Stiftung, Abt. Arbeits- und Sozialforschung (Hrsg.), Einwanderungspolitik Kanadas und der USA. Beispiele für die Bundesrepublik Deutschland?, Bonn, Juli 1994 (Gesprächskreis Arbeit und Soziales Nr. 31)

Freie Hansestadt Bremen, Landesbeauftragter für den Datenschutz (Hrsg.), 16. Jahresbericht, vorgelegt zum 31. März 1994

Freie Hansestadt Bremen, Landesbeauftragter für den Datenschutz (Hrsg.), 16. Jahresbericht, vorgelegt zum 31. März 1994

Gorzini, Mehdi Jafari / Müller, Heinz (Hrsg.), Handbuch zur interkulturellen Arbeit, Wiesbaden 1993

Hailbronner, Kay, Reform des Asylrechts. Steuerung und Kontrolle des Zuzugs von Ausländern, Konstanz 1994

Hailbronner, Kay, Reform des Asylrechts. Steuerung und Kontrolle des Zuzugs von Ausländern, Konstanz 1994

Hamburger, Franz / Müller, Heinz, Auswertung der Arbeitsstatistik zur Einzelhilfe des Sozialdienstes für ausländische Mitbürger des Deutschen Caritasverbandes, Beiheft der Zeitschrift für Caritasarbeit und Caritaswissenschaft 3/1994

Heintze, Hans Joachim, Selbstbestimmungsrecht und Minderheitenrecht im Völkerrecht, Baden-Baden 1994

Henkel, Joachim, Zur Sicherheit von Drittstaaten. ZDWF-Schriftenreihe Nr. 58, Oktober 1994

Huber, Bertold, Handbuch des Ausländer- und Asylrechts, München 1994

Isensee, Josef / Schmidt-Jortzig, Eberhard (Hrsg.), Das Ausländerwahlrecht vor dem Bundesverfassungsgericht, Heidelberg 1994

Kallert, Heide, Mädchen als Flüchtlinge im Heim, Frankfurt/M. 1993

Klose, Hans-Ulrich (Hrsg.), Zuwanderung, Möglichkeiten und Grenzen, Forum - Demographie und Politik 5/1994

- Koch-Arzberger, Claudia / Böhme, Klaus / Hohmann, Eckart / Schacht, Konrad (Hrsg.), Einwanderungsland Hessen?, Opladen 1993
- Kühne, Peter / Öztürk, Nihat / West, Klaus-W. (Hrsg.), Gewerkschaften und Einwanderung, Köln 1994
- Liegemann, Gabriele Martina, Eingriffe in die Religionsfreiheit als asylerhebliche Rechtsgutverletzung religiös Verfolgter, Baden-Baden 1993
- Marschall, Dieter, Bekämpfung illegaler Beschäftigung, 2. Aufl., München 1994
- Maydell, Bernd von / Hohnerlein, Eva-Maria (Hrsg.), Die Umgestaltung der Systeme sozialer Sicherheit in den Staaten Mittel- und Osteuropas - Fragen und Lösungsansätze, Berlin 1993
- Meier-Braun, Karl-Heinz / Kaiser, Klaus, Arbeitsmigration - Flucht - Vertreibung, Menschen im Aufbruch, Stuttgarter Themen: Begegnen - Verstehen - Verändern, Nr. 3, Stuttgart 1994
- Mitteilungen der Beauftragten der Bundesregierung für die Belange der Ausländer (Hrsg.), Ausländerinnen und Ausländer in europäischen Staaten, Bonn, August 1994
- Mitteilungen der Beauftragten der Bundesregierung für die Belange der Ausländer (Hrsg.), Daten und Fakten zur Ausländersituation, Bonn, Oktober 1994
- Niessen, Jan, The Making of European Immigration Policies, CCME Briefing Paper No. 15
- Der Paritätische Wohlfahrtsverband (Hrsg.), Positionen zu Fragen der Migrationspolitik, Frankfurt, April 1994 (Schriften des Deutschen Paritätische Wohlfahrtsverband Nr. 47)
- Prantl, Heribert, Deutschland - leicht entflammbar, München 1994
- Presse- und Informationsamt der Bundesregierung (Hrsg.), Europa für junge Leute - Tips zu Bildung und Ausbildung, Bonn 1994

Presse- und Informationsamt der Bundesregierung (Hrsg.), Was tut die Europäische Union für unseren Arbeitsmarkt?, Bonn, Mai 1994

Ratgeber für griechische Arbeitnehmer, Bundesanstalt für Arbeit (Hrsg.), Stand: Dezember 1993

Ratgeber für italienische Arbeitnehmer, Bundesanstalt für Arbeit (Hrsg.), Stand: Dezember 1993

Ratgeber für portugiesische Arbeitnehmer, Bundesanstalt für Arbeit (Hrsg.), Stand: Dezember 1993

Ratgeber für spanische Arbeitnehmer, Bundesanstalt für Arbeit (Hrsg.), Stand: Dezember 1993

Ratgeber für türkische Arbeitnehmer, Bundesanstalt für Arbeit (Hrsg.), Stand: Dezember 1993

Rosen, Hans-Henning (Hrsg.), Jahrbuch der Stiftung für UNO-Flüchtlingshilfe 1993, Baden-Baden 1994

Schoger, Kristina, Zuwanderer und Politik. Ein deutsch-französischer Vergleich, Berlin 1994

Schulte, Bernd, in: Bundesministerium für Familie und Senioren (Hrsg.), Die Judikatur des Europäischen Gerichtshofes zur Abgrenzung des sachlichen Anwendungsbereichs der Verordnung (EWG) Nr. 1408/71 im Hinblick auf Sozialhilfe- und Sozialhilfeähnliche Leistungen, Gutachten, Bonn, Mai 1994

Sen, Faruk / Goldberg, Andreas, Türken in Deutschland, München 1994

Sieveking, Klaus, Ausländerrecht und Ausländerpolitik 1993, ZERP-Diskussionspapier 7/94, Bremen 1994

Vertretung der Europäischen Kommission in Deutschland (Hrsg.), Europa in Forschung und Lehre. Eine Dokumentation, Bonn, Juni 1994

Völker- und verfassungsrechtliche Probleme des Erwerbs und des Verlusts der deutschen Staatsangehörigkeit. Zwei Rechts-gutachten von Albert Bleckmann, Köln 1992

Wegner, Jörg / Durmus, Ali, Die Ausweisung von Ausländern mit verfestigtem Aufenthaltsstatus nach dem neuen Ausländergesetz, Berlin 1994

Winkler, Beate, "Was heißt denn hier - Macht und Verantwortung der Medien", München 1994

Zimmermann, Andreas, Das neue Grundrecht auf Asyl, Berlin 1994

C. Standing Committee of Experts on International Immigration, Refugee and Criminal Law. Proposals for the Amendment of the Treaty on European Union at the IGC in 1995, March 1995 - Excerpt -

Content:

Introduction

- A. Amendments for the promotion of openness in European government
 - B. Amendments relating to the jurisdiction of the Court of Justice under Title VI
 - C. Amendments regarding parliamentary control of decision-making under Title VI
- D. Amendments on combatting racial discrimination and the promotion of equal treatment of immigrants in the Union*

The European Council has frequently called for common action against racism and xenophobia. The amendments seek to provide a legal basis for the adoption of binding rules for common action towards the prevention of racial discrimination and ethnic conflict within the Union.

The current provisions of the Union Treaty emphasise the differences in legal position between the citizens of the Member States and immigrants from third States who are residing in the Union. That distinction serves as a justification for xenophobia and unequal treatment of immigrants from third countries. If the Council wishes to take its declarations on the prevention of racial discrimination seriously, priority deserves to be given to improving

the legal position of citizens of third countries legally residing in the territory of each of the Member States.

- I. A new subparagraph 'u' should be added to Article 3 of Title II, to read as follows:

"u the prohibition of discrimination on grounds of race, colour, birth, religion, language, or national, social or ethnic origin"

Explanation

This amendment adds the prohibition of racial discrimination to the list of tasks spelled out in Article 3 of the EC Treaty. This does no more than expand the material scope of the EC Treaty to include a prohibition on discrimination on grounds which the Member States have already accepted under Article 14 of the European Convention on Human Rights and Fundamental Freedoms and Article 26 of the International Covenant on Civil and Political Rights, namely race, colour, birth, language and national, social or ethnic origin.

The Standing Committee accepts that a general prohibition on sex discrimination beyond the scope of Article 119 EC, which is limited to pay may well be appropriate. However, this subject matter is beyond the remit of the Committee, and is not considered further in this paper.

- II. A new Article 6A should be placed after Article 6 of Title II as follows:

"6A. Within the scope of application of this Treaty and without prejudice to any special provisions contained therein, any discrimination on the grounds of race, colour, birth, religion, language or national, social or ethnic origin shall be prohibited.

The Council shall adopt directives and regulations, in accordance with the procedure prescribed in Article 189B containing measures required to prohibit discrimination on grounds of race, colour, birth, religion, language or national, social or ethnic origin."

Explanation

This amendment establishes a clear legal basis for the adoption of Community rules to combat racial discrimination. The prohibition of discrimination on grounds of nationality laid down in Article 6 EC and the parallel provision on the grounds of sex as laid down in Article 119 EC can serve as a source of inspiration for the precise wording of this amendment. The proposed Article would create an obligation for the Member States which could be enforced even in the absence of national implementing rules.

As indicated above, the wording of this amendment corresponds to that of Article 14 of the ECHR and Article 26 of the ICCPR. The use of the words 'citizens', 'employees', and others has been avoided. The all embracing 'persons' is used in the sense of Article 7A EC.

- III. The phrase "or who has been lawfully residing in the territory of a Member State for five years" should be added to the first paragraph of Article 8 of Title II. Article 8 (1) would then read as follows:

"1. Citizenship of the Union is hereby established.

A person holding the nationality of a Member State or who has been lawfully residing in the territory of a Member State for five years shall be a citizen of the Union".

Explanation

This amendment extends Union citizenship established in 1993 to include immigrants from third states who have legally resided in the territory of a Member State. Without an express equality provision such as this, many Union measures against racism, xenophobia, and racial discrimination will remain hollow rhetoric. It is incumbent on the Union to set the Member States and the citizens a good example.

The prohibition of discrimination in Article 6 of the EC Treaty only applies to the material scope of the Treaty itself. That prohibition is of relevance to citizens of third state only in so far as they are accorded rights in or pursuant to the Treaty.

The phrase "lawfully residing in the territory of" is borrowed from Article 13 ICCPR.

The period of five years has been chosen because this term is used in the national law of a number of Member States for the purpose of granting a permanent residence permit or for eligibility to naturalise as a citizen of the State. The term of five years is also employed in Article 6 (1) of Regulation 68/360/EEC. The period should be completed on the territory of one Member State to the exclusion of aggregation of periods of residence in different Member States for this purpose. From a practical perspective, such a limitation facilitates the verification process, and on policy grounds it means that such citizens of the Union are more likely to have integrated into their host community. The word 'uninterrupted' has not been employed in the amendment in order to avoid problems arising from short absence from the country.

Such persons would acquire the rights accorded to Union citizens in the second part of the Treaty with the exception of diplomatic protection (See amendment IV). They would not acquire the nationality of the Member State. The amendment emphasises the principle of equal treatment.

Conferring Union citizenship on citizens of third states who have lawfully resided in the territory of a Member State for five years compels the Council, in accordance with Article 8A (2) EC, to adopt regulations simplifying the free movement of these persons. Free movement of workers as provided in Regulation 1612/68 is still only applicable to citizens of the Member States. The same applies to the freedom of establishment and provision of services under Articles 52 and 59 of the EC treaty. The conditions under which citizens lawfully resident in a Member State could enjoy freedom of movement deserves further elaboration. (See amendment V below).

Amendment III does not affect the competence of the Council in accordance with Article 2 (3) of the Protocol relating to Social Policy, to legislate as regards social protection and employment of citizens of third States lawfully in the Community.

- IV. The phrase "Every citizen of the Union" in Article 8C of the EC Treaty shall be followed by:

"and those possessing the nationality of a Member State"

Explanation

This amendment limits the grant of diplomatic protection by the Member States to citizens of the Union possessing the nationality of a Member State. In international law diplomatic protection is based on nationality. It cannot, without the consent of the State in question, be extended to citizens of third States residing in the Union.

- V. Article 100C Paragraphs 5, 6 and 7 shall be renumbered as 6, 7 and 8. A new paragraph shall be inserted as Article 100C (5) to read as follows:

"The Council shall, in accordance with the procedure set down in Article 189B, determine the conditions under which free movement within the Union shall be exercised by citizens of third States lawfully in the territory of a Member State".

Explanation

Free movement of persons in the Community cannot be fully developed when a section of the population is excluded from the enjoyment of this right. Pursuant to the above provision, the Council can determine the extent to which free movement of persons can be extended to citizens of third States lawfully in the Community, for instance, the self-employed or workers of those pursuing further education. Conditions may be specified as regards duration, financial requirements, extension of stay after the original ground has ceased to exist, social security entitlements and responsibility in event of expulsion.

Discussions on the position of citizens of third states lawfully in the Union often take place in terms of all or nothing: full equal rights as granted to EC citizens or no right to free movement in the Union at all. The European Commission has indicated in the Flynn report how important it considers the issue of free movement of citizens of third states and has further intimated that it will be making further proposals on this issue.

Free movement as provided for in this amendment additionally affords the Council the opportunity to lay down rules regarding entry, short term stay and residence. The entry into force in 1995 of the right of circulation within the territory of the Schengen States may prompt the desire of other Member States

to have similar rules within the Union. This amendment provides a Community foundation for such activity, but in no way renders the draft External Frontier Convention superfluous. That Convention first and foremost regulates the crossing of the external frontiers thereby giving access to the Union territory. Our proposed Treaty amendment is strictly limited to movement of persons within the Union territory and in particular to persons lawfully residing in the Union.