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**SPECIAL ISSUE**

# **Immigration and Federalism in Europe**

**Federal, State and Local Regulatory Competencies  
in Austria, Belgium, Germany, Italy, Russia,  
Spain and Switzerland**

edited by

**Dietrich Thränhardt**



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# Preface

This study provides detailed systematic information about federal, state, and local regulative responsibilities in the fields of immigration, recruitment, regulation of temporary and permanent residence, asylum, amnesties and regulations of illegal immigrants, naturalisation, integration and language programmes, social housing for foreigners/immigrants, local voting rights, schooling, employment and unemployment benefits, and the acknowledgement of qualifications in the seven federal countries in Europe.

The study covers Austria, Belgium, Germany, Italy, Russia, Switzerland, and Spain. The comparison demonstrates the tremendous varieties in the divisions of powers between the federations, the member states and local communities in the seven countries, and thus opens pathways for further comparative studies to be done. The extremely decentralised situation in Switzerland with its local referenda on naturalisation, Belgium's dualistic system in Flanders and Wallonia, Germany's ›unitarian federalism‹, Austria's limited federalism, the emerging powers of the *Comunidades Autónomas* in Spain, Italy's recent decentralisation experience and Russia's ›vertical democracy‹ with its dominant central power are described in detail. The comparison shows diverging tendencies towards more centralisation or more decentralisation. Some countries enjoy stable regimes, some are happy with more and more regionalisation. Some have symmetrical and some others asymmetrical decentralisation regimes.

We thank the Forum of Federations for its initiative that encouraged us to focus on a rigorous institutional comparison between countries, and on analysing the differences between the seven countries systematically. Immigration will continue to be a challenge for federal as well as centralistic systems, bringing its various parts and partners to integrate newcomers, to rethink the understanding of the identities of their communities and cultures, and to readapt again and again in the ever-changing global transformations in local, state and federal environments.

Dietrich Thränhardt

**Dietrich Thränhardt**

# **Immigration and Integration in European Federal Countries: A Comparative Evaluation**

## **1 Immigration in Federal Systems: Challenges and Assets**

Research on federalism and research on immigration have long been isolated from each other, as often happens between specialised sub-disciplines. Only a few books have been published about migration in federal systems (Thränhardt 2001; Joppke/Seidle 2012). Specialists on federalism have focussed on institutional arrangements, power relations, historical pathways, existing traditions and the relations between the federation and the member states. Immigration research was concerned with assimilation and integration processes, migration streams, naturalisation and populist, xenophobic and extremist reactions and movements. As migrations of various sorts and easy internal EU mobility are becoming permanent, and immigrants constitute a growing percentage of the population, migration influences the polity, the politics and the policies of federal countries (Thränhardt 1996). On the other hand, immigrants' access, integration, socialisation, status in society and acceptance is shaped by federal structures. Immigrants are naturalised as citizens of Austria, Belgium, Germany, Italy, Russia, Spain or Switzerland, but they are socialised as Viennese or Tyrolians, Walloons or Flemish, Bavarians or Hamburgers, Venetians or Sicilians, Madrileños or Catalans, Gènevois or Zürcher, and the like.

How do federal systems deal with these new challenges? How do they include these new strata and characteristics into the existing formal and mental order? Federal political systems bring regional diversity to life, whereas centralist systems hide regional differences in culture, language, religion, economic interest and dynamics, social values and mentality under the veil of the nation ›une et indivisible‹. Federal systems allow them to play out and come into the open, and make regional identities as legitimate as national identities. In addition to traditional diversities, immigration adds more elements of diversity and more pluralism.

One hypothesis is that political systems with inbuilt legitimate difference can easier digest new and additional differences. In this line of thinking, more difference would not be conceived as a threat because difference is already legitimate. Moreover, regions and sub-states can welcome immigrants because of cultural similarities or as a chance to strengthen the place, economically or demographically. On the other hand, newcomers can be conceived as a danger to delicate balances in federal systems, or as a threat to particular local or regional cultures and settings, like in French-speaking Quebec in Anglo-dominated North America. Thus the most prolific regions of Spain construct their integration policies quite differently: Catalonia tries to assimilate immigrants into the Catalan ›nation‹ and particularly the Catalan language, whereas the Basque government has not developed a clear policy towards non-Spanish immigrants and the situation is largely defined in antagonistic political terms (Larroque Aranguren 2012). A third possibility is that political entrepreneurs construct national unity at the cost of new outsiders, making people forget about regional difference and point to foreigners as a danger. A further hypothesis is about the diffusion of settlements, problems and solutions, in contrast to the concentration of immigrant settlement and antagonisms that we find in centralistic countries, like the French *banlieues*, the Dutch *Randstad* or the inner city of London.

We can find examples for all of these approaches: Switzerland is the country with the highest immigration numbers in Europe, calculated per capita of the native population, and it is most efficient in putting migrants into work. At the same time, it experienced waves of xenophobia from time to time over the last hundred years, not connected to any internal linguistic or other regional tensions, and strengthening Swiss nationalism. In Belgium, on the other hand, xenophobia is connected to the Flemish-Walloon cleavage, as Flemish politicians fear Francophonisation through immigration. In Italy anti-immigration agitation has been brought forward particularly by the regional Lega Nord, which in former decades had blamed Southern ›terrori‹. In Canada, Quebec obtained the right to implement its own immigration policy, trying to recruit French speakers. In the US, immigration is a critical element in the relation between the states and the federal government, with some states blaming Washington for not controlling the border and putting financial burdens on them. In Germany, the *Länder* followed different integration philosophies and policies, until the Grand Coalition formulated a consensus about integration. In Austria, the capital Vienna, Austria's immigration hub, implements its own integration policy, and for many years had a much higher naturalisation rate than the rest of the country.



## 2 Two European Ramifications: The Council of Europe and the EU: European Communalities and Specificities

One commonality among European federal systems are the legal bonds that bind them together and structure their behaviour. First, all European states have signed the European Convention on Human Rights and its protocols. These documents are binding treaty law in all European countries, including Russia and Switzerland, neither of which are members of the European Community. Every citizen in all these countries can appeal to the European Court of Human Rights in Strasbourg. Over time, the court's decisions are translated into national law, and they are guiding the courts. Finally, they become part of national legal traditions, and are generally accepted by the public. Even if the court system is not really independent, as is the case in Russia, the process can be flawed but nonetheless it exists. This makes Europe a controlled human rights area with binding rules, in contrast to other regions that are only bound by the UN human rights declarations and have only NGOs as watchdogs. One symbol of this communality is the absence of the death penalty all over Europe. No European country has ever opted out of this system, even if some countries have been strongly criticised, and had to amend their laws or pay substantial compensations to plaintiffs (Lambert 2006; Wijkhuis 2007; Clements/Mole/Simmons 1999; Guiraudon 2000).

People, and particularly immigrants in the member states of the European Union, including the federal countries Austria, Belgium, Germany, Italy and Spain, have a second institutional setting to protect them: the legal system of the European Union. A powerful part of its structure is the European Court of Justice in Luxembourg, which interprets European law in a proactive and pro-European way. Thus, it sees the status of settled Turkish citizens in Europe under the EU-Turkey association treaty in the light of the ›four freedoms‹ of European citizens. The principle of gender-equal pay, which has been part of the EEC/EU treaty since the beginning, is another example of the deep influence of the European treaties and the European Court on the daily life of European citizens and immigrants.

The multi-level structure in federal countries which are members of the European Community can lead to complex juridical processes. Even when federal constitutions of the member countries give the lower levels in the federal systems certain constitutional rights, these are not protected from interference from the side of the European Union. The union is a treaty community between nation states, and – as German scholars have characterised it – *Länder* blind. Thus, the European Council can formulate European directives which cut into the constitutional rights of the *Länder* or regions. In some cases they have been outmanoeuvred via EU regulations.

### 3 European Federalism and its Varieties

#### 3.1 What is Federalism? Do Italy, Spain, Belgium and Russia have Federal Systems?

Should all the seven countries we are discussing here be called federal? This should concern us first, since two of the seven countries we discuss here do explicitly not define themselves as federal countries but as »a state of the autonomies« (Spain) and as a »regional state« (Italy). Moreover, in both countries the freedom and self-governance of the regional level is only a recent phenomenon. Analytically, however, they should be classified as federal. In both countries, the regions have their own rights and prerogatives, defined in the constitution. They are autonomous in their organisation, and they can pass laws and regulations. Politically, it seems unlikely that the process of regionalisation could be revised.

Belgium has a specific state structure, with overlapping subnational entities that are defined linguistically (Flemish, French and German-speaking communities), and territorially (the regions Flanders, Wallonia, and Brussels). Since the Flanders Region and the Flemish Community have merged institutionally, there are five institutionalised entities. Here also, we can state that the entities possess a high degree of institutional autonomy and can act independently. In all three countries, the constitution has definitely been changed, and former centralism has given way to two-level structures of decision-making.

Despite being a rather small country, Switzerland certainly is the most decentralised. The cantons hold important powers. The constitution formulates their priority, and in contrast to all other federal countries, two thirds of the taxes go to the coffers of the cantons in Switzerland and only one third into the federal budget. Many cantons proudly define themselves as ›*Staat*‹, ›*république*‹, or ›*repubblica e cantone*‹; Switzerland as a whole is called a confederation in French and Italian, and an *Eidgenossenschaft* in German. Swiss cantons even play an important role in naturalisation, a topic reserved for the central state in all other countries, and also in the United States of America. Even a very small canton like Appenzell-Innerrhoden with its 15,100 inhabitants sticks to all these qualities of autonomy. Swiss cantons are also autonomous in their decisions about the right of foreigners to participate in elections at the cantonal and local level.

German *Länder*, even if some of them are larger than Switzerland as a whole, are less autonomous. The country as a whole is called a Federal Republic (*Bundesrepublik*), uniting in its name a federal and a unitarian aspect. In contrast to Switzerland, there has been a strong cultural tradition of unitarism since the 19<sup>th</sup> century, and (with the possible exception of Bavaria) regulations are considered more legitimate if they are equal throughout the

whole country. Austria is even more centralistic than Germany, calling itself a *Republik* without including the federal principle into the name of the country. The Austrian *Bundesländer* have their main role in administration, and the capital Vienna dominates in all respects, in contrast to the division of central functions between the Swiss cities (Berne as the capital, Zurich as the economic capital, Lausanne as the seat of the Swiss Federal Court, Basel as the seat of the large chemical companies, Geneva as the seat of international institutions, Fribourg as the centre of Catholic life, and other federal functions in smaller cities like St. Gallen, Neuchâtel and Lugano).

Labelling Table

Country	Federal level	State level	Counties/other administrative entities	Local level
Austria	Bund	Bundesland	Bezirk	Stadt/Gemeinde
Belgium	koninkrijk/ royaume/ Königreich	gemeenschap/ communauté/ Gemeinschaft Regio/région/ Region	provincie/ province/ Provinz	Gemeente/ Commune/ Gemeinde
Italy	Stato	Regione	provincia	Città/commune
Germany	Bund	Land, Freistaat, Freie Stadt	Kreis, Regierungs- bezirk	Stadt/Gemeinde
Russia	Tsenter (center)	Federal'nye ok- ruga (seven federal districts <i>above</i> the level of the repub- lics and regions)	respublika, kray, oblast', gorod fed- eral'nogo znache- niya, avtonomnaya oblast'/okrug	Munitsipal'nye obrazovaniya
Spain	Estado	Región	provincia	Comune
Switzerland	Bund/ Fédération/ Federazione	Kanton/ Canton/ Cantone	Bezirk/ District/ distretto	Stadt/ville/città Gemeinde/ commune

Russia has a special place in our comparison. In legal terms and in the terminology, it is quite decentralised and pluralistic. Some of the members of the Russian federation are ›republics‹. In the early 1990s, possible secessions were discussed, and there was a bloody war of secession in Chechnya. The republics also have their own languages, cultural autonomy and many insignia of statehood. However, when it comes to power relations and financial resources, the member entities of the Russian federation are less influential. The weakness of the institutional processes and constitutional guarantees are prone to make their autonomy rather fragile, since President Putin has succeeded in systematically strengthening the centre, disgracing the institutional processes to charades. He now appoints all heads of the republics and re-

gions, and thus controls them. Modifying an old Soviet slogan, we can characterise Putin's regime as decentralised in form, but centralised in content.

### 3.2 Centralising and De-centralising Tendencies in the Last Decades

Some of the countries we are discussing have experienced strong decentralising tendencies in the last decades. Belgium has moved from a unitary state *à la française* to a situation where the communities and regions control many spheres of government, and radical Flemings even dream of Flemish independence and a division of the country. Italy has changed its constitution in 2001, to allow for wide autonomous powers of its regions. This is only the latest step in a development that led from the over-centralisation in fascist times to more and more decentralisation. Autonomy for Sicily, Sardinia, Aosta, Friuli-Venezia Giulia and Trentino/Alto Adige/Südtirol after the war as well as the creation of regional governments in the rest of the country in 1970 had been previous steps. The regions of Emilia-Romagna, Friuli-Venezia Giulia, Liguria, Puglia and Toscana have introduced integration laws in the last years. Moreover, most Italian cities have created reception and information centres for asylum seekers and other immigrants and worked with EU funds to improve the situation.

Twenty years after Italy, the development in Spain started from a centralised authoritarian one-party state which suppressed all regional languages and movements. In the last decades, the regions have attained more and more autonomy, and the process is actually moving on, with Catalonia's desire to acquire the status of a ›nation«. In all three countries, the traditional monopoly of the central state for foreign relations including visa provisions, for immigration and for naturalisation was not shaken. However, the regional level became important for schools, kindergartens, health care and for integration. The consequence was that the integration policies became more diverse (particularly between Flanders and Wallonia), and some regions and cities were more affected and more concerned with immigration than others (for Spain see a vivid description in Fauser 2007).

Responsibilities for integration in Germany went the other way. Whereas the constitutional reform of 2006 led to more autonomy for the *Länder* in other fields, the creation of the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF) with the new immigration law of 2005 had a centralising effect in the field of integration. There were also some centralising tendencies in security matters, although this is not comparable to the sweeping changes in the US, with the creation the Department of Homeland Security and its manifold functions and incursions into private life. However, Berlin and North Rhine Westphalia adopted integration laws in 2011/12 in order to coordinate their activities with regard to the integration of migrants.

Russia falls into the same category, although in a dramatic way, since the central power strengthened its grip on the regional authorities. This can be seen in constitutional changes that give the centre more influence and in the informal sphere where the government has extended its influence widely into civil society, nationally as well as regionally.

### 3.3 Stable Systems vs. Unstable Federal Systems

Switzerland is an example of extreme institutional stability. Even though no Swiss court holds jurisdiction about the constitutionality of the laws, the necessity for an overall majority in the electorate and for a majority among the cantons makes changes quite difficult. Moreover, the deep cultural preference for federalism and for the right to be different among the cantons, as well as the strong identification of the people with their canton underpin the existing political structure of the country culturally. Even though Switzerland agreed on a *Totalrevision* of its constitution in 1999, and in the last years has experienced the rise of the populist anti-immigrant Swiss People's Party (*Schweizerische Volkspartei, Union Democratique du Centre*), the constitutional structure and particularly the »sovereignty of the cantons« has remained intact. The cantons are constitutionally and financially autonomous (Martinet 1999).

We see the same stability in Austria with its rather centralistic constitution, even though the party politics of the country were in turmoil, the asylum policy hardened and the country introduced a points system in immigration. Germany can also be seen as a rather stable country, even the parties and the levels of government agreed on some adjustments of responsibilities, to make the decision-making less complicated. In all three countries, there is a widespread consensus about the principles of the constitution and a system of checks and balances that hinders sweeping changes. Federalism is deeply rooted and can be traced back down to the Middle Ages. The traumatic experiences of 1933, 1934, and 1938 to 1945 in Germany and Austria have led to a deep feeling about the necessity of checks and balances. In Germany, federalism is protected as an unmodifiable principle under the constitution.

In Italy and Spain the constitution could be re-reformed back into a centralistic form. In both countries, however, nobody would expect that, since even the former ardent supporters of a centralistic authoritarian state, the post-Francist *Partido Popular* and the post-fascist politicians of the former *Alleanza Nazionale* are now in favour of the regions and rely on them as a support base if they are in opposition on the national level. In Belgium, the only option seems to be more decentralisation. The central government now holds only a few functions, and the capital Brussels' special situation as a mostly French-speaking bilingual island in Flanders makes a division impossible.

The only country with a dramatic development is Russia. In Soviet times, its decision processes were extremely centralised, even if the republics enjoyed language and cultural autonomy. With the breakdown of the Soviet Union, a disintegration process set in which led to the independence of the non-Russian republics and an anarchical situation in large parts of Russia. In the last years, we see a re-centralisation which has reached a high point and has made federalism somewhat farcical, even if language plurality and autonomy exist in the republics.

### 3.4 Symmetrical and Asymmetrical Federalism

Federalism in Germany, Switzerland and Austria (and the USA) can be called symmetrical, as all the member states have identical rights. There are only a few specialities, like the favourable special clause for the Danish minority in Schleswig-Holstein. It is particularly interesting that the language groups in Switzerland do not appear in the constitution, and that federalism between the cantons and the federation is strictly symmetrical, as French-speaking, Italian-speaking, and mixed-language cantons have exactly the same rights and responsibilities as the German-speaking cantons.

In contrast to this, federalism is asymmetrical in Spain and Italy (and also in Canada). These approaches are somewhat similar to the devolution process in Britain, conceding autonomy to Scotland, Wales and Northern Ireland, but not to England. The Italian islands Sicily and Sardinia, the border regions Val d'Aoste (French-speaking), Trentino-Alto Adige with its autonomous provinces Südtirol/Alto Adige and Trentino, and Friuli-Venezia Giulia at the Slovenian border all enjoy special and far-reaching autonomies that even now have not been matched by the other regions. In Spain, Catalonia and the Basque country with their special languages, traditions, and separate identities are the driving forces in the process towards autonomy. They take pride in having more autonomous rights than the rest of the regions and would not be satisfied if the other regions got the same status. Therefore, the Spanish state of the autonomies is basically an asymmetrical construction. Belgium is also somewhat asymmetrical since the authority of the small German-speaking area is included in the French-speaking region, and the Flemish and Flanders authority is a combined one.

In the present European drive to focus on state programmes for migrant integration (Michalowski 2007), these asymmetrical tendencies play out again. In Spain as in Italy, some community and regional governments are active in introducing laws and regulations as well as in implementing policies to integrate immigrants whereas others are rather negligent. This is not so much a question of different legal rights, but of their political energy and determination: Catalonia and Andalusia in Spain and Emilia-Romagna and Friuli-Venezia Giulia in Italy are examples of deliberate policies.

In contrast to this, the political dynamics in integration policies in Austria derive from the central government. After limiting the moving space of Vienna city policies, the Austrian central government has unfolded new initiatives since 2011: restrictive towards asylum seekers and illegals, constructive towards settled migrants, encouraging them to contribute to Austria's economy and well-being (Thränhardt 2012).

Russian federalism is basically constructed in an asymmetrical way, since republics, regions, important cities, autonomous areas and the Jewish autonomous region have different statuses and rights. In practice, however, this does not translate into differences in the handling of immigration and integration problems, since the central state is all too powerful to allow for independent policy initiatives on the lower levels. National and regional laws and regulations often contradict each other, but under the present circumstances the will of the centre always prevails. In addition, the national law defines special regions of settlement for immigrants – unattractive places where the native population is leaving. This is one more example of the contradictory and ineffective character of Russian migration policies. However, it has definitely terminated the Soviet system of marking everybody with a »nationality«, documented in the internal passports (Aktürk 2012).

All the countries with asymmetrical orders leave the central functions of immigration, asylum and naturalisation in the hands of the central state. The regions deal only with matters of integration, particularly those connected to education, housing and other social affairs. Countries of symmetrical federalism (and old traditions of federalism) involve the *Länder* and cantons in matters of naturalisation and immigration. In the Swiss case, cantons and communities even carry the main responsibility for naturalisation.

### 3.5 Interactions of the Levels of Government and Constitutional Autonomy

German federalist theorists use the categories of *Verbund-* and *Trennföderalismus* when they compare Germany and the United States. *Verbundföderalismus* has been translated as shared, integrated, connected or cooperative federalism (Majeed 2006). This means that all levels of government work together in a defined way, and particularly in German-speaking countries the *Länder* and cantons administer the laws of the federal level. The underlying idea is that there should be basic equality through federal law, but the administration should be connected to the realities and needs of the individual cantons or *Länder* and controlled by elected regional and local representatives. This tradition can be traced back to the Middle Ages. In 1220 and 1231, the emperor conceded to the German princes the independent administration of their territories, whereas the empire kept the right to pass binding laws. There are slight differences between the three countries. Most independent are the

Swiss cantons. In Germany, the *Länder* also administer most federal laws in their own responsibility but the culturally based desire for uniformity often leads to administrative norms consented between the federal government and the *Länder* in the *Bundesrat* (federal chamber, where the *Länder* governments are represented). In Austria, with its more centralistic constitution, the federal government can instruct the *Landeshauptmänner*, the heads of *Länder* governments, how to interpret a law (Davy 2001).

Court rulings can have a unifying influence in all three countries, as the court system is organised hierarchically and the decisions of the higher courts predetermine the decisions of the lower courts, and thus also the administration. Their influence should not be underrated. An illustration of their powerful effect can be found when we compare Austria and Germany with respect to the diversity in handling social assistance. Whereas in general Austria is much more centralistic in its constitutional and legal structure, social assistance is given to non-EU citizens only in four *Länder* (Bauböck 2001: 257f.). Access to council housing has long been denied to foreigners, depending on city policies. In Germany, even if the *Länder* are stronger, practices in both of these cases are equal across the country. The courts, and particularly the Constitutional Court, have put down several attempts to discriminate against foreigners. Examples are the special family allowance in Berlin in the early 1980s which was only conceived for Germans and EU citizens. The Constitutional Court declared the resulting discrimination against the large Turkish group in Berlin unconstitutional. Some years later, Bavaria tried to discriminate in the same way and had to give in likewise.

Another case was the practice of the Southern German *Länder* Bavaria and Baden-Württemberg to grant family reunification only after three years of marriage. This was directed against Turkish families, and the idea behind was to slow down the Turkish immigration to Germany. Again, the Constitutional Court stepped in, and ruled that the subsequent immigration of family members could not be delayed for more than one year. A third example is the initiative of the *Länder* Hamburg and Schleswig-Holstein to extend voting rights in local elections to certain groups of foreigners (in that case Scandinavians and Dutch citizens, countries which at that time already gave the same right to Germans). Again, this was declared unconstitutional, under the doctrine that the ›*Staatsvolk*‹ (nation) of Germany had clear limits, and thus voting rights in *Länder* elections could not be different from those in the federation. The Supreme Court in Austria gave a similar judgement when the city of Vienna wanted to extend the right to vote in the elections for the city districts to foreign citizens.

In Switzerland the situation is totally different. As the right to vote for women was introduced in one canton after the other, so is the introduction of voting rights for foreigners. Switzerland's newest canton Jura introduced it,



seven other cantons entitle foreigners to vote in local elections or let local governments introduce voting rights for foreigners if they wish to do so. Thus, the cantons are not only autonomous in theory (Martenet 1999) but they use their autonomy in different ways in the highly contested field of political rights for foreigners. This parallels their financial autonomy and their important role in the organisation of the Swiss army. In the 19<sup>th</sup> century, voting rights for foreigners were also granted in many US states, before the nationalistic wave swept such participation away. In Switzerland, the tradition was kept alive in the canton of Neuchâtel and has been re-awakened since the 1970s (Waldrauch 2003).

In all three German-speaking countries, there are doctrines of cooperation between the levels of government, but with characteristic variations. Whereas the Swiss constitution includes a definite and one-sided obligation for the federal government to »leave the cantons as large a space as possible« and to »take their particularities into account« (Art. 46.2), in Germany the Constitutional Court developed the doctrine of an obligation to behave friendly in the federation: »*bundesfreundliches Verhalten*«. In Austria the Highest Court created a parallel doctrine of federal considerateness (»*bundesstaatliche Rücksichtnahmepflicht*«). Both doctrines obligate the *Bund* as well as the *Länder*, but obviously they legitimate the cohesiveness of the country as a whole and not – as in Switzerland – the peculiarities and the diversity of the member states. Thus Austria and Germany are prototypes of an integrated and cooperative federalism, or as one former member of the German Constitutional Court has termed it: »unitarian federalism« (Hesse 1962).

In Germany – as the examples above illustrate – *Länder* governments often do not act with respect to their »peculiarities« but to the respective party lines. As immigration has been a very divisive issue in Germany, this results in symbolic gestures as well in policies dependent of the party colour of the *Länder* governments (Thränhardt 2006, 281ff., about the cleavage lines; Wüst 2011). Switzerland is also an integrated federation, with many lines of cooperation running between the federation and the cantons, but with a clear focus on decentralisation and the legitimacy of cantonal diversity.

Italy and Spain have joined the camp of cooperative federalism. In both countries, there was (and is) a tradition of centralistic government. The Italian constitution not only speaks of the autonomy of regions, but also of the nation »*una e indivisibile*«, in the French tradition. Both countries also have taken up the division between central legislation and regional implementation. In 1995, Romano Prodi, Italy's prime minister from 1996 to 1998 and 2006 to 2008, has substantiated the parallels between Italy and Germany and the need for regional government in Italy:

*»Our geography, our history, the youth of our state, the strong regional characteristics speak in favour of a structure of the German type, with a strong*

*fiscal and administrative autonomy and a fund of solidarity [...] which transfers part of the riches from the richer to the poorer regions.» (Prodi 1995: 43, own translation).*

Belgian federalism can also be called cooperative. The five regional units and the central state are overlapping so that the country cannot be governed without a high amount of cooperation. The Belgian state still holds economic prerogatives whereas the linguistic entities have their main impetus in cultural affairs and thus are financially dependent. Therefore we do not find any divided or separate federalism in Europe. It would be too much to speak of cooperative federalism in Russia, although we can find elements of it in the constitution. In practice, however, it is dominance from the centre.

#### 4 Overriding Characteristics of the Seven Federal Countries

In 1995, Heidrun Abromeit compared the basic ideas of government in three countries. She characterised Britain as a country with parliamentary sovereignty, Germany as a country with constitutional sovereignty, and Switzerland as a country with people's sovereignty. I shall try to further develop these ideal types in the Weberian sense for our problem, even if this is partly hypothetical and much more research energy should be invested. In this text, we have tried to focus on the differences of the political systems and their effects for immigration and integration policies and politics. In Switzerland they are largely dependent of referenda in the country as a whole and on the regional and local level, and in Germany they are to an important part dependent of the constitution and its interpretation by the Constitutional Court. In today's Russia, the presidential prerogative is decisive. He appoints the governors; he controls the large enterprises, the influential media, the Duma majority, the police, the army and the justice system.

In Italy, despite the existence of a constitutional system, democratic elections and a government responsible to parliament, most problems of immigration and integration are not regulated by state agencies according to rules and laws but are open to private arrangement or non-policy, often sanctioned by an amnesty or by non-intervention by state agencies (Caponio 2004; Barbera 2006) Moreover, the rights and privileges of immigrants under Italian law are vulnerable since the processing of applications often takes more time than is given by the residence permit itself (Sciortino 2003), and thus the applicants remain in limbo or even fall back into irregularity. When we compare Spain, a much more recent democracy, the similarities with Italy are evident, particularly with respect to the large informal immigration. However, the country seems to move towards organised two-level federalism, functioning regulation and less informality faster than Italy (Kreienbrink 2004).

Austria has a Constitutional Court like Germany, and it has intervened quite often in immigration cases in the last years. Still, however, legislation and administration are more in the hands of political parties which have an enormous density of membership and are influential in every aspect of life. In the early 2000s, the former ›black-blue‹ coalition often manoeuvred at the borders or beyond the boundaries of the constitution.

Belgium can be characterised by the duality of solutions, with a largely Dutch model in the North, and a French model in the South. Moreover, it shares many aspects of informality with Italy.

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# Kai Leptien

## Austria: A Centralistic Federation

### 1 General Characteristics of the Austrian System

Article 1 of the Austrian Constitution defines Austria as a democratic republic. The federal composition is laid down in Article 2. Austria consists of nine *Bundesländer* (federal states). The *Länder* legislate the municipalities law, which is framed by national framework legislation (Art. 115). Above the municipal level, the political districts (*politische Bezirke*) form another institutional level within the framework of the *Länder*. The capital, Vienna, is a special case in the Austrian political system because it is a state and a municipality with its own status at the same time. Vienna is not further divided into municipalities, but rather districts, and plays a special and important role in the Austrian system. In Vienna, 38.8% of the inhabitants had an immigrant background in 2011, while the number in the other *Länder* differed from 10.2% to 23.0% (Statistik Austria).

Compared to other countries, in terms of constitutional law, federalism in Austria is relatively underdeveloped following the assessment of Austrian scholars (Esterbauer 1995: 75). Austria is often described as a »centralist federation« (Pelinka 1999: 490), which is mainly characterised by two things: first, the Constitution of 1920 gives the *Länder* quite a weak position towards the federal government. In addition, it is argued that the societal homogeneity had centralising impacts on the Austrian system (Erk 2004: 4). The so-called *Generalklausel* of Article 15 of the constitution gives all competencies that are not explicitly defined as federal competence to the *Länder*. However, since the listing of federal competencies in the constitution is quite extensive, there are only a few competencies that rest with the *Länder*.

The administration of finances belongs exclusively to the federal level. Jurisdiction in Austria is also an exclusively federal competence. The Administrative Court and the Constitutional Court make final judgements and have the right to abstract and case-related review. The Austrian Constitutional Court is responsible for settling competence questions between the Federation and the *Länder*. Its decisions, which are normally made in favour of nationwide harmonisation and in preference of the federal state, have led to further centralising effects. The Constitutional Court introduced the principle of the duty for federal consideration (*bundesstaatliche Rücksichtnahmepflicht*), which prescribes concerted action and reciprocity and therefore limits

*Länder* autonomy (Erk 2004: 9) The Austrian federal system can be compared to the German federal system in terms of its denomination as a form of cooperative federalism in which the federation is mainly responsible for legislation and the *Länder* for executing the laws and the possibility of legal appeal in all cases. In the Austrian political system, the *Länder* also execute federal law with their own administration, following the principle of *mittelbare Bundesverwaltung*. In contrast to Germany, however, in Austria the head of the *Länder* administration, the *Landeshauptmann*, has to follow directives of the responsible federal ministry. This is another institutional peculiarity of the Austrian system, leading to strong centralising effects.

Under the Austrian Constitution, there are three settings of law-making and administration:

1. Federal Legislation and Execution (Art. 10)

This is the case for the following issues concerning immigration:

- Asylum, immigration and emigration matters
- Aliens police and residence registration
- Public health

2. Federal Legislation and State Execution (Art. 11)

- Nationality and right of citizenship
- National housing affairs (social housing is a *Länder* responsibility)

3. Federal Framework Legislation, further legislation and legislation on the state level (Art. 12)

In this case, only framework legislation is exercised by the federation, whereas implementing and executing the laws is a responsibility of the *Länder*;

- Social welfare.

In the following section, the competencies of the central state concerning migration matters shall be listed in more detail.

## 2 Central State – *Länder* Cooperation

Immigration in Austria is a matter of the federation. After a law concerning immigration or integration of foreigners is passed, it is left to the *Länder* to implement and execute the regulations. On the federal level, there is no central institution dealing with the various aspects of immigration and integration. Administrative responsibilities are spread over various federal governmental departments. However, the Federal Ministry of the Interior is responsible for policies in the field of immigration regulation, asylum policies and the policing of immigrants. Within this ministry, the first State Secretary for Integration was appointed in April 2011. He is responsible for all integration

matters on the federal level, e.g. the language course system and coordination of the national integration plan (NAP).

In 1992, Austria became the first country in Europe to pass an immigration law, *Zuwanderungsgesetz*, and started to reconstruct its immigration policy, aiming at controlling immigration via a strictly centralised quota system for all kinds of immigrants except for asylum seekers. The law was changed in 1998, following the so-called Aliens Law package (*Fremdenrechtspaket*). The legislation reform of 2005 was passed in order to implement five directives of the European Union concerning long-residence, family reunion, free movement of EU citizens, students, the fight against trafficking in humans and proposals for researchers (König/Perchinig 2005: 2). In the late 1980s, the Federal government started to set up a quota system for the recruitment of foreign labour (Perchinig 2002: 6).

From July 2011 on, a new immigration system based on a points system has been in place in Austria, especially for those jobs which are in high demand. These jobs are annually defined by an agreement between the social partners and the government. Resident and work permits can be granted either for a special job offer only or for unlimited labour market access, depending on the qualification of the applicant (*Rot-Weiß-Rot-Karte*).

### 3 Language Courses

Since 2003, all immigrants from third countries have to sign an integration agreement (*Integrationsvereinbarung*) in which they commit themselves to participate in a basic German language course. The federal government funds the language course system. Its organisation is centralised; the *Länder* play no role in it. In general, immigrants have to pay on their own for the language courses and must fulfil the requirements of the agreement within three years after their arrival in Austria. Otherwise, foreigners can be sanctioned with fines and even be expelled from the country. The courses must be held in certified institutions only. The *Österreichische Integrationsfonds* (Austrian integration fund), a federal institution funded by the Ministry of the Interior, organises and coordinates the language courses. In special cases, the federation also can take over a part of the costs of the language course.

### 4 Asylum Policy

Asylum policy is a federal matter, too. Since 1992, the federal *Bundesasylamt* has been responsible for all asylum applications in Austria in the first instance. In 1998, the independent federal asylum senate (*Unabhängiger Bundesasylsenat*) was established as an appeal institution against first instance decisions made by the *Bundesasylamt*. The members of this senate are nominated

by the federal government and appointed by the president. The *Länder* and the federation concluded a cooperative agreement following Article 15a of the Austrian constitution. In this agreement, the federation agreed to finance means of subsistence for asylum seekers, whereas the *Länder* agreed on following a regional key for distribution of the asylum seekers, similar to the *Königstein Schlüssel*. The key for distribution contains a percentage for each *Land* on how many asylum seekers it has to admit in Germany. This has led to political turbulences and a lawsuit brought before the Constitutional Court because two *Länder* ultimately did not accept the distribution rules.

The Minister of the Interior can create Initial Reception Centres (*Erst-aufnahmestellen*) for asylum seekers in Austria by decree. In 2005, the federal government and the *Länder* agreed upon a Basic Welfare Support Agreement (*Grundversorgungsvereinbarung*). In this agreement, a part of the federal responsibility was shifted to the nine *Länder*. The federal government pays for the basic supply during the application procedure in central federal camps. In the asylum procedure, the distribution follows a system that is based on an agreement of the *Bund* and the *Länder*. In this agreement, the *Bund* pays 60% of the costs for the basic supply, while the *Länder* finance the other 40%. In some cases, the *Länder* have integrated the federal prerogatives in their social aid legislation.

## 5 Naturalisation

Citizenship in Austria is following the principle of *ius sanguinis*. The Minister of the Interior sees naturalisation as the last step of the integration process (›crowning theory‹) and therefore handles it strictly. Concerning naturalisation policy, the federal legislation has legal competence, but the *Länder* governments are in charge of executing the federal act and therefore hold important powers in their decision-making processes. As basic requirements, the knowledge of German and the history of Austria and the specific *Land* is required by federal law. For EU citizens, naturalisation after six years is possible, for other foreigners after ten years. After the last modifications of the citizenship law in 2011, a naturalisation test is mandatory. The test contains federal and *Länder* history questions. The costs for naturalisation in Austria can reach about 600 to 1,700 Euros – higher than in Germany, but much lower than in Switzerland. The costs include federal and *Länder* fees for the naturalisation procedure.

## 6 Schooling

The Austrian Constitution states that the federal government is responsible for school legislation and implementation (Art. 14), more precisely in the



domain of the Federal Ministry of Education, Science and Art. However, certain regulations and implementation can be delegated to the *Länder* governments. The *Länder* governments implement the federal educational policies. In matters concerning the integration of students, the *Länder* governments enjoy a wide autonomy with respect to implementation. Therefore, it might vary whether immigrant languages are offered as an optional course or whether they are included in the general curriculum, as done in Vienna. Since 1912, Islam is legally recognised as a religious community. Islamic religion classes in Austrian schools are offered nationwide.

In 2005, the federal government passed two laws (*Schulpakete I und II*), which included measures to improve language skills of students with a foreign language. The laws aim at organising language skills assessments for pre-school children. The programmes shall be offered in the Kindergartens – a responsibility of the municipalities. Since pre-school language training is not compulsory and based only upon a recommendation of the Federal Ministry of Education, Kindergartens can decide whether they offer language courses or not (IOM 2004: 47).

## 7 Local Political Rights

Citizens from EU countries enjoy local voting rights and can participate in the elections of the European Parliament. In Austria, foreigners from third countries do not enjoy voting rights, neither on the federal nor on the *Land* or municipal levels. In 2003, the Viennese government changed the city's voting law and granted local voting rights to third-country nationals who had stayed in Vienna for at least five years. However, in 2004, the Constitutional Court declared that the revised election law was unconstitutional. As an alternative model of political participation, some cities created local advisory boards (*Ausländerbeiräte*). The first advisory board was established in 1996 in Linz. In Steiermark, every city with over 1,000 foreign nationals must create local advisory boards. Nowadays, in many states and cities *Ausländer-, MigrantInnen-* or *Integrationsbeiräte* exist (Peintinger 2012: 14).

## 8 Social Housing and Benefits

Housing is not a federal task and rests with the cities and the municipalities. Until 2006, in most Austrian cities, foreigners did not have any access to publicly financed flats or access was strictly limited (this differed sharply from the practice in Germany). Due to EU directives, since 2006 non-EU citizens can also apply for *Gemeindewohnungen* (communal flats) when they have been living for at least five years in Austria.

The access to social benefits depends on various factors. Recognised asylum seekers and EU citizens enjoy the same rights as Austrian nationals concerning federal assistance since the *Grundversorgungsvereinbarung* (Basic Needs Agreement) between the federation and the *Länder* in 2004 (Peintinger 2012: 6).

The unemployment law falls under the competence of the Federal government. No EU-citizen group enjoys the same rights as native Austrians. In Austria, the *Länder* legislate the social aid assistance. In the last few decades, social aid legislation for foreigners has varied widely in the different *Länder* but has been regulated more uniformly in the last years due to federal and EU legislation.

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# Amanda Klekowski von Koppenfels

## Belgium: A Nation Diverging

### 1 Introduction: Belgium as a Federal Country

The Kingdom of Belgium is an unusual federal country in that it was a unitary state for the majority of its nearly 200-year history (established in 1831), which only recently – in 1993 – became a completely federal state. Belgium has, like Canada, Italy and Switzerland, territorially-defined autochthonous language groupings, each of which has its own political representation and enjoys official language status. Tension on the basis of regional and linguistic difference remains in Belgium today, with the New Flemish Alliance (*Nieuwe Vlaamse Alliantie*, NVA) holding the largest number of seats in the Belgian parliament, following the 2012 elections. The far-right party in Flanders, *Vlaams Belang*, or Flemish Interest, had based its platform not only on anti-immigrant platform elements, but on pro-Flemish elements as well. The success of the NVA, however, came at the cost of support to *Vlaams Belang*, which was, as of 2013, a party clearly in decline while the NVA gained in influence.

The Belgian Constitution was first drafted in its current form in 1970 (although originally dating from 1831) and has undergone several substantive changes since. In 1970, the Constitution was amended to note that Belgium is made up of four different linguistic communities (the French-speaking, Flemish-speaking and German-speaking communities and the bilingual Brussels Capital Region) (Art. 4). In 1980 and 1988, the communities were granted exclusive control over education (Art. 24).

In 1993, the Constitution was revised to reflect its new federal status, with Article 1 stating that »Belgium is a Federal State made up of Communities and Regions.« The Constitution notes that there are three regions (Walloon Region, Flemish Region and the Brussels Region) (Art. 3), three communities (French-speaking, Flemish-speaking and German-speaking) (Art. 2) and four linguistic regions (the German-speaking community is part of the Walloon Region) (Art. 4). The Flemish Region has five provinces, as does the Walloon Region (Art. 5). Each province, including Brussels Capital, is further subdivided into communes (or municipalities). These divisions are to be established by law (Art. 6).

The population of Belgium is some 10.5 million, with ca. 6 million in Flanders, 3.4 million in Wallonia and 1 million in the Brussels Region. Of these 10.5 million, there are ca. 1 million non-citizens, what totals about 10%. The Brussels Region has the highest immigrant population, with some 30% of its population being of foreign descent (ca. 300,000). The Flemish Region has the lowest percentage of immigrants, at 5.9% overall (360,000); this ranges from 8.8% in the province of Limburg to 2.7% in West Flanders. The Walloon Region has 9.8% immigrants among its population (340,000), ranging from a high of 11.6% in Hainaut province to 4.8% in Namur.<sup>1</sup> In the German-speaking community (which is part of the Walloon Region) totalling only 73,000 people, there are 13,000 foreigners, or 17% of the population, 82% of whom are German citizens (Abeo 2005: 26).

## 2 Competencies in Belgium

In Belgium, there is no hierarchy of laws: community, regional and national laws all have equal validity; none supersedes another. A royal decree (*arrêté royal/koninklijk besluit*) represents the formal implementation of the law. Competencies are very clearly divided, either as laid out in the Constitution or as specified in laws, with certain areas (defence, justice, police, immigration, foreign policy, finance and social security) falling under national competence (Jacobs: 1) although there is often also a division of responsibilities in certain areas (see Appendix 1). Immigration, entry into and residence in the country is handled on a national level. The first relevant law was passed in 1973 and has been amended several times over the years, with significant amendments made on 18 April 2000.<sup>2</sup> Many other related aspects (education, employment), however, are addressed at either the community or the regional level.

On the national level, offices were established to address various aspects of immigration. These include the Aliens' Office (*Office des Etrangers (OE)/Dienst Vreemdelingenzaken*) as well as the Royal Commission on Migrant Policies (RCMP), established in 1989. The RCMP was developed as the result of the 1988 elections in Belgium (in which the *Vlaams Blok* received nearly 20% of the vote in the city of Antwerp's local elections) and the government's desire to pursue a real immigration policy: »The main functions of this organisation were to carry out research and develop policy measures related to the problems migrants face in the area of employment, housing and integra-

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1 Figures from <http://statbel.fgov.be> and own calculations.

2 18 AVRIL 2000. – Loi modifiant les lois sur le Conseil d'Etat, coordonnées le 12 janvier 1973 ainsi que la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers (1), published in: *Moniteur Belge*, 5 May 2000.

tive education« (Center 2003: 7). That is, a national-level body undertook research on the regional and community-level competencies. The RCMP was replaced in 1993 by the Center for Equal Opportunities and Opposition to Racism (Center 2006). The center was established by law in 1993 and its competencies are promoting equality, promoting dialogue, facilitating studies, »oversee[ing] [...] the respect of the fundamental rights of foreign nationals and [...] inform[ing] the government of the nature and scope of migration flows. It shall also have the task of developing consultation and dialogue between all governmental and private actors who are involved in the reception and integration policy of the immigrants.« (Art. 2/2).<sup>3</sup>

Recruitment of foreigners is addressed in a 1999 circular of the Walloon Government, which notes that recruitment for particular jobs is not open to non-EU nationals, drawing upon Article 10 (Equality) of the Belgian Constitution, which states that »Belgians are equal before the law«<sup>4</sup>, and noting that this equality does not apply to non-EU citizens.

### 3 Asylum

The asylum procedure in Belgium is regulated by the National Law of 15 December 1980 on the access to the territory, residence, the establishment and the removal of foreigners<sup>5</sup> which also regulates immigration to Belgium, in particular Title II, Chapter II (Refugees), noting that it is the Minister<sup>6</sup> or his/her delegate who makes the determination of refugee status (Art. 51(5)).<sup>7</sup>

The asylum procedure is a three-step process, with applications first addressed to the Aliens' Office (OE), which is part of the Ministry of the Interior and which registers the application for asylum and determines its admissibility; applicants may request that their application be processed either in Dutch or in French, unless an interpreter is needed. In the latter case, the OE makes the decision of the language of the process (CGRA 2005: 42). Once admissibility to the procedure is established, applications are passed on to the Commissioner General for Refugees and Stateless Persons (*Commissariat*

3 Act of 15 Feb 1993 pertaining to the foundation of a centre for equal opportunities and opposition to racism.

4 1er MARS 1999. – Circulaire relative à la politique d'intégration des personnes de nationalité étrangère ou d'origine étrangère.

5 Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.

6 Defined in Article 1(2) of the 15 Dec 1980 law as the minister who has access to the territory, residence, the establishment and the removal of foreigners as part of his competencies. This is at present the Minister of the Interior.

7 Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers.

*général aux réfugiés et aux apatrides*, CGRA), an independent federal-level body. At this level, the commissioner (or his or her representative) decides whether or not to grant refugee status to applicants. The CGRA can also overturn admissibility decisions made by the OE which have been appealed to the CGRA. Any further appeals of decisions made by the CGRA are deliberated upon by the Permanent Commission of Appeals for Refugees (PCAR). It has administrative jurisdiction. The Federal Agency for the Reception of Asylum Seekers (FEDASIL) houses asylum-seekers during the process. For housing after the acceptance as a recognised refugee, see chapter ›Social Housing‹ below.

Subsidiary protection has only recently been introduced in Belgium and has been in force since 10 October 2006.<sup>8</sup> It also is granted by the CGRA.

#### 4 Amnesties and Regularisation of Illegal Immigrants

Belgium carried out an amnesty in 2000, which had been agreed upon by national law in 1999 (22 December).<sup>9</sup> The law specified that foreigners in an irregular situation, meeting at least one of certain requirements, should submit a dossier to the mayor of the commune, who would then transfer the documents to the Regularization Commission. This Commission then made recommendations to the Minister of the Interior, who in turn made the final decision. There is also a procedure of regularisation for asylum-seekers whose application procedure has been pending for four years; in that case, a request for regularisation is almost always granted. It is submitted to the mayor of the commune and processed by the Aliens' Office, i.e. also at the national level (Direction Générale Emploi et Marché du Travail, 2006: 23).

#### 5 Naturalisation

Article 8 of the Constitution of the Kingdom of Belgium, ›Citizenship‹, notes that civil law regulates the acquisition, preservation and loss of Belgian nationality. Article 9 of the Constitution states that »Naturalisation is accorded by the federal legislative power«.

Naturalisation in Belgium was modified by a 2012 law which took effect 1 January 2013, tightening previous procedures. Non-citizens born in Belgium continue to be able to become Belgian citizens at the age of 18 by simple declaration. Others who have been living in Belgium for five years

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8 CGRA, Cadre Legislatif; 5 Oct 2006, Circulaire relative au statut de protection subsidiaire.

9 22 DECEMBRE 1999. – Loi relative à la régularisation de séjour de certaines catégories d'étrangers séjournant sur le territoire du Royaume (1). In: Moniteur Belge, 10 Jan 2000.

must demonstrate language competency – in either French, Dutch or German – at the A2 level as well as »social integration« and »economic integration«, which can be proved either by having been employed for five years or taking an integration course, at present only possible in Flanders. Those who have lived in Belgium for ten years are held to less strict standards, but must still demonstrate language knowledge and integration into their local community.

Until the 2012 modifications, decisions on naturalisations were made by the national Parliament; after the 2012 modification of the law, while applications for naturalisation are still obtained at and initially submitted to the commune, or local office, with the final decision now resting with the *parquet*, a judicial authority.<sup>10</sup>

## 6 Integration and Language Programmes

Language is a complicated issue in Belgium. The educational system includes French/Flemish in all schools, so that all Walloons must take at least some Flemish and all Flemings must take at least some French. However, for the most part, true bilinguality appears to be rare, although data on this point are not readily available. Migrants, then, enter a complex and sensitive situation.

The Royal Commission for Migrant Policies (RMCP), established in 1989, carried out studies on a variety of issues, including education, yet education remains the purview of communities (French, Flemish and German-speaking). The RCMP did define integration as »the promotion of structural involvement of minorities in activities and aims of the government«, while also noting that assimilation could be required where the »public order demands this«, that respect for Western social principles must be observed, but that there should be »unambiguous respect for cultural-diversity-as-enrichment in all other areas« (Jacobs: 5). The French and Dutch language councils have competency for cultural issues and education (Art. 127 of the Constitution), with their decrees having the force of law. The communities determine the minimum standards for the granting of diplomas as well as the beginning and end of mandatory schooling. The communities also decide on the use of language in administration and education (Art. 129).

Integration programmes vary from the Flemish to the Walloon Region, each having different approaches; the Flemish prefer a system in which migrants are encouraged to form their own organisations (Jacobs: 6)<sup>11</sup>, indeed at

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10 4 DECEMBRE 2012. – Loi modifiant le Code de la nationalité belge afin de rendre l'acquisition de la nationalité belge neutre du point de vue de l'immigration 2012-12-04/04.

11 See also: Vlaamsegemeenschapscommissie, Allochtonenverenigingen, [www.vgc.be](http://www.vgc.be)

present, the Flemish Community Council financially supports 51 migrant organisations in Brussels alone.

The Flemish Parliament passed a law in 1998 specifically addressing integration (Vlaamse Beleid 2006: 41) which variously addressed the »integration sector«, the »minorities sector« and now the »diversity sector«, indicating a new emphasis upon living together in harmony. The Flemish diversity sector is extremely active on many different levels, with the following goals: »promot[ing] living together in diversity, promot[ing] accessibility of services, support[ing] local and provincial administrations and promot[ing] emancipation of marginalised groups« (ibid.: 47). There are 28 »integration centres« at the commune level in Flanders (ibid.: 47) as well as five at the province level. Those at the commune level work with local migrant leaders to receive feedback from the community and to increase migrant (and migrant-origin) participation in local affairs. Again, numerous activities are undertaken in order to facilitate integration. Civic integration programmes were introduced in Flanders in 2003 and carried out by local offices; the programme includes a social orientation course, basic Dutch and career advice; it is required in Flanders for all third-country nationals, but is optional in Brussels. Following the change in the nationality law, participation in this programme can be used to demonstrate the required level of integration.

Language instruction is available for children so that they may achieve the language level of their age group. Furthermore, as of four »*anderstalige*« (literally: other languaged) children in a school, funding is available for additional instruction (ibid.: 35). For adults, integration and language programmes are also available, in a dizzying array of possibilities.

In Wallonia, on the other hand, the philosophy was traditionally centred more on the concept of anti-discrimination rather than on explicit integration (Gsir 2006: 9). In 1996, however, the Walloon Government passed a decree on the integration of foreigners<sup>12</sup>, which introduced positive action as well as six Regional Centers of Integration. Their responsibilities included: development of integration activities in the areas of housing, health, promotion of the education of foreigners, collection of data and accompaniment of those of foreign origin in their steps toward integration. These steps were to be evaluated. Indeed, in 1999, a circular was passed in the Walloon Region enquiring local authorities about measures undertaken in the areas of integration and non-discrimination.<sup>13</sup> Taking the wording from the 1989 RCMP, the decree also states that the »integration of persons of foreign origin in cul-

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12 4 JUILLET 1996. – Décret relatif à l'intégration des personnes étrangères ou d'origine étrangère. In: Moniteur Belge, 3 Sep 1996: 233–249.

13 1er MARS 1999. – Circulaire relative à la politique d'intégration des personnes de nationalité étrangère ou d'origine étrangère.



tural, social and economic life« is to be promoted and differences are to be respected.

Coordinated by the Federation of Centers of Regional Integration (FECRI)<sup>14</sup>, the activities undertaken appear to be of a different nature than those in the Flemish Region. FECRI coordinated a campaign in 2006 to encourage foreigners to vote in the local elections, to improve access to the labour market with pilot programmes, etc. Less work seems to be undertaken in terms of integration programmes and language training. The FECRI 2005 report notes that persons of foreign origin (*personnes d'origine étrangère*, or POE) are to be included in cultural life, but that no financial means are available for this goal (FECRI 2005). In short, the philosophy of integration is different in the Flemish and Walloon Regions, with the one focusing on integration and the other on combating exclusion.

## 7 Social Housing for Foreigners/Immigrants

Social housing is administered by the regions (Flemish, Walloon and Brussels Regions). Although the three regions do coordinate and agree on policy, each region administers its own social housing programme, with immediate responsibilities on the level of the commune and administered by a designated Public Centre for Social Assistance (*Centre public d'aide sociale*) or CPAS. The plans for social inclusion of 2001 to 2003 and 2003 to 2005, for example, were agreed upon jointly by the three regions, while the National Inclusion Plan was finalised in 2003 and passed into law on 31 July 2003 (Mertens/Fontaine 2003: 3).

Non-citizens – with a legal right to residence in Belgium – have the same access to social housing as do Belgians. Nor is there any restriction upon freedom of movement for non-citizens within Belgium. It must be said, however, that in the case of recognised refugees, there is some restriction in that refugees are assigned to a designated CPAS, which then is responsible for welfare provision and finds housing within its area of competence. The different CPAS offices have a financial burden-sharing agreement (*ibid.*: 4).

Social housing is administered by societies for social housing, of which there are 112 in Wallonia; policies and standards are agreed upon jointly by the communes in the Walloon Region (*La procédure d'inscription*, CIDJ). A person or family wishing to live in social housing must submit an application to one of these 112 societies, where the application is either accepted or denied. As noted, Belgians and non-Belgians alike have equal access to these services.

In Flanders, the amount of social housing available corresponds to ca. 6% of the total housing available (Heylen 2006: 3). Allocation rules adhere

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14 www.fecri.be

more or less strictly to the order of registration: first come, first served (ibid.: 3; Stad Leuven). In the last several years, attention has also been paid to creating a »social mix« (*sociale mix*) in order to prevent »liveability problems« (*leefbaarheid*) (Heylen 2006: 3). One can perhaps conclude from these goals that the Flemish government attempts to keep the percentage of non-citizens in any one area low. Housing is dealt with on a policy level at the regional level, but administered on the municipality level.<sup>15</sup>

## 8 Local Voting Rights

Access to the right to vote in local elections is a federal competence, although the organisation of the elections is carried out by the regions (CNAPD 2006: 4). In Belgium, voting is obligatory. Consequently, the decision was made not to enter non-citizens onto the voting rolls automatically, thereby obliging them to participate, but rather to permit them to register (Jacobs/Martiniello/Rea 2002: 204). Once registered, they are obligated to participate in all future (local) elections. EU citizens were allowed to vote in local elections as of 2000, following the 1994 Council Directive<sup>16</sup>, while third-country nationals could do so as of 2004<sup>17</sup> – which effectively meant the 2006 local elections. The rate of participation was quite low, despite a campaign of »sensibilisation«.

## 9 Schooling

According to Article 24 of the Belgian Constitution, all educational issues are to be dealt with at the language community (i.e. Flemish, Walloon or German) level. As noted above, the Flemish community has in place a system to help new students with language acquisition so that they can be placed at grade level. The French community, on the other hand, seeks to ensure equality, not explicitly encouraging diversity and therefore does not identify students as belonging to a certain ethnicity; socio-economic measures, however, are used (Le Texier et al.: 23). Introduction in the mid-1990s of such concepts as »écoles de réussites« and »zones d'éducation prioritaire« began to address the issues of poor school achievements, again focusing on socio-economic markers.

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15 [www.vmsw.be](http://www.vmsw.be)

16 Council Directive 94/80/EC of 19 Dec 1994 lays down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals.

17 19 MARS 2004. – Loi visant à octroyer le droit de vote aux élections communales à des étrangers (1).

## 10 Employment and Unemployment Benefits

For all non-EU foreigners who work in salaried jobs, work permits are issued by the three regions as well as by the German-speaking community (Direction Générale Emploi et Marché du Travail 2006: 28). Non-salaried workers, i.e. professional independents, must have a *«carte professionnelle»* issued by the Ministry of Economics.

Unemployment benefits are managed on the regional (or German community) level, and must be applied for at the commune office of the regional-level organisation dealing with employment (ORBEM, Office Régional Bruxellois de l'Emploi; FOREM, L'Office wallon de la formation professionnelle et de l'emploi, or VDAB, Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding).<sup>18</sup> Non-citizens are eligible for unemployment benefits on the basis of the same criteria as Belgians, although work abroad may be treated somewhat differently.

## 11 Acknowledgement of Qualifications

Insofar as the linguistic Communities are responsible for education, the acknowledgement of any professional, i.e. university-granted, qualification is managed by the linguistic communities in Belgium.

Other types of recognition of qualifications, however, are addressed on the national level. A Royal Decree of 2002 notes that all EU migrants' diplomas are recognised (Chapter II, Art. 6/1). The decree also notes that the Minister of Small and Medium Enterprises may decide that a foreigner's qualifications are sufficient, following an examination if his/her diploma has not already been declared as equivalent by the competent authority (Chapter II, Art. 6/2).<sup>19</sup> Recognition of professional qualifications on the basis of professional experience is also regulated on the national level in this decree (Chapter III).

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# Kai Leptien

## Germany's Unitary Federalism

### 1 Federal Law – *Länder* Administration

The Federal Republic of Germany consists of sixteen states (*Länder*), including three cities which have *Länder* status: Hamburg, Berlin and Bremen. The general division of powers in the German system can be described as a cooperative form of federalism. All responsibilities in the legislative, administrative and judiciary fields are distributed between the *Bund* and the *Länder*. Article 30 of the German Basic Law (Grundgesetz) states that all competencies not explicitly defined a federal matter are in the responsibility of the *Länder*. There are few federally administered administrations in the German system, among them Defence, Foreign Service and Border Police (Art. 87).

The basic division of powers in Germany rests on the predominant competence of the federal level for law-making and that of the *Länder* level for the administration and implementation of the laws in their own responsibility (»*in eigener Zuständigkeit*«). The *Länder* do not only implement their own laws, but also federal law (Schneider 2006: 124).

Under the constitution, the federal level has no direct control over the administration, and there is no possibility to appeal to the federation regarding decisions. Control over the constitutionality and the legality of administrative acts is the competence of the administrative courts at the various levels and the constitutional courts at the *Länder* and the federal levels. Since all law-making and administrative acts are bound to the constitution, the administration is bound to the law, and final judgements rest with the Federal Administrative Court and the Federal Constitutional Court). The court system has a powerful centralising effect. Moreover, the possibility of abstract and concrete judicial review has a strong unifying effect, as every law can be brought before the Constitutional Court at the request of the federal government, a number of *Bundestag* deputies or a *Land* government. Since Germany has a centralistic political culture and there is a strong public impetus for uniform practice, federal laws often include administrative rules or administrative regulations enacted by the *Bundesrat*, the federal chamber of the *Länder*.

With the immigration law of 2005, these principles were modified in the field of integration. The former Federal Office for Refugees was extended and is now the *Bundesamt für Migration und Flüchtlinge* (BAMF) (Federal

Office for Migration and Refugees). It is a federal institution and has regional sub-offices all over Germany, administering decisions over the granting of asylum and the administration of the extensive integration programmes, e.g. language and civic courses (*Integrationskurse*). The reason for this deviation from the basic principle of federal law and *Land* administration was the political priority of the centre-left ›red-green‹ government of 2005 for a sweeping reform and a new immigration law as well as the unwillingness of the largely centre-right Christian Democratic *Länder* to pay for integration programmes.

The Federal Office for Migration and Refugees also collects data about all foreigners in Germany in the *Ausländerzentralregister* (Central Register of Foreigners) which is one of the biggest data banks in Germany. All institutions dealing with immigration matters have access to this data bank, e.g. the police, the federal labour office and the local foreigners' registration offices. Another main task of the *Bundesamt* is the responsibility to grant asylum, whereas housing of refugees is a state and local matter. The proportional distribution of refugees follows an agreement of the *Länder* (*Königsteiner Schlüssel*). Thus, every state has to house a certain number of refugees proportional to its population.

Where the *Bund* has passed laws, the *Länder* often agree on common guidelines, following the basic cultural imperative of a standardised policy all over the country. They have also institutionalised *Länder-Länder* coordination bodies in many policy fields, particularly in cultural affairs, in the *Kultusministerkonferenz* (Cultural Ministers' Conference), which keeps a large administrative body in Bonn. In other fields, there are also conferences of the federal minister with his *Länder* colleagues, e.g. the *Innenministerkonferenz* (Conference of the Ministers of the Interior). Both sorts of bodies operate on the principle of unanimity and are divided between the ›A-‹ and ›B-Länder‹, meaning the *Länder* led by the Social Democratic Party (SPD) and those led by the Christian Democratic Party (CDU), whose ministers also hold their own internal coordination meetings, with the respective positions often brought to the public. *Länder-Länder* coordination often has strong standardising effects. Since 2007, regular meetings are held by the state ministers who are responsible for integration (*Integrationsministerkonferenz*), aiming at finding agreements on state-level responsibilities for integration. An example for the recent activities on both federal and state level is ›Integration Monitoring‹. The federal and *Länder* activities on collecting and comparing data are run separately, but it is intended that variables are comparative.

Another cooperation between the federal state and the *Länder* has developed since 2007 within the framework of the National Integration Plan (*Nationaler Integrationsplan*) and the National Action Plan on Integration (*Nationaler Aktionsplan Integration*) (SVR 2012: 63). These plans contain deci-



sions made on the federal level but also self-commitments by *Länder*, municipalities and NGOs who deal in the field of integration. Generally, it can be said that the debate on integration as well as institutional cooperation has intensified in the last few years.

Local government has its coordinating bodies: the *Städtetag* for the cities, the *Städte- und Gemeindebund* for the towns and smaller local communities, and the *Landkreistag* for the counties. They recommend policies and administrative schemes to their members and thus also have coordinating and standardizing impacts. Still, most decisions follow the traditional trias principle:

- Federal law,
- *Land* and local government administration, and
- Possibility of legal appeal.

This is the case for

- Settlement of refugees and asylum seekers: Federal law, *Land* administration, legal appeal.
- Regulation of temporary and permanent residence: federal law, *Land* administration, legal appeal (Groß 2006: 52).
- Amnesties and regulations of long-standing asylum seekers: Since 2006, the *Länder* follow an agreement between the *Länder* Ministers of the Interior. Since 2006, each *Land* has a commission for special cases of hardship. They are now allowed to grant a residence permit even if the foreigner does not fulfil the legal requirements.
- Naturalisation and citizenship: federal law, *Land* administration, and legal appeal. The principle of *ius soli* was added to the traditional *ius sanguinis* principle under German federal legislation in 1999. Children of two parents without a German passport receive German citizenship by birth if one parent has been living in the country legally for at least eight years. Coming of age, between 18 and 23, they have to opt for which citizenship they want to keep. However, on request it is also possible to keep both citizenships. Foreigners who have been living in Germany for at least eight years can apply for naturalisation. If they participated in ›integration courses‹, they can apply for citizenship after seven years. Other requirements are sufficient German language skills, no dependency on welfare aid and the absence of a criminal record. In case of very good German language skills, naturalisation is possible after only six years. The requirements are defined by federal law and administered by the *Länder* administrations. Naturalisation figures differ widely between the *Länder*, as the Social Democratic and some Christian Democratic *Länder* encourage naturalisation, while for example Bavaria keeps restrictive practices, and naturalisation claims are

often only enforced by appeal to the courts (Hagedorn 2001, Dornis 2001, Thränhardt 2008).

- Recognition of credentials and qualifications: federal laws, *Land* administration, in some professions administration through corporate bodies at the *Länder* level, e.g. for physicians through the General Medical Council (*Ärzttekammern*).
- The competence for kindergartens is regulated in principle by a federal law which gives priority to churches and other charity institutions or to parents' initiatives which are to be funded by the local government. Local government is obliged to provide kindergartens if such services are not offered by corporate or private providers. The *Länder* regulate the funding, organisation and standards as well as the right for a place in a kindergarten.

## 2 Federal Prerogatives

Foreign relations are one area where the federal level has not only the legal, but also all administrative competencies. This means that visas and immigration are controlled on the federal level. However, they have to consult with the *Länder* in cases of quota refugees and *Aussiedler* (ethnic Germans) from Russia and other CIS countries. With respect to labour migration, they must consult with the federal labour agency (*Bundesagentur für Arbeit*), a federal tripartite body.

Since 1993, incoming asylum seekers, quota refugees and *Aussiedler* are divided between the *Länder* according to a fixed quota system bound to the population of the respective *Land*, the *Königsteiner Schlüssel*. This is partially laid down in laws, e.g. the asylum law, and partially agreed upon by the *Länder*.

### 2.1 Federal Integration Programme

The new system of language and orientation courses, introduced with the immigration law of 2005, is another matter where the federal level has full control. By law, the federal government is responsible for offering courses nationwide. The reason for this deviation from the usual division of powers is that the federal government was prepared to fund the whole new system, and the states did not want to participate in funding. There is a central authority for the courses: the Federal Office for Migration and Refugees (*BAMF*) with regional sub-offices, which controls the whole process of integration courses. The language and orientation courses guarantee a 900-hour language course and 30 hours for the integration course for each newcomer. Immigrants who have been living in the country for a longer time can participate if there are free places.

The Federal Office is also responsible for the curriculum of the integration courses and the evaluation of the course system. The *Länder* have to fund counselling and child care. However, there are no general rules concerning these issues for the *Länder* (Frings/Knösel 2005: 79). The costs of the language courses are shared between the *Bundesamt* and the participants who have to pay 1.20 Euros for each course hour as of November 2012. Ethnic Germans as well as EU citizens do not have to pay for the courses due to the anti-discrimination legislation of the European Union. Non-natives who are dependent on social assistance can participate without paying the fees. The federal residential and naturalisation law rules that non-participation in these courses can be sanctioned when decisions are made concerning residence permits and naturalisation. The law on integration of 2007 also includes the right to sanction immigrants who do not participate in these courses, for example unemployed people.

The federal level also carries the costs for the new system of basic migration consultation (*Migrationserstberatung*) for foreigners during the first three years of their stay in Germany. In this field, the federal level does not cooperate with the *Länder* but with the six welfare organisations, which have a long tradition in performing tasks for foreigners in Germany (catholic *Caritas*, protestant *Diakonie*, Jewish *Zentralwohlfahrtsstelle*, the German Red Cross, *Arbeiterwohlfahrt* (workers welfare), and *Deutscher Paritätischer Wohlfahrtsverband* (a pluralist non-denominational association)). All of Germany's six welfare organisations are engaged in integration policies. Even though they are private organisations, they are funded mainly by state money (Heckmann 2003: 69; Puskeppeleit/Thränhardt 1990). Apart from the federally financed integration programme, which is based on the immigration law, all *Länder* within their framework passed own supplementary integration concepts or guidelines.

Placements, employment and unemployment benefits are under the responsibility of the Federal Labour Agency and ruled by federal law. Cities have, however, the right to opt out and administer benefits for people in need (*Arbeitslosengeld II*) when the regular benefits (*Arbeitslosengeld I*) have expired. Local governments also administer social welfare, which is refunded according to the complex federal and *Land* finance systems.

### 3 *Länder* Competencies

Schooling and education are regulated by *Länder* laws and administered by *Länder* ministries. Educational policy is an exclusive state competence. The field of education is coordinated by the Conference of Ministers of Culture (*Kultusministerkonferenz*).

School teachers are *Land* officials. Local governments participate in the administration with respect to the buildings and technical administration, and in some *Länder* also with respect to school organisation. Three *Länder* offer Islamic religious instruction alongside Catholic, Protestant and Jewish instruction, other *Länder* are planning to offer Islamic instruction in the future.

The federal government (Minister of the Interior) invited representatives of Islamic organisations to consult with them in the German Islam Conference and pleaded for the introduction of standards for Islamic religious education. However, the competence for school legislation is with the *Länder* (International Crisis Group 2007: 29). Since they are also in charge of recognising religious associations as *öffentliche Körperschaften* (public corporations), the International Crisis Group urged the *Länder* to create regional counterparts to the German Islam Conference, a discussion forum of the five main Muslim organisations in Germany and the federal government, representatives of the *Länder* government and the municipalities.

The *Länder* also decide on further promotion programmes in pre-school education. In 2007, the *Land* of North Rhine Westphalia was the first to introduce compulsory linguistic competence tests for all children at the age of four and promotion programmes in order to guarantee sufficient German language skills when children enter school (Schulministerium NRW 2007). There are similar programmes in Hesse, Bavaria and other *Länder* as well.

Universities are fully under the competence of the *Länder*, but enjoy autonomy under the constitution. The admission for some study programmes in demand is regulated by a central board. Financial support for college and university students and for adult education is generally available for accepted asylum seekers, foreigners with a permanent residential status or if one parent has German citizenship. It is funded by the Federal Ministry of Education and Science (*Bundesausbildungsförderungsgesetz, BAFÖG*, law for the support of education).

The recognition of diplomas for some jobs not only requires a working permit granted by the state but also recognition of the job by the local profession chambers, e.g. for physicians.

## 4 Local Government

Local government is under the jurisdiction of the *Länder*, and the federal government has no role in it. Again, there is control through the system of administrative courts and the constitutional courts.

At the local level, the *Länder* operate through local government in the system of *Auftragsverwaltung* (delegated administration). Despite the constitutional principle of local self-government, the cities and counties are bound by instruction (*weisungsgebunden*) with all delegated affairs (*übertragene Auf-*

*gaben*). They recruit the personnel and organise the administration, but the *Land* government can give them instructions and can also intervene in the decision of cases. Most of the *Länder* policies are administrated by delegation to the local government. This is the case for naturalisation, asylum, regulation of residence, amnesties and other matters except for schools, where the *Länder* work through their own school offices (*Schulämter*). Concerning their organisational structure dealing with immigration and integration matters, local governments are free to find their own local organisational solutions.

Social housing for foreigners/immigrants is granted by local governments which have allocation rights (*Belegungsrechte*) if housing has been built with federal and *Länder* subsidies. Needy people can get housing benefits (*Wohngeld*) at local government offices, jointly funded by the federal and *Land* governments. Cities have preference systems based on need, family size, etc., and in some cases also on the length of residence in the respective city. Within their local autonomy, municipalities can arrange organisational settings concerning the management of integration of foreigners. The measures and strategies of how municipalities deal with the challenges concerning migration into their cities may therefore vary locally, e.g. how they engage to receive federal or state funding for programmes.

The Federal Ministry of the Interior, in cooperation with non-governmental actors such as foundations and in some cases the European Union, supports local efforts for integration projects in cities. In 2004, a country-wide contest on best practice took place and received much public attention (Bertelsmann Stiftung 2005). By agreement, the *Bund*, the *Länder* and cities also coordinate and finance various integration projects on the local level, e.g. the programme *Soziale Stadt* which was initialised in 1999. Nationwide, the programme supports over 200 projects located in cities or city districts. The goal of the initiative is to advance local programmes and best practice and to coordinate the different measures of local governmental and non-governmental stakeholders. The programmes address especially areas with high percentages of immigrants. Partly, the municipalities take over the implementation within their organisational framework; in other cases, external structures are created (Bundesbeauftragte 2005: 128).

#### 4.1 Political Rights

EU citizens enjoy local voting rights under EU regulations. They are allowed to vote in the election for the European Parliament as well as for the local government. In 1990, the Constitutional Court ruled that *Länder* or local governments are not allowed to grant local voting rights to non-EU foreigners under the doctrine of a unitary German *Staatsvolk* (nation). This interpretation means that German *Länder* are less autonomous in their own constitutional affairs than Swiss cantons or American states. Some *Länder*, e.g. North

Rhine Westphalia, Hesse and Brandenburg, have institutionalised local advisory boards (*Ausländerbeiräte*, *Integrationsbeiräte*) for foreigners, some of them elected by the foreign residents, some appointed. In conservative *Länder*, some larger cities have taken the initiative to create such bodies, e.g. Munich and Stuttgart. Frankfurt created an ›Office for Multicultural Affairs‹ early on.

## 5 Commissioners

The federal government and many *Länder* and local governments have created special commissioners for foreigners or for integration (*Ausländerbeauftragte*, *Integrationsbeauftragte*), a kind of ombudsman for foreigners/immigrants. They are initiating integration programmes, arranging networks, fighting discrimination and addressing complaints about unfair treatment or social problems of immigrants, as well as advising governments. In the federal government, the *Beauftragte* has had the status of a *Staatsminister* since 2005. In 2005, North Rhine Westphalia created a Ministry for Integration, Women, Families and Generations. Baden-Württemberg, Rhineland-Palatinate, Lower Saxony and Schleswig-Holstein have also created ministries which explicitly have ›integration‹ in their title.

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Claudia Finotelli

## Italy: Regional Dynamics and Centralistic Traditions

### 1 Introduction

Italian immigration policies are a highly debated issue. Since the migration crisis of the 1990s, international observers have often mistrusted the capacity of the Italian governments not only to control irregular migration but also to implement efficient labour migration policies. With respect to immigrant integration, Italy's ›young‹ immigration experience and its alleged lack of interest in ambitious integration designs, were typically invoked to suggest that the Italian regime, like other Southern European integration regimes, may be ›perilously close to a *de facto* policy of differential exclusion« (Freeman 2004: 961).

Indeed, the weakness of Italian immigration regulations together with an extended informal economy for many years represented a magnet for irregular migration flows. Most of them started their new life in Italy in very precarious conditions. This notwithstanding, the Italian migration regime has been able to ›normalise‹ the presence of a significant number of foreigners since the 1990s. In 2010, foreign nationals in Italy represented 8% of the total population.

Among them, Albanian and Romanian immigrants, two of the formerly most stigmatised immigrant communities in Italy, have achieved a satisfactory degree of economic and social integration (Melchionda 2004). Finally, it is important to note that the second generation of immigrants has been steadily increasing in the last decade, in which the percentage of foreigners born in Italy has grown from 4% in 1999 to 12.6% in 2009 (Valtolina 2010).

In view of the restrictive and often dysfunctional character of Italian immigration policies, scholars agree that the stabilisation of the foreign population was mainly a consequence of regularisation processes. Not only have many immigrants obtained their first residence permit after a regularisation process, but most of them have been also able to renew it in the following years (Finotelli 2007). In this way, regularisations turned out to be the most suitable instrument to repair the disfunctionalities of the Italian migration regime and represented an important element of continuity between the

policies of centre-left and centre-right governmental majorities (Zincone 2006).

In contrast to the relevance of the migration control issues, integration often remained in the backstage of the political debate. Very few efforts were made to conceive a systematic framework of integration policies and practices. In 1998, the centre-left government chaired by Romano Prodi decided to turn the integration of immigrants into one of the main pillars of the new Italian immigration law, the so-called *legge Turco-Napolitano* no. 40/1998. The government aimed at establishing a »model of reasonable integration« (Zincone 2000), constituted by four basic elements: 1) Interaction based on security and the respect of the rules. Fighting against crime and curbing illegal entries were considered to be two fundamental aspects of achieving the goal of positive interaction; 2) integrity of human rights for illegal immigrants; 3) full integrity for legal immigrants; 4) interaction based on pluralism and communication (ibid.). The government also created a Commission for the Integration of Immigrants, a governmental advisory body with both monitoring and consulting functions. However, the implementation of the new measures was affected by the instability of the centre-left majority. The Democratic Party lost the elections in 2001 and the following centre-right governments chaired by Silvio Berlusconi (2001–2006)<sup>1</sup> returned to a more security-oriented immigration discourse with very little interest in integration issues.

Due to the lack of a coherent integration policy at the state level, the issue of integration was early occupied by non-state actors, regions and municipalities whose daily integration practices succeeded in »substituting« the weak presence of the State. It is the main goal of this chapter to provide an overview of the role played by regional and municipal institutions in the Italian immigration policies and to understand their relationship with state competencies in this field.

## 2 The Territorial Organisation of the Italian State

According to Title V, Article 114 of the Italian Constitution, the Italian Republic is constituted by municipalities (*Comuni*), provinces (*Province*), metropolitan Cities (*Città Metropolitane*)<sup>2</sup>, regions (*Regioni*) and the central State:

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- 1 The first Berlusconi government lasted only a few months in 1995. The second Berlusconi government lasted five years, from 2001 to 2006, the third one from 2008 to 2011.
  - 2 Metropolitan Cities are Rome, Milan, Naples, Turin, Genoa, Bologna, Florence, Bari and Venice. According to the constitutional reform they will get a special regulation, which will distinguish them from the other municipalities and provinces. The new territorial units will begin functioning in 2014.

Municipalities, provinces, regions and metropolitan cities are autonomous entities with their own statutes, powers and functions according to the principles defined in the Constitution.<sup>3</sup>

Five of the Italian regions enjoy special forms of autonomy (*Regioni a Statuto Speciale*) because of their particular geographic position and their historical as well as linguistic background (Art. 116 It. Const.).<sup>4</sup> After the constitutional reform of 2001, all the Italian regions considerably increased their autonomy, enlarging their competence spectrum and approving their own statutes (Art. 123 It. Const.).<sup>5</sup> No longer do regional laws and statutes need an approval of the central government, as was the case before 2001, nor is there a preventive control on their administrative acts any longer. The Italian Constitution defines the matters in which the State has exclusive legislative competence (Art. 117.1. It. Const.), in which both State and regions have »concurrent« legislative competence (Art. 117.2. It. Const.) and in which the regions have exclusive legislative competence (Art. 117.3. It. Const.). In matters of exclusive legislative competence the central State approves both the law and its execution acts (*regolamento*)<sup>6</sup>, while the regions have an administrative function. This is the case, among others, for foreign policy, immigration, money, citizenship, general rules on education and social security. In other matters the Constitution foresees a »concurrent« legislative competence of both the State and the regions: »In matters of concurrent legislation, the regions have legislative power except for fundamental principles which are reserved to State law« (Art. 117.4. It. Const.). In this case the State adopts a frame-law (*leggi cornice*) as a reference for regional legislation on the same topic, while the regions have to legislate and adopt the execution acts respecting the principles of the frame-law.<sup>7</sup> Finally, the regions have exclusive

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3 This description is based on the English version of the Italian Constitution: <http://www.legislationline.org/upload/legislations/4e/84/8d54de31535e08c956669691792d.htm>.

4 These are the autonomous provinces of Trento and Bolzano, Valle d'Aosta, Friuli Venezia-Giulia, Sicily and Sardinia.

5 The Italian decentralisation process has been very slow. It started in the 1970s despite being rooted in the Italian Constitution of 1948. In the last years, the Italian territorial government has been revised by the Constitutional Laws no. 3 of 18 Oct 2001, no. 1 of 22 Nov 1999 and no. 2 of 31 Jan 2001.

6 The execution act is subordinated to the law. The doctrine agrees on their definition as substantially legislative acts and formally administrative acts.

7 This is for example the case, among others, of international and European Union relations of the regions, foreign trade, protection and safety of labour, education without infringement of the autonomy of schools and other institutions and with the exception of vocational training, professions, food, disaster relief service, major transportation and navigation networks, regulation of media and communication, production, transportation and national distribution of energy, complementary and integrative pensions systems, promotion of the environmental and cultural heritage

legislative competence »with respect to any matters not expressly reserved to state law« by the Italian Constitution (Art. 117.5. It. Const.).<sup>8</sup> Those regions enjoying special forms of autonomy can obtain further responsibilities in education, the protection of the environment and in matters of cultural heritage (Art. 116 It. Const.).

However, due to the complexity of the new competence distribution, it is not always clear in which fields the regions have concurrent or residual legislative competence in a specific matter (Barbera 2006). In addition, the concept of the legislative competence of the Italian regions needs some further explanation. The regional legislative powers are first of all limited by the constitutional principles as well as by EU-legislation and international treaties. For this reason, regional statutes and laws may be controlled by the Italian Constitutional Court (*Tribunale Costituzionale*), which can examine the constitutional legitimacy of a regional law. As a matter of fact, the State can appeal against a regional law apparently exceeding its competence or a region itself can appeal against the laws approved by another region (Art. 127 It. Const.). Furthermore, the Italian Constitutional Court can decide on competence conflicts between the State and regions as well as between two regions (Art. 134). In case of illegitimate acts of the State against regional law, the regions have to appeal to the Regional Administrative Court (*Tribunale amministrativo regionale*), which is traditionally the court entrusted with decisions on acts of the public administration. Decisions of the Regional Administrative Court can be appealed by the State Council (*Consiglio di Stato*). Secondly, the legislative power of the regions is limited, because Italian regions can only legislate on the administrative activity of the regional and local public administration. As the constitutionalist Giandomenico Falcon has pointed out: »The Italian regions can legislate, but they are not States« (Falcon 2006: 304). For the same reason, the doctrine agrees on the fact that Italy is not a federal but a regional state despite the autonomy obtained by the regions after the last constitutional reform. In particular, the doctrine does not consider the Italian State to be a federal state because the regions are derivative territorial bodies, instituted by the Italian Constitution in 1948.

The central State in Italy has exclusive legislative competence in immigration matters (Art. 117 It. Const). In other words: the central State has the exclusive power to legislate and regulate on this topic. However, the Italian Parliament adopted in 2000 the Frame Law on the Integrated System of In-

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and promotion and organisation of cultural activities, savings banks, rural co-operative banks, and regional banks. (Translation of: <http://www.legislationline.org/upload/legislations/4e/84/8d54de31535e08c956669691792d.htm>).

8 Admittedly, this competence distribution inverted the order of the former constitutional regulation, which indicated only the regional competencies, suggesting that the rest were competences of the State.

terventions and Social Services (*Legge Quadro per la realizzazione del sistema integrato di interventi e servizi sociali*) n. 328 of 8 November 2000. According to this law, the regions are granted programming and regulation competencies for the institution of social services. Such an »integrated system« is funded by the National Fund for Social Policies (*Fondo Nazionale per le Politiche Sociali*) and is of particular importance for implementing integration objectives for immigrants on the Italian territory. In fact, important issues such as health protection and education belong to the group of »shared« matters between the central State and the regions. However, the complicated reforms, which affected the Italian territorial organisation in the last five years, do not make it easy to draw a clear division of responsibilities. What we can say, is that the Italian territorial organisation follows the principles of integrated federalism (*Verbundföderalismus*), without a clear separation of the regional and state powers. Furthermore, the territorial organisation shows clear asymmetric patterns. This refers not only to the division between ordinary regions and regions with special forms of autonomy, but also to the ordinary regions themselves. Five of them<sup>9</sup> approved their new statute and an electoral law; four<sup>10</sup> adopted only a statute while the rest of them have approved neither a statute nor an electoral law.<sup>11</sup> Considering this development and according to the doctrine, the reform of the Constitution has prepared the basis for a »differentiated regionalism« in Italy (Barbera 2006). In the following section we will provide more details on the competence distribution on immigration and integration issues among the different levels of territorial government.

### 3 The Central State and Immigration

Immigration and integration in Italy are still matters of the central State. Once immigration laws are approved, they are followed by an execution act (*regolamento*), which determines how state law has to be carried out at the regional and the local levels. Since 1990, the Italian Parliament has approved three immigration laws: Law no. 39/90 (*legge Martelli*), Law no. 40/1998 (*legge Turco-Napolitano*) and Law no. 189/2002 (*legge Bossi-Fini*). The whole legislation on immigration and integration is collected in the Legislative Decree no. 286/1998 and the corresponding Execution Decree no. 394/1999, which has been modified several times until today.<sup>12</sup> To be operative, each of them has to be accompanied by the corresponding execution decree.

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9 Calabria, Lazio, Marche, Puglia, Toscana.

10 Emilia-Romagna, Piemonte, Liguria, Umbria.

11 Abruzzo, Basilicata, Campania, Lombardia, Molise, Veneto.

12 It has been modified by Law Decree no. 51/2002, Law no. 189/2002, Law no. 289/2002, Legislative Decree no. 87/2003, Legislative Decree no. 241/2004, Legislative Decree no. 144/2005, Legislative Decree no. 3/2007 and no. 5/2007, Law no.

The state laws cover almost every field of immigration regulation. First of all, they regulate the recruitment of migrants through the establishment of yearly immigration quotas. Since 1998 the central government publishes a programmatic document (*documento programmatico*) outlining the government action in matters of immigration and integration for the following three years. The central government decides also on bilateral agreements with third-countries for the recruitment and the expulsion of foreigners. Issues of immigration control like visa-policy, the renovation of residence permits, border controls and the management of the expulsion centres (the so-called *Centri di Permanenza Temporanea*) depend on the central government and its administration. Law no. 189/2002 created the so-called *Sportelli Unici per l'immigrazione* (central immigration offices) in local delegations of the Ministry of the Interior (*Prefetture*), in which employers have to present their applications for the recruitment of foreign workers and immigrants their applications for family reunification. Since 2006, these offices cooperate very closely with the Italian Employers Associations. Employment and unemployment benefits are dealt with by the National Institute for Social Security (*Istituto Nazionale della Previdenza Sociale*). Tourist and long-stay visa can only be issued by the Italian consulates and embassies, which depend directly on the Italian Foreign Ministry. Residence permits can be only granted or renewed by the *Questure*, the Italian police headquarters, which depends on the Ministry of the Interior in Rome and has to act in accordance with its guidelines.<sup>13</sup> This is why these offices play a central role in the administration of immigration and have considerable discretionary power. The Ministry of the Interior and the police are also responsible for border controls and for the management of the expulsion centres. Since 2002, the Italian Navy (Ministry of Defence) has been entrusted with the control of sea borders, getting the possibility to stop and control foreign vessels at sea, if there is any suspicion that they are smuggling irregular migrants. Finally, regulation and management of the asylum procedure are also a matter of the central government and its administration. The right to asylum in Italy is a constitutional right with the character of a subjective right. However, it has not been brought into an asylum law yet. The asylum procedure in Italy is based on the Geneva Convention, on Art. 32 of Law no. 182/02, modifying Art. 1 of Law no. 39/90 and the corresponding execution acts. Since 2004, seven territorial Commissions

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125/2008, Law no. 94/2009 as well as by the ratification of all European directives on immigration and asylum.

13 However, the initial procedure changed in December 2006, eliminating the long queues in front of the Italian *Questure*. According to an agreement between the Ministry of Interior and the Italian Post (*Poste Italiane*), Foreigners can also present their application for the renewal of the residence permit in a Post Office, which through a special procedure will send it to the competent *Questura*.

have been entrusted with the examination of the asylum seekers' applications. In 2008, three additional Commissions were added to the already existing ones. They are composed of four members from the Ministry of the Interior (local *Prefettura*), the Police, the UNHCR and local government (Decree no. 303 of 16 September 2004).<sup>14</sup>

The Central Commission in Rome still holds a consulting function. In the Italian case, there is no kind of *Königsteiner Schlüssel* to distribute asylum seekers and refugees on the territory. However, Law no.189/2002 instituted the National Protection System for Asylum Seekers and Refugees (*Sistema Nazionale di Protezione di Richiedenti Asilo e Rifugiati*) based on the experience of the previous reception programme called National Asylum Programme (*Programma Nazionale Asilo*). The Protection System is managed by the Central Service, which depends on the Ministry of the Interior but is managed by the Italian Association of the Local Governments (ANCI – *Associazione dei Comuni Italiani*) which coordinated about 138 local projects for a total of 3,000 places in 2010.<sup>15</sup> As a matter of fact, reception of refugees in Italy is possible thanks to a wide network of local projects, funded by the Fund for Protection and Asylum Policies (*Fondo Nazionale per le Politiche d'Asilo*) created by Law no. 189/2002. However, the reception capacity of the system cannot cover the necessities of all asylum seekers in Italy. For this reason, the asylum seekers who do not get a place in the National Protection System get a cheque for the first three months of their stay from the local *Prefettura*. Apart from the role of the local governments in the National Protection System, asylum and refugee issues are under the control of state administration. This applies also to amnesties for irregular migrants, which can be ruled only by the central government and executed by its administrations.<sup>16</sup> For the amnesty of 2002, the applicants had to present their documentation at a post-office in their town of residence. The application was then sent to the *Prefettura* and *Questura* in charge of its evaluation. In the case of a positive response, the contract between the worker and the employer was also signed in the presence of a representative of the *prefettura*, of the *questura*, of the territorial Work Office (*Ufficio del Lavoro*), of the Social Security Institute (*Istituto Nazionale per la Previdenza Sociale* – INPS) and of the Central Tax Office, respectively. Finally, naturalisations are also a matter of state. The *Prefetture* is responsible for the naturalisation of foreigners, which is still based on Law no. 91 of 5 February 1992. The naturalisation application has to be presented in the *Prefettura* of

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14 The territorial Commissions are in Gorizia, Milan, Rome, Foggia, Syrakus, Crotone, Trapani, Torino, Bari and Caserta.

15 Sistema di Protezione dei Richiedenti Asilo e Rifugiati (SPRAR), Rapporto Annuale Anno 2010/2011, <http://www.serviziocentrale.it/?Documenti&i=7>.

16 The amnesty in 2002 was regulated by Law no. 189/2002 and Law Decree no. 190/2002.

place of residence, which forwards it to the Ministry of the Interior to be examined.<sup>17</sup> Italian citizenship law is one of the most restrictive in Europe. New foreign residents have to wait ten years before applying for the Italian citizenship, while foreign children born in Italy can apply for the Italian citizenship only after having reached the majority age of 18.

The central state is also responsible for the so-called ›integration agreement‹ (*Accordo di integrazione*). According to Law Decree no. 171/2011, all foreigners that come to Italy for the first time have to sign an integration agreement with the State. In such an agreement, they have to declare that they will learn the basics of the Italian language, the fundamental principles of the Italian Constitution and the basic rules of civil life in Italy. They also have to promise to send their children to school and sign the ›Charter on the Values of Citizenship and Integration‹ (*Carta sui valori della cittadinanza e dell'integrazione*) of the Ministry of the Interior. Finally, to fulfil the agreement immigrants have to attend a ten-hour ›mini-course‹ about the basic principles of civil life in Italy. Only immigrants who obtain 30 or more points will be considered to be successfully integrated. Immigrants who obtain between 1 and 29 points have to extend their contract for one more year to prove their integration level. Those who have 0 points – as in the case of immigrants who have committed criminal actions – will be expelled. The *Sportelli Unici per l'Immigrazione* is the administration responsible for checking if immigrants accomplish their integration agreement with the State.

Since the abolishment of the Commission for the Integration of Immigrants in 2001, no special Commissioner for foreigners or for integration has been created. It is the so-called *Difensore civico* (Civic Defensor), the ombudsman for Italian citizens, who is entrusted with integration and discrimination issues. In 2005, the Minister of the Interior Beppe Pisanu also created the *Consulta per l'Islam Italiano* (Council for Italian Islam), an advisory body whose aim was to favour the institutional dialogue with the Muslim Community in Italy and the social and economic integration of Muslim immigrants in Italy (for more information see Ferrari 2007).

As we can notice, the central state and its administrations in Italy play a significant role in matters of immigration and integration. Immigrant integration, however, has also benefited from an increasing involvement of the regional and local governments in the provision of social services and in the development of local integration programmes and practices.

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17 Actually, there is no institutionalised procedure for proofing the loyalty of the applicant, so that there is a lot of discretionary power of the administration in play. A new law project on the Italian Citizenship Law should reduce the minimum residence period from ten to five years, introduce the *ius soli* for foreign children born in Italy and rationalise the procedure.



## 4 The Regional Administration and Immigration

The Italian regions are not directly involved in the recruitment process of foreign workers. However, they have consulting functions in the determination of the yearly immigration quota. In fact, they can participate through the Regions-State-Conference to the determination of the triennial *Documento Programmatico*, foreseen by Art 3 of the Legislative Decree no. 286/1998. Furthermore, Law no. 189/2002 has established the participation of the State-Regions-Conference and State-Local Autonomies-Conference with the decisions about the annual quota decrees (*decreto flussi*). However, due to the same law, the Italian regions lost their only opportunity to intervene directly in the recruitment of the labour force through the so-called *sponsor*. In fact, Law no. 40/1998 foresaw the creation of a sponsor, which could be an Italian citizen, but also a region to guarantee the entry of a foreign worker. This rule meant a direct involvement of the regions in the recruitment process, although they did not really take part in it. In 1999, the so-called Territorial Committees for Immigration were established. They are ruled by the Head of the *Prefettura* and composed of representatives of the regional and local government, the Commerce Chambers (*Camera di Commercio*), the Trade Unions and the organisations of foreign workers as well as of the Employers. They have a monitoring function and an advisory function towards the central power and should favour all initiatives with integration and cooperation purposes.

In general, Immigration Law no. 40/1998 entrusted the regions with considerable programming and coordination competencies in immigration matters. Law no. 189/2002 represented a step forward in the decentralisation of responsibilities as far as the integration of immigrants is concerned, establishing the National Fund for Migration Policies that supports the involvement of the regions in the field of social integration. Since then six of them have signed their own integration laws. Emilia-Romagna was the first one to adopt Law no. 5/2004 on norms for the social integration of foreign citizens (*Norme per l'integrazione sociale dei cittadini stranieri immigrati*), which defines the competencies between the three territorial levels. The region is responsible for programming, coordinating, monitoring and evaluating initiatives in the field of social integration. For this purpose, the law foresees the constitution of a regional consulting body for the integration of foreigners and the preparation of a Triennial Programme for Social Integration as well as a Regional Observatory for Immigration. After Emilia-Romagna, the regional government of Friuli Venezia Giulia has approved Law no. 5/2005 on norms on the reception and social integration of foreign citizens (*Norme per l'accoglienza e l'integrazione sociale dei cittadini e dei cittadini stranieri immigrati*). Also in this case, the aim of the law is to promote the participation of immi-

grants in local life, to support the recognition of their cultural identity and their integration into social life through regional policies for housing and education. For this purpose, special attention should be dedicated to the teaching of the Italian language. Furthermore, the law foresees the constitution of a Regional Observatory of Immigration and of consulting bodies in provinces and municipalities. For all these measures, the region is requested to approve a Regional Plan of Integration, partly financed through the Social Policies Fund. Since 2005, laws for the integration of immigrants have been approved by the Region Liguria (Law no. 7/2007: *Norme per l'accoglienza e l'integrazione sociale delle cittadine e dei cittadini stranieri immigrati*), Toscana (Law no. 29/2009: *Norme per l'accoglienza, l'integrazione partecipe e la tutela dei cittadini stranieri nella Regione Toscana*), Puglia (Law no. 32/2009: *Norme per l'accoglienza, la convivenza civile e l'integrazione degli immigrati in Puglia*) and Campania (Law no. 6/2010: *Norme per l'inclusione sociale, economica e culturale delle persone straniere presenti in Campania*). Their common aim is to guarantee to immigrants access to social services and to support integration. The regions have to promote initiatives against discrimination, favouring the equal access of immigrants to education, health care and housing. Furthermore, they can promote all those activities which can facilitate the access of immigrants – included asylum seekers – to the labour market. Local authorities together with the regions also have to promote housing services, measures to recuperate old buildings, facilitate immigrants' access to mortgages<sup>18</sup> and carry out all kind of activities aimed at cultural mediation. In this respect, all pay special attention to housing policies while most of them foresee the constitution of a Regional Consulting Body, an Observatory for Immigration and a Triennial (or Yearly) Integration Programme. Some laws pay special attention to the encouragement of immigrant entrepreneurship. The activities of the other two territorial levels, provinces and municipalities, have to be directed to a consulting function for the region and, especially in the case of the municipalities, in programming and carrying out projects aimed at social integration.

Even though not all Italian regions have approved a law in the field of social integration, the Italian regions have always been active in the field of integration through regional integration programmes and the provision of social services. In fact, according to state law, *all* Italian regions have clear competencies in the field of health protection and education, which represent a fundamental basis for the integration process of immigrants.

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18 The region Veneto has been a pioneer in this kind of action, favouring loans and mortgages to immigrants for the acquisition of abandoned cottages in the countryside with an urgent need for renovation.

The Italian National Health Care System is a tax-based health care system of universalistic and a solidarity character. The regions are responsible for its organisation and for expenditure. Italian citizens are automatically members of the health care system. They get a health insurance card (*tesserino sanitario*) from the local Health Care Agency (*Unità Sanitaria Locale*). So do regular immigrants with a regular residence permit. However, the law foresees basic health care also for illegal immigrants, which can be extended if there is a necessity of long-term care (for example after a surgery or a post-traumatic rehabilitation). In 2009, the Italian centre-right government chaired by Silvio Berlusconi decided to pass a new regulation according to which doctors and health personnel had to renounce the irregular migrants they had attended to the police. Eventually, however, the central government had to withdraw the regulation proposal due to widespread criticism from civil society and the medical community.

School access for immigrants is regulated by state legislation.<sup>19</sup> According to state law all immigrants have the right to obligatory school education (until the age of 16) and public schools have to accept underage immigrants without asking them for their residence permit.<sup>20</sup> As teaching is a matter of the State, personnel recruitment and management depend on the Ministry of Public Education and University in Rome. Teaching programmes are also defined by state law, though there are some perplexities on the legislative competence of the regions in the case of vocational training. However, individual schools got the possibility to modify 20% of the teaching programme according to the specific geographic or economic needs of the territory. In the case of immigrants, the teachers' board of each school can modify the teaching programme in order to adapt it to the necessities of certain immigrants groups.<sup>21</sup>

The procedure for homologation of academic and professional titles is a complicated one and is almost completely controlled by the state administration. However, individual universities are entrusted with the homologation of titles giving access to university studies. In this case, foreign students have to send their application and the necessary documents to the University Rectorate. The Ministry of Education and University is responsible for the homologation of Bachelor and Ph.D. titles. Generally, immigrants who want to start an economic activity, either employed or self-employed, have to submit their homologation application to the Ministry of Production Activities or other competent ministries like the Ministry of Health in the case of

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19 See among others section 115 and 116 of 297/94; Section 36 of Law no. 40 of 6 Mar 1998; Section 45 of D.P.R. no. 394 of 31 Aug 1999.

20 See Administrative memo (*circolare*) no. 5 of 12 Jan 1994.

21 See Section 45 of D.P.R. 394/99.

doctors and nurses. This rule also applies to immigrants who want to register in the small-trade-register (*Albo artigianale*). However, in certain regions immigrants applying for homologation of their title as nurses or radiologists can send their application to regional offices.<sup>22</sup> In the case of non-regulated professions, like plumbers, there is no need of homologation.

## 5 The Local Government

Municipalities and provinces in Italy do not have legislative powers, but can adopt their own statutes, defining their organisation and functioning.<sup>23</sup> Like the regions, they have a certain financial autonomy. Furthermore, they have the regulatory power to organise and carry out their administrative functions through executive acts (*regolamenti*), which represent their only ›legislative‹ source. Their most important regulative powers refer to the organisation of the local police, the provision of services to the community, like *Kindergarten*<sup>24</sup> and libraries, transport and waste disposal. For this purpose, the municipalities recruit their own personnel and organise their own administration. The construction and administration of social housing is a competence of the regions, but municipalities are entrusted with regulating the population's access to it.

The regions can delegate responsibilities to the municipalities in the context of a specific regional regulation. Generally, the responsibility for a certain topic is defined in a regional law. This is the case of the aforementioned regional laws for integration, which determines the specific competencies of provinces and municipalities on this issue.<sup>25</sup> Therefore, the Italian case shows a kind of *Auftragsverwaltung* (delegated administration), the municipalities implementing the regions' policies. In the case of the integration laws, the municipalities have management competencies, while the provinces are entrusted with programming and coordination. The municipalities can

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22 It is the case of Calabria, Lazio, Umbria, Campania, Liguria, Veneto, Emilia-Romagna, Lombardia, Valle d'Aosta/Val d'Aoste and the Selfgoverning Provinces of Trento and Bolzano/Bozen.

23 The organisation of local government in Italy is regulated by Law no. 142/1990 introducing the statutory autonomy of the Municipalities, Law no. 59/1997 and Legislative Decree no 112/1998. In particular, the last two delegate to the regions and the local governments important competencies in matters of social services. Finally, regulations on the local government were recollected in the Comprehensive Text on the local Government (*Testo Unico sull'ordinamento degli enti locali*) 267/2007.

24 Municipalities have competencies for the construction and the administration of *Kindergarten* for children between 0 and 5 years.

25 In this case, the Province of Ferrara has assumed competencies for the institution of an Observation Centre for Immigration, the promotion of a ›virtual‹ intercultural centre and the institution of a consulting centre.

then decide to administrate the funds for certain services itself or to entrust a cooperative with the realisation of certain integration objectives.

As far as immigration is concerned, the municipalities have shown a certain potential in the supply of integration services. It has already been mentioned that the local authorities are the key actors in the National Protection System for Refugees and Asylum Seekers, which has once more pointed out the importance of »civic tradition« (Putnam/Leonardi/Nanetti 1993) and »municipal socialism« (Montemartini 1902) in Italy. Furthermore, many municipalities were able to establish efficient implementation networks, which involved civil servants as well as immigrant and religious associations (Caponio 2010). In this respect, Muslim immigrant associations seem to have been very successful in developing very dense networks between immigrants, municipal governments, local police and trade unions (Schmidt di Friedberg 2004). But the involvement of municipalities goes further. According to a survey of the Association of Italian Municipalities (ANCI), most Italian municipalities with more than 15,000 inhabitants have not only created reception infrastructures but also Information Centres for immigrants and services for cultural mediation (Caponio 2004). According to the same survey, most of the interviewed majors are worried about the housing problem. At present, 7,063 immigrant families had access to municipal social housing in the considered municipalities. Moreover, some municipalities seem to be quite active in the Territorial Councils of Immigration. Finally, there seems to be a widespread convergence with respect to diversity recognition when it comes to avoid obstacles in the provision of certain municipal services especially in the fields of education or health assistance (Caponio 2010).

Strikingly, the participation of immigrants in the local political life is still very limited. EU citizens enjoy local voting rights under EU regulations, while non-EU citizens are still excluded from local voting rights. Regional or local governments are not allowed to grant local voting rights to non-EU foreigners. However, some local governments have institutionalised consulting boards (*consulte elettive*) constituted by immigrants. This is for example the case of Modena, Forlì, Cesena, Ravenna and Nonantola in the Emilia-Romagna. Interestingly, the institutionalisation of a consulting board of foreigners is not a decision of the regional government but of the local authority, which takes it through an own regulation act.<sup>26</sup> The target of these consulting bodies is to favour the cultural meeting and allow the participation of immigrants' associations to public political life in absence of a regional body. Furthermore, municipalities can foresee the presence of immigrants as added

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26 In the case of Modena it was, for example, the *Regolamento per l'istituzione della Consulta Comunale elettiva per i cittadini stranieri extra-EU ed apolidi residente a Modena* decision of the Local Council no. 83 of 30 May 1996 and no. 66 of 15 May 1999, modified through the decision no. 40 of 17 Jun 2003.

members of the Municipal Council (*consiglieri aggiunti*). Unfortunately, only few of them have put this measure into practice (Caponio 2006).

## 6 Final Remarks

The central State in Italy plays a major role in the regulation of immigration and asylum flows while integration issues have often kept a secondary role in the political agenda. Only with the introduction of the 'Integration Agreement' in 2010 was the Italian central State ascribed a monitoring function of the integration process of immigrants. Due to the weak presence of the State, municipalities and regions have become the most important integration actors in Italy. Regions and municipalities do not only deliver social services, but have also conceived successful integration programmes thanks to the support of efficient implementation networks between institutional and non-institutional actors. In some cases, national integration or reception programmes were the result of a bottom-up process that started at the municipal level. As was seen, for instance, the national System for the Protection of Asylum Seekers and Refugees was institutionalised years after several Italian municipalities had created a network of municipal projects for the reception of asylum seekers and refugees.

All in all, Italy certainly represents one of the most significant European examples of the »creative power« (Borkert/Caponio 2010: 9) of local governments when state action in integration matters is weak or even inexistent. Especially during the two centre-right legislature periods (2001–2011), the daily integration practices of regional governments and municipalities showed that Italian immigration policies are not exempted from the paradox between »pragmatic routine« and »symbolic staging« that has been observed in the German case (Bade/Bommes 2000). However, the consequences of the economic crisis could prevent regions and municipalities from keeping their central role in integration matters. The recently approved law for financial stability (Law no. 183/2011) has considerably reduced the budget of the National Fund for Social Policies, which has been often used to finance regional and municipal integration programmes. Clearly, this decision is not only bound to affect the provision of social services to Italian citizens but also to seriously reduce the scope of action of Italian »municipal socialism« in the times to come.

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# Marina Egger

## Russia: From Autonomy to ›Vertical Democracy‹

Russian migration policy is making headlines. Migration policies implemented in January 2007 were described as a migration revolution. Indeed, they produced debates about federal-regional competencies for migration and integration. In 2013, Russia's President Putin again announced major reforms including visa restrictions for citizens of former Soviet republics. At the same time, Russia is eagerly seeking immigrants. This article begins with a short overview of Russia's federal structure. It then introduces the development of Russian federalism and migration policy and considers the competence distribution on immigration and integration in more details. The final section discusses conclusions.

### 1 The Russian Federal System

Russia constitutionally consists of 83 »equal subjects«<sup>1</sup> of the Russian Federation (Effective 2012), made up of 21 republics, 46 territories (*oblast'*), and 9 regions (*kray*), two cities of federal importance (Moscow, St. Petersburg), the Jewish Autonomous Region and four autonomous areas (*okrug*). »The federal structure of the Russian Federation is based on its state integrity, the unity of the system of state authority, the division of subjects of authority and powers between the bodies of state power of the Russian Federation and bodies of state power of the subjects of the Russian Federation, the equality and self-determination of peoples in the Russian Federation«<sup>2</sup> (Constitution, Art. 5). The subjects of the federation have equal rights and different statuses. The republics (nation-states) have their own constitutions and legislation. The territories, regions, cities of federal importance, autonomous regions and autonomous areas (territorial-states) have their charters (*ustav*) and legislation. Subjects of the federation are represented on the federal level in the Federal Council (Federal Assembly), which was originally conceived to pro-

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1 Vladimir Putin signed a federal Constitutional law on combining of two subjects (*oblast'* and *okrug*) to establish *Irkutsk oblast'* on 31 Dec 2006.

2 This quotation is taken from the English version of the federal Constitution <http://www.constitution.ru/en/10003000-01.htm>.

tect their interests against federal intrusion. However, since the Russian president appoints the heads of the regional governments, control is now overwhelmingly top-down and not bottom-up. In 2012, there was talk of a return to more autonomy and elections of regional heads of government.

Republics and other entities have equal powers. The Constitution lists the jurisdiction of the federation (Art. 71 Const.), it concerns the country as a whole. The Constitution does not define the regional powers. Article 72 indicates only the joint jurisdiction of the federation and the subjects. If a list of powers of the subjects would be drawn from their constitution or chapters, »it would likely include: the adoption and amendment of regional constitutions/chapters and laws and measures designed to ensure compliance with them; the structure and territory of the component units; the establishment of regional bodies of legislative, executive and judicial power and of local self-government; the management of regional state property; and fiscal powers including the preparation of the regional budget, the imposition of regional taxes and levies, and the expenditure of regional funds« (Salikov 2004).

Article 72.1 of the Constitution declares that the joint jurisdiction of the federation and the subjects includes the establishment of common principles of organisation of the system of bodies of state power and local self-government. A direct description of the organisation of local self-government can be found in Articles 130–133. The population shall determine the structure of local self-government bodies independently (Art. 131.1 Const.). According to the Constitution, the local level is separate from the federal and regional levels. But the law *On General Principles of Local Self-Government in the Russian Federation*, enacted on 6 October 2002, integrates the municipal level into the hierarchy of bodies of state power (Cashaback 2003). There are municipalities (cities or settlements) or municipal regions at the local level. The development of the local self-government was conceived of to build up society and to influence the central government in the 1990s: a bottom-up approach that is in stark contrast to the topdown practice of the Putin government. The following section examines the practice of federalism and looks at migration policy from the viewpoint of federal development in Russia.

## 2 Federal Development and Migration Policy

Russia's Federalism was first instituted by the Constitution of 1918. The Russian Socialist Federated Republic was proclaimed in 1924. Despite its name, it was a state governed by a centralised party and controlled through a centrally planned economy. Before the dissolution of the Soviet Union and the signing of the Federal Treaty, federative relations could be analysed as relations between the centre and the republics. In 1992, republics, regions, territories, and federal cities, except Tatarstan and Chechnya, signed the Federal

Treaty and thus a federalist system was created. As a consequence, the status of Russia's constituent units was elevated and a new model of division of powers between the central government and regional governments began to function. Moreover, many subjects of the federation did not interpret federalism as a chance to develop clear federal-regional interaction with Moscow but as an opportunity to weaken its control. The next step was a system of bilateral treaties between the federal centre and the subjects. Tatarstan was the first republic to sign such a bilateral treaty in 1994 (Drobizheva 2005). Chechnya passed its own constitution in 2003 and was formally recognised as a member of the federation. Bilateral treaties have resulted in an asymmetric federation, in contrast to the equality declaration in the Constitution. The republics conceived asymmetry as a democratic accomplishment, whereas the centre viewed it as a dangerous source of separatism.

Russian asymmetric federalism signifies that ethnic and non-ethnic regions may coexist and the federation may be based on different degrees of autonomy, the ethnic subjects enjoying more independence. According to the Constitution, there is a top-down division of funding responsibilities in the Russian Federation. In the 1990s, the regions tried to develop their own rules of the game, partly contradicting the rules of the Constitution and of federal law. Under President Yeltsin the centre and the regions began to develop »social contracts« with respect to competencies, taxes and funding, and the responsibility for the infrastructure. With President Putin coming to power, the situation changed dramatically.

Under Vladimir Putin, the federation was reorganised into seven large administrative regions<sup>3</sup>, headed by appointed representatives (*PolPred*), subordinate to the president (Decree no. 849, 2000). »The decree set out three tasks: to monitor the region's conformity to federal law and the constitution; to coordinate the activities of federal-level officials in the regions; and to analyse and report on the effectiveness of local law enforcement agencies. The aggregation of this monitoring function was not a federal or constitutional but a managerial reform« (Cashaback 2003). Putin's reforms attempted to stabilise the state and harmonise federal relations. However, the reforms give the centre the upper hand in federal-regional relations. Moreover, since 2004, Russian heads of regions (governors) and republics (presidents) are no longer elected by popular vote, they are directly appointed by the president. The president nominates a candidate and the local assembly approves the president's candidate. To conclude, the Russian federal system today is controlled by the centre, almost like a unitary system, and may be classified as a permissive federalism (Teves/Abueva/Carlos/Sosmena 2002). In the Consti-

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3 Through the issuance of Presidential Decree No. 82, dated January 2010, there are eight administrative regions in Russia.

tution, it is defined as a cooperative model. In practice, there is a competition of three models of federalism – cooperative, unitary, and parallel (Shakhray 2005). The strengthening of vertical relations leads to central control, and back to unitarianism, even when all the titles and forms of the various autonomies still exist (Salikov 2004).

Like other policy fields, migration policy was basically transformed under Putin. The federal centre re-established vertical power. It paralysed any attempt of the subjects to develop their own migration strategies. The transformations concerned both the legislation and the organisational, instrumental and financial practice (Mukomel' 2006). Because of the centralisation of migration policy, the subjects have to revise their policies. The regions create instruments for indirect regulations of migration (*ibid.*). The independence of the subjects develops differently. Thus, federal-regional relations are inconsistent now. The control of the centre is increased in some regions and is reduced in other regions. The Krasnodar and Stavropol regions passed laws, that contradicted the general principles fixed in federal laws. They were adapted under pressure from Moscow. However, new laws were created, which again contradict the federal legislation (Mukomel' 2006). On the regional level, the administrations of governors or presidents of republics construe migration policy. Its main objectives include the recruitment of foreign workers, border policy, and the regulation of illegal migration. In the border regions the heads of the region establishes Consulting Councils. Here the local self-government and third-sector organisations are represented (*ibid.*). The Consulting Council aims at fostering cooperation between non-governmental institutions and the assembly. Today its importance has diminished because of the reduction of the federal migration programmes.

The regulation of rights and the distribution of financial resources are the prerogative of the federal centre (*ibid.*). Russia's migration policy is regulated and managed only by the centre. Some regions created measures aimed at easing the strained relations between natives and immigrants. At the same time they try to hide this from the centre and from the public as well. The regions are now depending on the help from the federal budget; they are not able to act independently. One important weakness of most regional institutions is their financial dependence on the central government which controls the oil and gas revenues and other resource assets that have become so important in recent years. The federal development plans demonstrate that the president's representatives do not only coordinate, but also control governors, heads of municipalities, legislative assemblies, and local elite groupings (Lysenko 2006: 7). Neither the regional nor the municipal authorities feel responsible towards their citizens; they try to demonstrate loyalty to the centre (*ibid.*). The justice, police and secret service systems are also under the control of the central government, and can be manipulated from the centre.

Whereas in other federal systems, the justice system acts as an arbitrator between the central and the regional powers, in Russia the president becomes the arbiter between the branches of government and the oligarchs.

### 3 Responsibilities for Immigration and Integration

#### 3.1 Immigration

In the early and mid 1990s, migration policy in Russia focused on asylum and ›forced migration‹. At the end of the 1990s and in the early 2000s, all attention of the federation was concentrated on the control over immigration and reduction of illegal migration flows (Zayonchkovskaya 2006). The migration policy became restrictive and securitised. The current migration strategies of the federal government focus on labour migration, legalisation, recruitment and voluntary resettlement of ›repatriants‹ living abroad. In this context, migration laws are modified to realise these goals. The state strategy is aiming at reducing illegal immigration, simplifying the registration procedures for foreigners, and creating a resettlement programme for repatriants (*byvshie sootchestvenniki*). Current migration rules are discussed in the public again and again and exploited in election campaigns, contributing to growing migrant-phobia being more and more visible in Russia's population.

The history of the Federal Migration Service (FMS)<sup>4</sup> also reflects the incisive developments regarding the core themes and the competencies for migration. The FMS was founded in 1992. Its activities were mainly directed at asylum-seekers and ›forced migrants‹. At that time, the government's attention was not focused on labour migration. It seemed then no special regulations for labour migration were needed. In this climate, the first steps were taken to introduce a system of immigration control.

In 2004, the competencies of the FMS (control, monitor, administration, and management of migration) were specified quite differently: policy-making, finance, and jurisdiction (Presidential Decree no. 928 of 19 July 2004). The posts of minister's deputies and heads of department of the interior were established in 53 subjects of the federation, which have jurisdiction over migration. The president appoints the director of the FMS. The presi-

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4 The Alliance of refugees' affairs was founded on 11 Nov 1990 and was the predecessor of the FMS. It became a part of the Ministry of Labour. Its responsibilities were transferred to the Committee of Migration, which was founded in October 1991. On 14 Jun 1992 it was discontinued and the FMS was founded. In 2000, it was reorganised again and the competencies for migration were transferred to the Ministry of the Federation, National and Migration Policy. It was again reorganised a year later. Since February 2004, the management of migration is under the Ministry of Interior, and the FMS became part of it. As a rule, the employees of this office are military officers.

dent, on suggestion of the government, appoints the director's deputies. In August 2005, General Romodanovskiy, the former Chief of the Personal Safety Department of the Federal Ministry of the Interior, became director of the FMS. The FMS and its regional offices are financed from the federal budget. Offices of the FMS have been opened in eleven countries – Ukraine, Kazakhstan, Moldova, and Uzbekistan since 2006 and in Azerbaijan, Georgia, Lithuania, Estonia, Germany, the USA, and Israel since 2007. Their mission is to focus on cooperation and on the Russian diaspora.

Russia's migration policy is regulated by the parliament (laws) and is specified by governmental resolutions. In the 1990s, it was regulated by the laws ›On Citizenship‹, ›On Refugees‹, ›On Displaced (Forced) Persons‹ as well as by the Federal Migration Programme of 1994. These migration laws have been amended several times until today because of the new objectives. The institutional framework of the migration policy consists of the Ministry of the Interior, the FMS, the Ministry of Foreign Affairs, the Ministry of Labour, the Ministry of Education, the Ministry of Transport, the Ministry of Traffic, the State Customs Office, the Federal Border Control Authority, Security Service, Enforcement Authority, Revenue Office, Social Office, and Health Authorities. The basis of the jurisdiction are normative acts: the Constitution, federal laws, international and interregional acts, bilateral treaties and agreements. The instruments of Russian migration policy are as follows:

- Migration card (control over temporary residence)
- Visas for specific purposes and dates: diplomatic, official, transit, ordinary visa (private, business, study, tourist, work, humanitarian, asylum-seeker), and visa for temporary residence
- Temporary residence permit and permanent residence permit
- Contract soldiers (non-Russian citizens)
- Naturalisation
- Quotas to issue temporary residency permits
- Quotas to issue work permits
- Sanctions for employers or for immigration violations.

In 2012, two regulations providing immigrant integration measures were adopted in Russia: the Executive Order ›On Ensuring Interethnic Unity‹ and ›The Concept of the State Migration Policy of the Russian Federation through to 2025‹. According to the Executive Order, complex measures should be developed to prevent interethnic conflicts and to harmonise interethnic relations. The Concept contains seven sections. These include general provisions, conditions for the implementation of the state migration policy; the goals, objectives and key areas of this policy; international cooperation in this area; information analysis and basic mechanisms and stages for implementing Russia's state migration policy. The policy on labour migration is a key area of Russia's migration policy. This is mainly due to »the increased significance

of the use of foreign labour as a result of depopulation and the reduction of working-age populations in Russia« (Mukomel' 2012).

### 3.2 Recruitment and Resettlement

The State Resettlement Programme for repatriates living abroad is regulated by the Presidential Decree no. 637 of 22 June 2006. It would be implemented in stages. A special commission is created, which is responsible for the preparation of the Resettlement Programme. The FMS coordinates its implementation and is responsible for a commitment programme. The federal bodies of executive power and the bodies of executive power of the subjects are responsible for the implementation of the programme. The subjects draw up regional resettlement programmes.

The resettlement of programme participants is to take place in twelve depressed Russian regions. These regions are classified into three categories. There are different benefits for programme participants and their family members depending upon the category. ›Repatriants‹ receive financial assistance in the regions of categories A and B.<sup>5</sup> Moreover, they receive compensation for travelling expenses. Persons who do not find work can receive financial assistance for basic living essentials during the first six months. The regional governments provide a ›services block‹ (*kompensatsionny paket*). This can include services in the fields of education, social services, health and employment. Programme participants and their family members get a special certificate.

The Ministry of Finance provides subsidies to the subjects of the federation which realise the programme. The amount of subsidies differs according to the numbers of the programme participants and the category of the region. The 2007 federal budget provided 4.5 billion roubles to implement the programme; the regions give additional financial support (Grafova/Smol'yakova 2006). Office-holders could be dismissed if participants decided to drop out of the programme. The first five agreements to support the Russia's resettlement programmes were signed with Armenia, Latvia, Kyrgyzstan, Tajikistan, and Turkmenistan (*ibid.*). In 2007, ITAR-TASS<sup>6</sup> reported the Kaluga region has got the first applications from potential participants living in Turkmenistan, Moldova, Tajikistan, the Baltic States, Ukraine, Germany, and Israel. The FMS estimated that 50,000 migrants would come to Russia in 2007 and 100,000 or 150,000 in the years 2008/09, 250,000 migrants in total during

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5 Programme participants in the regions of Category A receive 6,000 roubles and their family members 2,000 roubles, in the regions of Category B 4,000 and/or 1,500 roubles.

6 See <http://www.strana.ru/stories/01/10/24/1852/306341.html>, 16 Feb 2007.

the years 2007–2009. As of March 2011, the actual number was much lower: 37,000 migrants (Mukomel' 2011). The programme has factually failed (*ibid.*).

In 2012, the ›Repatriation programme‹ was revised, to make it more ›convenient‹, and allow families to bring their relatives as well and introducing additional incentives. The government was worried because Russia's population was shrinking. Vladimir Mukomel' (Russian Academy of Sciences, Sociology institute) said that since the inception of the programme in 2006, only 80,000 individuals have been repatriated to Russia. This means, he said, that the government failed to reach its commitments of increasing the migration figure to about 450,000 per annum. He said that many repatriates had to face several difficulties in settling in the region they were living in. Most of them, he said, were allowed to enter the country on condition to live in specific regions and do specific jobs. Mukomel' was also skeptical about the future of the programme. ›The federal government reimburses regions for only a portion of the expenses incurred for receiving repatriates, and the regional budgets are often too meagre to support the programme.‹ Most analysts feel that the situation has made it clear that the repatriation programme is only targeted at those former compatriots who have well established businesses, to help them relocate their businesses from abroad.<sup>7</sup>

### 3.3 Regulation of Temporary and Permanent Residence

Presidential Decree no. 1095/16531/143/49/1189/692 of 11 November 2002 regulates the implementation of migration cards. The migration card is a document that includes data about foreign citizens, stateless persons and persons who have the right to enter Russia visa free. It should be used as an instrument to control their temporary residence. The Ministry of the Interior, the Ministry of Foreign Affairs, the Ministry of Transport, the Ministry of Traffic, the State Customs Office, and the Federal Border Control Authority work together to implement migration cards.

Migration cards are issued by the Ministry of the Interior and are available at all border points. All foreigners and stateless persons entering Russia must fill out a migration card, depositing one part with the immigration authorities at the point of entry and holding on the other part for the duration of their stay. Upon exit, the migration card must be submitted to immigration border guards' officials. The migration card is also an important document for migrants who have the right to enter Russia visa free. It contains personal information of migrants, terms of stay, purpose of visit and place of residence. Citizens from the CIS states, except Georgia and Turkmenistan, do not have to apply for a visa to visit Russia. Foreigners entering

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7 <http://news.visato.com/russia/russia-renews-repatriation-program-to-increase-immigration-influx/20120925/>



Russia visa free should receive a migration card registration. All foreigners who spend more than three days in Russia must register their visa and migration card. Until today Ukrainians have been allowed to register and can apply for a residence permit after 90 days in the country. Visitors who have not put a registration mark in the migration card will be considered illegal.

Through the 2006 agreement between Russia and Belarus, migration cards were also introduced in Belarus. In addition, it is planned to establish a database that should contain information concerning the entry, registration, health/illness, payment of taxes, and criminal cases of migrants. In general, foreigners who wish to stay in Russia can hold the following statuses: a temporary residence permit (it can be issued for 90 days or for a maximum of twelve months); a long-term residence permit (it is issued for three years and must be extended each year); a permanent residence permit (for five years); a career contract soldier permit (5 years); a special status (e.g. for diplomats); and permits for foreign workers, foreign entrepreneurs, and refugees. The legal status of foreigners in Russia is fixed in the federal law N115-F3 passed in June 2002 (amendments – 30 Jun 2003, 11 Nov 2003, 22 Aug 2004, 2 Nov 2004, 18 Jul 2006, 6 Jan 2007). A visa can be granted for 90 days and is valid for a special purpose. The visa is issued by a Russian embassy or a consulate.

A temporary residence permit can be granted for three years and is issued to a foreigner within a quota established by the federal government. The quotas are not considered in the case of repatriates, persons born in Russia, former Russian citizens, and persons married to a citizen of Russia who resides in Russia. The federal government set quotas on the proposal of the bodies of executive power for the subjects in consideration of the regional demographic situation as well as the possibilities of employment for foreigners. Depending upon place of residence, a Russian embassy or consulate or a regional office of the Ministry of the Interior will decide whether foreigners still meet the requirements for a residence permit (*razreshenie na vremennoe prozhivanie*). Regional offices should place inquiries at the Security Office, Executory Office, Revenue Authorities, Social Authorities, Public Health Office, and Migration Office about applicants. Foreigners who have a temporary residence permit must file a current registration mark and other required documents to their regional Migration Office of the FMS within two months of having spent twelve months in Russia.

A long-term residence permit (*vid na zhitel'stvo*) can be granted for five years and may be prolonged for another five years. The number of extensions is not limited. Applicants have held a temporary residence permit for one year. This permit must be valid during the following six months. The long-term residence permit can be issued by the regional office of Interior. Foreigners who have a long term residence permit must file a current registration mark to the FMS every year. They are able to do this in person or by mail.

The federal government decides which documents applicants have to submit. It also defines conditions for procedures. The federal government schedules which cities or settlements are closed throughout Russia. Travellers who wish to enter these cities or settlements need prior authorisation. Foreigners who have a temporary residence permit cannot change their place of residence.

### 3.4 Asylum

»The Russian Federation shall grant political asylum to foreign nationals and stateless persons according to the universally recognised norms of international law« (Art. 63 Const.). The federal law ›On Refugees‹ enacted in 1993 has since been modified several times.

Responsibility in the area of asylum lies within the competence of the FMS. Asylum-seekers arriving in Russia can apply to the regional offices of the FMS for recognition as a refugee. They have to submit the required documents to officials. Asylum-seekers may become subject to the capriciousness of office-holders who can argue that documents are falsified (Kirillova 2007). In the 1990s, regional migration offices were subordinate not to the FMS but to local authorities. This has been changed. However, the interaction between office-holders and asylum-seekers varies with the situation in particular regions. The state provides assistance for asylum-seekers. This can include financial assistance or assistance for social housing. The FMS finances public housing for refugees. Refugees who are interested in public housing have to wait for a housing opportunity for a long time. In consequence, they often abandon their status (Zayonchkovskaya 1997). Ninety-seven per cent of the refugees mastered their migration situation without assistance from the state (Zayonchkovskaya 2006). Most refugees and forced migrants came to Russia after the collapse of the Soviet Union. The highest number of refugees (1,191,900) was reached in 1998. In 2004, 360,800 refugees were registered (Kirillova 2007). After the collapse of the Soviet Union, 11 million asylum-seekers came from the CIS and the Baltic states, but only 1,300,000 have held refugee status since 1992. And only 500,000 were able to receive benefits from the state (ibid.).

The aspect of housing is most difficult for refugees (and migrants) in Russia. The Federal Department of Social Development reports that 154,000 refugees applying for housing are registered. In 2004, the federal budget appropriated 250 million roubles for this goal, a sum that is sufficient for 2,000 applicants (Kirillova 2007). In 2006, 147,000 refugees were registered. The refugee status is granted for five years. It may be prolonged for one year if the ›housing situation‹ is not regulated. Administration of social housing was transferred from the Migration Office to the Ministry of Regional Development. Citizens who suffered from the war in Chechnya receive assistance for

their lost property (120,000 roubles), those who wish to go back to Chechnya receive 360,000 roubles (*ibid.*). Asylum-seekers from Afghanistan, Azerbaijan, Armenia, Iraq, North Korea, Uzbekistan, Kyrgyzstan, Moldova, Rwanda, Syria, Sri Lanka, and the Congo arrive mostly in St. Petersburg and Moscow. Many asylum-seekers use St. Petersburg and the Leningrad region as transit regions. As long as they do not want to apply for asylum in Russia, they avoid the migration offices. For this reason, temporary accommodation centres are required for asylum-seekers (Salova 2006).

### 3.5 Amnesties and Regulations of Illegal Immigrants

The aforementioned ›revolution of migration‹ relates to the liberalised migration policy of 2007. In fact, the new immigration laws aim at enhancing the fight against illegal immigration. At the same time, they are understood as a measure against corruption. The FMS estimates that there are 10 million illegal migrants in Russia, but researchers argue that their number is possibly lower, namely 5 million (Grafova/Smol'yakova 2006). In 2006, within a period of 9 months, 60,000 illegal migrants were expelled to Uzbekistan, Tajikistan, Kyrgyzstan, Azerbaijan and Georgia. The expulsion of one migrant costs about 1,000 US dollars (*ibid.*). Ukrainians and Chinese have the reputation of being particularly law-abiding but do not represent a major share of undocumented migrants in the Russian Federation.

In order to control immigration, the Commonwealth of Independent States (CIS) defined a common set of measures. It comprises measures to uncover irregular migrants and to stop organised irregular migration. A further step is supposed to be the introduction of biometric passports in the CIS states. In Russia and Azerbaijan, these passports are now issued. In addition, the CIS states are planning the introduction of a common database on lost or forged passports. Belarus has signed an agreement with Russia on the introduction of a common migration card (Smol'yakova 2006).

The simplified registration system for immigrants as well as the introduction of a quota for work permits for foreigners shall also help to control illegal immigration. And the major objective of recent regularisation campaigns has rather been to expel irregular migrants than to accord them more rights (Zayonchkovskaya 2006).

### 3.6 Naturalisation

According to the Constitution, the competencies in the field of naturalisation are defined in Federal Law no. 62-F3 of 19 April 2002 on the nationality of the Russian Federation. These competencies lie with the presidents of the federal bodies via the Ministry of the Interior and the Ministry of Foreign Affairs of the Russian Federation (including their regional and foreign offices). The president decides about naturalisation »in general«, re-naturalisation »in

general«, the loss of nationality »in general« as well as the suspension of decisions on naturalisations. The president is in charge of the laws in the area of naturalisation; he coordinates the different competent departments and can issue decrees. In order to implement his competencies, the president establishes a commission for naturalisation affairs. The different departments and their regional offices are in charge of the simplified naturalisation procedure. Several cases can fall under the regulation for simplified procedures: (a) immigrants who have a non-employable parent who is of Russian nationality; (b) immigrants who have been nationals of the Soviet Union, never adopted another nationality and lived or are still living in a former Soviet state and are stateless; and (c) immigrant children and unemployed immigrants can also fall under the scope of this regulation. The departments and their offices will then check the existence of Russian citizenship. They are also in charge of examining the applications, of going into the merits of the case, of addressing applications to the president and of administrating of his decisions. They also manage the data of the candidates whose application has been decided upon.

### 3.7 Integration and Language Programmes

In Russia, language tests for candidates for naturalisation were introduced in 2003 by Presidential Decree no. 1345 of 14 November 2002. The precise requirements as well as special cases which are exempted from the language tests are laid out in the regulation of the naturalisation procedure in Russia. The language test has been developed by the Pushkin State Institute of Russian Language (Moscow), the Moscow State Lomonosov University, and St. Petersburg State University. Candidates for naturalisation must reach the first level of certification of the ALTE classification. If 65% of all answers are correct, the candidate has successfully passed the test (Astakhova 2003). The test can be administered in 130 educational institutions that are chosen by the Ministry of Education. The candidates must prepare for the tests on their own, but they can pay for and participate in language courses offered by some universities or take private Russian courses.

Furthermore, the introduction of language courses for the so-called ›guest workers‹, i.e. low-skilled migrants who mainly work in the construction sector, has been discussed. This has been favoured by the construction alliance and by the state university for construction in Moscow. The language course should last at least one week and offer language instruction adapted to the construction sector as well as civic orientation. The costs are to be covered by the employers. These short ›adaptation courses‹ shall only address low-skilled workers. In addition, employers are given the possibility to choose some workers among their personnel who then participate in short training programmes in order to become foremen. These training pro-

grammes are run by schools specialised in the construction sector. In the long run, cooperation with schools providing professional education in the neighbouring countries shall be established. They might be charged with professional qualification of future migrants in their countries of origin (Belasheva 2006).

The vice president of the FMS, Vyacheslav Postavnin, argues that a »policy of adaptation« will be necessary, i.e. teaching migrants some respect for the values of Russian citizens. Such a policy could keep Russian citizens from feeling disadvantaged and show them that migrants do not infringe certain rules of behaviour. However, it is not only such a policy that is lacking but also a common system of values (Postavnin/Slutsker 2007).

While the introduction of language and civic orientation courses is currently discussed, the regional migration programmes are abolished. While in the 1990s, approximately twenty units of the federation implemented such migration programmes, there were only four in 2006: Moscow, the Orenburg region, the Penza region, and the Chita region.<sup>8</sup> Initially, these so-called regional programmes were introduced in cooperation with the centre and the bodies of state power of the regions in order to take into account regional specificities. Thus they were financed (on a small scale and often merely symbolically) by the regions. The main part, however, was financed by the centre (ibid.). With the end of the federal migration programme, the regions have lost these funds.

### 3.8 Local Voting Rights

Foreign persons who hold a residence permit shall have the right to elect and be elected to local self-government bodies, and also to participate in local referenda (Art. 12 federal law of the right status of foreign persons in the Russian Federation no. 115-F3, 21 June 2002). This does not apply to the federal level.

### 3.9 Schooling

»Everyone shall have the right to education« (Art. 43 Const.). »Foreign nationals and stateless persons shall enjoy in the Russian Federation the rights and bear the obligations of citizens of the Russian Federation, except for cases envisaged by the federal law or the international agreement of the Russian Federation« (Art. 62 Const.). Article 31 of the federal educational law (passed in June 2005) states that the local self-government bodies are responsible for offering to all citizens various educational programmes, and people are free to choose. In case school certificates are not existent, pupils in the age of 10 to

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8 The Penza and Chita regions, however, do not afford any funding to the migration programmes.

12 years have to prove their skills in Russian language and mathematics. In addition to this, older students also have to prove their knowledge in chemistry and physics. Difficulties especially emerge for children of refugees and displaced persons who are not officially registered. As long as the parents do not have a residence permit or employment, their children are not accepted into a school. Moscow schools also complicate the acceptance of pupils who are living out of the city and do not have »documents of registration«.

However, there are about 74 schools with an ethno-cultural component in Moscow. This means that pupils with a migration background are learning various languages, culture and history of the CIS states, of the Baltic States and other regions. In 88 schools, there are also plans to establish cultural centres in which the pupils will learn about traditions and cultures of the different ethnicities. In addition to this, there are about 276 groups in the Moscow region who dedicate themselves to offering Russian language courses to migrant children. In the Perm region (Otschyor), a school for Afghan pupils has been established. In the regional context, integration programmes for children and adolescents have been proved and conducted. In Moscow, the Moscow region, the Samara region, and Vladikavkaz, nine counselling projects were implemented. One example of these measures is the project »Friends« which is especially addressed to girls with a migration background including trainings of social skills. In the years 2005/06, a competition of education institutions »Dialogue – Ways of understanding. Integration of refugees and other migrants by education« was realised under cooperation of the UNHCR, the Ministry of Education and the regional Moscow Department of Education.

### 3.10 Employment and Unemployment Benefits

In the Russian Federation, people from 132 countries are employed (Shcherbakova 2007). Most of the foreign employees come from the CIS, particularly from Ukraine, Tajikistan, Uzbekistan, and Moldova. Outside the CIS, consistently workers from China, Germany, Turkey, Vietnam, Korea, the former Yugoslavia and the Baltic states are registered. Most of the foreign workers are employed in the following regions: 63.3% in nine subjects of the Russian Federation, including 41.3% in the Moscow and the Moscow region. The other region is the Tjumen' territory (the Yamalo-Nenets autonomous area) (Shcherbakova 2007).

In the mid-2000s, Russian newspapers reported about a so-called »migration war«, that would consequently substitute the »gas war« and would be fought between the CIS states. The inducement of this conflict was the introduction of quotas for foreign workers. Annually in Russia six million people can be employed without needing a visa. The quota for the employment of people from countries outside the borders of the former Soviet Union

is fixed at 300,000 persons. The quotas do not determine how many workers from each country are allowed to enter. Thus, some sending states asked for an enhancement of the quota for their country.

The procedures to apply for a work permit have recently been simplified remarkably. Before the changes, the old system had been criticised because of various bureaucratic barriers. The new system will help to reduce the number of illegal employed immigrants in Russia. Foreigners who entered the country without a visa can apply for a work permit at the federal FMS. They have to pay a fee of 1,000 roubles and will then receive their work permit within ten days. After the legislative changes, the employer of visa-free labour immigrants does not have to ask for work permit any longer but to announce the employment to the Office for Migration and the Office for Labour in the subject of the federation (Smol'yakova 2007). High punishments are foreseen for those employers who illegally hire immigrants. While the immigrant himself has to pay a fine up to 5,000 roubles, the employer can be obliged to pay up to 30,000 dollars. In addition to this, the employer can lose his business certification. Detained illegal workers are expelled from Russian territory and may not re-enter the country for five years.

The other modifications implied to the law have been harshly criticised by the regions. As of 15 January 2007, up to 40% of the employees in public markets can be foreign workers. However, from the beginning of April 2007 foreigners are not allowed to work as vendors or in retail.

The director's deputy of the FMS, Vyacheslav Postavnin, stresses that foreign workers may work as carriers or business owners but not as vendors (Postavnin/Slutsker 2007). According to a report of the trade supervisory centre of Russia (*rospotrebnadsor*), there was one region in Russia in which more than 40% of the of the market personnel was recruited from the foreign workforce. The Primorie Territory, a region where a lot of Chinese migrants work in markets, reached a share of 38% foreign employees. Most of the so-called foreign-trade people are not from the CIS states but from China: 61% come from China, 4.8% from Azerbaijan and 5.1% from Ukraine (ibid.). The rulings are also a reason for tensions between the federal centre and the regional migration offices. The regional authorities consider the new rulings as disadvantageous and inappropriate. However, they pledge a quota system for recruitment that enables subjects of the Russian Federation to decide autonomously (Rogozin 2007).

### 3.11 Acknowledgement of Qualifications

The Ministry of Education has to inform the Russian Universities about international agreements which deal with the requirements for university access for foreign college students. Mostly, the students come from the CIS states. Diplomas issued in Belarus, Kazakhstan, and Kyrgyzstan are to be

treated as equal to the Russian Diploma and vice versa. In the recent past, there have been initiatives for Chechen students who had to flee due to the turbulence of war. The Ministry of Education shall help to process them into Russian Universities. These measures are funded by federal money. In practice, these proceedings were only possible when Universities had state-funded places of study available. It was even more difficult for medicine students from Chechnya, because the responsible Ministry of Healthcare did not receive any federal funding. In the future the admission quota for professional education and colleges studies shall be raised for foreign students.

## 4 Conclusions

The directives of the federal centre are neither transparent nor adequate for the situation in the regions. The initiatives of the regions are limited. Cooperation and sharing of responsibilities only exist on paper. Office-holders interact with migrants by pleasure. As a result, migrants must slush money or run through a bureaucratic labyrinth. The institutional way of dealing with immigration matters in Russia cannot be changed as fast as new laws are amended. Other official structures (NGOs or migration agencies) are established which help migrants. Ombudsmen in the field of migration and integration protect the rights of migrants and asylum-seekers in Russia. The Moscow Centre for Migration Studies was founded in 1997. However, scientific input seems to be rarely used in migration policy-making in Russia. While local authorities in some regions try to project a negative image of migrants to the public, other regions argue for sharing responsibilities in the field of migration between the centre and the regions. Summing up, Russia's immigration policies are characterised by a flood of initiatives from the almighty centre of power, unrealistic goals to attract Russian emigrés from Israel, Germany and the USA, complex bureaucratic competencies and widespread corruption. Local and regional governments, with the exception of rich cities like Moscow and St. Petersburg, have little power to influence the situation, even if they want to integrate immigrants. In contrast to their comprehensive legal rights written in the Constitution, they are in reality dependent on the centre.

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Claudia Finotelli

## Spain: Multilevel Immigration and Integration Governance

### 1 Introduction

Immigration has represented one of the most important social changes in Spain since the end of Franco's dictatorship and the approval of the Spanish Constitution in 1978. During the 1990s, however, migration flows remained fairly modest, and started to increase rapidly and intensively only at the beginning of the new century. Between 2000 and 2011, the foreign population grew from one million to almost six million, and Spain became one of the major immigration receiving countries in Europe. During the so-called »prodigious decade« (Oliver 2008) of economic and demographic growth, the foreign-born population in Spain came to represent 14.3% of the Spanish population, getting very close to the percentages of »older« immigration countries such as Germany (with 12.9%) or the Netherlands in 2009 (11.1%) (OECD Statistics 2001).

Like what occurred in other Southern European countries, Spanish governments were not prepared to face the new immigration challenge. Inefficient recruitment procedures, weak external controls and an extended informal economy turned irregular migration into a structural condition of the Spanish migration regime. The problem of irregular migration was mostly managed *a posteriori* through frequent regularisation processes, while very little was done to strengthen controls and develop more efficient immigration channels. Certainly, regularisation processes had an undeniable stabilisation function for most immigrants (Finotelli 2011). However, Spanish immigration policy remained for a long time a »reactive« immigration policy, in which the lack of a coherent policy design did not only affect the control of migration flows but also the integration of the newcomers.

However, the absence of a state integration policy (and philosophy) could be compensated by the integration programmes of Autonomous Communities (*comunidades autónomas*) and municipalities. Such a subsidiary function was facilitated by the competence distribution embedded in the territorial organisation of the Spanish state, which allowed municipalities and

Autonomous Communities considerable leeway to develop their own way to manage immigrants' integration.

## 2 The Territorial Organisation of the Spanish State

The Spanish Constitution recognises and guarantees the right to self-government of the nationalities and regions of which it is composed and the solidarity among them all. The basic principles of the territorial organisation of the Spanish State are declared in Part VIII of the Spanish Constitution (*Constitución Española*). According to Section 137 of the document:

*»The State is organized territorially into municipalities, provinces and the Self-governing Communities that may be constituted. All these bodies shall enjoy self-government for the management of their respective interests.«<sup>1</sup>*

The government and the administration of provinces are entrusted to provincial councils (*Diputaciones provinciales*) (Section 141 CE). Furthermore the Spanish Constitution guarantees the autonomy of the municipalities, which enjoy full legal personality (Section 140 CE). A group of municipalities form a province, designed to carry out certain activities. But the most important elements in the Spanish territorial organisation of the State are the Autonomous Communities (*comunidades autónomas*):

*»In the exercise of the right to self-government recognized in section 2 of the Constitution, ordering provinces with common historic, cultural and economic characteristics, insular territories and provinces with a historic regional status may accede to self-government and form Self-governing Communities (Comunidades Autónomas) in conformity with the provisions contained in this Part and in the respective Statutes« (Section 143.1. CE).*

The Spanish Constitution precisely defines the government organisation of the Autonomous Communities (Section 147 CE) and gives quite a detailed description of the State and the autonomic competencies. Section 149 of the constitution lists the matters in which the State has exclusive competence: immigration, emigration, asylum, citizenship, international relations or defence and armed forces, among others. In some matters the State has exclusive competencies »without prejudice« of their management or implementation by the Autonomous Communities. This provision applies to labour legislation, basic legislation and the financial system of Social Security as well as to the protection of Spain's cultural and artistic heritage and public safety. On the other hand, the Autonomous Communities can assume competencies in the field of town and country planning and housing, public works of inter-

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1 An English version of the Spanish Constitution is available at: [http://www.congreso.es/constitucion/ficheros/c78/cons\\_ingl.pdf](http://www.congreso.es/constitucion/ficheros/c78/cons_ingl.pdf)

est to the Autonomous Community, railways and roads whose routes lie exclusively within the territory of the Autonomous Community, social assistance, health and hygiene (Section 148 CE). The Autonomous Communities based on the so-called *nacionalidades históricas* have particular competencies on the behalf of their foral laws (*fueros*), which are special laws deeply rooted in their history.<sup>2</sup> Nevertheless, the Spanish Constitution does not only specify if the competencies are of legislative or executive character, but also does not clearly limit the competency fields. As a matter of fact, at the end of Section 149 the Spanish Constitutional Fathers agreed that:

*»Matters not expressly assigned to the State by this Constitution may fall under the jurisdiction of the Self-governing Communities by virtue of their Statutes of Autonomy. Jurisdiction on matters not claimed by Statutes of Autonomy shall fall with the State, whose laws shall prevail, in case of conflict, over those of the Self-governing Communities regarding all matters in which exclusive jurisdiction has not been conferred upon the latter. State law shall in any case be suppletory of that of the Self-governing Communities«* (Section 149.3 CE).

This provision reflects the intention to create a flexible territorial model, based on an »open« constitutional process, allowing different levels of autonomy according to the disposition principle (*principio dispositivo*) (for a general view on the Spanish territorial organisation see Fernández/González Beilfuss 1996). Especially the Autonomous Communities, corresponding to the *nacionalidades históricas* (historical nationalities), have tried to take advantage of the disposition principle based in the Constitution as much as possible. The possibility for the Autonomous Communities to enlarge their competencies turned out into several competence quarrels between them and the central State. After several competence transfers between the 1980s and the 1990s, the Autonomous Communities today show a certain harmonisation level. They have, for instance, exclusive competence in matters of education and health protection according to the frame laws of the central State. Nevertheless, not all Autonomous Communities have the same competencies in the same matters. The *nacionalidades históricas* still have wider competencies than other Autonomous Communities. Catalonia and the Basque Country have, for instance, their own police, foral laws and wider competencies on teaching programmes because of their language policy. However, competence transfers are still on the top of the Communities' policy agenda.<sup>3</sup> The Constitutional Court (*Tribunal Constitucional*) guarantees the constitutionality of this

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2 The Catalanian Civil Code, for instance, is based on the *fueros* and is so far different from the Spanish one, while the Financial System of Navarra (*cupo*) and the Basque Country is different from that of the other Autonomous Communities.

3 These transfers usually take place after the conclusion of the so-called *Pactos Autonómicos* (Autonomic Pacts).

transfer process, while jurisdictional bodies of administrative litigation are entrusted with the control of autonomic legislation and its regulations. This is the case, for example, of the Superior Court of Catalonia (*Tribunal Superior de Cataluña*), the highest state appeal entity in Catalonia. Finally, the Auditing Court has to decide on financial and budgetary matters.

Because of these different levels of autonomy, it is not easy to define the form of territorial government in Spain. The legal doctrine has agreed that the Spanish state is neither a regional nor a federal state. While the adjective ›regional‹ would have offended the identity of the *nacionalidades históricas*, the federal one would have suggested a state-quality of the Communities, increasing the political tensions around the »national question« (Wiedmann 1996). That is why constitutionalists preferred to call Spain an »Autonomic State« (*Estado de las Autonomías*), in which the unequal distribution of autonomy shows a clear asymmetric pattern (for the notion of the asymmetric federal state see González-Encinar 1992). Even though the Spanish Constitution does not define a competence typology (legislative, executive, administrative), it is widely accepted by the doctrine that the Autonomous Communities are entrusted with the execution and development (*ejecución y desarrollo*) of basic principles (*condiciones básicas*) defined by the frame laws of the central State (*leyes marco*). In other words, the Autonomous Communities can only adopt execution and development laws. Therefore, the Spanish state is a further example of integrated federalism (*Verbundföderalismus*), as the State and autonomic powers are not separated but clearly interconnected territorial entities.

Immigration and asylum in Spain have not been involved in the competence transfer process and are still an exclusive competence of the Spanish state. The central State has full juridical-administrative competence on the entry and residence of immigrants and there is no sentence of the Constitutional Court defining state and autonomic competencies in these matters. This kind of state-centred competence distribution is clearly rooted in Spain's history as an emigration country and its late development into an immigration country. During the 1990s there was no need to think about a more effective coordination on immigration issues. But since the end of the 1990s, the immigrant population in Spain has been rising from one to six million people, most of whom are regular residents. Most of them live in the Autonomous Communities of Madrid, Catalonia, and Andalusia. The rocketing immigrant population, not least through a growing family reunion processes, has increased the need for educational and health services and drove the attention to the communities as the first service providers for immigrants. As a matter of fact, even if the Spanish Constitution does not define competencies in integration matters, social services like education, health services and

housing belong to the autonomic competencies and are potential indicators for the autonomic integration capacity.

In the following chapter we will consider in detail how the different competence levels in immigration matters are organised and which present and future role the central State and the Autonomous Communities play.

### 3 The Central State and Immigration

The central State in Spain is responsible for immigration control, the recruitment of foreign workers, asylum, rejections, detentions and expulsions of foreigners. In sum, the State is responsible for all the juridical-administrative aspects related to immigration. They are regulated and managed by the central government in Madrid and its delegations (*Subdelegaciones del Gobierno*) in each Spanish province. All main entry channels depend on state policy and are presently regulated by the recently approved immigration Organic Law no. 2/2009 and the Royal Decree no. 557 of 30 June 2011.

The Secretary of State for Immigration and Emigration<sup>4</sup>, who depends on the Ministry of Labour and Social Security (former Ministry of Labour and Immigration), is in charge of labour migration policies, whereas the Ministry of the Interior maintains competencies in preventing illegal migration and continues to be responsible for the asylum procedure. Clearly, the separation between Ministry of Labour and Ministry of the Interior reflects the intention to distinguish institutionally between the regulation of ›wanted‹ labour migration flows on the one hand and of ›unwanted‹ irregular migrants and asylum seekers on the other.

A foreign worker can be recruited in his or her country of origin according to the so-called ›General Regime‹ (*Regimen General*). In this case, the recruitment of foreign workers is based on a nominal offer of the employee. Before hiring a foreign worker, employers have to check whether there are Spanish or EU citizens available for the job offered. The labour market check can be avoided only for occupations included in the ›Catalogue-of-Hard-to-Find-Occupations‹ (*Catalogo de ocupaciones de difícil cobertura*). If a vacancy refers to a job type listed in the Catalogue, an employer can immediately start the hiring process without the labour market check. In this case, an employer presents a formal recruitment offer. Based on this offer, the immigrant has to apply for an entry visa to work in Spain in his or her country of origin.

Once in Spain, the immigrant has to apply for a residence and a work permit in the corresponding offices of the Ministry of the Interior (residence

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4 The new Secretary of State had competencies that were previously shared by the General Direction for the Organization of Migration Flows, the Institute of Migrations and Social Services and the Government Delegation for Foreigners and Immigration.

permit) and Ministry of Labour and Social Security (work permit). Residence and work permits can be only be issued by the state administration and depend on each other, but are issued separately. Visas are issued by the Ministry of Foreign Affairs in the Spanish consulates and embassies. Another possibility to enter Spain for work purposes is on the basis of the so-called *contingente* (immigration quotas) that are published yearly by the Secretary of State.

Besides the state management of a priori recruitment schemes, it should be noted that also the execution of regularisations entirely depended on the state administration. During the regularisation of 2005, the Social Security Offices (*Oficinas de la Seguridad Social*) in each Autonomous Community were entrusted with the evaluation of the regularisation applications. Currently, the same applies to individual regularisations called *arraigo* (rootage). In this case, it is the corresponding office of the Ministry of the Interior (*Oficina de Extranjería*) that has to consider the application of the immigrant.

Family reunion, asylum and naturalisations are also regulated and administrated by the State. The *Oficina de Extranjería* is responsible for applications concerning family reunion, while asylum applications in Spain can be presented at border police offices, in the consulates, in the *Oficinas de Extranjería* or directly in the Office for Asylum and Refugee (*Oficina de Asilo Refugio*) itself. The Asylum Office evaluates if the asylum application fulfils all the conditions to be admitted to the examination procedure. In the case of a negative decision, the Office communicates the decision to the Ministry of the Interior and to the Ministry of Justice as well as to the UNHCR representative in Spain. In an affirmative case, the asylum application will be examined by the Interministerial Commission for Asylum and Refugees (*Comisión Interministerial de Asilo y Refugiados*) constituted by representatives of the Ministry of the Interior, Foreign Affairs, Justice and Social Services (the ACNUR representative is present with consulting functions). Finally, naturalisations are also a state competence, and in particular, of the Ministry of Justice. Immigrants can present their application in any civil register of the Ministry of Justice (*Registro civil*), which will forward it to the competent civil court. The applicant will be then interviewed by a judge, who will examine above all the loyalty of the applicant to the Spanish Constitution. The applicants' knowledge of the Spanish language is a fundamental criterion to decide in favour of his or her naturalisation.

Finally, the State maintains central competencies for the homologation of academic titles like bachelors, while the application for the homologation of Ph.D. titles can be submitted to the corresponding university administration, although a representative of the Ministry for Education and Science has to acknowledge the final homologation certificate. The ministry is also responsible for the homologation of professional titles. So, even though the



health system is an autonomic field, the Ministry of Education is entrusted with the title homologation of doctors from non-EU countries. As far as non-regulated professions are concerned, no professional qualification is required by the Spanish state.

To sum up, immigration in Spain is still a matter of the State, in which the state administration has considerable powers in matter of entry and residence of immigrants. In contrast to the central role played by control policies, integration issues remained in the background for many years. Only after 2004 did the Spanish central government adopt a more pro-active role with respect to immigrant integration. In 2007, the Spanish government approved a Strategic Plan for Citizenship and Integration (*Plan Estratégico de Ciudadanía e Integración*) that provided for the first time a common framework (and national funding)<sup>5</sup> for the management of immigrant integration. The Spanish government, however, did not create a separate governmental institution in charge of monitoring integration (like, for instance, the German *Integrationsbeauftragte*). Nevertheless, the Spanish Ombudsman<sup>6</sup>, the *Defensor del pueblo*, became increasingly involved in questions concerning the integration of immigrants, as, for example, in the field of education. In 2009, the socialist government introduced the so-called ›report on integration efforts‹ (*Informe de esfuerzo de integración*). In the case of unemployment, immigrants could request the report at the corresponding municipal administration to compensate the absence of a work relationship and so to increase his or her chances to renew the residence permit in times of economic crisis.

Certainly, the PECEI represented an important step towards a more coherent integration policy. However, it should be highlighted that its implementation could rely on already established integration policies at the federal and municipal level. The following section will analyze in greater detail in which way Autonomous Communities and municipalities could assume relevant competencies in immigration and integration matters.

#### 4 The Autonomous Communities and Immigration

The role of the Autonomous Communities in the overall recruitment process of immigrants is still limited. Only recently have the competencies concerning active labour market policies been transferred to the Autonomous Com-

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5 Forty per cent of the Integration Fund for Immigrants (120 million Euros) instituted by the central government in 2005 was assigned to education policy. The remaining 60% was devoted to first reception policies. Catalonia and Madrid were the two Autonomous Communities that received the highest financing amount (El País, 28 May 2005).

6 The Spanish Ombudsman is elected by the *Cortes Generales* and is an independent body with a central character.

munities. Thus, the Autonomic Employment Services are responsible for issuing the negative certification for the employment of foreign workers. In the case of nominal recruitment, employers have therefore to check with the corresponding Office of the Public Employment Service in the Autonomous Communities if they can recruit a foreign worker for a given job. The Autonomic Employment Services also elaborate the catalogue jointly with the National Employment Service and the Secretary of State of Immigration. In fact, the Autonomous Communities elaborate a pre-catalogue that is then sent to and evaluated by the Central Office of the National Employment Service. In the last stage, the content of the catalogue has to be approved by the Tripartite Labour Commission of Immigration (*Comisión Laboral Tripartita de Inmigración*), which is composed of the representatives of the employers' associations, the trade unions and the Secretary of State of Immigration. The final version of the catalogue is published every three months as a resolution of the Public Employment Service.

The central government also allows the Autonomous Communities a certain level of participation as far as the determination of immigration quotas is concerned. The ministerial decree with the list of occupations offered in the *contingente* is published yearly by the Secretary of State of Immigration. In elaborating this document, the Secretary of State considers the information on the national employment situation collected by the Autonomic Employment Services and subsequently revised by the national offices of the Public Employment Service, which may correct the information according to the »national employment situation«. The final proposal is discussed within the Tripartite Labour Commission of Immigration, which has the last word. Additionally, the Secretary of State will always consider the reports by the Sectorial Conference of Immigration (which was called the Superior Council of Immigration until 2008) and the Interministerial Commission on Foreigners.

Some Autonomous Communities have already taken important steps towards their autonomy in immigration issues through the reform of their autonomy statutes. According to its reformed statute (*Estatut de Autonomia*)<sup>7</sup>, the government of Catalonia (*Generalitat*), for example, has executive power in processing and issuing initial work permits to foreigners, though it has to coordinate its executive power with the state competencies.<sup>8</sup> The new statute

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7 The statute has been modified by the Organic Law no. 6/2006. It represents a clear progress towards the Spanish Constitution, because it clearly defines where the *Generalitat* has legislative or administrative competence.

8 The *Generalitat* had also proposed to establish autonomic offices in the immigrants' country of origin for a more effective participation to the quota-programmes. Furthermore, Catalonia also demands a (limited) transfer of competencies as far as the issuance and renovation of the residence permits is concerned. Both proposals have remained, however, unsuccessful.

of Andalusia contains a similar provision on the issue of work permits as well. However, no similar provisions have been included into the new Autonomy Statutes of other Autonomous Communities. In general, the competence transfer was regarded with a certain degree of scepticism. Some scholars feared that such a provision could provoke a different treatment of immigrants in the Autonomous Communities, enhancing an asymmetric distribution of competencies (Montilla-Martos 2006). Moreover, some scholars predicted that the implementation process would be burdensome and that coordination difficulties would exist between the State and the autonomic administration (Rojo Torrecilla/Camas Roda 2009). This is indeed what happened in the case of Catalonia, where the implementation phase of the new provision was quite burdensome even though most institutional representatives are satisfied with the final implementation results (Finotelli 2012).

In contrast to their rather secondary role in immigration management, Autonomous Communities have been significantly active with respect to immigrant integration. Not only Catalonia, but several other Autonomous Communities have taken integration measures as far as allowed by the state framework laws. All Autonomous Communities adopted »autonomic« integration plans following autonomic guidelines. The Autonomic Plans for the Social Integration of Immigrants are part of several Autonomic Laws of Social Services that were approved in Spain up to 1988.<sup>9</sup> Since the beginning, these Autonomic Plans focused mainly on the fields of education, health protection and social housing.<sup>10</sup> Some Autonomous Communities have gone even further. According to the new Catalan and Andalusian statutes, the Community has exclusive power in the initial reception of immigrants and for determining the guidelines of its integration policy.<sup>11</sup>

The possibility to acquire competencies in the aforementioned fields was defined by the competence distribution of the State of Autonomies. According to its principles, state law determines the basic principles of education and health provisions, which can be extended by autonomic legisla-

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9 As far as social services are concerned, the Spanish government approved the Dependency Law 39/2006 (*Ley de Dependencia*) at the end of 2006, regulating cash-benefits and services for people in need of care. According to the new law, the state guarantees minimum tax financed services, too, while special agreements (*convenios*) between the state and the Autonomous Communities regulate the remaining provisions. Furthermore, the Autonomous Communities can introduce special provisions on their own.

10 Catalonia was the first community to adopt this kind of immigration plan.

11 The *Generalitat* has already tried to make full use of it. In October 2006, the President of the nationalistic party, *Convergència y Unió*, proposed a kind of point system to evaluate the integration of immigrants. The *Generalitat* had already proposed in 2004 binding residence permits issued in the particular case of *arraigo social* to an evaluation of the integration degree of the applicant. See: El País, 8 Jul 2004.

tion. Therefore, the competence of the Autonomous Communities in social services for immigrants is derived from general competencies in the fields of health and education. The Spanish National Health System (*Servicio Sanitario Nacional*), based on the principles of solidarity and universalism, is formed by the National Health Service and the Health Services of the Autonomous Communities (*Servicio Sanitario Autonómico*). The State is entrusted with the basic and general regulation of the Spanish health system, while the Autonomous Communities are entrusted with sanitary planning on their territory, public health provisions and the management of health services.<sup>12</sup> One of the most important achievements of Social Services Laws was to guarantee the access of irregular immigrants to the National Health System, independent from their residence status in all Autonomous Communities.

Education is the second most important matter of self-government for the Spanish communities. Secondary school teachers and university professors are state civil servants, whose salaries depend on the autonomic administration. According to several laws on education adopted by the central government since 1990<sup>13</sup>, the Autonomous Communities can co-determinate the teaching programmes for the secondary school and the way to introduce immigrant children into the new school system. In fact, according to the Organic Law for Education Quality no. 10/2002 (*Ley Organica de Calidad de Educación/LOCE*), immigrants are considered to be a special category among students with a necessity of special educational treatment (Larios Paterna 2006). This provision is particularly important for the *nacionalidades historicas* with two official languages.

Even though it is still not possible to recognise a state philosophy of integration in Spain, scholars have recognised different ways to understand integration in the different Autonomous Communities (Lizarrondo Artola 2009). Catalonia, for instance, has developed an immigration philosophy in which learning the Catalan language is considered a fundamental condition for the social and the national integration of immigrants. The so-called ›Catalan way of integration‹ is mainly based on the search of a balance between the respect of diversity and the feeling of belonging to the same Catalan community (ibid.). The treatment of immigration issues through the lens of Catalanism, however, has also favoured the rise of xenophobic parties such as *Plataforma para Catalunya*. Nevertheless, the political impact of these

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12 It should be mentioned that the transfer of competences from the Spanish State and the Autonomous Communities began in 1981 and ended in 2002.

13 They are the *Ley de Ordenación General del Sistema Educativo* (LOSGE) of 3 Oct 1990, followed by the *Ley Organica 9/1995* (LODGE), both amended by the *Ley Organica 10/2002* (LOCE) on the quality of education. The LOCE will be substituted by the new Organic Law of Education (*Ley Organica de Educación*), which has not been approved by the *Cortes* yet.

parties is still very weak. In the Catalan elections of November 2012, for instance, *Plataforma para Catalunya* did not even manage to enter into the Catalan Parliament.

In the Basque country, the other important *nacionalidad histórica* in Spain, immigration and integration issues maintained, by contrast, a very low profile in the political debate due to the absence of a statute regulating this field, a very small immigrant population and the lack of a tradition of immigration from other Spanish regions. Nevertheless, this has not prevented the Basque government from implementing fully inclusive practices in terms of the access to social rights, which are probably the most generous ones in Spain (Larroque Aranguren 2012).

All in all, recent developments show that the Autonomous Communities have certainly played a major role in the immigrants' integration process. However, it should not be forgotten that most of them rely on the cooperation of the municipalities, especially if we consider the strong relationship between the access to social services and the registration of Spanish and foreign citizens into the municipal registry of population. This draws the attention to the role of the local government and on the way municipalities have been gaining increasing importance in the integration process of immigrants.

## 5 The Local Government

The Spanish Constitution guarantees the autonomy of municipalities. They have own administrative competencies as well as powers delegated by the central administration and the Autonomous Communities. An example of this competence, distribution is represented by pre-school education. The construction and management of *Kindergarten* belongs to the field of education and is an autonomic issue. However, the Autonomous Communities can delegate competencies in this matter to the municipalities in their own interest.<sup>14</sup> All in all, local competencies still represent a fuzzy picture without a clear legal frame. However, municipalities have been increasingly involved in active programmes for the integration of immigrants since Spain's transformation into an immigration country (Pajares 2006). The existence of European funds for projects like the EQUAL plan or the introduction of the Euro-

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14 At this point it should be remembered that pre-school education does not belong to the obligatory education guaranteed to all citizens by law. That is why there is only a small number of public *Kindergartens* available. Furthermore, their distribution in the Autonomous Communities is very unequal. Madrid belongs to the communities with the largest offer of *Kindergarten* places, while Catalonia is on the bottom of the ranking. Finally, the low numbers of *Kindergarten* places has favoured the ›private‹ offer of *Kindergarten*, which is hardly regulated and does not always offer acceptable standards of education and care. See *Expansión*, 25 Sep 2006.

pean Refugee fund in 2000 have promoted such activities that are always coordinated by the corresponding Autonomous Community. In the frame of the ARENA programme, the government of Andalusia (*Junta de Andalucía*) and eight municipalities have started an integration programme consisting of reception and information centers for immigrants and advisory services for easier access to housing as well as to Spanish classes for immigrants and the training of intercultural mediators.

In Catalonia, one of the ›oldest‹ immigration destinations in Spain, the municipal government of Barcelona established an Office for the Attendance of Immigrants and Refugees in 1990, which is still active. Other Catalan municipalities, like Mataró, are pioneers in the initial reception of immigrants. Finally, the *Generalitat* supports and finances the activities of groups of municipalities called *Consells Comarcals*. The Basque Country has favoured a series of activities in the field of integration, which involve several municipalities and are aimed at the reception of immigrants and the vocational training of people working with them.<sup>15</sup> Apart from the aforementioned integration programmes, since 2000, municipalities have played a central role in the legal ›inclusion‹ of immigrants into the Spanish social security system. As already mentioned, the first step towards a regular residence consists in the registration in the municipality (*empadronamiento*). All immigrants, independent of their legal status, can register into the *Padrón Municipal*. In the past years, the *Padrón* allowed not only the access to the National Health System for all immigrants, but it also represented a *conditio sine qua non* for a residence regularisation usually required to demonstrate the presence of the applicant up to a certain date. Furthermore, according to the new immigration law no. 2/2009, immigrants with a residence permit that are registered in the municipal registry can vote in the Spanish municipal elections. The possibility to do so, however, depends on the existence of reciprocity agreements allowing Spanish citizens to do the same in the immigrants' countries of origin. Such agreements exist with Latin American countries but not with other relevant sending countries like Morocco or China. Finally, it is also important to notice that immigrants who apply for an individual regularisation based on social reasons (*arraigo social*) have to ask their municipality for a certificate providing information about their degree of social inclusion in the municipality of residence.<sup>16</sup>

In the past years, there have been some attempts to redesign the competence distribution of municipalities also in view of their increasing rele-

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15 This, for example, is the case of the Ordinance of 3 Nov 2006, opening a call for the financing of municipal projects aimed at the integration of immigrants.

16 The certificate can include information about the length of the applicant's residence in the municipality, the presence of relatives, the knowledge of the Spanish language, the participation in social or educational activities etc.

vance as a service provider. In 2006, the Spanish Parliament started to discuss a proposal of a Basic Law on local government and administration (*Cortes Generales*).<sup>17</sup> Among other issues, the new laws wanted to better define the role of municipalities in the provision of social services.<sup>18</sup> At the same time, the cities of Madrid and Barcelona had already obtained a special statute in 2006, clearly defining their competencies and their coordination with the autonomic and state levels.<sup>19</sup>

The proposal of the socialist government was never turned into law. Moreover, the reform plans of the new government seem to go into the opposite direction, planning to cut competencies rather than better define and organise them. The new government is planning a new reform of the municipality law<sup>20</sup> that aims at reducing the number of municipalities and municipality officials as well as at adapting the functioning of municipalities to the Organic Law of Financial Stability (Law no. 2/2012) by eliminating »incorrect competencies« at the municipal level. The law will define the competence distribution at the local level with more clarity, adapting them to the more and more limited municipal financial resources.

Moreover, the new government controlled by the Partido Popular has approved a new regulation establishing that irregular immigrants registered in the *Padrón* are not allowed free access to the Health System (the only exceptions are emergencies, childbirths and minors).<sup>21</sup> This regulation, which came into force on 31 August 2012, challenged one of the most important pillars of the Spanish welfare regime and triggered a wave of rejection in Spanish society. Consequently, the Autonomous Communities governed by the socialist party decided not to implement the new regulation. According to a very recent report of Doctors Without Borders, the Autonomous Communities of Balears, Canarias, Cantabria, Castilla-La Mancha, Extremadura, La

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17 See Work Sheet of 5 Jul 2006 [http://www.map.es/iniciativas/nueva\\_agenda\\_territorial/reforma\\_gobierno\\_local/parrafo/03/document\\_es/ANTEPROYECTO\\_DE\\_LEY\\_BASICA\\_DEL.pdf](http://www.map.es/iniciativas/nueva_agenda_territorial/reforma_gobierno_local/parrafo/03/document_es/ANTEPROYECTO_DE_LEY_BASICA_DEL.pdf)

18 The municipality of Madrid provides, for instance, special care services, mainly house work and meal preparation, for people older than 60, minors and other people in need of care.

19 Madrid's and Barcelona's municipal governments are regulated respectively by Law no. 22/2006 on the Special Regime of Madrid and by Law no. 1/2006 on the Special Regime of the Municipality of Barcelona.

20 Anteproyecto de Ley de Racionalización y Sostenibilidad de la Administración Local, <http://www.lamoncloa.gob.es/ConsejodeMinistros/Enlaces/130712-enlacesostenibilidad.htm>.

21 It must be noted that already in 2009 the major of the Catalan city of Vic declared that the registration into the municipal registry had to be refused to irregular migrants. The then socialist government responded that such a requirement was unacceptable since the *Padrón municipal* is a statistical instrument and not one of control.

Rioja, Madrid, Murcia and Aragón are fully implementing the new regulation. Another group of communities, Galicia, Navarra, Castilla-León and the Comunidad Valenciana are implementing the law and at the same time developing instruments that allow to assist immigrants out of the minimal assistance allowed by the state law.

Andalusia, the Basque Country, Catalonia and Asturias do not implement the reform while the Basque Country has appealed against it in court (El País, 28 Nov 2012). These cases of »autonomic disobedience« are not a new phenomenon. In the past, the Catalanian government recognised the access to non-obligatory education for irregular immigrants enrolled in the *Padrón* lists. The Superior Court of Justice of Catalonia declared this measure as incompatible with state law (Sentence 1233/2004). Andalusia, by contrast, has been more successful. Irregular migrants in Andalusia, who are not enrolled in the *Padrón*, have got access to the Health System on the basis of an agreement between the *Junta de Andalucía* and some NGOs (Montilla-Martos 2006).<sup>22</sup>

In the current context, the Constitutional Court has recently decided in favour of the Basque decision to not implement the provisions of Decree no. 16/2012 on the access of irregular migrants to the Public Health System. The Court validates its decision, stating that the protection of public health is more important than economic constraints (El País, 18 Dec 2012). The Ministry of Health has immediately declared that the Court's decision does not affect the law implementation in other Autonomous Communities. It only remains to be seen if this is the end or only the beginning of a new confrontation between central State and Autonomous Communities in Spain.

## 6 Final Remarks

The development of the Spanish territorial model has been deeply affected by the open character of the Spanish Constitution, which resulted in what is generally known as an asymmetric territorial model. As far as immigration issues are concerned, the Spanish state keeps a juridical-administrative predominance on the condition of immigrants, while the Autonomous Communities, and, to a lesser extent, the municipalities are responsible for the provision of social services. The active role of the Autonomous Communities, the municipalities and of the association of immigrants has certainly contributed to the creation of inclusive citizenship paths. Yet, the lack of a national integration philosophy did not prevent immigrants from access to social rights that are in some cases more extended than those in countries with a larger

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22 The author, however, criticises this agreement, because it was not adopted through an autonomic law.



immigration experience. Moreover, during the ›prodigious decade‹ of immigration, the central State tried to recover the role of coordinator in integration matters without depriving the Autonomous Communities of their significant position in this policy field.

All in all, recent developments show that Spain is no longer a new country of immigration faced with the emergency of unwanted flows, but rather a receiving society in which integration has become part of its daily challenges. Nobody can forecast to what extent the spending cuts will affect the State and autonomic commitments towards the integration of immigrants. The new government has not only limited the access of irregular migrants to the Public Health System, but has also reduced the funding of integration programmes through the National Fund of Integration down to nothing. Furthermore, it has revoked the report on integration efforts, a decision which could prevent many unemployed immigrants to renew their residence permit thanks to a positive report. All these changes could deeply impact the progress that has been made in the last decade, increase the precariousness of immigrants and affect the future of social cohesion in Spain.

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# Kai Leptien

## Switzerland: Decentralisation and the Power of the People

### 1 Weak Federal Level – Strong Cantonal Powers

The political system of Switzerland can be portrayed by its decentralised character, a system of consensus, an intense amount of direct democracy, and people's sovereignty (*Volkssouveränität*) as well as the strict application of the system of subsidiarity. The decentralised organisation of immigration and integration matters has led to different practices at the cantonal and local levels.

Historically, in Switzerland the idea of being a ›nation of will‹ (*Willensnation*) has always prevailed. The multicultural and multilingual character of Switzerland is reflected in the representation of French, German, Italian and Romansh speakers, catholics and protestants, all major parties and now also women and men under ›magic formulas‹ in political institutions – all this based on consensus, compromise and voting, and not upon any quota regulations. A vital factor of the Swiss system is the principle of people's sovereignty, granting the people the final right to approve or reject decisions made by federal, cantonal or local state government (*obligatorisches und fakultatives Referendum*) as well as the possibility to initiate legislation processes by popular initiatives (*Volksinitiative*). Popular vote is also an important factor for immigration and integration issues. Naturalisations in some local communities depend on the approval of a popular vote. Parliament and people are sovereign.

The Swiss Federal Court (*Bundesgericht*) decides on all questions concerning federal law as well as competence disputes between the states and the federation, and can assess cantonal and municipal laws on their constitutionality. It cannot decide upon the constitutionality of federal laws but has begun to rely on international law in recent years. In the Swiss judicial system, the cantons do have their own administrative courts, since they legislate their own administrative law (Linder 1999: 478).

The 26 cantons enjoy wide competencies in the federal system and are often defined as ›sovereign‹. The cantons exercise all competencies that are not given to the confederation (Swiss Constitution Art. 3) and which are to be accomplished within the framework of their powers (Art. 43). Each canton

has its own constitution and can decide autonomously about raising and spending taxes. Swiss federalism can therefore be characterised as decentralised rather than cooperative. The Federal Constitution recognises the particularities of the cantons and thus allows for a wide range of interpretation, even for executing federal law.

»*The confederation shall leave the cantons as large a space as possible, and shall take their particularities into account.*« (Art. 46.2)

Execution of federal laws by the cantons is not further determined in the Swiss Federal Constitution. Therefore, the need for cooperation and the spirit of uniformity is weaker than in other federal systems. Federal laws consist mainly of framework legislation so that the cantons are able to interpret federal laws freely. The absence of detailed federal legislation is rationalised in the intention of the government to avoid a popular vote against it. In many cases, cantonal laws regulate the specifics and the implementation of the federal laws. The federation does not have any influence on these cantonal regulations (Braun 2003: 72).

Within the cantonal constitutional setting, the 3,000 municipalities, many of them very small, fulfil their tasks autonomously. New responsibilities are usually taken up by municipalities first. The cantons only take over such tasks that cannot be solved by the municipalities. The federation has no role in the legislation of the municipalities.

A positive vote of both chambers of parliament is needed to transfer competencies to the federal level and can be subject to referendum. Thus, Switzerland strictly follows the principle of subsidiarity and is one of the most decentralised countries in the world.

## 2 Federal Responsibilities

For a long time, claims for an immigrant policy on the national level have been denied because it has been argued that integration is a responsibility of the cantons (Mahnig/Wimmer 2003: 146). Since 2005, the Federal Office for Migration (*Bundesamt für Migration, BFM*) is the most important national institution for immigration matters. It is part of the Federal Department of Justice and Police.

The BFM regulates all issues under the law concerning foreign nationals and asylum seekers such as:

- Entry and residence
- Asylum
- Financial support for integration projects
- Setting minimum standards for naturalisation

The law dealing with immigration and the recruitment of foreigners into the country is the Federal Law of Residence and Settlement for Foreigners (*Bundesgesetz über Aufenthalt und Niederlassung der Ausländer, ANAG*). Generally, only a limited residence permit is given to all foreigners when they first arrive (*Aufenthaltsbewilligung*). They can apply for a permanent residence permit (*Niederlassungsbewilligung*) after having lived in the country for ten years. EU nationals can obtain a permanent status after just five years. The permits are issued at the cantonal offices. Due to an agreement with the European Union on freedom of movement, EU and Swiss nationals can move freely between their countries. The agreement also coordinates the social security systems and recognition of diplomas. People from non-EU countries are admitted to Switzerland based on an annual quota system for well-qualified professionals. Thus, in the last years, immigrants have come mostly from EU countries, particularly from Germany.

Asylum recognition policy is a federal matter, which in Switzerland is carried out by the Federal Office for Migration. However, execution of these policies belongs to the cantons. Refugees are allowed to take up gainful employment whereas asylum seekers are not allowed to do so for the first three months after their submission of the asylum application. The cantons are able to extend this period (*Eidgenössische Kommission für Migrationsfragen 2011: 89*).

The integration of the foreign migrant population as a federal competence has only been recognised since 2001. For a long time, claims for a national immigrant integration policy have been rejected. However, the national government is providing financial help for integration projects that belong to the cantonal field of responsibility.

The *Eidgenössische Kommission für Migrationsfragen (EKM)* is another institution dealing with migration and integration in Switzerland at the federal level; the resources of this institution are, however, quite limited. It is an advisory board for the Swiss government composed of various experts from societal institutions who deal with immigration issues in Switzerland. In 2001, the *Tripartite Agglomerationskonferenz (TAK)* was founded in order to strengthen the vertical cooperation between the federal, state and local levels. It is led by the cantonal governments. One of the core themes of this conference is cooperation with regard to immigration and integration policy (*Bundesamt für Migration 2006: 15*).

### 3 Competencies on the Cantonal Level

Education is a competence of the cantons (Swiss Constitution, Art. 62), whereas professional education and universities belong to the confederations' competence (Art. 63). Together with the municipalities, the cantons carry 90% of the expenditures on education.

As a result, one can find a huge variety in the ways immigrants are included in the school system due to the autonomy and variety of the cantons' policies. Depending on the language spoken in their canton, the children have to adopt the respective language. In German-speaking cantons, there has been a tendency to create specific, separate institutions for migrant children. In contrast, French and Italian-speaking cantons have opted in favour of migrant children integrating into the mainstream institutions (Mahnig/Wimmer 2003: 144).

It all depends on the policy of the cantons and resources of the municipalities as well as how immigrant children are prepared to join the regular classes; whether they are prepared in so-called ›integration classes‹ before they are integrated in the Swiss school system and whether the schools offer special classes in the native language of the students with a migration background. In 2004, almost half of the cantons utilised special resources for schools with a large number of non-native speakers in order to further the integration of immigrant children, and 24 cantons set up special integration projects (Stauffer 2004: 41).

In recent years, however, there has been a tendency towards intercantonal cooperation in the field of integration and education. In the Swiss Conference of Cantonal Ministers of Education (*Schweizerische Konferenz der kantonalen Erziehungsdirektoren, EDF*), the cantons cooperate in the field of education and recognition of diplomas. Still, in order to pass legally binding compromises, all cantons have to approve the decisions made in the conference, and in some cantons a positive popular vote is also required before approval. The agreement on educational coordination implies a general obligation for the cantons to cooperate in the field of education. The cantons also agreed that the EDF could give recommendations regarding the education of children with a foreign language background. Since the recommendations are not legally binding for the cantons, they can decide whether or not to implement these recommendations. Thus, although the cantons try to cooperate, the decision-making always remains with the cantonal institutions and the will of the people. This has led to different settings of activities in the Swiss federal educational system towards the challenges of integrating non-native speakers into the local and cantonal contexts.

## 4 Fields of Cooperation between Federation, Cantons and Municipalities

### 4.1 Labour Market

Access to the Swiss labour market and professional mobility in Switzerland depends on resident status. People from the European Union and those who already have a permanent residence permit enjoy the same rights in the labour market as Swiss citizens. The mobility of people who only have a non-permanent residential status is limited if they want to work in a different canton (BMF 2006: 45) because their permit is only valid for the canton in which it has been issued. As a result, non-permanent residents have to apply for a new work permit when they move to another canton. Thus, the cantons can regulate flows of workforce on their territory. People who stay in Switzerland for less than one year do not have any right to change their profession or canton (Tripartite Agglomerationskonferenz 2005: 25–27). Since the establishment of contingents for short-term workers, cantons participate in setting up a quota for the each year for short-term workers, giving the economically weaker cantons possibilities to attract foreign workers, even if they could earn more in other parts of the country (Cattacin/Kaya 2001: 196).

Certain groups are privileged. People from the European Union are free to move and work in Switzerland. Starting one's own business is also possible for people from the European Union, as well as those who are granted permanent residence, or are married to a Swiss citizen.

### 4.2 Access to Public Service for Foreigners in Switzerland

There are only a few jobs in the public sector that are exclusively reserved for Swiss people. Legally, Swiss and foreign employees from EU countries and other people with a permanent residence permit are equal under the law concerning public employment. However, the percentage of non-Swiss citizens in the public sector is low. In Switzerland, the cantons and municipalities can set up their own criteria regarding the employment of foreigners who are involved in public service, such as education and administration. Consequently, the pre-requisites for the employment of non-Swiss citizens may differ locally.

### 4.3 Social Benefits

The social security system in Switzerland is based on federal legislation dealing with illness, unemployment, accidents at the workplace and invalidity. Most social securities are mandatory, e.g. those for unemployment and work accidents. As a result, all foreigners are required to have health insurance and all employed foreigners are included in the regular national social

insurance systems. The insurance for unemployment is based on local structures in the cantons and cities. Municipalities and cantons can create additional laws (*Ergänzungsgesetze*) for federal measures, e.g. job creation schemes.

In contrast, welfare aid is part of the legislation of the cantons. Each canton has its own regulation and only basic principles are the same between the cantons. These are based on general guidelines that result from agreements between the cantons.

#### 4.4 Health

Until 2002, the cantons mainly organised issues concerning migration and health. As a result, the cantons found different ways of dealing with the arising challenges in this field. Some of the cantons chose to keep the sector private, whereas others set up large public programmes to improve the structure for migrants in the health field (Cattacin/Kaya 2001: 200). In 2002, the federal government started a national initiative called ›Migration and Health‹. This was aimed at the multicultural education of employees in the health sector and creating a better provision of care for the migrant population. The competencies and implementations of the programme's guidelines, however, are ultimately determined by the cantons and municipalities (BFM 2006: 62).

#### 4.5 Language Courses

The federal integration programmes grant money to the cantons in order to establish language courses for foreigners in the local language. The cantons' local authorities have offered these programmes since 2001. Language courses for asylum seekers are based on the federal asylum decree. They give a lump sum to the cantons, and the cantons can determine how to spend the funds (BFM 2006: 68) and whether or not to establish mandatory language courses for foreigners.

#### 4.6 Housing

Switzerland promotes social housing at all levels of government, all of whom cooperate with one another (Slominski 2001: 747). The municipalities mostly distribute funds, and there is a wide variety of activities and approaches among the various municipalities (BFM 2006: 74).

#### 4.7 Naturalisation

Due to its federal structure, Switzerland has a three-tier citizenship at the federal, cantonal and municipal levels. The federal citizenship follows the local and cantonal citizenships. »Every person who has the citizenship of a



municipality and of the canton to which it belongs, has Swiss citizenship« (Art. 37 Swiss Const.). The confederation sets up minimum requirements for naturalisation, and the cantons and municipalities are free to add additional requirements for naturalisation in their canton and municipality. Therefore, the naturalisation requirements differ widely between cantons and even between municipalities within most cantons.

The Swiss naturalisation law is based on the *ius sanguinis* principle. Two legal ways of the naturalisation process are known in Swiss law. Foreigners who are married to a Swiss citizen or are younger than 22 years of age can apply for a faster naturalisation in most cantons. The normal naturalisation process (*Ordentliche Einbürgerung*) that applies to the vast majority of applicants requires a minimum legal stay in Switzerland of twelve years. The naturalisation of foreigners in Switzerland is not only a legal, but also a democratic act since it depends on various other criteria and, in some cases, on the approval by popular vote of the citizens in the municipalities in which the foreigners live.

The federal law requires that the applicant must be »qualified« for naturalisation. Criteria that can widely be interpreted by the cantons and municipalities are the applicant's integration into »Swiss manners and habits«. In most cases, the municipality's council decides on the naturalisation. In many smaller towns and villages, a popular vote of the citizens can be necessary as well, and the municipalities act autonomously in deciding to whom citizenship is granted. After this step, the case goes to the cantons and then to the confederation to approve this decision. The proceedings of the popular vote for naturalisation have been criticised in recent times due to inequalities and the lack of objectivity, and the federal court annulled some of them and demanded new votes in 2004 (TPA 2005: 62). However, the court's decision did not apply to all cantonal procedures, so there is still a significant difference regarding the practice of naturalisation, even though the number of naturalisations has increased remarkably in recent years. A government proposal for *ius soli* and easier naturalisation for children and young adults was rejected by a conservative majority of small cantons for the third time in 2004, demonstrating that the rural cantons can hold back the more progressive, larger cantons (Sager/Vatter 2013). The populist Swiss People's Party also criticizes the Federal Court for curtailing people's democratic rights and a popular initiative is under way, to legitimate free decisions by the local population – which would have the effect of discriminating against unpopular immigration groups.

Naturalisation procedures are strongly based on subjective evaluations of the municipalities' council and the canton. Some cantons do not define any language requirements for naturalisations, whereas others demand a certain level of knowledge of the official cantonal language. Huge differences

between the cantonal naturalisation practices concern the question of whether the applicant depends on social aid (Eidgenössische Kommission für Migrationsfragen 2011: 58).

#### 4.8 Voting Rights

Concerning voting rights, like in other cases, the trias confederation, canton, and municipality has to be distinguished. The Swiss constitution does not grant political rights to non-citizens at the federal level. The cantons are sovereign in their institutions and in their legislation for the municipalities, which means that they can decide whether to give voting rights to non-citizens at the cantonal or local level. Canton Jura grants active voting rights on the cantonal level for foreigners who have been living in the country for ten years. Seven cantons have institutionalised active and passive local voting rights for foreigners. In several other cantons, attempts for local voting rights have been rejected by popular vote (Cattacin/Kaya 2001: 206).

#### 4.9 Commissioners

There are commissioners for integration (*Integrationsbeauftragte*) on the federal, cantonal and municipal levels in Switzerland. They coordinate integration policy between the federation, the canton and the cities, inform the governmental bodies and initiate integration projects.

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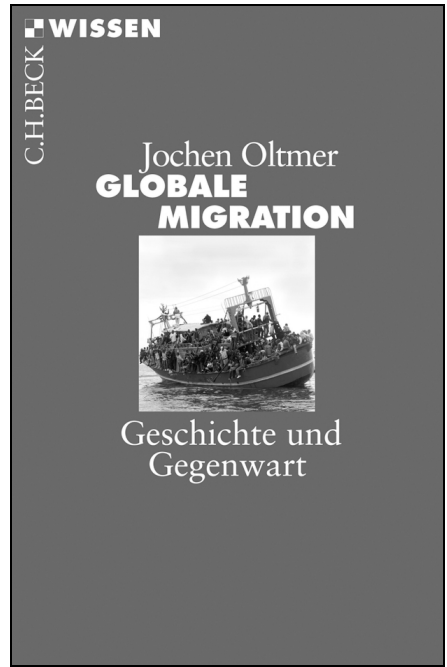
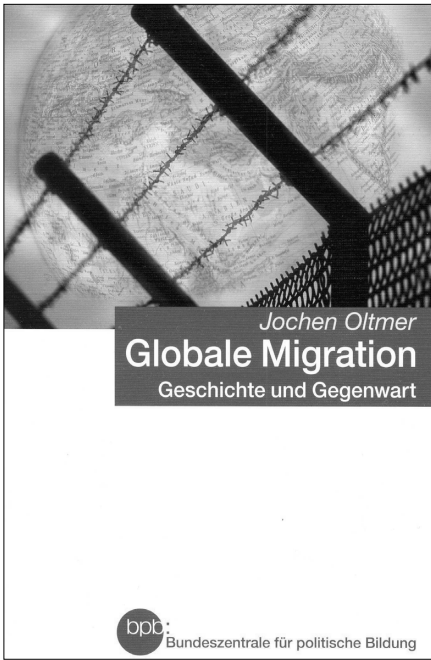
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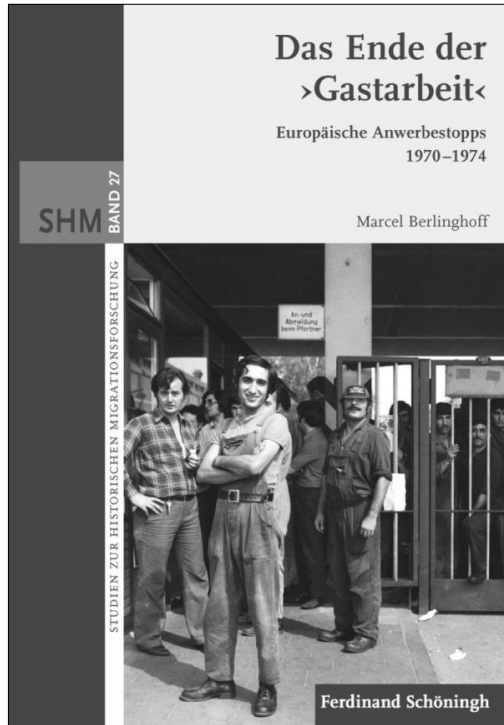
MARCEL BERLINGHOFF

## Das Ende der ›Gastarbeit‹

Europäische Anwerbestopps  
1970–1974

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*Jenseits der Ölkrise – »Grenzen der Aufnahmefähigkeit« – Europäisierung der Migrationspolitik.*

Beendete tatsächlich die Ölkrise die »Gastarbeiter-Ära«? Warum stoppten alle westeuropäischen Industriestaaten Anfang der 1970er Jahre ihre Anwerbung und schlossen die Grenzen für unerwünschte Arbeitsmigranten? Das Buch begibt sich auf die Suche nach der Entstehungsgeschichte der Anwerbestopps und zeichnet die Diskussionen der Beamten nach, die sich auf unterschiedlichen Ebenen von der Stadtverwaltung bis zur Europäischen Gemeinschaft mit dem »Problem der ausländischen Arbeitnehmer« beschäftigten. Dabei erklärt es am Beispiel Deutschlands, Frankreichs und der Schweiz, wie die nationalen Entscheidungen durch transnationale Diskurse geprägt wurden, sich gegenseitig beeinflussten und schließlich zu einer Europäisierung der Migrationspolitik führte.

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