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Cultural impact of recent changes in German Citizenship Law

There are several theoretical concepts and extremes behind Citizenship Law, since it does not less than regulate who and who not can become part of a definite community. These demands a certain definition of this community, which usually goes together with a certain perspective on the one outside of this community.

For Citizenship Law, the questions that frame the theoretical extremes are generally the following:

Is *naturalisation* into the community possible because of *ius sanguinis* or *ius soli*?

Is the *community* a concept of culture (“Kulturation”) or of republicanism?

Is *culture* based on a holistic or syncretic notion?

Is *integration* a precondition for citizenship or is citizenship – granting equal rights and participation - a precondition for integration?

With the reform of German Citizenship Law in 2000, the ethnic principle of *ius sanguinis* has been complemented with the more including principle of *ius soli*. Furthermore the cultural concept of nation (“kulturation”), which is translated into legal terms by the doctrine of constitutional preconditions, has lost its dominance in the discourse.

But how does the new, more republican version of Citizenship Law defines its community? Do the reform in 2000 and the most recent changes mark that the “kulturation” is left behind? Or is the new republican style still based on a static, holistic view of culture which is not far from the concept of “kulturation”?

To show these, this paper will concentrate on the most recent changes of Citizenship Law, the strengthened requirements towards applicants for citizenship concerning language skills and the passing of a naturalisation test, while on the other hand pointing out the attempts to form a collective German identity “inside” the community.

Reform of German Citizenship Law

The former German citizenship law has been based on the ethnic principle of *ius sanguinis*: Germans citizens are generally the descendants of German parents. Already the German government of 1984 admitted, that there is a public interest in granting naturalisation to the second and third generations of “foreigners” (Marx 2006, no. 364). In 2000, the Citizenship Law was reformed and complemented the still dominant principle of *ius sanguinis* with the opposite principle of *ius soli*: at least children of foreigners, who are born on German territory, have under certain conditions the possibility to gain German citizenship with their birth, as well as the citizenship of their parents. To avoid double-citizenship, which is by jurisdiction and legislation still considered as an “evil” (“*Übel*”) (Marx 2000, no. 376, 380), the “option-model” requires those children to decide for one citizenship in the ages of 18 until 23.

***ius sanguinis* and *ius soli*; “Kulturation” and republicanism**

The concepts of *ius sanguinis* and *ius soli* are both linked with the opposed concepts of community: “Kulturation” v. republicanism. The only way to become member of a “kulturation” is ethnic belonging or assimilation to its static, fixed culture. Hence, the naturalization through *ius sanguinis* is an “instrument of perpetuation of the kulturation” (Marx 2000, no. 268).

Gerdes, Faist and Rieple, though, are of the opinion that there is no necessary link between *ius sanguinis* and an ethnic concept, but *ius sanguinis* could also be a form of naturalization in nations with republican self-understanding (Gerdes/Faist/Rieple 2007, 57 f.). They see the contrast of republican vs. ethnic nation as misleading, instead there are two opposing views of integration: the supporters of *ius sanguinis* would take integration as precondition for naturalisation, while the supporters of *ius soli* see naturalisation first of all as a matter of equal rights (Gerdes/Faist/Rieple 2007, 48). Then it depends on the concept of integration whether the community is constructed as a

republican or ethnic one. But a totally ethnic concept of nation would not allow any immigration at all, therefore the contrast between a republican and a cultural concept of nation (such as “kulturnation”) is a better way to analyse: the “kulturnation” is mainly based on an ethnic concept (see above), but allows naturalisation under strict conditions, which include the assimilation to a set up culture. The formation of a static culture inside a community to which any “outsider” has to adapt can be used as a substitution for an only ethnic concept of community.

Constitutional preconditions (“*Verfassungsvoraussetzungen*”)

The concept of a “kulturnation” finds its transition into legal terms through the doctrine of “*Verfassungsvoraussetzungen*”: the constitution is supposed to be based upon preconditions which cannot be given in the constitution itself, but which have already been there. Hence, the state followed after a certain folk, a certain culture, a certain language. In the legal discourse, there is a broad range of examples for alleged constitutional preconditions in Germany: this is especially the German language, which is a basic factor of the concept of the “kulturnation” and for the construction of a common German identity in the 19th century (Preuss 2004, 25 f.). Other examples are mainly diffuse concepts of Christian religion and the values of the “occidental culture”; the examples of “money” or “taxes” (Kirchhof 1998, 56, 58) show the arbitrariness in the selection of these preconditions, while the constitution of “reproduction” (Kirchhof 1998, 55) and the “found state territory in the middle of Europe” as such preconditions reveals historical blindness.

The legal discourse of the recent years has significantly changed: the doctrine of constitutional preconditions is considered as undemocratic and denying historical and sociological facts (Möllers 2000, 257; Baer 2009). While the German constitutional court defined the German citizens in 1990 as the often quoted “political community of fate” (BVerfGE 83, 37, 39 f.) with a common historically and culturally background and denied the right to vote in communal elections to non-

citizens, the ministry of justice Zypries now proposes to include the right to vote for non-citizens in the constitution and to abolish the differentiation of rights for citizens and non-citizens in German Basic Law (Zypries, FAZ 22.05.2009).

Reformed German citizenship law as marking point from “kulturnation” to a more inclusive republican concept of nation?

The reform of German Citizenship Law has been embraced by many scholars, it is considered as a sign that Germany finally accepted the fact of being an immigration country by granting citizenship at least to “foreigners” of the second or third generation (Benhabib 2004, 208). The reform of Citizenship Law would mark the change from only ethnic conditions, from a cultural defined national community to a more open “post-national society” as defined by Habermas, which equally recognizes the political rights of “foreigners” (Kaya 2005, 227). It is criticized, though, that this reform is not extensive enough, because not all xenophobic provisions of the former law could be cancelled (Marx 2006, no. 258).

Assuming, that citizenship law is culturally formed (Kaya 2005, 228), does the renewed German Citizenship Law follow rather a holistic or syncretic notion of culture? While holistic culture refers to one static, authentic culture closely related to the ethnicity and history of a nation (Kaya 2005, 228), the syncretic notion of culture is not based on a prefixed, stated culture but refers to cultural identity as a constant process of “becoming”, so that it allows the “hyphenated Germans” the construction of a “third space” of culture, in between the sending and the receiving country (Kaya 2005, 230).

Requirements outside – disciplination inside

The closing of borders, the refusing of immigration of “outsider” always means on the other hand the disciplination of “outsiders” inside the country (Benhabib 2004, 173). Benhabib agrees with the

critic of Soysal (1994), that e.g. Germany cannot force its national identity on “outsiders”, if German people themselves are not sure about their own collective identity (Benhabib 2004, 173 f.)

Therefore, the requirements on “outsiders”, as on the applicants for citizenship, in terms of integration and adapting to one's culture must be closely linked to attempts to form a collective identity inside the community.

This paper will argue, that the most recent changes of Citizenship Law strengthen the need of applicants to adapt to a holistic German culture, while on the other hand “on the inside” the creation of a stronger collective German identity is promoted. This could create a step backwards to a cultural concept of nation.

Requirements for naturalisation now

At present, most naturalizations are based on §10 of German Citizenship Law or “*Staatsangehörigkeitsgesetz*” (*StAG*) which contains a legal title of naturalization, if its conditions are fulfilled. The requirements are 8 years of residence in Germany and an unlimited residence permit for the time of application. The applicant needs to be able to earn a livelihood without relying on social security measures. To avoid double citizenship, the loss or abandonment of his or her former citizenship is obligatory, while numerous exceptions exist. He or she also has not to be convicted because of a criminal offence in the past, needs to commit to the free-democratic basic order (“*freiheitlich-demokratische Grundordnung*”) of the German Basic Law and must not be suspected of being a member of a group which is hostile against the German constitution (§11 *StAG*).

Recent changes in Citizenship Law

With a law to implement an EU directive, the requirements for a legal claim of naturalization were changed in several point, especially important are those two:

Since September 2007, the applicant needs to proof his or her sufficient knowledge of the German language (§10 I no. 6 StAG) and – since September 2008 - knowledge about the legal and social order and living conditions in Germany (§10 I no. 7 StAG). This knowledge is generally proofed by passing a “naturalisation test” (“*Einbürgerungstest*”) (§10 V StAG).

The proof of knowledge of German language and of legal and social order can be omitted because of an illness, a disability or because of the age of the applicant (§10 VI StAG).

Knowledge of language

Before this recent change, the knowledge of German language was not a legal requirement; but a lack of knowledge could cause an exception from naturalisation. Now, the applicant has to proof knowledge of a relative high level (B1 of the Common European Framework of References for Language) and – which was subject to legal dispute before – has to proof not only oral, but also written knowledge of the German language (Geyer 2008, §10, no. 23 f.). The requirement of written knowledge constitutes an obstacle for all illiterate applicants (as well as the naturalisation test does). The highest administrative court of Baden-Württemberg decided recently, that a 39-year-old illiterate has no title for naturalization (VGH Baden-Württemberg 2009), the related newspaper article in the Frankfurter Allgemeine Tageszeitung (FAZ) is titled “Too stupid for Germany?”. The court reasons, that for the purpose of integration the applicant has to be able to communicate in written form in his or her personal, professional and social relations and in contact with state authorities (VGH Baden-Württemberg 2009, no. 26). The concept of integration is not explained in the judgement, furthermore the integration of the approximately 4 million other functional illiterates who live in Germany (estimation by the Bundesverband Alphabetisierung und Grundbildung e.V.; www.alphabetisierung.de) is not an issue.

The need for the requirement of knowledge of German language can be legitimated in two ways: with the “public interest” or with the possibility of integration and participation of each applicant.

Before the change of the requirement of language skills, the legal interpretation of “sufficient” knowledge of German language has been very restrictive to avoid the naturalisation of persons for whom is no “public interest” (Geyer §10, no. 23). Contrary, the new version of Citizenship Law makes exceptions on the proof of language skills for ill, disabled or elderly applicants (but not for illiterate). Hence the individual situations of the applicants is recognized, based on the principles of equality and anti-discrimination. Instead of public interest, the individual claim for participation through naturalisation is now emphasized. Geyer concludes, that because of this exception, §10 is clearly not about “picking the best” (Geyer 2008, §10, no. 23).

To legitimate a linguistic requirement for naturalisation in general, the German parliament argues that basic German language skills are necessary for social and political integration, to understand German media, to communicate with the German population and to take part in political decision-making (BTDrucks. 14/533 p. 18). Certainly there is no doubt that the knowledge of the official language and of the language spoken by the majority population provides great advantages in everyday-life and opens broader opportunities for economical, social and political participation.

Therefore actions on increasing alphabetisation and teaching German skills are worth supporting, as well as all efforts to make social and political participation in more than one language possible.

But there cannot be an obligation to communicate in German language, to get information from German media and to take part in political decision-making, all this is a choice of each citizen.

The freedom of election as in art. 38 I of German Basic Law also means, that there is no obligation to vote, and many citizens choose not to do so: 23,3% did not take part in the last elections for the German parliament in 2004, 57% did not vote in the last election for European parliament in 2004.

Of course, a democracy is based on political participation, but this participation cannot be attained by force. Considering the illiterate rate and voting turnouts in Germany, there seems to be the attempt to make foreigners to “better citizens”, to expect more than of the “normal” German.

Therefore “picking the best” is still a legitimation for these linguistic requirements, together with a paternalistic understanding of participation and the denial of the possibility to use more than one language.

Knowledge of the legal and social order and living conditions in Germany: “naturalisation test”

The other recent change in Citizenship Law, the requirement of knowledge about the legal and social order and living conditions, is effective since September 2008. Before this unique provision, the federal states Hessen and Baden-Württemberg already conceptualized highly debated questionnaires by themselves to test the applicants knowledge. By now, the applicant has to proof his or her knowledge about the legal and social order and living conditions in Germany generally by passing a naturalisation test. Elderly applicants or those who suffer from an illness or disability can be excluded from this requirement, the test can furthermore be replaced if the applicant visited a German school.

The ministers of Interior of all German federal states have agreed on 300 questions and 10 question for each federal state. Out of those, the applicant needs to answer 33 randomly chosen questions and has to answer 17 of those correctly to pass the test. Special courses have been established to practice for the test which can be repeated as often as necessarily to pass. Assumed that the applicant has the sufficient knowledge of German language and is not illiterate, this test is not a serious obstacle in the naturalisation process, even though some questions are objectively wrong or formulated in a misleading way. In contrast to the questionnaires of Hessen and Baden-Württemberg, the questions now are supposed to be not about the applicants intentions, but to test the factual knowledge only. The supposed aim of the test is to educate the applicants to understand and fulfil their rights and duties as citizens (BMI 2008b, 144).

The requirement of a test for naturalization can also be translated in the question of “what should a

German know?” and consequently creates a certain German self-understanding or identity. On the other hand it shows through the choice of the questions the assumptions of the authors of the test about “what do 'the others' probably not know?”

The questions especially emphasize that Germany is a democracy which guarantees the freedom of opinion, the freedom of religious belief and non-discrimination (BMI 2008a). Some questions also point out the equal rights of woman, the possibility to be married to only one woman at the same time and the prohibition to solve conflicts by violent self-justice. Are these the issues “the others” need some lessons on?

Other questions show a very biased and one-dimensional self-understanding of Europe and Germany: the correct answer of the question “Which religion has formed the European and German culture?” is “the Christianity”, among the other possibilities Hinduism, Buddhism and Islam (BMI 2008a, no. 295). Such a question does not proof knowledge, but constructs a cultural border of Europe which excludes non-christian countries such as Turkey and is one example for the impact of citizenship law on the construction of European borders (Vardar 2005, 87).

Contradictory to the often mentioned freedom of religion, the test stresses the dominance of the Christian culture furthermore by several questions about traditions of the Christian holidays (BMI 2008a, no. 271, 293, 294, 296) and another question about what the religion of majority in Germany is (BMI 2008a, no. 292).

This is one example which shows that the naturalisation test is not only about knowledge of the German Basic Law, but furthermore introduces a certain picture of German culture and identity. For example, it is a condition that all applicants for citizenship agree on art. 1 of German Basic Law, the inviolability of human dignity. The members of the Parlamentarischer Rat, the authors of the Basic Law, based their concept of human dignity on a christian, occidental ethos, linked to the German history and the need to avoid another holocaust. But the concept of human dignity is not reserved

by one cultural and historical view. Other possibilities are to base the concept of human dignity on any other religion, on any other historical or personal experiences; while the exact content of human dignity as in the Basic Law is controversial disputed anyway.

Therefore the contents of the test and the affiliated integration classes to prepare for the test are not only about “neutral” knowledge, but also want the applicants to enter into a certain, predetermined historical and cultural context, into the German identity. But what is supposed to be the content of such an identity?

Parallel creating of a collective identity

As stated above, the strengthening of requirements to “the outside”, here the applicants for citizenship, must be linked to parallel attempts of strengthening a collective identity inside Germany.

These attempts can be seen in recent political discussions and media coverage. Characteristic is the renewal of the promotion of a German “leading culture” (“Leitkultur”), e.g. in the publication series of the Federal Centre for Political Education (bpb), titled “Verfassung – Patriotismus – Leitkultur” (2006) (“constitution, patriotism, leading culture”), initiated by the President of Parliament Lammert; or the proposal of the Christian Democratic Party (CDU) in 2008 to amend the German Basic Law with the provision that “the language in the FRG is German” (sueddeutsche.de 03.12.2008). This internal CDU-debate should be taken more serious considering a survey by the TV channel ARD because of the 60. anniversary of the German Basic Law: 85% of all respondents agree to the proposal of amending the Basic Law with this provision (ARD, tagesschau.de 21.05.2009).

The new more “relaxed” (“*unverkrampt*”) relationship the German citizens could built to their country during the Soccer World Championship in 2006 by chanting the national hymn and showing national symbols was welcomed through most media and most political parties, and led to

discussions about a “new patriotism” and “healthy nationalism”.

Conclusion

The reform of the German Citizenship Law in 2000 has marked a change to a more inclusive and republican concept of political community. But the concept of culture has to be opened for change and participation at the same time.

The strengthening of the requirement of knowledge of German language and the introduction of the “naturalisation test” show, that the Citizenship Law sticks to a holistic notion of culture. These requirements are parallels to the recent attempts to create a common German identity.

The recent changes in German Citizenship Law show a static, holistic notion of culture and are a step backwards to the concept of the “kulturation”.

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