

## **Migration and integration: a challenge for legislature, execution of law and adjudication**

Legislature, administration executing law and courts find orientation in guiding principles when forming and implementing law. The law does not necessarily contain these guiding principles, as they are likely to be found outside the legal sphere. Those bodies that implement or enact law approach legal provisions with the precondition of guiding principles, as long as they cannot derive them from the law.

In the past, German migration law was not well developed. It contained only limited means to steer migration to Germany. This is partly still the case for the current Residence Act (2004), the German migration law in force. The guiding principles applicable for migration law have changed considerably in the Federal Republic of Germany during the last decades. These changes took place, irrespective of any legislative amendments. The early general idea of a rotation of guest workers in Germany was replaced by other principles. In the 1990ies guiding principles of a multicultural society and the main culture prevailed, while now the principle of integration dominates.

Guiding principles can influence and even steer rights and obligations of migrants. This applies for the first legal title necessary to cross the border. Whether one obtains permanent residence permission or whether family members are entitled to stay in Germany too, can be steered by those guiding principles. The same counts for naturalisation and goes even beyond, as illustrated in the notion of migrant and, subsequently, someone with a migrant background.

The terminology of the current guiding principle 'integration' is rooted in preceding decisions – also, but not only regarding migration law. Its meaning has, however, evolved and has assumed a new position in present days. This counts for its interpretation as well as its legal salience. It is the task of this project to explore this new position more comprehensively and – also in delineation to other, older guiding principles – to reach a clearer understanding.

The notion integration is characterised through its rather broad meaning, as evidenced in the way how many scientific branches utilize the notion with different content. To prevent possible misunderstandings, researchers developed tables with integration benchmarks and indicators that carve out various diversity characteristics and partly combine them. These characteristics allow to understand and form an opinion on the phenomenon of social heterogeneity respectively diversity based on a set of different criteria. The 'super diversity', perceived as societal status quo, shall be examined – based on the aforementioned characteristics – and shall become the subject of legal steering.

However, any change of indicators seems to have an ambivalent effect. Being part of the guiding principle influencing the applicable law, a given indicator can cause legal discrimination (residential education – foreigner education). If the indicator as such or its legal understanding (for instance well educated – not well educated) is changed,

legal discrimination can be diminished partially, but also created anew. Acts of discrimination thus take place along the new line of the guiding principle: inclusion causes new or newly defined exclusion.

Indicators of integration may facilitate the differentiation between diversity characteristics. As such, indicators may diminish inequality but also create it. This is part of its ambivalent effect – alike the ambivalent effect of its changes. A guiding principle based on integration presupposes heterogeneity (from a legal point of view: factual inequality) and generates inequality (from a legal point of view: legal discrimination).