



Civil participation in the decision-making process

Fact finding visit in Germany

24-26 OCTOBER 2016

REPORT

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Introduction

The Conference of INGOs of the Council of Europe carries out fact-finding visits in member States which focus on the participation of NGOs in the decision-making process. Discussions and exchange of experiences during the visits are part of a wider analysis of the effectiveness of various forms of civil society participation in the decision-making process. We look for answers to questions such as:

- How does the co-operation between NGOs and decision-makers, notably the ministries or elected officials and the public administration, work?
- Is there an enabling environment for the NGOs?
- In which way and in what phase of the decision-making process are NGOs consulted, is this consultation effective, how could consultation be improved?
- What is hampering participation, how can barriers be broken down?

In Germany, the fact-finding visit took place in Berlin on 25 and 26 October 2016¹. We were assisted, shown around and got relevant introductions by the National Network for Civil Society (Bundesnetzwerk Bürgerschaftliches Engagement (BBE)) and a representative of the permanent representation of Germany to the Council of Europe of the Ministry of Foreign Affairs. We would like to thank everyone who took time to meet us and share their experiences and expertise, especially Mirko Schwärzler and his organisation Bundesnetzwerk Bürgerschaftliches Engagement (BBE) and Michael Becker, representative of the Ministry of Foreign Affairs, who both made a smooth visit possible.

The delegation of the Conference of INGOs consisted of Ms. Anna Rurka, President of the Conference of INGOs of the Council of Europe, Ms. Karin Nordmeyer, Representative of Zonta International, Mr. Simon Matthijssen, member of the Expert Council on NGO Law of the Conference of INGOs and Ms. Jane Crozier-Vincent, Civil Society Division of the Council of Europe.

Integration of migrants and asylum-seekers after *Wir schaffen das* (“We can do this”)

On 31 August 2015, the Federal Chancellor (Bundeskanzlerin) Angela Merkel spoke the famous words "*Wir schaffen das*" (“We can do this”). In that year Germany faced the challenge of the reception of nearly one million refugees. Bearing this in mind our mission focused on the effectiveness of NGOs when responding to the migrant and asylum seekers influx in Berlin² (Germany). The visit was set against the socio-political backdrop in Europe of a lack of solidarity of EU member states with the countries affected by war. During the visit meetings were organised with representatives of NGOs active in the field of first help, shelter and integration of refugees and asylum seekers, NGOs on a State and Federal level and the relevant Federal Ministries such as the representatives of the Federal Ministries of Interior, of Justice, Labour and Social Affairs and the Federal Government Commissioner for Migration, Refugees and Integration. Meeting with NGOs, think-tanks, experts on integration

¹ Appendix 2: Agenda of the visit

² We are very much aware that Berlin, although it is the capital of Germany, is very different from most other parts of Germany. Therefore, Berlin cannot be taken as an example of how complex issues such as the reception of a huge amount of asylum seekers and migrants is handled in the rest of Germany.

policies and the involvement of civil society in integration measures in Germany, allowed us to identify the challenges and good practices of the participation, and the relevant legal rules.

This document is the report³ that follows each fact-finding visit. In this report, we highlight the important issues for the NGOs in that specific moment and specific socio-political context. In the last chapter of the report we present observations labeled “food for thought” addressed to the public authorities, national and international NGOs and the Conference of INGOs. These observations aim to bring to discussion some possible improvements concerning the efficiency of co-operation between NGOs and representatives of the public authorities at the local, national and international level.

Historical development and background

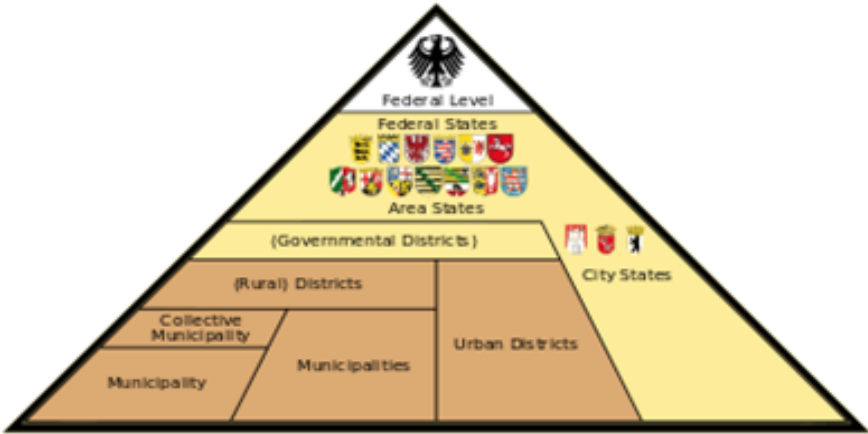
Three regulatory principles

The legitimacy of civil society to participate in the decision-making process is given by the German Constitution. However, in order to understand the functioning of NGOs in Germany, it is necessary to mention the three guiding principles that are organising public policies and which are ruling the civil society participation in the decision-making process in Germany. These principles are:

- federalism,
- corporatism
- subsidiarity

Federalism

In Article 20 of the Constitution of the Federal Republic of Germany⁴, federalism is positioned as an organisational principle of the state order. The responsibilities of the Federation and the 16 States (Länder) are regulated by a complex system of checks and balances. The advantages of a federal system can be, for example, better democratic participation and better protection of minorities, the possibility of better problem solving through competition and greater potential for cultural diversity. Disadvantages arise mainly from a higher need for coordination which would reduce tension between the various political levels.



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This principle also applies to the integration of migrants in Germany. The Federal level is in charge of the legislative general framework concerning migration policy. But the local efforts are deployed by the States (Länder) through their own programmes. The States (Länder) also have their own Ministries in charge of integration or Commissioners for Integration⁵ who cooperating with the Federal Commissioner who since 2005 is attached to the Federal Chancellery. The Cities and Municipalities are in the best position to foster connections between immigrants and the native-born communities.

Subsidiarity

The division of rights and obligations takes place through the principle of subsidiarity. This division of power, competencies and responsibility is articulated with the principle of subsidiarity of which the general aim is “to guarantee a degree of independence for a lower authority in relation to a higher body or for a local authority in relation to central government. It therefore involves the sharing of powers between several levels of authority, a principle which forms the institutional basis for federal States”⁶. As well as being applicable to regulate the relation between the member States and the EU (Treaty on the European Union) and the relations between different echelons of power within the state, the same principle can be applied to the relation between the public authorities and civil society organisations in Germany where the private associations are important supplements to the State. The first organised stakeholder, self-help groups and associations had vast political powers. This situation has historical origins. The development of “citizen initiatives” started after 1970 and as social movements these initiatives have also been directed to integrate the political parties, not just NGOs.

⁵ The authorities note that not all States (Länder) have their own Commissionair for Integration.

⁶ Fact Sheets on the European Union – 2016 http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.2.2.pdf

Corporatism

The culture of participation and dialogue in Germany is marked by the principle of corporatism (also known as corporativism). Germany is a corporatist social state. Practical social policy deals with a wide-ranging field of action in which various ministries, parliamentary committees, welfare and professional NGOs are responsible. Corporatism is characterised not by competition, but by means of negotiation mechanisms. NGOs are directly involved in decision-making processes and help the state, through their participation, in the fulfillment of public tasks, especially as service providers (“Durchführungsorganisationen”). The corporatism between the (welfare) state authorities and social welfare NGOs - sustained by German unification and its expansion into the new federal states - developed into a success story for both sides. The incorporation of welfare NGOs into the state social policy, is largely institutionalised, be it in committees, hearings, commissions or working groups. On the other hand the devaluation of parliamentary power is seen as a disadvantage of corporatism, as the interests are no longer articulated in parliament, but are found in the non-parliamentary discourse. The great advantage of corporatism is the simpler governability of the system, since it acts as a relief function for the government. Parliamentary systems would be too labour intensive, if they were to cope with all the co-operative tasks.

In the German corporatist approach, we observe an important role of non-state organisations (NGOs and companies) in the decision-making process. The collaboration with authorities and these NGOs is based on consensus. Mediation is an important means of political decision-making, therefore there is a low level of conflicts in society, and also a low level of heterogeneity in the NGOs representing civil and general interest. This regrouping of NGOs into federations or larger entities is the result of a historical construction; an advanced phase of the process of creation or development of voluntary non-profit organisations and associations as well as profit-seeking associations. Tension arises in particular between general interest (Federal or State and umbrella NGOs) and special interest NGOs.

This corporatist logic allows certain service provider NGOs to grow and carry out the missions delegated by the public authorities. We had the example with the international NGO Caritas. The meetings with representatives of Caritas in almost all the countries we visited, show that its operation in Germany is quite particular. In Germany the services delivered by Caritas are based on a high level of employment within the INGO, which also implies a high level of bureaucratisation. Beside the big service provider NGOs (umbrella NGOs), the citizen initiatives are more flexible, less procedural, which makes it easier to think “outside the box”.

Legal framework for the functioning of NGOs

Definition of NGO

According to Recommendation CM/Rec (2007)14 of the Committee of Ministers to member States on the legal status of non-governmental organisations in Europe, NGOs are voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members. They do not include political parties. NGOs encompass bodies or organisations established both by individual persons (natural or legal) and by groups of such persons. They can be either membership or non-membership based,

they can be either informal bodies or organisations or ones which have legal personality, can be national or international in their composition and sphere of operation, should enjoy the right to freedom of expression and all other universally and regionally guaranteed rights and freedoms applicable to them, should not be subject to direction by public authorities.

In the German context, NGOs are organisations working to achieve socio-political-cultural goals. The strength of NGOs lies mostly in the high degree of motivation and specialist know-how of their people (members/staff/partners) as well as in the fact that they are in close contact with a wide range of people, including the underprivileged sections of the population – which is a key prerequisite for mobilising people to help themselves and take the initiative.

General situation of NGOs in Germany

In Germany, NGOs have a wide range of legal entities to choose from⁷, but normally they have the legal form of an association (*Der Verein*), a foundation (*Die Stiftung*), sometimes a non-profit limited (Ltd) company (*Die gemeinnützige GmbH*⁸) and even some cooperatives (*Die Genossenschaft*) do exist. Over the past decades, due to continuous unification in the European Union, these legal entities are more or less the same in most of the EU.

According to surveys there are now approximately 616,000 NGOs (so called *Drittsektor Organisationen*⁹) in Germany. Roughly 95% (580,000) are associations (Vereine) with about 23 million volunteers and 2,2 million employees. Their number is steadily growing¹⁰, the same goes for the foundations, non-profit (Ltd) companies, and cooperatives.

In the last two decades there has been a considerable growth in the amount of NGOs, mostly in the fields of citizens interests, consumers interests, healthcare, international solidarity and education. We see the opposite in leisure and sports organisations which are diminishing nowadays.

NGOs have many different functions:

- welfare state: (social)-service, health and education
- democracy: advocacy role, agenda setting and watch dog
- society : integration, social capital, community building

Funding: multiple revenue streams:

- membership fees are important with self-generated revenues coming in second place
- public money accounts for only 20% of the total income
- donations and sponsoring (10%)

NGOs in the social service, education, health fields combine the most paid work with voluntary work.

Plurality of institutional forms

⁷ Many thanks to Dr Burkhard Küstermann: Rechtsformen bürgerschaftlichen Engagements: Initiative-Stiftung-Verein-GmbH.

⁸ gemeinnützige Gesellschaft mit beschränkter Haftung [gGmbH]

⁹ H. Krimmer, J. Priemer. Ziviz-Survey 2012, Zivilgesellschaft verstehen. Druckverlag Kettler, 2012. P. 16.

¹⁰ Ibid. p 16

*Der Verein*¹¹ is an association, which can have many members or where the members change frequently. In Germany the only requirement for starting an association is to have seven members and present bylaws (*Satzung*)¹². We notice that this condition is not in compliance with the Recommendation CM/Rec(2007)14 of the Committee of Ministers¹³. No starting capital is needed. It is forbidden for associations to pursue financial benefit for the members or the board. The highest authority in an association is the general assembly (*Die Mitgliederversammlung*). It is this authority that decides over the liquidation of an association.

Registration as *eingetragener Verein*¹⁴ holds many legal benefits because a registered association may legally function as a corporate body (legal person) rather than just a group of individuals (we come to this later)¹⁵ The legal status must be in the name as well.

Many "*Bundesländer*" (States) have opted for general incident and tort insurances for the non-legal-entity associations in order to lower the threshold for starting an unregistered civic group. The fact-finding group welcomes this support of the enabling environment for civic engagement.

Die Stiftung¹⁶ is a foundation. When it comes to membership, a foundation is the opposite to an association, where there are no members but a board. A foundation can be defined as a capital or assets that is, or are, singled out with the aim of realising a certain goal (charitable¹⁷ - with tax exemptions - or private interest). A foundation can be established by other legal entities and is very often established by a benefactor to (use the inheritance in order to) pursue certain goals after his death. In the German context it is relevant that there can be a controlling/auditing body (Stiftungsrat) that is checking whether the board (Der Vorstand) is still pursuing the right goals. A foundation ceases its work once the goals are reached or when the goals are permanently impossible in the future. Charitable foundations are subject to supervision by state authorities. All forms of foundations can be dissolved, however, if they

¹¹ Sections 21-79 (sections 705-740 of the Civil Code regulate the Partnership[Bürgerliches Gesetzbuch (BGB) [German Civil Rights act]: Wiki:

¹² The public authorities note in their comment that only two members are needed for starting an association. If you want to register to become a "eingetragener Verein" the entry should be made only if there are at least seven members. Should means that in exceptional cases even a lower number of members may be sufficient.

¹³ Item 17: Two or more persons should be able to establish a membership-based NGO but a higher number can be required where legal personality is to be acquired, so long as this number is not set at a level that discourages establishment.

¹⁴ Vereine: Sections 21–79 Bürgerliches Gesetzbuch (BGB) [German Civil Rights act]

¹⁵ The public authorities add that the entry in the register should be made only if the number of members is at least seven. When the association is entered in the register, the name of the association is given the additional element "eingetragener Verein

¹⁶ Krimmer, p 17: 2012, 18.162 Stiftungen

¹⁷ gemeinwohlkonforme Allzweckstiftung ("general-purpose foundation compatible with the common good").

pursue anti-constitutional aims¹⁸. Foundations are supervised by local authorities within each State (Bundesland)¹⁹.

Die gGmbH²⁰ can be seen as a non-profit limited company. When it comes to the prohibition of making profit, the limited company is the opposite to the association; it is mostly a commercial organisation pursuing to make profit and limiting its liabilities to the worth of the shares that are in the company. The main capital of the limited company is made up of the shareholders who either pay a cash subscription or bring in their assets. In the NGO setting the most commonly used form is the *gemeinnützige GmbH* (gGmbH, i.e. non-profit limited company).

Die Genossenschaft²¹ - the least common NGO but still worthy of a mention, is the cooperative where people with skills and/or means of production, voluntarily unite to pursue their common economic, social and/or cultural needs. It is a democratically governed organisation, in which workers can be partly owners. Traditionally cooperatives re-invest quite a lot of their benefits into the goals they pursue.

Umbrella organisations

In Germany, the initiator of a project needs to answer the question: does the NGO want to do all the work alone and find its own way, or should it try to find help, shelter and advice under the roof of a bigger organisation?

Going alone is costly because the NGO has to invest time and money in structuring its initiative, in spending money on advocacy and to make its project[s] known to possible benefactors. Being under the roof of a bigger organisation also gives the NGO the possibility of benefiting from the experience of others and there may even be synergies. Fundraising using social media campaigns is becoming more and more important. A good campaign and the build up of media contacts seems to be impossible without large financial investment. It is in this respect that a larger organisation, with deeper pockets (more financial resources), can be very beneficial.

Another reason to seek refuge under the umbrella of a bigger organisation stems from the fact that in Germany a large portion of health care and social welfare care, subsidised by different authorities, is executed by NGOs (50% of hospital beds are managed by NGOs). During our fact-finding mission, we found that the States (*Länder*) and federal authorities had a clear preference to deal with existing large NGOs, which are considered more stable and (therefore) trustworthy. To appear stable and trustworthy, the smaller and more regional/local initiatives might choose to find shelter under the roof of a bigger NGO which has a place at the

¹⁸ The public authorities add that " 18Actually for a foundation it is sufficient that the aims endanger the common good in order for the authorities to dissolve it. The pursuit of anti-constitutional aims is a reason to dissolve an association."

¹⁹ 2008, approximately 15,000 foundations in Germany: 85% charitable foundations.

²⁰ Krimmer: in 2012, about 10.000 gGmbH

²¹ Section § 21 Bürgerliches Gesetzbuch (BGB) [German Civil Rights act]

negotiation table with the higher authorities. It was uncontested that being at the table is of primordial importance for the big NGOs²².

Funding for NGOs

Analysis presented showed that on average all NGOs get about 41% of their income from members, 27% of their income is generated by themselves, 10% is given by authorities, 20% is given by sponsors and 2% is miscellaneous. As expected, it shows that the cooperatives generate nearly 90% of their income themselves. On the other side of the coin, the nonprofit gGmbHs benefit more than any other organisations (33%) from subsidies from the authorities. This leads to the conclusion that the associations (10%) and the nonprofit gGmbH's (33%) are competing for money from the authorities. It shows that mostly the big professional organisations profit three times more than all the others from these subsidies²³. In the fields of social welfare and education respectively 49% and 56% of the income is money from the authorities. These are typically highly professional organisations with more than 10 full staff members. Opposite this are the organisations working fully with volunteers and which seldom get money from the authorities.

Future possible problems²⁴

Most NGOs have splendid ideas and very often good “manpower” but do not have sufficient resources/money. They are in a permanent state of lack of funds, partly because of the very clear restrictions on commercial activities for associations. The problem nowadays is that both the number of volunteers (Ehrenamtliche) and the number of members is decreasing. This situation is very difficult, in particular for associations, which are dependent on membership fees. Furthermore, there is a growing bureaucracy or adherence to official rules and formalities (red tape). Raising membership fees (the choice of 30% of the associations), or selling association products to third parties (25%) and/or inviting sponsors (66%) cannot stop the negative trend: 14% have less volunteers and 41% have a negative balance.

The above-mentioned problems are not divided evenly over the whole range of NGOs. Over the last years there has been a rise of 20% in State subsidies, but this falls largely in the pockets of the social work NGOs and general interest groups (of whom 38% have seen an increase and 22% have seen a decrease in subsidies). For sporting clubs and leisure NGOs there has been a 50% decrease in subsidies.

Influence through funding?

According to the Recommendation of the Committee of Minister (2007)¹⁴²⁵, NGOs should be free to solicit and receive funding – cash or in-kind donations – not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties. It is obvious that

²² As we learned during the meeting on 25.10.2016, NGO-Roundtable “Federal Level” Meeting with civil society associations and experts on integration policies and the involvement of civil society in integration measures in Germany.

²³ Krimmer: p 55

²⁴ Höfer, Simone & Primer, Jana (red): Ziviz-finanzierungsstudie 2015, Weniger Subsidiarität, mehr Wettbewerb in der Zivilgesellschaft? Chapter 3

²⁵ Recommendation CM/Rec (2007)14 of the Committee of Ministers, item 50:

- considering the enormous state-like tasks carried out by NGOs - neither private donations nor membership fees can ever be sufficient. There are many questions that could be put concerning the independence of NGOs when a considerable part of the funding comes from the government, for this may imply government control. Private sector money is much more “controlled” in Germany – businesses wish to gain influence by giving money.

Activities of the public authorities and NGOs concerning the integration of migrants

According to the data presented during the visit, in 2015, 890,000 refugees arrived in Germany and all of them were already registered. In 2016, the authorities expected approximately 350,000 refugees. For comparison, according to the Eurostat, 1.3 million asylum applications were registered by 2015 in the 28 EU member States. Since the beginning of the migratory crisis, Germany has shown courage in welcoming this large number of refugees. This choice has not been welcomed by some countries which subsequently refused to share this responsibility with Germany and others. The fear of terrorism, which fuels the confusion between a terrorist and a refugee, sparked very negative tendencies in Europe in general. This does not help those who are committed to helping refugees perform their tasks, in respect of human rights and international conventions. It is now generally understood that we will not be able to protect ourselves from all the dangers stemming from terrorism. Over a period of years the authorities of different countries of Europe, have underestimated the departures of young people to Syria and the problem of radicalisation.

We established during our visit that many persons and organisations share our vision that the answer to the above-mentioned problems does not lie in the exclusion of groups, but in social work and education in order to generate hope and social justice: fighting inequalities, opening ourselves up to diversity and practicing inclusion are the answer to nationalistic movements that prey on fear and aim to destabilise the social cohesion and political integrity of Europe.

German Integration policy

The presentations and exchanges within the various ministries allowed us to understand that the development of German integration policy is marked by different stages. From 1955 to 1973, guest workers were integrated into the welfare system without any specific policy measures. At that time immigration to Germany was predominantly economic, what is reflected by the fact that the Commissioner for Foreigners was appointed in 1978 within the Ministry of Labour. After the opening of the Iron Curtain, a new wave of immigration arrived in Germany which lasted until 1998, when the German government officially defined Germany as a country of immigration.

The new integration policy started in 2000, with the adoption of the not exhaustive list of major legal documents:

- the new Citizenship Law, making the naturalisation of children born in Germany from non-German parents (2000) easier,
- the updating in 2012 of the legal framework for foreign workers permanently established in Germany (2005) to allow increased highly-skilled immigration,

- the creation of the German Islam Conference²⁶ in 2006, to improve the relation between Islamic communities and the German State,
- an Integration Law (which came into power in early August 2016) adopted by the German Parliament (Deutscher Bundestag). According to this law the residence assignment aims for a fairer distribution of refugees within Germany.

The current German integration policy covers different areas: language courses, education and work, housing, health, participation in social life. From the point of view of the representative of the Federal Ministry of the Interior (BMI), integration means equal opportunity and participation. “*There can be no migration without integration. It is necessary to invest in the integration of new immigrants who are also required to make an effort*”. For example, the German authorities invest a large part of public money in integration courses, the refusal to attend a course can have legal consequences. Furthermore, a permanent residence permit will be granted only if the recognised refugee has provided proof of integration efforts. The question that remains unresolved is: how will these efforts be assessed, what objective criteria will be used to give a fair assessment?

The integration policy as far as the Federal Ministry of the Interior (BMI) is in charge, is based on three pillars: integration courses, migration advice for adult immigrants and integration project. The beneficiaries of these integration measures are the *immigrants* who acquired legal residency status in Germany. The question that remains is what will be organised for the *asylum seekers* be they accepted or (later on) be they refused? From the point of view of the German authorities there are three groups within the refugees and asylum seekers:

1. Refugees from safe countries of origin (such as Albania, Kosovo²⁷, Montenegro, Serbia, the Former Yugoslav Republic of Macedonia) are encouraged to go back to their country and apply for a job in Germany from their country of origin.
2. Refugees from countries of origin with a high recognition rate (above 50%) (such as Eritrea, Iran, Iraq, Syria and Somalia) are believed to have a good chance of success, based on a reliable estimation of the Federal Office for Migration and Refugees²⁸. Persons belonging to this group are benefiting from the early-access to the integrations measures.
3. The person whose nationality is unclear.

The representative of Federal Ministry of the Interior underlined that the asylum seekers without good prospects of staying, would receive an *orientation offer*. This was be done in a

²⁶ The public authorities add that « The German Islam Conference is a dialogue platform, not a legal document. In this context also the National Integration Summits in the Federal Chancellery should be mentioned, which since 2006 bring together NGOs – among them many migrant organisations - and state’s representatives”

²⁷ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with the United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo

²⁸ During our visit, it had not been decided whether Afghanistan could be considered as a not-safe country. Afghanistan presents just below 50% recognition rates. But in Mid-December, the first Afghan refugees were deported from Germany to Kabul as part of EU-Afghan repatriation deal. This new EU-deal (as this with Turkey) is again very controversial (See more “Europe makes deal to send Afghans home, where war awaits” them By ROD NORDLAND and MUJIB MASHALOCT (2016). New York Times http://www.nytimes.com/2016/10/06/world/asia/afghanistan-eu-refugees-migrants.html?_r=0

pilot project in the second half 2016 and the roll-out all over Germany in 2017. This orientation course has the focus on values and practical information, which makes the stay in Germany easier and gives practical hints if the It is unclear whether this offer will be (very) different from the suggestion to return to the country of origin might become necessary.

Despite the fact that the meaning of the concept of “good prospects of staying” is still under discussion, the asylum applicant with the “good prospects of staying” and the persons whose return to the country of origin has been suspended for personal, urgent humanitarian, or public interest reasons²⁹ can participate in language courses, as already said above.

The comprehensive Language Strategy, which allows the refugees and asylum seekers to acquire language skills, is a shared responsibility of the different ministries depending on the level³⁰ of language teaching. The Federal Ministry of the Interior is responsible of the integration courses (B1 level)³¹, the Federal Ministry of Labour and Social Affairs is responsible for job-related language learning (C1 and C2 level), and the Federal Office for Migration and Refugees is responsible for organisation and implementation of both language schemes. With the new labour market programme called “Refugee Integration Measures” 100,000 job opportunities were created funded by the federal government.

We observed that the public authorities organised a system of integration in a very thoughtful way, allowing each refugee to know the different stages which would lead to integration in the labour market. Persons who are entitled to asylum and persons denominated “tolerated” (i.e. the person without working ban) have the right to receive different levels of vocational training. The waiting time for this training depends on the legal status of the person (asylum applicants or “tolerated”), 49 months being the maximum waiting time to receive the work permit. At different stages in the process NGOs are supporting the ministries in the implementation of this strategy (for example, they check the condition of employability of every person concerned).

However, the swift action taken by the authorities gives very little time for civil society to react. NGOs set-up by migrants underline that even if a person is recognised as refugee (most of the time after a too long period), a lot of obstacles still have to be overcome before the migrant can start to participate in normal life. A lot of “newcomer” refugees should be offered the possibility to participate immediately in action (for example to help other refugees).

A citizens’ initiative “Moabit Hilft” (Moabit helps) has experienced that this immediate integration gives self-esteem (feeling necessary) to the newcomers. It offers them the possibility for meeting people and developing skills, learning some language and getting used to German way of life. Moabit Hilft saw that in order to integrate refugees, it was necessary to create new initiatives and new organisations. “Moabit Hilft” was created in 2013. Their work

²⁹ Section 60(2)(3) of Residence Act

³⁰ Common European Framework of Reference for Languages (CEFR): A1: beginner, A2: elementary, B1: lower intermediate, B2: higher intermediate, C1: lower advanced, C2: higher advanced.

³¹ At this level, 600 hours of teaching are provided + 100 hours of the course on legal system, culture, history. The groups are profiled according of the specific needs (parents, women, youths, illiterate persons). The courses are delivered by 15 000 instructors and 1 500 course providers. Since 2005, the Federal Government has spent more than 2 billion Euros on the integration courses.

aims to help the refugees in the Moabit neighbourhood of Berlin, providing first need materials (bed, bread, shelter, medical care etc) for the refugees in the neighbouring park. In addition they also provided social and everyday practical assistance such as the access to rights for the refugees. They defined their own mission as: to inform the population and to involve them in aid projects in order to dismantle prejudices against migrants. This networking with institutions and volunteers for refugee aid is one of the most relevant fields of work of "Moabit Hilft". They did great work in a big refugee camp. They are proud of their own work, therefore they fight for recognition by the authorities, to get access to funds to continue to do their social integration work.

The negotiation mechanism of corporatism is not flexible enough for new initiatives. The results of ZiviZ survey³² presented during our visit show the lack of knowledge related to the NGOs acting for refugees and integration. The data on how many organisations are engaged with refugees and migrants needs to be improved.

Current challenges for NGO participation in the decision making in Germany

"Shaping an interconnected world" is the motto of Germany's G20 Presidency from 1 December 2016 to 30 November 2017. The delegation of the Conference of INGOs was very interested to learn about the German G20 priorities during the exchange with the representative of the Ministry of Labour and Social Affairs. Our attention was drawn to three main pillars of the German presidency: ensuring stability, improving viability for the future and accepting responsibility. The third pillar aimed at strengthening the G20 as a community of responsibility is focused more particularly on sustainable economic development in Africa, but more generally on migration and refugee movements and the fight against terrorism. It was announced that "between March and June 2017, several dialogues would take place, including events for the business community (Business20), non-governmental organisations (Civil20), trade unions (Labour20), the science and research community (Science20), think-tanks (Think20), women (Women20) and youth (Youth20)"³³. The responsibility of these meetings will be given to the civil society organisations, which will produce the recommendations for the German G20 Presidency.

This example shows in what way the NGOs can influence the political agenda of such an important event. However, is access to this possibility of influence open for all NGOs? How do the authorities ensure that this access is guaranteed for all?

Concerning Parliamentary processes, we learnt that civil society consultation comes late in the law-making process, especially in the case of the law on migration. The NGOs to whom we spoke, underlined that there is no real exchange or debate, and that there are hearings where they have 7 minutes to present their case. This is surely not enough and this presentation is not followed by any dialogue with policy makers. This procedure leads to frustration, and is considered not worth the effort. The informal groups of civil society, their views and positions do not have the influence that the established NGOs have.

³² <http://ziviz.info/>

³³ https://www.g20.org/Webs/G20/EN/Home/home_node.html

One of the findings of our visit is that the German corporatism gives much more legitimacy and (bargaining) power to the large umbrella NGOs, with the consequence that some problems and needs are not heard nor solved. The smaller watchdog and service-providing organisations, and citizen initiatives, also play a valuable role and merit greater recognition and better support in order to guarantee their sustainability. Their influence in the public decision-making process and their interaction with the public authorities seems weak at the federal level. The smaller NGOs and citizen initiatives, in particular youth initiatives – which are also service providers - are very often not capable to negotiate effectively for funding. They lack resources, manpower and time and consequently they are very often not informed or heard, nor do they get funds to do their valuable work in the decision making process. People working in the majority of citizen initiatives and smaller NGOs are very often non-paid which also means they have no social security cover.

It is obvious that there is an uneven power relation between the big umbrella organisations and smaller NGOs or citizens' initiative. According to the latter they are sometimes excluded. The umbrella organisations tend to think of themselves as closed shops and keep other civil society groups out. Funding of new organisations is also problematic. The interests of the old service providers are defended and older/bigger institutions tend to win. It is important to establish different and more adequate criteria for the different roles of different types of organisations. The donors cannot expect the same results or action from the big professional NGOs and the smaller voluntary initiatives. According to "Moabit Hilft" the Red Cross and other big NGOs failed to adapt to the actual situation of tens of thousands of people sitting in a park without any help or shelter. They lacked the new energy and new initiatives of the bottom-up NGOs. The established NGOs should open up to new forms of volunteering, organising themselves via social media and other less organised forms of civil society. We observed this phenomenon during our exchange with the founders of the citizens' initiative "Moabit Hilft".

Food for thought

Compared to the countries researched by the Expert Council on NGO Law of the Conference of INGOs³⁴ and through what the fact-finding mission found out during the visit, it is unquestionable that NGOs in Germany find themselves in one of the most enabling environments in Europe. Even persons who have a professional critical position vis-à-vis the German NGO situation³⁵ do acknowledge that – whatever comments can be made – Germany lives up to very high NGO standards.

Bearing in mind that the situation of NGOs in Germany is rather good, we do not have sharp or fundamental critique. In this chapter, we want to share some suggestions for improvement.

³⁴ Hadzi-Miceva Evans, Katerina (ed): EXPERT COUNCIL ON NGO LAW, REGULATING POLITICAL ACTIVITIES OF NON-GOVERNMENTAL ORGANISATIONS. Report on behalf of Expert Council on NGO Law of the INGO conference of the Council of Europe (2015) 3, Updated in December 2015

³⁵ As we learned during the meeting on 25.10.2016, NGO-Roundtable "Federal Level" Meeting with Civil Society Associations and Experts on Integration Policies and the involvement of Civil Society in Integration Measures in Germany.

The Association (Der Verein)

- The typical German rule that a minimum of seven members can start an association, can probably be explained in the perspective of tradition, but this may be evaluated in near future.³⁶
- We very much welcome the fact that States (Länder) organise general incident and tort insurances for non-legal-entity associations which is a factor for ensuring an enabling environment for NGOs.

Inflexible system

As we noted before, there is a tendency at the federal and state level to do business with the bigger (umbrella) NGOs;

- It fits better in the budget cycle,
- established procedures can be used,
- agreements on products and costs are more secure.

Both authorities and NGO are locked in this system of negotiations and agreements. Problems arise when new sudden situations have to be dealt with, such as natural disasters (flooding, wild fires) or – like in 2015 – huge amounts of displaced persons, refugees and asylum seekers. The system is not built to deal with the phenomena as mentioned before in a few days' time. The good thing in the German NGO situation is that all kinds of initiatives can easily be developed in the course of trying to provide immediate answers to sudden new situations. Less stimulating is that these initiatives are new in the budget cycle and – especially when they do not want to opt to join an umbrella NGO – are not at the negotiation-table where the money is divided. They do feel that they are seen as intruders who reduce the available budget for the regular players.

Advocacy / influencing policies

The late and inadequate method of consulting NGOs during the legislative process (7 minutes pitch) offers room for improvements.

Funding and independence of NGOs

The financial situation of associations faced with a decrease in the number of members and volunteers is problematic. We heard that the strict rules that prohibit profit-making, make it very hard to survive this decrease in the number of members and volunteers.

The relation between subsidies related to agreements on products and costs seems to diminish the freedom of NGOs. How to distinguish state agencies from NGOs?

Final remark

Given the foregoing, we recommend that the authorities be more attentive to the balance between large and small NGOs as regards their political power in the political decision-

³⁶ From the point of view of the public authorities, the German Law is in accordance with the Recommendation CM/Rec(2007)14. It is possible to found an association with two members, seven members are only required to register the association and thereby acquire a legal personality. Even for registration a lower number may be permissible in special cases.

making process. The same applies to NGOs that represent migrants and refugees in the political crises management, provoked by the massive arrival of the new refugees in Germany. The German Government is in a position of power to request more solidarity from EU member states, to ensure that EU policy prevents any deal taking place between states which leads to a non-respect of human rights of the refugees, asylum seekers and migrants. The European values and fundamental rights is desperately needed as a counterpart to the tendencies of renationalisation and right-wing populism in the member States of the Council of Europe.

Appendix 1

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10. New York Times http://www.nytimes.com/2016/10/06/world/asia/afghanistan-eu-refugees-migrants.html?_r=0
11. Recommendation CM/Rec (2007)14 of the Committee of Ministers it was already mentioned
12. Section 60(2)(3) of Residence Act

Fact-finding visit of the Conference of INGOs of the Council of Europe

Berlin 25-26 October 2016

Programme
(English Version)**Tuesday, 25 October**

- 10.00** **Introduction (opt.)**
- 10.30** **Transfer from Hotel**
- 11.00** **Visit to “Moabit Hilft!”**
Meeting with Civil Society Initiatives active for welcoming and integrating Refugees in Berlin
- 12.30** **Transfer**
- 13.00** **Lunch with NGOs participating in the afternoon meeting**
- 14.30** **NGO-Roundtable “Federal Level”**
Meeting with civil society associations and experts on integration policies and the involvement of civil society in integration measures in Germany
- 17.00** **Opportunity for individual meetings**
Return to Hotel
- 19.30** **Dinner**

Wednesday, 26 Oktober

- 08.15** **Transfer from Hotel**
- 09.00 – 10.00** **Federal Ministry of the Interior**
Meeting with Mr. *Nils Stützle*, Stab GZ – Gesellschaftlicher Zusammenhalt und Integration Referat GZ 2
- 10.00** **Transfer**
- 10.15 – 11.15** **Office of the Federal Chancellor**
Meeting with Ms *Honey Deihimi*, Referatsleiterin für den Themenbereich „Gesellschaftliche Integration“
- 12.30** **Stifterverband, ZiViz, Zivilgesellschaft in Zahlen**
- 14.00 -15.00** **Federal Ministry for Justice**

15.30 – 16.30

Federal Ministry for Labour and Social Affairs

Meeting with *Ms Sabine Baun*, Leiterin der Unterabteilung VIb

(Internationale Beschäftigungs- und Sozialpolitik)

- *Integration of Migrants in the Labour Market, Ms Anne Lutz, Referentin im Referat IIc6 (Grundsatzfragen der Migrations- und Integrationspolitik)*
- *Activities in the Frame of German G20-Presidency, Dr Sebastian Künzel, Referent im Referat VIb1 (Internationale Beschäftigungs- und Sozialpolitik)*

16.30 h

Return to Hotel (opt.)

18.00 – 20.00 h

Exhibition “Women and the UN” at the Ministry for Foreign Affairs

(Karin Nordmeyer guest speaker)

Delegation:

Ms Anna Rurka,

President of the Conference of INGOs of the Council of Europe

Ms Karin Nordmeyer,

Member of the Conference of INGOs of the Council of Europe

Mr Simon Matthijssen,

Member of the Expert Council on NGO Law of the Conference of INGOs

Ms Jane Crozier-Vincent,

Civil Society Division of the Council of Europe

Organisation:

Bundesnetzwerk Bürgerschaftliches Engagement (BBE) (National Network for Civil Society)

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Auswärtiges Amt (26.10. only):

Herr Jens Gust, Leiter der Arbeitseinheit Europarat

Herr Michael Becker, Arbeitseinheit Europarat