

Employment of Foreign Workers and Social Equity : The German Experience

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Social equity of foreign workers is not restricted to equality of wages and labour conditions. All aspects of immigration and immigration policy are relevant. The social position of the foreign worker is influenced not only by his situation on the workplace, but also or even more by his status as an immigrant. This is the broad context for my presentation.

1. Immigration into the aging society

Just as Japan and many other countries Germany is facing a shrinking and aging population. The United Nations Population division estimated in 2000 that our present population of roughly 80 million can only be maintained by a yearly immigration of 350,000 people, compared to a yearly immigration of 200,000 people in the last 10 years. But that's not enough, because it would only avoid the shrinking, not the aging of the population. To cope with the deterioration in the age structure a yearly immigration of 3.4 million people would be necessary.

In spite of this clear prospect Germany sticks to a restrictive immigration policy, even in relation to the new member states of the European Union in Eastern Europe, in this respect in contrast to Britain and Ireland who throw their door wide open for workers from Poland, the Czech Republic and other countries.

Our restrictive practice has two main reasons, former experience with generous immigration policy and present high unemployment, especially among foreigners. Our government does not shut its eyes before the problem of a shrinking and aging population, but it tries to strike a balance between former experience, present situation and future needs. It is torn between on the one hand, the European Union which advocates free movement of workers, and the statisticians, who underline the need for immigration, and on the other hand a population which is not concerned with statistics and the EU but with their jobs. As to the employers, most of them are more eager to export jobs than to import workers, with the exception of the farmers, who can't export their land, and the IT-

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Industry suffering a skill shortage. Not visible, but probably numerous are employers, especially in private households, who employ illegal and therefore cheap foreign workers.

This is a complicated picture and I have to confine myself to some elements which might be relevant to Japanese readers.

2. Open door policy until 1973

From 1955 until 1973 our rapidly expanding, post-war economy needed foreign workers without special qualification. This was satisfied on the basis of treaties between Germany and the Southern European states as well as Turkey. In the beginning the work permits and the employment contracts were limited to one or two years, but over and over repeated until the status became de facto permanent, although formally still only temporary. The families followed and a second and third generation was born.

The integration of the foreign workers into the factories, shops and other workplaces was easy. They were willingly accepted by their German co-workers on the basis of strict non-discrimination, equal payment and other labour conditions, equal access to the works councils and the unions, equal compulsory membership in all branches of the social insurance. This is in line with the ILO-Migration for Employment Convention (cf. Plender, *International migration law*, 2nd ed. 1988). The principle of non-discrimination because of nationality is not extended to hiring, but ethnic discrimination is forbidden even in this area. The Federal Government urges the employers to include foreigners from the 2nd or 3rd generation into vocational training.

3. The closing of the door

The immigration of foreign workers was suddenly stopped in 1973, a reaction to the first oil price shock. The unemployment began to rise and new foreign workers were no longer admitted, with few exceptions. Most formerly immigrated workers stayed and continued to enlarge their families in Germany. From 1973 until now the number of foreigners doubled from 4 to 8 million people, not all, but most of them workers or ex-workers, their spouses and relatives. Their position in the labour market got worse. Unemployment of foreigners rose up to 16 %, nearly double average. Their employment quota amounts to 53%, in comparison with an average of 67%. The unemployment was not evenly spread over the different foreign nationalities. Most affected are the Turks and the Greeks, least Portugueses and Spaniards (21%, 16% and 11% respectively).

An independent commission¹⁾ attributed this result of our immigration policy to two

1) *Zuwanderung gestalten, Integration fördern, Bericht der unabhängigen Kommission Zuwanderung, 2001 (Shaping immigration, promoting integration, Report of the independent Commission Immigration).*

connecting factors : the immigrants' low professional qualification and little interest in improving it, due to their technical status as only temporary immigrants. The commission gave no reason for the striking differences in the employment situation depending on the origin of the workers. In case of the Turks it's partly self-imposed segregation with serious consequences not only in the employment but also in the education sector. Economic, social, cultural and religious factors are mingling here.

Expulsion and deportation of foreigners on the dole or on welfare was never considered. Most of them are protected by regulations of the European Union and its association with Turkey. Furthermore the foreign workers had paid taxes and social security contributions and therefore deserved social assistance, not to forget humanitarian reasons.

5. Persisting opening for temporary workers

Even after the stop of permanent immigration in 1973 temporary workers were admitted for temporary tasks. In the last years as many as 300,000 mostly Polish workers worked for some weeks or months in the countryside to harvest the crops ; having done this they went home and returned in the following years. Again and again they get work permits, although nearly 5 million Germans are on the dole. But these people shun the hard work on the fields and in the vineyards, especially as most of the wages would be subtracted from their unemployment benefits. In this year the administration strives for substitution of 10 % of foreign farm hands by unemployed people, but the success is doubtful, especially as the farmers prefer their experienced foreign workers.

6. Paradoxical immigration policy in relation to the new member states of the European Union

Apart from the temporary agricultural workers our restrictive immigration policy is maintained even in relation to Poland, the Czech Republic and other states in Eastern Europe which recently joined the European Union. At special request of Germany (and Austria) the free movement of workers from Poland etc. to Germany is suspended for up to seven years. This is motivated by our high unemployment. Our population is anxious that our employers once more could prefer foreign workers, the principle of non-discrimination in wages and other labour conditions notwithstanding.

In striking contrast to the restricted movement of workers from Eastern Europe the freedom of services is suspended only for the construction industry. Thus self employed workers and companies are free to perform services in Germany with their own personnel, even from non-EU countries, and with their usually low wages. Certainly an EU-directive authorizes the member states to impose their minimum wages also on dispatched or posted

workers but we don't have a general minimum wage, only scattered collective agreements. The result is paradoxical: workers of the new member states are admitted only in circumstances when their wages may undercut the German level.

Admittedly this gap in our restrictive immigration policy is only used in certain branches (e.g. meat industry). Most employers draw advantage from lower wages by exporting jobs, not by importing services.

7. Illegal workers

To complete the picture a short glance on its black spot, illegal work. Our authorities are not able to count them. We cannot but admire the Japanese Ministry's of Justice estimation of exactly 219,418.

Illegal work is cheap and it's cheap because it's illegal. Two countermeasures are possible: penalizing and legalizing. Last year Spain legalized thousands of illegal workers who had a job. Our choice is penalizing, but only the employer, not the illegal worker himself. He is even protected by the industrial accident insurance, annoying the employers of legal workers financing the insurance.

8. A difficult reappraisal

a) The Pros and the Cons

So much about the past. At present a difficult reappraisal is on the agenda. Do we need more immigration to make good for less population? The pros and the cons were compiled by the independent commission:

The most important argument for lifting the barrier is directly correlated with the aging and shrinking of the population. Substitutes for the dwindling workforce are necessary, not only in respect to the quantity, but also the quality of the workforce. Most wanted are young and qualified immigrants.

If the demand for foreign workers can't be satisfied legally, it could be directed to illegal ways. A less restrictive immigration policy might help to lessen illegal employment.

These are strong pros, but they are confronted with likewise strong cons. Free immigration can weaken or even substitute necessary efforts to mobilize additional native manpower, to bring more women into the workforce, to keep elder people longer in their jobs, to care for better education of unqualified and/or unemployed workers. There is a temptation to refrain from such arduous activities when foreign workers are available.

There is also the fact that these workers can't be moved freely to and from, in and out like chessmen. Temporary immigration for temporary work is possible but a

temporary status can't be uphold indefinitely. When foreign workers lose their jobs after some years they and their families in most cases won't be expelled and deported ; legal and humanitarian reasons are against it. Their chances to get new jobs depend on their capacity for continuous education and integration which ought to be assessed in advance. The same is true for the members of their families.

An open question is whether the immigration of workers is an alternative to the export of jobs. If the employers are keen on cheap manpower, immigration is no viable alternative. If they simply are in search of additional manpower not to be found in their home country, immigration can prevent the export of jobs, which never come back.

b) New legislation—old principle—new outlines

Considering these pros and cons the above mentioned independent commission (2001) and subsequent legislation (2004) stuck to the principle of restricted immigration. Our high unemployment tipped the balance. Even in this framework some outlines of future immigration policy are visible. Firstly the need for more foreign nurses and other people who care for the elderly. Secondly a preference for immigrants with professional qualification because they are most needed. Thirdly a preference for immigrants from certain countries on the basis of bilateral treaties between the states concerned. Fourth a clear separation between strictly temporary employment, repeatable at most after a break, and employment with a prospect of permanent settlement after a probation period. Above all a preference for people already living in the country.

To implement this policy close cooperation between all branches of the administration concerned is necessary and provided for in our new legislation. The independent commission proposed a special authority for immigration and integration, supported by a research division, to achieve a comprehensive concept and policy of integration.

c) General conclusion

It's obvious that the German experience is influenced by some peculiarities of our economical and social development. But some general conclusions may be possible :

- social equity demands not only equality of wages and other employment conditions, but a steady integration in the host country's labour market and society.
- important is to consider not only the present, but also the future development of the labour market.
- the necessity of a clear and strict borderline between temporary and possibly permanent immigration.
- illegal work and export of jobs are negative alternatives to legal immigration.
- last not least, immigration has not only an economic, but also a cultural and humanitarian dimension. The immigration of men can't be treated like the import of machines. We must never forget that.