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### *NATURALISATION PROCEDURES FOR IMMIGRANTS GERMANY*

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# Naturalisation Procedures for Immigrants

## Germany

Anuscheh Farahat

### 1. Background and political debate

German nationality law has been subject to major reform since 1999/2000. Besides the introduction of the *ius soli* principle to German nationality law, the naturalisation process has been significantly facilitated by that reform. The first important change regarding naturalisation concerns the residence requirement. Foreign nationals are now entitled to naturalisation after a residence period of eight instead of fifteen years on the condition that they declare themselves bound to the free and democratic order of the Constitution (*freiheitliche und demokratische Grundordnung*), that they are in possession of a residence permit, that they are capable of earning a living without any recourse to public assistance or unemployment benefits (except in those cases in which the dependence on those benefits is not attributable to the applicant's fault or negligence), that there is no criminal conviction and, finally, that they have lost or renounced their previous nationality.

A second important amendment concerns the acceptance of dual nationality. Dual nationality is now accepted in more cases, e.g. if the applicants are elderly persons and dual nationality is the only obstacle to naturalisation, if the dismissal of the previous nationality is related to disproportionate difficulties, and if a denial of the application for naturalisation would constitute a particular hardship. Moreover, dual nationality is accepted in cases in which the previous country of nationality does not allow renunciations or if the renunciation of the previous nationality entails—in addition to the loss of civil rights—economic or financial disadvantages. Finally, dual nationality is allowed in cases in which reciprocity exists with the previous country of nationality, i.e. dual nationality is generally accepted for all EU citizens.

Despite these fundamental changes, public debate about further simplification of the naturalisation procedure continues. The most acute controversy about current German nationality law concerns the option model (Optionsmodell), requiring *ius soli*-German nationals to decide between the German and their foreign nationality at the age of 21 (see Farahat 2012: chap. 6 A.I.; Göbel-Zimmermann/Eichhorn 2010a: 296; Niesler 2007; Wallrabenstein 1999: 223 ff.; 2007: 5 ff.). In addition to legal scholars, several non-profit organisations frequently criticise the option model and demand that this rule be abolished (see the press release of the non-profit organisations in 2010: [http://www.proasyl.de/de/presse/detail/news/ngos\\_optionszwang\\_im\\_staatsangehoerigkeitsrecht\\_abschaffen/back/657/](http://www.proasyl.de/de/presse/detail/news/ngos_optionszwang_im_staatsangehoerigkeitsrecht_abschaffen/back/657/)). Despite this controversy, an even more generous acceptance of dual nationality and the introduction of shorter residence periods are being discussed. Regarding dual nationality, some scholars argue that dual nationality is more and more accepted in international law and should therefore no longer be regarded as a rare exemption in German nationality law (Kluth 2009: 136f.). Multilateral treaties are suggested as an instrument to cope with potential conflicts regarding loyalty, voting rights or military service (Kluth 2009: 137; Farahat 2012: chap. 6, B.II.2.f).

## 2. Federalism and the implementation of nationality law in the Länder

German nationality law is primarily regulated by the Nationality Act on the federal level. Implementation of nationality law is however assigned to the state level, i.e. the 16 Länder. Exercise of discretion and interpretation of the federal rules potentially diverge in the 16 Länder. One instrument directing the interpretation and implementation of nationality law and ensuring a coherent application of the Nationality Act are administrative regulations (Allgemeine Verwaltungsvorschriften). This instrument is legally binding for the administration of the Länder internally, but does not establish any claims for potential applicants. Such administrative regulations have been enacted in December 2000 following the grand reform of the Nationality Act the same year.<sup>1</sup> It has not been politically possible to agree upon an updated version since then, because the enactment of administrative regulations requires not only the consent of the Bundestag (federal parliament) but also of the Bundesrat (federal council consisting of the governments of the Länder). Meanwhile, the administrative regulations of 2000 are more or less outdated. The Bundesregierung (federal government) nevertheless adopted a so-called preliminary implementation guide for the Nationality Act (vorläufige Anwendungshinweise) in 2009.<sup>2</sup> This guide is legally non-binding for the 16 Länder and their administrations, but it is intended to allow for a more uniform and appropriate implementation in the 16 Länder. Due to subsequent changes in nationality law, this preliminary implementation guide is meanwhile also partly outdated. Regarding the majority of regulations in the Nationality Act, it nonetheless still provides useful orientation. If not indicated otherwise, the implementation in the Länder complies with the federal preliminary implementation guide.

Most of the Länder have by now adopted their own implementation guide building extensively on the federal preliminary guide of 2009. It is worth mentioning that four northern Länder (Schleswig-Holstein, Hamburg, Niedersachsen and Hessen) have agreed upon a so-called 4-Länder-paper in order to agree upon a common implementation practice in nationality law. While Hessen has published its implementation guide, Hamburg does not have its own implementation guide. This is due to Hamburg being a small Land consisting only of one city. There is one central citizenship authority which closely co-operates with the Ministry of the Interior of Hamburg. Citizenship authorities in Hamburg nevertheless use the so-called 4-Länder-paper for orientation. Bavaria has an internal implementation guide from its Ministry of the Interior based on the federal administrative regulation of 2000. This implementation guide is not publicly available. Bavaria explicitly refuses to apply the federal preliminary implementation guide claiming that this document is not legally binding and alleging that it does not conform to the constitution and the jurisprudence of the federal administrative court and the federal constitutional court in several aspects.

Given the diverging implementation in the 16 Länder, three Länder have been examined for the purpose of this study: Hamburg, Hessen and Bavaria. Hamburg is the Land with the highest naturalisation rate in 2010: 2.19% of all foreign nationals living in Hamburg had been naturalized in 2010. Nationwide, Hessen has the second highest naturalisation rate (2.04%). However, contrary to Hamburg, Hessen is a territorial state which implies a different administrative structure and a multiplicity of authorities involved in naturalisation procedures. Finally, Bavaria as another territorial state with a lower naturalisation rate (1.01%) has been examined. Although Bavaria is not the Land with the lowest naturalisation rate nationwide, it has been adequate for the purpose of this study since the economic structure of its foreign population can be better compared to the foreign population in Hessen and Hamburg than the foreign population in Brandenburg (naturalisation rate: 0.61%).

<sup>1</sup> [http://www.verwaltungsvorschriften-im-internet.de/bsvwbund\\_13122000\\_V612400513.htm](http://www.verwaltungsvorschriften-im-internet.de/bsvwbund_13122000_V612400513.htm)

<sup>2</sup> <http://www.bmi.bund.de/cae/servlet/contentblob/123084/publicationFile/13216/Anwendungshinweise.pdf>

### 3. Promotion for Naturalisation

Promotion for naturalisation is generally not particularly developed in Germany. During the last ten years the federal government has not launched any naturalisation campaigns. The federal government provides, however, a website with information regarding the application process, requirements for naturalisation and the benefits of naturalisation.<sup>3</sup> A brochure summarizing the benefits of becoming a German national, the application process and legal and economic requirements of naturalisation is available on the website.<sup>4</sup> A separate leaflet informs about the specifics of the option model (Optionsmodell) and explains why the 21<sup>st</sup> birthday is a crucial date for all Germans to whom the option model applies: They have until their 21<sup>st</sup> birthday to make their decision between their German and their foreign nationality.<sup>5</sup> While simplified language is available regarding some topics on the governmental website, no information in simplified language is available regarding nationality law. Application material is not available on the federal government's website since the whole application procedure is in the competence of the 16 Länder.

Regarding the preparation for integration and language requirements, the Federal Office for Migration and Refugees provides an interactive website where potential questions of the nationwide citizenship test can be practiced.<sup>6</sup> The Federal Office for Migration and Refugees financially supports integration and language courses primarily for new immigrants which do not particularly focus on the requirements for naturalisation. The citizenship test costs 25 € according to § 2 of the regulation on citizenship tests (Einbürgerungstestverordnung). Costs for language assessment (without prior language classes) nationwide range from approximately 120 to 200€ depending on the provider. Financial support is not regularly available for the assessment. The administrations of the 16 Länder provide websites indicating certified providers including the adult education centres (Volkshochschulen) and several private providers. The naturalisation fee is 255€ for adults plus 51€ for children who apply together with their parents (§ 38 Nationality Act). Children applying separately have to pay the full fee of 255€. Exemptions from the naturalisation fee are allowed for “reasons of equity” according to § 38 Nationality Act. The interpretation of this notion is in the discretion of the Länder applying the Nationality Act. Exemptions are however rather rare in the three Länder examined for the purpose of this study, and the implementation guides of Hessen and Bavaria do not mention examples for “reasons of equity”.

Amongst the three examined Länder, Hamburg has established the most outstanding promotion practice during recent years. In November 2010 the city of Hamburg launched a campaign under the slogan “Hamburg. My Harbour. Germany. My Home”. Part of this campaign is the concept of so-called naturalisation pilots (Einbürgerungslotsen): Around 80 famous former foreigners (football players, TV-chefs, actors and the like) promote naturalisation via a poster campaign. Moreover these naturalisation pilots volunteer in supporting potential naturalisation applicants explaining the procedure or helping to collect the necessary documents.<sup>7</sup> The naturalisation pilots regularly improve their skills in training sessions organized by the Turkish Community of Hamburg in co-operation with the city of Hamburg. In addition, the city of Hamburg has developed teaching material and a teaching

<sup>3</sup>[http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/BeauftragtefuerIntegration/Einbuengerung/\\_node.html](http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/BeauftragtefuerIntegration/Einbuengerung/_node.html)

<sup>4</sup>[http://www.bundesregierung.de/Content/DE/Publikation/IB/wege-zur-einbuengerung.pdf?\\_\\_blob=publicationFile&v=8](http://www.bundesregierung.de/Content/DE/Publikation/IB/wege-zur-einbuengerung.pdf?__blob=publicationFile&v=8)

<sup>5</sup>[http://www.bundesregierung.de/Content/DE/Publikation/IB/2011-07-15-flyer-staatsbuergerschaft-optionspflicht.pdf?\\_\\_blob=publicationFile&v=7](http://www.bundesregierung.de/Content/DE/Publikation/IB/2011-07-15-flyer-staatsbuergerschaft-optionspflicht.pdf?__blob=publicationFile&v=7)

<sup>6</sup><http://oet.bamf.de/pls/oetut/f?p=514:1:576183633964166>

<sup>7</sup><http://www.hamburg.de/pressearchiv-fhh/2607910/2010-11-04-bsg-einbuengerungskampagne.html>

unit on naturalisation to be taught in the 9<sup>th</sup> to 13<sup>th</sup> grades in Hamburg's schools. Moreover, the new First mayor of the city of Hamburg (equivalent to the prime ministers in the territorial Länder) started to send all potential applicants for naturalisation a personal letter in December 2011; every month the mayor addresses 4000 new foreigners in alphabetic order. So, by now far more than 4000 foreigners should have been addressed. Finally, Hamburg provides a website containing information on the benefits and requirements of naturalisation. The application form is also available online.<sup>8</sup> Due to this package of promotional activities, the number of naturalisations almost doubled between 2008 and 2011. Between January and March 2012 the number of applications for naturalisation increased by 45% compared to the period between January and March 2011.<sup>9</sup>

The political differences regarding the function and importance of naturalisation between Hamburg and Bavaria have recently been expressed by the Secretary General of the Christian Social Union (CSU), Alexander Dobrindt who turned against the Hamburg initiative claiming that the German nationality is no "junk". By actively promoting naturalisation true integration is effectively endangered, he said in the "Tagesspiegel".<sup>10</sup> Nevertheless, the Bavarian Integration Commissioner is planning to launch a naturalisation campaign in the near future. So far, only the City of Munich has launched a naturalisation campaign containing a brochure entitled "The way to German nationality".

The different promotional approaches of Hamburg and Bavaria are also reflected in the availability of information. While the city of Hamburg actively distributes information, the Ministry of the Interior of Bavaria simply provides a website with basic information about the naturalisation procedure and the required documents. Application forms are however only available in individual conversations and upon request. Hessen focuses somewhat more on actively distributing information about the naturalisation procedure. The Ministry of the Interior of Hessen provides a website with information about the application procedure, the requirements and relevant documents.<sup>11</sup> Moreover, an online PowerPoint-presentation on the naturalisation procedure is available online, as well as all necessary application forms. Finally, the regional council (Regierungspräsidium) Darmstadt, which is one of three responsible authorities in Hessen, regularly provides information sessions for local and regional Foreigner's Councils and other civic organizations.

Ceremonies are handled differently in the three Länder. The Bavarian Ministry of the Interior encourages all local authorities to hold official naturalisation ceremonies. Once a year, the Minister of the Interior of Bavaria holds an official ceremony for some new German nationals. While § 16 Nationality Act requires a solemn statement upon the naturalisation, naturalisation ceremonies are rather rare in Hessen. The statement is usually given in the office of the local authority handing the naturalisation document over to the new German national. In Hamburg, the ceremonies are part of the larger package encouraging naturalisation. Consequently, the city of Hamburg regularly holds naturalisation ceremonies attended by the First Mayor.

The activities of the Hamburg authorities are also outstanding with regard to their support for language requirements. The city's authority for work, social affairs, family and integration (BASFI) offers literacy classes for foreigners in preparation to the regular language class. Moreover, the same authority co-finances the project "Rainbow PLUS" which

<sup>8</sup> <http://einbuengerung.hamburg.de/>

<sup>9</sup> Internal evaluation of the Einwohnerzentramt the city of Hamburg.

<sup>10</sup> Tagesspiegel, 12.4.2012, <http://www.tagesspiegel.de/politik/integration-unser-deutscher-pass-ist-kein-ramschartikel/6498210.html>

<sup>11</sup> Bavaria: <http://www.stmi.bayern.de/buerger/staat/staatsangehoerigkeit/>; Hessen: [http://www.hmdis.hessen.de/irj/HMDI\\_Internet?cid=dfa52243a15262146f06d2d41d69c327](http://www.hmdis.hessen.de/irj/HMDI_Internet?cid=dfa52243a15262146f06d2d41d69c327)

is organized by the Turkish Community in Hamburg and offers advanced training courses for foreigners who have to retry the test for the B1 language certificate (according to the Common European Framework of References for Languages). The BASFI also finances language classes at schools and in kindergarten for the parents of foreign children. Finally, the city of Hamburg offers the project “German Dialog” in public libraries, where participants of integration and language classes can practice their German together with other foreigners or Germans by discussing current political or cultural topics.<sup>12</sup> No similar schemes exist in Hessen and Bavaria.

#### 4. Documentation

Documents necessary for an application are clearly specified in the application form and/or on the website of the responsible authority of the three Länder. In Hamburg and in Hessen documents are only required once during the procedure. Regarding the proof of the identity of an applicant authorities in all three Länder require either (in the following order) a German birth certificate, a passport from the country of origin or a birth certificate of the country of origin. In very exceptional cases affidavits are accepted. Cases (i.e. countries of origin) in which affidavits are accepted are listed in the so called Kölner Liste (Cologne List).<sup>13</sup> Humanitarian grounds and accessibility grounds play an important role when assessing whether affidavits instead of the original documents are sufficient or not. Foreign documents always need to be translated at the cost of the applicant.

Exemptions of the language and the integration requirement are listed in § 10 sub-sec 6 of the Nationality Act: Mental or physical disability allow for an exemption of the language requirement. In all three Länder, a medical certificate indicating the disability and its influence on the ability to learn a language is, however, mandatory. Bavarian authorities may require an adjusted language test if the applicant’s language abilities are only reduced. Applicants over the age of 65 are equally exempted in Hamburg and Hessen. Illiteracy is generally an insufficient reason for exemption.<sup>14</sup> According to § 10 sub-sec 1 of the Nationality Act persons not capable of acting are also exempted. Children under the age of 16 are exempted from the strict language requirement according to § 10 sub-sec 4 Nationality Act. However, they have to prove their language abilities to be adequate to their age. This is regularly proved by school diploma or – in kindergarten – by an attestation of the chief kindergarten teacher. In Bavaria, language development surveys can also be used as proof. A complete exemption from the language requirement is not possible.

§ 10 sub-sec 1, no. 7 Nationality Act requires sufficient knowledge of German society, history and the legal and political system. This is regularly proved by a passed citizenship test (§ 2 sub-sec 1 and § 1 sub-sec 4 of the regulation on citizenship tests (Einbürgerungstestverordnung). A question sample is online available at federal level.<sup>15</sup> A German school diploma, German university diploma and a completed professional training in Germany count as equivalents to the citizenship test in Hessen as well as in Hamburg.<sup>16</sup> In Bavaria a university diploma is only sufficient if the applicant studied law, social or political science. A school diploma and a completed professional training count, however, as equivalents. Regarding this requirement, children under the age of 16 are fully exempted.

<sup>12</sup> <http://www.buecherhallen.de/ca/s/itw/>

<sup>13</sup> <http://www.olg->

[koeln.nrw.de/002\\_aufgaben/justizverwaltung/organisation\\_verwaltung/dez\\_7/laender/index.php](http://www.koeln.nrw.de/002_aufgaben/justizverwaltung/organisation_verwaltung/dez_7/laender/index.php)

<sup>14</sup> No. 10.6 of the implementation guide of Hessen for the Nationality Act

<sup>15</sup> <http://oet.bamf.de/pls/oetut/f?p=512:1:2446790588893620>.

<sup>16</sup> No. 10.5 of the implementation guide of Hessen for the Nationality Act

In all three Länder the applicant has to prove sufficient economic means for himself/herself and his/her family. This is usually documented by pay slips or job contracts no older than three months. Exemption is, however, possible, if they obtain social assistance through no fault of their own. The applicant has to submit a personal statement on that matter. Applicants are not allowed to obtain social assistance according to the Social Law Book II or XII.

Applicants have to prove the renunciation of their foreign citizenship before they can effectively become German nationals (§ 10 sub-sec 1 No. 4 Nationality Act). According to § 12 sub-sec 1, no. 6 of the Nationality Act refugees are exempted from renunciation of their former citizenship if they hold a refugee passport according to Art 28 of the Geneva Convention. § 10 sub-sec 1 of the Nationality Act contains other grounds for exemption, namely: 1) the country of origin does not allow renunciations; 2) the country of origin regularly denies renunciations (all three Länder have a list indicating the renunciation policy of countries of origin); 3) the renunciation is only possible under unacceptable conditions or the country of origin has not taken a decision within a reasonable time; 4) the applicant is an old person and the renunciation is the only obstacle for naturalisation, the renunciation is extraordinary complicated and the renunciation would constitute an unacceptable hardship; 5) the renunciation would result in considerable economic or proprietary disadvantages.

Despite the strong influence of federalism in nationality law, most of the provisions regarding documentation are applied and interpreted similarly in Hamburg and in Hessen. One explanation may be the strong co-operation of both Länder in the so called four-Länder-paper that aimed at establishing a coherent and more uniform application of the Nationality Act in the participating Länder. The implementation of the provision regarding documentation in Bavaria also reveals only minor differences to the other two Länder reviewed by this study, though.

## 5. Discretion

One would expect highly diverging implementation regarding those provisions leaving discretion to the naturalisation authorities. A closer look at the implementation practice of Bavaria, Hamburg and Hessen however yields a surprising result. Despite their discretion the three Länder apply the relevant provisions regarding the requirements for naturalisation in similar ways.

As mentioned before, implementation also diverges slightly regarding the proof of the integration requirements and equivalents to the citizenship test. Some differences also exist with regard to the residence requirement: The entitlement to naturalisation according to § 10 of the Nationality Act requires a duration of permitted regular residence of 8 years without attending an integration course and 7 years if the applicant attended an integration course. Differences occur due to a different interpretation of the term “regular residence” and the residence titles that count for the required duration. Moreover, it remains in the discretion of the naturalisation authority in each Land whether this residence requirement is reduced to 6 years due to “special integration achievements”. In all three Länder “special integration achievements” require language skills at the B2 level or above according to the Common European Framework of References or an extraordinarily good school or university diploma. While in Hamburg and Hessen the requirement of extraordinary language skills or an extraordinarily good diploma can be replaced by considerable voluntary work of at least 2 years which should not only be focused on self-interest groups, Bavaria requires considerable voluntary work in addition to extraordinary language skills or diploma. Both interpretations conform to no. 10.3. of the federal preliminary implementation guide which leaves discretion to the Länder and mentions language requirements as well as voluntary work as possible

requirements. Moreover, all three Länder require that all other naturalisation requirements are regularly fulfilled (e.g. that no exemption was needed in order to fulfil them, except exemptions from the renunciation requirement) and that the personal circumstances of the applicant are overall positive and integrative.

All three Länder accept not only language certificates but also German school and university diploma as well as a completed professional training in Germany as proof for the B1 language requirement according to the Common European Framework of References for Languages. If a language test is used to prove the language requirement, it must have been administered by an officially accredited test provider. There also exists a list of language certificates equivalent to the official-B1-certificate in all three Länder. The list of certified providers differs among the Länder but all three Länder accept tests and courses of the adult education centres (Volkshochschulen) and the Goethe-Institutes as well as several private language schools.

Almost no differences in implication can be mentioned regarding exemptions from the renunciation requirement, since this aspect is clearly regulated by § 12 Nationality Act. According to § 12 sub-sec 1, no. 6 of the Nationality Act refugees are exempted from renunciation of their former citizenship if they hold a refugee passport according to Art 28 of the Geneva Convention. § 10 sub-sec 1 of the Nationality Act contains other grounds for exemption, namely: 1) the country of origin does not allow renunciations; 2) the country of origin regularly denies renunciations (all three Länder have a list indicating the renunciation policy of countries of origin); 3) the renunciation is only possible under unacceptable conditions or the country of origin has not taken a decision within a reasonable time; 4) the applicant is an old person and the renunciation is the only obstacle for naturalisation, the renunciation is extraordinary complicated and the renunciation would constitute an unacceptable hardship; 5) the renunciation would result in considerable economic or proprietary disadvantages. Regarding those foreign countries which regularly deny renunciation of citizenship all three Länder have an internal list assessing the renunciation practice of those foreign countries. In general, this assessment leads to similar results in the three Länder.

Despite this result one should bear in mind that there may still be additional differences in implementation which have not been mentioned by the authorities consulted for the purpose of this study. Nevertheless, the discovered differences in the implementation of discretionary provisions are less significant than expected.

## **6. Bureaucracy**

Significant differences between the three Länder can be observed regarding the bureaucracy. In all three Länder naturalisation decisions are taken on the local level with national standards. In all three Länder the applicant communicates with only one authority responsible for their case. This authority regularly receives and checks the required documents, requests data from other authorities (inter alia regarding criminal records) and communicates directly with the applicant.

In Bavaria local authorities (Kreisverwaltungsbehörden) are responsible in cases of naturalisations according to § 10 Nationality Act and regional government (Bezirksregierungen) in cases of §§ 8 and 9 Nationality Act (discretionary naturalisation and naturalisation of spouses). The local naturalisation authorities have to ask for the consent of the regional government in some cases, among others if they want to apply § 10 sub-sec. 3, sentence 2 of the Nationality Act (6 years requirement).

Hamburg, as a non-territorial Land, has only one central naturalisation authority, the central register office (Einwohnerzentralamt) which closely co-operates with the Ministry of the Interior of Hamburg. The central register office checks the documents three times during the procedure, while in Bavaria and Hessen documents are regularly checked only once during the procedure.

In Hessen the applicant communicates with the local naturalisation authorities (Standesämter), while the deciding authorities are the regional councils (Regierungspräsidien) which take the decision and check the documents. They communicate the result of their check internally to the local authorities which then communicate with the applicant.

Overall, naturalisation authorities are structured very differently in the 16 Länder. One of the most extreme cases may be Nordrhein-Westfalen, where 101 local communities are responsible for deciding about naturalisations.

Time limits generally apply only to security checks and proofs of the economic requirement (they should not be older than three months) nationwide. Moreover, applicants are obliged to co-operate during the procedure according to § 37 Nationality Act and § 82 Residence Act. The authorities are otherwise allowed to set a time limit. Documents provided after this time limit are usually not considered for the naturalisation process.

## 7. Review

Review of naturalisation decisions is similar in the three Länder since the administrative court procedure is mostly regulated on the federal level.

While Hamburg still applies a first administrative review by the central register office of Hamburg (Widerspruch) according to § 68 Code of Administrative Court Procedure (VwGO), Bavaria and Hessen have abolished the administrative review. In Bavaria and Hessen direct remedy is possible to the local, regional and federal administrative courts and finally federal constitutional court within one month after notification (§ 74 Code of Administrative Court Procedure). Remedy to the administrative courts and to the federal constitutional court is also possible in Hamburg after a first administrative remedy. Administrative and judicial remedies cover both procedural and substantial aspects.

Finally, there is no explicit prohibition of discrimination within the naturalisation procedure. Article 3 of the Basic Law (Grundgesetz) contains however a general non-discrimination clause which also applies to naturalisation procedures. It is very difficult to demonstrate that a forbidden discrimination has taken place since different treatment according to the former nationality are legitimate if based on international treaties or other reasonable arguments, such as a different renunciation policy.

## 8. Conclusion

Despite several differences regarding bureaucracy and interpretation of requirements set out by federal law, the differences in the implementation of naturalisation law between the three Länder remain manageable. One should, however, not underestimate the relevance and effect of the existing differences in implementation on the naturalisation figures. After all, it makes an important difference under which condition the residence requirement can be reduced to six years, which documents are accepted as equivalents to certified language requirements and most important: who finances language training. Moreover, during the interviews for this study it became perfectly clear that differences in the interpretation of federal rules also have an important impact with regard to other areas of nationality law, such as the controversial

option model (Optionsmodell) requiring *ius soli*-German nationals to decide between the German and their foreign nationality at the age of 21.

One reason for the rather small differences regarding the interpretation of federal naturalisation rules may be the close co-operation among some of these Länder. Another reason may be the significant and unifying influence of decisions taken by national courts as well as the existing federal administrative regulations on the Nationality Act. Although the Bavarian government refuses to rely on the federal preliminary implementation guide this document may nevertheless exercise some influence through public debate and the argumentation strategies of attorneys in this field.

Bearing this in mind, it seems plausible to explain the significant differences regarding the naturalisation rate between the three Länder by highly diverging attitudes towards naturalisation in the local and regional authorities of the three Länder (see Tränhardt 2000: 21f.). While Hessen and particularly Hamburg follow a policy in favour of naturalisation resulting in promotion material, information sessions, instruction of local authorities and migrant groups, education on naturalisation in schools or comprehensive naturalisation campaigns, Bavaria so far has refused to explicitly promote naturalisation (see Tränhardt 2008: 22). Bavarian politicians have repeatedly insisted that naturalisation is an enormous privilege only for the best integrated migrants who are ready to cut all their formal ties to their former country of nationality in order to be exclusively tied to Germany. That the attitude of political actors and administrative authorities significantly influences naturalisation rates has already been analysed in earlier studies (see Tränhardt 2008: 22; Bultmann 1999: 91, 167). The relevance of comprehensive information on websites and individual counselling by naturalisation authorities has lately been proved by a study of the Federal Office for Migration and Refugees (BMAF 2012: 171f.). The study concludes that almost one fifth of potential applicants do not know where to get information about the naturalisation procedure and that providing information in foreign languages would also enhance the interest in naturalisation (BMAF 2012: 176).

The results of this small study again suggest that “soft” aspects, like attitude and promotion campaigns, make a bigger difference in naturalisation results than sometimes expected.

### **Sources:**

- Bundesamt für Migration und Flüchtlinge, BMAF (2012), Einbürgerungsverhalten von Ausländerinnen und Ausländern in Deutschland sowie Erkenntnisse zu Optionspflichtigen [Federal Office for Migration and Refugees, naturalisation among foreigners in Germany and findings about the option model], Berlin.
- Bultmann, P.F. (1999), ‘Lokale Gerechtigkeit im Einbürgerungsrecht’ [local justice in naturalisation law], Berlin .
- Farahat, A. (2012), ‘*Die Zugehörigkeit von Migranten*’ [migrant citizenship], Berlin/Heidelberg/New York: Springer (in press).
- Göbel-Zimmermann, R./Eichhorn, A. (2010a), ‘Entwicklungen des Staatsangehörigkeitsrechts seit 2000 – eine kritische Bilanz (Teil 1)’ [developments in nationality law since 2000 – a critical review (part 1)], *Zeitschrift für Ausländerrecht*, 293-302.

- Niesler, N. (2007), 'Die Optionspflicht und das Verbot der Staatenlosigkeit – zur Notwendigkeit der teleologischen Reduktion des § 29 III 2 StAG' [The optional model and the prohibition of statelessness], *Zeitschrift für Ausländerrecht*, 275-279.
- Pro Asyl, Interkultureller Rat, Deutscher Anwaltsverein (2010), Optionszwang im Staatsangehörigkeitsrecht abschaffen, [http://www.proasyl.de/de/presse/detail/news/ngos\\_optionszwang\\_im\\_staatsangehoerigkeitsrecht\\_abschaffen/back/657/](http://www.proasyl.de/de/presse/detail/news/ngos_optionszwang_im_staatsangehoerigkeitsrecht_abschaffen/back/657/) (last visited: October 12, 2012).
- Tränhardt, D. (2008) Rahmenbedingungen, Motive und Perspektiven des Erwerbs der deutschen Staatsangehörigkeit [conditions, motivation and perspective of acquiring German nationality], in WISO Diskurs March 2008, Berlin.
- Wallrabenstein A. (1999), '*Das Verfassungsrecht der Staatsangehörigkeit*' [constitutional law and nationality law], Baden-Baden: Nomos.
- Wallrabenstein, A. (2007), 'Stellungnahme im Rahmen der Anhörung des Innenausschusses zum Staatsangehörigkeitsrecht' [advisory opinion for the committee for interior of the Bundestag], A-Drs. 16(4)311 B.

