

# LABOUR MIGRATION IN GERMANY

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## ABSTRACT

*European Union member states are preferring to address the single labour market's benefits, and thus establishing the various forms of regulations for the labour migration within EU. Among the member states, Germany labour rules are in the great norms and the good history which makes the fair and just legislation between the national workers and migrant workers. The very interesting regulations in Germany are the Key Role of Hartz Reform with the Convincing on the Effectiveness of Profound Labour Market which gets the German labour policies to be developed. Active labour market policies are the principal play in Europe as far as the workers' rights through the labour market, and so all European member countries also have to implement ALMP supporting to their national labour legislations. Germany had been trying to set active labour market policies as their best in lieu of demanding the skilled workers only, since after the Second World War.*

**Keywords:** *European Union, Labour Migration, Migrant Workers, Trade Unions, Irregular.*

Germany is a member country, supporting to the EU most and with the great systems of labour migration. It can highly stand and exits as a brilliant country in resolving the obstacles among the EU member states. Germany labour policies and how to get up from the economic crisis are really interesting around Europe. How could the Germany succeed the crisis situation? What are their labour migration policies? We need to trace back the history and evaluate for the answers of those questions.

First of all the German Employment Law is the substantial factor for managing the labour systems: how to control the workers and the employers not to get the disadvantages and the side effects. German Employment law especially gives the protection the employees against unlawful dismissal in order to avoid the recent past infringement of this kind of cases, various social rights for the employees and the co-

determination rights for them through the Works Council with the rights of being a member in the union. Since 1960s a large number of social rights are included. In Germany there is a Works Council which is established with the workers, who have to opt out the representative every four years, and the employers are responsible to inform all the employment-relevant matters for getting the Works Council's consent but when it happens in dispute, the employers may request the labour court to substitute a Works Council under the rules. Sometimes co-determination is needed with the support of the employment lawyers.<sup>1</sup>

From the Employment Law of Germany, there are some rights for all the employees who need to be pointed out; types of employment contract, remedies of employees, working time and equal opportunities. There are two kinds of employment contracts which are permanent

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<sup>1</sup> Aspatore, Navigating Employment Law in Europe: Inside The Minds, 2011, page 53-57.

contract and fixed-term contract that is for 2 years in the maximum level. The employees have the remedies relating to the cases of employers' break of the contractual duties, which means that if the employers are breaking their contract regulations, they are entitled to take legal action, to claim their damages, to withhold their work, to terminate the contract without any notice and lastly to apply the interim injunction. The working time are that the employees have to be asked to work two hours at least during the night, they are entitled to take a rest 11 hours continuously in each day, and they have the right to get holidays on Sunday and public holidays. In the performance of the equal opportunities (especially equal treatment), two means are still being applied: General Equal Treatment Act and constitutional right to equal treatment.<sup>2</sup> Under the Employment Law, one more interesting and effective thing is pension right; which all the employers and the worker usually pay the compulsory contribution money for the pension program, but most of the companies offer the workers for the cooperation of this program. Since before, Germany always focus on the skilled workers for the effectiveness of their economy, therefore, the recruitments from the European Member states are still being served in order to fill the vacant. The German people also welcome the foreign workers outsides of European Union.<sup>3</sup> Those are the summary of German Employment Law all the workers and employers have to apply. In monitoring of the law, Germany's target is to finish their economic processes effectively without delaying at all and to find the skilled workers from the local, from the region and from the third countries. Their concept is

simple that they have no desire to use the low skilled workers made their business delayed. The Works Council is also a kind of great options which can prevent the infringement of the workers' rights in conformity of their EU Charter and Human Rights. Not only the government servants but also other workers will get the pension if they work faithfully in their employment.

In mid-1950, the recruitment of foreign labours was emerged with respect of the labour shortage of the high demand and then in spite that the foreign worker population was about 200,000 until 1961, the recruitment was stopped in 1973. It was a kind of incentive for the foreign workers to stay in Germany permanently, which is why the employers also needed to keep their workers in case of working long time. Between 2000 and 2004, Green Card was issued; for the recruitment of IT specialists. In 2005 the new immigration law was enacted. The vital migrant workers from Germany are Turkey, Italy, and Poland at the time. But 60% from EU member states; one-quarter from Poland, 11% from Romania and 4% from Turkey, and 24% from non-European countries were existed in 2010. Later EU Blue Card for non-EU migrants was introduced and had been in force in 1<sup>st</sup> of August of 2012. EU Blue Card means that he/she will get a work permit for two to four years for owning a resident permit in terms of social security and the employment law, additionally, after three years, he/she will be granted to live in Germany with the settlement permit. Since 1<sup>st</sup> of April, 2012, foreign education certificates have been recognized.<sup>4</sup> The main intention to change the policies in Germany is to preserve the foreign workers with a long term and high skilled level to be

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<sup>2</sup> Constanze Moorhouse and Elizabeth field, *Employment Law in Europe*, 3<sup>rd</sup> Edition, 2013, page 455-472.

<sup>3</sup> Aspatore, *Ibid*.

<sup>4</sup> WERNER EICHHORST and FLORIAN WOZNY, *Migration Policy in Germany*, 2012, page 2-5 and 8-10.

permanent and to obstruct the high demand of labours without any hesitation of the businesses. The Green Card and EU Blue Card were created for the inducement of the temporary migrant workers in Germany.

There were over 80 million residents in Germany, however, many emigrants left with the reasons of some affairs, which was made Germany alert to improve their systems. Germany recruited the foreign workers from the southern Europe and the Mediterranean Region in 1955<sup>5</sup>, then for getting back the recovery was started with the agreement of Italy; "Agreement on Recruiting and Placement of Workers" depending on the negotiation in 1955. After the first agreement with Italy, Greece, Spain, Morocco, Portugal, Tunisia, and Yugoslavia also followed and carried out the recruitment of workers in the good cooperation. Those started Germany labour force in filling out of the demand in the employments and made the immigrants increased after 1959. Guest workers population is much more than permanent foreign workers, but they had to work in the positions for the unskilled owing to non-recognition of foreign certificate. In the post-war Germany became habitual with the recession and can try to get the growth although the economic crisis affects Germany negatively. On 23<sup>rd</sup> November, 1973, there was a directive, Recruitment Ban, which fully blocked the guest workers who are not the members of the European Economic Community. It looks deterring the temporary working and preferred the permanent workers within the country. After that, Germany gave the opportunities

to them the dual citizenship. Besides, the new Immigration Law was enacted in 2005 which includes the temporary resident permit and permanent resident permit for the people who entered with different purposes.<sup>6</sup> The process mentioned above is the steps to control and change the systems with their immigration law. The strange thing is that Germany had to face the shortage of workers and the problem that many people left before the crisis. After the crisis, Germany could carry on steadily with their carefulness by learning their past lessons. With the new Immigration Law, Germany showed that it is a kind of immigration country.

One of the integration methods is the enactment of a new Alien Act in 1990; the allowance of the family reunification. In 2000, the citizenship law was established; the right to born the children in Germany or on the other hand the birth-right citizenship which means that this kind of baby gets the right to be a German citizenship.<sup>7</sup> In 2005, almost 7% of all and 4.5% of the highly-skilled employees in Germany have a foreign nationality.<sup>8</sup> The shortage of foreign workers was persuaded by allowing all the guest workers to call their family reunification, a kind of labour integration. It is clear that Germany was trying to change their system of integration to get better of their economic crisis as their economy also depends on the foreign workers in their labour demands of the employments and the very first reason for facing this problem is that their national workers are not enough to circle of their machinery of the productivity.

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<sup>5</sup> Federal Ministry of Interior, Building and Community, Labor Migration, <https://www.bmi.bund.de/EN/topics/migration/immigration/labour-migration/labour-migration-node.html>.

<sup>6</sup> DOMid, Essay: Migration History in Germany, <https://www.domid.org/angebot/aufsaeetze/essay-migrationsgeschichte-in-deutschland>.

<sup>7</sup> Sude Ůnal, Labour Migration to Germany and its Effects on German Politics of Cultural Diversity, 2019, page7-8.

<sup>8</sup> Burkert, Carola; Niebuhr, Annkatrin; Wapler, Rüdiger, Regional disparities in employment of high-skilled foreigners: Determinants and options for migration policy in Germany, HWWI Research Paper, No. 3-7, 2007, page 5.

That's why the migrant workers have to be replaced without being vacant.

With the current conditions of labour migration in Germany, there is a new rule, Skilled Immigration Act, which was in force on 1<sup>st</sup> of March, 2020; the summary is that

1. what the skilled worker is the worker with University Certificate or vocational training certificates ( but at least two years training),

2. Generally the work visa is issued after four weeks of applying,

3. The foreign workers can apply the immigration with job offer or work contract despite of not recognition of the qualification lower than two years vocational training level,

4. The duration of the residency in the work visa is four years or depending on their employment contract,

5. The permanent resident permit can be applied after four years of residency,

6. If the skilled foreign workers are older than 45 years, they need to prove that they can earn 3685 Euro per month,

7. The skilled professionals, for instance medical doctors, nurses, etc. don't need to show their certificate but just five years working experiences.<sup>9</sup>

It is clear that Germany always is offering the workers to be skilled workers in their employment and their productivities because they just want the high skilled workers from the abroad. But the foreign workers always had to work in the position of the low skilled workplace in Germany employment in the past. It was a problem for the migrant workers although the german workers get the high opportunities like the high positions and the high skilled level positions within the countries. The employers in Germany always preferred to call their german workers in their business

for giving the high salaries but for the migrant workers they didn't want give the high salaries instead of their German workers. they had a reason that the foreign workers had no skills and not effective in working in their business and they would not allow and recognize their certificates and their educations of their original countries. But there was an Immigration law in 2005 which also divided into two parts for the foreign workers as the temporary workers and permanent workers and a new Immigration Law has been promulgated on 1<sup>st</sup> of March in 2020 which is calling the high skilled workers from abroad, on the other hand, the Germany is giving the another opportunities to the migrant workers to get the higher positions in their employment and their productivities. It is a kind of protection for their country, which means that they will not face the shortage of the workers in the future because they had already faced in the past about the workers' problem and they had to accept the guest workers. Moreover, they already faced that many workers left Germany because of some affairs and obstacles of Germany. It looks preventive for their workers in their country and the german workers have to be motivated, for example, if the german workers are not working with high skilled in their employment, they will lose their opportunities in the employment and they can lose their jobs easily and it will be for the foreign workers. According to the EU laws and regulations for the migrant workers, the Germany also has the responsibilities for obeying their EU standards and human right protection in the case of labour migration. Since the past till today Germany is a country of Immigration even though the government denied it under

<sup>9</sup> Sabine Kinkartz, Germany's New Labour Migration Law Explained, <https://www.dw.com/en/germanys-new-labor-immigration-law-explained/a-52575915>.

most of the discussion or debates. Nevertheless, Germany labour laws is a kind of great law and regulations among European member states as the other member states should imitate and use the norms in their national labour laws. All member states have the responsibilities for the protection of the workers. German language speaking is also essential for the foreign workers, and it can make them to be more last long living there and get a better opportunities.

### **How Germany sets their policies differently in their active labour market policies as an EU member state**

Active labour market policies are the principal play in Europe as far as the workers' rights through the labour market, and so all European member countries also have to implement ALMP supporting to their national labour legislations. Germany had been trying to set active labour market policies as their best in lieu of demanding the skilled workers only, since after the Second World War.

### **The Key Role of Hartz Reform with the Convincing on the Effectiveness of Profound Labour Market**

Before German ALMP currently, so-called Hartz Reform needs to be acknowledged; which is the outset of active labour market policies reform in Germany. When was ALMP come out? A compulsory unemployment insurance was established in 1927 and ALMP in 1970s whilst in a high rate of unemployment. In 1990, the active labour market policies got famous as an important role, which was administered by the federal employment office. At that time,

the unemployment benefits were relying on the workers' previous unemployment duration and wage; the employers and the workers had to share the unemployment insurance, however, in the comparison of other countries Germany ALMP expenditures were higher and with long duration. Till 1990s its unemployment rates got worse and worse, and its financial services collapsed. Therefore Germany needed to change a comprehensive reform, notwithstanding anything, it was still controversial with so many criticisms in every systems. In fact, from 1990s to the early of 2000s Germany was in the weakest situation in Europe in the reasoning of higher unemployment, too slow growth, public debt and budget deficit, afterwards the Hartz Reform could change the hardest condition and brought to the better position by changing in their labour market regulations.<sup>10</sup>The government initiated a Commission for Modern Labour Market Services which created Hartz Reform implemented in 2002-2005, with three aims which are the increasing effectiveness and efficiency of labour market, activation the unemployed and fostering employment demand by labour market deregulation.<sup>11</sup> Especially Hartz Reform was performed with four stages. It was organized with eight experts; two academics, two trade unionists, the representative from the employer organization, the representative from management consultant, company boards and government. It can be said that the Hartz Reform resulted positively and negatively by evaluating the past conditions that within three years from 2005 the unemployment rate fell down from 11% to 7.5%, otherwise, that it could make the unemployment

<sup>10</sup> Thomas Beissiger, Nathalie Chusseau and Joel Hellies, Offshoring and Labor Market Reforms in Germany: Assessment and Policy Implication, *Economic Modelling Journal* 53, 2016, Page 314.

<sup>11</sup> Lena Jacoba and Jochen Klave, Before and After Hartz Reform: The Performance of Active Labour Market Policies in Germany, Discussion Paper No. 2100, 2006, page 1-7.

decreased and the employed people increased but most of the people were in the low-quality employment conditions.<sup>12</sup> Somehow, it is clear that the main objective of Hartz Reform is to reduce unemployment rates. It is such an efficient way to control and tackle the labour issues in Germany. It can be said that in learning the systems of labour legislation in Germany the Hartz Reform plays a vital innovation to change the better situation and no one can deny and reject this Hartz Reform though there were some defeats or weaknesses and low-quality employment was high by virtue of getting free from the unemployment obstacles at least.

Hartz Reform stages put into practice with the dissimilar goals that Hartz I was leading to the setting up new personnel service agency, the support the vocational trainings and the deregulation of temporary work sector, Hartz II with the commencement the subsidy for one-person companies and low paid jobs (Mini and Midi jobs), Hartz II in the restructuring of the federal labour office and the last stage in the changing of unemployment assistance and social assistance. Meanwhile, the Reforms could cease the regulation on temporary agencies, reorganize the federal employment agency, reshape the unemployment insurance, and tighten job search obligations.<sup>13</sup> Nevertheless Hartz IV has a controversial case between the economists' comments, for instance Launov and Wälde argued that Hartz I to III could led to the effective systems but Hartz IV is not efficient with the reason that it was

leading to too much high unemployment benefits as the incentives of the unemployed people, however, which made the labour market inefficient and too rigid.<sup>14</sup> Gianna C. Giannelli, Ursula Jaenichen and Thomas Rothe (2013) mentioned the disadvantages of the Hartz Reform IV concerning with the decreasing of the employment rate though Hartz I, II and III could make the rate of unemployment reduced, the combination of the unemployment and social assistance into one means-tested unemployment benefit type II, depending on the previous wage, duration and other household members' income.<sup>15</sup> As the situation and the reviews of some others, Hartz Reform IV is a kind of reduction of the benefits compared to the previous benefits range by the terms of the depending on the working wage and duration and on the income of the other family members and a type of forcing the workers to be long lasting in a workplace and to keep their chances not by quitting the job. The worst thing is the Hartz IV making the other I, II and III effort advantages to be down and mitigated the high rate of the employment.

Germany unemployment range is lower than EU27 as the percentage of Germany unemployment was 5.5% while EU27 range of unemployment was 8.1% in 2012. Germany could reduce their rate level from 13% in 2003 to 7.5% in 2008, besides; during the economic crisis in 2008/2009 Germany could preserve not to effect on their labour market with their Hartz reforms. Overall evaluation of Germany unemployment reduction reasons is because

<sup>12</sup> Center for Public Impact A BCG Foundation, The Hartz Employment Reforms in Germany, 2<sup>nd</sup> September, 2019. <https://www.centreforpublicimpact.org/case-study/hartz-employment-reforms-germany>.

<sup>13</sup> Niklas Engbom, Enrica Detragiache, and Faezeh Raei, The German Labor Market Reforms and Post-Unemployment Earnings, IMF Working Paper/15/162, 2015, page 3-8.

<sup>14</sup> Innovation Reports, Hartz Reform IV did not reduce the Unemployment rate, 2013, <https://www.innovations-report.com/social-sciences/hartz-iv-reform-reduce-unemployment-germany-222355/>.

<sup>15</sup> Gianna C. Giannelli, Ursula Jaenichen and Thomas Rothe, Doing Well in Reforming the Labour Market? Recent Trends in Job Stability and Wages in Germany, 8/2013, page 3-5.

of their job creation on the Mini jobs and Midi jobs which are especially for the women more effective than men in lieu of two-third of mini jobbers of women or the expansion of the female labour force. What is Germany Mini jobs nature and its aims? For this question, the main features of mini jobs need to be mentioned; the maximum earning money with 450 Euros monthly or less, just 30% of the employer's payment of tax, and without supporting of living accommodation and social insurance rights for the workers. Therefore, the mini jobs workers are not entitled to the social insurance contribution but the midi jobs are not the same with Mini Jobs nature; which the workers will be entitled to the right of getting lower social insurance when their monthly earnings reach 850 Euros.<sup>16</sup> To sum up the overall review on the Germany labour market it runs with the non-standard employment with low wages owing to the Hartz Reforms.<sup>17</sup>

### **Expression of the role of Migrant Workers in the Labour Market in Germany**

In the past of labour market regulation in Germany, the migrant workers who were outsiders of EU had to work in the industrial sectors arduously with low social status. Some authors referred three reasons in the former labour market in Germany; the migrant workers with low education in comparing of the domestic education, non-stable working or movement from one country to another country prospectively and working temporarily which was why the employers did not want to invest the job

training for them. Tracing back to 1960s-1970s, 70% of migrants were employed in the industrial sectors while the national workers were in the service sectors, though, 50% of migrants were employed in the less-skilled manufacturing jobs in a long-term in 1990. Between 1992- 2008, the industrial employment declined with the growing of service sector employment. The comprehensive monitoring was going to the remark that the labour market became worse and made the rate of unemployment population raised, thus the wage pay and working conditions were also to the down clearly which was especially on the foreign workers or non-EU workers. Hence the foreign workers had to work in low-wage jobs (1 in 3 workers) and then up to 35% before 2015.<sup>18</sup> In 2020, over 11 million foreign people entered into Germany; 5% from EU member states and 5% from non-EU countries. Among Non-EU foreign people, 259000 were for the employment.<sup>19</sup> Nevertheless the foreign workers from third countries were not easy to get job which is why the old immigration law gave the job opportunities where the national workers and EU workers cannot work at all. But later the foreign workers have the opportunities in working in Germany if they have the qualifications or University degrees which can compare to the Germany education or are skilled workers under the new Immigration law which named "Skilled Immigration Act". However if the foreign workers don't have the qualified education or vocational training but have the job offer or contract from the company founded in Germany, they are entitled to get the rights

<sup>16</sup> TRÉSOR-ECONOMICS No. 110, 2013, page 3.

<sup>17</sup> Janine Leschke, Labor Market Development, Non-standard Employment and Low Wages in Germany, ISSN:2339-5793, 2014, Vol 2, Page 67-78.

<sup>18</sup> Torben Krings, 'Good' Bad Jobs? The Evolution of Migrant Low-Wage Employment in Germany (1985–2015), 2021, page 527-533.

<sup>19</sup> Jan Schneider, Toward An EU Toolbox for Migrant Workers: Labour Mobility and Regularization in Germany, Italy and Spain , 2020, page 3.

staying in Germany for six months ( the visa for job seekers) while the employers are evaluating his trial working in the employment. Additionally the foreign students also have the chances to work in Germany for 18 months after their study duration.<sup>20</sup> Nevertheless Germany decided to receive the foreign workers with low skills, and then they can be trained with the vocational trainings.<sup>21</sup> Comparing to the past with the present policies in Germany, the restricted rules for the non-EU workers were so serious and hard to enter into the labour market, on the other hand, the possibility to work only where the national workers neglected or didn't choose, but in the later situations the workers can work in the high position if they have high skilled qualifications which can compare to the Germany quality. It is obvious that Germany are just concentrating on their great productivity and exports competitive the global market and EU market , and they don't have any desire to go back their bad past situation which was in a low dignity in Europe. The Hartz Reform cannot effect on the foreign workers because they can only be accepted with the high skilled qualification. Under the Hartz Reforms the local workers are with the employment from the unemployment position in working every sector.

The percentage of foreign workers is the same with the EU-workers in Germany in accordance with the factors mentioned above. Although Germany doesn't want to get any bad impact for their economic or productivity quality, the foreign workers also support their economic from their perspective and with the same population of EU national workers. Those migrant

workers need to have the same protection and social insurance together with the EU national workers. There is one chance which is likely to be most; job seeker visa with 6 months. That duration is not short that's why the migrant workers have time to find jobs and the tendency to get jobs. If so, what are the social security rights for the migrant worker? For this question, the next topic will explain with the provided policies.

### **Social Rights in terms of the Laws in Germany**

Germany is also a member state of EU which provides some social rights for the migrant workers within EU with the conventions and Regulations, hence it has the responsibility to obey the regulations and policies of EU in the protection of the migrant workers because Germany entails one of the states it runs with the migrants in their machinery of the economics. In 1967, the Federal Republic of Germany gives the migrant workers in the following:

- Sickness benefits,
- Maternity benefits,
- Death grants,
- Accidents at work and occupational disease,
- Pensions,
- Unemployment.<sup>22</sup>

For all the social security benefits, the workers are responsible for paying the contribution for their social insurances. But the limitations of the social rights rely on different situation and rights of the workers. Jean-Michel Lafleur referred the Germany social system into two kinds: through the contributions of workers and employers and through the tax ( but it is restricted more for the foreign workers). The insurance systems

<sup>20</sup> Amar Ali, The New Skilled Immigration Law in Germany, 11/2020, <https://immigrationlawyers-london.com/blog/the-new-skilled-immigration-law-in-germany.php>.

<sup>21</sup> Jan Schneider, page 6.

<sup>22</sup> European Communities, Social Security for Migrant Workers in Germany, 1967, page 19.



involve five categories which are public pension, health care, unemployment, work-related injuries, and long term care insurance. Social insurance is concerning with the labour market status and the job type, somehow the migrant workers need to get the work permit and the formal employment importantly.<sup>23</sup>

The social benefits for migrants in Germany Currently are:

**Unemployment:** Whoever working in Germany and temporarily abroad is covered, by the deduction of 165 € from their income remuneration. They will get 60% for the persons without the children and 67% for the persons with the children. After paying the contributions for 12 months and become unemployed, the unemployment benefits for six months will be covered. Moreover, pensions, health care, and long-term care have the right to be covered during the benefit of the unemployment.<sup>24</sup>

**Health-Care:** 80% of the population in Germany is supported with the health care system. Normally there are two types of health care benefits; in-kind medical treatment and sickness pay after six weeks of sickness leave. Deloitte expresses “All workers in Germany with the regular annual remunerations less than € 64,350 must be enrolled in the compulsory health insurance scheme. And the contributions are 2.4% of the gross salary half by the employer and the workers. For the long term nursing care and disability insurance, the contributions are

3.05% half by the employer and the worker.”<sup>25</sup> Three options of health insurance are categorized in Germany which are the government-regulated public health insurance schemes ( GKV), the private health insurance from a German or International Insurance Company (PKV), and a combination of GKV and PKV, for all the workers employing in Germany. If the gross salary is less than 62550 Euros per year, the worker will be mandatory to be membership of GKV, however, while the annual salary is higher than 62550 Euros, he/she may opt out the PKV.<sup>26</sup>

**Pensions:** three divisions are split out mainly with old age, disabilities, and survivors. Germany pension system has three main pillars; mandatory state pension, company or occupation pension and private pension.<sup>27</sup> Germany is working with the pay-as-you-go system for the pensions benefit. For the pensions, all residents comprising of non-EU citizens who are residing in EU and having German public pension record, are allowed to pay the contributions in the waiting for 5 years at least. After 5 years, they have the right to get the pension depending on the sum of their earnings.<sup>28</sup> If the workers work in an employer who contributes for the pensions, they are eligible to get pension in Germany.<sup>29</sup>

**Family Benefits:** EU citizens are sure to get the family benefits than non-EU citizens relying on the resident permit. EU citizens get six weeks before and eight

<sup>23</sup> Jean-Michel Lafleur and Daniela Vintila, *Migration and Social Protection in Europe and Beyond*(Vol I): Comparing Access to Welfare Entitlements, IMISCOE Research Series, 2020, page 179-194.

<sup>24</sup> Jean-Michel Lafleur and Daniela Vintila, *Ibid*.

<sup>25</sup> Deloitte, *Working & Living in Germany: Moving together and making together*, 2021, Page 9.

<sup>26</sup> Cathy J. Matz-Townsend, *Health Insurance Option in Germany*, 2020, page 2-3.

<sup>27</sup> EXPATICA, *The German State Pensions: Guide to the German Pension System*, <https://www.expatica.com/de/finance/retirement/pensions-in-germany-831124/#GermanPensionSystem>

<sup>28</sup> Jean-Michel Lafleur and Daniela Vintila, *Ibid*.

<sup>29</sup> EXPATICA, *The German State Pensions: Guide to the German Pension System*, <https://www.expatica.com/de/finance/retirement/pensions-in-germany-831124/#GermanPensionSystem>.

weeks after the pregnant, and child allowance even if they are abroad and the parents are still in Germany. This allowance will end when the parents leave Germany and their income tax stops.<sup>30</sup> Both EU citizens and non-EU citizens also have the parental benefits in terms of their working time (30 hours/ a week) and their annual net income.<sup>31</sup>

**Minimum Income Benefits:** EU employed nationals with the income below the social minimum income can accept a supplementary minimum income benefits, if they are employed for one year continuously, they will be treated like the Germans in this case if they become unemployed. For non-EU citizens can also get the minimum income benefits with the entering into Germany with the employment but not the asylum seeker.<sup>32</sup>

The migrant workers also have the right to get the fundamental social security rights in Germany according to the German legislation and EU regulations. In comparing of the EU nationals and non-EU nationals, it cannot be resumed non-EU national workers struggle with the discriminations in the social systems in lieu of the fair system, they have options to choose to be valid of getting the social insurance once they are holding the valid resident permit and can work in the harmony of the labour policies of Germany.

### **Trade Unions Rights regarding to the migrants**

The migrant workers require getting the right to be membership in trade unions in Germany. German Constitution entails to

have the right to freedom of association in Article 9 in the following:

“All Germans shall have the right form corporations and other associations.”

In accordance with the rule mentioned above, only the Germans have the right to the freedom of associations. In 2018, 78 million people were with the trade union memberships.<sup>33</sup> Prior to the course of the membership of migrant workers in the trade unions in Germany, First of all, the potential question should be stated: what is the general trade unions situation in Germany? In general, there are three main biggest trade unions confederation in Germany, which are the German Confederation of Trade Unions (DGB), German Civil Service Federation (DBB) and the German Christian Trade Unions Confederation (CGB). Moreover, other trade unions also exist without comprising of these three confederations and the total member people are 280000 in 2014 by WIS. The German biggest trade unions are slightly concerning with the politicians. But DGB was partly close to the political party; currently they are defined as non-partisan, that's why they don't have any financial support from the political party. The other two DBB and CGB are a little connection politically; therefore, they get the financial support from them.<sup>34</sup> By viewing those factors, most of the employees are going with three biggest trade unions federations. Getting the main support of the trade unions relies on whether of cooperating with the political parties due to the cause of financial support from them in the improvement of trade unions rights. It is a matter if the workers get the membership of famous big trade unions or

<sup>30</sup> Jean-Michel Lafleur and Daniela Vintila, *Ibid.*

<sup>31</sup> Deloitte, *Working & Living in Germany: Moving together and making together*, 2021, *Ibid.*

<sup>32</sup> Jean-Michel Lafleur and Daniela Vintila, *Ibid.*

<sup>33</sup> Heiner Dribbusch and Peter Birke, *Trade Unions in Germany Challenges in a Time of Transition*, 2019.

<sup>34</sup> Heiner Dribbusch and Peter Birke, *Trade Unions in Germany Challenges in a Time of Transition*, 2019. And *Trade Unions in Germany, Organization, Environment and Challenges*, 2012.

non-famous trade union, with the reason why they think that the biggest trade unions can only guarantee to give the protection and security of their lives.

The German Confederation of Trade Unions (DGB) is the first biggest trade unions confederation in Germany, with eight affiliated trade unions members, over six millions people with 20% pensioners, 5% unemployment, and 35% women workers in 2018, founded in 1949.<sup>35</sup> Eight affiliated trade unions members are Industrial Union Mining, Chemicals, Energy (IG, Berghau, Chemie, Energie) (IG BCE) with the members 274.182, Industrial Union Construction, Agriculture, Environment ( IG Bauen-Agrar-Umwelt) (IG BCE) with the members 632.389, Union For Education and Science (Gewerkschaft Erziehung und Wissenschaft) with the members 279.389, Industrial Union for Metal Workers (IG Metall) with the members of 2,270,595, Union for Food, Beverages, and Catering (Gewerkschaft Nahrung-Genuss-Gaststätten NGG) with the members 198.026, Police Union (Gewerkschaft Der Polizei GDP) with the members 190.931, Railway and Transport Union (Eisenbahn-und Verkehrsgewerkschaft EVG) with the members 187.396 and United Service Union (Vereinte Dienstleistungsgewerkschaft) with the members 1,969,043.<sup>36</sup> DGB financial affair is managed with the union membership fees.<sup>37</sup> The German Civil Service Federation (DBB) is the second largest trade unions organization with 40 affiliated trade unions members and the total members with 1,317,000 in 2018, 32% of women, and 11% of young workers. The Christian Trade Unions Confederation of

Germany (CGB) is the third biggest organizations in Germany with 13 individual trade unions members, the gross member with 270,000 in 2017 and under 24% of women. CGB is a bit different with the other two unions with the reason that it is with a distinct politician orientation.<sup>38</sup> Nevertheless, the civil servant workers are not entitled to the right of collective bargaining and right to strike through those trade unions once their salaries are fixed by the government. No one can deny that the three biggest trade unions are leaned on by most of the workers in Germany in the condition of memberships and running faster than other trade unions in reviewing their success and well-known service or performances.

In the case of migrant workers in German trade unions, the recruitment system for them was started in 1950s, and the first largest trade union DGB was accepting the migrants in terms of the government labour migration policies, as the second class people, in the unskilled jobs not same with the German workers but not allowing the permanent residence. In fact, the German government and all trade unions were going with the migrant workers as the equal memberships like the nationals from the outset. But the foreign workers were participating in the Spontaneous Strike Movement 1973 mainly which caused the German government decision changed to not allow the foreign workers entering into the trade unions with the support of DGB. After 1982, the Christian Democratic Union party (CDU) got the power in the country: which has different policies for the migrant workers, DGB also went along with its policies leading to the integration and better

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<sup>35</sup> Heiner Dribbusch and Peter Birke, Page 7.

<sup>36</sup> DGB Member Unions, <https://en.dgb.de/member-unions>.

<sup>37</sup> Heiner Dribbusch and Peter Birke, Ibid.

<sup>38</sup> Heiner Dribbusch and Peter Birke, Page 6-9.

rights for the migrants.<sup>39</sup> In fact, DGB gave the agreement to focus on the trade union representations of migrants and non-migrants, thus, it founded a Central Office for the Foreign Workers in Hamburg but existed only until 2000s; which functioned the meetings between the migrant workers and trade unions. In 1984 the foreigners' committee was established in IG Metall with the purposes of the solving the affairs of the foreigners. In 1985 to the government promulgated the complicated policies for the acceptance of the migrant workers.<sup>40</sup> One of the internal studies of IG Metall stated that over 3000 foreign works council's representatives, 400 works council leaders and 7500 foreign shop stewards currently exist. German trade unions are in an effort to combat anti-racist by engaging with some association such as "Kumpel" association though the foreign workers have in less rights. The government also confirmed to accept the refugees from Syrian in 2015, made trade unions to change their focusing point, for instance DGB built an advice center for the migrant workers, which means that German trade unions are working in accordance with the Government policies by means of accepting the refugees.<sup>41</sup> In fact, DGB was province the foreign workers with their commitment and consensus, for the stance on their sides, nonetheless, it targeted to support the policies of the government. Trade unions in Germany seem standing to carry out the government's decisions without targeting to

the migrant labour's equal rights though they are not participating with the political parties clearly.

### **How to manage the concern of Germany in the occasion of Irregular Migration for working**

Irregular migration affairs become worse and more important since 1990s till currently, especially Germany seems mostly faced from EU borders and member states. Barbara Laubenthal and Patricia Pielage argued that the Government amended German Residence Law a lot of times but not untouched the part of the irregular migration.<sup>42</sup> The migrants from EU countries which joined EU before 2004 have the right to stay unlimited in Germany but the ones from non-EU countries need to get the work permit or resident permit. If it does not meet with the factors mentioned, illegal residence will be deserved and those migrants will be deported by the government. Despite the legal status of living in Germany, they will be fine if they works in the irregular employment and then the employers will also get the punishment of the imprisonment in the fact that they hire the illegal workers. The German authorities had been trying to detect the illegal employment since before in conformity with "Law to Combat Undeclared Work" in 2004 and some amendments of "Fourth Social Law Book", to ensure that all workers need to have their passport, moreover, the punishment level was raised.<sup>43</sup>

<sup>39</sup> Stephen Castles, Labour migration and the trade unions in Western Europe, Center for Multicultural Occasional Paper, 1990, page 7-9.

<sup>40</sup> Lisa Carstensen, Challenging the Trade Union Agenda: Migrants' Interest Representation and German Trade Unions in Hamburg in the 1970s and 1980s, 2021.

<sup>41</sup> Mark Bergfeld, International Unions Rights, Vol 28, No 1, 2021, page 6-7. [https://www.ictur.org/pdf/IUR281\\_BERGFELD.pdf](https://www.ictur.org/pdf/IUR281_BERGFELD.pdf).

<sup>42</sup> Barbara Laubenthal and Patricia Pielage, European Task Force on Irregular Migrations: Country Report (Germany), 2011, page 14.

<sup>43</sup> European Community Programme for Employment and Social Solidarity PROGRESS, Illegal Works of Migrants on European Union, 2013, page 23-28.

Around by 1990s Germany served actively of setting the common policies in EU regarding to the irregular migration, then tried to transpose two directives, the Directive 2008/115/EC on common standards and procedures in member states for returning illegally staying third-country nationals and the Directive 2009/52/EC providing for minimum standards on sanction and measures against employer of illegally staying third-country nationals, into its internal legislation by virtue of the “Return Home” policy in 2011. Hence the government issued a first draft for the first directive in the case of illegal migrants to be detained for 18 months in a maximum, got the criticizing from the NGO and a second draft for the second directive in the event of the sanction to the employer who employed the irregular migrants, on the other hand, the fundamental rights of the irregulars are endeavored to give at least under the political federal System, which is that all the cities in Germany have different system for controlling and managing of those migrants. In spite of different policies in the several cities, generally they are focusing on the social dilemma on the illegal migrants, for instance Munich which regulates right to education and health and Freiburg regulating to the right of education relating to the irregulars and their children and some other cities, Bonn, Leipzig, Menschen, Nurnberg, Augsburg, Stuttgart and Gelsenkirchen were reporting to the federal government for the access of the social and human rights.<sup>44</sup> Social rights are essential to all human beings and substantially right to health care is necessitated more to be reliable on the right to life (UDHR Art -1).

Under International labour standards, all workers have to get the fundamental human rights in the employment country, furthermore, EU standards also compatible to the global norms. It is such a type of greatest humanitarian to treat all humans equally and horizontally that Germany goes to the general social rights in the cities once Munich and Freiburg are the sample cities in the condition of right to education for the irregular migrants and their children.

There is a regularization system for the irregular migrant people in European Union member states including. In 2010 2% of the foreign population had been regularized in Germany, since 2000s the government specified several measures of regularization based on the humanitarian ground with the extent that the employability was their main criteria in the system.<sup>45</sup> Three kinds of target were focused on asylum seekers who entered before 1990 in 1990, asylum seekers who entered before 1993, and 8 years residency in 1999 and long term tolerated persons in 2000.<sup>46</sup> In this case only the irregular people, entered into Germany legally but become illegal once their resident permit expire, will get this kind of opportunities, nevertheless, the people who are entering into the country illegally already commit under Resident Act.

### Summary

Germany is a country which faced the big labour shortage than other EU members before their labour regulations had been provided in the past. Therefore, the recovery for getting back the fulfillment of the labour demand was tried with the Hartz reforms

<sup>44</sup> Barbara Laubenthal and Patricia Pielage, page 16-18.

<sup>45</sup> Albert Kraller, Regularization of Irregular Migrants and Social Policies: Comparative Perspectives, *Journal of Immigrant & Refugee Studies*, 2018, page 99-107. <https://doi.org/10.1080/15562948.2018.1522561>.

<sup>46</sup> Kate Brick, Regularizations in the European Union: the Contentious Policy Tool, 2011, page 11. <https://www.migrationpolicy.org/sites/default/files/publications/EURegularization-Insight.pdf>.

which totally transferred into the best situation of labour shortage issues. Among four Hartz steps, the fourth step has a controversial problem regarding to the social security rights differently of the other three steps. Before that, the treatment of the past defeat was started with the cooperation of Italy, Greece, Spain, Morocco, Portugal, Tunisia, and Yugoslavia by accepting the migrant workers from those countries. Then German government blocked the foreign workers migrating into the country because of some cases in 1973. In 2005 the new immigration law was issued. Later EU Blue Card for non-EU migrants was introduced and had been in force in 1<sup>st</sup> of August of 2012. The new Skilled Immigration Law was in force on 1<sup>st</sup> of March, 2020.

The Hartz Reform cannot effect on the foreign workers because they can only be accepted with the high skilled qualification. Under the Hartz Reforms the local workers are with the employment from the unemployment position in working every sector. Regarding social security rights, they have options to choose to be valid of getting the social insurance once they are holding the valid resident permit and can work in the harmony of the labour policies of Germany. If the German Constitution is viewed, there is no trade unions right for the migrant workers but just for nationals. Virtually they also have the right to be membership in Germany in lieu of the government policies and different trade unions regulations. Among three biggest trade unions, DGB mostly accepts the foreign workers in the membership despite the breaking of the commitment to stand up for the migrant workers in the past, built an advice center for the mobile workers and is part of Federal Employment Agency which

gives the job opportunities for the migrant workers. Trade unions in Germany seem standing to carry out the government's decisions without targeting to the migrant labour's equal rights though they are not participating with the political parties clearly.

Till today Germany is a famous and good country in the systematic policies comparing to EU members once it could stand up strongly with their great rules and policies without falling down in the last recession 2007/2008. In the case of foreign workers Germany set their rules distinctly for the labour migration that can allow the skilled immigrant workers and not giving the chances the foreign workers easily to enter and work in Germany. The high skilled workers, the high qualified productivity, and the more lasting rules to preserve are only intended. But if the employers give the job offering or work permit to the foreign workers, the workers can enter and work in Germany easily, though they won't get the high remuneration. Owing to the new Skilled Immigration Law, the foreign workers' entrance is restricted setting on the skills of the foreign workers and giving to the equal rights like the nationals relying on their skills. Regarding the regularization system, Germany never allows the irregular migrants, entered firstly into the country illegally, transforming into the legal status, though the people who enter into the country legally and become irregular due to their expiration of the resident permit, are only given to the regularization chance with the document of the suspension of removal order. Moreover they also have the right to education and health care within the country based on the humanitarian ground by virtue of the EU directives.

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