International Journal of Law and Psychiatry 57 (2018) 1–8

Contents lists available at ScienceDirect

International Journal of Law and Psychiatry

Migrants in unlimited detention according to section 63 of the German penal code: Results from the German federal state of Baden-Württemberg

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ARTICLE INFO

Article history:
Received 22 November 2016
Received in revised form 8 August 2017
Accepted 4 December 2017
Available online xxxx

1. Introduction

According to the micro-census for the year 2015, 21% of the German population has a migration background. This does not take into account the large number of refugees whose applications for asylum are still being processed (Statistisches Bundesamt, 2016b). Migration status defined by the German Federal Bureau of Statistics includes migrants and the first generation of their descendants. In the past two years, more than one million migrants from Syria, Iraq, Afghanistan, Nigeria and other countries have fled to Germany. Two major groups of migrants can be described: "guest workers" from Turkey and Southern European countries and "late repatriates" from the former Soviet Union states and Eastern Europe.

A short summary of the migration history sheds light on the heterogeneity of those people who have received migrant status in Germany. In the medieval period, Eastern European kings encouraged Jewish- or German-origin minorities to resettle with the objective to develop sparsely populated rural areas. Until the beginning of World War II, a large German minority had lived in different Eastern European countries and the Soviet Union, particularly in Poland and Romania, the Baltic States and the Volga region. The Second World War and the holocaust destroyed many multicultural communities and regions in Eastern Europe. With the beginning of the Russian campaign, Soviet citizens of German origin were deported to Siberia, and after the war resettled in the Central Asian Soviet Republics, especially to Kazakhstan. Another 14 million fled to territories which would then become the Federal Republic of Germany and the German Democratic Republic. During the Cold War, West Germany decided to encourage immigration of German minorities from communist countries. The so-called repatriates were granted German citizenship (Hensen, 2009). Until 1989, 3 million repatriates immigrated to Germany from Poland and Romania, and after the fall of the "Iron Curtain", another 1.5 million, who were then called "late repatriates", came from the former Soviet Union (Worbs, Bund, Kohls, & Babka von Gostomski, 2013).

During the 1950s, the strong economic development in Germany provoked a manpower shortage. The Federal Republic concluded some bilateral agreements on labour recruitment, starting with Italy and Spain, then with Turkey (Oltmer, Kreienbrink, & Sanz Díaz, 2012). The so-called "guest workers" were originally expected to return to their countries of origin, but the majority of them decided to stay in Germany. They were allowed to bring their families, and most became permanent residents in Germany, or German citizens.

Another large immigrant group in Germany has been asylum seekers. The status of an asylum seeker is generally defined as persecution on political or religious grounds in his country of origin. For example, during the era of the Yugoslav civil wars in the 1990s, hundreds of thousands of people sought asylum in Germany. After the breakdown of the Russian dominated Eastern Bloc, Jewish citizens were facing anti-Semitism, although there was no systematic governmental prosecution. As a sign of good will, and in order to strengthen the small Jewish community in Germany, they were granted the status of "quota refugees". More than 200,000 individuals made use of this offer.

Migrants from different countries and regions of origin differ greatly with respect to their cultural background, school qualification and religious faith. Among those with poor schooling, the poverty risk is high, and their chances of finding a job are low (Luthra, 2013; Siegert, 2008). Even within the legally defined subgroups of (late) repatriates, major differences are found. Until 1989, repatriates usually spoke German as their first language, and they belonged to the middle classes in their countries of origin. The late repatriates from the former Soviet Union, however, seem to share more similarities with migrants from the former Soviet Union who have no German ancestry than with non-migrant German citizens (Bulla, Baumann, Querengässer, Hoffmann, & Ross, 2016).

1.1. Migration and mental health

Several studies have raised concern about the mental health of migrants. Across Europe, the prevalence of common mental disorders,

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https://doi.org/10.1016/j.ijlp.2017.12.003

such as psychotic disorders, as defined in subsection F2x of the International Statistical Classification of Diseases and Related Health Problems, 10th edition (ICD 10), alcohol and drug abuse, alcohol-related disorders, anxiety and depression are several times higher than in the local population (Carta, Bernal, Hardoy, & Haro-Abad, 2005). Epidemiological studies on the German general population suggest a prevalence for psychiatric disorders at least twice as high in migrant groups as compared with non-migrant individuals (Bermejo, Mayninger, Kriston, & Härter, 2010; Glaessmer et al., 2009).

1.1.1. Migration and schizophrenia

Migration also increases the risk of being diagnosed with a schizophrenia spectrum disorder (Cantor-Graae, 2007; Cantor-Graae & Selten, 2005). A range of studies conducted over the past 60 years in England indicate that dark-skinned migrants stemming from African or Caribbean countries have a higher incidence of schizophrenia and other psychotic disorders than "white Caucasian" populations (Fearon et al., 2006; Kirkbride et al., 2008; Tortelli et al., 2015). In the Dutch city The Hague, the incidence of schizophrenia is highest with immigrants from Morocco, medium for those from Surinam and the Netherland Antilles and low for migrants from Turkey (Veling et al., 2007). In Israel, migrants from the Far East, the Caribbean region and South America had the highest incidence of schizophrenia (Werbeloff, Levine, & Rabinowitz, 2012).

1.1.2. Schizophrenia in migrants: social defeat and ethnic density

One explanation has been associated with the detrimental influences of low socioeconomic status and high social discrimination against population groups which later develop schizophrenic disorders (social defeat paradigm; Sharpley, Hutchinson, Murray, & McKenzie, 2001; Veling & Susser, 2011; Veling et al., 2007). The *social defeat paradigm* postulates a relationship between poor living conditions and other social disadvantages and neurobiological factors facilitating the development of schizophrenia (Selten & Cantor-Graae, 2005). Genetic influences are not likely to be the prime causal factor for the increased likelihood of the development of schizophrenic disorders among economically disadvantaged groups because second generation migrants are apparently at a higher risk than their parents (Selten et al., 2001). Furthermore, the incidence of psychoses is not higher in the regions from which these migrants originally came, and migrant subgroups with a high risk for psychotic disorders show a heterogeneous ethnic background (Fearon et al., 2006).

The *ethnic density effect* describes the negative correlation between the prevalence of psychotic disorders and the proportion of an ethnic group in a certain area. There is good evidence for an overall effect, but mixed results have been described when breaking the data down to different migrant groups. For example, black Caribbeans in the UK show a strong ethnic density effect, while Pakistanis do not. However, the causal influences, especially the interaction with discrimination, are not well understood (Bosqui, Hoy, & Shannon, 2014).

1.1.3. Migrants in mental health services

A large number of studies report that migrants are underrepresented in outpatient mental health services, although, again, there are differences between migrant groups. This has been shown for different populations and clinical problems: for the general population of Ontario (Grace et al., 2016), US American patients with different ethnic backgrounds and double diagnoses (Nam, Matejkowski, & Lee, 2017), young migrants who showed externalising behaviour (Malhotra et al., 2015), migrants with criminal and psychiatric histories (Lee, Matejkowski, & Han, 2015), Asian minorities in the US (Brook, Lee, Balka, Finch, & Brook, 2014; Lee, Martins, & Lee, 2015), Vietnamese migrants in Germany (Ta et al., 2015) and different migrant groups in the Netherlands (Koopmans, Uiters, Deville, & Foets, 2013). Ethnic minorities presumably have a greater risk of involuntary admission to psychiatric inpatient treatment (Grube, 2009; Mann, Fisher, & Johnson, 2014).

1.2. Socioeconomic and population characteristics of Baden-Württemberg

Baden-Württemberg is the third largest state of the Federal Republic of Germany, both in terms of geographical area and population (Staatsministerium Baden-Württemberg - Pressestelle der Landesregierung, 2017). In 2016, Baden-Württemberg reported 10,766 million inhabitants (13.2% of the total German population [n = 81.404 million]). According to the definition of the Federal Bureau of Statistics, 3.015 million inhabitants have a migration history (28.0%): 36.3% of these (n = 1.093 million) are permanent residents with foreign passports [immigrated foreigners], 21.8% (n = 0.656 million) are German citizens who have at least one parent with migration background, followed by late repatriates (n = 0.563 million; 18.7%), naturalised migrants (n = 0.398 million; 13.2%) and foreigners born in Germany (n = 0.294 million; 9.8%; Statistisches Bundesamt, 2016b). Among the 16 federal states, Bremen, Hamburg and Hessen (29.4%, 28.8%, 28.4%, respectively) have a slightly higher than average population with a migration background. The corresponding figures are lowest in the 5 East German states (about 5%). Baden-Württemberg's economy is strong, and unemployment is low; 15.2% of the German gross domestic product (2015: € 3025.90 billion) was realised there (Bundesagentur für Arbeit, 2016; Statistisches Bundesamt, 2017).

1.3. Migrants in forensic psychiatric treatment

In forensic psychiatric hospitals, migrants are overrepresented (2015: 35.6% of the Baden-Württemberg forensic inpatients). Since the 1990s, the proportion of migrants in forensic psychiatric clinics has doubled (Hoffmann, 2006). The German penal code differentiates between unlimited detention according to section 63 and the time-limited detention for addicted offenders (section 64). Unlimited detention is possible only if criminal responsibility has been ruled out and dangerousness prevails. German is the common language on the wards, and the use of German is encouraged in order to facilitate re-integration into the German society. Where possible, staff members serve as interpreters in daily routine; professional interpreters are engaged for initial assessment, and to facilitate expert opinion. Despite the high number of migrants treated in German forensic psychiatric clinics, little is known about specific subgroups that may differ greatly with respect to criminological, criminal and other person-related socio-demographic variables.

For example, Thornicroft, Davies, and Leese (1999) found that black Caribbean and African residents had an elevated risk for compulsory admissions and the use of forensic services. A Danish study conducted by Gabrielsen and Kramp (2009) showed that migrants were more likely to be detained in forensic psychiatric units. While US American and Western European migrants did not differ from Danes without migration status, immigrants from Iran, Northern Africa and Eastern Europe had a substantially elevated risk of becoming forensic patients. In comparison to native Danes, migrants from Iran were at a greater risk of being detained and treated in a forensic psychiatric facility (adjusted relative risk [AAR] = 15.4). The corresponding figures from Northern Africa and Eastern Europe are AAR = 7.9 and 5.9, respectively. Eighty-nine percent of the migrants were diagnosed with schizophrenia spectrum disorders in comparison to 81% of the native Danes. Migrants from Iran had an AAR of 13.4% for not being diagnosed with substance abuse; for Northern African patients, AAR was 7.9% and for Eastern European patients an AAR of 5.9% was reported (Gabrielsen & Kramp, 2009). Sing, Greenwood, White, and Churchill (2007) conducted a systematic review of detentions under the Mental Health Act 19. Primary studies included forensic patients detained under both the civil and the penal laws. Pooled odds ratios were calculated for "white", "black", "black-minority-ethnic" (BME) and "Asian" detainees. "Blacks" were 2.45 times more likely than "whites" to be sentenced under the forensic section (mixed legal bases 3.65). Odds ratios for BME vs. white were 2.29 (mixed: 3.12) and for Asian vs. white, 1.45