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## **Becoming and Belonging? Lived experiences of naturalization and the implementation of citizenship law in Germany and Canada**

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## 4 | The Getting and Granting of Citizenship Examining the Inequalities of Naturalization Policy Implementation involving Discretion

### 4.1 INTRODUCTION

Filiz<sup>1</sup> is 15 years old when she heads to her local Foreigners' Office hoping to clear up an issue regarding her legal status. Filiz was born in Germany and has lived and gone to school there ever since. Her parents immigrated to Germany from Turkey and both still hold Turkish citizenship – as does Filiz. When she arrives at the Foreigners' Office, she is told by the head official that her legal status lapsed 18 months ago. Filiz was supposed to extend her status, which she was unaware of as her parents hold permanent residency. Her confusion and fear are met with the official's promise that he will do everything in his power to have her deported to Turkey. 'I told him that I wanted to graduate high school and to go to university here, to study law- he said 'something' like I would never be able to do that and that since I was already disobeying the law, I would never become German' (Filiz, 2021). Since this interaction back in 2012, Filiz has become a German citizen and started studying law, but the memory has stuck with her: 'Regardless of that title issue, I always knew that I would naturalize and that I wanted to naturalize. It didn't have to be this way – now that whole thing has a *Gschmäckle*<sup>2</sup> (...) a bitter, bitter aftertaste' (Filiz, 2021). Filiz had never questioned whether she belonged in Germany; she had been born there, seen her siblings naturalize and knew that she wanted to do so as well. The rejection she felt from the head official and thus the Foreigners' Office was the first time she felt it was not just individuals that might question her belonging in Germany, but that the state did so as well.

Filiz' case demonstrates that the formal change of legal status is one thing, but seeking advice from authorities and going through the bureaucratic motions holds its own kind of tension: the interaction with street-level bureaucrats. The naturalization process denotes a major change in a person's life, as the individual becomes a fully integrated political member of the citizenry. Each naturalization holds its own unique set of circumstances and motivations as to why the process was initiated and how it unfolded (for research on motivations to naturalize in the German case see: Prümm, 2004; Weinmann

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1 All names of interviewees have been changed.

2 Swabian term deriving from the diminutive of 'Geschmack' (German for flavor/taste) denoting both a meal or food that tastes off and, figuratively, events of a dubious kind.

et al., 2012; Witte, 2018; Wunderlich, 2005). For most applicants in Germany, naturalization happens through communication and exchanges of documents and information with mainly one person: their caseworker at their local naturalization office. Focusing on this often-overlooked relationship, this study explores the impact of discretionary power and its perception by migrants on the naturalization process.

The theoretical and empirical contributions of this chapter are threefold. Firstly, it connects the concept of discretion as it is discussed in the literature on street-level bureaucracies (e.g. in Lipsky, 2010; Zacka, 2017) to its unique legal context in German administrative law (Arai-Takahashi, 2000; Jestaedt, 2016; Wendel, 2016). This added dimension of discretion and the understanding thereof by frontline workers extends previous scholarship exploring the different levels and types of discretion utilized by street-level bureaucrats (eg. Eule, 2016). Secondly, the chapter highlights the relevance of perceptions of discretionary decision-making in the discernment and assessment of procedural justice (Andreetta et al., 2022; Tyler, 2011). As long as migrants feel that discretionary power is utilized in an arbitrary manner, procedural justice is impeded and thus the legitimacy of state practices undermined. Thirdly, the article offers a unique view at the implementation of citizenship policy by utilizing data collected from interviews with both new German citizens as well as their caseworkers at the respective naturalization departments, thus adding to the scholarship examining citizenship ‘from below’ (Badenhoop, 2017, 2021; Witte, 2018).

Through the use of a bottom-up approach to analyze citizenship policy implementation, I identify where bureaucrats have to make use of their discretion, how they wield this power and how migrants perceive this process, resulting in the following key findings: (1) Caseworkers use their discretionary power not only to decide between alternative outcomes, but also to create their own guidelines for the implementation of citizenship policy. Most of these protocols are created on a departmental level while some individual caseworkers establish additional protocols for themselves. (2) Intense workloads burdening the naturalization departments lead caseworkers to pre-evaluate applications before they have been officially submitted by applicants in order to avoid the issuing of lengthy formal rejections. Some new citizens report having their applications delayed for unfair reasons by their caseworker with one street-level bureaucrat admitting to prolonging the processing of certain applications. (3) Past negative interactions with other bureaucrats from the immigration authorities prime citizenship applicants negatively, making for a potentially tension-filled relationship with their naturalization caseworkers. Ultimately, an overburdened administrative structure unable to ensure comprehensive oversight that requires front-line workers to make decisions utilizing significant discretionary power cannot guarantee procedural justice.

The following section offers a short description of the naturalization process in the German context followed by a closer examination of the concept of

discretion both as a legal concept in German administrative law and its somewhat contradictory role in the administrative reality of policy implementation. I subsequently examine both new citizens' and caseworkers' perspectives on discretion within the naturalization process. The chapter concludes with a discussion and propositions for future research.

#### 4.2 NATURALIZATION IN GERMANY

Germany is often characterized as the prime example of an 'ethnic' nation due to its citizenship policy being based exclusively on the principle of *jus sanguinis* up until the late 1990s (Miller-Idriss, 2006: 543). Preceding the broad reforms of the Citizenship and Nationality Law of 1913 and the Alien Act of 1965 in 1999, German citizenship could only be acquired based on the principle of descent (Anil, 2005). Previously, the state had openly defined itself as 'not a country of immigration' where naturalization would only be considered 'if a public interest in the naturalization exists' (Koopmans, 1999). Only the most recent coalition agreement describes Germany as a country of immigration (Bundesregierung, 2021). As of fall 2023, the German naturalization process includes proof of unrestricted right of residence; proof of habitual, lawful residence in Germany for at least eight years; proof of independent means of securing a living for one's self and one's family; proof of adequate German language skills; passing the naturalization test; one's commitment to the free democratic constitutional order of the Basic Law of the Federal Republic of Germany; the relinquishing of any other nationalities (with certain exceptions) and a fee of 255 Euro (Federal Office for Migration and Refugees, 2018). The eight years of minimum legal residence can be shortened to seven or six years through the participation in an 'integration class' and special 'integration achievements' respectively, which can range from volunteer work to exceptional achievements in one's work or education.

Germany poses an intriguing case for the study of naturalization due to its comparatively low rates of citizenship acquisition in contrast with other countries even though many migrants already fulfill the requirements for naturalization (Courtman and Schneider, 2021). The Federal Statistics Office of Germany estimates that less than 2.5 percent of those fulfilling the requirements for citizenship actually naturalize with naturalization rates differing greatly per prior nationality. Previous research has set out to explain why so many migrants are hesitant to apply for citizenship and why these factors seem to differ per nationality. Thränhardt (2017) finds that Turkish nationals hesitate to gain German citizenship since they would have to relinquish their Turkish citizenship while Weinmann et al. (2012) find that those exempted from having to give up their citizenship of origin – such as Iranians, Afghans or Syrians – show more interest in naturalization. German citizenship law functions under the principle of 'avoidance of multiple citizenship' meaning that new citizens

holding a non-EU citizenship are expected to withdraw from their citizenry of origin upon becoming German citizens. A survey study of naturalized citizens, migrants applying for citizenship and employees of the naturalization offices commissioned by the state of Rhineland-Palatinate found that the majority of nationalities exhibiting high naturalization rates were those nationalities exempted from relinquishing their first citizenship (Anschau and Vortmann, 2020). At the same time, those participants that reported having decided against naturalization cited having to give up their first citizenship as the main reason for their decision. In cases where third-country nationals chose naturalization after all, participants had a significantly higher desire to be seen and accepted as German by mainstream society compared to third-country nationals that did not choose to naturalize (ibid.). In a similar vein, Weinmann et al. (2012) found that the willingness to naturalize in participants across all nationalities increased significantly the more the participant in question presumed that they would be accepted as a German once they held the same rights as everybody else.

Next to the question of dual nationality, research studying naturalization in Germany has identified an array of factors impacting a migrant's decision to naturalize including political interests, a secure residence status, improved labor market opportunities, and an improved ability to travel for an extended time without losing their rights in Germany (Prümm, 2004; Witte, 2018; Wunderlich, 2005). One factor that has only been taken into account in a limited amount of research, is the relationship between the migrant and the street-level bureaucrat working for the immigration and/or naturalization office. Anschau and Vortmann (2020) found that the perceived treatment of migrants by street-level bureaucrats during the naturalization process had a big impact (both positively and negatively) on whether or not a migrant identified with Germany. Their perception of their caseworkers as representatives of the Federal Republic of Germany meant that any mistreatment or discriminatory action was seen as direct rejection by the state of Germany and therefore hindered the migrants' ability to identify as German.

Dornis (2001) finds that long relationships between caseworkers and clients have a positive impact on the naturalization process. How this relationship functions and how migrants perceive this relationship has not been the focus of previous studies. Caseworkers individually and as a team within their departments hold a certain amount of discretion concerning the implementation of citizenship law. Even though the application of the *Staatsangehörigkeitsgesetz* (StAG) is delegated to the *Länder* within Germany's federal system, the federal state formulates regulatory provisions, which are binding and are meant to ensure the uniform application of the law across all agencies and institutions. Regarding the StAG, the last regulatory provision was passed in 2001 and is at this point, according to Hailbronner et al. (2017), only partially practicable. As the application of the StAG requires the interpretation of many indefinite legal concepts, caseworkers rely on guidelines formulated by their state admin-

istration (which differ across the *Länder*) and consultation with colleagues at their local offices (Courtman and Schneider, 2021). These circumstances indicate that caseworkers have to use discretionary powers when handling citizenship application and might derive practices that were not explicitly intended to be developed. When evaluating whether an applicant is able to sustain themselves financially, some naturalization offices have included not only whether or not someone is receiving social benefits, but also a prognosis as to whether someone will continue to receive these benefits in the future. This part of the evaluation is not required in the legal text but has emerged as a common practice (Hofmann and Oberhäuser, 2013). These developments illustrate that the migrant-caseworker relationship deserves greater scholarly focus. The following outlines the relevance of discretion within said relationship nexus.

#### 4.3 DISCRETION AS A LEGAL TERM AND AN ADMINISTRATIVE REALITY

As this study examines the role of discretion in the implementation of naturalization policy in Germany, it is necessary to first establish discretion as a legal term in the German context as well as in administrative practice. In the public administration scholarship on street-level bureaucrats (Lipsky, 2010), discretion is often defined as involving ‘the power [a public official has] to exert choice among a range of alternatives between which the law does not discriminate’ (Zacka, 2017: 33). The literature on interactions between street-level bureaucrats (SLBs) and their clients has mainly focused on the bureaucrats, their decision-making and the ambiguities and uncertainties they have to manage (Harrits and Møller, 2014; Raaphorst, 2018; Zacka, 2017). Researchers have examined the tools and strategies used by bureaucrats to mitigate these ambivalences when implementing law such as the oral exchange of traditions and experiences between colleagues (Eule, 2016), the role of administrative guidelines (Vetters, 2019), list-making (Dorondel and Popa, 2014), and producing case files (Hull, 2003; Scheffer, 2007). The perception of discretion itself by clients is seldom at the center of studies of policy implementation, especially regarding immigration and citizenship policy (Bartels, 2013; Goodsell, 1981).

Recent studies have highlighted the interaction between the role of discretion within a bureaucracy and the sociolegal concept of procedural justice, which constitutes state clients’ perceptions of just treatment in legal procedures (Andreetta et al., 2022; Borrelli and Wyss, 2022; Nagin and Telep, 2017; Tyler, 2011). The legitimacy of state practices hinges on (non)citizens’ perception of procedural justice, which consists of feeling informed about ongoing legal procedures as well as being treated fairly (Borrelli and Wyss, 2022). According to Lipsky (2010: 15), the ‘maintenance of discretion contributes to the legitimacy of the welfare-service state’. A perception of discretionary decision-making as fair and just is thus a prerequisite for procedural justice as an abuse of said power indicates arbitrary uses of discretion that do not offer transparency into

the SLB's decision-making and in turn undermine the legitimacy of state practices overall.

However, German administrative law uniquely defines discretion – referred to as *Ermessen*, in German – as authorized to be utilized only where the law explicitly provides for it (Arai-Takahashi, 2000). German legal scholars differentiate between the 'margin of discretion' (*Ermessensspielraum*) and the 'margin of appraisal' (*Beurteilungsspielraum*), which they explicitly do not consider to be the same as discretion. According to German administrative law, discretion requires that the administrative agent or authority has a choice between two legally sound actions. Within a margin of appraisal, there is one correct choice to be made by the agent in question: The determination of indefinite legal concepts by a caseworker – such as 'sufficient proof of identity' or 'sufficient financial independence' in the context of naturalization – only has one correct outcome, which is subject to judicial supervision. Hence, as the law is written as well as in jurisprudence, discretion does not factor into the evaluation of naturalization requirements (Dornis, 2001; Wendel, 2016). Both legal and social scholars have criticized this dichotomy as too far removed from the administrative practice, which *de facto* involves discretionary decision-making by administrators (Arai-Takahashi, 2000; Dornis, 2001; Jestaedt, 2016; Vettters, 2019; Wendel, 2016).

In her analysis of the use of administrative guidelines by bureaucrats implementing immigration policy, Vettters (2019) illustrates how the decision-making processes of caseworkers can move from the 'margin of discretion' to the 'margin of appraisal' and thus to *de facto* discretion. German immigration bureaucrats used to have the ability to reject a person's application for a student visa even if they met all formal requirements. The law explicitly granted this margin of discretion. After this formulation of the law (which was the German implementation of a EU directive)<sup>3</sup>, the new legal text now dictates that a visa must be granted if all requirements are fulfilled (*ibid.*). Vettters found that bureaucrats preserved their discretionary leeway by adjusting the administrative guidelines for the assessment of whether an applicant met the formal requirements for a student visa. Applications were now rejected on the basis of not fulfilling all necessary requirements, which is subject to the margin of appraisal (Vettters, 2019). As Dornis (2001) further illustrates, not every administrative decision is taken to court either because the administrator decided in the applicant's favor or due to the difficulty and stressors of taking legal action. In this context, discretion is better understood as 'the leeway of officials in the enforcement of rules or implementation of programs' (Dubois, 2014: 39). When studying the German administrative system, it is thus essential to be aware of the simultaneous existence and non-existence of discretion and that,

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3 Case C-491/13 *Mohamed Ali Ben Alaya v Bundesrepublik Deutschland* (ECJ 10 September 2014)

as Eule (2016: 58) puts it, ‘the decision to exercise discretion itself is a discretionary practice’.

Irrespective of whether discretion functions as the law defines it, this definition is still a foundational piece of administrative training and the education of street-level bureaucrats (Wendel, 2016). This disparity between how law is written and how it functions plays into the perception of caseworkers of themselves who state that they are not utilizing discretionary power while their clients report the opposite. This contrast will be further elaborated on in the empirical section of this chapter. It is essential to keep in mind that caseworkers see themselves as working in clearly delimited spaces of discretion. Furthermore, when taking into consideration the importance of the perception of discretion by clients for state practice legitimacy, as illustrated by the scholarship on procedural justice, it becomes clear that a mismatch in understanding regarding what discretion *is* can have a broader impact on the state’s immigration apparatus.

#### 4.4 METHODOLOGY

This chapter is based on the thematic analysis of 24 semi-structured interviews conducted with 12 new German citizens, three individuals, who were still in the process of naturalizing, and nine naturalization caseworkers. The interviews took place in the fall of 2021 and spring of 2022 with 22 interviews being conducted in person in the governmental district of Cologne and two taking place as video calls via WhatsApp and Webex. The in-person interviews were conducted in various places including parks, cafes, interviewees’ homes, or their place of work – depending on the preference of the respective interviewee.

Seven of 15 new citizens were women and eight were men. Their ages ranged from 24 to 63 years old with an average age of 38 years. In comparison, the average age of all new German citizens who naturalized in 2020 was 33,2 years (Bundeszentrale für politische Bildung, 2022). 11 out of the 15 participants were third-country nationals before naturalizing, holding Azerbaijanian (2), Cameroonian, Georgian, Israeli, Serbian, Syrian (2), and Turkish citizenship respectively. The remaining EU citizens held Romanian (2) and Spanish (2)<sup>4</sup> citizenship. The interviewees were recruited by contacting the available migrant support institutions in the greater region of Cologne, calls for participants through social media networks, as well as snowballing once a couple of interviews had taken place. An average interview lasted between 60 to 80 minutes and consisted of two parts: Firstly, it chronicled the participant’s migration history starting either when and why they entered German territory

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4 One of the originally Spanish citizens also holds a UK citizenship.

or at birth if they had been born there. Secondly, and depending on how much the respective interviewee had already said on the matter, participants were asked to take the interviewer through their memories of the naturalization process.<sup>5</sup>

At the outset of this study, I had not planned to interview bureaucrats. However, throughout the interviews with new German citizens, it was apparent that their caseworkers played an important if not essential role in the naturalization process. Many interviewees repeatedly mentioned their caseworker by name. The bureaucrats interviewed were recruited through official requests with their department heads. No caseworker was told by their boss to be interviewed by me; instead, my request was circulated in each department. Interviews were conducted in the naturalization departments in Cologne (5 out of 17 possible participants), Bonn (2/5) and Heinsberg (2/2).<sup>6</sup> The interviews with street-level bureaucrats working in the naturalization offices were structured differently than those with new citizens. Similarly, caseworkers were asked to describe the naturalization process and their role in it in the first half of the interview. Through follow-up questions on some of the procedural details, caseworkers were able to elaborate on the typical trajectory of a naturalization procedure. In the second half of the interview, interviewees were handed three separate vignettes to read and to reflect on (see Table 1). These real-life, anonymized vignettes were based on interactions that respondents who had naturalized had had with caseworkers and had described to me. Sampson and Johannessen utilized real-life vignettes ‘as a way of encouraging participants to recall examples of real events and (...) to explore how commonplace some previously observed experiences were’ (2020: 60). Caseworker interviewees were invited to reflect on the vignettes and the behavior both of their colleagues as well as of the immigrants involved. One of the vignettes illustrated a discriminatory comment made by a caseworker towards one of my interviewees. Reading what all bureaucrat participants assessed as wrongful behavior enabled some caseworkers to talk about shortcomings they had either witnessed or addressed in themselves. Some were able to sympathize with their colleague’s outburst. Having vignettes that they knew were based on real interactions made it easier to more quickly get to a deeper level of conversation than would have otherwise been possible in the one to two hours of interview time.

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5 ‘Would you take me through the naturalization process as you remember it?’; in German: ‘Würden Sie mich einmal durch Ihre Erinnerungen an den Einbürgerungsprozess mitnehmen?’

6 In Cologne and Bonn, the naturalization departments share a building with the Foreigners’ Office while Heinsberg’s naturalization department is situated in the rural district’s office which also houses further departments. Generally, municipalities can choose to attach their naturalization department either to the Foreigners’ Office or the respective Registry Office.

The interviews were transcribed and coded in Atlas.ti using an inductive approach. All interviews were conducted in German. Any interview quotations in this chapter have been translated by the author.

Table 1: English translations of ‘real-life’ vignettes

| Vignette 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Vignette 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Vignette 3                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Person A came to Germany at the age of 19 and has been living here for 20 years. She holds Romanian citizenship, is married to a German and has two children, one of which was born in Germany. When she first applies for citizenship, she is told that she will have to attend an additional language course, which she feels is unnecessary. She is advised to speak to another caseworker who will evaluate her German through an interview. During the interview, the caseworker asks her whether they have any pets at home. When she starts to laugh and list off all the animals that they have on their farm, the caseworker joins her in laughing and ends the evaluation with an “Yeah, I’ve heard enough”. | Person B came to Germany at the age of 18 and has been living here for 4 years. She holds Serbian and Montenegrin citizenship and studies at a German university. After getting her student visa extended for another year, she goes to the ministry to pick up the paperwork. Her caseworker hands her the papers and just as she reaches for them, he pulls them back again and says, “You have to be very careful; you need to know what you’re doing, you do not want to take advantage of the German state”. | Person C came to Germany at the age of 22 and has been living here for 4 years. He holds Cameroonian citizenship and studies computer sciences at a German university. Before every appointment to get his visa extended, C is not sure whether he will get an extension of 6 months, 12 months or maybe 2 years - each has happened, but not in that order. He and his friends have all prepared similarly for these appointments, making sure they have enough money in their bank account and keeping their grades up. Having done a number of extension interviews, C says he still does not know what gets him a longer or a shorter extension. |

<sup>a</sup> Vignettes chosen based on their representativeness of common themes and experiences as reported by interviewees. Vignette 1: informality in coping with regulations; vignettes 2 and 3 describe moments taking place between migrants and caseworkers at the foreigners’ office and not the naturalization department and signified important dynamics for applicants that applied to the entire migration trajectory.

<sup>b</sup> Utilizing vignettes taking place in other departments allowed for distance between the caseworker-respondents and the behavior they were exposed to through the vignettes, which reduced possible defensiveness. It also meant a lower risk of interviewees identifying a direct colleague’s behavior as in many cases the bureaucrat participants were the caseworkers that had processed the new citizen participants’ applications for naturalization.

## 4.5 ANALYSIS

### 4.5.1 The Trouble with Indefinite Legal Concepts

Discretion – as laid out in previous sections – is an essential part of administrative work, of the implementation of laws and regulations. Bureaucrats are tasked with balancing the law as it was written with the individual reality and set of circumstances of the person in front of them. The ambiguities and

uncertainties involved in said task can cause their own set of pressures on street-level bureaucrats (Raaphorst, 2018). However, most of the interviewees working as naturalization caseworkers rejected the idea that their discretionary power could be an additional stressor. ‘We don’t have that much freedom of choice at all’ (SLB Fischer, 2022), one bureaucrat stated. She elaborated that there were always guidelines to follow, which prevented her from treating two identical cases differently. Her remark reflected what many of her colleagues said: At the end of the day, they were dealing with ‘cold, hard facts’ (SLB Schmidt, 2022) and that most of the time granting someone citizenship was less of a choice and more of a foregone conclusion as long as an applicant fulfilled the relevant conditions. This perspective is very much in line with how the legal text governing German citizenship acquisition is structured. Paragraph 10 of the StAG dictates that once an applicant fulfills the necessary requirements, naturalization must be granted. There is thus little to no margin of discretion as German administrative law would define it.

In instances where they were granted leeway by the law<sup>7</sup>, bureaucrats described it as adding to their enjoyment of their work with one interviewee saying that he had chosen the position for that reason, after working at a different government office for years: ‘I thought (...) you have more freedom of choice, more discretion (...) and I thought the topic of naturalization was very interesting.’ (SLB Weber). Another bureaucrat went on to say,

‘What’s fun about the job? No process is the same. If you’ve acquired a lot of knowledge, especially concerning identity verification, doctor’s certificates, everything concerning the social code (...) then you can really have a ball with it, let’s say that.’ – SLB Becker, 2022

What Mr. Becker is referring to is the interpretation of indefinite legal concepts. Indefinite legal concepts have to be concretized by front-line workers in order to determine whether a requirement for citizenship has been met. Requirements such as the residency and language conditions are clearly formulated: a certain number of years, a certain language certificate. Requirements such as a ‘verified identity’ or ‘one’s financial independence from the state’ are more difficult to concretize. This process falls within the ‘margin of appraisal’ and does not constitute discretion according to German administrative law. When evaluating whether an applicant fulfills the necessary conditions, interviewees from every naturalization office I visited reported coming together with the other caseworkers in the department to make sure everyone was following similar approaches:

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7 Paragraph 8 of the StAG constitutes the ‘discretionary naturalization’ (*Ermessenseinbürgerung*), which allows for naturalization after less than 8 years of residence under certain conditions.

‘That means we are applying the law ourselves and try to delimit the indefinite legal concept (...), to develop discretion-guiding information – and then we have to make sure that everyone on the team is prepared in a way and understands [the issue] so that everyone addresses these legal issues in the same manner’ – SLB Neumann, 2022

‘We got a new form that states, for example, if they have A or B then their identity is [verified]- or if they *don’t* have A or B, then their identity isn’t verified. (...) I always talk to [a] colleague in those moments and ask, what can we do? Should I send [the client] over to the consulate or...’ – SLB Schulz, 2022 [emphasis as made by interviewee]

‘You can’t figure that out on your own. You *always* have to talk to your colleagues. Either your colleagues or your team leader or ideally in a department meeting (...). We used to do that at least once a month. (...) Based on these meetings, we would sometimes come up with standardized provisions’ – SLB Hoffmann, 2022 [emphasis as made by interviewee]

Through these meetings, departments had established internal regulations and practices. Two departments had instituted shortcuts for applicants that did not hold the necessary language certificate but had lived in Germany for a long time and spoke fluent German during the consultations with their caseworkers. In one case, for example, these applicants would be sent to a separate department, where their language ability could be evaluated effectively without having to pay for one of the specific certificates. In one naturalization department, caseworkers agreed to only count higher language proficiency (C1 or C2 German) as ‘extraordinary integration efforts’, which can shorten the residency requirement by a year. Before establishing this rule, caseworkers had struggled to determine whether, for example, volunteering or a hobby in a group setting constituted such an effort. ‘No, that’s when you have too much discretionary leeway – what is ‘integration’ anyway?’ (SLB Hoffmann, 2022). In this case, the extreme vagueness of the legal exemption led to caseworkers establishing a departmental regulation that reduced ‘integration efforts’ to solely constitute a higher language proficiency than required for naturalization.

Most interviewees would describe departmental agreements, but one caseworker outlined that he had created his own set of questions that he used to determine whether someone met the ‘financial self-sufficiency’ requirement. When asked whether his colleagues at the department were using this question catalogue as well, he stated:

‘Now my colleagues are using the same approach as I am – I hope at least. I came up with my questions myself. They aren’t definite. This question catalogue can – will be extended’ – SLB Becker, 2022

This personalized question catalogue to determine one of the relevant indefinite legal concepts demonstrates that strategies deployed by caseworkers to cope with these concepts can be found on the departmental as well as the individual level.

Interviewees reported knowing little about other naturalization offices' daily practices and strategies. Some knew individual people who worked for a neighboring city or municipality and others remembered going to inter-departmental events pre-pandemic once a year. These results corroborate Courtman and Schneider's finding of regular deliberative processes within naturalization departments that compensate for the lack of federally issued guidelines (2021). While these responses speak to the somewhat siloed nature of the German administrative structure and to how these administrative processes are supposed to function – uniformly across (at least) departments and efficiently – they portray a different picture than that illustrated by the new citizen interviewees about their experiences with their caseworkers. In the following subsection, we will look at more individualized approaches taken by some bureaucrats and how they have impacted former applicants.

#### 4.5.2 To Process, Or Not To Process

Most of the interviews I conducted with new German citizens could be summarized by how Natasha described her interactions with the naturalization office: 'It was super easy, I gotta say. I did not expect that at all!' (2022). While naturalizations departments often share a building with the Foreigners' Office, the department is not strictly part of it and can also be situated at a registry office. Many participants reported having had bad experiences with the Foreigners' Office prior to applying for citizenship. Two female interviewees described having been refused permanent residence for what they felt were unjust reasons.

'The caseworker there said they couldn't grant me permanent residence because ... my income was not enough. Even though... they are supposed to add it up, because I'm married to my husband and she said, 'no that is excluded from your data.' (...) How am I supposed to understand that? My impression is... a lot of the time, they just do what they want to.' – Elena, 2021

Elena's case falls under the indefinite legal concept of 'sufficient financial means', which falls into the caseworkers individual margin of appraisal. However, according to the bureaucrats I interviewed, married women are always considered as sharing income with their partners and do not need to make a significant amount of money on their own. The interaction Elena experienced thus does not fit into what caseworkers describe as their regular practices. Interviewee Zahra encountered a similar situation when she and

her husband applied for permanent residency and only his application was accepted:

‘That women, she said to me– [that] I basically met all the criteria for permanent residency, I speak German, I have a work contract, all these things, pay slips. (...) everyone in the neighboring city [office] told me I fulfilled the requirements, and she then showed me some small print, some law, that said that each local administration could decide for themselves through discretion’ – Zahra, 2022

All new citizen interviewees were very aware of the power imbalance between them and their caseworker. For them, the issue was not only that the bureaucrat could decide over whether their permits were granted or extended, they were also missing the necessary information to explain why bureaucrats were deciding a certain way. In the context of procedural justice, this perceived opacity of the decision-making process indicates a lack thereof as new citizens did not feel sufficiently informed about the ongoing legal procedures (Borrelli and Wyss, 2022). As exemplified by Vignette 3, migrants would create strategies based on their own and other migrants’ experiences to cope with the fact that ultimately they felt they had little influence on how their caseworker would decide. When asked to react to the third vignette, caseworkers most often referred to the excessive amount of cases their colleagues at the Foreigners’ Office had to cope with and thus would spend less time on each evaluation, making the ‘safe’ choice of granting shorter extensions for example. One bureaucrat criticized the limited training young caseworkers were getting: ‘That’s one of these issues. A lot of young people that are now sitting at the Foreigners’ Office and have no idea what they are doing’ (SLB Fischer, 2022). Besides the Foreigners’ Offices being overwhelmed by applications and understaffed, caseworkers took issue with their colleague’s limited efforts to explain their decisions to the applicants.

‘I get the impression sometimes that clients are not being properly informed in these matters. (...) People are left in the dark a bit, I think sometimes, because it isn’t communicated ahead of time. (...) Every extension has its reasoning and everyone that would want to hear the reasoning, could hear it, if they inquired with the administration. (...) In my view (...) this process of informing [clients] is a bit inadequate.’ – SLB Schmidt, 2022

Mr. Schmidt’s statements further highlight the issue of transparency between applicants and caseworkers and thus a lack of procedural justice that takes place by withholding information – be it due to time constraints or strategically. As stated earlier, most applicants did not report feeling mistreated by their naturalization caseworker and had a positive experience in their interactions with them. Most reported having difficulty reaching their caseworker to inquire about their application, especially during the early stages of the Covid-19 pandemic that forced administrative offices to close and the still often paper-

based German bureaucratic system to go remote and digital. However, for many new citizens, the discretionary power of the naturalization caseworker did not only lie in the evaluation or general outcome of an application for citizenship, but in the civil servants' freedom to choose when they would actually process an application. Hani, who had come to Germany as a Syrian refugee 6 years prior to being interviewed and who now works as a welfare administrator, described his confusion at seeing friends and acquaintances, who all met the requirements for a certain status, get said status after vastly different waiting periods: 'Why? In my opinion, it's the people that are employed by the authorities that process the applications. (...) there should be proper oversight that the civil servants are doing their job correctly' (Hani, 2021). Calls for greater oversight were frequent in the interviews with new citizens, who felt less impacted by the requirements themselves and more by the people reviewing whether they met them:

'There is this – how do you say that [in German]; the applications end up in... a drawer?'<sup>8</sup> (...) If someone complains because their application hasn't been looked at in months, they go: 'oh you are complaining? You are not getting an answer from me!' – Hani, 2021

Most bureaucrats reported reviewing applications on a 'first come, first served' basis with exceptions being made for urgent cases, where an applicant needed citizenship before an official deadline for a government job or in the aftermath of the 2016 Brexit referendum, when many long-term British residents in Germany applied for German citizenship while they could still become dual nationals and did not have to relinquish their British citizenship. But during an interview with one of the bureaucrats, the interviewee used similar imagery to Hani to convey how he treated applications he thought should not have been submitted:

'People who have issues [fulfilling the requirements] – they know that. They generally go to a lawyer and have them represent them. (...) Well, those applications lie dormant in my drawers, where I say, 'no that doesn't work for me''. – SLB Becker, 2022

Admitting to this practice of willfully delaying the processing of an application only occurred once during the caseworker interviews but matched the experiences of several new citizens. Marian had graduated from a German-speaking university in Romania and had acquired a written statement by his employer, the Federal Agency for Technical Relief, of his services to the country, but his caseworker refused to accept his application:

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8 Here to mean 'get swept under the rug' from the German '*etwas in der Schublade verschwinden lassen*', which literally translates to 'making something disappear in a drawer'.

‘The law allows for [a two-year reduction of the residency requirement], but he didn’t want to hear that. All I got to hear was ‘well, you can submit the application’ – I work in admin, so I know my stuff – ‘feel free to submit the application, but you know yourself since you work in admin that I, the caseworker, make the decision and that will not pass my judgement.’ I asked why because it’s in the law and was told]: ‘no, I don’t do that.’” – Marian, 2021

These experiences in combination with Mr. Becker’s description of his processing approach highlight an important issue in the German naturalization process: While German administrative law generally grants three months of processing time before applicants are authorized to submit an action for failure to act (*Untätigkeitsklage*), the responsible administrative courts are just as overburdened with cases and migrants do not want to risk extending the process even further while possibly souring the relationship with their caseworker. Bureaucrats at the Foreigners’ Office, naturalization department and other parts of the administrative structure know how overburdened the entire apparatus is by the number of applications. Hence, individual cases are rarely followed up upon by supervisors. Marian felt he had no other choice than to wait out the required eight years and submit his application once his caseworker allowed for it. Hani, after waiting to hear back from his caseworker for months, submitted his naturalization application on his own hoping that would jumpstart the process. Another few months of no contact went by, and Hani finally contacted his caseworker’s supervisor hoping to get an update on his application. After a couple more weeks, Hani finally heard back from his caseworker. He had returned all of Hani’s paperwork too him stating that there was an additional document he needed and before Hani had acquired said document, he would not accept the application. In these instances, caseworkers hold a significant amount of informal discretionary power. It is up to them when an application is processed and even though they are not legally allowed to refuse an application they are still able to employ tactics to dissuade clients from submitting their applications.

Vetters’ study of the use of administrative guidelines by front-line workers illustrates how bureaucrats had shifted in strategy from rejecting visa applications that theoretically met all requirements to being stricter when evaluating whether someone met the requirements due to the former type of rejections being ruled unlawful (Vetters, 2019). In the case of the naturalization caseworkers, we see the ‘rejection’ taking place even earlier in the process before an application has even been submitted. Some caseworkers reported advising clients not to submit their applications if they thought the applicant had little chance of succeeding.

‘Naturalization- ultimately, it’s an application- and I am not allowed to tell the person, ‘You may not submit an application’. That person is of course allowed to submit the application, but I am allowed to indicate that the application will be denied.’ – SLB Weber, 2022

The practice of carefully checking applications *before* accepting them was justified by caseworkers as a consequence of their heavy workload and that the applicant would only lose money in the process if they were to pay the processing fees just to be denied. In the context of an overburdened administrative system, it makes sense that caseworkers would try to avoid the lengthy process of writing up rejections (which must hold up in court), when it is easier and more efficient for them to perform an informal check of the application before it is even submitted. This move into informality, rejecting or halting applications before it is legally even possible, grants the front-line bureaucrat a significant amount of discretion outside of the formal process itself. Most caseworkers might not misuse this discretionary power, but the experiences outlined above demonstrate that they easily could. Ultimately, this finding illustrates that an overwhelmed bureaucratic system pressures caseworkers into informal practices, which in turn offer space for arbitrary processing procedures which harm certain applicants. With informality often comes a certain opacity in procedures which hinders applicants understanding of the process and might trigger perceptions of arbitrariness, in turn undermining procedural justice and thus the legitimacy of state practices (Borrelli and Wyss, 2022).

#### 4.5.3 The Client-Caseworker Relationship

The previous sections have outlined to what extent the legal framework as well as the caseworkers' work environment impact their discretionary power and ultimately their clients. The focus of this section is on the client-caseworker relationship and how the kind of interaction affects migrants' naturalization processes. In the aforementioned case of Filiz, disrespectful treatment by the head official she had turned to for help left her feeling rejected by the German state even years after the event. Out of all the interviews I conducted for this study, she was not the only one detailing difficult experiences of the same sort that had a lasting impact. Natasha, whose interaction with an official at the Foreigners' Office served as the basis for vignette 2, described how she had always felt bad going to the immigration authorities thinking that the officials were always looking for something nefarious that she had done. Referring to the incident described in vignette 2, she said, 'that gesture, of him pulling away my papers so easily, that stayed with me, and I had more moments like that at the Foreigners' Office' (Natasha, 2022).

Natasha's vignette made for a constructive prompt when presented to the caseworkers during the interviews. The insulting remark made by the official was condemned by all interviewees, who emphasized that no civil servant should speak to a client in such a manner. The vignette did offer caseworkers the opportunity to theorize why their colleague had acted in such a manner with some expressing sympathy with their colleague. They described feeling

betrayed or hurt if applicants had lied to them or if they felt the applicant was not putting in enough effort.

‘And of course, it’s burdensome when you want to help someone and the person in front of you says, ‘no, I’m taking advantage of this, I know the law very well. (...) You can cut some [of my social assistance], but not everything. And that not everything is enough for me to get by, so I won’t get a job. I won’t do it.’ That hurts your ego of course, you know. Of course, officially [that reaction] is reprehensible, but it does hurt your ego. I get that.’ – SLB Schmidt, 2022

The client-caseworker relationship thus has an intersubjective quality to it, which in an overburdened work environment with many stressors has the potential to erupt in an interaction with the applicant. New citizens reported feeling nervous going to the immigration authorities due to prior experiences and the obvious power imbalance between them and their caseworker.

‘You go [to the Foreigners’ Office] with a certain amount of respect because you want to live in this country, you want to stay– you’re hoping that you’ll be allowed to stay. (...) this power differential that grows out of that... people sense that. And some people sit there and take advantage of their power.’ – Filiz, 2021

Caseworkers also noted that some applicants were apprehensive and would tell them about bad experiences they had with other bureaucrats. When asked to theorize why applicants were having such intimidating interactions with colleagues, interviewees mostly referred to their colleagues’ workload and the tension felt from some applicants, who, according to the bureaucrats, thought their life was hanging in the balance with each residency permit extension. When a naturalization application would be processed slowly, because additional documents had to be requested and verified, for example, then this dynamic between the overworked caseworker and stressed-out applicant could lead to misunderstandings:

‘I get the impression sometimes that people are misreading things: We are the *naturalization* office, we’re not the naturalization prevention office. – we are working towards the same goal. The naturalization office is not the adversary of the citizenship applicant. It is not my goal to reject you. It is my goal to have you naturalized.’ – SLB Schmidt, 2022 [emphasis as made by interviewee]

The interactions with clients could also be personal in a positive manner, where bureaucrats remembered being thanked for their work by former clients and valued applicants showing appreciation for their work. One bureaucrat reported still getting regular calls from former applicants that would inquire concerning friends’ issues with residency permits or the immigration authorities more generally. Her work as a naturalization caseworker had made her a trusted person to contact for many of the new citizens she had naturalized

– not only for them personally, but for their social circle. New citizens were quick to also refer to the positive interactions they had had with caseworkers, emphasizing that the negative experiences were individual cases.

Crossley (2022) highlights in his work on the agency-structure problem that social relations and interactions are fundamental to the social structure. He defines institutions such as governmental agencies as being ‘nested’ within multi-level configurations of relations between humans (Crossley, 2022: 170). In the case of the German naturalization office and more broadly the immigration authorities, we can gauge a similar formational structure: Caseworkers form relations with their clients and each interaction influences the overall relationship clients have towards the institution. It becomes clear that even few negative interactions have a lasting effect on migrants’ perception of the administration and thus impact future interactions with said institution. As exemplified by Mr. Schmidt’s quote on the misunderstandings between applicants and caseworkers, these dynamics can evolve into a vicious cycle of tensions and distrust that hinders the necessary administrative processes and thus hampers the legal integration of migrants. Viewed through the perspective of procedural justice, this dynamic perfectly demonstrates the interaction between the perception of discretionary decision-making and the legitimacy of state practices.

#### 4.6 CONCLUSION

This study of both the experiences of new citizens as well as their caseworkers offers new insights into the implementation of citizenship policy adding an essential perspective to the existing naturalization literature. Its inclusion of the legal definition of discretion in German administrative law further extends the understanding of German street-level bureaucracy by connecting legal and social scholarship on discretion (Arai-Takahashi, 2000; Eule, 2016; Jestaedt, 2016; Vetters, 2019; Wendel, 2016; Zacka, 2017). The linking of both sides of the administrative process through real-life vignettes offers a unique view of the implementation of naturalization policy in Germany, extending the still modest catalogue of scholarship on the topic by examining citizenship acquisition ‘from below’ (Badenhoop, 2017, 2021; Courtman and Schneider, 2021; Witte, 2018).

The preceding analysis offers three key findings: Firstly, caseworkers refer to departmental regulations as well as individually created guidance in order to manage the evaluation of indefinite legal concepts. This process might not be considered discretionary decision-making under German administrative law, yet it *de facto* requires the caseworkers to use discretion in their assessment. Secondly, the immense workload burdening the naturalization offices has led some caseworkers to pre-evaluate applications before they have been officially submitted in order to avoid having to write lengthy formal rejections.

In some instances, new citizens report having their applications delayed for unjust reasons by their caseworkers with one street-level bureaucrat admitting to willfully delaying the processing of certain applications. Thirdly, it is apparent that negative interactions with their caseworkers often have an overall effect on migrants' perceptions of the immigration authorities. Even those interviewees who rejected the idea that their caseworker was representative of the state felt that the administrative system was failing in its duty to supervise front-line workers. The fact that caseworkers reported feeling personally betrayed or hurt by the behavior or attitudes of their clients highlights the personal aspect of the client-caseworker relationship. An overburdened administrative structure, where comprehensive oversight is not possible and front-line workers are required to make decisions using significant discretionary power cannot guarantee procedural justice.

Aside from the differences between naturalization departments regarding the regulations concerning indefinite legal concepts, individual caseworkers have the ability to use guidelines created by themselves. Without regular communication and comparison of these kinds of guidelines with higher-level officials, it is difficult to imagine how equal treatment of each applicant can be ensured. This circumstance is exacerbated by the intense workload and tensions caseworkers are faced with while conversely their clients might be apprehensive towards them due to their past experiences with other caseworkers. A system that allows for such large amounts of discretionary leeway as outlined in the preceding analysis while also having a significant personal dimension to its client-caseworker relations inevitably creates inequalities.

The limitations of this study highlight the future research necessary to gain further understanding of the client-caseworker relationship in the context of migration policy implementation and its interaction with the discretionary powers legally and informally granted to street-level bureaucrats. Future research expanding the scope of this sample beyond the governmental district of Cologne is essential in order to gauge the extent to which different departments and individual officials develop distinctive regulations to cope with their discretionary leeway and whether practices such as the willful delay of processing certain applications are prevalent elsewhere. Conducting qualitative research based on interview data needs to account for certain issues such as social-desirability bias. In this study, the use of real-life vignettes, particularly vignette 2, proved effective in enabling bureaucrats to voice otherwise socially undesirable feelings towards their work and clients. Additional studies are necessary to further evaluate the merit of this interviewing method beyond the sample of this study.

