



“Poetry and truth” about the Immigration Law

(von der Karawane Bielefeld)

The Immigration Law (Zuwanderungsgesetz) has come into effect and it is slowly becoming obvious in practice what it really means and had always meant to people like Otto Schilly, the Interior Minister. For critical observers, it had been clear that the Immigration Law (subtitle: “Law for controlling and restricting immigration and for regulating residence and the integration of European Union citizens and foreigners”) did not have much to do with the former announcements of a liberal law. According to official statements, with the Immigration Law the Federal Republic of Germany should at last recognize that it is a country of immigration, the “chain tolerances” (Kettenduldung) should be abolished, some humanitarian aspects of the asylum law should be respected more, and for demographic reasons the immigration of workers should be allowed in higher numbers. Aside from the different single aspects that have been criticized by different NGO’s including the United Nations High Commission for Refugees (UNHCR), from the beginning on there were also fundamental criticisms from many people, to the effect that the Immigration Law is mainly based on the priority of “national interests” (Verwertbarkeitsinteressen), and that the rights of migrants and refugees do not count. The benefits of the “integration courses” only fall to someone’s lot when it is decided that he or she belongs to the “chosen ones” who are supposed to be integrated. Refugees who have had a Duldung (tolerated stay) for several years and cannot still be deported and yet do not get a residence permit, still do stay outside of these “benefits”.

The picture of the Immigration Law as a cosmopolitan law is still in a lot of people’s minds, and that is because of the continuing gloss over by the Green Party and the refusal to “nail one’s color to the mast”.

Even the Reparation Law of the Immigration Law which the Green-Red government brought into the parliamentary debates at the end of 2004 and which included some positive aspects, has been rejected by the opposition in November 2004. Finally in January 2005, the Red-Green government was not courageous enough to at least bring into force the last pathetic remnants of some positive solutions for refugees and migrants.

One of the positive aspects of the abovementioned interim regulations would have meant that for those refugees who have had the so-called “small asylum” (§51 of the Immigration Law) for more than three years, it would not have been possible to set up a “revocation proceeding” (Widerufsverfahren), but that they they would have gotten the “unlimited residence permit” (Niederlassungserlaubnis) right away. In the future every refugee asylum case that have a positive answer will be automatically reviewed after three years. There it will be tested if the recognition as a political refugee is still valid or revocable. The example of Iraq, where almost



all people who once got recognition lost it again, shows that the revocation has nothing to do with the really stable circumstances in the home country.

With regards to the positive aspects of the interim regulations, Mr. Schilly always had a different opinion and the liberal part of the Green-Red government could not impose their will. So there were negotiations with the opposition, which led to the situation where Frau Süßmuth commented with the following words the year before: she had said that the existing Immigration Law corresponds with the version that the opposition had always wanted.

In the meantime, there exist that so-called "temporary instructions for use" (vorläufige Anwendungshinweise) by the Interior Ministry that carry on the restrictive version of the law (see position of Pro-Asyl). The instructions have not been confirmed by the parliament and thus have no legal character, but restrictive foreign offices like to use them for their interpretation of the Immigration Law. It is still possible to use other interpretations, but in many cases it is a hard fight to carry them through in court. When this is done there might already be a new interim regulation that is necessary because of the need for European Union guidelines.

Very briefly, we want to describe some aspects that have become obvious in our counselling work as repressive instruments of restriction and deportation policy by degrees.

1. Since January 1, 2005, a lot of refugees with tolerated stay (Duldung) lost their work permits, resulting into many of them losing their jobs they had been employed in for several years. The background of this fact is that applications for work permits are not any more made at the Employment Office (Arbeitsamt) but at the foreign office (Ausländerbehörde). The interpretation for the public is that this was set up so that that refugees will not undergo circuitous ways for an application as they have to go to different authorities. But the fact is a lot of foreign offices in Nordrhein-Westfalia use this as an opportunity to adopt a general refusal to issue work permits in a massive way. This is possible because of the Decree on Occupation Procedure (Beschäftigungsverfahrensverordnung) that has come into effect at the same time as the Immigration Law. With this decree the foreign office can refuse to give a work permit if, in the opinion of the foreign office, the refugee is himself/herself responsible for the existence of a "deportation obstacle" (Abschiebehindernis) With this restrictive interpretation, refusals from the foreign offices are pretty easy. Nevertheless, refugees should dare and be encouraged to take legal steps against these refusals. Many foreign offices try every kind of restrictive interpretation of the Immigration Law now because there are not many legal precedents up to now.

2. Since January 1, 2005, the Implementing Decree (Durchführungsverordnung) of the Immigration Law marks another discriminatory change of the formulation in the documents of refugees with Duldung. The only documents those refugees have for identification include the following words: *"No residence permit! The owner of this document is obliged to leave the country!"* In the inner part of the document, it says: *The owner of this document does not fulfill his passport obligation. He is not allowed to work.* Practically this means another form of discrimination, and a lot of problems in everyday life, for example, passport control, looking for a job (that is still legally possible after checking with the labor market), opening of an account, etc.

3. One aspect that the advocates of the Immigration Law from the liberal side had always mentioned is the assertion that with the Immigration Law, the chain tolerances (Kettenduldung) would be abolished. According to Pro Asyl, they receive negative reports about the reality of §25(5), *(the paragraph that was meant to abolish the chain tolerances)* from almost all Länder up to now. Pro Asyl says: *"In Germany about 200,000 people have only a tolerated stay. Out of this number, about 150,000 have the tolerated stay for more than five years. The ones affected be the restrictive interpretation of paragraph 25.5 (the interpretation of the temporary instructions for use"by the Interior Ministry) are refugees with a tolerated stay from Kosovo or Afghanistan. The official argument on the possibility of a "voluntary departure from the country" or the "non-existent passport" means, for almost all refugees with tolerated stay, that they do not get the residence permit according to §25.5 AufenthG. By this interpretation of the Interior Ministry, the chain tolerance is not abolished. (Pro Asyl, Statement on the "Temporary Instructions for Use" of the Immigration Law. The foreign office or the Länder has the possibility of positive interpretation of the Immigration Law on this paragraph by arguing with the reasonableness of "voluntary departure from the country".*

4. With the Immigration Law, the number of people who fall under the the "Asylbewerberleistungsgesetz" gets bigger. To get benefits according to the Asylbewerberleistungsgesetz means to get 30 % less than ALG II (Unemployment Benefit II). For all who had to do with the issue of ALG II or who get ALG II themselves, it is obvious what people get when this amount is reduced to 30%. In addition, there are still a lot of communities like Höxter which give refugees only food coupons and a little pocket money.

5. The number of people who only get Asylbewerberleistungsgesetz is also bigger because a lot of people who got Arbeitslosenhilfe or Arbeitslosengeld before do not get it anymore because of their residence permit. Besides the discriminatory unequal

treatment there is the question of understanding the Immigration Law and the SGBII (?), if people who had worked and paid unemployment insurance for several years do not get benefits from this insurance by law.

6. As we had mentioned before, there is a regular review of the asylum recognition after three years. Not even the refugees who got recognition of §51 for more than three years on January 1, 2005 are exempt from this review and get an unlimited residence permit. Especially for heavily traumatized refugees who finally need a sense of a safe and calm place to at least assimilate their experiences, this regulation is an additional factor of insecurity. Their fear of being returned does not end only because the Ministry of Foreign Affairs decides that there is no individual danger in their countries anymore.
7. It is interesting that some of the positive parts of the Immigration Law on the section about humanitarian shelter that the Greens have always been proud of are aspects that Germany is anyhow obliged to fulfill under the European Union Guidelines soon. This basically affects the recognition of non-governmental and gender-related persecution.

Wearing Down and Deportation Policy by Degrees

The Immigration Law intends the so-called "Ausreisezentrum" for a lot of refugees with a tolerated stay, as already exist in Fürth or Bramsche. There, refugees live in a "Lager" with barbed wire, excluded from the rest of the population, and from there they are to be persuaded to "leave" the country. The isolation is meant to prevent solidarity by the population, as has already happened several times.

At the same time, we have the impression that with the Immigration Law, Hartz IV and the Decree on Occupation Procedure, there are so many means to wear down refugees. The difference from an "Ausreisezentrum" is not big. The question is not asked why so many refugees still stay even if they have to suffer these terrible conditions. For example, the UN Administration in Kosovo have said several times and for years now that a return of the Roma people is not safe, so what is the sense of making these people's life as uncomfortable as possible and refusing them every possibility for integration? The disregard of elementary human rights is a form of state racism that, unfortunately, is not seen by a lot of people because of the separation of their lives.

The reduction of the number of recognitions of asylum cases at the same time as the increase of revocations of asylum makes obvious the tendency the deportation policy takes on.