



Overview of asylum procedures in different Bundesländer

by *Anderas Kolb,*
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Putting into practise the Aliens Act (*Ausländergesetz*) and to a large extent also the Asylum Procedure Law (*Asylverfahrensgesetz*) is the responsibility of the Bundesländer. Differences can be observed, especially in the provision of social security benefits (payment in kind, food packets, coupons etc), in the integration and participation of asylum seekers and refugees, as well as in the application of the duty of residence (*Residenzpflicht*, restriction of movement during the asylum procedure). In addition, in some Länder, there are Committees for cases of hardship (*Härtefallkommission*, HFK) for rejected refugees and foreigners who are threatened with deportation/departure.

Lower Saxony:

At the beginning of the nineties, this state had a humane refugee policy with liberal permission to stay legislation where the asylum process was lengthy. It provided consultation and support state - wide for refugees who did not reside in reception centres, state wide minimum standards of accomodation in residence centres and measures for integration into work for refugees granted asylum. Since then, state wide standards for accomodation have been abolished, and municipalities are obliged to provide refugees coupons instead of cash. Further, the state experimented with the creation of "project x", a pilot scheme with the purpose of discovering the identity and providing documents for refugees whose cases have been previously concluded and are to be deported. Persons are sent to large refugee camps for investigation, from which many fled, and became "illegal".

Bremen:

No decision on work permits has been made in favour of asylum seekers who are not recognised after one year in Germany. In the opinion of the Senator of the Interior, taking up a job could be counterproductive to an immediate departure after a possible rejection of the request for asylum. Sanctuary given by the church contradicts, in the opinion of the Senators of the Interior, the principle of the state under the law. Taking young people into detention prior to deportation is not generally prohibited.

Asylum seekers are, in principle, granted payments in cash. Except for the first accomodation in the Central Reception Area, there is no common catering. Even in interim homes, they can cook for themselves. Families are accomodated in apartments as soon as possible after arrival. Children are required to attend school. Expenses for German language courses are not covered.

Mecklenburg-West Pomerania:

No general accomodation in reception centers. However, the decree of the Ministry of the Interior for decentralized accomodation (11/97, dated 18.04.97) is not binding, so that in many towns and administrative districts, asylum seekers and refugees are generally not allowed to live in alternative accomodation (duration of stay in reception centres has been up to 8 years!).

The "Guideline for the operation of reception

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Information given on these pages is taken from documents of the respective Refugees Councils.

centres and social care for the occupants" (25th Sept. 2000) and the "Order on minimum requirements on form, size and furnishings of reception centres" (6th July 2001) are exemplary, and if applied accordingly, will bring a real improvement in the living conditions of refugees.

The reintroduction of payments in cash instead of coupons, packets and Asylum Cards is being considered. Medical care is handled relatively generously.

With regard to the duty to residence, loosening of regulations is being deliberated.

Compulsory school attendance for children of refugees and asylum seekers. In addition, in different municipalities, 6 hours daily attendance at kindergarten are offered. The costs are usually covered by the youth department.

Mecklenburg-West Pomerania is the only East German Bundesland with a Committee for cases of hardship (HFK). Yet, their autonomy is quite small (e.g. less opportunities to recommend than the HFK of North Rhine-Westphalia).

Refugees from Bosnia-Herzegovina and Kosova who have already been economically and socially integrated into Germany for years can be granted a residence permit for one year. Thus, their chances of gaining a residence permit that is permanent and for humanitarian reasons, are relatively high.

Saxony-Anhalt:

Since January 1st, 2002, a pilot scheme centre for "single male persons who persistently refuse to cooperate in the obtaining of a pass replacement" (decree of the Ministry of Interior, 20th Nov. 2001) has opened, limited until 31st December, 2002. However, the new Law on Immigration (Zuwanderungsgesetz) means a continuation is most probable. Freedom of movement of these persons accommodated is restricted and payments in cash have been dropped.

Reception centres with more than 200 places have mostly been closed, although as a rule, locations outside the cities have been maintained. Structural and hygienic standards are mostly very low. In total, the living conditions can be seen as not compatible to human dignity, partly due to non compliance with the legally stipulated amount of space per person (6 square meters per person). There is no HFK. No compulsory school attendance for children of asylum seekers, but the right to attend school.

Hesse:

Generous application of the duty to residence, yet care is often applied sparingly: Discretionary

services are not granted, even compulsory services partly refused and care is reduced to a minimum.

Because one of Europe's major airports is in Frankfurt, the airport procedure, a special ruling regarding refugees who try to enter Germany by air (*Flughafenverfahren*), is particularly relevant. The asylum procedure is carried out before entry of the refugees, who remain in the extra-territorial area of the airport, i.e. in the legal sense they have not entered Germany. Some particularities of the airport procedure include the lack of obligation for the BGS (*Bundesgrenzschutz*, German Border Police), who have to take the decision on entry to ask a lawyer before and during the hearing, the particularly short statutory periods, as well as the lack of examination of obstacles to deportation as defined in parag. 53 sub-sec. 6, Aliens Act. New accommodation in the transit area of the airport and a detention centre prior to deportation, planned for 2003, manifest these previous practices.

Schleswig-Holstein:

The federal state constitution guarantees independence of the cities and administrative districts. Consequently, specialist supervision of the Aliens Authorities is not done by the Ministry of Interior, but by the respective administrative heads of the districts and cities. The superior federal state authority can in most cases only give a "recommendation" of a certain quality of administrative decisions.

Relatively liberal Aliens policy regarding deportation practise, administrative treatment of traumatized persons, release of the payments in kind principle and HFK exists since 1996.

North Rhine-Westphalia:

Through a decree of the Ministry for Interior (dated 17th July 2002), new, more humane guidelines concerning detention prior to deportation as well as rulings to avoid detention prior to deportation of young persons, pregnant women, mothers with babies, breast-feeding women and single parents have been introduced.

Appeal Committee of the federal state parliament can be applied when foreigners are threatened by deportation.

Throughout this federal state, different standards are applied with regard to the treatment of families where the parents are obliged to leave the country after a rejection of their requests for asylum, but where they have later put forward a request for asylum for an infant who has been born in Germany. Only in a few municipalities are payments in kind and coupons instead of cash. HFK only partly meets the high expectations.

What do Refugee Councils do for Refugees?

Irene Dulz, Secretary General of the Refugee Council, North Rhine-Westphalia

Refugee Councils are independent unions of refugees, asylum working groups, refugees initiatives and persons who are voluntarily, or on a full-time basis involved in the movement which has solidarity with refugees. Today, each *Bundesland* (except for the *Free Hanseatic City, Bremen*) has a Refugee Council and/or Asylum Working Group, which are in close contact with *Pro Asyl*, the working group for refugees throughout Germany, and in addition to this, there are local Refugee Councils.

In the public discussion on asylum in Germany, refugees, their destiny and their reasons for escape increasingly fade into the background, and therefore, the Refugee Councils try to allow those whose voices often remain unheard in our society to speak. They want to make the public more sensitive to their general demands regarding asylum policy and issues like deportation, detention prior to deportation, payments in kind/coupons instead of

money, illegal residency, restrictions to freedom of movement (duty of residence) and traumatization.

In co-operation with other human rights organisations and civil rights movements, lobbying work is done in committees, in church and charitable institutions, and in politics. Refugee Councils coordinate campaigns, demonstrations, press releases and petitioning, and organise events which aim to stop deportations and promote residence permits for refugees.

Refugee Councils consider themselves to be networks and forums for discussion, which create the possibility for informed exchange and transfer of information: they offer services to refugees counsellors, who are under great pressure to inform themselves of an increasing jungle of regulations, in which dispensation of justice by the administrative courts is quickly outdated and where knowledge of the situation in the refugees' countries of origin must be continuously revised and revisited.

Paragraph 53 sub-section 6 Alien Act (Ausländergesetz) “How deportation of gravely ill refugees is possible”

Lawyer Michael Gödde, speaker for the Refugees Council North Rhine-Westphalia.

Lawyer Michael Gödde, speaker for the Refugees Council, North Rhine-Westphalia (Flüchtlingsrat Nordrhein-Westfalen) reports for ESCAPE on the legal question of whether serious disease stands in the way of refugee's deportation:

"[...] A refugee who suffers from a serious disease that cannot be treated in his country of origin or whose treatment he cannot finance there, can [...] according to parag. 53 sub-sec. 6 clause 1 AuslG [Ausländergesetz, Aliens Act] be granted toleration of his further stay [...]. Yet, this possibility is essentially restricted by the effect of parag. 53 sub-sec. 6 clause 2 AuslG, according to which, dangers that "generally affect" the population, or a section of

the population in the country of origin are only taken into account (this is the interpretation of parag. 53 sub-sec. 6 clause 1 AuslG in the dispensation of justice of the administrative courts) in decisions under parag. 54 (decree of the respective State Minister of the Interior).

This means, that refugees who come from a state in which a particular disease is widely spread (e.g. AIDS in different African countries), may well be deported, because in addition to their own suffering, they have the bad luck that a great number of persons in their home country are affected by the same disease.[...]"

Lufthansa: Deportation Class

by Niels Gründel, MediaClinic

The German airline, Lufthansa has repeatedly had to justify its practice of deporting refugees for the German federal government to the opponents of the policy of deportation, passengers and deportees.

At the Lufthansa General Meeting in Cologne on June 19, 2002, there were protests in the front entrance and hall, of which the Board has declined the opportunity to comment. Counter motions to the motion to accept the board's actions were proposed by Eduard Bernhard and the umbrella organization of the Critical Shareholders.

Lawyer Gisela Seidler, from Munich, commented; "legislation does not in any way oblige the Lufthansa to transport passengers against their will". She added, "everyone who wishes to be transported by airplane has to be admitted, however, the law does not compel Lufthansa to transport persons who do not wish to fly." As a consequence, Lufthansa would be acting within the law if they refuse persons who have expressed that it is their wish *not* to fly.

Lufthansa, however, stated before the meeting: "The statement that the company only transports deportees in cases when it is legally compelled to do

so continues being valid. Lufthansa refuses to undertake deportation where there is perceptible opposition from the deportee. This is the practise Lufthansa has been applying for several years." Due to this opinion from Lufthansa, it has to be expected that the criticisms of the airlines deportations will not alter this policy.

Final Conclusions by Belén García de Vinuesa, Protection Official, UNHCR Madrid, December, 2001

The Asylum since Amsterdam (II)

Although the final instruments need to follow the Geneva Convention of 1951 and its Protocol of 1967, the Amsterdam asylum agenda contains elements that are not specifically regulated by the Convention and the Protocol. Among the unregulated are the procedural norms for refugee status decision, the asylum conditions of the displaced persons, or the regulation of other forms of protection. Nevertheless, the implementations of these norms, in practice can result in an infringement of some of the norms or principles that stem from the Geneva Convention of 1951 or other human rights international instruments.

Moreover, the Amsterdam Treaty also introduces a group of measures for immigration policy harmonisation of the Member States. The inter-relationship between asylum and immigration has been increasing during the last years. A common policy on immigration is positive and desirable, and if it is effective it will contribute to relieving the existing pressure in the asylum system in the EU. However, it must make clearly and strategically the principles and norms of international refugee

In variance to the Lufthansa position, the Romanian airline, Tarom, have resolutely withdrawn from the deporting business, stating that it no longer wants to earn money from the so-called 'deportation class'.

protection, principally, in the measure of access control to the territory and expulsion. On the contrary, the principles of the 1951 Geneva Convention could be damaged, particularly concerning the obligation of **non-refoulement** or **non-return**.

If we imagine this process as a balance, we can observe that on one hand the refugee's individual rights will stand before, during and after requesting asylum. Meanwhile, on the other hand, there are the Member States' interests in controlling the external frontiers, as well as avoiding the abuse of the asylum system. Depending on which way the weighting goes, it could be possible that national courts will be forced to rule against the European community law, if its implementation is in conflict with the States obligations inside the refugees' international rights framework. The process of the construction of an asylum procedure in the European Union will be a continuous work, and will require the constant efforts of all that represent refugees and Member States' interests, in order to reduce the imbalance.

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Italy and the boat people

If victims of drowning bled, the channel of Otranto would probably be red by now. Over and over again, refugees who try to enter Italy without visa via the Adria, pay for their dreams of a better life with drowning. Each year, around 150 persons are fished out of the water or are washed ashore onto the beaches, others disappear without any trace. The old boats capsize far too often and the captains of the speedboats, who are called "scafisti", use weapons to force the passengers to jump off when the boat is still in deep water. When the coastguard appears, the "scafisti" throw women and children into the sea in order to gain time and speed away, while the authorities are busy saving the passengers.

Only when bigger freighters arrive do the media

report. Hundreds of refugees then smile merrily into the cameras and are happy to have reached the "praised land". Normally, they are indeed treated in a quite humane way by the Italian authorities, and children even quite lovingly. After a first supply with food, given by volunteer helpers, and if necessary first aid, the newcomers are distributed throughout the refugee camps of Apulia, Calabria and Sicily. There, their names are entered onto registers. One tries, if possible, to confirm their identification details via consulates or embassies. While doing so, weeks and months pass by, until they can get official papers and a few of them, residence- and work permits.

Yet, most of them receive deportation papers.

This means they have to leave the county within a few hours, which, however, they usually do not do. They disappear into illicit work and go to where they already have friends or relatives: some in Italy, others in Northern EU-states. Unfortunately, one often reads about refugees who die in agony, shut up in transporters, without water and food, in heat with too little air.

Therefore, what does the Italian government do? On the whole, it seems to take it with mediterranean composure, or it gives a helpless impression. It unloads many of the real problems onto church and humanitarian organisations, although it is just about to tighten up the immigration laws regarding this.

Migration will certainly not be stopped by doing this, especially as reasons for escape, like poverty, oppression and wars will still exist for a long time.

United Nations: Denmark should revoke its new aliens policy

United Nations expert Committees on Human Rights urge Denmark to revoke its new aliens policy.

After a general election in Denmark in October 2001, a new right wing Government has amended the Danish Aliens Act. Now three UN expert Committees express concern about the situation in Denmark.

The *Committee on the Elimination of all forms of Discrimination Against Women (CEDAW)* regrets the introduction into new legislation of an increase in the age limit for spousal reunification from 18 years to 24 years of age. CEDAW is also concerned about amendments of the Aliens Act, concerning the right to asylum for women, and expresses concern about the situation of migrant, refugee and minority women in Denmark.

Further, the *UN Committee against torture* complained on 28 May 2002 about "6. (c) *the proposed amendment to the Alien's Act, which may imply that aliens who have been refused a residence permit leave the country immediately after the rejection of their application. If strictly applied this will frustrate the effectiveness of article 22 of the Convention.*" (Note: *Convention against torture, right to communication with the Committee against torture*)

Consequences of shielding include the multiplying of trafficking groups, higher costs for even more sophisticated methods because routes increasingly become more risky, due to the international mafia.

Through our local politicians, we must demand that our states jointly develop an extensive multilateral migration concept, as the global dimension of migration problems require an intensified cooperation by all industrial states. Some of these issues would include the increase of development aid, debt remission, opening of the EU markets and customs reliefs.

Certainly, all this costs much money, however, it would in time have positive impacts upon us all, whereas a policy of shielding and deportation costs also much money, but is in the end doomed to failure despite all the best efforts and money.

By Legal Counsellor Niels-Erik Hansen, Member of the Board of the Danish documentation and Advisory Centre on Racial Discrimination, and vice-chair of ENAR-Denmark.

Finally the *Committee on the Elimination of all forms of Racial Discrimination (CERD)* concluded that: "10. *The Committee is aware of reports of an increase in hate speech in Denmark. [...] The Committee is concerned about reports of a considerable increase in reported cases of widespread harassment of people of Arab and Muslim backgrounds since 11 September 2001. [...] The Committee is concerned about the introduction of new, more stringent asylum and refugee regulations, and encourages the State party to maintain its standards and ensure that all cases of asylum-seekers are decided on merit and without discrimination.*"

According to the United Nations, Denmark is heading in the wrong direction when it comes to the treatment of foreigners rights. The question is, how will this effect the European Union policies, when Denmark, with Presidency of the Union - is responsible for the process of adoption of new EU-directives concerning the rights of third - country nationals in the Union?

Documents quoted in the article:
CEDAW/C/2002/II/CPR.3/Add.3
CAT/C/CR/28/1
CERD/C/60/CO/5 (21 May 2002)

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Sangatte and the Schengen Frontier

The Red Cross camp where undocumented foreigners find some very basic shelter and sustenance near the French town of Sangatte has become a symbol across Europe of the consequences of reinforced border controls upon persons. According to press reports the camp shelters about 1,400 persons per night, though it is less clear how much movement there is among the residents. Popular wisdom has it that the Sangatte-Camp, which is close to the entrance to the Channel Tunnel leading to the UK, exists because undocumented migrants are seeking to get to the UK. According to this line of reasoning, because of the draw factors in the UK for asylum seekers, these people do not want to stay in France but wish to continue on to the UK and try their chances there. Various arguments about the generosity of welfare benefits, identity cards and the lack of them, and the possibility of working irregularly are all put forward as reasons for this. None of these are convincing when a comparison of access to benefits or work, or the activity of the black market in labour is compared between continental countries within the Schengen border control free area and the UK.

So why are these undocumented foreigners at Sangatte? According to the researcher who has been studying the phenomenon for the Red Cross, there seem to be a wide variety of factors which have more to do with how people end up in Sangatte than a pre-formed desire to move to the UK. However, rather than examining the motivations of the people at Sangatte it may be more important to look at the reason why Sangatte exists in the EU. It is the result of the UK's refusal to lift controls on persons crossing internal EU frontiers which was first required by the EC Treaty to be completed by 31 December 1992. There is no Sangatte between France and Germany or France and Italy. No Sangatte has been created between the Netherlands and Belgium or Spain and Portugal. It is a phenomenon of a type of frontier control on movement of persons which no longer corresponds to the norm within the European Union. Even as regards asylum seekers, the subject of substantial concern in the Union, as UNHCR pointed out in its press release of 30 May 2002, in 2001 there were just over half the number of asylum seekers in the European Union that there had been ten years previously. Clearly, abolishing intra Member State border controls in 1995 did not have the great draw

effects which brought more asylum seekers to the Union. However maintaining the anachronistic border control mechanism between the UK and France has had the effect of creating a bottleneck, and if the Red Cross researcher is correct, that bottleneck then provides the environment within which a demand for movement onwards towards the UK is created.

There is a further effect of Sangatte which needs to be taken into account. By creating a place where more than a thousand undocumented foreigners are waiting, apparently, to find a way to go to the UK, the perception of the purpose of a border is transformed from one where people with rights cross back and forth on a daily basis to one where there is a threat of virtually military amplitude at the border. The protection of the border becomes defence of the realm. This perception of the border is unhelpful to the integration of Europe. It draws on ancient perspectives of sovereignty which no longer assist in the maintenance of peace and prosperity in Europe. Sangatte is the physical evidence of the failure of the internal market and failure of commitment, at least of the UK, to the European project.

The French and British Governments have now finally reached agreement on the closure of the Sangatte camp in 2004. What is less clear is what will happen to the people who are there or who would be there in 2004. The problem of Sangatte cannot be resolved by refusing to provide shelter and housing for persons in need, whether that be in the actual place of Sangatte or anywhere else at the edge of the EU's external border. The proposal for a Directive on the reception of asylum seekers, if adopted in a sufficiently strong form so as to provide a real mechanism for ensuring the shelter and support of asylum seekers, would go a substantial way towards dealing with the problem. The central issue is the humane treatment of individuals caught between worlds who are at risk of persecution or inhuman or degrading treatment in their countries of origin. If this issue is not resolved the phenomenon of Sangatte will reoccur again and again belying the claims of the EU and its Member States of their commitment to the protection of fundamental human rights.

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