

## **Integration by Law – a possible way?**

*by Katharina Allendorf – translation by Anna Hampel*

It is the third big reform of German asylum law within the last ten months – this kind of speed has not been seen before in other fields of law. On the 6<sup>th</sup> of August 2016 the new integration act (Integrationsgesetz) was put into force. For the most part, it is questionable whether it will really contribute to integration. It influences several fields of law: for example the residence act (Aufenthaltsgesetz), asylum act (Asylgesetz), the Employment Ordinance (Beschäftigungsverordnung) and the act about benefits for asylum seekers (Asylbewerberleistungsgesetz). The following article explains the most important changes.

### **The obligation to reside in a special area (Wohnsitzauflage) - §12 a AufenthG (Aufenthaltsgesetz)**

Everybody who gets a protection status (refugee, subsidiary protection or another humanitarian residence status) is now obligated to take residence in the federal state where he/she asked for asylum. This rule applies for the duration of three years beginning with the date of recognition. Whoever wants to move to another federal state before this three years period is over has to prove that he/she will start/take up a job with at least 15 hours per week at the place he/she wants to move to. The income of the job has to be at least as high as the monthly average requirement (monatliches durchschnittliches Einkommen) as it is defined in §§ 20 und 22 of the Social Security Code (SGB II). The commencement of studies or an apprenticeship (Ausbildung) entitles to move before the three years period as well. If somebody starts his/her studies or apprenticeship in another federal state he/she can also move before the three years period.

It is up to the federal states to issue further rulings about allocation inside the federal state's area. The Ministry of the Interior in Mecklenburg-Vorpommern did not make use of this opportunity until now. But nevertheless, it already has effects/consequences: It is probably out of a lack of assurance, clear laws or other reasons that, already now, Jobcenters in several cities refuse to permit the move to another town/city (inside the federal state). In the eyes of the Flüchtlingsrat Mecklenburg-Vorpommern this behavior is – at this moment in time – arbitrary and therefore illegal. A future ruling in Mecklenburg-Vorpommern will probably protect Rostock and Schwerin where living space is running short. Although, these cities offer much more integration courses and support structures than the rest of the country.

This development imposes a drastic restriction on the people's freedom of movement which is, after all, a fundamental right which is also fixed in the 1951 Refugee Convention and in the European Union Directives. The regulation will rather hinder integration than conduce to it because people will not be able to move easily to the place where they see good perspectives for the future and support networks for themselves and their families.

### **Refugee integration measures (Flüchtlingsintegrationsmaßnahmen) - §5a AsylbLG (Asylbewerberleistungsgesetz)**

Asylum seekers can now be obliged to participate in so called Refugee Integration Measures (Flüchtlingsintegrationsmaßnahmen) during their asylum proceedings. For that, the national Ministry of Labour creates around 100.000 *low-threshold work programs/measures* (niedrigschwellige

Arbeitsmaßnahmen). This will mainly affect people whose asylum proceedings will probably take a lot of time. They can be obliged to take part in the measures. If they do not participate their benefits may be cut. The job opportunities may be offered by and inside the camp or by external state, communal or charitable corporations (externe Flüchtlingsintegrationsmaßnahmen). The aim is to introduce refugees to the job market and recognize their skills. People from so called safe countries of origin (sichere Herkunftsländer) are not allowed to participate in the integration/work measures. These integration measures were created in addition to the work possibilities (Arbeitsmöglichkeiten) that already exist in the camps (§5 AsylG). The hourly wage was reduced from 1,05€ to 0,80€.

It is not clear yet how these measures will be put in practice. It may happen that precarious employments will be created in the beginning, and that they will not be transformed into long-lasting employments. In addition to that, the measures create another opportunity for the authorities to punish people if they do not take part in the measure: Furthermore, the minimum living wage (Existenzminimum) may be shortened if somebody does not fulfil his/her obligation to take part in an integration course (Integrationskurs).

### **Priority examination (Vorrangprüfung) - §32 BschV (Beschäftigungsverordnung)**

The priority examination (Vorrangprüfung) was cancelled in most of Germany's districts. Priority examination (Vorrangprüfung) is carried out by the authority for foreigners (Ausländerbehörde) or the Employment Agency (Bundesagentur für Arbeit) when an asylum seeker or a person who is temporarily suspended of deportation (Duldung) who is in Germany for less than 15 months wants to start an employment. The authorities check whether a German person or a person with residence permission would be more qualified for the job. Only after a negative result of this examination the asylum seeker can start the employment. This procedure is a bureaucratic obstacle, also for employers. Therefore, it is very positive that this examination will be omitted in many sectors and regions.

Unfortunately, the priority examination (Vorrangprüfung) will not be omitted in Mecklenburg-Vorpommern. The authorities are going to continue the examinations because the employment agency (Arbeitsagentur) considered the unemployment rate in the federal state as too high.

### **Settlement Permit (Niederlassungserlaubnis) - §§9 und 26 AufenthG (Aufenthaltsgesetz)**

The Niederlassungserlaubnis is the first unlimited residence title refugees can ask for. Until recently, people who were recognized as refugees (Flüchtlingseigenschaft, according to § 3 AsylG) could ask for that title already after three years. Now, this possibility depends on integration achievements (Integrationsleistungen) . Only people who know and speak German very well and earn enough money to cover their own livelihood will profit from that ruling. Whoever does not know German well enough or does not earn enough money for his/her livelihood independently after three years, can ask for the settlement permit only after five years.

This new rule is another aspect that will let people live in an uncertain situation. A lot of people need the certainty that they can stay for a long time in order to make plans for the future, learn the language fast and to settle in their new environment. The new ruling will just cause even more pressure.

### **Exceptional permission to remain for apprenticeship (Duldung zur Ausbildung) - §§ 60 Abs.2 Satz 4, 18a Abs.1a AufenthG (Aufenthaltsgesetz)**

A very positive new ruling determines that people can receive a *Duldung* for the whole duration of their apprenticeship (Berufsausbildung). This will give them and their employers certainty. Until recently, the *Duldung* had to be extended every few months or even weeks. If somebody stops his/her apprenticeship prematurely he/she *will get one second chance (but this is a one-time opportunity with no exceptions)* and receive a *Duldung* for six months in order to find a new apprenticing company. If they conclude a job contract after the apprenticeship they will get a residence permission for two additional years.

In general, this change is positive. Unfortunately, there is a drawback: Employers are obliged under penalty of fines to report to the authorities immediately when a refugee decides to stop the apprenticeship. This can make a trustful employment relationship difficult.

### **Further Changes**

Beside the changes that were described until this point there are several more changings. For example, other authorities than the federal office for migration and refugees (Bundesamt für Migration und Flüchtlinge/BAMF) will be allowed to make the interviews about people's reasons for escaping their countries. By that, the German authorities want to be prepared for situations in which a lot of people ask for asylum at the same time, like in late summer 2015. For the same reason, the federal states have to retain first reception facilities (Erstaufnahmeeinrichtungen, like Horst or Stern-Buchholz in Mecklenburg-Vorpommern) with at least 1.000 places (until now the minimum was 500). Camps with such enormous capacities cannot pay a lot of regard to the personal needs of asylum seekers. In Mecklenburg-Vorpommern these facilities are mostly located in very remote areas with nearly no public transport connections to civilization. This isolation leads to frustration and conflicts in the camps.

All in all, only a few of the new law's changes will really help to integrate – and if so, they are connected with pressure and sanctions. Unfortunately, this obscures the reality in which a lot of people are willing to integrate but places at language and integration courses are lacking. The high point of that *injustice* is the requirement to reside in a certain area (Wohnsitzauflage) whose consequences remain to be seen in Mecklenburg-Vorpommern.