

## ONE MILLION ASYLUM SEEKERS IN GERMANY (2015/16)

### *The Role of the Civil Society in their Education and Training*

Ingo RICHTER

President of Irmgard Coninx Foundation)

#### **1. Introduction**

In the first days of September 2015, approximately 3,000 refugees were stranded here in Budapest at the railway station waiting for the chance to get to Austria or Germany. The German Chancellor, Angela Merkel, made a lonely decision, to let them in. She decided to admit them into Germany and have them registered. Although, according to the Dublin regulations of the EU, the registration had to be done here in Hungary, or elsewhere, prior to entering the EU.

We all know what happened next: The decision of Chancellor Merkel was understood as an invitation to come to Germany. In the Balkans, in Syria, in the other Arabic states and in North Africa, they believed they would be welcomed in Germany. Meanwhile, the hauler gangs made them believe this too and profited from it. From September 2015 to August 2016, more than 1 million people arrived in Germany and asked for asylum or recognition as a refugee of war.

They were there and had to be registered, fed, housed, cared for, distributed, transported, etc., and their applications for asylum had to be processed. Nobody was prepared for that. And then, Frau Merkel made the famous statement: “Wir schaffen das” – “We will manage.”

The famous and effective German administration was not prepared to manage this, and without the massive intervention of the German Civil Society organizations, the problem would not have been solved.

As we talk here about the role of the Civil Society for the awareness, advocacy and accountability of the Right to Education, I will report about the German experience in the refugee crisis last year.

Let me begin with some personal experiences in Berlin, where I live. Here are some snap shots:

1. Our son, a journalist, lives with his family – three little daughters – in downtown Berlin. In the first days of September, when the refugees arrived, they had to wait for hours in long lines to get registered. So, where were they to sleep? Neighbours were asked to give them a bed for a night. My son and his family did. Twice, late at night, after midnight, some tired young refugees came, had some food, and slept on mattresses for a couple of hours before they left to cue up again.
2. Our neighbour, a professor of education, some 100 kilos of weight, put together some of his old suits and coats and brought them to the clothing store for refugees. But, the mostly young refugees, were too slender for those clothes.
3. A friend of ours, a member of the green party, who organized the help for refugees in Berlin, asked for 200 lunch boxes and some skateboards for the kids. So, we bought 200 plastic lunch boxes for 1€ each and some used skateboards and brought them to the school for refugees.
4. Another friend, a former teacher, had taught a course “German for Foreigners” to American students at the university for many years. She wanted to teach German to the refugees at a school for adults where there was an urgent demand for teachers. But, she was not hired by the administration who admitted only those teachers who completed a three-week special training for adult language learning in Würzburg.
5. My wife and I wanted to “adopt” – so to speak – a family with children in order to help them to get through the registration process. No, such kind of so called “adoption” or “sponsorship” was allowed by law. This could only be done informally.
6. There was the case of another friend who runs a small factory for marmalade production in the countryside. She employs 25 seasonal workers from Poland. Last autumn, she asked 25 asylum seekers in a nearby home to help her. The mayor refused because they had no working permit. She just said: “I don’t care.”
7. Another woman, in the South German countryside, where unemployment is very low, managed to find jobs for 19 refugees who lived in a nearby shelter. These refugees had nothing to do. She just called employers again and again until they resigned and employed everybody. The last one, a 30 year old computer engineer from Nigeria, a Muslim, took a job as an apprentice with a butcher where he produces pork sausages.
8. I, myself, tried to become a legal guardian for a couple of unaccompanied young refugees who could not ask for asylum themselves because they were minors. Although, I am a law professor who has taught family law for years, I was not permitted to without a special training for legal guardians, and the money for that training had run out.

I could go on with these kind of stories for hours, but I will not. They show that the German Civil Society was, in fact, able to create a friendly climate, a “Willkommenskultur” as we call it, to welcome more than one million refugees in

only one year. It was a challenge and nobody thought that the German Civil Society would be able to do that. There were some bureaucratic barriers, and there was some local resistance too, but finally, the Civil Society succeeded and overcame both the resistance and the bureaucratic barriers.

Nevertheless, as you will have read in the papers, there were demonstrations against the refugees and against Frau Merkel. A new anti-refugee movement was founded and it was very successful. A right wing anti-European political party turned against the Chancellor's refugee politics and collected up to 15% of the vote. Asylum homes were set on fire and Neo-Nazi gangs and refugee groups fought in the streets at some places. There was a growing security and criminal problem, and, yes, some of the refugees turned out to be terrorists sent by the Islamic State.

The society was split, and nobody knew whether it would become a wound in the society which cannot be healed. Only time and integration will heal that wound, and integration means education, vocational training and jobs. Therefore, I will now talk in a more systematic way on the function of the Civil Society in providing education, training and jobs for the refugees. I will follow our usual 3 A – scheme of awareness, advocacy and accountability.

## **2. Awareness of the Civil Society for the right to education of refugees.**

*Thesis: Within the German Civil Society, there is a high awareness for the fact that education and training are absolutely necessary for the integration of the refugees into the German society and that this is in the interest of the society, but, even Civil Society actors are not aware of the fact that the refugees have a right to education and training.*

### **2.1. Information**

The information level of the German public on the refugee problem is very high. For at least six months, the refugee numbers were top news. And, when Angela Merkel came under attack this spring, the refugee problem again was in the news. The media ran front stories about demonstrations, about local conflicts over the housing of the refugees, and about the sexual assaults on German girls as in Cologne on New Year's Eve. The administration regularly issues the relevant data about the arrivals of refugees and the processing of their asylum applications. Big Civil Society organizations, like the welfare organizations, distribute information about the so called refugee crisis too. One could say that there is even too much information on the refugee problem. But, the information is targeted at the social cohesion, at the upcoming social conflicts and at the possible consequences for the political system. There is no information on the fact that the refugees have a right to education in Germany and that this right is guaranteed by international law.

## 2.2. Communication

All over Germany last winter, the refugee crisis was the main party talk. Everybody gave his or her opinion. The social networks were full of divergent attitudes and, if somebody came up with a particular view, whether in favor or not for Frau Merkel's refugee policy, a "shit storm" came over him or her with hundreds and thousands of tweets leaving the author completely helpless. Journalists and politicians particularly came under attack in the networks. It was a communication of the deaf. Nobody listened anymore to what the other had to say. The right of speech does not imply the duty to listen. Communication about the right to education and training for refugees is therefore absolutely necessary. It must be made clear that the right to education under international law is a right and not a privilege granted in the interest of the society. Particularly, the lawyers must speak up and explain the international law. Therefore, this spring our journal "Youth and Education Law" (Recht der Jugend und des Bildungswesens) organized a conference for lawyers and administrators in order to facilitate the communication between them on the legal aspects of the refugee problems in education.

## 2.3. Documentation

The existing information on the refugees and the asylum seekers must be documented. Such a documentation can be a source for further information and communication. On the internet, you will find a lot of information on asylum laws and on the procedures, and it is very complicated to sort them out, even for lawyers like me. Unfortunately, the legal regulations on education and training are not well documented. Although, compared to the immigration and asylum laws, they are quite simple. Therefore, we will document the papers of the conference which I mentioned above in our journal.

## 2.4. Institutionalization

Germany Civil Society is well organized. The freedom of association as in article 9 I of our constitution guarantees the founding and funding as well as the activities of the associations. Therefore, we have a lot of NGOs which articulate private and public interests. The rights of the religious associations (art. 4) and of the trade unions (art. 9 III) to act as NGOs are protected as well. They all are very active in public life, but they do not have standing in court litigation, except for the environmental NGOs. And, we have NGOs that particularly fight for the rights of migrants and asylum seekers, as e.g. a NGO called "Pro Asyl" and others. However, there is no NGO which has the right to education and training of refugees as a focus. Therefore, it is time to found and fund an NGO under the name of "Refugees' Right to Education." On the European level, this could be a task for ELA.

### **3. Civil Society Advocacy for the Right to Education and Training of Refugees.**

*Thesis: The right to education as a fundamental right is not laid down in the German Constitution, although the constitution can be interpreted in the sense that there is a fundamental right to education. As Germany is a federal state, the right to education has been granted in the state school laws. The Civil Society should fight for the Constitutionalization of the right to education as a fundamental right on the federal level.*

*Federal integration law.* In order to cope with the refugee problem this summer – that is one year after the beginning of the massive immigration wave – the federal parliament passed the new integration law. This does not mention the right to education for refugees. As the federation has no say in school education, the integration law only regulates labor market problems. It namely asks all refugees to participate in: an integration course of approximately 700 hours, 100 hours of general information, 600 hours German language course that is nearly half a year. In addition, it asks the refugees to participate in community work, called “Flüchtlingsintegrationsmaßnahmen” if the local communities provide for such work, but education and training are not included in this. It also supports the vocational training of apprentices, if the refugees fulfill the training conditions and find a trainee position (333€ per month) or a one year vocational preparation course (310€ per month).

Civil Society organizations must advocate for the implementation of the right to education and training on the federal level, particularly for the access of refugees to vocational training, and for the additional education and training within the community work programs.

#### **3.1. State School Law**

Children under 6 years of age in Germany have the right to preschool education and compulsory schooling begins at age 6. According to international law, to go to school is a human right, not only for nationals, but also for foreigners beginning the first day of their stay in the country. There is no waiting period. Nevertheless, fourteen of the German states provide for schooling of refugee children only after six months and two states after three months. The reason given is the uncertainty of residence. Indeed, it takes a couple of weeks to distribute the refugees in the country and to assign permanent homes to them. But, this is no reason to deny the right to education to the children. We must realize that thousands of young men, 14 -18 years of age, live in camps for six months just doing nothing! Civil Society organizations must insist on the fulfillment of the state obligation to provide for schooling beginning the very first day refugees and their children are in the country. (When I was a refugee myself from Pomerania to Lower Saxony in the spring of 1945, I had to go to school as a first grader during our three-week temporary stay in a Saxonian town which every day was bombed by the allied forces.)

After the waiting period, the refugee children have to attend classes which euphemistically are called “Welcome Classes.” This means, as long as they do not

know enough German to follow the instruction in regular classes, they are segregated in order to properly learn German. In Berlin, e.g. there are 530 welcome classes with nearly 6,000 children. When they know enough German, these kids should go to the regular classes. But, who knows when? And, one can doubt that segregation is better for language learning than integration. In these classes, there are refugee children from many countries of the world together who do not meet their German counterparts, and that is not a good condition for integration. The Civil Society organizations should keep an eye on these segregated classes and promote the transfer of the children into the regular classes.

### 3.2. Higher Education Law

In German constitutional law, there is a right of access to the university which can be restricted for qualification reasons and exceptionally also for capacity reasons. But, it is the right of equal access, and therefore, this right is also a right of the refugees, if they fulfill the study requirements. And there is also art. 13 al.2 c of the ICESCR which asks the states to make higher education accessible to everybody on an equal basis, particularly free of tuition. In Germany, it is up to the universities to decide on the access of refugees to the universities. They did so at once last autumn, granting the status of the so called “guest students” to the refugees who fulfilled the requirements, and this was done before their applications for asylum were decided upon. As guest students, the refugees are entitled to the German study grants. I do not have any data on the numbers of guest students and not of the refugees who were registered as regular students. The Civil Society organizations, particularly the university administration and the students’ unions, should report on this.

### 3.3. Lobbying

There are two big NGOs which try to promote the interest in social welfare and in children’s rights. One is called “Deutscher Verein für öffentliche und private Fürsorge” founded more than 130 years ago at the times of the “Kaiser” which is an interesting organization insofar as it tries to lobby for private as well as for the public interest in welfare. This is in fact an organization of the local communities and the so called “Big Five” and these are the Protestant Church, the Catholic Church, the Jewish Community, the labour unions and a “mixed club” of welfare organizations. The Muslim welfare organizations were not included. The second organization is the so-called “National Coalition for the Rights of the Child” founded after the ratification of the UN Convention of the Rights of the Child (CRC). Both organizations should try to promote the right to education and training by lobbying for the implementation of this right. Particularly, the “National Coalition” must have an interest in this subject because the German handling of the right to education as of art. 28 of the CRC will be under review of the UN Children’s Commission shortly.

### 3.4. Litigation

To my knowledge, up to now, there are no cases. German courts until now did not hand down decisions on the right to education and training of refugees, and to my knowledge, the German administration has not been sued because of the three to six month waiting period. Also, the “Welcome Classes” and the segregation of children on the basis of their language competencies have not come under legal attack. The Civil Society organizations should try to make a case and bring it to court, whether it is because of the illegal waiting period or the problematic segregation in “Welcome Classes.” Then, the administrative courts will have to decide on the right to education and training of refugees or transfer the case to the German Constitutional Court or the European Court for Human Rights. I tried to put together a dossier, but I could not find an NGO to help me to build a suitable case.

## 4. Accountability for the Right to Education of Refugees.

*Thesis: Accountability becomes a big problem when public services are outsourced under very difficult conditions such as the refugee crisis last year. Nevertheless, the Civil Society has a right and a duty to hold public as well as private organizations accountable for the fulfillment of the right to education and training.*

### 4.1. National Reporting

The refugees in Germany are registered by the local administration, e.g. the local communities, where they arrive. Then, they are distributed to the various states according to the population of the states. Their applications for asylum or recognition as refugees of war are sent to the Federal Migration Agency (Bundesamt für Migration und Flüchtlinge – BAMF). In case of recognition, a residence is assigned to the refugees; they now have a right to stay there for a limited time and they receive a work permit. Basically, they have the freedom of movement. In the case of rejection of the asylum, the refugees should be deported to their country of origin, but mostly this is not the case because they get the so called secondary protection under European law. In the case of rejection, the asylum seeker can sue the government and many of them do so, with the help of Civil Society lawyers. The BAMF, the federal migration agency, reports regularly on its decisions; therefore, the information is very good.

The local communities, which are responsible for that housing and the social aid to refugees, mostly outsource their duties to private agencies, because they do not have the administrative means to fulfill these themselves. In this case, there is a great variety of contractors, e.g. charities, welfare organizations as well as private profit-oriented businesses. In this case, reporting and control very often are deficient, and Civil Society organizations have to take over the control and ask for accountability. In fact, up to now, there is no effective control and accountability. As the NGOs themselves can be contractors, they monitor themselves, so to speak.

The state educational administration is responsible for the accountability in the case of the right to education as far as the schools are concerned. They fulfill their

duty and do report regularly but very often they lack the data because the collection of the relevant data is in the hand of the schools and the local communities.

The federal labor administration is accountable for the vocational training, particularly for the integration and language courses. These, too, are outsourced and difficult to control for the same reasons as in the case of the local communities.

As we have so many different agencies on the federal, the state and the local level, not regarding the welfare organizations and the private business, Germany urgently needs a central reporting system for the refugee politics and particularly the right to education and training. However, it does not exist. Therefore, seven foundations founded an expert organization (Sachverständigenrat Deutscher Stiftungen für Integration und Migration) in order to organize the reporting. Their bi-annual report is the best source for the accountability of the right to education in Germany.

#### 4.2. International reporting

The German government, under the CRC, has to report every five years to the Secretary General of the United Nations on the implementation of the right to education laid down in art. 28 of the CRC as well as on all the other children's rights. It did so for the last time in 2010, long before the present refugee crisis, and the concluding observations of the Children's Commission date from the year 2012. They cannot be very effective for the implementation of the right to education in the present refugee crisis. Nevertheless, the Civil Society organizations, particularly the National Coalition for the Rights of the Child, are prepared to deliver the so called "shadow report" which will be taken into account by the children's commission when they report on Germany for the next time. The same is true for the Human Rights Council of the United Nations which is responsible for the implementation of the ICCPR and the ICESCR. Their reporting comes too late to be effective, not to speak about the other problems which arise within these international bodies.

#### 4.3. Evaluation

One million refugees within one year, 25% under age 18, which is school age. This was, and still is, an extraordinary challenge for the German Civil Society. 250,000 students had to be integrated into the school system, and many thousands in the preschool system and Higher Education and Vocational Training. They all have the right to education and training under international law and this right must be fulfilled by the federation and the states. It is still too early to ask for an evaluation, to ask and answer the question if the German Civil Society did fulfill this right and how it coped with the enormous difficulties. Now, it is time to discuss the question of whether a European Association, like ELA, should be prepared to take over such a task if it is asked to do so by the German government. It would be worthwhile!