Joint Opinion

on the legislation to implement EU directives on residence and asylum law

- **Amnesty International (German section)**
- **Arbeiterwohlfahrt Bundesverband e.V.**
- **Arbeitsgemeinschaft Ausländer- und Asylrecht im Deutschen AnwaltVerein**
- **Caritas Germany**
- **Deutscher Paritätischer Wohlfahrtsverband**
- **The Social Service agency of the Evangelical Church in Germany**
- **The legal advisor conference of the lawyers working with the welfare associations and the UN High Commission for Refugees**
- **Neue Richtervereinigung (new association of judges)**
- **PRO ASYL, national working group for refugees**

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DIE RECHTS-BERATER-KONFERENZ

In this Joint Opinion, refugee and human rights organisations, welfare associations, and associations of judges and lawyers express opposition to the specific method of the German Federal Government when transposing directives under European law into provisions of the immigration act (*Zuwanderungsgesetz*). While the European Union directives aim to fundamentally improve refugee protection, the present Act may well achieve the opposite effect.

The Act contains a host of legal amendments with no connection to community law, e.g. the planned tightening of German nationality law. At the same time, community-law obligations are inadequately and incompletely transposed. The associations view the proposed transposition of the EU directives as at best piecemeal and at worst counterproductive. Germany does not do justice to its obligations under community law in the field of refugee law. The Act is backward-looking, a barrier to integration and not in the interests of refugees.

Last year the associations issuing this Opinion repeatedly criticised the flaws of the immigration law and called for the abolition of repeated renewal of "tolerations" (*Kettenduldungen*), a statutory settlement of the right to remain for those persons in this insecure position, and other improvements. These criticisms and demands remain largely unresolved and the parties to this Opinion reiterate their call to the German government to deal satisfactorily with these issues. – The intention of this Joint Opinion, however, is to clearly set out the steps necessary to implement European law. The associations call upon the German Federal Parliament to adhere more closely to community law in transposing the EU directives. To this end we request the German Legislature to take the following demands into account:

1. Council Directive 2004/83/EC (qualification directive) must be transposed into a separate national law.

2 The German procedural bar (*Sperrwirkung*) must not be employed in deciding on the subsidiary protective status under European law. The exact wording of Article 15(c) Council Directive 2004/83/EC must be transposed into national law.

3. The legal claim of those persons entitled to subsidiary protection to be granted a residence permit must be clearly established.

4. Individuals must have access to an effective remedy in the application of Council Regulation 343/2003/EC (Dublin II).

5. The provisions of Council Directive 2003/9/EC (reception directive) on the medical care of asylum seekers and the specific care requirements of people with special needs must be included in the Asylum Seeker Benefits Law.

6. Asylum applications by persons who have suffered torture, rape or other serious acts of violence must not be dealt with in the airport procedure. Instead they must first be granted necessary medical treatment inside the country (Article 20 Council Directive 2003/9/EC).

7. The regulations on fines and punishments of § 85 No. 2, § 86 AsylVfG must be revoked.

8. The community-law provisions on the "well-being of the child" must be implemented fully and correctly.

9. The entry of spouses must not be predicated on a language test.

Explanatory remarks

1. Council Directive 2004/83/EC (qualification directive) must be transposed into an autonomous national law.

Directives have to be interpreted on the basis of their wording, their legal context and their purpose and aim. If, as in the said Act, only certain elements of a directive are transposed into national law, the interpretative methods required by community law are not dealt with appropriately and thus, the directive cannot be transposed in conformity with community law. In addition, German jurisprudence needs to make fundamental changes to its approach in the light of community-law requirements.

If, however, only partial elements of the qualification directive are transposed into national law, the administrative authorities and courts will frequently be completely unaware of the deviation of previous German law from community law. Discrepancies between German and community law are particularly problematic in the areas of indiscriminate violence in a civil war and the standards used to evaluate religious freedom claims. There is therefore a serious danger that the community provisions will be implemented under the specific terms of previous German law and that the Federal Republic of Germany will violate community law. In the case of subsidiary protection, moreover, the required separation of community law from national subsidiary protection is likely to cause considerable legal uncertainty and long-drawn-out argument in jurisprudence, which has already been triggered by the controversial procedural bar.

The present Act includes in § 60(1) AufenthG (Residence Act) the actual preconditions for refugee protection and in § 60(2-7) AufenthG the preconditions for subsidiary protection. Thereby, in the case of refugee protection, a total of six very extensive articles of the directive, which moreover largely rewrite previous German asylum policy, are to be transposed merely into a single paragraph of national law. In terms of subsidiary protection, a likewise very extensive article of the directive is to be turned into only six paragraphs. In addition, according to the Federal Administrative Court national subsidiary

protection[1] must be considered alongside community law and the same national standards are foreseen for both forms of subsidiary protection.

Finally, for refugee protection the Act stipulates only a "*supplementary application"* of specific norms of the qualification directive (§ 60(1) sentence 5 AufenthG) and for subsidiary protection a direct application of certain articles of the qualification directive in § 60(11) of the draft residence legislation. This is inconsistent and, with regard to refugee protection, incompatible with the primacy of community law. Directives are not supposed to be used merely to supplement the interpretation and application of national law. Rather they confer independent legal rights and status on the beneficiaries, unrelated to national law, and must therefore be transposed in their entirety.

2. The German procedural bar must not be used when deciding on the subsidiary protective status under European law. The exact wording of Article 15(c) Council Directive 2004/83/EC must be transposed into national law.

§ 60(7) sentence 1 AufenthG contains the traditional concept of *German subsidiary protection* for considerable real threats. By contrast, § 60(7) sentence 2 transposes the concept of *community subsidiary protection under Article 15(c) Council Directive 2004/83/EC* into German law. The Act seeks to use the traditional so-called "*procedural bar"* for both forms of subsidiary protection. According to Article 15(c) Council Directive 2004/83/EC the "serious harm" justifying subsidiary protection status is

> "*serious and individual* threat to a civilian's life or person by reason of *indiscriminate violence* in situations of international or *internal armed conflict."*

The text of the Act does not contain the concept of "indiscriminate violence". During the deliberations on the directive there was a debate about the procedural bar and also about the concept of "indiscriminate violence" contained in Article 15(c) Council Directive 2004/83/EC. In particular the German federal government wanted a blocking approach modelled on the German procedural bar of § 53(6) sentence 2 Alien Act (AuslG) of 1990. However, it failed to gain sufficient support for this proposal.

The so-called procedural bar is a provision in German law that restricts access to subsidiary protection when the threat facing one person is shared by a larger group of the same nationality or ethnicity, for example, in internal armed conflict. The provision essentially transforms subsidiary protection, which is an entitlement, into temporary protection, which is a discretionary form of protection exercised at the option of federal agencies. The procedural bar has been used in Germany to deny protection from deportation to refugees fleeing war torn countries on the grounds that the threat they experience is shared widely by others in the same situation. The Federal Administrative Court developed the procedural bar because, in its view, the

individual as part of the population or population group could always be threatened by general threats, particularly in a civil war. It was thus not a lack of impact on the individual that blocked the use of § 53(6) sentence 1 AuslG 1990 (now § 60(7) sentence 1 AufenthG), but the fact that he or she would share this *individual fate of fleeing* with many others. Thus, their admittance to federal German territory would require a general policy decision.[2]The wording of § 53(6) sentence 2 AuslG 1990 is neutral and using it to is not compatible with the development of community law since that time. That is because under community law there is no procedural connection between subsidiary protection and the kind of provisional or temporary protection created in German law through the use of the procedural bar under § 53(6) sentence 2 AuslG 1990, now § 60(7) sentence 2 AufenthG or § 60(7) sentence 4 AufenthGE. Under community law, subsidiary and temporary protection are two entirely different forms of protection and are regulated by two entirely different directives, neither of which refers to the other. Subsidiary protection is covered by Article 15 of the Qualification Directive (2004/83/EC), while the regulations on temporary protection are found in an entirely different directive, namely Article 5 of Council Directive 2001/55/EC (*Directive on temporary protection*).Under community law, temporary protection is triggered by a Council Decision [establishing the existence of “a mass influx of displaced persons”] pursuant to Article 5(1) Council Directive 2001/55/EC (*Directive on temporary protection*). Absent such a decision by the Council, temporary protection does not apply and cannot be used to block the use of Article 15(c) Council Directive 2004/83/EC. Moreover, it is up to the member states to guarantee that “people enjoying temporary protection must be able to lodge an application for asylum at any time” (Article 17(1) Council Directive 2001/55/EC).

In addition, the Federal Administrative Court confuses the threats that are individual-related in the material sense with general threats typically ensuing during a civil war.

For example, the court counts as threats under § 53(6) sentence 2 AuslG 1990 threats arising through fighting, food shortage, pressure exerted on the individual by the respective warring party to support it financially or fight for it, or the danger of being killed by a warring party along with close relatives.[3]The rationale of this still valid judgement is *not to apply* the concept of threat under § 53(6) sentence 1 AuslG 1990, now § 60(7) sentence1 AufenthG, to *threats arising in armed internal conflicts*, independently of whether they represent individual-related or more indirect, reflexive effects of acts of war. By contrast, the wording of *Article 15(c) Council Directive 2004/83/EC* has fundamentally changed as compared to the original version. Now it *focuses precisely on threats originating in armed internal conflicts*, independently of whether they relate to individuals or are more indirect, reflexive effects of acts of war. Conversely, when it comes to the application of § 60(7) sentence 1 AufenthG the considerable, real threats arising from indiscriminate violence in the context of an armed international or internal conflict are excluded by means of the procedural blockage of § 60(7) sentence 2

AufenthG. Article 15 Council Directive 2004/83/EC did not adopt a provision comparable to the German model of § 60(7) sentence 1 AufenthG. Instead "considerable material threats to life, limb or freedom" now also have to encompass the concept of "torture or inhuman or degrading treatment or punishment" (Article 15(b) Council Directive 2004/83/EC).

Admittedly, according to *recital 26 Council Directive 2004/83/EC* "risks" to which the population or a section of the population of a country is generally exposed do not in themselves normally constitute individual threat. However, Article 15(c) Council Directive 2004/83/EC links the requirement of "individual threat" with the aspect of "*indiscriminate violence*". It is not "*general violence*" as such but the unpredictable consequences arising from indiscriminate violence that convey subsidiary protection status. If the situation in the country of origin is thus characterised by indiscriminate patterns of violence within the meaning of Article 15(c) Council Directive 2004/83/EC, then recital 26 Council Directive 2004/83/EC is not predicated on "general" violence but rather on "indiscriminate" violence as postulated in Article 15(c) Council Directive 2004/83/EC. Only if general risks are not the expression of armed internal conflicts – e.g. city crime – do they "in themselves" (recital 26 Council Directive 2004/83/EC) not represent any serious harm.

However, in the event that an armed internal conflict is characterised by indiscriminate patterns of violence, e.g., targeting of civilians, an individual threat will arise for the individual.

At the same time, the concept of "indiscriminate violence" will have a considerable impact on the standard of proof. The reason is that if *unpredictable* consequences of indiscriminate violence affect the assessment of whether a *"serious individual threat*" is imminent, the strictly individual, restrictive yardsticks of "*clear probability*" or of "*real risk"* as required for Article 15(b) Council Directive 2004/83/EC will not be decisive. Rather, by using the concept of indiscriminate violence, community law requires a standard of proof set considerably lower than these yardsticks.

This interpretation is backed up by the wording of Article 15(c) Council Directive 2004/83/EC and also the overall context of Article 15. Since the establishment of real risks to individuals by virtue of special personal circumstances in the context of an armed conflict already trigger the claim to protection under Article 15(b) Council Directive 2004/83/EC, the definition of individual threat under Article 15(c) of the directive is implicitly less particularized. To read Article 15(c) as requiring a nexus between the threat and special person circumstances would make it redundant. Thus, the individual threat must exist "by reason of indiscriminate violence". The connection between "indiscriminate violence" and "serious individual threat" therefore requires that any interpretation or standard of proof for serious individual threat under 15(c) take appropriate account of the unpredictability and lack of intent that characterizes indiscriminate violence. The effects of indiscriminate

violence on certain individuals cannot be predicted in every individual case. Indeed, unpredictability is the very definition of indiscriminate violence. Therefore, pursuant to Article 15(c) Council Directive 2004/83/EC, the requirements for the standard of proof for subsidiary protection must not be overstretched.

The previous discussion makes clear that the procedural bar currently used in German law cannot be applied to Article 15(c) Council Directive 2004/83/EC. Independently of the wording of recital 26 Council Directive 2004/83/EC, the origins of Article 15(c) Council Directive 2004/83/EC and also the wording itself, particularly the adoption of the term “indiscriminate violence“, show that the procedural bar is not in conformity with community law. This is also true in light of the way German case law has developed since October 1995 with regard to threats in connection with an armed internal conflict. Therefore the wording in § 60(7) sentence 2, which simply omits the term “indiscriminate violence“ that is so important for the standard of proof, is incompatible with community law. Article 15 and recital 26 Council Directive 2004/83/EC must be interpreted pursuant to community law principles and not according to previous German case law.

3. The right of those persons entitled to subsidiary protection to be granted a residence permit must be clearly established.

According to Article 18 Council Directive 2004/83/EC, the member states must grant subsidiary protection status to persons eligible for subsidiary protection.

Under Article 24(2) Council Directive 2004/83/EC persons entitled to subsidiary protection are also entitled to be granted a residence permit. The draft law appears to implement this requirement in certain sections, but does so incompletely and in a way that leads to confusion. The draft law must be amended so that it is clear that persons entitled to subsidiary protection are also entitled to a residence permit.

§ 25(3) sentence 1 AufenthG is not in harmony with the directive, because it merely indicates that a residence permit *is to/should be* (*soll*) granted. On the other hand, § 26(1) sentence 1 of the Act stipulates that in § 25(3) AufenthG cases the residence permit *shall be* (*wird*) granted for at least one year. However, the time limit of § 26(1) sentence 1 AufenthG is preceded by the application of the *soll* clause of § 25(3) sentence 1 AufenthG, leading to confusion about whether a residence permit is in fact mandatory. These sections should be rewritten to avoid confusion.

Additionally, refusing a residence permit in the case of atypical exceptions[4] is incompatible with the entitlement addressed in Article 24(2) Council Directive 2004/83/EC. The reservation in § 25(3) sentence 2 1st alternative

AufenthG (possible and acceptable departure for a third state) and 2nd alternative (violation of duty to cooperate) cannot be upheld, as Council Directive 2004/83/EC does not make the claim to residence for persons entitled to subsidiary protection under Article 24(2) dependent on such reservations.

At any rate, for those persons who under § 60(2-7) AufenthG fulfil the preconditions of Article 15 Council Directive 2004/83/EC it must be clearly established that the first two reservations in § 25(3) sentence 2 AufenthG do not apply. Furthermore, the Legislature must guarantee that the residence permit is granted under § 25(3) sentence 1 AufenthG - thus deviating from procedural bars under § 10(3) sentence 2 AufenthG (rejection of asylum application as manifestly unfounded) under § 30(3) AsylVfG - Asylum Procedures Act and § 11(1) sentence 2 AufenthG (expulsion and deportation). Community law does not allow for the entitlement under Article 24(2) Council Directive 2004/83/EC to be undermined by national exceptions, unless "compelling reasons of national security or public order" otherwise require an exceptional refusal of a residence permit.

4. Individuals must have access to an effective legal remedy and judicial review in the application of Council Regulation 343/2003/EC (Dublin II).

According to § 18(2) No. 2 AsylVfGE member states are treated procedurally as "safe third states". A case under Dublin II is moreover no longer treated like an 'inconsiderable' (*unbeachtlich*) application for asylum (cf. § 29(3) AsylVfG current version), but rather as an inadmissible application (§ 27a AsylVfGE).

§ 18(2) No. 2 AsylVfG divides cases into two groups: the Dublin states and other states that have concluded a competence agreement with the community (e. g. Norway, Iceland and Switzerland). The Dublin states are, however, already covered by para. 1. Para. 2 therefore has repercussions particularly for the other states with whom such an international agreement exists.

The new view of the Dublin procedure as involving inadmissible asylum applications in connection with the regulations on refusal of entry and deportation orders abolishes the previous protection offered by the urgent procedure. Particularly with reference to unaccompanied minors (Article 6 Dublin II) and family members (Article 7 Dublin II) and also with reference to the declaration of competence on humanitarian grounds (Article 15 Dublin II), the regulation clearly intends to safeguard access to an effective legal remedy. Otherwise, immediate community-law claims on the respective member state cannot be put into effect. That the directive intends to preserve access to an effective legal remedy is further evidence from Article 19(3) Council Regulation 343/2003/EC, which provides that member states may remove the suspensive effect of legal remedies. However, the directive in no way authorizes the complete elimination of legal remedies and judicial review, nor can any such intent be inferred. If anything, the fact that the directive permits member states to restrict the suspensive effect of legal reme-

dies but says nothing about the provision of such remedies in the first place implies that member states must provide access to an effective legal remedy through which to challenge Dublin related decisions.Thus, the Act's attempt to abolish the urgent procedure for Dublin cases violates community law.

5. The provisions of Council Directive 2003/9/EC (reception directive) on the medical care of asylum seekers and the specific care requirements for people with special needs must be included in the Asylum Seeker Benefits Law (AsylbLG).

The Act contains no provisions for transposing Council Directive 2003/9/EC

(reception directive). Apparently the prevailing view is that it does not require any legislative action. This view is erroneous, however, and contradicts community law. There is a need for legislation in particular regarding the medical care of asylum-seekers and the specific care required by people with special needs. Hence the UNHCR has already made extensive proposals aimed at supplementing the Asylum Seeker Benefit Act and, to some extent, the Asylum Procedure Act[5], which are supported by the organisations presenting this opinion. While Article 15(1) Council Directive 2003/9/EC entitles asylum seekers to receive all *necessary* medical care, § 4(1) sentence 1 AsylbLG limits treatment merely to *acute* illnesses, so that in practice there are problems regarding the care of patients with chronic illnesses. So far no attempt has been made to transpose the extensive provisions on the specific care for persons with special needs (Article 15(2), (17-20) Council Directive 2003/9/EC).

6. Asylum applications by persons who have suffered torture, rape or other serious acts of violence must not be dealt with in the airport procedure. Instead they must first be granted necessary medical treatment inside the country (Article 20 Council Directive 2003/9/EC).

According to Article 20 Council Directive 2003/9/EC, the member states have to ensure that, "if necessary", persons who have suffered *torture, rape* or other *serious acts of violence* receive the necessary treatment. This calls for the availability of a procedure to ascertain when such treatment is *necessary ("Bedarfsprüfung").* If this proves to be the case, special medical precautions must be taken and the procedural steps initiated. Conducting an airport procedure (§ 18a AsylVfG) is incompatible with this situation. Rather, where there are indications of torture, rape or other serious acts of violence the procedure must be suspended for the purpose of establishing the need for medical treatment and entry must be granted to this end (cf. § 18a(6) No. 1 AsylVfG). For clarity, the situations in which entry is required set out in § 18a (6) AsylVfG must be supplemented by this group of cases. The procedure may only resume if and when the extent of the "damages" caused by torture, rape and other serious acts of violence are firmly established (cf.

Article 20 Council Directive 2003/9/EC), and all applicable requirements under procedural law have been followed.

7. The regulations on fines and punishments of § 85 No. 2, § 86 AsylVfG must be revoked.

The national penal regulations on grounds of violations of residence restrictions by asylum seekers (§ 85 No. 2, § 86 AsylVfG) is not in conformity with Article 16(3) Council Directive 2003/9/EC (reception directive). Admittedly, the directive allows for sanctions for "serious breaching of the rules" of accommodation centres. However, the overall context of the provisions in Article 16 Council Directive 2003/9/EC only provides for administrative sanctions, e.g. withdrawing previously granted privileges. This view is confirmed by Article 7(4) Council Directive 2003/9/EC, which links residential restrictions with the granting of material reception conditions. Penal sanctions are not named in the directive (*cf.* also Article 16(4) Council Directive 2003/9/EC). If the member states had been ceded such powers it would have been necessary to adopt the relevant provisions. However, this is not the case. Since the directive lays down *minimum standards* for the practice of the member states, their sanctions must not be more severe than the standard established in the directive, i.e. they must not establish penal sanctions instead of administrative sanctions. Hence, there are major community-law reservations regarding the clauses in § 85 AsylVfG and thus they must be revoked.

8. The community-law provisions on the "well-being of the child" must be implemented fully and correctly.

A number of laws and regulations in the area of immigration and refugee law take account of children's special need for protection through specific provisions aimed at their well-being. This applies, for example, to the victim protection directive (Article 9(2), Article 10), the reception directive (Article 10), the asylum procedural directive (Article 17) and also the qualification directive (Article 30). While the special interest in the protection of minors runs throughout applicable European law, the draft bill simply ignores these protective provisions. The authors of this opinion therefore call upon the legislature to accord special importance to promoting the well-being of the child when transposing the directives. The Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (federal association for unaccompanied minor refugees) has already taken a stand on this in a lengthy statement of 19 June 2006 containing a number of recommendations for the legislature on transposing the directives into German law. This statement and the individual demands are expressly supported by the present Joint Opinion.

9. The entry of spouses must not be predicated on German language skills

According to § 30(1) No. 2 of the amended Residence Act new legislation , the spouse of a migrant may only follow if he (or she) does not have to take an integration course after entry, i.e., if she or he speaks German. The same applies according to § 28(1) sentence 3 of the new law to foreign spouses of German nationals. This tightening up of the law on the entry of spouses is justified by the argument that requiring a low level of German skills in the visa procedure is acceptable, particularly as speaking the language is thought to be a way of protecting higher-ranking legal rights (freedom of marriage and way of life, sexual self-determination and physical integrity). However, the erection of frequently insurmountable language barriers does not protect the freedom of marriage and way of life. Rather, in individual cases, they are abolished. Moreover, it defies reason to assert that possessing simple German skills will protect sexual self-determination and physical integrity.

Article 7(2) Council Regulation 2003/86/EC (family reunification directive) offers the possibility of member states deciding themselves, on the basis of national law, that spouses of non-EU nationals[6] entering the country have to participate in integration programmes. Accordingly, this is an *option clause,* which, unlike the general rules of the directive, concedes member states more far-reaching powers for their national law. Since it is a matter of exceptions from general principles, they are to be interpreted restrictively. Article 7(2) Council Directive 2003/896/EC leaves the requirement for integration programmes fairly general, but is not a legal basis for making them a precondition for entry. Rather, the required restrictive interpretation of the option clause seems to argue against requiring participation in an integration programme as a precondition for entry. We must fear not just a contravention of community law in the German rules for the entry of spouses but also that, in a host of cases, the consequences will be unconstitutional. Given the lack of available options for acquiring even simply German language skills in many migrants' countries of origin, many spouses abroad simply will not be able to join their spouse in Germany. However, this outcome would be incompatible with Article 6(1) and (2) GG (German constitution). Besides a *guarantee of the right to enjoy marriage and the family,* Article 6(1) GG contains *a basic right to protection by the state* and a *fundamental standard* for all law affecting marriage and the family, obliging the state to respect and promote family unity and recognising the responsibility of parents for the family.[7] The Federal Constitutional Court, in its landmark decision on family reunification, expressly held that Article 6(1) and (2) sentence 1 GG convey a right of family members to join the rest of their family . The reference to the possibility of restoring family unity in the country of origin of the member desiring to enter Germany would mean that the members living there would have to free themselves "from the German way of life, e.g. an acquired economic and social position and possible personal bonds". In a legal sense such an objection would have the effect of eliminating an existing right of residence.

Such coercion applied to family members – living apart from their relatives for a considerable time or finally abandoning an existing right of residence – impairs married and family life and should thus be measured against Article 6(1) GG.[8]

The Legislature has significant discretion with respect to this question. Although an arrangement that would stop a certain group of persons for a *"considerable, but not unlimited period"* from realising their wish to enjoy family life together in Germany "without *simply preventing* such life together", may not unconstitutionally burden marriage and the family under Article 6(1) and (2) sentence 1 GG,[9] the *de facto* permanent exclusion of family members with Germans or persons with secure residential status in Germany cannot be justified under constitutional law.

The associations have raised strong doubts about the appropriateness of the new law because the exclusion of entry rights for spouses when they lack language skills does not do justice to the over-arching constitutional importance of protecting marriage and the family. Many spouses desiring to enter Germany lack a suitable opportunity to learn German in their country of origin. Hence, instead of an exclusion clause based on the lack of language skills, the associations call for greater encouragement of spouses to integrate, in particular through learning German, after they have entered the country. There are also grounds under international law for not excluding the entry of spouses with insufficient or no German skills. Doubts exist with respect to Article 8(1) European Convention on Human Rights (ECHR), because the existing family unity of a foreigner whose departure is not possible for the foreseeable future for legal or practical reasons may be seriously impaired through the inability of the family members to join him or her. If in these cases it is not possible to reunite the family in a third country and if the spouse seeking to enter cannot overcome the language barrier for lack of suitable language schools his or her entry will be blocked for an indeterminate period. Such provisions would therefore violate Article 8(1) ECHR.[10]

[1] BVerwGE 122, 271 <276 ff.> = EZAR 51 Nr. 2 = NVwZ 2005, 704 = InfAuslR 2005, 276.

[2] BVerwGE 99, 324 <327 f.> = EZAR 046 Nr. 6 = NVwZ 1996, 199; BVerwG, NVwZ-Beil. 1996, 58 <58>;

BVerwG, NVwZ-Beil. 1996, 59<60>; BVerwG, InfAuslR 1996, 289 <290>.

[3] BVerwGE 99, 324 <329> = EZAR 046 Nr. 6 = NVwZ 1996, 199.

[4] BVerwGE 124, 326 (331 ff.) = InfAuslR 2006, 272 (273) = NVwZ 2006, 711 = EZAR 33 Nr. 2 = AuAS 2006, 122; OVG Sachsen, InfAuslR 2005, 465 (466); VG München, U. v. 9. 2. 2006 – M 26 K 05.5227; VG Trier, U. v. 26. 1. 2005 – 5 K 1421/04.TR; *Günter Renner,* AuslR, 8. Aufl., 2005, § 25 AufenthG Rdn. 22.

[5] UNHCR, Stellungnahme des UNHCR zur Umsetzung der EU-Richtlinie über die Aufnahmebedingungen für Asylbewerber, November 2005

[6] Member states are not permitted to apply the particular provision regarding integration programs to spouses of recognized refugees. Art. 7(2) Council Regulation 2003/86/EC.

[7] BVerwGE 65, 188 <192> = EZAR 105 Nr. 11 = InfAuslR 1982, 122.

[8] BVerfGE 76, 1 <42 f.> = NVwZ 1988, 242 = EZAR 105 Nr. 20 = InfAuslR 1988, 33 = EuGRZ 1987, 449.

[9] BVerfGE 76, 1 <49> = NVwZ 1988, 242 = EZAR 105 Nr. 20 = InfAuslR 1988, 33 = EuGRZ 1987,449; so auch *Pirson,* NVwZ 1985, 321 <323>; a. A. noch BVerwG, BVerwGE 70, 127 <138> = InfAuslR 1984, 297 = EZAR 105 Nr. 15 = NVwZ 1984, 799; BVerwG, InfAuslR 1984, 304 (305); BVerwG, InfAuslR 1986, 133.

[10] *Kay Hailbronner,* AuslR, § 29 AufenthG Rdn. 19.