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### **A letter to Africa:**

#### **What could a German immigration law look like?**

Dear Fogang Toyem,

For your doctoral thesis on German migration policy, you ask about the reasons for the dispute between the CSU and the CDU.

The complex debate can perhaps be best understood by juxtaposing the various political positions in (fictitious) “**drafts of an immigration law**”.

The key question is: **Does Germany want an immigration law and what could it look like?** In the coalition agreement, CDU/CSU announced such a law for the first time.<sup>1</sup> At the moment we are observing how a long epoch of discursive flattening of identity problems has come to an end. The unsettled now strives back into the public. This is particularly painful for a multi-wing popular party such as the Union, which is built on values, not on nationalism. Not out of conviction, but in the hope of an influx from the wrong side, the Union is currently struggling with immigration prevention packages instead of finding its way back to its core political concerns.

Which, I will say below, is not as complicated as it currently seems.

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<sup>1</sup> Various opposition parties had submitted drafts:

- On 8 November 2017 (long before the current coalition was formed), the SPD presented a draft to the Bundestag: DS 19/44), <http://dipbt.bundestag.de/extrakt/ba/WP19/2301/230124.html>.
- Alliance 90/The Greens on 04.04.2017 in the Bundestag election campaign also prepared a draft: DS 18/11854; <http://dipbt.bundestag.de/doc/btd/18/118/1811854.pdf>.
- The Left, also in May 2017, described such a draft:
- <https://www.zeitschrift-luxemburg.de/wer-hat-angst-vor-einem-linken-einwanderungsgesetz/>.
- The FDP briefly in the Bundestag election programme: <https://www.fdp.de/wp-modul/btw17-wp-a-80>

### **1. Alternative for Germany | Alternative für Deutschland AfD**

In the case of the AfD, an immigration law would presumably look very brief (in the following a summary of various statements made by the AfD leadership or, in para. 3, further thinking based on Mussolini's practice in South Tyrol in the 1920s):

§ 1 <sup>1</sup>Germany has been inhabited exclusively by Germans for a thousand years and that must remain so. § 2 <sup>1</sup>Immigration does not take place. § 3 <sup>1</sup>All people with non-German names must assume a German name within seven years.

### **2. The Left in the Left | Die Linke**

There are currently two discussions on the left. (a) Sahra Wagenknecht for respecting set limits, (b) the left in the Left for Open Borders and Unlimited Migration for humanitarian and all other reasons. For Group B, the law could also look very short:

§ 1 <sup>1</sup>Germany does not exist as a nation. <sup>2</sup>The territory of today's Federal Republic has always been a destination of migration and multiculturalism. § 2 <sup>1</sup>Immigration with and without reasons is welcome at any time. § 3 <sup>1</sup>All migrants have immediate access to social security systems. <sup>2</sup>The financial overload is avoided by a wealth tax and a special tax from all commercial enterprises.

### **3. Free Democratic Party | Freie Demokratische Partei FDP**

The FDP is divided into a (currently very weak) social wing and a (currently dominant) economic wing of "the better-off". The latter might draft an immigration law as follows:

§ 1 <sup>1</sup>The citizens of the Federal Republic have the right to prosperity. <sup>2</sup>In view of the demographic shortage and the shortage of skilled workers, the economy is dependent on immigration.

§ 2 <sup>1</sup>People with a university degree in economic sectors with a shortage of skilled workers and persons with a regular school-leaving qualification interested in working in economic sectors with a shortage of skilled workers can apply for immigration through the German embassies in their home country in a step-by-step procedure. <sup>2</sup>An immigration permit requires successful participation in immigration courses in your home country with examinations in German, German rule and legal system, professional qualification examinations.

§ 3 <sup>1</sup>Depending on the development of the German economy, the immigration permit must be issued for a limited period and renewed or refused depending on the economic development.

#### **4. Municipal-Communitarian Perspective**

Parts of the Greens (Boris Palmer, Lord Mayor of Tübingen) and the SPD (Andrea Nahles) have a perspective that is shaped by the conditions of urban living together which in parts appears “conservative”. The SPD parliamentary group in the Bundestag has not actually reflected it in last November’s draft. (Again, other parts of the Greens and the SPD are moving away from such a municipal down-to-earth attitude and follow a good-human perspective similar to the apostrophized above for the Left, Section B.). The Palmer-Nahles and perhaps even Wagenknecht perspective could be as follows:

§ 1 <sup>1</sup>The well-being of the people depends essentially on their common commitment to a common area of public visibility of the individual in the community, to include the weaker in the process and to demand a special commitment from the strongest also beyond the material level.

§ 2 <sup>1</sup>The integration of the individual into the community is independent of language, gender, sexual orientation, place of birth, skin colour and social standing. <sup>2</sup>It is an obligation for all. <sup>3</sup>The goal is to live together in peace and respect at the level of each community.

§ 3 <sup>1</sup>The overloading of individual communities by concentrated immigration of certain groups must be avoided. <sup>2</sup>A legal quantification of congestion limits does not take place; it is the task of each municipality to develop and annually update a medium-term five-year plan for immigration and integration in accordance with the needs of the economic enterprises and the immaterial absorption capacities of the municipality in accordance with the Basic Law and Articles 1 and 2. <sup>3</sup>It is the task of each of the Länder to support the municipalities in their immigration plans and to promote advanced plans in particular by fine-tuning financial compensation.

§ 4 <sup>1</sup>Immigrants' participation in social security schemes shall be tiered. <sup>2</sup>For this purpose, a system of integration points must be developed in which, among other things, language skills, knowledge and active application of the rules of German society, including the legal system, and participation in non-profit organisations must be taken into account .

## **5. Union | Christlich Demokratische Union CDU / Christlich Soziale Union CSU**

Remains the Union. What could a bill drawn up by the Union (and taking into account its diverse internal trends) look like?

Certainly it would have

- (a) be historically correct;
- (b) differentiate between humanitarian conditions and economic interests, not play one off against the other;
- (c) offer all participants, arrivals as well as citizens and those who have already arrived, municipalities and administrations clear mental guidelines and offer an "expectation management" (Günter Nooke) as well as a "fear management" in an appropriate manner;
- (d) aim for long-term development and focus on a pan-European perspective.

### **§ 1 A peaceful and prosperous coexistence**

<sup>1</sup>In seventy years of the Federal Republic of Germany, the basic moral and mental orientation of Art. 1-19 of the Basic Law has proved its worth and created the framework conditions for German citizens to live together in peace and prosperity.

<sup>2</sup>This must be maintained even in times when demographic developments make regulated immigration indispensable.

### **§ 2 German citizenship**

<sup>1</sup>German citizenship is independent of gender, sexual orientation, place of birth, faith and social position. <sup>2</sup>It is open to everyone and is conferred in consideration of the willingness to actively participate in the basic moral and intellectual orientation of Article 1-19 of the Basic Law, in particular the moral law pursuant to Article 2.1 of the Basic Law. <sup>3</sup>The bestowal of German citizenship requires in-depth knowledge of the German language and the German rule and legal system as well as active personal participation in non-profit organisations, municipal structures, commercial enterprises and the social security system located in Germany. <sup>4</sup>The Federal Government, the Länder and the municipalities are obliged to set up structures for integration assistance to ensure that persons with valid residence permits are accompanied through a process, usually lasting eight years, until they apply for citizenship. <sup>5</sup>The decision to grant citizenship is taken by the federal states in agreement with the applicant's municipality, in accordance with the Citoyenneté paradigm of the Swiss Confederation.

### **§ 3 Joint commitment to a common area of public visibility**

<sup>1</sup>People's well-being depends to a large extent on their common commitment to a common area of public visibility for individuals in the community, including the weaker in the process and demanding a special commitment from the strongest also beyond the material level. <sup>2</sup>The Federal Government and the Länder provide the municipalities with substantial assistance to support citizens, associations, institutions and companies, which offer citizens and arrivals appropriate expectation management as well as fear management.

### **§ 4 The first pillar of immigration: the humanitarian pillar**

<sup>1</sup>The right to apply (1) for asylum under Article 16a of the Basic Law, (2) for recognition of refugee status under the Geneva / Washington Convention, (3) for subsidiary protection, (4) for tolerated domicile constitutes the first humanitarian pillar of immigration. <sup>2</sup>For the duration of the four recognition procedures mentioned above, applicants are granted extra-territorial status under the responsibility of the Federation; the Länder support the Federation in this respect in return for reimbursement of costs.

### **§ 5 The second pillar of immigration: the economic pillar**

<sup>1</sup>The possibility of applying for immigration for economic reasons from countries outside the EU does not constitute a statutory right. <sup>2</sup>It is at the discretion of the German state, is granted for a limited period of time during the first five years and forms the second economic pillar of immigration. <sup>3</sup>People with a recognised university degree in economic sectors with a shortage of skilled workers and persons with a properly recognised school-leaving certificate with an interest in working in economic sectors with a shortage of skilled workers can apply for immigration through the German embassies in their home country in a step-by-step procedure. <sup>4</sup>An individual application in Germany is excluded; an application by a company or a public body in Germany is possible. <sup>5</sup>An immigration permit requires successful participation in enculturation courses in the home country with examinations in German, German rule and legal system as well as professional qualification examinations. <sup>6</sup>Second-pillar persons are granted integration assistance within the meaning of § 2 sentence 4. <sup>7</sup>The removal of the time limit on the residence permit requires the successful passing of an examination and participation in accordance with the provisions of § 2 sentence 2; the decision on the time limit is incumbent on the Länder in agreement with the applicant's municipality of residence in accordance with the *Citoyenneté* paradigm of the Swiss Confederation. <sup>8</sup>The residence permit for university studies and for participation in initial and continuing vocational training is part of the second pillar.

### **§ 6 The third pillar of immigration: the common indigenate**

<sup>1</sup>The Federal Republic is united with the other member states of the European Union by the right to free movement of persons. <sup>2</sup>This is the third pillar of immigration. <sup>3</sup>It continues the common indigenate according to Articles 3 of the Constitution of the North German Confederation in 1867, of the German Confederation in 1870 and of the Reich Constitution in 1871, Article 110 WRV 1919 and Article 33, paragraph 1 of the Basic Law in 1949. <sup>4</sup>The Federal Republic may, with the consent of the other member states of the European Union, agree with other third countries on the mutual right to free movement of persons. <sup>5</sup>Integration assistance within the meaning of § 2 sentence 4 is granted to persons under the third pillar.

### **§ 7 Joint integration and argumentation management**

<sup>1</sup>The Federal Government is committed to encouraging the other member states of the European Union affected by demographic problems to develop comparable immigration laws and joint integration and argumentation management, taking into account national specificities.

### **§ 8 Enforcing European security by strengthening the peripheries in the countries of emigration**

<sup>1</sup>The Confederation and the Länder, if possible in cooperation with the other member states of the European Union, are working to ensure that structures, particularly in the peripheries of the emigration countries, are supported which open up social and economic prospects for young people in their home countries. <sup>2</sup>Federal government and the Länder allocate at least the same funds each year as for the development and maintenance of military structures and register them with NATO as security contributions.

## Summarized

Your letter shows that the migration dispute between CSU and CDU is causing world-wide attention.

Indeed, the state cannot create the foundations on which it is based itself (Wolfgang Böckenförde). However, agents of the state can destroy these foundations. Federal President Steinmeier insisted on this on 26 June.<sup>2</sup> Therefore, questions must be asked about the **ideological core points of the dispute** (a) within the Union, (b) within the German party landscape, (c) between the Visegrád bloc including the Bavarian CSU on the one hand and the suffering external border states of the Dublin regulations (Italy, Greece, Bosnia and Malta) on the other.

Within Germany, a so-called “welcome culture” and a policy of preventing immigration are almost irreconcilable. Inadmissibly, three different regulatory circuits are systematically blended together in the public debate: <sup>3</sup>

- (1) Humanitarian aid for people in need who (a) claim their fundamental right to apply for asylum in accordance with Article 16a of the Basic Law but who, as a result of their application review, only receive it in about 1% of cases. In addition, there is secondary humanitarian aid such as (b) refugee status after Geneva/Washington, (c) very limited subsidiary protection without formal refugee status, (d) toleration of stay on grounds of personal reasons such as pregnancy etc. In the vast majority of cases, therefore, it is not a question of granting asylum, but of purely applying for it. In many cases (e) a negative decision is issued, but often not implemented. This provokes indignation, which now calls into question the entire system of humanitarian aid for people in need.
- (2) The basic problem for immigrants from non-EU countries is that in the almost seventy years of its existence the Federal Republic of Germany believed that it could afford not to adopt a law on the rules governing economic migration. A brief look back into German history shows that the Second World War could only be carried out with forced foreign workers on the so-called home front. The so-called ‘economic miracles’ in the Federal Republic (first agreement 1954 with Italy), the Republic of Austria (first 1962 with Spain) and the GDR (first 1968 with Hungary, then with Algeria, Cuba, Vietnam, Angola and Mozambique) were each based on bilateral employment

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<sup>2</sup> “How can we successfully promote reason and a sense of proportion in the political debate when, at the highest level and even in the government camp, we argue with inadvertency and excessive rigour about problems that can actually be solved, as if there were no tomorrow?” (Federal President Frank-Walter Steinmeier, Berlin 26.06.2018)

<sup>3</sup> cf. Vogt, Matthias Theodor; Fritzsche, Erik; Meißelbach, Christoph (2016). Geleitwort von Rita Süßmuth und Nachwort von Olaf Zimmermann. *Ankommen in der deutschen Lebenswelt. Migranten-Enkulturation und regionale Resilienz in der Einen Welt*. Berlin 2016.

contracts for so-called guest workers. (Only Switzerland had decided on a general regulation in 1934.) After the expiry of such agreements and from countries with which no such agreements have been concluded, economic migration is only possible for selected groups of highly qualified or wealthy persons. However, since legal means of economic immigration are not open, only the right of asylum seems to offer an open alternative. This leads to systematic abuse. In view of the demographic problems and the acute shortage of skilled workers, the opening of legal channels is an unavoidable necessity, as it was the case with Adenauer in 1954.

- (3) The free movement of persons in the European Union is distinctly old German law. It continues the joint indigenate under Articles 3 of the Constitution of the North German Confederation in 1867, of the German Confederation in 1870 and of the Constitution of the Reich in 1871, Article 110 WRV 1919 and Article 33, paragraph 1 of the Basic Law in 1949. This is largely unproblematic within the EU-15, but encounters problems among people from the EU+13 group that are partly relevant and cloud the mood of the citizens. An extension of the free movement of persons to other states (beyond the EU and EEA) would only be possible in cooperation with the EU states and is currently not under discussion.

**The CSU/CDU dispute and the dispute between Europeans can only be resolved if it is possible to distinguish these three completely different regulatory circuits in the public debate and to tackle different regulatory mechanisms in each case.**

Asylum according to (1a) only exists in Germany, not in the other EU states. However, since all EU members have signed the (1b) Geneva/Washington Refugee Agreement, since (1c) subsidiarity law is a Community law in any case and since the exemptions for (1d) tolerance could easily be agreed, a Community humanitarian law could well be created from a legal—but not political—point of view and everything could be transferred to the EU level. This would make it possible to replace the Dublin rules which unilaterally discriminate against the external border countries. Neither will succeed, since the political actors of the Visegrád bloc and also Italy owe their power to an intelligently employed populism and an immigration prevention rhetoric. **A solution must therefore now be found within Germany.** (Since, e.g., the Slovak automotive industry is on the verge of implosion due to a lack of skilled workers, and since the Polish social system and parts of the Polish economy are only maintained by the use of illegal Ukrainian migrant workers, a hope for the political power of the factual in central and eastern Europe is quite realistic in the medium term.)

Within Germany, on the other hand, the decisive problem of the objection debate is the **systematic weakening of the municipalities** in the almost seventy years of the Federal Republic. “He must grow, but I must grow smaller.” (Jn 3:30), the Bible says on St. John's Day, June 24. The Federal Government did not take this into account and allowed itself—through the Federal Finance Constitution—to grow further and further at the expense



of a substantial reduction in the political significance of the Länder and above all of the municipalities. The municipalities, however, are the place of living and working together. **Germany owes its regional diversity and multi-focal economic strength to continuous immigration over many centuries and the high integration power of its municipalities.**

**If the forthcoming immigration law were to place the municipalities at the centre of considerations, a reconciliation of Christian-humanitarian positions with economic necessities on the one hand, respect for the person of the arriving person and support for his willingness to integrate (which is indispensable) on the other would be quite possible.**

**Beyond the ideologue, I believe that a compromise could be reached between the (bourgeois) positions from the above-mentioned draft laws 5, 4 and 3, in which both CSU and CDU, as well as the moderates in the SPD and the Greens, and incidentally also the Left and the FDP, could pull in the same direction.**

Then again, the over-complex set of previous, rather technical laws could be traced back to a core (which can be positively communicated both internally and externally), namely the different treatment of the three pillars. From here a convincing code would then have to be drawn up, which follows the principle of clarity, truth, comprehensibility and no longer represents a hidden immigration prevention package.

It is only through intensive, **long-term work on the ground** that people—certainly never all, but many—who are being stirred up by populists for the sake of their electoral success, but who are now becoming increasingly damaging to the common good by fear of the other and of the foreign. And so that Germany's people and—in the sense of the Federal President's warning—also its parties—can once again be introduced to the “Moral Law” of Article 2, paragraph 1 of the Basic Law. The current debate touches nothing less than the core of our liberal-democratic basic order.

I would of course be interested to know how you and the other PhD students in Yaounde evaluate these considerations and which arguments would have to be changed or supplemented from your point of view.

With kind regards

Matthias Theodor Vogt