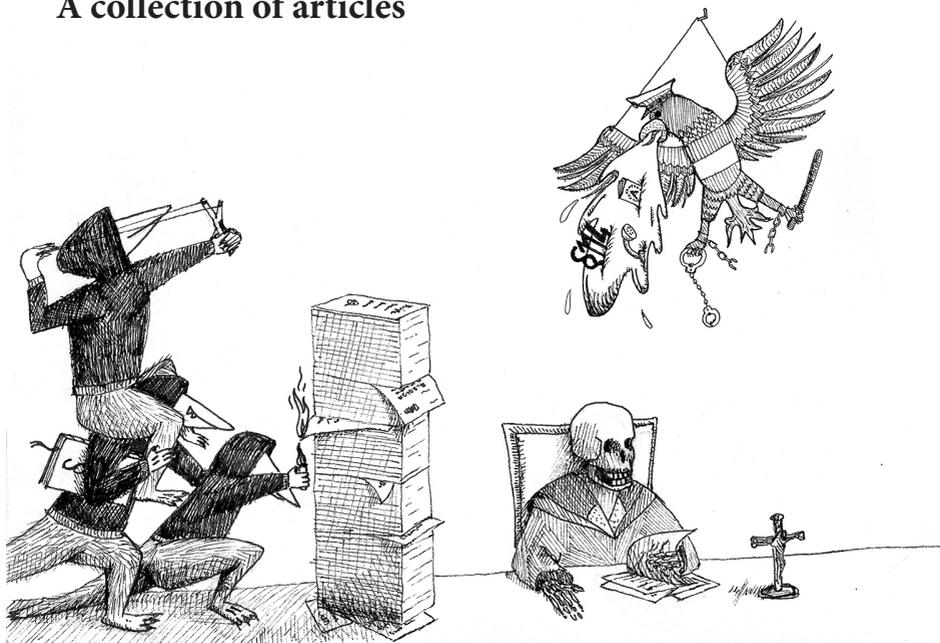


“It all starts in the park”

The “Schlepperei” trial 2014 – A trial on §114 FPG
which received special attention

A collection of articles



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This booklet is about a trial against eight people accused of „human smuggling“ that took place in Wiener Neustadt, Austria in 2014. It wants to give background information on the trial and to point out the connection with the criminalization of migration in general.

This is the translation of a booklet that was first published mostly in German in January 2015.

The German version can be found here: solidarityagainstrepression.noblogs.org

At this point we want to thank those who helped with translation, correction and design!

About this booklet

This booklet gives an overview over the trial against eight people who were arrested in August 2013 and charged with §114 Fremdenpolizeigesetz (FPG), the so called „Schlepperei“ (human smuggling) paragraph. Their trial started in March 2014 at the regional court in Wiener Neustadt. On 4 December seven of the eight accused were found guilty.

We – the editors of this booklet – are a group of people who have been supporting the accused in this trial. We see this case as one out of many that show the effects of the European migration policy. We want to critically emphasize the social context in which such a paragraph exists from a perspective that claims freedom of movement for everyone. Over all, we think that the legal grounds of the accusation and the power relations which are reproduced in this case are representative for a justice system which maintains state hegemony and a capitalistic system. We refuse prisons as a part of this system, the question of legal guilt or innocence is not the base of our support. For us, the support we have been trying to provide during the last year is one possibility to respond to the racist normality.

Since summer/autumn 2013 we have been in contact with the accused who had still been held in investigative custody at that time. We tried to support practically during the remand and the trial. Through regular attendance in court we have been watching the trial, documenting it and reporting from it. Additionally we have been trying to scandalize this court case and its embodiment in the context of the European border regime through actions and demonstrations

Fortunately, we haven't been the only ones supporting. Without the many people who joined in and have been supporting from different sides, took action on their own initiative and have been demonstrating strong persistence, this court case would have looked completely different. Anyways, we know that not always everything was going well and that there are still many things that we could have done (better).

Most articles in this booklet result from the support during the last year. This booklet is a revised and extended edition of a version published in November 2014, which itself was based on a booklet that was already spread in March 2014.

You will find articles giving background information on this case, more general texts about the paragraph and the Austrian and European border regime, as well as statements by and interviews with the accused.

Vienna, December 2014

Connection with the Refugee Protest Movement

Even though in general, migration of many people is criminalized it is clear that state authorities are even more focused on protest movements. The moment when the eight accused were arrested was short after the deportations of eight activists from the protest movement. This doesn't seem to be a coincidence but a strategy to delegitimize the protest. In the middle of the parliament's election campaign, the accusation of human smuggling served to criminalize the movement and legitimated its massive surveillance. We see the accusation and the paragraph on which it is based in general as part of the criminalization of migration in a system in which "legal" border crossing is virtually impossible for many people. The paragraph against human smuggling ("Schlepperei") is thus used to repress movements which attack this logic of migration policy. The investigation in this case got quite a lot of attention from the media and repressive state institutions because of its reference to the refugee movement. For us it is especially important to point out this particular connection. Anyways, we see this trial as one out of many in the reality of the European border regime.



Chronology of Events

In autumn 2012 refugees, non-citizens and asylum seekers all over Europe showed increased resistance to the European migration and asylum policies. They organized political strikes in refugee camps, united in protest tent cities and demanded a change of migration policies on numerous demonstrations and protest marches. At this time in Vienna, a group of Somali refugees organized protests in front of the Austrian parliament to call attention to the difficult situation of asylum seekers and migrants in Austria. The connection of several actions of protest led to the formation of the “Refugee Camp” in the Sigmund-Freud-Park – the starting point of this short chronology of events.

24 November, 2012: Protest march of refugees and people in solidarity from the asylum camp in Traiskirchen to Vienna. Setup and move-in to the Refugee-Protest-Camp in the Sigmund-Freud-Park in Vienna.¹

01 January, 2013: Two newly established special task forces (Sonderkommissionen, SOKO) to investigate “Schlepperei” (facilitation/human smuggling) take up their work under the supervision of the Federal Office of Criminal Investigation (Bundeskriminalamt).

28 July, 2013: Ten activists of the Refugee-Protest-Camp, who by that time are living in the “Servitenkloster”, are arrested during a compulsory daily registration at the police.

29 July, 2013: Eight activists are deported to Pakistan despite the imminent danger for them there. The protests against the deportations are widely adopted by the media.

30/31 July, 2013: Several people are arrested and accused of “Schlepperei”, some of them activists from the Refugee-Protest-Camp. The investigative custody, which will last for months, begins. The people held in custody may only be visited under permanent surveillance.

31 July, 2013: House raids in the “Servitenkloster” and private flats.

03 August, 2013: Minister of the Interior, Johanna Mikl-Leitner (ÖVP) claims in an interview with the newspaper “Kurier”, “We know, that this is an organization of smugglers that acted in the most brutal ways. [...] They operated extremely inhumane. For example, when there were problems with pregnant women on the smuggling-route,

¹ A timeline of the protest movement to be found here: <http://refugeecampvienna.noblogs.org/time-line/>

those women were left on the route without any help.”² The statements later turned out to be wrong and were disproved by the state prosecutor’s office.³

December 2013: The state prosecutor’s office in Wiener Neustadt presents the indictment against the eight people. They are accused of being members of a “criminal organization”, which conducted organized “Schlepperei”. One of the accused appeals the indictment, therefore it is temporarily without legal capacity. The permanent surveillance during visits and hence, also the constraint for the detainees and visitors to only talk German or English (the languages understood by the personnel) is canceled.

January/February 2014: After several requests two people are released from investigative custody. Prior to this, the rejection of their requests was, amongst others, justified by the assumption that they wouldn’t have enough “social bonds” in Austria or wouldn’t be “integrated well enough”.

29 January 2014: The Higher Regional Court in Vienna confirms the indictment. Hence, it becomes legally effective.

17 March, 2014: The trial starts at the Regional Court in Wiener Neustadt.

27 March, 2014: The case is postponed due to deficits in the indictment files. The six accused, who have still been in custody at that time, get now released.

6 May, 2014: The trial starts again after an interruption of more than one month.

22 July – 8 September, 2014: Again, the case is adjourned for the summer months. At first the trial is scheduled until the 1st of October, but soon it becomes evident that the trial will take more time, in order to listen to the numerous telephone calls, that were recorded during the investigation. The trial is extended until the 4th of December.

10 September, 2014: The prosecutor reads out the modified indictment, after it became clear in the previous months, that the accused were charged repeatedly with acts that are actually identical. Altogether though, the indictment gets even more fuzzy with those modifications. For example the phrase “to Austria” is simply replaced by the phrase “via Austria or another country of the EU”. Still it is all about “unknown smuggled persons”, “unknown offenders” in Hungary and Greece and often unknown amounts of money.

4 December, 2014: After the final speeches of the prosecutor and the lawyers, as well as a seven hour negotiation session of the senate, seven of the eight accused are found

2 Interview in “Kurier” on 3 August, 2013: <http://kurier.at/politik/inland/fremdenpolitik-johanna-mikl-leitner-wir-sind-nicht-auslaenderfeindlich/21.450.436>

3 Article in “Falter” 32/13: <http://www.falter.at/falter/2013/08/06/beinharte-posse/>

guilty short before midnight. Six of the eight are found guilty for acting as part of a criminal association. As usual, the announcement of the judgment is initially only done in German. For the conviction the visitors area of the courtroom is guarded by police, the public audience is being filmed by police at the entrance. During the whole day a rally took place in front of the court, the courtroom was full the entire time. After initial silence, an increasing disquiet erupted, a lot of heckling occurred during the announcement of the judgment.

5 December, 2014: A spontaneous demonstration with about 200 people starts in the evening at the Marcus-Omofuma-Monument in Vienna.

9 December, 2014: Prosecutor Gunda Ebhart brings in appeal and nullification against the judgment. She states as a reason, that “as a consequence of the vocal bashing and protest by the audience during the pronouncement of the judgment the statement of the chairwoman of the senate could not be understood in essential parts [...]”. Obviously she tries to blame her possible demand for higher sentences on the audience which showed solidarity. At the latest when the written judgment is finished after three to four months, it will be clear if she keeps her demand or not. By all means she will need different arguments for it. At this point we thank all those, who didn’t just let this verdict happen in silence. Also the defenders announced to bring in appeals and nullifications, the trial will most likely go on.

A Letter from Prison

In January 2014, we got this letter from prison from one of the accused with the demand to publish it.

19th of January 2014

About my Situation

I feel shameful because I am here in this country where there is no justice. I hate the moment when I decided to live in Austria, really I hate it. I hate this system and I also hate the law of this country. Now I’m in here nearly six months and in these six months I NEVER talk to my family. Why? Why can’t I talk to my family? What is the fault of my mother? What is fault of my father? Minimum 50 times I asked the social worker “I want to talk to my mother” and she said no, this is not possible. Fuck you why is it not possible?!

Feiertag was our celebration day (Eid Mubarak), I was here and I asked every policeman. I was crying so much and asking these people “please can I say hello to my mother” and they say ‘this is not possible.’

We were not criminal but they want to make us criminal. Because we are here unschuldig, they want to give another turn of our lives. We were normal humans, we were living normal lives, but they don't like us like that.

Now I'm here, crying, nobody can see my Tränen. These Tränen are not Tränen, these Tränen are Säure.

Really if my life gets any turn like Kriminalität then they are responsible of that. Now I'm 20 years old. This is a very important time of my life. If this year I'm here, in prison, then how is my Zukunft? Why they don't think about us? I know for them is scheißegal but for us it is not. We are coming here for making good our life but they make shit our life. If we are happy in Pakistan then we don't come to this country. We are coming here with many problems. Why they don't understand when I come to Pakistan my family doesn't have money. They sell their own home for me and now they are living in eine monatliche Wohnung. Who likes it like this? They sell their home because they think I can live happy like this. If the Austrian police destroy me, who is responsible of that?

I don't understand one thing: They say we make this work. If we are making this work, then here in Austria why don't we have an own home? Why were we living with Caritas? Then, why did we get money from Caritas every week? Why don't we have a car or something like that? Those who are doing this work, they are sitting in Greece or in Serbia from where the people are coming. We also came from this way. We are not stopped if we want to do this work then we don't pay for coming here, then we also stay there and work there. We don't want to do this work because I know how difficult it is to make money, I don't think somebody knows better than me.

Please help us, you are our hope.



An Overview of What Has Happened During the Court Sessions from March until November 2014

Translator's note: This text is dealing with specific judicial language as well as quotes from the files and the biased police translation of specific terms to German. It was originally written in German and sometimes there exists no adequate English translation for the language used. To make the manipulative police strategies as visible as possible, the original German terms remain in the text and their meaning is explained in the footnotes.

The trial against eight persons who were accused of people smuggling within a criminal organization started in the middle of May. The accused were questioned in the first couple of days of the trial. But already on day one, an interruption occurred: In the courtroom were three interpreters, two for Urdu resp. Punjabi and one for Farsi. At the start of the hearing, judge Petra Harbich announced that there are only a handful of legally confirmed interpreters for Farsi available and that the present one just has knowledge of the language but is not an interpreter confirmed by oath. During the playback of one of the monitored phone calls, federal prosecutor Gunda Ehardt asked, how to translate the word “Schleppungswillige”⁴ to Punjabi. Both of the Punjabi interpreters explained that no word exists for this specific translation. Then the Farsi interpreter explained that the phone call was “schlepperrelevant”⁵ and that this was the reason it was translated that way. It turned out that the interpreter was part of the Soko Schlepperei⁶ for many months, taking part in the phone call monitoring and surveillance. For this reason she felt confident in deciding about whether a call was “schlepperrelevant” or not, without once hearing the words “Schleppung”⁷, “Schleppungswilliger” or “Schlepper”⁸ in the call. After this, the defense lawyers applied for the summons of all those interpreters who were working on the translation of phone calls during the preliminary proceedings. On the next day of the trial, the Farsi interpreter was replaced.

One of the defendants pleaded not guilty, the others pleaded partly guilty, stating: “Yes, I did help someone.” Being questioned about incriminating statements in their police interrogations, some of them negated ever having said these things and added that some of their testimonies had not been retranslated to them. Additionally, they pointed out that oftentimes they were threatened by the interrogating police officers and that

4 Schleppungswillige: People who are willing to be smuggled

5 Schlepperrelevant: Relevant in the context of people smuggling

6 Soko Schlepperei: Task Force People Smuggling. For more info, check the text on the task force in this booklet

7 . Schleppung: People smuggling

8 Schlepper: People smuggler

the officers were showing them photos of their participation in demonstrations of the *Refugee Protest*.

After five days of trial and further questioning of the defendants, the judge must have finally understood that the bill of indictment could not deliver the facts to back-up the charges demanded by it. After adjourning the trial to have time to organize the chaotic police records, she advised the lawyers to apply for a release of the six defendants who were still in jail at that time. The next day this motion was anticipated by the state prosecutor who by now (after half a year of investigative custody) also saw a “disproportionality” of the prison term. All defendants were released on the 27th of March.

Interrogation of the interpreters

Because of the incredibly chaotic police files the trial’s continuation was postponed to the beginning of May. It started once more with the interrogation of the police interpreters. The translations are an extremely important part of this trial as all of the indictment is based on telephone surveillance which means on the resulting – translated - transcripts.

Quite quickly it became evident that the work of the interpreters who were working with police during the investigation was not only poor and faulty but also tendentious, selective and prejudgemental. The investigating police had a massive influence on the translations. It was common practice that the interpreters translated orally and then the police decided which parts were important and in which context they were to be put. All this while the surveillance transcripts in the police files pretended to be word-for-word translations.

The first interpreter, Diba Sayed, stated to have translated statements (on which the prosecution heavily relied) like: “The people have come” to: “The Schlepungswilligen have come” because the conversation was defined as “schlepperrelevant”. The interpreter, who is working with police since about five years, stated to have never heard of the presumption of innocence⁹. According to this, the applied practices did not raise any doubts in her.

Also the second interrogated interpreter Rahim Sayed, Diba Sayed’s brother, was mainly knowledgeable in Dari and Farsi but also translated to Urdu and Punjabi. Despite of working five years in the field of police interrogations, he did not manage to literally translate the legal instructions which explain the defendants’ rights before the start of their hearing, to Punjabi. Also both of the consecutively interrogated interpreters Rafi Ahmad and Hammad Rafi (father and son) did not deny the fact that words like “Schlepungswillige” never appeared in the original conversation (there is actually no literal translation for this word in Punjabi) but that these terms were interpreted out of

⁹ The principle that the defendant be given the benefit of the doubt.

the conversation's context. Additionally, terms commonly used in Pakistan like "Mitr" (universal term for people from India) and Pathan (universal term for people from Afghanistan or northern Pakistan) were handled like specific identifiers resp. "aliases" of persons presumably involved and were also tied to the defendants. Criticism of the interpreters' practice of constructing and filtering "schlepperrelevantes" instead of translating word-by-word received little if any attention from the trial's authorities.

Questioning of the interrogating police officers

Later on there was the questioning of some of the police staff. Group inspector Martin Unger and district inspector Rudolf Kranz as well as the supervising inspector Bernhard Korner were the investigating officers of the Soko Schlepperei and therefore the most important witnesses in this context. It is interesting to note that, once it was clear Unger, Kranz, Korner and the police interpreters were going to be interviewed, there was a constant presence of members of the Soko Schlepperei in the audience during the questioning of the witnesses.

During the interrogation, it became obvious how the chaotic pile of records came into being. The Soko had two investigations running more or less parallel to each other. They were only merged after the arrests by the Wiener Neustadt Regional Court. Martin Unger pointed out that one of the defendants was included into their investigation after having attracted attention in another investigation and that this led to the consecutive expanding of the telephone surveillance.

This other investigation was based on a testimony given in Traiskirchen. The witness incriminated one of the defendants who was then observed by the police. The witness' motivation for his testimony was not reviewed by police at any moment, additionally he withdrew the testimony in court. There are eligible reasons for the witness' bias due to past conflicts. Moreover it turned out during the trial that legal proceedings against other suspects were suspended. The reasons for this remained unclear, it obviously was not related to the quantity or quality of the existing evidence.

Concerning the defamation produced by the media after the arrests, Martin Unger merely stated that the Soko never released any info about a pregnant woman supposedly left behind during a smuggling operation. There must have been a confusion at the Ministry of the Interior¹⁰.

The only relevant "evidence" on which the prosecution based its accusations, were the phone surveillance records. Alongside, there were meaningless individual monitoring

¹⁰ Defamation in the media helped to justify the controversial deportation of eight protesting refugees in summer 2013. Among other things it was reported that, during their operation, people smugglers had left behind pregnant women without any support (the whole trial shows not one bit of evidence suggesting such incidents).

records that were not visibly included in the files and police officers who were referring to their “work experience”. While it seemed that the main goal of this “experience” is to identify everything as suspicious what is done by people with a precarious status of residence: It is suspicious to meet in the Votivpark as the goal of this obviously must have been to avoid surveillance. Additionally, just to be acquainted with a specific person is already incriminating. The question why certain people were stopped and checked by police at the Meidling trainstation after apparently immediately being recognized as people smugglers, was as well answered by referring to the officers’ “work experience”.

The other part of this “experience” seems to consist of learning how to write a file in the most incriminating way. Uncommented photos were attached to the file, showing a person with a lot of cash, even though police had already decided in the preliminary proceedings not to include this person in the case. A diagram showing the phone connections of the defendants also showed numbers of people who have not been monitored at all. Exculpatory material on the other hand never found its way into the file. There was little attention given by the judge and the state prosecution to the grave translation errors being revealed during the trial, they continued as if nothing happened. A vicious circle came into being: One person is suspicious for knowing another person, for instance in Hungary. This person from Hungary then on the other hand is suspicious for knowing a person in Austria.

Modified indictment and the playback of the monitored phone calls

Before the summer break in August, the state prosecutor Gunda Ebhart changed the indictment because various phone calls were used twice as evidence which led to an “overlapping of facts”. The indictment was not reduced however, even though recent trial days suggested this to be a necessity. Ebhart canceled not even a handful of the more than fifty points of the indictment and reformulated the others in a way that made them become even more vague. Instead of being accused of helping people to enter Austria, now they were being accused of helping with entering and passing through the country. Instead of helping to continue the journey to Germany, now it was about helping to travel to any other country of the European Union. This, however, did not diminish the vast amount of “overlapping of facts”.

In September, all the summoned witnesses had been questioned. After now more than twenty days in court, the judge started to go through the various charges of the indictment and listen to the police-recorded phone calls or read out the corresponding translations, questioning the defendants concerning their content.

This procedure lasted until November, more than ten days in court. The last step was to go through the rest of the undiscussed files to close the main hearing with the final speech of the defense and the prosecution on the 4th of December, the 42nd day in court.

Statements from Some of the Accused

These statements from September 2014 are not translated, some of them were in English originally, the German ones are left in German.

What four of the accused (A, B, C, D) say...

...about their current situation:

A: *“Till now, we have been 22 times in Wiener Neustadt, what the state wants to do with us now?
We have so many problems with our families, I don't have work here.
When I came here, i sold my house. When I go back to Pakistan I have no house. My wife lives in a rented house. Now there have been big floods in Punjab in Pakistan, so many houses are destroyed now because of the water.
Why they don't give me asylum? I only have a green card.
I don't have any cent to give to my children. I support the government of Austria. You can give me punishment, but don't give punishment to my children. How can I support my wife when I go to the Gericht three times a week?!”*

B: *„When we go to any place for work, they say we are bad character. They say we are Schlepper. We have no asylum.”*

C: *“When I came to Austria I sold my house in Pakistan. During three years I have not sent one Cent to my home. I have too many problems in Pakistan. If you give me a deport letter I leave Austria.
My brother is dead. In prison, I was not allowed to call my family – why didn't I get telephone permission? Not one time i could make a call. “*

...about the trial and the accusations:

C: *“After six months my asylum has finished and I came to Votivkirche to sleep there. Sometimes I helped some people who were my friends to buy tickets and the police made a story. If the trial was in Vienna, all people would know that the people were in Votivkirche but they start the trial in Wiener Neustadt to break the protest. This is a master plan to break the protest. I got all this problems because I was speaking against the asylum system and injustice. If I helped some people at Westbahnhof, this is not ‘Schlepperei’”*

A: *“This paragraph 114 is not good for our health because it destroyed our life. Also, this paragraph is not only a problem in Austria but also in Pakistan because when we go back we maybe get 5 years. I want to help the government of Austria. I was speaking against mafia people in Austria, who were stealing millions of Euros of taxes. I went to financial police, I speak the truth and I have proofs. But they put me to jail.”*

B: *“Why the police doesn’t have big evidence against us, when they say we helped so many people? Where are the people who say, these people helped me? In all the countries, the police works together with ‘Schlepper’, in every place, in Serbia, in Macedonia. Where is this police? This is a criminal organisation.”*

...about “human smuggling”:

B: *“When a person comes to search for asylum, this person must cross the border illegally. People come to save their life and for a better future. If any person wants to come to save his life and you want to have close borders, you have to put everywhere a person with a gun.”*



...about the prison:

D: *“Ich war mit einem Nazi zusammen im Gefängnis. Diese Zeit war ein bisschen schlecht.”*

A: *“Diese Zeit war schlimm. Ich war mit einem Jungen zusammen in der Zelle, ein Araber. Dieser Mann versteht kein englisches Wort und kein deutsches. Die Gefängnispolizei war sehr scheiße. Warum? Weil sie mit Ausländern nicht normal reden. Wenn wer was braucht, egal! Sie machen einfach die Türe zu.”*

D: *“Wenn du zum Beispiel Tabletten brauchst wegen Kopfschmerzen oder Bauchschmerzen oder so, dann musst du zehn Minuten die Klingel drücken, bis sie einmal kommen und dann kannst du sagen, was los ist. Aber dann kommen sie die ganze Nacht nicht mehr.”*

B: *“In prison, I was not allowed to call my family – why didn’t I get telephone permission? Not one time i could make a call.”*

D: *“Als die ersten Verhandlungstage fest standen, ist ein Wärter gekommen und hat gesagt: ‘Du bist ein big criminal. Du hast so viele Verhandlungstage, das hab ich noch nie gesehen!’”*

About the German Terms “Schlepperei”, “Fluchthilfe” and “Grenzübertrittsdienstleistung”

This article is a translation of a German article which is about the words used in German language to describe the action of helping someone to cross a border undocumented. Here we will talk about German terms and not ask the question about the words used in English, even though this would be interesting as well. Anyways, according to the language problem, this article is not a literal translation of the original article but a slightly adapted version with the aim to make the discussion accessible for non-German-speakers.

In Austrian law “facilitating a foreigner’s illegal immigration to or transit through a member-state of the European Union or a neighbor country of Austria with the aim to enrich him/herself or a third person through a payed reward” (§114) is called “Schlepperei”. At the time of this trial, many people in Vienna talk and write about “Fluchthilfe”. Roughly, both terms want to describe actions that certain people take to help others to cross a border undocumented. Still, the words put attention to different aspects.

“Schleppen” means in German in general “to tow”, “to carry” as used for really heavy things. With the prefix “ein-” (“einschleppen”) it can be used for example to describe that Europeans brought certain illnesses to the Americas, when they started to sail across the oceans. “Schleppend” as an adjective describes situations which are taking long, proceeding very slowly and where the same things are happening again and again. In the context of undocumented migration, the word “Schlepperei” as a noun therefore pictures the person that is “smuggled” as a passive thing, with which something is done that he/she doesn’t want or at least cannot control.

At the same time with this objectification (migrants are shown as objects, not as subjects) the focus lies on the people that support others to cross a border – the so called “Schlepper”. They seem to be the protagonist of a seemingly brutal – or at least exhausting – action of bringing a person from A to B. It is not a coincidence that the law uses exactly this word. According to Austria’s Migration and Asylum policy (as well as the EU’s) migration is a danger, something that has to be controlled, restricted and (except from certain cases) prevented. Every undocumented immigration extracts itself from the control, so everyone who facilitates or supports it is an enemy – and this is how these persons are presented: And Enemies are not only doing bad things, they actually are bad. “Schlepper” are brutal and ruthless – this is how it is legitimated to take particularly harsh actions against them.

Behind the picture of the ruthless “Schlepper”, those who actually migrate and take support for it disappear. They become “poor, passive refugees” of whose weakness the greedy “Schlepper” take advantage to squeeze out the last cent of their pockets.

Even though women are also sentenced with this paragraph 114, this picture shows the “Schlepper” as a man. Being brutal and exploitative are adjectives generally related to men. Women are mostly shown as victims. If it is about women and “Schlepperei”, instantly connotations on forced prostitution and trafficking in women (“Frauenhandel”) are evoked. Actually, “Schlepperei” is juridical distinguished of “human trafficking” (“Menschenhandel”) which per definition is based on a forced migration enacted by a certain person onto another. Especially – but far not only – if it is about “female” migration, the terms “Schlepperei” and “Menschenhandel” are mashed up. In fact, “Menschenhandel” is often intentionally distinguished from “Schlepperei”, at the same time also the confusion has a function: to underline the ruthlessness of the “Schlepper”.



A term that is used alternatively to “Schlepperei” is “Fluchthilfe”. Historically, the term was used for actions which helped people to get from the GDR to West Germany or to cross the so called iron curtain. It is also used to describe the support for people who had to flee from National Socialism. The term does not only describe help without conditions but also paid support. Anyway it focuses on the aspect of helping and has a positive connotation.

The first part of the word “Fluchthilfe”, “Flucht” (English: flight or escape) points out the reason, why the people whom is helped, cross borders: They flee. “Flight” is a reason for migration which is quite strictly defined in the UN’s Convention relating to the Status of Refugees (CRSR). Generally, the term flight is related to the situation in the country a person has been living in until he or she left. People flee from war, persecution, oppression. An especially bad situation in a country is seen as a legitimate reason to emigrate (which it definitely is). But why this view can be problematic, is that in reverse it is often suggested that there would be circumstances which deliver no legitimate reason to migrate. For example the German word “Wirtschaftsflüchtling” (“economic refugee”) commonly expresses this idea. Privileged external people (bureaucratic authorities, media, the white/western majority,...) judge according to their view of a situation in a country if a person has the right to leave from there.

Related to the history of the term “Fluchthilfe” we also have to think about a certain anticommunism, which was not only relevant during the Cold War. The so called Socialist regimes have constituted a legitimate reason for migration – the emigration from the GDR was seen positively in the Western Germany because of ideological reasons

The “Fluchthelfer/in” in contrast to the “Schlepper” is a hero/ine, he/she saves lives. What the term does not consider, are the interests of the “Fluchthelfer/innen” themselves. The term suggests (even if strictly defined, it still means more) they would act from a charitable background – namely to help someone. In fact, many people have been doing it this way. People also support because of given or felt commitment, because they are from the same village, because they were once in the same situation, because they are friends or family and/or because of political reasons. Some of the people ask back the money they spent, others (partly) pay travel expenses, food or other important things from their own pocket. Indeed, there are people who don’t just ask back their expenses, but take money for the work and time spent or whose main interest is to earn money. And finally, there are those who take advantage of the illegalized situation of others, exploit or work together with the police.

The closed borders and the lacking possibilities for many people to cross borders “legally” are the conditions, which create a market for services to support or facilitate border crossings. Legal regulations, controls and military protection of border areas possibly produce additional expenses (fake documents, bribe authorities,...) and make the services firstly illegal and secondly dangerous. Dangerous not only for those who cross the border but also for those who help them – and the second often let the first pay for the expenses and the risk (according to the rules of capitalistic market economy).

As this market hence is illegalized and many states have a certain interest in destroying or repressing it, a structure is built up between repression, illegalization and profit interest, where it is often not the target to help people. On the other side, there is a structural interest that the service that is offered – the border crossing – functions, because only then money can be made and other “customers” will come. But again on the otherhand, the illegalization facilitates the implementation of structures that are more brutal and exploitative than in a “legal” market situation.

In English it is relatively simple to stress the market-like aspects in the term border crossing services as another alternative for “Schlepperei” or “Fluchthilfe”. The German translation of this term is rather complicated though: Grenzübertrettsdienstleistungen.

To sum up, we can say that the term “Schlepperei” isolates the exploitative aspect that this kind of support can have. It ignores the circumstances that lead to a possible exploitation and secondly completely hides the reasons why people cross borders and presents migration as a danger. The term “Fluchthilfe” on the other hand overstates the charity aspect of actions which are not always done out of the wish to



help someone and it reproduces the idea that flight (in the sense of CRSR) would be the only legitimate reason to cross borders undocumented.

In German language the term “Grenzübertrittsdienstleistungen” is complicated and bulky and therefore not really user-friendly but it contains the possibility for a general critique on capitalism. Still, the term does not refer to the circumstances under which these services are provided – the illegalization which is produced by the closed borders. On the other hand, the wording “Grenzübertritt” (border crossing) is less judging concerning the reasons why people migrate. At the same time, it doesn't say that the border is crossed illegalized or refers to any reasons of migration. Moreover, it is important to say that the terms are hardly used by the travelers without papers themselves but by people who talk about them.

Definitely we have to ask if at all one term can contain everything it should express. Probably, especially in this case it is not possible but it could be an adequate criteria to ask if the used term points out the intended aspects.

Therefore, we decided to partly still use the word “Schlepperei” when we talk about the legal criminalization of “Fluchthilfe” or border cross services but to write it with quotation marks and clearly connect it to the paragraph 114 FPG. Because this is the term that is used in the law and fulfills the function discussed above.

As we want to fight for a world where everyone has the freedom of movement to choose his/her preferred place to live, we don't want to use a term that legitimates migration under certain circumstances but excludes others. It is not enough to try to include other reasons for migration (e.g. so called economic ones) – we refuse any kind of judgment about the legitimacy of migration. Nonetheless this should not put a simple move to another country on the same level with fleeing from persecution.

Hence, for us it is not so important to find the proper title for this trial but to generally point out the criminalization of migration and of the protest movement and to try to uncover the structural and explicit racism of the police and the justice system.

A Few Thoughts on the Capitalist Border Regime

This brochure deals with the concept of the “border regime”. Even though a lot of what is written seems to be obvious, the following lines will explain in more detail the meaning of this term, and how it is used within this context.

In common parlance the term border regime describes all measures and institutions (legal, political, economic etc.) which are used for border security and control. The word is also used on a neutral level in the bureaucratic jargon of politics.

However, in the following paragraphs, the concept of the border regime will be discussed in a more critical and wider way in order to give the deadly reality of border politics a name. The context of the trial in Wiener Neustadt should mainly be seen in the European border regime, which despite everything can be seen as common space. It doesn't deal with the military closure of the borders of "Fortress Europe", but also with diverse forms of power relations and the production of racist differentiation and exploitation. Spatially there is both, an outward move through the outsourcing of border controls beyond the borders of EU member states as well as a extensive internalization of borders in everyday life and in institutional contexts such as the legal system, education, social and health care system, labour market, "humanitarian" bureaucracies, etc., as well as in the consciousness of people.

The European border regime is a combination of many local border regimes. The fact that the militarization of Europe's external borders causes deaths – both through the illegalization of safe ways of traveling and through direct armed forces – has now arrived in the mainstream public perception. However, the border regime is not a purely state-run construct. People often reproduce its borders and exclusions. Many don't only look away, but often actively support the system and even demand stricter regulations or see them as necessary with no alternative. What is already commonplace for goods and capital remains denied to most people: The freedom to movement.

However, the border regime remains contradictory and despite all brutality friable. On the one hand the capital counts on the mobility of labour, on the other hand capitalist states have to maintain control over their sphere of influence. Many manage to cross the European border despite of the severe and deadly closure. In some areas "the economy" presses on its opening, in others on its defense. A complete isolation is not the main reason for the defense of the border, but rather the control over migration based on capitalist criteria of usability. The border and migration regime is also a labour regime in which people are being made more productive for capitalist exploitation. Because of the deprivation of rights and the precarious situation of migrants on the capitalist labour market, they can easily be exploited.

The so called "human smuggling paragraph" ("Schlepperei paragraph" §114 Aliens Police Act Austria) can be seen as part of the European border regime. Due to its vague wording it can be used to criminalize any kind of support of irregular border crossing. A system in which some people are unable to move "legally" produces constructs such as "human smuggling", "marriages of convenience", "illegal entries" and "illegal residence" all the more. Under these circumstances, an irregular border crossing is

often not possible without support. Thus “smuggling” becomes a necessary service. One thing is for sure: As long as there are people who - for whatever reason - are forced to or willing to cross borders, which are closed to them, these people need support in order to cross and there will be a market for commercial forms of this support. The paragraph is not formulated in a way to allow prosecution of inhumane behaviour. but it criminalizes the support of irregular border crossings itself. The conditions under which it takes place, only play a secondary role. Essentially § 114 serves to further close the borders and break the solidarity between people in order to expand the border regime and increase the effectiveness of its repressive function.



Criminalization of Poverty

Different aspects of the court case of the of ‘human smuggling’ accused persons in Wiener Neustadt has been broached as an issue already:or example racism rooted in institutions and society, that crossing borders is possible for some and impossible for others, wrong translations during the trial which additionally where incriminating, political motivation before parliament elections, lies of the minister of internal affairs about millions of profit and allegedly cruel bosses of a “human smuggling” mafia. What has not been broached as an issue is the creation, maintenance and finally criminalization of precarious living conditions. This issue has been observable in different ways during and prior to the trial.

First of all people had been kept in investigative custody („Untersuchungshaft“)¹¹ for months, argued with a danger that they would repeat the “crime” („Tatwiederbegehungsgefahr“)¹². The accusation included an increase of the punishment saying that the “crime” was done within a ‘criminal organization’ and also saying that they committed it “commercially” („gewerbsmäßig“)¹³. The main argument given for this accusation is the assumed lack of material resources of the accused.

An appeal against the point of committing it “commercially” in the accusation had been rejected by the higher regional court on the grounds of the low income of the accused which led the court to the assumption of committing it “commercially”.

In the refusal of the objection it says: ‘Especially the commercial motive of all participants is construable [...] from the membership of a [...] criminal organization in relation with the minimal income of asylum seekers of 39,- € or 45,- € monthly of the accused who are without other means.’

The criminalization of precarious life situations can be seen similarly already in the ‘ground crime’ („Grunddelikt“)¹⁴: Helping someone with irregular border crossing is only considered a crime and followed by penal consequences if an intention of enrichment („Bereicherungsvorsatz“) is included. In theory, such an intention of enrichment can only be proven through statements of the accused since intention is an inner fact which refers to the consciousness of the accused person not to external facts. However, for the institutions a low income seems enough reason for this inner fact of intention of enrichment.

That means, it is argued that there can only be one motive for a person with little money to do a certain thing: earning money. Again and again the judge in this trial doubted the statements of the accused which said that the reason for their actions were something different than financial ones. Nevertheless the judge kept on doubting and put the financial and material situation of the accused in context of their motivation. On the one hand, laws limit the possibilities of people with precarious statuses to earn money, for example through a very limited access to the job market. On the other hand, other laws criminalize acts which are set because of a bad financial situation and finally, because of their precarious situation people get denied that they can act out of solidarity.

11 investigative custody means that somebody is in prison without a sentence and has to wait there for his/her trial. The state justifies this with the arguments that this person will maybe commit the “crime“ again or could flee or destroy proofs.

12 “Tatwiederbegehungsgefahr” means that the reason for being in investigation-detention is that police says it is possible that the person commits the crime again.

13 Committing a „crime“ “commercially” makes the punishment higher and means that a person did the crime to get money for daily life.

14 Means only the delict of „human smuggling“ without additional higher punishment for a ‘commercial character’ or within a criminal organization.

Interview with One Accused

Extracts from a radio feature on Radio Orange from the 3rd of October, 2014.
Stream at: <http://cba.fro.at/270358>

Already at the beginning of the trial in spring it has become evident that the translations of the observed phone calls are inaccurate. Since September the single charges are again topic. For every charge the court has been going over the protocols of phone recordings and has been questioning the accused on certain calls. In doing so, it shows once again, that there is no evidence at all for the horrendous quantity of money, which they supposedly made.

One of the accused explains: *“I don’t remember exactly where I read that our group supposedly made 30 Mio Euros. But what we hear in the courtroom, what the interpreters from the police translated from the protocols of the monitored telephone calls, these are conversations where nobody even talks about 500 or 1000 Euros.”*

The prosecutor and the judge ask very detailed questions as soon as money is mentioned in the monitored phone calls. Talking about small amounts of money, which are necessary for the daily routine, is criminalized. Some accused report that they even added money out of their own pockets when they helped others, showed them the train station or provided similar support.

“Many people don’t know that, but when I meet a person on the street who talks the same language as my mother tongue and asks me for something, I have to help. When the person asks me for directions, I have to show them where to go or where they can buy certain things. We also told those people about our own problems, because they asked us. When they ask how it is in Austria, we have to tell them, that it is very difficult here, that it is not easy to stay here. And then many of them leave.”

If this is a payoff for the Refugee-Protest-Camp, then even a verdict of not guilty would not change much. Because the everyday life of the accused is massively restricted, also after the release from investigative custody of eight months in March.

“I have a lot of problems with my school. I was in school on Monday and my teacher was very angry. She said, that what I am doing is not worth a graduation. I explained to her, that I have to go to court or otherwise I will get in trouble with the authorities. She agreed, but she said, that I also have to go to school. I am afraid, because I don’t want to be kicked out of school. I also have to do something for my own life. Now I have hearings in the court until 4th of December, I hope that will be the last day of trial.”

The others can't go to work. They always tell me, that they have problems at work, because they always have to go to court and can't show up for the job."



§114 FPG – The so-called “Schlepperei”-Paragraph

The legal background of „Schlepperei“

In 2013, 352 persons were caught by the Austrian police because they were suspected of doing human smuggling. This shows that the case of the eight accused in Wiener Neustadt is just one of many trials on “Schlepperei” in Austria. The legal norms criminalizing human smuggling are changing frequently and are strongly influenced by discussions within the European Union. This article focuses on the prevailing legal situation in 2014.

§114 is part of the Austrian „Fremdenpolizeigesetz“ („aliens’ police law“). As in many other cases migration is discussed as a problem of security for EU citizens: According to legislative authorities the paragraph should protect the borders and the interests of the state, help to keep the „public order and security“ and protect the national labour market. According to this law, a person who promotes the illegalized immigration or journey of a non-citizen to Austria or another country of the EU, in order to enrich

oneself or a third person can be charged with “Schlepperei”.

The definition of „promote“ is widely interpreted: It means any kind of behavior facilitating the illegalized journey, such as offering sleeping places, buying train tickets or giving advice for safer border-crossing. In the legal practice it is not necessary that somebody really crosses a border somewhere, the mere possibility that someone could cross a border illegally is enough to break this law.

“Enrichment“ can be money, but also cigarettes or food. These kinds of “enrichment” do not have to be given to the “smuggler” directly. It can also be a third person who gains money, cigarettes or a burger.

If these basic elements are fulfilled, one can be punished with up to two years in prison. For other, more severe forms of smuggling there can be sentences between 6 months up to five years. If someone is spoken guilty for human smuggling as part of a criminal association the sentence can be up to 10 years.

From a juristic perspective one can criticize that almost every action leading to the exchange of money between persons who are not even directly participating on a border-crossing action can be criminalized as supporters of illegalized border-crossing. It is not even necessary that the accused person knows about the complete action. This law makes it possible that persons who offer a ride and people like taxi drivers can be prosecuted as “smugglers”. As a consequence, they start to control ID-cards and visa which means they are driven to do police work.

The fight against human smuggling is an important goal of national and international politics: As the amendments in 2000 and 2005 showed, EU guidelines and frameworks should lead to harmonized legal norms in Europe, higher sentences and more effective investigations.

§114 FPG is part of a whole set of legal norms that are criminalizing migration and are making life more complicated for migrants. Examples are the criminalization of marriages and adoptions, restrictive asylum laws and the limited access to the labor market, which pushes people in precarious working conditions. Another point are the extended permissions police have against persons they define as „foreigners“.

Laws as these are built on the differentiation between persons with and without papers. Based on this differentiation is also the practice known as „racial profiling“, something also happened in the current case: The suspicion of a person looking „illegal“ is, by law, reason enough for the police to make an ID-control.

According to law only a person without a legal status can be smuggled. In the current case it is not clear how many of the supposedly smuggled people, in the beginning often nameless, had asylum or any other legal status. The police just assumed that they were without papers. It became clear that the cops based their actions simply on their „experience“ as foreign police – this was the explanation for these kinds of vagueness.

“SOKO Nord” and “SOKO South” - Task Force North and Task Force South

The task forces (German: Sonderkommission SOKO) North and South were introduced in January 2013. Before then, only a “Task Force East” and the “Task Force Traiskirchen”, introduced in 2011 by the Austrian minister for interior affairs, Johanna Mikl-Leitner, and the Lower Austrian governor, Erwin Pröll, existed. Meanwhile, they have been implemented into the Task Force North. The Task Force North still has its base of operations in Traiskirchen, whereas the Task Force South operates from Eisenstadt. They are organized by the local police forces of Lower Austria and Burgenland. A declared reason¹⁵ for the introduction of these task forces are the supposedly successful investigations of the Task Force East, which lead to a change of “smuggling routes”. Task Force North should now specifically target the routes from Chechnya, Russia, Poland, Ukraine and Slovakia while Task Force South focuses on possible routes crossing or coming from Turkey, Greece, Romania, Bulgaria, Serbia and Hungary.

Both the task forces North and South consist of twelve “executive officers”: Six of them are appointed by the State Office of Criminal Investigation (Landeskriminalamt, LKA) of Lower Austria, respectively Burgenland, two by the LKA Vienna, one by the Federal Office of Criminal Investigation (Bundeskriminalamt, BKA) and the others are policewomen and -men from the federal states. The twelfth person comes from the so called “Operational Centre for Compensation Measures” (“Operatives Zentrum für Ausgleichsmaßnahmen”). In addition, the Task Force South is to be reinforced by two Hungarian officers (status: December 2012). The authority for both task forces is the BKA.

The “Operational Centre for Compensation Measures” has been set up in August of 2011 in Wiener Neustadt. A press release, regarding its opening, states: “The appointed officers coordinate, register and analyze data and search measures for fighting against illegal migration, human smuggling, illegal drug trafficking and arms trade as well as vehicle trafficking and document forgery in Austria”¹⁶ The Ministry of the Interior calls the centre a “core of the new bureau [...], in which criminal and migration specific data is being analyzed and registered. Based on that, target-oriented investigation and search measures will be initiated in the whole country of Austria, for example for fighting against illegal migration and human trafficking.”¹⁷

15 “Polizei Aktuell – Zeitung für die Exekutive” Edition 135, p. 6

16 http://www.ots.at/presseaussendung/OTS_20110830_OTS0167/lh-proell-und-bm-mikl-leitner-eroeffnen-operatives-zentrum-fuer-ausgleichsmaßnahmen-in-wiener-neustadt [last access in April 2015]

17 http://www.bmi.gv.at/cms/bmi/_news/bmi.aspx?id=6A335070394C4A7530537333D&page=1&view=1 [last access in April 2015]

“I must have made a mistake there.”¹⁸

For the current case, police investigations have been initiated on the 10th of march in 2013, under the names YUNAN 1 and 2. In general, none of the police officers who spoke as witnesses in front of the court behaved as if they were responsible for anything or knew anything about their work or the work of their colleagues.

Translators referred to other translators that referred to police officers who then ascribed the demanded information to again other police officers. Both of the investigations were running at the same time, one being under control of the prosecution office of Wiener Neustadt and the other one being overseen by the prosecution office of Wien-Josefstadt. Until now though, it is not clear why the investigations were running at the same time, although at least one officer knew of the overlaps between the two. They were merged only in November 2013 by the head prosecution office. The police departments also worked internationally. According to witnesses from the police there was cooperation with German, Hungarian and Italian offices, with the information exchange happening through Europol-databases. One of these databases was FIMATHU, though its results were incorporated into the file, so that it is impossible to say now which information comes from this specific database.

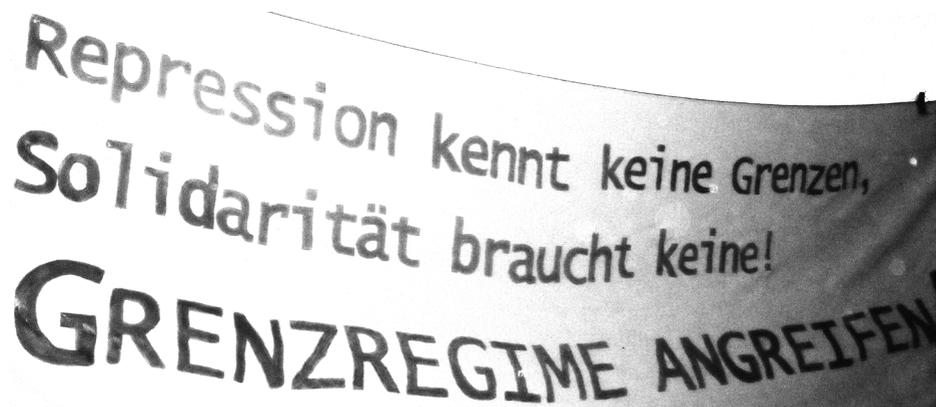
Reports of observations, too, have been managed as an “internal file” and therefore don’t appear in the official file. Often it is not even clear, whether they exist or not. As a means of introduction into the chaos of files there is a schoolwork-resembling intro into the working habits of “human smugglers”. Some sentences can be found on Wikipedia, others are justified with “professional experience”. Some information though have supposedly been gained from the interrogations of asylum seekers.

“It all starts in the park”¹⁹

The testimonies of task force officers often demonstrate their biased and paranoid judgement of certain situations. Meetings in the park or the repeated changing of SIM cards are supposed to be clear signs of conspirative actions, even though the observations in the park would, according to their own testimonies, not have led to relevant results for the investigations. According to one police officer, there would “always be an uncertainty about specific facts” in investigations about “human smuggling”. Often it was completely unclear why a specific person was mentioned in the charge, one time simple “telephone contact” was mentioned as the decisive evidence.

¹⁸ Rudolf Kranz, one of the main investigators of the task force “human smuggling”, confronted with the fact that he reported the same actions in two different cases.

¹⁹ This statement, made in a telephone call, was the only “evidence” against a defendant in one charge.



Repression kennt keine Grenzen,
Solidarität braucht keine!
GRENZREGIME ANGREIFEN

The word “uncle”, too, alerted a police officer. “It could be a potential financier”, he stated in front of the court. Even the poor evidence would not necessarily be exculpatory, the accused could “possibly have always been present in the background”. In contrast, it looked like some police officers didn’t just stay in the background of the translations of the phone conversations. Terms like “Schleppungswillige” (“someone willing to be smuggled”) became apparent in the file after the police officers discussed them with the translators, although the accused only spoke of “people”. The police officers also decided, which of the contents were “relevant to smuggling”. One witness gave an appropriate definition of this: “If people come or someone talks about people it is always relevant to smuggling!” But the assignment of voices to the accused, however, was a task of the translators, who repeatedly made major mistakes, as the trial showed.

During the two investigations YUNAN 1 and 2, which were led by district inspectors Rudolf Kranz and group inspector Martin Unger, Bernhard Korner was their supervisor. Their greater supervisor, and technical chief of the operation, was colonel Gerald Tatzgern, who is the leader of the Central Unit Combatting Human Trafficking and Smuggling Crimes (“Zentralstelle zur Bekämpfung der Schlepperkriminalität und des Menschenhandels”), which is located in the Federal Office of Criminal Investigation, which is part of the Ministry of Interior.

On this note, it shall be left open, what kind of “mistake” Johanna Mikl-Leitner spoke of in an interview with the KURIER on the 3rd of August 2013.²⁰

²⁰ See: chronology in this brochure.

Cell Phone Surveillance – How the Police Can Observe your Mobile Phone

Cell phones are tracking and surveillance devices. Almost every person has a cellphone nowadays and carries it around all the time. There are two types of cell phones: simple mobile phones and smart phones. Simple mobile phones are the 'old' ones, with the buttons. Those types of phones are mainly used to make phone calls. Smartphones on the other hand are not only for making phone calls, but also for checking emails, surfing the web or using social media.

Both types of phones can be used by the police for surveillance purposes. The police asks the mobile phone provider for access to your phone line and is then capable of listening to every call you make. They do this based on your phone number, so if you are being surveilled and you change the phone, but keep the number, they are still listening. And they can listen to the calls you make as soon as the phone is dialing. Because the microphones of the telephones are so good, they also listen the surrounding noises (if at the time you make a phone call people around you are talking, the police can also listen to their conversations). They do not only listen to the phone calls, they also record them. The police also receive a copy of every SMS you send with that number.

The mobile phone provider also gives to the police the location of the mobile phone while a call is being made or an SMS is being sent or received. This means, that the police can also track your movement while you use the phone. If you don't use the phone, the police can send you 'Silent SMS' (SMS you cannot see on your phone) so they know where you are at the moment. With smartphones, the situation is worse, because when you use a smartphone with a data connection (for example to check you emails or your facebook status), the phone provider can track your location all the time.

When the police monitor your phone number, they also get an unique identifier of your phone. So if you change the SIM-card but not the phone and they start monitoring your new number, they know that it is the same phone.

Quotes from the Court-Room

May 6, 2014

Hearing of witness Diba Sayed, translator of the police, tasked with translation of interrogations and telephone observations.

About the term „Schleppungswillige“, an invented word which was used to translate a Punjabi term for “person”. The direct English translation would be “person-who-is-willing-to-be-smuggled“.

Lawyer: *How did the term “Schleppungswillige“ get into the translation? Is it this word, about which you have said that you were writing it down because it looks better?*

Diba Sayed: *Yes of course, it was like that.*

Lawyer: *You were writing it, because it looks better?*

Diba Sayed: No.

About one certain telephone protocol:

Lawyer: *Well, let’s say, my secretary calls me and says, ‘Herr Magister, Sir,²¹ the persons are here, come, fast!’ I say: ‘I don’t have time.’ How do you interpret this?*

Witness: *You are the Herr Magister, not the smuggler, of course.*

Hearing of Rahim Sayed, translator of the police, tasked with translation of interrogations and telephone observations, brother of Diba Sayed.

About the term “agent“, which would be the translation of “smuggler“ in Urdu and Punjabi.

Rahim Sayed: *Agent, for example, can also mean something else. ... If there are words with different meanings, we just write down this word.*

Rahim Sayed, asked if he knows what „Zweifelsgrundsatz“ (the justice term for the principle that the accused enjoys the benefit of the doubt) means, *‘Of course I know, it means that maybe you can get wrong answers.’*

Lawyer: *I would kindly ask for Name, rank and function of the gentlemen from the executive in the back of the room or alternatively clarify if there are possible witnesses in the court-room.*

Note for the protocol: *Two policemen, who were present at the arrests, say so and leave*

²¹ The term „Herr Magister“, is a way of addressing a person who has a university degree.

the courtroom due to the request of the chief judge.

Lawyer: I would ask kindly to note for the protocol that possibly these persons were present at earlier hearings.²²



June 12, 2014:

Hearing of Bernhard Korner, policemen at SOKO Schlepperei Süd. As leader of the operation he has the overall responsibility.

Question: *Do you have the personal data of the police informant?*

Korner: *No, the person is not registered. It is only an informant.*

Question: *Are you sure?*

Korner: *Yes.*

Question: *I confront you with the files, there is a note to which you referred. The last sentence says, 'The personal data of the police informant are noted at the station of SOKO Schlepperei Süd.' What do you say?*

Korner: *This is my department, which is under closure.*

Question: *I asked you if you have it and you said no!*

Question: *Are there any files which have not been given to the court till now?*

Korner: *I cannot tell you this. You have to ask the coordinating officers.*

²² During the hearings of the translators and the police constantly other police(wo)men have been present in the court-room, for job-related reason, as they said. After their hearings were over, they haven't been there anymore.

Question: *You yourself said that you coordinate and sign the reports, so you should have an overview!*

Korner: *According to my knowledge, everything that was relevant for the case was given to the court. I cannot say more about this.*

Question: *Are there pictures from the observations?*

Korner: *I cannot tell you this. It is the task of the coordinating officer.*

Question: *This means you don't know anything about this case?*

Korner does not answer.

Lawyer: *We have already been talking about the translation and you said that there were words which don't exist in German. So, there were words said in Punjabi but it is not possible to translate them, because they don't exist in German. But still it has to be translated. Can you give an example?*

Korner: *The word „Schleppungswillige“.*

Lawyer: *But the word „Schleppungswillige“ does exist in German. It is called Schleppungswillige!*

June 16, 2014

Hearing of Johannes Jandrisevits, Policemen at SOKO Schlepperei Süd, coordinator of the telephone observation.

Lawyer: *You are familiar with the basics of the criminal procedure. Does Zweifelsgrundsatz (benefit of the doubt) mean anything to you?*

Jandrisevits: *Not really.*

Hearing of Roman Stangl, officer at SOKO Schlepperei Süd, tasked with telephone observation.

Lawyer: *Does Zweifelsgrundsatz (benefit of the doubt) mean anything to you?*

Stangl: *What do you mean by that?*

Lawyer: *Does presumption of innocence ring a bell?*

Stangl: *Yes, of course.*

Lawyer: *Can you explain this term to us shortly?*

Stangl: *I think this has nothing to do with the file, has it?*

September 24, 2014

Judge: *For the protocol we note that one can hear in the recording that one of the persons is singing. The chief judge has the impression that the persons speaking have fun.*

Six Exemplary Reports of the Trial

Based on the trial monitoring, for each day of trial short reports were written. We selected six of them as examples. You can find more here:

<http://solidarityagainstrepression.noblogs.org/prozessbeobachtung/prozessdokumentation/>

Report of the 22nd day of trial on 11 October 2014

The 22nd day of trial continues the same way the last one has ended. The judge goes on with the charges. She states which of the observed phone calls are relevant, according to police protocols. On closer inspection one finds out, that most of the phone conversations don't have anything to do with the absurd reproaches of the SOKO, not even with lots of fantasy.

Out of huge quantities of records, some are played in the courtroom. In between some of the accused are questioned alternately: if they recognize their voice or the voices of others and what the phone conversations are about. The judge interrupts the trial during two recordings to let the present interpreter translate them.

Altogether it gets clear, that the investigating SOKO-officers find every conversation about other persons, money, traveling or giving someone directions relevant for their investigations, and reinterpreted every conversation relevant for smugglers. After every charge the concerned accused are asked, whether they plead guilty or not guilty. The first accused says that he stands to his mistakes which were that he was helping people and as long as he is still in Europe, he will not do this again. If he got something for this? That would be very clear: eight months custody and a months taking court case.

Since 8 September 2014 they have been discussing anew every charge with all the stated telephone recordings from the observation of the SOKO. Only two of the almost 50 charges were dealt during this day. Presumably, this court case will be going on for a long time.

Report of the 25th day of trial on 18 September 2014

...and another day full of protocols from the telephone observation and questioning of the accused. Probably one of many more that are awaiting us. On 24 September, the next day of trial (which will start at 10 a.m.!) further dates of trial will be published. Today the fifth defendant was questioned a lot, but also the first, fourth and sixth de-

fendant. It was discovered that one needs money for traveling and traveling by train is more expensive than by car sharing. According to the statements of the defendants, the person who gets a lift pays him_herself or someone transfers the money. Sometimes even the defendant payed or money for a journey was collected in the Serviten monastery. Criminal activities through and through.

For one of the defendants jokes and showing off on the telephone became a bit of a fate, but he could explain credibly, that no one would pay 500 or 600 Euros from Vienna to Germany. Besides, it was shortly discussed, that one of the defendants reported an acquaintance to the police for tax evasion. The defendant stated that this was the reason why someone wanted to trick him and bring him to court for smuggling with a wrong testimony.

The atmosphere in the courtroom was tense, again and again the accused and their lawyers were reprimanded by the judge.

One question of a lay judge lead to bigger excitement: After one defendant told that some people – strangers to him – talked to him at the train station because they wanted to go to Italy, the lay judge asked, “How were you dressed? Like today, or was it visible that you are Pakistani?” This question with its cultural racist assumption that the defendant would have to – according to his descent – dress differently caused a low voiced sign of upset in the audience. After this the judge lost her patience and asked one the trial observing person to either show her ID or leave the courtroom. After this interruption the spectacle went on as usual – this time until 3.45pm.

Extract of the report of the 26th day of trial on 24 September 2014²³

After some time one of the defendants decides to refuse any further answers, stating that this trial has already made him sick, he is not able to concentrate anymore and he has got a headache. The trial has impact on his health and he doesn't want to be part of this game anymore. After this he answers only partly to the questions of the judge and the state prosecutor.

It once again gets very clear that the goal of this trial is not to prove supposed evidence (that doesn't exist anyways), but to create evidence from the statements of the defendants. For lack of evidence this trial has become an investigation procedure.

²³ The whole report can be found here: <http://solidarityagainstrepression.noblogs.org/post/2014/09/27/proz-essbericht-vom-25-verhandlungstag-am-24-september-2014/>

Report of the 27th day of trial on 25 September 2014

It was striking, that in some cases a single telephone protocol was used as evidence for several charges. One person's leaving the country was used to build several different charges which is exemplary for the pompous indictment.

One fact that has been discussed today bases on so called "indication" of the police. "Indications" (compared to „facts“) are phone conversations which not even the police could match to any specific "act of smuggling", as admitted by chief investigator Martin Unger. "Because of this," one lawyer noted, "I don't understand, why there is a charge for this at all." It turned out during the questioning that the conversations were about jobs for newspaper distribution.

The questions asked are always similar: Has the defendant helped someone to cross a border? Did he get any money for it and if yes how much? Which status of residence did the persons have? What was the relation between the accused and the person (relatives, persons from the same village,...)?

Every question about the earnings was negated, sometimes the accused would have even payed extra, lent money, donated clothing or food – they simply helped out. When asked for the umpteenth time by the public prosecutor "*Should you get something for organizing the lift?*" the fifth defendant replies, "*Only love*".

Report of the 28th day of trial on 10 November 2014

Today started with a video conference. A witness, which was helped to get to Germany by one of the defendants was questioned via Skype. He said that he was from the same village as the defendant and that this person had helped him getting from Austria to Germany. He was asked if he had payed anything for that? The witness replied that no, the defendant had helped him, because they were from the same village. Besides, the witness confirmed, what defendants had already said several times: Many people from their home village in Pakistan had fled to Europe, the accused person had helped where he could.

After almost an hour the questioning was finished and the rest of the day went on in the usual manner: phone recordings were played, partly translated and the defendants questioned.

The charge VV has been continued and couldn't get finished today. In this charge several defendants are accused of smuggling 30 people form Germany to Italy. Only through inaccuracies and double and triple counting the prosecution came to such high numbers: Only two out of ten people were helped to leave Austria. But also here it was negated that the defendants had got any money for this. Besides, four people are accused of this charge and one of them only because he has a similar name to one

person talking in a phone recording. In another defendant's case there is no police evidence at all for being accused.

Again some wrong translations were uncovered: For example in one conversation people are talking about somebody being gone, but it is translated that they had been "sent". Another translation stated that one accused supposedly had said that he worked with the "big smugglers in Hungary". He actually said that he knew many people in Hungary.

Report of the 30th day of trial on 1st October 2014

Groundhog day. From 9.10am to 3.10pm phone conversations were played, translations read and defendants questioned.

Today the charges DD, EE, FF, GG and HH were discussed. Mainly the first defendant and the fourth one were questioned. Others got only a few questions.

Some of the telephone records were damaged. In some of today's played conversations only one participant was audible. The records had probably been handed over damaged by police. The judge will give more information about this at the next day of trial.

Today especially one charge should be emphasized: One defendant was informed by phone, that 22 persons had arrived in Vienna. Despite the fact that there is no evidence that he or any other defendant had anything to do with these persons entering or leaving the country, three persons are charged.

After one defendant was asked again about the support, he explained emphatically *"When XY told me that his acquaintances from Traiskirchen or another camp would come and asked, whether I could help, I would help him. That is a social relation. Please don't take it as an international organization!"*

Today the word "guarantee" was discussed, which has already been mentioned several times in previous trials. One of the defendants explained that it was normal to leave money with a trusted person during a stopover on your route of escape. If you then needed the money for traveling on, they would send it to you. Often you give a verbal promise, a verbal guarantee, for example for people of your village. So guarantees have much more to do with building up trust, than with down payment, as it has been understood by the judge until now.

Besides, some of the defendants again and again noted in which situation this trial had brought them. They had often paid train tickets from their own money and had never got anything back. They said that supporting others had not been good for anything but 8 months of prison..



Statement of the Accused from May 2014

On tuesday, the 6th of may, our trial will continue.

The police made a lot of mistakes in the “Anklageschrift” of our case so the trial had to be stopped after five days.

Who is responsible for our eight months in prison? How can we explain the situation of our criminalization to our families? We lost a lot of family members while we were not allowed to contact them. The father of one person died, of one other the brother - everyone of us lost dear ones.

And this is human rights in Austria? Sometimes we feel like human rights only apply for Austrian people here. Why are all the prisons full of non-Austrians?

Nine months after our arrest all of us were released. But this is only a small success. One and a half month we were outside of prison, but in reality we don't feel free. The civil police is following us all the time, searching for us and controls what we are doing. This is why our mind is feeling like a second prison. We are confused and we understand that it will not stop that the state and the police want to make us criminals.

When we got released we felt very happy, but now the time is running until we have to face the court again. It is very difficult to feel treated fairly and as humans after so many months in prison, without contact to our families, with many losses and all this investigation going on. But we are strong!

We hope the judge will give us justice.

Resistance is Everywhere

Call for solidarity with the imprisoned refugee-activists

Published originally in German by solidarity against repression in January 2014
[<https://linksunten.indymedia.org/en/node/104335>]

Under the name “Refugee Movement Vienna” different types of struggle for freedom of movement and residence have developed since the protest march from Traiskirchen to Vienna in November 2012, and the subsequent protest camp and hunger strike. All the actions under this name are just one spark—but a strong one—amongst many, attacking the injustice of fortress Europe from below.

Even though the media does not show press conferences, supporters or big demonstrations anymore: the struggle for freedom without borders will continue. Every day refugees—many of them so-called “asylum-seekers”—resist the racist system, that divides people in two groups—those with and those without papers. This resistance occurs at many places: in the camps, at the borders, in “everyday life”, in police stations and prisons.

Like in many other European countries the demands of refugee activists have gained increased attention in the public and the media since October 2012. Still, the political authorities in Austria—unlike in other states, where refugees went on strike—have hardly shown any willingness to negotiate.

At the end of July 2013, after months of protest, eventually eight activists got deported. Close to the climax of the election campaign, this clearly was a politically motivated act of repression by the Austrian authorities. Despite massive protests the deportations could not be stopped.

What follows, is a wave of state repression and criminalization, that reminds of the so-called “Operation Spring” from 1999.²⁴ This police operation was launched after protests had emerged in solidarity with Marcus Omofuma, who had been killed by the authorities in the course of his deportation. More than hundred predominantly Black²⁵ people were arrested, supposedly suspected of drug trafficking. Hundreds had been under surveillance and had been wiretapped. Even though the investigations were far

24 Annotation: There is a mistake in the original text, where it says 2000. In fact, Operation Spring was conducted in 1999, in the Winter of 1999/2000 the trials took place.

25 Black is mentioned and written in capital letters in this context, to emphasize, that it does not only refer to the skin colour of a person, but to a social status. In our society which is determined by racist dynamics and discourses, this makes a difference. White people as members of the majority are not being criminalized in that way.

from successful for the police and the prosecution, most of the arrested were convicted to long prison sentences in a highly questionable lawsuit and based on dubious evidences.

In the summer of 2013 the protests against the deportation of activists again generated public attention. As a direct response, a number of people of the refugee movement and from their personal environment got arrested and put into prison on remand. They are accused to be part of a “criminal organization of people smugglers” (§114 FPG), which can be punished with prison sentences of up to ten years. The public (above all the media and the minister of the interior) happily jumped at the story of “ruthless chiefs of a people-smuggler gang” who were living “disguised as refugees”. Even though the court files, which were partially published in the ‚Falter‘, soon revealed that these were mere chimera of the minister and the media, the coup had been successful in discrediting the movement in the public view. The arrested are now „waiting“ for the date of the trial, which still is to be announced, for almost six months. These were six months in extreme conditions of detention, which led to massive physical and mental ailments. Six months, in which the contact to family members had been denied, six months of very restrictive visiting allowances, in an attempt to break the solidarity with the prisoners. After a few months visiting was made further difficult by moving the prisoners from the prison Josefstadt in Vienna to a prison in Wiener Neustadt.

Prison is - besides the national borders - part of the racist and repressive system, which legitimates and maintains injustice and inequality. Here, once again the hypocrisy of the political system and the asylum policy become obvious. The Austrian and European migration policies create a system, which illegalizes people: “Legal” border crossing is only possible for “privileged” people.

The right to asylum is defined very narrowly, so that many do not have the possibility to claim this basic human right. If people do not match these stringent criteria, they will be denied basic rights such as the right to free movement and the right to freely choose one’s place of residence. They remain without a permit to work and without any chance to build up an existence in Austria.

The paradox of „Legality“

The “legal” solution of this problem is the deportation of illegalized people. This is based on the idea, that certain human beings and all their activities within the Austrian borders can be considered as “illegal”. Consequently it is “legal” to imprison them for weeks, and finally set them into a plane against their will, to deport them to a country they have fled from. The racist and repressive laws that consider people to be “illegal” and deportations to be “legal” have to be refused.

The freedoms of movement and residence have to be universal, and not only valid for privileged citizens of the EU. According to the same logic also a border regime, that illegalizes cross-border movement, has to be refused. This very border regime excludes people without the right papers from “legal” traveling and limits their possibilities to cross borders to dangerous and often life-threatening “illegal” options.

The same border regime - implemented by the EU and countries like Austria - thus creates a market for unofficial border crossing, where services are offered to facilitate the dangerous and risky “illegal” crossing of borders. Just like people and their undocumented crossing of borders are considered as “illegal”, services to facilitate these travels are being criminalized. Here we can notice the same absurd logic as before: deportations are “legal”, but supporting others to cross borders (often denounced as “smuggling”) is being highly criminalized. To put it differently, if it is sanctioned by the state it is “legal” to put someone in a plane against his/her will in police custody—often tied up, sedated, and by using force. But to help somebody to cross a border, who is excluded from the right to travel “legally”, means that you face prosecution, arrest, surveillance, remand, and up to a few years in prison.

Assistance to refugees—presented as “smuggling”—is often being depicted as exploitative and dangerous. In contrast, attempts by the state to criminalize and halt these activities are considered as positive, useful and necessary. The paradox becomes even stronger if we remember that for example crossing the border from the former GDR towards the “western” countries, and helping others to do so were considered as downright heroic deeds. It is often being assumed that assistance to cross borders—so called “people smuggling”—includes exploitative practices such as human trafficking or cheating of the “victims”.

The way how people are crossing borders (hidden in small spaces in trucks; under extreme conditions; in places where their life is at risk; etc.) is—often rightly—being considered as cruel and inhumane.

The business of borders

Because borders are more and more being controlled by the police, crossing them is in fact getting more dangerous and can hardly be done without risk. Often it is only possible to move from one country to another if you have support by services like information transfer and provision of contact addresses, especially in highly guarded areas of the EU.

Like in all free market situations, “people smuggling” can be exploitative and dangerous. But we have to keep in mind what causes this problem: The borders themselves create this “smuggler” market, which is often referred to as ruthless.

If everybody had the right of free movement without being stopped at militarized and guarded borders, the exploitation and dangers of the “people smuggling” market would be avoided.

Every attempt of the EU to tackle “smuggling“ and the involved exploitative practices is hypocritical, as long as it does not aim at the abolition of borders and restrictions to migration altogether. Looking at airlines which earn money from deportations, embassies where people have to pay for deportation certificates, or political parties that use the topic in their campaigns, we should also ask the question who benefits from the deportation-business. This is a brutal trading with human lives, which is being camouflaged by the criminalization of refugees and supportive activists.

The protests of refugees in Vienna and the consequent criminalization campaign have to be viewed in a wider context. The current accusations of “people smuggling” against people involved in the protest movement in Vienna are in line with the abovementioned racist logic of the Austrian and European policies. However, in the specific case the criminalization has to be considered as an attempt to silence a strong protest, which is well-covered by the media and has already been lasting for more than a year.

The criminalization will not achieve to stop the struggle for equal rights and against the excluding migration policies of Austria and the EU. The demands remain the same: freedom of movement and the right of residence for all, as well as the abolition of the border regime.

Solidarity must go beyond words. Silence and ignorance mean agreement with the dominant racist conditions.

We demand an immediate stop of all deportations and the end of racist motivated arrests and imprisonments!

We demand to immediately set free all refugee activists that are detained under the suspicion of “people smuggling”!

Smash §114! Destroy all border regimes!
Resistance is everywhere! Political prisoners are everywhere!
Solidarity with the imprisoned refugee activists in Austria!

We Have Never Done this Job

Interview in MALMOE²⁶ with two of the accused

F. and I. Are two of the eight men from Pakistan accused of human smuggling/“Schlepperei“ as a criminal association. Only few days before they were arrested in summer 2013, eight refugee activists had been deported to Pakistan. Three of the accused were arrested in Servitenkloster, where the protesters had been pushed to go by governmental and church authorities some months before. In February 2014 there was still no trial date fixed, six of the accused were still in investigative custody. F. and I. have been released some weeks ago. MALMOE talked to them about the accusations, friendly turns and ten million Euros.

MALMOE: In the end of July you were arrested , put into prison and recently you were released. How are you doing?

I: Not very well, but it is okay. We are still waiting for the trial. When I think about it I feel stressed. We still don't know when the trial will start. But at least we are not in prison anymore.

What are the exact accusations?

I: I don't know exactly, human smuggling/Schlepperei. When I asked the police why they arrested me, they said: „Because you were part of a protest. That's not Pakistan, that is Austria.“ They showed me pictures of the protest against the deportation of eight persons to Pakistan in a newspaper. I was on this pictures, yes. But protest is not a crime.

How were the circumstances of your imprisonment, and what happened afterwards?

F: I said good-bye to friends at the trainstation Philadelphiabrücke. It was the 29th of July 2013 in the evening, when they arrested me. The day of the deportations to Pakistan. They brought me to Eisenstadt.

I.: I was arrested the next morning and also brought to Eisenstadt, as the others. There our lives in prison started. From there they brought the two of us and another person to JVA (=prison) Josefstadt, the others to Wiener Neustadt. After three months we were also transferred to Wiener Neustadt.

²⁶ Issue 66, 03/2014, or online: <http://malmoe.org/artikel/widersprechen/2736>



Smash § 114
de-criminalize
migration!

What is your opinion on the accusations?

I.: They arrested us because of human smuggling/Schlepperei, but we have never done this. We have many friends here. At the protest camp about 300 Pakistani were involved. About 20 of these are still in Vienna, eight were deported and six are still in prison. All the others left the country. When friends call you and say, that they are leaving you say goodbye. This is not human smuggling. Police says they have been observing us for four months, so they know what we did. But if they knew that well, why didn't they catch us together with illegal persons? Simply because we have never done this work.

F.: When we were arrested, they said, that we had earned ten million Euros with human smuggling. The public view is now, that we had a big business. But we don't, that's a big lie. We have no money at all, where should this ten million be? If we had that much money, we wouldn't live in the monastery.

I.: I left Pakistan because there is no justice. My relatives are dead, that's why I came here. I thought this would be a place for a human life, Europe. But now, as I'm here, I don't feel as if I am living in Europe. I don't have freedom here, I didn't experience justice. The six months in prison we will never get back in our lives. But I hope we will get justice from court.

F.: We helped people, who didn't know what to do. When I was released in Wiener Neustadt I didn't know where to buy a ticket. I asked somebody and it was shown to me. We also did such things, for brothers from Pakistan. Police observed everything, not only

telephones, also bank accounts, Western Union, everything. Where is the money they say we earned?

Six persons, who are accused in the same case are still in custody. Why have you been released and the others not?

I.: I don't know. I've been released just like that, they opened the door and said, that I could go. I suppose it has something to do with the asylum case. Maybe they think, that people whose appeals were rejected would leave the country if they let them go.

F.: I had a review of a remand in custody, a judge decided to let me go. I was 18 years old at this time, maybe that's the reason. But I also don't know why.
What are your experiences in custody, how did the police and the prison guards treat you?

I.: The situation was bad, the food also, and nobody ever listened to us. I wasn't called by my name but „Votivkirche“. For example for two weeks I asked every day for the social service. And when the woman from the social service came and asked, what I wanted, she was accompanied by police. I couldn't talk to her alone, and she didn't listen to me anyway.

F.: I hurt myself in prison, I cut my arms, because they said that I would be deported. A policeman pinched me in my wounds and hit me. That was how they behaved.

How do you see the accusations from a political perspective?

I.: We think, that we were arrested for taking part in the protest. And we ask ourselves, why we are still waiting for the trial

F.: Other people are also in prison because of Schlepperei and they admit it. They get their trial quickly and are sentenced with one month in prison and 13 months of probation. But we have been in prison for six months without seeing a judge. And we still don't know when the process will start.

Statement on Yesterdays Proclamation of the Verdict

Critique should not be addressed to her but to the legislator, says the state prosecutor and insists on twenty pages of vague phrases which make up the indictment. She is right, as a state prosecutor she only applies the law: She classifies what is indicted according to the Austrian law. In this logic it is impossible to talk about the fact, that laws like §114 criminalize migration and are based on a racist distinction between people according to their papers. This will not change even if the paragraph itself should be changed.

The sentence which the state prosecutor asks for – and will have been confirmed by the judge, the end of the day – criminalizes a protest movement on the one hand and on the other, keeps up social inequality, like many other decisions made in this justice system: Those who don't have money are committing crimes commercially and should therefore be punished with high sentences – an idea which is not based on the law but was literally applied. Apparently, it seems impossible that people are acting in solidarity with others without taking money for it. If there is no proof, some figurative phrases about “lambs” on the telephone are taken as evidence for a strictly organized business.



All in all, the accused were “small wheels” in a bigger network, they say. The bosses are somewhere in Hungary or Greece, unseizable for the Austrian justice, hence even more dangerous. Also the lawyers point on the fact that the “big boss” was released by the police. This argumentation illustrates the contradictions in the Sonderkommission’s logic (Sonderkommission = specialized police force). Still, the “knowledge” about these “bosses” is based on the same chaotic files and investigations like the ones which form the weak accusation against these eight people. To refer to it, therefore, supports the argumentation of the police and the state prosecutor.

Trials like this are expensive for the state, there are costs for translators, investigative custody or keeping up buildings like the court. This, together with the (critical) public attention in this case, made any acquittals seem unrealistic – already before 4th December. How else would the judiciary justify its actions?

Overview of the Sentences

1st defendant: 22 months, thereof 15 on parole

2nd defendant: 8 months, thereof 5 on parole

3rd defendant: 7 months, thereof 6 on parole

4th defendant: acquittal

5th defendant: 28 months, thereof 21 on parole

6th defendant: 13 months, thereof 10 on parole

7th defendant: 18 months, thereof 15 on parole

8th defendant: 10 months, thereof 7 on parole

As explanation: A sentence on parole means that it is not executed, hence the convict doesn’t have to go to prison. Only if the person is sentenced again during a certain period, the first sentence on parole can be changed to an unconditional one and the person would have to go to prison.

The unconditional part of the sentence is the difference between the total sentence and the parole. The investigative custody counts as sentence after the verdict.

For example : The 1st defendant got a sentence of 22 months, thereof 15 on parole.

That means that he got 7 months unconditional imprisonment, which he was already jailed during the investigation custody. As long as he will not be sentenced again during a fixed period, he won’t have to go to prison for the 15 months of parole.

At last when it was known that there will be a limited number of people allowed inside the courtroom for the proclamation of the verdict and every person was filmed by the police while entering the court, even empty plastic bottles had to be left at the entrance and the Courtroom was surrounded by police, with one civil policemen sitting with the accused at the dock, it was clear for everyone that there will be sentences.

Finally, everything stayed like it was. “An unknown number” of people should have been brought to “unknown countries of the European Union” for unknown amounts of money, together with unknown backers.

Seven out of eight accused got prison sentences from seven to 28 months, arranging their probation in a way that, so far, no one has to go to prison again. To not have to go to prison again does not mean that the sentence will not have a negative influence on their right to stay in Austria.

As usual, Petra Harbich read out the verdict in German first. Half an hour she was talking in juristic tongues, and as usual, the last ones who got to know what exactly is going on were the accused. Interjections from the audience did not change this either. The media wrote that the judge stayed “cool” despite tumults. This is true, as despite tears, political interjections and emotional statements by the accused and by the audience she read out the verdict, which was just another violent act as done by the constitutional state every day. In the end the question which remains is who for real are the “small wheels” of a bigger, dangerous structure





Book Recommendation

Stefan Buchen: Die neuen Staatsfeinde. Wie die Helfer syrischer Kriegsflüchtlinge in Deutschland kriminalisiert werden. Dietz Verlag, 2014.

(The new enemies of the state. How the supporters of Syrian war refugees are being criminalised in Germany)
“The story told here is about how people, who were refugees themselves, wanted to help other refugees - often friends, relatives, women or the own kids - to live safely in Germany.

As the story shows, one must not believe that in Germany today nobody is unjustly imprisoned, just because we live in a republic, under a rule of law with separation of powers and a guaranty of fair lawsuits. To have only laws in place that are passed by parliamentary majorities in the two chambers of parliament (Bundestag and Bundesrat) does not provide an absolute warrant against ‘legal injustice.’” (Stefan Buchen, *Die Neuen Staatsfeinde*, p. 9)

It is easy for the reader to discover similarities to the situation in Austria. The investigation methods used by the police and the concluded lawsuits are identical and culminate in similarly boundless persecution: telephone surveillance, observations, searches, arrests, imprisonment - all that as a punishment for helping other people.

Unfortunately we don't know about an English translation of this book yet.

Contact

This booklet is about a trial against eight people accused of „human smuggling“ in Wiener Neustadt 2013/2014. It wants to give background information and to point out its connection to the criminalization of migration in general.

This version is the English translation of a booklet published in German in January 2015.

More Information (partly English, partly German) concerning this trial, the legal situation and reports from the trial you can find here: **solidarityagainstrepression.noblogs.org**

There you can find this booklet (in English and German) online as well.

For comments, questions or critique you can contact us via **solidarityagainstrepression@riseup.net**