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Legislative Restrictions on the Right to Asylum (July 1, 1993)

To reduce the number of asylum seekers, the Bundestag revised Article 16 of the Basic Law. The revision ruled out recourse to asylum rights for those who hailed from countries where no evidence of persecution could be found. It did the same for people who had travelled to Germany through EU member states or other “safe states.” At the same time, however, the revision simplified bureaucratic processes for other asylum seekers.

Democracy at Risk

On the new asylum law that comes into force this July 1st

“The party caucuses agree that immigration to Germany must be limited and controlled, that the abuse of the right to asylum must be prevented, and that the protection of actual victims of political persecution must be guaranteed. At the same time, a conciliatory signal should also be sent because Germany is an open, tolerant country and should remain that way.” The joint paper by the CDU/CSU, SPD, and FDP on asylum policies begins with these words; it was agreed on in early December of last year, after many long nights of negotiating. The package of laws that was passed later on takes effect this Thursday.

The debate on the need for an amendment to the Basic Law had started back in the early 1980s and had gone back and forth for a long time. Growing numbers of asylum seekers – at last count it was several hundred thousand a year – had left local authorities increasingly overwhelmed. Even before the opening of the borders in Eastern Europe, the wording of Article 16 of the Basic Law, “Persons persecuted on political grounds shall enjoy the right of asylum,” had been used by foreigners who were doubtless in need, but who in most cases were not politically persecuted in the true sense of the word. This trend intensified after the collapse of the Warsaw Pact. Since then, more than two-thirds of all asylum seekers have come from Europe. The predominant view in the government coalition, as in the SPD, was that German asylum law should not be allowed to remain a means of internal migration within Europe.

In addition, the conclusion of the Schengen Agreement on the elimination of border controls between Germany, the Benelux countries, and France, and later between Italy, Spain, and Portugal had ramifications with regard to constitutional law. As a “compensatory measure” for eliminating border controls it was agreed that the countries should recognize each others’

asylum policies – policies based on the principles of the Geneva Convention. Still, in view of Germany's basic right [to asylum] and the procedural laws derived from it, a proviso reserving national rights was included in the agreement. But the CDU/CSU caucus made clear that it would not ratify the agreement unless an amendment to the Basic Law allowed the German federal and state legislatures to retain their full legislative authority in matters regarding legislation between the European countries. The Union [CDU/CSU] worried that Germany would become a "buffer country" for asylum seekers; with this, they meant that Germany still would not be able to easily deport asylum seekers, even when their applications had been rejected in another member state of the Schengen Agreement.

The package of laws on asylum policies basically consists of three parts: the amendment to the Basic Law, changes in the Asylum Procedure Act, and – with respect to the welfare benefits paid to asylum seekers – changes in social law. In addition, there are agreements that should facilitate the naturalization of foreigners; discretionary decisions made by the administration are being replaced by legal rights. Refugees from civil wars will receive special legal status. These legal amendments should make it easier for the SPD to agree to the package as a whole. Among other stipulations, the SPD demanded that the regulation of immigration go above and beyond asylum policies and address other issues as well. The demand for an immigration law – which, admittedly, was also not uncontroversial within the SPD – was rejected by the Union. In the future, welfare support is to be provided to asylum seekers, who are generally housed in communal homes, predominantly as a non-cash benefit.

The major changes in the Asylum Procedure Act are also reflected in the new wording of the Basic Law (Article 16a). This article begins with the previous phrasing ("Persons persecuted on political grounds shall enjoy the right of asylum"). The exceptions follow thereafter. The right to asylum cannot be invoked by anyone who enters the country from an EU member state or "from another third state in which the application of the Convention Relating to the Status of Refugees and of the Convention for the Protection of Human Rights and Fundamental Freedoms is assured." These "safe third countries," according to another reference inserted into the Basic Law, are determined by law. They are Finland, Norway, Sweden, Poland, the Czech Republic, Austria, and Switzerland. Residence-terminating measures against asylum seekers who enter Germany through these countries can be enforced "without regard to any legal challenge that many have been instituted against them [i.e., the measures]." This is based on the opinion that such asylum seekers no longer require German aid because they could have found protection from persecution elsewhere. An agreement to provide assistance has been concluded with Poland to offset the additional burdens faced by that country.

Article 16a (3) states further: "By a law requiring the consent of the Bundesrat, states may be specified in which, on the basis of their laws, enforcement practices, and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists." These "safe countries of origin" are Poland, Hungary, the Czech Republic, the Slovak Republic, Romania, Bulgaria, Gambia, Ghana, and Senegal. Asylum seekers from these countries can still opt for an accelerated hearing, during which they

can argue that, contrary to presumption, they have been persecuted on political grounds. The “implementation of measures to terminate an applicant’s stay” may be set aside in these and in other plainly unfounded cases “only when serious doubt as to the legality of the measures exists.”

The leadership of the CDU/CSU and [of] the SPD also viewed the actual developments in immigration and the accompanying debate on asylum policies as a strain on the domestic-policy climate. They feel that democracy is at risk. A statement uttered by Herbert Wehner in the SPD executive committee in 1982 has been frequently quoted in recent weeks. Wehner, then chairman of the SPD caucus, said that the democratic parties would be swept away if the problem could not be resolved. The rise of the [right-wing extremist] Republikaner party and acts of violence against foreigners were viewed by the parties as omens of a kind of development they wanted to prevent. The debates on asylum policies, which came in waves, did not benefit any of the parties – not the CDU/CSU, which blamed the SPD for the immigration figures, and not the SPD, which regarded the CDU/CSU’s request for an amendment to the Basic Law as proof of its xenophobia. That kind of debate has now ended. The largely mutual agreement on the asylum-policy package law has moved this area of alien policy [*Ausländerpolitik*] out of the partisan political fight.

Source: Günter Bannas, “Democracy at Risk” [“Der Demokratie drohte Gefahr”], *Frankfurter Allgemeine Zeitung*, July 1, 1993.

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