

Suggestions for Curbing the Abuse of the Asylum Law (April 10, 1989)

Abstract

A conservative lawyer asserts that asylum must be reserved for the truly persecuted and not used as a backdoor route to immigration for economic reasons. He argues that asylum abuse could be curbed through various procedural and administrative changes that would not require a constitutional amendment. Access to asylum proceedings, he notes, must be made more difficult, and legitimate applications must be quickly separated from spurious ones.

Source

People Seeking Work are not Entitled to Asylum

How the abuse can be curbed

The number of asylum seekers was roughly 103,000 in 1988; the current trend suggests that the figure will double in 1989. Most petitions for asylum – about 90 percent – are denied. Therefore the federal government has decided that from now on citizens of Yugoslavia will also be among those foreign nationals required to obtain an entry visa. It is hoped that this will help curb asylum abuse. The charge of abuse is raised by some on the basis of the number of denied asylum petitions. Others – primarily from relief organization circles – don't want to notice any asylum abuse at all, because "taking advantage of a basic right can never be abuse." The truth about asylum abuse lies in the middle of these two opposing viewpoints.

Unsuccessful asylum seekers from poor, war-torn, or crisis-ridden regions can still hope that, for reasons of the protection of human dignity (Article 1 of the Basic Law), they will not be forced to leave the Federal Republic immediately. Their presence is to be tolerated [*dulden*]. This is often the outcome of court proceedings that fail to grant asylum but still do not permit the sanctions envisaged by the Aliens Act. In an asylum proceeding, even this sort of outcome can be interpreted as a success. This result often occurs with foreigners whose asylum applications were not totally without prospects for success from a *de facto* or *de jure* perspective. In these cases, too, it cannot necessarily be claimed that the right to asylum as guaranteed by the Basic Law is being abused. Asylum abuse exists, however, when it is obvious that the asylum petition is not based on any threat in the applicant's country of origin and [when the petition] is merely filed to undermine those laws of the Federal Republic that pertain to foreign nationals.

From this perspective, there is certainly massive abuse of asylum today. More than half of all applicants for asylum come from Yugoslavia (1988 recognition rate: 0.2 percent) and Poland (1988 recognition rate: 2.6 percent). These people apply for political asylum almost exclusively for economic reasons. These applicants receive a temporary right of residence [*Bleiberecht*], which is enticing in light of the conditions in their home countries. For both Yugoslavs and Poles, the legally binding rejection of a petition for asylum generally means that a temporary stay of deportation [*Duldung*] is not, or no longer, an option.

Instances of abuse in public and private law do not generally produce lasting benefits if the person in question continues to pursue his case by filing motions. That is not the case with asylum abuse. Even an illegitimately filed petition leads to a temporary right of residence. These asylum seekers are also guaranteed room and board, clothing, and medical services while their petitions are being reviewed and until a legally binding ruling is made. The annual costs for all asylum seekers are presently estimated at 3

billion marks. A considerable percentage of rejected asylum seekers go underground in big cities and live there relatively unbothered. The financial and social harm of asylum abuse is considerable.

Suggestions for ameliorating the situation usually boil down to accelerating asylum proceedings at the Federal Office and in the administrative courts. This cannot happen without a considerable increase in personnel. The fact that rejected asylum seekers aren't consistently deported is also criticized time and again. There are increasing demands to attach the basic right to asylum to a reservation of statutory powers or to abolish it entirely and introduce in its place only a so-called institutional guarantee that would no longer permit legal review. The move toward legal conformity within the EU also promises an improvement [of the situation], though nothing is being said about how this can be accomplished. One should not overlook the fact that the two-thirds majority required in the Bundestag and the Bundesrat to amend [the law] on the basic right to asylum is not achievable within the foreseeable future.

The public is kept unaware of the fact that asylum abuse occurs for reasons that do not necessarily emanate from this basic right itself. Here, much could be achieved through simple legislation – that is, without a constitutional amendment. This is already apparent from the recent history of asylum procedures. In a ruling from February 25, 1981, the Federal Constitutional Court pointed to a way to replace quantity with quality in an asylum proceeding, something that would help those who are genuinely persecuted. In response to a constitutional complaint, the court declared: “Because it is consistent with the humanitarian aims of the right to asylum to give an applicant for asylum clarity on his entitlement to asylum as quickly as possible, it is in principle compatible with Article 16, Paragraph 2, of the Basic Law, with regard to certain types of applications with no hope for success, to legally transfer the competence to review and make a decision to the Aliens Registration Office and to authorize this office to issue directives to end the stay of the asylum seeker as soon as such a petition is rejected.”

The Bundestag did not take this route with the Asylum Procedures Act, although the Bundesrat called for it. And legislators never returned to this option again. Consequently, today there is a “one-way street” to the Federal Office for the Recognition of Foreign Refugees for all “asylum petitions,” even those that are filed illegitimately. This leads to the familiar problems associated with the temporary right of residence.

A petition for asylum has become a magic phrase, since only the Federal Office is allowed to judge and appraise the facts upon which it is based. The magic word “asylum” opens the barrier at the border, even if the foreigner does not grasp the significance of his or her request. The application is to be passed on to the Aliens Registration Office. The already limited ability of the Aliens Registration Office to review whether this is indeed a genuine petition for asylum has little effect in practice, since there is overlap between an “unsubstantiated petition” and an “inconclusive” one. The option of not passing on applications that represent obvious cases of abuse is not unequivocally prohibited under current law. Even the general expression of a wish to seek protection from political persecution is regarded as an application for asylum.

Abuse of asylum law can only be curbed if access to asylum proceedings is made more difficult. A way must be found to legally distinguish between legitimate [*beachtliche*] asylum applications and illegitimate [*unbeachtliche*] ones, even as early as the initial filing of the petition. If it is illegitimate, it should fall under the exclusive jurisdiction of the Aliens Registration Offices. An application for asylum should be considered illegitimate when it is obvious that asylum cannot be granted under any circumstance. An application for asylum is obviously inconclusive when the foreigner's assertions are deemed true but still do not meet the requirements for asylum. An obviously unfounded application is conclusive, but in this case the asylum-relevant claim of the foreigner is obviously not true; the claimed political persecution in the [applicant's] country of origin is obviously not to be expected.

The decision of the Aliens Registration Office on illegitimate asylum petitions should be a preliminary decision in connection with the issuance of measures to end the asylum seeker's stay. It should be noted

that a legitimate petition for asylum can also be proven obviously unfounded during the course of the proceedings of the Federal Office, in accordance with its sound knowledge of the [applicant's] country of origin and in view of its specific experience in assessing asylum petitions. The desired expansion of the competency of the Aliens Registration Office should only involve the employment of a preliminary "obviousness" filter.

The Aliens Registration Agency decides in the end if it is doubtless that a petition for asylum will be rejected in the absence of further investigation. In any case, there is the usual legal protection against measures by the Aliens Registration Agency to end a petitioner's stay. If the court deems the asylum petition (also in an expedited proceeding) to be legitimate, it should be transferred to the Federal Office without delay. Also, any obstacles to deportation that are directly related to protection of human dignity are considered. Such expedited legal proceedings should be completed within two months of the date of the issuance of the measures to end the applicant's stay. This cannot be accomplished by more complex proceedings through the Federal Office, even if an application had been rejected there as obviously unfounded. Precisely such an acceleration of proceedings would serve to deter asylum abuse. The fact that the Federal Constitutional Court's decision points to this route should ease the political discussion.

[...]

Things will get worse if the developing avalanche of asylum abuse cases is not effectively halted. Augsburg Bishop [Josef] Stimpfle imagines a mass migration of peoples heading for the European Community, "such that the world has never seen before." During a mass, he said that in the next thirty years about 120 million Arabs, Africans, and Asians will have to be integrated into the economic and cultural sphere of the European Community. Already today, he said, a "wave of desperate people seeking work" is moving from the Third World toward the affluent countries.

Source: Helmut Riepl, "Arbeitssuchende sind nicht asylberechtigt", *Frankfurter Allgemeine Zeitung*, April 10, 1989.

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