Germany: Perfecting the system of rejecting refugees

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At the celebration marking fifty years of Germany's Federal Office for the Recognition of Foreign Refugees (BAFl-*Bundesamt für die Anerkennung Ausländischer Flüchtlinge*), the invited politicians made clear that they were demanding the agency act in a manner entirely contrary to its name. It was not the right to asylum that stood at the centre of the commemorative speech by Interior Minister Otto Schily (Social Democratic Party—SDP) and the greetings delivered by his Bavarian state colleague Guenter Beckstein (Christian Social Union—CSU), but the allegedly "immense abuse" of this right.

The small numbers of successful asylum applications were cynically referred to in this light. In fact, since the 1980s, at the behest of politicians and legally backed by legislation, BAFl has done everything in its power to reduce the numbers of asylum seekers granted official recognition. Increasingly the agency has become the "Federal Office for the Rejecting of Foreign Refugees".

The individual right of asylum is anchored in Germany's 1949 constitution, which states: "the politically persecuted enjoy the right to asylum." The post-war Federal Republic of Germany was one of the few states to adopt United Nations Article 14 of the Universal Declaration of Human Rights as a constitutional right.

The experiences of the Nazi regime certainly played a role, when hundreds of thousands of refugees from Germany found no protection in neighbouring European countries, and were interned in camps or handed back to the Nazis. Although there was much argument in the Parliamentary Council, charged with drawing up Germany's post-war constitution, whether certain ethnic groups and political refugees should be excluded from the right to asylum—mainly non-Germans and socialists—there was cross-party agreement that every individual refugee should have a right to claim asylum, since only such a right gives "the right to asylum" any sense at all.

In practice, however, over the years the right of asylum was continually watered down and undermined, until it was virtually done away with in 1993. But it had always been subject to the vicissitudes and needs of official politics. To this end, the Federal Office for the Recognition of Foreign Refugees was created, and in its fifty years of existence has readily fulfilled the requirements of the ruling elite.

Until 1953, the Allied powers then occupying Germany determined who was granted asylum; there was neither a German administrative structure nor a legal framework governing asylum.

The situation did not change even with the adoption of the 1951 Geneva Convention. This contained a widely drawn definition of who constituted a refugee, but there was no individual right to asylum; the Convention only offered protection against expulsion and deportation.

The "regulation concerning the recognition and distribution of foreign refugees", enacted on January 12 1953, and which incorporated the Geneva Convention into German law, marked the birth of the Federal Office for the Recognition of Foreign Refugees. Previously, the agency had less authority and was situated in a former prisoner-of-war camp near Nuremberg, which served as a refugee camp since the end of the war.

The agency had about 40 staff, and until 1965 was not responsible for dealing with asylum claims, but only for recognizing those who needed protection against expulsion under the Geneva Convention. Requests for asylum were dealt with by the existing Aliens Police Authority, which was not responsible to the federal agency. The applicable law governing asylum was the 1938 Aliens Police Regulation, enacted by the Nazis, and which since then had merely been cleansed of a few racist concepts.

The first twelve years of the federal agency passed quietly. About 2,500 requests for protection under the Geneva Convention were processed a year; recognition varied between 10 and 50 percent and by 1965 less than 10,000 refugees had found protection in the Federal Republic. These were almost exclusively refugees from Eastern Europe who came under the auspices of the Geneva Convention. Although their escape from the Stalinist regimes was utilised for propaganda purposes, not infrequently refugees received the decision rejecting their claim to asylum at the same time they were being placed on a plane back to Prague, Budapest or Warsaw.

In 1965, the agency became a Federal Office and was placed under the control of the Interior Ministry, responsible for processing applications for asylum as well as determining who qualified for protection from expulsion under the Geneva Convention. There were two main reasons for this decision. On the one hand, a Supreme Court constitutional judgment in 1959 decided that the right of asylum should be construed quite widely, and on the other hand, German business was crying out for immigrant labour. At that time, refugees were regarded as a source of cheap labour. In 1965, the Aliens Police Regulation was replaced by an Aliens Act, in which, for the first time, the procedures for asylum seekers to seek recognition were laid down in law.

Until 1974, most refugees came from Eastern Europe. In 1969, thousands fled the defeat of the "Prague Spring" in Czechoslovakia, with up to 85 percent of refugees being granted asylum. That changed suddenly in the mid 1970s, when those fleeing persecution to seek asylum in Germany came increasingly from the so-called "Third World". First came Chileans, Vietnamese and Palestinians. From 1979 onward it was mainly Afghans and Turks; the numbers of asylum seekers rose to 108,000 in 1980. At the same time, the level of those being recognised as refugees fell to 12 percent, dropping to less than 7 percent by 1982.

Against the judgment of the Supreme Court, the Federal Office for the Recognition of Foreign Refugees interpreted the right of asylum very narrowly for non-European refugees. In large measure, those fleeing from Eastern Europe were still granted asylum, and were even granted general protection from expulsion.

But the political climate for foreigners had worsened. With the 1973 oil crisis, there was a freeze on recruiting any more foreign employees, who increasingly became scapegoats for the economic crisis and growing social problems. The expressions "tide of asylum seekers", "economic refugees" and "sham asylum seeker" became commonplace in the mouths

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of politicians from all the establishment parties. In the 1980 general election, Helmut Schmidt (SPD), the incumbent federal chancellor, announced he favoured an amendment to the basic right of asylum.

Although no amendment to the constitution followed, the right of asylum was seriously weakened. Accommodation in camps was introduced for asylum seekers and a visa requirement was established for many refugees. Airlines were fined for transporting refugees without a visa, and the procedures for hearing asylum cases were changed. In order to accelerate the procedures, asylum decisions were now taken by a sole adjudicator instead of a three-person committee. Refugees' options for obtaining legal redress were drastically cut. Refugees whose applications for asylum were not recognized faced embarking on a lengthy and financially risky legal battle in the administrative courts in order to secure their right to asylum.

These measures, directed mainly against refugees from Africa, Asia and South America, had the desired effect. The number of refugees was halved within a year and sank to under 20,000 in 1983.

However, the new asylum procedures were still not sufficient to deter refugees who fled to Germany during the upheavals that gripped Eastern Europe and the Balkans in the early 1990s. The numbers of refugees rose rapidly. Moreover, the Interior Ministry refused to raise staff levels at BAFl, resulting in a massive backlog and ever-longer asylum proceedings. These difficulties were then used to justify further attacks on the right of asylum.

Once again, refugees were denounced as "economic migrants" and "sham asylum seekers", a burden on the social security system. In the nationalist frenzy surrounding German reunification in 1990, refugees were considered "fair game", which only served to encourage neo-Nazi groups to launch arson attacks on hostels used to house asylum seekers.

In 1993, BAFl reacted to political pressure by lowering the proportion of asylum applications granted recognition to a scandalous 3.2 percent. Subserviently and rapidly, the BAFl adjudicators thereby realised the "asylum compromise" arrived at by the Christian Democratic Union/CSU and Free Democratic Party coalition government, in harmony with the SPD opposition. For all practical purposes, the "asylum compromise" that came about in early 1993 and which achieved the force of law on July 1, 1993, abolished the right of asylum in Germany.

BAFl grew considerably at this time. Following the "asylum compromise", in addition to its own staff of 4,100, several thousand workers were recruited from other government departments. For a time, in addition to the central head quarters, the agency had a total of 48 branch offices.

Since then, the agency has shrunk to 2,300 staff employed in 24 offices. This dramatic contraction is the result of the continual decline in applications for asylum since 1993, on the one hand, and the considerable tightening up of the asylum proceedings on the other.

In the meantime, refugees are barely allowed any opportunity to explain the reasons why they have fled their homeland. Instead, on the assumption that asylum is being abused, adjudicators try to entangle refugees in contradictions, so that the often traumatised exiles admit they came to Germany via so-called "safe" third states, and then have their claim for asylum rejected as "evidently unfounded".

The accelerated asylum procedures in place at airports, and the use of pre-formulated texts from Foreign Office reports, ensure that asylum applications can be rejected at record speed. The Interior Ministry under Otto Schily (SPD) and the Foreign Ministry under Joschka Fischer (Green Party) work hand in hand to this end.

Thus, under the current SPD-Green Party government, the rate of successful asylum applications continues to plummet. Last year, only 1.7 percent of refugees were granted asylum. Those granted protection from expulsion ("mini asylum") amounted likewise to only 1.7 percent. Thus, the SPD-Green Party coalition has succeeded in further cutting back on the already scandalously low level of successful asylum cases of the last years of the conservative Kohl government.

But even this did not prevent Otto Schily from admonishing BAFl staff, during his commemorative speech marking the agency's anniversary, that "the protection of refugees should not be abused for immigration purposes". He had no cause to worry, however. A BAFl information brochure uses the same xenophobic rhetoric as the Interior Minister. Here one can read about "immigration pressure resulting from the abuse of the right of asylum" and from the decrease in the number of asylum seekers from safe countries of origin, because "now the main countries of origin are those where political persecution occurs only in isolated cases [sic!], e.g. Iraq, Iran and Afghanistan".

BAFl is working to the complete satisfaction of Schily, who calls nearly every decrease in the numbers of asylum seekers a "pleasing development". During his term of office, the number of asylum applications processed by BAFl has sunk just as drastically as the level of those granted recognition. The total number of asylum applications reached approximately 51,000 in 2003—no more than in 1984 and over 20,000 fewer than in 2002, a decrease of nearly 30 percent. The number has been more than halved since the SPD-Green Party coalition took power.

However, this is not because there are fewer refugees. Although the European Union (EU) and its member states do everything possible to ensure that refugees never set foot on their territory, the number of asylum seekers has remained almost constant between 1998 and 2003, at about 320,000 people seeking protection annually.

In 1998 approximately 30 percent of all refugees arriving in the European Union claimed asylum in Germany. This year it will be scarcely 16 percent, although 22 percent of the EU population live in Germany and the latter's economy constitutes about a quarter of the EU's gross domestic product. Whereas Schily and his predecessors in the 1990s called for a "fairer distribution of refugees", in the meetings of the EU Council for Justice and Home Affairs, he now rails against any such provision.

Fewer asylum applications and falling rates of those granted recognition are still not enough to satisfy Germany's Interior Minister. With increasing vehemence, Schily is now threatening recognised asylum seekers with withdrawal of recognition. In his speech at the BAFl anniversary, he demanded, "The grant of asylum should be immediately revoked ... if the reasons for it are no longer valid", and insisted on the application of this legal instrument.

Such revocation procedures threaten refugees whose reasons for fleeing their homeland are allegedly no longer valid—allowing them to be finally expelled. The withdrawal of the right to asylum is possible under Paragraph 73 of the Asylum Procedures Act, which until a few years ago was virtually never used.

With the "Anti-terrorism package II", introduced one year ago, Schily has significantly expanded the possibilities for using revocation procedures. For some months, the Interior Ministry has been exerting pressure on BAFl to instigate more revocation proceedings and relieve the burden of adjudicators—despite the falling numbers of refugees. In plain language, this means that BAFl staff are to "secure their continued employment at the expense of refugees", as the organisation Pro Asyl commented.

Since the summer, BAFl has reversed the burden of proof in revocation proceedings and is sending out questionnaires to recognised asylum seekers, who have to show that there are sufficient grounds to prevent their deportation.

Among those currently affected are Tamil refugees from Sri Lanka, who still face arrest and torture if they return. BAFl justifies removing their asylum status by tersely stating that the civil war in Sri Lanka is now over.

The next to be threatened with revocation proceedings are above all

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refugees from Iraq and Afghanistan, who are due to be deported in spring 2004. The revocation proceedings establish the necessary legal conditions, since the removal of asylum status places responsibility with the local authorities, who can then decide on residency status. The weakest and poorest—refugees who have only been granted a limited right of residency or are dependent on welfare benefits—are threatened with imminent deportation

Neither BAFl nor the Interior Ministry provide any figures of how many revocation proceedings have been carried out in the last five years, but the revocation and annulment of over 8,000 recognized applications for asylum between 1998 and 2002 are regarded as further "successes" by the Interior Minister.

The Immigration Act Schily is seeking to introduce even envisages the exclusion of any involvement by local authorities. In his draft of the law, recognized refugees face a routine examination after three years. The revocation of asylum immediately means removal of any residency permit and the refugee being forced to leave the country.

BAFl is being given even more responsibilities. It houses the Central Office for the Administration of the European Refugee Fund in Germany. Since this programme promotes the return of refugees to their homeland rather than the building of an existence in their new country of residence, it can be imagined how BAFl will allot the available funds.

In addition, BAFl has responsibility for "promoting the integration of immigrants", which includes language courses and providing help with social integration. It is more than probable that an agency that sees its task as deterring immigrants and which interprets the right of asylum as restrictively as possible will also be highly selective here. Only those immigrants who are "useful for us" should be considered, as Schily's close friend Guenter Beckstein (CSU) polemicized. Those who "lack the ability to integrate" will probably be threatened with deportation.

Schily can rely on BAFl's "efficient" administrative work. Not without reason did he praise BAFl as a "modern and innovative federal agency". Under the SPD-Green Party government, the head of BAFl, Albert Schmid (SPD), has perfected a system of electronic data acquisition and transfer (including the installation of the EU-wide fingerprint identification system EURODAC). The total monitoring and registration of refugees, together with the active sharing of data with benefit agencies, local residency registration offices, federal and state criminal police agencies and the authorities of other EU states, will be used to deny asylum claims or protection from expulsion.

At the same time, there is no limit to the fantasy exercised when it comes to using standardised assessments in order to reject applications for asylum, or to revoke asylum for those formerly recognised. In its acquiescence to its political masters, BAFl has achieved exactly what Schily expected of it: the deterrence of asylum seekers and increasing pressure to expel those already residing in Germany. The distraught victims of this policy are the refugees themselves, whose fate is no longer of any social concern, and who are made to feel entirely unwanted.

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