

German Supreme Court fails to defend right to asylum

Martin Kreickenbaum
1 February 2011

On January 26, the Supreme Court in Karlsruhe, Germany, decided to halt procedures leading to the deportation of asylum seekers to Greece. This followed a shameless manoeuvre worked out between the Supreme Court and the Interior Ministry to prevent current asylum law from being deemed unconstitutional. The 1993 “asylum compromise”, which for all intents and purposes abolished the right to protection from persecution for refugees in Germany, is to remain in place.

The Supreme Court ruling addressed a case that had been filed on behalf of an Iraqi refugee who had come to Germany via Greece and applied for asylum. His application was rejected as being “manifestly groundless” because he had previously stayed in Greece, which is classified as a “safe third country”. Under the EU’s Dublin II accord, Greece is responsible for processing the asylum application. As a result, in June 2008, the Federal Office for Migration and Refugees ordered his deportation to Greece.

The refugee lodged an appeal against this decision and sought legal protection before the Administrative Court in Münster. This was rejected, whereupon the Iraqi lodged his case with the Supreme Court. Because EU member states are automatically classified as “safe third countries,” states can legally terminate residency without granting a refugee the right of appeal.

There is no functioning asylum system in Greece. Asylum seekers’ requests are regularly rejected by the dozen, with only minuscule numbers seeing their applications approved. In 2009, the appeal body in Greece where asylum seekers could seek redress was abolished. Those seeking protection are exposed to arbitrary detention in overcrowded camps with squalid conditions and inadequate food. Refugees living at large in Greece are refused help from government

agencies. They are forced to beg for alms and live without shelter.

Despite all this, until recently the German authorities insisted on sending asylum seekers coming via Greece back to that country. Beginning in 2009, however, the Administrative Courts increasingly began to stop the mass deportation of refugees. In addition to agreeing to hear the appeal of this Iraqi refugee, in fast-track proceedings the Supreme Court blocked an additional 13 deportations to Athens.

In response to the case of the Iraqi refugee, during an oral hearing held in October of last year, the Interior Ministry insisted that although asylum seekers still faced problems in Greece, they were not serious enough to necessitate legal protection against deportation. The second chamber of the Supreme Court, chaired by Chief Justice Andrew Voßkuhle, maintained, however, that the case raised “fundamental questions of the interaction of constitutional and European law and asylum procedures”.

However, in its most recently published decision, the court backtracked from this position. “It is not appropriate to clarify in the abstract the constitutional questions raised by the present procedures”, the judges’ statement reads.

This position contradicts that recently taken by the European Court of Human Rights, which decided that deportation to Greece under the Dublin II accord without any individual assessment and without opportunity for appeal is unlawful and violates the European Convention on Human Rights. In a case similar to the one heard at Karlsruhe, the court in Strasbourg sentenced Belgium to pay a heavy fine for its asylum policy.

In the *Süddeutsche Zeitung*, Heribert Prantl correctly

sketched out the consequences of the court ruling as being the final abandonment of protection for refugees. The judges have left the protection of refugees to “German and European politics, although in the past 15 years they have shown how little the protection of refugees concerns them”.

From a legal standpoint, the ruling in Strasbourg places a question mark over the Dublin II accord, upon which Germany’s asylum procedures are based. It is worth noting that the judges in Karlsruhe have not followed Strasbourg’s lead. If they had, they would have had to declare the right to asylum unconstitutional as it now stands. They would have had to reverse a 1996 ruling by the Supreme Court that established that lawmakers were definitely empowered to limit fundamental rights.



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact