

*The situation in Germany regarding their liberal asylum law has become well known through the reporting of recent events there. Viktor Foerster, who practices law in Nurnberg, Germany and is a member of The Social Contract Editorial Advisory Board, outlines a political agreement designed to deal with abuses.*

# In Germany: Solutions to the Problems of the Abuse of the Right of Asylum and Limitations on Immigration

By Viktor Foerster

The political debate between the political factions represented in the German Parliament (Bundestag), with the exception of the Green Party, has resulted in a Framework Agreement which will enable the government to prepare immediate amendments to the German Constitution (Basic Law) and other laws (especially the Law of Aliens — "Ausländergesetz"). The principles of this Framework Agreement were put down in the following paper and provide a clear program to combat the abuse of the right to asylum and to limit immigration to Germany.

## Results of the Negotiations on Asylum and Migration

1. The factions are in agreement that,
  - migration to Germany must be limited and controlled and
  - the abuse of the right to asylum must be stopped and the protection of *bona fide* politically persecuted persons must be ensured.
2. By doing so, a signal of reconciliation should be given to demonstrate that Germany is a liberal, tolerant country and should remain so.
3. As is with every other country, Germany must also be able to control and limit migration. Without such a possibility fears and insecurity will be strengthened and this will be damaging to the domestic peace.
4. However, we need a system to help combat the causes of migration and give the people the possibility of remaining in their country of origin
5. We want a common European political policy which combats the causes of migration and regulates asylum and migration.

## The Factions Agree on the Following Arrangement:

I. **Refugees from War and Civil War**, it is agreed that:

1. a legal status will be established for war and civil

war refugees (analogous to the Geneva Convention).

2. the acceptance of refugees shall be dependent upon the existence of a state of war or civil war (and shall thus be limited in time) with the possibility of the formation of acceptance quotas.
3. the acceptance of refugees shall be subject to the condition subsequent (see No. 2), that if the above state of war no longer exists, then the refugees must return.
4. the regions of origin shall be determined by the Federal Minister of the Interior in agreement with the Ministers of the Interior for the states.
5. the allocation of accepted refugees from war and civil war to the states shall take place in accordance with the current valid procedures with calculation being taken for those refugees already accepted.
6. during the acceptance in accordance with No. 2 it is not possible to make an application for asylum. After that period an appropriate application will be treated as an application for asylum.
7. on questions of the matter of financing (under Nos. 1-6) in terms of the allocation of funds between the Federal State and local governments, the Parties will attempt to reach an agreement in the course of consultations in these matters.

## II. The Right of Asylum

The right to asylum shall be newly defined in Article Sixteen of the Basic Law (Constitution):

1. Politically persecuted individuals shall enjoy the right to asylum.
2. Those persons travelling to Germany from a member state of the European Community or from another third country in which the Geneva Convention and the European Convention on Human Rights apply shall not enjoy the right of asylum. The countries outside of the European Community which meet the requirements of

sentence #1 above shall be determined by law which requires the approval of the Bundesrat (Upper Chamber of the German Parliament). In these cases, action can be taken to terminate the asylum-seeker's stay in Germany independently of any legal actions commenced by that person.

3. By law, which would require the approval of the Bundesrat, countries may be determined in which (on the basis of the legal situation, the application of law and the general political relationship) it appears that in these states no political persecution or inhuman or degrading punishment or treatment takes place.

A foreigner from such a country shall be deemed not to be politically persecuted unless the said person can give reasons which lead to the suspicion of political persecution in terms of the provision of sentence #1 above.

4. Deportation from Germany shall, in cases in terms of paragraph #3, be set aside by the court only if there are serious doubts as to the legality of such procedures. The same shall apply to deportation from Germany in all cases where the application for asylum is clearly unfounded. In this regard, the extent of the examination can be limited and evidence presented to the Court at a later stage may be disregarded. Further details shall be determined by statute.

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**In addition to the basic agreement on the Amendment, the factions are in agreement as to the following:**

1. It is agreed that the present day situation in Poland, Czechoslovakia, Austria and Switzerland is such that they can be deemed to be safe third countries.

So that the individual countries, especially those of Eastern Europe, are not unproportionedly burdened by the determination of their status as safe countries with no political persecution, the Federal Republic of Germany advocates a sharing of the burden on a European basis. In anticipation of such a settlement, the Federal Republic of Germany will commence discussions with Poland and Czechoslovakia without delay.

The basis for these discussions will be an offer by Germany concerning:

- administrative and financial help to overcome the refugee problem
- agreements to share the burden of accepting refugees in special situations
- the determination of jurisdiction in terms of the Dublin Agreement.

The states will be involved in these negotiations.

2. Apparent unfounded applications for asylum in terms of paragraph 4 sentence 2 shall exist especially in cases of serious crimes and when the duty to assist in procedural matters is not adhered to.

#### **Follow-on Applications**

There is agreement that the abuse of filing follow-on applications should be further restrained. In this regard, it should be examined whether the time limitation of the present Asylum Procedure Law should be extended from 1 to 3 years.

#### **Existing Cases**

1. Pending procedures will, in principle, be continued in terms of the *new law*. In this regard a suitable clarification is required.
2. Those measures that have already been adopted in existing cases should be expedited.
3. A right of stay for asylum seekers from countries with a high success rate for asylum recognition will be established in so far as such applications are more than two years old.

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#### **Procedure of temporary legal remedies for cases of clearly unfounded application for asylum.**

##### **1. Procedural steps.**

a.) The Federal Office for the Recognition of Foreign Refugees shall send to the responsible administrative court, as a precaution, the decision and a copy of the file at the same time as the servicing on the applicant.

b.) The proceedings for the granting of temporary legal remedies shall be, as a general rule, non-oral proceedings and shall be separated from the main proceedings.

c.) Facts and evidence which have not been put forward by the applicant do not require to be considered and in this regard the principle of

investigation by the court shall be limited.

d.) In its judgment, a court may cite the decision of the Federal Office without giving any further reasons.

e.) A temporary injunction may be issued before a single judge and does not require a full court (3 or 5 judges).

## 2. Organizational Measures

In order to carry out the acceleration of the asylum proceedings personal and organizational as well as logistical measures will be taken in the individual states.

Asylum proceedings will be decided upon by judges who are experienced predominantly in this area and for whom incentives could be provided.

The Central Reception Facilities and the courts responsible for asylum matters should be located next to each other. In accelerated proceedings related to clearly unfounded cases the questions of asylum, rights as a foreigner, and reasons for staying in Germany shall all be considered by the federal authorities in so far as the applicant has not left the Central Reception Facilities or the common quarters.

## Law concerning the control of the minimum support for asylum seekers:

Minimum level of support during the time of the proceedings for asylum shall be determined independently by law with the aim that:

- a clear reduction is achieved in terms of the current level of support
- in terms of stays in the Central Reception Facilities or common quarters support shall be given in kind (i.e. no monetary payments)
- in terms of stays outside of the above facilities priority should be given to payments in kind.

Upon a positive decision being made in terms of administrative law or the right to stay, support should be increased to conform with the provisions of the Federal Social Security Law. This is the law which applies to residents of Germany (including German citizens) entitled to social security payments.

## III. Questions of Naturalization and other Questions of Migration

### Law of Nationality

1. In terms of the existing law the naturalization procedures for foreigners should be made easier.
2. As a result of the new organization of the Law of Nationality the right of German nationals to pass on their nationality to their children in situations of non-residence should be limited.

### Migration Rules

The factions are in agreement that the possibilities of establishing rules to limit and control migration at a national level should be checked and negotiations should be continued in this regard at the European level.

### Report on Foreigners

The Federal Commissioner on Foreigners provides annually to the German Parliament a report on the situation of foreigners in Germany.

## IV. German Ethnic Immigrants

The movements of German ethnic immigrants must be controlled. In this regard the following should be ensured:

1. The Federal Administrative Department shall in future grant acceptance to enter Germany based on the average numbers for the years 1991 and 1992. The Federal Administrative Department may vary up to 10% of the average.
2. A final date for applications will not be established.
3. Detailed regulations were agreed to).

## V. Contract Workers

### Employment of Contract Workers

The factions are in agreement that:

- by the regulation of current contracts (treaties) and agreement with other states the number of contract workers can be limited to 200,000 persons annually and the agreed to numbers should be strictly enforced.

- the combating of illegal employment through stricter enforcement must take place. The Federal Authority for Employment may, without any reason, check in places of employment to determine whether or not persons are being employed without the appropriate permission.

#### **Contract Workers**

The heads of government at the federal and state level are asked to consider the position of contract workers of the former German Democratic Republic and to attempt to obtain a human solution in terms of the intended period of stay and the actual level of integration of these persons. ■