THE LEGAL POSITION OF ASYLUM-SEEKERS IN AUSTRIA

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During the Cold War era Austria was a frontline country against the ‘Iron Curtain’. Refugees from Eastern European countries were welcome to Austria- they were political friends who had escaped to freedom. Otherwise, Austria was not a country of immigration. There were seasonal migrant workers but it was commonplace that they were to stay in Austria only temporarily and were to return to their home country after the agreed labour was done. This author experienced this phenomenon in summer 1964 when I was undertaking a language course in Salzburg. I had a nice room on the second floor; at least four Turkish workers lived in the basement in one room.

1. The 1990s

When the socialist bloc of Eastern Europe began to collapse, there was a significant influx of asylum-seekers to Austria from those countries. Many newcomers, especially Polish and Romanian, took up illegal work; many applied for asylum in order to obtain a residence permit, and asylum was automatically granted.

Before 1991, Austria had a fairly informal asylum seeking procedure. As the number of persons from Eastern Europe working illegally in Austria increased dramatically, in 1991 Austria introduced a rigid and severe asylum law. It limited quite effectively refugee status granted but it had elements of non-equitableness and unfairness. The new law did the job: the number of asylum-seekers dropped.

However, war broke out in the neighbouring Yugoslavia. Austria did not close off its borders but received a notable number of refugees on temporary basis- some 80,000–90,000. During the Kosovo crisis Austria received 5,000–6,000 asylum seeking Albanians who were granted temporary asylum.

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In 1997 new asylum and immigration acts were enacted. The declared purpose of the Asylum Act was continuously to limit the misuse of the asylum procedure while at the same time making the legislation more equitable. The Aliens Act severely limited immigration. A strict quota was created; at least a half of it was filled by persons in family reunion. For a person to apply for immigration, he/she had to apply from abroad.

In the 1990s, Freiheitliche Partei Österreichs (FPÖ, Freedom Party) became internationally known because of the aggressive speeches of its leader, Jörg Haider. Haider used strong xenophobic terms in his speeches, speaking of the ‘Überfremdung’ [‘foreign infiltration’] of Austria, especially against asylum-seekers and non-Western migrants. FPÖ was in opposition throughout the 1990s. Thus, the responsibility for the asylum and immigration policy was carried by the leading mainstream parties, the Volkspartei (ÖVP, People’s Party) and Sozialdemokratische Partei (SPÖ). The general atmosphere in Austria was anti-asylum and anti-immigration. The thinking went as follows: ‘They take advantage of us and commit many crimes’. This atmosphere was favourable to FPÖ which put pressure on the government. In face of the general atmosphere and fear of losing votes to FPÖ, ÖVP and SPÖ applied a tight policy on immigration and asylum.

2. Some Basic Facts about Asylum Seeking and Migration to Austria in Recent Years

In a European comparative perspective the number of persons of alien origin in Austria is among the highest. Over 9 per cent of Austria’s population are of alien origin, most of them refugees from the eastern part of Europe. Austria received the highest per capita number of refugees from the war-torn former Yugoslavia of any EU member State.1 Whereas the number of asylum-seekers after the first years of the 1990s sank during most years below 10,000, since 1999 it has been over 20,000 and appears to be increasing. In 2002 the number of asylum applications exceeded 37,000.

Since the present possibilities of migration for people other than family members of persons already living in Austria or highly-skilled experts are small, many persons wanting to migrate apply for asylum. It is a widely shared view in Austria that most asylum-seekers are actually seeking migration to Austria or other Western countries. The atmosphere is anti-foreigner: ‘we have taken our share of the refugee flow’. If a person’s primary motive to seek asylum is economic, his/her chances to succeed are small.

A great majority of asylum applications in recent years have been terminated without final decision by asylum authorities. A role here is played by the poorly organized care system of asylum-seekers (shelters, etc.). Many asylum-seekers

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1 See the report by an expert group organized by 14 EU member States to consider the advisability of whether to continue or discontinue boycott measures against the Austrian Government issued on 8 September 2000 in Paris (report of the so-called three wise men), which can be found in International Legal Materials, Vol. XL, 2001, pp. 108-110.