

United Nations versus the Federal Agency

The recognition of asylum-seekers in West German camps after 1949

Michael Mayer

Introduction

Zwetan M.¹ was born in Bulgaria in 1926. In 1943, he moved to Rottweil in southwest Germany to work in I. G. Farben's chemical plant. Two years after that, in November 1944, he volunteered for the Waffen-SS and subsequently fought in the area of Prague, where he was taken prisoner in May 1945.² In 1949, he was released from a prisoner-of-war camp in the Soviet Union and travelled to Austria. Three years later, he illegally crossed the border into West Germany and eventually arrived at Camp Valka, which was one of the main camps for foreign refugees in the Federal Republic. Once there, he applied for asylum, which was granted in 1953.³ This story is presented to demonstrate the complexity of the asylum issue in post-war West Germany. Many asylum-seekers who reached the Federal Republic had been victims of the National Socialists; others – like M. – had been collaborators.⁴

Asylum-seekers who reached West Germany after the end of the Second World War and before 30 June 1950 were placed under the mandate of the United Nations

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- 1 All asylum-seekers' names are anonymised to protect their privacy.
 - 2 See his registration card for the city of Rottweil (in which his employer and his recruitment by the SS are both mentioned), International Tracing Services [ITS], Bad Arolsen, Document 73590787. See also the affidavit of his former battalion commander, Hauptsturmführer Johann Schulzer, 28 January 1957, ITS Document 79452864. The documents do not indicate whether M. moved to Germany "voluntarily."
 - 3 See, in the context of a retrial, the notice of the Federal Agency for the Recognition of Alien Refugees, 1 October 1958, ITS Document 79452861. The story is much more complicated because M. had used a false name on his application. However, he was able to remain in West Germany after gaining recognition for a second time in 1958.
 - 4 For more on former collaborators who claimed asylum in the Federal Republic after 1949, see Michael Mayer, "Asyl für Kollaborateure in der Bundesrepublik? Die Gewährung eines Asylstatus für Ausländer in den Diensten der Nationalsozialisten," *Zeitschrift für Geschichtswissenschaft* 69 (2021) 9: 729–50.

Relief and Rehabilitation Administration (UNRRA) or – after the UNRRA's dissolution – the International Refugee Organisation (IRO), if they were eligible. Many were subsequently resettled, but a significant number remained in the Federal Republic. The Allied High Commission insisted that the West German government must grant these people asylum as *heimatlose Ausländer* (homeless foreigners).⁵ From 1953 onwards, following a period of transition, the West German authorities had responsibility for recognising all foreign refugees who had reached the Federal Republic after 30 June 1950. Therefore, it is important to differentiate between the IRO's and the West German administration's recognition processes in various refugee camps throughout the country. The aim of this article is to analyse how these two authorities carried out their respective recognition processes and to describe their interactions with each other. Furthermore, the article explores the federal reception camp for foreign refugees, Camp Valka, close to Nuremberg, the only camp where interrogations of asylum-seekers were conducted from 1953 on.⁶

Previous researchers have investigated the UNRRA's and IRO's interrogation of Displaced Persons.⁷ By contrast, foreign refugees who arrived in West Germany after 1949 and were placed under IRO mandate have received less attention.⁸ The same is true for the interconnections between the IRO's recognition process, which continued until 1952, and the way in which the West German Federal Agency for the Recognition of Alien Refugees (*Bundesdienststelle für die Anerkennung ausländischer Flüchtlinge*), founded in January 1953, defined persecution.⁹

The next section will explain how foreign refugees falling under the auspices of the IRO were recognised as people who were entitled to legal and material assistance provided by the United Nations. The second section focuses on the transfer of authority over foreign refugees from the IRO to the West German administration. Thereafter, as the third section explains, the German authorities seemingly

5 See para. 1 of the Gesetz über die Rechtsstellung heimatloser Ausländer im Bundesgebiet, 25 April 1951, Federal Law Gazette [BGBl.] I, 269–71, at 269. This law officially introduced 30 June 1950 as the retroactive effective date.

6 In 1955, Camp Zirndorf was founded close to Nuremberg-Fürth, which, after the closure of Camp Valka in 1960, was the only camp where interrogations of foreign refugees took place in the Federal Republic.

7 See, for instance, Anna Holian, *Between National Socialism and Soviet Communism: Displaced Persons in Postwar Germany* (Ann Arbor: University of Michigan Press, 2011), 56–77. See also other papers in this volume.

8 François Crépeau, *Droit d'asile. De l'Hospitalité aux contrôles migratoires* (Brussels: Editions de l'Université de Bruxelles, 1995), 73, states that the IRO, which was mainly responsible for Displaced Persons, was less inclined to provide assistance to refugees arriving after 1945 (i.e. persons who had not been displaced by the war). However, ITS documents show that this continued on a large scale.

9 The author is currently working on a habilitation thesis on West German asylum policy between 1949 and 1970.

perceived the refugees as a security threat that could be solved only by interning them in the repurposed Camp Valka for the duration of the recognition process. The final section analyses various aspects of that recognition process. This framework highlights the IRO's and West German authorities' contrasting approaches towards persecution and the granting of asylum.

The article focuses on Bavaria for two important reasons: first, it received more refugees from the Soviet sphere of influence than any other German state; and, second, it was the location of both Camp Valka and the Federal Agency for the Recognition of Alien Refugees.

The IRO and its recognition of asylum-seekers in West German camps

Following its establishment in 1946, the IRO was responsible for refugees fleeing persecution and reaching the occupied zones of the Western Allies in Germany.¹⁰ This continued even after the founding of the Federal Republic of Germany in May 1949. Asylum-seekers who reached the West German border might be sent to Camp Valka, close to Nuremberg, or any other camp for foreign refugees, after which the IRO would question them to determine whether they should be placed under IRO mandate.¹¹

A person was deemed eligible for consideration for asylum if they had suffered from "persecution, or fear, based on reasonable grounds of persecution because of race, religion, nationality or political opinion."¹² However, the IRO did not attempt to verify each individual claim of persecution. It was usually sufficient for a person simply to claim that they were opposed to the government in their home country, whereupon the IRO agents would note "political reasons" on the application form and place the person under their mandate.¹³ In practice, only people fleeing from the Soviet sphere of influence or claiming to be anti-communists were placed under the mandate of the IRO. Thus, the IRO – which was backed by the Western Allies and vehemently criticised by the USSR – became a significant manifestation of the East–West divide.¹⁴

10 The IRO was the successor of the UNRRA. See the Constitution of the IRO: UN General Assembly Resolution No. 62, 15 December 1946, United Nations Resolutions I, 97–121.

11 For the US zone, see the letter from US Commissioner for Bavaria George N. Shuster to Bavarian Minister President Hans Ehard, 19 November 1951, Bavarian Main State Archive [BayH-StA], Munich, MInn 88406.

12 Part I, Section C, No. 1 of UN General Assembly Resolution No. 62, 15 December 1946, United Nations Resolutions I, 97–121, at 113.

13 See, for instance, the case of Petar P. from Yugoslavia: ITS Document 79604311.

14 See Greg Burgess, *Refugees and the Promise of Asylum in Postwar France, 1945–1995* (Basingstoke: Palgrave Macmillan, 2019), 154f.

The West German authorities were regular critics of the IRO's work. For instance, on 15 February 1952, the secretary of state for refugees in the Bavarian Ministry of the Interior, Theodor Oberländer, claimed:¹⁵ "The IRO commissions never reached a decision whether to grant asylum." Rather, they only checked if the people who were sent to the camps by the German authorities after crossing the border "could be recognised as international refugees according to the IRO statutes."¹⁶ In other words, the IRO merely had to decide who should be placed under its mandate and therefore become eligible for assistance and possible resettlement. If resettlement of an individual refugee failed, the IRO would maintain assistance and then (until the end of 1951) transfer the person to the care of the West German authorities, who were obliged to afford them asylum if they had entered the country prior to 30 June 1950. Thus, IRO mandate status was a *de facto* guarantee of asylum in a country that had no opportunity to conduct its own investigations into the applicant. The West German authorities were keen to overhaul this system as part of the process of regaining sovereignty following the partial end of the Allied occupation.

The case of Tihomir M. – a Yugoslav, born in 1924 – typifies the IRO's approach to refugees in post-war Germany. Arrested by German forces in his home town of Belgrade in November 1941, M. subsequently worked as a forced labourer in a gas plant, a flour mill and a scrap-iron shop in Bremen. The UNRRA – the predecessor of the IRO – registered him as such on 13 June 1945, then repatriated him to Yugoslavia.¹⁷ Almost five years later, on 1 May 1950, M. left his home country and enlisted in the French Foreign Legion in the Austrian city of Innsbruck. However, in Lyon, en route to Marseilles, from where he was to be shipped overseas, he took flight. Later, during an interview with West German police officers, he explained: "I didn't want to be trained in Africa to be sent to Indochina to die for France."¹⁸ Over subsequent months, he worked in a coal mine in Mons, Belgium, before illegally crossing the border and entering the Federal Republic on 24 June 1951.¹⁹ M. expressed a wish to work for the British forces in West Germany, but he was refused permission to do so and sent to the IRO in Hannover, where he was registered and questioned. M. claimed that he had travelled to the Federal Republic "because I didn't agree with

15 For more on his National Socialist past and the debate about him after 1959, see Philipp-Christian Wachs, *Der Fall Theodor Oberländer (1905–1998)* (Frankfurt am Main: Campus Verlag, 2000).

16 Letter to the Federal Ministry of the Interior, Bonn, German Federal Archives [BArch], Koblenz, B106/47453.

17 See his IRO application, 3 July 1951: ITS Document 79438435.

18 Interrogation by the police in Camp Friedland, 12 July 1951: ITS Document 79438432.

19 See his IRO application, 3 July 1951.

the political and economic conditions in Yugoslavia [...] I didn't feel well under that political system. I preferred to return to Germany."²⁰

M. was placed under IRO mandate on 3 July 1951, so from that moment his asylum in West Germany was effectively guaranteed. The IRO did not ask for any evidence of persecution. Instead, the IRO agent simply noted as reason for M.'s flight from Yugoslavia: "Because of bolshevism there."²¹ Therefore, as was the case in most IRO interrogations, it was sufficient for a refugee fleeing the Soviet sphere of influence merely to express his opposition to the regime in his home country. Proof of individual persecution by state actors was not required.²² This was because the IRO's primary concern was the social welfare and resettlement of foreign refugees.²³ Therefore, the organisation's first task was to decide who was eligible for welfare benefits. When refugees requested resettlement in the United States or other countries, each applicant's potential "economic benefit" to the country in question was a more important factor than proof of persecution.²⁴

Especially from 1951 (following the founding of West Germany in 1949), the IRO started to wind down its operations, to such an extent that it added only sixty-eight refugees to the 240,000 people who were already living under IRO mandate in the Federal Republic in the first ten months of 1951.²⁵ Despite this lack of activity, the Western Allies continued to resist a full transfer of responsibility for the country's refugees to the West German authorities. Nevertheless, in the autumn of 1951, they finally agreed that the Federal Republic's own agents should be able to interrogate foreign refugees,²⁶ on condition that the interrogators would consult with either the Allied authorities or the IRO if they concluded that an asylum-seeker's claims were unfounded.²⁷ Shortly thereafter, on 15 January 1952, the IRO officially ceased opera-

20 Interrogation by the German police in Camp Friedland, 12 July 1951.

21 IRO application, 3 July 1951.

22 This gave refugees "strong incentives [...] to overemphasize the political nature of their flight": Gerard Daniel Cohen, *In War's Wake: Europe's Displaced Persons in the Postwar Order* (Cary, NC: Oxford University Press, 2012), 51.

23 See Annex 1 of the Constitution of the IRO, UN General Assembly Resolution No. 62, 15 December 1946, United Nations Resolutions I, 97–121, at 110–15.

24 See Laura Stokes, "The Permanent Refugee Crisis in the Federal Republic of Germany," *Central European History* 52 (2019): 19–44, at 24.

25 For more on the sixty-eight refugees, see the letter from the Federal Ministry of the Interior to the Bavarian Ministry of the Interior, 1 January 1952, BArch, B106/47453. For more on the 240,000 refugees under IRO mandate, see the inter-ministerial meeting of West German Federal Ministries, 6 June 1955, BArch, B106/5340.

26 Letter from the Federal Ministry of the Interior to the Bavarian Ministry of the Interior, 1 January 1952.

27 See Günter Schoeppe, "Die Sammellager für Ausländer," in *Heilsbronn-Colloquium 1963. Abgelehnte Asylbitten*, edited by the Nansen-Society (Augsburg: Hofmann, 1963), 39–70, at 39.

tions,²⁸ even if IRO agents continued working on a smaller scale for another couple of months. Now the Federal Republic was left with sole responsibility for the recognition process, although the Western Allies remained in overall control of West German affairs until 1955 and continued to issue orders on how to proceed.²⁹

The West German authorities establish a system to recognise asylum-seekers at Camp Valka

The start of West Germany's post-war asylum policy can be dated to 15 July 1950, as that was the day when the Western Allies instructed the Federal Republic to establish "foreigners' camps" (*Ausländerlager*) for refugees fleeing persecution in their home countries. This usually involved the repurposing of former UNRRA or IRO camps or sites that had previously accommodated German refugees or expellees. The IRO conducted interviews in these camps to determine the applicants' eligibility for asylum,³⁰ but this raised objections from the German authorities. For example, the Directorate of Border Police Departments in Bavaria – the state where the majority of West Germany's border crossings took place – complained that "every person arriving at the border and claiming political asylum had to be admitted regardless of their eligibility."³¹ Six months earlier, US Commissioner for Bavaria George N. Shuster had instructed the Bavarian authorities that they could not reject refugees solely on the grounds that they had crossed the border from a non-persecuting country, such as Austria.³² Nevertheless, the Bavarian secretary of state for refugees Oberländer told the Directorate, "[N]o asylum should be granted to foreigners who, coming from Austria, illegally cross the Bavarian borders because they are, as is generally known, not in danger of persecution there."³³ The Bavarian authorities thus tried to prevent refugees from entering the country amid ongoing fears that any who found their way to a camp were sure to gain recognition from the Allies.

After the IRO ceased to place foreign refugees under its mandate in 1952, the West German authorities attempted to implement their own asylum policy, which

28 See the letter from Secretary of State Oberländer to the Federal Ministry of the Interior, 15 February 1952, BAArch, B106/47453.

29 For instance, the Allies were still responsible for the criminal persecution of refugees. This continued until 5 May 1955, when all restrictions on the Federal Republic's handling of foreign refugees were finally lifted.

30 See letter from the Allied High Commission for Germany to the Federal Government, 14 July 1950, BAArch, B106/47453.

31 Letter to the Bavarian Ministry of the Interior, 15 May 1952, BayHStA, MInn 88345.

32 Letter to Bavarian Minister President Ehard, 19 November 1951, BayHStA, MInn 88406.

33 Letter, 31 May 1952, BayHStA, MInn 88345.

involved sending all new *and resident* refugees (many of whom were under IRO mandate) “to a camp to be politically screened.”³⁴ Previously, 75 per cent of all refugees had lived outside of the country’s camps,³⁵ but the Federal Council’s Refugee Committee stressed that it was necessary “to reappraise debatable cases that were not definitively settled in the past.”³⁶ In this way, the Federal Republic tried to undo the work of the IRO by initiating a second recognition process that would be conducted on its own terms.

Camp Valka was chosen as the location for the implementation of this new policy. Established to accommodate spectators at the Nuremberg Nazi party’s rallies of the 1930s, it was later transformed into a forced labour camp. After coming under the auspices of the UNRRA in 1946, the first residents were refugees from Estonia and Latvia who named the camp after the city of Valka, which is situated on the border between the two Baltic states.³⁷ Four years later, the IRO placed Valka under the authority of the Bavarian government, which subsequently offered it to the federal government as the country’s first “federal reception camp.” By then, it could accommodate 330 inmates. Hence, from the autumn of 1950 onwards, every illegal immigrant into West Germany who claimed asylum was sent to Camp Valka for registration and a security screening.³⁸ However, for the time being, their applications for recognition were not processed there, even after the Western Allies gave West German agents permission to conduct interrogations in the autumn of 1951. This was due to fears that the Allied authorities would continue to overrule any rejected applications and insist that the refugees were granted asylum anyway. To avoid such an outcome, the plan was to hold the refugees in limbo at Camp Valka until such a time as the Federal Republic could make its own, independent decisions on asylum applications without any risk of Allied interference.

On 6 January 1953, after almost two years of sustained pressure from the Allied authorities,³⁹ the West German government finally passed a decree to regularise the recognition process for all asylum-seekers who had reached the country from the

34 Minutes of a meeting of the Federal Ministries, 11 January 1951, BArch, B106/47453.

35 See letter from the Federal Ministry of the Interior to the Federal Chancellery, 22 November 1950, BArch, B106/47453.

36 Minutes of a meeting of the Refugee Committee of the Bundesrat, 13 September 1952, BayHStA, MInn 90419.

37 See letter from Vello L. (a former inmate from Estonia) to the Bavarian Ministry of the Interior, 29 January 1954, BayHStA, MInn 88418.

38 See letter from the Bavarian Ministry of the Interior to the Federal Ministry of the Interior, 15 February 1952, BArch, B106/47453.

39 See Decision No. 10 of the Allied High Commission, 6 March 1951, Official Gazette of the Allied High Commission for Germany, 794f., at 795.

Soviet sphere of influence.⁴⁰ This gave the Federal Republic almost total responsibility for its foreign refugees,⁴¹ which meant it could not postpone the implementation of a thorough recognition process any longer. From now on, every person claiming asylum would be sent to Camp Valka, where the Federal Agency for the Recognition of Alien Refugees would process each application under the terms of the Geneva Convention. The final decision would rest with a Recognition Board that included representatives of the UNHCR.⁴² In the event that an application was rejected, the claimant could file an objection, which was discussed at a second meeting of the Recognition Board. In addition, claimants had access to an appeals procedure at three tiers of the administrative court system.⁴³

The new recognition regime's first order of business was to review the cases of the 5,000 foreign refugees who had entered the Federal Republic since 30 June 1950.⁴⁴ However, most of these people were already living outside of Camp Valka, so they would have to be either persuaded or compelled to return to the camp in order that their applications for asylum could be reassessed. This proved to be an impossible task, as we shall see in the next section.

The problem of mandatory residence in Camp Valka

All foreign refugees who claimed asylum in West Germany were required to register with the police and surrender themselves to "a camp to render possible police verifications in an appropriate manner."⁴⁵ However, neither Camp Valka (which was

40 Asylum-seekers from other countries could be recognised on the basis of Article 16 of the West German Constitution.

41 Only a handful of restrictions remained, mainly in relation to legal cases. These were lifted by the Allied High Commission through its introduction of Law No. A-37, 5 May 1955. See Official Gazette of the Allied High Commission for Germany, 3267–70, at 3269.

42 See Sections II and III of the Asylum Decree (Asylverordnung), 6 January 1953, BGBl. I, 3–6, at 3f.

43 This right was guaranteed by Article 19 of the West German Constitution.

44 See the memorandum of the Federal Agency from the beginning of 1954, BArch, B106/47454. Around 28,900 refugees were recognised between 1953 and 1964. In that period, no fewer than 15 per cent and no more than 55 per cent of applicants were granted recognition each year. See Regina Heine, "Ein Grundrecht wird verwaltet. Die Asylpraxis des Bundesamtes," in *Bewährungsprobe für ein Grundrecht*, edited by Amnesty International (Baden-Baden: Nomos, 1978), 407–47, at 408, 416.

45 Memorandum from Deputy Assistant Under-Secretary Herbert Freiherr von Wolff (Federal Ministry of the Interior) for the minister, BArch, B106/47453. See also para. 4 of the Asylum Decree, 6 January 1953, BGBl. I, 3–6, at 3. This was in accordance with Article 31, para. 2 of the Geneva Convention, 28 July 1951. See BGBl. II, 560–89, at 571.

closed in 1960)⁴⁶ nor Camp Zirndorf (which was established close to the Bavarian city of Fürth close to Nuremberg in 1955 and still functions as a refugee camp to-day)⁴⁷ wasn't a secure institution. Residents received a permit that guaranteed free movement not only within the confines of the camp but also in the city of Nuremberg (Camp Valka) or Fürth County (Camp Zirndorf).⁴⁸ Therefore, it is not surprising that some 46 per cent of them slipped away from the camps between 1953 and 1959. In general, those who left in this way either emigrated or relocated to other parts of the Federal Republic that granted them residence without feeling the need to inform the camp authorities. Very few refugees remained illegally in West Germany after a claim for asylum was rejected.⁴⁹

The authorities' loose enforcement of the Asylum Decree's requirement that every asylum-seeker should remain in a camp for the duration of the application process can be traced back to the first few weeks of the new system. On 5 February 1953, the head of the Federal Agency, Eduard Kramer, informed the Federal Ministry of the Interior that there was no need to oblige every asylum seeker to be admitted to the camp. He continued: "[T]he persons concerned are accommodated by their relatives or friends or are employed by American agencies or companies. Understandably, they don't want to be admitted to a camp." Moreover, he suggested that the obligation to remain within the confines of a camp could have "political implications" because the US occupying administration, in particular, employed many foreign refugees in its "labor service units," often as security guards.⁵⁰

In light of these concerns, and the high cost of strict enforcement, the Federal Agency soon became the chief advocate for a less rigid approach. It argued that administration, subsistence and welfare costs would all be substantially reduced if asylum-seekers were allowed to remain outside the camp.⁵¹ Moreover, it had evidence that mandatory residence within the camp would impose a significant financial burden on certain municipalities. For example, in February 1953, the town clerk of Solingen in northwest Germany, Gerhard Berting, contacted the Federal Agency with respect to a Belgian citizen who was living with his (German) family in the city. He

46 See circular of the Bavarian Ministry of the Interior, 30 May 1960, Ministerialamtsblatt der bayerischen inneren Verwaltung, 439.

47 Camp Zirndorf was founded by a decision of the Federal Cabinet during a meeting of 22 June 1955. See *Die Kabinettsprotokolle der Bundesregierung 1955*, edited by the Bundesarchiv (Boppard: Bundesanzeiger Verlag 1997), 376–87, at 387.

48 See circular from Federal Minister of the Interior Gerhard Schröder to Ministers of the Interior of the West German Länder, 18 March 1959, Gemeinsames Ministerialblatt, 166.

49 See Schoeppe, "Die Sammellager," 60.

50 Letter from the Federal Agency to the Federal Ministry of the Interior, 5 February 1953, BARch, B106/47454.

51 Ibid. Para. 4 of the Asylum Decree of 1953 facilitated the release of refugees in certain circumstances (e.g. if they had found a job in the Federal Republic). See BGBl. I, 3–6, at 3.

felt he was unable to return to his home country due to his collaboration with the German forces during the war, so he had claimed asylum on the grounds of “persecution” by the Belgian state.⁵² However, Berting argued against the Belgian’s transfer to Camp Valka as this would mean his “pregnant wife and his three children would have to be assisted by the public welfare system.” In addition, he asked the Federal Agency if other asylum-seekers in similar situations could be exempted from the obligation to reside in the camp as this would enable them to hold down a job and continue to support themselves and their families.⁵³

Before long, the federal authorities bowed to the inevitable and took the pragmatic decision not to insist on the obligation that had been written into the Asylum Decree. In practice, this meant that they also abandoned the plan to review the cases of the 5,000 asylum-seekers who had entered West Germany under the previous IRO regime. By the latter half of the 1950s, initial screenings of new asylum-seekers, which were still conducted in one of the two camps, were normally completed within three months of arrival. Then, in 1960, the exception became the rule as all asylum-seekers were henceforth required “to make use of any possibility for accommodation outside the federal reception camp as soon as their presence in the camp is no longer necessary for their recognition process.”⁵⁴ Seven years later, on 27 July 1967, the Ministry of the Interior announced that “the majority of foreigners respect law and order in the Federal Republic,”⁵⁵ so West Germany no longer needed to exert control over refugees by incarcerating them in camps. Consistent economic growth, the gradual cementing of the new republic and greater respect for human rights throughout society all contributed to this significant shift in the country’s refugee policy.⁵⁶

52 In general, the Federal Agency dealt only with claims for asylum based on the Geneva Convention, which normally involved refugees from the Soviet sphere of influence. “Western” citizens could usually apply for asylum under the terms of Article 16 of the West German Constitution.

53 Cited in letter from the Federal Agency to the Federal Ministry of the Interior, 5 February 1953, BAArch, B106/47454.

54 Para. 11 of the “Lagerordnung des Bayerischen Staatsministeriums für Arbeit und soziale Fürsorge für die Sammellager für Ausländer,” Bayerischer Staatsanzeiger No. 4, 22 January 1960, 4.

55 Letter from Federal Ministry of the Interior Secretary of State Karl Gumbel to the Federal Parliament, Deutscher Bundestag, printed paper 5/2046.

56 See, for instance, Ulrich Herbert, “Liberalisierung als Lernprozess. Die Bundesrepublik in der deutschen Geschichte – eine Skizze,” in *Wandlungsprozesse in Westdeutschland. Belastung, Integration, Liberalisierung 1945–1980*, edited by Ulrich Herbert (Göttingen: Wallstein, 2002), 7–49.

The recognition process in federal reception camps for foreign refugees after 1953

When the Federal Agency was founded in 1953, one of its first tasks was to decide which types of persecution were sufficiently serious to warrant the granting of asylum. The West German courts, which had the final say over Federal Agency decisions during the appeals procedure, assisted with this process. For instance, as early as 21 January 1953, the Federal Court of Justice ruled that “considerable persecution measures are only those which directly emanate from the administration of the home country.”⁵⁷ So it was only forms of persecution which were inflicted by a state on its own citizens which were deemed worthy for recognition. The Federal Agency did not define minor restrictions on personal liberty, such as police surveillance or a requirement to report to the local authorities at regular intervals, as persecution. By contrast, repeated questioning by the police, imprisonment without trial or deportation might be reasonable grounds for claiming persecution.⁵⁸ Such claims were only ever taken into consideration if the asylum-seeker could provide evidence of “a persecution measure directly aimed against the foreigner [...] where the state refuses to provide protection.”⁵⁹ Then the West German authorities would need to decide whether the persecution had been sufficiently serious to merit official recognition of the victim. Judge Lothar Schmitt, of the administrative court in Ansbach (which heard all asylum-seekers’ first appeals against negative decisions by the Federal Agency), stated: “The asylum-seeker who faces harm due to his political opinion needs to provide evidence of serious conflict. It is insufficient for him merely to differ from the politics of the day without fundamentally rejecting the political system.”⁶⁰

The Federal Agency rejected the Yugoslav Dane L.’s application for asylum on 7 July 1958 on the grounds that he had failed to provide concrete evidence of persecution. Specifically, the decision stated:

It certainly can be presumed that he is an anti-communist and that life in communist Yugoslavia seemed unbearable to him. However, he shares this opinion

57 Entscheidungen des Bundesgerichtshofes in Strafsachen, Vol. 3, 392–5, at 395.

58 See various judgements of the first level of the administrative court in Ansbach in the 1950s in Karl Friedrich Zink, “Das Asylrecht in der Bundesrepublik Deutschland nach dem Abkommen vom 28. Juli 1951 über die Rechtsstellung der Flüchtlinge unter besonderer Berücksichtigung der Rechtsprechung der Verwaltungsgerichte,” Ph.D. thesis, published by Nuremberg University, 1963, 77.

59 Undated memorandum annexed to letter from the Federal Agency to the Federal Ministry of the Interior, 1 March 1966, BAArch, B106/81067.

60 Lothar Schmitt, “Das Asylrecht des Grundgesetzes,” in Bayerische Verwaltungsblätter, 1964, 33–6, at 36.

with many of his fellow countrymen, just as the difficulties linked to this are a common fate. It would have been a precondition for his recognition that he was personally threatened by persecution because of his opinion, or at least that he had well-founded fear of persecution.⁶¹

Similarly, in the case of Milan L., another Yugoslav, the Bavarian Administrative Court in Munich – the second tier of the appeals process – decreed on 25 November 1959: “Mere opposition to the communist regime does not justify recognition as a foreign refugee. The crucial point is the attitude of the home country towards the claimant, not the attitude of the claimant towards the communist regime of his home country.”⁶² Eight months earlier, the same court had ruled that the purpose of the Geneva Convention was not “to provide shelter for proven fighters in the Cold War against communism to support their resistance” and that antipathy towards communism should not be equated with persecution, even though “owing to the present political situation most asylum-seekers in the Federal Republic come from communist-ruled countries.” The judges’ conclusion was that any asylum-seeker who had suffered genuine persecution should be granted recognition “regardless of the political system from which it emanates,” whereas the mere fact “that someone has fought against communism” should have no bearing on that decision.⁶³

Notwithstanding occasional disagreements with the Federal Agency, in general the UNHCR approved of the West German recognition process. For instance, on 5 May 1955, the organisation’s representative in Camp Valka, K. C. Elliot, stated:

Although we ourselves have our own ideas one must be just and admit that the procedure and basic policy is in accordance with the [Geneva] Convention. Each case is individually considered and when a refugee has fair grounds, is honest (so many I am afraid, are not) and explains his case without frills, he has decent chances of recognition.⁶⁴

So, even though the Federal Agency’s recognition process was markedly different from the IRO’s, the local UN representative raised no fundamental objections to the new procedures.

61 Notice of the Federal Agency, 7 July 1958, ITS Document 79402424.

62 ITS Document 79417046.

63 Judgement of the Bavarian Administrative Court in Dane L.’s asylum case, ITS Document 79402442.

64 Letter to the UNHCR office in Bonn, ITS Document 79658148 (original emphasis).

Conclusion

The IRO and the West German authorities adopted very different approaches to the processing of asylum-seekers because they had very different objectives and perspectives. The IRO was founded primarily to provide social benefits to foreign refugees and – if possible – prepare them for resettlement abroad. It saw no need to investigate whether those refugees' claims of persecution were authentic. As long as it concerned bona fide refugees the vast majority was automatically placed under IRO mandate. If subsequent resettlement failed the refugees were left to the West Germany administration because the Western Allies insisted that it must grant asylum to each and every mandated refugee.

By contrast, the West German authorities felt that the arrival of ever more refugees was placing an intolerable burden on their war-stricken country that had to be mitigated as soon as possible. As a result, in the early years of the Federal Republic, foreign refugees were often perceived and represented as a security issue. However, the Federal Agency and the courts eventually developed a practical and, crucially, fair system for dealing with asylum-seekers based on the West German Constitution and the Geneva Convention.

These divergent perspectives were epitomised by the two systems' attitudes towards refugee camps. For the IRO, camps were simply a means to accommodate refugees who would otherwise lack shelter. By contrast, the West German authorities viewed them as an effective control mechanism. Yet, over time, the Federal Republic gradually realised that the disadvantages of enforcing mandatory stays in a camp outweighed the supposed security "benefits." This eventually led to a change of policy that not only allowed but encouraged refugees to find alternative accommodation.

The treatment of foreign refugees in West Germany in the 1950s and 1960s is symbolic of the country's gradual retrieval of its national sovereignty after the war. In the immediate post-war era, the Western Allies and the United Nations exerted complete control over any foreign refugees who crossed the border into West Germany. This was followed by a short period when the country's own institutions and agents wanted to challenge some of the IRO's decisions and practices, yet any refugee who had been placed under IRO mandate still had, from 1951 on, the right to remain in the Federal Republic as a "homeless foreigner." Refugees who arrived after June 1950 were treated differently. For most of them, the IRO was no longer responsible. Initially, the Federal Republic planned to reassess and potentially deport those refugees. However, following the introduction of its own recognition system in 1953, it eventually abandoned that idea and instead adopted what would become a rather liberal approach to asylum-seekers.

