
WILL THE FAMILIES OF SYRIAN REFUGEES BE DENIED THE RIGHT TO REUNIFICATION?

-

21.11.2016

20.11.2016

DW.de

In a case that will have widespread ramifications for the rights of refugees in Germany, a court in Schleswig will decide whether refugees from war zones will only be granted 'subsidiary protection'.

Families of Syrians to be denied right of reunification

On 23 November the Higher Administrative Court in the northern German region of Schleswig will be the first to decide whether it is possible to limit the rights of refugees from war zones. Recently, the Federal Office for Migration and Refugees (BAMF) granted only so-called "subsidiary protection" to asylum seekers, primarily from Syria. Thousands of those affected were successful in appealing the decision. Now the BAMF has taken the judgment to the next level of authority, the Higher Administrative Court. It continues to insist on granting only limited protection to Syrian refugees.

Full refugee protection according to the Geneva Convention normally includes permission to remain for three years, and this is usually followed by an unlimited residence permit. Refugees also have the right to family reunification.

If, however, the BAMF were to grant them only so-called "subsidiary," or limited, protection, they would initially get a residency permit for just one year, perhaps with the possibility of extending this for another two. But this extension would have to be applied for separately. Families would not be permitted to join them until 2018. This is a source of great insecurity and an additional emotional burden for those affected.

Complicated legal situation

The Osnabrück lawyer Henning Bahr is well versed in asylum law. He defends refugees who wish to appeal against their assessments. They can get legal aid to cover the cost of the appeal. Bahr is currently dealing with between 50 and 55 cases □ an increase of 100 percent on 2015, he says. He is well aware of the personal suffering of his clients whose relatives were unable to flee. "Two years is a long time in Syria," he says. "For family reunification to be suspended for 'only' two years - it's not 'only,' it's horrifying that it's been suspended at all."

He has to keep explaining why limitations can be imposed. Put simply, "subsidiary protection" is usually granted to all those who are not covered by either the Geneva Convention on Refugees or the German basic right to asylum.

For example, the German constitution only grants right of asylum to people who are politically persecuted. It doesn't apply to people fleeing general situations like civil war or a natural disaster. "Again and again, assessments focus on the fact that the people concerned weren't able to demonstrate why they were individually persecuted," Bahr explains.

Hearings should be better prepared

Henning Bahr and his colleagues are urging that offers by institutions such as the Red Cross, faith-based charities Caritas International and Diakonie, or the Informationsverbund Asyl und Migration to act in an advisory capacity should be accepted, and that lawyers should prepare very carefully for the hearings that form part of the asylum procedure. For example, many applicants will have been called up for military service prior to fleeing. If they return to Syria, they will be prosecuted for desertion. "The federal office usually skips over this fairly quickly in its assessments," says Henning Bahr. He hopes that this will provide a point of leverage for refugees' rights to be fully recognized.

"Unfortunately, it often also happens that people are put under time pressure during a hearing," he says. It may be pointed out that, as an asylum seeker, they surely want the process to be a swift one. "It's often implied that the applicant doesn't need to go into so much detail, when in fact it's important that the people concerned leave out nothing of what's happened to them during the war," Bahr advises. According to reports by Pro Asyl, refugees don't always give all the relevant reasons for their asylum claim in their statement to the BAMF.

Refugees rest on a railway in Croatia's Tovarnik municipality as they wait for a train to go to Zagreb.

Decree "from on high"

For a long time it was predominantly people from Eritrea, Afghanistan and Iraq who received "subsidiary protection." Syrians were given full protection rights almost automatically on the grounds of their country of origin. But since March 2016 and the "second asylum package," the flow of refugees from this region is to be limited, and the rules for recognizing Syrian refugees are to be made stricter. Both Henning Bahr and his colleague Marcel Keienborg in Düsseldorf assume that very clear guidelines have been issued by the interior ministry: "Of course, we can only assume that there has been a directive, but it's certainly highly probable."

Naturally, the Federal Office for Migration and Refugees defends its decrees about "subsidiary protection," and has appealed many cases in which the plaintiffs were granted full rights.

Numerous decisions by the administrative Courts of First Instance, whether in Trier, Regensburg or Frankfurt an der Oder, have supported refugees and decided appeals in their favor. Now it's the turn of the next level of the justice system □ such as the Higher Administrative Court in Schleswig. If it confirms the lower court's decision, it will be a signal that cannot easily be ignored. Henning Bahr is convinced: "The BAMF will be overwhelmed by a tidal wave of judgments. For financial reasons, the Federal Office will then have to consider whether it intends to appeal every one of these decisions."