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Vice President, Radio Liberty Committee

European Counsel

Federal Alien Law

The German Federal Government has adopted a new law relating to aliens in the Federal Republic. The statute is called "Ausländergesetz", is dated April 28, 1965, was published in the Federal Register (Bundesgesetzblatt) part I, number 19, page 353 et seq. on May 8, 1965 and will go into effect on October 1, 1965 except for certain provisions which became effective on May 9, 1965. It replaces the Alien Registration Act of May 11, 1937, the Alien Police Regulation of August 22, 1938, and the Asylum Regulation of January 6, 1953 all of which are repealed or rescinded. The Passport Act of March 4, 1955 as amended is no longer applicable to aliens. Certain other regulations concerning travel documents continue in effect until replaced by appropriate new regulations.

Following is a summary of the principal provisions of the new statute which determines the conditions for the entry and presence in the federal territory of aliens, that is persons who are not Germans pursuant to Article 116 subsection 1 of the Basic Law (Para.1).

Aliens who desire to enter or reside in the federal territory require a residence permit which may be issued if the presence of the alien does not impair the interests of the Federal Republic. Aliens below the age of 16, displaced persons or persons for whom the Minister of Interior creates exceptions require no such permit. A duty to register may be imposed upon aliens who need no residence permit (Para.2). Aliens entering or residing in or leaving the territory must identify

themselves by means of a passport. Individual exceptions are permitted. By regulation the Minister of Interior may exempt from this requirement aliens whose readmittance is assured, and may permit or introduce passport substitutes (Para.3). Paragraph 4 provides that an alien passport (Fremdenpass) may be issued to aliens who have neither a passport nor a substitute.

The residence permit may be issued before or after entry. The Minister of Interior may prescribe that the residence permit shall be secured prior to entry (Para.5). The residence permit may be restricted with regard to time, place or otherwise.

The statute declares in paragraph 6 that the aliens shall enjoy all basic rights which are not expressly limited to German nationals. Political activities may be curtailed or prohibited in the interest of the public order of the Federal Republic. Aliens may not engage in political activity which is incompatible with international law, jeopardizes the liberal democratic order of the Federal Republic or intends to support institutions or aspirations outside of the federal territory which are incompatible with the Federal Constitution.

A significant innovation is paragraph 8 which provides that aliens who have lawfully resided in the federal territory at least for 5 years and have integrated themselves into the economic and social life of the Federal Republic may be granted a residence permit in the form of a right to reside which is unlimited and unconditional. Residence permits and residence rights terminate if the alien loses his valid passport or substitute, changes his nationality, leaves the federal territory other than temporarily or is expelled (Para.9).

The statute sets forth in some detail the circumstances and conditions of expulsion and deportation. These provisions constitute a considerable liberalization of past practice and reflect the rulings of the administrative courts in a number of deportation cases which have usually irritated the authorities charged with the administration of the alien police laws. These authorities in general are the local police in whose district the alien ordinarily resides; in the absence of a residence the police in whose district action must first be taken shall have jurisdiction.

-3-

An alien who enters the country in possession of a residence permit must report his residence; an alien who arrives without a residence permit must apply for one without delay after his entry. Prescribed forms shall be used, and the alien must appear in person to supply all pertinent information on request. Appeals from denials of applications have no delaying effect.

the new statute simplifies the procedures in that it consolidates the provisions which are now in force. In Bavaria there has been a merger of the offices in the Ministry of Internal Affairs which previously had cognizance of our problems; this too should lead to simplification. The great innovations, of course, are the possibility - introduced here for the first time though necessarily as a discretionary measure - to allow an alien to settle permanently in the Federal Republic as a matter of right, the - if somewhat limited - extension of the Bill of Rights to an alien, and the permission for aliens to engage in political activities in the Federal Republic. In the latter respect the Düsseldorf "Handelsblatt" in its issue of February 11, 1965 stated in part as follows:

"In international law there is no provision granting to foreigners the right to exercise political activities in their respective host countries. This fact is also confirmed by the 1950 'European Human Rights Convention'. Neither does the constitution of the Federal Republic permit per se such political activities. The 'basic rights' - guaranteed by the constitution, such as the freedom to assemble and to associate are solely intended for German citizens. Moreover, it is also impossible to deduct the right to political activities from the basic right of freedom of expression because the concepts of freedom of expression and political activity are not identical. In spite of this the framework of the new provision (in the 'Ausländergesetz') will be flexible and wide enough to permit foreigners to exercise political activities although, by international law and the constitution, they are not privileged to do so."

After discussing the legal limitations which are (still) placed upon the aliens' domestic political activities, the "Handelsblatt" added:

-4-

"With these restrictions (the lawmakers) intended to take into consideration certain changes in Eastern Europe in the course of which not only persecuted democrats have come into the Federal Republic but also members of extreme left and extreme rightwing groups. The Government intends to take measures preventing the latter to harm the interests of the state."



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