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Urgent measures to amend the Swiss Asylum Act

The Swiss law governing the rights of refugee seekers is about to be modified, on June 9th. The new modifications will lead to grave breeches of the Geneva Convention on Human Rights. The most controversial modifications are the following:

1. **Deserters and conscientious objectors are no longer considered refugees**. (art. 3 LAsi)
2. **It is no longer possible to seek asylum via a Swiss Embassy** (art. 19 & 20 LAsi)
3. **« Recalcitrant » asylum seekers can be placed in special centres**. (art. 26 LAsi)
4. **The Swiss government (the Federal Council) can set up test phases (for a maximum of two years) to evaluation new asylum procedures. The terms of these phases may transgress the Asylum Act or the Foreigners Act.** (art. 112b LAsi)

A fifth argument could be added: there are no grounds to "urgently" amend these measures.

1. Desertion and conscientious objection are no longer grounds for asylum

Addition to paragraph 3 of Article 3 (definition of a refugee):

Are not considered as refugees, people who have exposed themselves to serious prejudice or who fear to be exposed solely because they refused to serve or deserted. The provisions of the Convention relating to the status of refugees are reserved.

By this modification the Swiss Parliament is attempting to deter genuine refugees from seeking asylum in Switzerland. Parliament is weakening the rights of refugees and is avoiding dealing with the issue of supposedly false asylum seekers. It is feared that this will lead to a more restrictive practice: increasing numbers of applicants will receive a negative decision. They would still benefit from temporary entry to Switzerland (permit F) because it is illegal to send them away. The seeker would then find herself/himself in an even more precarious situation, with even less possibility of integration.

Refugee status is given solely to protect individuals from persecution in their countries of origin. Refugee status aims to allow those who fit the criteria, to rebuild a dignified life in the welcoming country, know that he will never be able to return to his own country. The F permit therefore does not respond to international human rights law. According the UNHCR, Switzerland is the first country in Europe to introduce such a modification to its law.

2. Abolish the asylum procedure via Swiss Embassies

Modification and deletion of the provisions that allow asylum seekers to apply via a Swiss Embassy.

The asylum procedure from abroad, through Embassies, helps prevent illegal migration and human trafficking which is becoming more dangerous for asylum seekers, in particular for the most vulnerable. Every year thousands of people drown in the sea or die of other causes trying to break into Europe's fortress. Asylum application via an Embassy would help to avoid this. In addition, the asylum seeker on foreign soil would avoid costly and inhumane forced repatriation.

It is interesting to note that while Switzerland wants to remove this law, the European Commission is developing protected entry and visa procedures that favour applications from abroad: "protected entry measures and the issuance of humanitarian visas should be facilitated, including through diplomatic representations, or any other structure set up in developing countries, in the context of a global mobility strategy "(EC parliament and board, press release, 10-06-2009)

3. Special centres for "recalcitrant" asylum seekers.

Introduction of paragraphs to Article 26 of the Asylum Act.

Art. 26 (registration centre)

(...)

The ODM (the Federal office for migration) can confine applicants who threaten security and public order, or who affect the functioning of the registration centres, to specific centres created and managed by the ODM or the cantonal authorities. This provision applies equally to applicants assigned to a Canton. The Confederation and the Cantons share the costs of these centres in proportion to the use they make of them.

(...)

The Arab Spring in 2011 was followed by increased immigration to Europe and, in the absence of other procedures to legally immigrate, asylum applications increased. It then appeared in the press, particularly in German, a debate on "recalcitrance", false asylum seekers who should be set aside.

Here, the Asylum Act, which should be for the protection of refugees, is turned away from its purpose to manage immigration issues, bypassing the constraints of criminal law. 1) What behaviours significantly affect the operations of a centre? - An asylum seeker who returns with a beer to the dormitory? 2) Who decides on the transfer a specific centre? -A security guard? 3) The decision will probably be neither written nor questionable.

Beyond inappropriate behaviour, a person who commits a crime should be judged according to criminal law. In a few months, via a particular phenomenon (the Arab Spring), we witnessed racist and permanent fillings in the emergence of this a new category of people.

4. “Carte blanche" to the Swiss Federal Council

The Swiss government (the Federal Council) can set up test phases (for a maximum of two years) to evaluation new asylum procedures. The terms of these phases may transgress the Asylum Act or the Foreigners Act. - Introduction of Article 112b "Asylum procedure in test phases"

1. The Federal Council can set up testing phases to evaluate new procedures when these require that a test phase takes place before the adoption of a modification to a law, alleging grounds of complex organizational and technical measures.
2. The Federal Council regulates the details of the test phases by decree. In doing so, it may derogate from this law and from LEtr (RS 142.20) with respect to the application of the first instance asylum procedure and expulsion proceedings, as well as related financial issues.
3. During the test phases, the Federal Council may shorten the appeal period from 30 days (art. 108 al. 1) to 10 days if appropriate measures guarantee efficient legal protection for the concerned asylum seekers.
4. All statutory provisions that are derogated are stated in the decree.
5. The duration of the test phase is maximum two years.

The introduction of this standard is intended give Federal Councillor, Mrs Sommaruga, carte blanche to undertake a major revision of the asylum law as she wishes. To obtain this exemption, Mrs Sommaruga took advantage of a wide consensus that asylum proceedings need to be expedited.

However, the reasons put forward to explain the slowness of asylum proceedings were incorrect and incomplete. The reduction in the appeal deadline from 30 days to 10 days is inadequate. Even the best lawyer in the world cannot present a strong appeal in 10 days.

The introduction of Article 112b is a threat to human rights.

5. Urgent measures

The urgent character of these measures bypass certain democratic rights that should apply to all ordinary legislative procedures, including the effects of a referendum. In this case, the referendum does not prevent the entry into force of these urgent measures, but they can be terminated after one year in case of refusal by the people.

Neither the removal of desertion as motif to seek asylum, nor the embassy procedures, are grounds for seeking urgent measures. Urgent measures are reserved for cases when following the ordinary legal proceedings would create major inconveniences, or if the urgent measures would have an immediate impact on a problem of major importance. Applications filed by Eritreans and those filed in Swiss Embassies have remained stable for several years and no increase in flow has been objectively observed. By declaring these modifications as “urgent measures”, without proper justification, the Swiss Parliament has chosen to ignore the Constitution and to deprive citizens of their democratic rights in the decision process.

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