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Germany: border returns ruled unlawful

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On 2 June, the administrative court in Berlin ruled that the return of three Somali nationals – who had been sent back from Frankfurt (Oder) to Poland in early May after expressing their intention to seek asylum in Germany – was unlawful. In its reasoning, the court stated that Germany must first carry out the Dublin procedure to determine which EU member state is responsible for examining an asylum application. During the hearing, the government argued that under Article 72 of the Treaty on the Functioning of the European Union, member states may, in exceptional circumstances, derogate from EU law. However, the judges found that in this instance the authorities had failed to demonstrate a sufficient threat to public security. Interior Minister Alexander Dobrindt (CSU) emphasised that, in his view, the court's ruling pertained solely to the individual case of the Somali nationals and did not question the broader practice of returns at the border. He announced that, in the ongoing principal court proceedings concerning the tightening of border controls, the government would present "a more detailed justification". He also affirmed that Germany maintains its position on the policy of returns and the stricter border regime in force since 8 May.

The ruling undermines the government's plans to tighten migration policy. It will amplify critical voices opposing the practice of returning migrants at the border and is likely – once a final judgment is issued in the main proceedings – to bring this practice to an end.

Commentary

- **The court's decision could derail Chancellor Friedrich Merz's plans to implement sweeping reforms to migration policy.** Until a ruling is issued in the main proceedings concerning the legality of returns, the authorities are likely to remain determined to continue the current practice. Should the court ultimately rule against this procedure, the Interior Ministry will likely begin processing asylum applications after transferring individuals from the border to the nearest reception centres – such as the facility in Eisenhüttenstadt, near the Polish border. Since the beginning of the year, that facility has served as a temporary accommodation centre and is also used for fast-tracking cases under the Dublin procedure. As part of its coalition agreement and pre-election pledges, the government approved a draft bill on asylum law reform, prepared by the Interior Ministry on 28 May. The proposed changes include suspending the right to family reunification for individuals granted subsidiary protection, and abolishing the accelerated path to citizenship after three years of residence.

- **The number of asylum applications in Germany has fallen sharply** (see: '*Germany: a significant drop in the number of asylum applications*'). By May of this year, 45,000 applications had been submitted, representing a 46% decrease compared with the same period last year. The highest numbers came from citizens of Syria (11,644 applications, down 55% year-on-year), Afghanistan (7,873 applications, down 39%) and Turkey (4,749 applications, down 60%). In the court's view, these figures preclude the invocation of a state of emergency. The ruling also emphasised that Germany should first seek an agreement with its EU partners and attempt to find a joint solution. Regarding the Interior Minister, the court noted 'insufficient coordination of these actions with the EU, or at the very least with Poland, as another directly affected member state'.
- **The tightened border controls are attracting growing criticism.** According to the Bavarian Chamber of Industry and Commerce, sales in the region's trade, catering and hospitality sectors have fallen by around 20% since their introduction. Businesses are also reporting delivery delays and issues with cross-border workers. The German Trade Union Confederation (DGB) has highlighted the difficulties faced by employees, including those from Poland, who commute daily to Germany – some are losing bonuses due to arriving late for work. Local officials have also voiced concerns about the disruptions caused by the controls. On 21 May, the mayors of border cities – including the mayor of Frankfurt (Oder), along with politicians from Kehl and Strasbourg – sent a letter to the federal government calling for an easing of the regime, which they argue is severely disrupting everyday life in the border regions. At the same time, the German Police Union (GdP) has warned that that officers may be overstretched. However, Dieter Roman, head of the Federal Police responsible for border protection, rejected these claims. He noted that since September, around 1,200 additional officers have been deployed to assist, and that between 13,000 and 14,000 police officers are currently on duty at the borders.
- **The German government has positively assessed the tightened border regime and intends to maintain it.** During the first three weeks of its implementation, authorities prevented 3,387 attempted illegal entries and turned back 2,161 individuals. Of the 160 people who applied for asylum, 125 were returned. Prior to Interior Minister Dobrindt taking office, the weekly average number of returns stood at 576, with a total of 10,368 returns recorded since the beginning of the year. According to a *Politbarometer* survey conducted for ZDF television on 23 May, 51% of Germans believe that the stricter controls will help reduce the influx of illegal migrants into the country.