

Minor Interpellation by the Member of the Bundestag Volker Beck and others and the Alliance 90/The Greens parliamentary group.

Impacts of defining Morocco as a safe country of origin on the territory of Western Sahara and the Sahrawi people

Bundestag printed paper 18/7771

Preliminary remarks of the questioners:

On 3 February 2016, the Federal Government adopted the bill to categorise the People's Democratic Republic of Algeria, the Kingdom of Morocco, and the Tunisian Republic as safe countries of origin. The upshot of designating safe countries of origin is the limitation of the procedural rights, legal protection possibilities and social and economic rights of nationals from these states seeking protection. The Alliance 90/The Greens parliamentary group continues to believe the instrument of "safe countries of origin" is wrong.

When designating safe countries of origin, the stipulations of the German Basic Law and Directive 2013/32/EU of the European Parliament and of the Council of 26 July 2013 on common procedures for granting and withdrawing international protection (Asylum Procedures Directive) must be adhered to. Under Article 16a (3) sentence 1 of the German Basic Law "states may be specified in which, on the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists." Under Annex I of the Directive, a state can only be designated as a safe country of origin, "where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict." Reports from numerous governmental and non-governmental institutions and organisations show that these conditions are not met in Algeria, Morocco and Tunisia (see for instance Amnesty International, Opinion of 2 February 2016 on the Federal Government bill to designate Algeria, Morocco and Tunisia as safe countries of origin, 5. 10).

Irrespective of this, designating Morocco as a safe country of origin also gives rise to questions due to the continued occupation of the territory of Western Sahara since 1975, which to date the Federal Government has been unable to provide a coherent, let alone a convincing answer to. The oral question by Member of the Bundestag Volker Beck as to what extent the designation of Morocco as a safe country of origin would also extend to the territory of Western Sahara or the Sahrawi people and a follow-up question on this by Member of the Bundestag Katja Keul was not answered clearly by the Federal Government in the Question Time on 17 February 2016.

1. In the opinion of the Federal Government, would the designation of Morocco as a safe country of origin extend to the territory of Western Sahara or the Sahrawi people?

a. If so:

i. To what extent are the requirements of the German Basic Law and the Asylum Procedures Directive on the designation of safe countries of origin met in the opinion of the Federal Government in relation to the human rights situation on the territory of Western Sahara?

ii. Why does the explanatory memorandum on the Federal Government's bill to categorise the People's Democratic Republic of Algeria, the Kingdom of Morocco and the Tunisian Republic as safe countries of

origin not mention that “Sahrawi political activists, defenders of human rights and journalists ... face[d] a host of limitations to their rights and ... [were] often arrested, tortured or otherwise abused and criminally prosecuted” (Amnesty Opinion, p. 6), and what is the Federal Government’s assessment of the human rights situation of Sahrawi political activists, protestors, human rights defenders and journalists?

b. If not, in the opinion of the Federal Government how are the Federal Office for Migration and Refugees and other authorities dealing with the enforcement of regulations pertaining to asylum and asylum law supposed to distinguish between

i. members of the Sahrawi population and Moroccan nationals,

ii. members of the Sahrawi population and Moroccan nationals originating from the Western Saharan territory,

iii. members of the Sahrawi population and Moroccan nationals from the internationally recognised sovereign territory of Morocco?

Answer to question 1:

Questions one and its sub-questions shall be answered together in connection with each other.

The status of Western Sahara under international law is unresolved. Germany advocates a just, lasting and mutually acceptable political solution in the scope of the United Nations. The planned categorisation of Morocco as a safe country of origin has no bearing on the Federal Government’s stance towards the status of the territory under international law.

As a general principle, what counts in the decision on whether an asylum seeker comes from a safe country of origin is solely the nationality of the applicant and not the territory of a country.

The Federal Office for Migration and Refugees (BAMF) will therefore examine which nationality asylum applicants from Western Sahara have. This is determined on the basis of documents presented or prima facie evidence. For Moroccan nationals, including those from Western Sahara, the provisions pertaining to Morocco as a safe country of origin would apply. Different provisions would apply to asylum seekers habitually resident in Western Sahara (without Moroccan nationality). Irrespective of this, an applicant with Moroccan nationality would have the opportunity to refute the presumption of freedom from persecution by asserting that he or she was indeed being persecuted as an exception to the general situation in the country of origin.

Nationality is already documented in a person’s record at the time of the application for asylum as a general principle. Should corrections need to be made during the procedure, for instance following the hearing, these are also reflected in the contents of the records.

The distinction based on membership of a particular ethnic group would be of no relevance for assignment to a safe country of origin.

2. To what extent does the Federal Government share the view of the State Secretary to the Federal Minister of the Interior, Dr Günter Krings, who in the Question Time on 17 February 2016 in relation to the “sovereign territory of Morocco” stated the following: “To my knowledge, the term “sovereign territory” specifically does not apply to this territory — because otherwise that would mean that we would implicitly be recognising sovereignty over this territory —, rather it is the uncontested Moroccan territory that is meant here” (Stenographic record of the plenary proceedings of 17 February 2016, p. 15168)?

On 2.

The Federal Government fully shares the view of the State Secretary to the Federal Minister of the Interior Dr Günter Krings.

3. How does the Federal Government counter concerns that the designation of Morocco as a safe country of origin would constitute a “huge diplomatic win” for the Moroccan government and virtual recognition of the otherwise internationally disputed sovereignty of Morocco over Western Sahara (www.libe.ma/L-Europese-bunkerise-Le-Maroc-dit-oui-au-retour-de-ses-migrants-irreguliers-dans-le-cadre-daccords-bilateraux-a71221.html), and to what extent does it view these possible impacts to be acceptable in terms of foreign policy and human rights policy?

On 3.

The planned categorisation of Morocco as a safe country of origin is one of several measures to process asylum applications more swiftly and by doing so to be able to significantly reduce the time spent in Germany by asylum seekers who have no prospect of being granted protection status. The basis of the planned categorisation is intensive monitoring of the human rights situation in Morocco by the Federal Government. The Federal Government will continue to honour its monitoring obligation for Morocco and regularly review the categorisation in line with the stipulations of the Federal Constitutional Court and will report to the German Bundestag on this every two years in accordance with Section 29a (2a) of the Asylum Act (AsylG). The planned categorisation as a safe country of origin has no bearing on the legal position of the Federal Government towards Western Sahara.

4. To what extent did the Federal Government hold prior consultations on the impacts of designating Morocco as a safe country of origin in relation to refugee, foreign and human rights policy with its European partners (in particular the European Commission, France, Sweden and Spain), the African Union, Morocco’s neighbouring countries and the Frente Polisario with what outcome, and what conclusions, including in terms of action to be taken, did it draw from these consultations?

On 4.

The Federal Government engages in a regular exchange on the human rights situation in Morocco with the EU partners and with governmental and non-governmental actors inside and outside of Morocco and incorporates their views into its assessment.

5. To what extent is the Federal Government considering recognising Western Sahara as an independent state or recognising the Frente Polisario as the representative of the Sahrawi people and what conclusions, also in terms of action to be taken, does it draw from an initiative in this vein by the Swedish government (<http://www.tagesspiegel.de/weltspiegel/schweden-will-befreiungsbewegung-frente-polisario-anerkennen-marokko-verbietet-in-letzter-sekunde-eroeffnung-von-ikea/12388414.html>)?

On 5.

The Federal Government’s position on Western Sahara remains unchanged. The Federal Government advocates a solution based on a consensus between all parties in the scope of the mediation and negotiation process led by the United Nations. The Federal Government has no information on plans by the Swedish government to recognise Western Sahara as an independent state. In mid January 2016 the Swedish government denied such an initiative.

6. To what extent does the Federal Government share the view of the General Court of the European Union that the Frente Polisario is the legitimate representative of the territory of Western Sahara and its inhabitants under international law and that Morocco has no right to declare Western Sahara as its own territory and to use the resources available there and in the coastal waters (EGC, Judgement of 10.12.2015, Case T-512/12)?

On 6.

The General Court of the European Union is not of the view that the Frente Polisario is the legitimate representative of the territory of Western Sahara and its inhabitants under

international law. It merely refers in subsections 61, 73 and 128 of the judgement of 10 December 2015 in case T-512112 to the claim the applicant makes to this status under international law; in its decision the court does not voice an opinion on this.

The statement "that Morocco has no right to declare Western Sahara as its own territory and to use the resources available there and in the coastal waters", is also not part of the decision of the General Court of the European Union, but merely a repetition of the applicant's application and pleadings; see *inter alia* Subsection 190 of the judgement of 10 December 2015 for case T-512/12. The court expresses no opinion on these questions of international law in its decision.

7. In the view of the Federal Government, to which country, by what means and with what documents could German authorities repatriate members of the Sahrawi people enforceably required to leave the country?

On 7.

Persons enforceably required to leave Germany can be returned to their home country, to a transit country through which they entered Germany or to a third country which is prepared to admit them. The possibility of repatriation is therefore based in the individual case on the nationality of the person required to leave and their route to Germany. If the person is in possession of a valid travel document, repatriation usually is to the country that issued this document. Otherwise the nationality of the individual is determined on the basis of the available documents and the information given by the person required to leave. If during the investigation of the facts it arises that according to the Moroccan civil registry the individual in question was in possession of a Moroccan passport or a Moroccan identity card, repatriation can take place using a Moroccan passport substitute, provided that in the individual case, the examination of the case has found that there are no obstacles to deportation.

8. Is the Federal Government aware of cases since 1975 in which there were demonstrations on the territory of Western Sahara in favour of Western Sahara's independence without the police and other security agencies taking action against the demonstrators and if so which?

On 8.

The Federal Government has no systematic information on all the demonstrations in Western Sahara since 1975. The Moroccan security agencies are required to take action to de-escalate demonstrations. The National Human Rights Council of Morocco has been conducting human rights training in Western Sahara, too, for several years.

9. Is the Federal Government aware of any cases since 1975 where journalists reported critically on the Western Saharan policy of the Moroccan government without police or legal action being taken against them and if so which?

On 9.

The Federal Government has no systematic evaluation of all media reports on Western Sahara since 1975 available to it. In recent years there have been regular critical reports on the policy of the Moroccan government towards Western Sahara in the Moroccan media without consequences on the part of the Moroccan security or justice authorities. Journalists who openly advocate the independence of Western Sahara in Morocco generally have to expect strong resistance from the Moroccan public and official action based on the existing constitutional and criminal law provisions in place.

10. How does the Federal Government view the sentencing of 24 members of the Sahrawi population, who were arrested when the protest camp Gdim Izik was forcibly evacuated in November 2010, to long

prison sentences by a Moroccan military court? : www.amnesty.de/jahresbericht/2013/marokko-undwestsahara#unterdrueckungandersdenkendersahrauischeaktivisten
<<http://www.amnesty.de/jahresbericht/2013/marokko-undwestsahara#unterdrueckungandersdenkendersahrauischeaktivisten?>

On 10.

When the Gdim Izik camp was evacuated in November 2010, a total of 13 people, including 11 members of the Moroccan security forces, were killed. The legal investigation of the evacuation triggered reform of the Moroccan military jurisdiction. Since 1 July 2015, legal proceedings against civilians have no longer been able to take place in military courts.

In the trial of the accused from Gdim Izik at a military court in Rabat there were 25 convictions in total. The charges pertained to the formation of a criminal gang and deliberate use of violence against security forces resulting in death. According to the Moroccan Human Rights Council, the trial took place in accordance with due process. Foreign observers were admitted at all stages of the trial. According to the prison administration, the accused were examined medically on a regular basis during their time in custody and visited by their families. Claims by Moroccan human rights activists that some of those convicted were abused in police custody or in prison could not be independently corroborated.

11. What is the Federal Government's assessment of the fact that Morocco has not joined the Ottawa Convention and that land mines have been placed in large parts of the sand wall on the side of the Western Saharan territory occupied by Morocco (www.the-monitor.org/engb/MonitorSearch?year=0&report=§ion=&country=Morocco)?

On 11.

The Federal Government regrets that Morocco has not joined the Convention of 18 September 1997 on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on their Destruction ("Ottawa Convention") thus far. On 7 December 2015, Morocco voted in favour of resolution 70/55 "Implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and their Destruction" at the UN General Assembly in New York.

The Federal Government resolutely advocates the universalisation of this international treaty, and in bilateral talks regularly calls on non-party countries – including Morocco – to join or to ratify the convention. According to information from the NGO association "International Campaign to Ban Landmines", whose work the Federal Government promoted with funds totalling EUR 250,000 last year (publication "Landmine Monitor 2015", website www.the-monitor.org), Morocco is no longer planting landmines, has no stockpiles of anti-personnel mines any more and has started removing mines and weaponry and taking measures to raise awareness of the risks amongst the population and to provide care for the victims of mines.

On 19 March 2002, with the ratification of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and other Devices in the changed version date 3 May 1996 (Amended Protocol II) of the UN Weapons Convention Morocco already subscribed to the prohibitions set forth therein, which *inter alia* include the indiscriminate use of landmines and non-detectable anti-personnel mines.

12. To the knowledge of the Federal Government, in which specific institutions were the funds it provided to the Regional Office of the International Committee of the Red Cross in Tunis in 2015 totalling EUR 800,000 (for the area of care for the victims of mines) deployed (Bundestag printed paper 18/4750, p. 3)?

On 12.

The funds totalling EUR 650,000 provided by the Federal Foreign Office in the scope of humanitarian aid in 2015 were used to finance orthopaedic measures by the International Committee of the Red Cross (ICRC), on the basis of the humanitarian appeal by the ICRC (Special Appeal on Disability & Mine Action). These measures were implemented at the corresponding medical centre located inside the Rabouni hospital (Algeria).

13. To the knowledge of the Federal Government, what is the current status of the legal proceedings against Mbarek Doudi (Amnesty Opinion, p. 7), and to what extent do these proceedings infringe the human rights of this individual in the view of the Federal Government?

On 13.

To the knowledge of the Federal Government, on 8 February 2016, the court of appeal in Agadair confirmed the ruling of the court of the first instance handed down on 3 December 2015. Mbarek Daoudi was sentenced to a prison term of five years. He was accused of being in possession of shotgun shells and of attempting to make a weapon. During the hearing on 8 February 2016, the defendant called for the right of the Sahrawi people to self-determination and the independence of Western Sahara in court.

14. To the knowledge of the Federal Government, what is the current status of the investigations in the case of Mohamed Ali Saidi, who stated he had been tortured in police custody in 2013 (Amnesty Opinion, p. 18), and what conclusions does it draw from this case?

On 14.

To the knowledge of the Federal Government, Mohamed Ali Saidi was taken into temporary detention and detained at the Laayoune prison. He was then released. The Federal Government has no information of its own on the accusations of torture.

15. To the knowledge of the Federal Government, what is the current status of the investigations in the case of Abdelaziz Raddaouia, who stated that he had been tortured by security personnel in 2013 (Amnesty Opinion, p. 19), and what conclusions does it draw from this case?

On 15.

To the knowledge of the Federal Government, Abdeaziz Raddauois was sentenced to a prison term of two years for drug dealing. The Federal Government has no information of its own on the accusations of torture.

16. To the knowledge of the Federal Government what is the current status of the investigations in the case of Abderrazak Jkaou, who stated that he was beaten unconscious by the police on the eve of a demonstration in Kenitra on the university grounds (Amnesty Opinion, p. 19) and what conclusions does it draw from this case?

On 16.

The Federal Government has no information on the current status of the investigations.

17. What conclusions, including in terms of action to be taken, does the Federal Government draw from the fact that the Audiencia Nacional de España issued international arrest warrants against seven high-ranking Moroccan officials on suspicion of genocide due to actions on the territory of Western Sahara (<http://derstandard.at/2000014297668/Voelkermordanklage-stoert-Verhaeltniszwischen-Spanien-und-Marokko>)?

On 17.

The Federal Government does not comment on investigations by the independent Spanish jurisdiction.

18. What conclusions, also in terms of action to be taken, does the Federal Government draw from the resolution of the European Parliament of 17 December 2015 on the Annual Report on Human Rights and Democracy in the World 2014 and the European Union's policy on the matter (2015/2229(INI)), in which the European Parliament "Calls for the fundamental rights of the people of Western Sahara, including freedom of association, freedom of expression and the right to assembly, to be respected; demands the release of all Sahrawi political prisoners; demands access to the territories of Western Sahara for members of parliament, independent observers, NGOs and the press; urges the United Nations to provide MINURSO with a human rights mandate, in line with all other UN peacekeeping missions around the world; supports a fair and lasting settlement of the Western Sahara conflict, on the basis of the right to self-determination of the Sahrawi people, in accordance with the relevant United Nations resolutions"?

On 18.

The Federal Government advocates a solution to the Western Saharan conflict based on a consensus between all the parties in the scope of the mediation and negotiation process led by the United Nations. The Federal Government is also working to secure improvements to the human rights situation in Western Sahara and in Morocco.