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# CHURCH ASYLUM IN GERMANY

## EXTRA-SYSTEMIC CHURCH ACTIVITY IN THE STATE OF LAW

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### Abstract

Church asylum in Germany coexists with the official state asylum system. It is a bottom-up movement consisting of the temporary provision of Church premises to refugees facing deportation, thus creating exceptions to generally accepted legal solutions. This paper aims to verify to what extent the Church asylum (Kirchenasyl) offered by the two largest Churches in Germany (Catholic and Evangelical) conflicts with the regulations of a state well-organised under the state of law (Rechtsstaat), what makes it exceptional, and whether such asylum is effective. Our analysis is based on the three pillars of ecclesiastical asylum: its finality (*ultima ratio*), free space (*liberum spatium*) and its exceptional character (*casus excepti*).

*Keywords:* asylum, church, refugee, foreigner

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### 1. Introduction

The institution of Church asylum constitutes the oldest variety of territorial asylum limited to the area of temples and places of worship. Church asylum was originally widely recognised in Christian communities. However, as the idea of state kept developing and grew in force, the secular power increasingly tried to question and prohibit asylum within church walls considering it an instrument of limited control and thus very inconvenient for itself. The 1983 Code of Canon Law, in canon 529 par. 1 provides, among others, for the following duties of priests: helping those in need, especially *e patria exsules*, i.e. those who have been expelled from their homeland [1].

The claim the two largest Churches in Germany (Catholic and Evangelical) make to the free exercise of *sacrae potestatis* is among the last historical remnants, which, as a peculiar legal and social artefact, on the one hand, creates an uncontrolled exception in state law based on particular solutions (*casus excepti*), and on the other hand constitutes an open space, which, as an enclave of freedom (*liberum spatium*), differs from the non-church space.

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With our research hypothesis, we intend to examine to what extent the Church asylum (*Kirchenasyl*) in a state well organised under the state of law (*Rechtsstaat*), such as Germany, interferes with state regulation, what its exceptional character consists in and whether it is effective.

## 2. Methodology and the Church asylum concept

Church asylum in Germany takes on particular importance due to the large number of immigrants arriving to this country. “Since the Second World War until 1990, some 15 million refugees and expellees from the former GDR and foreigners from Eastern and Southern European countries arrived in West Germany. In addition, 5.2 million foreign citizens lived in the old FRG before reunification.” [2] Germany has become a major destination for asylum seekers in the European Union.

Church asylum is a bottom-up initiative exercised by both Catholic and Evangelical parishes and communities [3]. The purpose of Church asylum is to provide temporary shelter to the persecuted persons, especially foreigners without a valid residence permit, who face deportation to their country of origin and often associated with torture and persecution. Church asylum usually is an *ultima ratio*, i.e. it is a last resort to provide shelter and assistance based on civil disobedience [4] and the last opportunity for the state to thoroughly re-examine the case. Thus, Church asylum affects not only the German legal and political system (the rule of law) but also the social environment (e.g. the followers and NGOs). This is the spill-over effect with the Church asylum transgressing the walls of churches.

The issue of Church asylum in Germany remains poorly researched. On the one hand, it is recognised that Church asylum is an institution subject to Church-internal regulatory and institutional framework [5] and, on the other hand, it is an intra-Church and inter-Church (Catholic and Evangelical) activity salutary for those seeking protection [6], which also mobilises parishes and Church people (clergy and laypeople alike) to help and to actions to the benefit of foreigners and excluded individuals. Communes together with Catholic and Protestant parishes form a kind of network ready to help and offer shelter. Please note that Church asylum is both an institution and a network of humanitarian and ecumenical activities [7] fitting well into the system of human rights protection and equality policy and forming a kind of exceptional enclave in the German legal and political system. The analysis of the institution of Church asylum thus includes a key component of relationships between the state and the two largest Churches in Germany. Therefore, a research approach based on exceptionalism, a theory that explains bottom-up activities and ideas that differ from the mainstream and form exceptions to generally accepted solutions [8], may provide great exploratory potential here. Church asylum in a stage of law, such as Germany [9], seems to be not only surprising, as it challenges the regulations and actions of lay authorities, but also creates an exception in the state law and offers alternative and bottom-up forms of protection often based on resistance and opposition to official rulings that may take the form of civil disobedience.

### 3. Church asylum as ‘ultima ratio’

The first instance of Church asylum was recorded in Germany in 1983 in what was then West Berlin (Kreuzberg district) and it concerned the shelter that an Evangelical parish gave to three Palestinian families from Lebanon threatened with deportation. This first asylum case was recorded after Cemal Atun, a 23-year-old Turkish citizen, who was about to be deported from Germany, jumped out of a window of a court building in Berlin and for whom the same Evangelical parish in Berlin-Kreuzberg helped to file the asylum application. Atun died on the spot and the clergy concluded that such a misfortune must not happen again.

In the early 1990s, in connection with attacks on foreigners mainly occurring in East Germany, Christian churches intensified their asylum-granting activity [10] offering protection not only from the state and its laws but also from German citizens and their lawless behaviour. In the first years after reunification, several attacks on foreigners were observed in Germany, including arsons in homes for asylum seekers. Some incidents lasted several days. The most notorious of these events took place in: Hoyerswerda (17-22 September 1991) - stone attack, several injured; Hünxe (3 October 1991) - arson, two children injured; Rostock-Lichtenhagen (23-27 August 1992) - arson of a house for asylum seekers; Mölln (23 November 1992) and Solingen (29 May 1993) - arson and many injured foreigners (mostly of Turkish origin), etc. The Churches had to cope with the post-unification reality, which, especially in the new federal states, brought a wave of stress-recovery reactions in East Germans whose attitudes had been suppressed for many years. They took the form of xenophobic behaviour as a defence mechanism against new challenges [11].

Church asylum is a form of temporary protection granted on the territory of parishes and ecclesiastical communities to foreigners (Ausländern), especially refugees in particularly difficult life circumstances, who are threatened with deportation to their home country and, as a consequence, often inhuman living conditions, torture or even death [12]. Such protection consists in making Church premises available for residence purposes, as well as supporting and advising foreigners in the asylum procedure conducted by state offices to get make them legalise their stay. Many refugees perceive Church asylum as a last resort in averting the danger of deportation, which may put their life and health in danger, and thus preventing violations of human rights. Church asylum is therefore a measure of last resort (*ultima ratio*) adopted when other measures fail, or after all available legal possibilities have been exhausted. Thus, Church asylum is seen as a temporary state of affairs that lasts until the state authorities re-evaluate the deportation decision. Foreigners using Church asylum hide behind the church walls to protect themselves from deportation from their refuge country. This is already their second escape, as the first one was from their country of origin. For these people, Church asylum has become the ultimate measure and a kind of ecclesiastical begging (*hikesie*) for mercy and for a change of the unfavourable deportation decision [13]. And begging is usually a last resort.

From the beginning of the Church's asylum practice, the Catholic and Evangelical bishops founded the asylum logic on the concept of partnership, which consisted in the integration of foreigners into society and even assumed that they would be granted all constitutional rights, which, after all, are not reserved exclusively for German citizens. The right to asylum is a fundamental right of the persecuted people. Furthermore, many argued that defending foreigners rather than separating from them makes the German culture and the Germans themselves stronger. The partnership concept was the Churches' courageous response to the fear of and hostility towards strangers, which became the number one social problem in a reunified Germany in the early 1990s [14]. Multicultural and polyethnic coexistence in tolerance and social peace depends on whether and how far the world of politics and society in Germany are prepared to meet the challenges brought by migration, i.e. the integration of minorities using far-reaching concepts [15]. The implementation of the Church's concept of partnership found a good response in the society. The awareness that Church asylum is the last resort for foreigners persecuted in their homelands triggered an unexpected reaction from NGOs who offered their help to Churches [7, p. 111]. Activists from these organisations undertook cooperation with refugee councils (at regional and village level) and with representatives of Churches and trade unions, etc. The manifestations of social support prove the spill-over of the Church asylum idea beyond the ecclesiastical communities and parishes, thus in practice beyond the Churches.

As an *ultima ratio*, Church asylum has become an impulse for state agencies to take new initiatives to improve the situation of foreigners in Germany. A kind of bottom-up creative influence was even observed under the influence of Church asylum. The asylum granted thanks to an open and free church space (*liberum spatium*) created exceptions in the surrounding normative and political reality (*casus excepti*). For foreigners, Church asylum was a last resort, and for the state it became an inspiration to seek and initiate new institutional and normative solutions modifying the German legal and political system. The creative and axiological potential of Church asylum confirms that such a solution is needed and effective.

#### **4. Church asylum as 'liberum spatium'**

In canon 1213, the 1983 Code of Canon Law stipulates that "in sacred places, the Church authority exercises freely its powers and tasks" [1, p. 481]. This gives clergy the freedom of action within Church premises without depending on other authorities. As a result, the hierarchs of the Catholic and Evangelical Churches make decisions sovereignly within the Church walls, including giving permission for asylum. The two largest Christian Churches have even called on their communes and parishes to make premises available as a refuge for foreigners. Parishes that offer refuge to foreigners attempt to examine each case individually, taking into account all legal, social and humanitarian perspectives and seek the annulment of deportation decisions. Catholic parishes

have been forerunners of grassroots help for foreigners and have thus set an example that has helped making social attitudes more flexible, increasing the acceptance of such help, and uniting the local community around the idea of acceptance of strangers, while at the same taking the wind out of the sails of xenophobic groups. Problems resulting from the lack of acceptance for strangers occurred only where parishes did not assume such tasks. This demonstrates how important a sanctuary, i.e. a safe and free space (*liberum spatium*), is for the Church asylum.

The Church asylum as *liberum spatium* is thus first and foremost a place of refugee (sanctuary) in Church communes and parishes, which, invoking their Christian duty, placed themselves in the role of advocates for oppressed people, in this case foreigners threatened with deportation. Such a refugee *de facto* consists of two spaces. The first one in the legal sense, which in practice becomes in a way exempt from the state law (*casus excepti*), and the second one in the physical sense, which is made up of church walls; concrete church and monastery premises designed for the stay of foreigners. This second space consists of more than 20,000 Catholic and Evangelical churches in Germany, to which parish houses and other premises owned by the churches must be added. In this case, we can speak of an ecclesiastical space of freedom (*liberum spatium*), which remains open, safe, and not restricted by any limits or quotas. The bishops refused the quotas proposed by the state administration for the protection given to foreigners by the Churches (the so-called Kirchenkontingenten). The Catholic Church rejected the proposal, brought forward by Minister Günther Beckstein in 1995, to include asylum seekers in extreme circumstances in the so-called 'Church quota'. The Catholic office in Bavaria rejected Beckstein's opinion according to which in asylum law the Church plays a 'special role' and behaves almost like a 'state within a state'. Beckstein's proposal was also rejected by the Federal Asylum Work Cooperative in the Church (Bundesarbeitsgemeinschaft Asyl in der Kirche) [C. Neumann, Süddeutsche Zeitung, München, 7.07.1995, 17].

This space, although not always guaranteeing withholding or annulment of deportation, temporarily protects against the decisions of the state, thus displaying certain characteristics of extraterritoriality. Legal autonomy of Evangelical diaconal institutions and, in the case of the Catholic Church, its supranational character defined by the direct authority of the Holy See and a separate system of canon law, additionally strengthen these features.

The ecclesiastical space of freedom, which the German bishops also called *Freiraum*, is a response to the fear of strangers that kept appearing cyclically in Germany as the stream of incoming foreigners grew stronger or as the threat of terrorism appeared. Furthermore, the ecclesiastical space of freedom allows for full exploitation of the multicultural values of Church asylum, since multiculturalism is a universal value. In this difficult process, the Churches did not remain restricted to their followers, but they initiated dialogue with people of other faiths. These were the Churches that taught multiculturalism to the German society and helped to strengthen it. Churches were and still are a *Freiraum* for the suffering, the exiled, and the politically persecuted [2, p. 54]. In the 1980s, an

example of the provision of the Church *Freiraum* includes the provision of shelter in Evangelical and Catholic churches of the German Democratic Republic to opponents of the socialist government [16]. Similarly to the asylum for foreigners, it was the protection from the socialist state, and the churches became a space for freedom in an authoritarian environment. Paradoxically, this space of freedom was used by Erich Honecker himself, who, after his resignation, for several months, starting on 30 January 1990, took refuge with his wife Margot in the Evangelical parish in Lobetal with Pastor Uwe Holmer.

In July 1997, a new space of Church asylum emerged as *liberum spatium*, this time within the monastery walls. This happened when Benedictine nuns from the abbey in Burg Dinklage near Vechta in Lower Saxony gave refuge to a deserter from the Russian army and his family (wife and 5-year-old daughter). The German authorities refused asylum and announced the deportation of the whole family to Ukraine. The police intervened and entered the monastery but escorted the soldier only (the nuns managed to keep their wife and daughter in the monastery). With their intervention, the police violated the inviolability of the monastery premises, guaranteed by both law and tradition. In a joint letter to the government of Lower Saxony, the Catholic and Evangelical Churches described the arrest of the soldier on the monastery grounds as an affront to both Churches (apart from the Catholic Church, to which the monastery belonged, the Evangelical Church also came to the defence). Eventually, as a result of this Church protest, the authorities of the Land governed by the Social Democrats, headed by Gerhard Schröder withheld extradition of the soldier, but the police action in Vechta was treated as a political signal to the extreme right and encouraged violence against foreigners.

Church asylum as *liberum spatium* is a sanctuary that comes in two basic varieties. The first of these is open church asylum when churches do not conceal the location of refugees and the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF) and the immigration authorities responsible for deportation know the location of the person concerned. In this case, to justify their actions and to demonstrate greater transparency and objectivity, parishes may even publicly announce the fact that they are granting asylum by involving mass media. The second variety is the closed ecclesiastical asylum (also called ‘silent’ or ‘secret’ asylum) when the churches do not disclose the whereabouts of refugees. BAMF and immigration authorities do not accept such Church actions and call refugees granted such asylum ‘fugitives’. It results that, when referring to the institution of Church asylum, the state authorities recognised the importance of its spatial dimension, emphasising explicitly that ‘space excluded from the law’ was created within church walls, even though normally churches are not allowed to create an area not subjected to the state legal order. Ecclesiastical asylum as *liberum spatium* thus exhibits certain characteristics of temporary extraterritoriality, as it creates a safe and free refuge that is in many respects exempt from the rule of German law and European Union law.

## 5. Church asylum as ‘casus excepti’

Church asylum constitutes a departure from current German law consisting of postponing the expulsion of a foreigner until all issues relating to his/her arrival in Germany have been resolved (*casus excepti*). Decisions to grant asylum are made primarily by the church commune or parish councils that are in charge of the parishes, which are then also responsible for providing accommodation and board to their protégés, as well as legal, social, and humanitarian assistance. For each individual case, the parishes draw up a so-called dossier, which details information and guidelines on the anticipated difficulties in the procedure. Then, they turn to BAMF to carry out a new acceptance test in the asylum procedure. Many parishes and bishoprics employ their own full-time or community attorneys for asylum-related tasks or have their own parish offices for refugees and migrants. The asylum-related activities of the Church are generally funded with voluntary donations from parishioners, other Church communities, and from monetary donations from third parties. In fact, these bottom-up activities constitute departures from state legal regulations or even an exception (*excepti*) made in favour of foreigners granted such asylum.

The duration of Church is a product of the regulations contained in the Regulation of the European Parliament and of the Council of 26 June 2013 called Dublin III (Dublin II was the Regulation of 18 February 2003 establishing the criteria and procedures for determining the Member State responsible for processing asylum application lodged by a third-country national [*Council Regulation (EC)*, 343/2003, OJ L 50/01, 25.02.2003]. The Dublin III Regulation extends the provisions on the so-called subsidiary protection status for people who claim to be in need of protection. Subsidiary protection applies when neither refugee nor asylum protection can be granted and still there are serious threats in the country of origin, e.g. imposed death penalty, etc. In these cases, the EU member state from which the asylum-seeker reached Germany is responsible for the asylum procedure. Within six months of arrival, BAMF must transfer such a person to the state originally responsible for the asylum procedure. Usually, this is the EU Member State through which refugees first enter the EU [*Regulation of the European Parliament and of the Council (EC)*, 604/2013, OJ L180/31, 26.06.2013]. If this period elapses, Germany becomes responsible for the asylum procedure rather than the country of first entry. If the asylum-seeker is granted official protection in Germany during this period, then Church is automatically terminated. However, if the asylum application is rejected again, the refugee is expelled to the country of first entry into the EU, and the Church cannot do any more. If a refugee flees during the six-month period of waiting for a decision, e.g. by taking refuge in a church, then, according to Article 29(2) of the Dublin III Regulation, the refugee is considered a ‘fugitive’ and the period of transfer to the state of entry can be extended to 18 months (this means that the responsibility for the asylum procedure is only transferred to Germany after the elapse of this period). This was confirmed by a resolution passed at the conference of Land Interior Ministers in June 2018, according to which persons in Church asylum

should be treated as ‘fugitives’ within the understanding of the Dublin III Regulation. The Churches considered such a classification legally questionable also within the meaning of this very regulation. The extension of the waiting time for a decision from 6 to 18 months, under the Dublin procedure, meant that parishes had to extend the stay of people sheltered by the parish, with a financial and logistical burden. After the extension the chances of migrants in Church asylum receiving protection against deportation had dropped to nearly zero. Additionally, parishes are required to immediately provide information about the individuals they have sheltered. Despite these difficulties, Churches have not stopped providing asylum. State authorities, in turn, argued that Church asylum is used as a pressure tool to question the Dublin system. Even before the decision the Interior Ministers made their decision, the German criminal and administrative courts had ruled that persons in an open asylum could not be treated as ‘fugitives’ within the understanding of Dublin III. This was justified by the fact that, given the known whereabouts of the refugees, there are no legal or factual obstacles to the application of the Dublin procedure and that in these cases the state deliberately refrained from implementing it. On 8 June 2020, the Federal Administrative Court finally ruled that persons in the Church open asylum are not ‘fugitives’ thus dismissing the complaint filed by BAMF [Die deutschen Bischöfe Migrationskommission, *Handreichung zu aktuellen Fragen des Kirchenasylys*, 42 (2019), Bonn, 13]. Thus, asylum for foreigners offered by the two largest Churches in Germany became an exception (*casus excepti*) not only in the German legal system but more broadly, also in the legal system of the European Union and may be treated as an attempt at a humanitarian correction to the strict deportation practice applicable in Germany.

According to German law, Churches are not among institutions entitled to grant asylum. Only the state has this competence, and state law is also applicable to all churches. Article 16a, paragraph 1 of the German Constitution stipulates that only politically persecuted persons are entitled to claim asylum [*Grundgesetz für der Bundesrepublik Deutschland vom 23. Mai 1949*, art. 16]. This limitation to the asylum policy was introduced in 1993 as part of the so-called asylum compromise adopted by the Bundestag and Bundesrat on 26 May 1993 by a two-thirds majority and sanctioned by a 1996 ruling of the Federal Constitutional Court on its compliance with the Constitution. The compromise actually restricted the ability to effectively invoke the fundamental right to asylum and met with opposition from both Christian Churches, as it largely questioned the right of asylum in itself. Moreover, the bishops requested a separate regulation, outside the asylum procedure, for refugees from countries affected by war or calamities [C. Neumann, *Süddeutsche Zeitung*, München, 7.07.1995, 17] and that all foreigners who had arrived in Germany before the change in asylum law be granted the right of residence. The amendment was also strongly criticised by the German Caritas Association (Deutsche Caritasverband), the Federal Association of Catholic Youth (BDKJ), Pax Christi, Pro Asyl and the Asylum Working Circle (Arbeitskreis Asyl) at the German Bishops’ Conference (Deutsche Bischofskonferenz, DBK). BAMF on the other hand, emphasises that Church



asylum is not an element of German law and therefore cannot be regarded as an objection or contestation of decisions taken at the federal level. However, churches practising asylum activities within their walls do not perceive it as illegal, but rather as “filling a gap” left by the federal government, even as a “grey zone”, but not as an illegal underground [17].

There is no doubt that the granting Church asylum to foreigners is an extra-systemic activity, all the more so that it is often done confidentially (closed asylum), which means that it is only disclosed once the state procedure has been completed (although state offices should be informed of such measures, this practice is not always observed). In its exceptional dimension, Church asylum questions the law applicable in Germany and thus challenges the state of law, even if state officials emphasise that in a state of law even invoking morality is not considered a title to break the applicable rules. German prosecutors were able to challenge the Church’s asylum granting practices as conscious help in violation of the Foreigners Act. In the past, investigations were repeatedly initiated against priests, but these were discontinued by courts. From the point of view of the state authorities, Church asylum could be considered an ‘illegal’ activity on par with ‘smuggling foreigners’. However, police intervened in Church asylum only in exceptional cases. Such exceptional treatment constitutes not only the practical but also the conceptual basis for the analysis of Church asylum.

The Church asylum practices are thus situated at the borderline between benevolence and politics [18] and remain extremely controversial, as they lead to conflicts with state offices, i.e. *de facto* to a conflict between the Churches, invoking human consciences, and the state, invoking the applicable laws. The bishops became well conscious of the fact that a Christian granting refuge to an asylum-seeker, and thus following his or her conscience, would come into conflict with state law, but the law of conscience should be stronger than the state legal order.

The scale of Church asylum (the number of cases and persons granted asylum) depends on the volume of immigrant influx to Germany. Please note that the asylum activity of the two largest Churches in Germany had remained at a stable level since the adoption of the Residence Act of 30 July 2004 and gained momentum with the outbreak of the migration crisis in 2015, which affected Germany particularly hard. At that time, the number of Church asylum cases virtually doubled from 620 cases in 2015 to 1,325 in 2018 (Table 1).

The effectiveness of Church asylum as measured by the number of positively concluded cases. Positively concluded cases are those that ended in the resumption of the asylum procedure (re-examination of the case), prevention of deportation, or granting a tolerated stay (*Duldung*). The institution of tolerated stay in the German law (Article 60 of the 2004 Residence Act) is specific and one of the first such solutions in national legal systems. It covers persons who have not been granted asylum, but at the same time cannot be deported due to the danger they may face in their country of origin. Such tolerated persons can stay on the German territory for 3 months. Between 2015 and 2017, 3.1 million asylum applications of asylum applications filed within the EU were filed in

Germany. Tolerated stay was granted to 9% of the applicants, and only 2% of them were ordered to leave the country [2].

**Table 1.** Church asylum scale and effectiveness between 2004 and 2018.

Year	All asylum cases	Persons granted asylum	Successful applications	Percentage of successful applications (%)
2004	48	159	19	39.6
2005	39	122	21	53.9
2006	52	159	17	32.7
2007	43	120	18	41.9
2008	36	113	15	41.8
2009	27	81	14	51.9
2010	31	67	13	42.0
2011	32	70	16	50.0
2012	56	105	19	34.0
2013	79	162	43	54.5
2014	430	788	212	49.3
2015	620	1015	332	53.6
2016	692	1139	417	60.3
2017	1189	1799	725	61.0
2018	1325	2136	909	68.6

Source: own data analysis based on: *Aktuelle Zahlen: Kirchenasyle bundesweit, Menschenrechte Gastfreundschaft Asyl Netzwerk. Ökumenische Bundesarbeitsgemeinschaft Asyl in der Kirche, kirchenasyl.de, 01.01.2021.*

The effectiveness of Church asylum understood in this way exhibited relative stability before the migration crisis, fluctuating between 32.7% and 51%. However, during the migration crisis, the effectiveness of this asylum type exhibited a noticeable upward trend, starting at 50% in 2015 and reaching 68.6% in 2018. This increase was related, on the one hand, to the larger number of people granted such asylum, but, on the other hand, to the convincing arguments that churches presented in *dossiers* submitted to state offices. The high percentage of successful church asylum cases proves that the decisions previously taken by state offices, e.g. deportation orders, were often wrong and should at least be revised, if not repealed, as shortcomings were found in the procedure or even in the asylum law. As a result, from a subsidiary to the state asylum system, Church asylum has become an element of control and verification of state procedures and thus contributes to the implementation of a fairer asylum policy. As *casus excepti*, Church asylum is thus primarily exhibits control and verification capacities.

## 6. Conclusions

Church asylum in Germany coexists with the state asylum system and is based on three pillars: finality (*ultima ratio*), free space (*liberum spatium*) and

exceptionality (*casus excepti*). This construct of Church asylum allows, often against the binding law, to effectively control the actions of state offices and to protect foreigners from the mistakes of a well-organised state characterised by high institutional culture.

When answering the question contained in the research hypothesis on the potential collision between Church asylum and the state of law and the exceptional character of Church activities in this field, it should be noted that Church asylum interferes with the German asylum law and constitutes an attempt to find an exception in its system (*casus excepti*). The whole dispute about Church asylum is not only about the collision of democracy in the model state of law (*Rechtsstaat*) with fundamental human rights. This cannot be really eliminated, because it provides the political system with additional impulses for development. It is mainly about Churches substituting the state in the implementation of these tasks, expressing concern for the protection of fundamental human rights. Church asylum proves that the official asylum procedure in Germany does not always meet the principles of a democratic state of law. It was often the case, that only actions of parishes and church communities forced the state authorities to re-examine rejected applications more thoroughly, thus reversing the fate of many people. The dispute between the Church and the state was not about the fundamental right to asylum, but about whether the state's asylum practice fundamentally violated this right. Thus, the crux of this dispute was not the right to asylum, but freedom of conscience and faith. On one hand, the Churches saw the need to help people, but on the other hand, they also saw the need to observe the state of law. The growing number of Church asylum case does not prove that the Churches were right, but rather that in many situations, but for their interference, the law would have been violated.

This analysis shows that the asylum activity of both Churches reveals symptoms of non-systemic solutions, challenging the regulations and actions of state offices, but also offering alternative forms of protection, which can take the form of civil disobedience. Thus, the German state of law has been challenged with regard to the full protection of human rights. German Christian Churches are more critical than the state administration and this has allowed them to take on the role of advocates for those in need of support and assistance. In most cases, however, the Church asylum proves well in controlling or verifying the decisions of state institutions and pointing out errors.

The strength of Church asylum lies in its bottom-up character, its creative influence on the legal and political system, and its ideas spilling over beyond the church walls and exerting influence on the social environment. These elements, combined with free and open church space characterised by temporary extraterritoriality (in individual cases these premises were temporarily excluded from the application of German law), determined the effectiveness of church asylum. The increasing effectiveness of Church asylum as measured by the percentage of resumed asylum procedures suspended deportations or tolerated stays granted reaches almost 70% and confirms the need for a bottom-up humanitarian correction to state solutions in asylum policy.

It should also be noted that as a result of the COVID-19 pandemic, most EU countries have decided to close their borders and which has affected on the relocation of migrants to Germany. As a result the general number of refugees may have decreased. This assumption is confirmed by the German Home Office Minister Horst Seehofer, who stressed, that the drop in asylum seekers could partly be attributed to the COVID-19 pandemic, which sharply reduced international travel and caused some countries to close their borders, especially during the first wave of cases in the spring 2020. (According to the ministry, it recorded just over 76,000 first-time asylum applications in 2020, i.e. 31.5% fewer than in 2019) [B. Bathke, Info Migrants, 15.01.2015, 1].

The authors would also like to note that the new BAMF decision of January 2021 regarding the exemption from the Dublin system has been shortened to 6 months and it works in the benefit of Churches and people who want to stay on German territory. This means that in the state versus Churches confrontation mentioned by the authors, the Churches succeeded.

## References

- [1] \*\*\*, *Codex Iuris Canonici, can. 529*, Pallottinum, Poznań, 1983, 241.
- [2] H. Brücker, P. Jaschke and Y. Kosyakova, *Integration Refugees and Asylum Seekers into the German Economy and Society: Empirical Evidence and Policy Objective*, Migration Policy Institute, Washington DC, 2019, 6.
- [3] M. Krannich, *Das Kirchenasyl. Eine empirische Studie zu den Auswirkungen auf das Gemeindeleben*, Humbolt Univetsität, Berlin, 2006, 18.
- [4] W.D. Just (ed.), *Asyl von unten. Kirchenasyl und ziviler Ungehorsam-Ein Ratgeber*, Heilig-Kreuz-Kirche, Berlin, 1993, 48.
- [5] W.D. Just and B. Sträter (eds.), *Kirchenasyl. Ein Handbuch*, Loeper, Karlsruhe, 2003, 21.
- [6] F. Dethloff and V. Mittermeier (eds.), *Kirchenasyl. Eine heilsame Bewegung*, Loeper, Karlsruhe, 2011, 82.
- [7] \*\*\*, *Ökumenische Bundesarbeitsgemeinschaft Asyl in der Kirche, Asyl in der Kirche. Eine Dokumentation*, Heilig-Kreuz-Kirche, Karlsruhe, 2004, 7.
- [8] L. Hoffmann, *L'Europe en Formation*, **359(1)** (2011) 83.
- [9] M. Morgenstern, *Kirchenasyl in der Bundesrepublik Deutschland. Historische Entwicklung, aktuelle Situation, internationaler Vergleich*, VS Verlag für Sozialwissenschaften, Wiesbaden, 2003, 35.
- [10] R. Lettmann, *Asylfrage, Hirtenbriefe*, Salzburg, 1992, 189-190.
- [11] J. Ruszkowski, *Multikulturalität in der Soziallehre der katholischen Kirche besprochen am Beispiel des vereinigten Deutschlands*, in *Germanistische Erfahrungen und Perspektiven der Interkulturalität*, F. Grucza, H.J. Schwenk & M. Olpińska (eds.), Euro Edukacja, Warszawa, 2005, 207.
- [12] O. Hiroshi, *Journal of the Graduate School of Letters*, **1(2)** (2006) 17-21.
- [13] M. Babo, *Kirchenasyl-Kirchenhikesie. Zur Relevanz eines historischen Modells im Hinblick auf das Asylrecht der Bundesrepublik Deutschland*, LIT, Münster, 2003, 29.
- [14] F. Kamphaus, *Rundbrief, Hirtenbriefe*, Salzburg, 1989, 45-46.

- [15] J. Grefen, *Gemeinsame Erklärung der DBK und des Rates der EKD zur Aufnahme von Flüchtlinge und zum Asylrecht*, in *Kirchenasyl im Rechtsstaat: Christliche Beistandspflicht und staatliche Flüchtlingspolitik*, Schriften zum Öffentlichen Recht, Duncker & Humblot, Berlin, 2001, 119.
- [16] J. Ruzkowski, *Kościół ewangelicki w NRD. Geneza i rozwój aktywności opozycyjnej w latach 1971-1989*, Instytut Zachodni, Poznań, 1995, 256.
- [17] R. Siebert, *Contemporary Sanctuary in Germany: Bavaria and the Intricacies of Church Asylum*, University of Washington, Washington DC, 2017, 8.
- [18] B. Neufert, *Forced Migration Review*, **48(1)** (2015) 36.