



Foundations of a Humane Asylum and Migration Policy of the EU

Key points for a position of the German Caritas Association (*Deutscher Caritasverband = DCV*)

Summary

Given the sometimes dramatic circumstances under which migrants have been trying for years now to enter the EU, there is an obvious need for urgent action within the EU regarding a humane asylum and migration policy. According to the DCV the following considerations should be part of this:

The EU needs a common, coherent and humane immigration and asylum policy. This requires clear rules on legal immigration, the promotion of the integration of immigrants, the guarantee of protection for refugees, the guarantee of basic rights like e.g. the right to health care for irregular migrants and measures designed to enable a durable voluntary return.

The fight against the causes of migration and flight. War and displacement, but also an extreme gap between living conditions force people to emigrate and to flee. There is a need to support the economic and social development and the rule of law in the countries of origin. This cannot eliminate the causes for migration and flight, but it combats them in an effective manner, which in turn encourages people to return to their own countries.

Refugee camps are no solution. Considerations to establish refugee camps in African countries fail to address reality. They will not stop the often desperate attempts of many migrants to reach the EU. To the contrary, there is a danger that the EU does not fulfil its international obligations regarding protection of refugees, and that countries, which in their dealings with migrants do not guarantee human rights standards, become bridgeheads for efforts to keep refugees at bay.

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The DCV acts in favour of the full respect of human rights and a life in human dignity for migrants. International law for the protection of refugees must be implemented fully and correctly. There has to be a regulated way for migrants to enter Europe, and in conjunction with it, the promotion of the integration of immigrants. There is no question about the legitimate interest of States to manage migration. At the same time there must not be any discreditation of those people who are forced by violence, natural catastrophes and poverty to seek better living conditions for themselves and their families.

1. Basic Considerations on the Issue

For years people who no longer see a perspective for staying in their country, due to political persecution or economic needs, have been trying to reach Europe. In doing so it happens time and again that people drown, suffocate in lorries or die of exhaustion. According to conservative estimates about 5,000 people died this way over the past 10 years.

The countries of Africa and Asia carry the main burden of migration and refugee flows: According to UNHCR statistics the vast majority of the ca. 19 million people worldwide seeking protection, find refuge in their own region of origin. About 1.8 million find refuge in the EU Member States¹. But the UNHCR statistics do not include refugees fleeing from violence, poverty and environmental conditions, who thus flee not from individual persecution but from general threat or violence, from environmental catastrophes or from economic hardship. They form the majority of the world's migratory movements. Their number has been estimated to reach more than 175 millions. The majority of them stay in their region of origin, as internally displaced persons. Only a small part of them reaches Europe as labour migrants or irregular migrants. Forms of support must be found for these people who do not fall under the protection of the Geneva Convention on Refugees, adapted to their situation. Also when dealing with these persons human rights must be strictly adhered to.

Only an encompassing long-term strategy will be able to find solutions, a strategy that differentiates between combating the causes for migration in the countries of origin and the development of an EU migration policy. Here various aspects have to be taken into account:

- The commitment of the EU Member States towards international protection for refugees and the Geneva Convention on Refugees².
- Respecting the human rights of those who do not flee from individual persecution but who flee violence, environment and poverty, general threats and pauperisation.
- The need for a common, coherent and humane asylum and migration policy within the EU, which takes into account the interests of the Member States as well as the wellbeing of migrants. Such a policy ought to open up ways for legal forms of immigration including economically motivated migration, promote the integration of immigrants, and respect the basic human rights of irregular migrants. Migration has to be acknowledged as a part of human reality. Programmes for a voluntary return must be accompanied by measures that secure the very existence in order to have a lasting effect.
- The right to emigrate is not mirrored by a right to immigrate. It is possible and admissible to check border crossings.³ Any rules permitting and managing migration, admissibly also have the implicit effect of always excluding persons.⁴
- The permissible approach of managing and limiting migration does not entail total freedom of movement, neither does it entail a complete ban. This approach would give economic migrants the opportunity to enter the EU legally. The need to effectively manage immigration must be ap-

proached not just from the national angle but also from the viewpoint of the EU's community of States.

- The visible contradictions between declarations of political will and the praxis of some EU Member States when dealing with migrants and in particular with refugees who try to overcome the borders of Europe, by legal or illegal means.
- The need to combat illegal immigration and the fight against trafficking in human beings.
- The discussion surrounding the establishment of "asylum camps" or "reception centres" outside the EU.
- The need to combat the causes for forced migration and flight, i.e. promoting the economic and social development and the rule of law in the countries of origin in order to improve the living perspectives of their inhabitants.
- The demographic change in the EU countries and the resulting social and economic consequences. Here it has to be seen that the need for labour in the EU does not entail a shortage of skilled workers in the countries of origin.⁵

A policy investing primarily in mechanisms of border control and sealing off the borders cannot be successful because it does not contribute to the fight against the causes of forced migration and does not define a humane immigration policy.

2. Differentiated Analysis – Differentiated Statements

War and displacement are only two possible reasons for people to migrate against their will. Equally, the destruction of the environment, poverty and economic hardship can force people to emigrate. 'Even if many of them do not fall under the scope of the Geneva Convention on Refugees, they still require the necessary protection, which does justice to the human rights, economic and existential needs of those refugees.'⁶ It is legitimate to seek better living conditions for oneself and one's family. Whoever leaves his home fleeing from poverty, hunger and economic hardship, must not fear for his life nor must he be discredited as a so-called economic refugee. Even for economic migration legal ways of access to Europe should be created. The generalized fear of so-called economic refugees in the political debate must not lead to a hollowing out of the right to asylum and an isolationist practice of the EU.

2.1 The EU Needs a Common, Coherent and Humane Immigration Policy

2.1.1. Starting Point

The EU subscribes to the full respect of human rights, the Geneva Convention on Refugees and the right to seek asylum (Tampere 1999 and The Hague Programme 2004). In addition, the EU strives to bring about a more effective management of migration flows and the fight against illegal immigration by improved border controls and co-operation with countries of origin and transit countries.

Actions must follow the EU's words. Herewith it is important to strike a balance between the respect of the right to seek asylum and the application of the Geneva Convention on Refugees (which includes also the important principle of *non-refoulement*) and the necessary management of migration as well as the fight against illegal immigration. However, the real EU migration policy has so far entailed very few concrete measures designed to give complete protection to refugees and to define legal immigration in particular of labour migrants. Rather the policy primarily aims at mak-

ing the access of refugees to the EU more difficult (concept of safe third countries). In addition, the fight against illegal immigration enjoys highest priority.

The EU has developed a bundle of short and long-term measures designed to manage migration and to fight against illegal immigration. Among them are e.g. the supplement to the Schengen Agreement⁷ designed to more effectively combat illegal immigration, and which sanctions carriers that transport persons without a valid visa. The communication from the Commission to Council and European Parliament "Integrating Migration Issues in the European Union's Relations with Third Countries"⁸ envisages economic co-operation and development policy as means to guide and combat migration flows and to use them for sealing off the EU. This creates the danger that development co-operation becomes an instrument for steering migration and is used to exert pressure on States that are not willing to do enough on behalf of protecting the EU against illegal immigration⁹. Such measures display a repressive orientation and thus do not yet reflect the insight that "the problem of immigration [...] can only be addressed effectively in the long term through an ambitious and coordinated Development cooperation to fight its root causes"¹⁰.

A European legislation which regulates the immigration of people who desire to take up a job does not yet exist. Any thoughts reflections on a future regulation of immigration have so far mostly followed considerations of expediency and economic policy, for example with regard to the demographic change in the EU. However, it is necessary to take into account the consequences for the countries of origin and for the social and socio-political integration of immigrants, as well.

2.1.2 Respecting Human Rights

Caritas stands for the full respect of human rights and a life in human dignity for migrants. The asylum and migration policy of the EU and its Member States must respect the inalienable dignity of all people and human rights. Security considerations must support these important principles and must not undermine them. (For example, a critical view has to be taken on the fact that all asylum seekers have their fingerprints taken and stored.) This does not affect the right of countries and international communities to regulate migration and immigration. The existing international rules for the protection of refugees must be implemented fully and correctly. Requests for asylum ought to be processed quickly; access to the labour market should be granted to all asylum seekers as soon as possible.

2.1.3 Perspectives for Migrants with Legal Residence Status

Migrants with legal residence status must have the opportunity to be given a secure status, to be allowed to work, to live with their family, to have access to social and medical services, and to enjoy freedom of movement. Acknowledgement must be given to migration's economic, social and cultural benefits to society.

2.1.4 Victims of Trafficking in Human Beings Need Protection

The fight against trafficking in human beings must be consistent and must enjoy a clear political backing. The victims of trafficking in human beings must be given protection and long-term perspectives, so that they are enabled to lead independent and autonomous lives – independently of their willingness to stand witness against their traffickers in court. More resources should be earmarked for research and data collection in order to improve our knowledge of this phenomenon; there should be improved co-operation between the competent authorities and the organisations of civil society.¹¹

2.1.5 Acknowledging the Reality of Irregular Migration

When defining a policy on labour migration irregular migration must be taken into account as a fact of reality, it is after all a product of the demand for cheap labour in the EU. Whoever desires to reduce the demand for "irregular" labour must logically open pathways to legal labour immigration and must make it more difficult to hire migrants without residence status by intensifying controls. In addition, people without a legal residence status must enjoy a minimum of rights based on humanitarian considerations. This includes access to medical care, the enforceability of wages, and the possibility for their children to go to school without fearing expulsion, as is already possible in some Member States.

2.1.6 Strengthening Integration Policy

The EU should continue to follow up on its common approach to integration policy, which was first discussed at the summit at Thessaloniki (2003). The basic principles mentioned in the EU's The Hague Programme show the right direction. Integration must be shaped as a mutual process involving an active role for both the migrants and the host society. There is a need for integrated measures geared towards reality which benefit migrants as well as nationals.¹² The increasing diversity of our society should be promoted as a positive factor and should lead to a better understanding of issues surrounding asylum and migration.

2.2 Combating the Causes for Migration and Flight

People do not flee out of their own will, but they are forced to flee or emigrate because of wars and armed conflicts, persecution, suppressive regimes or because of poverty, economic hardship or famine catastrophes. It is impossible, from an external side alone, to change the conditions in the countries of origin that are the root cause for flight and migration. However, by promoting the economic and social development and the rule of law in the respective countries, the EU is in a position to contribute to an effective and sustainable fight against those causes for migration movements. Part of this is to provide more funds for development co-operation (at least fulfilling the promised 0.7% of gross national income [GNI]), to respect and/or achieve the millennium development goals (elimination of extreme poverty and of hunger), to foster fairer trade relations, and to support the debt relief for the poorest countries.

However, a lasting help for the countries concerned requires more than "just" achieving the 0.7% target. The fight against poverty must be accompanied by serious efforts to prevent crises and solve conflicts. Decisive support must be given to the necessary structural changes, e.g. in trade and armament policies. Hopeful attempts to peacefully solve longstanding conflicts (examples: Sudan, Angola, Sierra Leone) are to be acknowledged and strengthened. The Western industrialised nations and here in particular Europe and/or the European countries carry a special responsibility in this regard. This is because, on the one hand, they are the former colonial powers, and on the other hand, because they supported or even continue to support elites in those countries who have exploited and still exploit their respective country.

2.2.1 Involving Migrants in the Task of Democratisation and Stabilisation of their Countries of Origin

With remittances migrants support their families back home and contribute to their wealth. These transfers are significantly larger than development aid.¹³ It must be pondered if these remittances could receive official support by the State, and if migrants could become “agents for change” in their countries of origin.¹⁴ As the communication from the Commission on migration and development aid suggests, bureaucratic obstacles to sending these remittances should be eliminated.¹⁵

2.2.2 Regional Protection Programmes in the Regions of Origin

We welcome the recent decision by the EU to intensify the co-operation with the organisation of African Union in the fight against the causes of migration and flight. The parallel decision to establish regional protection programmes in the regions of origin can equally form a contribution to solve the problem provided this measure does not lead to a restriction of existing international systems of protection for refugees, but complements them by providing additional means and capacities of protection. In no case may regional measures of protection weaken the willingness of the European States to shelter refugees. Those regional programmes must pursue the objective of creating the conditions needed for one of the three durable solutions to the refugee problem, i.e. repatriation, local integration or re-settlement in a third country if the first two durable solutions are not possible. These regional protection programmes must be implemented in co-operation with the Office of the UN High Commissioner for Refugees and the respective countries in the protected regions. Required is a co-ordination of EU policy in the fields of refugees, humanitarian assistance and development so that the need for protection as well as the effects of refugee populations on local communities are taken into account and developed in a way that benefits all concerned.

2.3 Refugee Camps are no Solution

Since 2003 the EU has been discussing proposals to establish refugee camps outside the EU, as for example on the African continent. The idea is to prevent people from illegally entering Europe by entrusting themselves to gangs of middlemen or risking their lives.

2.3.1 Hollowing out the Right to Seek Asylum

These proposals suggest that in those camps no formal asylum procedure may be applied, but only an informal check whether there is a need for protection. Establishing such a need for protection does not automatically lead to a duty for the EU to receive those persons; rather a host country in the region of origin is to be found. Individual Member States, in the light of their interests, can grant the right of entry to persons requiring protection. If no need for protection has been established then people may be repatriated to their region of origin without further processing and even against their will.¹⁶ Although such ideas have not (yet) found a majority in the EU¹⁷ the EU's ministers of Justice and Home Affairs, in October 2004, agreed on the creation of five “pilot projects” in North Africa. Italy now even, based on a bilateral agreement, deports refugees to Libya without any further checks.

The DCV¹⁸ and the European Network of Caritas with 48 member organisations in 44 countries, Caritas Europa¹⁹, oppose such concepts, among other reasons because they create situations where protection by law is no longer guaranteed, where the right to seek asylum becomes a mere prerogative of mercy, and where hence the constitutional right to asylum is being hollowed out.

In order to do justice to its commitments, the EU must make certain that also in the future all people seeking protection may have unrestricted access to an asylum procedure, which encompasses free legal advice and translation as well as the opportunity to lodge an appeal with a suspensive effect. Fast-track processing without access to information and without legal advice as well as the concept of “safe third countries” undermine the necessary rule of law. The EU legislation should define the explicit right of all asylum seekers to remain in the State where asylum has been requested as long as a final decision is pending (effective legal protection).

2.3.2 Extraterritorial Refugee Camps do not prevent Economic Migration

These camps do not enable entry into an EU country. Whoever desires to come to Europe, be it as refugee or as economic migrant, will look for other ways of access. These include dangerous means of illegal entry, often characterised by violations of human rights.

3. How Does Caritas Contribute to Finding a Solution?

3.1 Fighting against Hardship Locally

With its work, Caritas international (Ci) makes a contribution to the fight against poverty and for the creation of social structures in the local context. Besides offering survival relief to refugees and victims of catastrophes, Ci supports the creation of structures for social work in the areas of assistance to children and youth, assistance for the disabled, the elderly, substance abusers and people with Aids. In Africa, from 1993 to 2003, Ci funded projects worth ca. EUR 180 mio. As member of the umbrella organisation Caritas Europa²⁰ and within the international world-wide Caritas network, the German Caritas could incorporate its own efforts to reduce poverty into the larger assistance programmes of international Caritas.

3.2 Raising Awareness – Offering Support

To meet the alien with a helping hand constitutes an integral part of the social work done by Caritas as a Catholic association. At the European, national and international levels, Caritas works in favour of a just treatment of all groups of migrants (labour migrants, EU citizens, migrants without proper residence status, refugees, displaced persons, returnees, etc.)

The efforts by Caritas on behalf of migrants in Germany are based on the universality of human rights. Caritas is active to ensure that all migrants have a perspective to decide for themselves how to live their lives. In particular the advocacy on behalf of refugees, displaced persons and people without a regular residence status is of fundamental importance to Caritas because these groups often do not have any lobby and are increasingly being marginalised. Caritas works in favour of strengthening their rights and improving their socio-economic situation – equally via its efforts in the Caritas migration services.

The German Caritas Association accompanies the European and national legislative processes with a critical mind via its opinions and position papers. It contributes to the national transposition of existing EU directives and regulations with its working papers detailing own ideas. Among the foundational concerns is the desire to raise awareness amongst politicians and within society and to help define a legislation that satisfies standards of human rights. Part of the basic demands as most recently formulated in the DCV's positions during the 2005 election campaign 'Empowering people, creating jobs, fighting against poverty and exclusion'.²¹ It is necessary that Germany fully honours her humanitarian commitments. For this reason the German Caritas Association speaks

up in favour of a right to stay for foreign nationals who have been tolerated in the country for many years. There is also a need to further improve the situation of unaccompanied refugees who are minors. People staying in Germany without documents and without secure legal status must be given access to health care. Their children must be allowed to go to school. The German Caritas Association opposes any attempts to restrict family reunion. A further restriction of family reunion contradicts the constitutional protection given to the family as well as the Catholic view of family, and it does not do justice to the reality of the lives and the needs of many migrants. Another important request is that Germany ratifies the International Convention on the Protection of the Rights of all Migrant Workers.²²

The German Caritas Association participates in the debate surrounding the development of sustainable programmes for the voluntary repatriation of migrants, which offer them perspectives in their countries of origin. The international Caritas network, Caritas Internationalis, and as a part of it Caritas Europa, offers a potential for the development of such programmes.

Caritas considers integration policy a mutual process within society, involving both nationals and immigrants as partners with equal rights. Caritas is actively engaged in this process, e.g. with its offer of migration services. Besides this practical work, the association develops concepts like the building blocks for a forward-looking integration programme for Germany, entitled 'Shaping Immigration and Integration – Winning the Future'.²³

3.3 Networking – International Lobbying

Via its European umbrella organisation Caritas Europa, the German Caritas participates in the international networking with regions of origin in order to better understand the migration flows, to jointly develop concepts, to support migration work in the countries of origin, and to do advocacy.²⁴ In this context the German Caritas Association has initiated and supported the creation of a Christian network to combat trafficking in women, which now is active all over the world with participants from 22 countries and with 29 national partners and 4 international networks.

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- ¹ UNHCR (Hrsg.), 2004 GLOBAL REFUGEE TRENDS, 17 June 2005, <http://www.unhcr.ch/cgi-bin/texis/vtx/statistics/opendoc.pdf?tbl=STATISTICS&id=42b283744>
- ² Tampere European Council Presidency Conclusions, October 1999: The European Council reaffirms the importance the Union and Member States attach to absolute respect of the right to seek asylum. It has agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement. http://europa.eu.int/council/off/conclu/oct99/oct99_en.htm#asylum
- ³ *Ökonomisch motivierte Migration zwischen nationalen Eigeninteressen und weltweiter Gerechtigkeit*, Sachverständigengruppe Wirtschaft und Sozialethik der Deutschen Bischofskonferenz [Expert Group on Economics and Social Ethics of the German Bishops' Conference] (Ed.), 11/2005, p. 26, 28, Download unter: <http://dbk.de/>
- ⁴ *Ökonomisch motivierte Migration* (vide footnote 3), p. 31.
- ⁵ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Migration and Development: Some concrete orientations; COM (2005) 390 final http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0390en01.doc
- ⁶ Suffragan Bishop Josef Voß, *Die Herausforderung der Flüchtlinge, Kirche + Leben*, 13 November 2005, p. 7
- ⁷ Directive 2001/51/EC of the Council of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June; Official Journal Nr. L 187 of 10/07/2001 p. 0045 - 0046
- ⁸ Brussels, 3 December 2002, COM(2002) 703 final., http://europa.eu.int/eurlex/en/com/cnc/2002/com2002_0703en01.pdf
- ⁹ According to an article in the *Süddeutsche Zeitung* of 9 October 2005 the German Minister of the Interior Otto Schily threatened African States with sanctions if they were not to retake refugees
- ¹⁰ Commission President José Manuel Barroso, „European Commission adopts European Union Strategy for Africa“, Press release of the Commission, Brussels, 12 October 2005
- ¹¹ See also the report of the Commission's Expert Group on Trafficking in Human Beings: http://www.europa.eu.int/comm/justice_home/doc_centre/crime/trafficking/doc/report_expert_group_1204_en.pdf
- ¹² Integration: A process involving all, März 2004 <http://www.caritas-europa.org/code/EN/publications.asp?choix=x3x>
- ¹³ 'In 2001 the remittances that legal and illegal migrants sent to the developing countries were estimated to amount to USD 60 billion – this surpasses development aid by 20%'. In: *Odysee nach Schengenland, Die Zeit* Nr. 3, 8 January 2004
- ¹⁴ Von Carlowitz, Leopold: *Migranten als Garanten* [Migrants as Safeguards], *HSFK – Standpunkte*, Nr. 6/2004 http://www.hsfk.de/publication_detail.php?publicationid=2579&language=de
- ¹⁵ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Migration and Development: Some concrete orientations; COM (2005) 390 final http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2005/com2005_0390en01.doc
- ¹⁶ *Effektiver Schutz für Flüchtlinge, wirkungsvolle Bekämpfung illegaler Migration – Überlegungen des Bundesministers des Inneren zur Errichtung einer EU-Aufnahmeneinrichtung in Nordafrika* [Effective protection for refugees, effective fight against illegal migration – considerations of the Germany's Minister of Home Affairs on an EU reception facility in Northern Africa], 9 September 2005, Download: http://www.bmi.bund.de/nn_334158/Internet/Content/Common/Anlagen/Nachrichten/Pressemitteilungen/2005/09/Ueberlegungen,templateld=raw,property=publicationFile.pdf/Ueberlegungen
- ¹⁷ Cf Communication from the Commission on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin [Com (2004) 410 final], p. 13. In October 2004 explicit refusal by the EP. See also.: <http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//NONSGML+TA+P6-TA-2004-0022+0+DOC+PDF+V0//DE&L=DE&LEVEL=3&NAV=S&LSTDOC=Y>
- ¹⁸ Cf the joint opinion *Zum Konzept des regionalisierten Flüchtlingsschutzes* [On the concept of regionalised protection of refugees], 19 June 2003, *Deutscher Caritasverband* et. al. (Ed.); *Asyllager in Afrika verfehlte Form der Flüchtlingspolitik* [Asylum camps in Africa, a failed type of refugee policy], Press information CI 26/04, Freiburg, 20 July 2005; Martin Salm, *Flüchtlinge in Europa aufnehmen* [Receiving Refugees in Europe], *Süddeutsche Zeitung* 29 July 2004.
- ¹⁹ Press release CE, *Die EU als "asylfreie Zone"? Gegenvorschläge zur kontraproduktiven Politik der Härte* [The EU as an asylum-free zone ? Proposals against the counter-productive policy of hardness]; 12/13 July 2003 ; CE/CCME/COMECE/ICMC/JRS, Towards a balanced approach in EU migration and asylum policy 12 recommendations, Nr. 11, Brussels, 8 October 2004
- ²⁰ www.caritas-europa.org
- ²¹ *Menschen befähigen, Arbeit schaffen, Armut und Ausgrenzung bekämpfen*, Positions of the German Caritas Association during the 2005 election campaign, *Deutscher Caritasverband* (Ed.), Freiburg, 13 July 2005, download: <http://www.caritas.de/2340.asp?detail=1&id=797&area=dcv&order=datum&pageNr=2>
- ²² <http://www.december18.net/web/general/page.php?pageID=79&menuID=36&lang=EN#eleven>
- ²³ „Zuwanderung und Integration gestalten – Zukunft gewinnen“, *Bausteine für ein zukunftsweisendes Integrationsprogramm für Deutschland*, *Deutscher Caritasverband* (Ed.), Freiburg 2004, download unter: <http://www.caritas.de/13292.html>

²⁴ Positions of the Christian organisations active in the field of migration: <http://www.caritas-europa.org/code/EN/migr.asp?Page=243>