



Minimum requirements that a European system designed for the protection of refugees has to meet (from the point of view of PRO ASYL)

Theses

1. The European Union is at a crossroads: Either an open Europe or clinging to the strategy of raising the drawbridges.
 - The declaration made by the heads of state and government in Tampere is characterized by unmistakeable professions of supporting openness and transparency in the European Union, and of upholding human rights as well as the right to asylum. Yet in practice the European Union continues to be a community specialized in raising the drawbridges when faced with refugees.
 - To realize the claim to be an „open Union“ would be tantamount to a fundamental reorientation: a break with the strategy of raising the drawbridges and deterrence, as well as pulling down to a considerable extent the fortifications erected against refugees and migrants.
2. Protecting refugees is not a matter of quota: seeking asylum and immigration must be distinguished.
 - The European Union needs much more than 20 million new immigrants from non-EU countries in the next twenty years. The necessary debate on immigration is primarily orientated towards the respective



demographic and economic needs within the Union. By contrast, the main concern of refugee policy is offering protection to persecuted individuals. Therefore, the protection of refugees, which is mandatory in international law, cannot be turned into a matter of quota. Protecting refugees is part and parcel of the universal protection of human rights and not something to be changed at the whim of politicians addicted to thinking in terms of profit or loss only. Human rights are clearly defined and juristically enforceable titles, which guarantee the individual the right to a life in human dignity.

3. The right to asylum has to be guaranteed in a future Charter of Fundamental Rights.

- There are some areas within the borders of the EU in which protection of individual rights and parliamentary control have only insufficiently been formed, in particular in the third pillar of police cooperation, but also for example with respect to the policies related to asylum and migration. However, basic rights must be valid and enforceable in all pillars of the Community Treaties. It would be absurd to continue to turn a blind eye to those aspects where infringements of fundamental rights occur especially intensely.
- The future Charter of Fundamental Rights in its entirety has to become legally binding by including it in the EU Treaty. The Charter has to guarantee the right to asylum. The question to what extent there will be a constitutionally enforceable right to asylum within the borders of the European Union is vital for the protection of refugees. Accordingly, in Tampere the European Council have committed themselves to base the future common European asylum law on „the full and inclusive application“ of the Geneva Refugee Convention. This passage has to turn up again in a Charter of Fundamental Rights.
- There must not be any EU citizens who are excluded from the purview



of the asylum law. An inadmissible geographical limitation of refugee protection would be a fatal model for countries outside the EU borders.

4. In translating the Amsterdam Treaty's agenda concerning asylum policy into reality certain minimum requirements guaranteeing an effective protection of refugees have to be met.
- A consistent application of the Geneva Refugee Convention must be the starting point and not the final phase of a harmonization policy. At present, a great part of the de facto refugees in the EU is kept from the protection they are entitled to under the Geneva Refugee Convention. Against the background of widely differing recognition procedures in the respective EU member states the refugee's decision to choose a certain country of refuge may fairly be described as a choice the outcome of which is determined by pure chance.
 - The application of the Geneva Refugee Convention in the European Union has to take into account all forms as well as all perpetrators of persecution.
 - „Complementary protection“ has to be granted to persons who, although not within the scope of the Geneva Convention, are protected from deportation by means of international treaties, such as the European Convention of Human Rights or the United Nations Convention against Torture.
 - Establishing an answer to the question whether asylum seekers are refugees under the Geneva Refugee Convention or under the rules relating to „complementary protection“ has to be safeguarded by a uniform procedure.
 - The instrument of „temporary protection“ – originally intended to cope with situations of mass flight – was abused to evade the Geneva Convention in the past. The use of this instrument has to be restricted to cases of war and emergency in which it is impossible to set up an



individual asylum procedure at short notice. Its basis has to consist of measures intended to help evacuate people, and (for those who have to flee spontaneously) the possibility to enter the EU without restrictions concerning visa, „Third Country“ practices, or border measures undertaken to deter refugees. Rights modelled on the Geneva Refugee Convention have to be granted to refugees, enabling them to file an asylum application at all times.

- Any agreement substituting the Dublin Convention has to be drafted in such a way as to really guarantee the checking of each asylum application within the borders of the European Union. The European Union ought to suspend the rejection and subsequent sending away of refugees to so-called „safe third countries.“
- A common European asylum law must guarantee that each asylum application is individually checked in court. There must not be laid down any clauses that exclude certain groups of persons.
- The guiding principle of not allowing immediate rejection implies that the access to an asylum procedure and the actual appropriateness of national asylum procedures for ascertaining the status of being a refugee have to be guaranteed.
- International protection does not only comprise the refugee's safety but also the organization of his/her social environment in accordance with human dignity. Special laws for asylum seekers that bear the stamp of stigmatization and discrimination violate human dignity, and have, consequently, to be excluded from the future EU minimal standards.

5. The preservation of the fundamental right of asylum and the guarantee of full legal protection (Rechtsschutzgarantie) are the best safeguards against the risk that the Federal Republic of Germany might not honour the obligations imposed on it by



international law.

- The fundamental right of asylum and the guarantee of legal protection (article 19, paragraph 4 of the Constitutional Law of the FRG) serve the purpose to make sure that the applications for asylum to be processed by the Federal Republic of Germany are checked in an effective, constitutional, and fair legal procedure. This is no obstacle to the harmonization of procedural law.
6. In the Federal Republic of Germany there is urgent need of action concerning the restrictive interpretation of the Geneva Refugee Convention and the European Convention of Human Rights. The existing protection gap must be closed, initiating the return to international standards of protection.
- On account of its narrow concept of „refugee“ the Federal Republic of Germany cannot live up to the provisions and obligations imposed by international law. The official German interpretation is at odds with the interpretation of the Geneva Refugee Convention in the majority of EU countries.
 - The Federal Republic of Germany has also isolated itself in the interpretation of the European Convention of Human Rights. The jurisdiction of the Federal Administrative Court is in calculated contrast to the European Court of Human Rights. As in the case of asylum law, the threat to the refugee is required to emanate from a functioning state authority.

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siehe auch: [Asylpolitik in der EU - Tagung in der Evangelischen Akademie Arnoldsheim 2000](#)
