

The immigration issue in Germany – Presentation to the Secretary-Generals

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I have come directly from a meeting of our Foreign Commission about the situation in the Middle East, a dilemma for which we do not see a short term solution. However, this dilemma underlines the need to protect civilians according to international standards as demonstrated through the work of the International Red Cross and Green Cross.

My presentation will consist of two parts. In the first part I will deal with the German Independent Commission “Immigration” and its results after nine months of work from September 2000 to 4 July 2001. In the second part I would like to provide you with a short overview of the developments at the EU level. In spite of the Tampere Summit and the Amsterdam Treaty most countries still focus on their national interests in discussing ways to reduce the number of refugees and even to lower the standards of treatment, the latter being an especially crucial point. But one cannot continue to discuss problems relating to migration and refugees in a national context.

Let me first turn to the discussion that took place in Germany in 2000, which was mainly influenced by the need on the labour market for specialized foreign experts in certain areas and the question of how to organize their employment in Germany. As you may know, a complete stop on bringing migrants into the work force has existed in Germany as well as the EU since 1973. However, this is merely the law on the books. In reality several million people have come to Germany, consisting mainly of workers between 1956 and 1973 and refugees with families after 1973. In particular, a high number of civil war refugees arrived in the 1990s. Figures suggest that between 230,000 and 330,000 people arrive in Germany every year in order to join the work force. Let me give you an example: 44 % of the personnel working in the area of medical care, including doctors, are foreigners. Therefore there can be no doubt that Germany is an immigration country. Nonetheless we continue to officially refuse to accept this or to think about ways to organize migration in a country which for many years now has been a multicultural one.

Another factor that made the work of the Commission more difficult was the continuing discussion in the German election campaign – which I would call a brutal one – stating that nobody should come to Germany because we have 4 million unemployed. But, this suggestion is totally counter-productive because the reality is that people *are* coming. Unfortunately we find similar contradictions in a lot of European countries where there is a certain level of unemployment coinciding with the existence of more than 1,800,000 available jobs.

However, the work of the Commission included the analysis of migration in the last 40–50 years and the organization of migration and immigration today. Our main result was to reform the German migration system and to show how migration should be organized for certain areas with particular attention to the demographic factor. Due to decreasing birth rates the population is ageing and shrinking in the EU, and in most European countries we see the same need for qualified employees and workers as in Germany. This shows again that we have to deal with migration on a European level. Our aim was to bring good, qualified people to Germany, following the Canadian system. I know perfectly well that this includes a form of selection. Nevertheless, you do need criteria and we are still lacking experience in knowing which criteria would be the best for us. So, we said, let us try to find out and not block any effort in this direction.

Another central point is that you cannot organize migration without putting the main emphasis on integration. In Germany nowadays we find people with a very low knowledge of German not only in the Turkish population – the biggest ethnic minority group in Germany – but also in well-integrated ethnic groups like Italians or Greeks. Therefore we focused on education and vocational training, regarding both as being absolutely necessary for integration. Lastly, the Commission concentrated on the special difficulty existing for women with regard to the reconciliation of family and work.

A second topic of the Commissions work have been the refugees. When we started our work the main discussion focused on whether or not to downgrade Art. 16 of our Constitution by establishing an institutional guarantee, following the French example. After analyzing the French example we decided to maintain the German approach because we still believe we should follow our own culture and principles rather than setting up a new administrative system. However, I learnt in the Commission that political circles argue that we have so many refugees in Germany precisely because of Art. 16 and we therefore have to lower our standards in order to fulfil European rules and directives. But this is wrong. Surely, we have different models in the EU; not just those countries with the highest standards, including Germany with a constitutional guarantee for asylum-seekers, but countries with other regula-

tions that do not afford less protection. So, we maintained our system, but you know very well that we already had a reform in the early nineties regarding the so-called “Third Countries”. In fact, until last year, Germany was the only country in the EU with special rules for “Third Countries”. As a result people were applying for asylum at the borders and could not be sent to another country.

The Commission made proposals with particular regard to: recognition as a refugee, permission to work, non-state persecution, family-reunification and the different status of refugees and asylum-seekers.

Firstly, the German system and procedure for recognition as a refugee is very complex and complicated. The Commission therefore had to reform and reduce the different regimes of stay and to shorten the procedure without sacrificing one of the different levels of appeal. In particular, proceedings before the administrative courts tend to differ in practice depending on the Federal State where a proceeding takes place but last generally very long. Hence, it can take years before a refugee knows if he or she is allowed to stay. As a consequence a refugee can be told to leave after 5, 9 or even 13 years of stay in Germany when he or she is already integrated. So our proposal was to recognize a person as a refugee within a year by the *Bundesamt* followed by the two stages of intervention and contradiction.

Secondly, currently people in Germany who apply for asylum are not allowed to work for three years. Although I can understand that some countries have introduced such a policy I think it is not human. Especially unfair is the view prevailing in Germany that most of the refugees are taking advantage of our social system. What should they do when they cannot work and have no alternatives? Therefore the Commission proposed to reduce the duration of the prohibition to work to one year which would also help to make acceptance and integration easier. However, there is still another rule stating that these people are only allowed to work when there is no German citizen for the same vacancy. So, in a certain way, they are still excluded.

Thirdly, one of the most important questions in the Commission was how to deal with non-state persecution of women – i.e. what we call in Germany *geschlechtsspezifische Verfolgung* (*gender-specific persecution*). Such women are tolerated in Germany for three months which basically means they cannot be thrown out. But they do not have access to educational or integration measures and they do not know what will happen to them after the three months. Therefore we suggested that people facing non-state persecution, for example from Afghanistan or Sierra Leone, should be recognized as refugees and allowed to stay in Germany for two years, especially when we know that they cannot go back. After a long and controversial debate this proposal was finally incorporated into the law as a reason to stay but not as a

reason to apply for asylum. But let me point out: I think it is important to incorporate into the law what has already been decided by courts.

Fourthly, we have been occupied with the question of an age-limit for children to be allowed to immigrate to Germany and to be reunited with their family. In the Commission we proposed to follow European standards and to set the age-limit for children at 18 years. However, the law now states 12 years which in my opinion is a bad result. There are some exceptions provided by the law but it is still not in conformity with my understanding of the German constitution and with my Christian concept according to which families belong together. Those in favour of the regulation in the law argued that any other age-limit would create enormous problems for integration. Let me be clear. It can make a difference if the child is coming at the age of 10, 12, 14 or 16. But the first question should be always: What are the measures and what are the offers for integration. This is clearly a problem of education, on both sides of course, but it is especially a problem concerning the organization of the German educational system. Personally I believe it is much better to oblige parents to send their children to the kindergarten since children of ethnic minority groups integrated in the kindergarten or the elementary school have much better opportunities for their future lives. I will not go into detail but in my opinion this decision is wrong.

Finally, we needed to harmonize the different regimes for recognized asylum-seekers and those recognized as refugees by the Geneva Convention. The latter group represents the larger part. Figures suggest that below 5 % are recognized as asylum-seekers and between 15 % and 20 % as refugees. So we called for the same status with particular regard to integration measures, access to the labour market as well as to health and social assistance. Unfortunately, not all of our proposals were taken into consideration, especially what we proposed for illegal migrants. Nonetheless, I think that the immigration law that was adopted by the *Deutscher Bundestag* and by the second chamber, the *Bundesrat* is a step in the right direction and based on a broad consensus in Germany of the business sector, the trade-unions, the churches, social associations etc. All of them still have expressed some criticism about the law but agree that we have to change the paradigm of migration and integration. However, since we are in an election campaign I cannot make a prediction as to whether the Federal President will sign the law. Additionally, a case might be brought before the Federal Constitutional Court.¹ But in any case, a new law would have to be based on the fundamental work done by expert commissions and the parties in the *Deutscher Bundestag*.

¹ On 20 June 2002, the Federal President signed the controversial Immigration Law. But it is to be assumed now that the law will be challenged before the Federal Constitutional Court.

Let me now turn to the European context. The decision of all 15 EU Member States at the Tampere Summit to introduce a European regime for refugees and asylum-seekers was in my opinion a big step forward. In addition, the activities in the pipeline suggest that they are aware of the need to regulate migration as well. All of those who followed the ceremonies of the 50th anniversary of UNHCR know that it is crucial not to lower the standards but to agree on a European minimum standard for the protection of refugees. Furthermore, if you look at issues such as burden-sharing and solidarity with those countries which have an open policy and as a consequence are overburdened, we turn to a world-wide perspective. A country like Iran for example has accepted 2 million refugees and therefore more than Germany. But many other countries have also accepted large numbers of refugees, for instance last year the United Kingdom, Spain, Portugal, and Italy. These countries especially tried to lower the applicable standards. It is against this background that the European minimum standard, the *Mindestnorm*, proposed by the European Commission and adopted in its first version by the European Parliament, is so decisive – it has not yet been ratified by Germany.

It is absolutely necessary that we reach a common decision on what will happen with a refugee who arrives in an EU Member State. How long is he allowed to stay? Is he allowed to work or entitled to receive social and health assistance? What about family-re-unification, a crucial point in all Member States? The work that has been done in Brussels has been really progressive but we know very well that governments might argue it is going too far. When I studied the differences between European and national standards, I organized a project that brought together experts working in the area in order to network between EU and national levels and to benefit from their experience. In this regard it is important (and follows international refugee recommendations) that NGOs like your important organization bring in their experiences. Furthermore, we should always keep in mind that a strict legislation leads to more illegality instead of reducing it.

So let me conclude by saying that we have to implement the EU minimum standards on the national level and at the same time to think about possibilities for repatriation and other forms of negotiations with countries of origin in order to enable them to help themselves and to overcome instability etc. We definitely need a broader political commitment to resolve the problems. But I insist on the need for minimum standards for refugees. They state that Member States can allow refugees to stay at least for two years and then for another three years. I am afraid that their implementation will need a certain time period. But in any case we do not need more national competence. On the contrary, if we do not find European solutions the problems will increase and not be resolved.