

## **European Commission Hearing on a Community Return Policy on Illegal Residents Brussels, 16 July 2002**

**Contributions by Felix Leinemann on behalf of the Migration  
Working Group of COMECE and by Doris Peschke of CCME  
as part of the Christian organisations' response to the Green  
Paper**

### **Return Policy in the framework of a comprehensive migration policy**

Thank you very much to the European Commission for the organisation, the interest and the invitation.

Thank you for inviting Christian Churches to comment on the issue (i.e. the Green Paper<sup>1</sup>). Churches and their organisations are closely working with migrants and refugees, among whom a significant number are undocumented residents. On the basis of our work and out of our commitment to the dignity of the human individual, we work together at European level and regularly publish joint comments on different aspects of a future common asylum and immigration policy of the European Union.

I shall make 3 points:

- General comments
- Guiding principles in the fight against irregular migration
- The importance of voluntary return,

while my colleague Doris Peschke will focus her contribution on the co-operation with countries of origin.

#### ***General comments***

We very much welcome the Commission's principle of seeking a comprehensive approach by seeing the phenomenon of return in a broader context.

As we have emphasised before, migratory movements have always happened. Today, they have become a permanent global phenomenon. They are closely related to the EU's relationship to the countries of origin, as well to policy areas such as development co-operation, trade policy, or arms exports.

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<sup>1</sup> European Commission: Green Paper on a Community return policy on illegal residents, COM (2002) 175 final.

I should thus start by reiterating the Churches' recognition of migration as a twofold right, to leave one's country and to look for better conditions of life in another country. Certainly, the exercise of such a right needs to be seen in the context of the global common good and justice. In this context, however, it is important to prevent unilateral decisions that are harmful to the weakest.

This is one of the reasons why we are increasingly preoccupied by a certain imbalance of Council decisions with regard to the European Commission's proposals. Without going into detail, it would be enough to compare the number of paragraphs in the Seville Conclusions on control measures against illegal immigration on the one hand, on the legislative work to be sped up on the other. Over the past three years, many of the Commission's proposals both on immigration and on asylum have been subject to seemingly endless negotiations.

### ***Guiding principles***

The green book logically focuses on the return of illegal residents. I should like to underline that in our view the phenomenon of illegal residence might be significantly reduced by:

1. clear, accessible and open procedures for **legal labour migration** into the EU, as well as a coherent and open **information policy** on these procedures
2. an improved **efficiency and quality of asylum procedures**, and an asylum policy which would make it possible to **reach the territory of the Union in a legal way** and launch a claim for asylum

(1) In our view, the current lack of sufficient legal possibilities to immigrate is one of the reasons for the increase in irregular migration and critical employment situations. New forms of slavery can be observed. This does not only include the exploitation of women as prostitutes, but also of domestic workers or of workers on construction sites. Paradoxically, these appalling circumstances could logically be seen as the living proof that the clandestine labour market is actually able to absorb the influx of these migrants.<sup>2</sup>

(2) Fair and efficient Asylum procedures as well as access to these procedures are a first step when working against illegal migration. Studies have shown that a range of factors, including distrust of state asylum determination procedures, reluctance to be detained, and fears about return, lead some refugees to choose life as a migrant with irregular status. Moreover, restrictive measures often force legitimate refugees into illegal activities to enter the state in the first place. This makes them subject to return measures even if their asylum claim is legitimate.

### ***The importance of voluntary return***

We very much support the Commission's statement that voluntary return should be given preference over forced return. Somehow contradictorily though, the Commission's Green Paper clearly focuses on the issue of forced return. Voluntary return evidently poses fewer problems.

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<sup>2</sup> We are aware that the complex challenges of the clandestine labour market require solutions beyond migration policy, involving inter alia social, labour and tax policies based on consultation with the social partners.

We believe, however, that voluntary return deserves much more study and evaluation. An increase in voluntary return programmes would offer the opportunity to reduce the number of forced return measures. It would at least reduce the quantity of the problem. In this sense, we should like to encourage the European Commission and Member States to undertake more research and to compare examples of best practice.

It is certainly right to assess that some voluntary return programmes have been relatively successful and that in several other cases the failure of such programmes was the result of a bad implementation.

But from the experience of our work, we are concerned that in various cases voluntary return programmes were carried out with returnees and towards countries of origin, of which neither were prepared for such a return. In other cases the number of returnees jeopardised the success of a voluntary return programme. To our experience this was partly the result of *pressure* exercised – on third country nationals and on third countries – to participate and co-operate “voluntarily”. We very much welcome the idea of an evaluation of programmes carried out so far and would be glad to contribute the experience of our member organisations working “on the ground”.

To make a practical suggestion, I should like to add that voluntary return is more likely to succeed when the individual has had access to training and work experience during the time spent in the host country. This is true for both refugees and rejected asylum-seekers. It could be advisable to promote and offer short-term qualification courses such as computer or craft courses, even during more or less short waiting periods, e.g. instead of detention.

Another useful means of promoting voluntary return could be to encourage “go and see” visits and to offer reintegration assistance above and beyond financial aid. This approach is likely to make a later return to the country of origin more viable. The individual is able to return with more skills and hence should be better able to provide for himself/herself and in many cases perhaps also provide a valuable contribution to a recovering society.

Thank you very much for your attention.

## **Cooperation with Countries of Origin**

Mr Chairman, Ladies and Gentlemen,

On behalf of the Churches' Commission for Migrants in Europe, CCME, I would like to add some aspects to what my colleague from the COMECE secretariat has said.

The need of cooperation with countries of origin has been rightly analysed and placed on the European Union's agenda by the High Level Working Group on Migration and Asylum and confirmed by the Tampere European Council in October 1999. This linkage has been particularly appreciated by Christian organisations working on migration and asylum issues, as we share the conviction expressed by the Tampere Council that “The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human

rights, in particular rights of minorities, women and children.”<sup>3</sup> Therefore, we were convinced that this comprehensive approach was one based on partnership and solidarity, developing a concept of burden sharing not only within the Union, but also beyond.

We are aware that migration does not figure as a top priority on the list of those involved in development. However, the attempts to convince actors in development to take on board the issue of forced and voluntary migration – comprehensively – suffered a major setback with the public debate prior to the Seville Council when suddenly development aid was reduced to an instrument to force countries of origin and transit to comply with EU migration restrictions. Although the decisions of the Seville Council are far more balanced than the public debate prior to it, the media did not cover the decisions after the summit as well as the debate before. We are convinced that this debate however damaged the realistic perception of both, migration and development by creating connections which do not hold a critical and analytical view.

1. “Everyone has the right to leave any country, including his own, and to return to his country.”<sup>4</sup> Of course, this right does not mention a right to immigrate in any country; however, it does effectively prevent governments from introducing extreme emigration controls if they are not to be accused of human rights violations. In addition, and particularly in Europe, we would like to underline that we were convinced that the majority of people across the wider Europe celebrated the end of travel and emigration restrictions at the end of the 80s, beginning of the 90s and would not like such concepts to return. However, in the recent debate that countries of origin and transit should do more to stop irregular migration from their territory, if they did not want to put at risk development cooperation, such concepts do come back to mind.
2. Since Tampere we understood the comprehensive approach with regard to migration and asylum and the concept of partnership with countries of origin as sincerely attempting to balance the necessary control measures with long-term aims of poverty reduction and conflict prevention in order to reduce factors of forced migration. If development aid to countries of origin and/or transit was reduced as a means of penalty – the Seville summit has kept this as an option – the cut in development aid might increase the push factors rather than reducing them, thus even have the opposite to the desired effect. An additional conditionality, which is debated controversially anyway among development experts, is thus not only not helpful, but might turn out counterproductive. The debate on using reduction of development aid as a penalty and a sanction destroys the concept of partnership, which ought to be based on equality and taking serious each counterparts’ interest. For quite a big number of developing countries, the revenue in foreign currency through remittances of migrants exceeds benefits from development aid. Some research also proves that low-skilled (and perhaps irregular) migrants send back higher amounts of remittances than highly skilled experts. A cooperative approach needs to acknowledge these legitimate interests of states in order to find appropriate solutions.

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<sup>3</sup> Presidency Conclusions Tampere European Council 15-16 October 1999, A I 11

<sup>4</sup> Universal Declaration of Human Rights, Art. 13.2

3. While we wish to maintain a distinction between irregular migration and criminality around irregular migration, the churches in Europe see an urgent need of international cooperation to fight criminal organisations exploiting the plight of persons forced to migrate or the desire of persons to voluntarily migrate. Therefore international agreements and Conventions need to be adhered to and the United Nations should be regarded as the right forum of agreement as in the United Nations all member states have a say. We are convinced that cooperation can and will be established with a culture of dialogue. In this context we would like to refer to the Protocol on migrant smuggling annexed to the UN Convention on Trans-national Crime, adopted in Palermo in 2000, and re-emphasize the need to protect victims of smuggling and trafficking. We are also convinced that Conventions like the one on the Rights of All Migrants and their family members form an important basis for international comprehensive migration concepts. It is in the absence of international agreements and guarantees and due to a lack of adherence that criminal organisations are exploiting persons who merely wish to improve their lives.
4. In the context of a return policy the readmission agreements with third countries are playing an important role. In line with the fundamental right to return to one's country, we support endeavours to ensure that persons who wish to return to their country of origin should get all necessary assistance, and countries of origin should be obliged to facilitate the return of their nationals. However, the readmission clauses envisage more than this: that countries of transit are obliged to readmit third country nationals who happened to have been on their territory for a shorter or longer period, e.g. for studies or training. This provision is based solely on the interest of EU member states and does not consider sufficiently a third country's capacity of integration nor does it provide for the person to decide on his or her future. We doubt that any EU member state would sign a similar clause e.g. for students from Africa or Asia, to be readmitted in case they cannot return to their home country but have stayed for some months after their studies in another country. Reciprocity is however an important element of international agreements and should not be sacrificed.
5. We hope and expect that the forthcoming communication by the Commission on development and migration will deal thoroughly with the important connections which deserve attention and appropriate solutions. We also hope – as my colleague has stated, that the normality of migration is not forgotten and a return policy is designed which upholds the dignity of each person.