

## **Church Asylum in Germany:**

### **Experiences of more than 20 years work in the field, relevance within the church, political framework**

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#### **1. Basic information on church asylum in Germany**

It doesn't always take seven years. But the St. Paul parish in Hamburg-Altona needed this long to be able to assist a Kurdish woman with five children to obtain a residence permit. Imagine, the youngest child was only ten months old when the family was given church asylum and was already in the second grade when the family was finally given permission to stay in Germany. But as I said, it does not always take this long.

As I speak, there are 30 cases of church asylum on the roster kept by the German Ecumenical Committee on Church Asylum<sup>2</sup>. Evangelical, Catholic, as well as parishes belonging to the free churches, together with ecumenical networks care for 82 persons from several countries. One must assume that this figure needs to be revised upwards, as many parishes probably award church asylum without publicizing it, in order to better protect those concerned.

How do we define church asylum in Germany?

Let me give you some basic information along the following topic headings.<sup>3</sup>

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<sup>1</sup> Contribution on the 3rd International Conference of SoDRUS (Groupe de recherche société, droit et religions), Université de Sherbrooke, Canada: „Giving Sanctuary to illegal Immigrants: Between Civil Disobedience and Legal Obligation“, February 8th-9<sup>th</sup>, 2007.

<sup>2</sup> <http://www.kirchenasyl.de>.

<sup>3</sup> Ökumenische Bundesarbeitsgemeinschaft Asyl in der Kirche e.V.(ed.): Erstinformation Kirchenasyl.

What is church asylum?

Church asylum is a form of temporary protection for refugees without the status of legal residence who would face unacceptable social hardship, torture or even death if forced to return to their country of origin. During the church asylum, all relevant legal, social and humanitarian aspects are examined. In many cases, it turns out that the authorities' decision needs to be revised, which means that a new asylum procedure has a chance of success.

Is church asylum likely to be successful?

Statistical information gathered by the German Ecumenical Committee on Church Asylum shows that over 75 per cent of church asylum cases ended with a solution protecting refugees from human rights violations and from danger of physical harm<sup>4</sup>.

How long does church asylum take?

Parishes have to be aware that a church asylum case is unlikely to be solved within a few days. It can last from several weeks to many months. It seems therefore reasonable to periodically re-examine the conditions of church asylum and that of those concerned.

What is expected from parishes?

The parish provides accommodation (living space, cooking and sanitary facilities), basic needs (food, maybe clothing) and in certain cases medical services. It creates a circle of supporters who accompany the case and help the refugees in their daily life. Ideally, meaningful sparetime activities should be provided for the refugees.

Does a parish need to do it all on its own?

It would definitely be an advantage, if a pastor or other church employees could take part in the legal proceedings (meetings with lawyers and authorities). However, it is also possible to let counselling organisations handle this aspect.

How is church asylum financed?

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Handreichung für Gemeinden und ihre Gremien, Berlin, Nachdruck Oktober 2006; German Ecumenical Committee on Church Asylum (ed.): Basic information on Church Asylum, Berlin 2007.

<sup>4</sup> Wolf Dieter Just/Beate Sträter: „Unter dem Schatten deiner Flügel...“. Eine empirische Untersuchung über Erfolg und Misserfolg von Kirchenasyl, Bonn 2001.

Church asylum is financed by donations. These donations are raised as far as possible by the parish giving asylum and by neighbouring parishes. Some local asylum networks have funds at their disposal from which parishes can draw.

Are there legal consequences for the parishes?

Church asylum does not rely on any legal norms other than those of the German constitution and international law. It is, however, based on the assumption that decisions by state actors in individual cases can overlook or even break fundamental legal norms.<sup>5</sup> It is possible that applications for refugee status, for protection from deportation or for a residence permit on humanitarian grounds (according to §25: 4 or 5 of the German Residence Act/ Aufenthaltsgesetz), as well as claims to special treatment because of unacceptable hardships, have been refused, although the situation does in fact call for protection from forcible removal. The conscience of Christians can come into conflict with state rulings or actions and may lead to a breach of legal norms. That is why people acting for a parish providing church asylum have to be prepared to accept the full responsibility for their actions. Investigations related to church asylum cases have so far mostly been closed without ending in a court proceeding. However, in some cases pastors or members of the church council have had to pay a fine.

Is church asylum made public?

In general, church asylum cases should be made public in order to strengthen the protection of the refugees from interventions by the authorities and to underline the shortcomings of the asylum procedure and of the asylum law itself. In individual cases it could nevertheless be more reasonable to opt for a “quiet” church asylum, which is only disclosed to the public when the case is settled. However, the authorities have to be notified of all church asylum cases, whether they are made public or not.

## **2. A short history of the church asylum movement in Germany**

The current church asylum movement in Germany began in 1983. Two events in the

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<sup>5</sup> Steffen Töppler: *Rechtliche Aspekte des Kirchenasyls. Ausgewählte Probleme des Flüchtlings- und Ausländerrechts*, ed. by Ökumenische Bundesarbeitsgemeinschaft Asyl in der Kirche e.V., Bonn 2001, p.40ff.

parish of Heiligkreuz (Holy Cross) in Berlin led to this development. In the spring of that year, a hunger strike against the deportation of a young Kurdish man, Cemal Altun, took place on the premises of the parish. His life ended horribly: he jumped out of the window of the court building, fearing his imminent deportation to Turkey. A few months later, the same parish received three Palestinian families who were threatened by the deportation to a Lebanon engaged in civil war. The Church Asylum was able to successfully protect these families, so that they could stay in Germany.<sup>6</sup> Parishes in other parts of Germany followed this example. One spectacular case occurred in the St. Stephan church in Hamburg in 1984: Susan Alviola, the wife of a Philippine sailor, was violently arrested and taken out of the church by 60 policemen, separating her from her children. That same evening the family was deported to Manila.<sup>7</sup> This rude and harsh behaviour of the local police and government became known throughout the entire country and caused a lot of indignation and protest, including a number of prominent figures. For a long time violent breaking up of church asylum remained the exception. Today, 23 years later, we are only aware of twelve cases where the police has entered a church and stopped the church asylum procedure violently.

Since 1983 a lot of local church asylum circles have come into being and they have founded regional networks. They join together annually for federal meetings and conferences. In 1994, the 150 members present at one such church asylum conference, in the Evangelische Akademie Mühlheim/Ruhr, decided to found the German Ecumenical Committee on Church Asylum. This umbrella organisation provided a platform for sharing experience, for supporting one another, for drawing the attention of the general public to the inhuman German asylum policy and for convincing church leadership that the idea of church asylum is feasible and sound.

This initiative came at just the right moment, because in 1993 the right to asylum in Germany had been drastically reduced. Section 16a of the German constitution, which says "Politically persecuted persons have the right to asylum" was limited through the so called "safe third country regulation." Each refugee who comes to Germany via one of these so called safe countries can no longer ask for asylum in Germany. (Nowadays Germany is rather successfully forcing the European Union to adopt this rule.) As

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<sup>6</sup> Ökumenische Bundesarbeitsgemeinschaft Asyl in der Kirche e.V.(ed.): Asyl in der Kirche. Eine Dokumentation, Karlsruhe 2004, p.12ff.

<sup>7</sup> Wolf Dieter Just/Beate Sträter (ed.): Kirchenasyl. Ein Handbuch, Karlsruhe 2003, p.144.

practically all countries around Germany were declared to be safe countries, it became almost impossible to reach Germany by land. Since that time, the question of how a refugee travelled to Germany has become one of the main issues in the asylum procedure (Asylverfahren), often getting more attention than the reasons for the asylum petition.

In this situation, with a weak German refugee lobby and a strong tendency in the general public towards xenophobia and racism, e.g. when residences of asylum seekers were burned down, the church asylum movement matured and developed.<sup>8</sup> Based on the international declaration of church asylum initiatives, as laid down in the “Charter of Groningen” (Charta von Groningen), the German Ecumenical Committee on Church Asylum started to fight for the rights and human dignity of refugees and does so even today.

What are our tasks and aims?

- We provide information on church asylum to the general public, offering comments, press releases and publications.
- We offer legal and theological counselling as well as practical assistance to parishes providing church asylum.
- We organise seminars and training courses.
- We document and analyse church asylum cases all over Germany.
- We keep in touch with state and church decision makers.
- We promote exchange of information and co-operation across borders between groups working in the field of church asylum.

From the beginning church asylum was controversial disputed not only in the government but also within the churches.<sup>9</sup> What is the position of the church leaders today? The churches in Germany have increasingly taken note of the topic and have

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<sup>8</sup> L.c. p.145-147.

<sup>9</sup> See for example the statements in: Evangelischer Pressedienst (ed.): Trotz der Thesen des Rates der EKD: Die Legitimität von Kirchen-Asyl bleibt auch weiterhin umstritten, EPD-Dokumentation Nr. 43/94, Frankfurt 1994.

lately taken a clear position in support of those parishes who have decided to offer church asylum. One can justifiably say that the church asylum movement has been able to strengthen the common church position which has led to intensified lobby work on behalf of refugees within the entire church structure.

### **3. The current state of German and European asylum policy**

- Since 2005, we have a new migration law in Germany, which unfortunately might better be called an anti-migration law. During the last ten years the number of asylum seekers has been drastically reduced. From a peak of some 400.000 per annum in the early 90's, the number has shrunk to about 21.000 in 2006. The number of persons given the right to asylum has remained, however, year after year, at 0,9 per cent or even below. A further five per cent of the asylum seekers are for various reasons allowed to stay in the country.<sup>10</sup> And, as I speak, plans are being laid for radical changes in the law, which we expect will further diminish the rights of asylum seekers.
- After long debates, a regulation concerning the right to residency permits for persons whose presence had been tolerated for many years was adopted in November 2006. It is a specific problem for us in Germany that some families who have been in Germany for ten, fifteen or even twenty years can be deported. The new ruling still excludes some of those 200.000 persons who have held temporary permits for many years.
- Beyond these specific regulations, it is important to note that German asylum legislation is a part of the all-European asylum system.
- Instead of concentrating on fighting the root causes which have led people to seek asylum, which takes a prominent role in the EU discourse, it seems that Europe of today wishes to concentrate on a fight against refugees.

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<sup>10</sup> Official statistics of Bundesamt für Migration und Flüchtlinge, <http://www.bamf.de>.

- Europe is encircled by camps which are there to simply try to pick up refugees before they can enter the “Fortress Europe.”
- Since October 2004, without examining the reason for flight, some 4000 asylum seekers have been deported from Italy to Libya.<sup>11</sup> Let me remind you that the human rights situation in Libya is considered by experts to be a catastrophe.
- Heavy military security, patrols and the use of the European Border Security Agency (Frontex) make it almost impossible to overcome the outer borders of EU. Between August and December 2006, Frontex could in out-of-area operations prevent the entry of more than 3.500 persons on the Atlantic or vis á vis the West-African coast, forcing them to return to Senegal and Mauretania.<sup>12</sup> As a result of European government actions and Frontex operations, it is becoming more and more difficult to enter Europe and attempts very often lead to the death of asylum seekers on the high seas. It is assumed that half of those who try to reach a European port by way of the sea drown.
- In addition, humanitarian aid is being criminalized. An example for this is, when the German ship Cap Anamur in June 2004 saved 37 boat people.<sup>13</sup> Three crew members are at this moment charged with trafficking and may face sentences of twelve years in jail. There is a strong movement protesting their innocence.
- The legal instruments of EU theoretically provide a good basis for a common asylum policy. Since 1999 the Union has had the competency to create at least common minimum standards in asylum and migration law.
- It is true to say that the current situation seems to work against the creation of

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<sup>11</sup> Pro Asyl: Menschenrechtsverletzungen an den Außengrenzen – Schlaglichter. Dez. 2006, see <http://www.proasyl.de>.

<sup>12</sup> Frontex-Presseerklärung vom 19.12.2006.

<sup>13</sup> Elias Bierdel: Ende einer Rettungsfahrt. Das Flüchtlingsdrama der Cap Anamur, Weilerswist 2006.

strong human rights and asylum standards.

We Europeans should demand from EU:

- An entry free of danger to Europe for those who wish to seek asylum;
- An all European migration policy which would allow the access to the labour market;
- The further positive development of refugee reception programmes;
- A continued fight against root causes and unequal living standards, not just through random developmental aid, but through a change in the economic and agrarian policies as well as a fight for more just trade agreements.

#### **4. Solidarity with illegal or "illegalized" migrants: Different forms of protection and advocacy work**

In Germany there is a difference between "tolerated", those persons who are not allowed to stay in the country but also cannot be deported, and the so called "illegals", who can be arrested at any police control and deported.

We are speaking here not only of persons who may have entered the country illegally but also of work migrants, who still have strong ties to their country of origin, of persons forced into prostitution, of students who remain after their studies, or of family members who have arrived after, for example, the head of the family. Such persons can only live in hiding in Germany and are often victims of extreme exploitation as a result of the fact that they cannot work or reside legally.

They cannot claim a right to medical care, education or normal working conditions. The German economy gains enormously from this cheap labour which has no rights.

It is estimated that up to a million persons belonging in this category can be found living in Germany today.<sup>14</sup>

Giving humanitarian assistance to illegal immigrants or other undocumented persons is in Germany a punishable act.

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<sup>14</sup> E.g. Andreas Fisch: Menschen in aufenthaltsrechtlicher Illegalität. Reformvorschläge und

The churches sense these challenges strongly. Persons in need and who have become victims, need protection, peace and reinstatement of their dignity and capabilities, in order to be able to proceed with their lives.<sup>15</sup>

Many parishes assist with this and keep, for example, guest appartements in which temporary refuge is offered. In Berlin alone, we today know of twelve such church guest appartements. We call this development a “movement of guests”.

This, however, should not be confused with the classical church asylum, which, for its part, strives to achieve a legal solution and which entails a continuous dialogue with the authorities.

In networking with NGOs, we strive for a fundamental improvement of the situation of undocumented persons. We demand access to medical services, the right of education, protection from unfair labour practicies and the cancellation of the criminalization of humanitarian aid in dealings with illegals. On a European scale, we are a member of the Platform for International Co-operation on Undocumented Migrants (PICUM).<sup>16</sup>

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Folgenabwägungen aus sozialetischer Perspektive, Berlin 2007, p.15f.

<sup>15</sup> Ökumenische Bundesarbeitsgemeinschaft Asyl in der Kirche e.V.: Solidarität mit den Entwurzelten, Berlin <sup>2</sup>2005; Kirchenamt der Evangelischen Kirche in Deutschland (ed.): Zum Umgang mit Menschen ohne Aufenthaltspapiere. Eine Orientierungshilfe des Kirchenamts der EKD, EKD-Texte 85, Hannover 2006.

<sup>16</sup> See <http://www.picum.org>.

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