

NORBERT BERNSDORFF*

Concepts and Legal Problems of Migration Policy

I. Introduction	109
II. Current Focal Points of European Migration Policy	111
1. “False Incentives” for Migrants – so-called Push Factors and so-called Pull Factors	111
2. Unfair Distribution of Refugees – The Failure of the Dublin III System	112
3. Migration as a “Weapon” – War by Other Means	112
4. Refugees from Ukraine	112
III. The EU’s New Asylum Policy – So-called Migration and Asylum Pact	114
IV. Selected Legal Problems	114
1. Prohibitions of Refoulement as an Obstacle to Expulsion	115
2. Expulsion of Serious Criminals and so-called Gefährdeters?	115
3. Safe Countries of Origin and Readmission Agreements	116
4. So-called Push-backs – Rejections at the Border	116
5. Outsourcing of Protection Status Checks to Third Countries	117
6. Restrictions on Family Reunification	119
7. Agreements with Neighboring Countries – The EU-Turkey Readmission Agreement	120
8. So-called Numerical Upper Limits, Quotas and Contingents	120
V. The Relevance of my Remarks for Georgia	121
1. Georgia as a Safe Country of Origin and the Readmission Agreement of December 2023	121
2. Georgia as a so-called Host Country	121
VI. A Special Problem: Conscientious Objection and Desertion from Military Service as Reasons for Asylum	122
VII. Conclusion	124

* Prof. Dr. Marburg, retired judge at the Federal Social Court.

I. Introduction

The myths surrounding the influx of illegal migrants to Europe are nothing short of apocalyptic. Is it 60, 400 or 800 million illegal migrants that we can expect to see on Europe's shores in the near future? This debate is a good example of how an issue can be politically instrumentalized. The underlying fear is that millions of young people in Africa are sitting on packed suitcases, ready to come to Europe at any moment.

In February 2018, Hungarian Prime Minister *Viktor Orbán* spoke of 60 million people leaving Africa by 2020. A few weeks later, he repeated this prediction. Where – one might ask – did Mr. *Orbán* – an avowed opponent of any immigration to Hungary – get these figures? *Viktor Orbán* is not the only head of government in Europe to operate with such threat scenarios. Migration is described as a “beast” that has set itself the goal of destroying the occidental world. Many political decision-makers in Europe are now calling for Europe to be turned into a “fortress”; the gigantic migration movements – especially from Africa – are to be slowed down.

How realistic are such horror stories? – First of all, a distinction must be made between legal migration and illegal migration. Legal migration is the result of state policies in the so-called host countries that allow it. Illegal migration takes place against the will of the so-called host countries. If we only look at legal migration, the overall picture for Europe – especially for Germany – is indeed worrying. United Nations statistics reveal the following: Out of 12 million asylum applications worldwide by 2019, 2 million such applications were made in Germany alone. It is also Germany that has granted legal protection to the most refugees during this period, namely over 1 million, followed by Sweden, France, Italy and Austria. For example, Sweden granted more refugee protection during this period than the large countries of China, India, Mexico, Indonesia and Japan combined.

To date, 85 percent of the world's legal refugee protection is granted in some Western countries. At the same time, however, the world's demographic and economic center of gravity is shifting. Germany, Sweden and Austria currently account for 1.3 percent of the world's population and are expected to account for only one percent by 2050. Nevertheless, these

three countries together currently provide a third of the world's legal refugee protection. Of course, one of the reasons for this is that it is essentially only in Europe that there are formalized asylum procedures that meet international standards.

In view of such figures, an immigration policy based on the motto “Open borders for all!” is utopian. No matter how much you feel like a “citizen of the world” and welcome an “unrestricted culture of welcome” – incidentally, I used to do the same as a student – such a position would miss the point. Migration policy is always a “clash of morals”. Rich countries strive for globalized trade with poor countries, a free flow of capital and services; but they try to prevent immigration from these poor countries: a paradox! The “lever” here is the nation-state order of states. This also includes the territorial sovereignty of states and the right of borders to exist. There is therefore no subjective right to enter and live in a foreign state!

The phenomenon of immigration of people from third countries is nowadays – also in Europe – consistently viewed from the perspective of the so-called host countries. There are two central points: On the one hand, migrants – legal and illegal – should already be prevented from entering the territory of the so-called host countries – keywords “walls-up policy”, “Fortress Europe”. On the other hand, migrants – especially illegal ones – who are already on the territory are to be brought back across the border out of the so-called receiving countries – keyword “expulsion”. These are the two key issues in the global migration debate.

In the following article, I would like to highlight a few selected aspects of these two topics and evaluate them from a legal perspective. The European Convention on Human Rights and the UN Convention Relating to the Status of Refugees of July 1951, which Georgia also ratified in August 1999, will serve as a legal benchmark. The focus is on the migration problems of the European Union (EU), which, in view of the 270,000 illegal migrants crossing the Mediterranean, is increasingly calling for so-called push-backs and expulsions. However, I will also deal with issues concerning Georgia, such as the German-Georgian Migration Agreement of December 2023, and the specific question of the conditions under which conscientious objectors and deserters from military service can claim the right to asylum in so-called host countries.

II. Current Focal Points of European Migration Policy

The common political desire of all European countries is to “channel” the flow of refugees into Europe. The mass immigration of people from third countries is to be controlled. However, such migration control is hindered by several factors. Some can be influenced, others cannot! Four factors currently seem important:

1. “False Incentives” for Migrants – so-called Push Factors and so-called Pull Factors

There are currently numerous “false incentives” in favor of illegal migration.

So-called push factors can hardly be controlled by the so-called host countries. These are negative circumstances in the refugees’ countries of origin that “push” them out of their home country, so to speak. These include war, environmental disasters and poverty. Combating these causes of flight by the so-called host countries would take decades and would therefore not be able to stop migration to Europe immediately.

So-called pull factors, on the other hand, can be influenced. These are positive circumstances in the destination country that “attract” people, such as a high standard of living. The general opinion is that refugee protection is not intended for migrants who only come to Europe for economic reasons. However, such economic migration does exist if the social benefits for migrants – such as in Germany – are already very high. In Europe, this phenomenon is now referred to as “social tourism” or “benefit tourism”. In order to eliminate this “false incentive”, social benefits for the country’s own population would also have to be reduced due to the principle of equal treatment of nationals. However, there is regularly no political majority for this.

The length of asylum procedures in Europe also represents a “false incentive”. This regularly leads to permanent residence in the so-called host country. Even in the case of asylum applications that are hopeless from the outset, this long-term stay – sometimes several years – can be used to “go underground” in Europe. This is known as „pseudo-asylum“.

2. Unfair Distribution of Refugees – The Failure of the Dublin III System

The so-called Dublin III Regulation of the EU from 2013¹ stipulates that an asylum application is only examined by one single European state. The regulation defines the criteria for the responsibility of this state. The aim is to prevent refugees from moving on from one European state to another; so-called secondary migration within Europe is to be prevented.

The Dublin III system has failed because some of the so-called host countries – including Hungary – refuse to distribute migrants fairly. Furthermore, due to a lack of sufficient controls, every refugee can choose his or her “country of choice” and reach it: This is – you will know – usually Germany. This is also a “false incentive” that can be influenced.

3. Migration as a “Weapon” – War by Other Means

Another issue that Europe is currently struggling with is illegal immigration across its eastern borders. With the aim of political destabilization, Belarusian head of state *Alexander Lukashenko* lured countless migrants from Afghanistan, Iraq and Syria to Belarus in autumn 2021 and had them brought to the EU’s eastern borders. They were supposed to immigrate illegally to the EU and thus cause a migration crisis there. This type of use of migrants as a so-called hybrid weapon is not new, but represents an age-old political concept in a gray area below the threshold of violent conflict. Even the former Libyan ruler *Muammar al-Gaddafi* threatened make “Europe black and Muslim” if the EU did not meet his financial demands.

4. Refugees from Ukraine

The Russian Federation’s military intervention in Ukraine in February 2022 triggered significant refugee movements. Within five days, more

¹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), OJ L 180, 29.6.2013, 31–59.

than 500,000 Ukrainian nationals had entered the EU member states. At the beginning of 2024, there were around 1.1 million people from Ukraine in Germany.

The legal basis for the residence of Ukrainian nationals in the EU is the so-called mass influx directive of 2001.² This EU directive was passed in response to the refugee movements during the civil war in the former Yugoslavia in the early 1990s. Refugees who are unable to return to their country of origin are to be offered temporary protection immediately. The existence of a mass influx and the need for temporary protection must be decided by the EU Council – meaning the heads of state and government of the member states. It did so in March 2022 with binding effect for all EU member states. As things stand at present, Ukrainian nationals may remain in the EU until at least March 2026.

Question: What burdens does the mass influx from Ukraine place on the EU?

Firstly, unlike other migrants, people who have fled Ukraine do not have to go through an asylum procedure; they are granted a right of residence immediately!

Secondly, there is no equal distribution of burdens in the EU because people from Ukraine are free to choose their so-called country of residence in the EU!

Thirdly, refugees from Ukraine often receive more social benefits than other migrants; they also have unlimited access to the local labor market!

It should be noted that the temporary residence of refugees from Ukraine can very quickly lead to permanent residence, depending on the duration of the conflict in Ukraine. The development after the war in Yugoslavia in the years from 1992 is a good example of this. Today, most Yugoslavian refugees are allowed to remain in the EU without any time restrictions.

² Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212, 7.8.2001, 12–23.

III. The EU's New Asylum Policy – So-called Migration and Asylum Pact

The EU has had a Common European Asylum System (CEAS) for a long time. This was reformed in view of its dysfunctionality in the years 2015 and 2016, when over 2.4 million migrants entered the EU. In May 2024, a so-called Migration and Asylum Pact was adopted; its most important points are:

People from countries with an asylum recognition rate of less than 20 percent in the EU are to be placed in camps with detention-like conditions at the EU's external borders. Which people belong to this group will be decided in a so-called screening procedure, which should not take longer than seven days. In so-called border procedures – meaning so-called fast-track procedures – a decision is then to be made on their asylum application; if the decision is negative, they are to be quickly expelled to their country of origin. A maximum period of twelve weeks applies to the so-called border procedures.

One innovation is the new redistribution procedure. According to this, migrants from particularly burdened EU member states are to be taken over by other member states. We are talking about a redistribution quota of 30,000 refugees per year. If an EU member state does not want to take in refugees, such as Hungary, it pays money or provides personnel to support border protection at the EU's external borders.

Even after this reform of the CEAS, its key problem remains: the fair distribution of the burden. Refugee protection in Europe has been provided in the past and will probably continue to be provided in the future by a “coalition (alliance) of the willing”. What does that mean? It is only a few EU member states that take responsibility.

IV. Selected Legal Problems

As it has already been mentioned, current migration policy in Europe focuses on two key issues: preventing migrants from entering the country and removing migrants from the territory of the so-called host countries. Let's start with the second key issue, expulsion.

It can be said at the outset that the legal dimension of such political demands is considerably underestimated. There are unresolved legal problems in many areas.

1. Prohibitions of Refoulement as an Obstacle to Expulsion

Only a third of deportations of illegal migrants are actually carried out in the EU. Why is that?

The European Court of Human Rights in Strasbourg has long ruled that deportation to a country in which the person concerned is subject to torture or inhuman or degrading punishment or treatment violates Article 3 of the European Convention on Human Rights. According to its case law, this results in a so-called prohibition of refoulement, which constitutes an obstacle to expulsion. A further so-called prohibition of refoulement follows from Article 33 of the UN Convention Relating to the Status of Refugees of July 1951. The case law of the European Court of Human Rights in this regard is barely comprehensible and has also become more indulgent in the meantime. It no longer only covers cases of elementary existential fear in the country of expulsion, but also cases in which migrants with serious illnesses cannot expect appropriate medical treatment there. The so-called Paposhvili case law of the Court of Justice is fundamental here. This was the case of a Georgian national against Belgium in 2016.³

2. Expulsion of Serious Criminals and so-called Gefährders?

In response to the most recent attacks in Europe, the debate has flared up again as to whether serious criminals and so-called Gefährders (a German word) – meaning dangerous persons – should be deported to their countries of origin despite posing a serious risk to their life and limb. So-called Gefährders are migrants who pose a terrorist threat, for example due to Islamist motivation. The German Federal Criminal Police Office currently has around 680 people registered as so-called Gefährders.

The following should be said in this regard: Article 3 of the European Convention on Human Rights is not suspended for these persons. Expul-

³ Paposhvili v. Belgium, [2016] ECHR (Appl. No. 41738/10).

sion “at any price” is also prohibited here. A case-by-case assessment according to general principles is required. Recently, however, the European Court of Human Rights has “loosened the reins”; it no longer interferes in the risk assessment by national courts prescribed by Article 3.

3. Safe Countries of Origin and Readmission Agreements

Countries are considered safe countries of origin if it is assumed that torture or inhuman or degrading punishment or treatment does not take place there. Illegal migrants from these countries without a right of residence can be deported there more easily. The legal basis for determining safe countries of origin is the EU's Asylum Procedures Directive from 2013.⁴ However, there is still no Europe-wide list of such countries. The creation of such a list and the expansion of the circle of safe countries of origin is the subject of fierce debate between the political parties in Europe. Information: Safe countries of origin currently include all EU member states, all countries with candidate country status and some countries in Africa.

One of the main difficulties with expulsions is that the countries of origin are often unwilling to take back illegal migrants. Why is that? The population there would protest vehemently, as many families are dependent on the money that their relatives who have migrated to Europe illegally send home. The EU has repeatedly tried to persuade such countries to conclude readmission agreements by tightening visas and cutting off development aid. Ultimately, as with Tunisia, it has only succeeded with the promise of large sums of money.

4. So-called Push-backs – Rejections at the Border

Does Article 3 of the European Convention on Human Rights, with its prohibition of refoulement, also guarantee a right to enter the so-called host country? Is there a guarantee of being let in at any border in the world

⁴ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L 180, 29.6.2013, 60–95.

if you shout the word “asylum” there? Or can migrants be turned back at the borders – so-called push-backs?

These so-called push-backs are still highly controversial in legal terms. Their legal assessment is largely dependent on political preconceptions!

So what is the view of the European Court of Human Rights in Strasbourg on these issues? The Court in Strasbourg has not yet taken a clear position on the legality of so-called push-back operations. In 2012, it ruled that push-backs on the high seas – in the Mediterranean – to Libya constitute a violation of the prohibition of *refoulement* under Article 3 of the European Convention on Human Rights.⁵ However, this ruling was relativized by two subsequent decisions from 2020⁶ and 2022,⁷ in which it declared the *refoulement* of illegal migrants at the Spanish and North Macedonian borders to be compatible with the Convention.

I myself am one of the more conservative legal experts who reject such an individual human right to enter a foreign state. For me, the reason for this is the territorial sovereignty of nation states, which only allows them to decide on the entry of foreign nationals. Accordingly, there is no such thing as an unrestricted right of entry, a human right to migration!

Finland, Lithuania and Poland are of the same opinion and are currently enacting national laws to legalize push-back operations at their borders.

5. Outsourcing of Protection Status Checks to Third Countries

Another variant: With the aim of preventing the illegal entry of migrants, there have recently been increasingly loud calls in the EU for asylum procedures to be outsourced to territories outside the EU. There is still refugee protection for anyone who needs it, just not in Europe. The aim of such an upstream examination is to ensure that migrants without protection status can be deported more quickly; the so-called prohibitions

⁵ *Hirsi Jamaa and Others v. Italy*, [2012] ECHR (Appl. No. 27765/09).

⁶ *N.D. and N.T. v. Spain*, [2020] ECHR (Appl. Nos. 8675/15 and 8697/15).

⁷ *A.A. and Others v. North Macedonia*, [2022] ECHR (Appl. Nos. 55798/16 and 4 others).

of refoulement would then naturally not apply. The model also relies on deterrence: The path to Europe is blocked!

Such a model of extraterritorial refugee protection is not new. Back in 2001, Australia introduced the so-called Pacific Solution by law, according to which migrants are taken to reception centers in Papua New Guinea to prevent them from applying for asylum on Australia's own territory. Examples in Europe include the Rwanda and Albania models:

a. The Rwanda Model

In 2021, the Danish legislator decided that asylum procedures should be carried out in countries outside Europe – namely in Africa. In these third countries, however, not only should the asylum procedure be carried out; migrants with a positive decision should also be given access to the labor market, education and healthcare in these (!) countries in addition to protection from persecution. In return, the African state was to receive financial aid amounting to several billion euros.

The United Kingdom concluded a similar agreement with the African country of Rwanda in 2022. The Danish and British plans are currently not being pursued following an intervention by national courts.

b. The Albania Model

An agreement between Italy and Albania pursues the same objective, albeit in a different way to the Rwanda model. The agreement initiated by Italian Prime Minister *Giorgia Meloni* on the operation of two reception centers in Albania is designed for 36,000 asylum applications per year. However, it ultimately only provides for the relocation of protection procedures. Unlike the Rwanda model, European and Italian law is to be applied throughout. If the decision is positive, the migrant will only receive protection in Italy. This also distinguishes the Albania model from the Rwanda model. Albania is also a candidate country.

There are always skeptics who consider the outsourcing of refugee protection to third countries to be contrary to European law due to the so-called prohibitions of refoulement. Nevertheless, the European Commission in Brussels has deemed the Albania model to be unobjectionable. It can be assumed that such a model is also consistent with the case law of the European Court of Human Rights.

Interesting for Georgia: Some European countries are already considering whether to adopt the Albania model and outsource upstream protection status checks to other candidate countries in exchange for financial aid.

6. Restrictions on Family Reunification

Until recently, Germany alone had 500,000 Syrians in the country claiming to be joined by their families from Syria. With just two more family members joining them, the number of these immigrants would triple to 1.5 million people. In order to reduce the influx of refugees in the long term, there have therefore been calls in Europe for decades for family reunification to be restricted.

There are many political concepts for such a restriction on family reunification in the so-called host countries. However, there is a minimum consensus that only legal migrants can request the reunification of family members from third countries anyway. But even within this group, limits are to be set. First concept: family reunification only for those already granted asylum, not for other refugees with “second-class” protection status. Second concept: only parents – not extended family – should be allowed to join unaccompanied minor refugees. Third concept: reunification with migrant minors only in cases of hardship. Fourth concept: introduction of so-called numerical upper limits for family reunification – for example up to 1,000 family members per month.

What legal problems are there here? The right to family is protected in Article 8 of the European Convention on Human Rights. According to the case law of the European Court of Human Rights in Strasbourg, it is not possible to derive an unrestricted right to family reunification from this; however, a blanket refusal is not permitted. The decisive factor is whether it would be reasonable for the family to live together in their country of origin. It is also unclear who is actually entitled to the right to family reunification: the minor children in the EU or the family abroad. As an administrative court judge, I have seen cases in which underage daughters have refused to allow their fathers and brothers to join them because they feared that they would be “forcibly married” by them in Germany.

7. Agreements with Neighboring Countries – The EU-Turkey Readmission Agreement

The EU has long been pushing for agreements with neighboring countries to prevent migrants from travelling on to Europe. Most recently, such agreements were reached with Tunisia, Egypt and Lebanon. The EU has long supported the coast guard in Libya, for example.

The EU-Turkey Readmission Agreement from 2014,⁸ which continues to form the basis of the EU's migration policy, should be highlighted at this point. A brief look at its content: Illegal migrants who make their way to Greece are returned to Turkey. According to the so-called one-to-one principle, for every returned illegal migrant, a legal migrant is to be brought from Turkey to the territory of the EU and distributed there.

The legal problems of this readmission agreement are obvious: due to the complete “sealing off” of the Greek border and so-called chain deportations from Turkey – for example to Syria – there are violations of the two so-called *refoulement*, which have already been discussed in the article.

8. So-called Numerical Upper Limits, Quotas and Contingents

The most radical proposal for stemming the influx of refugees into Europe is the introduction of so-called numerical upper limits for refugees. However, it is not entirely clear what this means: should the entry of migrants be limited by imposing certain quotas or contingents? Or – in the case of uncontrolled entry – should the scope of refugee protection be limited in terms of content, for example by only granting residence rights for a limited period of time or by shortening the legal status of persons with a right of residence?

The reason for this proposal is obvious to everyone: The absorption capacity of every society is exhausted at some point! In Germany, the proponents of this proposal assume a so-called numerical upper limit of 200,000 migrants per year.

⁸ Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation, OJ L 134, 7.5.2014, 3–27.

Question: Legally permissible?

No! – Neither the European Convention on Human Rights nor the UN Convention Relating to the Status of Refugees of July 1951 contain – say the experts – a so-called general reservation of capacity or even a so-called fiscal reservation of capacity. These international treaties therefore do not permit such a radical measure. They would first have to be amended before so-called numerical upper limits could be introduced.

V. The Relevance of my Remarks for Georgia

What the above-mentioned remarks have to do with Georgia?

1. Georgia as a Safe Country of Origin and the Readmission Agreement of December 2023

Georgia has been on Germany's list of safe countries of origin since December 2023. In 2023, the recognition rate for asylum applications from Georgian nationals was a low 0.3 percent. 12 percent of all rejected asylum applications came from Georgia. Because – in the opinion of the German legislator – generally people from Georgia did not have to fear political persecution in their country of origin during this time (!), the country in 2023 was classified as a safe country of origin.

At the same time, Germany and Georgia signed a readmission agreement in December 2023. The importance of such agreements have already been pointed out.

A German Court has now criticized this official German line because the breakaway regions of Abkhazia and South Ossetia are not safe in the courts mind.

2. Georgia as a so-called Host Country

Since the military intervention in the Ukraine, Georgia has become a gathering place for refugees.

The start of the conflict in February 2022 led to a wave of emigration from the Russian Federation to the South Caucasus, particularly to Geor-

gia. After a partial military mobilization in September 2022, many Russian citizens left their homeland – for fear of the borders being closed, call-up for military service, etc. More than 100,000 – mostly young – Russians are currently believed to be living in Georgia. Surveys have shown that many immigrant Russian citizens only see Georgia as a transit country for further emigration to Europe or the United States of America. Such an outflow of Russian migrants from Georgia could already be observed at the end of 2023.

A second large group of migrants are Ukrainians. Since February 2022, more than 240,000 Ukrainian nationals have fled to Georgia. According to the authorities, 26,000 Ukrainians still live there. The legal residence situation for both groups of migrants is currently comfortable: Russian nationals do not require a visa to enter Georgia. Ukrainians are allowed to stay in Georgia for two years without a visa.

Should these residence rights end at some point, Georgia will have to comply with all the legal requirements that were described in the article. As a reminder: Georgia has signed both the European Convention on Human Rights and the UN Convention Relating to the Status of Refugees of July 1951.

VI. A Special Problem: Conscientious Objection and Desertion from Military Service as Reasons for Asylum

Asylum applications based on conscientious objection and desertion from military service are playing an increasingly important role in the so-called host countries.

A few general remarks to begin with: Under international law, states may require their nationals to perform military service! They are allowed to do so. They may also make refusal to do so a criminal offense. At the same time, however, states must offer the possibility of conscientious objection to military service and the possibility of a performance of non-military alternative service. Article 9 of the European Convention on Human Rights obliges them to do so; this includes a human right to conscientious objection to military service. To avoid any misunderstanding: such a right cannot be asserted against the so-called host countries, as it is not the host states

that demand military service. Conscientious objectors and deserters from military service can therefore only receive protection in the so-called host countries by being recognized as persons entitled to asylum.

The question is: Are such circumstances relevant to asylum? – This must be examined on a case-by-case basis!

First of all, the reasons for the refusal of military service must be examined: If conscientious objection is based solely on fear of combat and not on any inner conviction, it has no significance for asylum recognition. A conscientious objection exists, however, if someone is a pacifist and rejects any use of armed force. Conscientious objection may also be merely “situational” and be limited to specific conflicts without generally rejecting the use of armed force. In such cases, it must always be taken into account that the country of origin often assumes that the refusal to participate in acts of war is based on a certain political conviction: The governments in the states of origin regularly see this as a demonstration of politically justified rejection of their military interventions! I know very well from my own experience how difficult it is to “examine one’s conscience”: as an administrative court judge in Germany, I had to judge around 80 cases of German conscientious objectors.

The aforementioned “examination of conscience” is followed by the question of what consequences the objectors would face if they were to return to their country of origin. Are these – punishment or non-military alternative service – disproportionately harsh, violating international law, or can they be accepted as meaningless?

What is the current position of the courts in Germany? They are very careful! – In their case law, they take into account the relevant EU Qualification Directive from 2011,⁹ according to Article 9 of which conscientious objectors and deserters from military service must be classified as

⁹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ L 337, 20.12.2011, 9–26.

refugees in the host country in the event of a war deemed by the United Nations to be in violation of international law! However, German courts currently often doubt that such persons were actually deployed in a war if the refusal of military service took place before the start of the war. This connection must be made credible in the asylum procedure. However, even if these individuals can provide proof of their call-up for military service, German courts often do not consider their deployment in a war to be sufficiently probable; the hurdles here are very high. It is also unclear how German courts will deal in future with the case law of the European Court of Human Rights in Strasbourg, according to which at least an attempt must have been made in the country of origin to apply for conscientious objection. However, such a request is often not possible in practice if the situation escalates.

VII. Conclusion

The overview of the current concepts of European migration policy that have been discussed was naturally only a sketch; it could be expanded on in legal terms in many places. However, even these brief remarks show that the European states want to counter the influx of refugees primarily with restrictions that relate to their territory: expulsion and refusal of entry. Here, however, the so-called *refoulement* prohibitions of the European Convention on Human Rights (Article 3) and the UN Convention Relating to the Status of Refugees of July 1951 (Article 33) pose legal “barriers” that are almost impossible to overcome. There is universal consensus that the massive immigration of illegal migrants must be slowed down. This has obviously also been recognized by the European Court of Human Rights in Strasbourg, which takes the pressure under which the so-called host countries are seriously and is therefore gradually softening its case law.