



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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THE PROTECTION OF MIGRANT RIGHTS IN EUROPE

Round-Table with human rights defenders
organised by the Office of the Council of Europe Commissioner for Human Rights
Paris, 5 October 2012

REPORT

Introduction

1. The Office of the Commissioner for Human Rights of the Council of Europe (“the Commissioner”) organised a Round-Table with human rights defenders on the protection of migrant rights in Europe, on 5 October 2012 in Paris.
2. The Round-Table gathered 19 human rights defenders from 15 Council of Europe member states, who carry out prominent work in the area of migration, as well as representatives of the Office of the Commissioner.
3. The event provided an opportunity to discuss a number of specific issues related to the human rights of migrants (including migrant workers, refugees and asylum-seekers) and to assess the situation of human rights defenders working in this field, as well as their work environment. The Round-Table contributed to reinforcing links and co-operation between human rights defenders and the Commissioner.
4. The main themes discussed concerned the detention of migrants, the integration of migrants from a human rights perspective, and the situation of human rights defenders protecting migrant rights. The present report provides a concise summary of the trends identified during the discussions in relation to these themes.
5. The discussions were meant to help the Commissioner and his Office to further develop their work in the area of migration and in supporting the work of human rights defenders, in particular those in a difficult situation.
6. The Commissioner wishes to express his sincere gratitude to those who participated in this Round-Table and made valuable contributions from their professional experience and fields of expertise.

I. Detention of migrants

7. Participants of the round-table extensively discussed the detention of migrants, including asylum-seekers, assessing the conditions, purpose and impact of detention, as well as its legality and the alternatives thereto.
8. Although states are not prohibited from detaining irregular migrants in certain situations, their power to detain is limited and they must protect the rights of those detained in compliance with international and European human rights standards. The European Court of Human Rights (ECtHR) has developed an extensive [case-law](#) concerning the human rights of migrants and the [European Committee for the Prevention of Torture](#) has elaborated standards on the safeguards for migrants deprived of their liberty.
9. According to these standards, detention orders should be subject to judicial review. Detained migrants should be kept in special facilities, separately from accused or convicted prisoners. Standards also provide for the right of access to a lawyer and a medical doctor, the possibility to inform a relative or other person of the detainee’s choice about the detention measure, the recourse to the services of an interpreter and the possibility of maintaining meaningful contact with the outside world. Restrictions of movement of detained migrants should be kept to a minimum.¹

¹ See the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 20 Years of Combating Torture: [19th General Report](#); Parliamentary Assembly of the Council of Europe, [Resolution 1509 \(2006\)](#), [Human rights of irregular migrants](#).

10. The Commissioner has often addressed the human rights challenges arising from the detention of migrants, including the violations of the principle of non-detention of asylum-seekers; detention as a major factor of the criminalisation of migration; substandard detention conditions; lack of access to judicial review, and ineffective access to asylum procedures.²
11. Participants noted with concern the degrading conditions of migrant detention. In several Council of Europe member states administrative detention is used in respect of migrants. However, this measure is not adequately framed and therefore is not conducive to ensuring humane conditions of deprivation of liberty. Administrative detention usually bears weaker human rights safeguards than criminal detention, such as the lack of automatic judicial review of the detention process. Facilities for migrants under administrative detention are designed for shorter detention periods, and material conditions in such places are not adequate for persons being kept for several months or years (e.g. in Russia where detention of migrants can go up to two years). The situation in transit zones situated at entry points of European Union (EU) countries, where migrants who have been refused entry are being kept, is particularly difficult.
12. Torture and other forms of ill-treatment in the course of migrant detention have been documented and reported in several member states of the Council of Europe. In some countries, there have been cases of sexual abuse of detained migrant women by police officials. Access to an effective remedy and to healthcare remains difficult, compounding difficulties for the victims of such abuse.
13. Major impediments to challenging detention, as well as the lack of access to an effective remedy in cases of torture and other forms of ill-treatment raise further human rights-related questions. Legal procedures to challenge detention can be very complicated and are even more difficult to pursue in situations where migrants have been subjected to torture or other forms of ill-treatment. In these cases it is all the more necessary that migrants are assisted throughout legal procedures. The absence of adequate interpretation opportunities is one of the major deficiencies encountered by migrants in these cases. In Cyprus, for example, migrants willing to challenge a decision on detention need to engage into complex proceedings at different instances. Human rights defenders identified shortcomings in the judicial review of detention, which on certain occasions is formalistic and superficial.
14. In the majority of the concerned countries, there is a real problem of accessing legal aid and judicial representation for migrants in detention. In some states, detained foreign nationals are not entitled to benefit from state-funded legal aid and most of the legal assistance is ensured by NGOs and international organisations such as UNHCR. However, these organisations are not able to reach out to all those who need assistance.
15. The results of the monitoring conducted by human rights defenders point to the fact that the length of detention has increased over the years, also due to the 2008 EU "Returns Directive"³ which allows for detention of up to 18 months. In the case of the United Kingdom, there is no time-limit on the length of detention in removal centres. However, lengthy detention periods appear to be ineffective, as they do not serve the purpose of removal of irregular migrants. Human rights defenders noted that statistically, removal most frequently occurs within the first 15 days, or at the latest within the first month of detention. In many cases, although the removal is not possible (e.g. due to the lack of migrants' identification documents, lack of contacts or co-operation with the country of migrant origin, and/or insufficient resources to carry out the removal), the detention of the concerned person continues. This raises the issue of absence of purpose and justification for prolonged detention, which challenges its lawfulness. It appears that detention is used by the authorities as a deterrent for irregular migration. However, this policy does not seem to work, as migration flows persist.

² See the [thematic webpage of the Commissioner on human rights of immigrants, refugees and asylum-seekers](#).

³ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

16. The detention of minor migrants remains a particularly problematic area. Families with children as well as unaccompanied minors are often held in inadequate premises and conditions, sometimes for lengthy periods. In some cases minors are held together with and under the same regime as adults either because of mistakes or delays in the age assessment process, or because the authorities do not apply this distinction in practice, particularly in transit zones at borders. Despite all the shortcomings mentioned with regard to the detention of migrants, there is an increase in the number of detained migrants and in the detention capacity in the member states of the Council of Europe. Unfortunately, the detention of migrants has become a key tool in managing migration. The fact that in many countries detention is a quasi-automatic answer to irregular migration undermines the application of alternative measures aiming at a more effective and humane handling of irregular migration. Detention also often obstructs the submission of applications by those seeking asylum. In some cases, detention decisions and deportation orders are issued in respect of persons who express their wish to submit an application for asylum.
17. One major deficiency identified in the asylum systems of many European countries is the absence of legislation and policies providing for alternative measures to detention. Some of the alternative measures used in Council of Europe member states are the registration of migrants who are subsequently provided with official documents and required to report periodically to the relevant authorities; the deposit of documents; the assignment of guarantors who take responsibility for the non-absconding of migrants; house arrest; electronic monitoring; placement in an open-type collective accommodation; and individual case management (supervised release), where case managers establish a personal rapport with the migrants and assist in finding adequate solutions to their situation. Certain human rights defenders expressed caution towards alternatives to detention which, in practice, may well turn into alternative forms of detention (such as house arrest). There is also a risk that the application of alternatives becomes too broad, being extended even to migrants who would not otherwise be subject to detention. Individual case management appears to be the alternative favoured by human rights defenders, as it allows the participation of the concerned migrants in finding personalised solutions for their particular situation.
18. National human rights structures, including ombudspersons, are in some countries actively involved in work concerning migration-related issues. However, their impact is limited by the fact that authorities do not always give enough attention to the findings and recommendations presented by these institutions. Additionally, the decreasing resources and the reforms affecting national human rights structures may also undermine their efficiency. It is important that national human rights structures include work related to the human rights of migrants in their activities, including the regular monitoring of detention places where migrants are held.
19. The access of human rights defenders to detention places for migrants remains problematic. Regular scrutiny and oversight of the conditions of detention and the treatment of those detained may therefore be difficult. This lack of transparency, as well as the lack of clarity and consistency concerning rules in detention centres does not favour the dissemination of information on the detention conditions of migrants. The public has little information about the conditions in these detention places, and consequently has a limited understanding of the situation of migrants and of the hardship they face. Instead, they are widely considered as breaching the law, a perception which contributes to the stereotyping of migrants as criminals.

II. Integration of migrants from a human rights perspective

20. Politicians, authorities and the public should see migrants first of all as human beings who have legitimate needs and human rights. It seems that the collective memory of migration is vanishing and that people forget how societies have changed through this process. Unfortunately, integration tends to be seen only as a one-way process involving the assimilation of migrants into the host country's society and culture. Integration should also be seen as allowing for a plurality of cultures, in a society that provides equal access and opportunities. Access to suitable accommodation, employment, health, education and social assistance is essential for migrants to live in dignity. The possibility to learn the language of the host country through free-of-charge programmes and the opportunity to bring family members over are also important factors in the

successful integration of migrants. This in turn enhances migrants' contribution to the societies they live in. Unfortunately, migrants are expected to integrate while they face enormous challenges in accessing social, economic, civil, political and cultural rights. In reality, the responsibility to integrate in the host society mainly lies with the migrants themselves, who are required to fulfil several conditions, sometimes embodied in a sort of contract with the state, if they want to have a chance to stay.

21. Concretely, there are instances of restricted access to the job market for migrants who may only be allowed to work in sectors where there is a shortage of candidates or for migrants with a low level of qualification. Access to healthcare remains complicated and migrants face difficulties to get coverage from existing schemes.
22. Too often, migrants are portrayed negatively in the public discourse, as a threat to national security and identity, with little consideration for individual situations and realities. The rise of xenophobic and racist tendencies in many member states of the Council of Europe impacts heavily on the situation of migrants and undermines their chances to integrate. Prejudiced discourse about migrants has been increasingly used politically since the outbreak of the economic crisis in many European states. Human rights defenders face difficulties in reversing this tendency and in disseminating a human rights-oriented discourse on migration, including via the media.
23. In many countries migrants are perceived as temporary residents who are not meant to stay. Integration may be difficult even for migrants legally residing in a country. In Malta, migrants face restrictions in obtaining long-term residence or in bringing family members over. In Greece, many migrants have lost their documentation in the past years while they have been living in the country for a long time. This certainly weakens the prospect of their integration and can even result in their detention and removal from the country. The acquisition of a legal status for migrants can be challenging and opportunities for regularisation remain scarce in many countries. In Turkey the authorities only recognise refugee status in respect of persons originating from Europe, which leaves out a significant part of migrants present in the country. Many do not obtain a residence permit and work sporadically, without a contract. In these conditions family reunification and integration remain illusory. In Italy, the situation of Roma from the former Yugoslavia, who have no identity documents from their countries of origin and are, however, not recognised as stateless persons by Italy, raises serious concerns.
24. Most of the participants concluded that there was no consistent integration policy at the national level in their countries. In Italy for example, the devising and implementation of integration measures are left to local communities or civil society actors, as well as to projects funded by the European Refugee Fund or the European Integration Fund. Authorities put the emphasis on conditions that migrants have to fulfil, even before their arrival (e.g. mastering the language of the host country, securing a work contract, etc.) and do not implement genuine integration measures.
25. Family reunification remains one of the main factors of immigration to Council of Europe member states. It is an important element that contributes to the integration of migrants and to social cohesion. However, the conditions of family reunification are not encouraging, especially for migrants originating from non-European countries. Some categories of migrants (e.g. refugees or other migrants originating from specific countries) are not allowed to bring their family members over. Difficulties with respect to family reunification and acquisition of citizenship for family members of EU nationals, mainly as concerns foreign spouses, are reported in some countries, like the Czech Republic and Cyprus.

26. The family reunification process proves to be lengthy, costly and cumbersome. The 2003 EU Directive on the right to family reunification⁴ and national laws define which categories of migrants are entitled to family reunification, the family members who are eligible for reunification (e.g. children over 12 years may be barred from benefitting from family reunification provisions), and the requirements to exercise the right to family reunification (e.g. legal residence, adequate accommodation, health insurance, sufficient resources, level of integration, etc.). The definition of family members is sometimes the object of restrictive interpretation and DNA testing may be applied to verify a biological relationship between family members. In some cases, only certain categories of migrants are allowed to bring family members over.
27. Family reunification can take several years, as the procedures are complicated and the communication and co-operation with consular authorities in the countries of origin of family members can be difficult, e.g. in respect of checking the identity of the applicants for the purpose of obtaining visas. The process can also be costly because of the paperwork involved, the length of procedures and the obligation to demonstrate a sufficient level of resources to bring family members over. There is also a need to provide assistance after family members have arrived. However, this is undertaken very rarely by the authorities. Impediments to family reunification seriously undermine the integration of migrants who are sometimes established already for a long time in the host country.
28. Migrant women may be in an especially vulnerable situation, as they experience more difficulties in accessing complaints procedures and effective remedies. Migrant women who are victims of violence or other abuse, perpetrated by their family members or by other persons, may be reluctant to complain because of their irregular situation, isolation, fear of retaliation by abusers and insufficient information concerning their rights. A lack of resources, including shelters, for reaching out to victims and combatting abuse further compounds these shortcomings. Muslim women wearing full face-covering veils are targeted in France and Belgium with disproportionate sanctions; the so-called burqa laws isolate women instead of contributing to their integration.⁵ Human rights defenders noted that Muslim migrants are especially targeted by racist attacks and discriminatory treatment both by state and non-state actors.
29. Another vulnerable group are the victims of trafficking in human beings. In Italy, for example, victims of trafficking are entitled to social protection under the law and NGOs act in co-operation with the authorities to assist in the rehabilitation of these victims. However, in many other countries, victims of trafficking may not benefit from protection or assistance; they can even be targeted by the authorities and be treated as criminals. In Greece, (trafficked) foreign women forced into sexual exploitation have been considered by the authorities as a threat to public health, and subjected to arrest and deportation. In countries of origin, such as Ukraine, more needs to be done to assist victims of trafficking returning to the country.

III. The situation of human rights defenders protecting migrant rights

30. Participants discussed the obstacles that human rights defenders and lawyers face while carrying out their work in promoting and protecting the human rights of migrants. These obstacles range from defamation campaigns, verbal and physical attacks, on-line threats, legal restrictions and administrative sanctions to judicial harassment. Country-specific, as well as individual cases were presented by the human rights defenders participating in the round-table.
31. In some instances, human rights defenders are the targets of severe attacks because of their work. In Russia, serious abuses against defenders, sometimes having fatal consequences, have been reported. The difficult working environment for human rights defenders and organisations in Russia, characterised by legal restrictions (specific concerns have been expressed about the recent amendments to the law on non-commercial organisations which pose further impediments

⁴ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

⁵ See the Commissioner's Human Rights Comment, [Penalising women who wear the burqa does not liberate them](#), July 2011.

to NGO work, including in terms of access to funding), intimidation and lack of protection by the state authorities, is compounded by threats and attacks from extremist and far-right groups against foreigners and those defending them. It is important that the authorities ensure effective investigations into alleged abuses, capable of leading to the identification and adequate punishment of perpetrators. Considering the importance of hate crimes targeting foreigners, including migrants and minorities, more should be done by the authorities to combat this phenomenon.

32. The situation in Greece raises serious concerns for several years already, as there were a number of reports of migrants and their lawyers being verbally and physically attacked, notably in the context of the rise of the neo-Nazi party “Golden Dawn” and of racist violence, especially in Athens. There is a palpable atmosphere of fear prevailing among migrants and human rights defenders. There have been reports that the police displayed tolerance and inaction in the face of these attacks, reportedly indicative of a connection between the police and radical groups. The Greek authorities must step up their efforts to combat hate crimes, including those affecting human rights defenders.⁶
33. In France, legal provisions, known as “délit de solidarité” (the offence of solidarity),⁷ have been used to criminalise the facilitation, through direct or indirect assistance, of unauthorised entry, circulation and residence of irregular migrants. This was in line with the 2002 Directive on the facilitation of unauthorised entry, transit and residence of foreigners,⁸ which calls on EU member states to impose sanctions on persons involved in the above-mentioned activities in breach of the national legislation, with the exception of those providing humanitarian assistance. In this context, relatives of migrants and those providing urgent humanitarian assistance to migrants in danger were exempted from criminal charges. According to the French legislation in force at the time of the Round-Table, the penalty could go up to a 30 000 euro fine or five years of imprisonment.
34. On several occasions, human rights defenders and persons providing assistance to irregular migrants or calling attention to violations of their human rights have been pressured, detained and prosecuted by law enforcement bodies. Harassment against persons opposing the degrading treatment of migrants about to be deported by air has been reported, for example, in France and in Belgium in the past years. In some cases, persons convicted under the “offence of solidarity” have been ordered to pay a fine. It also happened that those helping migrants have been questioned by the police or placed in custody and released afterwards. Specific concerns were raised about the intimidation and abuse of human rights defenders working with migrants in Calais and the island of Mayotte. In Belgium, it appears that defenders of migrants’ rights are also targeted by legal provisions similar to the French “offence of solidarity”.
35. Many human rights defenders underlined the opacity of the migrant detention system and the difficulties they have to access these places of deprivation of liberty, including those which are not officially designated as such. This prevents defenders to monitor the human rights situation in these places and to assist migrants in need. In Italy, there has been a past good practice to conduct joint visits of all detention centres for migrants with the participation of government officials and civil society representatives. The recommendations that were published following these visits contributed to the improvement of the conditions in these centres, while others have been closed as a result.
36. Some human rights defenders referred to attempts from the state authorities to control activities of human rights defenders dealing with rights of migrants (e.g. surveillance from security services and law enforcement bodies, restrictions in accessing funding, or reporting to the police).

⁶ See the Commissioner’s [press release](#) issued at the end of his visit to Greece, 1 February 2013.

⁷ In December 2012, the French National Assembly amended the legislation in order to exempt from criminal liability persons and organisations providing assistance to irregular migrants in a non-profit context.

⁸ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence.

37. Human rights defenders pointed to the important role of solidarity and networks assisting them in dealing with difficult situations. For example, international migrant NGO networks like Migreurop and PICUM are active in raising awareness on cases of defenders who have been attacked or harassed. Regional and national networks of human rights defenders are also effective, especially in providing concrete help and protection on the ground.
38. International and European structures also support the work of human rights defenders and engage in a dialogue with concerned member states when defenders face obstacles. Some participants expressed the opinion that the EU should raise and follow cases of human rights defenders facing problems in its member states.
39. At the end of the discussions, the Commissioner thanked the human rights defenders who took part in the Round-Table. He underlined that the information exchanged and the trends put forward constitute a useful input for his future work. He concluded by stating that he would take the outcome of the Round-Table into account in the course of his country work and thematic work.