

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Recommendation Rec (2001)18 of the Committee of Ministers to member states on subsidiary protection

*(Adopted by the Committee of Ministers on 27 November 2001
at the 774th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling the 1950 Convention on the Protection of Human Rights and Fundamental Freedoms, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and other relevant international instruments, namely the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Convention on the Rights of the Child, the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights;

Affirming that persons in need of international protection must be able to seek and enjoy such protection with full respect to their fundamental human rights and dignity;

Considering that not all persons with international protection needs are covered by a full application of the 1951 Convention and its 1967 Protocol and that such persons should be given adequate treatment;

Stressing that protection measures, subsidiary to those enshrined in the 1951 Convention and its 1967 Protocol, should be implemented in such a manner that these measures do not undermine but complement the existing refugee protection regime;

Underlining that the availability of subsidiary protection must not prejudice the right of persons to apply for refugee status and that nothing in this recommendation shall be interpreted as restricting or adversely affecting the rights of persons as recognised by international law, in particular by the 1951 Convention, its 1967 Protocol and by national legislation and practice;

Bearing in mind the functions of the Office of the United Nations High Commissioner for Refugees (UNHCR) under Article 35 of the 1951 Convention Relating to the Status of Refugees

and its extended mandate stipulated by various resolutions of the United Nations General Assembly;

Considering that subsidiary protection is a category of individual protection as opposed to the concept of temporary protection which, as defined by Recommendation No. R (2000) 9 of the Committee of Ministers, is an exceptional practical measure, limited in time, applicable as such in situations of massive and sudden influx;

Calling on member states, in which legislative and administrative mechanisms do not exist for granting subsidiary protection to persons in need of international protection but who are not covered by the 1951 Convention and its 1967 Protocol, to introduce such mechanisms, either by legislation or practice,

Adopts the following recommendations:

1. Subsidiary protection should be granted by member states to a person who, on the basis of a decision taken individually by the competent authorities, does not fulfil the criteria for refugee status under the 1951 Convention and its 1967 Protocol but is found to be in need of international protection:

— because that person faces a risk of torture or inhuman or degrading treatment or punishment in his/her country of origin; or

— because that person has been forced to flee or remain outside his/her country of origin as a result of a threat to his/her life, security or liberty, for reasons of indiscriminate violence, arising from situations such as armed conflict; or

— for other reasons recognised by the legislation or practice of the member state

and therefore cannot be returned to the country of origin.

Procedures

2. All possible protection grounds should preferably be considered in a single procedure. If there is an application for refugee status, that should be examined first.

3. When considering the cessation of, and exclusion from, subsidiary protection, member states should be fully aware of the absolute character of Article 3 of the European Convention on Human Rights and other relevant human rights instruments. Such cases should be decided individually in an objective and non-arbitrary manner.

4. Provisions incorporated in Recommendation No. R (81) 16 of the Committee of Ministers on the harmonisation of national procedures relating to asylum and in Conclusion 8 (XXVIII) of the Executive Committee of the UNHCR (EXCOM) on the determination of refugee status, should, as far as possible, be applied by member states when deciding on the granting of subsidiary protection.

Minimum standards of treatment

5. Host member states should ensure that beneficiaries of subsidiary protection enjoy a legal status and that therefore, in particular, they:

- are issued with documents certifying their legal status;
- are issued, in conformity with national law, with a travel document if the beneficiary has no access to such a document issued by the authorities of the country of origin;
- enjoy freedom of movement within the territory of the host state, restricted only by - interests of national security or public order;
- have access to courts and administrative authorities;
- enjoy basic social and economic rights, in particular, access to housing, legal means of subsistence (access to social benefits or to the labour market), basic healthcare and, as appropriate, education or training.

6. For family reunion of beneficiaries of subsidiary protection, the provisions of Recommendation No. R (99) 23 of the Committee of Ministers on family reunion for refugees and other persons in need of international protection apply.

7. If the stay of beneficiaries of subsidiary protection in the host country is prolonged due to the continuation of conditions on which subsidiary protection is based under paragraph 1, member states should consider the granting of a long-term residence permit to such beneficiaries, in particular when their stay exceeds five years.