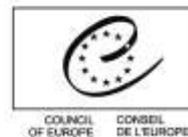




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**Refugee Protection, Migration and Human Rights in Europe:
Notes from the field**

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Thank you for inviting me to give this lecture on a subject that has been central to my work since I started my mandate as Council of Europe Commissioner for Human Rights.

First, I would like to share with you some of my findings and conclusions concerning the situation of Syrian refugees in Europe.

In 2013 I encountered Syrian refugees regularly during various country visits. In October I travelled to a conference in Yerevan and I visited a refugee accommodation centre inhabited by several hundred Syrian-Armenians. Attending another conference in November in Belgrade, I went to a refugee accommodation centre where I also met some Syrian asylum seekers. On a country visit to Denmark in November, I met entire Syrian families in a refugee reception centre.

On the heels of these visits, last December I carried out a “thematic mission”, following the route taken by many Syrian refugees who come to Europe. I decided to examine more closely the human rights situation of Syrian refugees in certain Council of Europe countries – their right to seek asylum, the conditions of their reception or detention, and the prohibition on their collective expulsion or *refoulement*.

I started my journey in Turkey, in two large refugee camps, one only three kilometres from the border with Syria. I continued to Bulgaria, which has become a major point of entry into the European Union for Syrian and other asylum-seekers, where I visited a reception centre and a pre-deportation facility. I concluded the mission in Germany, where I visited a reception centre in Friedland. I had the opportunity to speak at length with many of the refugees, including several families with children, and learn about their stories, their current needs, and their hopes for the future.

In spite of the size and proximity of this human tragedy, Turkey is the only member state of the Council of Europe to have opened its arms fully to Syrians in need, having received alone an estimated 1 million. This amounts to well over ten times the number of Syrians in all other 46 Council of Europe member states combined. The Turkish authorities have been very generous, providing lodging for more than 200 000 Syrians in 21 camps, free medical care and education to children and adults, as well as a significant monthly cash support to all in the camps. However, despite the huge costs borne by the Turkish government, international assistance has not been particularly forthcoming – last year, only less than a third of the amount requested by UNHCR in its refugee response plan for Turkey was funded.

Amongst the EU member states, Germany is doing the most, having pledged to receive 10 000 Syrians through a humanitarian admission programme, in addition to more than 18 000 Syrian refugees who have already found their way to the country. Sweden has also accepted more than 21 000 Syrians by last year, granting them all permanent residence permits. This should be seen, however, in a broader context in which other EU countries have accepted several dozen or at most

several hundred Syrian refugees under humanitarian admission or resettlement programmes – pitifully small numbers given the overall figure of close to 2.5 million Syrians who are hosted by Syria's neighbouring countries.

All other European countries are failing to meet the challenges arising from this crisis. Countries in the Western Balkans and in Eastern Europe have thus far seen themselves as countries of transit with no real “interest” in stepping up their efforts in protecting Syrian refugees. Several European states have shamefully low recognition rates for Syrian asylum seekers, ranging from zero to just a few per year. In the worst cases, credible reports suggest that border guards and other law enforcement officers in some countries have been mistreating Syrians, robbing them, and pushing them back to the most exposed countries.

My findings on the ground strengthened my conviction that European states can and must do much more to live up to their obligation to protect Syrian refugees. Europe's extremely poor reply to what is today the world's biggest humanitarian crisis and Europe's biggest refugee crisis in 20 years is disheartening. However, the conflict in Syria goes on and refugees will continue to seek protection in Europe. In response, Europe should keep its borders open to them and help them rebuild their lives. I would like to turn now to a broader discussion concerning the difficulties faced in general by irregular migrants, including asylum seekers, coming to Europe. One of the biggest problems is the scarcity of legal venues to enter Europe. Particularly since the onset of the economic crisis, Europe has become increasingly difficult to reach. Its border and immigration control strategies and measures have become more and more restrictive and sophisticated. Some countries also took very blunt measures such as building walls or fences to prevent migrants from entering their territories. There have also been serious allegations of denied rescue, “push-backs” and ill-treatment of migrants – often resulting in deaths - taking place in particular in the Mediterranean. For many migrants, Europe remains a dream destination which turns into a nightmare as soon as they set sail.

Following the tragic deaths of migrants near Lampedusa last year, there was hope that Europe will finally make a new start. Yet similar tragic incidents happened again in the Mediterranean, and I am not aware of any concrete case in which those responsible for the harm or deaths caused to migrants at sea have been held accountable. The indifference to the fate of those who so desperately need protection is harrowing.

I would also like to say a few words about those migrants who eventually reach Europe. For them, this is only the beginning of another series of perils and hardship. Criminalisation is the first, together with its corollary – detention.

Criminalisation by itself is a reflection of how Europe continues to associate migrants with security concerns. This approach is reflected also in the language used in respect of irregular migrants. It is worrying that the language of criminalisation has been adopted at EU level and is employed in EU migration-related legislation, such as the 2008 “Return Directive”. The European Commission decided not so long ago to abandon the use of the terms “illegal migrant” and “illegal migration”. This is a welcome change which should be followed by other EU institutions and should eventually trigger the banishing of these terms from legislation or other public documents, both at EU level and in its member states.

During my country visits in particular, I had the occasion to have a closer look as to how migrants' detention functions in Europe. The lack of adequate safeguards that should normally accompany detention is striking.

For example, during my recent visit to Denmark I discussed with the authorities about the lack of a provision in Danish legislation establishing the maximum length allowed for the detention of migrants. Also, last year, I initiated a dialogue with the French authorities, concerning the court hearings held off site in the administrative detention centre of Le Mesnil - Amelot and in the migrants' holding facility of Paris-Charles de Gaulle airport. The fact that these proceedings are held outside the ordinary courts of justice, near to, or on the premises of migrant detention facilities, can give credence to the idea that foreign nationals are not litigants like any other, that they are different.

This difference in legal safeguards, which are recognised to nationals, but denied to migrants, is symptomatic of a major flaw of the European immigration and asylum policies. Migrants are practically

being punished for being foreigners. European countries subject them to extraordinary measures which could not be envisaged in the case of citizens and could not be applied to them. It should not be forgotten that many migrants become irregular simply because they do not have an opportunity for regular entry into Europe. Punishing migrants for this lack of opportunity is wrong and inefficient. Much as it is traumatic, detention has not yet deterred migrants from coming, or returning to Europe.

Another challenge faced by those who reach Europe is the risk of “Dublin returns” to countries whose asylum systems are dysfunctional. At the end of my thematic visit concerning Syrian refugees last December I urged EU member states to refrain from using the “Dublin Regulation” for returning Syrian refugees to other European countries whose asylum systems are already overstretched or highly dysfunctional, in particular Bulgaria, Greece, Italy and Malta. Bulgaria was caught unprepared for the influx, and its staffing levels and reception conditions are woefully inadequate. Shortly after my visit, UNHCR came to a similar conclusion about “Dublin returns” to Bulgaria. I was glad to learn that on 5 February the Danish authorities announced their decision to suspend the return of asylum seekers to Bulgaria.

There are many other difficulties that migrants are forced to struggle with in Europe. I would like to stress here a particularly dangerous phenomenon, which poses a serious risk to migrants’ safety and dignity. In virtually all countries, irregular immigrants, asylum seekers and refugees are confronted with a raising wave of racist manifestations directed against them. Extremist groups and parties have made serious inroads in the political life of several European countries. They have been very virulent in spreading hatred and even rallying public support for violent attacks against migrants. During my visit to Greece last year some young Afghans told me about the violence and abuse they had suffered at the hands of members and supporters of the neo-Nazi political party “Golden Dawn”. Muslims in the United Kingdom – including those born and raised in the country – increasingly report feeling less safe as they face a spike in anti-Muslim hostility and aggression.

However, it would be mistaken to think that racism, prejudice and discrimination are directed only against migrants from other continents. They also affect migrants originating from European countries, in particular those from the Western Balkans and the new EU member states.

For example, visa liberalisation concerning the Western Balkan countries, in 2009 and 2010, has raised worries in a number of EU member states that nationals of those countries were “abusing” their freedom and were entering the EU for unwarranted periods of time, activities or reasons.

Although the numbers of migrants from Western Balkan states were not alarming, seen through the overall EU migration figures, these states have been pressured to reduce the number of their citizens applying for asylum in the EU under the penalty of seeing all their nationals subject to mandatory visa requirements.

In response to such pressure, some of the Western Balkan states have restricted the departure of their nationals, primarily Roma, whom they considered most likely to apply for asylum. Between 2009 and 2012, in “the former Yugoslav Republic of Macedonia” about 7 000 citizens of this state were not allowed to leave the country and the Macedonian authorities have regularly confiscated passports from those who have been returned to the country by EU member states. In December 2012 a new offence was introduced into the Serbian criminal code, making it harder for Serbians to seek asylum abroad.

However, the EU has not relaxed its approach to countries that benefit from visa-free travel. On 12 September 2013 the European Parliament adopted a visa waiver suspension mechanism to allow the EU to re-impose visa requirements in “emergency” situations, such as a sudden high inflow of irregular migrants or a sudden increase of rejected asylum applications from certain countries.

Recently, the issue of Roma migration, particularly from Romania and Bulgaria, has become a hot subject in the United Kingdom too. Terms such as “bomb”, “Gypsy (or Romanian, or Bulgarian) hoards”, and “benefit tourists” have been used in the media and by politicians, alarming the population by conjuring calamitous images of floods of destitute people rushing to take possession of riches that do not belong to them.

The same view of migrants as benefit profiteers was behind the campaigns that preceded the recent referendum in which Swiss citizens voted to reintroduce immigration quotas to that country from the European Union. This vote was preceded by a decision by the Switzerland not to lift restrictions to its labour market to Romanian and Bulgarian citizens as of January, when such restrictions were lifted throughout the EU. Not surprisingly, the Swiss vote was hailed by a number of political parties across other western European states, including France, Austria and the Netherlands, who see in this vote an example that their countries could follow for limiting the free movement of European citizens that they consider undesirable.

However, this debate, conducted on misleading grounds, needs to be placed back into its correct context, namely, the right of every person to leave a country. This is the third major point I would like to discuss today.

The right to leave a country is a fundamental right enshrined in major human rights documents such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. It is also found in the International Convention on the Elimination of All Forms of Racial Discrimination and in Article 2 of Protocol No. 4 to the European Convention on Human Rights (ECHR).

Practices such as ethnic profiling and measures taken to stem the migration of certain ethnic groups, in particular Roma, are contrary not only to this right, but also to the prohibition on discrimination provided for by Article 14 of the ECHR. The fact that state authorities suspect Roma of being more likely to leave in order to seek asylum can only reinforce concerns that these persons are indeed in need of international protection, as their human rights are not adequately protected in their home countries. The human rights problems which face Roma in many parts of Europe are fully evidenced by the judgments of the European Court of Human Rights, concerning a wide array of abuses. These include ill-treatment by law enforcement authorities, forced sterilisation of Roma women, forced evictions without the observance of legal safeguards, failure to investigate racist attacks on Roma and segregation in schools – to name just a few.

It is important to understand the critical relation between the right to leave a country and the right to seek and enjoy asylum. If people cannot leave one country they cannot seek protection in another. Another reality that needs to be acknowledged is that migrants work in Europe because their work and contribution are needed. I congratulate the University College London for its very comprehensive study on the fiscal consequences of migration to the UK from the eight central and eastern European countries that joined the EU in May 2004.¹ This research showed that those immigrants who arrived after the enlargement in 2004 and who were legally eligible to claim benefits were 60% less likely than natives to receive state benefits or tax credits, and 58% less likely to live in social housing. In each year, the immigrants from these new EU countries made a positive contribution to public finance because they had a higher labour force participation rate, paid proportionately more in indirect taxes, and made much lower use of benefits and public services.

Other recent research conducted on the same line on the consequences of unrestricted immigration from Romania and Bulgaria to Sweden also shows that the average net fiscal contribution in 2011 of Romanian and Bulgarian migrants who arrived in Sweden between 2007- 2010 was substantially positive, equalling one sixth of public sector turnover per capita.²

These and other similar studies serve to discredit the myth of the “benefit tourist” and should be widely used to counter populist claims and rhetoric based on racist ideology.

I would like to summarise by saying that it is essential for all European states to examine or re-examine their laws, policies and practices related to immigration and asylum.

¹ Christian Dustmann, Tommaso Frattini and Caroline Halls, Centre for Research and Analysis of Migration Department of Economics, University College London, [Assessing the Fiscal Costs and Benefits of A8 Migration to the UK](#), 2009.

² Joakim Ruist, Centre for Research and Analysis of Migration Department of Economics, University College London, [The fiscal consequences of unrestricted immigration from Romania and Bulgaria](#), 2014.

The Syrian refugee crisis shows the dire need for a shift in these policies. The response to more refugees should be more recognition and more equitable sharing of responsibilities, rather than more security measures.

It is also high time for Europe to dissociate migrants and their presence from emergency or extraordinary procedures and from criminal law.

European countries need to create lawful ways of entry for migrants and ensure adequate integration conditions for those who arrive. They need to fight racism directed against migrants and recognise the benefits of migration in an ageing continent.

Most importantly, European states must emphasise the protection of the human rights of all persons in Europe. The right to leave one's country must be ensured equally to European citizens and third country nationals and it must never be subject to restrictions motivated by racial discrimination.

I thank you for your attention and look forward to your questions.