



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



CommDH/Speech(2012)13
English only

Asylum and Human Rights: Trends and priorities for Action

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ECRE Annual General Conference
Dublin, 17 October 2012

In the present environment of political and social upheaval, as well as of economic hardship in countries all over the world, many people continue to try to reach Europe, seemingly a land of promises.

However, the current trends in the treatment of asylum seekers and refugees, as well as of other migrants, are less than encouraging.

The austerity policies put in place by a number of European governments leave little room for welcoming even those migrants who experience the most challenging difficulties.

While the strain put by the economic crisis on the receiving capacities of many countries is not contested, it is also quoted all too often as a cause and justification for the cold treatment meted out to migrants.

European states constantly challenge long-established principles concerning refugee protection with laws and practices aimed at deterring migratory inflows, including asylum seekers:

- As a first-line barrier, European countries are increasingly engaging in extensive border patrols.

The immigration and asylum policies of the EU have become intrinsically linked to the co-operation among its member states in border security issues and in their fight against terrorism and crime.

Under these policies, asylum seekers are not viewed as people who seek protection against threats to their life, integrity or freedom, but rather as a threat to European nations, that must be kept at bay.

- The language associated with migrants in general is thus one that persistently refers to threats to public security, order and health. In many countries, the consequences of this approach is the stigmatisation of migrants.

Where migrants are not criminalised and detained on that basis, they are subjected to administrative detention. Migrants are often detained in appalling conditions, without adequate access to quality asylum procedures, if needed, legal aid, healthcare or other basic services. Detained children are deprived of education and proper care.

- Moreover, national asylum authorities use the concept of “safe third countries” indiscriminately, even if there is substantial evidence showing that some of the countries considered safe fail to provide sufficient protection to asylum-seekers.

This practice creates heightened risks of *refoulement*, including chain *refoulement*, as in the case of returns of asylum-seekers to Serbia, followed by subsequent removal to countries considered by Serbia as safe - including Greece or countries that apply the death penalty.

- Accelerated procedures for applications deemed manifestly unfounded may also pose the risk of *refoulement*, as pointed out in the [Guidelines on human rights protection in the context of accelerated asylum procedures](#) adopted by the Council of Europe Committee of Ministers in 2009.

Even when such procedures do not directly lead to *refoulement*, they may cause a significant decrease in the number of applicants. An example of this is the 48-hour accelerated procedure introduced by Switzerland last August, which has already prompted several hundreds of applicants from the Western Balkans to leave Switzerland.

- Furthermore, certain re-admission agreements are entered into with countries that appear to fall short of their human rights obligations concerning migrants.

For instance, the EU-Ukraine readmission agreement which entered into force in January 2010 does not provide for mechanisms for the monitoring of treatment of immigrants and asylum seekers in Ukraine, despite the fact that many of those returned to Ukraine reportedly have suffered serious ill-treatment.

Italy has recently re-initiated discussions with Libya in view of reaching a new agreement on controlling irregular migration. This agreement will replace the one of 2009 that produced the “push-back policy” which was strongly criticised by the European Court of Human Rights in the [Hirsi Jamaa](#) judgment handed down last February.

The negotiations have been resumed while there is no real improvement in the protection against the abuses faced by asylum seekers returned to Libya.

- At the same time, some European countries have introduced measures that preclude certain categories of asylum seekers from acquiring refugee status.

For example, the amendment to the asylum law passed by the Swiss parliament in September excludes desertion from the army as a ground for granting refugee status. A

significant number of asylum-seekers fleeing conflicts, like the one in Syria, are already affected by this law.

- Other restrictive measures adopted by European states deprive asylum seekers of effective opportunities to challenge detention and deportation.
- In addition to this, European countries witness an alarming rise of racism and extremism. Extremist political parties have become a “fixture” of the political scene in many countries, gaining sufficient support to make their ways into national parliaments and the European Parliament.

We continue to witness open attacks on migrants perpetrated not only by extremist groups, but also by ordinary people who feel encouraged by the weak response or even the tacit approval by national authorities.

My priorities in the field of refugee protection stem from the need to address these worrying trends and to put high on European states’ agendas the human rights principles and standards by which they are bound.

1. My first priority is to enlarge my area of action in migration.

I shall continue to follow up on the situation in the Mediterranean, including the interceptions and rescue operations at sea.

According to UNHCR, 2011 had been the deadliest year in the Mediterranean area, with at least 1 500 people drowning or going missing while attempting to cross the sea.

The devastating consequences of the unwillingness of European countries to accept migrants have been exposed in [Resolution 1821 \(2011\) of the Parliamentary Assembly of the Council of Europe on the interception and rescue at sea of asylum seekers, refugees and irregular migrants](#), followed by the Resolution entitled "[Lives lost in the Mediterranean Sea: Who is responsible?](#)", adopted in April 2012.

In the first resolution the PACE has pointed out the inadequacy of the guarantees of respect for human rights in the context of the joint operations co-ordinated by Frontex.

The recent boat disaster at Izmir, of 6 September, which resulted in the death of 61 persons, including Syrian refugees and children, is yet another tragic example of how Europe’s efforts to protect its borders at all costs continue to defy humanitarian and human rights considerations.

According to UNHCR estimates, the death toll at sea among those attempting to make the journey from Lybia to Europe has reached some 170 people during the first six months of this year. Tragic incidents involving migrants coming from Libya continue to occur, with 54 persons having perished in July while attempting to reach Italy.

The loss of these lives should prompt European states to reconsider their relations with North African countries. In doing so, it is essential to recall the principle that the European Court of Human Rights made very clear: bilateral agreements do not

discharge states from their obligation to abide by the fundamental principle of *non-refoulement*.

The announced renegotiation of the bilateral agreement between Italy and Libya is to be regretted. [Libya](#) at the moment is not in a position to provide international protection to people in need thereof. It is not even bound by the UN Refugee Convention and no national legislation or administrative structures have been established to address matters of asylum.

Attention by European states should also be paid to avoiding similar violations when applying other agreements, such as the re-admission agreements with Egypt and Tunisia.

The situation of Syrian refugees represents in this context another issue of extreme concern. On 27 September the United Nations and its humanitarian aid partners presented a [second revised appeal](#) for extra funding to cover the humanitarian needs of approximately 700 000 Syrian refugees forecast by the end of the year.

Today the number of Syrians registered or awaiting registration as refugees in Jordan, Lebanon, Turkey and Iraq exceeds 300 000.

These countries continue to keep their borders open for Syrians fleeing violence. However, there have been signs that the populations and governments of the region are reaching a point of saturation. European countries must continue to demonstrate and enhance their solidarity with them.

At the same time, it is necessary to turn our attention to the new waves of migration affecting Eastern and Central European countries. These are no longer only transit countries, but are becoming increasingly destination countries.

Surveys conducted in these areas show worrying statistics of routine use of detention, falling recognition rates for both refugee status and for subsidiary protection, and racism and open violence against migrants.

In Eastern Europe, countries like Ukraine and Poland currently appear to deal with a manageable, albeit increasing inflow of migrants. However, Ukraine's low capacity of providing effective protection to refugees and Poland's low rates of recognition and limited integration assistance may lead to bigger crises in the future.

In the Western Balkans, Serbia is reported to rely on the "safe third country" concept in order to reject virtually all applications without an evaluation on the merits. Serbia has not granted refugee status since 2008, and has granted subsidiary protection in only five cases.

It is necessary to take immediate steps for the improvement of refugee protection in these regions in line with these countries' obligations under the UN Refugee Convention and the European Convention on Human Rights.

2. My second priority is the abolition of migrant detention and the promotion of alternatives.

The detention of migrants, including asylum seekers, upon arrival or when subject to removal in Council of Europe member states has increased substantially in recent years.

While the conditions of detention are of major concern, gaining better clarity on when detention may be legally justified is a matter of paramount importance on its own.

The Parliamentary Assembly of the Council of Europe in its Resolution 1707 (2010) set out the [10 guiding principles governing the circumstances in which the detention of asylum seekers and irregular migrants may be legally permissible](#), and reiterated that the grounds for immigration detention are limited by Article 5.1 (f) of the European Convention on Human Rights. Detention should be used only as a last resort, if less intrusive measures have been tried and found insufficient. Consequently, priority should be given to alternatives to migrant detention.

However, in most European countries there are no alternatives to detention and detention is indeed the first line of reception. This results in prolonged and needless deprivation of personal liberty, very often repeatedly.

The various alternative measures in use in the few countries that provide for alternatives should be explored and other countries should draw on good practices and develop their own system of alternatives.

It should be remembered, however, that alternatives to detention may lead to abuses. Measures such as house arrest or curfews can represent, in practice, alternative forms of detention, rather than alternatives to detention.

Care should be taken also that alternatives to detention do not become a measure imposed by default to all migrants, even to those for whom no reason for detention could be justified.

3. My third priority is to help European states in combating racism, xenophobia and intolerance.

I am very concerned at persistent reports indicating increasing xenophobia, intolerance and violence towards migrants, including beneficiaries of international protection, in many parts of Europe.

The criminalisation by states of irregular migration, and the corresponding vulnerability of migrants to exploitation and abusive working conditions is a major impediment to their integration.

Many European countries, even those with higher rates of acceptance, fail to ensure the integration of refugees, leaving them to fend for themselves.

During my recent visit to Italy I witnessed the shocking situation of the estimated 800 recognised refugees and other beneficiaries of international protection who occupy the so-called “Palace of Shame” in Rome.

The inhabitants of the “Palace” had received no official support towards their integration, the only help they received being from volunteers.

The government’s near lack of an integration policy for refugees and other beneficiaries of international protection, which relegates these persons to the margins of society, is a factor that feeds racism and xenophobia, which in turn exacerbates the social exclusion of these persons.

European countries should transpose, as soon as possible, the 2011 EU Directive amending the Long-Term Residents Directive, which enables refugees and other beneficiaries of international protection to acquire long-term resident status after five years of residence in a member state.

This may not only give refugees better opportunities to secure a dignified living, but may also help to dissipate their image as a temporary nuisance and foster their image as individuals and communities who actively contribute to the societies of their host countries over a long period of time.

The strengthening of the fight against racism and xenophobia is a precondition to the success of any effort to promote the integration of refugees.

In this context it is essential to systematically monitor and effectively sanction hate crimes against migrants, as well as to promote awareness raising and education to foster openness, understanding and acceptance of the otherness by the hosting societies.

Political leaders in all European countries have a key role to play in this domain and this is a fact that I keep recalling during my country visits and meetings with national authorities.

I am looking forward to enhancing my co-operation with all 47 member states of the Council of Europe, as well as with NGOs and international actors in order to address these priorities.