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Europe's "boat-people": mixed migration flows by sea into southern Europe

Reply to Recommendation¹: Recommendation 1850 (2008)
Committee of Ministers

1. The Committee of Ministers has given careful consideration to Parliamentary Assembly Recommendation 1850 (2008) on "Europe's "boat-people": mixed migration flows by sea into southern Europe", together with Resolution 1637 (2008). It has brought the recommendation to the attention of the governments of member states and has transmitted it to the relevant steering committees,² whose comments have been taken into account in this reply. The response of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is appended to this reply.

2. The Committee of Ministers shares the concerns of the Assembly regarding the situation of rising numbers of irregular migrants, refugees and asylum seekers arriving in southern Europe. It is also concerned at the related causes and implications, particularly for the most affected countries. In this respect, it recognises that the involvement of organised crime in international trafficking constitutes an aggravating factor.

3. The Committee of Ministers reaffirms the position outlined in the Action Plan adopted by the Third Summit of Heads of State and Government of the Council of Europe (Warsaw, May 2005) in this sector. The Council of Europe continues its efforts in developing and implementing policies on migration and the integration of regular migrants, particularly from and to member states but also from non-member states, that are founded on the principles of human rights, democracy and the rule of law, with a view to ensuring orderly migration, social cohesion and the respect of the individual.

4. The Committee of Ministers is aware that irregular migrants arriving by boat in certain member states, but also by land or by air, may be vulnerable, and that member states must ensure that holding centres function properly.

5. The Committee of Ministers has taken note of the proposal that guidelines be prepared for minimum standards to be applied to the detention of irregular migrants and asylum seekers. However, the Committee of Ministers has not, at the present time, reached a common position with regard to examining possibilities for Council of Europe action in this area. The Committee of Ministers underlines the importance of the relevant instruments of the Council of Europe, such as the European Convention on Human Rights and the recommendations adopted by the Committee of Ministers in this field (see paragraph 9 below), as well as those emerging from the work of the CPT and the Commissioner for Human Rights. It notes the ongoing work in the European Union in this field, including the revision under way of the 2003 directive laying down minimum standards for the reception of asylum seekers.

1. adopted at the 1081st meeting of the Ministers' Deputies (31 March 2010)

2. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Committee on Migration (CDMG), the Steering Committee for Human Rights (CDDH) and the European Committee on Legal Co-operation (CDCJ).



The Committee of Ministers will bear in mind the proposals outlined by the Assembly relating to co-operation and assistance programmes (paragraph 5.3), training (paragraph 5.4) and with regard to a round table to be organised with directors and high-ranking officials of such reception and holding centres (paragraph 5.2).

6. Particularly significant instruments in this field, also to be borne in mind in the framework of any possible activity in this area, include Committee of Ministers' Recommendation No. R (98) 13 of 18 September 1998 on the right of rejected asylum seekers to an effective remedy against decisions on expulsion in the context of Article 3 of the European Convention on Human Rights, Recommendation No. R (98) 15 on the training of officials who first come into contact with asylum seekers, in particular at border points and Recommendation Rec(2003)5 on measures of detention of asylum seekers. The Committee of Ministers would also signal the "Twenty guidelines on forced return"³ adopted on 20 May 2005 and the Guidelines on human rights protection in the context of accelerated asylum procedures adopted on 1 July 2009.

7. The Committee of Ministers would also refer to other texts relevant in this area, such as its reply to Parliamentary Assembly [Recommendation 1755 \(2006\)](#) on "Human rights of irregular migrants" in which it draws attention to the minimum safeguards provided for in the European Convention on Human Rights that can be applied to irregular migrants. It also recalls its Recommendation No. R (2000) 3 to member states on the right to satisfaction of basic material needs of persons in situations of extreme hardship, which provides a minimum threshold of rights which should be recognised regardless of their status.

8. The Committee of Ministers would also inform the Assembly that, following the adoption of "[Resolution No. 1](#) on access to justice for migrants and asylum seekers" by the European Ministers of Justice during their 28th Ministerial Conference (Lanzarote, Spain, 25-26 October 2007), it entrusted the relevant intergovernmental bodies to examine, *inter alia*, access to justice for migrants and asylum seekers by identifying means and measures with a view to facilitating and ensuring this access, including the provision of legal aid and assistance. In this context, a study on access to justice for migrants and asylum seekers has been prepared which identifies existing gaps, both in law and in practice, in the legal protection of this group of vulnerable people. The follow-up to be given to this study is currently under examination.

9. Furthermore, the Committee of Ministers draws the Assembly's attention to a report produced by the CDCJ on non-criminal remedies for victims of crime which considers the most vulnerable victims such as those found under point 9.6 of [Resolution 1637 \(2008\)](#) of the Parliamentary Assembly and proposes civil law measures that could be presented in the framework of standard-setting, information and awareness-raising activities.

10. The Committee of Ministers would also draw attention to the extensive work of the Commissioner for Human Rights in this field and to his recommendations to member states and his appeals for solidarity within Europe with those countries that are on the frontline and facing a very difficult situation. It also refers to the regular exchanges of views that it holds with the Commissioner during the year. These exchanges are both of a general nature but also concern specific country reports in which he addresses, *inter alia*, the protection of human rights of immigrants and asylum seekers, including, where relevant, those arriving by sea. Migratory flows present major challenges to many European countries which must be met in a spirit of mutual responsibility and solidarity. In this context, the Committee of Ministers welcomes bilateral projects, such as the present community pilot project for reallocation of beneficiaries of international protection from Malta, aiming at concrete action to be taken in order to put mutual responsibility and solidarity into practice.

11. Finally, with a view to promoting the use of the tools already available on the international level to further protect the growing numbers of migrant populations, and curb the influx of irregular migrants, the Committee of Ministers invites those member states who have not yet done so to consider ratifying the Council of Europe Convention on Action against Trafficking in Human Beings and the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime, as well as the European Convention on the Legal Status of Migrant Workers.

3. CM(2005)40 final.

Appendix to the reply

Comments from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

1. The CPT is grateful to the Ministers' Deputies for having communicated to it for information and possible comments [Recommendation 1850 \(2008\)](#) of the Council of Europe Parliamentary Assembly on "Europe's "boat-people": mixed migration flows by sea into southern Europe".
2. The CPT first wishes to point out that, from its inception, it has devoted continuous attention to the situation of persons deprived of their liberty under laws relating to the admission and residence of foreigners in the states party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. These efforts were further stepped up in the early years of this decade when the first large influxes of irregular migrants arriving by boat on the coasts of southern Europe were reported, and repeated visits have been made to holding centres for irregular migrants and asylum-seekers, notably in Greece, Italy, Malta, Spain and Turkey.
3. With regard to the recommendation in paragraph 5.1, the CPT is willing to support any initiative taken by the Committee of Ministers to prepare guidelines for minimum standards to be applied to the detention of irregular migrants and asylum-seekers. In this connection, it draws attention to the standards which it disseminated as far back as 1997 in its 7th general activity report and more recently in its 19th general activity report.
4. With regard to the recommendation in paragraph 5.5, the CPT reiterates its intention of continuing to monitor very closely the situation in holding centres for irregular migrants and asylum-seekers in southern Europe. In this context, particular attention will be focused on large-scale arrivals of irregular migrants and asylum-seekers and their consequences, and on facilities not yet visited by the CPT.