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Preventing harm to refugees and migrants in extradition and expulsion cases: Rule 39 indications by the European Court of Human Rights

Reply to Recommendation¹: Recommendation 1956 (2011)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly [Recommendation 1956 \(2011\)](#) on “Preventing harm to refugees and migrants in extradition and expulsion cases: Rule 39 indications by the European Court of Human Rights”. The Committee of Ministers notes that according to the Court’s case law, Article 34 of the Convention entails an obligation for States Parties to comply with an indication of interim measures under the Rules of the Court and that failure to comply may imply a violation of Article 34. However, like the Assembly – and indeed like the Court – the Committee has followed the growth in the number of requests for such measures with considerable concern.

2. The Committee recalls that on 11 February 2011, the President of the Court issued a statement, addressed both to the governments of member States and to potential applicants and their legal representatives, in which he drew attention in particular to a 4000% increase in requests for interim measures between 2006 and 2010 and to the consequences of such volumes of requests in respect of the Court’s ability to handle them and of the potential harm to the proper processing of requests by “the small minority of applicants who do face a genuine threat to life and limb in the country of destination” in the case of their removal.

3. The President’s statement went on to set out the detailed requirements to be satisfied for the Court to examine emergency requests for the indication of interim measures (completed by a Practice Direction appended to the statement) as well as the domestic measures (remedies with suspensive effect) which Contracting Parties to the Convention should adopt to forestall the need for interim measures indicated by the Court. The Committee of Ministers was subsequently informed of a significant reduction in the number of requests for interim measures.

4. The Committee further recalls that in section 3 of the action plan adopted at the High-level Conference on the future of the European Court of Human Rights (Izmir, 26-27 April 2011), the conference in particular welcomed the measures already taken by the Court and, underlining that the Court was not to be regarded as a fourth instance immigration tribunal, stressed the importance of effective national remedies and of respect by applicants of the terms of the Practice Direction referred to above. It further invited the Court to consider, with the States Parties, how best to reconcile the practice of interim measures with the principle of subsidiarity and to take appropriate action.

5. The Izmir declaration and action plan were endorsed by the Committee of Ministers at its 121st Session in Istanbul on 11 May 2011. The Committee of Ministers will continue to pay particular attention to the question of Rule 39 in the context of the follow-up to the Interlaken and Izmir declarations. It welcomes the new instructions published by the Court in July 2011 regarding requests submitted to the Court under Rule 39 and will follow with attention the impact of this initiative.

1. Adopted at the 1131st meeting of the Ministers’ Deputies (18 January 2012).



6. As to the practical recommendations contained in section 4 of the recommendation, the Committee of Ministers can assure the Assembly that it fully uses its competence under Article 46 in all cases establishing violations of Article 34, whether in order to ensure that urgent individual measures are rapidly adopted, or repetitions of violations prevented through the introduction of necessary domestic safeguards. The Committee recalls in this context that the new working methods applied since January 2011 fix as indicators for classification under enhanced supervision all cases calling for urgent individual measures or revealing major structural problems.

7. The Committee notes the Secretary General's recent proposals relating to the relevance and efficiency of member States' asylum and return procedures, made both in his document on a Framework for Council of Europe action on migration issues (SG/Inf(2011)10 rev, Appendix I, paragraph 10) and in his discussion paper following the report of the Group of Eminent Persons on "Living together – Combining diversity and freedom in 21st century Europe" (SG/Inf(2011)22 Part II). It considers these proposals relevant to the Parliamentary Assembly's invitation to the Committee in paragraph 4.6 of the recommendation.