



## Recommendation 1236 (1994)<sup>1</sup>

# Right of asylum

Parliamentary Assembly

1. Important developments and considerable changes in respect of the right to territorial asylum, both in Council of Europe member states and on the international level, have taken place in the five years since the adoption of [Recommendation 1088 \(1988\)](#) on the right to territorial asylum.

2. The international political and economic situation is such that the number of refugees seeking asylum in Council of Europe member states has rocketed and reached levels unknown to Europe since the second world war. Reasons for this development can be found in the fall of communist regimes in eastern Europe, the civil war in the territories of the former Yugoslavia, the economic disparity between the industrialised countries and the poorer ones, and on-going human rights abuses, both in Europe and the world at large.

3. The large influx of asylum-seekers made it more difficult for many European states to process applications for asylum in an appropriate amount of time, sometimes leading to the impression that European countries were being overrun by asylum-seekers. A part of the population of some of these countries is influenced by racist and xenophobic propaganda and is showing increasing hostility towards asylum-seekers. Moreover, there is the problem of economic migrants who pose as refugees and apply for asylum to gain access to Council of Europe member states. They are sometimes difficult to separate from the true and sincere asylum-seekers.

4. On these and other political grounds, many states have made their previously liberal asylum laws more restrictive. Multilateral treaties like the Schengen Agreements, the Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Community (the Dublin Convention) and the Treaty on European Union (the Maastricht Treaty) reinforce these trends.

5. It is likely that the above mentioned treaties will result in stricter controls at the external borders of member states of the European Union, no longer admitting many refugees into European Union territory. Already some European Union states apply the rule of the "safe third country" or "host third country", meaning that only refugees not having passed through a country considered safe, where they could have applied for asylum first before entering the European Union state concerned, may apply for asylum in that state. This is bound to increase the burden of protection and assistance for refugees and asylum-seekers disproportionately for member states of the Council of Europe which are not members of the European Union and/or for states that have less restrictive asylum practices or are geographically close to asylum-seekers' countries of origin. It might even result in the refoulement of refugees (especially de facto refugees) who should have been given asylum.

6. Historically, the Council of Europe, though it never incorporated a right to asylum into a legally binding instrument, always asked its members to treat refugees and asylum-seekers in a "particularly liberal and humanitarian spirit", in full respect of the principle of non-refoulement. Since two of the aims of the Council of Europe are bringing its member states closer together and protecting human rights, now should be the time to take common action in the Council of Europe, to ensure fairness to all persons in need of protection, and to

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1. Assembly debate on 12 April 1994 (11th Sitting) (see [Doc. 7052](#), report of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr Franck; and [Doc. 7064](#), opinion of the Committee on Migration, Refugees and Demography, Rapporteur: Mrs Mascher). Text adopted by the Assembly on 12 April 1994 (11th Sitting).



reduce friction over sharing asylum responsibilities between its member states by initiating collective European co-operation. The right of asylum is a pan-European problem that requires a pan-European solution.

7. The Assembly regrets that not all member states of the Council of Europe have ratified the Geneva Convention of 1951 (United Nations Convention relating to the Status of Refugees) and its additional Protocol.

8. Therefore the Assembly recommends that the Committee of Ministers:

8.1. concerning the roots of current problems:

- a. urge member states, especially new member states, to incorporate in their domestic law, and implement, minority rights, provisions aiming at preventing or reducing statelessness, and the prohibition of discrimination and racist or xenophobic activities, so that no more situations are created which could lead to people having to leave their country for fear of persecution or other dangers to their lives and integrity or because of statelessness;
- b. ask member states to intensify their work on human rights outside Europe (from where a substantial number of asylum-seekers come), for example, through the United Nations or development aid programmes;
- c. request member states to implement expeditiously the plan of action on combating racism, xenophobia, anti-Semitism and intolerance decided upon at the Vienna Summit;
- d. invite member states to improve their co-operation in trying to disband human smugglers' rings;

8.2. concerning asylum procedures:

- a. urge member states to rely more on pan-European co-operation (via agreements and co-operation extending to all Council of Europe member states, not just bilateral or multilateral agreements or practices, such as the "safe third country" practice, involving only a few of the member countries) when harmonising asylum procedures or trying to distribute the responsibilities more fairly;
- b. take particular care with the processing of applications classified as "manifestly unfounded";
- c. ensure that the notion of "host third country" is interpreted in a restrictive fashion so as to guarantee that asylum-seekers are actually readmitted to the country concerned and that they are protected there from any refoulement measures pending a decision on their application for asylum;
- d. insist that asylum procedures provide for the following minimal legal guarantees:

*asylum-seekers shall be informed of their right to legal advice and, if appropriate, to linguistic assistance;*

*notification of the decision to grant asylum shall be given in writing together with the grounds for the decision;*

*in the event of rejection, the decision notification shall set out the possibilities of appeal;*

*while appeals are being processed, asylum-seekers may not be deported;*

- e. ask member states to accept an increased role of the Council of Europe in the field of the right to asylum, and to strengthen the Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) in its role, instructions and resources;
- f. establish an additional forum within the framework of the Council of Europe: a responsible, co-ordinating agency with more executive powers than other presently existing forums can command; in this context, the proposal of the Danish Government, put forward in April 1993, for the establishment of a "European Refugee Commission", deserves careful attention;
- g. authorise the above-mentioned "European Refugee Commission" to formulate the guidelines to be observed - basing itself on the most generous solutions - and also to consider the solutions arrived at in every member state with a view to avoiding any discrepancies between member states in the procedures for the granting of asylum;
- h. authorise the European Court of Human Rights to assess the decisions taken in each member state on the basis of the guidelines of the "European Refugee Commission" as the single supreme jurisdiction and last court of appeal;

- i.* propose to member states the appointment of a European High Commissioner for Refugees to work in close co-operation with the United Nations High Commissioner for Refugees without prejudice to his mandate, to help focus member states' governments and populations on the plight of asylum-seekers and refugees in Europe;
  - j.* insist that asylum procedures and visa policies, in particular ones recently changed through national laws or on the basis of European Union treaties, continue to be based on the 1951 Geneva Convention and the Convention for the Protection of Human Rights and Fundamental Freedoms - remembering that the latter also implies obligations vis-à-vis persons who are not necessarily refugees in the sense of the 1951 Geneva Convention - and allow no infringements to be made, especially not on the generally accepted principle of non-refoulement, and the prohibition of rejection of asylum-seekers at the border;
  - k.* ask member states to abide by the guidelines set by the United Nations High Commissioner for Refugees (UNHCR) when interpreting the criteria for the granting of refugee status, and to act upon criticisms of new national asylum laws or multilateral treaties made by the UNHCR;
  - l.* suggest to member states the creation of a fund, in order to give financial and logistic aid to those member countries (especially new member countries) that are overburdened by the mass arrival of asylum-seekers or the unaccustomed role of being a receiving country;
  - m.* considering the developments in the former Yugoslavia, urge member states to extend protection to displaced persons through applying accordingly the number of minimum standards as formulated in 1981 in Conclusion No. 22 (XXXII) on the "protection of asylum seekers in situations of large-scale influx" of the Executive Committee of the UNHCR;
  - n.* ask for more openness in the matter of quota refugees in general and an increase in the number of quota refugees accepted by each Council of Europe member state in particular;
  - o.* urge governments of member states in view of the current international situation to ensure that asylum is granted to those in need of it, as they have promised to do so before;
  - p.* follow the suggestions made in its [Recommendation 1237 \(1994\)](#) on the situation of asylum-seekers whose asylum applications have been rejected;
- 8.3. concerning the status of asylum-seekers and refugees in international law:
- a.* amend the Convention for the Protection of Human Rights and Fundamental Freedoms to include a right of asylum, basing the text to be adopted on the suggestions made in Assembly [Recommendation 293 \(1961\)](#) or in Appendix II of the 1988 report on the right of asylum ([Doc. 5930](#));
  - b.* draw up, failing the incorporation of a right of asylum in the Convention, a separate agreement on the right of asylum, containing not only a clarification of the legal status of asylum-seekers and displaced persons, but also laying out model (harmonised) procedures and criteria for determining refugee status in full compatibility with the 1951 Geneva Convention, the 1967 New York Protocol and other relevant principles of international refugee law;
  - c.* draw up a legal instrument for the protection of de facto refugees who - in international law - are not even afforded the basic refugee protection secured through the 1951 Geneva Convention and 1967 New York Protocol;
  - d.* take back the initiative on the matter of the responsibility for examining asylum requests by adopting the draft agreement on the matter submitted by the CAHAR to the Committee of Ministers in 1989;
  - e.* invite those member states which have not yet done so to ratify the Geneva Convention of 1951 and its additional Protocol.