Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1348 (1997)[1]

Temporary protection of persons forced to flee their countries

Parliamentary Assembly

1. In Europe a number of people forced to flee countries beset by war, civil strife, widespread violence or natural disasters may not necessarily be covered by the refugee definition of the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, nor by their application. Likewise, in the event of a massive influx, it is virtually impossible to process asylum applications individually.

2. The swift and flexible award of temporary protection to whole categories of people in danger is therefore an essential instrument which complements, but cannot substitute for, the protection system established by the Geneva Convention.

3. To gear the use of this instrument as closely as possible both to the beneficiaries' needs and to the host states' resources, it is imperative to establish a common reference framework which will serve as a basis for European states' legislation and practice. At present, besides general provisions of international human rights and refugee law, there are no specific international legal obligations concerning the granting of temporary protection and the scope of the rights it entails.

4. Temporary protection is by definition limited in time. It is based on the presumption of return, which must take place as soon as the conditions justifying temporary protection cease to exist. Compliance with this principle is essential if the concept is to remain credible in the eyes of the member states and to be used in the future.

5. The Assembly stresses that return must be safe, dignified, orderly and staggered and must take into account the country of origin's capacity to absorb the returnees

6. If temporary protection is to function effectively, the process must be closely co-ordinated from beginning to end between all the states and international organisations concerned so as to avoid disproportionate distribution of people fleeing their country as well as secondary movements of refugees between European states in the event that temporary protection is lifted unilaterally.

7. Temporary protection must be viewed in the broader context of a comprehensive effort to re-establish peace and prosperity in the country of origin. While a successful return is critical for reconstruction, hasty repatriation may be a further barrier to stabilising the country.

8. At present, the debate on temporary protection in Europe is closely linked to the situation of persons who have fled the conflict in some countries of the former Yugoslavia, in particular Bosnia and Herzegovina.

9. The Assembly therefore recommends that the Committee of Ministers:

9.1. adopt a recommendation to member states establishing common guiding principles for member states' legislation and practice with regard to temporary protection, drawing upon the proposals contained in paragraph 9.iv below, as well as upon the principles formulated by the Office of the United Nations High Commissioner for Refugees (UNHCR);

1. See Doc. 7889, report of the Committee on Migration, Refugees and Demography, rapporteur: Mrs Arnold. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 7 November 1997.

9.2. provide in such a recommendation for the introduction of a system for swift consultation and co-ordination between the member states, in co-operation with UNHCR, if there is a risk of a massive influx of people seeking international protection, especially on such points as the admission of these people to the states' territory, their equitable distribution and the lifting of protection;

9.3. invite the European Union to use the framework of the Council of Europe in co-operation with UNHCR to co-ordinate its temporary protection initiatives on a pan-European scale and, when framing its standards in this area, to draw upon the principles set out in paragraph 9.iv below;

9.4. ask the member states to:

a. adopt a generous attitude towards people in need of international protection, allow them to be speedily and flexibly admitted to their territory and, in particular, exempt them from visa requirements;

b. co-ordinate their temporary protection policies at European level and support the establishment of a rapid consultation and co-ordination system as proposed in paragraph 9.ii above;

c. strictly respect the principle of non-refoulement;

d. ensure respect for the human rights of people under temporary protection and, where their stay is prolonged, upgrade their economic and social rights, including access to employment;

e. ensure that people under temporary protection have access to primary and secondary education and make every effort to improve their access to higher education;

f. organise vocational training schemes for people under temporary protection to help them reintegrate after their return and in the event of resettlement;

g. from the very outset of temporary protection, facilitate family reunification for certain vulnerable groups, especially unaccompanied under-age children and, where the stay is substantially prolonged, allow family reunification for spouses, under-age children and other, dependent ascendants of people under temporary protection;

h. examine asylum applications by people under temporary protection as soon as possible and, in any case, two years after the beginning of temporary protection at the latest;

i. refrain from returning persons whose applications for asylum have been rejected as long as the conditions justifying temporary protection persist;

j. where the conditions justifying temporary protection persist for an extended period, and in any case after two years, grant all beneficiaries stable legal status entitling them to the same economic and social rights as other residents;

k. once temporary protection has been lifted, favour the principle of voluntary return and refrain from forcibly repatriating certain categories of people, especially those who might have reason to fear persecution, victims of torture, traumas due to war and rape and sick people who cannot receive medical care in their countries of origin;

l. implement these recommendations as soon as possible and apply them to both future situations and to persons already under temporary protection.