Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1547 (2002)[1]

Expulsion procedures in conformity with human rights and enforced with respect for safety and dignity

Parliamentary Assembly

1. The Assembly is greatly concerned at the number of deaths resulting from the methods used to enforce expulsion orders in Council of Europe member states. Ten people died between September 1998 and May 2001 while being deported from Austria, Belgium, Germany, France, Italy and Switzerland.

2. These deaths are sad examples of the worst that can happen during expulsion procedures. Amnesty International has, for at least the past seven years, been receiving regular complaints about the ill-treatment of potential deportees. All organisations dealing with complaints report that the numbers received have risen sharply in the last two years, reflecting an increase in the number of expulsions and at the same time in the number of forced and violent expulsions.

3. The Assembly believes that the increase in the number of incidents during expulsions from Council of Europe member states shows that these are not isolated events. All too often, persons awaiting expulsion are subjected, in breach of the European Convention on Human Rights, to discrimination, racist verbal abuse, dangerous methods of restraint and even violence and inhuman or degrading treatment. All too often, the officials responsible for enforcing expulsion orders resort to an unjustified, improper or even dangerous use of force. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) believes that there are clear risks of inhuman treatment in the deportation of foreigners; during the preparatory phase, during expulsion (on flights or on boats) and on arrival.

4. The Assembly is concerned at the predominant, or indeed exclusive, role of the police and security forces, which are often poorly trained, in enforcing expulsion orders. It can only deplore the fact that the involvement, at all stages of the procedure, of professionals in both psycho-social support and humanitarian aid on the one hand, and of lawyers, judges and doctors on the other, remains limited. The Assembly is also concerned at the inordinate responsibilities which states place directly or indirectly on carriers.

5. In this context, it is not surprising that it is difficult to gather reliable information on expulsion procedures. It is often only by chance that ill-treatment suffered during deportation comes to light. Lack of resources and support account for the fact that very few people, on returning to their countries of origin, bring proceedings against those responsible for expelling them.

6. The Assembly regrets that in all the member states of the Council of Europe expulsion procedures lack transparency. It is interested to note that some Council of Europe member states are looking into this area or have implemented reforms, however it is concerned that the legal frameworks for the enforcement of expulsion orders are often not adhered to in practice.

7. The Assembly believes that forced expulsion should only be used as a last resort, that it should be reserved for persons who put up clear and continued resistance and that it can be avoided if genuine efforts are made to provide deportees with personal and supervised assistance in preparing for their departure.

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1. Assembly debate on 22 January 2002 (3rd Sitting) (see Doc. 9196, report of the Committee on Migration, Refugees and Demography, rapporteur: Mrs Vermot Mangold). Text adopted by the Assembly on 22 January 2002 (3rd Sitting).

8. The Assembly insists that the Council of Europe's fundamental values will be threatened if nothing is done to combat the present climate of hostility towards refugees, asylum seekers and immigrants, and to encourage respect for their safety and dignity in all circumstances.

9. It thanks the European Commissioner for Human Rights for having recently brought together the non-governmental organisations for a seminar on human rights standards applying to the holding of foreigners wishing to enter a Council of Europe member state and to the enforcement of expulsion orders, which gave him the opportunity to obtain valuable information on expulsion procedures.

10. The Assembly recalls and reaffirms its recent recommendations aimed at improving the protection and treatment of asylum seekers, namely Recommendation 1475 (2000) on the arrival of asylum seekers at European airports, Recommendation 1467 (2000) on clandestine immigration and the fight against traffickers, Recommendation 1440 (2000) on restrictions on asylum in the member states of the Council of Europe and the European Union, and Recommendation No. R (99) 12 of the Committee of Ministers to member states on the return of rejected asylum seekers.

11. The Assembly recommends that the Committee of Ministers conduct an in-depth study, and follow it up with periodical reports, on the procedures and practices used in the Council of Europe's members states, including those of central and eastern Europe, during the enforcement of legally decided expulsion orders, by gathering precise and detailed information on:

the relevant legal and regulatory frameworks in national laws and the direction and extent of existing and planned reforms;

the practice put in place by the authorities responsible for enforcing expulsion orders and the directives which are the basis of this practice;

the number of complaints, the results of enquiries and, where applicable, the legal and disciplinary convictions.

12. The Assembly also recommends that the Committee of Ministers set up a joint working party at European level (including, for example, representatives of governments, parliaments and relevant organisations, members of bodies responsible for carrying out expulsion orders, persons working in the health and psycho-social fields, pilots, judges and legal advisers) to draw up, in a pragmatic and human spirit, a code of good conduct which includes the following:

an exhaustive list of human rights standards applicable to foreigners being expelled and their safeguards;

a list of minimum principles regarding the monitoring, supervision and support of potential deportees, with regard to their dignity and safety;

guidelines on restraint techniques;

a status for members of escorts and liaison agents guaranteeing that the responsibility for expulsion procedures lies fully with the public authorities.

13. Finally, the Assembly recommends that the Committee of Ministers urge member states:

to establish independent monitoring systems for expulsion procedures, for example by appointing observers, mediators or ombudsmen, and to conduct impartial and in-depth enquiries at all levels into allegations of ill-treatment;

to ensure that all foreigners awaiting expulsion receive, under the aegis of a referee, supervision which is:

a. individual, through the assessment of the individual situation of each foreigner concerned, covering not only his or her administrative and legal status, but also his or her anxieties concerning the expulsion and his or her state of health;

b. comprehensive, through the involvement of a multidisciplinary group including, with respect for their ethical principles, doctors, psychologists, social workers, legal advisors, organisations offering legal or humanitarian assistance, particularly non-governmental organisations;

c. monitored at all stages of the expulsion procedure, that is, during preparation for departure, in particular in detention areas and centres, during the journey and on repatriation;

to ensure that every accompanied minor concerned by an expulsion procedure is not taken away by the competent officers unless in the presence of his parents and accompanied by them;

to develop systematic policies for voluntary or forced repatriation in partnership with the International Organization for Migration (IOM) or any other relevant body, in particular through the allocation of financial aid;

to adapt without delay their legislation and practices regarding holding prior to expulsion, in order to:

a. limit the length of detention in waiting or transit zones to a maximum of fifteen days;

b. limit the length of detention in police stations to the amount of time strictly necessary for any arrest and to separate foreigners awaiting expulsion from people being questioned for common law crimes;

c. limit prison detention to those who represent a recognised danger to public order or safety and to separate foreigners awaiting expulsion from those detained for common law crimes;

d. avoid detaining foreigners awaiting expulsion in a prison environment, and in particular to:

put an end to detention in cells;

allow access to fresh air and to private areas and to areas where foreigners can communicate with the outside world;

not hinder contacts with the family and non-governmental organisations;

guarantee access to means of communication with the outside world, such as telephones and postal services;

ensure that during detention foreigners can work, in dignity and with proper remuneration, and take part in sporting and cultural activities;

guarantee free access to consultation and independent legal representation;

e. guarantee, under regular supervision by the judge, the strict necessity and the proportionality of the use and continuation of detention for the enforcement of the deportation order, and to set the length of detention at a maximum of one month;

f. favour alternatives to detention which place less restrictions on freedom, such as compulsory residence orders or other forms of supervision and monitoring, such as the obligation to register; and to set up open reception centres;

g. ensure that detention centres are supervised by persons who are specially selected and trained in psycho-social support and to ensure the permanent, or at least regular, presence of "inter-cultural mediators", interpreters, doctors and psychologists as well as legal protection by legal counsellors;

h. take into account, in any decision to limit personal freedom, the needs of vulnerable groups, and in particular:

the principle of the unity of the family must be respected in all circumstances;

unaccompanied minors must be treated in accordance with their age, and must immediately be taken charge of by a judge for minors and have access to independent legal consultation and representation;

single women must be able to use separate facilities,

the elderly must have access to the medical care necessary for their age;

ensure that expulsion orders are enforced by specially trained, plain-clothed state representatives and not by private agents, and avoid any traumatising treatment, especially towards vulnerable persons;

inform the destination state of the measures taken, to ensure the expelled persons are not considered criminals;

set up a monitoring system in the destination country, managed by embassy personnel, with a view to ensuring that the expelled person is not subjected to human rights violations, considered as a criminal or threatened with blackmail or arbitrary detention;

adapt immediately their legislation and practices concerning the transportation of expelled foreigners in order to:

a. inform the deportee at least thirty-six hours in advance of the details of the journey: times, destination, means of transport and, if applicable, whether they will be escorted;

b. limit the use of escorts to cases of known resistance, to take careful account of all refusals to be escorted and to organise a prior meeting with members of the escort, if absolutely necessary;

c. ensure that members of escorts are adequately trained, particularly in mediation and stress management, and have linguistic and cultural knowledge;

d. favour in all cases scheduled air transport and to ensure that the carrier and captain have been fully informed and, if they do not allow the presence on board of independent observers or video recordings, to at least give their formal agreement;

e. allow also the presence of independent observers or to make video recordings of the moments leading up to departure, due to the possibility of threats or attacks intended to persuade the person to leave; the independent observers must be present on departure and arrival;

f. systematically draw up certificates on the physical and mental health of the deportee, on departure and arrival;

g. introduce into national law specific regulations which strictly forbid the following practices:

partial or total obstruction of the respiratory tract;

gagging with adhesive tape;

the use of poison gas or stun gas;

the administration of tranquillisers against the wishes of the person concerned or of medicines without medical direction;

any form of restraint other than handcuffs on the wrists;

immobilisation by handcuffs during the journey;

the wearing of masks or hoods by members of the escort;

the arbitrary or disproportionate use of force;

h. ensure proportionality and respect for safety and human dignity in any other measures taken during the expulsion procedure, by taking account of the particular needs of vulnerable persons such as children, unaccompanied minors, single women and the elderly;

i. ensure that deportees receive food and drink during the journey and that they can carry and reclaim their personal belongings;

introduce into law the legal guarantees necessary for persons whose rights are violated during an expulsion procedure to be able to effectively exercise their right to appeal, namely:

a. the possibility for the victim, or any other person appointed by him or her to this effect, to appeal to the legal authorities, including, if appropriate, the diplomatic representations of the state from which he has been expelled;

b. the provision of complete information to all persons awaiting expulsion regarding the possibility of making an appeal and ways of doing so, information on the possible consequences of a refusal to co-operate and the means of restraint stipulated in national law;

c. the presence of the victim in the state which decided to expel him or her throughout the duration of the proceedings brought about by the appeal, if necessary by means of:

the suspension of an expulsion procedure against a person still present in the state from which he or she is to be expelled; or

the return of an expelled person to the state which expelled him or her.