

Recommendation 1577 (2002)¹

Creation of a charter of intent on clandestine migration

Parliamentary Assembly

1. The Parliamentary Assembly is deeply concerned by the increasing number of migrants who lose their lives while attempting to enter the territory of the member states illegally, or who live in extremely dangerous and inhuman conditions before, during and after their illegal entry into Europe. Recourse to clandestine migration also represents an infringement of the right of each state to regulate the entry of foreign nationals into their territory and the circumvention of the immigration rules that are enshrined in law, a phenomenon which is of major political, social and economic significance.

2. The Assembly recalls and reaffirms its Recommendations 1211 (1993) on clandestine migration: traffickers and employers of clandestine migrants; 1325 (1997) on trafficking in women and forced prostitution in Council of Europe member states; 1449 (2000) on clandestine migration from the south of the Mediterranean into Europe; 1467 (2000) on clandestine immigration and the fight against traffickers; and 1545 (2002) on the campaign against trafficking in women, and reiterates the urgency of addressing effectively the issue of clandestine migration in Council of Europe member states, since it is controversial in a number of countries.

3. The Assembly takes note of the replies of the Committee of Ministers to its Recommendations 1467 and 1449, as well as of the Committee of Ministers' Recommendation (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation, which contains a number of measures geared at effectively fighting against trafficking, and congratulates the Committee of Ministers for its continuing interest in the issue of clandestine migration, and its series of valuable initiatives.

4. The Assembly notes with concern the absence of an international instrument addressing the phenomenon of clandestine migration as a whole.

5. The Assembly further notes that existing international instruments dealing with particular types of clandestine migration, such as trafficking in human beings and smuggling of migrants, have either not been ratified by all Council of Europe member states, or have not been adequately translated into domestic criminal legislation by a number of them, which is a problem which needs to be addressed.

6. The Assembly is aware of the "grey areas" existing between migrants and asylum seekers, namely that people who do not qualify for international protection may resort to the asylum system in the hope of gaining access to their country of destination, and that people who do qualify for international protection may resort to human traffickers or migrant smugglers.

7. The Assembly, however, reiterates the binding character of the principle of non refoulement, irrespective of the mode of entry into the asylum country, in compliance with the 1951 Geneva Convention Relating to the Status of Refugees.

8. In view of its importance, the international debate is primarily focused on preventing clandestine migration, but the Assembly regrets that little attention is paid to the situation of irregular migrants in transit and destination countries, including the protection of the rights they are entitled to under several international human rights instruments, notably the European Convention on Human Rights.

1. Assembly debate on 23 September 2002 (25th Sitting) (see [Doc. 9522](#), report of the Committee on Migration, Refugees and Demography, rapporteur: Mr Wilkinson). Text adopted by the Assembly on 23 September 2002 (25th Sitting).



9. The Assembly notes the absence of international instruments specifically relating to the rights of clandestine migrants, and that the United Nations Convention on the Rights of All Migrant Workers and Members of their Families (1990), which also applies to irregular migrants, has not yet entered into force.

10. The Assembly is convinced of the need for a single and comprehensive pan-European instrument involving the European Union and all Council of Europe member states which addresses the root causes of clandestine migration, its forms, including trafficking and smuggling, the rights of clandestine migrants, and co-operation between countries of origin, transit and destination, so that illegal inflows of migrants can be checked and the welfare of both host communities and of clandestine migrants guaranteed.

11. The Assembly therefore recommends that the Committee of Ministers elaborate an international instrument on clandestine migration to be open for signature and ratification by member states, taking into account the recommendations of the Commissioner for Human Rights, mandated international and regional organisations as well as the European Union, incorporating the following principles:

the legitimate goal of combating clandestine migration should not be pursued in such a manner that it undermines the obligation of member states to protect those genuinely in need of international protection;

an effective policy to deal with clandestine migration should be made and applied in the context of a reliable system of migration management in which both citizens of the receiving country and migrants can have confidence;

clandestine migration should be addressed in a comprehensive and balanced manner, and its causes, manifestations and effects in the countries of origin, transit and destination should be examined;

there should be a concerted effort between countries of origin, transit and destination to deal with clandestine migration. Partnership should include exchange of information as well as technical and financial assistance, seeking to address the root causes of migration, such as gross disparities in economic and social development;

member states should sign and ratify existing legal instruments against smuggling of migrants and trafficking in human beings, and introduce and implement appropriate and harmonised national legislation to criminalise these acts while protecting the victims;

clandestine migrants should not be deprived of their rights, including the right to welfare for children, and particularly for vulnerable individuals, the right to emergency health care and the right not to be held in slavery or servitude;

member states should introduce and impose effective sanctions on employers of clandestine migrants;

clandestine migrants should be informed of the benefits of voluntary departure when they remain in a country in breach of the immigration rules, and of the possibility of regularising their position when this is legally possible;

member states should develop appropriate information campaigns in the countries of origin and transit of potential clandestine migrants to inform them about the disadvantageous situations they would find in countries of transit or destination. These campaigns should not be aimed at discouraging those who wish to make use of legal migration channels, or those who need to seek international protection;

member states should organise or promote training within domestic and international legal frameworks which apply to clandestine migration, to be provided to law enforcement officials, members of the legal profession and the judiciary, always bearing in mind their human rights obligations under existing instruments.

12. The Assembly requests that the Commissioner for Human Rights of the Council of Europe:

within the framework of his mandate, advise member states, and investigate their existing laws and practices with regard to their control of clandestine migration in relation to the principles of the Council of Europe;

ensure thereby that the new charter is fully compliant with these principles.