Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Recommendation 1596 (2003)[1]

Situation of young migrants in Europe

Parliamentary Assembly

1. Young migrants represent a varied and heterogeneous group. They include children, young women and young men who have fallen prey to human traffickers or who have been smuggled into a country in the hope of escaping poverty, persecution or a situation of generalised violence; young people who have entered European countries through legal channels for study, work or family reunion; and second-generation migrants who are born in the host country. Many of them come from non- European countries; but many others are Europeans who move, legally or illegally, from one member state to another. They are immigrants for some states and emigrants, or returning emigrants, for others.

2. Bearing in mind the activities of the Council of Europe in the field of migration, as well as the numerous activities addressing the situation of youth in Europe, and namely those conducted by the Directorate for Youth and Sport, the Parliamentary Assembly recalls the works of the Hearing on the Specific Situation of Young Migrants (held at the European Youth Centre in Budapest, on 15 and 16 November 2001), where thirty young people from twenty-seven European countries shared their experience of migration with members of the Sub-Committee on Migration of the Committee on Migration, Refugees and Demography, and voiced their unease and concern at current policies, or absence of policies, applying to their situation.

3. The Assembly is convinced that the situation of young migrants in Europe requires urgent action on the part of the Council of Europe, in co-operation with the relevant international organisations, to address the reasons why young people want to, or are forced to, emigrate, their rights and living conditions as immigrants, and finally their rights and needs when, and if, they return to their countries of origin.

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

4.1. in consultation with relevant international agencies such as Unicef, the International Organisation for Migration (IOM) and the Office of the United Nations High Commissioner for Refugees (UNHCR) – and in compliance with the mandate of these agencies –initiate a long-term multidisciplinary programme for young migrants in Europe, with the aim of fostering social cohesion and the participation of young migrants through the improvement of their legal status, the support of appropriate integration and reintegration projects, the development of educational materials and programmes and the organisation of various initiatives designed to meet the needs of young migrants and highlighting their positive contribution to the strengthening of democratic society;

4.2. include in the work programme of the General Directorate on Education, Culture and Heritage, Youth and Sport regular meetings – in the form of seminars, hearings, conferences and others – on the topic of young migrants, with the participation of young migrants;

4.3. encourage member states to submit projects to the Council of Europe Development Bank, with a view to funding or co-funding integration projects for young migrants in host countries, as well as reintegration projects for young migrants returning to their countries of origin, in particular young victims of trafficking;

1. Assembly debate on 31 January 2003 (8th Sitting) (see Doc. 9645, report of the Committee on Migration, Refugees and Demography, rapporteur: Mr Yáñez-Barnuevo). Text adopted by the Assembly on 31 January 2003 (8th Sitting).

4.4. initiate a study to review the implementation of Committee of Ministers Recommendation Rec (2000)15 of the concerning the security of residence of long-term migrants and Recommendation Rec (2002)4 on the legal status of persons admitted for family reunification, with special regard to protection against expulsion of migrants who were born or raised in Council of Europe member states or who are minors;

4.5. with reference to the current preparation of a report on conditions for the acquisition and loss of nationality by its Committee of Experts on Nationality (CJ-NA), ask its relevant committees to initiate a study on the use of nationality law as an instrument to foster social cohesion and the integration of young migrants and include this issue among those to be addressed during the next European Conference on Nationality;

4.6. initiate a feasibility study on the harmonisation of national laws on legal guardianship of separated children, as defined in sub-paragraph 7.iv of the present recommendation, with a view to the elaboration of an international binding instrument including the following guidelines:

a. all Council of Europe member states should adopt a legal framework for the appointment of a legal guardian for separated children who are under their jurisdiction, irrespective of whether they apply for asylum or not;

b. the legal guardian should look after the child individually, and be chosen among people or institutions of proven reliability, and have an understanding of the special and cultural needs of separated children as well as of the institutions of the host country;

c. the appointment of the legal guardian should take place as a matter of urgency, and in any case within two weeks of the presence of the child on national territory coming to the knowledge of the authorities;

d. the legal guardian should ensure that all decisions affecting the child are taken in his or her best interests, that the child has suitable legal representation to deal with his or her legal status and that she or he receives suitable care, accommodation, education, language support and health care;

e. the legal guardian should also act as a link between the child and various service providers and advocate on behalf of the child where necessary.

5. Furthermore, with a view to fostering participation and social cohesion, the Assembly recommends that the Committee of Minister elaborate measures aiming to assist member states to:

5.1. grant the right to vote and stand in local elections to migrants having settled legally on their territories and having resided there for at least three years;

5.2. adopt appropriate legislation to facilitate the acquisition of nationality for migrants having resided legally in the country on a long-term basis;

5.3. facilitate the acquisition of nationality for children born on their territories to legally residing foreign parents;

5.4. establish, or promote the establishment of, integration programmes according to, the following guidelines:

a. states should use all the available instruments at their disposal to fund, or support the funding of, integration programmes, and in particular the loans of the Council of Europe Development Bank and other international agencies;

b. states and local authorities should:

mobilise resources to employ sufficient staff for the implementation of integration programmes and provide them with adequate training;

monitor the implementation of integration programmes and conduct periodical evaluation studies;

ensure the participation of migrants in the elaboration, implementation and evaluation of integration programmes;

establish special integration programmes addressed to young migrants, not only those who have newly arrived;

c. participation in integration programmes should be voluntary, but states and local authorities could provide financial inducements to ensure wider attendance;

d. integration programmes should include language tuition and vocational guidance and/or training;

e. integration programmes should be based on an assessment of the integration needs of each beneficiary;

f. in the absence of specific integration programmes devoted to them, young migrants with dependants, especially women, should have priority of access to ordinary integration programmes;

g. integration programmes should aim at the personal development of beneficiaries, providing them with instruments to participate in all aspects of society, while preserving their language, culture and national identity, in accordance with the European Convention on Human Rights.

6. With a view to using education effectively as an instrument to foster equality, multiculturalism and mutual understanding, the Assembly also recommends that the Committee of Ministers elaborate measures addressed to member states, and aiming at:

6.1. ensuring unimpeded access to compulsory education for migrant children, irrespective of their own or their parents' legal status;

6.2. ensuring access to compulsory education for migrants aged under 18 and who have not completed compulsory education in other countries, irrespective of their legal status or the legal status of their parents;

6.3. responding to the special needs of migrant students integrating the ordinary curriculum with additional classes, focusing on tuition in the language of the host country and the study of its society and culture;

6.4. investing additional resources in the employment in educational institutions of specialised staff, such as psychologists, pedagogues, social workers and cultural mediators and provide them, as well as teachers, with appropriate training to deal with young migrants;

6.5. ensuring that the content of school programmes and textbooks does not contain any national or ethnic prejudices and does not convey any discriminatory or racist interpretation of the history, culture and society of foreign countries or communities;

6.6. funding and supporting extracurricular activities aimed at highlighting the value of the culture and civilisation of migrants' communities and their countries of origin;

6.7. supporting initiatives taken at local level to foster contacts between immigrant parents, the school and the community.

7. The Assembly further recommends that the Committee of Ministers include in its working programme activities aimed at assisting member states to:

introduce in all domestic laws or policy measures affecting children a specific mention of the situation of migrant children;

give primacy and binding character to the principle of the best interests of the child, making this explicit in all laws, regulations or administrative guidelines concerning migration and/or asylum;

refrain from detaining minors exclusively on immigration grounds, and consequently provide for alternative and adequate accommodation;

introduce in domestic law and policy the definition of "separated children" as "children under 18 years of age who are outside their country of origin and separated from both parents or their legal/ customary primary caregivers", and afford them an effective system of care and protection, consistent with the present recommendation as well as the recommendations of the Separated Children in Europe Programme established by the UNHCR and members of the International Save the Children Alliance;

ensure that the definition of separated children, and the special care and protection to which they are entitled, are interpreted and applied in a uniform manner throughout their territories, even when the competence in this matter falls within the remit of federate, regional or local authorities;

introduce legal provisions to allow the placement of separated children, including those who do not apply for asylum, in reception centres or care institutions appropriate to their needs, invest in the creation of such centres and institutions where necessary and ensure that separated children benefit from the same level of assistance and protection as is available for children with the nationality of the host country;

facilitate the family reunification of separated children with their parents in other member states, even when parents do not have permanent residence status or are asylum seekers, in compliance with the principle of the best interests of the child;

consider favourably requests for family reunification between separated children and family members other than parents who have a legal title to reside in a member state, are over 18 years of age and are willing and able to support them;

facilitate the family reunification of separated young people with mental or physical disabilities, including those who are over 18 years of age, with their parents or other adult family members upon whom they were dependant in the country of origin or the country of habitual residence and who are legally residing in another member state;

in any ordinary or accelerated procedure implying the return of separated children to their countries of origin or any other country, including procedures of non-admission at the border, comply with the following guidelines:

a. states should make sure that return is not in breach of their international obligations under the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, or the European Convention on Human Rights and other relevant instruments;

b. return should not be possible before a legal guardian for the child has been appointed;

c. before taking the decision to return a separated child, states should demand and take into consideration the opinion of the child's legal guardian as to whether return would be in the best interests of the child;

d. return should be conditional upon the findings of a careful assessment of the family situation that the child would find upon return, and of whether the child's family would be able to provide appropriate care. In the absence of parents or other family members, the suitability of childcare agencies in the country of return should be investigated. The assessment should be conducted by a professional and independent organisation or person and should be objective, non-political and aimed at ensuring the respect of the principle of the best interests of the child;

e. prior to return, states should obtain an explicit and formal undertaking from the child's parents, relatives, other adult carer or any existing childcare agency in the country of return that they will provide immediate and long-term care upon the child's arrival;

f. the decision to return a separated child should be reasoned and notified to the child and his/her legal guardian in writing, together with information on how to appeal against it;

g. the child and/or his or her legal guardian should have the right to lodge an appeal before a court against the decision to return. Such an appeal should have suspensive effect and be extended to the lawfulness and the merits of the decision;

h. during return, the child should be accompanied and treated in a manner in keeping with his or her age;

i. the well-being of the child following return should be monitored by appropriate authorities or agencies on the spot, who should liaise with, and report to, the authorities of the country from which the child has been returned;

j. migrants who arrived in a host country as separated children but who have reached the age of 18 at the time of return should be treated as vulnerable cases and consulted on the conditions required for successful reintegration into their country of origin.

8. As regards the issue of trafficking in children and young people, the Assembly recommends that the Committee of Ministers include in its working programme activities aimed at assisting member states:

8.1. to sign and ratify the United Nations instruments applicable to this matter, and in particular the Additional Protocol to the Convention against Transnational Organised Crime to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, , the Optional Protocol to the

Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, and International Labour Organization Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;

8.2. to establish effective protection regimes for children and young people who are victims of trafficking, and ensure the availability of psychological counselling and assistance upon demand of the victims, their legal guardians or care institutions;

8.3. to devise and implement appropriate programmes to meet the care and assistance needs of traumatised children and young people who are victims of trafficking in host countries;

8.4. to devise and implement appropriate reintegration programmes for young victims of trafficking returning to their countries of origin;

8.5. to allocate additional financial resources to the prevention of trafficking in children and young people in the countries of origin and support or conduct information campaigns in schools and other places of socialisation or care, including orphanages, especially in areas at risk;

8.6. support the initiatives of the IOM, the UNHCR and other agencies – within the limits of their mandates – to train police officers, border police and immigration officials on the international legal framework applying to trafficking, with particular attention to the assistance and protection needs of children and young people who are victims.

9. Finally, also recalling Assembly Recommendation 1547 (2002) on expulsion procedures in conformity with human rights and enforced with respect for safety and dignity, the Assembly asks the Commissioner for Human Rights to conduct an investigation on the situation of separated children in Council of Europe member states and report to the Assembly and the Committee of Ministers.