



Recommendation 1624 (2003)¹

Common policy on migration and asylum

Parliamentary Assembly

1. The Parliamentary Assembly is concerned that major differences in migration and asylum law and policy may produce considerable disparities in the treatment that different Council of Europe member states afford to migrants, asylum seekers and refugees, thereby undermining the establishment of greater unity among member states, which is a fundamental aspiration of the Council of Europe.
2. The Assembly acknowledges the progress made by the European Union towards the development of a common asylum and migration policy and encourages it to persevere in its efforts to attain the objectives set out in the Amsterdam Treaty and the Conclusions of the European Council in Tampere.
3. The Assembly, however, is convinced of the need to establish a Council of Europe common policy on migration and asylum, consisting of minimum standards which should be shared by all Council of Europe member states irrespective of their membership of other international organisations and without prejudice to more favourable provisions applicable in some member states. Such a common policy on migration and asylum could contribute to creating a Europe-wide area where migrants and people in need of international protection would enjoy treatment in line with human rights and the principle of the rule of law, and have access to basic rights and to legal remedies. This common policy would also provide the mechanisms for strengthening the channels of legal migration, and set the parameters for the co-operation of the various migration services.
4. In fact, even whilst recognising the important differences between the various categories of forced or voluntary migrants, the Assembly believes that a Council of Europe common policy on migration and asylum should be based on core rights and procedural safeguards to be enjoyed by all those who are within the jurisdiction of a Council of Europe member state, be they economic migrants, aliens joining their families in the context of family reunification procedures, or other categories of non-forced migrants, asylum seekers, refugees or other people in need of international protection. This approach would be greatly assisted if the network of databases held on foreign nationals were accessible to all migration services thus ensuring a speedier response. Similarly, a common package of information should be accessible to potential migrants.
5. Such a policy should be inspired by an integrated approach to migration and asylum and acknowledge their interdependence: in particular, that the lack of channels for legal immigration may lead a certain number of economic migrants to abuse the asylum system as the only way of gaining access to the country of their choice; that some people in need of international protection wish to choose the country in which to apply for asylum, and therefore prefer not to make their presence known to the authorities of other states, as they are living or transiting in breach of immigration rules; and finally, that migration may be forced by persecution, all-pervasive violence and widespread human rights violations, but also by other compelling factors, such as extreme poverty.
6. A Council of Europe common policy in this area, based on rights and procedural safeguards common to both migration and asylum, should not be prejudicial to more favourable provisions applying under national or international law to some specific categories of voluntary or forced migrants.

1. Assembly debate on 30 September 2003 (29th Sitting) (see [Doc. 9889](#), report of the Committee on Migration, Refugees and Population, rapporteur: Mr Hancock). Text adopted by the Assembly on 30 September 2003 (29th Sitting).



7. The Assembly believes that a Council of Europe common policy on migration and asylum, consistent with its role and expertise, should be placed in the context of the protection of human rights and the respect for the dignity of the person, and in particular of the European Convention on Human Rights.

8. Finally, a Council of Europe common policy on migration and asylum should be based on a concerted effort by countries of origin, transit and destination to address the root causes of forced migration movements and on a commitment to engage in activities of conflict prevention and development aid.

9. The Assembly therefore recommends that the Committee of Ministers instruct its relevant committees to draw up a model for a Council of Europe common policy on migration and asylum, according to the following guidelines:

With regard to border control:

1. member states should enforce effective immigration control at their borders, whilst respecting their international obligations;
2. member states should improve their co-operation with a view to ensuring effective immigration control at their borders, in particular through the organisation of common training courses, the exchange of intelligence and other joint initiatives and activities;
3. under no circumstances should the enforcement of immigration control at states' borders be prejudicial to the principle of non-refoulement for those who are in need of international protection;
4. member states should ensure that those responsible for the enforcement of border control receive adequate training in human rights and refugee law, and on how to deal with victims of trafficking and other vulnerable groups. There should also be specialised training in how to deal with minors for the persons concerned.

With regard to detention linked to immigration or asylum:

1. detention solely for reasons of immigration and asylum should be resorted to on an exceptional basis and only where there is a convincing reason for believing that the person is trying to enter the country illegally, or when there are legitimate reasons specific to the person concerned, such as when a person is at high risk of absconding, or when detention is necessary to enforce the removal or establish the identity of the person;
2. the person concerned should be notified in writing, in a language that he or she understands, of the reasons for the decision and the evidence on which it is based, using an interpreter if necessary, in order to ensure that the person has understood the decision;
3. the decision to detain should be considered null and void if, at the moment of the notification, the person concerned is not informed, in writing and in a language that he or she understands, of his or her rights in these circumstances and advised on how to gain access to free legal advice and representation;
4. in any case, detention for reasons of immigration or asylum should be confirmed by a judge within forty-eight hours of the decision to detain being taken;
5. under no circumstances should detention for immigration or asylum reasons be any longer than is reasonably necessary and should not be prolonged unduly.

With regard to fairness of immigration and asylum procedures: any legal procedure aimed at granting a legal status, at limiting personal liberty or at removing a foreigner from the territory of a member state should comply with the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, as well as the European Convention on Human Rights; in addition, it should be fair and include a sufficiently reasoned final decision, which should be notified in writing to the person concerned in a language that he or she understands, or explained via an interpreter if necessary.

With regard to access to interpretation and legal advice and representation in the context of immigration and asylum:

1. during any legal procedure aimed at granting legal status, at limiting personal liberty or at removing a foreigner from the territory of a member state, independent legal advice and representation should, normally, be available free of charge if the person concerned does not have sufficient financial means;

2. during any legal procedure aimed at granting a legal status, at limiting personal liberty or at removing a foreigner from the territory of a member state, any communication between the local, state or federal authorities of such a state and the person concerned which could affect his or her legal status or removal should take place with the assistance of a professionally qualified and independent interpreter.

With regard to the duration of the asylum procedure:

1. as a rule, the relevant authorities should reach a decision on an asylum application within six months, and ensure that the applicants enjoy an adequate standard of living for the duration of the procedure;
2. after six months, the authorities responsible for processing the asylum application should inform the person concerned in writing and in a language which he or she understands, or through an interpreter, if necessary, of the reasons why they have been unable to reach a decision.

With regard to expulsion:

1. member states should introduce effective measures to ensure the expulsion of foreigners who are not in need of international protection and who do not have any legal entitlement to stay in the country;
2. any decision to expel a foreigner from the territory of a Council of Europe member state should be subject to a right of suspensive appeal;
3. if an appeal against expulsion is lodged, the appeal procedure should be completed within three months of the original decision to expel;
4. those who are not legally entitled to stay in a Council of Europe member state, but cannot be expelled in safety and dignity, and with full respect for their human rights, or for practical reasons including, amongst others, the non-existence of readmission agreements with the country of origin, the lack of co-operation of the authorities of the country of origin, the suspension of flights to the country of origin, the impossibility of determining the identity or the nationality of the person to be expelled, should be registered by the authorities as soon as their presence is known and granted temporary entitlement to remain in the country, which is renewable for so long as the relevant conditions persist.

With regard to minors:

1. Council of Europe member states should introduce clear rules on the appointment of a legal guardian for every unaccompanied minor or separated child who is at their border or in their territory. Such an appointment should be made without delay after the presence of the unaccompanied minor or separated child comes to the attention of the authorities;
2. no unaccompanied minor or separated child should be expelled, rejected, removed or otherwise returned to his or her country of origin or any other country before the appointment of a legal guardian has been made, the opinion of the legal guardian as regards the return of the child has been heard and duly considered, and a formal undertaking has been made by the authorities of the country to which the child is being returned that appropriate immediate and long-term care will be provided upon his or her return;
3. minors should not be detained exclusively on the grounds of immigration or asylum, unless there are very exceptional circumstances.

With regard to trafficking and smuggling:

1. member states have the duty to apprehend and punish traffickers and smugglers as well as to provide adequate assistance and protection to victims who agree to co-operate with a view to apprehending traffickers and smugglers;
2. in this respect, the negotiation, conclusion and ratification of a European convention on trafficking in human beings should be strongly encouraged as a fundamental element of a common policy on migration and asylum.

With regard to off-territory asylum processing arrangements:

1. Council of Europe member states should ensure that measures to deal with mixed movements of refugees and migrants are firmly based on principles of refugee law and human rights, maintaining the centrality of the 1951 Geneva Convention relating to the Status of Refugees;
2. any responsibility-sharing arrangements should promote, first and foremost, the rights and interests of refugees;

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3. any responsibility-sharing arrangements should not serve to undermine international co-operation and solidarity by creating different classes of asylum states, allowing some states to choose who enters, and compelling others to host large numbers of asylum seekers;
4. no measures should be taken which have the effect, directly or indirectly, of undermining the primacy of state responsibility, or legal enforceability and accountability, or otherwise diminishing refugee protection.