



Recommendation 1645 (2004)¹

Access to assistance and protection for asylum seekers at European seaports and coastal areas

Parliamentary Assembly

1. The Parliamentary Assembly is deeply concerned about the increasing number of people who put their life and safety at risk by attempting to enter the territory of Council of Europe member states on board unsafe and overcrowded boats or hiding on board ships, secreted in containers, trailer carriers or other facilities, travelling in conditions of extreme hardship which sometimes result in their death.
2. The Assembly recalls its [Recommendation 1467 \(2000\)](#) on clandestine immigration and the fight against traffickers, in which it voiced its shock at the death of fifty-eight Chinese clandestine passengers who were found in a container in the port of Dover, and affirms its dismay at the death of eight Turkish nationals of Kurdish origin, including three children, found in a container in the port of Wexford (Ireland) in 2001. To these dramatic deaths innumerable other persons should be added who have lost their lives drowning in the Strait of Gibraltar, the Adriatic, the Aegean and off the shores of Sicily, while fleeing from hardship, extreme poverty, discrimination and persecution.
3. The Assembly reaffirms its recommendations designed to improve the protection and treatment afforded to asylum-seekers, in particular its [Recommendation 1163 \(1991\)](#) on the arrival of asylum-seekers at European airports; [Recommendation 1236 \(1994\)](#) on the right of asylum; [Recommendation 1309 \(1996\)](#) on the training of officials receiving asylum-seekers at border points; [Recommendation 1327 \(1997\)](#) on the protection and reinforcement of the human rights of refugees and asylum-seekers in Europe; [Recommendation 1374 \(1998\)](#) on the situation of refugee women in Europe; and [Recommendation 1440 \(2000\)](#) on the restrictions on asylum in the member states of the Council of Europe and the European Union.
4. Despite statistics gathered by the International Maritime Organisation (IMO), it is not possible to know how many people manage to gain clandestine entry into Council of Europe member states by travelling on board ships or unsafe craft, as shipping companies do not systematically report stowaway and rescue incidents. However, the increasing number of those who are apprehended while trying to do so, as well as the number of unfortunate victims, show that this is not a negligible phenomenon.
5. Aware that this manner of entry can be used by genuine asylum-seekers as well as other migrants, the Assembly reiterates that those in need of international protection should neither be punished nor deprived of the right to lodge an asylum application in compliance with the 1951 Geneva Convention on the Status of Refugees on account of their clandestine manner of entry or attempted entry.
6. The Assembly is concerned that effective access to the asylum procedure for those who arrive at European seaports or coastal areas may be hindered by legal and practical hurdles, including lack of independent legal advice, limited availability of professional interpreters and inadequate information on how to lodge an asylum application. In addition, in the case of clandestine passengers, there is a concern that their effective access to the asylum procedure may be impeded by an unclear and non-harmonised legal framework applying to them as well as by the concurrent responsibilities of several actors.

1. Assembly debate on 29 January 2004 (6th Sitting) (see [Doc.10011](#), report of the Committee on Migration, Refugees and Population, rapporteur: Mr Danieli). Text adopted by the Assembly on 29 January 2004 (6th Sitting).



7. The Assembly regrets that often, especially in cases of large-scale arrivals in coastal areas, the only interviews taking place before the adoption of an expulsion order have the exclusive purpose of determining the identity and the nationality of the person concerned, with the result that a number of potential refugees may be returned in breach of the principle of non-refoulement risking their lives and safety. On the contrary, effective access to the asylum procedure should imply that every person seeking entry into a Council of Europe member state should have the possibility of expressing the reasons why he or she is trying to do so in full, in an individual interview with the relevant authorities of the country.

8. Similarly, the Assembly fears that the effective exercise of the right of appeal against the refusal to receive an asylum application, or against expulsion, may be nullified by expeditious or accelerated procedures that do not allow sufficient time to lodge an appeal, by inadequate information, lack of independent and free legal advice and representation and by the limited availability of professional interpreters.

9. The Assembly also notes with regret that, despite the large numbers of asylum-seekers and migrants arriving on European shores every year, permanent reception facilities in the areas concerned are still the exception, and that their material and humanitarian conditions are often below acceptable standards.

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

10.1. instruct the relevant committees to review the law and practice of Council of Europe member states regarding access to the asylum procedure for people arriving at European coastal areas, especially in cases of group or mixed arrivals, and on this basis, to make appropriate recommendations to member states;

10.2. instruct the relevant committees to review the law and practice of Council of Europe member states applicable to clandestine passengers who wish to lodge an asylum application, with a view to drafting a code of good practice and, on this basis, make appropriate recommendations to member states;

10.3. call on member states to:

- a. ensure that those who wish to apply for asylum at seaports and coastal areas are granted unimpeded access to the asylum procedure, including through interpretation in their language or, if this is not possible, in a language they understand, and to free and independent legal advice;
- b. ensure that every person seeking entry at seaports or coastal areas be given the possibility of explaining in full the reasons why he or she is trying to do so, in an individual interview with the relevant authorities;
- c. set up a system to ensure the permanent availability of independent and professional legal advice and representation in the field of asylum and migration at seaports and coastal areas, and monitor its quality;
- d. take full responsibility for immigration control at seaports, including through the investment in methods of prevention and detection and, where necessary, the reinforcement of police and immigration staff, working in partnership with private actors involved in seaport activities;
- e. improve international co-operation between police, judicial and immigration authorities through the exchange of intelligence and information with a view to dismantling networks of smugglers operating at European and international level;
- f. introduce harmonised criminal legislation to punish the smuggling of migrants and the trafficking of human beings;
- g. ensure that vulnerable persons, such as unaccompanied minors and separated children, the elderly, the sick and pregnant women who arrive at seaports or coastal areas, even if they do not apply for asylum, be given appropriate assistance and accommodation pending their being sent back or being granted legal status; in addition, unaccompanied minors and separated children should be provided with effective legal guardianship as soon as their presence comes to the attention of the authorities of a member state;
- h. establish appropriate and permanent reception structures in coastal areas and near seaports, to provide accommodation for the new arrivals, whether they apply for asylum or not;
- i. accept responsibility for processing asylum applications of clandestine passengers when the first port of call on the planned route of the ship is on their national territory;

- j.* in the context of their responsibilities for immigration control, conduct sea patrolling operations in such a way as to fully comply with the 1951 Geneva Convention on the Status of Refugees and the 1950 European Convention on Human Rights, by avoiding sending people back to countries where they would be at risk of persecution or human rights violations;
- 10.4. ask the Council of Europe Development Bank to give positive consideration to funding requests from member states to build such reception structures;
- 10.5. invite the United Nations High Commission for Refugees (UNHCR) to:
 - a.* continue its work on the issue of clandestine passengers who are in need of international protection;
 - b.* continue co-operation with the international community and, in particular, with the IMO and the European Union in the search for effective solutions for clandestine passengers, including consideration of the viability of a single legal instrument on the treatment of clandestine passengers seeking asylum, rules on the determination of the state responsible for processing their asylum applications, their treatment on board ship and the maximum duration of custody on board ship.