Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1483 (2006)[1]

Policy of return for failed asylum seekers in the Netherlands

Parliamentary Assembly

1. The Parliamentary Assembly takes note of the recent policy on asylum seekers proposed by the Government of the Netherlands and approved by the Parliament in February 2004 which sets up rules for implementing the return of asylum seekers who applied for asylum before 1 April 2001 and whose application has been rejected (hereafter referred to as "failed asylum seekers").

2. This policy aims at expediting the return of some of the 26 000 people who find themselves in this situation, once they have exhausted all legal remedies against the refusal of their asylum application and provided that they are not granted a residence permit on asylum or other grounds. The persons concerned are allowed to make representations to the authorities of the Netherlands to draw attention to any special circumstances of their case. The return plan is also accompanied by an amnesty for asylum seekers who have not received a decision on their first asylum application within five years. Some 2 097 people have benefited from this amnesty.

3. The Assembly believes that the effective return of failed asylum seekers who have exhausted all legal remedies against the refusal of their claim, and do not have any right to stay in a Council of Europe member state on other grounds, is necessary to ensure the integrity of the institution of asylum and the credibility of the asylum system both to citizens and to people in need of protection.

4. Previous recommendations of the Assembly are relevant to the return of failed asylum seekers and in particular Recommendation 1237 (1994) on the situation of asylum seekers whose asylum applications have been rejected, Recommendation 1547 (2002) on expulsion procedures in conformity with human rights and enforced with respect for safety and dignity, Recommendation 1624 (2003) on common policy on migration and asylum, and Recommendation 1703 (2005) on protection and assistance for separated children seeking asylum.

5. The Assembly also recalls Recommendation No. R (99) 12 of the Committee of Ministers to member states on the return of rejected asylum seekers, the Committee of Ministers' 20 guidelines on forced return (CM(2005)40), as well as Recommendation (2001)1 of the Commissioner for Human Rights concerning the rights of aliens wishing to enter a Council of Europe member state and the enforcement of expulsion orders (CommDH/Rec(2001)1).

6. Similarly, the European Convention on Human Rights and its protocols, as well as the jurisprudence of the European Court of Human Rights, have relevance for the implementation of return measures from Council of Europe member states, in particular Article 3 on the prohibition of torture, Article 5 on personal liberty and security, Article 8 on respect for private and family life, Article 13 on effective remedy, Article 14 on the prohibition of discrimination and Article 4 of Protocol No. 4 on the prohibition of collective expulsion of aliens.

7. The Assembly reiterates that Council of Europe member states should promote the voluntary return of failed asylum seekers and that forced return should be considered only as a last resort. Where forced return is inevitable, it should be implemented in a humane and transparent manner in compliance with human rights and with respect for the safety and dignity of the person concerned.

---

1. Assembly debate on 26 January 2006 (7th Sitting) (see Doc. 10741, report of the Committee on Migration, Refugees and Population, rapporteur: Mrs Zapfl-Helbling). Text adopted by the Assembly on 26 January 2006 (7th Sitting).

8. The recently revised policy of the Netherlands on asylum seekers broadly complies with the recommendations on return made by Council of Europe bodies. Some features of this policy, however, raise concerns which are also relevant for other Council of Europe member states applying similar return policies. Switzerland and the United Kingdom are, inter alia, countries with similar return policies.

9. In particular, the Assembly believes that special consideration, through a procedure laid down by law, should be given to those failed asylum seekers who have established strong family, community or other links with the Netherlands, such as children who were born or brought up there, or failed asylum seekers who have lived in the country for a long time and have integrated there.

10. Furthermore, the Assembly is concerned that, in pursuing the legitimate objective of expediting the return of foreigners who do not have a legal right to remain in the country, the Netherlands could return certain people to a situation where they might be at risk of serious human rights violations or where their safety would be in danger because of the circumstances prevailing in the country or region of origin.

11. In addition, the Assembly fears that, under the revised policy of the Netherlands, detention, of potentially unlimited duration, could be resorted to as a punitive measure to sanction those who do not co-operate, or who cannot prove that they are co-operating, towards facilitating their own return. It regrets that this policy does not foresee any clear exemptions from detention for specific categories of failed asylum seekers such as children, the elderly, people suffering from trauma or mental illness and people with disabilities.

12. Reiterating its position expressed in Recommendation 1624 (2003) on common policy on migration and asylum, the Assembly believes that those who cannot be returned due to objective circumstances or due to a lack of co-operation from the country of origin should be given a residence permit allowing them to stay in the host country.

13. The Assembly agrees with the principle that failed asylum seekers who do not have the right to stay in the country should co-operate with the authorities to facilitate their own return, as stated by the Committee of Ministers in Recommendation No. R (99).

14. on the return of rejected asylum seekers. The Assembly, however, is aware of the practical difficulties that failed asylum seekers may encounter while trying to obtain travel documents from the relevant authorities, or in proving that they have tried to do so. Failed asylum seekers should therefore be given a reasonable time to organise their voluntary return.

15. Finally, the Assembly believes that the revised policy of the Netherlands should be modified in so far as it allows, in some cases, for certain persons to be protected from expulsion where it is impossible to return them, whilst simultaneously depriving them of all access to housing, social benefits and health care. This is a particularly worrying development, especially regarding children in the light of the rights laid down in the Convention on the Rights of the Child. It represents one of a series of measures increasingly used in a number of Council of Europe member states as a means of exerting pressure on failed asylum seekers to return to their countries of origin.

16. The Assembly, therefore, calls on the Government of the Netherlands and on other Council of Europe member states having similar policies to:

16.1. consider the possible use of amnesty, regularisation procedures or discretionary powers to regulate the situation of asylum seekers awaiting a decision on their asylum application for a long period of time;

16.2. while considering applications from failed asylum seekers to remain in the country, give special attention to the length of time the person concerned has lived in the country, family, community or other links, as well as his/her level of integration;

16.3. take into account the best interests of the child, before, during and after decisions are taken concerning the family and not only after a decision has been taken concerning the main applicant;

16.4. postpone the return of failed asylum seekers to countries or regions of conflict or where the humanitarian situation is volatile, pending improvement of the situation;

16.5. take all necessary steps to ensure that the principle of family unity is respected;

16.6. promote fully the use of voluntary return programmes, including advice and assistance on return, in preference to detention and forced returns;

16.7. provide a reasonable time to organise voluntary returns;

16.8. refrain from introducing any policies which lead to excluding from the community or compelling to orbit around European states, failed asylum seekers who cannot be returned due to objective circumstances or due to lack of co-operation from their country of origin;

16.9. use detention only as a last resort and provide for a maximum period of detention. Where detention is considered, limit the period of detention and its use to cases where there is a clear and objective risk that the person concerned would abscond to avoid return, on the basis of an individual assessment of each case;

16.10. provide for an automatic and regular review of all detention decisions as well as the right of failed asylum seekers in detention to apply to a judicial authority which would decide promptly on the lawfulness of their detention;

16.11. avoid in all circumstances detaining children, the elderly, people suffering from trauma or mental illness and people with disabilities; 15.12.

16.12. demand a reasonable level of proof for failed asylum seekers to demonstrate that they have tried to co-operate towards their return and afford them the benefit of the doubt;

16.13. grant a residence permit that provides for the right to work and access to health care for failed asylum seekers who cannot be returned due to objective circumstances or to the lack of co-operation of the country of origin. This should translate into a permanent permit if there is no likelihood of return within a reasonable time-frame;

16.14. ensure an appropriate level of access to housing, social benefits and health care for all failed asylum seekers up to the time of their departure from the country;

16.15. promote public understanding of the situation of refugees in Europe and take measures to ensure that the media and politicians do not distort information on the situation of failed asylum seekers in such a way as to create hostility or intolerance towards persons belonging to this group.