Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1568 (2007)[1]

Regularisation programmes for irregular migrants

Parliamentary Assembly

1. The Parliamentary Assembly is deeply concerned by the large number of irregular migrants in Europe. Some estimates indicate that there may be as many as 5.5 million irregular migrants in the European Union alone and a further 8 million irregular migrants living in the Russian Federation.

2. It is becoming ever more clear that a large proportion of these persons will remain in Europe and that it will not be possible to return them forcibly or voluntarily to their countries of origin.

3. The question therefore arises of how to deal with these irregular migrants living in Europe, where they are largely tolerated but do not have a legal status or the right to remain.

4. A number of member states of the Council of Europe have in the past undertaken so-called regularisation programmes through which irregular migrants have been able to regularise their situation. In the last twenty-five years, within the European Union alone, over 20 regularisation programmes have been carried out, providing 4 million irregular migrants with either temporary or permanent residence and work permits.

5. A range of different types of regularisation programmes have been tried. These include exceptional humanitarian programmes, family reunification programmes, permanent or continuous programmes, one-off or one-shot programmes and earned regularisation programmes.

6. Notwithstanding that dealing with irregular migration, including implementing regularisation programmes, is an issue of common concern for Europe, there has been no attempt to share European experiences or adopt a common European position or guidelines on the use of such programmes either within the Council of Europe or within the European Union.

7. The use of regularisation programmes has proven highly controversial. Critics claim that regularisation programmes reward lawbreakers and create a pull effect for irregular migration. They also claim that many persons who are regularised lapse back into irregularity.

8. Those in favour of regularisation programmes argue that they provide a solution for the human rights and human dignity concerns of migrants in an irregular situation. They also claim that such programmes reduce the size of the undocumented population, encourage circular migration, decrease the likelihood of exploitation of migrants, reduce the size of the underground economy and have a positive impact on tax revenues and social security contributions.

9. The Assembly, while recognising that there are many diverging opinions on regularisation programmes, considers that a distinction can be drawn between the concept of regularisation programmes, which are often targeted towards specific groups of irregular migrants, and general amnesties, which apply to all irregular migrants. In the view of the Assembly, much more research on the impact of these programmes is needed.

10. The Assembly notes in particular the regularisation programme carried out in Spain in 2005 in which over 570 000 persons were regularised, and considers that Europe can learn from this experience. This regularisation programme has been welcomed by irregular migrants, civil society, employers and trade unions, as well as by the majority of politicians in Spain.

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1. Assembly debate on 1 October 2007 (29th Sitting) (see Doc. 11350, report of the Committee on Migration, Refugees and Population, rapporteur: Mr Greenway). Text adopted by the Assembly on 1 October 2007 (29th Sitting).

11. The Assembly considers that the success of this programme can be put down to its response to a number of pressing needs. Employers and trade unions needed to hire persons legally and avoid the risk of criminal prosecutions; the irregular migrants needed to find security and a better level of protection of their rights; and the government needed to tackle the shadow economy, increase social security and tax contributions and promote the rule of law.

12. One of the main failings of the Spanish regularisation programme was, however, the failure of the Spanish authorities to keep their European partners aware of their plans to carry out such a programme. This led to misunderstandings as to the nature of the programme and also created a backlash against such programmes in a number of countries across Europe.

13. The Assembly is aware of the criticism put forward, including in Spain, that regularisation programmes have a pull effect on irregular migration. The Assembly, however, considers that this factor may be exaggerated. If one takes the example of Spain there are a number of other important contributing factors causing irregular migration. These include Spain's geographical location, its colonial history and linguistic ties, the high level of demand for unskilled labour and limited opportunities for regular migration. There is a further contributing factor which is the difficulty Spain has in returning irregular migrants and the fact that those irregular migrants who are not returned within forty days of being held in detention must be released.

14. One important feature of the recent Spanish regularisation programme was that it was employer driven. The Assembly considers that as it met the needs of many irregular migrants, and Spanish society in general, this contributed greatly to its acceptance and its success.

15. The Assembly, drawing from the experience of regularisation programmes carried out in Europe to date, has a number of recommendations to make to member states on this issue. The Assembly considers that member states should seek to:

15.1. avoid having large numbers of persons living in an irregular situation in their countries. If it is not possible to return them, member states should consider the option of regularising their situation;

15.2. determine how many persons are living in an irregular situation and analyse whether they are likely to return or be returned to their countries of origin, or remain in member states of the Council of Europe;

15.3. evaluate the situation of persons living in an irregular situation from a humanitarian and human rights perspective and examine the impact that regularisation of their situation might have on these persons, including in terms of integration into society and their potential return to their country of origin;

15.4. review the economic demand for migrants and consider how far this is currently being filled by irregular migrants. Furthermore, analyse the economic contribution made by irregular migrants together with the impact that regularisation of their situation would have on the informal economy, social security contributions and tax receipts.

16. The Assembly also recognises that further research is needed on the outcome of past regularisation programmes, including on issues such as the possible pull effect of these programmes, the impact on the informal economy and the contribution to social security and tax contributions, and also on the lives of persons who have been regularised and whether they have lapsed back into an irregular situation. The Assembly therefore recommends that member states that have already implemented such programmes, carry out such studies as a priority.

17. The Assembly considers that a number of accompanying measures should be adopted by member states when implementing regularisation programmes. These include:

17.1. strengthening the administration in order to enable it to deal with the potentially high number of applicants for regularisation;

17.2. ensuring that administrative requirements are kept to a minimum;

17.3. guaranteeing against fraudulent procedures;

17.4. preparing integration programmes for migrants who are regularised;

17.5. consulting employers, employees irregular migrants and civil society in preparing and implementing the programmes;

17.6. ensuring publicity for the programmes reaches irregular migrants;

17.7. ensuring that the programmes and their benefits are explained carefully to the media and to the public in general;

17.8. keeping European partners informed of plans for regularisation programmes and their implementation.

18. The Assembly finds employer-driven regularisation programmes particularly interesting as a means of meeting the needs of a large number of irregular migrants, employers, trade unions and society in general.

19. It also finds interesting a process of earned regularisation, whereby irregular migrants earn the right to regularisation by demonstrating their contribution to society through learning the local language and customs, providing evidence of work and payment of social security contributions, taxes and other steps leading towards a process of integration.

20. The Assembly considers that member states should also take steps to reduce the risk and need for recurring regularisation programmes. A number of measures should be adopted before implementing regularisation programmes if states wish to "set the counter to zero" and clear the backlog of irregular migrants. The Assembly therefore urges member states to:

20.1. provide greater opportunities for regular migration in order to reduce the number of irregular migrants;

20.2. combat illegal employment and accompanying exploitation, including through reinforcing the labour inspectorate and having in place systems of fines and punishments for those offering illegal employment;

20.3. strengthening, as appropriate, border and visa controls;

20.4. provide assistance to countries of origin of irregular migrants in tackling the push factors of irregular migration, whether these be economic or environmental, including through co-development and other measures;

20.5. combat trafficking that is linked to irregular migration, in line with the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197);

20.6. protect victims of trafficking, with a view to avoiding their twofold suffering, both as victims of trafficking and as irregular migrants.

21. The Assembly believes that for those irregular migrants who cannot be returned to their countries of origin, member states of the Council of Europe must offer some possibility for them to regularise their situation and integrate into society.

22. For those irregular migrants who can be returned, the Assembly reiterates its concern that they should only be returned voluntarily or in accordance with the 20 guidelines on forced return adopted by the Committee of Ministers of the Council of Europe in May 2005. For those irregular migrants that remain in Europe, they should be entitled to at least the minimum rights as outlined in Assembly Resolution 1509 (2006) on human rights of irregular migrants until such time as they may be able to regularise their situation or are returned.

23. The Assembly encourages the European Commission to further its reflection on the use of regularisation programmes in the European Union, taking into account the recommendations made in this resolution and in particular the strong human rights and humanitarian concerns relating to the situation and the exploitation of irregular migrants in Europe.£

24. It invites the Council of Europe Commissioner for Human Rights to encourage member states to implement regularisation programmes as a means of safeguarding the human dignity and human rights of a particularly vulnerable group of persons in member states of the Council of Europe.

25. The Assembly proposes keeping the issue of regularisation programmes in member states of the Council of Europe under review, noting the contribution that such programmes can make towards managing irregular migration and protecting the rights of irregular migrants.