

Protection of migrants in countries of origin, transit and destination: the point of view of the Council of Europe

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The theme of the conference addresses a very topical issue, namely, how to manage migration so that it maximises the benefits for and minimises the negative effects on destination, transit and origin countries as well as migrants themselves. At the Council of Europe (CoE), we fully agree with the forthcoming Greek Chairmanship as we, too, believe that enhanced co-operation between destination, transit and origin countries, first internally, that is at local and national level, then both bilaterally and at regional level, can lead to the development of comprehensive, effective and secure migration management strategies. This process will have in turn a positive effect on overall stability and security in the OSCE region, emphasise mutual understanding, defuse potential tensions, and lead to joint actions.

At the CoE, we also agree with the Greek authorities that the OSCE with its cross-dimensional character can provide a good platform for political dialogue and experience exchange on these issues. Let me recall that at the 3rd Summit of Heads of State and Government of the CoE, Heads of State confirmed their commitment “to ensure close cooperation and coordination in international action, in particular on the European scene. The Council of Europe, the European Union and the OSCE will therefore work in enhanced synergy and complementarity based on their respective competency and expertise.”

Moreover, during that summit, OSCE and the CoE signed a joint statement on enhanced cooperation in identifying co-ordinated responses to the threats and challenges of the twenty-first century.

The OSCE is therefore our natural partner with whom we share common values, and tackling migration challenges is a promising area for cooperation between both organisations.

Now turning to session III relative to the “Protection of migrants in countries of origin, transit and destination, including gender aspects”, obviously, in a Human Rights organisation like the CoE, the interests of migrants are central to our work and I thank you for having included me as speaker in this specific session. We deal with migration management focusing on the human rights and dignity of migrants, but not at any cost, not at the detriment of the protection of all migrants, including the most vulnerable, i.e. children, elderly, women and irregular migrants.

At the CoE, we strongly believe that there is scope for the protection of migrants in every strategy or policy for migration management. That is why an important aspect of the work of the Council of Europe is to help member States guarantee migrants a set of rights which will make their stay and work in destination countries beneficial and secure for all.

Sovereign powers of state in determining nationality, admission, conditions of stay and removal of non-nationals: as the title rightly points out, these issues are still mostly within the national sovereignty of member States (mS).

But the CoE deals a lot with standard setting and has different tools to harmonise sovereign powers of mS, to try to “speak the same legal language” across our member States.

Apart from the fact that every human being who finds him or herself on the territory of a member State of the CoE is covered by the provisions of the ECHR, we count on the European social Charter, a treaty that covers the rights of workers.

Although it is a matter for States to decide, which persons are their nationals, it is important for States to co-operate and co-ordinate their nationality laws in order to deal with such issues as statelessness, state succession and multiple nationality and their consequences. That is the objective of the main European legal instrument in the area of nationality - the European Convention on Nationality (CETS No.166), which was adopted by the Council of Europe in 1997 and entered into force on 1 March 2000. Another important Council of Europe legal instrument in the area of nationality – the Convention on the Avoidance of Statelessness in relation to State Succession (CETS No. 200) – was opened for signature on 19 May 2006.

On removal of non-nationals, the Committee of Ministers adopted Twenty Guidelines on forced return of illegal residents in May 2005. The Guidelines constitute the first international instrument in which all the stages of the procedure of forced return are covered, from the moment of the adoption of a removal order until the effective return. It is the first time that states have agreed on dealing with every aspect of this issue in a single instrument. The adopted approach is based on the idea that human rights and effective procedures for return are mutually supportive. The Guidelines also call for more transparency and better communication among all the actors involved in a forced return.

Then, we have a convention which deals with an important aspect once the migrant is at the borders, that is his or her legal status in the country of destination, ‘the conditions of stay’ as you put it in the background paper.

In this respect, let me highlight the importance of the Convention on the legal status of migrant workers. This text is designed to supplement the protection afforded by the European Convention on Human Rights and the European Social Charter, and is based on the principle of equality of treatment between migrant workers and nationals of the host country.

It was signed in November 1977 and came into force on 1st May 1983. It guarantees migrants equal treatment with nationals in such areas as:

- right to work;
- right to social security;
- trade union rights;
- family reunion.

This treaty has been recently ratified by Ukraine, Moldova and Albania and apart from EU member States, it is also in force in Turkey. It is the only binding text specific to migration and out of 47 mS, only 11 have ratified it.

But we all know, and the experience with the ratification of the 1990 UN Convention will not contradict me, that treaties legally binding our states in the field of migration are not popular with our governments, so we have to get the message across differently, with “soft laws”, constant work and a continuous presence on the long-term. That is what we do at the CoE with recommendations to mS., asking them for instance to grant non-nationals access to employment in the public sector or to explore with migrants associations ways to make co-development sustainable.

Other recommendations which help member States devise their migration and integration policies include:

R (2002) 4 on the legal status of persons admitted for family reunification. This recommendation aims to harmonise rules and guarantee minimum standards to people arriving under family reunification schemes.

R (2000) 15 on the security of residence of long-term migrants. This recommendation sets out a number of principles which include:

- equal access to employment and other economic activities;
- equal treatment with nationals in a number of areas connected with professional activity;
- special protection for second-generation immigrants;
- minimum procedural, administrative and judicial guarantees in the event of withdrawal of a residence permit or an expulsion order;
- the possibility of acquiring the state’s nationality.

We are convinced that the security of residence is not only about protecting the right of the migrant to a secure residence, it is also the first step in settling down and integrating into their host society and is also vital for social stability in member states. In the eyes of the majority population, security of residence is a positive signal, it shows that the public authorities have accepted that newcomers may stay for an unlimited period, that they will become fully-fledged citizens, and that unequal treatment of them can no longer be justified by their precarious status in society.

More recent recommendations include the integration of children of migrants and of immigrant background or one on improving access of migrants and persons of immigrant background to employment.

What is the power of these recommendations and guidelines ? Our recommendations are based on the experience and good practice of different member States which have joined efforts to present the ideal, the best possible framework taking into account the more progressive ‘state of the art’ in Europe. The beauty of it is that it has a take off effect. It gives ideas to the decision makers about what could be an ideal legal framework in their country. We know that it is difficult to achieve for some states but since it has proved it works in another, why not try? At the end of the day, recommendations harmonise national legislations at a higher level, not with the minimum common denominator as compulsory, binding texts do. It makes policies progress to fairer, more human rights based systems for all.

How to take up the challenges related to enforcement of legal commitments?

At the CoE and at OSCE as well, our Conventions, recommendations and guidelines are addressed to central governments of mS which are our privileged interlocutors, while we know that in many mS decentralisation is growing. So how to reach the regional and the local level? We have an institution called the Congress of Local and Regional Authorities a style of local self-government that meets the needs of the citizens wherever they may be. Being intended to genuinely represent both local and regional authorities, it comprises two chambers: the Chamber of Local Authorities and the Chamber of Regions. The Committee on Social Cohesion has charge of all questions relating to employment, citizenship, migration, inter-community relations and also gender equality and solidarity. So, through the Congress we reach for mayors and prefects and we count on them for the effective implementation of our recommendations.

How to ensure alignment with HR standards as promoted by the CoE ?

We have in the migration field the premise at the basis of our migration management strategy, that is co-operation, co-ordination and collaboration among all the actors involved in the migration scene. Co-operation was the cornerstone of our report ‘Towards a migration management strategy’ and it is still the key-word of the integrated approach to migration discussed at the recent Ministerial Conference in Kyiv. There is not a principle adopted by the Ministers, there is not a single paragraph in the final declaration that does not relate to co-operation and co-ordination of actions.

The Ministers recognised that the close links between migration, social cohesion and development require a coherent, comprehensive, integrated and co-ordinated approach by member states that is fully respectful of human rights, relevant to Europe as a whole, and derived from consultation and co-ordination between local, regional and national bodies, actors responsible for distinct policy areas, and all other relevant stakeholders, including social partners and civil society;

The Ministers agreed to strengthen dialogue and co-operation between receiving, transit and origin countries, particularly within Europe, with a view to increasing and sharing the benefits of migration, facilitating integration and re-integration, and enhancing the impact of migration on development

And

To promote coherence between migration, development and integration policies at all levels (international, national, regional and local) including improved co-operation between government departments and the mainstreaming of migration into government policies and, for this purpose, continue to develop or improve national migration policies.

The Ministers also undertook to

31. Pursue an integrated approach to economic migration, development and social cohesion at national and international level, in particular, by:

- (i) Co-ordinating, so far as possible, observation and research at local, national and international level;
- (ii) Co-ordinating policy action at local, national and international level;
- (iii) Developing multi-sectorial partnerships with and between states and involving civil society;
- (iv) Promoting synergy and concomitance in the action undertaken;
- (v) Properly and fully assessing policy need and evaluating its impact on development and social cohesion.

32. Strengthen partnerships and consultation mechanisms between receiving, transit and origin countries with a view to improving the mutual understanding of their respective challenges in the field of economic migration and maximising its benefits for all actors.

36. Strengthen the co-operation between government departments in member states across the policy areas of economic migration, social cohesion and development, identify common priority lines of action and objectives, and develop concomitant and complementary policies. And last but not least:

37. Establish and strengthen partnerships between the member states of the Council of Europe in the fields of economic migration, social cohesion and development and increase co-operation in these fields between the Council of Europe, European Union, Commonwealth of Independent States, Organisation for Security and Co-operation in Europe, the specialised agencies of the United Nations including the International Labour Organization and the United Nations High Commissioner for Refugees, Organisation for Economic Co-operation and Development, and International Organization for Migration.

We are convinced that an integrated approach to migration is the best safe-guard for the human rights of all migrants and we believe that a close co-operation with OSCE could be very beneficial for both organisations. ODIHR has observer status with the CDMG and our colleague Nina Lindroos-Kopolo regularly follows its work and participated in the last Ministerial Conference. We look forward to continuing co-operation and coordination of actions.