

OSCE Human Dimension Implementation Meeting

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Working Session 5: 'Humanitarian Issues and other commitments'

Contribution of the Council of Europe

**COUNCIL OF EUROPE ACTIVITIES IN THE FIELD OF ASYLUM
AND REFUGEE LAW**

Introduction

The Council of Europe has always attached a great deal of significance to the implementation of the Geneva 1951 Convention relating to the Status of Refugees in member states. Since the 1970s, the Committee of Ministers has adopted a number of European standards in this field - Recommendations to the governments of member states¹ - which now make up a comprehensive set of standards in the form of soft law legal instruments. These recommendations attempt to address the most pressing issues European governments face in the field of asylum and offer guidance in dealing with these issues. They constitute a set of rules, compatible with the Geneva Convention, which reinforce and complement its provisions in a European context.

I. Council of Europe legal instruments

The Council of Europe Recommendations in the field of asylum deal with a wide range of issues, including the application of the safe third country concept and "membership of a particular social group" in the context of the Geneva Convention, the harmonisation of national procedures relating to asylum, the arrival of asylum seekers at European airports and the training of officials dealing with asylum seekers, detention of asylum seekers, the right to an effective remedy and the return of rejected asylum seekers, family reunion of refugees as well as subsidiary and temporary protection.

¹ These texts are available at <http://www.coe.int/cahar> (see "texts and documents")

The latest Council of Europe legal instruments in this field are briefly described below.

Recommendation Rec(2005)6 on exclusion from refugee status in the context of Article 1 F of the Convention relating to the Status of Refugees of 28 July 1951, adopted on 23 March 2005

The aim of this Recommendation is to provide member states with a common approach to the exclusion clauses contained in Article 1 F of the Geneva Convention, to ensure that those who have committed serious crimes, such as acts of terrorism, be prevented from enjoying the benefits of refugee status while, at the same time, establishing certain guarantees for persons whose asylum request is examined with regard to a possible exclusion ground.

“Twenty Guidelines on forced return”, adopted on 4 May 2005.

These Guidelines apply to procedures leading to the expulsion of non-nationals, including rejected asylum seekers, from the territory of member states of the Council of Europe. They are the first international instrument in which all the stages of the process of forced return are covered, from the moment of the adoption of a removal order until the effective return. The Guidelines suggest how to conduct forced return with efficiency while reducing the risk of violation of human rights. They are based on the idea that human rights and efficient procedures for return are mutually supportive, that transparency and communication are required for return operations and that co-operation with returnees at all stages of the process should be encouraged.

Recommendation Rec(2006)6 on internally displaced persons, adopted on 5 April 2006.

This latest Council of Europe Recommendation aims at promoting the implementation of the UN Guiding Principles on Internal Displacement in the member states.

It should be noted that the Council of Europe legal instruments in the field of asylum frequently draw on the relevant case-law of the European Court of Human Rights. Although the European Convention on Human Rights itself contains no explicit provisions on the right of asylum, the Court, through its case-law, has gradually made the Convention a key instrument in the field of refugee law. The case-law of the Court now offers to asylum seekers and refugees in Europe a protection that is complementary to the one afforded by the Geneva Convention. This is the case with respect to a wide range of issues such as detention of asylum seekers, family reunion of refugees, expulsion of rejected asylum seekers and access to effective remedies, etc. This case-law is binding and must be taken into account by law makers, judges and the other state authorities concerned in all the member states of the Council of Europe.

II. Assistance Programmes

Since the early 1990s the Council of Europe has been organising assistance programmes which aim at ensuring that the universal principles and the relevant Council of Europe standards in the field of refugee protection are being properly considered by those states that are in the process of setting up or developing their national asylum systems. Many of these assistance activities in the field of asylum have and continue to be organised together with the United Nations High Commissioner for Refugees (UNHCR). In 1999, a Memorandum of Understanding was concluded between the Council of Europe and the UNHCR, providing for co-operation between the organisations. This operational co-operation underlines once again the complementary character of the Council of Europe's activities with the Geneva Convention, and more generally with the work of UNHCR.