



COMMISSIONER FOR HUMAN RIGHTS  
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## **“Europe must respect migrants’ rights”**

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on the occasion of the 70<sup>th</sup> anniversary of the CIMADE  
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## I. Introduction

Across Europe there is an increasing trend to repel, at any cost, irregular migrant flows, thus putting human lives at serious risk. This is often part of so-called 'migration management'. Such methods of controlling the movement of people often violate and certainly erode international law principles. The recent new deaths of migrants in the Mediterranean Sea reminded us once again of the human tragedies that such border control methods entail without really achieving their purpose of genuine control.

**No one can deny states' legitimate interest to control their borders.** They have, in principle, the right to decide on the entry and stay of foreign nationals. **However, international standards are clear and states' sovereignty is not unlimited in this area.** For example, individuals have the fundamental right to seek and to enjoy asylum from persecution, according to Article 14 of the Universal Declaration of Human Rights. The principle of *non-refoulement* has been established in order to protect individuals from being sent back to situations which would seriously threaten their life or freedom.

**The reality is unfortunately different.** As you know, in order to reach Europe, migrants go through a long and difficult journey. It can take months, sometimes even years. They often encounter hunger, suffering, violence and unfortunately death on their way. However, when they finally arrive a number of them cannot claim refugee status, even if their enforced return would amount to personal tragedy.

## II. Access to asylum procedures should be ensured

In many European countries access to asylum procedures by foreign nationals is complex. Asylum seekers are commonly requested to file their request as well as evidence of grounds for asylum in a rather limited period of time. Often, they also have to submit applications in a language they do not know and have to cover the expenses of the interpretation or translation when necessary. These requirements make it even harder for people requesting international protection.

When the asylum application is submitted, the proceedings must be fair and give the asylum seekers the possibility of expressing their views. However, accelerated procedures, often used nowadays, can be problematic due to deadline limitations. The Guidelines concerning these kinds of asylum procedures were adopted last July by the Council of Europe Committee of Ministers and are a reminder of the seriousness of this situation, and the human rights which are at stake.

Even more problematic is the notion of so-called "*safe country of origin*". European states, especially in the context of the EU law, have developed lists of countries which have to be presumed to be safe places of origin. I have always advocated against those lists.

Even in generally safe, democratic countries, there may well be situations where not all individuals or groups of individuals are safe. For instance, a state may be unable to provide effective protection against certain acts by private persons, such as genital female mutilation or honour killings, mostly perpetrated by close family members of the victim, or against racist violence. In such situations, it is necessary not only to assess the willingness of a country to provide protection against such acts, but also the real capacity of the state to do so. Moreover, severe discrimination against one group of people may well reach the level justifying international protection, even if the majority population in the country generally enjoys effective human rights protection. Recently the arrival in France of a number of Hungarian and Czech Roma fleeing their countries due to fear of persecution, reminded us of the serious, inherent inadequacies of the “safe country” notion.

### **III. Migrants are not figures**

**Migrants are finding themselves increasingly targeted**, and some governments have even set quotas of migrants that should be returned. When visiting France last year, I was struck by the fact that personal history, integration and interests of the migrants were less and less considered. It appeared that the priority for the administration was to reach a predetermined number of migrants to be returned. Such a policy may well contravene migrants’ right to private and family life. The rationale of these “quotas” is also, somehow, difficult to understand. As noted in my Memorandum of last November following my visit to France, the target numbers appear to be calculated on the basis of the authorities’ presumed capacity to reach these quotas, rather than a real belief that such measures can stop irregular migration. My feeling is that migration policy should not be determined by figures but by full and effective respect of the human rights, including dignity, of migrants.

Furthermore, the **side effects of such quotas are particularly worrying**. They directly affect the way in which all migrants are treated. As reported by CIMADE, the attitude of public services changes due to these quotas. Civil servants from migration and public order services become more suspicious toward anyone that looks different. They are more reluctant to take into account specific needs or requests.

Additionally, there were reported cases of **people arrested in prefectures or even schools** with a view to being deported. I found this practice unacceptable. Every inhabitant of a country - whatever their legal status - should feel confident using public services. Furthermore, this feeling of suspicion spreads over the entire society. I recently read that an irregular migrant was arrested at a bank after the bank staff called the police because they had some “suspicions” as to his legal status.

**Such an atmosphere dissolves social cohesion**, which is necessary in democratic, pluralist societies. It can only feed the emergence and **development of xenophobic attitudes**. State authorities should adopt effective measures to eliminate

discrimination and not policies that can lead to social exclusion. **Recent proposals to criminalise attempts to enter a country or to stay there without a permit, further reinforce a xenophobic climate.**

First of all, such criminalisation could drastically **undermine the right to seek and to enjoy asylum**. In addition, persons who have been trafficked into a country should not be seen as having committed a crime. There are agreed international standards, such as the 2005 Council of Europe Convention on Action against Trafficking, to protect persons who have been victims of human trafficking from criminal liability. Criminals are the traffickers, not the migrants.

Also the 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, expressly provides that if migrants are detained for violating provisions relating to migration, they should be held separately from convicted persons or persons detained pending trial. They should not be seen as criminals.

**Criminalisation is a disproportionate measure** which exceeds a state's legitimate interest in controlling its borders. To criminalise irregular migrants would, in effect, equate them with the traffickers or employers who, in many cases, have exploited them. Such a policy would cause further stigmatisation and marginalisation, when in fact the majority of migrants contribute to the development of European states and their societies. Immigration offences should remain *administrative* in nature.

#### **IV. Migrants also enjoy the human right to liberty**

The right to liberty under Article 5 of the European Convention on Human Rights is a human right enjoyed by all human beings. Deprivations of liberty should meet the strict requirements provided for in the Convention.

**Detention of migrants, especially upon irregular entry or subsequently with a view to deportation, is now a common practice in almost all Council of Europe member states.** The length of detention varies from a month to an unlimited amount of time. Indeed, even when detention is limited, practice proves that it can be prolonged due to **legal loopholes**. In my report on Belgium published last June, I have highlighted this particular problem. The Belgian law limits the detention of migrants to 2 months, renewable once and, in exceptional circumstances, to 8 months. However, the statutory time-limit starts afresh if a deportation attempt is thwarted by the objections of the person concerned. Therefore, a migrant may potentially be detained for an unlimited period in the event of multiple refusals to board a means of transport. As CIMADE described to me during my 2008 visits, a similar practice seems to exist in France where migrants are consecutively detained in migration detention centres, then in prisons, before being sent back to migration detention centres to be deported.

In this context, I should like to reiterate my grave concern about the possibility that now exists of detaining irregular migrants in EU member states for a maximum period of 18 months. This possibility is provided for by the “*Returns Directive*” which was adopted last December. This was an unfortunate response to the urgent need to harmonise European policies in this area. Despite the possibility of abuses, **the average length of detention of migrants does not exceed a month in several European countries**. Therefore, 18 months of detention is not only inhumane but also unnecessary in many cases.

## V. Review of the “Dublin II Regulation” is urgent

I am also concerned by the fact that some EU member states detain asylum seekers in the context of the “*Dublin II Regulation*”, when their transfers are under way to the member state responsible for examining their application. The inherent weakness of this system has been shown in the case of Greece, where a number of states have stopped sending asylum seekers back to Greece due to the serious, chronic defects of the asylum system there, as noted also in my report on Greece published last February.

Furthermore, such a mechanism of regulation does not allow for real **burden sharing**. States at the “entry” of Europe remain responsible for migrants registered in their territory. I feel that the “**Dublin II Regulation**” **should be urgently revised to ensure that a fair sharing of responsibility is made among all the EU member states. The principle of non-detention of asylum seekers should also be reflected in the new Regulation.**

International bodies, such as the CPT or the European Parliament, have done important work in reporting on the **conditions of detention of migrants**. Given the subsidiary nature of the work of these organs, this work should also be **done at national level by effective monitoring mechanisms**. Places used for detaining migrants, including asylum seekers, should be under constant surveillance by an independent organ.

## VI. Regularisation as a means of upholding migrants’ human rights

The need for common European procedures in this area is obvious. I have met government representatives who have been worried that a rights-based policy would send “signals” which would attract further refugees. That attitude tends to feed a negative chain-reaction. Policies should instead be coordinated on the basis of the agreed human rights standards.

**Political decision-makers should not lose sight of the human rights perspective** in this discussion and should formulate a rational long-term strategy. Such an approach has to include the need for migrant labour to perform the jobs which nationals very often refuse to take. In other words, **European states should face up to the reality that irregular migrants are working because migrant labour is in demand.**

We know that the **agricultural sector** in southern Europe employs extensively irregular migrant workers. The same goes for **catering services** in France and the United Kingdom. Sadly, migrants in these fields often fall prey to **substandard working and living conditions.**

Migration is a social phenomenon which requires multilateral and intelligent action by states. Irregular migration has increased and thrived, not only because of underdevelopment in migrants' countries of origin, but also due to the **lack of clear immigration mechanisms** and procedures which respond to labour demands through regular migration channels.

The issue of regularisation of irregular migrants should be seriously considered in certain situations. Although some European states have denounced such a practice, it has proven to be useful in several countries. **Italy** recently adopted a mechanism to regularise a large number of irregular migrant workers. A few weeks ago, **Belgium** also announced that it will create a regularisation procedure based on objective and fair criteria. In 2007 the Council of Europe Parliamentary Assembly adopted a Recommendation containing guidelines on regularisation of migrants. Indeed, after several years living and working in a country, a migrant – whether regular or not – integrates into the community and creates social ties with the host society. Regularising these people and their families' status and residence also benefits the host country, reinforcing its social cohesion.

## **VII. Conclusion**

I would like to conclude by insisting on the crucial role played by civil society in the protection of migrants' rights. The information provided me by NGOs has been invaluable as it allows me to have an accurate picture of the law and practice in the Council of Europe member states. Proposals for improvements made by NGOs with long experience in this field are always welcome and encouraged. It is a difficult task and their professionalism is much appreciated.

NGOs have the right to express their views, to report what they witness in the field every day. Civil society organisations have become an integral part of and crucial actors in democratic societies.

I know that the last few years have been difficult for CIMADE. Your dedication to protect migrants as well as to defend your freedom of expression threatened the functioning of the association. Your valuable contribution to the protection of the human rights of migrants is widely acknowledged. I take this opportunity to express my appreciation of the important work that CIMADE has carried out over the last 70 years and continues to do with the same enthusiasm.