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Detention of asylum seekers and irregular migrants in Europe

Motion for a recommendation
presented by Mrs Mendonça and others

This motion has not been discussed in the Assembly and commits only the members who have signed it

1. The detention of asylum seekers and irregular migrants is widely practiced in Europe.
2. Conditions of detention of migrants and asylum seekers can be particularly harsh with the problem of overcrowding, as recently witnessed on the Island of Lapedusa in Italy, or dangerous, as evidenced by the death of 11 irregular migrants following a fire at a detention centre at Amsterdam's Schiphol Airport. The conditions of detention of asylum seekers and irregular migrants are not always transparent and access is often not granted to humanitarian or watchdog organisations. In Britain the Race Relations Institute has registered 34 suicides of asylum seekers in detention centres in the UK since 2000. In Greece, Amnesty International has recently denounced the conditions in which irregular migrants were held prior to their expulsion. These are just some recent problematic examples linked to the detention of asylum seekers and migrants in Europe.
3. The legal basis for detention, or the duration of detention of migrants and asylum seekers is not always clear and practices vary considerably from country to country and may even differ within a country, depending on whether someone is detained at the border or within the country.
4. The European Convention on Human Rights provides for the right to liberty and security of person but allows, under Article 5 paragraph 1(f) of the Convention, "the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition".
5. There is no comprehensive definition of detention at international law or its application to migrants and asylum seekers. The case-law under the European Convention on Human Rights, the standards developed by the European Committee for the Prevention of Torture and those outlined by the Council of Europe Commissioner for Human Rights however all provide guidance on the human rights standards to be applied in relation to detention of asylum seekers and irregular migrants and provide indications of practices to be adopted.
6. There is a need to further clarify these developing human rights standards to be applied when detaining asylum seekers and irregular migrants.
7. As a minimum the following standards should apply:
 - Detention of irregular migrants should be used only as a last resort and not for an excessive period. Alternatives to detention should always be examined first;

- Irregular migrants and asylum seekers should be held in special detention facilities and not with convicted prisoners;
- Children and vulnerable persons (pregnant women, elderly, people with disabilities, etc.) should not be detained. If they are detained it should be as a measure of last resort and then only for the shortest time possible;
- Families should be lodged together; women and men when not making up a family unit should be lodged separately;
- Detainees should have the right to contact anyone of their choice and have access to adequate medical care and access to an interpreter and free legal aid where appropriate;
- Detention should be judicially authorised and there should be independent judicial scrutiny of the legality and need for continued detention. Those detained should be expressly informed, in a language they understand of their rights and procedures applicable to them. They should be able to take proceedings before a court to challenge speedily the lawfulness of their detention.
- Irregular migrants and asylum seekers in detention should have the right to communicate, where they so choose, with the consular posts of their country of origin and to be informed of their rights under the 1963 Vienna Convention on Consular Relations.

8. The Parliamentary Assembly recommends that the Committee of Ministers:

- i. Prepares guidelines on minimum standards to be applied in the detention of asylum seekers and irregular migrants;
- ii. Provides for a maximum limit for the length of detention of asylum seekers and irregular migrants
- iii. Encourages member states to adopt a policy of transparency by allowing access to places of detention by humanitarian and watchdog organisations
- iv. Encourages the European Committee for the Prevention of Torture (CPT) to pay particular attention to the detention of asylum seekers and irregular migrants, including when there are sudden or mass arrivals of asylum seekers or irregular migrants.

*Signed*¹:

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EPP/CD: Group of the European People's Party
ALDE: Alliance of Liberals and Democrats for Europe
EDG: European Democratic Group
UEL: Group of the Unified European Left
NR: not registered in a group