

Doc. 11111
18 December 2006

Human rights of irregular migrants

Recommendation 1755 (2006)

Reply from the Committee of Ministers
adopted at the 983rd meeting of the Ministers' Deputies (13 December 2006)

1. The Committee of Ministers has taken note of Parliamentary Assembly Recommendation 1755 (2006) on human rights of irregular migrants. It also notes with interest the useful overview of provisions in existing international instruments that potentially safeguard the minimum rights of irregular migrants contained in Resolution 1509 (2006) on the same subject, which points to the lack of specific or encompassing protection (paragraph 10 of the resolution). It transmitted the recommendation to the European Committee on Migration (CDMG), to the European Committee for Social Cohesion (CDCS), to the Governmental Committee of the European Social Charter and to the Steering Committee for Human Rights (CDDH) for information and possible comments. The comments received are appended to the present reply.
2. The Committee of Ministers agrees with the Parliamentary Assembly's affirmation in Resolution 1509 (2006) that the European Convention on Human Rights provides minimum safeguards of civil and political rights that can be applied to irregular migrants. With regard to social and economic rights, it stresses that while it is essential to encourage member states to provide irregular migrants with minimum protection, it is up to each member state to adopt specific measures, as appropriate.
3. With respect to the establishment of a list of minimum rights for irregular migrants, the Committee of Ministers refers to the activities of the European Committee on Migration (CDMG), and in particular the report on "Irregular migrants, access to social rights" published in 2005, which makes proposals for minimum guarantees with respect to social rights, as called for by the Assembly.
4. Regarding the proposal to organise a round table on the state of ratification of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and to analyse the obstacles faced by member states in ratifying the treaty, the Committee of Ministers has taken note of this proposal and of the readiness of the CDMG to conduct such an exercise. However, it questions the relevance of conducting an analysis of the situation concerning ratification of a United Nations' convention within the Council of Europe.
5. With respect to the final request by the Assembly, to keep under review the effectiveness of the European Social Charter with respect to irregular migrants, the Committee of Ministers points out that neither the European Social Charter nor the revised Charter contain provisions relating to irregular migrants. However, national situations are taken into account in the framework of social cohesion activities. As an example, a group of experts under the aegis of the CDMG was entrusted in 2005/2006 with assessing the effective access of irregular migrants to minimum rights through an evaluation of five national policies on irregular migrants. The CDMG is due to examine the results of this work in spring 2007.

Appendix 1 to the reply

Opinion of the European Committee on Migration (CDMG)¹ on Parliamentary Assembly Recommendation 1755 (2006) on the human rights of irregular migrants

1. The European Committee on Migration (CDMG) welcomes the attention of the Parliamentary Assembly to the issue of human rights of irregular migrants and agrees that the minimum rights applying to irregular migrants should be clarified.
2. The CDMG welcomes the proposal by the Parliamentary Assembly to hold a round table discussion on the state of ratifications by the member states of the Council of Europe of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The CDMG will organise such a round table with a view to analysing the obstacles faced by member states in ratifying the treaty, subject to instruction from the Committee of Ministers.
3. The CDMG reminds the Parliamentary Assembly that at their 7th Conference (Helsinki, September 2002), the European Ministers responsible for migration affairs recommended the Committee of Ministers to examine issues of human dignity including issues relating to the effective enjoyment of minimum rights for persons in need (Final Declaration, paragraph 36). In pursuit of this recommendation, the CDMG and/or the Secretariat has organised various activities devoted to the situation of irregular migrants (reports, seminars, expert groups).
4. Most recently, the CDMG approved for publication a report on the access of irregular migrants to social rights ("Irregular migrants: access to social rights", Ryszard Cholewinski, 2005). This report reviews the international framework relating to the access of irregular migrants to the following social rights: housing, education, social security, health, social and welfare services, fair employment conditions and residence rights and regularisation. It reviews obstacles to effective access and makes proposals for minimum guarantees.
5. The CDMG is currently preparing research on different specific policies relating to irregular migrants in five member states which will be examined by the committee in 2007.

Appendix 2 to the reply

Opinion of the European Committee for Social Cohesion (CDCS) on Parliamentary Assembly Recommendation 1755 (2006) on the human rights of irregular migrants

The European Committee for Social Cohesion (CDCS) took note of Recommendation 1755 (2006) of the Parliamentary Assembly on the Human rights of irregular migrants, and especially of paragraph 3.1 which instructs the relevant intergovernmental committees to establish a list of minimum rights for irregular migrants,

The CDCS draws the attention of the Committee of Ministers to the fact that this sensitive subject has already been widely debated in the past. In this respect, the Committee refers to the studies carried out under its responsibility: "The specific situation of female migrant workers in Europe in relation to social security" and the "Exploratory report on the Access to Social Protection for Illegal Labour Migrants" which was published in 2004.

As concerns the list of minimal rights of irregular migrants requested by the recommendation, the CDCS recalls that the European Social Charter does not include irregular migrants within its sphere of competence. It is therefore up to member states to decide whether or not they intend to integrate irregular migrants into their national legislation and in which measure.

Bearing in mind that the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which came into force on 1 July 2003, lists in Part III of the text "Human rights of all migrant workers and members of their families" while Part IV of the text indicates "Other rights of migrant workers and members of their families who are documented or in a regular situation".

The CDCS is of the opinion that it does not need to take any further action on this issue.

¹ Opinion prepared by the Bureau of CDMG and finalised by the Secretariat after its 63rd meeting (Kyiv, 27 September 2006)

*Appendix 3 to the reply***Opinion of the Governmental Committee of the European Social Charter on Parliamentary Assembly Recommendation 1755 (2006) on the human rights of irregular migrants**

1. At the request of the Committee of Ministers (972nd meeting, 12 July 2006), the Governmental Committee of the European Social Charter examined, during its 113th meeting (12-15 September 2006), Recommendation 1755 (2006) of the Parliamentary Assembly and adopted the following opinion.
2. The Governmental Committee takes note of Recommendation 1755 (2006) of the Parliamentary Assembly and has carefully examined it. The Committee takes note of the interest shown by the Parliamentary Assembly in the European Social Charter.
3. The Governmental Committee also takes this opportunity to reaffirm its commitment to the protection of social rights and to recall the indivisible nature of human rights – civil, political, social, economic and cultural.
4. The fundamental values of our societies, such as the respect for human rights, democracy and the rule of law are part of our common European heritage.
5. The Governmental Committee wishes to put forward the following observations:
 - 5.1. The Governmental Committee concurs that providing clarity on the issue of the rights of irregular migrants is a pressing challenge for the governments of a Europe which is increasingly a refuge for asylum seekers and a destination for migrants.
 - 5.2. The Governmental Committee recalls that irregular migrants are not included in the personal scope of the European Social Charter. The Appendix to the Revised Charter stipulates that Articles 1 to 17 and 20 to 31 apply to foreigners “only insofar as they are nationals of other Contracting Parties lawfully resident or working regularly within the territory of the Contracting Party concerned.” Moreover, it is sufficiently clear from the actual wording of Articles 18 and 19, which deal specifically with the right to engage in gainful employment in the territory of other Parties and with the rights of migrant workers and their families, that these provisions are subject to the same constraints.
 - 5.3. However, it should be noted that the European Committee of Social Rights (ECSR) in the general introduction to Conclusions XVII-1 (2004) recalled that the Parties to the Charter can extend its scope beyond the minimum laid down in the Appendix and stated that the Parties have guaranteed to foreigners, not covered by the Charter, rights identical to or inseparable from those of the Charter by ratifying other human rights treaties, notably the European Convention on Human Rights, or by adopting domestic rules whether constitutional, legislative or otherwise without distinguishing between persons referred to explicitly in the Appendix and other non-nationals.
6. In the present situation, the Governmental Committee does not consider it necessary to widen the scope of the Charter with a view to including this specific target group of irregular migrants. However, in the future it may be determined whether relevant Charter amendments will be taken into consideration.

*Appendix 4 to the reply***Opinion of the Bureau of the Steering Committee for Human Rights (CDDH) on Parliamentary Assembly Recommendation 1755 (2006) on the human rights of irregular migrants²**

1. The Bureau of the Steering Committee for Human Rights (CDDH) notes with interest Recommendation 1755 (2006) – “Human rights of irregular migrants”, as well as Resolution 1509 (2006) and the report of the Committee of the Parliamentary Assembly on Migration, Refugees and Population (document 10924, 4 May 2006). It shares the concerns of the Parliamentary Assembly expressed in these

² At their 971st meeting (12 July 2006, item 3.1b) the Ministers’ Deputies agreed to communicate to the Steering Committee for Human Rights (CDDH) this Recommendation for information and possible comments by 16 October 2006. Given that the CDDH would not hold a meeting before the expiration of this deadline, the Bureau adopted this reply at its 72nd meeting (12-13 October 2006).

texts: insofar as migrants in an irregular situation often find themselves in a vulnerable situation, they particularly require that their fundamental rights be protected (§5 of the resolution).

2. Although recognising with the Assembly that a legal instrument specifically devoted to the rights of irregular migrants is unlikely to receive support from member states, the Bureau notes with interest the request of the Assembly that minimum rights of those people be codified and clarified by relevant intergovernmental committees (§3.1 of the recommendation) taking the list of civil, political, economic and social rights appearing in §§12-13 of the resolution as a starting point. This codification would take the form of a recommendation or guidelines to governments of member states.

3. Bearing in mind the protection of human rights that is its aim, the Bureau considers that the list of minimum civil and political rights appearing in §12 of the resolution constitutes an excellent basis for discussion. It declares that it is ready to examine this issue if the Committee of Ministers decides to entrust the CDDH to contribute to the elaboration of a recommendation or guidelines in this field. It notes however that a number of issues raised are complex and would need in depth consideration. Bearing in mind the workload of the CDDH, it would not be foreseeable to achieve concrete results in the immediate future.

4. Moreover, the Bureau recalls Recommendation No. R (2000) 3 of the Committee of Ministers to member states on the right to satisfaction of basic material needs of persons in situations of extreme hardship, elaborated within the CDDH. This recommendation could be a useful source to determine a minimum threshold of rights which should be recognised to any person whatever their status.