

Doc. 11217
30 March 2007

State of human rights and democracy in Europe

State of human rights in Europe

Opinion¹
Committee on Migration, Refugees and Population
Rapporteur: Mr Ed VAN THIJN, Netherlands, Socialist Group

I. Introduction

1. Refugees, internally displaced persons, migrants and missing persons are a particularly vulnerable group of persons and feature high on the priorities of the Council of Europe in terms of protection needs.
2. Your Rapporteur has considered it important to highlight some of the main issue concerning refugees, internally displaced persons, migrants and missing persons in 2006, drawing, *inter alia*, on the cases before the European Court of Human Rights, the work of the Parliamentary Assembly and the work of other bodies of the Council of Europe.
3. Your Rapporteur has provided a short summary of the main issues of concern in part II below, which are expanded upon in the subsequent chapters.

II. Main issues concerning refugees, internally displaced persons, migrants and missing persons

4. The developing case-law of the European Court of Human Rights bears witness to the importance of looking at the human rights of refugees, internally displaced persons (IDPs), migrants and missing persons in some detail. In 2006 a number of important refugee issues were dealt with by the Court, including cases concerning asylum requests by boat people arriving on the island of Lampedusa, interim measures to prevent expulsions and the use of diplomatic assurances in the context of extradition. In terms of IDPs the Court has been active in examining compensation claims from IDPs and the effectiveness of national remedies for compensation, in particular for those displaced in Turkey and for those displaced from the northern part of Cyprus. A number of important cases have also concerned migrants. These have dealt with the protection of private life in expulsion cases, grounds for detention of migrants, including unaccompanied minors, and also the issue of headscarf bans. Finally, the Court has also had to deal with a number of cases of disappearances and has further clarified the duty of authorities to effectively investigate disappearances.

¹ See Doc. 11203 tabled by the Political Affairs Committee and Doc. 11202 tabled by the Committee on Legal Affairs and Human Rights.

5. A particular challenge in 2006 has been the mass arrival of migrants and asylum seekers on Europe's Southern shores and dealing with the human rights and humanitarian needs of the arrivals. Access to international protection remains a particular problem for asylum seekers in Europe as it becomes increasingly difficult to enter Europe. There is a recurring criticism that asylum procedures in Europe lack consistency and quality and that reception conditions are gradually becoming harsher, as a means of dissuading asylum seekers from seeking to enter Europe.

6. Protracted refugee and IDP situations continue in a number of regions. In the Southern Caucasus local integration needs to be encouraged and the right to return has to be guaranteed. In the Northern Caucasus the safety of returning IDPs is not yet assured. In the Balkans obstacles such as discrimination and intolerance hamper the return process and its sustainability. In Turkey, statistics published in 2006 show the number of IDPs to be much greater than originally estimated. Steps at a local level to adopt action plans for IDPs can be welcomed and progress on dealing with compensation claims of IDPs needs to be encouraged further.

7. Not enough attention is paid to the rights of irregular migrants and rights issues connected with regularisation programmes and return processes, including re-admission agreements. Integration of migrants continues to be a challenge in many countries in Europe following the riots in European cities at the end of 2005 and there exists serious concerns about growing Muslim extremism. Integration of migrant women is a particular challenge, bearing in mind they have specific needs and represent almost 50% of the migrant population. Tackling the image of migrants and asylum seekers in the media is also an onward-going priority.

8. The issue of missing persons from the conflicts in the Northern and Southern Caucasus and the Balkans continues to cause great suffering for the families of the missing. Time is of the essence in dealing with the issue of the missing and notwithstanding certain developments in 2006, there is a need to speed up the procedures and assure that the matter is dealt with as a humanitarian and human rights issue and not as a political issue.

III. Refugees

A. Introduction

9. According to statistics published by UNHCR in March 2006, the number of asylum seekers in Europe continues to fall significantly² reaching the lowest level since 1988. In the then 25 member states of the European Union and in Europe as a whole, the figure fell by 16%. France received the most asylum requests reaching a figure of approximately 50 000, and the United Kingdom had the second highest figure of 30 500 requests.

10. The majority of asylum seekers in the European Union were from Serbia and Montenegro with close to 20,000 applicants, followed by claims from citizens of the Russian Federation (which fell by over 30 per cent) amounting to approximately 19 500 claims. Iraqis were the third largest nationality seeking asylum in Europe with slightly more than 10 600 applicants.

11. The decline in numbers is due in part to increasing stability in Europe, particularly in the areas which have accounted for large numbers of asylum seekers in the past (Balkans, South Caucasus and Northern Caucasus). It is also, however, due to the increasingly tough and restrictive practices of states which not only make it harder for asylum seekers to reach Europe, but also make Europe less attractive as a region of asylum destination.

12. The right to seek and enjoy asylum as well as the right to *non-refoulement* are fundamental human rights. Your Rapporteur is concerned by a number of developments in 2006 which undermine the effective access to quality protection in Europe.

² Asylum Requests in Industrialised countries in 2005 – UNHCR.

B. Issues of particular concern in 2006

Restricting access of asylum seekers to European territory and reception conditions

13. Notwithstanding the falling number of claims for asylum in Europe, the political environment concerning asylum remains tainted by concerns of fighting irregular migration and terrorism. The result is an increase in restrictive measures at borders, which are applied indiscriminately to asylum seekers and migrants and therefore hinder access to the asylum procedure. It also results in a reduction of procedural safeguards within the asylum procedure itself. These steps make it more difficult for asylum seekers to claim asylum (for example, because of the difficulty of entering the country, or because of strict requirements on making documentary evidence available). Restrictive reception conditions (accommodation provided, detention imposed, limitations on the right to work, limitations on social benefits offered, etc.) have also been introduced to make the stay of asylum seekers in member states increasingly unattractive.

14. While considering that the fight against terrorism and irregular migration are legitimate concerns for Council of Europe member states, your Rapporteur is concerned that these policies negatively impact on the effective possibility for persons in need of protection to claim and enjoy asylum in Europe.

Lack of consistency and quality of the asylum systems in Europe

15. The asylum systems across Europe vary greatly in terms of the protection they offer. Evidence of this can be seen in the widely differing recognition rates for refugee status and other forms of subsidiary protection from one member state to another. In Cyprus, for example, the recognition rate for refugee status on first instance decisions stands at 1.3%. By contrast in the United Kingdom the recognition rate stands at 9.45% and in Switzerland at 17.69%. The proportions of persons accepted on appeal or who are granted subsidiary protection is also markedly lower in Cyprus than in the United Kingdom or Switzerland. These figures³ support what some critics call the lottery of asylum in Europe, where the outcome of applications depends on where the applications are lodged.

16. Access to asylum procedures at borders remains a problem in many countries. This is the case not only with countries with less experience of dealing with asylum seekers (central and eastern European countries for example), but also in countries where there are mass arrivals of mixed flows of migrants and asylum seekers.

17. Strengthening the asylum systems across Europe is required, in particular in those countries where asylum systems have only recently been put into place.

18. Your Rapporteur considers that greater quality and consistency is needed in the decision making, and that all those responsible for taking decisions should be suitably trained and should have access to objective and reliable country of origin information.

Protracted refugee situations

19. Protracted refugee situations in Armenia and Azerbaijan following the break-up of the Soviet Union and the conflict over the Nagorno-Karabakh region continues to destabilise the two countries concerned. As the Assembly itself noted in 2006, further steps are needed to encourage the local integration of these refugees, guaranteeing them the right to return when conditions permit.⁴

20. In South eastern Europe at the end of 2005, UNHCR was providing protection and facilitating durable solutions for approximately 600 000 persons, of whom 164 000 were refugees. This is down from a peak of 1.7 million refugees and IDPs in 1999. The so-called "Sarajevo Process" or "3 X 3 Initiative"

³ UNHCR 2005 Global Refugee Trends. Table 7.

⁴ See Resolution 1497 (2006) Refugees and displaced persons in Armenia, Azerbaijan and Georgia and also the report of Mr Čilevičs, Latvia, Socialist Group (Doc. 10835).

launched by UNHCR, the European Commission and the OSCE together with the governments of Bosnia and Herzegovina, Croatia and the former Government of Serbia and Montenegro continues to be an essential initiative to bring about lasting solutions for the remaining refugees in South eastern Europe. In Croatia, your Rapporteur is particularly concerned by the need to find a fair solution to the issue of lost tenancy rights and in Serbia there is a need to do more in terms of local integration of those refugees who do not want to return or cannot return.

21. Forced returns of Roma to Serbia, including to Kosovo as well as to Montenegro stepped up in 2006, with serious concerns being raised by civil society members and UNHCR as to the safety of these returns and the capacity of the authorities to absorb these returns.

22. While there was no repeat of the violence which racked Kosovo in March 2004, the situation in the region remained tense and potentially explosive in 2006, in particular with the negotiations to determine the final status of Kosovo reaching a climax. Your Rapporteur considers that the international community needs to be ready to handle the implications of the final status conclusions, both in terms of addressing the needs of the existing refugees and IDPs, but also so as to deal with any further displacements.

Protection gaps in the Common European Asylum System

23. Within the European Union it is feared that the transposition of the so-called Qualification Directive and the Asylum Procedures Directive will result in standards falling to the lowest common denominator. The Assembly raised particular concerns on the Asylum Procedures Directive (see Recommendation 1727 (2005) and Resolution 1471 of (2005) on accelerated asylum procedures⁵) and it can be welcomed that the Committee of Ministers of the Council of Europe has set up an ad hoc working group on Human Rights Protection in the Context of Accelerated Asylum Procedures (GT-DH-AS) which met for the first time in 2006 to discuss this issue.

Particular vulnerability of separated children seeking asylum

24. Concerns about the vulnerability and specific protection needs of separated children, including those seeking or enjoying asylum, continue to be of concern for your Rapporteur. In this context it can be welcomed that the European Committee on Migration (CDMG) is preparing, for the Committee of Ministers, a draft recommendation on life projects for unaccompanied minors.

Mass arrivals: mixed flows of migrants and asylum seekers

25. The mass arrivals of migrants and asylum seekers on Europe's southern shores in 2006, posed particular humanitarian and human rights concerns for countries in the region (this issue is dealt with in more detail in the Appendix on Migrants). In the course of 2006 UNHCR developed a 10-Point Plan of Action (Addressing mixed migratory movements) highlighting the need for the international community to address this mixed flow of migrants and refugees in a more coherent and comprehensive manner. The 10- Point Plan, which your Rapporteur endorses fully, refers to, *inter alia*, the need for increased co-operation among key partners, data collection, protection sensitive entry management and provision of adequate reception arrangements. The mass arrivals are also an indication of the growing networks of smugglers and traffickers and steps need to be taken to tackle these networks.

⁵ See also the report of Mr Pedro Agramunt (Spain, EPP/CD), Doc. 10655.

C. Developments under the European Convention on Human Rights

Interim measures

26. The European Court of Human Rights consolidated its new jurisprudence crucial for the protection of asylum seekers concerning the binding effect of interim measures indicated under Rule 39 of the Rules of the Court. In the Mamatkulov judgment⁶ the Grand Chamber departed from previous case-law and ruled that failure on the part of a state to apply an interim measure constitutes a violation of the right of individual petition (Article 34).

Diplomatic assurances

27. A number of cases were decided in 2006 featuring the reliance by respondent Governments on diplomatic assurances given in the context of extradition of applicants wanted in connection with terrorist offences in their home states. For example in *Salem v. Portugal*,⁷ the applicant was trying to resist extradition to India and in *Saoudi v. Spain*,⁸ the applicant was trying to resist extradition to Algeria.

28. Your Rapporteur is concerned at attempts by governments to widen the use of diplomatic assurances and considers that their use should be confined to occasions when there are exceptional circumstances and adequate guarantees. He is pleased to note that in this respect the Steering Committee for Human Rights (CDDH) in 2006 considered that work should not be undertaken to expand the use of diplomatic assurance and “rejected the drafting of a legal instrument on minimum requirements/standards for the use of diplomatic assurances in the context of expulsion procedures, in cases where there is a risk of torture or inhuman or degrading treatment or punishment”.

Asylum cases

29. A number of applications concerning asylum requests from individuals who arrived on the small Italian island of Lampedusa in 2005 were declared admissible in 2006 raising several Convention issues linked to the right to life, freedom from torture or inhuman or degrading treatment or punishment and the right to an effective remedy.

IV. Internally Displaced Persons

A. Introduction

30. While the number of refugees in the world has been falling, the number of internally displaced persons (IDPs) has been climbing with recent estimates being given of 25 million IDPs worldwide.⁹

31. The trend is therefore for more and more people having to remain within the borders of their own country, often in a similar situation to refugees but without the same benefits or protection. As the UN High Commissioner for Refugees, Mr Guterres has stated, internal displacement is the world community’s “biggest failure” in terms of humanitarian action.¹⁰

32. In Europe, by contrast to the rest of the world, the number of IDPs is falling although IDP situations remain predominantly in the Northern and Southern Caucasus and also in the Balkans, Turkey and in Cyprus. Progress on solving IDP issues and ensuring that IDPs can return or integrate into society

⁶ Mamatkulov and Askarav v. Turkey [GC], nos. 46827/99 and 46951/99, ECHR 2005-1.

⁷ Salem v. Portugal, no. 26844/04, decision of 9 May 2006.

⁸ Saoudi v. Spain, no. 22871/06, decision of 18 September 2006.

⁹ State of the World’s Refugees: Human Displacement in the New Millennium. See also the figure of 23,700,000 provided by the Internal Displacement Monitoring Centre (www.internal-displacement.org).

¹⁰ Guardian Unlimited, 19/04/2006, Civil wars create new crisis despite number of refugees falling to lowest level for 25 years.

at their current place of residence, remains slow, although some momentum can currently be witnessed in a number of European countries.

B. Issues and initiatives of particular concern in 2006

IDPs in Southern Caucasus

33. The unsolved conflicts over the Nagorno-Karabakh, Abkhazia and South-Ossetia regions continue to affect progress on solving the issue of IDPs in the region. As the Assembly noted in 2006,¹¹ further steps are needed to encourage the local integration of these IDPs, while guaranteeing them the right to return when conditions permit.

34. Your Rapporteur welcomes that in January 2007 the Georgian authorities adopted a national strategy which facilitates integration of IDPs while respecting their right of return.

35. A solution to the conflict over the Nagorno-Karabakh region remains elusive, together with the prospects for the return of IDPs in the near future. Donor fatigue is a problem and it is therefore all the more important that the authorities in Azerbaijan find solutions for the humanitarian needs of IDPs and develop local integration strategies which should not exclude the ultimate possibility of return of IDPs.

IDPs in the Balkans

36. Twelve years after the war in Bosnia and Herzegovina and Croatia and eight years after the conflict in Kosovo, 440 000 registered IDPs still remain in the region.¹² Additionally, some IDPs from Kosovo, particularly of Roma origin, are not registered or provided with required documentation. While many IDPs were able to return, particularly in Croatia and Bosnia and Herzegovina, your Rapporteur considers that it is crucial for the whole region to address the obstacles, including discrimination and intolerance, which undermine sustainable return. Your Rapporteur is particularly concerned that IDPs in Serbia and in Montenegro find themselves hostage to the political negotiations on the future status of Kosovo, which hold back any substantial programmes for return or integration of IDPs in secondary displacement and may lead to statelessness.¹³

IDPs in the Northern Caucasus

37. The number of internally displaced persons in the Northern Caucasus is estimated at between 78 000 and 200 000.¹⁴ Within Chechnya, the safety of returning IDPs is not ensured. Together with the general population, IDPs are subject to grave violations of international humanitarian law and human rights (disappearances, extrajudicial executions, arbitrary detention, and torture). Protection concerns for IDPs in Ingushetia have grown, as instability has spread from Chechnya to neighbouring republics. The IDPs from the 1992 Ingush-Ossetian conflict have faced a special set of problems. They were often ineligible to receive relief from international agencies, which in some instances left them in worse circumstances than IDPs from Chechnya. Your Rapporteur therefore shares the view of various critics

¹¹ Resolution 1497 (2006) on refugees and displaced persons in Armenia, Azerbaijan and Georgia and also report of Mr Čilevičs, Latvia, Socialist Group (Doc. 10835).

¹² UNHCR data, June 2006.

¹³ Concerns shared by UNHCR field offices and Mr Dendias (Greece, EPP/CD), Rapporteur of the Committee on Migration, Refugees and Population on the *situation of longstanding refugees and displaced persons in South East Europe*.

¹⁴ There is a lack of accurate and consistent data on the number of IDPs in the Northern Caucasus. Estimates vary according to different sources. For example, Chechen authorities estimate about 48 000 IDPs within Chechnya, compared to the estimate of up to 180 000 IDPs in Chechnya by international agencies. Outside Chechnya, around 21 000 Chechen IDPs stay in Ingushetia according to the Danish Refugee Council. Additionally, there are between 8 000 and 21 000 Ingush IDPs who remain in displacement from 1992 Ingush-Ossetian conflict. Sources : International Displacement Monitoring Centre, Norwegian Refugee Council, Human Rights Centre Memorial (Publication "An uncertain future : the challenges of return and reintegration for IDPs in the Northern Caucasus, October 2006).

that the political roots of displacement in the Northern Caucasus have not been fully addressed by the Russian Federal Government to date.¹⁵

IDPs Turkey

38. According to a government-commissioned study¹⁶ released on 6 December 2006 the number of IDPs displaced by the conflict in Turkey's south-eastern provinces between 1986 and 2005 is between 950 000 and 1 200 000. This is significantly higher than the previous Government estimate of 355 000. Up to 124 000 persons are estimated to have returned to their places of origin and 55% of those still displaced wish to return to their homes. Of particular concern to your Rapporteur is that many of those who remain displaced are not aware of government return programmes (50%) and are not aware of the national compensation law for lost or destroyed property (53%).¹⁷

39. Your Rapporteur nonetheless welcomes that significant progress is being made on the development of local action plans for IDPs which will feed into a national action plan. Furthermore, progress can be noted in the handling of compensation claims, even if problems remain. Some of these problems include the consistency of decisions, the level of awareness of the compensation law, the closing of the deadline for applications and discrepancy between awards previously granted by the European Court of Human Rights and those awarded by the Turkish authorities.

C. Developments under the European Convention on Human Rights

Redress and compensation under the European Convention on Human Rights for IDPs

40. The European Court of Human Rights continued to play an important role in 2006 by further clarifying the rights of IDPs and the steps required by States to tackle allegations of human rights violations and claims for compensation.

41. In 2006 the European Court of Human Rights gave its blessing¹⁸ to the remedy introduced by Turkey for persons displaced from their villages during the height of the anti-terror campaign in the southeast. This was followed by the rejection of 1,500 similar claims on the basis of non-exhaustion of available and effective domestic remedies.

42. Central to the finding in this case was the judgement in the case of *Doğan and Others v. Turkey*¹⁹ and the corresponding remedies introduced as a result of this case by the Turkish authorities. As a reminder, in this case the Court found, following the forcible eviction of the applicants from their village, that there had been violations of the right to protection of property, the right to respect for family and home and the right to an effective remedy.

43. The European Court of Human Rights also examined the scheme of compensation set up by the "TRNC" for Greek Cypriots who had lost property and gave a favourable reception to this scheme.²⁰

¹⁵ Source: update on the implementation of the recommendations made by the UN Secretary General's Representative on Internationally Displaced Persons following his visit to the Russian Federation in 2003 (Publication "An uncertain future : the challenges of return and reintegration for IDPs in the Northern Caucasus, October 2006, page 41).

¹⁶ Prepared by Hacettepe University.

¹⁷ See Internal Displacement Monitoring Centre, News Alert, 11 January 2007, www.internal-displacement.org.

¹⁸ *İçyer v. Turkey*, no. 18888/02, decision of 12 January 2006.

¹⁹ *Doğan and Others v. Turkey*, Application nos. 8803-8811/02, 8813/02 and 8815-8819/02.

²⁰ *Xenides-Arestis v. Turkey (Just Satisfaction)*, no. 46347/99, judgment of 7 December 2006.

V. Migrants

A. Introduction

44. There are estimated²¹ to be around 200 million international migrants worldwide representing 3% of the world's population. In Europe there are over 56 million migrants accounting for 7.7% of Europe's population. Almost half of the world's international migrants are women.

45. A large number of these migrants in Europe are in an irregular situation. Within the European Union it is estimated that there are approximately 4.5 million irregular migrants. In Russia some estimates are as high as 8 million persons.

46. Large scale arrival of migrants on Europe's southern shores, issues of return policies, rights of irregular migrants, problems of integration, discrimination and intolerance are all issues of particular concern to your Rapporteur.

B. Issues and initiatives of particular concern in 2006

Mass arrivals

47. Mass arrivals of irregular migrants on Europe's southern shores regularly hit the headlines throughout 2006. The number of arrivals on the Canary Islands leaped from 4 700 persons in 2005 to over 34 000 persons in 2006. Italy and Malta as well as Greece, Cyprus and Turkey also continued to struggle with the flow of irregular migrants flowing across the Mediterranean.

48. While there was a demand to take action to manage this migration flow and improve border controls, there was also a real concern for humanitarian and human rights issues linked to the arrival of large numbers of migrants and asylum seekers.

49. The Assembly, following an urgent debate on mass arrival of irregular migrants on Europe's Southern shores, adopted Resolution 1521 and Recommendation 1767 highlighting a number of human rights and humanitarian concerns.²² These included, *inter alia*, the need to protect the lives of those seeking to enter Europe, the need to provide adequate reception conditions covering accommodation, health care and other basic needs for those who arrive and also the need to provide a hearing, with an interpreter to anyone whose right of entry is disputed to allow them to explain their reasons for entering the country and to lodge an application for asylum if appropriate.

50. UNHCR was particularly concerned by the mixed flow of migrants and asylum seekers and refugees and adopted in June 2006 a 10-Point Plan of Action Addressing Mixed Migratory Movements in order to help identify new arrivals with international protection needs (see also above under Refugees).

Return policies

51. The issue of return of irregular migrants remains particularly problematic in Europe. The Assembly has repeatedly recognised the importance of returns as part of a managed migration policy. It has however, at the same time, urged that voluntary returns should be favoured over forced returns.²³

52. Where forced returns are carried out your Rapporteur is of the view that these need to be done in accordance with the Committee of Minister's 20 Guidelines on Forced Return.

²¹ Statistics are taken from the report of the Global Commission on International Migration, published in October 2005.

²² Resolution 1521 (2006) and Recommendation 1767 (2006) on Mass arrival of irregular migrants on Europe's Southern Shores, see also report of Mr Christopher Chope, United Kingdom, European Democratic Group, (Doc. 11053).

²³ See most recently Resolution 1509 (2006) on Human rights of irregular migrants, paragraph 16.6.

53. The Assembly has recognised that a major problem in relation to returns is the lack of readmission agreements with countries of origin and transit of irregular migrants.²⁴ This makes return impossible in many instances. A further problem is that readmission agreements should provide certain safeguards for those being returned. Your Rapporteur is therefore of the opinion that human rights standards in this respect need to be clarified further.

Rights of irregular migrants

54. Guaranteeing the rights of irregular migrants continues to be a major challenge in Europe. The debate over regularising irregular migrants as a way of guaranteeing the rights of irregular migrants persists in the light of recent regularisation programmes, including the recent programme of Spain in 2005.

55. The Assembly highlighted some of the basic human rights to be applied to irregular migrants in its 2006 Resolution (1509) on Human Rights of Irregular Migrants. Of particular concern to the Assembly was the lack of clarity over the social and economic rights to be applied to irregular migrants and the weakness of the Strasbourg mechanisms for protecting these rights (notably the revised European Social Charter).

56. Your Rapporteur considers that the lack of protection under the revised Social Charter as well as the clear reluctance of the Committee of Ministers to tackle the issue of rights of irregular migrants²⁵ makes it all the more important for European states to ratify the International Convention on the Rights of All Migrant Workers and Members of their Families. This treaty has, unfortunately, only been ratified by three member states of the Council of Europe (Azerbaijan, Bosnia and Herzegovina and Turkey).

Integration of migrants

57. The riots in European cities at the end of 2005, combined with concerns about Muslim extremism and integration in Europe have guided the agenda on integration in Europe in 2006.

58. The Assembly has paid particular attention to the issue of integration of migrant women²⁶ as they account for almost 50% of all migrants. Women migrants have specific integration needs, and steps are needed to address, *inter alia*, issues linked to their legal status, protection against exploitation, linguistic needs, employment opportunities, etc.

59. While intercultural and inter-religious dialogue remained high on the agenda in 2006, there were continuing concerns about the image of migrants in the media as highlighted in the Assembly's Recommendation 1768 (2006).²⁷ Negative stereotyping, lack of effective legislation protecting against incitement to hatred, discrimination and intolerance as well as a need for effective codes of conducts by the media have all been identified by the Assembly as issues requiring further attention.

²⁴ See most recently Resolution 1521 (2006) on Mass arrival of irregular migrants on Europe's Southern shores, para. 3.7.

²⁵ See Human rights of irregular migrants (Recommendation 1755 (2006)) and report of Mr Ed van Thijn (Netherlands, Socialist) Doc. 10924 and also reply from the Committee of Ministers adopted at the 983rd meeting of the Ministers' Deputies (13 December 2006), Doc 11111.

²⁶ Resolution 1478 (2006) and Recommendation 1732 (2006) on Integration of immigrant women in Europe. See also report of Mrs Bilgehan (Turkey, Socialist) Doc. 10758 and opinion of Mrs Stoitsits, (Austria, Socialist) Doc. 10796.

²⁷ Recommendation 1768 (2006) on the image of asylum seekers, migrants and refugees in the media. See also report of Mrs Tana de Zulueta (Italy, Socialist) Doc. 11011.

C. Developments under the European Convention on Human Rights

Expulsion of migrants

60. The European Court of Human Rights refined its case law on the expulsion of settled migrants in the case of *Üner v. the Netherlands*.²⁸ In this case the Court considered that the totality of social ties between settled migrants and the community in which they are living constitute part of the concept of "private life" within the meaning of Article 8 of the Convention and that expulsion of a settled migrant may constitute interference with his or her right to respect for private life.

Necessity of detaining migrants

61. The question of whether there is an implicit condition of necessity involved when arresting or detaining an alien in order to prevent unauthorised entry into a country was examined by the Court in the case of *Saadi v. the United Kingdom*.²⁹ The Court concluded that there was no such condition although 3 judges dissented and the case has been referred to the Grand Chamber.

Headscarf cases

62. Three headscarf cases of importance were dismissed by the Court in 2006. The first, *Emine Araç v. Turkey*³⁰ concerned an application for University which was rejected as the accompanying photo showed the applicant with a headscarf. In *Şefika Köse and 93 others v. Turkey*³¹ the application of the headscarf ban in a second level school providing theological training was found not to be in violation of Article 9 of the Convention (freedom of thought, conscience and religion). In a third case *Kurtuluş v. Turkey*,³² the applicant, a university lecturer lost her post as a result of her refusal to comply with the dress regulations of the institution. The Court rejected her arguments under Article 9.

Detention of minors and return policies

63. Detention and return of an unaccompanied minor was looked at by the Court in the case of *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*.³³ In this case a 5-year-old girl of Congolese nationality was detained at an adult detention centre for more than two months and then repatriated without adequate supervision and support. The Court in finding a violation of Articles 3, 5 and 8 of the Convention, laid emphasis on the respondent state's failure to cater for the needs of a young child, separated from her family and detained in a totally alien environment.

VI. Missing persons

A. Introduction

64. Missing persons can be defined in a wide sense to include persons who have gone missing because of displacement, those who have disappeared during armed conflicts and those who have disappeared forcibly or involuntarily.

65. Your Rapporteur has focussed on those who have gone missing as a result of armed conflicts and displacement from the conflicts in the Balkans and the conflicts in Armenia, Azerbaijan and Georgia. Your Rapporteur notes that Mr Pourgourides (Cyprus, EPP/CD) in his report on the State of human rights in Europe has focussed on persons who have disappeared in the Russian Federation (in particular Chechnya) and Belarus.

²⁸ *Üner v. the Netherlands*, no. 46411/99, judgment of 18 October 2006.

²⁹ *Saadi v. the United Kingdom*, no. 13229/03, judgment of 11 July 2006.

³⁰ *Emine Araç v. Turkey*, no. 9907/02, decision of 19 September 2006.

³¹ *Şefika Köse and 93 others v. Turkey*, no. 26625/02, decision of 24 January 2006.

³² *Kurtuluş v. Turkey*, no. 65500/01, decision of 24 January 2006.

³³ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, judgment of 12 October 2006.

66. Your Rapporteur considers that the issue of missing persons is a humanitarian problem with human rights and international humanitarian law implications. It should not be treated as a political issue.

B. Issues and initiatives of particular concern in 2006

Armenia, Azerbaijan and Georgia

67. According to recent statistics,³⁴ there are over 7 500 persons missing in the region of Armenia, Azerbaijan and Georgia. More specifically there are 4 604 Azerbaijanis and 947 Armenians missing from the conflict over the Nagorno-Karabakh region, 1 763 Georgians and 197 Abkhaz from the conflict over the Abkhazia region and 10 Georgians and 122 South Ossetians from the conflict over the South Ossetia region.

68. Notwithstanding recent progress, there is still too much of a tendency to politicise the issue of missing persons in the region and much greater co-operation between the different parties is needed if the issue of the missing is to be solved. This includes co-operation with the “administrations” of the Nagorno-Karabakh, Abkhazia and South Ossetia regions. This co-operation needs to extend to agreeing consolidated lists of the missing, establishing effective multilateral mechanisms for co-operation between Commissions for missing persons, and working together on tracing, mapping and identification and management of human remains.

69. Further steps are also required to cater for the needs of the families of the missing through the provision of social, material and psychological support and through the respect for the memory of the missing.

The Balkans

70. The conflicts in Bosnia and Herzegovina, Croatia and Kosovo have led to 34 261 cases of missing persons being reported to the ICRC (Bosnia and Herzegovina 22 339, Croatia 5 940 and Kosovo 5 982). Much progress has been made in exhuming and identifying human remains although many families remain without answers as to the fate of their loved ones. 15 699 cases have now been closed and 18 592 remain under consideration.

71. The authorities of the countries concerned in the Balkans still however need to improve their co-operation in exhumation, identification and return of remains of exhumed persons in order to solve the remaining outstanding cases.³⁵

International Convention for the Protection of all Persons from Enforced Disappearances

72. The United Nations General Assembly adopted the International Convention for the Protection of all Persons from Enforced Disappearances in December 2006 “Affirming the right to know the truth about circumstances of an enforced disappearance and the fate of the disappeared person, and the respect of the right to freedom to seek, receive and impart information to this end”. This Convention, once ratified by 20 States, will help strengthen the protection of an important part of the larger issue of missing persons and your Rapporteur urges all member states of the Council of Europe to ratify it.

³⁴ See report of the Committee on Migration, Refugees and Population on Missing Persons in Armenia, Azerbaijan and Georgia. Leo Platvoet, Netherlands (Doc. 11196).

³⁵ See report of Mr Çavuşoğlu (Turkey, EDG) on Persons unaccounted for as a result of the armed conflicts or internal violence in the Balkans (Doc. 10251) and Resolution 1414 (2004) and Recommendation 1685 (2004).

C. Developments under the European Convention on Human Rights

73. The duty on States to effectively investigate disappearances is well established in Convention case-law.

74. This duty to investigate killings and disappearances was upheld in the recent case of Bazorkina v. Russia, Applications no. 69481/01, judgment 27 July 2006. In this case, an individual suspected of fighting on behalf of Chechen separatists was last seen and filmed in the detention of the authorities. The Court held that the authorities had failed to carry out an effective criminal investigation into the circumstances surrounding the disappearance and presumed death of the person concerned and held that there had been a violation of the right to life under Article 2 of the Convention.

* * *

Reporting Committees: Political Affairs Committee and Committee on Legal Affairs and Human Rights

Committee for opinion: Committee on Migration, Refugees and Population

Reference to Committee: reference No. 3283 of 6 October 2006

Opinion approved by the Committee on 1 March 2007

Secretaries of the Committee: Mr Lervik, Mr Neville, Mrs Karanjac