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Human rights implications for voluntary return policies and programmes for irregular migrants

Motion for a recommendation
presented by Mr Østergaard and others

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

1. With over 5.5 million irregular migrants in the European Union and a further 8 million irregular migrants in the Russian Federation, Europe needs to explore all avenues for tackling irregular migration.
2. An effective return policy for irregular migrants is essential if Europe is to tackle the problem of irregular migration. Return can however be in two ways. The first is through forcible return and the second is through assisted voluntary return (AVR).
3. The Committee of Ministers of the Council of Europe has said in its "20 Guidelines on forced return" adopted in May 2005 that voluntary return is preferable to forced return.
4. Over the years, there have been a large variety of initiatives and programmes elaborated and offered by concerned states (sometimes acting by national agencies), international organisations (notably IOM and UNHCR), by the European Union (in partnership with states, international organisations and non-governmental organisation), and increasingly by NGOs (e.g. National Red Cross and Red Crescent Societies, Caritas, Danish Refugee Council, etc.).
5. While a number of clear definitions, guidelines and best practices have been elaborated, none of these have been adopted as a general standard. It is necessary to look at current practices and analyse their strengths and their weaknesses and also their human rights implications.
6. When examining the issue of assisted voluntary returns there are a number of elements which warrant consideration. These include:
 - information about and promotion of voluntary returns ;
 - counselling processes and the need for an informed decision ;
 - voluntariness of the decision by the migrant, not to be confused with the voluntariness by the state concerned to participate in the programme ;
 - preparations necessary for the return and reintegration ;
 - assistance in the return process, from the pre-departure phase through transit and arrival and secondary transport ;
 - incentives and financial return assistance ;
 - reintegration assistance (covering economic, administrative, social and medical assistance).

7. In examining these matters there are a number of issues or questions which may be problematic and require particular attention. These include:

- the challenge of dealing with particularly vulnerable groups in the return process (e.g. children, elderly persons, single parents, victims of trafficking, etc.) ;
- the problem of dealing with voluntary returns when the returnee is held in administrative detention (raising the issue of whether the return is indeed voluntary) ;
- questions over the effectiveness of the reintegration assistance component and questions over what should be offered and how long persons should be accompanied in their individual reintegration processes?
- the role of the country / society of return has to be looked at ;
- the need for more joint, coordinated action via international partners and civil society needs examining ;
- a number of legal concerns persist, including the interdiction by certain states to re-enter their territories for a particular period.

8. In view of the above the Parliamentary Assembly of the Council of Europe should recommend that an analysis should be carried out of current practices and their strengths and weaknesses and their human rights implications with a view to producing guidelines on assisted voluntary returns to partner and supplement the important Committee of Ministers' 20 Guidelines on Forced Return.

9. These guidelines should reflect the human rights standards of the Council of Europe, and in particular those established by the European Court of Human Rights, the European Committee for the Prevention of Torture (CPT) and the Council of Europe Human Rights Commissioner. They should also provide guidance on how to increase effectiveness of assisted voluntary return programmes and promote closer cooperation between the different partners concerned, whether they be international organisations, ngos, countries of origin or countries of destination

*Signed*¹:

ØSTERGAARD Morten, Denmark, ALDE
BANOVIĆ Donka, Serbia, EPP/CD
BANOVIĆ Donka, Serbia, EPP/CD
CILEVIČS Boriss, Latvia, SOC
CLIVETI Minodora, Romania, SOC
DEDJA Taulant, Albania, SOC
ETHERINGTON Bill, United Kingdom, SOC
FERNÁNDEZ AGUILAR Adolfo, Spain, EPP/CD
GJUL Gunn Karin, Norway, SOC
GRAF Angelika, Germany, SOC
GREENWAY John, United Kingdom, EDG
HAGBERG Michael, Sweden, SOC
HANCOCK Michael, United Kingdom, ALDE
HENDERSON Doug, United Kingdom, SOC
JONKER Corien W.A., Netherlands, EPP/CD
KESKIN Hakki, Germany, UEL
LAAKSO Jaakko, Finland, UEL
MOONEY Paschal, Ireland, ALDE
PUCHE Gabino, Spain, EPP/CD
ZERNOVSKI Andrej, "the former Yugoslav Republic of Macedonia", ALDE

¹ SOC: Socialist Group
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