

Session I,

Asylum – The current situation in the EU and the member States

Minister, Chairperson, ladies and gentlemen,

On behalf of the Parliamentary Assembly of the Council of Europe, I am grateful for the opportunity to address the Conference on the issue of asylum in Europe.

The number of asylum seekers in Europe may have recently risen but remains far lower than in a number of recent years.

Listening to media, one might think that asylum claims were predominantly in the South of Europe, arising from flows from North Africa. This of course is not the case and the numbers fleeing Africa to Europe have been relatively modest. This is not to deny that certain regions in Europe have been put under extraordinary stress at times.

But it is important to put things in context. Even if there are a large number of asylum claims, there is no flood. Asylum is an issue affecting all of Europe. We are all therefore concerned, EU member states and non-EU member states members of the Council of Europe.

The Parliamentary Assembly of the Council of Europe recently expressed its concerns over the shortcomings in the quality and the lack of consistency of asylum decisions in Europe. Acceptance rates for asylum seekers in Europe vary dramatically from one country to another. In 2010, Malta, Latvia and the

Netherlands had acceptance rates of 60%, 50% and 44% at first instance. By contrast Ireland rejected 98.5% of the total number of asylum applications, while Greece refused 97% of the applicants, at first instance.

Asylum decisions are sometimes inconsistent even within one and the same country, as well as across the member states of the European Union and the Council of Europe. Such inconsistency means that similar claims are treated differently. This is an affront to the rule of law and inherently unfair. It is what creates what is called “the Asylum Lottery”.

It is true that different member states receive asylum seekers from different countries, whose need for protection might vary. However, even when looking at the same groups between countries the divergences can be substantial.

UNHCR statistics show that in 2009 Italy granted protection to Somalis in 95% of cases, while Spain granted protection to only 7%, and Greece did not grant status to any at all. Similarly, for Iraqi nationals, 89% of cases in Finland were accepted, while in Great Britain only 21% of positive decisions were recorded (1999 figures).

Greater efforts must be made to improve the situation. The challenge is however to identify the measures necessary and to take them.

I should like to take this opportunity to highlight 2 issues which have been of particular concern to the Assembly in its recent work:

- the specific situation of women asylum seekers
- the specific situation of Roma asylum seekers

As far as women are concerned, in its **Resolution 1765 (2010) on Gender related claims for asylum** the Parliamentary Assembly recommends that Council of Europe member states must be sensitive to gender-related claims.

Women seek asylum for the same reasons as men. But, in addition, women are also victims of persecution for reasons that are **specific** to their being **women**. Even if the reason for the persecution happens to be the same as for a man, it may manifest itself *differently* when the victim is a woman. The gender dimension clearly is not enough taken into account when assessing asylum claims. In our discussions it would be good to take and keep this gender perspective into account.

Concerning Roma, in its **Resolution 1768 (2010) on Roma asylum seekers in Europe**, the Parliamentary Assembly notes that if you come from within an EU member state, you simply cannot claim asylum within the European Union. Persecuted Roma living inside the EU have had to flee to Canada where they have been recognised as refugees and received international protection. The Parliamentary Assembly has called on the European Union to reconsider its rule on asylum in this respect.

Let us also not forget that the goal of a fairer division of responsibilities in asylum matters among the European states is far from being achieved. No doubt, the Dublin system places an excessive burden on the countries at the external borders of the European Union. In its recent **Resolution 1820 (2011) on asylum seekers and refugees: sharing responsibilities in Europe**, the Parliamentary Assembly stated that “*the effective protection of asylum seekers and refugees across the world cannot be achieved without countries sharing*

responsibilities.” As one of the measure to achieve this goal, the Parliamentary Assembly called on all Council of Europe Member States to participate fully in the UNHCR’s programmes for the resettlement of refugees, but also to accept relocation within Europe from countries under strain prior to or after the asylum determination process.

Minister, Chairperson, Ladies and Gentlemen,

I would now like to come to the heart of our discussions today. Putting in place a common European Asylum System at EU level offers the opportunity to make substantial progress to improve the quality and consistency of asylum decisions - not only in the EU, but also in the 20 other non member states, members of the Council of Europe.

The Council of Europe can and should assist in this mission.

The Council of Europe has a substantial corpus of rules and standards that deal with asylum that bind all EU-Member States. These include, not only the European Convention on Human Rights (ECHR), but also the European Social Charter (ESC) and a number of Recommendations of the Committee of Ministers and PACE.

It also has a performing system to identify shortcomings that goes beyond the European Court of Human Rights. This includes monitoring mechanisms within the Parliamentary Assembly, monitoring by the Commissioner for Human Rights, the CPT (European Committee for the Prevention of Torture), the European Commission against Racism and Intolerance (ECRI) and the

European Committee of Social Rights (ECSR). Furthermore, the Council of Europe Convention on preventing and combating violence against women and domestic violence covers the matter of gender-based asylum claims. The Convention establishes a strong, independent mechanism to monitor its implementation at national level (*the so called GREVIO Group of experts on action against violence against women and domestic violence*).

I strongly advocate that the EU should take advantage of this machinery and work with the Council of Europe to provide solutions.

To be more concrete:

➤ With regard to the ECHR and the Court's case-law which is legally binding on States Parties. It is essential to ensure that the Common European Asylum System which should be in force by the end of 2012 is ECHR compatible. The Commission has to consider ways to include the Council of Europe in this preparatory work.

➤ The EU institutions should also consider making use of the Council of Europe monitoring results to measure the human rights compatibility of its own instruments and their implementation.

➤ In this respect, it can be recalled that in its MSS judgment v. Belgium and Greece, the European Court of Human Rights found that implementation of the Dublin II agreement lead to violations of the ECHR in cases of return to EU-Member States which do not offer adequate guarantees against ill treatment.

➤ It is important that the EU provides assistance to its Member States whose asylum systems are under particular stress. Then, use Council of Europe Human Rights expertise when providing assistance to enhance asylum capacities of EU-Member States.

➤ There are many expectations from the newly established European Asylum Support Office and it is in the interest of all to support the Office - be it by sharing of good practices, sharing of expertise or training – the Council of Europe has its standards and expertise to offer.

➤ The same goes of course for FRONTEX whose human rights responsibilities in dealing with mixed flows of migrants and asylum seekers are increasingly important.

The Council of Europe will be preparing minimal detention rules for asylum seekers and irregular migrants. These will need to cover "legality aspects", specific procedural guarantees, standards for detention conditions, and possibly alternatives to detention. Work on these rules are planned to start by the end of 2012. Consequently, a coordination with work undertaken by the Commission in view of the Common European Asylum System (CEAS) is needed.

To conclude, the Common European Asylum System will have implications beyond the 27 member states of the EU to all 47 members of the Council of Europe. A fairer, more efficient system will benefit us all. The common European Asylum System provides us with an opportunity to deal with many of the ingrained problems in the current asylum process in Europe. This is an opportunity not to be missed.