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Parliamentary Assembly
Assemblée parlementaire



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Parliamentary Assembly Assemblée parlementaire

Recommendation 1633 (2003)1

Forced returns of Roma from the former Federal Republic of Yugoslavia, including Kosovo, to Serbia and Montenegro from Council of Europe member states

1. The Parliamentary Assembly refers to its Recommendation 1569 (2002) on the situation of refugees and internally displaced persons in the Federal Republic of Yugoslavia; Recommendation 1588 (2003) on population displacement in South-eastern Europe: trends, problems, solutions; Recommendation 1348 (1997) on the temporary protection of persons forced to flee their country; Recommendation 1547 (2002) on expulsion procedures in conformity with human rights and enforced with respect for safety and dignity; and Recommendation 1504 (2001) on non-expulsion of long-term immigrants.

2. The Assembly notes with concern that the problem of displacement in the Balkans still remains unresolved. At the moment, there are still more than one million displaced persons seeking durable solutions in the region. Of these, half a million are living in Serbia and Montenegro, including Kosovo. This general context of displacement should be taken into account when examining any specific questions concerning returns.

3. Roma constitute a particularly vulnerable group of the displaced population. In Kosovo, their security cannot be guaranteed. In Serbia and Montenegro, their economic and social situation, as well as living conditions, are very precarious. Everywhere in the region the Roma are confronted with a pattern of subtle discrimination on the part of both the local population and the local authorities, who are often reluctant to accept them.

4. According to estimates, between 50 000 and 100 000 Roma from Serbia and Montenegro, including Kosovo, who had fled the region during the conflict in the Balkans, are still living in various European countries, with no permanent status. The majority live in Germany (25 000-30 000), the Netherlands (12 000), Belgium (3 000), Switzerland (3 000) and Luxembourg (2 000-3 000). They fall into the category of candidates for return.

5. Forced returns are carried out on the basis of bilateral return agreements concluded between Serbia and Montenegro on the one hand, and various European countries who wish to repatriate the Roma on the other. They started shortly after the democratic

changes following the presidential elections in the Federal Republic of Yugoslavia in September 2000. So far, approximately 1 000 Roma have been forcibly returned, mainly from Germany.

6. The main concerns relating to forced returns of Roma can be divided into three areas. The first group of issues calls into question the legitimacy of certain decisions on expulsion taken by the host countries. The second group relates to the conditions in which forced returns take place, and the third to the situation in which forcibly returned Roma find themselves upon their return to Serbia and Montenegro.

7. It is particularly worrying that readmission agreements do not clearly define the conditions for the reception of returned persons and do not put any responsibility on the receiving state with regard to the reintegration of returnees.

8. The Assembly is also concerned by so-called "voluntary returns" which in some cases are so strongly encouraged that they may amount to disguised forced returns.

9. Therefore, the Assembly recommends that the Committee of Ministers:

i. urge the member states of the Council of Europe who are hosting Roma from Serbia and Montenegro, including Kosovo, to ensure:

a. that any decision on a forced return of Roma to Serbia and Montenegro is taken on a case-by-case basis taking into account all relevant circumstances; in particular, humanitarian grounds should be considered as a sufficient justification for granting a residence permit;

b. that every Roma who seeks international protection is given access to fair and effective asylum procedures;

c. that there are no forced returns of Roma originating from Kosovo either to Kosovo or to Serbia and Montenegro, as long as the security situation in Kosovo does not allow for their return;

d. that Roma representatives are given an opportunity to be involved, in an advisory capacity, at an early stage of preparation for a possible forced return of Roma;

e. that forcibly returned Roma are in possession of appropriate documents which will enable them to be recognised as full citizens upon their return;

f. that the procedures for deportation comply with international law and take into account recommendations included in Recommendation 1547;

g. that they contribute financially to the setting-up and implementation of effective reintegration programmes for returning Roma. These programmes should also be supported by funding for the new wider Roma strategy;

ii. urge the Serb and Montenegrin authorities:

- a. to actively seek support and international funding for the setting-up and implementation of reintegration programmes for returning Roma, including financing from the Council of Europe Development Bank;
- b. to ensure that Roma representatives are consulted and involved in the setting-up of any reintegration programme concerning the Roma population;
- c. to give particular attention to Roma, who constitute the poorest category in the vulnerable population groups in the forthcoming governmental Poverty Reduction Strategy that is assisted by the World Bank;
- d. to ensure that relevant ministries in charge of education, housing, employment, social and health care, and most particularly the local and municipal authorities, are properly informed about the readmission process; that relevant authorities should provide targeted plans to ensure that Roma are able to exercise their fundamental rights in these areas, starting with access to appropriate registration and personal documentation;
- e. to adopt, in co-operation with non-governmental organisations representing the Roma population, a comprehensive policy to address all aspects of the human rights situation of Roma returned to Serbia and Montenegro and to provide funding to ensure full implementation of the strategy;
- f. to adopt and implement, as a matter of priority, binding legal measures with the aim of preventing statelessness of Roma returnees, in particular to ensure that local authorities carry out the procedures necessary to provide them with identity documents. Urgent measures should be taken to improve the access of Roma returnees to public services necessary for the full exercise of their human rights;
- g. to facilitate the speedy provision of school attendance certificates to Romani children educated abroad so that they can continue their education in Serbia and Montenegro;
- h. to stop the practice of making returning Romani children attend classes they have already successfully completed abroad;
- i. to provide extra classes for Romani children to learn the Serbian language;
- j. to ensure that no ethnic segregation arises in the provision of schooling for returnee children.

10. The Parliamentary Assembly further recommends that the Committee of Ministers:

i. strengthen its programmes involving the returning Roma population in Serbia and Montenegro;

ii. promote and support activities of Roma civil society;

iii. continue its work on the development of the code of good conduct for expulsion procedures.

11. The Assembly calls on the Council of Europe Development Bank to step up its co-operation with the Serb and Montenegrin authorities, with a view to financing projects for returning Roma.

12. The Assembly invites the Congress of Local and Regional Authorities of the Council of Europe to step up its programme for the twinning of the municipalities in the regions which are hosting Roma with municipalities in other Council of Europe member states.

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 25 November 2003 (see Doc. 9990, report of the Committee on Migration, Refugees and Population, rapporteur: Mr Einarsson).*

Parliamentary Assembly Assemblée parlementaire



Forced returns of Roma from the former Federal Republic of Yugoslavia, including Kosovo, to Serbia and Montenegro from Council of Europe member states

Doc. 9990
31 October 2003

Report

Committee on Migration, Refugees and Population

Rapporteur: Mr Mats Einarsson, Sweden, Group of the Unified European Left

For debate in the Standing Committee — see Rule 15 of the Rules of Procedure

Summary

Forced returns of Roma have been carried out on the basis of bilateral readmission agreements concluded between Serbia and Montenegro on the one hand and different European countries on the other. They started shortly after the democratic changes following the presidential elections in Yugoslavia in September 2000. So far, approximately 1000 Roma have been forcibly returned, mainly from Germany. According to estimations, a further 50 000 to 100 000 Roma staying in different Council of Europe member states fall into the category foreseen for readmission.

Although this question cannot be considered in abstraction from the general issue of forced returns of rejected asylum seekers and migrants without legal status originating from the Balkans, Roma population constitute a particularly vulnerable and exposed group requiring effective policy measures in many areas.

According to the reports received from several Roma NGOs, the main concerns relating to forced returns of Roma can be divided into three areas. The first group of issues puts into question the legitimacy of certain decisions on expulsion taken by the host countries. The second group of complaints relates to the conditions in which forced returns take place. The third one refers to the situation in which forcibly returned Roma find themselves upon their return to Serbia and Montenegro.

The Rapporteur proposes a number of measures to be taken by both the sending and receiving countries aimed at improving the situation.

I. Draft recommendation [[Link to the adopted text](http://assembly.coe.int/WorkingDocs/doc03/EDOC9990.htm)]

1. The Parliamentary Assembly refers to its Recommendation 1569 (2002) on the situation of refugees and internally displaced persons in the Federal Republic of Yugoslavia; Recommendation 1588 (2003) on population displacement in South-Eastern Europe: trends, problems, solutions; Recommendation 1348 (1997) on the temporary protection of persons forced to flee their countries; Recommendation 1547 (2002) on expulsion procedures in conformity with human rights and enforced with respect for safety and dignity; and Recommendation 1504 (2001) on non-expulsion of long-term immigrants.
2. The Assembly notes with concern that the problem of displacement in the Balkans still remains unresolved. To date, the number of displaced persons still seeking durable solutions in the region exceeds 1 million. Out of this figure, half a million people stay in Serbia and Montenegro, including Kosovo. This general context of displacement should be taken into account when examining any specific questions concerning returns.
3. Roma constitute a particularly vulnerable group of the displaced population. In Kosovo, their security cannot be guaranteed. In Serbia and Montenegro, their economic and social situation, as well as living conditions, are very precarious. Everywhere in the region they are confronted with a pattern of subtle discrimination on the part of both the local population and the local authorities, which are often reluctant to accept them.
4. According to estimates, between 50 000 and 100 000 Roma from Serbia and Montenegro, including Kosovo, who had fled the conflict in the Balkans at different stages and left the region, still stay in different European countries with no permanent status. The majority live in Germany (25-30 000), the Netherlands (12 000), Belgium (3 000), Switzerland (3 000) and Luxembourg (2-3 000). They fall into the category foreseen for readmission.
5. Forced returns are carried out on the basis of bilateral readmission agreements concluded between Serbia and Montenegro on the one hand, and different sending European countries on the other. They started shortly after the democratic changes following the presidential elections in Yugoslavia in September 2000. So far, approximately 1 000 Roma have been forcibly returned, mainly from Germany.
6. The main concerns relating to forced returns of Roma can be divided into three areas. The first group of issues puts into question the legitimacy of certain decisions on expulsion taken by the host countries. The second group relates to the conditions in which forced returns take place, and the third one to the situation in which forcibly returned Roma find themselves upon their return to Serbia and Montenegro.
7. It is particularly worrying that readmission agreements do not clearly define the conditions for the reception of returned persons and do not put any responsibility on the receiving state in regard to reintegration of returnees.
8. The Assembly is also concerned by so-called "voluntary returns" which in some cases are so strongly induced that they may amount to disguised forced returns.
9. Therefore, the Assembly recommends that the Committee of Ministers:
 - i. urge the members states of the Council of Europe hosting Roma from Serbia and Montenegro, including Kosovo, to ensure that:
 - a. any decision on a forced return of Roma to Serbia and

Montenegro is taken on a case-by-case basis taking into account all relevant circumstances; in particular, humanitarian grounds should be considered as a sufficient justification for granting a residence permit;

b. every Roma who seeks international protection is given access to fair and effective asylum procedure;

c. there are no forced returns of Roma originating from Kosovo neither to Kosovo, nor to Serbia and Montenegro, as long as the security situation in Kosovo does not allow for returns of Roma;

d. Roma representatives are given an opportunity to be involved, with an advisory voice, at an early stage of a preparation for a possible forced return of Roma;

e. forcibly returned Roma have got appropriate documents which will enable them to be recognized as full-fledged citizens upon their return;

f. the procedures of deportation comply with international law and take into account recommendations included in Recommendation 1547 (2002);

g. they contribute financially to the elaboration and implementation of effective reintegration programmes for returning Roma. These programmes should be complemented by funding for the new wider Roma strategy;

ii. urge the Serb and Montenegrin authorities to:

a. elaborate and actively seek support and international funding for the concrete reintegration programmes for returning Roma, including financing from the Council of Europe Development Bank;

b. ensure that Roma representatives are consulted and involved in the elaboration of any reintegration programme concerning the Roma population;

c. give particular attention to Roma, who constitute the poorest category in the vulnerable groups of the population, in the forthcoming governmental Poverty Reduction Strategy that the World Bank is assisting;

d. ensure that relevant ministries in charge of education, housing, employment, social and health care, and most particularly the local and municipal authorities, are properly informed about the re-admission process; relevant authorities should provide targeted plans to ensure that Roma are able to exercise fundamental rights in these sectoral fields, starting with access to appropriate registration and personal documentation;

e. adopt, in co-operation with Romani non-governmental organizations, a comprehensive policy to address all aspects of the human rights situation of Roma returned to Serbia

and Montenegro and provide funding to ensure full implementation of the strategy;

f. adopt and implement, as a matter of priority, binding legal measures with the aim of preventing statelessness of Roma returnees, in particular to ensure that local authorities carry out the procedures necessary to provide Roma returnees with identity documents. Urgent measures should be taken to improve the access of returned Roma to public services necessary for the exercise of their human rights;

g. facilitate the speedy provision of school enrolment certificates to Romani children educated abroad so that they continue their education in Serbia and Montenegro;

h. stop the practice of returning Romani children to attend classes they had already successfully completed abroad;

i. provide supplementary classes for Romani children to learn the Serbian language;

j. ensure that no ethnic segregation arises in schooling provisions of returnee children.

10. The Assembly further recommends that the Committee of Ministers:

- i. strengthen its programmes involving Roma returning population in Serbia and Montenegro;
- ii. promote and support activities of Roma civil society;
- iii. continue its work on the elaboration of the Code of good conduct for expulsion procedures.

11. The Assembly calls on the Council of Europe Development Bank to step up its co-operation with the Serb and Montenegrin authorities, with a view to financing projects for returning Roma population.

12. The Assembly invites the Congress of Local and Regional Authorities of Europe to step up its programme for the twinning of the municipalities in the regions which are hosting Roma with municipalities in other Council of Europe member states.

II. Explanatory memorandum by Mr Mats Einarsson

1. Introduction

1. The Committee on Migration, Refugees and Demography has been following the situation of displaced populations in the Balkans from the very beginning of the conflict. A number of reports and recommendations have been presented at different stages. The most recent ones are the report on the situation of refugees and internally displaced persons in the Federal Republic of Yugoslavia[1] and the report on the population displacement in South-Eastern Europe: trends, problems, solutions[2]. Furthermore, the Committee has been concerned with different aspects of the protection of persons from the Balkans seeking refuge outside the region. In this context, the most relevant reports prepared by the Committee are the report on the temporary protection of persons forced to flee their country[3],

the report on the expulsion procedures in conformity with human rights and enforced with respect for safety and dignity[4], and the report on non-expulsion of long-term immigrants[5].

2. The question of the specific situation of the Roma displaced population within and outside the Balkans has been systematically acknowledged in the above-mentioned texts, and on several occasions recommendations referring to this category of displaced persons were made. Indeed, Roma displaced population constitute a particularly vulnerable and exposed group requiring effective policy measures in many areas.

3. The present report stems from the motion for a recommendation presented by Mrs Zwerver and others in March 2003 following the fact-finding visit to Serbia and Montenegro on the situation of Roma returnees organised by the Directorate General on Social Cohesion of the Council of Europe on 16-20 February 2003, in which two representatives of the Committee, Mrs Zwerver and Mr Cilevics took part. The findings of this visit as well as the report presented to the Committee of Ministers was used by the Rapporteur for the preparation of his own report. Moreover, this report takes into account updated information provided by the international and national organisations and associations, as well as the relevant authorities of the countries concerned. In particular, the Rapporteur used the information gathered during an exchange of views on the subject held by the Committee with representatives of the German and Swiss Ministries of the Interior which took place on 26 September 2003. The source of the information is indicated throughout the report.

4. The main aim of this report is to examine the procedures and conditions in which the Roma displaced persons are returned to Serbia and Montenegro (as their country of origin) after having enjoyed temporary humanitarian leave to remain in some western European countries during the conflict in the Balkans, and to assess their compliance with international law, in particular with the principles of respect for human rights, family life and property rights. Moreover, the Rapporteur examines the question of re-integration policies of Roma returnees.

2. General context of displaced population from the Balkans seeking to stay in western Europe

5. The break-up of the Socialist Federal Republic of Yugoslavia in 1991 opened a decade of massive forced population movements within and outside the region. It is roughly estimated that a total of three million people have been uprooted from their homes.

6. Between 700 000 and 1 million people were seeking refuge outside the region, mainly in the western European countries. Following the appeal launched by UNHCR in 1992, an international consensus developed to the effect that people who were compelled to flee the area of conflicts should receive temporary international protection until the solution to the crisis was found. Thus between 1992-1995, Germany received some 350 000 persons, Sweden 130 000, Austria 80 000. Out of these figures, the numbers of people originating from Serbia and Montenegro including Kosovo, according to rough estimates, amounted to 250-300 000 people.

7. The European countries have made various arrangements for dealing with these persons and granting them temporary protection in one form or another, be it called "temporary admission" as in France, "exceptional leave to remain" as in the United Kingdom, "collective protection" as in Norway etc. These arrangements were based on specific legislation or on various combinations of existing laws and administrative decisions. As a result, the scope of the rights granted to the beneficiaries and the measures taken in the event of extension or termination of

this protection differ substantially from one country to another. Most European countries suspended the examination of applications for asylum made by refugees from the former Yugoslavia, considering that they would not be in need of international protection for long and that, given the sheer number of arrivals at the time, it was therefore unnecessary to overwhelm national asylum procedures by processing claims on an individual basis. UNHCR concurred with this approach provided that persons wishing to submit a valid application for refugee status should not be prevented from doing so once the situation of mass influx stabilised. After 1995, certain European states started to process applications for asylum from people from the former Yugoslavia, but they stopped to do it again during and after the Kosovo crisis. In all, 217 000 persons including 111 300 from Serbia and Montenegro including Kosovo have applied for asylum.

8. Although the governments made it clear from the very beginning that return to the country of origin when conditions allow is a key element of the concept of temporary protection, they recognized however that in some cases there might exist compelling reasons for not to be returned. They also acknowledged that vulnerable groups needed special attention and treatment.[6]

9. The return process has been going on since the security situation on the spot only allowed for returns in safety starting as early as in 1995 after the conclusion of the Dayton Agreement. Voluntary return programmes have been implemented. The International Organization for Migration (IOM) manage an "Assisted Voluntary Returns Programme (GARP and REAG)" returning people from Germany to Montenegro. In 2002 alone, some 6200 people returned voluntarily under these two programmes (including approximately 30 % to Kosovo). The returnees have their fares paid and receive a lump sum payment on arrival (between 250 and 500 Euros for each adult and 125-250 for a child). As far as Switzerland is concerned, under different voluntary return programmes, over 40 000 people have returned to Serbia and Montenegro including Kosovo since 1999.

10. Now that the conflict is over, there is still a large number of people originating from the former Yugoslavia whose legal status does not allow for a permanent settlement in the host countries. During the last two years, forcible return programmes have been elaborated and readmission agreements have been concluded on a bilateral basis between Serbia and Montenegro on one side, and the western countries concerned on the other (see below).

11. There is a certain ambiguity in the distinction between voluntary and forced returns. It is a matter of concern how some of allegedly "voluntary returns" are encouraged. The margin between incentives/induced returns and fear of forced return is often somewhat problematic.

12. It is difficult to obtain reliable statistics on forced returns. The Serbian and Montenegrin authorities have only estimates. For example, the Deputy Commissioner for Refugees estimates that some 1000 persons have been forcibly returned to Yugoslavia under readmission agreements[7].

13. This figure does not correspond to the figures provided by Switzerland and Germany alone. According to the Swiss Federal Office for Refugees, 218 persons in 2002, and 121 persons in 2003 were returned by force from Switzerland to Serbia and Montenegro. Forced returns to Kosovo are carried out on the basis of Memorandum of Understanding between UNMIK and Switzerland. In 2002 and 2003, as many as 829 rejected asylum seekers were deported from Switzerland to Kosovo. Furthermore, according to the German Federal Ministry of the Interior under the old 1996 readmission agreement between Germany and Yugoslavia and under the new one signed in September 2002, Germany returned some 4,500 persons, who were under an obligation to leave the country, to Serbia and Montenegro (excluding Kosovo) between 2001 and 2003.

14. In Germany, up to 50 000 are expected to be returned.

15. It is important to note that the general question of refugees and internally displaced persons has by no means been resolved in Serbia and Montenegro including Kosovo. As of 1 March 2003, the total amount of IDPs and refugees in Serbia and Montenegro including Kosovo amounted to 579 200 persons which makes up approximately 7% of the population as a whole.

3. Overview and scope of the problem of forced returns of Roma from the former Federal Republic of Yugoslavia

16. As the statistics concerning refugees and asylum seekers do not include the information on ethnicity, it is difficult to determine exactly the proportion of Roma among different categories of displaced people from the former Yugoslavia, still staying in the western European countries. Similarly, the Government of Serbia and Montenegro has no information on the number of its citizens who left the country during the conflict, let alone the proportion of Roma. It is estimated, however, that between 50 000 and 100 000 Roma with no permanent status still stay in different European countries, and fall into the category foreseen for readmission.

17. The majority of the Roma refugees and asylum seekers in Western Europe currently live in Germany. It is estimated that 25-30 000 Roma from Serbia and Montenegro and a similar number of Roma who fled from Kosovo live in Germany under temporary protection status.[8] Lower numbers are registered for other western European countries: 3 000 in Belgium, 2-3 000 in Luxembourg, 12 000 in the Netherlands, 3-7 000 in Sweden, and 3 000 in Switzerland.

18. According to the report presented to the Committee of Ministers by the Council of Europe delegation (written by Alan Philips), the numbers of Roma who have unclear status in Western Europe could be in excess of 50 000 people and at the upper end, if illegal immigrants were also included, might exceed 100 000.

19. According to the Swiss Federal Office for Refugees, 44 Roma were deported from Switzerland to Serbia and Montenegro, and 7 to Kosovo in 2002-2003. So far according to the report by Alan Philips, approximately 1 000 forced returns of Roma have been executed from Germany. However, the German Ministry of the Interior has confirmed that so far no Roma has been forcibly returned to Kosovo.

20. Since summer 2002, as many as 620 Roma have returned on a voluntary basis from Germany to Serbia and Montenegro under the REAG and GARP programmes. Out of this figure, some 60 have gone to Kosovo. Switzerland does not keep records on ethnicity of voluntary returnees.

21. Under specific programmes addressed to minorities, approximately 200 Roma have returned to Serbia and Montenegro from Switzerland since 2001.

4. Legal framework applying to forced returns

a. International instruments

22. The concept of forced returns or expulsion covers the cases in which domestic law provides for the removal of foreigners. The concept of expulsion procedure covers all the acts which stem from the expulsion order and, if applicable, up to the return of the foreigner to another country.

23. A number of international instruments can be applied directly or indirectly

when assessing the conformity of a decision on expulsion and expulsion procedures with international law. For example, the respect of the dignity and safety of the persons concerned is guaranteed by the preamble and Art.1 of the 1948 Universal Declaration of Human Rights; preamble of the International Pact of Civil and Political Rights; preamble of the Pact on Economic, Social and Cultural Rights; and the preamble of the International Convention on the Elimination of all Forms of Discrimination towards Women.

24. As concerns the decision itself, it is essential that in consequence it does not deprive foreigners of their rights as guaranteed by several Articles of the European Convention of Human Rights, in particular Article 3 (prohibition of torture and inhuman and degrading treatment); Article 5 (right to liberty and security), Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination).

25. Provisions related to (the need for) international protection, and particularly the non-refoulement principle, are contained in the 1951 Geneva Convention relating to the status of refugees which is applicable to all Council of Europe member states as signatories of this instrument. Therefore it is essential to provide every asylum seeker with access to fair and efficient status determination procedures. Article 31 (illegal entry/presence), 32 (expulsion) and 33 (non-refoulement) of the Convention further define the international principles under which return/expulsion of asylum seekers/refugees is permissible. The jurisprudence of the European Court of Human Rights[9] indicates that a state is to all extents and purposes responsible for the situation of a foreigner on his return to another state. Authorities have a real responsibility to ensure that a person they expel are treated with respect and dignity in the country of destination.

26. It is worth noting that in January 2003, the UNHCR published a Position Paper on the Continued International Protection Needs of Individuals from Kosovo in which it concludes that Roma from Kosovo still have a well founded fear of persecution and therefore should not be forcibly returned to Kosovo.

b. Bilateral agreements

27. During the last few years bilateral agreements, so called readmission agreements have been concluded between Serbia and Montenegro on one side, and different European countries on the other.

28. The readmission agreement between Germany and the (then) FRY concluded in September 2002, refers to 50 000 persons from Yugoslavia. According to the assessment of humanitarian organisations and organisations for the protection of the human rights at least one third of those are Roma, although there are no official statistics. The agreement is already being implemented.

29. Readmission agreements were concluded with the following countries: Switzerland (1997, implemented since 2002), Benelux (2002), Slovakia (2001, implemented since 2002), Denmark (2002), Sweden (2002). Similar readmission agreements are currently negotiated with France, Norway, United Kingdom, Lithuania, Latvia, Austria, the Czech Republic and Poland.

30. It is worth noting that about 6 000 Roma originating from Montenegro and currently living in Bosnia are awaiting deportation to Serbia and Montenegro. The Bosnian government had agreed, following the request from Serbia and Montenegro, to delay the return until after June 2003.

31. Readmission agreements do not clearly define the conditions for the reception of returned persons and do not put any responsibility on the receiving

state in regard to reintegration of returnees nor do they systematically mention that the sending state should support that re-integration process through the allocation of appropriate assistance to the individual and/or to the receiving state.

c. National legislation in expulsing and receiving countries

32. As a rule, issuing and enforcing expulsion orders is the task of the national or federal authorities responsible for aliens, such as the Federal Office for the Recognition of Foreign Refugees, the Ministry of the Interior (Belgium, United Kingdom), the Ministry of Public Order (Greece), the Ministry of Justice (Netherlands), the Préfecture in France, and cantons in Switzerland.

33. In concrete terms, the preparation and enforcement of expulsion orders are the responsibility of the law enforcement agencies, ie the police (including the border authorities) or the gendarmerie. However, in all Council of Europe member states expulsion procedures lack transparency. For that reason, the Parliamentary Assembly recommended to the Committee of Ministers of the Council of Europe, to set up a joint working party at a European level with a view to drawing up, in a pragmatic and human spirit, a code of good conduct at different stages of expulsion procedure^[10]. The Rapporteur notes with satisfaction that the Committee of Ministers is working on that issue.

34. In another recommendation on the non-expulsion of long-term immigrants, the Parliamentary Assembly invites the member states to ensure that long-term migrants (category under which fall many potential forced returnees), in particular those who were born or brought up in a host country should not be expelled. Furthermore, the humanitarian situation of the persons facing expulsion as well as possible consequences of the expulsion should systematically be taken into account when deciding on an expulsion.

35. The system of government in Serbia and Montenegro is undergoing considerable transformation with a significant change of ministers and ministerial responsibilities following the establishment of the new State Union of Serbia and Montenegro. Some tension continues over the competences at a republic and federal level in particular in the area of internal affairs. The question of elaborating, funding and implementation of different laws and policies need detailed clarification. In that provisional situation it is difficult to expect that priority be given to the appropriate re-integration of forcibly returned Roma population. Although a draft strategy on the integration and empowerment of Roma has been elaborated in the Serbian government in December 2002, it will probably take a long time before it is transformed into laws and policies at both federal and republic levels, let alone funded and implemented. The draft calls on the Serb and Montenegrin authorities to develop a "Reintegration Programme for Romani Returnees". For the time being, the work on this programme has not started.

5. Main concerns relating to forced returns of Roma

36. Main concerns relating to forced returns of Roma can be divided into three main areas: the first group of issues puts into question the legitimacy of certain decisions on expulsion taken by the host countries. This also applies to so called "voluntary returns" which in some cases are so strongly induced (eg. through the suspension of socio-economic rights, the provision of financial incentives, etc) that they may amount to disguised forced returns. The second group of complaints relates to the conditions in which forced returns take place. Finally, the third group refers to the situation in which forcibly returned Roma find themselves upon their return to Serbia and Montenegro. Concrete questions need closer examination.

37. Legitimacy of the decision on deportation

a. The Roma organisations report that there have been cases of members of Roma families being deported while undergoing specialized medical treatment. This treatment allegedly could not be continued upon their return either due to the lack of adequate medical services or because the lack of identity documents which prevented them from access to public health care.

b. According to the reports some families who have been deported or are foreseen for deportation seem to have well-founded basis for permission to stay on humanitarian grounds. This concerns particularly families with little children who have been either born or spent the majority of their lives in Germany, speak fluent German, are well integrated into the German educational system, and may not even speak Serbian.

38. Conditions in which deportation takes place

a. *Separation of families:* the Roma organisations report on cases where families have been separated during forced returns. Allegedly this may happen for example if one member of the family is absent during the deportation or too ill to be transported.

b. *Loss of private possessions:* in some cases, allegedly, the deportation takes place so quickly, and the persons undergoing the procedure have no time to sell or otherwise take care of their belongings so that they may be compound to leave them behind. Furthermore, there are reports of confiscating cash and/or valuable items for which import taxes have not been paid. Returnees also encounter bureaucratic difficulties in withdrawing money from the European banks located in Serbia if the account has been opened abroad.

c. *No support on arrival:* there are reports on families arriving in Belgrade on charter flights with no money and no place to go. There are no reception arrangements whatsoever at Belgrade airport once they had passed through immigration procedure.

39. Situation upon return

a. *Economic conditions:* although the political situation in Serbia and Montenegro is relatively stable, the social and economic situation of the country is extremely difficult. The conditions of living for many categories of the population in general are dramatically low, with inadequate housing, huge unemployment, and collapse of social services. The authorities experience real difficulties in meeting the basic needs of vulnerable and marginalized populations among which the Roma are some of the worst affected. Both Serbia and Montenegro have their own important Roma populations. The care and maintenance of internally displaced persons from Kosovo, as well as the integration of refugees formerly from Bosnia and Herzegovina, and Croatia have added to the problem. The undergoing and planned forced returns of important numbers of Roma from the western European countries may severely affect the socio-economic situation of the country since Serbian and Montenegrin authorities are faced with a burden which certainly exceeds their possibilities. Even if Serbia and Montenegro is under the obligation to re-admit its own citizens (and is also strongly encouraged to do so for political reasons these authorities are not able to assure proper conditions for the reintegration of these forcibly returned Roma. As mentioned above, a draft strategy for the integration and

empowerment of the Roma has been elaborated but it is at a very early stage of discussion and anyway, will require substantial funding/international support. The Federal and Republic governments make it clear that there are no programmes aimed at helping the resettlement of Roma returning from Western European countries.

b. *Citizenship and identity documents:* according to the UNHCR and to Roma organisations a large number of Roma population in Serbia and Montenegro have no basic documents such as birth certificates and identity cards. Lack of these documents not only prevents them from access to many services but also places them in a situation of de facto statelessness. There are already reported cases of the statelessness situation of some returnees who face even more difficult bureaucratic obstacles for all Roma in Serbia and Montenegro to obtain identity documents.

c. *Personal security:* Roma still have a well-founded fear of persecution in Kosovo[11]. Although there are so far reportedly no forced returns to Kosovo proper Roma from Kosovo are returned to other parts of Serbia and Montenegro thus increasing the number of internally displaced Roma and further fragilising a delicate situation for the country. It should be pointed out that the situation in South Serbia continues to be unstable and there are some tensions in Montenegro on its position in the States Union.

d. *Access to support:* although they return to a situation of internal displacement, most returnees are not registered as IDPs by the authorities upon their return to Serbia and Montenegro, and are therefore unable to access a certain number of social support – they become even more vulnerable than IDPs who came directly from Kosovo to Serbia and Montenegro.

e. *Discrimination:* there has been a subtle pattern of discrimination against Roma in many areas of everyday life in Serbia and Montenegro on the part of local authorities and population. Some municipalities are reluctant to accept Roma IDPs. There are numerous reports of denied access to state facilities including education, housing, or health care.

f. *Education:* the lack of personal documents, common among Roma, has also a negative effect on access to the education system by Roma children, in particular those who are internally displaced. Another problem experienced by IDP Roma children or those returned from western Europe is the language barrier: many of them do not speak Serbian.

g. *Lack of information:* Roma IDPs in general are further disadvantaged because of lack of sufficient information on their rights and services available to them from governmental, intergovernmental and non-governmental sectors. Of particular concern are the Albanian-speaking Ashkali and Egyptians, who are further excluded because they do not speak Serbian.

h. *Living conditions* for the Roma population of Serbia and Montenegro are in general extremely poor and they are even more difficult for the IDPs whose numerous presence compounds existing problems. The majority of Roma live in unrecognised collective centres and illegal settlements often without access to electricity, drinking water and sewage system. Lack of legal place of residence creates problems

when Roma want to register themselves. Many returnees have nowhere to go.

6. Conclusions

40. Before presenting his conclusions, the Rapporteur would like to point out that his report does not deal with the general question of returns to Serbia and Montenegro, be they voluntary or forced. It is focused on a specific issue of forced returns of Roma. In absolute figures this question does not appear to be of big scope and does not have important economic impact. However, in the Rapporteur's opinion it should be given special attention because of a specific situation of Roma population in our societies. Consequently, the question of forced returns of Roma cannot be considered in abstraction of their specific situation in the countries concerned which distinguishes this question from the general question of forced returns.

41. The concerns raised in the report have been expressed by the Roma non-governmental organizations, in particular the European Roma Right Centre. It is difficult to verify the accuracy of the reports by non-governmental organizations, and it cannot be excluded that some of them are subjective, emotional and exaggerated. The representatives of the German and Swiss authorities insisted on the full compliance of forced returns with the international and domestic laws. However, for example, the German immigration law which lays down in detail the conditions under which a right of residence may be granted on humanitarian grounds, does not include some situations reported by the Roma NGOs (medical treatment started in Germany, children born and educated in German educational system etc). Thus problem undoubtedly exists, particularly as far as the reintegration of forcibly returned Roma is considered, and it should be brought to the public attention.

42. It should be a general rule, strictly applied to Roma, that any decision on a forced return should be taken on a case-by-case basis. According to the information provided by the relevant authorities, it is always the case in Germany and Switzerland, and this approach should be continued.

43. Furthermore, every Roma who seeks international protection should be given access to fair and effective asylum procedure. Statistics seem to confirm the respect of this rule in both above mentioned countries.

44. As long as security for Roma in Kosovo cannot be guaranteed, there should be no expulsions of Roma from Kosovo, whether to Kosovo proper or to the rest of the territory of Serbia and Montenegro where internal displacement does not offer an adequate or reasonable alternative to international protection.

45. Humanitarian grounds should be sufficient justification for granting residence permit. In particular the families with the children who have been staying for many years in the host country should be given particular consideration. Persons undergoing specialized medical treatment which might prove impossible to be continued after return, should be allowed to stay until it is completed. Members of one family should not be separated. Obviously this rule cannot be subject to any strict interpretation and certain arbitrary interpretation is unavoidable.

46. In the Rapporteur's opinion, Roma representatives should be given an opportunity to be involved – as an advisory voice- at the early stage of preparation for a possible forced return. Thanks to their experience their advice might be very helpful, both for the authorities and for the potential returnees.

47. The sending authorities should make sure that forcibly returned Roma have

got appropriate identification papers that will enable them to be recognised as full-fledged citizens upon return.

48. The procedures of deportation should comply with the international law and take into account recommendations included in Recommendation 1547 (2002). The Rapporteur notes with satisfaction that the Committee of Ministers of the Council of Europe is elaborating the Code of good conduct for expulsion procedures.

49. The sending countries should contribute financially to the elaboration and implementation of effective reintegration programmes for returning Roma. These programmes should be complemented by funding for the new wider Roma strategy.

50. The Serbian and Montenegrin authorities should elaborate and actively seek support and international funding for the concrete reintegration programmes for returning Roma, including financing from the Council of Europe Development Bank.

51. Any reintegration programme should be elaborated in full consultation with representatives of the civil society (particularly with the Romas) and have funding from the western countries.

52. The Roma population, being the poorest category in the vulnerable groups of population, should be given particular attention in the forthcoming governmental Poverty Reduction Strategy that the World Bank is assisting.

53. Relevant ministries in charge of education, housing, employment, social care and health care, and most particularly the local and municipal authorities, should be properly informed about the re-admission process; relevant authorities should provide targeted plans to ensure that Roma are able to exercise fundamental rights in these sectoral fields, starting with access to appropriate registration and personal documentation.

54. In co-operation with Romani non-governmental organisations, the Serb and Montenegrin authorities should adopt a comprehensive policy to address all aspects of the human rights situation of Roma returned to Serbia and Montenegro; provide funding to ensure full implementation of the strategy.

55. The federal and republic authorities should adopt binding legal measures placing an obligation on local authorities to end statelessness in their area. Urgent measures should be taken to address the problem of lack of personal documents among returned Roma, with a view, inter alia to improving access to public services necessary for the implementation of their basic human rights.

56. Facilitate the speedy provision of school enrolment certificates to Romani children educated in Germany so that they can continue their education in Serbia and Montenegro; stop the practice of returning Romani children to attend classes they had already successfully completed in Germany; provide supplementary classes for Romani children to learn the Serbian language, in order to assist in their integration into the educational system of Serbia and Montenegro; ensure that no racial segregation arises in schooling provisions of returnee children.

57. Ensure inclusion of Roma in any decisions of relevance to the Romani community.

58. In conclusion, your Rapporteur wishes to stress that any forced returns should be managed with dignity and should ensure that all human rights are protected. They should be supported by a well-founded reintegration programme, designed to promote the successful reintegration of returnees. The international

financial community and development agencies have a particular role to play.

Reporting Committee: Committee on Migration, Refugees and Population.

Reference to committee: Doc. 9727, Ref. No. 2818 on 31.03.2003

Draft recommendation unanimously adopted by the Committee on 21 October 2003

Members of the Committee: *Iwinski* (Chairperson), *Einarsson* (1st Vice-Chairperson), *Bušić* (2nd Vice-Chairperson), *de Zulueta* (3rd Vice-Chairperson), *Akgün*, *Akhvlediani*, *Alibeyli*, *Arabadjiev*, *de Aristegui* (alternate: *Fernández-Aguilar*), *Arzilli* (alternate: *Riccardi*), *Bernik*, *Bousakla*, *Branger*, *Braun*, *Brinkel* (alternate: *Duivesteijn*), *Brînzan*, *Brunhart*, *Cabrnach*, *Çavusoglu*, *Christodoulides*, *Cilevics*, *Dacic*, *Danieli*, *Debarge*, *Debono Grech*, *Dmitrijevas*, *Dokle*, *Donabauer*, *Err*, *Filipiová*, *Freiherr von und zu Guttenberg*, *Frimannsdóttir*, *Grzesik*, *Grzyb*, *Gülççek*, *Hagberg*, *Hancock*, *Higgins*, *Hoffmann*, *Ilascu*, *Jovašević*, *Lord Judd*, *Karpov*, *Kósá-Kovács*, *Kulikov*, *Kvakkestad*, *Lambert*, *Le Guen*, *Liapis*, *Loutfi*, *Matviychuk*, *Nabholz-Haidegger*, *Naro*, *Nasufi*, *Nessa*, *Olin*, *Popa*, *Prijmireanu*, *Puche*, *Raguž*, *Rakhansky*, *Reymann*, *Saks*, *Shakhtakhtinskaya*, *Slutsky* (alternate: *Fedorov*), *Soendergaard*, *Stoisits*, *Stübgen*, *Szabo*, *Tekelioglu*, *Tkác*, *Torosyan*, *Vera Jardim*, *Verivakis*, *Vermot-Mangold*, *Vieira*, *Wilkinson*, *Wray* (alternate: *Etherington*), *Yáñez-Barnuevo* (alternate: *Agramunt*), *Zavgayev* (alternate: *Tulaev*), *Zhirinovsky* (alternate: *Gamzatova*).

N.B. The names of those members present at the meeting are printed in italics.

Secretariat of the committee: Mr Lervik, Mrs Nachilo, Mrs Sirtori-Milner, Mrs Entzminger

[1] See Recommendation 1569 (2002) and Doc. 9479, Rapporteur Mr Boriss Cilevics, Latvia, Socialist Group.

[2] See Recommendation 1588 (2003) and Doc. 9519 revised, Rapporteur: Mrs Ans Zwerver, Netherlands, Socialist Group.

[3] See Recommendation 1348 (1997) and Doc. 7889, Rapporteur: Mrs Elisabeth Arnold, Denmark, Liberal, Democratic and Reformers' Group.

[4] See Recommendation 1547 (2002), Order No. 579 (2002) and Doc. 9196, Rapporteur: Mrs Ruth-Gaby Vermot-Mangold, Switzerland, Socialist Group.

[5] See Recommendation 1504 (2001), Order No. 570 (2001) and Doc. 8986, Rapporteur: Mrs Manuela Aguiar, Portugal, Group of the European People's Party.

[6] See Doc. 8427: Reply from the Committee of Ministers of the Council of Europe to Recommendation 1348 (1997) on the temporary protection of persons forced to flee their country, adopted at the 670th meeting of the Ministers' Deputies on 18 May 1999.

[7] See Memorandum prepared by DG III – Social Cohesion from 10.02.2002 on the CE fact-finding mission to Serbia and Montenegro

[8] Draft strategy for the integration and empowerment of the Roma: Federal

Ministry for national and ethnic communities, 2002.

[9] Rulings: *Cruz Varas against Sweden*, 20 March 1991; *Chahal against United Kingdom*, 15 November 1996, and *H.L.R. against France*, 29 April 1997.

[10] See Recommendation 1547 (2002).

[11] See UNHCR's Position Paper on the Continued International Protection Needs of Individuals from Kosovo, January 2003.



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STATUTE OF THE COUNCIL OF EUROPE

London, 5.V.1949

The Statute of the Council of Europe has been numbered "1" in the European Treaty Series. Amendments and texts of statutory character adopted later have been numbered 6, 7, 8 and 11.

Article 9

The Committee of Ministers may suspend the right of representation on the Committee and on the Consultative Assembly of a member which has failed to fulfil its financial obligation during such period as the obligation remains unfulfilled.

Chapter III – General**Article 10**

The organs of the Council of Europe are:

- i the Committee of Ministers;
- ii the Consultative Assembly.

Both these organs shall be served by the Secretariat of the Council of Europe.

Article 11

The seat of the Council of Europe is at Strasbourg.

Article 12

The official languages of the Council of Europe are English and French. The rules of procedure of the Committee of Ministers and of the Consultative Assembly shall determine in what circumstances and under what conditions other languages may be used.

Chapter IV – Committee of Ministers**Article 13**

The Committee of Ministers is the organ which acts on behalf of the Council of Europe in accordance with Articles 15 and 16.

Article 14

Each member shall be entitled to one representative on the Committee of Ministers, and each representative shall be entitled to one vote. Representatives on the Committee shall be the Ministers for Foreign Affairs. When a Minister for Foreign Affairs is unable to be present or in other circumstances where it may be desirable, an alternate may be nominated to act for him, who shall, whenever possible, be a member of his government.

Article 15

- a On the recommendation of the Consultative Assembly or on its own initiative, the Committee of Ministers shall consider the action required to further the aim of the Council of Europe, including the conclusion of conventions or agreements and the adoption by governments of a common policy with regard to particular matters. Its conclusions shall be communicated to members by the Secretary General.
- b In appropriate cases, the conclusions of the Committee may take the form of recommendations to the governments of members, and the Committee may request the governments of members to inform it of the action taken by them with regard to such recommendations.

Article 16

The Committee of Ministers shall, subject to the provisions of Articles 24, 28, 30, 32, 33 and 35, relating to the powers of the Consultative Assembly, decide with binding effect all matters relating to the internal organisation and arrangements of the Council of Europe. For this purpose the Committee of Ministers shall adopt such financial and administrative arrangements as may be necessary.

Article 17

The Committee of Ministers may set up advisory and technical committees or commissions for such specific purposes as it may deem desirable.

Article 18

The Committee of Ministers shall adopt its rules of procedure, which shall determine amongst other things:

- i the quorum;
- ii the method of appointment and term of office of its President;
- iii the procedure for the admission of items to its agenda, including the giving of notice of proposals for resolutions; and
- iv the notifications required for the nomination of alternates under Article 14.

Article 19

At each session of the Consultative Assembly the Committee of Ministers shall furnish the Assembly with statements of its activities, accompanied by appropriate documentation.

Article 20

- a Resolutions of the Committee of Ministers relating to the following important matters, namely:
 - i recommendations under Article 15.b;
 - ii questions under Article 19;
 - iii questions under Article 21.a.i and b;
 - iv questions under Article 33;
 - v recommendations for the amendment of Articles 1.d, 7, 15, 20 and 22; and
 - vi any other question which the Committee may, by a resolution passed under d below, decide should be subject to a unanimous vote on account of its importance,require the unanimous vote of the representatives casting a vote, and of a majority of the representatives entitled to sit on the Committee.
- b Questions arising under the rules of procedure or under the financial and administrative regulations may be decided by a simple majority vote of the representatives entitled to sit on the Committee.
- c Resolutions of the Committee under Articles 4 and 5 require a two-thirds majority of all the representatives entitled to sit on the Committee.

- d All other resolutions of the Committee, including adoption of the budget, of rules of procedure and of financial and administrative regulations, recommendations for the amendment of articles of this Statute, other than those mentioned in paragraph a.v above, and deciding in case of doubt which paragraph of this article applies, require a two-thirds majority of the representatives casting a vote and of a majority of the representatives entitled to sit on the Committee.

Article 21

- a Unless the Committee decides otherwise, meetings of the Committee of Ministers shall be held:
- i in private, and
 - ii at the seat of the Council.
- b The Committee shall determine what information shall be published regarding the conclusions and discussions of a meeting held in private.
- c The Committee shall meet before and during the beginning of every session of the Consultative Assembly and at such other times as it may decide.

Chapter V – Consultative Assembly

Article 22

The Consultative Assembly is the deliberative organ of the Council of Europe. It shall debate matters within its competence under this Statute and present its conclusions, in the form of recommendations, to the Committee of Ministers.

Article 23¹

- a The Consultative Assembly may discuss and make recommendations upon any matter within the aim and scope of the Council of Europe as defined in Chapter I. It shall also discuss and may make recommendations upon any matter referred to it by the Committee of Ministers with a request for its opinion.
- b The Assembly shall draw up its agenda in accordance with the provisions of paragraph a above. In so doing, it shall have regard to the work of other European intergovernmental organisations to which some or all of the members of the Council are parties.
- c The President of the Assembly shall decide, in case of doubt, whether any question raised in the course of the session is within the agenda of the Assembly.

Article 24

The Consultative Assembly may, with due regard to the provisions of Article 38.d, establish committees or commissions to consider and report to it any matter which falls within its competence under Article 23, to examine and prepare questions on its agenda and to advise on all matters of procedure.

¹

As amended in May 1951.

Article 25¹

- a The Consultative Assembly shall consist of representatives of each member, elected by its parliament from among the members thereof, or appointed from among the members of that parliament, in such manner as it shall decide, subject, however, to the right of each member government to make any additional appointments necessary when the parliament is not in session and has not laid down the procedure to be followed in that case. Each representative must be a national of the member whom he represents, but shall not at the same time be a member of the Committee of Ministers.

The term of office of representatives thus appointed will date from the opening of the ordinary session following their appointment; it will expire at the opening of the next ordinary session or of a later ordinary session, except that, in the event of elections to their parliaments having taken place, members shall be entitled to make new appointments.

If a member fills vacancies due to death or resignation, or proceeds to make new appointments as a result of elections to its parliament, the term of office of the new representatives shall date from the first sitting of the Assembly following their appointment.

- b No representative shall be deprived of his position as such during a session of the Assembly without the agreement of the Assembly.
- c Each representative may have a substitute who may, in the absence of the representative, sit, speak and vote in his place. The provisions of paragraph a above apply to the appointment of substitutes.

¹ First sentence of paragraph a, as amended in May 1951. The last two sub-paragraphs of paragraph a were added in May 1953; first sub-paragraph of paragraph a amended in October 1970.

