



**Euromed Ministerial Conference on Migration
- Analytical note and recommendations -**

Algarve, 18-19 November 2007

EXECUTIVE SUMMARY

10/10/07

The Euromed ministerial conference on migration, which will take place in the Algarve on November 18-19, 2007 under the Portuguese presidency, will be the first of its kind, entirely devoted to the issue of migration in the Euro-Mediterranean region.

The Euro-Mediterranean Human Rights Network (EMHRN) wishes to take this opportunity to raise a number of concerns regarding the issues of the rights of migrants, refugees and asylum seekers in the region.

In this perspective, the EMHRN has prepared the attached analytical note. The main conclusions from this note are as follows:

Main instruments guaranteeing the rights of migrants:

The EMHRN calls upon all the Barcelona member states to ratify and implement all existing instruments related to the rights of migrants, asylum seekers and refugees.

The EMHRN notes that, among the 37 member states of the Barcelona Process, only five have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The EMHRN calls for the ratification of this text and calls upon the European Commission to consult with the member states of the Barcelona Process in order to identify the obstacles that impede ratification and propose an action plan and timetable that would speed up ratification.

The EMHRN underlines that all migrants and asylum seekers, regardless of their status, also enjoy the rights enshrined in international human rights and humanitarian law such as the right not to be subjected to torture and ill treatments, or of being expelled to a country where he or she could be subjected to bad treatments. Any migrant, regardless of his or her status, has also the right not to be subjected to arbitrary arrest or detention, the right to leave any country, including his or her own and the right to respect for private and family life.

Migrants, refugees and asylum seekers are also to enjoy their social and economical rights. Their access to education, to health care and to work should not be hindered. ***Migrants are entitled to receive the adequate protection against exploitation, even if their presence is irregular in the country. It is regretful to notice that the general tendency is not to acknowledge such rights for migrants who are irregularly living in a country.***

Other instruments have been set up at the international and European level, in order to protect migrants from acts of smuggling or trafficking. ***The EMHRN invites all states to ratify and implement such instruments. It further invites all EU member states to ratify and implement the Convention of the Council of Europe on the repression of human trafficking.***

The impact of migration policies on the rights of asylum seekers:

The EMHRN insists on the need to clearly distinguish between the treatment and rights of asylum seekers and refugees and those of migrants. Refugees and asylum seekers enjoy specific rights granted by the Geneva Convention of 1951. However, it is important to bear in mind that the policies on the management of borders and migration flows exert a direct impact on the right of asylum seekers to access the territory of third countries and thus to enjoy the protection they are entitled to receive. The EMHRN believes it is essential to systematically consider the impact of such policies on the access of asylum seekers to the territories of third countries and to their right to apply for asylum. This is even more important in the case of mixed flows where the differentiation between economic migrants and asylum seekers is more complex.

The Network regrets that the issue of asylum is barely present, if at all, on the agenda of the ministerial conference. In its analytical note, the EMHRN demonstrates the inconsistency of the present policy with the principle of the protection of the rights of asylum seekers. Although the principle of “burden sharing” is regularly referred to by the European countries when discussing management of migratory flows, the European member states seem more reluctant to apply it when it comes to taking care of refugees and asylum seekers.

The EMHRN calls upon Syria, Lebanon and Jordan to ratify the Geneva Convention on the status of refugees as soon as possible. The Network also calls upon all member states of the Barcelona Process to fully comply with the obligations set forth in that convention and to take all possible steps to ensure that the United Nations High Commission for Refugees (UNHCR) can freely carry out its mandate in the region.

Feminisation of migration flows:

Migrant women are often victims of acts of violence and violations of their rights. The acts of violence range from sexual and physical abuse to forced labour. They are also victim of discrimination at the legal or administrative level, or due to customary practices. By the fact of being both women and aliens, they are subjected to double discrimination.

The EMHRN recalls that at the Euromed Ministers’ conference at Istanbul in November 2006, it has been decided to make the prevention of discrimination and violence against migrant women a priority measure. Such issues should therefore be part of any horizontal discussions on the management of migration flows. The EMHRN thus calls upon all member states of the Barcelona Process to ensure that they are put on the agenda of the conference and included in their conclusions.

Border control and fight against irregular migration:

The EMHRN recognizes the right of each state to control its borders. The EMHRN insists however that such control must take place with due respect for International human rights standards and humanitarian laws. The EMHRN also underlines that actions taken by states in order to control their borders must remain just, transparent and appropriate. In other words, they must be proportional. Asylum seekers must not suffer from such actions, nor should they be penalized, even if they entered the territory irregularly.

Criminalisation of the so-called irregular exit by nationals:

The laws of a number of the Euromed countries foresee prison sentences for the exit from the country by any other crossing points than those determined by the government or in a way that does not conform to the legislation.

The EMHRN recalls that anyone has the right to leave his/her country. Consequently, the member states of the Barcelona Process are urged not to penalize the so-called illegal exits by prison sentences .

Criminalisation of the irregular entry and/or stay of aliens:

Numerous countries in the region foresee prison sentences for the irregular entry and/or stay of migrants who proceed from third countries.

The EMHRN calls upon all member states of the Barcelona Process not to penalize by imprisonment the irregular entry and/or stay of migrants; the Network also calls for the decriminalization of so-called illegal exit of aliens;

The EMHRN underlines the inconsistency of those legislations with the commitment to protect migrants from any form of human trafficking and/or smuggling. For instance, a migrant who would wish to make a complaint regarding abuses of that nature may face the risk of being convicted because of the “illegal” nature of his/her presence in the country.

Cooperation between third countries:

The EMHRN believes that any cooperation on border and migration flow management with a third state should be subject to preconditions that ensure the rights of migrants, refugees and asylum seekers are effectively respected. The EMHRN is concerned by the fact that member states of the Barcelona Process feel little compunction to set up cooperation programs on border management with third states known to flout human rights.

The EMHRN regrets the lack of transparency concerning cooperation agreements with member states of the Barcelona Process, on border management and readmission. It asks for such agreements to be made public. To that end, the EMHRN asks the European Commission to make an inventory of these agreements, to publish them and make known to what extent these agreements guarantee that the rights of migrants and asylum seekers will be respected.

Readmission agreements:

Currently, several association agreements contain readmission clauses. The EMHRN believes that any return procedure, should be backed up by mechanisms that ensure that the rights of migrants will be respected, particularly the right not to be sent back to a country where his/her life or freedom would be threatened.

The EMHRN believes that the EU and/or its member states should not sign readmission agreements with countries that penalize the so-called irregular exit from their territory. Sending back migrants to countries where they could face prison sentences because of the “illegal” nature of their exit may make the EU and/or the member state guilty of complicity of the violation of the right of these migrants not to be subjected to cruel, degrading or inhuman treatments, and of the right not to be arbitrarily deprived of their freedom. The same arguments stand for the states that criminalise with prison sentences the irregular entry and/or stay in their territory.

Readmission agreements covering the nationals of third countries:

Readmission agreements provide for the readmission, by the signatory states, of their nationals that are irregularly residing on the territory of one of the signatory states. In accordance with EU policy, such agreements should also allow the readmission of anyone who has transited through the territory of one of the signatories in order to enter irregularly the territory of another signatory state.

Many examples exist in the Euromed region, where migrants risk being imprisoned if they are sent back to countries through which they have transited, once it is established that they irregularly crossed the border or stayed in the country.

The EMHRN also underlines the dangers of readmission agreements covering migrants other than the nationals of the state parties to the agreements, in case of consecutive readmissions.

The EMHRN highlights the risks for asylum seekers whose initial application for asylum has been rejected but who have lodged an appeal, meanwhile they are still deported to foreign countries, in application of such agreements.

Hence, the EMHRN pleads for the suspension of negotiations of readmission agreements that cover migrants other than nationals of the negotiating parties.

Furthermore, the EMHRN believes that any expulsion of migrants to their country of origin should be conditioned by the full access of these individuals to the asylum procedure. The EMHRN calls for the establishment of an effective mechanism that would ensure that migrants will not be expelled to a country where they may be subjected to ill-treatment, and that would also ensure that the rights of migrants and asylum seekers are fully respected by member states. Lastly, the EMHRN asks that the expulsion procedure be suspended in all cases whenever an asylum seeker appeals an initial decision rejecting his/her claim.

Interception and rescue at sea:

The EMHRN recognizes the necessity to carry out rescue at sea operations and notes the efforts of the European Commission to coordinate activities of member states in that field. The EMHRN nevertheless insists on the necessity to distinguish between rescues at sea operations and interception operations. While the former aim at saving the lives of migrants and asylum seekers in distress, the latter's explicit aim is to interrupt their crossing to the shores of Europe.

Interception

The Network believes that no migrant should be sent back following an interception operation at high sea. Only an in-depth, case-by-case study, of the situation of each migrant or asylum seeker will ensure that the principle of non-refoulement and his/her right to file an asylum claim will be respected.

The EMHRN is concerned about the lack of accountability and transparency of the activities of the Frontex agency. Also, the EMHRN is not favourable to joint operations with police forces from third countries. Indeed, taking into account the plight of migrants in transit countries, the Network considers that there is considerable risk such practices might result in the violations of the rights of migrants.

Rescue

The EMHRN is extremely worried about recent cases displaying a tendency of several governments to renege on their international commitments regarding the protection of asylum seekers. ***The EMHRN thus calls upon the European Commission to clarify the responsibility of all member states as regard the procedure concerning asylum claims and the handling and care of persons rescued at sea.***

The EMHRN also strongly condemns all means of intimidation against seamen who come to the rescue of migrants and asylum seekers in distress in Mediterranean waters. The EMHRN calls upon the Commission and the member states to take all possible steps to ensure that seamen who come to the rescue of persons in distress will not face sanctions for their action.

Role of civil society and of the UNHCR:

Migrants, refugees and asylum seekers have few rights in the Mediterranean countries. In most Southern and Eastern countries, little is done by the state to guarantee their effective protection and access to their most basic rights. Also, they face many difficulties in accessing the legal labour market and are often deprived of revenues. In such situation, the role of the UNHCR, and of civil society at large, is essential.

The EMHRN is worried about the legislation aimed at fighting the smuggling and trafficking of human beings, which, in practice, can also represent a major obstacle to the necessary action of civil society to support refugees, asylum seekers and migrants. The EMHRN pleads for the review of such laws, in order to make sure that no civil society organisation would have to face legal problems for having assisted migrants.

The EMHRN regrets that no consultation mechanism was foreseen in advance of the ministerial conference on migration. The Network further regrets that, to date, nothing has yet been planned in order to associate the UNHCR and the civil society organisations, in a way or another, to the ministerial conference.

The EMHRN further asks the Portuguese Presidency of the EU to foresee a role for civil society representatives from the Euromed region, within the different activities planned for the conference.