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Roma asylum seekers in Europe

Report¹
Committee on Migration, Refugees and Population
Rapporteur: Mr Milorad PUPOVAC, Croatia, Socialist Group

Summary

Over the last few years, acts of violence giving rise to death, injury and a climate of fear have forced many Roma to leave their countries, in order to apply for asylum in other countries, some of which are member states of the European Union. European Union legislation provides that it is safe to return asylum seekers to European Union member states; they are considered “safe countries of origin”. A citizen of one European Union member state may thus not be granted refugee protection in another European Union member state, save in exceptional cases. Since the requirements for long-term residence in another European Union member are often so stringent that many Roma asylum seekers are unable to fulfil them, they find themselves in a state of limbo and in an irregular situation.

A further issue of importance is that around 100 000 Roma who fled violence in Kosovo² are now facing return, after having spent up to ten years in western European or neighbouring countries. If they are returned they face great social difficulties, discrimination and threats to their personal security. They have little chance of successfully reintegrating. Many of the children of these potential Roma returnees are born in or have lived all their lives in the host countries. Between 70 and 75% of Roma returnees have left Kosovo again following their return.

In order to deal with these different issues, the rapporteur underlines the importance of providing asylum seekers with an individual, specific, fair asylum assessment and the opportunity to rebut the presumption of safety that exists in cases of flight within the European Union. The rapporteur also insists on the prompt re-evaluation of the return policy aimed at Roma from Kosovo and urges member states to consider suspending returns and examining the option of providing for local integration in the host countries. However, if returns are enforced, they should be accompanied by genuine assistance.

¹ Reference to committee: Doc. 12073, Reference 3626 of 25 January 2010.

² All references to Kosovo in this document, whether to the territory, institutions or people, shall be understood in full compliance with the United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

A. Draft resolution³

1. In the last few years, Roma in a number of member states of the Council of Europe have been the targets of racist attacks resulting in at least nine deaths, many injuries and the destruction of property. This wave of violence follows an upsurge in neo-Nazi visibility and activities.
2. The Parliamentary Assembly is concerned to note that the perpetrators have rarely been brought to justice and is particularly worried by the fact that, due to fear, threats and the lack of adequate reaction by the authorities, several thousand Roma have left their countries to seek asylum.
3. Whereas hundreds of Roma from the Czech Republic and Hungary have been granted refugee status in Canada, applications for asylum in European Union countries have automatically been rejected on the basis of European Union legislation, which provides that all European Union member states shall be considered "safe countries of origin" with regard to asylum applications from citizens of these countries.
4. If a citizen of a member state of the European Union wishes to stay on the territory of another European Union member state for longer than three months, he or she is obliged to show proof of having certain financial means or having a job in the country. Since many Roma from European Union countries cannot satisfy these requirements, they can neither claim asylum in another European Union country, nor reside longer than three months in another member state. Their remaining options are to seek asylum in a country outside the European Union, become irregular migrants or go back to their country of origin and risk persecution. All of these options are highly undesirable.
5. There are also a large number of Roma asylum seekers living in Council of Europe member states who have been displaced for a number of years following the conflicts in the Balkans and who are now facing forced return to Kosovo.⁴ As a result of the conflict in Kosovo about 120 000 Roma were forced to leave Kosovo and apply for asylum in other European countries. Many applications were rejected, but approximately 50 000 Roma from Kosovo still live in western European countries, and another 50 000 in neighbouring countries, where they have some form of temporary protection or are "tolerated".
6. Member states have taken steps preparing for the return of sizeable numbers of these Roma, despite strong warnings by the Council of Europe Commissioner for Human Rights that these persons are in an unsustainable social situation with little chance of reintegration upon return, as well as serious threats to their personal security. Many of these Roma have children who are born, or have lived all their lives, in the countries from which they are being returned. As at May 2010, in Germany alone, around 10 000 Roma from Kosovo were facing return. Half of this group consists of persons under the age of 18.
7. The Council of Europe Commissioner for Human Rights has stated that of those Roma forcibly returned to Kosovo, 70-75% have been unable to reintegrate and have undertaken secondary movement or gone back to the deporting countries. Enforcing returns is thus not only producing great human suffering, but is also wasting economic resources.
8. Returning countries should consider that Kosovo will not be able to reintegrate a large number of returnees. Such a situation may lead to social unrest, which will hit Roma first and hardest. Kosovo is still fragile and the authorities lack sufficient resources.
9. Furthermore, the Assembly rejects the view that Roma and related groups need to be returned to Kosovo in order to achieve or to reinstate ethnic pluralism. Whereas ethnic pluralism may be in itself something positive, which should be promoted by giving Roma originating from Kosovo a real and sustainable possibility to return, it is best achieved on a voluntary basis, or not at all if it jeopardises the security and human rights of the individuals concerned.
10. In order to successfully address the issue of Roma from Kosovo in Council of Europe member states, a holistic approach will be necessary, taking into account the rights and responsibilities of the Roma, involving all the countries in the region, the European Union, the Council of Europe and civil society. It will also be necessary to have a common strategy at European Union and Council of Europe levels. Civil society should be invited to play a greater role in the reintegration process.

³ Draft resolution adopted unanimously by the committee on 21 September 2010.

⁴ All references to Kosovo in this text, whether to the territory, institutions or people, shall be understood in full compliance with the United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

11. It is promising that the authorities in the countries of the former Yugoslavia are co-operating in order to find durable solutions for displaced Roma and to ensure that they have effective access to adequate personal documents, so as to clarify their status and gain access to their rights and benefits, and also, where relevant, apply for long-term residence or citizenship. The Assembly supports this process, in which Kosovo should be included, and encourages the countries of the former Yugoslavia to continue addressing these issues until satisfactory solutions have been found. The Assembly urges them not to return Roma to Kosovo until and unless genuine durable solutions have been found.

12. Against the backdrop of these issues, and drawing attention to its Resolution 1740 (2010) on the situation of Roma in Europe and relevant activities of the Council of Europe, the Assembly urges the member states of the Council of Europe to:

12.1. ensure that all asylum applications are considered on the basis of their individual merits according to fair and efficient refugee status determination procedures;

12.2. consider their plight sympathetically and seek ways in which to accommodate Roma who are citizens of one European Union member state and who are refused asylum in another European Union member state;

12.3. comply fully with their obligations under international human rights law, including the European Convention on Human Rights, by preventing attacks on Roma, and eradicating practical impunity by effectively and promptly investigating all crimes against Roma. This includes examining whether the crimes have racist motivations, bringing the perpetrators to justice and, if found guilty, punishing them;

12.4. improve the safety and security of Roma and do their utmost to eradicate racism and xenophobia by working actively and persistently at national and local levels in order to enhance understanding and communication between Roma and non-Roma in society. To do this member states should use, *inter alia*, the toolkit of the Council of Europe Dosta! Campaign "Dosta! Enough! Go beyond prejudice, discover the Roma!";

12.5. ensure that, within the limits of the right to freedom of expression enshrined in Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights, the media refrain from disseminating hate speech or from the demonisation of Roma migrants or asylum seekers.

13. The Assembly calls upon all politicians in member states to strongly and publicly condemn all forms of racism and stigmatisation of Roma.

14. The Assembly calls on the European Union to reconsider its rules on asylum seekers who are citizens of one European Union member state and who lodge their applications in another, and to ensure that the legislation as well as the practice in its member states provide for the opportunity to rebut the presumption of safety, also in cases of flight within the European Union, in order to ensure that Roma asylum seekers and other asylum seekers from European Union member states do not find themselves in a state of limbo.

15. Recalling its Resolution 1923 (2010) on the situation in Kosovo and the role of the Council of Europe, the Assembly furthermore calls on member states to:

15.1. reconsider their return policies with regard to rejected Roma asylum seekers from Kosovo and to consider offering them the possibility of local integration, including naturalisation options, taking into account their ties with their host country and the duration of their displacement;

15.2. respond sensitively to the return of Roma to Kosovo, in order to ensure that their human rights are fully safeguarded, that the return is staged in a sustainable way and that the merits of each individual case are examined, including the ties which have been established with the host country.

16. As and when returns of Roma to Kosovo take place, the Assembly urges the authorities of member states and organisations involved in the returns to take all appropriate measures to ensure that:

16.1. all concerned have an effective opportunity to have their international protection needs assessed prior to return;

16.2. returns are conducted in an orderly, gradual and dignified manner, and in co-operation with the relevant authorities;

16.3. returns are co-ordinated to avoid problems of capacity for reception and integration and that information on vulnerable returnees is provided to the authorities in Kosovo;

16.4. where returns of Roma to Kosovo are enforced on the basis of readmission agreements, these should be conducted with transparency and in compliance with international refugee law and human rights standards;

16.5. the Council of Europe's 20 Guidelines on forced return are complied with.

17. The Assembly calls on the authorities in Kosovo and the international stakeholders to step up their efforts to fully integrate Roma who are returned to Kosovo, to ensure that their human rights are respected and protected, and that they have access to justice.

18. The Assembly invites the Commissioner for Human Rights to continue monitoring the situation of racist violence against Roma in Council of Europe member states, as well as the problems of Roma returns to Kosovo and the compatibility of such returns with relevant Council of Europe standards.

19. The Assembly invites the European Commission against Racism and Intolerance to:

19.1. give priority attention in its country-by-country work to the issue of racist violence causing Roma to go abroad and claim asylum;

19.2. make policy recommendations to member states on how to deal with anti-Gypsyism.

B. Draft recommendation⁵

1. Referring to its Resolution ... (2010) on Roma asylum seekers in Europe, the Parliamentary Assembly draws attention to the worrying situation in some member states concerning racist violence targeting Roma, which is a factor that forces many Roma to flee their home country and to seek protection abroad.
2. The Assembly recognises that a responsibility for the human rights and the welfare of the Roma rests with those countries of origin, but considers that the restrictive rules concerning persons from one member state of the European Union who apply for asylum in other member state of the Union must be reassessed so that asylum seekers are guaranteed an opportunity to rebut the presumption of safety also in cases of flight within the European Union.
3. In addition, in view of recommendations by the Council of Europe Commissioner for Human Rights concerning the current undesirability of returning Roma to Kosovo,⁶ the Assembly further considers that policies with regard to such returns, concerning many thousands of individuals, should be reconsidered and planned returns suspended until they can be shown to be safe and sustainable.
4. It is also important that the general situation of Roma, which includes poverty, exclusion, discrimination and, in some cases, persecution, be examined.
5. The Assembly therefore welcomes the initiative of the Secretary General of the Council of Europe to call a high-level meeting, including not only Council of Europe member states but also the European Union, and the opportunity this provides to ensure greater allocation of European Union funds for Roma integration both in European Union and non-European Union countries.
6. Therefore, the Assembly recommends that the Committee of Ministers:
 - 6.1. instruct the Committee of Experts on Roma and Travellers to examine the measures necessary to create durable solutions for Roma from Kosovo who have been living for many years in member states;
 - 6.2. invite the Advisory Committee on the Framework Convention for the Protection of National Minorities (ETS No. 157) to examine, in the context of its monitoring activities and in the light of the Framework Convention, the legal and factual consequences of measures related to the return of Roma to Kosovo;
 - 6.3. instruct the Steering Committee on Mass Media to assess the media situation in member states, as regards the dissemination of hate speech, racist ideas and prejudice against Roma, including Roma migrants and asylum seekers, and to propose relevant action as necessary.

⁵ Draft recommendation adopted unanimously by the committee on 21 September 2010.

⁶ All references to Kosovo in this text, whether to the territory, institutions or people, shall be understood in full compliance with the United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

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1. Introduction

1. Imagine that your house is burnt down by skinheads, that you barely manage to escape and when you call the police, they refuse to help you. Imagine that you have never had a real opportunity to go to school. Furthermore, imagine that your mother or father needs urgent medical care, but when you call for an ambulance, you are told that it does not go to the area where you live. Or imagine coming to your senses after having given birth, only to find that doctors have sterilised you without your consent. If you are one of the 10-12 million Roma in Europe today, this will be no question of imagination.⁷ The chances are that you will have experienced one or other of these forms of ill-treatment, or many other human rights violations.

2. In the last few years, Roma have increasingly found themselves victims of even more serious violations of their human rights. This violence, which has caused several deaths and many injuries, is the manifestation of increasingly racist sentiments in the countries concerned, including by neo-Nazis. As a result, many Roma have been forced to leave their countries and claim asylum elsewhere. Many hundreds of Roma, for example from the Czech Republic, were granted refugee status in Canada in 2008 and 2009.

3. Some Roma opt to apply for asylum in another European Union member state, which is relatively close to their home country and where they would expect protection. The European Union legislation, however, provides that all European Union countries shall be deemed “safe countries of origin” in terms of asylum and that complementary protection on humanitarian grounds shall be available only for persons coming from non-Union member states and stateless persons. For example, Hungarian Roma who applied for asylum in France in 2009 were thus turned down.

4. In several member states, in particular in France and Italy, the summer of 2010 was marked by statements by high-ranking officials depicting Roma migrants collectively as criminals. In a statement, the European Commission against Racism and Intolerance (ECRI) has denounced the fact that Roma migrants they have been “singled out for abusing EU legislation on freedom of movement”.⁸ In a press release dated 20 August 2010, the President of the Parliamentary Assembly, Mevlüt Çavuşoğlu, also reacted to the recent developments in several European countries, particularly concerning evictions of Roma camps in France and expulsions of Roma from France and Germany, noting that they “are certainly not the right measures to improve the situation of this vulnerable minority. On the contrary, they are likely to lead to an increase in racist and xenophobic feelings in Europe”.

⁷ The terms “Roma” and “Travellers” are used in this report following the definition set out in the appendix to Committee of Ministers Recommendation Rec(2008)5 on policies for Roma and/or Travellers in Europe: “The term ‘Roma and/or Travellers’ used in the present text refers to Roma, Sinti, Kale, Travellers, and related groups in Europe, and aims to cover the wide diversity of groups concerned, including groups which identify themselves as Gypsies”. In this report, the term “Roma” covers both Roma and Travellers within the meaning of the above definition.

⁸ Statement by the European Commission against Racism and Intolerance on the situation of Roma migrants in France, 24 August 2010.

5. It is indeed frightening that systematic racist violence may occur in a member state of the Council of Europe and that its citizens feel forced to seek protection in other countries. Signatories to the European Convention on Human Rights (ECHR) owe an obligation to protect everyone within their jurisdiction. Furthermore, it is highly unsatisfactory that the rules of the European Union are such that the people concerned are faced with three equally negative options: to seek asylum outside the European Union (which can be prohibitively expensive and requires travel documents), to live as irregular migrants in the country of asylum once they are refused (without access to housing, health care or education) or to stay in their home country and face persecution. The rapporteur considers that the European Union should reassess its rules in order to avoid this state of affairs. He also considers that member states of the Council of Europe should do their utmost to prevent racism and violent acts from occurring and, if they still do, to abide by the rule of law and bring the perpetrators to justice. Impunity for crimes and human rights violations, which often forces people to flee, must be eradicated once and for all.

6. Many thousands of former Roma asylum-seekers are facing return from western European countries to Kosovo, having lived between six and eleven years in the returning countries. Around 10 000 Roma in Germany alone are waiting to be returned to Kosovo. The UNHCR, in its Eligibility Guidelines of November 2009, believes that Roma continue to face a particular risk of persecution or serious harm in Kosovo, including through cumulative discriminatory acts.

7. The Council of Europe Commissioner for Human Rights has advised against the return of Roma to Kosovo, in view of risks to their personal security and considering the difficulties of reintegration and the lack of sustainability of the return. Notwithstanding these concerns, western European countries continue to organise forced returns of Roma to Kosovo. In Kosovo's neighbouring countries, many Roma are waiting in limbo either to go back to Kosovo or to stay on, and are having difficulties accessing social rights. The rapporteur shares the concerns of the UNHCR and the Commissioner for Human Rights and considers that Council of Europe member states should not to go ahead with returns, but should seek durable solutions for the Roma respecting their rights and dignity.

8. The Assembly's Committee on Legal Affairs and Human Rights has recently approved a report entitled "The situation of Roma in Europe and relevant activities of the Council of Europe" (rapporteur: Mr József Berényi, Slovak Republic, EPP/CD). That report explicitly omits the issue of the right to free movement and asylum of Roma, preferring to leave the issue to be dealt with more fully in the present report. In the drafting of this report, the rapporteur has been greatly assisted by UNHCR, the European Roma and Travellers Forum, the NGO Romano Chachipe, the Council of Europe Roma and Travellers Division and the Council of Europe Co-ordinator on Roma Activities. He warmly thanks them for their valuable contributions. The rapporteur has carried out two fact-finding missions, to Germany and to Kosovo. He extends his gratitude to the authorities and organisations which he met during these visits and which provided crucial information.

2. Roma asylum seekers in Europe

9. On 2 August 2009, unknown men broke into a house on the outskirts of the Roma settlement in the village of Kisléta in North-East Hungary and fired shots at the people living there, including a 45-year-old woman and her 13-year-old daughter. The mother died immediately and the girl was severely injured. In addition to the cruelty of the act, it can be noted that 2 August is the remembrance day for the victims of the *Samudaripén* ("murder of everyone" in Romani) – the genocide of Roma during the Second World War, during which almost one million Roma were systematically killed.

10. Roma have been exposed to violence since arriving in Europe from India in the 14th century. Now they have once again become targets not only of discrimination, but of outright racist violence. The concerns addressed in this report stem from the incidents of violence and racism towards Roma today which have forced them to leave their homes in order to apply for asylum in other countries, some of which are member states of the European Union. During 2008 and 2009, the European Roma Rights Centre documented⁹ attacks targeting Roma in Hungary, the Czech Republic and the Slovak Republic which have already taken the lives of nine people and have left dozens of others with serious injuries. Many of the attacks have been aimed at families and children and have involved firebombing, shooting, stabbing and beating. The cases reported by the European Roma Rights Centre of course only include those that have come to the knowledge of the Centre and there might be further cases.

11. According to the non-exhaustive list prepared by the European Roma Rights Centre, between January 2008 and June 2009, the Czech Republic saw three arsonist attacks against Roma, several marches by

⁹ European Roma Rights Centre, "Attacks against Roma in the Czech Republic January 2008 – June 2009", May 2010. The list sets out the date, location and details of each of the attacks.

right-wing extremists toward Roma settlements and several beatings. At least three Roma suffered life-threatening injuries.¹⁰ These acts of violence, which included a petrol bomb attack that left a baby girl in hospital, had reportedly followed a rise in far-right extremism in the Czech Republic with neo-Nazi marchers targeting Roma communities. On 17 November 2008, for example, far-right supporters armed with stones and petrol bombs besieged a Roma community in the Czech town of Litvinov and were prevented from attacking the community only by police intervention. During the spring of 2010, there were several new cases of Molotov cocktails being thrown at houses inhabited by Roma.¹¹

12. In 2008, 792 persons (presumed to be Roma) from the Czech Republic applied for asylum in Canada. For the first half of 2009, the number of asylum applications lodged by Czech Roma exceeded 1 000. A number of the asylum seekers successfully claimed, under the 1951 Geneva Convention Relating to the Status of Refugees (the 1951 Geneva Convention), that they had been subject to persecution in the Czech Republic. Decisions by the Immigration and Refugee Board were supported by extensive country-of-origin research, including the findings of Immigration and Refugee Board officials who visited the Czech Republic. About 40% of the applicants from 2008 were granted refugee status in Canada.¹²

13. According to the list prepared by the European Roma Rights Centre concerning Hungary, between January 2008 and April 2010, 46 attacks were committed against Roma and/or their property in that country. These attacks took a total of nine lives, including two minors, and left dozens of people with injuries, ten of which were life threatening. In at least eleven cases, Molotov cocktails were used and in two cases hand grenades. In at least eleven cases, shots were fired and in at least nine cases, Romani property was vandalised.¹³

14. In the spring of 2009, a group of 30 Roma families from Hungary arrived in Strasbourg, France, where they applied for asylum. They were refused both refugee status and complementary protection, the formal reason being that they were nationals of another European Union member state. 302 Hungarians, who were presumably also Roma, applied for asylum in Canada during 2008 and 791 applied during the first six months of 2009.

15. The attacks in these countries have occurred in an increasingly racist climate, where extremist and openly racist groups engage in hate speech and organise anti-Romani marches through the very villages where Roma people are being attacked or killed. The violence has been entirely indiscriminate but nevertheless directed at Roma victims. This shows that the violence is purely racist and not connected to any pre-existing feuds or quarrels between the perpetrators and the individual victims. It should however not be forgotten that, according to unofficial sources, around 1 400 Roma from Kosovo applied for asylum in Hungary in 2008 and 2009.

16. Roma have been subjected to murderous violence also in other member states of the Council of Europe.¹⁴ The European Court of Human Rights has found violations of the European Convention on Human Rights in several cases concerning racist killings of Roma by policemen and the impunity of the perpetrators (Bulgaria),¹⁵ the lack of proper investigation and redress following pogroms initiated by the local population and tacitly accepted by municipal authorities (Romania)¹⁶ and the lack of proper investigations into racially motivated violence against Roma (Greece and Croatia).¹⁷

17. Although the threat and violence against Roma is worse in parts of central and eastern Europe, the situation is not good in western Europe either. In June 2009, over 100 Romanian Roma in the United Kingdom were forced to leave their settlements as a result of racist attacks.¹⁸ Another illustrative example

¹⁰ Ibid. See also Doc. 12174, Assembly report on the situation of Roma in Europe and relevant activities of the Council of Europe, pp. 7-8.

¹¹ See the Czech web-magazine romea.cz on 30 April 2010, "Molotov cocktail attack on a home in Slovácko district".

¹² Issue Paper by the Immigration and Refugee Board of Canada, "Czech Republic: Fact-finding mission report on the situation and treatment of Roma and Potential for internal relocation", July 2009.

¹³ European Roma Rights Centre, "Attacks against Roma in Hungary January 2008-April 2010", May 2010. The list sets out the date, location and details of each of the 46 attacks.

¹⁴ The following is a non-exhaustive list and the reader is advised to consult the report of the Committee on Legal Affairs and Human Rights on the situation of Roma in Europe and relevant activities of the Council of Europe, paragraphs 10-32, (Doc. 12174).

¹⁵ *Nachova and Others v Bulgaria*, Applications Nos. 43577/98 and 43579/98, judgment of 6 July 2005 [Grand Chamber].

¹⁶ *Moldovan and Others v. Romania*, Applications Nos. 41138/98 and 64320/01, judgment of 12 July 2005.

¹⁷ *Bekos and Koutropoulos v. Greece*, Application No. 15250/02, judgment of 13 December 2005, and *Šečić v. Croatia*, Application No. 40116/02, judgment of 31 May 2007.

¹⁸ Assembly report on the situation of Roma in Europe and relevant activities of the Council of Europe (Doc. 12174), pp. 7-8.

occurred in a French town, where a mayor staged the burning of abandoned Roma caravans, cheered on by locals.¹⁹

18. The report by the Committee on Legal Affairs and Human Rights²⁰ gives examples of a number of violent attacks against Roma in Italy (paragraphs 22-25) and so has the Commissioner for Human Rights following his visits to Italy in 2008 and 2009.²¹ These attacks have included the firebombing of several Roma camps that have been burnt down, as well as attacks on individual Roma.²² Italy has hitherto been a country of Roma immigration, but if the authorities are not able to prevent the violence described, Roma in Italy are likely to go elsewhere in order to seek protection.

19. There are a great many positive projects in Italy with regard to Roma, in particular carried out by NGOs and religious communities. This is not, however, a reason for refraining from highlighting the problems that are currently occurring in Italy, as positive actions unfortunately do not neutralise negative actions. One good example, however, at a local level is the response by public authorities to the violent attacks, including arson, against Roma in the Ponticelli district of Naples, as described by the European Union Fundamental Rights Agency.²³

20. Even if Roma in western Europe have, for the most part, not been exposed to the level of violence described above, they do suffer from prejudice, xenophobia, discrimination and exclusion. Not only is this intrinsically wrong and a violation of the human rights of the persons concerned, but history also shows, that it does not take much in order for such sentiments and situations to quickly translate into violence – and for violence to spread.

21. Following the rise in anti-Roma sentiment and violent incidents in several European countries, in November 2008 the United Nations Special Rapporteur on Racism stated that “such actions reveal serious and deep-rooted problems of racism and discrimination against Roma at the heart of modern Europe that must be addressed in the most vigorous manner and through the rule of law”.²⁴ The European Commission against Racism and Intolerance (ECRI) stated in 2008 with regard to Italy that “Roma and immigrants have been the subject of violent racist attacks and entire communities have been held responsible for criminal acts committed, or allegedly committed, by individuals from these communities. In this context, ECRI particularly regrets the persistent racist and xenophobic discourse by some Italian politicians, even at the highest levels, and in the media. It is also concerned that, in this critical situation, the Italian authorities are taking measures whose conformity with national and international human rights standards is questionable”.²⁵

22. The rapporteur firmly agrees with these opinions and therefore urges the Council of Europe member states in which Roma are targets of violence, to immediately do their utmost to stop the violence and bring those responsible to justice.

23. It is sometimes claimed in the general discourse that the Roma who seek asylum are in fact fleeing a difficult situation in terms of social and economic living conditions, rather than persecution. The European Union Fundamental Rights Agency identifies two push factors with regard to Roma migration: poverty and racism.²⁶ Today Roma continue to suffer heavily in all sectors of life. Their life expectancy is twelve years below the general average. Their settlements are often undignified slums without access to heating, running water or garbage collection. They often lack access to education, employment, housing and health care. They often face open discrimination. The European Committee of Social Rights has repeatedly found that countries fail to honour their obligations under the Revised European Social Charter as concerns, for

¹⁹ Migrations Societé, No. 105-106, 2006.

²⁰ See Doc. 12174.

²¹ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 13-15 January 2009, published in April 2009. See also Henry Scicluna in Roma Rights, No. 2 2008; “The life and death of Roma and Sinti in Italy: a modern tragedy”.

²² Open Society Institute, “Security a la Italiana: Fingerprinting, Extreme Violence and Harassment of Roma in Italy”, July 2008.

²³ European Union Agency for Fundamental Rights, “Incident Report. Violent attacks against Roma in the Ponticelli district of Naples, Italy”, 2008.

²⁴ United Nations Press Release, 20 November 2008, “UN Experts Call for European Action to Stop Violence Against Roma”.

²⁵ Statement of the European Commission against Racism and Intolerance on recent events affecting Roma and immigrants in Italy, adopted on 20 June 2008 at ECRI’s 46th plenary meeting.

²⁶ European Union Agency for Fundamental Rights, “The situation of Roma EU citizens moving to and settling in other EU Member States”, p. 17.

example, the right to health care or to housing.²⁷ In fact, in many places in Europe today, as regards their social situation and exposure to discrimination, Roma face a situation of *de facto* apartheid. This is unacceptable.

24. It is understandable that people living in such conditions leave their countries in order to seek a better life elsewhere. This, however, does not change the fact that Roma are also fleeing racist violence and the threat of new eruptions of violence. The rapporteur would like to emphasise the fact that Canadian asylum officials visiting the Czech Republic found the conditions to be such that they were prompted to grant refugee status to Roma from that country.

25. The rapporteur urges the member states of the Council of Europe to take immediate action in order to improve the opportunities of Roma in society, eradicate all forms of discrimination and racism and promote mutual understanding between Roma and non-Roma. This is a necessary step to overcome the problems that force Roma to flee. Social exclusion, discrimination and lack of knowledge about Roma among the general population are part and parcel of the overall problem which has recently regrettably come to include also physical violence and killings. There is a pressing need to deal with this issue if Europe wishes to retain its credibility in terms of human rights. In so doing, it is proposed that actors draw inspiration from the Council of Europe Dosta! Campaign and the "Common Basic Principles on Roma Inclusion" as elaborated by the 1st meeting of the integrated European Platform for Roma Inclusion in April 2009. The Dosta! Campaign provides a toolkit on how to fight prejudice against Roma and The Common Basic Principles are a set of general policy approaches based on best practice from European countries.

26. An important point is the leadership of authorities and politicians in the countries concerned. Extremists may feel that they have a license for their attacks when the message they receive from their government in other spheres is that the Roma are a problem. The rapporteur is consequently of the opinion that politicians must strongly and publicly condemn all forms of racism and stigmatisation of Roma.

27. In some countries, the media hands extremists a platform from which they can disseminate erroneous and prejudiced information which contributes to consolidating xenophobia and which can incite violence. Whilst freedom of expression is of crucial importance in a democratic society, the media has an ethical and professional obligation regarding the presentation of material which may give rise to offence or even physical harm, as in the case of hate speech.

28. Media, whether public or private, must not be allowed to disseminate hate speech directly, or indirectly, by broadcasting in an inappropriate way events such as marches or speeches, where third parties are disseminating hate speech. If racist or xenophobic information is relayed in some way, it must be counter-balanced by the journalists responsible.²⁸ In other words, neo-Nazi and other far-right groups should be denied publicity through the media so that hate speech can be properly curtailed. The European Court of Human Rights has stated that "the tolerance and respect of the equal dignity of all human beings is the foundation of a democratic and pluralist society. As a result, one may in principle deem it necessary, in a democratic society, to sanction or even to prevent all forms of expression, which propagate, incite, promote or justify hatred based on intolerance, provided that all 'formalities', 'conditions', 'restrictions or 'sanctions' imposed are proportionate to the objective sought".²⁹ In combating hate speech, member states should follow Recommendation R (97) 20 of the Committee of Ministers of the Council of Europe on "hate speech".

29. Countries of destination in western Europe are not without responsibility either. France and the United Kingdom, for example, have attempted, more or less unsuccessfully, to pressure Romania and the Czech Republic into obstructing Roma who wish to leave these two latter countries and go to France and the United Kingdom. This has led to a widespread perception in countries of origin, that "Roma are harming their reputation abroad".³⁰ In receiving countries, the arrival of several hundred Roma from another country can trigger front-page news in the media for days.³¹

30. The rapporteur considers that the Committee of Ministers should consider the media situation in member states as far as the dissemination of hate speech and the expression of racist ideas and prejudice

²⁷ See, for example, the decisions by the European Committee of Social Rights: No. 15/2003, European Roma Rights Centre v. Greece and No. 46/2007, European Roma Rights Centre v. Bulgaria.

²⁸ See the case of *Jersild v. Denmark*, Application No. 15890/89, judgment of 23 September 1994.

²⁹ *Erbakan v. Turkey*, Application No. 59405/00, judgment of 6 July 2006. The translation is the rapporteur's, since the judgment exists in French only. See also Weber A., "Manuel sur le discours de haine", Martinus Nijhoff, 2007.

³⁰ "Recent Migration of Roma in Europe", a study by C. Cahn and E. Guild carried out on behalf of the OSCE High Commissioner on National Minorities ("Cahn/Guild"), p. 34.

³¹ Cahn/Guild, p. 28. See also Waringo, K. (2004), "Who Is Afraid of Migrating Roma", EUMAP.

against Roma are concerned, as well as the demonisation of Roma migrants and asylum seekers, and propose relevant action as necessary. It is of great importance that victims of hate speech in the media are provided effective legal remedies. ECRI could also take further action on this issue.

3. Refugee status and the right to movement within the European Union

3.1. European Union legislation

31. Typically (or historically), the many asylum seekers who lodge their applications within the European Union come from countries outside the Union. The critical issue addressed in this section of the report concerns those individuals from within the European Union who are forced to seek asylum in another Union country.

32. "Protocol No 29 annexed to the Treaty establishing the European Community – Protocol (No 29) on asylum for nationals of Member States of the European Union (1997)" sets out specific procedures that are to be applied to the handling of any claim for asylum made by a national of a European Union member state. It provides that European Union member states shall be regarded as constituting "safe countries of origin" in respect of each other for all legal and practical purposes in relation to asylum matters.³² Accordingly, applications for refugee status from European Union nationals shall be inadmissible for processing by another European Union member state, except in very exceptional circumstances. Moreover, on the basis of these rules, Roma asylum seekers from Hungary have been refused asylum in France and Roma who had been granted refugee status in the United Kingdom saw that status, and therefore their protection being withdrawn once their countries of origin became members of the European Union.

33. It follows from the sole article of the European Commission Treaty Protocol on asylum for nationals of member states, applicable since the entry into force of the Lisbon Treaty, that exception can be made to this rule under four different circumstances:

(i) "If the Member State of which the applicant is a national invokes Article 15 of the European Convention on Human Rights, with a view to take measures derogating from its obligations under that Convention." States have very rarely invoked Article 15 of the ECHR in order to derogate from the Convention, and in any case never in a situation that would be relevant for the situation invoked by Roma asylum seekers.

(ii) "If the procedure referred to in Article 7(1) of the Treaty on European Union has been initiated and until the Council takes a decision in respect thereof." The procedure referred to in Article 7(1) of the Treaty on European Union concerns the suspension of the rights of a member state. It is equally unlikely that this procedure is initiated in a way that enables Roma from that country to profit from it when lodging an asylum claim.

(iii) "If the Council, acting on the basis of Article 7(1) of the Treaty on European Union, has determined, in respect of the Member State which the applicant is a national, the existence of a serious and persistent breach by that Member State of principles in Article 6(1) of the Treaty", namely of the Charter of Fundamental Rights of the European Union.

(iv) "If a Member State should so decide unilaterally in respect of the application of a national of another Member State; in that case the Council shall be immediately informed; the application shall be dealt with on the basis of the presumption that it is manifestly unfounded without affecting in any way, whatever the cases may be, the decision-making power of the Member State".

34. The conditions described in (iii) and (iv) have so far never been fulfilled. In practice, it is therefore extremely unlikely that any of these conditions would be fulfilled to the benefit of Roma asylum seekers.

35. Subsidiary complementary protection can be granted when an asylum seeker does not fulfil the requirements for becoming a refugee but cannot return to his or her country of origin. According to the European Union Directive 2004/83 "on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted", only a third country national or a stateless person is eligible for subsidiary protection in European Union member states. Therefore Roma who are stateless or a national of

³² "Treaty establishing the European Community (consolidated version) – D. Protocols annexed to the Treaty establishing the European Community – Protocol (No 29) on asylum for nationals of Member States of the European Union (1997)".

a non-European Union member state can obtain such a status. Those who are not fall outside the scope of the Directive and are as such precluded from complementary protection.

36. As European Union nationals might not qualify for refugee status and are not eligible for subsidiary protection, their last resort might be the Directive 2004/38 "on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States".³³ Under Article 6 of the Directive, citizens of the European Union "shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport". For a period longer than three months, European Union nationals have to fulfil the requirements set out in Article 7.1 of Directive 2004/38, that is to be workers or self-employed persons or otherwise have sufficient resources.

37. Roma asylum seekers who leave for another European Union country due to persecution can rarely be expected to fulfil any of these criteria. The exclusion of Roma European Union citizens in the society in their host states creates insurmountable obstacles to formal employment and the ability to prove "sufficient resources". This affects their ability to register and consequently have access to key civil and political, economic and social rights.³⁴

38. The options remaining are thus basically three: to seek and be granted asylum outside the European Union, to live as irregular migrants, or to stay in their home country and face persecution. The first option should be considered a failure by the European Union to provide protection. The second option brings with it exclusion and extreme difficulty in accessing social rights and employment, health insurance or valid identity or travel documents. The last of the three options should never have to be an option for someone seeking asylum.

39. The rapporteur urges the European Union to reassess its rules on asylum seekers from within the European Union in order to avoid persecuted Roma being obliged to choose any of these three options. Whereas for the over-whelming majority of European Union-citizens their home country can indeed be considered safe, this is no reason to abandon those for whom this does not hold true. It is crucial that the individual asylum seeker has a real opportunity to rebut the presumption of safe country of origin.

3.2. *European Convention on Human Rights*

40. European Union member states are also member states of the Council of Europe and thus Parties to the European Convention on Human Rights. They are not allowed to circumvent the ECHR and the jurisprudence of the Court by referring to European Union legislation. In principle, if a Romani person from one European Union member state seeks asylum in another European Union member state, he or she should not be expelled if there is a risk that his or her rights under Article 3 of the ECHR (the prohibition against torture and inhuman and degrading treatment or punishment) will be breached upon return.

41. Nonetheless, the practice of the Court has been one of subsidiarity, meaning that it has often declared inadmissible the application by an individual who is about to be sent back from one member state of the Council of Europe to another, even if the applicant invokes a threat of persecution or ill-treatment upon return. Instead, the Court has considered that an applicant should submit an application against the state in which that threat persists, normally his or her country of origin, rather than against the returning state. This practically means obeying the order to return to his or her country of origin and wait there for the outcome of the proceedings against that country.

42. Article 4 of Protocol No. 4 to the Convention prohibits collective expulsion of aliens. In the case of *Čonka v. Belgium*, the Court found that the Belgian authorities had violated this provision by collectively expelling a number of Roma families present in Belgium, particularly taking into account statements by Belgian officials concerning the presence of Roma in Belgium and plans to expel them collectively. The fact that each person concerned had been given a separate expulsion notice did not change the affirmation of the Court, since the individual circumstances of the persons had not been considered separately.³⁵ The rapporteur notes with regret that not all member states of the Council of Europe have signed and ratified Protocol No. 4 and urges those member states that have not yet signed and ratified it to do so.³⁶

³³ See more on this issue in Cahn/Guild, p. 28.

³⁴ European Union Agency for Fundamental Rights, "The situation of Roma EU citizens moving to and settling in other EU Member States", p. 7.

³⁵ *Čonka v. Belgium*, Application No. 51564/99, judgment of 5 May 2002.

³⁶ As at 5 May 2010, four member states had not yet ratified Protocol No. 4 to the ECHR.

4. Roma facing return to Kosovo

4.1. Background

4.1.1. Statistics

43. There is a protracted problematic situation for Roma refugees and asylum seekers in Europe. As a result of the conflict in Kosovo in 1999 and erupting violence in March 2004 about 120 000 of 150 000 Roma in Kosovo were forced to leave and seek protection in other countries. Most of them went to Serbia proper and to surrounding countries, but a great many also left to western Europe. While Germany and other countries in general declined to grant asylum to Roma from Kosovo, others like France, the United Kingdom, Austria or Hungary have recognised some of them as refugees. An estimated 100 000 Roma from Kosovo, including their children born in exile, still live abroad.³⁷

44. Around 45 000 to 50 000 Kosovo Roma live in Serbia of whom around 23 000 are registered as IDPs. Around 10 000 Roma from Kosovo live in Bosnia and Herzegovina, Montenegro and “the former Yugoslav Republic of Macedonia”. It is estimated that countries in western Europe currently host more than 40 000 Roma who are “tolerated”, and thus enjoy only limited residence or social rights. 35 000 are registered in Germany as rejected asylum seekers. An unknown number of Roma live as irregular migrants all over western Europe.³⁸

45. All in all, between January 2000 and October 2007, only 6 899 Roma returned to Kosovo. Many of them had, however, left again. Europe-wide, between 2003 and 2009, around 26 000 people of all ethnicities were forcibly returned to Kosovo. During 2009, 2 407 such forcible returns took place of which 89 related to Roma, 168 to Ashkali and 9 to Egyptians.³⁹ The majority were returned from Germany, Sweden, Austria and Switzerland.

46. Statistics published by the German government in August 2009 showed that 5 320 Kosovars were residing in Germany at that time. Of these 24 367 had entered Germany before 1998 and 7 470 during 1998 and 1999. Between 1999 and 31 August 2009, there were 92 240 voluntary returns from Germany to Kosovo.

47. Of those individuals who originate from Kosovo and who were in line to be returned from Germany as at 31 August 2009, 9 842 were Roma, 1 755 Ashkali and 173 Egyptians. Between 1999 and 31 August 2009 21 852 forced returns to Kosovo. According to the German Ministry of the Interior, 29 Roma, 148 Ashkali and 43 Egyptians were forcibly returned from Germany to Kosovo in 2008. For 2009, the numbers were 76, 77 and 13, and in 2010, up until 31 May, 66, 24 and 2 respectively.

48. According to UNHCR, 2 529 Roma and 4 883 Ashkali and Egyptians voluntarily returned to Kosovo between January 2000 and November 2007. Six hundred persons belonging to Roma, Ashkali and Egyptian communities voluntarily returned in a spontaneous manner to Kosovo between October 2007 and November 2008 and received assistance from UNHCR, such as shelter repair, food or other assistance. A total of 259 minority community members returned to Kosovo voluntarily between January and February 2010. Of these 30 were Roma and 89 Ashkali or Egyptians.

49. As at September 2009, Kosovo still ranked in fifth place among countries of origin of asylum seekers of all ethnicities in the European Union (Iraq being the first). Of the asylum seekers from Kosovo in Germany in 2008 and 2009, 30% and 41% respectively were Roma. In the first semester of 2009, 8.2% of the asylum seekers from Kosovo were granted some form of international protection, but it is not clear how large a proportion of these were Roma. In 2008, only one individual was granted protection and that person suffered from a severe illness and was afforded protection on that ground.

4.1.2. Readmission agreements⁴⁰

50. During the years before Kosovo’s declaration of independence, several countries that hosted persons from Kosovo signed readmission agreements with the authorities of the former Yugoslavia and with UNMIK concerning Kosovo. Subsequent to the declaration of independence, Albania, Belgium, Germany,

³⁷ Strategy for the Integration of Roma, Ashkali and Egyptian Communities in The Republic of Kosovo, 2009-2015, p. 46.

³⁸ Ibid.

³⁹ Council of Europe Commissioner for Human Rights “Viewpoint”, 22 February 2010.

⁴⁰ For further information on readmission agreements and return of Roma, see the Assembly report on readmission agreements: an instrument for returning irregular migrants (rapporteur: Tineke Strik, Netherlands, SOC) (Doc. 12168).

Switzerland and Turkey have signed readmission agreements with Kosovo. According to the authorities in Kosovo, negotiations are ongoing or foreseen with several further countries, including Austria, Denmark and France.

51. A readmission agreement is a tool to organise, formalise and facilitate the return of nationals or third-country nationals between the two countries (although, in reality, the returns take place primarily in one direction only). Readmission agreements do not provide who shall be returned or whether a certain individual shall be returned or not, but set out the conditions upon which the readmitting country shall accept to take back that person even though, for example, he or she has no documents proving nationality.

52. Readmission agreements are often preceded by long negotiations due to the fact that an increased number of returns can entail costs and difficulties for a country, in particular as regards third-country nationals. Kosovo, however, has been more than willing to sign readmission agreements and has even approached countries, Sweden for example, to this end. The reason is that signing a readmission agreement might be a way to visa liberalisation. Kosovo can also be expected to be eager to enter into international agreements in order to manifest its declared independence. Member states of the European Union normally leave it to the Commission to negotiate their readmission agreements. Since not all members of the European Union have recognised Kosovo, bilaterally negotiated agreements have been used instead.

53. The decision to forcibly return a person is thus not dependent upon the existence of readmission agreements, but if such a decision is taken, a readmission agreement will facilitate the enforcement of that decision.

4.2. *The security situation for Roma in Kosovo*

54. In 2006, the UNHCR recommended that Roma should not be returned to Kosovo.⁴¹ The main reason was that there had been lingering adverse feelings among the majority population vis-à-vis Roma, who normally speak Serbian and who were sometimes accused of having collaborated with the Serbian forces during the conflict. Ashkali and Egyptians were said to be less at risk, since they normally do not speak Serbian, but Albanian.⁴²

55. In November 2009, the UNHCR issued a set of eligibility guidelines for assessing the international protection needs of individuals from Kosovo. It stated that although there had not been serious incidents of violence against minorities comparable in scale to those that took place in March 2004, when around 4 000 Serbs and Roma were chased away, the overall situation of minorities, including Roma, had not improved since the UNHCR 2006 Position was issued.⁴³ Respect for minority rights continued to be the most significant human rights issue in Kosovo.

56. On 4 June 2010, the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities published an Opinion on Kosovo. The Advisory Committee expresses concern about shortcomings in the implementation of legislation and policies, education and inter-ethnic relations. The Committee states that there are serious shortcomings in access to justice and domestic remedies available to persons belonging to minority communities that need to be addressed as a matter of priority.⁴⁴

57. The Commissioner for Human Rights has stated that crime against Roma is under-reported.⁴⁵ According to unpublished sources, inter-ethnic crimes or "incidents" have not significantly diminished since the declaration of independence by Kosovo.

58. In particular, there have been reports of Kosovo Albanians having attacked and injured several Kosovo Roma. According to the NGO Chachipe and to Human Rights Watch, a flurry of attacks against Roma by ethnic Albanians took place in Gnjilane (Gjilan) in the last week of July 2009. At least four Roma, including a community leader, were physically assaulted and injured in separate incidents. The victims had reported the

⁴¹ UNHCR's Position on the Continued International Protection Needs of Individuals from Kosovo, June 2006.

⁴² "UNHCR's eligibility guidelines for assessing the international protection needs of individuals from Kosovo", December 2009.

⁴³ Amnesty International, *"Amnesty International zur Situation der Roma im Kosovo und zu den Abschiebungen von Roma in den Kosovo"*, Berlin, 6 May 2010.

⁴⁴ Advisory Committee on the Framework Convention for the Protection of National Minorities, Second Opinion on Kosovo, adopted on 5 November 2009.

⁴⁵ Report of the Council of Europe Commissioner for Human Rights' Special Mission to Kosovo, 23-27 March 2009, paragraph 130.

assaults to the police and investigations had been opened, but it appears that they had yielded no result.⁴⁶ When the rapporteur visited the Roma blocks in Gnjilane (Gjilan) during his fact-finding mission to Kosovo, he could see that several houses had been completely destroyed.

59. The fact that adequate protection is not offered by the authorities and that investigations bring no results speaks in favour of considering the security situation relevant in terms of asylum applications and envisaged returns. Not being able to expect protection from persecution carried out by non-state actors upon return to one's country is one of the elements of the refugee definition set out in Article 1A of the 1951 Geneva Convention.

60. The UNHCR no longer advises against the enforcement of return decisions already taken with regard to Roma from Kosovo. This applies provided that the decisions were taken on the basis of a fair and efficient refugee status determination procedure addressing the situation of the individual asylum seeker. It clearly states, however, that this group still faces a particular and significant risk of persecution or serious harm in Kosovo, including through cumulative discriminatory acts.⁴⁷ Internal flight within Kosovo is not a relevant option for Roma, who, like the minority Serb population, are confined to living in enclaves.

61. Moreover, persecution is not limited to acts that cause physical harm. Discriminatory measures that are not of a serious character by themselves may amount to persecution on a cumulative basis. This can be the case when human rights are restricted, in particular where the consequences are substantially prejudicial to the individual concerned, namely serious restrictions on the right to earn one's livelihood or access to available education or access to justice. Whether or not such measures of discrimination in themselves amount to persecution must be determined in the light of all circumstances.⁴⁸ For the European Union member states, Article 91 of the European Union Qualification Directive provides that cumulative forms of discrimination could give rise to a well-founded asylum claim.

62. It is difficult for the rapporteur to judge whether the security situation for Roma is such that returns can be carried out. One thing is certain however: hasty returns of large groups of people can create social unrest, which may translate into violence. On 6 April 2010, the United Nations Secretary-General stated before the Security Council that continuing forced returns from host countries may negatively impact the ability of the Kosovo authorities to support sustainable returns and may exacerbate existing tensions.⁴⁹ Experience shows that Roma will be the first victims in such cases. Such a situation would certainly also delay or jeopardise the ongoing transition in Kosovo. It is thus in the interest of all countries, as well as for Kosovo itself, to show great caution in their return policies with regard to Roma in particular.

4.3. *The social situation of Roma in Kosovo upon return*⁵⁰

63. In addition to the general discrimination which Roma face in Kosovo, and which is said to be overwhelming, just like everywhere else, a number of problems in all social dimensions have to be solved in order for return of Roma to be durable.

64. *Identity documents.* Amnesty International states that more than one third of Roma in Kosovo lack identity documents. Upon return, returnees have to register in the municipality where they decide to live in order to have access to social services and support. Roma returnees have, however, shown a reluctance to register. One of the reasons for this is the prohibitive fee. This will exacerbate the problem of sustainable reintegration.

65. *Property issues and housing.* Roma will have problems finding housing upon return to Kosovo. Houses have been taken over by secondary occupants and Roma will not be in a position to follow through lengthy restitution proceedings. In many cases, before fleeing abroad, Roma had informal or *de facto* property rights

⁴⁶ Kosovo: Investigate Attacks on Roma, Human Rights Watch, 7 September 2009. See also *Chachipe*, "Whose responsibility? Reporting on ethnically motivated crime against Roma in Kosovo – A case study", August 2009.

⁴⁷ "UNHCR's eligibility guidelines for assessing the international protection needs of individuals from Kosovo", December 2009, p. 17.

⁴⁸ UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, January 1992.

⁴⁹ Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo (S/2010/169) of 6 April 2010, paragraph 26.

⁵⁰ Strategy for the Integration of Roma, Ashkali and Egyptian Communities in The Republic of Kosovo, 2009-2015, p. 16 and Amnesty International, *Amnesty International zur Situation der Roma im Kosovo und zu den Abschiebungen von Roma in den Kosovo*, Berlin, 6 May 2010.

and will face great difficulty in proving these rights. Regardless of the property issues, Roma will have difficulties finding proper or any housing due to discrimination and the general difficulty finding housing.⁵¹

66. *Unemployment.* There are different figures on the current unemployment rate in Kosovo and how to interpret it, but indicated figures are at least 50%. If other parts of the population have difficulties finding work, Roma will be even harder hit due to discrimination and to lack of education. According to Amnesty International, 90-100% of Roma in Kosovo today are unemployed. 37% of Roma live in extreme poverty (on less than 1 US\$/day). War and flight have destroyed the Roma communities that existed before the war and it will be difficult for returnees to rely on social networks.

67. *Health care.* The Kosovo system is already limited and Serbs and Roma have to access parallel systems.

68. *Education.* 50% of the Roma that are in line to be returned from Germany to Kosovo are under 18 years of age. There is no official curriculum in Romanes or Serbian and Kosovo Serbs and Roma have to access parallel schools which entails transport to other parts of Kosovo than the ones in which they live. Many children among the returnees are said not to speak Serbian or Romanes, but only the language of the country from which they are being returned. 16% of Roma in Kosovo are illiterate and only 1.4% have attended high school.⁵²

69. After a visit to Kosovo in March 2009, the Council of Europe Commissioner for Human Rights published a report which concluded that Kosovo did not have the infrastructure that would allow a sustainable reintegration of the returnees, in particular for the Roma.⁵³ Following a renewed visit in February 2010, the Commissioner found that there were still about 20 000 internally displaced persons in Kosovo itself who have not been able to return to their homes since 1999. There was not yet sufficient capacity to give a further number of returnees humane living conditions. Of particular concern to the Commissioner was the fact that some Roma who had been forcibly returned had ended up in the lead-contaminated camps in northern Mitrovica, with very serious effects on their health.

4.4. *Two approaches to the return of Roma to Kosovo*

70. Against this backdrop, two ways forward emerge with regard to the Roma that are in line to be returned to Kosovo: either 1. Regularisation and integration in their host country, or 2. Repatriation to Kosovo with genuine assistance.

71. The rapporteur recommends that member states give priority to the first of these options. If Roma are returned to Kosovo, the rapporteur urges returning countries, Kosovo and the international community to do their utmost to find durable solutions for the Roma returnees.

72. Bosnia and Herzegovina, Montenegro and “the former Yugoslav Republic of Macedonia” together shelter around 10 000 Roma from Kosovo and Serbia around 50 000. These countries can be expected to have greater difficulties absorbing the Roma from Kosovo into society than countries in western Europe. Nevertheless, the rapporteur invites governments of these four countries not to return Roma to Kosovo until genuine durable solutions can be found for them in Kosovo.⁵⁴

73. These countries should also speed up the process – with the necessary economic responsibility being shared by the international community – of implementation of national programmes and action plans aimed at better integrating their Roma communities, including the Roma from Kosovo. They should allocate budgetary resources for the establishment of institutional frameworks and adequate mechanisms required for tackling the problems of Roma from Kosovo, as well as strengthening the administrative and institutional capacities at national and local level.⁵⁵ It is laudable that the countries have organised conferences with a view to finding durable solutions for the Roma concerned (for example, in Belgrade in 2009 and in Skopje in 2010), but the absence of the governing structures of Kosovo from these meetings is bound to make them less useful.

⁵¹ For further information with regard to restitution issues in Kosovo, see the Assembly Resolution 1901 (2010) on solving property issues of refugees and displaced persons.

⁵² Office of the Prime Minister of Kosovo, “Strategy for the Integration of Roma, Ashkali and Egyptian Communities in The Republic of Kosovo, 2009-2015”, p. 9.

⁵³ Council of Europe Commissioner for Human Rights “Viewpoint”, 22 February 2010.

⁵⁴ See letter from the Council of Europe Commissioner for Human Rights to the authorities of Bosnia and Herzegovina, dated 18 June 2007.

⁵⁵ Updated Opinion of MG-S-ROM on the Return of Roma to Kosovo and South Eastern Europe, July 2009.

4.4.1. Regularisation in the host country

74. The security situation and the social problems faced by Roma and Kosovo society in general strongly suggest that host countries should opt to find a way of regularising and integrating the Roma who are now facing return. Returning countries should bear in mind the fact that currently 75% of all returnees leave Kosovo more or less immediately upon return.⁵⁶ Enforcing returns is thus not only producing great human suffering (also taking into account the inhumane ways in which such returns are sometimes enforced), but is also a waste of economic resources. With regard to Germany, the Commissioner for Human Rights has called upon the German government in an open letter to its Chancellor, to suspend all returns of Roma to Kosovo.⁵⁷

75. It is true that Germany, for example, has undertaken not to request readmission of more than 2 500 individuals per year to Kosovo over the coming years. However, the low return rate in recent years (see paragraph 47) indicates that Germany and possibly also other returning countries have difficulties following through their return policies. This means that Roma from Kosovo who are in line to be returned will have been staying in Germany and other countries for 10 or 15 years, or even longer, without a regular status. Such a scenario would be highly unsatisfactory and the rapporteur reiterates his preference for the option of regularisation.

76. The majority of the Roma from Kosovo currently residing in Germany have no formal protection and are therefore obliged to depart and may be forcibly returned. However, the authorities have for many of them temporarily suspended deportation and decided to “tolerate” them. A toleration permit does not constitute a legal stay. Moreover, individuals that are “tolerated” face a number of restrictions regarding employment, family reunification, freedom of movement and they usually receive only reduced welfare benefits.

77. If, for example, Germany, which hosts the largest contingent of Roma from Kosovo, would opt for regularisation and integration, there are legal means in place to do so. If the risk of persecution is not considered to be such as to constitute a sufficient ground for asylum, there is a possibility to base refugee status on cumulative forms of discrimination or to grant the individuals concerned complementary protection based on humanitarian grounds.

78. In Germany, there is also the so-called long-stayer regulation which provides certain foreigners residing in Germany without a regulated legal status with a possibility to legalise their stay under certain conditions. These conditions will often be difficult for many of the Roma from Kosovo to fulfil.⁵⁸ Refugee and migration experts have welcomed the regulation but continue to recommend a more comprehensive solution for this issue. Besides humanitarian clauses and less restrictive exclusion criteria, the cut-off dates for entry into Germany specified under the regulation should be abolished.

4.4.2. Genuine assisted repatriation

79. As or when the policy on returning Roma to Kosovo is enforced, the rapporteur urges the authorities of member states and organisations involved to follow the opinions of the Council of Europe Committee of experts on Roma and Travellers⁵⁹ and take all appropriate measures to ensure that returns are conducted in an orderly, gradual and dignified manner, and in co-operation with the relevant authorities. Returning states and Kosovo should follow the guidelines for forced returns provided in the Council of Europe’s 20 Guidelines on forced return.

80. If the security situation permits the return of Roma to Kosovo, returning states must ensure that such returns are genuinely assisted. This applies whether the returns are voluntary or forced. Assistance will be necessary in order to ensure that the human rights of individuals are respected, that the returns are durable

⁵⁶ Council of Europe Commissioner for Human Rights “Viewpoint”, 22 February 2010.

⁵⁷ Letter from the Council of Europe Commissioner for Human Rights to Dr. Angela Merkel, Chancellor of the Federal Republic of Germany, 25 November 2009.

⁵⁸ See Federal Ministry of the Interior, “Migration and Integration – Residence law and policy on migration and integration Germany”.

⁵⁹ MG-S-ROM updated Opinion on the return of Roma to Kosovo and South-Eastern Europe (MG-S-ROM(2009)3); MG-S-ROM Opinion on Assembly Recommendation 1708 (2005) on the situation of Roma in Kosovo (MG-S-ROM(2005)14); MG-S-ROM Opinion concerning Assembly Recommendation 1633 (2003) on forced return of Roma from the former Federal Republic of Yugoslavia, including Kosovo, to Serbia and Montenegro from Council of Europe member states – See [Doc.10258](#). See also the Report of the MG-S-ROM and Coordinator’s visit to Kosovo (MG-S-ROM(2006)3) and the Report on the joint OSCE-ODIHR/Council of Europe field mission on the situation of the Roma in Kosovo (1999) (www.coe.int/T/DG3/RomaTravellers/Source/documents/mgsrom/missionkosovo99_en.pdf).

and that Kosovo will be in a position to absorb all the returnees without risk for social or ethnic tension. With the support of returning states and the international community as a whole, Kosovo must take genuine measures to integrate the returnees.

81. The UNHCR has indicated to the rapporteur that there are returns which take place in a grey zone, "induced voluntary returns", which implies that the returnee is pushed by the authorities in the sending countries to accept the voluntary return. The rapporteur urges member states to ensure that voluntary returns are indeed voluntary.

82. A number of problems have to be properly dealt with before there can be successful, that is to say durable and secure returns. Society is still fragile and the authorities still lack sufficient resources. Moreover, other groups, not only Roma, are facing a problematic situation in Kosovo. The Roma themselves are not organised enough to be able to collectively look after their common interests.

83. The Strategy for Reintegration of Repatriated Persons and its action plan were endorsed by the government in Kosovo in October 2007 and in April 2008. According to the Commissioner for Human Rights and the OSCE the plan is not being implemented.⁶⁰ The responsible actors at the municipal level are not aware of their responsibilities and there is not even a budget allocated for the strategy. The impression of the rapporteur following his visit to Kosovo unfortunately supports this conclusion. The OSCE field team has reported to the rapporteur that only four municipalities in Kosovo are currently in the process of developing their return strategies for 2010 and that 19 municipalities adopted return strategies in 2009.

84. According to unofficial sources, the repatriating countries do not provide a profile of the individuals in line to be returned. This makes it difficult for Kosovo to plan for reintegration. Returning countries also do not co-ordinate the returns between each other, which puts strain on the reintegration capacities of the receiving country. For example, no information is provided to Kosovo concerning the social vulnerability of the person concerned, nor on possible health problems, education needs, professional needs or ethnicity. There are some NGOs assisting returnees upon return.

85. OSCE has issued, *inter alia*, the following recommendations to the authorities of Kosovo, with a view to making assisted returns possible.⁶¹ The rapporteur supports and reiterates these recommendations:

- Allocate necessary government funding to ensure the implementation of the Strategy and the accompanying Action Plan.
- Co-operate closely with the host countries and international NGOs in order to co-ordinate financial and technical assistance and to facilitate the development of structured and funded reintegration programmes, as well as the capacity of local authorities.
- Provide adequate financial, administrative and political support for municipal community offices to enable them to carry out their duties.
- Ensure that relevant ministries responsible for health, education, employment, care and housing, as well as local authorities, are informed about the return process.

86. Most countries have voluntary assisted return programmes for Roma who go back to Kosovo. The German programme proposes to a Roma family with two children to have all travel expenses paid and to receive a grant of at least €2,850, the equivalent of an average annual gross income in Kosovo. Moreover, the Federal Government and the states of Baden-Württemberg, Lower Saxony and North Rhine-Westphalia, where most of the Roma from Kosovo reside, have launched the return project "URA2", which runs a return centre in Pristina providing assistance and support to voluntary returnees. The project offers counselling for new returnees as well as a broad range of financial and practical support, such as help finding work and housing, rent and wage subsidies, and support for starting a new business.⁶²

87. According to the German Government, URA2 had been able to assist every returnee who sought help to find adequate accommodation. According to Amnesty International, however, URA2 does not cover more than a few cases and does not provide durable solutions.⁶³ According to oral information from the UNHCR, it follows from airport monitoring that Roma who are being returned forcibly receive no further monitoring when

⁶⁰ OSCE Mission in Kosovo, "Implementation of the Strategy for Reintegration of Repatriated Persons in Kosovo's Municipalities", p. 1.

⁶¹ *Ibid.*, p. 12.

⁶² Bundesministerium des Innern, "Council of Europe, MG-S-ROM, Migration and related issues, Information on sub-item 2: Return of Roma to Kosovo and South Eastern Europe".

⁶³ See Amnesty International, "*Amnesty International zur Situation der Roma im Kosovo und zu den Abschiebungen von Roma in den Kosovo*", Berlin, 6 May 2010, p. 4.

arriving at Pristina airport. Most of them leave immediately for Serbia, Hungary or the returning country. URA2 is only dealing with returnees from Lower Saxony, North Rhine-Westphalia, Bavaria and Baden-Württemberg.

88. The International Organization for Migration provides assistance to persons who are returned to Kosovo and implements projects with a view to strengthening the independence and social survival of Roma communities in Kosovo. This organisation has drawn the rapporteur's attention to a programme for voluntary returns that has been successfully implemented and funded by Switzerland and Liechtenstein: the "EAS" Programme. Of the beneficiaries, 86% were still in Kosovo and 94% of these were employed or self-employed several years after return. The rapporteur recommends that returning states and Kosovo assess whether the programme could be used also with regard to the Roma from Kosovo.⁶⁴

5. Conclusions and proposals

89. Roma in Europe face discrimination, violence and other human rights abuses that could, in certain cases, amount to persecution under the 1951 Geneva Convention. It would thus be natural to ask why Roma would choose to flee to Canada, or why they would seek refugee status in France, instead of simply taking advantage of their rights as European Union citizens to reside in a European Union member state. The answer to both questions could be related to the fact that the right to free movement within the European Union is itself under threat, in view of the European Union rules that require a certain professional and financial situation in order for someone to stay in another European Union member state for longer than three months, criteria that Roma asylum seekers and refugees can rarely be expected to fulfil.

90. It is thus important that, in addition to the immediate urgency of stopping the violence against Roma, the issue of Roma asylum seekers and refugees is analysed also in light of the general right to movement within Europe and the restrictions that are laid upon it. The ideal of all European Union member states being "safe countries of origin" is very attractive for member states of the European Union. At this point, however, facts show that for some people it remains only an ideal and unfortunately does not correspond to reality. The rapporteur therefore recommends that the European Union look into this matter, with a view to possibly revising its rules.

91. The tens of thousand of Roma who fled from Kosovo as a consequence of the war and subsequently erupting violence have now lived in western European countries for up to ten years. Their children were born and have grown up in Germany, Switzerland, France and other member states of the Council of Europe. These children have gone to school there and often speak only the language of the host country. They are now in line to be returned to Kosovo, where, according to the UNHCR, the Council of Europe Commissioner for Human Rights and many others, conditions are such that these returns will be socially unsustainable. Those who will remain in Kosovo after their return will have great difficulties reintegrating. It can be expected that many returnees will do their utmost to immediately leave Kosovo again. This has hitherto been the case for 75% of the returnees. Roma returnees to Kosovo will still have to fear for their personal security. Therefore, host countries should suspend returns and consider how to regularise their situation or find other humane solutions for the people concerned.

92. When returns are enforced, they should be accompanied by genuine assistance to the persons concerned and to Kosovo. In order to achieve sustainable returns, Roma must be granted the same opportunities as returnees of other ethnicities that have been returning after the war. A problem that is specific to the Roma, and where they are at a further disadvantage compared to other returnees, is that they have no kin-state that advocates their interests. In order to successfully address the issue, a holistic approach will be necessary, involving all the countries in the region. It will also be necessary to have a common strategy at European Union and Council of Europe levels. Civil society should be invited to play a greater role in the reintegration process.

93. The view which has sometimes been expressed, that Roma and related groups need to be returned to Kosovo in order to maintain the ethnic mix is worrying. Whereas ethnic pluralism is in itself something positive and should be promoted by giving Roma originating from Kosovo a real and sustainable possibility to return, it must not be achieved as a result of sacrificing the security and human rights of the individual.

94. It is highly important that the issue of Roma asylum seekers is addressed in a holistic way, thus including their social and economic situation, as well as their right to inclusion. Their precarious social situation forces many Roma to live on the margins of society, making them easy targets for racist rhetoric.

⁶⁴ IOM, "Overview of IOM Kosovo Activities for Roma, Ashkali and Egyptian (RAE) ethnic minority communities" and "Assisted Voluntary Return and Reintegration Programmes".

The rapporteur reiterates that all human rights – economic, social and cultural, as well as civil and political – are equally important and are interrelated and interdependent. Moreover, history shows with unpleasant clarity, that a generalised situation of social distress and unemployment is conducive to the eruption of racist violence. This also has to be taken into account by member states when addressing the root causes of the violence which has now hit Roma in some countries and prompted them to flee.

95. The situation of the media in some countries has to be scrutinised closely, since it has been known to offer an arena to extremist right-wing spokespersons, who are guilty of hate-speech. By giving these groups and individuals the possibility to disseminate and reinforce prejudice with regard to the Romani population, the exclusion of the latter is consolidated and the risk of violence and new flows of asylum seekers increased. These concerns apply to media both in countries of origin and in host countries, which often demonise Roma asylum seekers and migrants.

96. The rapporteur commends the European Commission against Racism and Intolerance (ECRI), the Council of Europe's Directorate General on Social Cohesion, and in particular its Roma and Travellers Division, the Advisory Committee on the Framework Convention on National Minorities, the Commissioner for Human Rights and other bodies of the Council of Europe for the work carried out in order to promote the human rights of Roma in Europe, including their situation when being forced to flee, and without which the situation would probably have been even worse than it currently is.

97. The time has come, however, to step up this work. For many years, the Assembly has been drawing attention to the situation of Roma without much progress being made. To the general and deplorable situation of the Roma in Europe has now been added that of Roma refugees and asylum seekers. In fact, the situation of Roma in Europe, instead of improving, has deteriorated to the point that Roma have again been forced to leave their countries to escape persistent discrimination and racist violence. Instead of finding protection they have been caught in limbo and often forced into living as irregular migrants. The rapporteur therefore considers that the Committee of Ministers should give further priority to this issue, including the allocation of adequate resources, in order to allow the Council of Europe to pursue its important work and to address the issue of Roma refugees.