

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Recalling the 1950 Convention on the Protection of Human Rights and Fundamental Freedoms, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and other relevant international instruments;

Bearing in mind the Conclusions adopted by the Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) at its 1999 extraordinary meeting on Kosovo and Recommendation No. R (99) 23 of the Committee of Ministers to member states on family reunion for refugees and other persons in need of international protection, as well as the 1981 Conclusion No. 22 (XXXII) on the Protection of Asylum-Seekers in Situations of Large-Scale Influx and the 1998 Conclusion No. 85 (XLIX) on International Protection by the Executive Committee of the Program of the United Nations High Commissioner for Refugees (UNHCR);

Having regard to Recommendation 1348 (1997) of the Parliamentary Assembly on the temporary protection of persons forced to flee their country;

Anxious to preserve the institution of asylum and to ensure that persons who are in need of international protection have the possibility to seek and enjoy such protection with full respect for their fundamental human rights and dignity;

Considering that, in cases of massive and sudden influx of persons in need of international protection, member states might decide to adopt temporary protection measures;

Underlining that temporary protection is an exceptional, practical measure, limited in time and that it complements the protection regime enshrined in the 1951 Convention and its 1967 Protocol;

Noting that among beneficiaries of temporary protection there may be refugees within the meaning of the 1951 Convention and the 1967 Protocol and that the granting of temporary protection must not prejudice recognition of refugee status under those instruments;

Stressing that international solidarity is a key to coping with situations of massive and sudden influx and that the obligation of states to offer protection based on the principle of non-refoulement is not dependent on burden-sharing arrangements between states;

Emphasising that return under safe and dignified conditions to the country of origin is to be facilitated, and that voluntary return is preferable;

Desiring to establish certain minimum guarantees for the persons concerned in relation to those member states which apply or wish to apply temporary protection measures,

Adopts the following recommendations :

1. Persons in need of international protection should, for their safety, be admitted to the country where they first seek protection with only minimal formalities. The granting of such protection by one state should not prejudice the possibility of subsequent admission to a third state. These persons should be treated with full respect for their fundamental human rights and liberties. In taking decisions to initiate temporary protection measures, competent national authorities should consult with the United Nations High Commissioner for Refugees (UNHCR).

2. Persons benefiting from temporary protection should be swiftly registered and allowed to remain in the territory of the host country for the duration of applicable temporary protection measures. The freedom of movement of such persons within the territory of the host country should not be unnecessarily restricted.

3. Persons benefiting from temporary protection should have access, at least, to:

- adequate means of subsistence, including accommodation,
- appropriate health care,
- education for their children,
- the labour market in conformity with national legislation.

4. With regard to family reunion for persons benefiting from temporary protection who are not able to lead a normal family life together elsewhere, Recommendation No. (99) 23 of the Committee of Ministers, where appropriate, should apply.

5. The needs of vulnerable persons for special protection and assistance should be met, to the extent possible.

6. In the spirit of international solidarity and in an effort to alleviate the burden that falls upon the host countries, member states should take appropriate steps to co-operate with each other. Such co-operation should take place, on the one hand, between different host countries for the purpose of temporary protection and, on the other hand, between host countries and countries of origin for the safe and dignified return of those involved to, and re-integration into their country of origin.

7. Co-operation by states to prepare for emergencies would facilitate the exercise of international solidarity in situations of unexpected, massive and sudden influx. Member states affected by such situations may decide to turn to the Committee of Ministers for rapid consultation.

8. Individual applications for refugee status, where national law allows the suspension of examination of such applications, should be examined according to modalities provided for by internal legislation, at the latest, when temporary protection measures cease to apply. However, such suspension of examination should not last longer than can reasonably be justified by the exceptional circumstances.

9. Temporary protection measures cease to apply by decision of the competent authorities of the host country when the circumstances in the country of origin which had given rise to the massive and sudden flight have changed in a manner which enable the return in safety and dignity of the persons benefiting from these measures.

10. After a prolonged period of time without change in the relevant circumstances in the country of origin, temporary protection measures also cease to apply by decision of the competent authorities of the host country to offer long-term solutions with an adequate level of entitlements to the persons concerned.

11. In phasing out temporary protection measures, competent national authorities should consult with the UNHCR.

12. Member states should facilitate, through all available means, the voluntary return of persons whose temporary protection comes to an end. The decision by such persons to return must be well-informed. Where appropriate, the possibility of visiting the country of origin should be envisaged.

13. The right to return to one's own country should be respected by all states. Countries of origin should treat returning persons in a dignified manner and with full respect for their human rights.

14. When deciding about the return of the persons concerned, member states should take into consideration compelling humanitarian reasons, which would make return in such individual cases impossible or unreasonable.

## Explanatory Memorandum

### Introduction

1. The deliberations on temporary protection stem from the Parliamentary Assembly's Recommendation 348 (1997) on the temporary protection of persons forced to flee their country.

2. The Committee of Ministers, in its decision CM/Del/Dec (98)641/10.6 and CM(99)60, GT-TP(98)CB2, instructed the Ad Hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) to establish certain minimum guarantees for the persons concerned in relation to those member states which apply or wish to apply temporary protection measures.

3. The CAHAR studied the relevant provisions of the Recommendation of the Assembly as well as the state of work on this subject in other fora, notably at the United Nations and the European Union (since 1st May 1999, this subject falls within the scope of Title IV of the EC Treaty).

4. The draft, prepared by the CAHAR, was forwarded to the Committee of Ministers and was adopted by it on 3rd May 2000 at the 708th meeting of the Ministers' Deputies.

### General considerations

5. Some member states, in exceptional cases of massive and sudden influx of persons in need of international protection when individual examination of requests for protection may not be possible, consider granting protection on a temporary basis to such persons.

6. The aim of this Recommendation is to establish certain minimum guarantees for persons in need of international protection to be provided by those member states which apply or wish to apply temporary protection measures. Such persons should have the possibility to seek and enjoy protection with full respect to their fundamental human rights and dignity. The Recommendation also encourages international solidarity through co-operation between the states concerned.

#### Comments on the principles set out in the Recommendation

##### The preamble

7. The European Convention on Human Rights and the 1951 Convention and its 1967 Protocol and other relevant international instruments are recalled. The principles enshrined in these instruments are crucial for the protection of persons in case of massive and sudden influx, because persons fleeing in such situations are doing so for reasons which may or may not be covered by the definition of refugee of the 1951 Convention.

8. The Conclusions of the extraordinary meeting of the CAHAR on Kosovo in 1999 were drafted under the immediate emergency of the outflow of nearly a million persons from that province. Those conclusions dealt, among others, with protection measures of temporary nature, which may, on certain points, coincide with the meaning of temporary protection as understood in this Recommendation. Recommendation N° R (99) 23 of the Committee of Ministers is also recalled in the context of family reunion measures. The two EXCOM Conclusions recalled also contain relevant provisions for this Recommendation.

9. Temporary protection is an exceptional practical measure, limited in time, complementary to the refugee regime and not a substitute for the latter. Therefore, temporary protection must not prejudice the recognition of refugee status.

10. International solidarity and co-operation in a spirit of assistance for those countries which receive large numbers of persons in need of international protection is a key to coping with massive and sudden influx situations by the international community. However, international protection obligations of states, based on the principles of non-refoulement, do not depend on the existence or absence of burden-sharing arrangements between states as also underlined in EXCOM Conclusion No. 85, paragraph p/.

11. It is within the competence of national authorities to implement return measures if and when conditions and guarantees for the safe and dignified return to the country of origin are present. Voluntary return, however, is the most preferred option.

##### The operative part

12. In paragraph 1, the Recommendation recognises the need for admission to safety of persons in need of international protection in the country where they first seek protection, also as pointed out by EXCOM Conclusion No. 22, paragraph II.A.1. In such massive influx situations, formalities should be simplified as much as possible as they should not work to the detriment of the safety of persons in need of international protection. Respect must be guaranteed for fundamental rights and liberties, including the principle of non-refoulement, the prohibition of torture or inhuman or degrading treatment or punishment and the principle of non-discrimination which form part of basic standards of treatment of such persons. The granting of such protection should not prejudice the possibility of subsequent admission to a third state. In taking decisions to initiate temporary protection measures, competent national authorities should consult with the UNHCR.

13. Once admitted to safety, swift registration and allowing the person to remain are necessary to establish and preserve the legal and social position of persons under temporary protection, as paragraph 2 of the Recommendation calls for. As that stage, some member states also hold an initial interview with beneficiaries of temporary protection. The freedom of movement of beneficiaries of temporary protection should be determined by their safety and well being as well as, for example, by the security needs of the host country and should not be unnecessarily restricted. These factors may explain necessary restrictions on their freedom of movement within the territory of the host country. The designation of residence of such persons is within the competence of national or local authorities, unless delegated by them to international or non-governmental organisations.

14. Paragraph 3 contains a list of minimum entitlements which should be accorded to the persons under temporary protection. Beside the relevant human rights provisions, the Conclusions on Kosovo confirmed several of the following entitlements. Access to adequate means of subsistence might be ensured through access to work (gainful employment or self-employment) or subsidies and accommodation. Adequate health care, education for children and access to labour market in conformity with national legislation should be ensured.

15. With regard to family reunion (paragraph 4) for persons under temporary protection who could not lead a normal family life together elsewhere, Recommendation N° R (99) 23 of the Committee of Ministers should appropriately apply.

16. Special protection and assistance needs of vulnerable persons (paragraph 5) should be met, to the extent possible. These persons include, as confirmed also by the Conclusions on Kosovo, victims of torture, abuse or sexual violence, single heads of households, unaccompanied elderly and minors, the seriously ill or injured and the disabled.

17. According to paragraph 6, international co-operation is part of the effort by the international community to cope with refugee situations. The preamble of the 1951 convention reads: "the grant of asylum may place unduly heavy burdens on certain countries and a satisfactory solution of a problem of which the United Nations has recognised the international scope and nature cannot therefore be achieved without

international co-operation". This is particularly relevant in situations of massive and sudden influx where host countries co-operate in order to alleviate the burden and where some states apply temporary protection measures. Another kind of co-operation, only when conditions in the country of origin have changed, should take place between the host country and the country of origin for a safe and dignified return and re-integration in the country of origin.

18. In paragraph 7, the Recommendation calls for rapid and efficient response on behalf of the international community when massive and sudden influx situations occur, through emergency preparedness.

19. Paragraph 8 deals with the examination of individual applications for refugee status. In massive and sudden influx situations, some member states process individual asylum applications. In some other member states, national legislation allows the suspension of examination of such requests while applicants are under temporary protection. In the latter cases, suspension of examination should not last longer than reasonably justifiable by the exceptional circumstances but, examination should start at the latest, when temporary protection measures cease to apply. The recommendation refers to modalities provided for by internal legislation. In some member states these require the examination of formerly suspended applications in any case, while in other member states the applicant needs to maintain the application or explicitly confirm the maintaining of the application when temporary protection ends.

20. Temporary protection measures cease to apply (paragraph 9) by decision of the competent authorities of the host country when circumstances in the country of origin which had given rise to the massive and sudden flight have changed in a manner which enable return in safety and dignity.

21. After a prolonged period of time without change in the relevant circumstances in the country of origin, temporary protection measures also cease to apply (paragraph 10) by decision of the competent authorities of the host country to offer long-term solutions with adequate level of entitlements to the persons concerned. At the time of the drafting of this Recommendation, proposals for how long this prolonged period should last ranged from six months to five years. It was recognised that it was not the task of this Recommendation to arbitrarily draw an ideal time limit to temporary protection for all member states, nor to settle at the lowest common denominator. The particular circumstances of a specific group of persons under temporary protection, those of the specific situation which have given rise to the massive and sudden influx and those of the host country all can legitimately play an important role in deciding about the length of temporary protection in a given case. Once such decision is taken, the host country, in cases when paragraph 8 of the Recommendation does not apply, should offer long-term solutions with an adequate level of entitlements to the persons concerned. Such solutions, in conformity with national legislation, might include residence and integration, protection and integration, or resettlement in third countries, if applicable.

22. In phasing out temporary protection measures, competent national authorities should consult with the UNHCR (paragraph 11).

23. As paragraph 12 of the Recommendation stipulates, when there is such change in the circumstances in the country of origin which enable return in safety and dignity, member states should facilitate voluntary return of persons whose temporary protection ends. "All available means to facilitate" is understood here as in accordance with national legislation and with the assistance capacities of the host country.

24. When return is mandatory (paragraph 13) and no individual circumstances occur as detailed in paragraphs 8 and 10 of the Recommendation, the implementation of return should take place in safety and dignity, in a humane manner, with full respect to fundamental human rights during all stages of the return process and without the use of excessive force. These conditions have been established, among others, by Recommendation N° R (99) 12 of the Council of Europe on the return of rejected asylum seekers which does not indicate in any way that persons whose temporary protection ended and return mandatorily to their country of origin would be otherwise in the same position as rejected asylum seekers. The right to return to one's own country should be respected by all states. Countries of origin should treat returning persons in a dignified manner and with full respect to their human rights.

25. Paragraph 14 addresses the situation of those persons whose temporary protection has ended, who have no claim for refugee status or whose claim for it is rejected but who have other compelling humanitarian reasons which would make return to the country of origin for them or for the host country impossible or unreasonable. Member states should take into consideration such compelling humanitarian reasons when deciding about the return of these persons.