

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (98) 13

**OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE RIGHT OF REJECTED ASYLUM SEEKERS
TO AN EFFECTIVE REMEDY AGAINST DECISIONS ON EXPULSION
IN THE CONTEXT OF ARTICLE 3
OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

*(Adopted by the Committee of Ministers on 18 September 1998
at the 641st meeting of the Ministers' Deputies)*

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

Recalling, as stipulated by Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, “that no one shall be subjected to torture or to inhuman or degrading treatment or punishment”;

Affirming that no one, including rejected asylum seekers, shall be expelled to a country where they would be subjected to torture or inhuman or degrading treatment or punishment;

Bearing in mind that Article 13 of the European Convention on Human Rights provides that “every-one whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity”;

Having regard to the case law of the European Court of Human Rights in relation to Article 13 in conjunction with Article 3 of the Convention as it concerns rejected asylum seekers who face expulsion;

Without prejudice to the exercise of any right of rejected asylum seekers to appeal against a negative decision on their asylum request, as recommended, among others, in Council of Europe Recommendation No. R (81) 16 of the Committee of Ministers to member states on the harmonisation of national procedures relating to asylum,

Recommends that governments of member states, while applying their own procedural rules, ensure that the following guarantees are complied with in their legislation or practice:

1. An effective remedy before a national authority should be provided for any asylum seeker, whose request for refugee status is rejected and who is subject to expulsion to a country about which that person presents an arguable claim that he or she would be subjected to torture or inhuman or degrading treatment or punishment.
2. In applying paragraph 1 of this recommendation, a remedy before a national authority is considered effective when:
 - 2.1. that authority is judicial; or, if it is a quasi-judicial or administrative authority, it is clearly identified and composed of members who are impartial and who enjoy safeguards of independence;

- 2.2. that authority has competence both to decide on the existence of the conditions provided for by Article 3 of the Convention and to grant appropriate relief;
- 2.3 the remedy is accessible for the rejected asylum seeker; and
- 2.4 the execution of the expulsion order is suspended until a decision under 2.2 is taken.