

## **CEC CENTRAL COMMITTEE CONCERNED ABOUT ADMINISTRATIVE DETENTION OF MIGRANTS AND RE-ENTRY BAN IN EU COUNTRIES**

The Central Committee of the Conference of European Churches (CEC), which met in Vienna from 14-17 November 2007, expressed its concern for the increasing use of administrative detention of migrants pending removal procedures in many European countries, and for the proposed re-entry ban of up to five years following the execution of a removal. Churches in Europe are “deeply concerned” that EU Member States “should be able to detain persons for up to 18 months on the basis of a decision that is merely administrative. This is unacceptable as a common EU standard”. The Central Committee of CEC urges the European Parliament and EU Member States “to delete the provisions for a re-entry ban and to limit rather than expand the use of detention in removal procedures in EU legislation”.

The full text of the statement of the CEC Central Committee follows.

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### **CEC Central Committee calls on EU to limit administrative detention of persons pending removal from EU countries**

#### **Public Statement**

Churches in Europe are concerned about the increasing use of administrative detention of migrants pending removal procedures in many European countries. Churches share the concern of governments and societies to uphold the rule of law in European countries.

The Central Committee of the Conference of European Churches has taken note of the state of negotiations on the European Union “Directive on common standards and procedures in Member States for returning illegally staying third-country nationals” which will have to be agreed by the Council of Ministers of the EU and the European Parliament.

The Central Committee recognises that the negotiation parties have an enormous task before them to achieve greater harmonisation of standards across the European Union and appreciates that principles of law, such as judicial review and appeal procedures have been proposed by the European Parliament. The Conference of European Churches appreciates that voluntary return shall be given greater attention as well.

However, the Conference of European Churches is very concerned about two provisions in the current text of the European Parliament.

#### **Detention**

We recognise the attempt to improve the Commission’s proposal with regard to the duration of detention (Article 14, 4). However, we are deeply concerned that Member States should be able to detain persons for up to 18 months on the basis of a decision that is merely administrative. This is unacceptable as a common EU standard.

We also think the criteria for the extension of a detention period, such as delays in obtaining the necessary documentation from third countries, might open the door to abusive practices at the level of Member States.

Although European governments often state that detention is the only way to ensure an effective removal policy, reports show that longer detention periods do not directly lead to more effective removals. They are therefore unnecessary and inhumane. The prolonged detention of persons, too often in appalling conditions, should never be sanctioned by European Community law.

Detention is not the solution: it is expensive while alternative cost-effective methods are available.

For people who have not been found guilty by a court of committing a crime, detention is too extreme a sanction, and it violates one of the fundamental human rights protected by international law – the right to liberty. As reflected in EP Compromise Amendment 35, **detention pending removal** should only be used for as long as

removal arrangements are in progress. If such arrangements are not executed with due expedition and diligence, the detention is not acceptable and may be deemed disproportionate and not in compliance with Article 5 of the European Convention on Human Rights.

### **Re-Entry Ban**

The Conference of European Churches shares the concerns expressed by the Churches' Commission for Migrants in Europe (CCME) and other Christian organisations on various occasions over the past years that the draft directive foresees a re-entry ban of five years following the execution of a removal. A re-entry ban amounts to a double penalty, and five years is far too long. It may also have far-reaching consequences for the principle of *non-refoulement*<sup>1</sup> as guaranteed by the 1951 Refugee Convention. The situation of returnees may indeed change after they have been removed, and they may become eligible for the status of refugee. In this case, the re-entry ban may be contrary to the principle of *non-refoulement*. A general re-entry ban for 27 and potentially more EU member states, possibly extending to other Schengen member states such as Norway and Switzerland, excludes any possibility to find refuge, particularly if imposed for such a long time, not considering that the person may be returning into an unstable condition which might turn worse. Some persons would probably feel obliged to turn to smugglers if they are desperate and are excluded from legal entry. Thus the instrument of a re-entry ban is likely to increase irregular migration, smuggling and the risk of trafficking in human beings.

Also family relations in EU member states have to be considered. Certainly for dependent family members and minors, a re-entry ban is inappropriate. For example, a 15 or 16-year-old migrant who had been removed with the family would be stripped of training and scholarship opportunities he or she might have due to language competence acquired previously, in any EU Member State.

The Third European Ecumenical Assembly held in Sibiu/Romania 4-9 September 2007 has called “**upon European states to stop unjustifiable administrative detention of migrants, (and) make every effort to ensure regular immigration**”.

The Conference of European Churches urges the European Parliament and EU Member States in the Council of the EU to delete the provisions for a re-entry ban and to limit rather than expand the use of detention in removal procedures in EU legislation.

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*The Conference of European Churches (CEC) is a fellowship of some 120 Orthodox, Protestant, Anglican and Old Catholic Churches from all countries of Europe, plus 40 associated organisations. CEC was founded in 1959. It has offices in Geneva, Brussels and Strasbourg.*

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<sup>1</sup> Non-refoulement is the provision in the UN Refugee Convention obliging States not to send a person back into a possible situation of risk or persecution.