Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 13681
28 January 2015

The large-scale arrival of mixed migratory flows on Italian shores

Reply to Recommendation[1]: Recommendation 2047 (2014)
Committee of Ministers

1. The Committee of Ministers takes note of Parliamentary Assembly Recommendation 2047 (2014) on "The large-scale arrival of mixed migratory flows on Italian shores", which it has examined carefully. It has transmitted it to the Steering Committee for Human Rights (CDDH) and to the European Committee on Crime Problems (CDPC) for information and possible comments. The Committee refers to the comments made in its reply to Parliamentary Assembly Recommendation 2046 (2014) on "The "left-to-die boat": actions and reactions" in relation to the tragic incidents in the Mediterranean Sea.

2. The Committee has considered the Assembly's request that it launch a reflection on how best to introduce a new international crime to cover the situation when a person receives a financial benefit, directly or indirectly, for transporting people in a vessel which is unsafe for the purpose and which may endanger life or cause death or injury at sea (paragraph 4.1 of the recommendation). It notes that the crimes mentioned in this paragraph are likely already to be considered to be serious crimes under the legislation of the vast majority of member States of the Council of Europe. Moreover, the European Union has established a comprehensive set of rules in this regard. The Committee furthermore draws attention to an already existing international instrument in this field: the UN Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Crime. This instrument explicitly calls on States Parties to criminalise the smuggling of migrants and ancillary acts, when these are committed with intent and with the aim of obtaining, directly or indirectly, financial or material gain. Rather than duplicating international efforts, the Committee of Ministers calls on all States not having ratified the UN Protocol to do so swiftly, and to enhance international co-operation in its implementation.

3. Concerning paragraphs 4.2 and 4.3 of the Assembly's recommendation, the Committee of Ministers observes the well-established requirements of international law, i.e. the principle of non-refoulement, and in particular, the jurisprudence of the European Court of Human Rights. It draws attention to the Court's judgment in the case of *Hirsi Jamaa and Others v. Italy* (2012), to which the Assembly's recommendation refers. In *Hirsi Jamaa*, the Court held that while Contracting States are free to devise their own immigration policies, this right is circumscribed by Article 3 (freedom against torture or inhuman or degrading treatment) of the European Convention on Human Rights, where the removal of a person would expose him/her to a real risk of facing such treatment in the receiving country, irrespective of whether this person was intercepted outside of territorial waters. The Court reiterated the need for an assessment of individual circumstances (prohibition of collective expulsions of aliens, Article 4 of Protocol No. 4 to the Convention) and access to an effective remedy (Article 13 of the Convention). Given the foregoing, the Committee of Ministers considers that any arrangements for automatically returning people to a non-EU country, as suggested in the recommendation, would risk contravening the ECHR's requirements.

4. The need to address possible issues encountered in the implementation of the Hirsi Jamaa case is referred to in both Parliamentary Assembly Recommendations 2046 (2014) and 2047 (2014), albeit in diverging ways. The Committee of Ministers takes note of the Assembly's request in the latter

1. Adopted at the 1217th meeting of the Ministers' Deputies (21 January 2015).

Recommendation to “make this judgment compatible” with Council of Europe member States’ right to draw up their own immigration policies (paragraph 4 of the recommendation). In this context, it refers to the Court’s position quoted above, that the Contracting States’ freedom to devise their own immigration policies does not relieve them from honouring their undertakings under the Convention, and to comply with the Court’s judgments in any specific case. It is indeed for the respondent States to find, under the supervision of the Committee of Ministers, the most appropriate ways of complying with the judgments, and to adapt their immigration policies accordingly.

5. Finally, the Committee of Ministers takes note of the Assembly’s request to consider the necessity of an extensive review of the “Dublin Regulation” and its implementation. Although the Council of Europe’s activities, including the Court’s case law, have concrete repercussions on the manner in which the Regulation is applied, it is not for the Council of Europe to review an EU Regulation.