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Countries of transit: meeting new migration and asylum challenges

Reply to Recommendation¹: Recommendation 2078 (2015)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2078 (2015) on “Countries of transit: meeting new migration and asylum challenges” and has forwarded it to the relevant committees and bodies for information and comments.²

2. The Committee takes note of the call of Parliamentary Assembly regarding the importance of respecting and protecting the human rights of migrants and refugees in co-operation with transit countries. It shares the view that the current challenges arising from the refugee crisis require a co-ordinated response which is effective and based on the prevention of human rights violations.

3. In the light of the deepening refugee crisis, the Committee of Ministers held an in-depth debate on the question in September, following which a number of operational decisions were adopted.³ In particular, the Committee of Ministers reiterated the obligations falling upon member States under international law, and called on member States to intensify their efforts to address the crisis in compliance with international law. The Secretary General has also issued guidelines to the 47 member States of the Council of Europe regarding “The protection of migrants and asylum seekers: States’ main legal obligations under the Council of Europe conventions”.

4. The Committee of Ministers also emphasised, *inter alia*, that the Council of Europe must continue to monitor the honouring of commitments and obligations by its member States and asked the Secretary General to follow and report on the developing situation, making full use of existing monitoring mechanisms. It further underlined the importance for the Council of Europe to provide assistance in its areas of expertise to those member States which so wish.

5. The Committee of Ministers would inform the Assembly that the Programme and Budget for 2016-2017 aims to promote the social inclusion of migrants by focusing on responses to the large-scale arrival of migrants and on anti-discrimination and inclusion measures. Legal and practical aspects of specific migration-related human rights issues and challenges being faced by civil society in the member States will be considered, in co-operation with other international institutions. Furthermore, the Secretary General has recently appointed a Special Representative on Migration and Refugees to drive the assistance and support of the Organisation to member States and to foster international co-operation in this area.

6. The Committee of Ministers would also recall the relevance of the Guidelines on human rights protection in the context of accelerated asylum procedures, adopted by the Committee of Ministers in 2009, the purpose of which is to ensure the quality of asylum procedures and of the negotiation of readmission agreements.

1. Adopted at the 1255th meeting of the Ministers’ Deputies (4 May 2016).

2. Steering Committee for Human Rights (CDDH) and Council of Europe Commissioner for Human Rights.

3. Cf. [CM/Del/Dec\(2015\)1236/1.5](https://pace.coe.int/cm/del/dec/2015/1236/1.5).



7. With regard to paragraph 3.2 of the Assembly's recommendation, the Committee of Ministers underlines that the principle of non-refoulement constitutes a fundamental, well-established principle of international law that underlies the reasoning of the European Court of Human Rights in the case of *Hirsi Jamaa v. Italy* (2012) in the context of refugees and asylum seekers, referred to in the recommendation. It acknowledges that the case is an important one, particularly in terms of the extraterritorial applicability, only in exceptional cases, of the Convention. It would recall that the Court held that, while Contracting Parties are free to devise their own immigration policies, this right is limited by Article 3 of the Convention (prohibition of torture or inhuman or degrading treatment), where the removal of persons would expose them to a real risk of facing such treatment in the receiving country, irrespective of whether they were intercepted in territorial waters and transferred aboard an official vessel. The Court reiterated in cases referring to a group of persons the need for an assessment of individual circumstances (prohibition of collective expulsion of aliens, Article 4 of Protocol No. 4 to the Convention) and access to an effective remedy (Article 13 of the Convention).

8. The Committee of Ministers is aware of the important issues raised by the Assembly in this recommendation. It notes the comments adopted by the CDDH at its meeting on 7 to 11 December 2015 that "in the absence of case law of the Court in this respect, the Court's adjudication in the *Hirsi Jamaa* case cannot be construed as being applicable to other distinct situations cited in paragraph 10 of Resolution 2073 (2015) of the Parliamentary Assembly on countries of transit."

9. The Committee of Ministers will continue to monitor compliance by member States with the principle of non-refoulement.