

Resolution 2228 (2018)¹

Human rights impact of the “external dimension” of European Union asylum and migration policy: out of sight, out of rights?

Parliamentary Assembly

1. The Parliamentary Assembly has followed closely the European Union's policies providing for the implementation of asylum and migration control and border management beyond its external borders since the beginning of the current crisis in 2011.
2. The Assembly's position on the externalisation of asylum procedures has adapted to the evolving situation. [Resolution 2147 \(2017\)](#) on the need to reform European migration policies called on European Union member States and institutions to “explore possibilities for better identifying people in need of international protection and organising external processing of asylum applications by means of safer procedures established outside Europe in safe third countries, provided that the human rights of the asylum seekers are safeguarded”. In [Resolution 2000 \(2014\)](#) on the large-scale arrival of mixed migratory flows on Italian shores, the Assembly expressed support for the setting up of camps to process asylum requests in North Africa. In [Resolution 2109 \(2016\)](#) on the situation of refugees and migrants under the EU–Turkey Agreement of 18 March 2016, it voiced its concern that “the EU–Turkey Agreement raises several serious human rights issues relating to both its substance and its implementation now and in the future”.
3. The declared objectives of the delegation of migration procedures to countries outside the European Union's borders are to ease the migratory pressure on member States at the European Union's borders, thus facilitating migrants' onward resettlement throughout Europe and a more regular influx; to reduce migrants' need to undertake potentially fatal land and sea journeys; and to promote co-operation with Europe's neighbours in migration management. In the recent [Resolution 2215 \(2018\)](#) “The situation in Libya: prospects and role of the Council of Europe”, the Assembly notes that the European Union's Triton and Sophia air and sea operations resulted in a reduction of nearly 32% of arrivals on the Italian coasts between November 2016 and November 2017, that these operations have saved over 200 000 lives since 2014 and that the European Union provides much of the funding for the activities of the United Nations High Commissioner for Refugees and the International Organization for Migration in aid of refugees and migrants.
4. However, the shifting of responsibilities through the enlistment of third countries to reinforce European Union border controls entails serious human rights risks; it increases the risk of migrants being “stranded” in transit countries through readmission, as well as the increased use of punitive and restrictive measures such as *refoulement*, arbitrary detention and ill-treatment. It is also a way for many European Union member States to distance themselves from the politically divisive issue of assisting and integrating refugees. Keeping migrants at a greater distance may also in fact provide a means of avoiding situations of *refoulement* within Europe. In the above-mentioned [Resolution 2215 \(2018\)](#), the Assembly called on the Council of Europe member States to comply with their obligations under Article 3 of the European Convention on Human Rights (ETS No. 5), which requires them to refrain from sending migrants back to countries where they are exposed to the risk of torture and inhuman or degrading treatment or punishment, and not to co-operate on migration control with third countries if this is likely to result in violations of Article 3.

1. *Assembly debate* on 27 June 2018 (24th Sitting) (see [Doc. 14575](#), report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Ms Tineke Strik). *Text adopted by the Assembly* on 27 June 2018 (24th Sitting). See also [Recommendation 2136 \(2018\)](#).



5. Despite what might be termed as the success of the European Union's externalisation policies in contributing to a reduction in the number of migrants entering Europe, it has become clear that the involvement of third countries in migration management has compromised the rights of asylum seekers on many occasions. The member States should do more to ensure that these rights are defended and maintained, especially where this degradation is a direct consequence of measures decided in Europe. Europe is both morally and politically accountable.

6. The Assembly considers that migrants who have been, or will be, the subjects of asylum processing organised by the European Union outside its borders may find themselves in a "legal limbo" with regard to the guarantee of the fundamental rights stemming both from the United Nations 1951 Convention relating to the Status of Refugees and the European Convention on Human Rights. That is because the countries concerned may not have equivalent human rights standards or legal instances to uphold them, whereas asylum seekers face difficulties in holding the European Union or individual States responsible for possible human rights violations.

7. This difficulty in upholding rights is all the more serious as the people in question are more exposed to their denial: in extreme situations there is proof that migrants have been subjected to *refoulement*, torture and inhuman and degrading treatment and even slavery, as revealed in Libya; in others, they are consistently subjected to discrimination, arbitrary detention and lack of social protection and economic opportunities.

8. Externalisation policies have been introduced without due regard to the need to ensure that their implementation does not jeopardise human rights. In addition, there is a growing tendency to make development assistance conditional on countries' taking on migration procedures. For countries which by definition lack sufficient capacity to respond to the needs of their own populations, this amounts to creating more tensions and difficulties.

9. The Parliamentary Assembly therefore urges member States to:

9.1. work together to ensure that the growing focus on deterrence policies does not detract from European States' primary duty to respect and defend human rights globally and does not reduce resources devoted to development co-operation, which aims for the long-term reduction of poverty;

9.2. refrain from externalising migration control to countries in which legislation, policies and practice do not meet the standards of the European Convention on Human Rights and the United Nations Convention relating to the Status of Refugees, and where State agencies cannot effectively ensure the protection of these rights. To achieve this, human rights impact assessments at national and regional level should be carried out by States before entering into such co-operation;

9.3. introduce conditions in all agreements and arrangements concerning asylum management providing for human rights protection of migrants and asylum seekers, including:

9.3.1. standards for asylum seekers and refugees equivalent to the Convention relating to the Status of Refugees and its 1967 protocol;

9.3.2. respect for the standards of the European Convention on Human Rights, including the obligation of *non-refoulement* and an individual and meaningful assessment of asylum claims, the right to an effective remedy, freedom of movement (including the right to leave a country), human dignity and non-discrimination, as well as information and legal assistance;

9.3.3. safe and hygienic reception conditions and efficient and appropriate asylum application procedures which avoid arbitrary detention and allow possibilities for family reunion;

9.3.4. ensure that external co-operation on migration control and return policies is contingent on a system of independent monitoring which will ensure compliance with international human rights law and suspension of co-operation in the case of repeated human rights violations;

9.4. support the changes to the Dublin Regulation of the European Parliament and of the Council, on the basis of Assembly [Resolution 2072 \(2015\)](#) "After Dublin – the urgent need for a real European asylum system", and according to the proposals of the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament approved in November 2017, forsaking the country of first entry criterion and distributing asylum applicants among all member States under a permanent quota system, in accordance with Article 80 of the Treaty on the Functioning of the European Union.

10. In line with its [Resolution 2109 \(2016\)](#) and its [Resolution 2224 \(2018\)](#) on the humanitarian situation of refugees in the countries neighbouring Syria, the Assembly praises the efforts of the Government of Turkey to host (as at June 2018) 3.6 million Syrian refugees and large numbers of refugees and asylum seekers of other nationalities, and asks it to:

10.1. while acknowledging the Turkish efforts, ensure that the EU–Turkey Agreement is implemented in full respect of the human rights of all migrants, including irregular migrants and refugees;

10.2. while acknowledging the Turkish efforts, guarantee that asylum seekers have access to an effective asylum procedure respecting the *non-refoulement* principle and to proper reception provisions;

10.3. in order for Syrian refugees to be able to build a sustainable future, ensure their right to family reunification and all the rights provided by the Convention relating to the Status of Refugees, including effective access to education and in particular the means of earning a livelihood through effective access to the labour market, without losing the benefit of protection measures or possibilities of resettlement;

10.4. give Syrian refugees fleeing their country access to Turkey, and ensure that border control activities do not prevent them from claiming their right to protection;

10.5. while acknowledging the Turkish efforts, ensure that migrants, asylum seekers and refugees always have access to an effective remedy against deportation decisions, including suspensive effect and a full and *ex nunc* review, and that these fundamental rights are not affected by any measures taken under the state of emergency;

10.6. give full information to asylum seekers on their asylum and protection status possibilities and provide direct access to legal assistance at all stages of asylum procedures, including appeal against decisions, as well as psychological support.

11. The Assembly asks the Government of Italy to:

11.1. make any co-operation, both present and future, with the Libyan Coastguard dependent on respect for refugees' and migrants' fundamental rights, particularly by refraining from exposing them to situations in which they risk being subjected to severe ill-treatment, in accordance with its [Resolution 2174 \(2017\)](#) on human rights implications of the European response to transit migration across the Mediterranean;

11.2. in accordance with its [Resolution 2215 \(2018\)](#), delay the setting up of a new Maritime Rescue Co-ordination Centre in Libya until capacity building has ensured improved governance structures, to ensure adequate international human rights law training for the Libyan Coastguard, and to maintain and improve co-operation with non-governmental organisations (NGOs) carrying out search and rescue operations in the Mediterranean in accordance with international rules and agreements concluded by individual countries;

11.3. investigate fully the allegations of experts and international NGOs, such as Amnesty International, of returns to Libya of migrants picked up at sea in the Italian search and rescue zone, and of collusion between the Libyan coastguard and the human smugglers in the Mediterranean.

12. The Assembly further asks the European Union member States and institutions, in addition to putting in place all the safeguards to the externalisation of migration control described above, to:

12.1. make progress with the European Union's ratification of the European Convention on Human Rights in order to remove the legal void to allow appeals against the European Union's external policies;

12.2. step up the sharing of responsibilities, in the first instance by fulfilling their pledges to resettle 50 000 refugees (of whom only 4 252 had been transferred in May 2018), giving preference to the most vulnerable refugees;

12.3. in the context of the EU–Turkey Agreement, improve the flexibility of European Union programme implementation in order to provide more rapid and appropriate responses and fulfil the European Union's obligations entered into under the agreement;

12.4. substantially improve, broaden and sustain support to host countries and communities, particularly those affected by large movements of refugees, in order to provide protection, assistance and sustainable solutions for refugees. Such support should not depend on co-operation on return or border control. The European Union should give its full support to the draft global compact on refugees;

12.5. ensure that the European Union carries out thorough human rights impact assessments, in particular as regards compliance with the principle of *non-refoulement*, both in advance of agreements likely to have an impact on human rights and after such agreements have been put into operation. Assessments should include direct, indirect, intended and unintended effects on human rights;

12.6. recognise responsibility and enhance accountability for human rights violations in third countries if they result from formal or informal agreements on migration control between the European Union or its member States and those countries, and ensure that migrants affected by this co-operation have access to effective means of legal redress from European Union institutions and member States;

12.7. refrain from making funding for co-operation programmes to developing countries dependent on their acceptance of delegated migration control which should be the responsibility of European Union member States;

12.8. carry out stricter supervision of how funding for migration control is spent and ensure that a large proportion of expenditure is devoted to migrants' well-being and human rights during all procedures;

12.9. ensure greater transparency in reporting on the expenditure of funding from the European Union and establish more assessment and accountability mechanisms for the investments made in the context of the external dimension of European Union migration policies;

12.10. ensure that all co-operation arrangements with third countries on migration, whether formal or informal, including agreements of a political nature, are treated in a manner consistent with the principles and values set out in the international treaties and in the Charter of Fundamental Rights of the European Union;

12.11. in the context of the EU–Turkey Agreement, ensure that asylum seekers in Turkey have access to effective asylum procedures, that refugees can effectively enjoy all the rights under the Convention relating to the Status of Refugees, including access to the labour market, and that Syrian refugees are able to leave their country if necessary;

12.12. carry out a thorough human rights assessment of the EU–Turkey Agreement on a regular basis, in compliance with the European Union Ombudsman's January 2017 decision in the joint inquiry into complaints Nos. 506-509-674-784-927-1381/2016/MHZ against the European Commission concerning a human rights impact assessment in the context of the EU–Turkey Agreement "since the implementation of the Agreement reasonably and necessarily has an impact (a) on the human rights of migrants (direct or indirect) and (b) on the ability of the EU and the Member States involved to fulfil their human rights obligations". In order to carry out its responsibility, the European Union should ensure the possibility of legal redress for people affected by the agreement;

12.13. guarantee that the standards related to the safe third country concept in the forthcoming asylum procedures regulation are in line with international human rights law, by requiring that third countries fulfil all obligations under the European Convention on Human Rights and the Convention relating to the Status of Refugees, both in legislation and in practice, and that refugees have a meaningful connection with the third country concerned.