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# Extra-territorial processing of asylum claims and the creation of safe refugee shelters abroad

**Reply to Recommendation**[1]: Recommendation 2135 (2018)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2135 (2018) on "Extra-territorial processing of asylum claims and the creation of safe refugee shelters abroad". It has transmitted the recommendation to the Steering Committee for Human Rights (CDDH) and to the European Committee on Legal Co-operation (CDCJ) for information and possible comments.

2. The Committee of Ministers remains acutely aware of the dangers faced by migrants and refugees in their efforts to reach Europe, not least from human smugglers and traffickers. It also acknowledges the potential benefits, but also complexities, that extra-territorial processing of asylum claims can bring, even as an exceptional and limited way of granting protection. In this context, it has brought Resolution 2227 (2018) to the attention of member States.

3. With regard to paragraph 2.11 of Parliamentary Assembly Recommendation 2135 (2018), the Committee of Ministers recalls that the personal scope of the European Agreement on the Abolition of Visas for Refugees is limited to refugees who are resident in the territory of a contracting party and so, in principle, excludes persons who might be granted refugee status elsewhere and before becoming resident. It also does not apply to persons granted other forms of international protection.

4. The Committee of Ministers notes that before considering whether or not work should be undertaken to revise the European Agreement on the Abolition of Visas for Refugees, further analysis would be required in order to ascertain whether new international standards are required to address the issues raised by the Parliamentary Assembly, whether there is political support among member states to develop new standards, and if so what form they should take (e.g. revision of existing instruments or adoption of new instruments). Furthermore, it notes that the Convention in question pre-dates the European Union and has only been ratified by 23 member States, two of which have suspended its application. In the light of these considerations, the Committee of Ministers does not consider at present that there are any compelling reasons to modify the European Agreement on the Abolition of Visas for Refugees.

5. With regard to paragraphs 2.1.2 and 2.2 of the Recommendation, the Committee of Ministers would inform the Assembly that following the Secretary General's Report on the review of Council of Europe conventions and the Committee of Ministers' decisions of 10 April 2013, the Committee of Legal Advisers on Public International Law (CAHDI) carried out an assessment on the practical importance of the European Convention on Consular Functions (ETS No. 61). Following this work, the CAHDI concluded that Convention was of limited practical relevance and that States preferred to have recourse either to the Vienna Convention on Consular Relations (1963) which suited better for solving problems or eventually to bilateral agreements. It saw no necessity to draft amendments or additional protocols to supplement the Convention. In June 2016, the Committee of Ministers took note of the findings of the CAHDI[2] in this regard.

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1. Adopted at the 1330th meeting of the Ministers' Deputies (28 November 2018).
2. Cf CM(2016)56.

6. Finally the Committee of Ministers considers it relevant to recall the important work carried out by the Council of Europe regarding the issue of processing of asylum applications, whether through instruments adopted by the Committee of Ministers[3] or in co-operation with UNHCR, the European Union, civil society and other international actors.[4]

3. Recommendation N° R(94)5 of the Committee of Ministers to member States on guidelines to inspire practices of the member States of the Council of Europe concerning the arrival of asylum-seekers at European airports; Recommendation N° R(97)22 of the Committee of Ministers to member States containing Guidelines on the application of the safe third country concept; Recommendation N° 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; Recommendation N° R(99)12 of the Committee of Ministers to member States containing Guidelines on the return of rejected asylum-seekers; Twenty Guidelines on forced return; Guidelines on human rights protection in the context of accelerated asylum procedures.

4. See Memorandum of Understanding on Co-operation between the Secretariat General of the Council of Europe and the United Nations High Commissioner for Refugees signed in Geneva and Strasbourg on 4 October 1999; Summary Report on co-operation between the Council of Europe and the European Union presented at the 128th Session of the Committee of Ministers (Elsinore, 17-18 May 2018), Study Session: *Empowering Young Refugees* held in the European Youth Centre Strasbourg on 9-15 October 2017 by the NGO *Voices of Young Refugees in Europe.*