



Doc. 14774

05 December 2018

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

Reply to Recommendation¹: Recommendation 2136 (2018)
Committee of Ministers

1. The Committee of Ministers has closely examined Parliamentary Assembly [Recommendation 2136 \(2018\)](#) on “Human rights impact of the “external dimension” of European Union asylum and migration policy: out of sight, out of rights?” It transmitted the Recommendation to the Steering Committee for Human Rights (CDDH) for comments.

2. The Committee of Ministers fully concurs with the Parliamentary Assembly that co-operation between member States and third countries must be conducted in the light of the requirements of the European Convention on Human Rights. It recalls that the European Court of Human Rights has already indicated that acts of Contracting States which are performed or have effects outside their territory may constitute an exercise of their jurisdiction within the meaning of Article 1 of the Convention.²

3. The Committee of Ministers takes note of the Assembly's suggestion to draw up draft guidelines on external co-operation with third countries in the field of migration to ensure that such co-operation is implemented in accordance with, *inter alia*, the European Convention on Human Rights and the 1951 Geneva Convention relating to the Status of Refugees. It will bear this proposal in mind. The Committee of Ministers also notes that the Special Representative of the Secretary General on Migration and Refugees pays attention to issues regarding co-operation of Council of Europe member states with third countries underscoring questions that some co-operation practices raise with regard to the right to seek asylum and the respect for the principle of non-*refoulement* as well as the need for exercising human rights due diligence in the context of such co-operation.

4. The Committee of Ministers would underline that member States retain their human rights responsibilities in the context of their co-operation with third countries whether or not such co-operation takes place within the context of European Union policies. In this respect, the Assembly has rightly drawn attention to the importance of assessing the human rights impact of such co-operation through ensuring transparency and mainstreaming of human rights principles in all co-operation agreements and arrangements with third countries, which does not necessitate interference with European Union policy.

5. The Committee of Ministers would also draw attention to the position of the Council of Europe Commissioner for Human Rights, Ms Dunja Mijatović, that “any external migration co-operation must be transparent and accountable. This includes the proposed regional disembarkation platforms. European states must carry out and publish a thorough analysis of any such proposals, looking at their potential impact on the rights of migrants, asylum seekers and refugees, and if necessary they should explicitly set out which measures they will take to avoid adverse impact.”³ The Commissioner has also underlined in this regard the important role for independent monitoring of such options, for transparency of that monitoring and the possibility that monitoring outcomes affect decisions on whether to continue externalisation activities.

1. Adopted at the 1330th meeting of the Ministers' Deputies (28 November 2018).

2. See *Hirsi Jamaa and Others v. Italy* (n° 27765/09), (§§71-73), Grand Chamber judgment of 23 February 2012 and previous case-law.



6. Finally, in respect of paragraph 5.3. of the Assembly's Recommendation, the Committee of Ministers would like to recall the exchange of letters of June and September 2018 between the Secretary General of the Council of Europe and the President of the European Commission on a possible resumption of the negotiations for the accession of the European Union to the Convention. The Committee of Ministers will continue to follow closely developments in this regard.

3. <https://www.coe.int/en/web/commissioner/-/european-states-must-put-human-rights-at-the-centre-of-their-migration-policies>