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Pushback policies and practice in Council of Europe member States

Reply to Recommendation[1]: Recommendation 2161 (2019)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly Recommendation 2161 (2019) on "Pushback policies and practice in Council of Europe member States". It has forwarded it to the Steering Committee for Human Rights (CDDH) and the European Committee on Legal Co-operation (CDCJ) for information and possible comments.

2. The Committee of Ministers welcomes the Parliamentary Assembly's continued attention to migrants and asylum seekers and refers to its previous replies to a number of related recommendations.[2] The Committee agrees with the Assembly that pushback practices raise serious issues regarding respect for the human rights of asylum seekers and refugees and invites the member States to give due consideration to the various recommendations put forward in Recommendation 2161 (2019). It reiterates that the protection afforded by the European Convention on Human Rights extends to all persons placed under the jurisdiction of a State Party and that Article 4 of Protocol No. 4 prohibits collective expulsions of foreigners. The Committee calls on the member States to fully comply with the judgments of the European Court of Human Rights and to implement the interim measures indicated by it.

3. The Committee of Ministers stresses that the right to seek asylum must be respected. In this connection it recalls the Guidelines on human rights protection in the context of accelerated asylum procedures, which it adopted in July 2009. These guidelines establish a framework of minimum procedural safeguards which must be granted to asylum seekers. In particular, they emphasise that "asylum seekers have the right to an individual and fair examination of their applications by the competent authorities" (guideline II, §2). They also reiterate the obligation of the State receiving the asylum application to "ensure that return of the asylum seeker to his/her country of origin or any other country will not expose him/her to a real risk of the death penalty, torture or inhuman or degrading treatment or punishment, persecution, or serious violation of other fundamental rights which would, under international or national law, justify granting protection"(guideline VII). The Committee of Ministers reiterates its invitation to the member States to ensure that the guidelines are widely disseminated among all national authorities involved in the implementation of the various stages of accelerated procedures, including those responsible for the return of aliens.

4. With regard to paragraph 4.4 of the recommendation, the Committee of Ministers acknowledges the important role of national and international non-governmental organisations in assisting migrants and asylum-seekers. It also underlines the important role in preventing pushbacks played by National Human Rights Institutions and by National Preventive Mechanisms under the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

5. Migration issues have been discussed by the Ministers' Deputies. The Committee of Ministers recalls that the Commissioner for Human Rights has addressed the issue of pushbacks calling for laws and regulations that specifically prohibit practices that would lead to collective expulsions or refoulement and for

1. Adopted at the 1367th meeting of the Ministers' Deputies (12 February 2020).
2. See, *inter alia*, CM/AS(2013)Rec2016-final, CM/AS(2014)Rec2028-final, CM/AS(2017)Rec2108-2109-final.

investigations of any allegations that such pushbacks occur. In June 2019, the Deputies had an exchange of views with the Commissioner for Human Rights, during which she presented her Recommendation "Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean", which addresses in detail the issue of collective expulsions and refoulement of migrants at sea. The Commissioner has also repeatedly addressed the issue of solidarity within the European Union with regard to the sharing of responsibility for the reception and processing of migrants and asylum seekers and in providing for their relocation as appropriate. In addition, the new Special Representative of the Secretary General on migration and refugees started his mandate in January 2020 and his task is to promote the human rights standards of the Organisation in his interactions with member States as well as with the relevant international organisations and bodies in respect of activities or legislative processes conducted by them.

6. Finally, the Committee of Ministers recalls the need to continue shared efforts in addressing the challenges arising from global migration, based on a balance of responsibility and on solidarity. It also wishes to point out that, while continuously promoting compliance with the human rights standards of the Organisation in respect of migration-related activities in its member States, it strives to focus its efforts on the priority areas lying within its competence, where it can provide real added value. Accordingly, there will be work in the next biennium on different topics relating to migration and in particular the situation of migrant women and children.