Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
75
1949 - 2024
CONSEIL DE L'EUROPE

Resolution 2555 (2024)[1]

Ensuring human rights-compliant asylum procedures

Parliamentary Assembly

1. The Parliamentary Assembly recalls and aligns with the position of the Office of the United Nations High Commissioner for Refugees (UNHCR) whereby the definition of "refugee" is declaratory, which means that a person is a refugee as soon as he or she fulfils the criteria contained in the definition and that the principles foreseen by international refugee law must apply in all situations.

2. Article 3 of the European Convention on Human Rights (ETS No. 5, the Convention) and Article 4 of its Protocol No. 4 (ETS No. 46) commit member States to making sure that they will not expose, directly or indirectly, anyone falling under their jurisdiction to a risk of torture, or inhumane or degrading treatment. Only through a fair and effective individual examination of an asylum application can such an obligation be met, taking into account specific vulnerabilities faced by persons belonging to certain groups such as women, ethnic, religious and national minorities, lesbian, gay, bisexual, transgender and intersex (LGBTI) people, victims of violence and victims of human trafficking. In the case of an appeal, the remedy must be accompanied by an automatic suspensive effect on expulsion measures should the applicant complain of a risk under Article 2 or 3 of the Convention. These safeguards are required for the appeal to be considered effective and in compliance with Article 13 of the Convention, as well as with the consistent case law of the European Court of Human Rights (the Court).

3. The Assembly expresses its profound concern at the gradual erosion of the right to seek asylum as a reaction to the growing number of asylum applications in Europe, as well as at the instrumentalisation and exaggeration of the phenomenon of incoming migration, orchestrated for domestic political purposes or by certain external regimes as a means of exerting pressure on European countries for other purposes. It warns against this trend which, on the one hand, infringes on international human rights law and European law, and which thus eventually weakens the core principles of the rule of law, and, on the other hand, leads to chaos and human suffering.

4. The Assembly reiterates the concerns already expressed in Resolution 2404 (2021) "Instrumentalised migration pressure on the borders of Latvia, Lithuania and Poland with Belarus", in which it condemned "the growing tendency to restrict the right to seek asylum of persons crossing a border irregularly and any practice by member States of *refoulements* of migrants and asylum seekers to third countries, where international protection needs may not be guaranteed".

5. The Assembly recalls the reply by the Committee of Ministers to Recommendation 2161 (2019) "Pushback policies and practice in Council of Europe member States", in which the Committee of Ministers noted "that the right to seek asylum must be respected" and, in particular, that "asylum seekers have the right to an individual and fair examination of their applications by the competent authorities" (Doc. 15088).

6. The Assembly highlights that asylum seekers may not be able to avail themselves of their right to seek asylum because of restrictions or even blocking of access, disproportionally strict eligibility criteria or wide derogation rules, insufficient capacity and resources to process cases, or dire reception conditions. It underlines that policies of deterrence have neither demonstrated their effectiveness in enhancing domestic security nor in strengthening the protection of civil liberties. Therefore, the Assembly calls on member States to avoid resorting to such policies.

---

1. *Assembly debate* on 25 June 2024 (18th sitting) (see Doc. 15997, report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Ms Stephanie Krisper). *Text adopted by the Assembly* on 25 June 2024 (18th sitting).

7. The Assembly notes that asylum seekers belonging to vulnerable groups, particularly women, ethnic, religious and national minorities, LGBTI people, victims of violence and victims of human trafficking, are disproportionately affected by human rights violations at all stages of the asylum process, both by the action and inaction of relevant State representatives. The Assembly calls on member States to develop policies in accordance with their human rights obligations, which take account of specific vulnerabilities of the aforementioned persons.

8. The Assembly encourages member States to set up accelerated procedures only if in full compliance with human rights standards, making use of already existing procedures such as the *prima facie* procedure. The Assembly reiterates the imperative to ensure that accelerated procedures do not result in lowering procedural safeguards, in accordance with the Court's case law. It recalls the commitments by the Committee of Ministers to ensure access to justice for asylum seekers, pursuant to Resolution No. 1 on access to justice for migrants and asylum seekers, adopted at the 28th Conference of European Ministers of Justice (25 and 26 October 2007) and to the Guidelines on human rights protection in the context of accelerated asylum procedures (2009).

9. The Assembly reiterates that access to legal aid must be guaranteed. It encourages national parliaments to guarantee the professional independence of legal aid providers and ensure their high level of competence, in line with the *Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law*.

10. The Assembly recalls its Resolution 2461 (2022) and Recommendation 2238 (2022) "Safe third countries for asylum seekers", and welcomes the reply of the Committee of Ministers (Doc. 15874) informing the Assembly of its readiness to evaluate the need for and feasibility of updating Recommendation No. R (97) 22 containing guidelines on the application of the safe third-country concept. The Assembly is therefore looking forward to the results of this evaluation and the updated guidelines on the safe third-country concept.

11. The Assembly calls on national parliaments to review the alignment of national legislation with the case law of the Court and with the above-mentioned documents adopted by the Committee of Ministers.

12. The Assembly calls on parliaments and governments of member States to significantly increase the availability of the resources necessary for the processing of asylum claims in a fast, fair and effective manner, especially at the border, including through proper access to legal aid and an effective remedy.

13. The Assembly notes the adoption of the European Union Pact on Migration and Asylum (the Pact). It recalls its Resolution 2416 (2022) "European Union Pact on Migration and Asylum: a human rights perspective" and the continuing validity of the recommendations contained in it. In particular, the Assembly:

13.1. reiterates its deep concern at the prospect of detention and *de facto* detention being systematised, especially in the context of the newly established border procedures. It expresses its uncompromising opposition to the detention of children, whatever their age, and recalls that asylum seekers are not immigration detainees;

13.2. stresses the importance of providing sufficient human, infrastructural and technical resources at an early stage to ensure that member States can deliver on their international human rights obligations to guarantee effective access to the territory of asylum and to a fair and swift asylum procedure for all individuals throughout the territory of the European Union;

13.3. welcomes the initiative of establishing human rights border monitoring mechanisms and underlines that these mechanisms should be effective, independent and work in co-ordination with the Council of Europe's monitoring bodies, notably those referred to in paragraph 15.2, and with the UNHCR. These mechanisms should also take into consideration the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles), adopted by the European Commission for Democracy through Law (Venice Commission) in 2019, and be in line with the recommendations of the European Union Agency for Fundamental Rights on Establishing national independent mechanisms to monitor fundamental rights compliance at EU external borders, published in 2022;

13.4. welcomes the adoption of the Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, at European Union external and internal borders; and recommends that the Schengen evaluators are trained in the identification of people in need of international protection, in line with Council of Europe standards and recommendations;

13.5. encourages the European Commission to ensure that the allocation of European Union funding is conditional on specific fundamental rights clauses. In particular, the Assembly underlines the importance of imposing such conditions when accessing European Union funding during preliminary, mid-term and retrospective evaluations. It recommends that such conditions involve criteria for assessing compliance with effective access to procedural safeguards during asylum procedures as part of the "enabling conditions" pursuant to Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy.

14. The Assembly notes that the adoption of the European Union Pact will lead to a two-year period for evaluation of the situation in European Union member States with respect to the implementation of the new legislation in place. It also notes that the Pact includes components which involve external co-operation elements which will have an impact on non-European Union member States, many of which are members or partners of the Council of Europe.

15. With a view to ensuring coherence in the practical implementation of effective human rights safeguards to guide the approach of member States of the Council of Europe, including European Union member States, the Assembly:

15.1. encourages the European Commission and European Union member States to make explicit reference to the Council of Europe's relevant standards and documents, including country reports and the relevant case law of the Court, both in their gap analyses and in the follow-up and assessment documents produced in the framework of the European Union Pact;

15.2. stresses that particular attention should be paid to the preventive mechanisms and monitoring tools falling under the remit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Group of Experts on Action against Trafficking in Human Beings (GRETA), the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108);

15.3. calls on the above-mentioned monitoring bodies to pay specific attention to vulnerable persons with a migration background, including persons in need of international protection, as part of their monitoring activities;

15.4. invites the Special Representative of the Secretary General on Migration and Refugees (SRSG) to facilitate intergovernmental discussions, for instance through the Network of Focal Points on Migration, to design operational guidelines allowing for the practical implementation of the European Union Pact according to Council of Europe standards, including with regard to aspects involving non-European Union member States, such as external co-operation on asylum and the use of the safe country concept during asylum procedures.

16. The Assembly is convinced that the accession of the European Union to the European Convention on Human Rights will strengthen the regional approach to human rights. In this prospect, the Assembly takes note of the already fruitful co-operation between the European Union and the Council of Europe in the field of asylum and:

16.1. welcomes the reference made to the Venice Principles to guide the mandatory national monitoring mechanism to be established as part of the Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817;

16.2. invites member States of the Council of Europe represented in the management board of the European Union Agency for Asylum (EUAA) to promote operational guidelines with a view to ensuring coherence in the approach to and application of asylum procedures at European Union and Council of Europe levels;

16.3. invites the SRSG to contribute to enhancing such coherence as representative of the Council of Europe at the EUAA Consultative Forum.