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

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

Recommendation 2283 (2024)[1]

A shared European approach to address migrant smuggling

Parliamentary Assembly

1. The Parliamentary Assembly refers to its Resolution 2568 (2024) "A shared European approach to address migrant smuggling" and to the Reykjavik Declaration, adopted on 16 and 17 May 2023 at the 4th Summit of Heads of State and Government of the Council of Europe, and the commitment by member States to fight against the trafficking and smuggling of migrants through international co-operation "while continuing to protect the victims and respect the human rights of migrants and refugees, as well as supporting frontline States, within the existing Council of Europe frameworks".

2. The Assembly welcomes the decision by the Committee of Ministers to entrust the European Committee on Crime Problems (CDPC) with an additional task in accordance with its terms of reference for 2024-2027 to be implemented until the end of 2024, namely "within the existing Council of Europe frameworks, consider and explore concrete ways to improve international co-operation in fighting the smuggling of migrants, thereby also considering the protection from aggravated instances of migrant smuggling, with full respect for their human rights and taking into account the relevant legal framework, and prepare a report assessing the need for and feasibility of a possible instrument in this field" (CDPC(2023)09).

3. The Assembly recommends that an instrument on the smuggling of migrants be prepared and adopted by the Committee of Ministers, which will ensure as much consistency as possible in the understanding and interpretation of this crime, and which:

3.1. endorses the definition contained in Article 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, which explicitly restricts this definition to "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident";

3.2. recalls that the "procurement" of illegal entry is not tantamount to crossing a border irregularly and that the crime of migrant smuggling necessarily implies that the smuggler is making a material or non-material profit;

3.3. expressly states that migrants are not the perpetrators of the crime of smuggling and that reducing or waiving the smuggling fee in return for facilitating the unauthorised crossing of a border should not be considered as a criminal act committed by the smuggled migrant if this was done under coercion or threat, or if they are found to be in need of a form of protection (refugee, person in need of humanitarian protection, person at risk of being a victim of trafficking or victim of trafficking);

3.4. clarifies that people in need of protection should not be criminalised or administratively sanctioned for crossing a border unauthorised pursuant to Article 31 of the United Nations Convention relating to the Status of Refugees and pursuant to Article 26 of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197);

3.5. explicitly exempts humanitarian assistance and any support to migrants in accessing their fundamental rights from any form of criminal liability, when such acts are conducted without seeking any financial or material benefit;

---

1. *Assembly debate* on 1 October 2024 (27th sitting) (see Doc. 16032, report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Lord Simon Russell). *Text adopted by the Assembly* on 1 October 2024 (27th sitting).

3.6. clarifies that member States which have ratified the International Covenant on Civil and Political Rights and Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first protocol thereto (ETS No. 46) are legally bound by the obligation to protect and safeguard the right to leave any country, including one's own, and that restrictions on such fundamental right should always be lawful and proportionate, in line with the conditions enounced in Article 2 of this protocol.

4. The Assembly considers that the mandate, expertise, tools, experience and geographical scope of the Council of Europe justify the Organisation's leading role in helping member States to define a shared European approach to the smuggling of migrants. It strongly encourages the Committee of Ministers to ensure that any discussions on an instrument relating to migrant smuggling that involves the European Union enhance co-ordination and ensure the alignment of legislation and policies with Council of Europe standards and international human rights law.