Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1933 (2013)[1]
Final version

Management of mixed migration and asylum challenges beyond the European Union's eastern border

Parliamentary Assembly

1. The mixed flow of migrants, asylum seekers and refugees increasingly takes place in the countries beyond the European Union's eastern border. As routes of irregular migration, smuggling and trafficking are closed down, new ones open up, testing borders and the capacity of States to deal with these flows.

2. Turkey is the country beyond the eastern border of the European Union that is currently under the most pressure. This is not simply because of the influx of refugees from Syria, but because Turkey is seen as a stepping stone for refugees and migrants from Asia and Africa to enter into Greece and from there into other European Union member States. Turkey is not, however, alone in this, as countries in the Balkans are seeing a growth in mixed migration flows, which are also affecting Ukraine, the Republic of Moldova and Russia.

3. The European Union and its member States have a direct interest in keeping these mixed migration flows out of the European Union and returning persons who have entered the European Union without authorisation to the countries from which they have come. At the same time, they are responsible for respecting their obligations under international law.

4. The countries beyond the external borders of the European Union are increasingly in the position of having to take responsibility for persons who want to enter the European Union but cannot. They are thus becoming not only countries of transit but also *de facto* countries of destination.

5. While it is clear that the European Union is taking steps to help these countries to deal with these mixed flows, some, if not most, of the countries are not in a position to cope. Evidence of this comes from the countries themselves, which have launched appeals for assistance. Furthermore, institutions such as the United Nations High Commissioner for Refugees (UNHCR) and the European Court of Human Rights have indicated on various occasions that it is not safe to send certain persons back to these countries.

6. Many people sent back to these countries are returned using readmission agreements negotiated between the European Union and the countries concerned. The problems in using these agreements have been highlighted by the Parliamentary Assembly in its Resolution 1741 (2010) on readmission agreements: a mechanism for returning irregular migrants. There are particular concerns about provisions that require readmitting countries to take back not only their own nationals, but also third-country nationals.

7. The Assembly recognises that the European Union and its member States have a right to control their borders. However, the burden and responsibility for dealing with these mixed migratory flows, primarily destined for the European Union, should not be shifted to neighbouring countries. On the one hand, it is a question of fairness as the problem stems from the European Union itself being the magnet for these mixed flows. On the other hand, it is a question of commitment to protection of human rights at an international level. The countries that deal with the consequences of closed EU borders must be in a position to guarantee the rights of those entering their territory or being returned to their territory.

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1. *Assembly debate* on 25 April 2013 (17th Sitting) (see Doc. 13163, report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Mr Rigoni). *Text adopted by the Assembly* on 25 April 2013 (17th Sitting).

8. The Assembly therefore considers that much more needs to be done in the spirit of international co-operation and burden sharing by the European Union and its member States to assist the countries beyond their eastern borders to deal with these migratory pressures and to make sure that persons involved in these mixed flows are treated humanely and that their human rights and international protection needs, including the right to asylum, are respected.

9. The Assembly therefore calls on the European Union and its member States to:

9.1. increase substantially support to their eastern neighbours, to:

9.1.1. provide countries beyond the European Union's eastern borders with concrete assistance programmes with regard to burden-sharing responsibilities, including financial and cost-sharing schemes;

9.1.2. ensure that all necessary steps are taken to guarantee the rights of those with international protection needs, including the right to asylum, which is also protected in the Charter of Fundamental Rights of the European Union;

9.1.3. provide adequate reception facilities for mixed flows of migrants, asylum seekers and refugees, and where migrants or asylum seekers are detained in line with international standards, and where alternatives to detention are not possible, ensure that detention facilities comply with human rights and humanitarian standards;

9.2. respect their obligations under international law, including most importantly the principle of *non-refoulement*, which also applies at borders and prohibits indirect *refoulement*; and refrain from returning third-country nationals when it is clear that the readmitting countries either cannot cope or cannot guarantee fundamental rights. Furthermore, readmission agreements should be revised to ensure that they:

9.2.1. contain adequate safeguards to guarantee returned asylum seekers effective access to the asylum procedure;

9.2.2. contain suspension clauses to be activated in case of persistent violations of human rights in the countries concerned;

9.2.3. regulate what happens at borders, guarding against automatic or semi-automatic returns without a proper examination of an individual’s situation;

9.2.4. provide for adequate monitoring of the application of the agreements and the situation of persons following their return.

10. The Assembly calls on countries beyond the European Union’s eastern border to:

10.1. enhance intra-regional and cross-regional co-operation and develop comprehensive and protection sensitive strategies to address mixed flows, based on the UNHCR’s 10 Point Plan of Action on Refugee Protection and Mixed Migration;

10.2. improve their capacity to deal with asylum claims, in particular by:

10.2.1. putting in place fair and effective asylum systems accessible to asylum seekers;

10.2.2. strengthening their structures and human resources for dealing with asylum claims and providing training for those involved in the asylum process;

10.2.3. enhancing the capacity of border guards to identify refugees and persons with specific needs and referring them to competent authorities for appropriate follow-up;

10.2.4. ensuring that persons with international protection needs obtain legal advice and assistance, particularly when held in detention;

10.2.5. paying attention to asylum seekers with specific needs;

10.2.6. training judges on relevant international standards relating to asylum and international protection;

10.2.7. guaranteeing the quality and consistency of asylum decisions in line with Parliamentary Assembly Resolution 1695 (2009) on improving the quality and consistency of asylum decisions in the Council of Europe member States;

10.2.8. complying with all judgments and interim measures indicated by the European Court of Human Rights;

10.2.9. improving their capacity to ensure that minimum social rights, such as means of subsistence, free health services and accommodation, are provided;

10.2.10. increasing reception capacities and ensuring that reception centres for asylum seekers comply with international standards;

10.2.11. ensuring that asylum seekers are made aware of the dangers of traffickers and smugglers who may try to make contact with them;

10.3. improve their capacity to deal with the reception and detention of irregular migrants, notably by:

10.3.1. limiting the use of detention and the periods for which it is authorised, and looking for alternatives to detention;

10.3.2. transferring the management of detention centres away from the police or the military to authorities better able to cope with persons who have not committed any crimes;

10.3.3. ensuring access to asylum, the ability to challenge detention, and other legal rights with regard to detention;

10.3.4. refraining from detaining children and other persons with specific needs, keeping in mind that unaccompanied and/or separated children should never be detained;

10.3.5. guaranteeing detainees access to lawyers and members of their family, and also guaranteeing them access to health care;

10.3.6. opening places of detention up to monitoring by national and international bodies for the sake of transparency, and ensuring that parliamentarians are given the right to visit places of detention and are encouraged to use this right;

10.3.7. ensuring that sub-standard detention facilities are closed down and that they use only centres that can guarantee humane conditions of detention with access to health care, adequate activities, etc.