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Extra-territorial processing of asylum claims and the creation of safe refugee shelters abroad

Committee Opinion[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Egidijus VAREIKIS, Lithuania, Group of the European People's Party

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Committee on Migration, Refugees and Displaced Persons on his report and broadly supports the proposed draft resolution and recommendation. It considers that the draft resolution could be further strengthened by clarifying certain expressions.

2. The committee therefore proposes four amendments to the draft resolution.

B. Proposed amendments

Amendment A (to the draft resolution)

In paragraph 4, replace the words "should apply for refugee status in the first safe country of arrival" with the following words:

> *"may be expected to apply for refugee status in the first safe country of arrival, provided that country can guarantee effective protection in accordance with international standards,"*

Amendment B (to the draft resolution)

In paragraph 6, replace the words "Referring to the Guidelines on human rights protection in the context of accelerated asylum procedures adopted by the Committee of Ministers on 1 July 2009, the Assembly recalls that" with the following words:

> *"The Assembly recalls that under international law, including relevant provisions of the European Convention on Human Rights, the United Nations 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and customary international law,"*

Amendment C (to the draft resolution)

In paragraph 9, after the words "refugee status determination", insert the words "and prompt access to effective protection".

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1. Reference to committee: Doc. 14314, Reference 4305 of 30 June 2017. Reporting committee: Committee on Migration, Refugees and Displaced Persons. See Doc. 14571. Opinion approved by the committee on 26 June 2018.

Amendment D (to the draft resolution)

In paragraph 14, delete the words “and the International Organization for Migration (IOM)”.

C. Explanatory memorandum by Mr Egidijus Vareikis, rapporteur

1. I congratulate the rapporteur of the Committee on Migration, Refugees and Displaced persons, Mr Domagoj Hajduković, on his report, which takes a principled yet pragmatic approach to an issue of particular legal complexity and political sensitivity. The mass arrivals of asylum seekers and migrants in Europe in recent years have been a source of acute political distress and require new ways of thinking about the application of existing legal standards. Mr Hajduković’s report represents a welcome contribution to this debate.

2. The fundamental legal issues at stake are the right to seek and enjoy asylum, the prohibition on torture and inhuman or degrading treatment and punishment and the related prohibition on *refoulement*. All Council of Europe member States are obliged to respect these important provisions of international law, including the interpretation given to them by the European Court of Human Rights insofar as they are contained in provisions of the European Convention on Human Rights (ETS No. 5). The draft resolution presented by the Committee on Migration, Refugees and Displaced Persons properly restates this obligation.

3. Whilst a person seeking international protection has a right to be admitted to a State’s territory in order to pursue a claim for such protection, that State may reject the claim where the person concerned could reasonably have sought protection in a third country prior to their arrival in the country of destination and may be safely returned to that third country. It is of fundamental importance, however, that this possibility is applied in accordance with strict legal and procedural safeguards, so as to ensure that the purportedly safe third country is indeed capable of providing access to effective protection in practice.

4. In principle, this may also allow for the possibility of asylum seekers’ claims being received and processed by the authorities of a prospective country of asylum from within a safe third country. This should not, however, take place in such a way that refugees and asylum seekers are forced to submit to unacceptable conditions in a third country whilst the authorities of the prospective country of asylum determine their refugee status.

5. In order to ensure that these principles and safeguards are fully reflected in the draft resolution, I would propose four amendments.

1. Amendment A (to the draft resolution)

Explanatory note

The rejection of an asylum application and removal of the applicant to a third country on procedural grounds is inherently risky. Although the current text uses the adjective “safe”, it would be strengthened by clarifying what that means, with a greater emphasis on the essential conditions and safeguards.

2. Amendment B (to the draft resolution)

Explanatory note

It would be more accurate to state that this requirement is based on specific, binding provisions of international treaty and customary law, rather than on the Committee of Ministers’ Guidelines, which are a non-binding instrument.

3. Amendment C (to the draft resolution)

Explanatory note

Provision for legal determination of refugee status alone is not enough to establish any sort of expectation that refugees could or should seek asylum in countries closer to home. Status determination must be accompanied by prompt access to effective protection for those who are found to be entitled to it.

4. Amendment D (to the draft resolution)

Explanatory note

The International Organisation for Migration (IOM) does not play a role in either registration or status determination of refugees; its sphere of activity is different. Also, since 2016, the IOM has been part of the United Nations organisation; it should not be encouraged to duplicate work already done by another United Nations organ (i.e. the Office of the United Nations High Commissioner for Refugees (UNHCR), which was created for this purpose).