



Doc. 15592 – Compendium of written amendments
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(Final version)

Safe third countries for asylum seekers

Contents	Page
A. Draft Resolution	2
B. Draft Recommendation	5

A. Draft Resolution

1. Recalling the right to apply for and seek asylum under the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention) and, for member States of the European Union, under Article 18 of the European Union Charter of Fundamental Rights, the Parliamentary Assembly notes with concern a tendency of returning asylum seekers to third countries without clarity on the safety of the respective third country.

2. The Assembly emphasises that Article 31, paragraph 1 of the 1951 Refugee Convention, stipulates only that penalties shall not be imposed on account of an illegal entry or presence of refugees or asylum seekers who came directly from a territory where their life or freedom was threatened. Hence, asylum seekers are not required to apply for protection in the first safe country of arrival and cannot be penalised for not doing so.

3. Referring to Conclusion No. 58 (XL) of the Executive Committee of the United Nations High Commissioner's Programme, the Assembly recognises the importance of clarifying the legal situation and protection of refugees and asylum seekers, who move in an irregular manner from countries in which they have already found protection, in order to seek asylum or permanent resettlement elsewhere.

4. Whereas it is important for asylum seekers and member States alike to clarify in a timely manner which State is responsible for processing an asylum application, the Assembly is aware that the safe third country principle under Article 33 of the recast Asylum Procedures Directive of the European Union, according to which a EU member State can declare inadmissible an application for international protection if a country which is not a member State is considered as a safe third country for the applicant, does not apply among non-member States.

Amendment 1

Tabled by Mr Pierre-Alain FRIDEZ, Ms Margreet De BOER, Mr Eerik-Niiles KROSS, Mr Sergiy VLASENKO, Mr Stefan SCHENNACH

In the draft resolution, paragraph 1, after the words "a tendency of returning" add the following words:

"or transferring".

Amendment 2

Tabled by Mr Pierre-Alain FRIDEZ, Ms Margreet De BOER, Mr Eerik-Niiles KROSS, Mr Sergiy VLASENKO, Mr Stefan SCHENNACH

In the draft resolution, paragraph 1, at the end of the sentence, add the following words:

"the legality of the return, and the existence and availability of certain objective protection standards."

Amendment 3

Tabled by Mr Pierre-Alain FRIDEZ, Ms Margreet De BOER, Mr Eerik-Niiles KROSS, Mr Sergiy VLASENKO, Mr Stefan SCHENNACH

In the draft resolution, paragraph 2, after the first sentence, add the following sentence:

"Effectively depriving asylum seekers of access to fair and efficient asylum determination and treatment in line with international standards is not permissible as it may expose them to risk of refoulement and other rights violations."

This situation may cause legal uncertainty to the detriment of asylum seekers.

5. The Assembly recalls Recommendation No. R (97) 22 of the Committee of Ministers of the Council of Europe to member States which contains Guidelines on the Application of the Safe Third Country Concept and enumerates criteria to assess whether a country can be considered as safe, among others "observance by the third country of international human rights standards relevant to asylum as established in universal and regional instruments" and "the third country will provide effective protection against refoulement and the possibility to seek and enjoy asylum". Since adoption of the Recommendation, there have been many legal developments.
6. Welcoming the relevant jurisprudence of the Court of Justice of the European Union (No. C-564/18, Nos. C-924/19 and C-925/19), the Assembly reaffirms that the return of an asylum seeker to a safe third country requires a connection to that country beyond the mere transit by the person concerned.
7. Welcoming the relevant jurisprudence of the European Court of Human Rights in the cases Ilias and Ahmed v. Hungary (No. 47287/15), M.K. and Others v. Poland (Nos. 40503/17, 42902/17 and 43643/17) and M.S.S. v. Belgium and Greece (No. 30696/09), the Assembly emphasises that competent authorities in member States must analyse, before returning or expelling an asylum seeker to a third country, whether this person would have access to an asylum procedure in the country concerned without being exposed to the risk of inhuman and degrading treatment or torture in violation of Article 3 of the European Convention on Human Rights (ETS N° 5).
8. Welcoming the work of the European Union Agency for Asylum towards a co-ordinated approach within the European Union to evaluate the safety of third countries, the Assembly believes that co-ordinated efforts should also be taken at the level of the Council of Europe. Therefore, building on this work and taking into consideration the recent jurisprudence of the European

Amendment 4

Tabled by Mr Pierre-Alain FRIDEZ, Ms Margreet De BOER, Mr Eerik-Niiles KROSS, Mr Sergiy VLASENKO, Mr Stefan SCHENNACH

In the draft resolution, paragraph 7, after the words "whether this person would have" add the following word:

"proper".

Amendment 5

Tabled by Mr Pierre-Alain FRIDEZ, Ms Margreet De BOER, Mr Eerik-Niiles KROSS, Mr Sergiy VLASENKO, Mr Stefan SCHENNACH

In the draft resolution, paragraph 7, after the words "access to an" add the following word:

"effective".

Amendment 6

Tabled by Mr Pierre-Alain FRIDEZ, Ms Margreet De BOER, Mr Eerik-Niiles KROSS, Mr Sergiy VLASENKO, Mr Stefan SCHENNACH

In the draft resolution, at the end of paragraph 7, add the following words:

"or of being subjected to chain-refoulement"

Court of Human Rights, the Assembly encourages the development of new and up-to-date criteria at the Council of Europe level to assess the safety of third countries.

9. The Assembly also emphasises that no absolute presumption of safety can be made, as the situation in a safe country can deteriorate to a standard that renders the country in question unsafe. In this respect, the European Court of Human Rights clarified in *M.S.S. v. Belgium and Greece* ([GC], No. 30696/09) that applicants must be able to challenge the presumption that a country is safe in his or her particular circumstances without bearing the entire burden of proof. In the Chamber judgement *Ilias and Ahmed v. Hungary* (No. 47287/15), the Court stated that the burden of proof must not, in light of Article 13 of the European Convention on Human Rights, be reversed to the applicants' detriment. Therefore, referring to considerations of the European Court of Human Rights, the Assembly encourages the development of procedural requirements at the Council of Europe level for the asylum seeker to have a fair possibility to rebut the presumption of safety.
10. The Assembly recognises that the monitoring of safe third country decisions is essential to improve member States' practice and to strengthen the rights of asylum seekers and refugees. Therefore, the Assembly encourages member States to establish objective and independent monitoring mechanisms to monitor national law and practice in this regard.
11. Recalling Resolution 2409 (2021) "Voluntary relocation of migrants in need of humanitarian protection and voluntary resettlement of refugees", the Assembly welcomes the current discussion on relocation and resettlement of asylum seekers between European Union member States and beyond, while encouraging member States to undertake further efforts in this regard. Such engagement would prioritise solidarity over the recourse to the safe third country concept.
12. The Assembly invites the Special Representative of the Secretary General of the Council of Europe for Migration and Refugees to support greater co-ordination and co-operation among member States in applying the safe third country concept in the context of asylum.

B. Draft Recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2022) "Safe third countries for asylum seekers" and emphasises the need for greater co-ordination among member States, in order to effectively protect human rights of asylum seekers and the right to asylum in Europe.
2. Welcoming Recommendation No. R (97) 22 of the Committee of Ministers to member States containing Guidelines on the Application of the Safe Third Country Concept, the Assembly recommends that the Committee of Ministers:
 - 2.1. review this Recommendation in the light of relevant jurisprudence of the European Court of Human Rights, develop new standards to enable member States to improve their assessment of the safety of third countries and regularly up-date them in accordance with legal developments to come and future jurisprudence;
 - 2.2. consider setting standards on the transfer, return and readmission of asylum seekers and refugees, taking due account of the effective protection of their human rights under the European Convention on Human Rights (ETS No. 5) and their right to apply for and seek asylum;
 - 2.3. seek co-operation of the Council of Europe and its member States with the European Union Agency for Asylum, in order to prevent discrepancies in the application of the safe third country concept in Europe to the detriment of human rights and the right to apply for and seek asylum;
 - 2.4. invite member States to inform the Committee of Ministers about their practice regarding the safe third country concept as well as their practice as regards procedural means available to rebut the presumption of safety of a country.

Amendment 7

Tabled by Mr Pierre-Alain FRIDEZ, Ms Margreet De BOER, Mr Eerik-Niiles KROSS, Mr Sergiy VLASENKO, Mr Stefan SCHENNACH

In the draft recommendation, at the end of paragraph 2.2, add the following words:

"under international refugee law".