

**CDDH comments on Parliamentary Assembly Recommendation 2078(2015)
“Countries of transit: meeting new migration and asylum challenges”**

CDDH: 84th meeting - 7/11 December 2015 CDDH(2015)R84

1. The Steering Committee for Human Rights (CDDH) takes note of PACE Recommendation 2078(2015) on “Countries of transit: meeting new migration and asylum challenges”.
2. The CDDH takes note of the call of PACE regarding the importance of respecting and protecting the human rights of migrants and refugees in cooperation with transit countries.
3. Asylum seekers at risk of being returned to certain third countries might be subjected to inhuman and degrading treatment. In this context, the CDDH also notes the call of the Assembly to support these countries in the implementation of effective international protection and essential services.
4. Considering the deepening of the migration crisis, the CDDH shares the opinion of the Assembly that the crisis requires a coordinated response which is effective and based on the prevention of human rights violations. The ability of the Council of Europe to make a unique contribution in this area should also be borne in mind.
5. In this context, the CDDH recalls that its mandate for the biennium 2016–2017 provides for the production of an “*analysis on the legal and practical aspects of specific migration-related human rights issues, in particular effective alternatives to detention*”, with the mandate also anticipating that “*the need for further work in the field by the CDDH is explored*”.
6. Conscious of the quality of asylum procedures and of the negotiation of readmission agreements, the CDDH wishes once more to draw attention to the *Guidelines on human rights protection in the context of accelerated asylum procedures*, elaborated by the CDDH and adopted by the Committee of Ministers on 1st July 2009 at its 1062nd meeting.
7. Regarding paragraph 3.2 of the Assembly’s recommendation, the CDDH notes that the principle of non-refoulement represents a fundamental, well-established principle of international law that underlies the reasoning of the European Court of Human Rights in the case of *Hirsi Jamaa v Italy* (2012) in the context of refugees and asylum seekers – a case to which Recommendation 2078(2015) makes explicit reference.
8. The CDDH is of the opinion that the case is of considerable importance, particularly in terms of the extraterritorial applicability, only in exceptional cases, of the Convention.
9. The Court held that, while Contracting Parties are free to devise their own immigration policies, this right is limited by Article 3 (prohibition of torture or inhuman or degrading treatment), where the removal of persons would expose them to a real risk of facing such

treatment in the receiving country, irrespective of whether they were intercepted in territorial waters and transferred aboard an official vessel. The Court reiterated in cases referring to a group of persons the need for an assessment of individual circumstances (prohibition of collective expulsion of aliens, Article 4 of Protocol No. 4 to the Convention) and access to an effective remedy (Article 13 of the Convention).

10. The CDDH is aware of the important issues raised by the Parliamentary Assembly in this recommendation. Nevertheless, in absence of case-law of the Court to this respect, it notes that the Court's adjudication in the *Hirsi Jamaa* case cannot be construed as being applicable to other distinct situations cited in paragraph 10 of Resolution 2073(2015) of the Parliamentary Assembly on countries of transit.

11. The CDDH remains confident that the Committee of Ministers – particularly when supervising the execution of judgments – will continue to monitor compliance by member States with the principle of non-refoulement, ensuring that respondent States are held to account where there is evidence of returning migrants in violation of the Convention.

Recommendation 2078(2015)

Countries of transit: meeting new migration and asylum challenges

Parliamentary Assembly

1. The Parliamentary Assembly refers to its [Resolution 2073 \(2015\)](#) on countries of transit: meeting new migration and asylum challenges. It recalls, in particular, that the Council of Europe co-operates with non-member States with a view to promoting human rights and emphasises that compliance with the principle of *non-refoulement*, reflected in Article 3 of the European Convention on Human Rights (ETS No. 5), by both member and non-member States, is of crucial importance for migrants and refugees.

2. The Council of Europe should play a role in ensuring that the externalisation by member States of their migration policy and border control to third countries does not result in violations of the human rights of migrants and refugees when they are prevented from entering a Council of Europe member State or returned by a Council of Europe member State to a third country.

3. The Assembly therefore invites the Committee of Ministers to:

3.1. aim to further the human rights of migrants and refugees in its co-operation with third countries, and support these countries in promoting access to protection and basic needs and developing a comprehensive integration policy;

3.2. monitor member States' compliance with the general principle underlying the *Hirsi Jamaa v. Italy* judgment of the European Court of Human Rights, holding countries accountable where there is evidence of push-backs and promoting their compliance with that principle.