

CDDH comments on Parliamentary Assembly Recommendations 2046(2014) – The “left-to-die boat”: actions and reactions

CDDH: 82nd meeting – 19/21 November 2014 CDDH(2014)R82

1. The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly Recommendation 2046 (2014), especially against the background of recurrent tragic incidents in the past few months,¹ and their devastating toll on human life. The CDDH concurs that these incidents have shed light on the serious problems arising from lack of accountability, transparency and co-ordination in this area, resulting in failure to rescue people in distress at sea.
2. In this regard, the CDDH concurs that it is essential to promote a common, coherent and effective application of the legal framework of search and rescue (SAR) policies in Europe, and agrees that the Council of Europe has an important role in assisting member States in this regard and enhancing solidarity among them.
3. To avoid replication and unnecessary overlap, and to ensure that objectives in this field are achieved with added value, it is crucial, in the CDDH's view, to enhance coordination and cooperation regarding on-going activities before initiating new ones. Concerning the Assembly's request for a feasibility study on a common approach to fill vital legal gaps in SAR in the Mediterranean Sea, the CDDH wishes to draw attention to the important role entrusted to the European Agency for the Management of Operational Cooperation at the External Borders (Frontex) under the comprehensive EU Regulation No 656/2014 of 15 May 2014 establishing rules of the surveillance of the external sea borders in the context of operational cooperation. The CDDH also takes note of the important contribution by the EU's Fundamental Rights Agency (FRA) in this field.² The Parliamentary Assembly itself has played an active role in encouraging international efforts leading to progress in this area. In addition, the CDDH notes that much concrete work has and continues to be undertaken by various organizations, notably the United Nations High Commissioner for Refugees (UNHCR), which has implemented the comprehensive Central Mediterranean Sea Initiative, and is currently preparing a Protection Dialogue in December 2014, to further develop the Global Initiative for Protection at Sea,³ the

¹ Reuters, [“As many as 700 migrants feared drowned in Mediterranean”](#) 15.09.14); The Guardian, [“Migrant boat was ‘deliberately sunk’ in the Mediterranean Sea, killing 500”](#), 15.09.14); [“Boat tragedy in the Mediterranean: call for investigation into the latest deaths”](#), 18.09.14).

² See, in this context, a FRA [report on Detention of third country nationals in return procedures](#), containing a specific chapter on the immigration detention of children (p. 55 ff). In 2010, FRA published a [report on separated, asylum-seeking children in European Union Member States](#), based on qualitative interviews with asylum seeking children and adults providing for their needs (pp. 66ff). See also the 2014 [Handbook on European law relating to asylum, borders and immigration](#), jointly produced by the European Court of Human Rights and the FRA, (Ch. 9 deals with unaccompanied minors).

³ The Dialogue will inform the implementation of a two-year Global Initiative on Protection at Sea (available at: <http://www.unhcr.org/5375db0d9.html>;

main aim of both initiatives being to devise concrete steps forward – in collaboration with various key actors and states – in averting the loss of lives at sea.⁴

4. The CDDH takes note of the Assembly’s request for guidelines on how to implement the *Hirsi Jamaa and Others v. Italy* case of the European Court of Human Rights (ECtHR). In this context, the CDDH also takes note of the Assembly’s initiative to tackle this issue further in a follow-up Motion for Resolution on “The Implementation of the *Hirsi* judgment: have push-backs come to an end?”⁵, the outcomes of which remain to be seen. It is expected that the Committee of Ministers will continue to diligently fulfill its duty to supervise the adoption of the measures required by the judgment in accordance with Article 46 of the European Convention on Human Rights (ECHR).⁶ On a more general note, however, the CDDH is fully aware of the far-reaching impact of this judgment as to the scope of applicability of the ECHR to persons intercepted both in waters of non-EU countries and international waters (*see also the CDDH reply to PACE Rec 2047 (2014), para. 3ff*). The CDDH wishes to express its availability to contribute to the examination of such matter should the Committee of Ministers so decide.

Recommendation 2046(2014)

Final version

The “left-to-die boat”: actions and reactions

Parliamentary Assembly

1. The Parliamentary Assembly refers to its [Resolution 1999 \(2014\)](#) “The ‘left-to-die boat’: actions and reactions”.
2. The left-to-die boat tragedy and other recent serious incidents that have led to the loss of hundreds of lives need to trigger a radical change in search and rescue (SAR) policies and practices in Europe. Serious problems have arisen due to a lack of accountability, transparency and co-ordination. The Assembly considers that the Council of Europe has an important role to play in assisting member States in this respect.
3. With a view to preventing the human rights violations which result from the vacuum of responsibility in search and rescue and disembarkation, and to safeguarding solidarity among the member States, the Assembly calls on the Committee of Ministers to:

[See also the Global Initiative of Protection at Sea, http://www.unhcr.org/5375db0d9.html.](http://www.unhcr.org/5375db0d9.html)

⁴ More background information on UNHCR’s Central Mediterranean Sea Initiative is available at: <http://www.refworld.org/docid/538d73704.html>.

⁵ Doc. 13629, 07.10.14.

⁶ See in this regard, the outcome of the [1164th meeting – 07.03.13, Case against Italy](#) (Case No. 14), (accessed: 08.10.14).

3.1. instruct the Steering Committee for Human Rights (CDDH) to carry out a feasibility study on a common approach to fill crucial legal gaps with regard to search and rescue in the Mediterranean Sea, namely the definition of distress, the obligation to respond immediately to a distress call, irrespective of the SAR zone the call comes from, the criteria according to which member States are responsible for disembarkation, and the abolition of factors which dissuade shipmasters and fishermen from carrying out rescues;

3.2. on the basis of this feasibility study, hold a thematic debate, with the participation of the Assembly, on the above-mentioned issues, on finding safe routes for people in need of international protection (through resettlement and other types of protected entry), as well as on solidarity mechanisms for European Union member States to share the responsibility for those rescued (such as relocation and joint processing of asylum requests in or outside Europe, with due regard to the concerns of the Assembly in respect of the establishment of transit or processing centres, as outlined in [Recommendation 1808 \(2007\)](#) and [Resolution 1569 \(2007\)](#) “Assessment of transit and processing centres as a response to mixed flows of migrants and asylum seekers”), in order to exchange best practices, offer solutions and find ways to facilitate agreements between States facing regular disputes on the co-ordination of rescue at sea and disembarkation;

3.3. adopt guidelines on how to comply with the *Hirsi Jamaa and Others v. Italy* judgment of the European Court of Human Rights and urge member States to refrain from using push-back practices.