

CDDH comments on the Parliamentary Assembly Recommendation 2161(2019) – PUSHBACK POLICIES AND PRACTICE IN COUNCIL OF EUROPE MEMBER STATES

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1. The Steering Committee for Human Rights (CDDH) takes note of the Parliamentary Assembly Recommendation 2161 (2019) – “Pushback policies and practice in Council of Europe member States”. It draws attention to the fact that, following the previous work of the Parliamentary Assembly,¹ the Committee of Ministers adopted in 2009 its Guidelines on human rights protection in the context of accelerated asylum procedures². The drafting of this text had been entrusted to the CDDH.
2. These Guidelines reaffirm that asylum seekers enjoy the guarantees set out in the European Convention on Human Rights in the same way as any other person within the jurisdiction of States Parties, in accordance with Article 1 of the Convention. The Guidelines are applied *mutatis mutandis* in procedures whereby a State may declare an application inadmissible without considering the merits of the claim.³
3. Regarding the invitation made by the Assembly in its Recommendation 2161 (2019) to work on guidelines on ensuring access to rights of migrants arriving at borders or attempting to arrive there,⁴ the CDDH recalls that the above-mentioned Guidelines of the Committee of Ministers set out a framework of minimum procedural guarantees⁵ which must be granted for asylum seekers and underline that asylum seekers have the right to *an individual and fair examination* of their applications by the competent authorities.⁶ Moreover, the Guidelines:
 - recall all the minimum procedural guarantees that asylum seekers should enjoy;⁷
 - recall in particular the rights of the most vulnerable asylum seekers;⁸
 - clarify concepts such as *safe country of origin* and *safe third country*, and recall the right of asylum seekers to have an effective opportunity to rebut the presumption of security of their country of origin or that of the third

¹ Resolution 1471 (2005) and Recommendation 1727 (2005) on “Accelerated asylum procedures in Council of Europe member states”, and the related report by the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe.

² 1062nd meeting of the Ministers’ Deputies, 1st July 2009.

³ See Guideline I (*definition and scope*).

⁴ See paragraph 4.6. of the Recommendation of the Parliamentary Assembly 2161 (2019) “Pushback policies and practice in Council of Europe member States”.

⁵ For example, guidelines IV (procedural guarantees), V (the safe country of origin concept), VI (the safe third country concept), VII (*non-refoulement* and return), VIII (quality of the decision-making process), IX (time for submitting and considering asylum applications), X (right to effective and suspensive remedies), XI (detention), XII (social and medical assistance), XIII (protection of private and family life) and XV (increased protection).

⁶ Guideline II, § 2.

⁷ Guideline IV, *supra*.

⁸ For example, guideline III (Vulnerable persons and complex cases);

country,⁹ as well as the right to an effective and suspensive remedy for asylum seekers whose applications have been rejected;¹⁰

- stress in particular the obligation of the State receiving an asylum application "to ensure that the return of the asylum seeker to his/her country of origin or any other country will not expose him/her to a real risk of the death penalty, torture or inhuman or degrading treatment or punishment, persecution, or serious violation of other fundamental rights which would, under international or national law, justify the granting of protection ".¹¹ It is also reiterated, as in Article 4 of Protocol No. 4 of the Convention, that collective expulsion of aliens is prohibited.¹²

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Text of Recommendation 2161(2019)

“PUSHBACK POLICIES AND PRACTICE IN COUNCIL OF EUROPE MEMBER STATES”

Parliamentary Assembly

1. The Parliamentary Assembly refers to its [Resolution 2299\(2019\)](#) on pushback policies and practice in Council of Europe member States.
2. The Assembly is concerned about the persistent and increasing practice and policies of pushbacks, which are in clear violation of the rights of asylum seekers and refugees, including the right to (seek) asylum and the protection against refoulement, which are at the core of international refugee and human rights law.
3. In the face of the gravity of the human rights violations involved, the Assembly urges the governments of member States to provide adequate protection to asylum seekers, refugees and migrants arriving at their borders, and thus to refrain from any pushbacks, to allow for independent monitoring, and to fully investigate all allegations of pushbacks. There are persistent reports and evidence of inhuman and degrading treatment by member States and their agencies in the framework of those pushbacks, through intimidation, taking or destroying migrants' belongings, and even through the use of violence and depriving migrants of food and basic services.

⁹ Guidelines V and VI, cited above.

¹⁰ Guideline X cited above.

¹¹ Guideline VII cited above.

¹² Since the entry into force of Protocol No. 4, the Court has found a violation of Article 4 of Protocol No. 4 in only six cases (*Conka v. Belgium*, Application No. [51564/99](#), final judgment on 05/05/2002, *Georgia v. Russia (I)* Application No. [13255/07](#) [GC], judgment final on 03/07/2014, *Shiashvili and Others v. Russia*, Application No. [19356/07](#), Judgment final on 20 / 03/2017, *Berdzenishvili and Others v. Russia*, Applications Nos [14594/07](#) and following, judgment final on 20/03/2017, *Hirsi Jamaa and Others v. Italy* [GC], Application No. [27765/09](#), judgment final on 23 / 02/2012 and *Sharifi and Others v. Italy and Greece*, Application No. [16643/09](#), judgment final on 21/01/2015. For some of these cases, the Court also found a violation of Article 4 of the Protocol No. 4 in relation to Article 13 (right to an effective remedy); (e.g. *Conka v. Belgium*, *Georgia v. Russia (I)*, *Hirsi Jamaa and Others v. Italy*, *Sharifi and Others v. Italy and Greece*, cited above).

4. The Assembly therefore recommends that the Committee of Ministers:
 - 4.1. exhort the governments of all member States to reject and prevent any form of pushback policy and action;
 - 4.2. promote the reconsideration of any bilateral agreements between member States on border control between neighbouring countries which jeopardise the human rights of migrants, refugees and asylum seekers arriving at their borders or trying to arrive there;
 - 4.3. ensure the swift execution of the relevant judgments of the European Court of Human Rights, including the implementation of interim measures;
 - 4.4. promote the work of national (ONG) and international (OING) non-governmental organisations as partners, refraining from action that undermines their legitimate activities aimed at saving human lives, to refrain from using stigmatising rhetoric against NGOs assisting migrants, and to invite the Council of Europe's INGO Forum to work on recommendations in this area for national NGOs;
 - 4.5. consider drafting guidelines for border policing practises along the lines of the Manual on Intercultural Community Policing of the Council of Europe's Intercultural Cities Programme, and examine how this programme could be used as a model;
 - 4.6. consider inviting the relevant Council of Europe committee to work on guidelines on ensuring access to rights of migrants arriving at borders or attempting to arrive there, including aspects such as access to complete and comprehensible information, to translation and interpretation services, to legal assistance at all stages of reception and asylum processes, to continued and child- and gender-sensitive medical, social and psychological services and to decent conditions of accommodation, prohibiting inhuman and degrading treatment in violation of Council of Europe and other international conventions.

5. Finally, the Assembly also asks the Committee of Ministers to formally encourage member States of the European Union to accelerate their work on an improved revised Dublin Regulation in a way that furthers equal responsibility-sharing in order to relieve the burden for frontline States and in the interest of asylum seekers themselves. Meanwhile, the Committee of Ministers should encourage more efficient relocation programmes, to ease the pressure on Europe's external borders, which can lead to pushbacks.