Parliamentary Assembly
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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Resolution 1894 (2012)[1]

The inadmissibility of restrictions on freedom of movement as punishment for political positions

Parliamentary Assembly

1. Freedom of movement between Council of Europe member States is both a legal and a political issue, as shown in Recommendation 1648 (2004) on the consequences of European Union enlargement for freedom of movement between Council of Europe member states. The Parliamentary Assembly now wishes to stress the link between free movement of persons and freedom of expression.

2. The Assembly recognises that, in principle, under international law, States have a sovereign right to decide on who shall be allowed to enter their territories. However, this right can be limited by treaty law, including the Schengen Agreements. In addition, a denial of entry based solely on a person's political views could constitute an abuse of the right to determine entry and a form of discrimination within the meaning of Article 14 of the European Convention on Human Rights (ETS No. 5).

3. Some member States have misused their legal right to determine entry into their territory in order to deny entry to some persons merely as punishment for a political or ideological position they peacefully hold.

4. The Assembly condemns such practices and recalls that States which are also members of the European Union are bound by strict rules within the framework of the European legal order and in particular the Schengen Agreements.

5. The Assembly therefore:

5.1. recalls that freedom of movement is a prerequisite for the enjoyment of many other rights and is an important condition for the free development of individuals;

5.2. stresses that freedom of movement should not be restricted or used as a sanction for the expression of peacefully held political opinions and calls on the member States of the Council of Europe to give full effectiveness to the freedom of expression under Article 10 of the European Convention on Human Rights, by refraining from denying access to their territories on such grounds;

5.3. considers that the legal order of the European Union also does not allow the restriction of free movement of persons within the European Union as a punishment for expressing a political position and reminds European Union member States that resorting to such a practice may give rise to a claim for damages by the individuals concerned;

5.4. stresses that entries into the Schengen Information System must not be misused in order to deny persons who are not nationals of a European Union member State access to the Schengen area as a punishment for expressing a peacefully held political position;

5.5. recalls the Schengen States' duty to provide for swift judicial or administrative review of any entry into the Schengen Information System.

1. Assembly debate on 29 June 2012 (27th Sitting) (see Doc. 12943, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Koç). Text adopted by the Assembly on 29 June 2012 (27th Sitting).