

Memorandum to the JHA Council

Ending the asylum lottery – Guaranteeing refugee protection in Europe



EUROPEAN COUNCIL
ON REFUGEES AND
EXILES

CONSEIL EUROPEEN
SUR LES REFUGIES
ET LES EXILES

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The European Council on Refugees and Exiles (ECRE)¹ urges the JHA Council to take the opportunity to address huge divergences in the quality of asylum systems across EU Member States when it meets in Luxembourg on Friday 18 April. Scheduled discussions on extending the scope of the Long Term Residence Directive, improving practical cooperation on asylum matters, finalising the draft Returns Directive and addressing the situation of Dublin transfers to Greece all require the achievement of a more level playing field if Europe is to live up to its humanitarian traditions and international obligations to protect refugees.

Transfers to Greece under the Dublin Regulation

In a letter dated 3 April 2008 ECRE called on all Member States to follow the example of Norway and Germany (for unaccompanied minors) by utilising the sovereignty clause under Article 3(2) of the Dublin Regulation to prevent the transfer of any asylum seeker to Greece until its compliance with EU and international law can be fully demonstrated. An array of reports have documented the failure of the Greek authorities to comply with human rights standards concerning access to the asylum procedure, the detention of migrants and protection from ill-treatment². Recognition rates in Greece are among the lowest in Europe with only 132 refugees recognised from a total of 20,692 asylum claims in 2007. Only last week a new report by Greek and Norwegian organisations³ highlighted continuing obstacles to asylum seekers receiving a fair hearing in Greece, and demonstrated that outstanding problems remain unaddressed. In these circumstances, transferring asylum seekers to Greece under the Dublin Regulation represents an obvious injustice, and puts states at risk of violating their obligations under international refugee and human rights law.

However, it would be mistaken to focus solely on the treatment of asylum seekers in Greece, which is only one symptom of more fundamental flaws inherent in the Dublin system. To start with, by requiring that individuals must claim asylum in the first Member State they reach, the Dublin system is premised on there being equal protection standards across the EU. However, the harsh reality for Iraqis entering Europe in 2007 was that recognition rates varied from over 80% in some Member States to zero in others. As well as being unfair the Dublin system is both resource-intensive and inefficient, and fails to take account of particular pressures experienced by certain Member States. Amendments to the Dublin Regulation which will be tabled by the European Commission later this year must ensure that the exercise of responsibility determination criteria does not result in transfer to Member States which do not guarantee a full and fair hearing of asylum applications, or where reception conditions are inadequate. ECRE has also outlined short-term recommendations to better ensure the reunification of family members, to respect the rights of separated children and other vulnerable groups, and to

¹ ECRE is an umbrella organisation of 63 refugee-assisting organisations in 28 countries working towards fair and humane policies for the treatment of asylum-seekers and refugees.

² See for example European Parliament, Report from the LIBE Committee delegation on the visit to Greece, 17 July 2007; Pro Asyl, *The truth may be bitter but it must be told: The situation of refugees in the Aegean and the practices of the Greek Coastal Guard*, October 2007; Amnesty International, *Greece no place for an asylum seeker*, 27 February 2008 (AI Index: EUR 25/002/2008).

³ *A gamble with the right to asylum in Europe – Greek asylum policy and the Dublin II Regulation*, Norwegian Association for Asylum Seekers, Norwegian Helsinki Committee, Greek Helsinki Monitor (April 2008).

restrict the detention of Dublin transferees⁴. However, following completion of the Hague Programme, ECRE advocates that the Dublin system should be replaced altogether with new responsibility allocation criteria which better connect individuals with states, thereby enhancing integration prospects and maximising refugees' contributions to their host societies. ECRE has also proposed new ways in which EU states could improve solidarity by better sharing resources and the financial costs associated with receiving refugees.

Practical cooperation in the field of asylum

In Luxembourg the Slovenian Presidency will present the Council's conclusions on practical cooperation in the field of asylum. Currently Member States approach determining asylum claims in very different ways with varying levels of quality. ECRE has for some time argued⁵ that States, UNHCR, NGOs and other independent experts should work together by sharing expertise, information and resources to achieve a more level playing field. Best practice guidelines should be developed in relation to the training and accreditation of decision-makers, the treatment of unaccompanied minors and other vulnerable groups such as torture survivors, and country of origin information (COI). The common provision of reliable and accurate COI, open to scrutiny by academic and other experts, is an important component of achieving consistency and quality of decision-making across Europe. But good information is not enough, if it is ignored or improperly used by decision-makers. Independent monitoring mechanisms should be set up to identify flaws and gaps in decision-making and highlight the appropriate training and extra resources required. In order to improve cooperation ECRE supports the development of a European Asylum Support Office but cautions that for this to be effective it must be governed by principles of transparency and accountability, including oversight by the European Parliament.

Moreover, there is an urgent need for greater solidarity to be demonstrated towards Member States such as Greece, Malta, Italy and Spain who can experience disproportionate and sometimes sudden pressures on asylum services and reception capacities. In its 2006 Communication on strengthened practical cooperation⁶, the European Commission suggested creating expert support teams which could support *'the processing of asylum systems through the rapid provision of interpretation services, case working and COI expertise'*. However, little progress has been made on this issue, and if the EU is to develop a credible and rights-based response to the challenge of mixed flows, control-oriented measures such as Rapid Border Intervention Teams (RABITS)⁷ need to be complemented by more protection-focussed measures.

The draft EU Return Directive

ECRE recognises each state's right to return asylum seekers whose claims have been correctly rejected and that the EU has a role to play in the development of balanced and fair return policies. The pre-requisite for such policies is that fair and efficient asylum systems are in place. However, it is ECRE's opinion that this is not the situation in Europe today: asylum systems in Europe have major flaws and fail in some cases to grant protection to those who need it. This must be taken into account in the development of an EU returns policy, which must, above all, ensure that sufficient safeguards are in place to prevent the *refoulement* of refugees, as well as ensure safe, dignified and sustainable returns for all.

The draft EU Return Directive would be the first EU instrument dealing with the expulsion of persons found not to be in need of protection. While there is a need for common standards guaranteeing return in dignity and safety of those third country nationals who no longer have a right to stay in Europe, ECRE urges the Council to not lose sight of the fact that legal safeguards guaranteeing the effective protection of the interests of the individuals concerned are essential objectives in developing such common standards, as stated in the European Commission

⁴ ECRE, Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered, March 2008.

⁵ *The Way Forward: Europe's role in the global refugee protection system. Towards Fair and Efficient Asylum Systems in Europe*, ECRE, September 2005.

⁶ *Communication from the Commission to the Council and the European Parliament on Strengthened Practical Cooperation. New Structures, New Approaches: Improving the Quality of Decision Making in the Common European Asylum System*, COM (2006) 67 final.

⁷ Regulation (EC) No 863/2007 of the European Parliament and of the Council of 8 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) 207/2004 as regards that mechanism.

proposal of September 2005. Negotiations are currently underway to find a compromise agreement at first reading between the Council and the European Parliament. ECRE has serious concerns with regard to the lack of willingness of states to accept the inclusion in this instrument of measures needed to ensure that adequate human rights safeguards are in place. Attempts to limit the scope of application of this instrument to exclude persons who have been refused entry in areas close to the territorial borders of EU Member States would, for example, prevent persons who have not yet managed to request asylum and thus be admitted to an asylum procedure from accessing safeguards such as the right to an effective remedy. This could increase the risk of *refoulement* at the EU's borders. ECRE is also extremely concerned about proposals to allow EU Member States to detain potential returnees for up to 18 months, without adequate judicial safeguards supervising such arrangements. Systematic detention of persons who have committed no crime, including families and vulnerable persons is inhumane and unwarranted. The principle of proportionality enshrined in the ECHR implies that detention is for the minimum period necessary and never to be prolonged unduly. Automatic and prolonged detention should therefore not be sanctioned by European Community law. Detention is not the solution or cost-effective and should only be used as a last resort, as long as removal arrangements are in progress and when other alternatives have been proven to not work.

Extension of Long Term Residence Rights to Beneficiaries of International Protection

ECRE strongly welcomes the process of extending long-term residence rights to refugees in the EU. Denying refugees and beneficiaries of subsidiary protection who have already lived for at least five years in one Member State access to this more stable status has in ECRE's view resulted in denying them the enjoyment of certain social and economic rights, including the opportunity to make use of freedom of movement within the European Union, on equal terms to other third country nationals. This is therefore an opportunity for the Council to address the incoherence of such rules with the EU's important objective to promote refugees' successful integration into European societies. ECRE believes it is of major importance that beneficiaries of subsidiary protection are included in the scope of the LTR Directive as well as those granted refugee status. The concept of subsidiary protection has been recognised and harmonised in the Qualification Directive and is thus part of the EU *acquis*. There is no logical reason to grant third country nationals who have obtained a subsidiary form of protection fewer or lesser rights than Convention refugees – their needs may be equally compelling and lasting as those of Convention refugees. Equal treatment should also apply in determining the duration of residence to qualify for LTR status.

Another key concern relates to the fact that, at present, beneficiaries of international protection will not be exempt from the requirement to fulfil the condition of having stable and regular resources that are sufficient to maintain him or herself and members of his or her family without recourse to the social system of the Member State concerned. Remaining divergences between Member States regarding practices in reception conditions mean that it still varies widely as to whether or not asylum seekers are allowed to work during their asylum procedure. Moreover some refugees may struggle to recover from their traumatic experiences, while most have not been able to choose where they find safety in Europe and thus reach a country where they have the best chance of integrating – they may therefore need longer to fulfil this condition. Refugees should not be made to pay the price for the continuing inconsistencies in European asylum systems and should be excluded from this condition.

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For further information contact the European Council on Refugees and Exiles (ECRE) at:

ECRE Brussels
Bjarte Vandvik, Secretary General
Rue Royale 146, 2nd Floor
1000 Brussels
Tel: +32 (0) 2 514 5939
Fax: +32 (0) 2 514 5922

ECRE London
Chris Nash, Head of Policy & Advocacy
Patricia Coelho, Senior Policy Officer
103 Worship Street
London EC2A 2DF, UK
Tel: +44 (0) 20 7377 7556
Fax: +44 (0) 20 7377 7586

E-mail: ecre@ecre.org
Web: <http://www.ecre.org>