

The Way Forward

Europe's role in the global refugee protection system



The Return of Asylum Seekers whose Applications have been Rejected in Europe

Executive Summary

If governments and refugee advocates agreed on other aspects of European asylum policy, such as the need for fair determination procedures and the required level of protection, and could do so in practice as well as principle, their differences on the subject of return would be relatively limited.

In recent years, however, European governments have used return as a tool to gain political advantage by appearing tough on asylum at the expense of fairness and efficiency. The drive to return has led to an increased use of detention in the case of asylum seekers whose cases have been rejected for unreasonably long and even indefinite periods of time to prevent absconding. It has also led to destitution for many asylum seekers whose cases have been rejected, from whom all types of support are withdrawn as an incentive to return. Even where it is recognised by the host country that an individual cannot be returned many of those whose applications have been rejected do not receive a legal status and find themselves in a limbo situation without the right to work to earn a living and without state support. The result is that asylum seekers whose applications have been rejected form a growing segment of vulnerable, poor and marginalised people in European societies.

In the public debate surrounding return its complexity is often ignored. Over-simplistic comparisons are drawn between the number of asylum seekers whose claims have been rejected and the smaller number of people removed. Yet return is not always possible or desirable. Some states refuse to take back their nationals, particularly where their identity is in doubt. There are also humanitarian reasons exist for not returning a person which include particular vulnerability or a long period of residence in the host country. The failure to return is widely seen as a serious problem undermining asylum systems, yet there are no comprehensive, accurate and comparable statistics that could establish, for example, the extent to which asylum seekers whose claims have been rejected leave of their own accord.

The credibility of a removal system and an asylum system is fundamentally undermined if it fails to protect those in need of international protection.

ECRE and its member agencies do not dispute the fact that governments have the right to return asylum seekers whose claims have been correctly rejected following a proper and fair asylum procedure. However, we cannot at present confidently assume that if someone's asylum claim has been rejected by a European country they are necessarily a person not in need of international protection in view of procedural deficiencies in European asylum systems or restrictive interpretations of the refugee definition.¹

Fair and efficient asylum systems are a pre-requisite to return. If states are concerned with being able to undertake successful returns they must address the fairness of their asylum procedures first, as wrong decisions may lead to people being persecuted and having to flee from their countries of origin again.

¹ See ECRE's forthcoming paper: *The Way Forward. Europe's role in the global refugee protection system. Towards fair and efficient asylum systems in Europe.*

States must not enforce returns prematurely. Asylum seekers, those who are granted a status and those who are not granted a status in Europe all face the threat of return and experience the fear of premature return. There is an increasing trend across Europe to reduce the period of time between the declared end of hostilities in a given country/region and commencing or threatening return to that region. States sometimes also delay determination of asylum claims until the declared end of hostilities in the country of origin when claimants can be deemed not to be in need of international protection. Asylum seekers whose claims have been rejected, have therefore been returned to unsafe conditions.

Obstacles and alternatives to return

Obstacles to the return of persons whose claims have been rejected can exist for a variety of reasons. These can be technical such as the practical impossibility of transporting a person to a country with no functioning airport. They can also be related to countries of origin being unwilling or feeling unable to cooperate with returns, although it is an established principle of international law that states have an obligation to receive back their own nationals.

International cooperation with countries of origin in a spirit of solidarity at all stages of the return process is a pre-requisite to achieving sustainable return. It is in the best interests of all parties for host countries to maintain a supportive relationship with countries of origin, through offering political, financial and economic support, to ensure that returns can take place and that returnees have a good chance of successful re-integrating in their home countries. The use of punitive measures, such as the threat of withdrawing development aid and support, is unlikely to achieve this and ECRE strongly opposes it.

States should also resist penalising individuals for matters that are very often beyond their control where return is not possible. Instead, developing alternatives to return will often constitute a better solution for certain individuals as well as for the state that has considered and rejected their asylum application.

European states should not enforce removals and should grant a legal status to certain categories of persons, especially those who cannot be returned for reasons beyond their control. This would avoid asylum seekers whose cases have been rejected being left in unacceptable limbo situations, without support and with few rights in the host country. Legal statuses granted could be either temporary or permanent, as appropriate, and should in particular be considered for people who have been resident for 3 years or more in the host country, and for people considered 'vulnerable', namely the sick, older people, children (especially separated children), single women or female heads of households.

Increased efforts to enforce returns

An increase in efforts to enforce returns from Europe has resulted in increased returns. State authorities have no interest in making the process of return more distressing or difficult than necessary, so while return procedures should be efficient, all returns should be undertaken in a manner that is safe, dignified and humane. Individuals

should be allowed to retain a sense of self-sufficiency and control over their own lives.

In undertaking returns European states must ensure their actions do not breach any of their human rights obligations under international and European law.

ECRE has defined three different categories of return: voluntary, mandatory and forced.² Enabling voluntary returns is always preferable but this term, according to ECRE, only applies in the case of persons with a legal basis for remaining in a host country.

ECRE defines forced return as the return of those who have not given their consent and who may be subject to sanctions or the use of force on removal. Cases where the use of force in deporting an individual has resulted in their death or serious injury have shocked the European public and led to legal actions against state authorities. If implemented by European states, forced return must be carried out in accordance with their human rights obligations. In developing European legal frameworks on return procedures the European Union should help ensure the implementation of such human rights standards within its Member States.

Some people who no longer have a legal basis for remaining in the host country for protection-related reasons consent to return. But it is increasingly common for European states to use methods to induce or coerce such people to consent to return. ECRE defines all these situations as mandatory return. Methods for inducing return can include: threat of detention or continued detention and withdrawal of support in the host country. Where consent to return is coerced in this way it cannot be said that a person has freely chosen to leave their host country.

Detention should only be used as a last resort, and should be in full compliance with international human rights law. Detention for the purposes of preventing absconding prior to return should only be used when absolutely necessary, for the minimum period required to organise return. Alternatives should always be explored. The trend in European states, however, is increasingly to detain, sometimes for indefinite periods, as a standard part of any removal procedure. There is little supporting statistical evidence, however, that people who are not detained will necessarily disappear and it is highly unlikely in the case of certain vulnerable persons such as the sick, older people or families with young children.

The denial of human rights and the withdrawal of support as a means of forcing asylum seekers whose applications have been rejected to cooperate with return procedures or compel them to leave of their own accord is unacceptable. Through such withdrawal of support states risk violating their obligations under the European Convention on Human Rights. Instead asylum seekers whose applications have been rejected should be adequately supported by the government of the host country through the provision of basic socio-economic benefits until it is really possible for them to leave that country.

² ECRE, *Position on Return*, 2003

Some European governments extend positive incentives such as financial assistance, available through voluntary repatriation programmes, to asylum seekers whose applications have been rejected. This is to be welcomed and should be developed across all European countries. However, it is important that states ensure that consent is informed and no coercive methods are used. States should also seek the increased participation of NGOs and refugee representatives, including those working in countries of origin, in assisted return.

ECRE strongly opposes in principle transfers to third countries of persons whose asylum applications have been rejected as a measure to enforce return.

Follow up to return

It is very often not known whether a person returned to their country of origin has arrived safely and has been able to re-integrate into the community. Systematic monitoring would provide a check on the correctness of decisions on asylum claims and would instil confidence in potential returnees. It could also be used to evaluate the success of return policies (measured in terms other than just total numbers returned).

Sending states should set procedures in place to check that returnees have reached their destination safely. There should also be follow-up and monitoring of returns to identify whether return policies are safe, effective and sustainable. States should establish their own monitoring systems, but it is important for NGOs and refugees to be involved in monitoring returns, including NGOs in regions of origin.

The support of the host country must not end once return has taken place. In order to ensure sustainable return, it is important for states to assist in reconstruction and development in countries of origin and to support the re-integration of returnees. Successful reintegration in the country of origin is a key factor in ensuring the sustainability of return.

The development of this paper on the return of asylum seekers whose applications have been rejected is part of the organisation's development of a series of proposals entitled "The Way Forward - Europe's Role in the Global Refugee Protection System", designed to provide constructive recommendations on a number of topical refugee policy issues and contribute to positively influencing the European debate. The other proposals address the issues of developing European resettlement activities, making refugee protection effective in regions of origin, creating fairer and more efficient asylum systems in Europe and improving solutions for refugees through integration.

This is a paper version of the Executive Summary of ECRE's Way Forward Paper 'The Return of Asylum Seekers whose Applications have been Rejected in Europe'. The full version of the paper is available at www.ecre.org. For further information concerning the full version of the paper please contact Patricia Coelho at pcoelho@ecre.org.