

The Way Forward

Europe's role in the global refugee protection system



Towards Fair and Efficient Asylum Systems in Europe

Executive Summary

Although the number of asylum claims lodged in European countries has continuously dropped over the last few years, the political importance in Europe of how well or how badly a government is managing its national asylum system has not diminished. The current disparities between European asylum systems are the cause of many of the problems associated with asylum such as illegal transit/residence, onward movements, delay and associated lack of public confidence. EU Member States have increasingly recognised that they must co-operate on matters of asylum to better address the challenges they face. As a result a first set of binding laws establishing minimum standards were agreed between 1999 and 2004, and now the EU has set itself the goal of establishing a Common European Asylum System by 2010. But it cannot be said that states are yet seriously co-operating at the European level: recent years have seen their constant efforts to tighten their own national legislation and increasing efforts to shift responsibility for processing asylum claims either to each other or outside of the EU altogether.

ECRE and its member organisations share the desire of European governments for asylum systems that are efficient, manageable and capable of identifying those who qualify for international protection as well as those who do not. However, this must never be at the expense of asylum seekers' rights and correct decision-making. ECRE's experience on the ground shows that many of the current practices not only risk violating fundamental human rights but often create the need for lengthy and expensive appeal proceedings to rectify wrong decisions. Against this backdrop ECRE is making practical proposals for increased co-operation and burden sharing to improve asylum systems across Europe. ECRE is also putting forward a model asylum procedure that is efficient and workable, but also fair and upholds essential safeguards and fundamental principles of international refugee and human rights law.

The situation facing asylum seekers in Europe

Regrettably, it is still too often the case that state authorities deny asylum seekers access to asylum procedures, and sometimes to state territory altogether. For those individuals who are admitted many European states have established expedited or accelerated procedures that appear to be based not only on speed but on a "culture of disbelief" whereby most asylum seekers are presumed to be abusing the system. Such procedural developments have severely compromised the capacity of states to correctly assess whether an individual needs protection. Rather than the focus of the procedure being on identifying persons in need of protection, it has shifted towards techniques devised to screen out as many applications as possible. As a result, expedited asylum procedures appear to be increasingly adversarial in nature. Furthermore, these procedures are often characterised by a critical deficiency of legal and procedural safeguards necessary to comply with the principle of *non-refoulement*, the cornerstone of international protection obligations.

Practical Co-operation for better and more equal refugee protection across EU Member States

It is clear that pressures are periodically felt by different Member States regarding various aspects of an asylum procedure, including lack of reception capacity,

decision-making backlogs, staff shortages and facilities for vulnerable applicants. Flexible and practical co-operation measures for sharing resources and expertise could help address these challenges and the involvement of UNHCR, NGOs and other independent experts would contribute to the success of such measures. ECRE's suggested areas of co-operation are:

Staffing: Common mandatory qualifications would help ensure the recruitment of high quality decision-makers. States could usefully exchange best practice (including study visits) on recruitment and staffing issues such as the rotation of staff to avoid 'burn-out', compassion fatigue or secondary traumatising.

Training: In order to help improve the quality of decision-making a common EU training programme should be developed covering elements such as interview technique, working with vulnerable and traumatised applicants, researching and assessing country of origin information, assessing credibility, international refugee and human rights law and drafting decisions. A centralised EU training body could co-ordinate this programme by arranging training courses, maintaining a database/website of training materials and overseeing an accreditation scheme.

Country of Origin Information (COI): The provision of relevant, reliable, accurate and transparent COI is crucial for a fair and efficient asylum determination process. States would benefit by more efficiently sharing existing COI and exploring the increased and more co-ordinated use of joint fact-finding missions, particularly those states which currently lack extensive COI resources. Common guidelines could be developed on the researching, collection and application of COI. Such initiatives could lead to the development of an independent EU Documentation Centre responsible for producing both generic country reports and employing a team of experts to respond to specific information requests from decision-makers which could be posted on a public website. The creation of Independent National Advisory Boards would be a useful interim measure to improve COI provision while common structures are developed.

Quality Assessment Mechanisms: Independent monitoring teams should be established and given access to randomly selected samples of files in order to assess the quality of state decision-making. Access should cover all COI and other materials used and allow one-to-one interviews with decision-makers. In this way failings or weaknesses in asylum systems could immediately be identified and remedial advice provided. Periodic public reports would ensure transparency and accountability.

Expert support teams: States may periodically experience backlogs or unexpected increases in asylum numbers. Expert support teams (consisting of decision-makers, interpreters and other experts) could be used to meet any resulting shortfall in the capacity of an affected state. States with greater capacity could provide staff to these expert teams alongside independent experts and representatives of UNHCR.

A European Union Support Office: In the medium and longer term it will be necessary to establish an independent EU office to co-ordinate these measures and facilitate a truly common and unified EU approach. An EU Office could assume responsibility for the co-ordination of expert support teams and quality assessment mechanisms, the supervision of project-led initiatives (including possibly the

management of the ERF), and related monitoring and evaluation functions. In the short term existing structures such as EURASIL and the Committee on Immigration and Asylum (CIA) could start the process of co-ordinating increased practical co-operation among Member States. These structures currently lack capacity, transparency and accountability and thus would need to be modified in order to fulfil this role.

A Common European Asylum System?

The single most fundamental objective of a Common European Asylum System (CEAS) must be to end the current asylum lottery and instead guarantee that every asylum applicant arriving in the EU has access to one fair and thorough asylum determination procedure. ECRE is putting forward some creative and pragmatic solutions to overcome these and other challenges.

Determining which state is responsible for processing a claim: The Dublin II Regulation provides that after consideration of any family links or whether a prior visa or residence permit exists, if it can be established that an asylum seeker has irregularly entered the border of a Member State, that country shall be responsible for examining the request for asylum. As a consequence either more asylum seekers are returned to Member States on the periphery of the EU or they simply choose not to lodge a formal asylum claim but instead travel on to another Member State. Thus the Regulation creates unequal burdens and works as a disincentive for states to give full access to fair asylum procedures or even to their territories. As well as placing individual asylum seekers at risk of *refoulement*, the Dublin system is inefficient and resource-intensive. ECRE recommends the abolition of existing arrangements under Dublin II and proposes an alternative system for allocating responsibility based on two criteria: 1) the Member State where the asylum seeker has a family member is responsible, provided he or she agrees with a transfer to that state; or 2) the Member State where the asylum request was first lodged is responsible, unless there are compelling humanitarian considerations to prevent this.

Burden and responsibility sharing: ECRE accepts that its proposed system for allocating state responsibility for hearing an asylum claim must contain mechanisms to share responsibility by supporting those Member States that receive disproportionately high numbers of asylum seekers. A well-resourced financial burden sharing instrument based on the real costs of hosting and processing asylum claims could compensate Member States receiving higher numbers as well as helping those with less developed asylum systems to catch up with more developed states. A well-resourced Integration Fund could promote the integration of refugees and a well-resourced Return Fund would help facilitate the efficient and sustainable return of those found not to be in need of international protection. Common structures could co-ordinate the despatch of expert support and quality monitoring teams to assist overburdened states, as well as concrete programmes for joint responses to large-scale humanitarian crises.

Free Movement: ECRE considers that a crucial, linked reform would be the adoption of EC legislation granting freedom of movement within the Union to all persons recognised as being in need of international protection. As a result of their escape from persecution, refugees, unlike other third-country nationals, have been forced to

migrate and have had very little choice about where they reside in Europe. There is a natural logic that refugees will integrate more easily into those countries where they have extended family members, social networks, good employment opportunities and cultural or linguistic ties. In a market-based economy as within the European Union, where the mobility and flexibility of labour is increasingly important, there is much to be said for giving persons granted refugee status freedom of choice as to where to reside.

Joint processing within the EU: One possible model for a future CEAS would involve a system of jointly processing asylum applications. ECRE opposes any system that involves the forced transfer of asylum seekers to centralised joint processing centres or the unnecessary and disproportionate use of detention. This would be expensive, impractical and risk violating fundamental rights. However, ECRE would support further exploration of a system of joint processing comprising a single EU determining authority with decentralised offices in each Member State provided it guaranteed full respect for asylum seekers' rights under international law. This could be compatible with ECRE's proposals for an alternative system of determining state responsibility, burden sharing and the granting of free movement. However, questions regarding the legal and financial basis for joint processing and the issue of democratic control and accountability must first be addressed.

Towards more fair and efficient asylum procedures in Europe

Whether asylum determination procedures are processed unilaterally by European states or as part of a common multilateral framework, ECRE considers that there are certain universal and fundamental principles, that would help ensure the provision of a procedure which is both fair and efficient.

Frontloading: Frontloading is the policy of providing asylum determination systems with the requisite resources and expertise to make accurate and properly considered decisions at the first instance stage of the procedure. While the increased investment of resources will facilitate quicker decision-making, frontloading is not about the acceleration of procedures for its own sake and requires the inclusion of all necessary safeguards from the start of the procedure. Better initial decision-making reduces the length and expense of the system as a whole by refining the issues to be dealt with at appeal and avoiding unnecessary appeals. As an incentive for states to cut delays ECRE recommends the granting of residence status to an asylum seeker who has been in the procedure for 15 months and, for reasons beyond his/her control, has not received a final decision on his/her asylum request.

Registration: In some European states it is all too common for applicants to be denied access to a procedure altogether or to be processed by border guards lacking an adequate knowledge of states' obligations under international refugee or human rights law. ECRE therefore recommends that all border applicants should be taken to a designated registration point for a formal screening interview to be conducted with the assistance of a qualified interpreter. The applicant must be provided with documentation at this stage and referred to the competent authority for processing. Border guards should not be responsible for status determination and substantive interviews should never be conducted at a border or transit zone. Border guards

should receive better training to help them identify would-be claimants as well as practical facilities such as the improved provision of interpreters.

Reception Conditions: ECRE is concerned about the increasing tendency of states to detain asylum seekers during the processing of their claim and believes that asylum seekers should only ever be detained, as a last resort, in exceptional cases and where non-custodial measures have been proven on individual grounds not to achieve the stated, lawful and legitimate purpose. Instead access should be given to open and well-resourced reception centres where information is available on how to obtain services including health care, education facilities and legal advice.

Prioritising: ECRE believes that manifestly well-founded cases (including vulnerable or traumatised individuals) should be prioritised: this allows refugees to integrate as early as possible and keeps costs down. States should additionally be able to prioritise the rare cases that raise security concerns through specialised exclusion procedures. However, precisely because these cases raise complicated issues, there must be respect for all relevant safeguards and obligations under international law, including the absolute prohibition under Article 3 of the European Convention on Human Rights to return individuals to face torture or inhuman or degrading treatment.

Acceleration: The asylum procedure should not contain any acceleration mechanisms during the first instance stage of decision-making. If states choose to accelerate asylum procedures, this should be at the appeal stage, provided that the necessary legal safeguards are in place and the overall procedure is fair.

Essential safeguards: There are five minimum safeguards from which there should never be derogation (even in so-called accelerated procedures): access to free legal advice, access to UNHCR/NGOs, a qualified and impartial interpreter, a personal interview and a suspensive right of appeal.

A Single Procedure: A single procedure with the same minimum guarantees, determining whether an applicant qualifies for protection under the 1951 Refugee Convention or for subsidiary protection on international human rights grounds, is the clearest and most efficient way of identifying those in need of international protection. These statuses should afford the same rights.

ECRE's Model Asylum Procedure

ECRE is proposing a seven-step model asylum procedure (see Annex 1) that respects the above principles and provides a fair and efficient alternative to the myriad and varied asylum procedures currently existing in Europe.

The development of this paper on fairer and more efficient asylum systems in Europe 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, improving solutions for refugees through integration and the return of asylum seekers whose applications have been rejected.

ANNEX 1 Diagram of ECRE's Model Asylum Procedure

