

RELOCATION NOT PROCRASTINATION

ECRE'S ASSESSMENT OF THE OBSTACLES TO RELOCATION OF ASYLUM SEEKERS FROM GREECE AND ITALY AND ITS PROPOSALS FOR A CONTINUATION OF RELOCATION AFTER SEPTEMBER 2017

I. INTRODUCTION

The EU's relocation process which started in 2015 is a tangible expression of solidarity, i.e. the fair sharing of responsibility between EU Member States, in the area of asylum. The organised transfer of applicants for international protection from Italy and Greece to other EU Member States that it entails has been beneficial to the two countries and to eligible asylum seekers. It brings concrete relief to pressurised asylum systems while providing an alternative to irregular secondary movement for refugees seeking and seeing opportunities for integration in other EU Member States.

In its judgment of 6 September 2017, the Court of Justice of the EU (CJEU) dismissed in their entirety actions brought by Slovakia and Hungary to challenge relocation. As well as finding that there were no flaws in the procedures that led to the second Relocation Decision, the CJEU judges that mandatory relocation was an appropriate measure to meet the objective of supporting Italy and Greece to cope with the impact of increased arrivals in 2015. Interestingly, the CJEU also observes that there are a number of factors that explain the low number of relocations but "in particular, the lack of cooperation on the part of certain Member States."

With the expiration date of 26 September 2017 fast approaching, ECRE urges Member States to honour their commitments under Relocation Decisions 2015/1523 and 2015/1601 ("Relocation Decisions") adopted in September 2015 and to continue relocation beyond this date pending the reform of the Dublin system. Recent success in speeding up the relocation process shows that it can be made to work, while the price of giving up on solidarity in this area is one the EU should not be willing to pay.

II. ANALYSIS

RELOCATION: STATE OF PLAY (AS OF AUGUST 2017)

Relocation can be considered at best a partial success: as of 18 August 2017, only 26,295 applicants had been relocated from both Italy and Greece. With 44,284 places formally pledged and a legally foreseen commitment of 98,255 relocation places – after the decision to make 54,000 places under the second Relocation Decision available for the resettlement of Syrian refugees from Turkey under the EU-Turkey Statement – considerable additional efforts are needed to accomplish the task.

The political and legal obstructionism of certain Member States has been well-documented. However, other opaque and more subtle resistance has also taken place, ranging from prohibitive preferences expressed by some Member States to severe delays in pledging relocation places as well as in processing and providing offers by Italy and Greece. The use of unlawful refusal grounds and disproportionate security checks have also contributed to the disappointing results so far.

Moreover, the number of vulnerable applicants relocated, in particular unaccompanied children, remains unacceptably low, including as a result of unduly restrictive preferences for children with links with the Member State of relocation, and due to a high rate of absconding. As suggested by the Commission, the relocation of unaccompanied children as well as other vulnerable applicants must be prioritised, while local and central authorities should more actively engage in their identification and registration.

EVER LOWER EXPECTATIONS: THE DOWNWARD REVISION OF TARGETS

In addition, both States and EU Institutions have found creative ways to evade relocation obligations instead of maximising its potential. One such way has been the informal reduction of relocation quotas, justified through reference to the lower number of eligible applicants currently presumed to be present in Italy and Greece. However, reducing quotas is only partly explained by the changed patterns in arrivals in both countries.

In the case of Italy, there is a notable discrepancy between the number of potentially eligible applicants and the number effectively registered for relocation. More than 20,900 Eritreans arrived in Italy between 1 January 2016 and July 2017 but only around 10,000 persons have been registered for relocation. This suggests severe gaps in locating and registering Eritrean nationals for the purpose of relocation.

More iniquitously, the pool of eligible applicants has been artificially reduced by de facto excluding persons who arrived in Greece after the start of the application of the EU-Turkey Statement on 20 March 2016, regardless of their nationality. UNHCR statistics show that between April 2016 and July 2017 more than 11.000 Syrian and Iraqi (eligible until end of 2016) asylum seekers arrived in Greece (precisely: April to December 2016: 6,629 Syrians and 2,525 Iraqis arrived; January to July 2017: 4559 Syrians arrived).

The decision to use 20 March 2016 as a cut-off date for relocation from Greece, which has no legal basis whatsoever, has therefore unduly deprived these persons of the benefit of relocation. Many of them have instead been subjected to appalling reception conditions and truncated border procedures on one of the Greek islands. They remain there in limbo. Resources, including the over-stretched Greek asylum system and newly established EASO operations, have been re-allocated to implementation of the Statement rather than relocation. Given the continuing need to alleviate pressure on Greece, this decision to prioritise the EU-Turkey Statement over relocation should be revisited by allowing registration for relocation of persons who arrived in Greece after 26 March 2016 and before 26 September and who would otherwise be eligible under the existing Relocation Decisions.

These measures come in addition to the threshold whereby relocation is limited to individuals holding nationalities for which the EU-wide recognition rate of asylum claims is at least 75% according to the latest available quarterly Eurostat statistics. In addition to eligible nationalities changing frequently, this policy has

considerably reduced the pool of potential candidates from the start and meant that many in desperate need and entitled to international protection are excluded. For example, when the overall recognition rate for Iraq fell below 75%, Iraqis ceased to be eligible for relocation even though 64,630 of them in 2016 and at least 37,000 in the first half of 2017 were granted protection status at first instance across EU and Schengen Associated States. It has also led to tensions between different groups of asylum-seekers.

RELOCATION DOES NOT END ON 26 SEPTEMBER 2017

The abovementioned practical and legal obstacles to relocation are not insurmountable and initial targets under the Relocation Decisions can and should still be met. In this respect, it must be emphasised that relocation obligations vis-à-vis eligible applicants registered before 26 September 2017 continue to exist after this date. According to Article 13(3) of Council Decision 2015/1601 it shall apply to persons arriving on the territory of Italy and Greece from 25 September 2015 until 26 September 2017, as well as to applicants having arrived on the territory of those Member States from 24 March 2015 onwards. As clarified by the Commission, any relocation commitments not taken up by 26 September 2017 must be carried out by Member States within a reasonable time thereafter. In ECRE's view this includes the obligation on Member States of relocation to make pledges if necessary to meet their numerical quota under the Relocation Decisions.

In order to maximise its potential as a solidarity measure, relocation must go hand in hand with the automatic suspension of Dublin transfers to countries benefitting from relocation. As mentioned above, relocation also serves to mitigate the lack of solidarity in the Dublin system by alleviating pressure on the countries of first arrival to which Dublin allocates disproportionate and unfair responsibility. Enforcing both at the same time is counterproductive and defeats the purpose of relocation. The operation of the relocation scheme in parallel to the Dublin Regulation has led to a contradictory situation whereby European countries receive asylum seekers from countries such as Italy, while returning larger numbers of asylum seekers to the self-same countries under the Dublin system. With respect to Greece the resumption of Dublin transfers is now being actively promoted while as of 27 July 2017 more than 4,800 applicants were still waiting in that country for their relocation to other Member States. This constitutes a fundamental contradiction at the heart of the EU's approach to relocation, which regrettably persists in the corrective allocation mechanism introduced in the Commission proposal for reform of the Dublin system.

Yet, the successful implementation of relocation also requires full compliance by receiving Member States with their obligations under the EU asylum *acquis* and serious investment in the inclusion of those relocated so as to avoid onward movement. At the same time, relocation does not absolve benefiting Member States from their obligation to establish resilient asylum systems.

RELOCATION AS A NECESSARY SOLIDARITY TOOL IN THE CEAS

The practical challenges in implementing relocation should not be used as a pretext by States either to renege on outstanding relocation obligations, or to dismiss relocation as an unfeasible solidarity tool in the current or future design of the Common European Asylum System (CEAS). There are humanitarian and political reasons to invest in relocation and make it work. In fact, the progress made in the first five months of 2017 in speeding up relocation processes and increasing the numbers of applicants relocated, including through the voluntary engagement of Schengen Associated States, shows that relocation can work where there is political commitment.

The need for solidarity measures to support Italy and Greece, including the swift relocation of vulnerable applicants is likely to persist, even if current relocation commitments are fulfilled, given the humanitarian crises and political threats in both countries. Therefore, the adoption of a robust crisis relocation mechanism, revised in light of lessons learned under the Relocation Decisions, must be envisaged by EU co-legislators pending the reform of the Dublin system. The 2015 Commission proposal for a permanent crisis relocation mechanism could provide the basis for discussion on a system to structurally deal with disproportionate pressure on certain States' asylum systems.

III. RECOMMENDATIONS

Against the backdrop of changing patterns of arrivals in Italy and Greece in recent months and the continued need for relocation as a solidarity and protection tool, ECRE calls on EU Member States to:

- » Complete the number of pledges required to meet their respective quota under the two Relocation Decisions as soon as possible. Where necessary for capacity reasons, Member States should continue monthly pledges beyond 26 September 2017.
- » Refrain from expressing prohibitive or discriminatory preferences and relying on rejection reasons other than those explicitly mentioned in the relocation decisions
- » Prioritise the relocation of vulnerable applicants, in particular unaccompanied children from Italy. With support from EASO, Italy and Greece must take the necessary measures to ensure their identification and registration for the purpose of relocation.
- » With respect to Greece, lift the unlawful restrictions to the scope of the relocation Decisions resulting from the EU-Turkey Statement and consider those who have arrived after 20 March 2016 and who meet the eligibility criteria for relocation.
- » Refrain from initiating Dublin procedures regarding the countries benefitting from the relocation scheme, as the application of the Dublin Regulation undermines the aim of alleviating pressure on those countries' asylum systems.
- » Resume discussions on a robust crisis relocation mechanism pending the fundamental reform of the Dublin system.

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