

## RELOCATION OF ASYLUM – SEEKERS IN THE EUROPEAN UNION

Alexandra BUCUR\*

### ABSTRACT

*This study analyzes the emergency situation characterised by a sudden inflow of nationals of third countries in Europe. Member States have increased their efforts to set up measures of solidarity and fair sharing of responsibility for relocating a significant number of applicants from Greece and Italy, in clear need of international protection. This article examines the relocation procedures and implications resulting from the commitments of Member States. The rights and obligations of applicants for international protection covered by the relocation process are also presented.*

**Key-words:** relocation, asylum-seekers, solidarity, human rights.

The significant rise in the number of asylum-seekers on the European continent over the past years has brought human rights to the forefront. The European authorities have been working for an efficient response to the migration crisis, providing protection to people seeking it in Europe. One of the reasons why applicants come to Member States is that European Union has a protective asylum system.

“History has proved that the migration issue is one of the most dramatic aspects of all times”.<sup>1</sup> The right of asylum is an ancient juridical concept, under which a person persecuted by an authority may be protected by another jurisdiction. The term asylum-seeker is frequently mistaken for the term refugee. Asylum seekers are persons seeking to be admitted into a country as refugees and awaiting a decision on their application for refugee status under relevant international and national instruments.<sup>2</sup> Under principles of international law, nations are entitled to prescribe rules that control the behaviour or status of anyone located within the territorial state, and nations have the right to prescribe their rules that the subjects must obey. Asylum is connected to fundamental rights.

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\* PhD student National School of Political Studies and Public Administration, member of the European Law Institute.

<sup>1</sup> Irina Moroianu Zlatescu, *Migration and Law Issues Related to Legislation on Migration in Romania*, Human rights 1/2014, IRDO, 2014, p. 37.

<sup>2</sup> International Organization for Migration, *Glossary on Migration*, 2004.

Article 18 of the Charter of Fundamental Rights of the European Union, for the first time at European level, establishes the right to asylum. Moreover, even in the Preamble states that the enjoyment of rights contained in the Charter entails responsibilities and duties with respect to third parties and to the human community in general and to future generations.

The Council Conclusions of 10 October 2014 claim that a motion "should be undertaken without delay... proposing a credible number of resettlement places, on a voluntary basis, in order to offer an alternative legal avenue and contribute to stabilize refugees communities in partnership with UNHCR".<sup>3</sup>

In November 2016, EU countries registered 75 844 applications for international protection. Since the beginning of 2016, 1 171 138 applications have been recorded in the EU. This number is 6 % less than during the same period of 2015.<sup>4</sup> Syria and Afghanistan are the main countries of origin of applicants for international protection.

Like Ian Martin said "Government... are more often motivated by self-interest than by considerations of humanity, and this provides a further reason for those seeking to combat human rights violations to insist upon the right of asylum."<sup>5</sup> The EU needs an efficient mechanism for allocating responsibility. To this end a fundamental change of direction has been employed.

Hence, a new reality has emerged in Europe. It has opened, at European level, a new chapter in the legal enforcement of asylum issues and the integration of individuals. The foundation of a united Europe is based on fundamental ideas related to equality, freedom, and security.

In May 2015, the Commission proposed a European Resettlement Scheme which was adopted by the Council in July 2015.

Article 78 (3) of the Treaty on the Functioning of the European Union (TFEU) establishes that "In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament".<sup>6</sup> Under this article and the existence of the emergency situation, derogations from Dublin rules have been made. The system establishes the rule that every application presented will be examined by, in principle, only one "responsible State" (Art. 3(1) DRIII) European Union Regulation 604/2013. That State is to be determined by an agreement between the States concerned, based on a hierarchy of "objective criteria".

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<sup>3</sup> Council conclusions of 10 October 2014 - "Taking action to better manage migratory flows".

<sup>4</sup> European Asylum Support Office, Latest asylum trends - November 2016, <https://www.easo.europa.eu/sites/default/files/Latest%20Asylum%20Trends%20November%20draft%20wl.pdf>

<sup>5</sup> Roman Boed, *The state of the right of asylum in international law*, Duke Journal of Comparative & International Law, Vol. 5:1, 1994, p. 1.

<sup>6</sup> Treaty on the Functioning of the European Union.

The principle of solidarity has provided the basis for decisions and turned the conflict into an opportunity to act together. In the face of unmanageable situation, which surprised the states and the European institutions, the resettlement of persons in need of international protection to all European countries has been decided.

Like Saint John Paul II said, solidarity "is not a feeling of vague compassion or shallow distress at the misfortunes of so many people, both near and far. On the contrary, it is a firm and persevering determination to commit oneself to the common good; that is to say to the good of all and of each individual, because we are all really responsible for all".

Implementing the principle of solidarity seeks to build a bridge between the needs of individuals and the state's capacity to accommodate these people. This principle is regulated also in the Charter of Fundamental Rights and it is about valuing the others, because we are interdependent beings.

The relocation process is an important tool for solidarity regarding asylum and a legitimate method to access protection in all EU countries.

Relocation is the transfer process of persons who are in need of international protection from one EU Member State to another EU Member State. The distribution system has been built on objective criteria. Relocation is a "legal and safe way"<sup>7</sup> to move to another State member as an asylum seeker.

In this area, EASO had an important role, Agency promotes, facilitates and coordinates the exchange of information and best practices on relocation within the EU.<sup>8</sup>

The first multilateral intra-EU relocation project implementing the principle of solidarity among states in this area was EUREMA.<sup>9</sup> This initiative has been taken with the participation of some Member States - France, Germany, Hungary, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia and the UK. The project was led by authorities from Malta, with the involvement of IOM and UNCHR. Number of persons relocated was 227 in phase I (2011).<sup>10</sup>

Legislation on migration is facing a new perspective that strengthens increasingly more principles relating to human rights and respect for the person implicitly.

In 2015, the Commission proposed the transfer of persons in need of international protection, to states that have suffered extreme pressure on asylum

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<sup>7</sup> Living in another European country while your asylum claim is examined there (relocation), 2016, <http://asylo.gov.gr/en/wp-content/uploads/2016/06/W001-5-Relocation-Poster.pdf>.

<sup>8</sup> European Asylum Support Office.

<sup>9</sup> EUREMA is a EU Pilot Project for the relocation of beneficiaries of international protection from Malta, endorsed in the European Council Conclusions of 18-19 June 2009 (doc. 11225/2/09 CONCL 2)

<sup>10</sup> EASO, Fact finding report on intra-EU relocation activities from Malta, 2012.

systems because of the large number of individuals. In the same year, the compulsory relocation of a number of 160,000 people from Italy and Greece to other European countries was established.

In line with Article 8 of the Relocation Decision, Greece and Italy have submitted to the Commission and the Council roadmaps with measures in the area of asylum, first reception and return, aimed at enhancing the capacity, quality and efficiency of their systems in these areas, as well as with measures to ensure appropriate implementation of the Relocation Decisions.

Measures must be taken “to avoid secondary movements of resettled persons, in line with the EU acquis”<sup>11</sup>, without prejudice to the principle of non-refoulement.

One of the relocation conditions is that asylum seeker cannot choose the state jurisdiction where he is transferred to. Anyway, they can tell the authorities reasons why it would be better to be transferred to a specific Member State. Experience indicates that attempting to “allocate” persons without their consent, according to pre-determined criteria, is unworkable and comes at the expense of ensuring effective and swift access to status determination.<sup>12</sup>

Dublin procedures take long and have proven inefficient for these circumstances. Still, the Dublin system<sup>13</sup> remains the baseline system. For relocation, decisions can include a temporary derogation from the Dublin Regulation, in particular the criteria for determining the member state responsible for examining an application for international protection.

The suspension of Dublin transfers to Greece since 2011 has shown “a particularly critical weakness in the system”<sup>14</sup>, since a large number of migrants have come to this country. Relocation rules do not absolve European countries from applying the Dublin Regulation (EU) No 604/2013 fully, including the provisions related to family reunification.

COUNCIL DECISION (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of both Italy and Greece provides for relocating asylum-seekers from Italy and Greece. It

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<sup>11</sup> Conclusions of the Representatives of the Governments of the Member States meeting within the Council on resettling through multilateral and national schemes 20 000 persons in clear need of international protection, Brussels, 22 July 2015 (OR. en) 11130/15.

<sup>12</sup> Directorate General for Internal Policies Policy Department C: Citizens' Rights and Constitutional Affairs Civil Liberties, Justice and Home Affairs The Reform of the Dublin III Regulation Study, 2016.

<sup>13</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

<sup>14</sup> Communication from the Commission to the European Parliament and the Council towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe, Brussels, 6.4.2016 COM(2016) 197 final , p. 4.

only applies to asylum-seekers who have applied for asylum in one of those two States, and if that State is naturally responsible for considering the application under the Dublin rules (Chapter III of Regulation (EU) No 604/2013).<sup>15</sup>

According to the relocation procedure, Member States shall, at regular intervals, and at least every 3 months, indicate the number of applicants who can be relocated swiftly to their territory. On the other hand, Italy and Greece shall take a decision to relocate each of the identified applicants to a specific Member State of relocation.

It is important to be clear about the limits of relocation. Member States have the right to refuse to relocate an applicant only based on “reasonable grounds”, e.g., considering that person a danger to their national security or public order or where there are serious reasons for applying the exclusion provisions set out in Articles 12 and 17 of Directive 2011/95/EU. Hence, the protection of the nation and its interests, safety and security are essential concepts for European authorities and those individuals who can be considered 'threats' to security, who may have an impact to the wellbeing of a nation and its citizen are excluded from the relocation procedure.

Procedures regarding the identification, registration and fingerprinting for the purpose of transfer are guaranteed by Italy and Greece.

The transfer from Greece and Italy to another Member State takes place "as soon as possible" from the date of notification of the person concerned and, furthermore, Greece and Italy have the obligation to transmit the date and time of transfer. The Decision establishes that if the transfer procedure is not completed within the time limits, except Italy and Greece who agreed with the Member State a deadline for transfer, Italy and Greece remain responsible for examining an application for international protection in accordance with Regulation (EU) 604/2013.

The majority of Member States take too long to reply to relocation requests.<sup>16</sup> The EU authorities must learn from the experiences of these years and adopt measures that are fair and effective in the future.

Member States with bigger allocations, such as Germany or France, prefer to send acceptances for groups of 400 or 500 applicants, while countries with small or medium-size allocations prefer smaller transfers scattered throughout the month.<sup>17</sup>

According to data presented by the European Commission, up to 8 of November 2016, the total number of relocated persons is 1549 relocated from Italy

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<sup>15</sup> Art. 3.

<sup>16</sup> COM(2016) 222 final, Report from the Commission to the European Parliament, The European Council and the Council, Strasbourg, 12.4.2016, Second report on relocation and resettlement.

<sup>17</sup> Brussels, 8.12.2016 COM(2016) 791 final, Communication from the Commission to the European Parliament, the European Council and the Council, Eighth report on relocation and resettlement, p. 8.

and 5376 relocated from Greece. Austria and Hungary are the only two countries that have not submitted any pledge nor relocated at all.<sup>18</sup> The relocation to Austria of 1 065 applicants is suspended until 11 March 2017.<sup>19</sup>

In the mentioned period, 343 applicants from Greece were relocated to Romania, and a lower number from Italy, *i.e.*, 43.<sup>20</sup> Every country must show responsibility while applying new rules.

Note that Member States pay attention to "the best interests of the child", since a large number of minors have arrived on the territory of Europe. Also, in the proceedings for relocation, family members are transferred to the same state.

Persons who are subject of relocation are informed about the procedure "In a language which he knows or reasonably assumes that he knows." One of the applicant rights is that, before the transfer, a person notified of the applicant transfer decision will follow the applicant to the same state.

Currently, international cooperation is an absolute necessity assumed by most states, while the migration phenomenon is amplifying. It is an effective way to respond existing problems.

The most important activities coordinated by EASO, Frontex and other relevant Agencies are: the screening of the third-country nationals arriving in Italy and Greece, including their clear identification, fingerprinting and registration, the provision to applicants or potential applicants that could be subject to relocation procedure, the preparation and organisation of return operations for third-country nationals who either did not apply for international protection, or whose right to remain in Member States has ceased.<sup>21</sup>

The European Commission had an important role in terms of coordination between the parties, providing solutions to bottlenecks encountered during the application procedures, setting the strategic priorities.

In conclusion, the protection system can be more efficient by better balancing of interests, rejection is not a solution to the current global problem. At the same time, states have a legitimate interest in controlling internal security and defend their borders from those who abuse the institution of asylum. But, even when return is not immediately possible, basic rights are provided, like emergency, access to education for children or healthcare.

The balance between the security of the EU and an immigrant protection mechanism is a fundamental goal on the agendas of the authorities of the host

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<sup>18</sup> Austria benefits from a temporary suspension of the relocation of up to 30% of applicants allocated to Austria under Council Decision (EU) 2015/1601.

<sup>19</sup> Art. 1, Council Implementing Decision (EU) 2016/408 of 10 March 2016 on the temporary suspension of the relocation of 30 % of applicants allocated to Austria under Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

<sup>20</sup> Relocation and Resettlement - State of Play, 9 November 2016.

<sup>21</sup> Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, art. 7.

states. Hence, to yield a positive result, the actions of the states must be efficiently coordinated through proper adequate strategies.

This crisis should not be seen only as a security threat but as an opportunity to reaffirm the human dimension and to adopt sustainable measures to balance security and individual rights.<sup>22</sup> Human rights are inherent to the human person, expandable as the human society evolves.<sup>23</sup>

We believe that the European legislation on migration is growing through systematic changes and, furthermore, the Dublin rules will be improved, as well.

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<sup>22</sup> Alexandra Bucur, *Protection of human rights in the context of migration*, NEDES 2016.

<sup>10</sup><sup>th</sup> International Conference on Nondiscrimination and Equal Opportunities, Pro Universitaria, Bucharest, 2016, p. 193-199.

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