



Statewatch Briefing

ECRE recommendations to the forthcoming Polish Presidency¹: Call for a harmonised and upgraded Common European Asylum System

Last month, the European Council on Refugees and Exiles (ECRE) has published a set of recommendations addressed to the Polish Presidency, which took the lead of the European Council on 1st July 2011. It has become a habit for the non-governmental organisation to express its views and expectations to the different presidencies, thereby regularly raising asylum and international protection matters on the EU agenda.

Whether it comes to the reaction to the population displacements brought about by the “Arab spring” or to the current negotiations on the Procedure directive² and the Reception directive, ECRE is considering that “the EU’s effort so far in assisting both persons in need of international protection and the countries in the region most directly affected have been relatively poor”, while “the negotiations on the asylum package linger with little prospects of immediate success”. In line with the current debates on boat people trying to reach Europe from northern Africa, ECRE strongly positions itself reminding that access to protection is meaningless if no access to the European territory is given.

In view of the forthcoming establishment of a Common European Asylum System (CEAS), the organisation is strongly emphasising the need for harmonised and upgraded asylum and international protection system in the European Union, with proper implementation at the national level.

The need for “considerable improvement of the protection standards”

The European Asylum Support Office (EASO) has been opened on 19 June 2011, in Malta³, a symbolic step towards the realisation of a European asylum system. The rapid establishment of a CEAS is therefore even more needed. Rapidly established, however, does not mean downgraded: “The question may be raised as to what is meant by

¹ ECRE, ECRE Recommendation to the Polish Presidency of the EU, June 2011, <http://www.ecre.org/component/content/article/56-ecre-actions/240-recommendationspolishpresidency2011.html>

² European Commission, Asylum proposals: a more protective and effective Common European Asylum System (CEAS), MEMO/11/365, <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/365&format=HTML&aged=0&language=EN&guiLanguage=en>

³ European Commission, The European Asylum Support Office is now fully operational, IP/11/750, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/750&format=HTML&aged=0&language=EN&guiLanguage=fr>

establishing a CEAS by 2012”⁴. Indeed, negotiations over the so-called “asylum package” have so far been stalled “due to strong opposition in the [EU] Council” leading the Commission to take the initiative and submit proposals on 1 June 2011 with the hope of reaching a compromise with its co-legislative partners and establishing a CEAS by 2012 according to plans.

“(…) the 2012 deadline for establishing a CEAS has become highly ambitious and it is important that it does not undermine the objective to establish high standards of protection”.

The current EU asylum legal framework is, according to ECRE, largely insufficient, precisely because it sets “minimum standards” and somehow allows “member States to derogate from basic procedural guarantees while granting wide discretion in the implementation of minimum standards”. The claimed harmonisation in fact results in “widely diverging practices and law between the EU Member States today”.

Dublin Regulation

One emblematic illustration is the Dublin Regulation, through the striking example of the ECHR’s decision in *M.S.S. v Belgium and Greece* (January 2011) to suspend all returns to Greece in the absence of sufficient guarantees in the Greek system for people seeking international protection.

While acknowledging that improvement may be in progress following the Commission’s proposal to amend the Dublin Regulation, ECRE still makes precise recommendations which will hopefully be reflected on by the Council and the Parliament during the negotiation process:

- Respect for the right to information and the right to a personal interview (respectively Art.4 ad 5 of the Regulation) in all circumstances with no exception before a transfer decision to another Member State is made;
- Right to an effective remedy, with a suspensive effect, against a transfer;
- Establishing a temporary suspension mechanism when the asylum system in one Member State is “dysfunctional”;
- Detention of asylum seekers at a last resort only “if there is a significant risk of absconding”

Asylum procedure and reception conditions

ECRE has always considered that fairer and better first-instance procedures would facilitate a fairer and better examination of the appealed lodged against a first-instance rejection of an asylum claim.

The Commission’s proposals to recast both the Reception Conditions directive and the Asylum Procedures Directive are considered to weaken a number of important safeguards for asylum seekers (as already pointed by Steve Peers for Statewatch⁵), including the prohibition of detention of unaccompanied minors, access to legal aid and representation at the first instance, the judicial review of detention conditions and safeguards against

⁴ Ibid at 1

⁵ Peers S. “Revised EU asylum proposals: “Lipstick on a pig””, June 2011, <http://www.statewatch.org/analyses/no-132-asylum.pdf>

arbitrary detention, safeguards regarding the lodging of asylum applications at the border and in detention, access to the employment market (denial possibly extending up to one year), access to the asylum procedure for people coming from a country where the situation is assumed as improving over time (thereby justify for a postponement in the examination of the claim).

ECRE makes several recommendations to the Council and the European Parliament in these respects:

- Including the strongest minimum safeguards against arbitrary detention;
- Allowing access to labour market no later than 6 months after the application has been lodged;
- Accommodating the special needs of vulnerable asylum seekers;
- Ensuring that all asylum seekers have access to a personal interview, legal assistance and representation;
- The use of particular high standards when using medical records and envisaging accelerated procedures;
- The impossibility to postpone decisions on the application on the mere ground that changes are expected in the country of origin.

The role of the EASO

ECRE hails the EASO as playing a key role in supporting Member States facing particular challenges in with a high number of asylum applications to examine due to their geographical location. Much is said on the valuable contribution by the EASO to the Greek National Action Plan on Asylum and Migration, but also on potential improvement of the EASO's approach, for example by addressing reception conditions issues as a necessary complement to the support provided to the administrative aspects of the asylum system.

As regards other Member States, ECRE is underlining the role to be played by the EASO in helping identify people "with protection needs" within mixed flows reaching countries such as Italy or Malta. EASO is also expecting by ECRE to ensure that Frontex carries-out border surveillance operations "in a protection sensitive manner".

Finally, external experts (e.g. NGOs and academics) are considered to potentially bring a useful input to the work of EASO; ECRE therefore suggests that they take part to some working parties that the EASO may set up, as foreseen by the EASO Regulation⁶.

Intra EU-solidarity

The uprising in many Arab countries since late 2009 rendered more acute the issue of solidarity in ensuring protection to those in needs, not only with regard to northern African countries, but also among EU Member States themselves.

It is debatable whether the argument of the "pressure on the asylum system" is valid or not, something ECRE acknowledges by reminding that "numbers of refugees, asylum seekers and migrants arriving in the EU remain low compared to the influx in Tunisia and Egypt". However, as this has been brought to the fore as justifying for criticisable

⁶ Regulation (EU) No 439/2010,
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:132:0011:0028:EN:PDF>

decisions such as massive detention of migrants or the return of internal border controls within the Schengen area, this argument needs to be addressed in the framework of the current discussion on the European asylum system. That is precisely what ECRE does by supporting the relocation of some of the people granted international protection in Malta to another Member State.

Nevertheless, ECRE recalls that any relocation decision should be made “with the full consent of the persons concerned” and, importantly, should not “result in a mere shifting of the benefiting State’s responsibilities under international and refugee law”, especially in regards to detention and integration of people in need of international protection.

An important point is made by ECRE: the existence of a sovereignty clause in the Dublin Regulation (Art.3(2)) which allows for Member States to examine asylum claims of persons who may have previously transited through another EU Member State. This very clause, as argued by the NGO, may contribute to reduce the number of applications to be examined by countries like Italy, Greece or Malta by not automatically transferring people back to these countries.

Cooperation with third countries

Figures are self-explanatory: the EU’s share in the global resettlement efforts accounts for 4.4% of the resettlements in the world in 2010.

The degrading situation in some Arab countries at the moment, in Libya for example, calls for a rapid and comprehensive approach by the EU. In this regard, ECRE expresses deep concerns that the currently discussed Joint EU Resettlement Programme “remains hostage to an institutional dispute” between the Council and the Parliament when such a programme “could provide an enormous support for resettlement of refugees from this region in 2012”.

As regards Regional Protection Programmes, ECRE acknowledges they may contribute to capacity building in the countries where such schemes are implemented, but recalls that it “can never absolve EU Member States from their obligation under international human rights law and EU law vis-à-vis persons in need of international protection who arrive in the EU from the region concerned”.

In line with the above-mentioned argument, ECRE believes that the Global Approach to Migration should be articulated around four main axes: mobility, development, security and protection. This proposal is not without echoing the recent Communication by the Commission for a dialogue on migration, mobility and security; when put next to each other, this ECRE’s position stresses even more that the EU policy so far missed the opportunity to set up a mutually beneficial policy (development) in the full respect of its values and human rights standards (protection).

Border controls and access to protection

A CEAS would have no substance if people in need of international protection are not able to reach Europe, if not prevented from it. The recent agreement between Italy and the Libyan National Transitional Council on the repatriation to Libya of migrants apprehended at sea is of great concern as emphasised by ECRE.

The role of Frontex in border surveillance requires the Agency to ensure that people willing to apply for asylum and apprehended during Frontex operations are able to do so. The Fundamental Rights Strategy adopted by Frontex in March 2011 is welcomed by ECRE which calls for this strategy to be followed in practice and for a “systematic and independent monitoring of all Frontex operations from a human rights perspective”⁷.

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⁷ The latest draft agreed on following the *trilogue* between the Commission, the EU Council and the Parliament creates a Fundamental Rights Consultative Forum within Frontex (Art.26a), but guarantees on independence are questionable. Draft of the latest modification:
<http://www.statewatch.org/news/2011/jul/eu-council-frontex-final-12341-11.pdf>