

The interests of refugees should not be forgotten in the attempt to distribute them fairly across the EU

 blogs.lse.ac.uk/europpblog/2015/10/05/the-interests-of-refugees-should-not-be-forgotten-in-the-attempt-to-distribute-refugees-fairly

05/10/2015

EU member states agreed on 23 September to implement a quota system in which 120,000 refugees will be relocated from Greece and Italy to other countries across the EU. [Esin Küçük](#) writes that while there is a need to ensure a fair distribution of responsibility for refugees between member states, the interests of refugees should remain the most important concern. She argues that member states should reconsider the restrictions on secondary movements by asylum seekers within the EU, with individual countries compensated via a central fund for any inequalities that arise.



The arrival of a high number of Syrian refugees to the EU over recent months and the ordeals they have had to endure on their tough journey have exposed deficiencies in the EU asylum regime that have long been ignored. With the steady arrival of asylum seekers, the Dublin system of responsibility sharing is being challenged as never before. Refugees refuse to remain where they have entered the EU – as required by the Dublin Regulation – and instead head up north, with the hope of reaching a place offering the protection standards they deserve.

Informed by humanitarian concerns, and perhaps the demographic realities of an ageing society, Germany has suspended the enforcement of Dublin returns for Syrian refugees. Whatever the reasons, Germany's open-door policy for refugees is commendable, as it has no doubt prevented many human tragedies.



Credit: Public Domain

The initiative of Germany, however, does not seem to find an echo in the EU at large. Some Member States do not seem to be ready to give up the much-beloved country of first entry rule, which has been the gearwheel of shifting responsibility to easily accessible Member States. Rather than replacing the current failing system with an ethically sound responsibility-sharing mechanism that has the protection of refugees at its focus, the current tendency is to push for backup mechanisms to make the Dublin system work.

Hard mandatory quotas

On 22 September, the Council adopted [a decision](#) establishing an emergency relocation scheme that involves mandatory hard quotas. The plan envisages the relocation of 120,000 asylum seekers from Italy and Greece based on a mandatory distribution key determined by considering the economic strength, population density, unemployment rate and average number of past asylum applications of the Member States.

Together with the 40,000 asylum seekers who the Member States agreed to relocate from Greece and Italy with an earlier [decision](#), the relocation of a total of 160,000 asylum seekers is envisaged. In return, the participating states are compensated from a fund financed from the EU budget. The second decision imposes mandatory quotas and expects all Member States to participate in proportion to their strength by accepting asylum seekers into their

territories. Only in exceptional circumstances are Member States allowed to request the temporary suspension of relocation of up to 30 per cent of applicants allocated to it.

This decision is an important step in the enhancement of solidarity among the Member States. The relocation of people on hard quotas is a demanding form of responsibility sharing. It necessitates special arrangements, an intricate organisation, as well as financial resources. In short, it demands more commitment than simply transferring money. The Council decision, although not unanimously taken, shows that the Member States seek to honour the principle of solidarity and fairness in responsibility sharing as required under Article 80 TFEU.

On the other hand, while ensuring a more balanced sharing of responsibilities among the states, the decision seems to disregard the fact that a forced relocation system may cause protection gaps. According to the allocation scheme, the asylum seekers are not allowed to choose their asylum state. Asylum solidarity has two dimensions, namely solidarity towards refugees and inter-state solidarity. These two aspects of asylum solidarity are closely intertwined, in the sense that the former may be facilitated by promoting the latter. A mechanism that effectively reduces the costs for overburdened host countries would, at the same time, improve protection standards.

Yet a fair distribution of asylum responsibilities does not always ensure better protection for refugees. The relocation scheme seems to be based on the assumption that all asylum seekers voluntarily leave Greece and Italy to go to a relocation state. During the crisis, it became evident that some countries show strong resistance against opening their borders to refugees.

Asylum seekers may become victims of racially motivated violence, especially in societies that are not familiar with multiracial and multicultural living. [Experiences in both Germany and the UK](#) indicate that dispersal schemes that impose forced relocation may put the safety of refugees at risk. The decision, therefore, while seeking to facilitate a fair allocation of responsibilities, seems to undermine the best interests of refugees.

The Prime Minister of Slovakia, one of the few countries that voted against the decision, [stated](#) that Slovakia will challenge the relocation scheme before the CJEU. It is not difficult to guess that the main concern of Slovakia is not the possible implications of forced relocation on asylum seekers. Should the measure be challenged on grounds other than procedural reasons, it will be interesting to see how the Court approaches the principle of solidarity and fairness in responsibility sharing.

A solution outside the EU?

Ensuring that responsibility is equally shared among the Member States is only the first dimension of the Union's crisis response. The second aspect concerns the extra-territorialisation of protection. Frustrated with the scale of the crisis, Germany's Development Minister [Gerd Müller](#) called on the Member States to deal with the 'problem' of refugees in neighbouring countries before they reach the EU.

The idea of externalising protection seems to be endorsed also by [Donald Tusk](#), the European Council's President, who claimed that the asylum seekers who arrived in the EU are only the tip of the iceberg and measures should be taken to stop the inflow from neighbouring states. This means strengthening borders and offering financial assistance to states such as Turkey. Although EU leaders find it difficult to agree on sharing responsibility among each other, they seem to find it less challenging to agree on the externalisation of protection.

The EU, in general, seems to have a high opinion of Turkey as a host country. That is perhaps because Turkey is hosting about [2 million](#) refugees, while the Member States fight tooth and nail over sharing 160,000 asylum seekers. It is true that asylum seekers have not been sprayed with fire extinguishers, foam or tear gas in Turkey; however, the situation for refugees is still far from ideal. Turkey keeps its doors open, yet it refuses to grant them refugee status, retaining the geographical limitation to the 1951 Geneva Convention.

Syrian refugees are instead given temporary protection in accordance with Article 91 of the [Law on Foreigners and International Protection](#). Having finally realised that the conflict in Syria will not be resolved anytime soon, in 2014

the Turkish government issued [a regulation](#) to ease the access of those who are under temporary protection to basic healthcare, education and the job market. Regrettably, the protection under the regulation is reserved for those fleeing Syria, excluding many other asylum seekers, such as Yazidis from Iraq.

It should be noted that these developments do not substantially improve the position of Syrian refugees either. The temporary protection status does not automatically grant a work permit; rather it allows employers to apply for authorisation if they intend to hire Syrian refugees. Considering Turkey's high unemployment rate, the chances of refugees finding a job and convincing an employer to apply for authorisation are close to zero.

A considerable number of refugees, including children, try to sustain their lives by doing seasonal jobs where they are underpaid or exploited. In addition, as the total number is pushing up to 2 million, the structural problems of economic and political instability are escalating. Above all, Turkey is suffering from security problems, in particular in the east, which do not only threaten locals but also the refugee population. It is difficult to see how solutions oriented towards regional protection based on financial support will serve the protection of refugees in Turkey.

Is there an ideal solution?

The Member States seem to give more weight to egalitarian considerations in sharing responsibility among each other. The reach of fairness, however, does not go beyond the borders of the EU. Financial assistance became available to neighbouring states when the Member States realised that low protection standards force refugees to take the hazardous journey to the EU.

The Member States refuse to accept, however, that the low protection standards in the neighbouring host states result from deep structural problems that cannot be resolved with financial assistance and that externalisation of protection will have humanitarian costs. The Member States should reconsider their strategies for the regionalisation of protection, keeping in mind the values listed in Article 2 TEU, upon which the EU is founded.

The unfairness in responsibility sharing is a fundamental issue of the EU asylum regime, which awaits an urgent solution. On the other hand, while addressing the inequalities, priority should be given to the position of those whose lives are directly affected. The infringement of fundamental rights of refugees largely results from the restrictions that the Dublin rules impose on secondary movements. Rather than introducing corrective measures that leave the basic rationale of the system untouched, the Dublin regime should be altered to allow the free movement of protection seekers and refugees within the EU.

To reduce the inequalities that may result from free-movement rights, an effective solution would be the creation of a uniform asylum practice across the EU, under which the reception conditions, assistance provided and (most importantly) the outcome of an application would not change from one country to another. A uniform asylum system, in which the [European Asylum Support Office](#) plays a key role as a decision-maker, would eliminate the inequalities resulting from divergent asylum practices. The assessment of applications by a central agency based on credible and impartial data about the country of origin may assist in reducing the concentration of asylum seekers in countries where they believe they will receive fair treatment.

Admittedly, divergences in the protection levels offered by different countries are not the only determinant in the choice of an asylum country. Asylum seekers and refugees might also be attracted to certain states due to structural reasons, which may lead to inequalities in responsibility sharing. However, the current system under the Dublin regime also results in the concentration of refugees in certain states. If that is unavoidable, why not choose a system that prioritises the interests of refugees and develop corrective instruments to remedy the inequalities that may result from such a system?

In a model where free-movement rights are recognised, fairness can be ensured if asylum and refugee-related costs are covered by a central fund in which *all* Member States participate in accordance with their respective strengths and from which they benefit in line with their needs.

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