

Courtesy translation



THE SENATE
OF THE PARLIAMENT OF THE CZECH REPUBLIC
10TH TERM

546th

RESOLUTION OF THE SENATE

Delivered on the 28th session held on 19th October 2016

on the Proposal for a Regulation of the European Parliament and of the Council 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 (recast)

(Senate Print No. N 89/10)

The Senate

I.

1. Got acquainted

with the submitted proposal for a Regulation and welcomes the Commission's effort to improve the functioning of the Dublin system;

2. Sees,

however, no grounds for departing from its negative position on the introduction of permanent relocation mechanisms obligatory for the Member States and persons concerned;

3. Agrees

with the Position of the Government and asks the Government to act, both in the Council and the European Council, against the adoption of this Regulation, should it contain the proposed corrective allocation mechanism and so called solidarity contribution;

4. At the same time calls on the Government

to continue with its intensive participation in the financial, material, technical and personnel assistance to the asylum systems of Member States under strong migratory pressure and to support, at the EU level, the adoption and implementation of measures that truly contribute to solving the crisis, in particular strengthening the control of EU's external borders, functioning of the reception centres (hotspots), deepening the cooperation with third countries and providing efficient humanitarian aid in the affected regions;

5. Has come to the conclusion

that the proposal for a Regulation, as far as the establishment of the corrective allocation mechanism and so called solidarity contribution is concerned, does not comply, on the grounds set out in Part II.1. to II.4 of this Resolution, with the principle of subsidiarity according to Article 5(3) of the Treaty on European Union;

6. Adopts

therefore a **reasoned opinion** on the incompatibility of the proposal for a Regulation with the principle of subsidiarity in accordance with Article 6 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality attached to the Treaties;

II.

1. Is of the opinion

that the establishment of the corrective allocation mechanism does not have a real added value in comparison with the existing possibilities of Member States' action and does not lead to achieving the declared objectives, thus the requirement that the Union shall act only if the objectives of the proposed action cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level is not met on the following grounds:

- European Union already has instruments that enable to confront disproportionate pressure on a Member State, in particular Article 78(3) of the Treaty on the Functioning of the European Union according to which, 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 may adopt provisional measures for the benefit of the Member State(s) concerned and Article 78(2)(c) of the Treaty on the Functioning of the European Union that enables the Union to introduce a common system of temporary protection in the event of a mass influx of displaced persons (Directive 2001/55/EC on temporary protection);
- the abovementioned instruments allow a flexible response to crisis situations; however, so far the Commission has only used them to propose relocation of applicants for international protection obligatory for the Member States and persons concerned; on the contrary, the proposed automatic corrective allocation mechanism does not take account of the immediate situation and infrastructural capacities of individual Member States;
- due to its parameters the proposal does not lead to dealing with situations of disproportionate pressure, but to a permanent redistribution mechanism of applicants for international protection between Member States with no clear criteria for determining the Member State where the applicant is to be relocated to and without taking the will of the applicants into account;

2. Finds

that contrary to Article 5 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality, the proposal does not contain any detailed information allowing to appraise compliance with the principles of subsidiarity and proportionality, in particular with regard to the so called solidarity contribution, the amount of which is not justified in the proposal and no earmarking of this contribution is prescribed;

3. Remains to be convinced

that in accordance with the principle of subsidiarity, the relocation of applicants for international protection must be a matter of political decision of each Member State since it is the Member State that will be responsible for further stay of such persons on its territory, both with respect to providing medical and other assistance and to their social, economic and cultural integration, and in terms of maintaining public security; authorities of a Member State must also bear political

responsibility for a possible failure in this task and citizens of a Member State must be able to achieve a change of government policy, which would be made impossible if an automatic allocation mechanism was adopted at EU level;

4. Is of the opinion

that involuntarily relocated persons will not have the motivation to integrate into the society of the Member State of relocation and will seek to move to those Member States where they would be naturally heading, which cannot be prevented in the long-term; this considerably increases the security risks that will be associated with their stay;

5. Would therefore welcome

a detailed consideration of a wider range of alternatives to the current Dublin system;

6. Also agrees with the Government

that it is necessary to ensure the interconnection of the proposal with other EU asylum legislation and therefore it will debate in detail the related proposals presented by the Commission in July;

7. Supports

the elements of the proposal aimed at setting clear rules for applicants for international protection, in particular

- an obligation to remain in the Member State responsible for examining the application for international protection;
- strengthening the rights of unaccompanied minors;
- emphasis on automatic return of persons which came to the EU from the first country of asylum, safe third countries and safe countries of origin;
- the establishment of an automated system for registration of applications for international protection, as it is necessary to gather and share reliable information in the area of asylum policy;
- the abolition of the so called cessation clauses allowing for a later change of the state responsible for examining an application for international protection;
- the effort to prevent secondary movements within the European Union, in particular an obligation for the Member State to take back a beneficiary of international protection, who is irregularly present in another Member State;

8. Has doubts, however,

about other elements of the proposal:

- shortening the time limits provided for in the Regulation could contribute to faster decision making, however, it can also run into capacity limits of the Member States; at the same time the proposal does not address the consequences of the expiration of time limits;
- it is not appropriate to restrict the right of a State to assume responsibility for examining an application for international protection on humanitarian grounds, as it is basically an element of voluntary solidarity;
- certain limitations on the rights of applicants for international protection may collide with constitutional and international obligations of Member States, e.g. prohibition of providing applicants, which are located outside the Member State in which the procedure is carried out, with any material assistance except for emergency health care may be problematic if the responsible Member State does not rapidly take charge of an applicant;
- sanctions for uncooperative applicants that are based on a fast-track route to a rejection of the application may be counterproductive, because they may lead to a concentration of persons who have not gained international protection, but at the same time cannot be returned to a third country, in the Member States;

III.

1. Requests

the Government to inform the Senate about the way this position was taken into account, and about further development of negotiations;

2. Authorises

the President of the Senate to forward this reasoned opinion to the presidents of the European Commission, the European Parliament and the Council.

Milan Štěch
sign manual
President of the Senate

Zdeněk Papoušek
sign manual
Senate Verifier