

Approved Position Paper

The Hotspot Approach

“We have witnessed a new practice in the context of the hotspot. People coming from sub-Saharan African countries that are considered safe are issued with deportation orders as soon as they arrive on the Italian territory. They are not informed on asylum possibilities and the authorities present in the hotspot, national authorities and European agencies, do not give them the opportunity to claim asylum. Usually, their deportation is carried out very quickly, in the days following the issue of the order.”

Source: Staff member from Caritas Italiana

Introduction

The hotspot approach was launched by the European Commission in May 2015, in its European Agenda on Migration. According to the Commission, the hotspot approach aims at ensuring a better collaboration between national authorities and European agencies (European Asylum Support Office, Frontex, and Europol) which will work together in one point to swiftly identify, register, and fingerprint incoming migrants to facilitate the relocation process and to ensure a fair distribution of refugees between EU Member States.

However, first observations of the implementation of hotspots have raised concern among NGOs regarding the risk of discrimination based on grounds of nationality as well as the potential violation of Human Rights that could emerge from forced fingerprinting and rushed processing of asylum applications. Moreover, the Caritas Europa network is very concerned about the unclear procedures adopted at national level in the implementation of the hotspot system.

Caritas Europa organisations’ actions in the hotspots

In Chios and in Lesbos, Caritas Greece is distributing non-food items such as sleeping bags, mats, baby kits, backpacks, etc. at distribution points in two different camps, which are foreseen to become hotspots. In Athens, Caritas Greece has been participating since November in the “Winterization-Shelter” project, to provide accommodation to refugees and migrants. The Refugee Centre of Caritas Athens assists, orients, and facilitates the communication of refugees and migrants with the Asylum Services and Offices and informs them on the procedures for other relevant legal support.

Caritas Italiana is monitoring the implementation of the hotspots and in particular the access to international protection for migrants landing in Lampedusa. Caritas Agrigento is reporting numerous daily cases of migrants, who have disembarked in Lampedusa and are not allowed to ask for international protection. It seems that officials (Italian guards, Frontex officers) in the hotspot operate an “eligibility decision” about international protection requests, preventing people of certain nationalities (Nigerians, mostly) from formally claiming asylum, and instead issuing them directly a formal “refusal” order. These people are then completely abandoned and left to themselves by the authorities, which are not even managing their return. With no chance of being assisted and helped, they are hosted by Caritas Agrigento, which puts them in contact with lawyers for evaluating formal appeals against this treatment. As such, certain nationality groups are effectively being left into an irregular status.

Caritas Europa’s observations of the functioning of the hotspots

Four hotspots are currently working: three in Italy (Lampedusa, Porto Empedocle, and Pozzallo) instead of the foreseen six; and one in Greece (Lesbos) instead of the foreseen five. While relocation should have

been an important component of the hotspot approach, as of mid-Feb, only 272 refugees have been relocated since the beginning of the implementation of hotspots. This is because Member States do not want to fulfil their commitment in taking in relocated refugees. There is also a **clear lack of information about relocation** for migrants, leading to a situation in which very **few refugees become a candidate for relocation**.

Besides the **malfunctioning of relocation**, Caritas Europa is very concerned by the implementation of the hotspot approach. We have observed numerous cases of illegal practices of discrimination, where people coming from Sub Saharan countries are directly issued with a return decree upon their arrival, without having even the opportunity to submit a claim for asylum. In other cases, people ineligible for relocation who ask for asylum are put in detention centres during the processing of their asylum applications, which can take months. Both of these situations in particular are being observed in Sicily.

The hotspot system is essentially a sort of no-land where people are classified on a national basis against International and European Law. Caritas Europa believes that this discrimination on grounds of nationality gravely endangers the individual right to asylum and is very much concerned about the lack of access to asylum procedure. This situation is a clear violation of migrants' fundamental rights.

We remind EU institutions that even if the European legal framework or national laws do not give precise rules to the implementation of hotspots, they nonetheless guarantee the respect of migrants' and refugees' rights. In particular, automatic devolutions and collective returns are forbidden and the European Charter of Fundamental Rights recognizes the individual right to asylum.

The lack of will of other Member States to receive people arriving in Italy and Greece on the one hand, and the inability to repatriate people receiving a return decree on the other, demonstrate a current failure of the European Agenda on Migration.

Recommendations

Considering our concerns about the implementation of the hotspot approach and the current situation in those hotspots, Caritas Europa urges:¹

With regard to access to the procedure:

- The European Commission and European agencies stop illegal practices of discrimination on grounds of nationality in the hotspots and ensure that the right to individual examination of asylum applications is guaranteed to all.
- European agencies working in the hotspots inform migrants on procedures such as collecting private data and taking fingerprints. Information should be adapted when addressing children, single parents with children, women, and other vulnerable groups, and communicated in a language understandable to the applicant.
- Member States ensure that the national provisions regulating the hotspots are in accordance with their obligation under national, EU and international legal frameworks.
- The European Commission ensures that the national provisions regulating the implementation of hotspots are in conformity with the EU Charter of Fundamental Rights.
- The EU ensures that persons concerned are provided with an individual decision on the outcomes of the assessment, aiming at determining the age, nationality, family links and language skills; all criteria that could be used for deciding to relocate asylum seekers and for deciding to which Member State a person is to be relocated.
- The EU ensures that the decisions on relocation are made on the basis of a full interview conducted with adequate legal and linguistic assistance.

¹ See also for more information ELENA/ECRE letter on hotspot and relocation http://www.accem.es/ficheros/documentos/pdf_noticias/2016_pdf/ELENA%20letter%20relocation-hotspots%20EC.pdf

- The EU ensures that the requirements of the Asylum Procedures Directive in this regard are met by the staff responsible for the registration of persons in the hotspots.

With regard to the reception, identification and procedural safeguards for vulnerable individuals:

- The EU ensures that specific procedures are in place in the hotspots to identify vulnerable persons and that their special reception needs and special procedural guarantees are met.
- The EU avoids closed centres and ensures the access of civil society organisations in all centres.
- The European Commission provides a temporary regular position to all people who received a repatriation decree but cannot return to their countries of origin due to the lack of bilateral agreements.

With regard to the use of coercive measures:

- The European Commission bans from the hotspots coercive measures, especially when it comes to taking fingerprints. The use of detention for third country nationals arriving in hotspots should also be banned, including for those who will be returned to their countries of origin.
- The EU gives access to detained persons to a speedy judicial review of the lawfulness of such detention and to legal assistance in this matter.

With regard to relocation:

- EU Member States start implementing the relocation system as decided by themselves through the Council of the EU in order to guarantee the correct implementation of the hotspot system.
- Italy and Greece ensure that people declared not eligible for relocation have access to an effective remedy against such decision.
- The EU ensures that people eligible for relocation, but who don't want to be relocated or who want to challenge the country of relocation, have access to a procedure to contest such decision.
- The EU ensures that candidates to relocation have access to legal and procedural information and assistance free of charge, as well as interpretation services.

With regard to the accountability of EU agencies:

- The European Parliament requests information and transparency from the European Commission concerning the implementation of the hotspot approach.
- The European Parliament monitors the situation in hotspots and condemns strongly any violation of human rights that might happen there.

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