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ASK THE EXPERT

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ASYLUM

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The **Ask the expert policy briefs** are **highly informative tools** proposed in the framework of the ReSOMA project that aim at **facilitating knowledge sharing** and **social capital development**. By reacting to current events and developments that shape the European migration and integration debate during the duration of the project, these policy briefs will provide timely, evidence-based input to public debates as they unfold and feed in the overall process of identifying the unmet needs and defining policy trends.

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TOPIC 1

Impossibility and hardship of family reunion for beneficiaries of international protection

This policy brief aims to report on the current academic debate relating to family reunification policies addressed to refugees and holders of the subsidiary protection status across the European Union. Specifically, the attention is put on the main barriers hampering the possibility to enjoy this right by beneficiaries of international protection.

Current trends among Member States

Most of the Member States accord the same rights to refugees and beneficiaries of subsidiary protection as far as the family reunification is concerned (Belgium, Bulgaria, Croatia, Estonia, France, Italy, Lithuania, Luxembourg, The Netherland, Poland, Portugal, Spain, Romania and The United Kingdom). Nonetheless, in some other EU Countries, holders of subsidiary protection status have been facing more challenges compared to refugees for a long time. For example, they have to wait for a specific period of time before being allowed to submit the request (one year in Slovenia, two years in Latvia and three years in Switzerland) or, unlike refugees, they do not benefit from the same preferential treatments relating to income, sickness insurance and accommodation requirements (The Czech Republic, Hungary and Slovakia). Only recently have the other Member States introduced amendments to their laws such as Denmark in 2015 and Austria, Finland, Germany, and Sweden in 2016. Actually, beneficiaries of subsidiary protection are the main subjects of the restrictive policies put in place in the last period.

Barriers to family reunification to reduce the Country's attractiveness

Indeed, whilst the crucial role of the family in fostering integration is a shared opinion, because of the rising number of asylum seekers some Member States have been recently implementing strategies to reduce their attractiveness as countries of refuge. Restricting the right to family reunification for refugees and, mainly, for beneficiaries of subsidiary protection is one of the policies adopted at a national level in this regard. The objective is to reduce the number of arrivals to avoid the collapse of reception facilities or slowing down the integration processes. In parallel, this kind of measure is considered useful to prevent negative attitude against migrants, asylum seekers and beneficiaries of international protection. National authorities also highlight that the temporary nature of the permanence of the later target groups within the territory is another aspect at the basis of the deci-

sion to limit the family reunification rights (Czeck, 2016; Slominski and Trauner, 2018; Nicholson, 2018, Halleskov Storgaard, 2016).

Scholars highlight the controversy behind the fact that beneficiaries of subsidiary protection do have access to family reunification under national laws. Actually, what emerges from the academic analysis is that beneficiaries of subsidiary protection should enjoy the same favourable conditions granted to refugees because of the similar push factors at the basis of their decision to flee from the country of origin and leaving their families behind (Halleskov Storgaard, 2016, Rohan, 2014). The European Court on Human Rights (ECHR) developed a balancing test to determine whether family reunification is required by the ECHR (article 8). Therefore, the right of each State to manage flows should counterbalance the individual rights to be reunited with their families.

As the ECHR highlights, it is important also to take into account the push factors forcing people to leave the country of origin and their family as well. Unlike people who choose to migrate, asylum seekers escape from dangerous situations unwillingly leaving behind their relatives. Academics stress this concept by widening the analysis on beneficiaries of subsidiary protection (Halleskov Storgaard, 2016). This statement draws the attention to another aspect related to the family unity and reunification concepts: the limit or impossibility to "develop family life elsewhere". In this regard, if family reunification can take place in the country of origin (or in a different territory) there is no violation of article 8 ECHR (Gül v. Switzerland and Ahmut v. The Netherlands). Therefore, the weight of the "insurmountable obstacles" criterion is crucial to either accept or reject an application for family reunification as demonstrated in two different judgments: Kimfe v Switzerland, and I.A.A. & others v the United Kingdom.

At the same time, the assessment of applications for family reunification to beneficiaries of international protection needs to be carried out by taking into account the likelihood of risks for family members left behind. The Tuquabo-Tekle v. The Netherland[1] is a milestone case in this respect because it highlights the dangerous conditions experienced for example by older children who stay in the country of origin and the consequent necessity to proceed with the reunification procedure besides the parents' status.

Judgments also take into account the difficulties faced by beneficiaries of international protection because of delays from authorities in assessing the family reunification applications. In two cases, the Court stated that article 8 of the ECHR was violated (Mugenzi v. France[2], and Tanda-Muzinga v. France[3]).

Finally, the Hode and Abdi vs the UK[4] concerns discrimination against a refugee and his post-flight wife in the enjoyment of their right to family life because she was not allowed to join him in the UK. This was owed to more restrictive rules for the reunification of refugees' spouses in comparison to workers or students, or to refugees married before fleeing from the

[1] ECtHR, 2005, above fn. 74, para. 47-50
[2] Requête no. 52701/09, ECtHR, 10 July 2014
[3] ECtHR, 2014, above fn. 20
[4] Application No. 22341/09

Country. In this case, there was a violation of article 14 of ECHR in conjunction with article 8 ECHR.

When national sovereignty forgot human rights

Therefore, it is possible to shed light on the necessity to monitor the national sovereignty in implementing different kinds of policies addressed to refugees and beneficiaries of subsidiary protection (Nicholson, 2018).

Indeed, although the European Court of Human Rights has always shown respect for the state sovereignty when it comes to immigration matters, case law points out that the national legislation should take the law governing human rights into account also when family reunification is concerned, which is even more pertinent in cases involving refugees and beneficiaries of subsidiary protection. Examples regard situations in which insurmountable obstacles hindering the return to the country of origin to be together with other family members, but it is even more evident in cases in which the prohibition of discrimination binds national legislation. This means that, when certain categories of individuals enjoy more favourable family reunification conditions than other people, the difference in treatment needs to be reasonably justified. Therefore, the Strasbourg case law has the potential to influence the harmonisation in EU law also by requiring the Member States to provide objective and reasonable justifications, in case of differences in treatments between refugees and beneficiaries of subsidiary protection (Hode and Habdi v UK[5]; Niedzwiecki v. Germany[6]; Biao vs Denmark[7]).

The role of the Court is also to determine whether the strategies put in place are compatible with obligations at a national level under international and regional human rights and refugee law. The European Court of Human Rights plays a crucial role in this regard. Recently, the approach has shifted from a wide recognition for national prerogatives in the migration area to strengthened migrants' human rights. Specifically, as scholars point out, attention is paid to articles 8 and 14 of European Convention on Human Rights (Czeck, 2016, Halleskov Storgaard, 2016).

Article 14[8]ECHR, is often invoked when differences between refugees and beneficiaries of subsidiary protection occur. In this regard, commentators give rise to concerns on the choice, for example, of subjecting beneficiaries of subsidiary protection to three-year waiting periods

[5] Application no. 22341/09, ECtHR, 6 November 2012

[6] Application No. 58453/00, ECtHR, 25 October 2005

[7] ECtHR Grand Chamber, 2016, above fn. 51

[8] Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 177) is an anti-discrimination treaty of the Council of Europe. It was adopted on November 4, 2000, in Rome and entered into force on April 1, 2005, after tenth ratification. Unlike Article 14 of the Convention itself, the prohibition of discrimination in Protocol 12 is not limited to enjoying only those rights provided by the Convention. Protocol12, Article1 "General prohibition of discrimination" states that: 1 - The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. 2 -No one shall be discriminated against by any public authority. On any ground such as those mentioned in paragraph 1".

when the Family Reunification Directive forbids such restriction as regards refugees, on the one hand, and prescribes only two years in the case of other non-vulnerable Third Country Nationals (i.e. workers and students), on the other hand.

Conditions to avoid differences among beneficiaries of international protection

Family is important for migrants' inclusion and well-being, even more so for beneficiaries of international protection. The impossibility for this category of migrants to build a family life elsewhere needs to be considered when restrictions are put in place by the Member States. In this regards, scholars highlight the necessity to implement a holistic approach to regulate refugee and family matters. At the same time, the widespread academics' opinion asks for more harmonised conditions for refugees and beneficiaries of subsidiary protection.

Summarising the main analyses in this domain, the conditions for harmonised procedures comprise of, but are not limited to, the following elements:

- Increasing the effectiveness of family reunification procedures by:
  i) claiming requests that beneficiaries of international protection can meet as far as the documents to be produced are concerned;
  ii) avoiding delays in carrying out the assessment;
  Iii) foreseeing a sufficient time frame to apply the request.

- Avoiding discriminations between:
  i) refugees and beneficiaries of subsidiary protection;
  ii) family members specifically when they are dependent on the sponsor;
  iii) the so-called pre-and-post flight families.

- Giving a concrete follow-up to the Court's Case Law.

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TOPIC 2

Responsibility-sharing for asylum decision-making

The need of a structural rethinking of the Dublin system has become essential since 2015 when the massive migrants' flows exacerbated the system's limits expressed by the uneven distribution of responsibilities between Member States thus jeopardising asylum seekers' fundamental rights (Progin-Theuerkauf, 2017). Among others, the unwillingness and the refusal of some Member States to register people entering the territory, the shortage in properly implementing EU dispositions and the deep gap in national provisions have also fed the academic debate (Beirens, 2018).

On this point, it should be noted that even the Court of Justice has contributed to maintain the structural shortcomings of the Dublin system (Di Stasio, 2017). Indeed, the Court seized of determining the responsible Member States, stated the non-derogation of the State of first entry criteria without considering the exceptional nature of the situation caused by massive migration influx in some Member States (C-490/16, A.S. / Republika Slovenija; C-646/16, Khadija Jafari e Zainab Jafari).

However, as Francesco Maiani points out, the aim to build a sustainable and fair system to overcome the limits of the previous regulation can be achieved only taking into account the negative results arisen. In this respect, it would be necessary to enhance the asylum seekers cooperation by taking into account their needs and their choices, to adopt measures that can mitigate the defensive behaviour of some Member States and to simplify and streamline the entire system (Maiani, 2016).

The Recast of the Dublin Regulation

In view of the recast of the Dublin Regulation, many academics have commented on the proposals suggested by the Commission, the European Parliament and the Visegrad Group[9] by analysing the alternatives of solidarity adduced. The shared criticism on each proposed mechanism highlights a general reluctance in the effectiveness of the reform as it has been thought (Progin-Theuerkauf, 2017, Maiani, 2017, Den Heijer, 2017, Tubakovic, 2017, Thielemann, 2018)

The Commission Proposal

Relating to the **Commission proposal**, most of the comments regard the shortage in providing more structural changes (Progin-Theuerkauf, 2017). In this respect, beyond the still limited attention ad-

[9] See the Joint Statement of the Heads of Governments of the V4 Countries in which a flexible solidarity was proposed (https://www.euractiv.com/wp-content/uploads/sites/2/2016/09/Bratislava-V4-Joint-Statement-final.docx.pdf)

dressed to international protection seekers' needs and wills, the retention of some substantial elements of the previous system such as the responsibility criteria has been mainly criticised (Maiani, 2017). Indeed, the responsibility seems to remain substantially disproportionate on some Member States without effective changes in the current position of Italy and Greece (Den Heijer, 2017).

Moreover, attention is put on the current limited implementation of fair and equal share-responsibility because of the proposed corrective allocation mechanism that may be triggered only in times of crisis (if the number of applications in a Member State exceeds the percentage of 150%).

Indeed, the drafted allocation scheme has been criticised with regard to some crucial aspects such as the lack of harmonised procedures and a central authority (Hruschka, 2016) or the unduly high threshold that even in an emergency may be not triggered with the consequence to accentuate the unbalanced distributive effects (Maiani, 2017). Therefore, academics and experts ask for more long-term strategies able to face the migration crisis and to comply with the solidarity principle stated in art. 80 (Tubakovic, 2017).

Another element that gave rise to concerns as to the observance of the principle of solidarity is the optional payment of 250.000 euros instead of allocating asylum seekers. First of all, the fact that it could be considered as a fine seems to be in contrast with the idea of cooperation among Member States with the opposite result of reducing solidarity. Additionally, the amount is considered by scholars arbitrary and economically unfeasible (Peers, 2016).

From the point of view of the asylum seekers' protection, a lower level of safeguards has been argued: the shorter and non-mandatory time limits will cause infringements of individual rights and the problem of "asylum seekers in orbit" will increase. Moreover, the limitation of discretionary clauses (humanitarian and cultural grounds) that may be used only after the responsibility determination procedure and the fact that families might remain separated for a long period will reduce the protection of fundamental rights (Progin-Theuerkauf, 2016).

Moreover, it is worth highlighting that the unwillingness of Member States and the reluctance of asylum seekers to be transferred is to result in the increase of secondary movements. To sum up, the scholars' shared concerns regarding the limits of the relocation system that seem to remain in the proposal (Den Heijer, M., Rijpma, J. and Spijkerb oer, T., 2016). As a matter of fact, more attention to the international protection seekers' will in the relocation system is more than welcome in order to increase solidarity, also in respect of these subjects (Peers, 2015). This strategy will enhance both the effectiveness of the system and the effective integration in the host country (Thielemann, 2018).

The Wikstrom Report

Whereas the Commission proposal retains unchanged the default allocation rule of the responsibility of the State of the first entry, the **European Parliament Report** provides for a structural change by proposing a default mandatory allocation scheme. Many measures such as the hi-

erarchy of criteria based on the genuine links, the expansion of family criteria, the introduction of former studies in Member States criteria and automatic quota-based allocation have been positively assessed by commentators. However, many doubts have arisen about the possibility of an effective implementation (Maiani, 2017).

In particular, the mandatory quotas will widely increase transfers among Member States with significant consequences in terms of costs (a considerable expenditure would be left on the State of application) and protection of asylum seekers. Indeed, without the contextual strengthening of Member States' capacities "in a limbo" situations would increment and the time limits effect would be nullified (Maiani, 2017).

Hence, due to the mandatory nature, the proposed mechanism reproduces many drawbacks highlighted above regarding the Commission Proposal. Frequently due to the Member States' unwillingness to cooperate, the system will depend on coercion and weighty administrative procedures.

The Visegrad Group Opinion

The European Parliament proposal has been strongly rejected in the Council by the **Visegrad Group** which opposed the mandatory relocation option. Whereas commentators have pointed out the absence of unity and homogeneity among the four Member States (Nagy, 2017), the Visegrad Group seems to be firm in regard to the adoption of the responsibility scheme. The aim to counter any mandatory relocation scheme has been stressed at first through the refusal to comply with the relocation decision of 22nd September 2015 (Di Filippo, 2017) against which Hungary and Slovakia have filed two actions for an annulment from the CJEU. The Court dismissed both and stated the legality of the decision (Vikarska, 2015). The involvement of the Court allowed clarifying its role on this issue due to the power to enforce the principle of solidarity that will have a strong impact on the future case law (Ovádek, 2017). The recognition of the effect utile to the principle persuaded many commentators of the inadequacy of the adoption of the voluntary allocation mechanism as proposed by Visegrad countries (Obradovic, 2017).

The so-called "flexible or effective solidarity" provided for a voluntary mechanism based on a three-pillar system graduated on the crisis level (normal, deteriorating and severe). As in the Commission proposal, the emergency situation allows triggering the solidarity mechanism. The main observations regard the risk that the proposal is still unsuitable to form the basis of a comprehensive migration plan. Indeed, the percentage to determine a deteriorating or severe situation is not identified and the option to intervene with financial solidarity measure is considered insufficient (Grabusnigh M.A., 2017).

Despite criticisms of the flexible solidarity proposal, some remarkable and positive issues have been highlighted. First of all, the possibility to take over responsibility for returning rejected asylum-seekers is provided. Moreover, flexible solidarity is not necessarily a negative mechanism especially considering that the same principles are adopted in several international treaties in order to promote substantive equality between States. By contrast, the mandatory allocation system

may lead to the risk of more inefficiency because of the reluctance of asylum seekers to cooperate and to abstain from secondary movements. In addition, the absence of the limit of the excessive threshold may ensure more favourable effects on the Member States bearing disproportionate responsibilities (Den Heijer, 2017).

Conditions for an effective responsibility-sharing approach

Summarising the main findings in this domain, several conditions would allow for a fairer and more effective responsibility-sharing mechanism:

- Cooperation among Member States by considering other solutions: as long as the Member States do not cooperate and do not act jointly for a greater responsibility-sharing approach, any allocation mechanism will not effectively succeed (Cimina, 2017). Taking into account that the general lack of consent among Member States and the unwillingness to collaborate have been the main factors of weakness that contributed to the migration crisis, many academics suggest a structural rethinking of the solidarity system bearing in mind that art. 80 does not impose any obligation with regard to the specific measures to adopt and that also financial measures should be adopted. (Peers, 2015).

- International protection seekers' needs and wishes: taking into account the international protection seekers' needs and wishes, in particular, their family links, has been considered fundamental in order to enhance cooperation not only among Member States but also in their respect. This approach will reduce the risk of secondary movements from a Member State to another. Moreover, it will support the integration of beneficiaries of international protection (Den Heijer, M., Rijpma, J. and Spijkerboer, T., 2016)

- The effect of the corrective allocation mechanism: whilst the establishment of a corrective allocation mechanism[10] in order to alleviate the responsibility of some Member States in time of crisis has been considered as a positive solution, many commentators doubt its effectiveness since the threshold to trigger it is extremely high. It has been pointed out that the reference of 150% proposed by the Commission allows intervention only when the Member State is already under high pressure (Maiani, 2017). Such a criticism suggests that a possible solution could be establishing a lower threshold so as to trigger the mechanism before the crisis is rooted.

- The financial burden of relocations: academics suggest the re-opening of the debate on the establishment of a default mandatory allocation mechanism. Such a criticism arises due to the extremely high costs on Member States that could result from the frequent relocations that are necessary to respect the mandatory quota system. In this regard, it has already been underlined that in the current mechanism, due to the financial aspect, re-

[10] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0270(01)&from=EN

locations are extremely rare. In this respect, a system based on mandatory relocations is unlikely to be sustainable in practice (Maiani, 2017).

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TOPIC 3

Safe Third Country

As many commentators have pointed out, the limits of European internal measures adopted in order to tackle the migration crisis have led to strengthening external solutions able to shift the responsibility onto third countries and to reduce the excessive burden on the Member States (Tubakovic, 2017).

The aim of this report is to examine how the new trends adopted by many Member States in the interpretation of the concept of "safe third country" in a broad way, risks to jeopardise the effective protection of international protection seekers' human rights. In this regard, the brief highlights the main relevant stances adopted by Greece, Hungary and Italy and points out the serious consequences that such an interpretation could trigger.

The Safe Third Country concept and the new trends

This aim, enhanced by the Commission's list of safe countries and the broadening of the safety concept (Lavenex 2018), has been implemented through the relocation of asylum seekers into third countries following a pre-admissibility procedure (Slominski and Trauner, 2018). However, the objective to speed up and streamline the procedures, shifting the responsibility onto other countries to relieve pressure from the Member States has immediately risked undermining the effective protection of asylum seekers' rights and producing a "legal barrier to protection in the EU" (Peers, 2015). Indeed, as Peers emphasised, among others, "there is a need to balance efficiency with humanity" (Den Heijer, Rijpma, and Spijkerb, 2016).

As far as more efficient procedures are desirable, this goal shall be implemented in compliance with the minimum standard of protection provided by European law (Grigonis, 2016).

The safe third country concept raises serious concerns among academics who have highlighted existing shortcomings such as the timeframe for the examination of the asylum application and the reduced possibility to rebut the presumption of safety; the access to information and to a legal representative is limited and the possibility to appeal is restricted. In more general terms, some experts think that a broader and non-harmonised concept of the safe third country coupled with accelerated procedures risks to impair the protection of human rights and undermine the integrity of the non-refoulement principle (Niemann and Zaun, 2018).

Member States' interpretation

This issue has arisen in particular in Greece's and Hungary's interpretation of the "safety concept" with respect to which many commentators have criticised the validity of the relocation decisions as well as the abrupt change in the admissibility assessment currently based

on a presumption of sufficient safeguards of human rights in Turkey and Serbia.

The Greek's turnaround

As it concerns the **Greek position**, it has been highlighted that the recent reorganisation of the Committees competent for the assessment of asylum application entailed a radical increase of inadmissibility decisions based on the assumption that Turkey is a safe country (Gkliati, 2017).

Although Greek authorities justified the reform with the need to reinforce the independence of the Committees in order to ensure the right to achieve an effective remedy, many commentators doubt the possibility to achieve these purposes due to the fact that the main and real aim is to be found in avoiding the risk of jeopardising the implementation of the EU-Turkey refugee agreement. Although the European Law leaves Member States sufficient room to manoeuvre in the asylum application assessment, this shall be done in compliance with the right to an effective remedy (Tsiliou, 2018).

This premise seems not to be complying with the latter right and raises serious doubts arise on the effective level of safeguards granted in Turkey: the exceptional access to international protection, the frequent violations of the principle of non-refoulement, the lack of protection equivalent to that provided by the Refugee Convention, the many cases of arbitrary detention and the risk of resettlement to the origin country without a judicial review (Ulusoy Hemme Battjes, 2017).

More generally, even though Turkey's asylum system is generally compatible with EU law, there are still serious shortcomings and problems in the practical implementation, and the presumption of safety adopted by the Independent Committees may lead to Greece being responsible for violating the ECHR decisions and the EU Charter of Fundamental Rights (Gkliati, 2017).

Serbia as a Safe Third Country

With regard to **Hungary's stance**, the recent legislative reforms and the abrupt change in the relocation practice have risen questions among commentators in relation to their compatibility with EU law and with the effective protection of the refugees' rights (Gil-Bazo, 2017). The amendments adopted in 2015 have entailed the automatic application of the safe third country concept to Serbia and the acceleration of the procedures that are currently conducted directly at the border with the consequence that the merit assessment of the applications is often avoided. Similarly to the Greek's practice, almost all asylum applications have been declared inadmissible on safe third country grounds and people have been relocated to Serbia. However, many commentators do not consider that Serbia met the criteria to be identified as a safe third country as provided for by art. 38 of the Procedures Directive. In this respect, it has been highlighted that in Serbia applicants do not have an effective chance to request refugee status and to receive protection in accordance with the Geneva Convention. Moreover, the fact to consider is that the mere transfer from Serbia to Hungary able to establish a connection with the former is highly questionable (Nagy, 2016).

This controversial practice has also been brought also to the ECHR that in the Ilias and Ahmed v Hungary case has given important issues on the interpretation of the safe third country concept (Kilibarda, 2017). Although the Court refrained to define Serbia as an unsafe country, the ruling represents an important step forward due to the relevant explanations given: the inclusion in the list of safe third countries is not enough to define a third country as a safe one.

Thus, a simple presumption of safety is not sufficient and the government shall prove its decision trough through data analysis or reports (Venturi, 2017). Furthermore, the serious and repeated infringements of human rights have driven many academics to underline that the European Commission should lodge infringement proceedings against Hungary (Gil-Bazo, 2017).

The Italian agreement as a presumption of safety

The problem of the lowering protection of migrants' human rights as a consequence of a broader interpretation of the safe third country concept, occurs clearly in respect of the **Memorandum of Understanding signed by Italy and Libya** on February 2017. The deal is aimed at reducing the migratory flows and at curbing human trafficking by preventing departures from North Africa through financial and technical support to Libya (Palm, 2017). However, many commentators have expressed serious concerns on the legitimacy of the deal especially with regard to the effective protection of human rights in Libya.

Indeed, as the ECHR stated in Hirsi v. Italy case, Libya cannot be considered as a safe country, element which is absolutely required for the disembarkation after a rescue mission (Giuffre, 2017). Although Italy has the obligation to consider the condition of reception and treatment of rescued migrants in Libya, these factors seem to have been completely ignored. It has been highlighted that Libya is not a contracting party to the 1951 Refugee Convention and does not guarantee access to asylum. Moreover, there is a high level of corruption among Libyan Coast Guards and migrants who enter the country are "systematically harassed, forced into slavery, raped and in many cases killed (Toaldo, 2017) or unlawfully detained in inhuman conditions, subjected to ill-treatments, forced labour and exploitation (Nakache and Losier, 2017).

It should be noted that even if the Memorandum does not expressly provide a resettlement policy, it does not mean that Italy will not be found indirectly responsible under the European Convention of Human Rights (Nakache and Losier, 2017). In this regard, it is worth recalling the relevant European Court of Human Rights case law where the indirect violation of art. 3 of the ECHR was found. In those cases, the relocation in the first entry Member State, under the Dublin regulation, has been considered indirectly in breach with art. 3 due to the risk faced by the applicant to be transferred in the origin country considered as an unsafe country (M.S.S v. Belgium and Greece; Sharifi and Others v. Italy and Greece; Tarakhel v. Switzerland)

Conditions for the effective protection of asylum seekers' human rights

Summarising the main findings, the balance between accelerated procedures, alleviating the burden and safeguarding human rights may be achieved under certain conditions.

- Relevance of the circumstances of the case: it has been underlined that, in order to ensure an effective protection of protection seekers' fundamental rights, it is absolutely necessary to take into account all circumstances of a specific case and, in particular, the effective link with the relocation Country (Nagy, 2016).
- Need for harmonised assessment procedures: the Commission's list of safe third countries has been criticised due to the risk of fostering a broad interpretation of the concept. Indeed, the fact that each Member State does not have a national list could extend the risk of the presumption. For this reason, commentators have argued the need to contrast divergent practices in order to avoid the risk of lowering the minimum level of protection granted to asylum seekers (Slominski and Trauner, 2018). In addition, suggestions also regard the need to strengthen the role of the FRA and other EU agencies to ensure the protection of human rights (Grigonis, 2016).

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