



21.11.2016

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion of the Senate of the Czech Parliament on a 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)
(COM(2016)0270 – C8-0173/2016 – 2016/0133(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity.

The Senate of the Parliament of the Czech Republic has sent the attached reasoned opinion on the aforementioned proposal for a regulation.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for matters relating to compliance with the subsidiarity principle.

SENATE
PARLIAMENT OF THE CZECH REPUBLIC
TENTH PARLIAMENTARY TERM
546th SENATE RESOLUTION, adopted at its 28th session held on
19 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 Press No N 89/10/

The Senate

I.

1. Has familiarised itself with the proposal for a regulation and welcomes the Commission's effort to improve the functioning of the Dublin system;
2. Has, however, found no reason to amend its previous negative position on the introduction of permanent relocation mechanisms for the Member States and affected persons;
3. Agrees with the position taken by the Government and calls on the Government to oppose adoption of the regulation both in the Council and in the European Council if it contains the proposed corrective allocation mechanism and the so-called 'solidarity contribution';
4. Urges the Government, furthermore, to continue its intense involvement in providing financial, material, technical and personnel assistance to the asylum systems of Member States exposed to strong migratory pressure, and to promote and support the adoption and implementation of measures that will make a genuine contribution to resolving the crisis, in particular by stepping up controls at the EU's external borders, operating reception centres (hotspots), cooperating more closely with third countries and providing effective humanitarian assistance in problem regions;
5. Concludes that the proposal for a regulation, in view of the establishment of the corrective allocation mechanism and the so-called 'solidarity contribution', is inconsistent with the principle of subsidiarity as set out in Article 5(3) of the Treaty on European Union for the reasons provided in points II(1) to II(4);
6. Adopts therefore, in accordance with Article 6 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality attached to the Treaties, this reasoned opinion on the incompatibility of this proposal for a directive with the principle of subsidiarity;

II.

1. Considers that establishing the corrective allocation mechanism does not bring any real benefits compared with the existing negotiating capacities of the Member States 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:

- the EU already has instruments at its disposal enabling it to overcome disproportionate pressure on one or more Member States, in particular Article 78(3) of the TFEU, 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 TFEU, according to which a common system of temporary protection for displaced persons shall be adopted in the event of a massive inflow (Directive 2001/55/EC on Temporary Protection); - the aforementioned tools make it possible to respond flexibly to crisis situations; however, the Commission has so far only used them in respect of proposals for the compulsory – for Member States and affected persons – relocation of applicants for international protection; on the contrary, the proposed automatic correction mechanism makes it impossible to take into account the immediate situation and the infrastructure capacities of individual Member States;
- given its parameters, the proposal does not lead to a resolution of the disproportionate pressure, but rather to a permanent redistribution of applicants for international protection among Member States without clear criteria for determining to which Member State an applicant should be relocated and without consideration of the will of applicants;

2. Finds that the proposal is in conflict with Article 5 of the Protocol on the application of the principles of subsidiarity and proportionality and does not contain a detailed statement making it possible to assess compliance with the principles of subsidiarity and proportionality, in particular as regards the so-called ‘solidarity contribution’, the amount of which is not justified at all in the proposal and for which no specific purpose has been set;

3. Remains convinced that, pursuant to the principle of subsidiarity, the relocation of applicants for international protection must be a matter of the political decision of each Member State since it is the Member State that will be responsible for the 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; the 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 relocation mechanism were introduced;

4. Takes the view that people who have been involuntarily relocated will not be motivated to integrate into the societies of the country where they have been relocated and will attempt to move to those Member States where they would naturally be inclined to go, and which they cannot be prevented from entering for long; this significantly increases the security risks associated with their residence;

5. Would therefore welcome more thorough consideration of a wider range of alternatives to the current Dublin system;

6. Agrees moreover with the Government that the interconnectedness of the proposal with other EU laws in the area of asylum policy must be ensured, and will therefore carefully examine the related proposals put forward by the Commission in July;

7. Supports the elements of the proposal aimed at establishing clear rules for applicants for

international protection, such as:

- the obligation to remain in the Member State responsible for processing the application;
- strengthening the rights of unaccompanied minors;
- emphasising the automatic return of persons who entered EU territory from their countries of first asylum, safe third countries or safe countries of origin;
- establishing a system for registering asylum applications, since there is a need to gather and share reliable information in the area of asylum policy;
- abolishing the so-called ‘cessation provisions’, which make it possible to carry out additional changes of the country responsible for processing the asylum application;
- making efforts to prevent asylum seekers from making secondary journeys in the European Union, particularly through the obligation to accept people back if they have been granted international protection when they are unlawfully present in another Member State;

8. Has doubts, however, concerning other elements of the proposal:

- shortening the time limits laid down in the Regulation could lead to a faster decision-making process, but could come into conflict with the capacity limits of the Member States; at the same time, the proposal fails to address the consequences of the expiry of the time limits;
- it is inappropriate to restrict a country’s right to take on responsibility for processing an asylum application on humanitarian grounds, as in essence this is an element of voluntary solidarity;
- certain restrictions of the rights of applicants for international protection may impinge on the constitutional and international obligations of Member States, for instance the ban on providing applicants situated outside the Member State in which their applications are being processed with any material assistance, with the exception of vital healthcare, could be problematic if that person is not immediately taken back by the Member State responsible;
- sanctions for uncooperative applicants, consisting of a greater chance of having their asylum applications rejected by a country, could be counterproductive, since they could lead to people gathering in Member States who have not yet obtained international protection, but who also cannot be returned anywhere;

III.

1. Requests the Government to inform the Senate about the way it takes this opinion into account, and about further developments in the 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.

(signed) Milan Štěch, President of the Senate

(signed) Zdeněk Papoušek, Senate Verifier

