



Elżbieta H. Morawska*

Refugee Resettlement Capacity of the EU Member States: past experiences and new challenges

[Podejście państw członkowskich UE do przesiedlania uchodźców: zdobyte doświadczenia i nowe wyzwania]

Abstrakt

W lipcu 2016 r. Komisja Europejska, powołując się na dotychczasowe doświadczenia w zakresie przesiedleń uchodźców, przedstawiła wniosek ustawodawczy mający na celu stworzenie ram polityki UE w zakresie przesiedleń oraz zbudowanie wspólnego i bardziej skoordynowanego podejścia do dania osobom potrzebującym ochrony międzynarodowej możliwości bezpiecznego i legalnego przybycia do UE. W związku z tym powstało pytanie, czy rzeczywiście unijne inicjatywy przesiedleńcze z lat poprzedzających wnioski, a więc z lat 2003–2016, pozwoliły na zdobycie odpowiedniego doświadczenia i zarazem potwierdziły potrzebę zbudowania przez UE stałego mechanizmu przesiedleń uchodźców. Dokonana w artykule analiza obejmuje: unijne regionalne programy ochrony z 2005 r., doraźne programy przesiedleń uchodźców, ze szczególnym uwzględnieniem programów Irakijczyków w 2007 r.; ogólnoeuropejski program przesiedleń z 2009 r., programy rozbudowy i ochrony regionów z 2013 r.; pierwszy pilotażowy ogólnounijny program przesiedleń z 2015 r., wspólny program działań z Valletty i wreszcie program przesiedleń w ramach EU–Turkey deal z 2016 roku. Celem artykułu jest również ustalenie, czy inicjatywy przesiedleńcze UE z lat 2003–2016 realizowały dwie zasadnicze funkcje przesiedleń, a więc czy można je uznać za instrument ochrony uchodźców, których prawa podstawowe są zagrożone w kraju azylu, oraz czy miały na celu zapewnienie tym uchodźcom trwałego rozwiązania ich sytuacji. Aby osiągnąć cele badawcze, zastosowano metodę historycznoprawną. Umożliwi ona ukazanie podejścia państw członkowskich i samej UE do przesiedleń z perspektywy procesu historycznego i w konsekwencji pozwoli na wyodrębnienie lub skonkretyzowanie poszczególnych elementów tego podejścia i jego czasowych uwarunkowań.

Słowa kluczowe: uchodźcy, przesiedlenia, ochrona międzynarodowa, UNHCR, unijne programy przesiedleń.

* **Elżbieta H. Morawska** – dr hab. nauk prawnych, profesor uczelni, Uniwersytet Kardynała Stefana Wyszyńskiego, WPIA, Instytut Nauk Prawnych; ORCID 0000-0001-7299-0320; e.morawska@uksw.edu.pl / PhD, Associate Professor, Cardinal Stefan Wyszyński University in Warsaw, Faculty of Law and Administration, Institute of Legal Sciences.

Introduction

According to the United Nations High Commissioner (UNHCR)¹, resettlement is an invaluable protection tool for refugees whose lives, liberty, safety, health, or fundamental human rights are at risk in their country of first asylum (refugee).

Despite the efforts of the UNHCR, the need for them has become a persistent global phenomenon. A worrying element of this phenomenon is the growing gap between resettlement needs and available places. On average, less than 1% of the global refugee population benefits from resettlement. In this context, it is worth noting that international refugee law does not obligate states to resettle refugees and cooperate with UNHCR.² Nor does European Union (EU) law do so; hence, the resettlement initiatives were voluntary. However, in the face of the migration crisis (2014–2016), the European Commission (EC, Commission) attempted to establish a permanent resettlement mechanism. Its premises were published in 2016 in the Commission's proposal for a Regulation establishing an EU Resettlement Framework.³

In assessing the proposed solutions, it should be borne in mind that the refugee resettlement mechanism has an established position in the international refugee protection system. Resettlement is

a tool of protection and solutions for refugees, [as well as] a measurable mechanism for burden and responsibility sharing and evidence of solidarity, enabling states to assist each other in sharing burdens and reducing the impact of large refugee influxes on host countries.⁴

Resettlement is thus understood as a permanent or durable solution to the refugee situation. In the classic view, resettled refugees are granted permanent residence with the possibility of acquiring citizenship. It should be added that under international refugee law, the term 'refugee' can be understood in two ways. In the first instance, it may refer to a refugee within the meaning of the Geneva Convention Relating to the Status of Refugees (1951 KG)⁵ and its New York Protocol Relating to the Status of Refugees. The

¹ The Office of the High Commissioner for Refugees was created by resolution 428 (V) of the United Nations General Assembly on 14.12.1950 and became operational on 1.01.1951. See also A. Betts, G. Loescher, J. Milner, *The United Nations High Commissioner for Refugees (UNHCR): the Politics and Practice of Refugee Protection*, New York 2012, particularly chapter IV.

² N. Hashimoto, *Refugee Resettlement as an Alternative to Asylum* 2018, „Refugee Survey Quarterly”, 2018, 37, p. 162; N. Feith Tan, *The End of Protection: The Danish „Paradigm Shift” and the Law of Cessation*, „Nordic Journal of International Law” 2021, 90, p. 80.

³ The proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council, COM_COM(2016)046818/07/2016.

⁴ The report of UNHCR, Part II „Global compact on refugees”, General Assembly, A/73/12 (Part II), 2018, para 3.2, point 90.

⁵ The Convention relating to the Status of Refugees, Geneva, 28.07.1951, UNTS, vol. 189, p. 137.

second understanding of the ‘refugee’ derives from the UNHCR mandate. Its scope is broader, including persons who meet the eligibility criteria under the 1951 KG and persons designated by subsequent UN General Assembly and Economic and Social Council (ECOSOC) resolutions.⁶

The Refugee Resettlement Programme from the Perspective of the Common European Asylum System

Although the EU has recognised UNHCR initiatives in resettlement⁷, the involvement of the EU and its Member States in refugee resettlement has been relatively low⁸, and was not addressed at all in the early stages of developing a common asylum and immigration policy. Launched in 1999, through the Tampere Summit Conclusions⁹, the process of harmonising minimum standards under the Common European Asylum System (CEAS) did not include the resettlement of refugees in the EU, and it is consequently a mistake to see it as an original element of the CEAS.¹⁰ Resettlement was never the subject of harmonisation because the EU Treaties did not reference resettlement. Thus, resettlement was seen as an entirely voluntary effort on the part of the Member States, and the role of the EU institutions was only to encourage them to do so. Moreover, it was established that no CEAS legal instruments covered refugees who resettled in EU Member States.¹¹

They were acting in this spirit in 2003. The Commission reported that research was being carried out on ‘ways to increase the number of persons in need of international protection in the EU, namely through the establishment of ‘Protected Entry Procedures (PEPs) and Resettlement Schemes’ and conse-

⁶ Similarly, broad refugee definitions are in regional refugee regulations in Africa and Latin America. See respectively, M. Sharpe, *The Regional Law of Refugee Protection in Africa*, Oxford 2018; J. H. Fischel de Andrade, *Regional Refugee Regimes: Latin America in the Oxford Handbook of International Refugee Law* Cathryn Costello (ed.) et al., Oxford 2021, pp. 315–333.

⁷ In this context, see the European Parliament Resolution No 2018/2642(RSP) on progress towards the UN global agreements on safe, orderly and legal migration and refugees, 18.04.2018.

⁸ D. Perrin, F. McNamara, *Refugee Resettlement in the EU: Between Shared Standards and Diversity in Legal and Policy Frames*, „Know Reset Research Report RR 2013/03. Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute” 2013, p. 10; see also A. Niederberger, M. Göbel, *Cosmopolitan Norms and European Values Ethical Perspectives on Europe’s Refugee Policy*, Routledge 2023, see in particular part I, *The European “Refugee Crisis” – A Crisis of What?*, p. 22 et seq.

⁹ The Presidency Conclusions, Tampere EC, 15–16 October 1999.

¹⁰ The Council Directive No 2003/9/EC Laying Down Minimum Standards for the Reception of Asylum Seekers; Council Directive 2004/83/EC Laying Down Minimum Standards for the Qualification and Status of non-EU Nationals and Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection; Council Directive on Minimum No 2005/85/EC Standards on Procedures in Member States for Granting and Withdrawing Refugee Status; Regulation No 343/2003 of Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Asylum Application Lodged in One of the Member States by a Third-Country National.

¹¹ The Stockholm Programme, *An open and secure Europe serving the citizens*, OJC 115, 4 May 2010.

quently requested the best use of the results of this research.¹² Resettlement was included in this research. It was defined as ensuring a more orderly and better-managed arrival of persons needing international protection in the EU from their region of origin.¹³ The Commission linked resettlement with ‘orderly arrival’¹⁴, indicating the need to develop an EU-wide resettlement Scheme. This programme was to be integrated into the CEAS and implemented at Member State and EU levels. However, according to the Commission, many factors favour the entire resettlement process exclusively at the EU level. Still, there was no political will for such a solution among Member States.¹⁵

EU Regional Protection Programmes (2005)

In the context of the Commission’s 2016 proposal, it is important to see the need to increase the protective potential of the three durable solutions and to address the resettlement programme in more detail from the perspective of a durable solution.¹⁶ In this regard, two proposals should be noted. The first was the creation of the already mentioned PEPs, which, together with the resettlement programme, would protect more refugees and guarantee a more orderly and better-managed entry into the EU.¹⁷ The second proposal was for EU Regional Protection Programmes (RPPs). These were to be implemented to increase the capacity of selected regions to protect durable solutions, namely voluntary repatriation, local integration and resettlement, if the first two durable solutions were not feasible.¹⁸

The modalities for the establishment and operation of RPPs were set out by the Commission in 2005, indicating that resettlement should be a central

¹² The communication from the Commission to the Council and the European Parliament, *Towards more accessible, equitable and managed asylum systems*, COM(2003)315 final, Brussels 3.06.2003. The EC also referred to this issue in its Communication of 26.03.2003, *Communication on the common asylum policy and the agenda for protection*, COM(2003)152 final, 26.03.2003. Accordingly, the EC stated that both communications should be considered when analysing the selected issues.

¹³ The Communication from the Commission, COM(2003) 315 final, para 13.

¹⁴ UNHCR, *A Discussion Paper Prepared by Canada, „Forum”* (2003/02) 18.06.2003; at: www.unhcr.org/convention-plus.

¹⁵ The Communication from the Commission, COM(2003) 315 final, para 6.1.2.2.

¹⁶ *Ibid.*, para 6.2.2.3.

¹⁷ The notion of „protected entry procedures”, was understood as allowing a non-national to apply to a potential host state outside its territory for asylum or another form of international protection and to be granted entry in the event of a successful application, whether initial or final. See Communication from the Commission, COM(2003) 315 final, para 6.1.2.3; Communication from the Commission, COM(2004) 410 final, para 35 et seq.; and regarding „resettlement programmes”, the Commission recommended that „they should be considered as a tool to ensure more orderly and better-prepared entry into the EU of persons in need of international protection”. See Communication from the Commission, COM(2004) 410 final, para 56.

¹⁸ The Commission wrote more on regional protection programmes in its 2005 Communication; see Communication from the Commission to the Council and the European Parliament on Regional Protection Programmes, COM(2005) 388 final Brussels, 1.09.2005.

component of assistance to these areas.¹⁹ The Commission has developed these programmes in cooperation with Member States, UNHCR and selected countries of origin, transit and first asylum. The first RPP included the countries of the African Great Lakes Region (Tanzania) countries of origin, and the second RPP included the newly independent European countries, mainly Belarus, the Republic of Moldova and Ukraine as transit countries.

Ad hoc Refugee Resettlement Programmes: the resettlement of Iraqis (2007)

To fully illustrate the conditions under which the initiatives presented were undertaken, it is necessary at least to mention the first-ever joint resettlement programme, albeit undertaken on an ad hoc basis and initially involving six and eventually 12 EU Member States.²⁰

Member States took this initiative in response to UNHCR's call for the resettlement of 20,000 Iraqis, with both Iraqis who had left central and southern Iraq and Iraqis living in countries of first asylum, namely Syria, Jordan and Turkey, but also residing in secondary movement countries in the Middle East (Libya and Egypt) and elsewhere in the world.²¹ Of particular importance to the effectiveness of this resettlement was UNHCR's recognition of Iraqis who had left their country and who were unable or unwilling to return as persons in need of international protection, making them 'persons of interest to UNHCR as *prima facie* refugees'.²²

Member States pledged to resettle 10,000 Iraqis²³ However, between 2007 and 2009, they received 8,400, including 1,285 Palestinians who had lived in Iraq before 2003.²⁴ This resettlement was organised in cooperation with the 'UNHCR and other relevant organisations present in the region as a strategic means of increasing protection space in countries of first asylum'²⁵ and

¹⁹ The Communication from the Commission, COM(2005) 388 final, para 22.

²⁰ Six Member States initially participated in the programme. Participating Member States received financial support for their resettlement contribution through the then European Refugee Fund (now the Asylum Migration and Integration Fund), although country reports indicated that most funded their resettlement contribution from national resources, UNHCR's.

²¹ UNHCR, *Resettlement of Iraqi Refugees*, 12.03.2007; at: www.refworld.org/docid/45fab0242.html.

²² It refers to „persons of concern to UNHCR as *prima facie* refugees”. See UNHCR, *Return Advisory and Position on International Protection Needs of Iraqis Outside Iraq*, 18.12.2006, at: www.refworld.org/pdfid/45fab0242.pdf [accessed: 19.01.2024]. See also A. Garnier, L. Lyra Jubilut, K. B. Sandvik, *Refugee Resettlement: Power, Politics, and Humanitarian Governance*, Berghahn 2018, p. 253 et seq.

²³ Press Release 2908th Council Justice and Home Affairs Brussels meeting, 27 and 28.11.2008.

²⁴ S. Phillmann, A. Stiennon, *A Report on Joint Resettlement in the European Union*, ICMC and IRC, Brussels 2010, pp. 6, 12, 18.

²⁵ UNHCR, *Resettlement of Iraqi Refugees*, 12.03.2007; at: www.refworld.org/docid/45fab0242.html [accessed: 19.01.2024].

demonstrating international responsibility sharing²⁶, yet the effort lacked clear timelines, reporting mechanisms or coordination.²⁷ Moreover, while most Member States have carried out resettlement by UNHCR's resettlement and case prioritisation criteria, some have applied additional criteria of their own out of concern for the integration capacity of the resettlers.²⁸ They have done so against UNHCR recommendations and calls by international NGOs for UNHCR eligibility priorities to be paramount in resettlement efforts.²⁹ A similar call was made by the European Parliament, emphasising that resettlement should focus on the host community's integration capacity rather than resettlement applicants' attributes.³⁰

Pan-European Resettlement Programme (2009)

The commitment of Member States to the resettlement of refugees from Iraq led the Commission to propose in September 2009 the establishment of a Europe-wide resettlement programme (Joint EU Resettlement Programme).³¹ This programme was to pursue three objectives. Firstly, it was to increase the involvement of Member States in resettlement activities. Secondly, it was to ensure orderly and safe access to protection for those in need of resettlement; and thirdly, it was to 'serve to demonstrate greater solidarity with third countries in receiving refugees'.³²

²⁶ The Council of the EU adopted conclusions on the resettlement needs of refugees from Iraq, calling on Member States to resettle 10,000 refugees from Iraq; see Council of the European Union, Council Conclusions on the Reception of Iraqi Refugees (27-28 November 2008), (16325/1/08 REV 1 Presse 344); Council of the EU, Report on the EU Fact-finding mission to Jordan and Syria on resettlement of refugees from Iraq.

²⁷ S. Phillmann, A. Stiennon, *A Report on Joint Resettlement*, p. 16. See also D. Perrin, F. McNamara, *Refugee resettlement in the EU: Between Shared Standards and Diversity in Legal and Policy Frames*, Technical Report, Migration Policy Centre, KnowReset 2013/03, First Asylum Country Report; at: <https://cadmus.eui.eu/handle/1814/29400> [accessed: 19.05.2024].

²⁸ It was about avoiding additional refugee selection criteria during resettlement or using „other discriminatory selection criteria” such as health, age, family size, ethnicity or religion. See Phillmann, Stiennon, *A Report on Joint Resettlement in the European Union*, p. 40; UNHCR, *Frequently Asked Questions About Resettlement 2017*, p. 9; at: www.unhcr.org/hk/wp-content/uploads/sites/13/2016/04/FAQ-about-Resettlement.pdf [accessed: 19.05.2024].

²⁹ The ICMC and IRC recommended that UNHCR criteria and priority setting be paramount in future resettlement efforts. See Phillmann, Stiennon, *A Report on Joint Resettlement*, p. 41.

³⁰ The European Parliament stated that „there is no evidence that those with the most work experience and education are also the most likely to integrate”. At the same time, „there is ample evidence that refugees”, while being the most vulnerable and disadvantaged, can integrate with the right support”. See the European Parliament resolution of 12 April 2016 on the situation in the Mediterranean and the need for a holistic EU approach to migration (2015/2095[INI]). See also C. Mainwaring, *At Europe's Edge: Migration and Crisis in the Mediterranean*, Oxford University Press, 2019, pp. 50-71.

³¹ The Communication from the Commission to the European Parliament and the Council on the establishment of a joint EU resettlement programme (COM/2009/0447 final), Brussels, 2.09.2009.

³² *Ibid.*, para 2.1.

The above objectives demonstrate some commitment on the part of the Commission, although they do not address several structural issues. Indeed, the EC has maintained the controversial purely voluntary nature of Member States' involvement in resettlement and has also consistently failed to introduce numerical resettlement quotas in the EU and to develop operational mechanisms to ensure coordination of resettlement activities in the EU.³³ During the legislative work, significant reservations were raised about the second objective, namely the setting of EU resettlement priorities, with the dispute between the Council, the EP, and the Commission essentially about the procedure for setting such priorities. A compromise was reached in March 2012 after more than two years of negotiations. This resulted in the adoption of new rules for the allocation of funds for Member States' resettlement activities and the setting of resettlement priorities for 2013.³⁴ In light of the new decision, the list of specific common EU resettlement priorities for 2013 included:

- ◆ Congolese refugees in the Great Lakes region (Burundi, Malawi, Rwanda, Zambia);
- ◆ Iraqi refugees in Turkey, Syria, Lebanon and Jordan;
- ◆ Afghan refugees in Turkey, Pakistan and Iran
- ◆ Somali refugees in Ethiopia.³⁵

When analysing this list, it is worth noting the absence of refugees from regions covered by regional protection programmes. The exclusion from these resettlement priorities for 2013 is confirmed by recital 5 of the new decision, according to which the resettlement of persons from these regions was to receive additional, and therefore different, financial support.

³³ Resettlement was not an instrument of the CEAS. Therefore, Article 63 of the Treaty Establishing the European Community could only provide an implicit legal basis for the „Joint EU Resettlement Programme”. Also, no resettlement obligation arose from the 1951 KG and the 1967 PN. On the other hand, however, this nature of the legal basis did not prevent Member States from signing a declaration with Turkey in 2016; see also the Commission staff working document accompanying the communication of the Commission on the establishment of a joint EU resettlement programme and the proposal for a Decision of the European Parliament and of the Council amending Decision no 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European refugee fund for the period 2008 to 2013 as part of the general programme „Solidarity and Management of Migration Flows” and repealing Council Decision 2004/904/EC – Summary of the impact assessment {COM(2009) 447 final} {COM(2009) 456 final} {SEC(2009) 1127}.

³⁴ This required the repeal of Decision No 573/2007/; it was replaced by Decision No 281/2012/EU of the European Parliament and the Council of 29.03.2012 amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme „Solidarity and Management of Migration Flows”.

³⁵ Annex, Decision No 281/2012/EU.

Regional Expansion and Protection Programmes (2013)

This exclusion was incomprehensible and, at the same time, inconsistent with the EU's actions. Indeed, in 2010, the Commission opened two new regional protection programmes: the Horn of Africa (Kenya, Yemen and Djibouti) and the eastern part of North Africa (Egypt, Libya and Tunisia). Then, in the wake of the Syrian crisis, the Commission initiated 2013 'Regional Development and Protection Programmes' (RDPPs) in the Middle East and expanded the Regional Protection Programme to include development activities. In turn, an RDPP was launched in June 2014 to support Lebanon, Jordan, and Iraq and to enhance understanding, planning, and mitigation of the reception of forcibly displaced Syrian refugees.³⁶ In principle, the MPC and the RDPP were to identify regions from which EU resettlement was to be prioritised. Therefore, the European Agenda on Migration of 2015. (Agenda), in a section entitled 'A common approach to granting protection to refugees in need of protection: resettlement', stated that 'the EU should contribute to assisting refugees in clear need of international protection'³⁷ and indicated that 'priority regions for resettlement will include North Africa, the Middle East and the Horn of Africa, focusing on countries with regional development and protection programmes'.³⁸

Refugee Resettlement Programmes from African Priority Regions and Externalisation of Border Management (2015)

A review of successive EU instruments shows they included the regions covered by the Regional Protection or Development and Protection Programmes as priority regions for resettlement. Among these instruments was the European Council of 2015 statement of its extraordinary meeting, guiding strengthening EU political cooperation at all levels '... with African partners to address the root cause of irregular migration and combat human smuggling and trafficking'.³⁹ To this end, a European Union–African Union Summit was planned. It occurred in November 2015 in Valletta, Malta (Valletta Summit on

³⁶ See info at: www.eeas.europa.eu/node/7895_en; see also <http://icmc.cmbox.be/page/regional-protection-programmes> [accessed: 22.01.2024].

³⁷ UNHCR, *Person in need of international protection*; www.refworld.org/pdfid/596787734.pdf [accessed: 22.01.2024].

³⁸ The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "A European Agenda on Migration" (COM[2015]240 final), Brussels, 13.05.2015.

³⁹ Extraordinary European Council meeting (23.04.2015). Statement, Brussels 25.04.2015, EUCO 18/15.

Migration).⁴⁰ As part of its outcome documents, an important political declaration for the ongoing analysis was agreed upon, in the light of which states agreed to strengthen international protection and increase assistance, including humanitarian assistance, adding that this ‘protection must be granted to all who are entitled to it, by international and regional instruments, [and] access to regular protection mechanisms, such as resettlement, should be strengthened’.⁴¹

Moving from the above to concrete decisions, countries agreed on the Joint Valletta Action Plan (JVAP), which became a regional platform for cooperation on migration policy and in support of EU, African and global efforts to resettle refugees and increase legal avenues of access for those in need of protection, EU Member States reiterated a commitment to resettle 22,000 people in clear need of international protection to the EU.⁴² In addition, they formally launched the EU Emergency Trust Fund for Africa (EUTF)⁴³, to strengthen migration management between Europe and Africa, particularly from the North African region⁴⁴, the Sahel/Chad Lake region⁴⁵ and the Horn of Africa region.⁴⁶

It should be added to the assessment of this financial instrument that it foreshadowed the EU’s desire to link its foreign policy and partnership for development to the migration policies of African and other third-country countries of origin or transit, particularly their commitment to effectively stemming illegal migration to Europe.⁴⁷ A review of EU-funded projects confirms this subordination. In the literature, this process is called the ‘externalisation of Europe’s management of migration flows’ or the externalisation of border management.⁴⁸ These instruments are migration partnerships. They are not legally binding arrangements or agreements (they do not qualify as international agreements) with countries outside the EU. An example of such a ‘mutual partnership’ could be the EU–Turkey statement described below or readmission arrangements with African countries such as Ethiopia, Ghana, Niger or Nigeria.⁴⁹

⁴⁰ Summit on Migration, Valletta 2015, *What is the Joint Valletta Action Plan (JVAP)?*; at: www.jvapfollowup.org/jvap/ [accessed: 22.01.2024].

⁴¹ Valletta Summit, 11–12.11.2015, *Political Declaration*; at: www.consilium.europa.eu/media/21841/political_decl_en.pdf. Migration, November 2015 [accessed: 22.01.2024].

⁴² Valletta Summit, 11–12.11.2015, *Action Plan*; at: www.consilium.europa.eu/media/21839/action_plan_en.pdf [accessed: 22.01.2024].

⁴³ See the Fund’s official website: https://trust-fund-for-africa.europa.eu/index_en [accessed: 22.01.2024].

⁴⁴ The region includes Morocco, Algeria, Tunisia, Libya and Egypt.

⁴⁵ The region includes Burkina Faso, Cameroon, Chad, Côte d’Ivoire, Gambia, Ghana, Guinea, Mali, Mauritania, Niger, Nigeria and Senegal.

⁴⁶ The region includes Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Tanzania and Uganda.

⁴⁷ The Commission, *Progress report on the Implementation of the European Agenda on Migration*, COM(2019) 481 final, Brussels, 16.10.2019. See also M. Pótorak *European Agenda on Migration Towards Vulnerable Persons* *European Agenda on Migration Towards Vulnerable Persons*, „Studia Migracyjne – Przegląd Polonijny” 2021, 2, pp. 21–40.

⁴⁸ M. Trojanowska-Strzęboszewska, *Border control strategies – determinants of change and their impact on the nature of contemporary borders*, „Pogranicze. Polish Borderlands Studies” 2018, 6, 2, p. 83.

⁴⁹ Other agreements, including those with Tunisia (signed 16.07.2023), Egypt, and Morocco, are planned.

First EU-Wide Resettlement Programme (2015)

In addition to the measures described above, the EU was forced to take additional measures in the face of increasing migratory pressure and the ineffectiveness of initiatives already taken. These stemmed from the dramatic situation in the Mediterranean Sea, where an unprecedented number of migrants died trying to reach EU shores in the first months of 2015.⁵⁰

In October 2014, the Justice and Home Affairs Council (JHA) agreed on the Conclusions, establishing a Strategic Approach and Operational Priorities to Guide the EU and Member States in managing migration flows. To prevent unsafe sea crossings, the conclusions proposed voluntarily identifying a ‘credible number of resettlement places’ in cooperation with UNHCR.⁵¹ The JHA stated that all Member States should contribute to this objective ‘in a fair and balanced manner’, with financial support from the EU Asylum, Migration and Integration Fund.⁵²

A few months later, a special meeting of the European Council was held to discuss the strengthening of ‘internal solidarity and responsibility’, including establishing a ‘first voluntary pilot project on resettlement across the EU, offering places to persons eligible for protection’.⁵³ Shortly after that, in its 2015 Agenda, the Commission proposed an ‘EU-wide resettlement scheme’ (EU-wide resettlement scheme), which envisaged the resettlement over two years of 20,000 persons needing international protection and residing outside the EU.⁵⁴ In the Agenda (a communication), the Commission indicated that the above programme would be presented in an appropriate recommendation. This was taken up on 8 June 2015. (Recommendation 2015/914).⁵⁵

The legal form of implementing the EU-wide resettlement programme may raise concerns. Firstly, a recommendation is not a legally binding instrument. Secondly, the basis for its adoption was Article 292 of the Treaty on the Functioning of the European Union (TFEU), providing the Commission’s general power to issue recommendations.⁵⁶ Accordingly, the recommendation was not based on the provisions of Title V of Part Three of the TFEU, which was perceived as the Commission’s lack of confidence in obtaining Council approval

⁵⁰ IOM, *Mixed Migration Flows in the Mediterranean and Beyond*, 2015; Report on at: www.iom.int/sites/g/files/tmzbdl486/files/situation_reports/file/Mixed-Flows-Mediterranean-and-Beyond-Compilation-Overview-2015.pdf.

⁵¹ *Ibid.*, point I. j, was a new financial mechanism established from 1.01.2014 to 31.12.2020.

⁵² *Ibid.*

⁵³ The European Council Statement, Brussels, 23.04.2015, EUCO 18/15, para 3 q.

⁵⁴ The Commission also urged Member States to draw as fully as possible on „other legal means available to those needing protection, including private/non-governmental sponsorship and humanitarian authorisations and family reunification provisions”, *ibid.*

⁵⁵ The Commission Recommendation No 2015/914 of 8.06.2015 on a European resettlement scheme, OJ 2015/L 148/32.

⁵⁶ Treaty on the Functioning of the European Union – Consolidated text incorporating the amendments introduced by the Treaty of Lisbon, OJ 2012/C 326/47.

for such a programme, even voluntarily. This was an important point of contention. While the European Council approved the principle of resettlement and the scale of resettlement, it did not prejudice whether this would be achieved through a comprehensive EU resettlement programme, a collection of national resettlement offers, or a combination of the two mechanisms. The Commission was aware of this, which is why it pointed in its recommendation to the commitment made by the European Council in its statement of 23 April 2015⁵⁷ to 'establish the first voluntary pilot project on the resettlement of persons eligible for international protection throughout the Union' and to the European Parliament's demand to ensure 'safe and legal access to the EU asylum system' for persons in need of international protection.⁵⁸ The Commission further referred to statements in the 2015 Agenda that resettlement is a way to ensure safe passage to the EU without resorting to criminal networks of people smugglers and traffickers involved in many dangerous crossings of the Mediterranean.⁵⁹ A perceived 'significant imbalance' in Member States' efforts to provide resettlement at a time when the number of refugees, asylum seekers and internally displaced persons exceeded 50 million for the first time since the Second World War was also said to be in favour of undertaking this programme.⁶⁰

As mentioned earlier, the Commission's recommendation concerned resettling 20,000 persons outside the EU who needed international protection at its adoption. At UNHCR's request, these persons were to be relocated to EU Member States using the distribution key attached to the recommendation. The purpose of resettlement was to protect refoulement ('return to a country where there was a risk of persecution') and to grant the host Member State rights equivalent to those enjoyed by beneficiaries of international protection. According to the Commission, the resettlement programme should cover all Member States, and the distribution of resettlers was to be done according to a key based on the following criteria:

- ◆ population size (with a weighting of 40%);
- ◆ total GDP (also with a 40% weighting);
- ◆ the average number of spontaneous asylum applications and resettled refugees per 1 million population between 2010 and 2014 (with a weighting of 10%); and
- ◆ unemployment rate (also with a weighting of 10%).

The criteria should take into account each Member State's capacity to receive refugees, its ability to adapt and integrate them, and the contribution it had made in the recent past to global resettlement efforts and the management of asylum claims. In light of comments on, for example, the EU's expansion

⁵⁷ This referred to paragraph 3 q of the „European Council Statement”, EUCO 18/15, Brussels, 23.04.2015.

⁵⁸ The European Parliament Resolution No 2015/2660(RSP), 29.04.2015, para 8 and 10.

⁵⁹ The Commission Recommendation No 2015/914, para 7.

⁶⁰ *Ibid.*, para 3 and 4.

and protection programmes for selected regions and the already ongoing civil war in Syria at the time, it is noteworthy that the regions of North Africa, the Middle East and the Horn of Africa were identified as priority regions for resettlement. UNHCR was entrusted with the task of identifying candidates for resettlement, with the final individual decision to resettle a person resting with the Member State. It was to make the appropriate decision after medical and security checks. It was also obliged to complete the formal procedures for granting international protection.

It is not without significance that Member States were to receive funding from the EU Asylum, Migration and Integration Fund in proportion to the number of resettled persons.⁶¹ In addition, the European Asylum Support Office (EASO)⁶² was to implement the programme, particularly in those Member States with little experience in resettlement, and monitor and report on its implementation across the EU. In doing so, it should be noted that the programme was to be implemented over the next two years.

Moreover, in the context of the doubts raised about the legal basis of the recommendation, the conclusions of the JHA of 20 July 2015 on resettling 20,000 persons should be noted. These conclusions agreed to share the 20,000 persons needing international protection between EU Member States and the four non-EU States that had agreed to participate (Norway, Iceland, Liechtenstein and Switzerland). However, this was not a simple consent, as it was subject to several caveats. The delegates, therefore, agreed

- ‘- resettle, by the Annex, persons in clear need of international protection within the framework of multilateral and national programmes, reflecting the specific situations of Member States, at the request of the United Nations High Commissioner for Refugees, from a third country to a Member State;
- to resettle, at the request of the United Nations High Commissioner for Refugees, from a third country to a Member State, in agreement with the latter, to protect them from refoulement and to receive and grant them residence and any other rights similar to those granted to beneficiaries of international protection or, in the case of a Member State not bound by either Directive 2011/957 or Directive 2004/838, by the Geneva Convention relating to the Status of Refugees’.⁶³

⁶¹ Article 17 of Regulation 516/2014 provides a lump sum of €6,000 or €10,000 per resettled person. Still, the Commission’s recommendation suggests that this amount will likely be adjusted to „optimise the use of financial incentives” (see recital [14] of the Commission’s recommendation).

⁶² EASO was established under Regulation No 439/2010.

⁶³ The Conclusions adopted by the Commission on 25–26 June 2015, which, in light of the current emergency and of the EU’s commitment to reinforce solidarity and responsibility, noted the agreement of all Member States to participate, including through multilateral and national schemes in the resettling of 20 000 displaced persons in clear need of international protection, reflecting the specific situations of Member States, Doc. EUCO 22/15.

After two years (by September 2017), more than 17,000 people had been resettled, mainly from Turkey, Jordan, and Lebanon, representing more than 75% of the agreed-upon target.⁶⁴

Resettlement Programme Within the Framework of the Cooperation Agreement Between Member States and the Turkish Government (2016)

When assessing the effectiveness of Member States and the EU's refugee resettlement initiatives during the crisis period leading up to the Commission's 2016 proposal for a permanent European resettlement mechanism, it is important to take into account the actions taken under separate programmes targeting refugees from Syria's civil war that has gripped the country since March 2011.⁶⁵ As is well known, it has forced millions of Syrians to leave their homes in search of a haven. Most have taken refuge in Turkey, which has gradually become the largest host country.⁶⁶

One of the first EU programmes related to the dramatic situation of Syrian refugees in Turkey was the 'EU-Turkey Joint Action Plan on Syrian Refugees' (JAP, Joint Action Plan).⁶⁷ It was announced on 15.10.2015, and several joint actions were envisaged to be taken and implemented urgently by the EU and Turkey.⁶⁸ Of these actions, the 'Statement on Cooperation between EU Member States and the Turkish Government' (EU-Turkey statement; EU-Turkey deal, 2016 statement)⁶⁹ should be highlighted.

At this point, it should be emphasised that this statement is not an international agreement in the sense of EU law and was drafted by the Heads of State and Government of the EU Member States and the Prime Minister of Turkey

⁶⁴ The Commission, Relocation & Resettlement: Sharing responsibility and opening legal pathways to Europe, 27 September 2017; at: https://home-affairs.ec.europa.eu/system/files/2017-09/20170906_relocation_and_resettlement-sharing_responsibility_and_increasing_legal_pathways_to_europe_en.pdf [accessed: 22.01.2024].

⁶⁵ W. Wilk, *The war in Syria and the humanitarian crisis*, „Journalists Guide”, Polish Centre for International Aid, 2016, p. 24; see also E. G. Ferris, K. Kirisci, *The Context, Causes, and Consequences of Syrian Displacement*. [in] *The Consequences of Chaos: Syria's Humanitarian Crisis and the Failure to Protect*, The Brookings Institution, 2016, chapter I, pp. 10 et seq.

⁶⁶ In addition, thousands of Syrians are in Turkey illegally.

⁶⁷ The agreement between the EU and the Republic of Turkey on the readmission of persons residing without authorisation (OJ 2014/L 134) had a different objective.

⁶⁸ In 2012, an average of 20,000 Syrian refugees arrived in Turkey every month; in 2013, the number was almost 40,000, and at the end of 2014. 55 thousand. See A. İçduygu, D. Şimşek, *Syrian refugees in Turkey: Towards integration policies*, „Turkish Policy Quarterly” 2016, 15, 3, p. 60.

⁶⁹ This agreement is referred to as the „EU-Turkey deal”. See C. Costello, *It need not be like this*, „Forced Migration Review” 2016, 51, p. 12 et seq.; S. Peers, *The final EU/Turkey refugee deal: a legal assessment*, Blog: EU Law Analysis: Expert insight into EU Law Developments (2016).

and not by the EU institutions.⁷⁰ As such, it was published as a press release.⁷¹ As such, it did not give rise to binding obligations for any of the parties, and consequently, its violation would only have political consequences. Undoubtedly, its conclusion was forced by the growing migration crisis, which consequently led to a change in the EU's approach to relations with Turkey to a less moral and more pragmatic one, as well as a weakening of criticism of human rights violations in the country.

Two principles stand out in the 2016 statement. Firstly, the principle of readmission, i.e. the return of all irregular migrants arriving in the Greek islands from Turkey after 20.03.2016⁷², with the EU to cover the costs of this readmission and Turkey being granted safe third country status. Secondly, the resettlement rule, according to which 'for every Syrian returned (readmitted) to Turkey from the Greek islands, another Syrian will be resettled from Turkey to the EU'.⁷³ This principle expressed a *one-to-one* resettlement mechanism ('one-for-one' mechanism; 1:1 Scheme).⁷⁴ It was agreed that resettlement would take place 'taking into account UN vulnerability criteria', based on a mechanism agreed 'with the assistance of the Commission, EU agencies and other Member States, as well as UNHCR, to ensure that the principle [of resettlement] is implemented from the same day that returns begin'. It was further agreed that 'priority [for resettlement] will be given to migrants who have not previously entered or attempted to enter the EU illegally'. However, the number of admissions under this mechanism was capped at 18,000 places⁷⁵, although the possibility of an additional 54,000 places was allowed.⁷⁶

The implementation of the 2016 statement⁷⁷ would not have been possible without additional financial support from the EU for Syrian refugees and the Turkish host community. This refers to the €3 billion fund mentioned under the 'EU Facility for Refugees in Turkey' (EU Facility) for 2016–2017.⁷⁸ However,

⁷⁰ See the General Court's order of 28.02.2017, T-192/16, NF v. European Council; see also A. Kalicka-Mikołajczyk, *The concept of an international agreement in European Union law – comments on the General Court's order of 28.02.2017, T-192/16, NF v. European Council*, „European Judicial Review” 2019, p. 12.

⁷¹ Statement of the EU Heads of State and Government; at: www.consilium.europa.eu/en/press/press-releases/2016/03/18/EU-turkey-statement/ [accessed: 19.01.2024].

⁷² That point of the 2016 Statement is only seemingly clear; it raises concerns about the prohibition of collective expulsion of foreigners and the principle of nonrefoulement.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ This figure resulted from the conclusions of the representatives of the governments of the EU Member States meeting in the Council of 20.07.2015, which identified 22,504 resettlement places for non-EU displaced persons in clear need of international protection.

⁷⁶ JHA, 20.07.2015; at: www.consilium.europa.eu/en/meetings/jha/2015/07/20/.

⁷⁷ In fact, the implementation of the EU–Turkey statement started on 4.04.2016. Generally, H. Apak, *A Comprehensive Analyses on the EU–Turkey Statement*, Bod Third Party Titles, 2020.

⁷⁸ Of this amount, €2 billion came from national contributions, i.e. from the budgets of individual EU Member States, and the remaining €1 billion from the EU budget. See European Council Press Release, „Refugee facility for Turkey: member states agree on details of financing”, 3.02.2016; www.consilium.europa.eu/en/press/press-releases/2016/02/03-refugee-facility-for-turkey/.

it was agreed that once this fund was ‘fully utilised and subject to the fulfilment of all obligations’, the EU would disburse a further €3 billion to Turkey.⁷⁹ The fund in question was an integral part of the 2016 statement.⁸⁰

The declaration entered into force on 20.03.2016. The return of those who arrived in Greece after 20.03.2016 and the first resettlement of Syrian refugees from Turkey to Europe under the 1:1 mechanism began on 4.04.2016.⁸¹

It should be stressed that humanitarian organisations and the European public criticised the 2016 statement⁸², and its compatibility with international human rights law and CEAS instruments was considered questionable.⁸³ Unfortunately, its detailed analysis is beyond this article’s scope, although it seems necessary to at least signal the concerns, particularly those related to resettlement. It should not be overlooked as it demonstrates a ‘significant and noteworthy shift’⁸⁴ in the EU’s approach and shows a certain ‘paradox in the actions of the EU, which has urged neighbouring countries to apply its high asylum standards’ for several decades.⁸⁵

From the perspective of European asylum law, the most important allegation relates to the violation of Directive 2013/32/EU on common procedures for granting and withdrawing international protection (recast) in considering Turkey as a first country of asylum or a safe third country.⁸⁶ The accuracy of this allegation is confirmed by documents of the EU institutions, including the ‘Turkey 2016 Report’ of the European Commission⁸⁷ or

⁷⁹ The EU–Turkey Statement, para 6.

⁸⁰ In the end, the facility’s operational budget was €6 billion and more than €5 billion was disbursed. It should be added that in 2020. The EU mobilised additional humanitarian support and allocated €3 billion for 2021–2023.

⁸¹ EASO, *Annual Report on the Situation of Asylum in the European Union, 2016*; at: <https://euaa.europa.eu/sites/default/files/Annual-Report-2016.pdf> [accessed: 22.01.2024].

⁸² The EU–Turkey statement had profound effects on the ground. UNHCR refused to cooperate with the 2016 statement, suspending many of its operations in Greece because they were being used as detention centres before forced returns to Turkey. This decision directly affected the protection and asylum of individuals in the EU. On the other hand, Médecins sans Frontières (MSF) announced that it would not benefit from funding from the EU or any EU Member State, further complicating the situation. See *International Activity Report, 2016*; at: www.msf.org/international-activity-report-2016/year-review.

⁸³ See, among other things, R. Mandal, *EU–Turkey Refugee Deal Is Vulnerable to Legal Challenge*; at: www.chathamhouse.org/expert/comment/eu-turkey-refugee-deal-vulnerable-legalchallenge; R. Carp, *How Safe Shall Be a Third Country for Asylum-Seekers from a European Perspective? The Human Rights Implications of the EU–Turkey Deal and the Assessment of the ECHR/General Court*, „*Journal of Identity and Migration Studies*” 2018, 12, 2, p. 50.

⁸⁴ See Jesuit Refugee Service, *Annual Report 2016*; at: <https://jrs.net/en/news/jrs-releases-its-2016-annual-report/> [accessed: 19.01.2024].

⁸⁵ E. Collett, *The Paradox of the EU–Turkey Refugee Deal*, Commentaries (Migration Policy Institute, March 2016) at: www.reliefweb.int/report/world/paradox-Eu-Turkey-refugee-deal; M. Gatti, *The EU–Turkey Statement: A Treaty That Violates Democracy*, Blog of the European Journal of International Law (2016); at: ejiltalk.org/the-eu-turkey-statement-a-treaty-that-violates-democracy-part-1-of-2/ [accessed: 22.01.2024].

⁸⁶ See Article 38 and subsequently Article 33(2)(c); Article 25(4)(b) and (c) of Directive 2013/32/EU of the European Parliament and the Council on 26.06.2013 on Common Procedures For Granting and Withdrawing International Protection (recast), as regards the criteria for designation as a safe third country.

⁸⁷ The Commission Staff Working Document Turkey 2016 Report Brussels, 9.11.2016, SWD(2016) 366 final, Accompanying the document Communication from the Commission to the European Parliament, the Council,

the European Parliament resolution of 7.06.2022 on the Commission's 2021 Report on Turkey.⁸⁸

Other criticisms relate to human rights safeguards. The fact that the EU has delegated its power to control external borders to countries with a weak judicial system and non-governmental sector, underdeveloped and unprepared to deal with a humanitarian crisis, has been seen as a potentially dangerous shift that could result in human rights violations.⁸⁹ The lasting consequences of this shift can be seen in EU programmes, e.g. 'Better Migration Management'⁹⁰, which includes 'migration partnerships' with countries such as Sudan and Eritrea, whereby these countries receive EU aid in exchange for (in effect) a reduction in refugee flows to Europe.⁹¹

Another objection is closely linked to the non-refoulement ban: both directly, as Turkey cannot be considered a safe country for refugees, and indirectly, as Turkey could return refugees to Syria and other third countries.⁹² This allegation is all the more justified as the 2016 statement on returns/refoulement from Greece does not only cover Syrian refugees but any migrant with irregular status, regardless of where they come from or their nationality. There is no doubt that due to the Kurdish-Turkish conflict, this practice is particularly dangerous for Syrian refugees of Kurdish origin.⁹³ In addition, serious doubts are raised as to the compatibility of this statement with the European Convention on Human Rights (ECHR)⁹⁴ and the Charter of Fundamental Rights of the EU (CFR EU)⁹⁵, which require each application for international protection to be examined individually and thus avoid collective expulsion of foreigners (Article 4 P-4 to the ECHR⁹⁶ /Article 19 CFR EU). The European Commission on Human Rights (ECHR) already established in 1975 that collective expulsion means 'forcing

the European Economic and Social Committee and the Committee of the Regions 2016 Communication on EU Enlargement Policy, COM(2016) 715 final.

⁸⁸ The European Parliament Resolution 2021/2250(INI) on the 2021 Commission Report on Turkey, 7.06.2022, OJ 2022/C 493/01.

⁸⁹ A. Luedtke, *Crisis and Reality in European Immigration Policy*, „Current History”, 2015, 114, 77, p. 89.

⁹⁰ See information at: https://trust-fund-for-africa.europa.eu/our-programmes/better-migration-management-programme_en; CTR – Better Migration Management Programme – GIZ at: <https://eutf.akvoapp.org/dir/project/5492> [accessed: 22.01.2024]; Better Migration Management, www.giz.de/en/worldwide/40602.html. Annex I to the Delegation Agreement http://ec.europa.eu/europeaid/sites/devco/files/bmm-descriptionof-action_en.pdf; V. Shah, *EU Funds for Sudan may Worsen Fate of Refugees*, *EU Observer*, 2017; at: <https://euobserver.com/migration/137489> [accessed: 22.01.2024].

⁹¹ See „Better Migration Management” www.giz.de/en/worldwide/40602.html. Annex I to the Delegation Agreement at: http://ec.europa.eu/europeaid/sites/devco/files/bmm-descriptionof-action_en.pdf [accessed: 22.01.2024].

⁹² D. Afanasieva, K. Tagaris, *Migrants sent back from Greece arrive in Turkey under EU deal*, „Reuters”, April 4, 2016; at: www.reuters.com/article/us-europe-migrants-greece-returns-idUSKCN0X107Q [accessed: 22.01.2024].

⁹³ The Amnesty International, *Report 2015/16 – Turkey*, 24 February 2016; at: www.refworld.org/docid/56d05b08e.html [accessed: 22.01.2024].

⁹⁴ The Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No 005.

⁹⁵ The Charter of Fundamental Rights of the European Union, OJ 2016/C 202.

⁹⁶ The Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and the first Protocol thereto, ETS: No 046.

aliens as a group to leave the country, except when such a measure is taken after and based on a rational and objective examination of the particular case of each alien in the group'.⁹⁷ This requirement of a 'rational and objective examination of each case' was rightly considered unworkable given the overburdened nature of Greece's asylum system.⁹⁸

Concluding Remarks

The analysis conducted in the article covered the leading resettlement programmes organised by Member States or the EU. The critical evaluation of these programmes was based on the search for answers to several key research questions, crucial for understanding the current state of refugee resettlement. The first question, which focuses on the factors that prompted the EU and individual Member States to launch resettlement programmes in the first decades of the 21st century, is key to examining their actual impact on redefining the existing EU approach to global resettlement and strengthening cooperation with UNHCR. Equally important is the second question, which focused on the recognition by EU Member States of the need for a permanent refugee resettlement mechanism. In the context of this second question, it was important to demonstrate the extent to which Member States had taken into account the two functions of resettlement in the design of these resettlement programmes, namely as a tool to address the specific needs of refugees whose fundamental rights are at risk in the country of asylum, and as a tool to provide refugees with a durable solution to their complex situation.

The research described above was primarily based on formal and dogmatic analysis of legally binding and informal documents. It can be emphasised that the latter played an important role in achieving the research objectives. However, an assessment of the European refugee resettlement experience under EU and intergovernmental initiatives would not be complete without an analysis of the literature on the subject and selected decisions of international courts. The research conducted showed that legal doctrine is critical of resettlement programmes organised by Member States or the EU. This criticism resonates with the position of international non-governmental organisations (NGOs) that, in cooperation with UNHCR, seek to increase the involvement of the EU and Member States in resettlement programmes.

In conclusion, a few general observations can be made that fit the research problem adopted. It is clear from the analysis that resettlement needs have increased dramatically over the last decade and that EU resettlement pro-

⁹⁷ The case of *Becker v. Denmark*, no 7011/75, EComPC decision of 3.10.1975.

⁹⁸ In this context, see the case of *M.S.S. v. Belgium and Greece*, No 30696/09, ECHR (GC) judgment of 21.01.2011.

grammes have unfortunately not changed this. Resettlement needs reached unprecedented levels in 2023. Unfortunately, only 39,266 refugees were resettled in 2021, representing only 2.7 per cent of needs. Only three EU Member States (Germany (5), France (17) and Sweden (26)) were in the top 30 refugee hosting countries, and only Germany was in the top 10. Of course, we cannot expect European countries to take in all refugees or displaced persons. But there is certainly a need for member states to show more commitment and take more consistent action. Considering that low- and middle-income countries host 83% of refugees worldwide, and 27% by countries producing less than 1.3% of global GDP, it is clear that the commitment of European countries and the EU is disproportionate to the needs, and at the same time to their actual capacities. In this context, it can be reiterated that in 2022, despite pledging to host more than 20,000 refugees (in addition to hosting 40,000 at-risk Afghans in 2021–2022) through this route, member states collectively resettled 16,695 refugees, representing only 1.1% of global needs. This means an average of only 618 newly resettled refugees per Member State.

According to UNHCR, only 11 EU Member States resettled refugees last year. However, three quarters of these people arrived in just three countries – Germany (28.2%), Sweden (26.7%) and France (18.5%). This apparent divergence in resettlement efforts between EU Member States points to the need for a more balanced and coordinated approach. Sweden, on the other hand, resettles only 0.43 refugees per 1,000 inhabitants per year, based on data from the last five years. Finland resettles 0.15 refugees per 1,000 people, while France and Germany resettle less than 0.05 refugees per 1,000 people per year. Most EU Member States, including Austria, Bulgaria, Croatia, Luxembourg, Greece, Poland and Portugal, have not resettled a single refugee. This discrepancy further highlights the need for a more equitable and collective response to the global resettlement problem.

The above experience with resettlement programmes in the last two decades of the 21st century shows that it will be extremely difficult to create an EU resettlement policy framework and enable a collective and more coordinated approach to the safe and legal arrival in the EU of persons in need of protection.

Abstract

In July 2016, the European Commission, citing experience with refugee resettlement, proposed a legislative proposal to create an EU resettlement policy framework and build a common and more coordinated approach to allowing those needing international protection to come to the EU safely and legally. This raised the question of whether, indeed, the EU resettlement initiatives of the years preceding the proposal, i.e. from 2003 to 2016, had allowed for relevant experience and, at the same time, confirmed the need for the EU

to build a permanent refugee resettlement mechanism. Accordingly, the analysis in the article covers the EU Regional Protection Programmes of 2005, the *ad hoc* refugee resettlement programmes, with a special focus on the Iraqi programmes in 2007; the EU-wide resettlement programme of 2009, the extension and protection programmes of 2013; the first pilot EU-wide resettlement programme of 2015, the Valletta Joint Action Programme and finally the EU–Turkey Deal resettlement programme of 2016. The aim of the article is also to determine whether the EU resettlement initiatives from 2003 to 2016 fulfilled the two essential functions of resettlement, i.e. whether they can be considered as an instrument for the protection of refugees whose fundamental rights are at risk in the country of asylum, and whether they aimed to provide these refugees with a durable solution to their situation. A historical-legal method was used to achieve the research objectives. It will enable the approach of the Member States and the EU to resettlement to be shown from the perspective of a historical process. It will consequently allow the different elements of this approach to be isolated or concretised and its temporal determinants to be revealed.

Keywords: refugees, resettlement, international protection, UNHCR, EU resettlement programmes.

BIBLIOGRAPHY

Books and online publications

Afanasieva D., Tagaris K., Migrants sent back from Greece arrive in Turkey under EU deal, „Reuters”, 2016, April 4, www.reuters.com/article/us-europe-migrants-greece-returns-idUSKCN0X107Q [accessed: 22.01.2024].

Apak H., A Comprehensive Analyses on the Eu–Turkey Statement, Bod Third Party Titles 2020.

Betts A., Loescher G., Milner J. (eds.), The United Nations High Commissioner for Refugees (UNHCR): the Politics and Practice of Refugee Protection, Routledge 2012.

Collett E., The Paradox of the EU–Turkey Refugee Deal, Commentaries, Migration Policy Institute, March 2016, www.reliefweb.int/report/world/paradox-Eu-Turkey-refugee-deal.

Ferris E. G., Kirisci K., The Consequences of Chaos: Syria’s Humanitarian Crisis and the Failure to Protect, The Brookings Institution 2016.

Fischel de Andrade J. H., Regional Refugee Regimes: Latin America in the Oxford Handbook of International Refugee, Law Cathryn Costello (ed.) *et al.*, Oxford 2021.

Garnier A., Jubilit L. Lyra, Sandvik K. B., Refugee Resettlement: Power, Politics, and Humanitarian Governance, Berghahn 2018.

Gatti M., The EU–Turkey Statement: A Treaty That Violates Democracy, Blog of the European Journal of International Law (2016); ejiltalk.org/the-eu-turkey-statement-a-treaty-that-violates-democracy-part-1-of-2/ [accessed: 22.01.2024].

Niederberger A., Göbel M, *Cosmopolitan Norms and European Values Ethical Perspectives on Europe's Refugee Policy*, Routledge 2023.

Perrin D., McNamara F., *Refugee Resettlement in the EU: between shared standards and diversity in legal and policy frames*, „Research Report KNOW RESET RR 2013/03, Building Knowledge for a Concerted and Sustainable Approach to Refugee Resettlement in the EU and its Member States”, https://cadmus.eui.eu/bitstream/handle/1814/29400/Know-Reset_RR-2013_03.pdf.

Mandal R., *EU–Turkey Refugee Deal Is Vulnerable to Legal Challenge*, Chatham House 2016, March 23, ESO, www.chathamhouse.org/expert/comment/eu-turkey-refugee-deal-vulnerable-legalchallenge.

Peers S., *The final EU–Turkey refugee deal: a legal assessment*, EU Law Analysis 2016, March 18, <http://eulawanalysis.blogspot.it/2016/03/the-final-euturkey-refugee-deal-legal.html>.

Phillmann S., Stiennon A., *A Report on Joint Resettlement in the European Union*, ICMC and IRC, Brussels 2010, <https://www.refworld.org/pdfid/4c971b8d2.pdf>.

Sharpe M., *The Regional Law of Refugee Protection in Africa*, Oxford 2018.

Articles

Carp R., *How Safe Shall Be a Third Country for Asylum-Seekers from a European Perspective? The Human Rights Implications of the EU–Turkey Deal and the Assessment of the ECHR/General Court*, „Journal of Identity and Migration Studies” 2018, 12.

Costello C., *It need not be like this*, „Forced Migration Review” 2016, 51.

Feith Tan N., *The End of Protection: „The Danish „Paradigm Shift” and the Law of Cessation”*, „Nordic Journal of International Law” 2021, 90.

Hashimoto N., *Refugee Resettlement as an Alternative to Asylum* 2018, Refugee „Survey Quarterly” 2018, 37.

İçduygu A., Şimşek D., *Syrian refugees in Turkey: Towards integration policies*, „Turkish Policy Quarterly” 2016, 15.

Kalicka-Mikołajczyk A., *The concept of international agreement in European Union law – comments on the General Court's order of 28.02.2017, T-192/16, NF v. European Council*, „European Judicial Review” 2019, 12.

Luedtke A., *Crisis and Reality in European Immigration Policy*, „Current History” 2015, 114.

Półtorak M., *European Agenda on Migration Towards Vulnerable Persons European Agenda on Migration Towards Vulnerable Persons*, „Studia Migracyjne – Przegląd Polonijny” 2021, 2.

Trojanowska-Strzęboszewska M., *Border control strategies – determinants of change and their impact on the nature of contemporary borders*, „Pogranicze. Polish Borderlands Studies” 2018, 6.

Wilk W., *The war in Syria and the humanitarian crisis*, „Journalists Guide” (Polish Centre for International Aid) 2016, 24.