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Airlines are not immigration authorities

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European states seek to reduce immigration through improper threats of sanctions against airlines and other transport companies. They pass heavy responsibility on to the carriers in order to limit access to their territories. Travel personnel, who cannot possibly have the appropriate competencies for ensuring the rights of refugees under international law, have been made to decide if someone should be allowed to board an airplane or ship – or not.

For a refugee in need of international protection this is a serious barrier, as one must gain access to a state's territory in order to seek and possibly obtain asylum. Not everyone who fears torture or repression has the proper documents to travel, especially if he or she fears persecution from national authorities, who control the issuing of passports and other travel documents.

This policy creates other problems as well. In order to reach safe havens, refugees may instead be obliged to use the services of smugglers who provide them with false documents in order to get around the vigilance of the carriers.

A way to prevent migration flows

Many European states have severely restricted their immigration and asylum laws and practices in an attempt to reduce migration flows. Carriers' liability and sanctions, as well as visa requirements, are part of this phenomenon. The carriers' liability and sanctions have been established in Europe through the 1985 Schengen Convention and

Council Directive 2001/51/EC.

The rule is clear: carriers are obliged to take all necessary measures to ensure that an alien carried by air or sea is in possession of the travel documents required for entry into the Schengen countries. If a foreigner is refused entry, the carrier that transported him or her shall be obliged immediately to assume responsibility, including for the return trip to the country of departure. The carrier can, in addition, be fined.

Nevertheless, the directive states that the imposition on carriers of “dissuasive, effective and proportionate” penalties is “without prejudice to Member States’ obligations in cases where a third-country national seeks international protection”.

Trained and paid to serve flight passengers, airport staff do not have the competencies for ensuring the rights of refugees under international law. When in doubt, carriers will refuse a potential refugee trying to board a plane rather than risk a fine and have to bear the costs of accommodation and a return journey.

The responsibility to determine which migrants should be able to enter – or not enter – a territory must not fall on the shoulders of a private or public carrier company which is clearly not meant – or equipped – to do so.

Risk of human rights violations

Such practices risk violating international human rights and refugee laws, which prohibit states from returning someone to places where they risk torture or where their lives or freedom are seriously threatened. It may also give rise to violations of Article 3 of the European Convention on Human Rights, which prohibits torture, inhuman or degrading treatment or punishment.

Attempts to reduce irregular migration should not come at the cost of those who have grounds to seek protection. It is necessary that Europe overhaul its migration control mechanisms.

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