European Migration Policies and the Right of Asylum

Marija Veljovska Kondovska, Aleksandar Kitanovski

Abstract

The European Union is confronted with a deep migration crisis, at a time when the EU has changed from being a source of stability and security into becoming a generator of political instability and economic chaos. This chapter outlines the main parameters of Europe's immigration issue and the right of asylum. It presents the European migration policies of the last decade and traces the reasons behind its complete or near failure. The European Union takes into account how to rid itself of migrants through certain measures of tightening the law on asylum, and closing the borders. The result is that those states which had most fought against borders and walls and were committed to them being permanently eliminated, are now rushing to raise them again. Meanwhile, the security threat that has increased across the whole Union due to the mismanagement of migration. The European Union has spent years developing the Common European Asylum System (CEAS). The aim of CEAS is to ensure the rights of asylum seekers by law. The system establishes minimum standards and procedures for processing and assessing claims for asylum and for the treatment of asylum seekers and those granted refugee status. Nevertheless, a large number of EU member states have yet to correctly implement these standards. Instead there is a collage of 28 different asylum systems producing uneven results? Finally, this chapter examines the EU asylum system itself. The chapter analyses how national asylum systems interact under the law of the EU, applying the criteria of the distribution of state responsibility to investigate asylum applications. This chapter addresses two key concepts in the development of European asylum law in particular: the concept of solidarity and the concept of trust, the application of which has been demonstrably weak in the European Union asylum system.

Keywords: Common European Asylum System, right of asylum, refugees, immigration, racism.

Introduction

First of all this chapter will deal with the current situation of Europe's migration crisis, the right of asylum and European difficulties in absorbing migrants. For this purpose, this chapter is based on European migration policies and, more importantly, the massive inflows of asylum seekers as one of the key issues endangering the security and stability of the EU and the Western Balkans. The European asylum system is an advanced regional protection framework, in both political and legislative terms. However, the European asylum system lacks a mechanism to distribute responsibility fairly among the EU member states. In accordance with internal EU rules, the country to which migrants first come is supposed to handle them, giving them either political asylum or a temporary permit to remain. But many migrants wish to continue to Germany where they have prospects of better living conditions and of finding a job. The key point of this research is to diagnose the concept of solidarity, the application of which has been demonstrably weak in the European Union asylum system. Taking into consideration that the migrant crisis is the biggest concern for the European Union.

The Development of European Policy on Asylum

Asylum is given to people fleeing persecution or critical harm in their own country and, because they are in need of international protection they are granted either political asylum or a temporary permit to remain. Asylum and also the protection of refugees and asylum seekers is a fundamental right which was first recognized in the 1951 Geneva Convention on the protection and status of refugees. In the European Union, with open borders and freedom of movement, countries share the same basic values and states need to have a common approach to guarantee a high level of protection for refugees. Procedures must at the same time be equitable and effective within the EU and there should be resistance to abuse. Taking that into consideration, the EU Member States have committed themselves to building a Common European Asylum System (CEAS), which has to be based on the full implementation of the Geneva Convention. In fact, EU Member States committed themselves to collaborate and take responsibility of the lodged asylum application. We can say that the EU has spent years building and improving the Common European Asylum System.

Furthermore, since 1999 the EU has been working to create a Common European Asylum System (CEAS) as a means of improving legislation in the field of asylum. Between 1999 and 2005, the European Union adopted several legislative actions harmonizing common minimum standards for asylum. More specifically,

the European Union adopted the following legislation for the achievement of the first and important phase of the Common European Asylum System: the Dublin II Regulation (identifying the EU Member State responsible to inspect an application for asylum); the EURODAC Regulation (for an EU asylum fingerprint database); the Reception Conditions Directive (material support offered such as health care, job or employment and education); the Qualification Directive (determined standards for granting international protection); and, the Asylum Procedures Directive. Another important action was the strengthening of financial solidarity which came with the establishment of the European Refugee Fund.

After the completion of the first phase of the Common European Asylum System, starting in 2005, the EU has been working on overcoming the non-functional issues of the adopted legislation through a revision of the essential legislative measures. In essence, this has meant setting out common high standards and stronger cooperation to prove that wherever they apply for asylum, asylum seekers are treated equally in an open and fair system. The European Commission revised and improved the five key policy instruments. In short:

The Revised Qualification Directive, which ensures common grounds for granting international protection. It also improved access to a series of rights, namely rights: on protection, residence permits, travel documents, social welfare, access to employment, access to education, access to accommodation, and the provision of health care.

The Revised Dublin Regulation has improved the protection of asylum seekers during the processing of asylum applications by the State responsible for examining the applications. The objective of the Regulation is to ensure that one EU Member State is accountable for the examination of an asylum application.

The Revised EURODAC Regulation determines an EU database of the fingerprints of the asylum seeker. The objective of the Revised Regulation is to improve the compatibility of the system with the reform of the EU asylum acquis. Eurodac is a biometric database in which EU Member States are required to enter the fingerprint data of irregular migrants or asylum-seekers in order to identify where they entered the European Union, and whether or not they have previously made asylum applications. Its main purpose is to facilitate the application of the Dublin Regulation, which determines the EU Member State accountable for processing an asylum claim. The reform Eurodac Regulation has been applicable since 20 July 2015. (Orav, 2015)

The Revised Asylum Procedures Directive, thereby creating a coherent system, which is intended to provide a faster and better quality of asylum decisions. Asylum seekers must have access to fair and effective procedures of asylum.

The Revised Reception Conditions Directive ensures common standards of living conditions and humane material conditions in the reception of asylum applicants across the European Union. It confirms that applicants have access to housing, food, health care (medical and psychological care) and employment.

Taking all this into consideration, the Common European Asylum System actually consists of three directives and two regulations relating to asylum. Ultimately, it is about: the Qualification Directive, the Reception Conditions Directive, the Asylum Procedures Directive; and the Dublin Regulation and the Eurodac Regulation. Consequently, the Dublin Regulation and the Eurodac Regulation together form what is referred to as the Dublin System. The aim of the Common European Asylum System is to harmonize the legislation on common standards for asylum seekers between the EU Member States.

Right of Asylum

For centuries, people have been discriminated against and compelled to leave their homes because of conflict, persecution on racial, political and religious grounds, aggression, and threats to life. Human beings have migrated since the earliest societies, given that the first migrants were tribal people in search of food, water, and other resources and basic requirements. In fact, they were not yet refugees or asylum seekers; they were merely hunter-gatherers. (Warner, 1997:58)

The right to asylum is a part of the fundamental rights and freedoms to which all human beings are entitled without distinction of religion, race, political or other opinions, national or social origin, property or other status. At an international level, this right has been codified in article 14 of the Universal Declaration of Human Rights (1948), stating that: "1. Everyone has the right to seek and to enjoy in other countries asylum from persecution. 2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations" (The United Nations 1948). Asylum may consequently be defined as a kind of protection granted to people who flee their homes for fear of persecution or being at risk of suffering serious harm. These people therefore have the right to seek asylum in any country willing to protect them.

The legal basis for the right to asylum, at the European level is article 78 of the Consolidated Treaty on the Functioning of the European Union, providing an

overview on the protection of asylum seekers in the view of developing a common policy on asylum throughout the European Union. As a human right, the right to asylum was set out in article 18 of the Charter of Fundamental Rights of the European Union. In other words, after the creation of the European Charter of Fundamental Rights, the right to asylum was conceived as the right of an individual not only to apply for asylum, but also as the right to be granted it.

In accordance with the rules of international law, every state has the right (not the obligation) to receive on its territory foreigners, as asylum seekers, but it is not required to give an explanation to anyone about its decisions. Nevertheless, the state has an obligation not to interfere with anyone who wants to emigrate or wishes to seek asylum in another country. The convention states that refugees must be given access to fair and effective procedures for asylum and the measures necessary to ensure that they live in dignity and security whilst their claims are being processed. Giving asylum is a peaceful, apolitical act that no country should consider as a hostile act. We can say that today the approval of asylum to refugees is based on the principle of humanity. The right to asylum is a right of the state to approve asylum, not a subjective right of individuals to obtain asylum, unless an individual country adopts alternative arrangements in its legislation.

The Migrant Crisis in Europe: Created Dysfunction

The contrast today could not be greater than 24 years ago, when the border between Austria and Hungary came down, clearing the way for the unification of Germany. A new, free Europe was created in both the East and the West. What we see today is just the opposite. Wire fences have been erected along the Hungarian border, and have returned, exceeding those terminated in 1989/1990. Not only have external borders been put up, but also borders between EU Member States. Two supporting pillars of the EU – the Schengen and Dublin agreements - have crashed. We are witnessing the erosion of European unity while Member States are flexing their muscles. But now, in parts of Europe again, and Germany is no exception here, where its generous "Yes we can!" has become more narrowed, but realistic. After the statement of Angela Merkel that the refugees were welcome to Germany, accompanied by a 'selfie' with refugees, German municipalities and volunteers have been flooded. Establishing border control in Germany was, if not an imperative, then at least a much needed relief to overburdened officials.

As you might have assumed, with this farewell to open borders, a simultaneous domino effect hit Germany's neighbors, and as soon as Germany had established its border control, the neighbors did the same. There was a bitter admission that the

European Schengen free movement of free citizens cannot exist without strong external borders, apart from the need for cooperation, so as to ensure the right to asylum. Until now, the Mediterranean had separated the EU from the suffering of African migrants who traveled the south – north route. Now when people travel by land through the east to the west along the South – East European / Balkan route, the term "Fortress Europe" no longer serves as an apocalyptic hyperbole, but as a description of reality. What is even worse is that this is true for people who would prefer to remain apart from the refugees.

Yet, the policy of separation does not provide a true solution to the problem. Those who are in trouble will not be prevented from escaping across the border, be they internal or external frontiers. This led to the demolition of another central agreement since the 2003 Dublin II agreement (and the 2013 Dublin III) which stood alongside the Schengen Agreement. According to the Dublin agreement, only one EU Member State is responsible for the asylum procedure, namely the country of original entry. This is the only place where asylum seekers can 'enjoy' the right to remain. For too long, Germany, as a third country, exploited this rule. But lately, the Dublin agreement has been sidelined; reception centers in countries in the south are close to bursting, especially in Greece and Italy, and also in Malta and Spain. These countries are just beginning to forward the refugees on their way, in most cases to Germany.

The problems related to asylum and refugees demonstrate that the limitations of the current European project are running ahead of the national sovereignty of European solidarity. Unlike aid to Greece, the problems are not abstract, as in the case of billions of euros, but tangible, with the presence of actual refugees, leading to the two fundamental issues related to the sovereignty of nation states. First, who belongs to us? Secondly, who decides what our limits are, and how they are kept?

Obviously, the answers to these questions vary across Europe. While the western part of the EU states are ready to give up something along the lines of post-national sovereignty, Eastern Europe sticks to its newly found tradition of national independence, which had only been won, twenty-five years ago in 1989/1990. The same goes for ethnic homogeneity, and Poland and Hungary, in particular refuse to accept Muslims, under the pretext that they do not have a tradition of multiculturalism. Sadly, the phrase 'that all men become brothers' in The European anthem, Beethoven's "Ode to Joy" has turned out to be rather illusory.

As we can expect in the near future, the coming years will be decisive for the future of the European Union. These will demonstrate whether or not Europe is at all capable of providing the necessary and essential solidarity and constructive consensus, or

whether European states will slip into hostility. Europe is at a crossroads and in the worst case scenario; we will witness an ideological civil war across Europe, with the radical polarization between countries in different political situations. European solidarity and national egoism provide the essential question – Solidarity, is represented by the European Left on the one hand. Whilst the European right has already decided on its call to arms over the next few years over the refugee crisis. (Kitanovski, 2014).

Can Europe respond with solidarity to this humanitarian problem, ensuring fair distribution across its member states? Or will individual countries selfishly turn away from this huge challenge? Fighting fatal regionalism is the historic task of a progressive, liberal Left. Today, Europe stands in the face of an historic choice: either a united Europe will succeed, or we will become a patchwork continent of the old nation states. The latter would mean the collapse of the EU, Europe giving up on global dialogue, and the new global order of the twenty-first century being left to the new (and old) superpowers and their imperial ambitions. (Elsässer, 2014).

The last twenty-five years have shown that a purely monetary neo-liberal Europe, which is what Angela Merkel and Wolfgang Schäuble are pushing for, cannot respond to the fundamental crisis of Europe. On the contrary, it only stirs nationalism and leads to ever greater divisions. The Left's alternative cannot be a national one; only consistent Europeanisation can make the continent free, fair and sustainable. (Elsässer, 2014)

Populist polarization is not the correct way to reach this goal. We can only aspire to, as some leftists suggest, a simple distribution from the rich to the poor; we need a transformation of the capitalist system, a fundamental change of lifestyle. This is a way to really touch the real reasons why people become refugees; this is the only way to solve the humanitarian crisis. After all, the real reason for the business model tractor that crosses the ocean is a huge gap in wealth between the North and South, East and West. As long as it exists - and as long as the gap between rich and poor continues to grow, the refugees will not stop coming.

For all that will be required would be a peaceful and just world order, which people had been hoping for, but in vain, in Europe and elsewhere, in 1989/90. It is certain that such a goal, after all the disappointments over the last twenty-five years, seems to be rather utopian. But a united Europe can and must at least start working towards it.

Conclusion

Europe was affected, in 2015 by a historic wave of humanity, in the face of, people fleeing violence, war or poverty, seeking a place to live, a job and a chance to lead a dignified life. Much of the chaos in Europe was witnessed in the countries of Southeastern Europe that have been grappling with massive inflows of migrants and refugees. We can see the dysfunctional nature of the European Union in the place near a barbed-wire fence that divides Greece, an EU member state, from the Republic of Macedonia.

The European migrant crisis has highlighted the incompatibility or rather the inadequacy of the common EU asylum policy. In fact, it emphasizes the need to make a more harmonized and cooperative approach to the system for accommodating and processing asylum seekers. The European Union needs to show more solidarity.

The actual migration and refugee crisis has posed one of the greatest challenges the European Union has experienced so far. The appearance of migrants and refugees has stretched the borders of European cooperation and put one of the fundamental rights of citizens in Europe, free movement, at risk. The EU gave free movement rights to people. Freedom of movement can help to build solidarity between the people and governments of different countries, and the EU Treaties have a number of provisions for dealing with free movement of people, but evidently the free movement of people throughout the EU has come under threat. Furthermore, on the migration issue, European unity would seem to be an unreachable goal.

The European Commission makes efforts to find a common response to the refugee crisis. With the European Migration Agenda and many aspiring proposals, the European Commission has sought to push for conclusive and joint action to counter the migration and refugee crisis. And finally, the core of all policies of the European Agenda on Migration should be that refugees and asylum seekers are, primarily, human beings and deserve to be treated with dignity and respect.

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