

INTERNATIONAL PROTECTION IN THE EUROPEAN UNION*

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Abstract: This paper concentrates on a few aspects regarding the issues that arose after the massive waves of immigrants' who are in Europe. In this context, the purpose of the paper is to offer a perspective about what is international protection and asks the question: what rights do persons who may be in need of international protection have? It is obvious that the people in need of international protection do not have basic human rights and physical security guaranteed in their home countries and they have been forced to escape from the risk of persecution, inhuman or degrading treatment or other serious human rights violations. In this regard, we will analyze the *acquis communautaire* that the EU asylum organizations provide for forms of international protection and the corresponding procedure of international protection. We will conclude, stressing that even though the right to asylum is recognized and convergent at the European level and the roots are in the Geneva Convention, the Charter of Fundamental Rights of the EU, and other international and European legal instruments, in reality nowadays proves that there is a divergent tendency in applying the legal aspects to the persons who need international protection.

Key words: Public Law, European Union Law

Introduction

Migration is a demographic phenomenon that is a result of the process of globalization and regionalization to which we have witnessed in the last decade.

Migration can be seen as a normal phenomenon but with causes and multiple socio-economic effects; migration is a necessary process having to regard that generally, migration occurs from regions which have a less developed economy compared to developed countries, being involved in this process are mostly adults, especially young men, women, but also includes, elderly people and children.

Because of this diversity, and the range of intersectional identities, these people can experience discrimination and numerous inequalities due to their immigration status. For all of these people, migration represents a chance to start a new life which hopefully ensures a decent secure life.¹

* The article was prepared for the International Law Conference, "Current Issues within EU and EU Member States: Converging and Diverging Legal Trends", 3rd edition, organized by the Faculty of

Refugees and asylum seekers are a diverse group but they have something in common: they are subject to forced migration and fleeing from persecution in their countries of origin.

'Migrant' is a broad term that covers persons who leave one country or region to settle in another, some migrants voluntarily decide to move for a variety of reasons, most of them for reasons that are not protection-related, for instance because of family ties or due to economic hardship (as we mentioned before).

In this paper, we will refer strictly to the persons in need of international protection, as those are the persons who are forced to flee to save their lives or preserve their freedom.

The European Union's laws on refugees and asylum seekers are constantly changing and evolving, with the main challenge in the field of asylum being the creation of a Common European Asylum System. which needed to converge the different legal systems of the Member States and the international principles of refugee protection, drawn by the 1951 Refugee Convention.

Immigration Rules point us to the definition contained the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 and the New York Protocol of 31 January 1967 (often just referred to as the 'Refugee Convention' or the 'Geneva Convention').

A refugee is defined in Article 1A of the Refugee Convention as a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. There are some points of views that in the following years, we could witness a rapid emergence of new types of refugees, such as climate refugees, who could seek more environmentally stable areas, such as Europe.²

In almost all cases those persons have no protection in their country of origin and it is often their own government that is threatening to persecute them. In these particular cases, if the countries do not let them in, and do not offer protection,

Law - Transilvania University of Braşov on the 29th-30th of November 2019. All links were last accessed on 24 November 2019.

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¹ See also Ana-Maria Bolborici, *The immigration crisis - reflections concerning the crisis of European identity*, Bulletin of the Transilvania University of Braşov Series VII: Social Sciences • Law • Vol. 9 (58) No. 1 - 2016.

² Bacaian Livia Elena, *The protection of refugees and their right to seek asylum in the European Union*, 2011, INSTITUT EUROPÉEN DE L'UNIVERSITÉ DE GENÈVE COLLECTION EURYOPA VOL. 70- 2011, p. 8, <https://www.unige.ch/gsi/files/6614/0351/6348/Bacaian.pdf>.

they may be leaving them exposed to death, persecution, or other serious human rights violations.³

That' is why these people are vulnerable and need support, need international protection because they do no't have the assurance of basic human rights and physical security guaranteed in their home countries and in those circumstances they have been forced to escape from the risk of persecution, inhuman, or degrading treatment or other serious human rights violations.

Any person who is in a vulnerable position and asks for international protections should be treated fully with respect to key fundamental rights, such as human dignity, right to life, the prohibition of torture, the principle of non-refoulement, right to asylum, and non-discrimination.

Human dignity stipulates that a human being has an innate right to be valued, respected, and to receive ethical treatment. Right to life prohibiting the death penalty or execution and stipulating a duty to take preventive measures in situations where there is a real and immediate risk to the life of an individual.

Prohibition of torture that stipulates that no one can be subjected to torture or to inhuman or degrading treatment or punishment. Principle of non-refoulement referring to the obligation of states to refrain from expelling or returning a person in any manner whatsoever to a situation where she/he may face persecution and/or torture, inhuman or degrading treatment or punishment. Right to asylum that gives everyone the right to seek and to enjoy in other countries protection from persecution.

The regulation ensures that each person (whether adult or child) has the right to make an application for international protection on his or her own behalf or through his or her relative or representative.

Non-discrimination that prohibits any unfair treatment or arbitrary action or distinction based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.⁴

1. Discussion

According to Eurostat, 2.4 million immigrants entered the EU from non-EU countries in 2017 and the EU Member States granted citizenship to 825 thousand

³ EASO, *Access to the Asylum Procedure*, p. 5, https://www.easo.europa.eu/sites/default/files/public/FAQs_0.pdf.

⁴ EASO, *Practical Guide: Access to the Asylum Procedure*, p. 9, https://www.easo.europa.eu/sites/default/files/public/Practical-Guide1_0.pdf.

persons in 2017; 22.3 million people (4.4 %) of the 512.4 million people living in the EU on 1 January 2018 were non-EU citizens.⁵

Results of a Eurobarometer survey published in April 2018 show that nearly four in ten Europeans (38 %) think that immigration from outside the EU is more of a problem than an opportunity, although this varies significantly by country. Also, Eurostat reports that 37 million people in the EU were born in a third country and migrants in an irregular situation are estimated to total between 1.8–3.9 million.⁶

The opinion polls reveal that a significant percentage of citizens belonging to the Member of the European area no longer feel safe, considering that by this exodus of refugees will have an influence on the status of politics within the European area. The polls also reveal the collapse regarding the absence of a convergent approach and in accordance with the different viewpoints and, in the subsidiary, with the policies on migration and the legal trends about immigrants refugee status and subsidiary protection status in the frame of the Member States of the European Union. From 2015-2018, almost 2 million people received international protection in the EU, many of them were children or young adults.

Based on those realities, it is obvious the concerns related to migration affected different policies and as well practices in 2018 and 2019.

Although various civil society initiatives throughout the European Union aim to support and welcome migrants, Europe's population overall is concerned about migration, even more so when it is considered 'irregular migration'.⁷

At the same time, Europe's population is misinformed when having to regard that they can 'not have a clear projection about the incoming fluxes of migrants; for example, they didn't know how many migrants there are in dangerous and vulnerable situations and that need quick and specialized support.

This happens probably because the migratory patterns are often mixed, within mixed migration flows, those who are in need of protection and those whose reasons are not protection-related travel alongside each other, making use of the same routes and means of transport.

All together, at the end of the day, these migrants arrive in a European state (if they are lucky and have the chance to survive at that long and unsafe trip) and all that the European citizens can see are huge waves of persons who live on the streets and require help. This can explain why the opinion polls show that a significant percentage of citizens belonging to the Member of the European area no longer feel safe and protected in their own city/country. In this situation, it

⁵ Eurostat, *Statistics Explained, Migration and migrant population statistics*, March 2019, https://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics.

⁶ FRA, *Asylum, visas, migration, borders and integration*, p. 5, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-frr-chapter-6-asylum_en.pdf.

⁷ *Ibidem*.

becomes very important to identify those who are really in need of international protection.

A person who may be in need of international protection is entitled to certain rights regardless of whether they have explicitly applied for international protection or not. One of these rights is the principle of non-refoulement and applies to all persons regardless of whether their status has or has not been formally determined. In this regard, Member States have the obligation to refrain from returning individuals to any place where they may face persecution as well as inhumane or degrading treatment or punishment, including torture, and even if they are in an irregular migratory situation.⁸

Also important is to be assured of the effective access to the asylum procedure, the right to information in a language which can be understood by the immigrants concerning the entire process of application, so that; those people have access to an interpreter, and the opportunity to communicate with organizations who provide legal advice or counseling to applicants.

In line with the relevant international and European legal standards and legislation all persons must be treated with respect for human dignity and in accordance with fundamental and human rights and including the provision of emergency healthcare and meeting basic needs.

Vulnerable persons, such as children and victims of human trafficking, unaccompanied children, disabled people, elderly people, pregnant women, single parents with children and so on, must be identified and referred to appropriate procedures.

Another category of person who may also be in need of international protection are the victims of human trafficking and to those people shall be given access to the asylum procedure and must be properly informed of their right to seek asylum.⁹

In accordance with the Geneva Convention and the Schengen Border Code, applicants for international protection cannot be penalised on account of their illegal entry, provided they present themselves without delay to the authorities. During the investigation of false and fraudulent documents, the person may apply for international protection and in this case, the police investigation shall be stopped and the asylum procedure shall be initiated.¹⁰

The Common European Asylum System (CEAS) is a common system based on the full and inclusive application of the Geneva Convention and aims to ensure fair and human treatment of applicants for international protection, to harmonise asylum systems and to reduce the differences between the Member States on the

⁸ EASO, *Access to the Asylum Procedure*, p. 12, https://www.easo.europa.eu/sites/default/files/public/FAQs_0.pdf.

⁹ *Idem*, p. 7.

¹⁰ *Idem*, p. 19.

basis of binding legislation, as well as to strengthen practical cooperation between national asylum administrations and the external dimension of asylum.¹¹

EU asylum *acquis communautaire* provides for two forms of international protection: refugee status and subsidiary protection status.

A person who seeks international protection (refugee status or subsidiary protection status) is assimilated with asylum seekers. For many countries, the distinction between a refugee and an asylum seeker is still ambiguous due to the lack of a clear definition of an asylum seeker from the 1951 Refugee Convention. For that reason, each country may set out the guidelines for granting asylum to those in need of protection.¹²

According to the regulations, a refugee is a person who was forced to flee the country of nationality, or in the case of stateless persons, the country of former habitual residence, because of a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, and is unable or, owing to such fear, unwilling to return to it.¹³

The second option, subsidiary protection is granted to people who do not qualify as refugees but are in need of international protection. Across the EU, subsidiary protection is provided to those facing a real risk of serious harm if returned to their countries, such as the death penalty or execution, torture, inhuman or degrading treatment or punishment, a serious and individual threat by reason of indiscriminate violence in situations of international or internal armed conflict.¹⁴

An asylum seeker has been generally defined as a person who seeks asylum or shelter in another country than his country of origin, for a series of reasons like persecution, aggression, conflicts, human rights abuses, threats to life, etc., and who is waiting for his application to be examined. After applying for asylum, this asylum seeker may become a refugee or an economic migrant in the host country. However, sometimes, an asylum seeker may not meet the Refugee Convention criteria and may not be entitled to refugee status, but may suffer persecution if he were to be returned to his country of origin. In this case, he may be granted “de facto” legal status to be able to enjoy the protection of the asylum country. This type of status was defined, under European law, in the form of subsidiary protection.

Asylum applications include all persons who have lodged or have been included in an application for international protection as a family member in the reporting country during the reporting month. First-instance decisions include all persons covered by decisions issued on granting EU-regulated international protection status (refugee or subsidiary protection) following a first time or

¹¹ *Idem*, p. 9.

¹² Bacaian Livia Elena, *op. cit.*, p. 19.

¹³ EASO, Access to ... *op. cit.*, p. 8.

¹⁴ *Ibidem*.

repeated application for international protection in the first instance determination process. The EU recognition rate includes EU-regulated forms of protection (refugee status and subsidiary protection) and excludes national protection forms (humanitarian reasons).¹⁵

An asylum seeker may be entitled to refugee or subsidiary protection status depending on the resolution of his application.

So, the reality is that a great number of asylum seekers, who do not qualify as refugees, fall under the second category and become persons eligible for subsidiary protection. In international law, this type of obligation to protect people who do not satisfy the 1951 Refugee Convention definition, are known under the name of complementary protection.¹⁶

The European Union codifies complementary protection in the form of subsidiary protection; in this regard, a person eligible for subsidiary protection is defined in the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted as follows: "a third-country national or stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15".¹⁷

According to Article 15, serious harm, meaning the death penalty, execution, torture, inhuman or degrading treatment, punishment, the threat to life or violence in the event of armed conflict.

It can be concluded that in the European Union, the notion of subsidiary protection is generous and applies to many categories of people, not only to those who may be subjected to torture.

Conclusions

Related to the asylum situation, in the first nine months of 2019, more than 500,000 applications were lodged in the EU, which is a slight increase compared to almost 497,000 in the same period of 2018. The main receiving countries in 2019 so far are Germany, France, Spain, Greece and the United Kingdom, representing more than 72% of the total. In 2018, the main countries of origin were Syria,

¹⁵ EUROPEAN ASYLUM SUPPORT OFFICE, Latest Asylum Trends, August 2019, <https://www.easo.europa.eu/latest-asylum-trends>.

¹⁶ Bacaian Livia Elena, *op. cit.*, p. 20.

¹⁷ Council Directive 2004/83/EC, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0012:0023:EN:PDF>.

Afghanistan, and Iraq, and so far in 2019, they are Afghanistan, Syria, and Venezuela.

In the first half of 2019, 96,800 positive decisions were issued in the EU. The recognition rate for first-instance decisions issued between February and July 2019 was 34%.

The main countries of first entry such as Italy and Greece have the largest number of existing records, France and Germany remain the main destination countries of secondary movements with the largest number of hits registered.

So far in 2019, some 456, 000 applications for asylum have been lodged in the EU, up by 10% compared to last year. Following a peak in July, applications were reduced in August (5, 400) but remained more or less in line with earlier in the year. Syrians, Afghans, and Venezuelans continued to lodge the most applications, accounting for a quarter of all applications.

So far this year (2019), the majority of citizenship among the top 30 lodged more applications than a year ago. In August 2019, the output of first-instance authorities (about 46,000) returned to the levels of most other months in 2019, after record numbers in July. Overall, the EU recognition rate for decisions issued at first instance in the past six months was 34% - with applicants from Syria (85%), Yemen (83%) and Eritrea (82%) having the highest EU-regulated recognition rate. Venezuelans, Colombians and Afghans, all lodged far more applications than they received decisions at first instance and so the number of pending cases for these nationalities increased.¹⁸

In August 2019 around 55, 400 applications for international protection were lodged in the EU, down by 12% from July, but broadly in line with most other months so far this year. Syrians, Afghans, and Venezuelans continued to lodge the most applications, but in lower numbers than a month earlier, in particular, Venezuelans (- 22%).

Turkey, Iraq, Colombia, Pakistan, Iran, Albania, and Nigeria completed the list of the top 10 countries of origin of applicants. With the exception of Turks and Iranians, for whom applications were stable, all these citizenship groups lodged fewer applications than a month earlier.¹⁹

The statistics show that some 3% of all applications were lodged by self-claimed unaccompanied minors (UAMs) in August 2019; most self-claimed UAMs were nationals of Afghanistan, followed at large distance by Syrians, Somalis, Pakistanis, and Moroccans.

The number of UAMs among Afghan applicants increased over the past few months. For citizenships, lodging at least 1, 000 total applications between January and August 2019, the largest concentration of UAMs was observed among

¹⁸ EUROPEAN ASYLUM SUPPORT OFFICE, *Latest Asylum Trends*, 7 October 2019, <https://www.easo.europa.eu/latest-asylum-trends>.

¹⁹ *Ibidem*.

nationals of Vietnam (12% out of all Vietnamese applicants), who preceded Afghans (9%), Sudanese and Eritreans (8% each).²⁰

It is obvious that the EU is set on implementing a Common European and Asylum System, intended to converge the different asylum policies and legal systems of Member States.

The continuous change and evolution in this area, starting with the development of European norms on asylum and continuing with the different case laws judged by the European Court of Justice and the European Court of Human Rights is still challenging nowadays.

Concluding, everyone has the right to apply for international protection and the right to asylum is recognised in the Geneva Convention, the Charter of Fundamental Rights of the EU, and other international and European legal instruments.

The question of whether the European Union will behave like a fortress or like a host for these new migrants will still remain open to further discussions.

²⁰ *Ibidem.*