

CHALLENGES AND DEVELOPMENT OF THE ASYLUM SYSTEM IN THE EUROPEAN UNION

Iveta Adijāne

Mg.iur., Docent of Border Guard and Immigration Service Subjects Department of the State Border Guard College, e-mail: iveta.adijane@inbox.lv, Rēzekne, Latvia

Abstract. *There still is a lack of unity among EU Member States on asylum issues, both, in the practical application of the existing legal framework and in the direction of the common asylum system. Latvia is subject of both international and European Union common asylum conditions. Any changes in the scale of the European Union affect Latvia, and the world situation in the field of refugees also affects our country. The aim of this article is to analyse the current situation of asylum in the EU, touching upon main trends in the world of refugees, and to identify the main problems in the existing asylum procedure in the EU. In order to achieve objectives, following research methods were used: monographic research of theoretical and empirical sources in order to analyse and evaluate various asylum domain information, analytical method in order to acquire legislative content and verities, comparative method in order to discover differences in legislation of asylum procedure in EU countries, systemic method in order to disclose interconnections in legislation, descriptive statistics method and correlation analysis in order to analyse process of asylum procedure and determine interconnections in asylum procedure time frame between legislation and practical instances in EU countries.*

Keywords: *asylum law, asylum system.*

Introduction

Nowadays the asylum procedure and rights to request an asylum are still in honour. Despite different opinions and discussions, all international organizations stress the importance of existence of asylum procedure, necessity of international rights and fact that international refugee law, international human rights law and international humanitarian law provide a legal framework for strengthening refugee protection.

Despite such problems as pressure of irregular migration, different economic, social and even ethical and moral problems, it is impossible to refuse an issue mentioned above – respect of human rights. Since the rights for asylum, as a part of human rights, are found in fundamental documents of human rights (The Universal Declaration of Human Rights, the United Nations General Assembly, 1948, 1951 Refugee Convention relating to the Status of Refugees, 1951, The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights, 1950, CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION, 2012). European Union (further – EU) fundamental document (Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union -



Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, 2007) and in national legal acts of every EU member state, it is set that EU must obey international terms of providing protection. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for the establishment of a common European asylum system.

This article examines current situation in the EU, real situation and legal situation according to granting international protection in the EU. The author analyses different legal acts, uses statistical analysis, announcements on EU organizations, and information from the EASO Asylum Report, that provides a comprehensive overview of key developments in asylum in European Union Member States, Iceland, Liechtenstein, Norway and Switzerland (EU+ countries). The report describes changes to policies and legislation at European and national levels, shares best practices and summarises challenges which persist. It presents trends in asylum patterns, key indicators and examples of case law to showcase how European and national laws are interpreted and applied in the context of the EU asylum acquis.

Contemporary trends in asylum rights

Since Europe again faced a growth of international protection applications in 2019 (first time since 2015), the asylum is still a high priority in EU policy (EASO 2020.gada ziņojums par patvērumu, 2020).

The situation in the region of EU and neighbouring states is important for Latvia as an EU member state. But it is important to understand the common situation in the world. The UN judges the refugee situation global because the number of refugees and displaced persons in the world is much bigger than in our region. According to the UN statistics, turning from absolute numbers, a different pattern emerges when comparing the share of refugees to the population size of the host country. In relative terms, at the end of 2018, the top countries to host refugees were Lebanon (156 refugees per 1 000 inhabitants), Jordan (72) and Turkey (45). All three countries are neighbouring Syria and this geographic proximity, independent of the host country's size, naturally facilitates access for large numbers of displaced Syrians who cross country borders in search of

security (EASO Asylum Report 2020, Section 1. Global overview of the field of asylum in 2019, 2020).

The number of refugees in the world does not decrease; it continues to increase, changing regions where this increase is bigger or smaller. Thus the number of asylum seekers in the EU increased in 1990's, then in 2015 and the latest growth – in 2019.

According to involved international organizations (UNHCR, IOM, EASO and others) and to scientists and scholars in the field (Guy S Goodwin-Gill - the International Refugee Law Scholar, Jane McAdam, Velluti, S., Smyth Ciara and others) the asylum item is very complicated. The solutions are being browsed for many years. Many understand that these solutions should be integral and more many-sided than current ones. But there is nobody to suggest precise formulations and solutions. States are still left alone to seek a solution to this problem. Of course, there is human aid, there are discussions about help to host states, but still states that face the refugee flow first, are forced to undertake the hardships and responsibility. Large movements of refugees and migrants have political, economic, social, developmental, humanitarian and human rights ramifications, which cross all borders. These are global phenomena that call for global approaches and global solutions. No one State can manage such movements on its own. Neighbouring or transit countries, mostly developing countries, are disproportionately affected. Their capacities have been severely stretched in many cases, affecting their own social and economic cohesion and development. In addition, protracted refugee crises are now commonplace, with long-term repercussions for those involved and for their host countries and communities. Greater international cooperation is needed to assist host countries and communities (New York Declaration for Refugees and Migrants, 2016).

The fact that all civilized world has to obey objectives and principles of Charter of the UN (Charter of the United Nations, 1945) was stressed again on 19th September 2016 during the discussion upon New York Declaration (New York Declaration for Refugees and Migrants, 2016). Also this fact was reissued in The Universal Declaration of Human Rights (The Universal Declaration of Human Rights, the United Nations General Assembly, 1948). Thus it was repeatedly set that all human's, refugees' and migrants' right will be completely secured disregarding their status because everyone has equal fundamental rights and freedoms.

Following the adoption of the New York Declaration, the UN Secretary-General and seven Member States on 20 September 2016 co-hosted the Leaders' Summit on Refugees to increase global responsibility-sharing for refugees. At the summit, 47 States committed to legal or policy changes to enhance refugees' access to education, lawful employment and social

services; substantially increase humanitarian aid; and expand access to third-country solutions, including through resettlement or complementary pathways (Summary Overview Document Leaders' Summit on Refugees, 2016). It was stressed that states keep rights to manage and control their borders, observing international law, including international human rights law and international refugee law, promote international cooperation on border control and management as an important element of security for States, including issues relating to battling transnational organized crime, terrorism and illicit trade. It is also stressed that the training of state officials and law enforcement employees is highly important. These officers are the first who face asylum seekers at state border and their decision is decisive for human destinies. So UN is ready to support strengthening international border management cooperation, including issues relating training and exchanging best practices that strengthen support in this area and help building capacity accordingly. In accordance with the principle of non-refoulement, persons may not be returned to the border. In accordance with these obligations and principles, States have the right to take measures to prevent the illegal crossing of borders (New York Declaration for Refugees and Migrants, 2016).

The New York Declaration repeatedly points at fact that refugees are in high danger from the side of international criminality during their path; the Declaration is reaffirming the importance of the United Nations Convention against Transnational Organized Crime and the two relevant Protocols thereto (New York Declaration for Refugees and Migrants, 2016). It should be stressed that EU human trafficking fighting policy is highly evaluated in the UN (New York Declaration for Refugees and Migrants, 2016).

Challenges in granting international protection in the EU

With the outbreak of massive refugee flow the EU had to concern following aspects. It was necessary to evaluate national possibilities and international legal liabilities; to ensure the identification of persons who need international refugee protection; to ensure secure, adequate and decent admission conditions especially for persons with special needs – human trafficking victims, children, especially ones who are unaccompanied or separated from families, sexual coercion victims. To achieve these goals host states needed aid from other member states. Within the frame of Frontex joint operations experts from different member states were deployed. These experts were performing individual registration, documentation and identification of asylum seekers. However the support of human resources is not enough to provide all asylum procedure stages and terms. Aid in biometric technologies and other

technical and financial resources is also needed. To ensure order in host states it is necessary to introduce the order of further residence of asylum seekers until the accomplishment of asylum procedure. There is also need in legal support such as registration of civil status, registration of newborns, marriage, death etc.

The EU is generalizing official statistics of asylum seekers, but European Asylum Support Office (further – EASO) stresses that nevertheless EASO uses both data published by Eurostat and through the EASO Early Warning and Preparedness System (EPS) data exchange to produce both public and restricted analyses of asylum trends, it is hard to pass judgement on administrative pressure on states where asylum application was made or states that are involved into asylum procedure according to the Dublin Regulation (Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, 2013). EASO works actively to improve the quality of information. Nonetheless, some discrepancies have been found which affect the interpretation of data on asylum, namely:

1. In 2020, data integration has become the most pressing issue in the area of analysis and research. In other words, the utility of data is now measured by the extent to which it can be 'linked' to other data in order to multiply its potential. For example, data on Schengen visa applications and the number of asylum applications are available, but these data originate from different sources and are not linked. As a result, it cannot be deduced how many people first applied for a visa and then applied for asylum. The more data become linked with the necessary level of precision, the more the EU can design a future-proof and efficient asylum system based on a detailed understanding of the underlying trends.
2. Administrative data tend to count administrative procedures rather than individuals, so information exists on how many applications were lodged but it is not clear how many people were involved in these procedures. This can have considerable consequences on the interpretation of the data and how they are used to support decision-making. For example, counting applications may produce over-estimations at the EU+ level when some individuals submit multiple applications at different times or in different countries. At the same time, applications might under-estimate the actual pressure on national asylum authorities because their number is dependent on administrative capacity to register applications (EASO Asylum Report

2020, Section 4. Data on the Common European Asylum System, 2020).

Concerning the mentioned Dublin Regulation, it is necessary to remember that the Regulation and all Dublin system attracts attention to itself because it gives real and practical solutions to EU asylum system in the fields of human rights observance, protection applicants and fighting fake applications in the EU.

The European Commission proposed a reform to the current Regulation in 2016, but without an agreement being reached between Member States, the Dublin system continued to be at the heart of public debates in 2019. Pending the future reform of the Dublin system, European and national courts continued to interpret some of the rules, delivering guidance based on each individual case. EASO estimates show that many applicants continued with secondary movements in 2019, while implemented transfers remained relatively low. Nonetheless, relatively few legislative and policy developments occurred in 2019, with the exception of countries experiencing a significant rise in the number of asylum applicants placed in Dublin procedures, such as Belgium and the Netherlands. It is relevant to note that the discretionary clause in Article 17(2) was used as the legal basis for ad hoc relocation schemes (.EASO Asylum Report 2020, Section 5. The Dublin procedure, 2020).

Mainly the development of Dublin system in member states is connected with organisational and institutional changes. For example in Lithuania the transfer of asylum applicants to the responsible Dublin state became the task of the State Border Guard Service, which previously shared this responsibility with the police. In comparison in Latvia the responsibility of Dublin Regulation execution was initially in the competence of the State Border Guard, but the decision of transfer is made by other institution – the Office of Citizenship and Migration Affairs. However some states have improved their legal side. The Netherlands following a ruling by the Council of State, the Dutch Aliens Act (Vw, Vreemdelingenwet) was amended (Article 50a) to permit applicants or Dublin claimants residing legally after the decision on the asylum application and awaiting a transfer to be stopped, transferred to a place to be questioned, questioned and kept in custody for a maximum of six hours to assess whether detention is necessary in the framework of the Dublin procedure (decision on the responsible state and implementation of the Dublin transfer) (NL LEG 01). Previously this was only possible when there was a reasonable suspicion of irregular stay (EASO Asylum Report 2020, Section 5. The Dublin procedure, 2020). Also some other legal conditions were introduced at the same time to limit the number of fake applications. The difference between court systems and court decisions in different

member states are seen in EASO report in 2019. Such differences do not help to implement common Dublin procedure. For example EU court in case between the Netherlands and Germany upon applying Dublin Regulation criteria to a Syrian citizen decided that during a procedure of identifying a responsible member state, a member state that received an admission or readmission application and that refuses this application after necessary procedures and terms, and that receives a re-examination request, should answer to this request within two weeks in the spirit of reciprocity and good will. In case the requested Member State does not reply within the period of two weeks to the re-examination request, the additional re-examination procedure shall be definitively terminated, with the result that the requesting Member State must, as from the expiry of that period, be considered to be responsible for the examination of the application for international protection, unless it still has available to it the time needed to lodge, within the mandatory time limits laid down for that purpose in Article 21(1) and Article 23(2) of Regulation No 604/2013, a further take charge or take back request (JUDGMENT OF THE COURT, 2018). The essence of the case follows: On 22 September 2015 the applicant in the main proceedings, an Eritrean national, lodged an application in the Netherlands for the grant of a temporary (asylum) residence permit with the State Secretary. According to the Eurodac database, he had previously lodged an application for international protection in Switzerland on 9 June 2015. It is indicated, in addition, in the file submitted to the Court that the applicant in the main proceedings at the end of May 2015 crossed the Mediterranean into Italy, where however his fingerprints appear not to have been taken and where he apparently did not submit an application for international protection.

Previously involved states had several discussions on such questions as possibility of refusal of application if EURODAC shows that the asylum was requested in this state before, is not-answering to a request is considered as a positive answer, is it necessary to give an answer to a re-examination request within two weeks. These questions are formulated in the Dublin Regulation, but the Regulation does not state what happens if any member state does not follow regulations, does not follow the terms, refuses a reasonable request or simply does not answer. At the same time it is discussed which day should be considered as an official start of the asylum procedure, because the right of asylum seeker for application examination in short terms is being violated during the argue between states about stating the responsibility. In fact the term of asylum procedure should not be affected by court process between states. In case if a member state that has received a readmission request, refuses to this request, the

responsibility falls on a member state that has issued this request. In this moment the term of asylum application examination starts.

It should be also mentioned that due to Dublin system there are member states that are forced to receive more asylum seekers than are transferred to other member states according to aid request. Mainly these are states that initially face a big number of protection applications. Such absurd implementation of these two systems parallel and uncoordinated should be dismissed (AUSTERS, A., BEITNERE-LE GALLA, D., RASNAČA, Z., 2019).

What concerning the implementation of the Dublin Regulation, EASO gives practical advices to improve this implementation in practical life thus improving all asylum system in the EU. Practical advices for the work with asylum seekers are published regularly. These advices explain the practical implementation of legal acts and also summarize the legal acts that justify exact actions (court practical aspects). For example the EASO Practical Guide on the implementation of the Dublin III Regulation: Personal interview and evidence assessment is a practical tool to support Dublin practitioners across all European Union (EU) Member States plus Norway, Switzerland, Iceland and Liechtenstein applying the Dublin III Regulation (Member States) in their daily work. This is a soft convergence tool, which reflects the common standards. The purpose of this practical guide is twofold. The guide assists the reader in conducting the Dublin personal interview with an applicant for international protection, as well as supporting the user to conduct an objective and impartial individual assessment of the evidence by applying the legal criteria and common standards equally. This is done in order to determine which Member State is responsible for examining the application for international protection lodged in one of the Member States by a third-country national or a stateless person (EASO Practical guide on the implementation of the Dublin III Regulation: Personal interview and evidence assessment, 2020).

The experience of publishing such handbooks has been started in 2014. It gives support for everyday work with asylum seekers. One of the first was EASO Practical Guide Personal Interview, that is intended as a practical checklist and brief guide to accompany case officers throughout the European Union and beyond in their daily work. It was set up to help Member States meet one of their key obligations in the Common European Asylum System (CEAS): the obligation to give applicants a fair and effective opportunity to state the reasons for their application when a personal interview is central (EASO Practical Guide: Personal interview, 2015).

Unfortunately these well prepared materials are not always used and taken into consideration. It is necessary to introduce common training methods to improve situation. Such training should introduce employees

and officers of institutions involved in asylum procedure to mentioned materials, thus implementing a common conception in all member states.

Conclusions and suggestions

The idea of dominance of human rights upon other rights and regulations is seen in international and EU legal acts. The right for asylum is already included into cluster of human rights. But there are peculiarities that are stressed and must be observed, thus enlarging the question of human rights even to scale of those legal acts that does not regulate this particular sphere. To ensure rights of an asylum seeker, states should initially ensure possibly fastest case examination striving to protect rights of the human regardless imprecise legal acts, absence of agreements or breach of agreements, explaining all inconsistencies on behalf of the asylum seeker. So it should be concluded that differences in legal act interpretation and practical policy disturb to achieve common asylum process in the EU and also allow third country nationals and stateless persons to use the asylum procedure with malicious intent.

To overcome this problem, EU should introduce solutions to apply common policy in decision-making in regard to asylum seekers, solutions that improve cooperation between states of origin, transit states and host states, solutions that improve the process of return and readmission of persons that do not pass terms and conditions for international protection. At this moment EU is making readmission agreements with third countries, but this process is rather slow and difficult. Also the common asylum procedure is being improved, but there is poor common understanding between member states. There are still some problems implementing Dublin Regulation. Member states should arrange on concise and practical conditions that could be implemented in real life, instead of overall arrangements. If these steps will not be done, irregular migrants will continue to use the miscommunication between member states to find way and reside in the EU.

Member states should focus on training of officials that are involved in asylum procedure, because common knowledge and skills could provide common policy in issues of granting international protection. International trainings, seminars, both full time and online, are methods that allow achieving common understanding of problematic questions.

References

1. AUSTERS, A., BEITNERE-LE GALLA, D., & RASNAČA, Z. (2019). Patvēruma meklētāju problēma un tās risinājumi Eiropas Savienībā un Latvijā. 260.lpp.

2. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, Official Journal, 2012, C 326. Retrieved August 4, 2020, from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>
3. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. 29.06.2013, Official Journal L, 2013, no. L 180.
4. The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights, 04.11.1950. Retrieved August 4, 2020, from <https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c>
5. The Universal Declaration of Human Rights, the United Nations General Assembly, 10.12.1948, (General Assembly resolution 217 A). Retrieved August 4, 2020, from <https://www.un.org/en/universal-declaration-human-rights/>
6. EASO Asylum Report 2020, EUROPEAN ASYLUM SUPPORT OFFICE. Retrieved August 4, 2020, from <https://easo.europa.eu/asylum-report-2020>
7. EASO Practical guide on the implementation of the Dublin III Regulation: Personal interview and evidence assessment, (2019), Luxembourg: Publications Office of the European Union, 2020.
8. EASO Practical Guide: Personal interview, (2014), European Asylum Support Office, 2015.
9. EASO 2020.gada ziņojums par patvērumu. Gada ziņojums par situāciju patvēruma jomā Eiropas Savienībā. KOPSAVILKUMS. Eiropas Patvēruma atbalsta birojs, 2020.
10. Summary Overview Document Leaders' Summit on Refugees (2016). Retrieved August 4, 2020, from <https://www.unhcr.org/58526bb24>
11. Charter of the United Nations, 24.10.1945. Retrieved August 4, 2020, from <https://www.un.org/en/charter-united-nations/>
12. CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION, 26.10.2012., Official Journal of the European Union, 2012, C 326/391. Retrieved August 4, 2020, from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>
13. New York Declaration for Refugees and Migrants. 19.11.2016. Retrieved August 4, 2020, from https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf
14. JUDGMENT OF THE COURT (Grand Chamber) 13 November 2018 (*) In Joined Cases C-47/17 and C-48/17. Retrieved August 4, 2020, <http://curia.europa.eu/juris/document/document.jsf?jsessionid=F2E7896FA924349652274BDA348EC0FE?text=&docid=207681&pageIndex=0&doclang=EN&m ode=lst&dir=&occ=first&part=1&cid=10295802>
15. 1951 Refugee Convention relating to the Status of Refugees, 28.07.1951. Retrieved August 4, 2020, from <https://www.unhcr.org/5d9ed32b4>