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Present and Future Challenges of Asylum Law and Policy in the EU

Just two years ago I was speaking to an audience of young people in Hungary and asked them if they could imagine one agency in the EU dealing with asylum claims and distributing refugees among the Member States according to certain criteria? At that time it seemed like a very unbelievable vision. Just two years later, possible establishment of a Single asylum procedure, one asylum office and quota system according to the distribution key is written black on white in the EU Commission proposals (April 2016).

Thus we are currently experiencing a very historical moment of asylum and migration law development in the EU, which has an impact also on the associate countries (the Balkans and Turkey will be affected in particular). The European migration emergency in 2015 has clearly been the main contributing factor to a substantial revision of the Common European Asylum System (CEAS).

In this short intervention I would like to explore with you the current challenges that shape the EU asylum policies and raise some issues for discussion about the future asylum policy basically in two areas:

1) responsibility sharing for asylum claims among the Member States, or, the so-called Dublin System and its reform;

2) distribution of refugees under quota system within the EU;

At starting point I need to show you some reasons why people move to a particular country or region, as to illustrate how harmonization of asylum law in the EU works in practice:

1) What share do you think EU has in a global refugee statistics, or in other words – where most of asylum seekers stay? Let's take Syrian refugees as an example. First, one of the major issues in the EU has been the varying recognition rates for refugees and subsidiary protection receivers, which explains why people prefer to go to particular Member State (*illustration with statistics is on the screen*) and which raises serious questions of harmonization of asylum laws only on the EU legal surface. The issue for discussion is how to achieve the harmonization beyond the EU legislation (in the mentality and practice of the officials and judges in various States)?

2) Secondly, protection standards in different EU Member States. Back in 1997 it was agreed by the then EU Member States that human rights standards are equivalent in each state and thus it should not matter to which of EU members the asylum seeker comes. At that time the

Member States introduced the so-called Dublin system, which since 2003 is regulated by the EU law. This presumption did not prove to be true and in 2011 was rebutted both by European Human Rights Court and the Court of Justice of the European Union. In *M. S. S. v. Belgium and Greece* case the ECtHR found that Belgium could not have sent an Afghan asylum seeker to Greece where reception conditions were poor and serious deficiencies existed in the asylum system. Later in that year, the CJEU in a case of *N. S. and M. E. v. UK* has ruled that EU law cannot be applied if this violates human rights. Similar decisions have been issued with regard to Malta, Bulgaria, and Italy.

Currently, the Dublin system, which was designed for sharing responsibility for examining asylum claims is dysfunctional. Several reasons could be emphasized:

a) the system did not favor EU members at the external borders, as applicants would enter the EU via Greece, Italy, Malta, Spain, but would not stay there and rather continue to other asylum countries: Germany, United Kingdom, Sweden. However, under the Dublin Regulation they would have to receive these applicants back. But it turned out that there are systemic deficiencies in the asylum systems of some of these border states, thus it was no longer possible to send the applicants back there.

b) Secondly, the system was coercive both for asylum seekers, but also the Member States, since it moved forcibly around 8000 persons per year.

c) The 2015 refugee emergency in Europe has demonstrated that the external EU countries are not capable of coping with

refugees and thus the Dublin system was suspended.

The future is likely to bring us a substantial reform of the Dublin system. Among the main elements of the new system is the introduction of principle that responsibility for examination of asylum claims should rest with the state, to which the applicant for asylum is most closely related (genuine links). Now, the objective is to motivate the person to apply for asylum asap. Thus if a person enters through a particular state, he should be interested to approach the authorities, who would then establish his connections asap and organize the travel to the most relevant country (such connections could be family, job offer, language and others), so not necessarily the person will have to stay in the country of first entry. However, those states that receive too few refugees, will have to take additional ones under special distribution system. This of course raises a question, if the less attractive asylum countries be punished with refugees with no connection?

Second issue that is most discussed in the EU is the introduction of quota system for distributing refugees among member states of the EU. Quotas were introduced for the first time in September 2015 (the Council invoked Art. 78 (3) of the TFEU on solidarity). Of course, this article deals with emergency measures only, but in April of this year, the Commission has already made a proposal for introducing such quota system on a permanent basis as part of the reform of the Dublin Regulation. It is yet to be seen if this flies through, in particular knowing that some new Member States are questioning even the initial Council measures and the case is

pending before the CJEU against the Council brought by Hungary and Slovakia (C-643/15 and C-647/15). The Court decision either will deepen the divide among the Member States over how solidarity should be practiced in the EU; or will set a basis for even further movement away from the discretion of Member States towards more powers by the EU in this field.

Last, but not least, relationship with neighboring countries should not be overlooked. The EU deal reached with Turkey in March of this year is already raising a number of questions of compatibility with EU law on safe third country notion and others. Furthermore, EU non-admis-

sion policies will be bound to change if the ECtHR adopts unfavourable decision for Spain for its policy to reject asylum seekers at the border with Morocco in small enclave cities of Ceuta and Melilla in the North of Africa, which is currently pending in Strasbourg. Reception standards in some EU member states, where even the Strasbourg court has recognized the violations of EU law in some member states and others.

Thus I leave you with a number of questions, but this is how the EU policy on asylum looks like now and also it will hopefully inspire our discussion in the panel.