



Fall 2014

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Abstract

Italy's unique geographic location at the coast of the Mediterranean Sea gives much opportunity for the international community to criticize its dealings with asylum seekers crossing the body of water to enter Europe. The UNHCR reported that as of October 2014, 165,000 asylum seekers had taken dangerous journeys across the Mediterranean Sea; of those 165,000 people, Italy received 140,000.

Keywords

Italy, UNHCR, refugees, borders

Disciplines

European History | Immigration Law | International and Area Studies | International Humanitarian Law | International Relations | Military, War, and Peace | Other International and Area Studies | Peace and Conflict Studies | Political Science | Politics and Social Change | Public Affairs, Public Policy and Public Administration | Race and Ethnicity | Transnational Law

Comments

This paper was written for the *International Refugee Law* course at the Danish Institute as part of the study abroad program.

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International Refugee Law
Final Assignment
December 2014

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I. Introduction

Amongst record numbers of asylum seekers and displaced people worldwide, Italy continues to bear the burden of hundreds of thousands of Middle Eastern and African asylum seekers fleeing the turmoil of the Arab spring, crossing the Mediterranean by means of human smugglers, in hopes of reaching Europe's Mediterranean borders. In June of 2014, the UNHCR reported that the number of refugees, asylum seekers and internally placed people worldwide has surpassed 50 million people, for the first time in the post-World War II world. (Amiri, 2012)

II. Who's Fleeing?

These asylum seekers are primarily fleeing from Afghanistan, Syria, Somalia and Eritrea. Afghanistan and its citizens have been struggling to overcome a Taliban-led insurgency for years, and many of those fleeing have fears of what will happen once foreign troops withdraw at the end of 2014, "the memories of the Soviet withdrawal in 1989 and the civil war that followed are fresh in the minds of many. Afghans fear that once most foreign troops leave, the Taliban will take over more territory and civil war could erupt along ethnic lines." (Amiri, 2012)

Approximately 9 million Syrians have fled their homes since March of 2011, when the civil war broke out there. Since then, more than 150,000 Syrians have obtained asylum in the EU, while 33,000 more Syrians are promised resettlement by EU member states in the next year. (Migration Policy Centre, 2013) Somalia has "been engulfed in conflict since the Siad Barre

regime collapsed in 1991, and many of its citizens have been displaced ever since.” (Refugees International, 2013) Eritrea seems to be driving many young men out, who are fleeing “compulsory military service that has been likened to slavery.”(Peter, 2014) Most of those fleeing are “flowing to Libya, where lawlessness has meant smugglers are better able to ferry them into the closest EU land mass: Italy.” (Sylvers, 2014)

The UNHCR reported that more than 165,000 migrants had attempted to cross the Mediterranean by October of 2014, an immense number compared to the mere 60,000 who tried the journey in all of the previous year. Of those 165,000, Italy received 140,000. (Peter, 2014)

Along with the floods of refugees to Italian coasts comes incredible responsibility for the southern border country, under the Dublin regulation. Italy has struggled to balance the amounts of refugees with their obligations under the regulation, and a debate has arisen surrounding the question of what the EU’s obligations should be in assisting Italy with the asylum seekers. Should other member states be permitted to send asylum seekers back to Italy if their fingerprints were first registered there, despite the poor conditions and overwhelming amount of cases they are trying to process?

III. Why Italy?

Part of Italy’s mass refugee solution is named Mare Nostrum. Its their \$12.4 million a month effort to provide rescue to thousands of asylum seekers who may be at danger while attempting to cross the Mediterranean. In August 2014 alone, the mission rescued more than 5,000 migrants at sea, in addition to the 45,000 that had already been rescued via the operation since last October. It is important to note that this expenditure on Italy’s part is more than what

Frontex, the European Union's border patrol agency, spends on monitoring the entirety of EU per month.

Many of these asylum seekers know that it won't be difficult for them just to pass thru Italy, and move towards northern Europe, because of the country's sheer inability to process so many thousands of people. By the end of August of 2014, Italy already had 52,000 arrivals, 21,000 of which were seeking or had been granted asylum there. However, they only have about 15,000 housing spots to house migrants, causing strain on the reception structure in the country. Italy has been accused of purposely moving asylum seekers along to other EU member states, and Joachim Hermann, one of Germany's Ministers of the Interior, claimed, "Italy in many cases intentionally does not take personal data and fingerprints from refugees to enable them to seek asylum in another country." Moreover, Human Rights Watch reported in March that, "Italy relies on short-lived emergency plans that don't guarantee consistent, adequate standards of treatment, conditions and access to asylum." (Sylvers, 2014)

IV. The Dublin Regulation & the EU Asylum Policy Puzzle

The EU has long struggled to try and standardize asylum policy within its borders, but with 28 member states, each having their own police and judicial forces, a compromise doesn't seem realistic. Though, some joint rules have been put into place thru the Common European Asylum System, but creating rules is a lot easier than enforcing them.

The Dublin Regulation, first signed into European Union Law in 1990,¹ was established in an effort to ensure that asylum seekers weren't being sent from one country to the next

¹ While the Dublin Regulation was signed in 1990, it wasn't adopted until 1997.

without being processed in the first country they arrive. In addition, it was designed to prevent applicants from opening several applications in multiple countries.

Additionally, the EURODAC fingerprint database and the “revised reception conditions directives,” that ensure that reception conditions union wide are humane and “that the fundamental rights of the concerned persons are fully respected,” are both examples of how the EU is pushing to come together as one to address asylum issues jointly (European Commission, 2014). But despite their policy efforts, there are still defects in the EU’s efforts to create a more fluid asylum process for seekers union wide.

V. Fundamental Flaws of the Dublin Regulation

While the Dublin regulation was meant to assist asylum seekers in obtaining a fair asylum process in one country, it manifests an incredible responsibility for Mediterranean border countries. While the regulation may seem like a fair consideration for all asylum seekers, Italy and other border countries like Greece and Bulgaria, who borders Turkey, would likely disagree.

Some experts, such as Troels Madsen of the Danish Refugee Council, would argue that a huge blemish in the Dublin regulation its tendency to favor a “geopolitical hierarchy.” (Madsen, 2014) For all countries involved, as long as there is a country closer to the EU borders to the Mediterranean or Turkey than they are, that country is “safe” in the game of asylum. Therefore, countries like Bulgaria and Greece don’t have vested interested in upholding the regulation, because that would mean they have to process more cases. Similarly, those border countries will always be in favor of Turkey joining the EU, because their processing problems would be passed on to a new border nation.

In Denmark, asylum seekers' cases undergo three phases. The first is known as the Dublin phase, in which asylum seekers check in with police to seek asylum and explain their travel route, and will later on undergo an interview with immigration services to gain background about their education, religion, work, reason for fleeing and fears of returning home. It is in this phase that Danish authorities can decide whether to send the seeker back to the first country they reached, or if they are going to process the case due to family connections in Denmark.

VI. Article 3 of the European Convention on Human Rights

Much of the debate surrounding the Dublin regulation relates the risk of harboring an Article 3 violation under the European Convention on Human Rights. This article states, "No one shall be subjected to torture or to inhumane or degrading treatment or punishment." Originally, this article was narrowly interpreted to prevent torture of detained asylum seekers by police, but the European Court of Human Rights has further interpreted this article to prohibit "the extradition of a person to a foreign state if they are likely to be subjected to torture." (UNHCR, Article 3)

Many discussions have resulted, regarding what the standards should be in returning an asylum seeker back to the country in which they first stepped foot. Should northern member states, such as Denmark and Sweden, be permitted to send asylum seekers back to countries that are knowingly overburdened?

In 2009, there was a case called *M.S.S. v. Belgium and Greece*, in which an Afghan asylum seeker left Kabul in early 2008, and fled to the EU through Iran and Turkey, into Greece where his fingerprints were taken on December 7, 2008. He was detained for a

week there, and when he was released he “was issued with an order to leave the country. He didn’t apply for asylum in Greece.” (M.S.S. v Belgium and Greece, 2011) The applicant in the case, M.S.S., arrived in Belgium via France in February of 2009, and applied for asylum in Belgium, without any form of identity documents. He was examined for application and the Belgian authorities discovered a “hit” in the EURODAC database.² M.S.S. was interviewed under the Dublin regulation in March 2009, and explained his route of travel, and his reasons for choosing Belgium.

The following month, the UNHCR sent a letter to the Belgian Minister for Migration and Asylum Policy warning of the weaknesses and deficiencies in the procedures and reception conditions for asylum seekers in Greece, requesting the suspension of transfers back to Greece. The decision made in May 2009 is as follows:

“The Aliens Office decided not to allow the applicant to stay and issued an order directing him to leave the country. The reasons given for the order were that, according to the Dublin Regulation, Belgium was not responsible for examining the asylum application; Greece was responsible and there was no reason to suspect that the Greek authorities would fail to honor their obligations in asylum matters under Community law and the 1951 Geneva Convention relating to the Status of Refugees.”

(M.S.S. v Belgium and Greece)

In June of the same year, Greek authorities sent a document back to Belgium “confirming that it was their responsibility under Article 18.7 and 10.1 of the Dublin regulation to examine the applicant’s asylum request, “The document ended with the following sentence: Please note that if he so wishes, this person may submit an application for asylum when he arrives in Greece.” (M.S.S. v Belgium and Greece, 2011) The case was ruled Belgium was in violation of Article 3 in their decision to send M.S.S. back to Greece; it

² The EURODAC database is an EU-wide collection of fingerprints of any asylum seeker that has been registered as entering the EU by any means of transport.

is the member state's obligation to provide a burden of proof that the country they are sending the seeker back to is capable of processing their case in a humane manner. In this case, "the court found the general country situation, rather than the individual circumstances of the asylum seeker, as most significant in assessing whether the Belgian authorities "knew or ought to have known" of the risk of ill-treatment in Greece." (M.S.S. v Belgium and Greece, 2011)

Though at the time authorities probably didn't realize the effects this trial would have on the future of European refugee law cases, it set a precedent for similar cases that would arise in the future.

VII. Tarakhel vs. Switzerland

In a case settled just a few weeks ago, the Afghan Tarakhel family found themselves in the middle of a trial against and Switzerland, regarding their potential return to Italy. The family claimed, under Article 3, that if they were returned to Italy, they would "be exposed to inhuman and degrading treatment on account of the risk being left without accommodation or being accommodated in inhuman and degrading conditions. The risk stemmed, in their submission, from the absence of individual guarantees as to how they would be taken charge of, in view of the systemic deficiencies in the reception arrangements for asylum seekers in Italy." (Tarakhel v Switzerland, 2014) The case was concluded that whenever an asylum seeker(s) is at risk of being sent back to a country with a known potential risk of unfair asylum application reviews, the country in which the seeker is being sent back to must provide individual guarantees that the seekers will

undergo a fair, just, process along with humane living conditions in the reception center where they'll be placed.

As Troels Madsen, explained in a class discussion to our last week, the decision was actually a step backward in the effort to help these countries as a united European Union. Troels explained that given the decision to require that overburdened countries provide individual guarantees to families being sent back to them creates a threshold for all situations like this. If every country's situation needs to be addressed individually, what level of standards are being upheld? How can authorities really ensure that these countries are going to live up to the promises, or are merely trying to save their reputation under the peer pressure applied by co-member states? Can the union really call this helping?

VIII. Conclusion

While it seems the EU may be taking responsibility in Italy's situation, discussion arises in the fact that an individual guarantee was needed to send seekers back to Italy. Should it be reliable enough that an overwhelmed member state signed a paper promising proper treatment?

Another issue with the ruling is that the EU is just creating more work for itself in the future. If every troubled state needs an individual lawsuit, who's up next; Bulgaria? Malta?

The point is, there's a difference between taking action and speaking words, and in the case of Italy, it's time to take for the entire union to take action and responsibility and move in to physically lift their burden. Italy is turning into the new Greece, and before long, Bulgaria and Malta will be in the same situation.

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