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SHORTCOMINGS OF THE EUROPEAN ASYLUM POLICY AND ITS DEVELOPMENT AFTER “LAMPEDUSA” AND SIMILAR RECENT ACCIDENTS

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Introduction

The migration phenomenon has always had a vigorous accent within European continent. However, it started to gain special attention mainly during recent decades, when the number of immigrants coming to Europe mainly from developing countries started to grow intensively. Migration offers a lot of benefits for both immigrants and destination states, but on the other side, it also brings a great deal of difficulties and challenges that the receiving states have to face. Nowadays, especially challenging and urging is becoming the immigration question that has largely been influenced by recent dramatic political events that broke out in the form of the Arab Spring movement in 2010. Latest political development on the African continent negatively impacted not only countries most involved in insurgencies, but European states, too. Particularly serious is the humanitarian situation in Syria, where the still on-going violent civil war between the government and its opponents caused the misery of millions of Syrians who have to worry about their lives and the lives of their families. Desperate situations usually lead to desperate steps and that is why many of them decide rather to escape from immediate danger. This fact is then reflected in the massive influx of immigrants and asylum seekers to neighbouring countries, as well as close Southern European states. In these respects, the pressure on these destination countries continues to intensify and their governments have to respond to it with dynamic, balanced and comprehensive strategies. The EU Member States seek to coordinate their common response to the quickly aggravating issue, but it is evident that they struggle to solve the problem effectively.

Recent tragic events in the Mediterranean Sea that were marked by the death of hundreds of immigrants seeking to reach European shores from the North Africa with a vision of a better life shook whole Europe as well as the international community. The absurd loss of immigrants' lives has stimulated turbulent discussions about why such accidents still happen and in particular about the inaction of the European Union (EU) that has obviously not been

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able to take necessary steps to prevent such disasters to occur. Most alarming is the fact that such deadly accidents occur not just occasionally, but on the regular basis. The blame for these extremely sad accidents has mainly been attributed to the inefficiently functioning European Asylum Policy, which indeed has a number of tangible shortcomings. There are even reflections that the EU Member States in this regard constantly fail to fulfil their main mission and other fundamental tasks that result from binding commitments.

The main objective of this work is to detect and subsequently analyse specific deficiencies of the common European Asylum Policy. Attention will also be given to the development of the asylum strategy after Lampedusa and other recent accidents, focusing on the eventual progress that has been made in this perspective and on the steps that the European authorities have undertaken in order to avoid such disasters in the future. Alternatively, the author would also like to recognize what other additional practices could be implemented in order to achieve a virtual asylum policy in Europe. The essay is basically divided into several chapters, each dealing with certain partial objectives. The principal goal of the first chapter is to analyse the recent situation concerning the immigration pressure in the EU based on the statistics. The second part of the work is intended to introduce basic principles of the Common European Asylum policy and its gradual development. Third chapter is considered to be a core of the essay. It deals chiefly with the specific shortcomings of the European Asylum Policy together with “Lampedusa” accident and the respond of the European authorities to this tragedy.

Statistics on the immigration pressure in the EU

Not only turmoil caused by the Arab Spring, but also violent insurgencies in other African countries, Iraq or Afghanistan are sources of thousands of asylum seekers. In addition, the savage Syrian civil war has pressed a new wave of immigrants towards the European Union, especially to its Southern countries like Italy, Greece or Malta. These three countries are most overextended with regard to the arrival of new asylum seekers, as their territory is easy to reach also by boat, chiefly for people fleeing from the Middle East or Africa. The number of asylum seekers is sharply increasing and the future perspectives do not provide patterns proving the situation would change into more positive in the forthcoming time period. Just on the contrary. The European Commission’s statistics from 2012 show that “whilst only 4% (or 27,465 out of 706,000) of those fleeing the civil strife in Libya travelled North to the EU, the resulting impact, combined with the increase in irregular migration flows from Tunisia and at

the Turkey-Greece border along with a significant increase of asylum applicants arriving at the EU's southern external borders, served to demonstrate that the EU is still under increased migratory pressure with no expectation of this declining in the future." (European Commission, 2012, p.8). The fact that makes the situation for these Southern countries even worse is that besides asylum seekers' influx, they were also negatively affected by the Eurozone crisis. However, it is important to note, that with respects to Syria, the most of displaced flee to neighbouring countries, notably to Lebanon, Jordan, Turkey and Iraq. In these countries, the system of asylum seekers' reception operates in a different way. According to UNHCR's spokesman, in cases of massive relocation of people, the displaced are immediately considered as refugees. "The refugees register and their stay is regulated, so they are protected from being sent back. It is not individual asylum processing as happens in Europe. Many countries do not have a national asylum system." (BBC, 2013a).

Globally, the US is the most wanted destination for immigrants. The key role on the other stages is then played by the European countries, in order, specifically by Germany, Sweden, the UK and France. (BBC, 2013a). The vast majority, almost a quarter of asylum seekers found shelter in Germany. If we let speak the concrete numbers, we will find out that in 2012, Germany registered 22,200 asylum seekers, Sweden 15,300, the UK 14,600 and France 14,300. Altogether, the EU Member States granted asylum to overall 102,700 people which was a large increase in numbers in comparison to 84,300 in 2011. On the other side, in 2012, Syria, Afghanistan and Somalia were countries where the majority of asylum seekers came from. Other frequent countries of origin are also Pakistan, Russia, Serbia, Iraq or Iran. (Eurostat Press Office, 2013). That means that "developing countries host more than 80% of the world's refugees." (BBC, 2013a). It is also relevant to specify, how exactly the asylum applications were processed within the EU during the latest period, which will give us an approximate picture of to what extend is the EU in general open to asylum seekers. During the year 2012, "407,300 decisions on asylum applications were made in the EU27, of which 274,500 were first instance decisions and 132 800 final decisions on appeal. Decisions made at the first instance resulted in 77,300 persons being granted protection status, while a further 25,400 received protection status on appeal. In total, of the 102,700 persons who were granted protection status in 2012, 51,400 persons were granted refugee status (50% of all positive decisions), 37,100 subsidiary protection (36%) and 14,200 authorisation to stay for humanitarian reasons (14%)." (Eurostat Press Office, 2013). These numbers prove that the EU

has in general been able to provide shelter for a great number of asylum seekers, but on the other hand, there still have been huge gaps and possibilities to do more.

Basic principles of European Asylum Policy

Before turning to fundamental features of the actual European Asylum Policy, it is useful to clarify differences between interrelated definitions regarding our area of interest. Immigrant, asylum seeker and refugee are three terms whose use might cause considerable confusion. Clarifying their means properly will prevent the misinterpretation of the text.

First of all, immigrant is a person who leaves his or her country or region because of various reasons starting from bad living conditions, persecution, natural disaster, discrimination, political or military turmoil, etc., in order to permanently reside in another country. Asylum seeker is a person who moves to a foreign country on account of a need of internationally guaranteed protection. This person applies for safe shelter under the so called Refugee Convention. The status of an asylum seeker is then retained until his formal application awaits for a positive or a negative respond. Thirdly, in this context, refugee is basically an asylum seeker who managed to apply for asylum successfully. In the case when the opposite happens, “asylum applications and appeals which are unsuccessful have been dismissed because of the failure of the applicants/appellants to persuade Home Office officials and immigration judges of the strength of their cases, even though the standard of proof required of a ‘reasonable degree of likelihood’ is much more lenient than the normal civil burden of ‘balance of probabilities’ and the applicant/appellant is often given the benefit of the doubt.” (Mitchell, 2006). It is important to note, that the most of asylum seekers who do not manage to convince competent authorities of truly legitimate reasons to seek asylum in foreign country are de facto economic migrants who fall under the category of irregular immigrants. In such cases, the main impulse towards asylum application is a vision of abusing asylum system when other legal means of entry into the desired country are not available. (Mitchell, 2006).

Based on the advanced social and political system, economic status and geographical position of the EU region as a whole, the Member States have an unconditionally eminent role in providing safe haven to people in need. The protection of fundamental human rights is one of the EU’s key priorities that have a long history and tradition. The Universal Declaration of human rights involves the right of persons to leave their own country and require asylum in other states when being persecuted. In 1951, the Refugee Convention or specifically the

United Nations Convention relating to the Status of Refugees was adopted. The document entered into force three years later and built up a core for asylum policy. (UNHCR, Convention and Protocol relating to the Status of Refugees). Nowadays, it creates a main source for international protection of asylum seekers and refugees. According to this leading document, asylum can be obtained by individuals seriously endangered by persecution, highly probable mayhem or even life-threatening conditions providing that their homeland country is not able to ensure their security. These asylum seekers are therefore in need of international protection, while granting asylum is a universal binding obligation. (European Commission, 2013). Though, the Convention which originated shortly after the Second World War, was designed to solve entirely different asylum issues at that time and thus had many legislative gaps that impeded the work with a rapidly increasing asylum applications, as well as with a great number of “spontaneous” asylum seekers. (Hatton, 2005). The asylum legislation therefore needed to gradually develop and adapt to new circumstances. In addition, there was an immense need to harmonise asylum policies of individual states, as asylum seekers were not treated equally in all the Member States. It was apparent that more dynamic asylum policy needs to be created for addressing the changing situation in Europe.

As a result, the stepping stones of the current European Asylum Policy were laid in 1999, when the EU started to work on fundamentals of a Common European Asylum System (CEAS). Since then, the system has gone through a couple of revisions, particularly with regard to its legislative framework, that required proper harmonisation aimed at setting common rules for individual Member States. (European Commission, 2013). Consequently, in the following period of 1999–2005, the EU focused its efforts on adopting additional legislation. Just in short, it involved the Dublin Regulation, the Reception Conditions Directive, the Asylum Procedures Directive and the Qualification Directive. The Dublin Regulation was basically intended to decide which Member State will review asylum applications. The Reception Conditions Directive ordered the required minimum level of provisions for the acceptance of asylum applications. Thirdly, the Asylum Procedures Directive set a level of minimum practices for asylum process. At last, the Qualification Directive complemented the Refugee Convention by the introduction of a supplementary protection of asylum seekers. (UNHCR Regional Representation: The UN Refugee Agency for Central Europe). Significant role was given also to the aspect of financial solidarity, which was reinforced by the establishment of the European Refugee Fund. This financial source “was provided with a budget of €216 million over the five years 2000–2004, about a third

distributed as a lump sum to member states and two thirds according to the number applying or receiving some form of refugee status.” (Hatton, 2005, p.10). This was considered as an important step that was supposed to greatly improve and ease asylum policies, but as later revealed, it had not met initial expectations. The Temporary Protection and Family Reunification Directive were also adopted within this time frame. (European Commission, 2003). With the adoption of all mentioned legislative measures, the first phase of the evolving CEAS was terminated.

After the first stage, the Green Paper on the future Common European Asylum System was adopted in 2007 as an instrument for evaluating results so far achieved in the first phase. Through this document, the European Commission attempted to recognize main problems and called for comprehensive discussion of competent organs involved in the process to introduce constructive proposals for the second stage. (Commission of the European Communities, 2007). On the basis of consultations’ results, the Policy Plan on Asylum was introduced in 2008 and revealed three major areas that needed to be modified. Analysing these trends, the European Commission decided to maintain following principles in the future direction of the European Asylum Policy: “Upholding the Union’s humanitarian and protection tradition and ensuring respect of fundamental rights when implementing the CEAS; Establishing a level playing field; Enhancing the efficiency of the asylum system; Providing solidarity within and outside the Union”. (Commission of the European Communities, 2008, p.11). Subsequently, the main Directives and Regulations were amended. Currently, the formation of the CEAS has now been in its second phase, in which the Qualification Directive was already modified three years ago. Regarding the rest of key legal instruments, their completion has already been agreed by the Council and the European Parliament, as well. (Library Briefing, 2013).

Shortcomings of the CEAS

As generally well known, the EU territory is bounded by the Schengen system, which is based on the principle of free movement of EU nationals but also non-EU citizens without border controls within EU internal frontiers. However, crossing external line of EU borders might for non-EU nationals be at least complicated, if not even impossible in many cases. (European Commission, 2013). In such instances they many times seek to find side trails and those are mainly illegal. Though efforts to get on the EU ground through means of irregular immigration are usually perilous, especially when the immigrants get into the hands of smugglers or human traffickers. Nevertheless, asylum seekers confide in smugglers and

continue to execute risky sailings and routes endangering their lives. Recent deadly accidents in the Mediterranean Sea demonstrated that the situation is indeed alarming. In October 2013, a boat sailing from Libya that transported more than 500 immigrants mainly from Somalia and Eritrea first started to burn and then sank to the bottom, killing 309 people. The tragedy happened near Lampedusa, a tiny Italian island near Sicily. Mayor of Lampedusa, Giusi Nicolini designated the incident as “the biggest sea tragedy in the Mediterranean Sea since World War II.” (Borghese, 2013). However, only shortly after the first accident, another boat overcrowded by immigrants sank near Lampedusa that resulted in drowning of at least 31 refugees. About 200 people were managed to be rescued but there still were many of them missing. Lampedusa is situated only 290 km from the African sea bank and is therefore the first access point to the EU from Tunisia. De facto more than 200,000 immigrants have entered the European territory through this Italian island since 1999. The worrisome reality is that only during last few years, Italian rescue workers have saved about 30,000 asylum seekers from the death in the ocean. (Borghese, 2013).

According to BBC, “many of the island’s residents have long complained that EU and Italian authorities are not doing enough to deal with the thousands who come ashore.” (BBC, 2013b). Some blame also the Italian government from reported “militarising borders” or “criminalising undocumented immigrants”. As Italian migrant’s rights groups claim, “migration laws are still based on a closed-off borders policy that makes legal entry almost impossible.” (Longhi, 2013).

In any case, the tragedies hit all the EU and appeals to improve the migration policy emerged among citizens, above all in the region. The United Nations’ Human Rights Office responded to the disaster by calling the European high officials to avoid more casualties. (Borghese, 2013). After the first tragedy, Cecilia Malmström, the European Commissioner for Home Affairs released a statement on behalf of the European Commission, declaring that the EU has to cooperate better with North African states to regulate migration flows and support mobility more effectively. The Union also has to strengthen its endeavours to eliminate the work of human smugglers. “We have to become better at identifying and rescuing vessels at risk. We also need to intensify our efforts to fight criminal networks exploiting human despair so that they cannot continue to put people’s lives at risk in small, overcrowded and unseaworthy vessels.” (Malmström, 2013). She further added that the Commission developed a so-called EUROSUR, a new facility at national level that should help better identify and then rescue immigrant boats approaching to the European territory. (Malmström, 2013). “Europe cannot

turn away. This tragedy today shows that it is indispensable to step up our efforts,” said the European Commission’s President Jose Manuel Barroso during his visit to Lampedusa. (Day, 2013). He assured that plus €30m will be given from EU funds to Italian parts struggling the most with the immigration pressure. We can state that the mentioned efforts are indeed valuable but taken steps are probably not enough for strengthening the stability of the EU’s Asylum Policy.

Despite a number of revisions and amendments of CEAS’s rules, the asylum system still has several failings which the European authorities are aware of but the quickly changing circumstances in global politics, especially those concerning the Arab Spring make the adaptation of asylum system more difficult.

Generally, we can notice several observable shortcomings of the European Asylum Policy. Firstly, the CEAS is working on an ineffective burden-sharing system. Western states like Germany or Sweden undertook a rather liberal approach to immigrants and yearly accept thousands of refugees. On the other side, despite the evident difficult situation on the south, many EU countries continue to maintain a very restrictive asylum policy. The problem is, that based on the Dublin II regulation, the first admission country is the one that is further responsible for dealing with asylum seeker. This fact causes great disparity among mainland and Northern and on the other hand Southern marine countries. Another source of disputes in this sphere is, when immigrants are rescued from water, which state is entirely responsible for admitting them.

Secondly, individual Member States have an uppermost role in the implementation of the Common Asylum Policy rules, particularly with regard to the Temporary Protection Directive, that would enable to relocate asylum seekers within the EU in emergency cases. In this instance, the European Commission should be granted by stronger competences in order to be legitimated to implement the mentioned Directive. (Spandler, 2013). Moreover, asylum policies of individual states definitely need to be harmonised. These accentuated aspects can be considered the most significant.

Conclusion

Fatal accidents that happened in October last year near the Italian Island of Lampedusa and buried more than 300 African immigrants have stimulated turbulent discussions about the inefficiency of the European Asylum System. The fact is that such incidents in the

Mediterranean Sea are not rare at all and the question of the European Asylum System's efficiency has already been disputed long before the recent tragedy. The European Asylum Policy clearly has a number of substantial shortcomings, of which the most serious are the dysfunctional and unfair burden-sharing or the dominance of national states in the implementation of new rules. Concerning the burden-sharing, it is apparent that the reception of immigrants within the EU is not balanced. While Southern European states complain about the unequal distribution of refugees, Germany or Sweden defend themselves arguing that their approach to the entry of asylum seekers is most liberal and they actually carry the most of the burden. It is unquestionable that the EU needs a more harmonised Common Asylum Policy. Despite some new tools and aid for the improvement of the grave situation were introduced by the European Commission, we can conclude that no notable progress has been made by European authorities after "Lampedusa" to prevent such tragedies in the future. The question that remains is what demonstrations are yet needed for the European Community in order to gather all its common efforts and implement truly efficient steps and thus prevent other similar accidents to occur in the future.

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