

Refugee protection and human rights obligations in the EU



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by Maria-Teresa Gil Bazo

Adoption in 1997 of the Amsterdam Treaty marked a major step towards the establishment of a Common European Asylum System. The first set of legally binding instruments has been agreed. While some progress has been made towards incorporating refugee rights into EC law, some provisions raise serious issues under refugee and Human Rights (HR) law and may result in judicial action even before they are applied. The European Parliament has taken the Council before the European Court of Justice for violations of HR law by adopting the Directive on Family Reunification¹ and may do so in relation to the Directive on Asylum Procedures.

EU asylum policies extend beyond Europe. The so-called External Dimension² aims to project the EU's asylum and migration policies beyond its borders by incorporating them into agreements with countries worldwide. When the Hague Programme was launched in November 2004 the EU declared its External Dimension to be a policy priority. An ever-widening number of countries have either signed agreements with the EU or are negotiating them in order to control migration movements.

How does refugee and HR law fit within the ever expanding nature of the EU's asylum and migration policies? When they signed the Amsterdam Treaty, EU states shifted competence to rule on certain aspects of asylum legislation to the EC and therefore gave up part of their sovereign powers to control the entry into and stay in their territories of refugees and others in need of protection. They also established that EU asylum law would need to comply with refugee and HR law.

All EU states are parties to the 1951 Refugee Convention and other

international human rights treaties. They are also accountable to the international bodies set up to monitor compliance, most notably to the European Court of Human Rights. Over the past decades and in absence of an international refugee court, human rights monitoring bodies have developed a body of decisions that complement the protection of refugees and others in need of protection.

However, as the EU itself is not party to any international human rights treaties it is not accountable to any body charged with monitoring its human rights record. While EU member states remain individually accountable for their human rights performance, the process of collectivising asylum and migration policies has provided a good opportunity to revisit international obligations. The Council has not even been accountable to the European Parliament, which has repeatedly petitioned the European Court of Justice to obtain access to documents and whose consultative opinions have often only come after agreement on legislation by governments had already been reached.

The removal of asylum policies from the control of national parliaments and the scrutiny of international human rights monitoring bodies raises serious refugee protection concerns. From a practical point of view, it is likely to result in an increase of claims before national courts against the application of EC asylum law by member states, something that runs contrary to their stated goal to improve the efficiency of their asylum systems.

Statements of these concerns are often labelled as 'unconstructive' by governments and those sympathetic to their inability to manage their asylum resources efficiently. However,

one fails to see how respecting the international legal framework that states have committed themselves to observe (and which goes much further than the *non-refoulement* obligation in Article 33 of the Refugee Convention) can be seen as anything but a basic starting point in any serious debate on this matter.

The EU must ensure as a matter of urgency that any proposals to address asylum systems in EU states be based on a well-informed analysis of the facts (rather than on unfounded presumptions) and on a sound understanding of international refugee and HR law. They must also ensure that international accountability is guaranteed. Accession by the Union to the Refugee Convention and other international human rights treaties must therefore be carried out as soon as it becomes legally possible (the 2004 Treaty Establishing a Constitution for Europe already includes the obligation for the Union to accede to the European Convention on Human Rights).

As long as the EU's asylum and migration policies fail to be grounded in international refugee and HR obligations, these policies will not only lack legitimacy but will remain incapable of achieving their expected goals.

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1. www.euractiv.com/Article?tcaturi=tcm:29-110014-16&type=Analysis
2. http://europa.eu.int/comm/justice_home/fsj/external/fsj_external_intro_en.htm

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