

A Failure of Policy, Law or Humanity? Syria, Hungary, and Beyond

Thoughts on the role of the law

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POINTS

➤ The European legal scheme – how should the system work?

➤ Why does it not work?

Design failure

Overload

Free rider member states

➤ Efforts to cure

EU level

National level

Hungary

➤ A few generalisations (broader outlook)

THE EUROPEAN LEGAL SCHEME – HOW SHOULD THE SYSTEM WORK?

Plan

- „a **uniform status of asylum** for nationals of third countries, valid throughout the Union” TFEU, § 78/2 a (also for **subsidiary protection** 78/2 b)
- „a **common system of temporary protection** for displaced persons in the event of **a massive inflow**” (TFEU, § 78/2 c)
- „**common procedures for the granting** and withdrawing of uniform asylum or subsidiary protection **status**” (TFEU, § 78/2 d)

+

harmonisation of **reception conditions**, rules on designating the MS responsible for determining status („**Dublin III**”)

THE EUROPEAN LEGAL SCHEME – HOW SHOULD THE SYSTEM WORK?

Critical elements

Law - reality: qualification directive, procedures directive: only **minimum standards**, with wide differences in the interpretation of the protection categories and procedural guarantees

Lack of key considerations: No element of **genuine and effective solidarity** built into the system. The united Schengen area is carved up into **national territories in respect of asylum**

Minimal tools of **solidarity**

- AMIF - monetary
- EASO – sending expert teams
- Temporary protection: voluntary offers to take over (never used)

The Dublin regime on determining the state whose duty is to conduct RSD: **manifestly unjust**, NOT burden sharing but shifting

(About the 2015 proposals see later)

THE CAUSES OF FAILURE

Design failure: Dublin: after family and visa/residence permit the external border crossed → perimeter states exposed to large numbers of application → Greece defaults in 2011, Hungary in 2015

Overload number of (first) applications, EU 27 or 28:

2011	2012	2013	2014	2015 <i>first half</i>
309,820	336,015	435,385	626,065	398,890

Source: Eurostat data, author's calculation for 2015

But:

- **highly uneven distribution** (UK: 14,990, Spain: 6,655 applications in first 6 months of 2015)
- Major groups with **unlikely claims** (Serbia, Kosovo, BiH, etc.)

THE CAUSES OF FAILURE

Free rider member states

Greece, Italy, Hungary, Austria

Ought to: register claim, submit fingerprint to Eurodac + start RSD procedure + keep within territory

Instead: allowing to leave or actively transporting to next MS

RELOCATION DECISIONS

Relocation: distributing among Member States those asylum seekers who are already within the EU and have a good chance of being recognised – i.e. members of groups with 75% recognition rate in the previous quarter (Syrians, Iraqis and Eritreans)

2 decisions:

- COUNCIL DECISION (EU) 2015/1523 of 14 September 2015
40 000 persons 24,000 from Italy, 16,000 from Greece
- COUNCIL DECISION (EU) 2015/1601 of 22 September 2015
120 000 persons First year: 15,600 from Italy and 50,400 from Greece Second year: 54,000 either from the same two or from other Member States.

No relocation to Denmark, Ireland, UK, Greece and Italy – 23 MS take up the 40 plus 120 thousand

EFFORTS TO CURE – EU LEVEL

Done, in progress

Rescue at sea – increased efforts Poseidon and Triton

70 million € emergency funding to most affected states

Efforts to stop smugglers

Financial support to alleviate the suffering caused by the Syrian crisis

€ 4 billion to Syria and neighbouring countries

Hotspots in Italy and Greece

Future

€ 1,8 billion to the 'Emergency Trust Fund for stability and addressing root causes of irregular migration in Africa'.

Resettlement: 22 000 persons from outside the EU

The Commission's summary of steps here:

http://europa.eu/rapid/press-release_IP-15-5700_en.htm

EFFORTS TO CURE – EU LEVEL

The Commission's six months plan (starting October 2015)

- **Operational matters** (Hotspots, In-kind assistance, Schengen internal controls abolished, RABITS, conferences with (pressure on) third states)
- **Budgetary support** (+ € 100 million emergency funding to the most affected, increased budget of Frontex, EASO, Europol + € 600 million in 2016, € 200 million to WFP and UNHCR, € 300 million humanitarian aid to refugees 1 billion from EU and MS contribution to the Trust Fund for Syrian refugees, 1 billion to Turkey, 17 million to Macedonia and Serbia)
- **Enforcing the EU law** (40 infringements procedures in motion)
- **Longer term structural steps**
 - Protecting the **EU's borders**: Enhancing Frontex and considering the establishment of European Border and Coast Guard
 - A long-term, **EU-wide system of resettlement and relocation**
+reviewing Dublin:
 - A credible and effective **return policy**
 - Opening **legal channels for migration**: 2016

THE NATIONAL LEVEL - HUNGARY

No genuine response to the increased flows with a view to protection

Instead of protection

DETERRENCE

OBSTRUCTION

PUNISHMENT

**FREE RIDING /
BREACHING THE LAW**

Reluctant reception and transport to reception centers

No creation of new reception and processing capacities

Crossing the „border closure” is a crime

Allowing tens of thousands to cross the order b/w Hungary and Austria

Fence at the border

„Transit zones” with 100/day capacity

Ineligible applicants are banned from the EU

Not registering entrants

Non-access to basic services / inhuman treatment

Serbia declared safe third country

Applying to people-smuggler rules to volunteers transporting refugees

Transporting people en masse to the A/H border

Unpredictable denial/permission to move on to Austria

Unlawful detention of applicants in the transit zone (w/out court control)

By closing the Serbian border re-directing flow to Croatia

Crisis situation caused by mass immigration

Violating H. environmental and EU law on asylum

BROADER CONTEXT

Experiencing a large influx, **not unusual in other regions** (Afghanistan, Rwanda, earlier Bangladesh)

Real novelty: states (Turkey, Greece, Macedonia, Serbia, Hungary, Austria) renouncing claim to control the presence of foreigners on their territories.

Threat: collapse of the Schengen zone

Fundamental issue: into which direction will the EU move:



- * Re-nationalisation
- * Dismantling Schengen
- * Retreat into national existence
- * Inter-state competition
- * Shifting responsibility to others MS

FRAGMENTATION

- * Creating a genuinely united European space
- * Asylum seeker arrive thereto and the European demos offers them protection

UNION

Thanks!

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