

ASYLUM PROCEDURE IN LATVIA - A PART OF COMMON EUROPEAN ASYLUM SYSTEM

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Abstract. *The Common European Asylum System (CEAS) conditions apply to Latvia. Development of the Common European Asylum System impacts Latvian legislation and has an effect on the work of judicial institutions. Any European Union scale change affects Latvia. Common European Asylum System conditions in Latvia are being met by direct implementation of the EU instructions. Well-considered position and evaluation of CEAS conditions according to Latvian interests is necessary. Goal of this article is to review demands of the Common European Asylum System towards the member states as well as concordance of the Latvian asylum procedure with conditions of the Common European Asylum System. Objectives of this research is to examine development of legislation in the EU and Latvia, to analyse and compare current legislation of the asylum procedure in the EU member states as well as to analyse impact of CEAS towards the asylum procedure in Latvia. In order to achieve objectives, following research methods were used: monographic research of theoretical and empirical sources in order to analyse and evaluate various asylum domain information, analytical method in order to acquire legislative content and verities, comparative method in order to discover differences in legislation of asylum procedure in the EU countries, systemic method in order to disclose interconnections in legislation, descriptive statistics method and correlation analysis in order to analyse process of the asylum procedure and determine interconnections in the asylum procedure time frame between legislation and practical instances in EU countries.*

Keywords: *asylum system, asylum procedure, Latvia, legislation, migration.*

Introduction

Current globalisation tendencies originates various reasons for movement of people, thus, increasing migration. People travel across borders for work, education, family as well as a result of circumstance when they have to flee their country of origin to save own life. Travel and crossing of borders can be legal and illegal. Regarding persons, who arrive from other countries in order to seek protection, it must be understood that actions taken have to be precise and immediate. It is essential, that all member state institutions involved in protection from persecution, are coordinated. Persons seeking protection must be sure that they will be treated the same in every EU country and that chance to receive protection will be provided equally in every state. This is what Common European Asylum System (CEAS) ensures since the end of the 20th century. It is achieved by the EU developing purposeful legislation.

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Common European Asylum System

European asylum system was created anticipating that number of refugees would not be large (18). Flow of migration from regions affected by military conflicts and revolutions grew rapidly and it became clear that current asylum system does not provide equal admission and procedure requirements in all states. In spring 2016, the European Parliament (EP) decisions were made regarding changes in CEAS, especially focusing on the Dublin regulation (15).

The proposed changes to the Dublin regulation aimed to remedy weaknesses in the current system and ensure that all EU countries accept their fair share of responsibility for hosting asylum seekers in the EU.

Under the reform, the country where an asylum seeker first arrives would no longer be automatically responsible for processing his or her asylum application. Instead, asylum seekers should be shared among all EU countries, by being swiftly and automatically relocated to another EU country (12).

In 2014, the EU Commissioner for Home Affairs Cecilia Malmström stated that CEAS would provide better access to asylum procedure to people seeking protection. She maintained that CEAS would provide equitable, more rapid decision-making process regarding granting the asylum to people who fear persecution and that they would not be returned to where they are endangered. System would ensure dignified conditions to those, who hand in asylum application and to those, who are granted international protection.

The cornerstone of CEAS is the non-refoulement principle. It means that, in fact, refugees must not be returned to a country where they have a reason to fear persecution. The non-refoulement principle applies both to returns to the country of origin and to returns to any country where the refugee would face persecution. All member states of the EU and the Council of Europe are parties to the 1951 Geneva Convention, but Turkey applies the Convention only in relation to the refugees from Europe (10).

Despite all the EU efforts to set asylum an illegal migration issues, the number of asylum seekers remains high. With 198 thousand applicants registered in 2017, Germany has accounted for 31 % of all first-time applicants in the EU-28. It has been followed by Italy (127 thousand, or 20 %), France (91 thousand, or 14 %), Greece (57 thousand, or 9 %), the United Kingdom (33 thousand, or 5 %) and Spain (30 thousand, or 5%) (20).

Alignment of Latvia with Common European Asylum System

Initially there has been very strict asylum policy in Latvia granting protection only under particular circumstances. By joining CEAS, Latvia has made a lot of political and judicial changes. Pressure coming from the EU has resulted in changes of the legislation as well as new legislation in regard to asylum procedure and asylum seekers arriving in Latvia. The EU has always had strict rules on observing human rights and that extends to all member states. In 2016, the following suit of CEAS development, new Law of Asylum came into force in Latvia (8). Firstly, changes were made in delegation of functions among institutions involved. Personal interviewing of asylum seekers was handed over from the Office of Citizenship and Migration Affairs to the State Border Guard. According to the directive 2013/32/ES (6), interviews are carried out to evaluate compliance to the criteria of granting the protection and oral interviews are conducted by the institution that makes decision whether to grant protection or not.

Currently, the main cause of the migration of asylum seekers are armed conflicts and violence. The 1951 Convention of Refugees (2) and the 1967 Protocol (3) to the convention directly applies to the persons escaping circumstances, where they are persecuted, because of their political convictions, religion, nationality, social status, or gender. The UN Refugee Agency (UNHCR) gives an explanation of this document in form of various recommendations and suggestions. This is done to advance unitary interpretation and implementation of norms. Since CEAS is based on the 1951 Convention of Refugees, all countries can benefit from UN recommendations. At times, it is difficult to understand what is persecution, how does it manifest, what are human rights violations. The UNHCR

viewpoint is that discrimination will amount to persecution where the effect leads to a situation that is intolerable or substantially prejudicial to the person concerned (11). Many of the aforementioned human rights violations and other serious harm may also constitute the war crimes when committed in the context of and associated with an armed conflict within the meaning of IHL, and/or crimes against humanity when part of a widespread or systematic attack against a civilian population (11). The new Latvian Law of Asylum in detail elucidates these notions according to CEAS.

Taking their chances on fishing boats, dinghies, and canoes, every year thousands of men, women and children drown in a desperate bid to reach Europe from Africa. They cross from the West Africa to the Spanish Canary Islands, from Morocco to southern Spain, from Libya to Malta, and the Italian islands of Sicily and Lampedusa, and from Turkey to the islands of Greece. Many more enter the European Union by land, via Turkey, and the Balkans or from Ukraine and Belarus. People entering Europe irregularly – without passports or visas – do so for a variety of reasons. In some cases, they flee persecution, human rights violations and armed conflict and can, therefore, be considered as refugees who need special protection. More often, they are migrants trying to escape poverty and unemployment.

In order to help the governments to respond to some of the challenges posed by mixed movements of the refugees and migrants in a coherent and practical way, the UNHCR has started implementing 10-steps plan which sets out key areas where action is required in countries of origin, transit, and destination (21). The strategic goals for the nearest future according to the UNHCR are to support reunification of families and to decrease number of stateless persons (17).

In 2018, the UNHCR will continue expanding its joint network with the local actors, including the training package “Strengthening preparedness and response capacity of local partners” which aims to ensure the local actors can prepare and mobilize an effective, immediate emergency response (21). Thus, the UNHCR and the EU work on eliminating mistakes of the previous years and ensuring that all the instances involved in the procedure are ready for a rapid and effective joint action throughout the EU. An effective implementation of the Dublin Regulation has the potential to foster solidarity between the EU states and the applicants, including reuniting family members (21).

When implementing the CEAS in Latvia, officials of the State Border Guard and the Office of Citizenship and Migration Affairs have taken part in the European Asylum Support Office (EASO) support measures that took place in Italy and Greece. Officials of the Office of Citizenship and Migration Affairs have taken part in the EASO trainings and have studied several

modules, such as “Interviewing vulnerable persons”, “Reception”, “Evidence assessment”, “Interviewing children”, and “Fundamental rights and International Protection in the EU”. One official of the Office of Citizenship and Migration Affairs has participated in the practical training on “Country of origin portal” by EASO (14).

Situation in Latvia

Many studies by the EU and the Latvian institutions (1) as well as the statistics (19) leads to the conclusion that most asylum seekers currently residing in Latvia has not chosen Latvia because of its asylum system or other reasons. Mostly they have handed in their application in Latvia because of circumstances – Latvia is the nearest safe EU country and this was the first border they had crossed. The situation, when countries position themselves as transit countries, badly affects the integration process (21). Among declined asylum requests most are the ones that are ill-founded.

However Latvia is ahead of other EU countries in implementing directives and regulations developed by the CEAS. For instance, the conditions on how regular the registration in the State Border Guard should be done by asylum seeker is foreseen in the Latvian Law of Asylum, but, in Belgium, alternative method to detention has not been established, and the reasons for detention leave a lot more space for interpretation. In Belgium, malicious use of asylum procedure corresponds to wider range of criteria than it does in Latvia. Similarly, is the situation with qualification of possible escape.

Latvia strictly observes the principle of non-refoulment and accepts asylum application at any time, regardless of the fact if person has entered country legally or illegally, and hands it in on the state border or inside the country. Person not having any identification documents is not an obstacle. Whereas in Italy, there are known cases when persons without documents or registered place of residence are being denied access to handing in application. Other EU countries are also known for not having equal implementation of the CEAS norms. Sweden’s methods of determining persons’ age as well as problems with reunion of families have been internationally criticized. Italy has been condemned for unlawful mass expulsion of asylum seekers, and it still struggles to meet minimal reception requirements. Germany, on the other hand, has speeded up the asylum procedure by performing initial checks more rapidly, but also implementing stricter rules. For instance, asylum seeker must reside in the asylum seekers centre for up to 24 months. Reunion of families is still an issue (9).

Latvia, in order to implement the directives 2013/32/ES and 2013/33/ES (7) and to set certain questions regarding implementing regulations Nr.603/2013 (4) and Nr.604/2013 (4) has developed new Law of Asylum. The new law explains the notion of group of vulnerable persons in more detail, gives options to hand in asylum application in other institutions, not only to the State Border Guard, changes detention period of asylum seeker from 7 to 6 days, and changes distribution on functions between involved institutions. Interviewing of asylum seeker is a duty of the Office of Citizenship and Migration Affairs, because it is the responsible institution in making a decision whether to grant or deny asylum or other kind of international protection. Thus the Office of Citizenship and Migration Affairs is responsible for obtaining information needed for making a decision, but the State Border Guard is responsible for an initial interview with asylum seeker in order to apply the Regulation No. 604/2013 and make a decision whether to review an application or leave it without reviewing, as well as gaining basic information about motives of applying for international protection. In regard to asylum procedure, the law states that every official dealing with procedure should have knowledge about the procedure and about needs of vulnerable persons.

Other questions, such as benefits and accommodations are changed to correspond with newest EU requirements.

Conclusions and suggestions

The CEAS sets certain minimal standards that should be met for all asylum seekers and applications. Analysing situation in the member states, it becomes clear that attitude towards asylum seekers still differs greatly, both in legislation and in practise. Unequal conditions originate movement of migrants between countries in order to find themselves the best conditions for asylum.

Latvia has implemented main CEAS and EU directives and requirements in its new Law of Asylum and related regulations of the Cabinet of Ministers.

The competent institutions in Latvia should follow all changes in the CEAS and take part in the discussion about planned changes by expressing opinions about implementing those changes in Latvia and accordance of said changes to Latvian situation. Accepting of new legislation must be based on the previous research and analysis if legislation concerned corresponds to the actual situation and is implementable, otherwise great problems that are difficult to solve afterwards might appear.

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