

ACCELERATED ASYLUM PROCEDURE IN LATVIA, LEGAL AND PRACTICAL ASPECTS

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Abstract. *Recent years have brought many challenges to all countries of the European Union in the field of immigration and asylum. Latvia, in the process of involving into the common European asylum system, has made different practical actions to improve the asylum procedure. Being a European Union country Latvia is subordinated to common changes in the field of asylum that are now in process of realization. But the events of recent years have influenced the sphere of asylum. These are: COVID-19, hybrid threat and situation at the Belarus border and recent events concerning situation in Ukraine. The authors have studied most current events during recent years focusing on questions on the topic.*

The aim of this article is to analyse the current situation of asylum in the EU, touching upon main trends in the world of refugees, to identify the main problems in the existing asylum procedure in the EU, in order to define the accelerated asylum procedure in the legal basis and in practical life, and to offer solutions. The object of the article is the asylum system. The subject of the article is the accelerated asylum procedure.

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, historical method, comparative method, systemic method, descriptive statistics method and correlation analysis, methods of interpretation of legal norms: grammatical method of interpretation, the historical method of interpretation, teleological method of interpretation and the systemic method of interpretation of legal provisions..

Keywords: *accelerated procedures, asylum procedure, asylum, border procedures.*

Introduction

Questions concerning asylum were important to all EU member states since the foundation of the union. Aspects of asylum have actualized in years 2015 and 2016 when migratory flows towards Europe have unexpectedly increased in volumes that EU asylum instruments were not able to deal. This fact showed the necessity of reformations in the Common European asylum system. The common European asylum system (CEAS) sets minimum standards for the treatment of all asylum seekers and applications across the EU.

Main drawbacks in EU migration and asylum policy showed inability of member states to come to an arrangement and set common standards in legal basis and even in practical life. There was different approach to

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admission and to decision making process concerning asylum seekers. This caused a wish of asylum seekers to travel across member states in order to find profitable conditions of admission and qualification with higher chance of granting the international protection. Amidst these persons there were such individuals who tried to abuse the asylum procedure to gain profit for themselves. Unable to fulfil the entry conditions foreigners used the asylum procedure as an entry card into the EU. Exactly the fight against the abuse the asylum procedure was one of the main aims of European Union asylum policy.

To prevent asylum procedure abuse the EU reformed different asylum instruments: the reform in Dublin system, regularization of different legal acts. One of the authors has traced the changes in EU asylum policy and made several researches (Adijāne, 2020; 2018). There appeared problems in Dublin procedure fulfilment during COVID-19. Unpermitted movements of asylum seekers during recent years have disrupted the integrity and reliability of asylum system. Today following latest directions of adjustment the asylum procedure are being stressed out: new migration and asylum system (substituting Dublin regulation), new regulations that organize migratory crisis and irresistible force situations, Eurodac data base renew, sustainable relocation system in the EU and new regulations that would state the new asylum system. Undoubtedly all these processes will touch Latvia as well and also predetermine Latvian asylum process and its accelerated order that will be studied by authors in current research.

Asylum situation in Europe and Latvia

As it was stated in the introduction, after facing the unprecedented quantity of migrants, the EU realised that current asylum system doesn't work properly and proposed different aims to mend the situation. At the current moment there are different changes of events considering the asylum questions. Part of the tasks on the topic have been fulfilled, but the current situation shows that part of solutions to these tasks have arrived too late, especially considering current situation in Ukraine.

The new Pact on Migration and Asylum should be mentioned as one of the most significant successes. On 23 September 2020, the Commission issued the New Pact on Migration and Asylum in an attempt to give a fresh start to the stalled CEAS reform. The pact aims to strike a new balance between responsibility and solidarity. The Commission proposes to integrate the asylum procedure into overall migration management, linking it with a pre-screening and return (Schmid-Druner, 2021).

The strengthening of border control and different solidarity outcomes are being stressed in the new Pact on migration and Asylum. Main changes

in the sphere of asylum touch upon desire to amend the boundary between granting the asylum and the return. The actions concerning the asylum procedure are being simplified. The main attention is being paid to the individuality of the asylum seeker and not to his/her asylum application. All necessary legal support is being provided in order to protect main rights of these people especially paying attention to rights of the children, rights for associability of protection and the rights for freedom. Also the attention is being paid to the fast and effective checks before the entry and to the fast data input into the Eurodac data base. The new pact also states the accelerated border procedure that would guarantee the asylum rights. But the decisions would be made much faster and much faster would be the return procedure in case of negative decision. This would safeguard the asylum procedure against abuse and at the same time would grant necessary protection for those who need it.

One of the most significant steps in the EU asylum policy was the creation of the new EU Asylum agency. The sphere of interior and the was discussed during the session of the Justice and Home Affairs Council on 9th and 10th of December 2021 (Justice and Home Affairs Council, 2021).

Having a fully fledged EU asylum agency is an important step in the building of our common EU asylum policy. This agency will be able to provide quick, tangible support to member states wherever needed. It will also contribute to our cooperation with third countries, showing in a very concrete way the strength of our joint action. (Hojs, 2022)

On 19 January 2022, the European Union Agency for Asylum (EUAA) replaced the European Asylum Support Office (EASO). The new agency is responsible for improving the functioning of the common European asylum system by providing enhanced operational and technical assistance to member states bringing more consistency to the assessment of applications for international protection (The European Council, 2022).

These and planned changes in the sphere of EU asylum system will significantly influence Latvia as well. The migratory situation in Latvia and in the whole world has changed mainly due to COVID-19, hybrid attack and the pressure from Belarus and also due to the situation in Ukraine.

Despite hardships Latvia made different actions to implement the CEAS. For example the training for the Latvian State Border Guard (the SBG) and the Office of Citizenship and Migration Affairs (the OCMA) officials in the work with improved functionality of the Register of the Asylum Seekers, and the aiding actions of the SBG and the OCMA to EU member states. The internal regulations of the SBG were refined in 2020 in order to immediately register the asylum or alternative status application and personal data of the asylum seeker in the Register of the Asylum Seekers. Thus the institutions under the supervision of the Ministry of Interior that are involved into the

asylum procedure are instantly and simultaneously informed about the asylum application fact. The Register of the Asylum Seekers also provided the common procedure of issuing the asylum seeker personal document and information about the place of temporary residence of the asylum seeker.

COVID-19 forced to make unprecedented decisions – after the OCMA direction several limiting actions were performed in the centre for detained foreigners to provide its functionality. From 17th of March 2020 the transit and admission of asylum seekers according to the Dublin Regulation was cancelled (the transit and admission was renewed on 15th of July 2020 according to regulations of the Illness prophylaxis and control centre and rating the individual situation of every asylum seeker). In order to insure the asylum procedure in terms stated in the Law of Asylum, the interviewing of asylum seekers and the court sessions were held in the format of video conference (European Migration Network, 2020).

The crisis that started in 2021 on Poland, Lithuania and, later, Latvia border with Belarus became a large challenge. Large numbers of irregular migrants tried and still are trying to cross the borders of the mentioned countries. Officials of the SBG must prevent illegal border crossing attempts of many people from Belarus to Latvia every day. According to the previous and after making an analysis of situation in Poland and Lithuania, Latvian government declared the state of emergency on 10th of August 2021 for a period from 11th of August 2021 until 10th of November 2021 in Ludza parish, Kraslava parish, Augshdaugava parish and Daugavpils city. Later this state was extended – on this moment until 10th of May 2022 (Regulation of the Cabinet of Ministers Nr.518, 2021). As it was stated by European Court of Human Rights in case N.D. and N.T. v. Spain, countries have the right to prevent illegal border crossings and provide that persons who crossed the border illegally would be pushed back from the territory of the state. Mentioned rights of countries could be referred to asylum seekers as well (Initial report on effect evaluation (annotation) to the Project of the regulation of the Cabinet of Ministers “On the Declaration of State of Emergency”, 2021).

Also the actual crisis should be mentioned as well. If previous migratory crisis caused movements of people from Syria, Iraq, Afghanistan, Pakistan, than now we have to speak about refugees from inside of Europe, from Ukraine.

This Statement is attributed to the UN High Commissioner for Refugees Filippo Grandi Comment: “In just seven days, one million people have fled Ukraine, uprooted by this senseless war. I have worked in refugee emergencies for almost 40 years, and rarely have I seen an exodus as rapid as this one. Hour by hour, minute by minute, more people are fleeing the terrifying reality of violence. Countless have been displaced inside the

country. And unless there is an immediate end to the conflict, millions more are likely to be forced to flee Ukraine.” (Grandi, 2022).

The UNHCR official data state that current refugee flow is unprecedented in European Union. On 29st of March 2022 the number of refugees was 4,019,287 Ukrainian inhabitants (Operational Data Portal, 2022).

On 4th of March 2022 European Council made a decision to activate the Directive on Temporary protection. Activating the application of Council Directive 2001/55/EC of 20 July 2001 by way of a Council implementing Decision establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Council Directive 2001/55/EC of 20 July 2001, having the effect of introducing temporary protection in accordance with the provisions of this Directive (Council Implementing Decision, 2022).

At the beginning of March, reacting on the refugee flow from Ukraine, Latvia developed and adopted the Law on the Aid to the Ukrainian Civilian Inhabitants as a matter of emergency. The aim of the law is to give support to the citizens of Ukraine and their family members who left Ukraine or who cannot return to Ukraine because of the military conflict caused by Russian Federation for the term of mentioned military conflict and to give common aid to the Ukrainian society. This law does not cancel or alter the asylum application procedure, but it introduces additional mechanisms that help Ukrainian civilians to receive support and rights to reside and work in Latvia.

As we can see, the EU and also Latvia give significant input to reform the asylum system regulations in order to fight abuse of the asylum procedure and to support those member states which are mostly affected by migratory flows and giving aid to those who need it by aiming efforts and resources to real help. The border procedure or accelerated asylum procedure is one of the tools that can fight abuse of asylum procedure. This procedure will be analysed by the authors in following chapter.

Conditions of the accelerated asylum procedure in Latvia

Making insight into actual situation in the EU in the field of asylum policy in the previous chapter, the authors stressed the events that are connected to accelerated asylum procedure. The problem is in the different terminology between Latvian and the EU legal acts. The authors of the current research made an express survey among the State Border Guard officials and stated that the term “accelerated asylum procedure” is being understood very differently. Part of the SBG officials consider this term as a border procedure others as shortened asylum procedure. Authors analysed the “accelerated asylum procedure” term in Latvian and EU legal acts and made conclusion

that the EU acts relate the mentioned term as the shortened asylum procedure by Latvian acts because the border procedure is a separate procedure that is supposed to take place in the border crossing point. Looking into the EU legal acts in English and in Latvian translation there appear to be differences in translation and the different Latvian terminology use that obviously confuse a reader.

The directive on asylum procedure allows in the abstract that in order to shorten the overall duration of the procedure in certain cases, Member States should have the flexibility, in accordance with their national needs, to prioritise the examination of any application by examining it before other, previously made applications, without derogating from normally applicable procedural time limits, principles and guarantees. In well-defined circumstances where an application is likely to be unfounded or where there are serious national security or public order concerns, Member States should be able to accelerate the examination procedure, in particular by introducing shorter, but reasonable, time limits for certain procedural steps, without prejudice to an adequate and complete examination being carried out and to the applicant's effective access to basic principles and guarantees provided for in this Directive (2013/32/EU, 2013).

If we look at the main Latvian legal act in the sphere of asylum – the Asylum Law, we can see that terms “usual order”, “shortened order” and “application consideration at the border” were used in Latvia initially. As we can see Latvia stated different asylum application consideration types from the beginning of the process of asylum procedure according to international legal acts.

According to the Asylum Law project of 2002 there was foreseen a possibility to locate asylum seekers in special premises at border crossing points (BCP) if these persons apply for asylum straight at the mentioned BCP (up to 72 hours or longer after a decision of a judge). Negotiations with an asylum seeker in such process had to be made by BCP officials. If, after the negotiations, the Department of Refugees considered the application reasonable, the asylum seeker had to be moved to the closest accommodation centre. On a whole the procedure could last up to 8 days: SBG passes received information in the term of 3 days, the Department of Refugees examine the received negotiation materials in the term of 2 labour days, the decision of the Department could be appealed during one labour day by Appellation Committee of the Refugee Affairs, the complaint has to be examined in the term of two labour days from receiving.

The conditions of visibly unreasonable asylum application were added in the admitted version of the Asylum Law of 2002 to previously viewed project. These conditions are: there are no threats, the person has protection or has rights for such protection in another state or the person has applied

for protection in another state. Also the Article 19 of the Asylum Law states the shortened asylum procedure if a person applied for asylum in the territory of Latvia and there are valid conditions that were mentioned before. As opposed, during the border procedure the application is submitted at a BCP, but during the shortened procedure the application is submitted inside the territory of Latvia. Also the shortened procedure is longer – the duration could be up to two weeks.

Considering the Asylum Law of 2009 the shortened procedure supposed to be used in case of obviously negative result and OCMA officials used this procedure and made decision to deny the refugee status of alternative status in case there was at least one of predetermined by the Law conditions. These conditions were five: asylum seeker comes from a safe native country; before entering Latvia, the asylum seeker crossed a country that is not a member state and that is considered as a safe third country regarding to the asylum seeker; the asylum seeker already applied for asylum, but using different personal data; the asylum seeker did not apply for asylum previously without a substantial ground although he/she had a possibility to do so, including in order to delay or avoid expulsion from Latvia and the asylum seeker creates a threat to state security or to public order and security (Asylum Law, 2009).

The Asylum Law of 2015 includes the requirements of the Asylum Procedure Directive. Member States may provide that an examination procedure in accordance with the basic principles and guarantees of Chapter II be accelerated and/or conducted at the border or in transit zones (2013/32/EU, 2013). The criteria of the shortened procedure were revised, described in details and included according to the Directive mentioned before. But the idea of this procedure did not alter – the procedure has to end with a denial because the asylum seeker does not suffer from threats or he/she tries to abuse the asylum procedure to reside in the EU or he/she provides threat to the EU. When using the shortened procedure, the officials pay attention to rights of children and persons who need special procedural guarantees, evaluating which state could be considered as a safe country to the asylum seeker in every individual situation especially according to the perspective of identifying him/her as a refugee or a person with rights to an alternative status.

The shortened procedure is not used in Latvia very often. According to the data of the Unit of Return and Refugee Affairs, the shortened procedure in Latvia was used 6 times in 2020 and 22 times in 2022. This is connected to shortened terms of hearings of cases and decision making process. These terms are not realizable to keep if the number of asylum seekers is large because the number of the OCMA officials is limited as well. According to the statement of the officials of the Unit of Return and Refugee Affairs of the State Border Guard Riga territorial board, the border guards who state the

possibility of the shortened asylum procedure are able to recommend this procedure to the OCMA officials but the least are the only ones who can make a decision to do so. So, even if there is a possibility to use the shortened asylum procedure, there not always is a possibility to do so because of the lack of resources. In order to provide the just and reliable asylum procedure without the violation the rights of every asylum seeker to it, the officials must use usual asylum procedure that demand larger terms for hearings and decision making.

Conclusions and suggestions

The research looks through a large amount of different materials, both the EU and Latvian, compares and analyzes them. It is clearly seen that Latvian asylum procedure, as a whole and its shortened order, is based on the EU common standards and rules. Thus it is achieved the common understanding and approach to the admission, qualification of asylum seekers and to the asylum procedure. The shortened asylum procedure provides faster decision making process in cases when there is no ground to grant the asylum or alternative protection status.

The decision to use the shortened asylum procedure now is being made only by the OCMA, the SBG officials cannot effect neither the decision to use the shortened procedure, nor the decision to decline the asylum granting. As it is seen, the OCMA is the only institution in Latvia that is competent to use the shortened asylum procedure.

Analyzing current theme it is stated that the SBG is not involved into the engagement of the shortened/accelerated asylum procedure. The only problem is in different understanding of the shortened/accelerated asylum procedure. The authors suggest to perform training to those SBG officials who are in straight contact with asylum seekers and with the asylum procedure in order to achieve the common understanding. It would be useful to involve the OCMA officials in such a training who would thoroughly explain these questions. Despite the fact that the decision in asylum procedure is made by the OCMA, every SBG official that works with asylum seekers should understand correctly the performance of both: the standard asylum procedure and the shortened asylum procedure. Exactly the border guards are the ones who initially explain the asylum procedure to the asylum seekers and ones who regularly inform asylum seekers, who are detained and are under the custody of the SBG, about the course of asylum procedure.

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