



UCL POLICY BRIEFING – MAY 2014

## AUTHORS

### Ms Eleni Frantziou

UCL Laws

eleni.frantziou.12@ucl.ac.uk

### Dr Uta Staiger

Deputy Director

UCL European Institute

u.staiger@ucl.ac.uk +44(0)20 7679 8737

### Sarah Chaytor

Head of Public Policy,

Office of the UCL Vice-Provost (Research)

s.chaytor@ucl.ac.uk +44 (0)20 7679 8584

## KEY MESSAGES

- Europe must take **coordinated and effective measures** in order to accommodate those seeking refuge from crisis situations including, crucially, the Syrian crisis;
- There needs to be **increased burden-sharing** of migration in Europe, in order to alleviate frontier zones which are currently disproportionately affected by the cost of processing asylum claims and accommodating new entrants;
- The EU must address the **inadequacies of the Dublin system**, which regulates the entry of migrants;
- It is important to understand and emphasise the **social and economic benefits** of migration and to **debunk the myth of 'benefits tourism'**;
- **Moderate voices must become louder** in order to tackle the reemergence of racism and xenophobia in Europe;
- It is important to understand the **human rights implications** of migration policy and discourse.

## Refugee Protection, Migration and Human Rights in Europe

### Summary

This policy briefing discusses key practical aspects of refugee protection, as well as questions of racism and xenophobia in Europe. In particular, it addresses:

- The inadequacy of Europe's responses to the Syrian crisis and how this illustrates broader problems with refugee protection
- The lack of coordinated action on refugees in Europe
- EU asylum policy, including concerns raised by the Dublin regulation<sup>1</sup>
- The need to consider human rights issues in discussions of migration
- Broader questions of racism and xenophobia and their impact on the debate on migration

### Introduction

Migration has always been high on the European human rights agenda, both at the Council of Europe and at the EU level. Today, pressing problems such as the impact of the Syrian crisis on the asylum system of many European countries, the fear of an increase in migration to the EU, and the re-emergence of nationalist and racist movements across Europe render migration a priority in political as well as in human rights discourse. This policy briefing discusses the need for coordinated action amongst states, as well as considerable awareness-raising, in order for Europe to address migration in an effective and humane manner.

### Key issues

#### Refugee protection in Europe Lessons from the Syrian crisis

The Syrian crisis has played an important role in the proliferation of asylum applications in Europe. **Treatment of Syrians seeking asylum varies greatly depending on the host country.**

<sup>1</sup> <http://tinyurl.com/DublinReg>

Some Council of Europe signatories, such as Germany and Sweden, have committed to receiving Syrian refugees, whilst others have been unwilling to offer assistance.

This is problematic: refugees living in cities are quickly running out of money, the cost of this wave of migration is adding up, and international support is very limited. More worryingly still, many Council of Europe members, including several EU member states, have provided extremely inadequate protection to those affected.

Despite the assurances provided by some European countries, **Europe's tackling of the Syrian refugee crisis has been uncoordinated and unbalanced**, failing both to take collective responsibility and to address the human rights impact of the Syrian crisis effectively. This reflects the broader problems in Europe's asylum policy.

### Lack of coordinated action and difference in recognition rates

One of the most important problems in European asylum policy, well illustrated in responses to the Syrian crisis, is the **lack of cooperation amongst different members of the Council of Europe**. Without uniform mechanisms to address the large numbers of asylum seekers fleeing crisis at the regional level, the burden falls disproportionately on certain states who are unable to manage it, thus offering inadequate human rights protection to entrants.

Another important problem flowing from Europe's lack of cooperation in the field of asylum policy, and one which has also been clear in the Syrian example, is the **difference in rates of recognition of refugee status amongst different countries**. While northern European countries tend to grant refugee status without significant hurdles upon fulfilment of certain criteria, countries which receive large numbers of migrants, such as Cyprus, Greece, Italy, and Spain, tend to recognise refugee status very rarely. Additionally, some countries (particularly in the Western Balkans), fail to see themselves as anything other than transit routes, and have thus granted asylum in only a handful of cases in recent years.

#### CASE STUDY: TURKEY

Turkey in particular has responded effectively to this crisis, with over 110,000 Syrians currently living in refugee camps. While the conditions are far from ideal, they receive a small monthly stipend and free healthcare, and children also receive free education. At the same time, Turkish cities accommodate a large number of Syrian refugees living privately. Turkey alone currently hosts a far greater number of refugees than all other Council of Europe signatories combined.

## EU Asylum policy and the drawbacks of the Dublin system

In addition to the difference in recognition rates and the lack of coordinated efforts to accommodate refugees, **there are important EU-specific problems in the field of refugee protection which**

**need to be addressed**. These are largely due to the rules put in place under the EU's main regulatory mechanism for controlling the entry of asylum seekers into the EU, the Dublin Regulation (Dublin II).

### The importance of the 'point of first entry' under the Dublin regulations

One of the main principles underpinning the Dublin system is that **applications for asylum must be made at the point of first entry**, irrespective of the intended final destination. This means that the EU's frontier regions (such as Bulgaria, Romania, Cyprus, Greece, Italy, and Spain), which are easier to reach for applicants, are responsible for processing the bulk of the EU's asylum claims. This has resulted in clear **deficiencies in the processing of asylum applications** in those countries. The problems are even more pronounced in countries which have recently acceded to the Union. As these states are now perceived as the 'new doors to the EU', asylum applications have multiplied, putting increased demands on often already inadequate national asylum application processes.

### Poor treatment in detention facilities

Importantly, in addition to the increased delays and lack of organisation in the processing of asylum claims, some EU countries offer consistently poor treatment to new entrants during the time that their applications are being considered. The Council of Europe's Human Rights Commissioner has identified significant shortcomings in this regard in recent site visits to detention facilities in Bulgaria, while both the European Court of Human Rights<sup>2</sup> and the Court of Justice of the European Union<sup>3</sup> have found that detention conditions in immigration centres in Greece amounted to **inhuman and degrading treatment**, contrary to Article 3 of the European Convention of Human Rights.

### The problem of 'pushbacks'

Finally, perhaps the most serious concern in this field remains that of the 'pushbacks'. In order to avoid having to process additional claims, some of the states which are struggling with an overburdened asylum system, such as Italy<sup>5</sup> and Greece<sup>6</sup>, have engaged in the practice of pushing back migrants to their point of departure. **The 'pushback' practice raises grave human rights concerns, as it fundamentally affects the right to leave a country and to seek asylum**, as well as often resulting in avoidable loss of life and in inhuman and degrading treatment. It has been condemned by the European Court of Human Rights<sup>4</sup>.

### Reform of EU asylum policy

**The Dublin II system is increasingly being eroded through legal challenges**. The EU sought to increase human rights safeguards by enacting a reformed Regulation, which came into force on 1 January 2014. While the new Regulation provides some guidelines

<sup>2</sup> M.S.S. v Belgium and Greece, 21 January 2011, App No 30696/09.

<sup>3</sup> Case C-411/10, N.S. v Secretary of State for the Home Department, 21 December 2011, not yet reported.

<sup>4</sup> Hirsi Jamaa and Others v. Italy, 23 February 2012, App No 27765/09.

<sup>5</sup> See <http://migrantsatsea.org/tag/push-back-practice/>

<sup>6</sup> See [http://www.ekathimerini.com/4dcgi/\\_w\\_articles\\_wsite1\\_1\\_09/07/2013\\_508335](http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_09/07/2013_508335)

in relation to the length of and reasons for detention, allows for a more effective appeals system and stipulates a transparent process for assessing applications, the **basic principles underlying Dublin II remain in place.**

**Perceptions of how successful this system has been vary greatly amongst EU Member States.** While Dublin II is hugely unpopular in countries which have suffered from the strain of the 'point of first entry' requirement, such as Greece, Malta, and Italy, it finds wide support in countries which fear an exponential increase in applications if the system were to come to an end, such as the UK and Germany.

Many of the human rights issues raised above go to the very heart of the Dublin II regime. It is debatable whether they can be addressed without more **fundamental, EU-wide reform.** Indeed, the process under Dublin II currently provides a disincentive to some EU Member States, like Greece and Bulgaria, to fix badly functioning national asylum regimes in the first place.

## Human rights issues relating to migration

### The lack of concern with the human in the migration process in the EU

European countries in general, and the EU in particular, are **failing to discuss migration in human rights terms.** Issues such as the right to leave a country, the right to seek asylum, the right not to be discriminated against, the right to peace, and the right to work, among others, are rarely included in the discourse concerning migration.

To date, EU immigration law seems to be underscored by one primary goal: that of keeping people out. There is however little control over the way in which this is done in the Member States and the impact this has on human lives. For example, in addition to the drawbacks of its asylum system, one of the clearest failures of EU immigration policy more broadly is the **lack of legal safeguards regarding the detention of migrants.** While the impact of recent reforms is still unclear, in the past, detention periods of over eighteen months have not been unusual, even in cases where there has been a clear decision to deport.

It is important for Europe to dissociate itself from bans and immigration controls and to emphasise the **human face of migration** – to listen to migrants' stories and to acknowledge their value. Human rights discourse can play an important role in this regard.

### The resurgence of racism and xenophobia

One of the most disconcerting developments in recent years in Europe is the increasing support for nationalist and racist movements, as well as the establishment of a culture of xenophobia.

The EU has regrettably played an important role in these problems. First, the shortcomings of EU asylum and immigration policies, particularly the concentration of new entrants to certain states, the lengthy detention periods and the lack of awareness about the reasons for migration and the human rights issues involved, have led to public outcry in affected states.

## BACKGROUND

In the academic year 2013-14, the UCL Faculty of Laws, the UCL European Institute, the UCL Institute for Human Rights and the UCL Centre for Law and Governance in Europe jointly hosted a project on 'Britain & Europe'. Through a series of public debates with experts from academia, the judiciary and policy-makers, and an accompanying resource collection, it sought to shed light on the contentious relationship between the United Kingdom on the one hand, and the European Union and the Council of Europe on the other. The project addressed key issues currently affecting this relationship, with a special focus on their legal dimension.

The sixth debate of the series, held at UCL Laws on 4 March 2014, concerned current problems in Europe's migration and asylum policies. This policy briefing is based on the contribution by the Council of Europe's Commissioner for Human Rights, Nils Muižnieks, chaired by Dr Virginia Mantouvalou (UCL Laws), as well as background research.

Secondly, several Member States, such as Italy, consistently do very little to help migrants find their way into society, even where entry has been allowed. This halts their integration and results in a great deal of **negative reporting.**

Finally, the **language of EU law is problematic** - racism is embedded in EU legislation and policy and, particularly, in the term 'irregular migration', which is routinely used to refer to non-EU migrants entering the EU without express permission, even if they seek asylum. The language of law, in addition to the language used in the media, influences public perception, by creating an overall impression of illegality.

**These concerns affect not only third country migration but, also, increasingly, EU migrants as well.** Across the EU, new arrivals are being blamed for national problems, and specific nationalities (e.g. Bulgarians and Romanians) and minorities (such as the Roma), are often targeted in media coverage and political discourse. Extensive misreporting, especially in countries like the UK, which feel that new entrants will negatively affect their welfare provisions<sup>7</sup>, compounds this, despite evidence to the contrary. For example, a recent study at UCL highlighted the benefits of immigration, finding that migrants to the UK from 8 new EU countries are 60% less likely to claim benefits than natives, and that they make a net fiscal contribution to the economy<sup>8</sup>. While more research is required to counter the myth of 'benefits tourism', such evidence often remains under-reported in popular media.

In some states, like Greece, the rhetoric is more extreme. While this is not a recent problem, in the light of the financial crisis extremist nationalist and racist movements have seen an unprecedented degree of popular support. A series of clumsy bailouts and the effects of EU immigration rules have played a role in this regard. It is important for the EU to face up to this issue together with its Member States. Further, at the national level, parties that use violence can and should be banned in exceptional circumstances.

Banning racist political parties is not enough in itself: it has to be combined with measures addressing social distance, segregation and feelings of otherness impacting migrants in their day to day lives in the host states. **One of the most potent tools for doing so is through open, informed and reasoned dialogue.**

<sup>7</sup> See for example, A Little and M Brown, 'Join our Crusade today... stop new EU migrants flooding in to Britain' (The Daily Express 31/09/2013); M Chorley, 'One in 10 dole claimants is from outside the UK as Cameron moves to limit access to benefits for foreigners' (The Daily Mail 15/09/2013); D Barrett, 'Diplomats admit 35000 Bulgarians may come to Britain' (The Telegraph 23/04/2013).

<sup>8</sup> See <http://www.ucl.ac.uk/news/news-articles/0907/09072302>

Unfortunately however, the media are often not used to tackling issues like racism, violence against migrants, and discrimination. Thus, national reporting is usually ineffective and, at times, non-existent.

This is not only the case in Greece. Throughout Europe, **the migration discourse is framed around the concerns of extremist parties, rather than reaffirming commitments in respect of human rights, asylum, and migration.** While the debates do of course need to be framed differently in different countries, with economic arguments, efficiency arguments, and welfare arguments discussed where appropriate, overall liberal discourse in favour of migration is largely absent from current debates. The silence of the moderates in respect of these issues in Europe is a particularly worrying development.

## CONCLUSIONS

Addressing these issues of asylum policy, response to crises, and tackling racism and xenophobia is difficult at the national level. **Europe needs to coordinate its actions in these fields in order to increase burden sharing** and adequately support those in need.

At the same time, **more research documenting the impact of migration is required** to counter the lack of information and the marginalisation of core political decisions in the discourse surrounding migration in Europe. Similarly, Europeans also need to learn to challenge politicians more on these issues.

Questions regarding the stance that European societies take on asylum and the trade-offs which are made for migration need to be addressed more thoroughly. This includes consideration of what a prohibition of labour migration means for the economy, the actual impact of migration on welfare; and, ultimately, the **impact of migration policy on human rights.**

