WORKSHOP ONE: RECEPTION CONDITIONS AND HUMAN DIGNITY

SPEAKERS

Nuala Mole (Chair), Aire Centre
Dr. Liam Thornton, University College Dublin, Ireland
Véronique Planès-Boissac, Consultant in Asylum and Human Rights Law, France
Aikaterini Drakopoulou, Lawyer, Greek Council for Refugees

WORKSHOP PROCEEDINGS

SPEAKERS’ PRESENTATIONS:

Liam Thornton (University College Dublin, Ireland)

How we treat people who are not citizens has always been problematic. The term ‘asylum seekers’ is given the traditional EU definition as well as those who seek subsidiary protection or other complimentary protection. Why are we using the phrasing of SE rights? This means rights to work, education.

He wants to stay away from the language of reception conditions because it gives rise to the ‘us and them’ attitude that people aren’t entitled to SE rights but a reception right.

We might disagree as to whether citizenship forms a basis for enjoying SE rights? Regardless, AS do enjoy the same rights as citizens. Various bodies of law (international human rights law (IHRL), Council of Europe Human Rights Law (COE HRL) and EU Human Rights Law (EU HRL)) all tell us something about the rights of asylum seekers.

- IHRL: There is a pre-supposition among practitioners, etc. that AS have the same rights as citizens. The CRC Committee have clearly stated that all children have the same rights regardless of citizenship. HRC and CEDAW have also questioned whether it is justified to differentiate rights based on citizenship.
- ECHR: What has the impact been here? The European Social Committee has had a good impact.
- EU: Charter and reception conditions directives are the only documents internationally that clearly state that AS have SE rights. The problem with the recast RCD was that it could be better – why did we pull back from strong proposals that were more rights-orientated?

The key methods and efforts should be refocused to domestic protection regimes such as ombudsmen regimes. The large degree of discretion with SE rights of AS, which the EU seeks to protect, is lacking because of the securitisation of asylum.

Veronique Planès-Boissac (Consultant in Asylum and Human Rights Law, France)

After a number of years of implementing the Reception Conditions Directive (RCD), a number of states had inadequate standards. At EU level, the CJEU plays an increasingly central role in providing guidance. But the
jurisprudence is still limited in terms of reception conditions for asylum seekers. The case law of the ECtHR has recently extended the scope of Article 3 to include reception conditions.

Since the RCD is a part of the EU Acquis, it is natural to refer to the CJEU, but the ECtHR was the first court to play a role in looking at reception conditions in Europe.

**MSS v Belgium (Application No. 30696/09)**

The ECtHR found a violation of Article 3 in Greece in terms of reception conditions. The EU RCD provides the obligation to provide a standard of living for impoverished AS. This was the COE using EU legislation to find a violation of the ECHR. Vulnerability of asylum seekers constitutes an aggravating factor when looking at a violation of Article 3. In this case the conditions were well known to the Respondent country (Belgium). The Courts were able to conduct detailed investigations of conditions.

EU law is seen as an important addition to ECHR cases –

**Rahimi v Greece (Application No. 8687/08)** and **Popov v France (Application Nos. 39472/07 & 39474/07)** both took EU law into account when finding a violation of Article 3 of the ECHR. Surely, the jurisprudence from the ECHR will be important when interpreting the recast RCD.

**Joined cases of NS & ME (C-411-10 & C-493-10) – CJEU:**

The Court relied extensively on the MSS case (ECtHR). From a practitioner’s perspective, it is good to be informed of the systems in other states and rebut the presumption of compliance with HR. The transferring state cannot be unaware of the conditions in the destination state.

**Case of Cimade (GISTI) (C-179-11)**

The CJEU had the opportunity to set the scope of the RCD. They held that all asylum seekers had to benefit from reception conditions, from the lodging of their application to their transferring to the other state. Asylum seekers must be allowed to remain in the MS where their claim is lodged until they are transferred to the respondent MS.

The fact that the ECtHR relies on the Charter for rights already in the ECHR shows that there is more and more interaction between the two European Courts. We can see that mandatory guidance exists but there is still a lacking in compliance – highlighted in Cimade.

**Aikaterini Drakopoulou (Greek Council for Refugees)**

There has been new legislation in Greece since MSS and NS & ME – Law 3970 of 2011

There is a new asylum service functioning since June 2013 – anything before that is still handled by the Police, which is problematic.

There have been improvements in the system – recognition rates have risen. Access to the asylum procedures is still limited – people might have to travel long distances to Athens to the one centre which is not a detention centre and they risk being arrested on the way. The waiting lists here are very long and people often have to wait for long periods.

In March 2013, the government opened the first reception centre near the Turkish border. It is actually a screening centre and people can lodge an application and receive information on the procedure in a language they understand (something new in Greece). This is very limited in its scope – it is similar to a detention centre and asylum seekers can only stay for 25 days before being transferred to detention centres.
In terms of administrative determinations, there is still a tight police control. Places designed for a few hours detention are being used for detention. However, in the Greek Action Plan they expect to double capacity. Greek detention facilities are well below EU standards. Regarding asylum seeker accommodation, there are only about 1000 places for asylum seekers or unaccompanied minors, often provided by NGOs. Certain categories of asylum seekers, such as those with mental illnesses or minors under 12 are almost excluded from the system.

According to Law 220/2007, asylum seekers do have access to employment, but this was restricted to only being available when there is no Greek citizen to take the job (something that is a big restriction, given the levels of unemployment in Greece). This forces them to work in the black market.

Access to healthcare is only available to those who are economically weak and have no social security – however, because this system is so busy people end up paying for treatment. With the parallel procedures, those in the police system have more limited access to healthcare.

DISCUSSION:

Nuala Mole (AIRE Centre, United Kingdom)

How does the Charter influence this discussion on reception conditions? (Not just on provisions of human dignity but Title 4 provisions as well)

It is not an asylum decision but it is relevant – Defence of Children International v Netherlands – Title 4 was used here. It has the same focus as human dignity – the Committee of the European Social Charter found that not having access to healthcare is an issue of human dignity because of its connection to the right to life.

We are awaiting the judgment of C-79/13, Sachiri. The Advocate General discussed that when a state provides financial allowances rather than material reception conditions, what is the responsibility of the state and when does that begin.

What are the conditions in Ireland?

Shauna Gillan (Immigration Law Practitioners Association, United Kingdom)

Freedom of movement is very restricted – lunch only at a certain time, remote locations. The system was designed for six months duration but people are there for up to a decade. Children have access to education up to 18 only – this is mainstream schooling and not in specific schools in the centres.

ALJ case in Northern Ireland – a Sudanese woman had spent years in the direct provision system and left to apply for asylum in Northern Ireland. When she challenged her removal to Ireland on the basis of the conditions in the Republic she was unsuccessful – she was, however, successful in terms of the best interests of her children due to the impact of the reception conditions on them. The Court looked at the fact that the
adults could not work and also the Irish Refugee Council report into child poverty among asylum seekers. It did not rise to the level of systemic failure.

Situation is improving in Greece –

Dimitrios Varadinis (Praksis, Greece)

There are two new reception centres, one in Athens, run by NGOs offering shelter to unaccompanied minors. There is a new centre planned for Patras. They also have a drop-in centre planned with UNHCR for unaccompanied minors to obtain medical care. The State is absent from all of this but civil society is very active. There should be 13 regional centres open soon – at the moment the only reception centre is based in Athens, as mentioned in Aikaterini’s presentation.

Nuala Mole asked the question of whether the State has explained why they will pay for 10,000 detention spaces and no reception spaces. This is a matter of policy.

Diane Goodman (UNHCR Bureau for Europe)

How does Greece deal with people who are refugees and do not make an application?

Once someone enters the country, they do not want to stay there because they cannot work and earn a living so they generally move on to another EU country.

Aikaterini Drakopoulou highlights that all improvements are being initiated by civil society and not the State. This funding may be interrupted at any time – i.e. there is no security. There have been times where centres for minors could not continue working and the minors had to be put out on the street. There are no common criteria or standards for the centres either. The centres, while they are there, may not be appropriate. Centres are often too far from the cities and there is a high rate of absconding among teenagers because their needs cannot be met.

Maria Valles Ferrero (Spain)

In Spain, the issue is that in 2011, the authorities decided not to allow AS arriving in enclaves to travel to the mainland – without any change in the law. This was challenged and the Courts said that it was illegal but it was limited to the individual cases and not applied generally. Therefore it would be up to individual people to challenge their case each time.

Does the right to freedom of movement apply to AS? What about the difference in reception conditions within a country?

Veronique Planès-Boissac

This is similar to France, which has an island in the Indian Ocean that sees similar problems to Greece. The problem is not the laws, but how they are implemented. Because of the decentralised nature of France, the treatment can depend on which Prefecture you are in.
Nuala Mole

The AIRE Centre took a case to Strasbourg regarding the use of a German procedure where asylum seekers were not allowed to go to the mainland and the Court held that they were not on the territory, even though they fell within territory under the Procedures Directive.

Liz Griffith (Law Centre, Belfast, Northern Ireland)

Some asylum seekers do not see themselves as vulnerable – they are fighters/resilient. If anything, it is the system that forces them into a situation of vulnerability. The longer the State leaves someone like this in such a situation, the more vulnerable a person becomes, which leads to more of a duty on the State.

Nuala Mole – Kamberaj (CJEU)

Long-term residence Directive and Article 34 of the Charter (social assistance)

This is worth reading to see if we have a comparable EU interpretation of what Article 34 means.

Liam Thornton – the person may develop problems once they get into the asylum system, such as mental health issues, etc. The UK courts are slow to find any socio-economic rights for asylum seekers.

Nuala Mole

Dameira & Bacara (sp) v Turkey (trade union disputes) – even though Turkey had not signed up to the European Social Charter, because it was the standard across Europe, Turkey would be held to that standard.

The Slovakian experience –

Miroslava Mittelmannova (Human Rights League, Slovakia)

In comparison to Greece, the Slovak reception conditions are not too bad. They have a reception centre on the border with Ukraine. Then there are two detention centres and accommodation centres. Healthcare and legal assistance is available from the State. The problem is really the entry to Slovakia – the first interviews are conducted at the border and people are sometimes sent back to Ukraine even though they have applied for asylum. These people are usually traversing Ukraine to get to Slovakia from elsewhere.

Nuala Mole asked if there were material conditions provided rather than financing (indirect provision) – material provision is provided. Asylum seekers do not have to stay in the reception centres, but they have to tell the Migration Office where they are staying so they can stay in the process.

Certain detention conditions in Greece are causing healthy people to become unhealthy.

John Stanley BL (Ireland)

He was conscious that the recast RCD mentions specific rights from the Charter, expect the right to work.

Liam Thornton mentioned that as well as this it fails to mention any rights on social assistance, etc. – any solidarity social rights – which seem only for citizens. These rights are not specifically set out for citizens in the Charter itself.
Question asked to Liz Griffith, as to whether there has been an increase of people applying for asylum in Northern Ireland since the High Court judgment there. Yes, there seems to be, but because of the family-orientated judgment, there has been an increase of single people being sent back to the Republic.

WORKSHOP MATERIALS

- EDAL case summary - CJEU decision in C-411-10 and C-493-10, Joined cases of N.S. v United Kingdom and M.E. v Ireland
- EDAL case summary - CJEU decision in C-179/11 Cimade, Groupe d’information et de soutien des immigres (GISTI) v Ministre de l’Interérieur, de L’Outre-mer, des Collectivités territorials et de l’Immigration, 27th September 2012
- Request for a preliminary ruling from the Arbeidshof te Brussel (Belgium) lodged on 15 February 2013 - *Federaal agentschap voor de opvang van asielzoekers v Selver Saciri and Others (Case C-79/13)*

FURTHER READING

- ECtHR, *M.S.S v Belgium & Greece* (Application No. 30696), Judgement of 21 January 2011