

The Myth of Europa: Greek Nation-State, Europeanization and European Identity

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Abstract

The paper discusses the interactions between the Europeanization process and the Greek national identity in order to acknowledge the impact of an institutional, political process like Europeanization on the immaterial values and bonds of a nation shaped community. The European polity, redefining the border of the state's sovereignty has deeply shaken the link between state and national community. The creation of a European public discourse opened a political and social space constructed through support, opposition or alternative projects. The political culture of a country carries the political traditions with which member states internalise the European political objects and contribute in defining the European space. The questioning of boundaries of sovereignty and legitimacy in specific policy areas stimulates identitarian responses that on the one hand affect national identities and on the other concur in defining and shaping an ideational space specific to the European polity. The Greek choice to be part of the European construction can be defined as an identitarian investment, that is, the choice of a political option that in the long run could change the lifestyles and identitarian allegiances of a society through new allegiances to norms, political and social models that the participation into the European polity entails. The attended result from this investment is the definitive attainment of the Western European modernity, an attainment that was at the core of the construction of the nation-state itself. Thus, at the national level the integration of Greece into the European polity is strictly associated to a discourse referring to the country's modernisation. Though the major parties of the Greek political system at the end of the twentieth century were fully committed to the European path of the country, the process met many oppositions and shortcomings, well represented by the collapse of the state finances, during which both the European polity and the national political system suffered a deep crisis of legitimacy.

Political cultures and legitimacy

Joseph Weiler made a distinction between formal (legal) and social (empirical) legitimacy. Formal legitimacy *implies that all requirements of the law are observed in the creation of the institution or system* (Weiler, 1999). Social legitimacy connotes a broad, empirically determined, social acceptance of the system, what, in the definition provided by Lipset, is *the capacity of a political system to engender and maintain the belief that existing political institutions are the most appropriate and proper ones for the society* (Lipset, 1983). Legitimacy gains an additional substantive component when the government process displays a commitment to, and actively guarantees, values that are part of the general political culture. The social legitimacy of political institutions is therefore strictly linked to their adherence to values, identities and narratives constituting the political culture in which they are embedded. In the case of the European polity the question can be paradoxical, since one may doubt the existence of a political culture specific to this polity, whose institutions rely basically on the formal legitimacy provided by the treaties. At the same time, the European process is called to display a commitment to, and to actively guarantee, the values of (so far) twenty-seven national political culture, in order to enjoy a social legitimacy other than the public opinion's passive acceptance.

Therefore, the mechanisms by which the social legitimacy of both the European and the national polities is constructed and reproduced have to be detected in the political culture specific to each political community. The establishment of a European public space is a social enterprise where the actors entering the process, be they political elites, public opinions or social movements, have been socialised to politics basically in a national context. The attitudes towards national institutions, the political experience as a citizen of his/her own country, the meanings attached to political object and ideas as well as the creative interaction with the political messages and their sources provide as many cognitive maps with which the European polity is explored and its space shaped. Thus, following the definition of Almond and Verba, the political culture of a society, *refers to the political system as internalised in the cognitions, feelings, and evaluations of its population* (Almond and Verba, 1989).

The relationship between political culture and institutions in a polity is not unidirectional: the former can be conducive to the establishment of a particular institutional order while successful institutions can help a political regime to spread specific values that prove to be functional to its legitimacy. The misfits between political regime and political culture can be the source of conflicts and contradictions that can lead to the alienation of members and groups not directly involved in the decisional process or to major conflicts whose resolution can both strengthen the regime or lead to its demise.

Europe, nation-state and identity

The European polity and its norms in creating a European public discourse opened a political and social space constructed through support, opposition or alternative projects. The political culture of a country carries the political traditions with which the member states internalise the European political objects and contribute in defining the European space. As a result, the Europeanisation process is followed by a discourse shaped mainly by codes or languages whose denotations and meanings are enshrined in the national political culture. Among these denotations and meanings there are those related to the identity, the myths, the memories and the historical experiences of a national community, as well as to the emotional and affective attitudes of individuals and groups towards them. These identitarian materials are the main resources with which Europe is imagined. Nevertheless, the question of a European identity-building cannot be simply addressed as a conflict between national identities and a European emerging one, nor this latter can be considered as the lowest common denominator of the former. At the same time, looking for the political culture more appropriate to fit the European polity building can be misleading since it does not correctly address the fluid nature of the European process. Rather, we should speak of political cultures

and identities that better adapt to or influence the European political space. Finally, though our focus is on national identity it should be remembered how other types of identities and sub-national, regional, transnational and supranational mechanisms of socialisation concur in shaping the process.

The theoretical challenges posed by confronting the Europeanization process with national identities and political cultures can be only overcome through a multidisciplinary approach where the instruments of sociology and history, notably the history of cultures and of ideas and studies on nationalism and state formation, help in clarify how political institutions and organisations shape identities and vice versa, how social and legal legitimacy interact in a particular historical context and institutional setting. In order to understand these interactions it is important to consider that the concepts evoked so far -legitimacy, political culture, identity(ies), nation- are themselves fluid processes subject to continuous redefinitions. We can represent the effects that Europeanization has on national identity as a loop where the political culture stand between the European political process and the state's political systems, mediating inputs and outputs in both directions. The questioning of boundaries of sovereignty and legitimacy in specific policy areas stimulates identitarian responses that on the one hand affect the national identity and on the other concur in defining and shaping an ideational space specific to the European polity. Furthermore, the comparison between national political cultures helps in detect clusters of countries sharing institutional arrangements, historical experiences and related path dependence mechanisms, path of legitimacy, internal distribution of power and participation.

Therefore, there are two dimensions of Europeanization to be explored: the effects and the interactions on the state (Europeanization as a process of polity-building) and the effects and interactions on the nation (Europeanization as a process of identity building). Coming to Greece, a rich literature and comparative analysis in the first dimension indicate how a southern European group of countries show similar patterns concerning democratization, economic development, the relationship between state and (civil) society. However, approaching the Greek national identity and its discourse over Europe better fit the historical and cultural legacies of South-eastern Europe. The invention and the construction of modern Greece as a nation trace their roots in the Ottoman period, as well as the ambivalent relationship with western Europe, at the same time (self-proclaimed) heir of the classical Greece and the “significant other” to emulate or to reject.

Greece and Europe: cultural dualism and modernisation

In his typology of the social situations producing or counteracting nationalism, Gellner lists the Greek nationalism in the category of the diaspora nationalisms. Similarly to Jews, the Greek-speaking communities were dispersed throughout the Eastern Mediterranean, notably in the coastal cities. The Greek high culture was the high culture of reference for all the Christian subjects of the Ottoman Empire, were they Slavs, Albanians or Romans. The division of the population of the Empire according to religious lines, resulted in the primacy of the Patriarch of Constantinople and of the Greek speaking officials as representatives of the Christian community. Beside the ruling class integrated in the Ottoman administrative machine, the Greek speaking community expressed also a large part of the commercial and cultural bourgeoisie of the Empire.

While the church and the phanariots remained attached to their positions within the Empire, that implied their loyalty to the Ottoman order, the bourgeoisie and the intellectuals of the diaspora embraced the ideas of the European Enlightenment and Romanticism. They learnt of the European modernity, making of it the flag of the cultural and political revival of the nation. Nevertheless, the West provided not only an ideological basis to the national movement, but also a clear indication of what should have been the identity and the historical references of the fledgling nation. Thus, the Greek national enterprise developed into two phases. During the first phase, the urbanized and learned Greek

diaspora appropriated the ideas of the European modernity to reform and emancipate their political community. The Greek national movement did not call to the independence from a colonial power, or a state that sought to impose an ideology or a dominant identity discourse. Instead, it rebelled against an agrarian Empire, whose antiquated structures could not meet the demands for major political rights and representation and the economic dynamism of the more advanced strata. The ideologues of the Greek nation sought independence in Europe. Greek intellectuals felt superior to their political rulers and in identify themselves as Europeans, they accepted the Orientalist discourse and subjected the Ottoman Empire to it, although in Europe, Greeks had been object of Orientalism too (Jousdanis, 2001).

The second phase saw the direct European involvement in building both the State, through the diplomatic and military intervention and the subsequent tutelage, and the Greek national identity. The XIX century philhellenism not only imbued opinions and actions of an entire generation of intellectuals educated through the classics, but helped in establishing an image of Greece that will be an essential part of the Greek national self representation. Thus, as vividly highlighted by Hertzfeld, *the Greek-speaking Christians of the Ottoman Empire were called to become the citizens of a nation-state presumed to represent the regeneration of a Hellas essentially invented by German classical philologists of the late eighteenth and early nineteenth century* (Hertzfeld, 1986).

Once Greece reached the independence, the main objective was to (re)convert the *Romios*, the Christian living in the European part of the Ottoman empire, in *Ellinas*. The latter term represents a series of virtues and qualities that the Greek citizen should embody, while the former is its antithesis, the subject of the Ottoman pre-industrial agrarian and pre-democratic culture, the sad memory of centuries of submission. The social identity of the *romios / valkanios remains communitarian, parochial, minoritarian, while the Ellinas is a citizen of a country that is his own and whose identity refers to a free nation, part of a larger democratic whole, Europe* (Couroucli, 2002). It is from these two representations, created during the process of nation-building, that the dualism east-west, Balkans-Europe developed. A dualism that continues to affect social and political representations and discourses of contemporary Greece.

Diamantouros translated these powerful identitarian representations in terms of political culture. In his ideal-typical model two conflicting traditions have reproduced themselves since the establishment of the Greek state, one epitomising the Byzantine-Ottoman parochial, pre-modern political culture, the other, the reformist and secular tradition, tracing its roots in the Western-Europe oriented, Illuministic origins of the national struggle. It is important to observe how these two traditions are *transversal to institutions, strata, classes, or political parties and thus not being exclusively identifiable with any one such structure across time or even at any given moment* (Diamantouros, 2000). This cultural dualism permeates the societal and political debate of contemporary Greek politics and interacts with the internal and international opportunities and constraints to which the Greek Third Republic established in 1975 has been subject. The Europeanization of Greek politics and the discourses developed by political and social actors over the path of integration into the European polity can be considered as the ultimate battleground where the parochial and reformist political cultures faces each others.

The Greek choice to be part of the European construction can be defined as an identitarian investment, that is, the choice of a political option that in the long run could change the nature of lifestyles and identitarian allegiances of a society through new allegiances to norms, political and social models that the participation into the European polity entails. The attended result from this investment is the definitive attainment of the Western modernity, an attainment that was at the core of the construction of the nation-state itself. In this sense, the transition to democracy after the fall of the military dictatorship in 1974, was a defining moment of identitarian reflection concerning the place of the new republic in the international context. Beside a specific political discourse that directly refers to the European construction, at the national level the integration of Greece into the European polity is strictly associated to a discourse referring to the country's modernisation.

The paradigm of modernity, technological achievements and material prosperity of a political community

is, as Benedict Anderson has illustrated, the reason for the success and even the affirmation of the nation-state as a form of complex social organization (Anderson, 1991). However, being an historical and ever-changing standard, the modernisation paradigm assumes the form of a unidirectional relationship between the materially more developed states setting the bar ever higher and those states who follow. For the latter, the modernisation process can result in a perpetual pursuit of the ultimate threshold of progress achieved by the former. In a historical perspective, the participation to the benefits of the European integration, the pursuit of a social and economic development similar to Western Europe, constituted for Greece the last avatar of the West European modernity pursued since the foundation of the Greek nation-state.

The PASOK *eksinkronismos* (1996-2004) is a paradigmatic example of how the “modernisation” discourse met the country's effort to stand at the forefront of the European integration process (Bilios, 2009). A managerial and technocratic approach to government was considered by then PASOK leader Costas Simitis as the only way to modernise, rationalise and thus Europeanise the Greek economy and society -as well as the party- and put an end to the "old" political practices that resulted in the waste of national wealth. The modernity and the economic progress were represented by Europe, that meanwhile proceeded to the completion of the Monetary Union. Though the then two major parties of the Greek political system were thus fully committed to the European path of the country, the process met many oppositions and shortcomings.

The elimination of any reference to religion from the ID cards of 2001-2001 and the history textbooks issue of 2006-2007 are emblematic. In the first case the European legislation on personal data directly affected one of the most powerful element of the Greek national identity, the orthodox confession. An important part of the public opinion was mobilised by the Greek Orthodox Church in defence of the Hellenism. The mobilisation of the Church of Athens also contributed to the withdrawal of new history textbooks accused to downplay the role of the Church in preserving the Hellenism during the Ottoman period and its contribute to the Greek revolution. Finally, the collapse of the state finances and the Memorandum / anti-Memorandum divide assumed the dimension of a historical breaking point in the country's European course. The EU-FMI financial plan became the contested symbol of the country's place in Europe, of the powerlessness of the Greek state and of the impossibility or inability for the national leaderships to provide a convincing response to the country's economic and social crisis. Failing in assure what was its main source of social legitimacy, that is economic prosperity, *Europe* was harshly questioned alongside the national political system.

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Lining a comparative analysis of post cold-war migration policies of liberal democratic states

Since the end of the Cold War western liberal states are striving to control international migration. The scope of this paper is to propose a comparative scheme which will represent accurately the majority of liberal democratic states.

The policies pursued by European countries at national level and at the communal level, as well as by the United States and the rest of the western states, in the broader field of migration, and especially in the areas of border control, asylum, the law of nationality, the authorization of residence and work permits, the bilateral agreements with neighboring countries, and the participation in the welfare system of non-citizens, seek to discourage border crossing and installation of migrants.

On the other hand, the dominant liberal ideology in both shores of the Atlantic is indicating a degree of contradiction. Economic liberalism that dominated the post-Cold War leads rationally to further liberalization of movement of people, which is complementary to the free movement of goods and capital. However western liberal states, since the early 1960's to date continually seek to impose limits on international migration, which throughout this period despite efforts to control it, it is growing.

In order to identify the aforementioned convergence this paper seeks to efficiently categorize receiving states for analytical reasons. Based on the traditional, for migration studies, categorization of receiving states: settlers states, "guest-workers" states and new receiving states, it aims to cover the full palette of modern liberal democracies. Simultaneously, the choice of countries with different types of state organisation, of democracy, of political structure, of varying degree of regional interdependence as well as with different economies both in structure and in dynamic provides for optimum results regarding the examination of policy convergence.

For this scope the choice of three countries representing each of the traditional categories of receiving states is combined with differentiation not only in migration history but also in political and economical aspects.

1. Introduction

In this paper is presented a part of my ongoing research in the context of my PhD dissertation “Comparative Political Analyses of Migration Policies of Greece, Germany and the USA”. In the broader field of international migration researchers have intensified their efforts to explain why, when and where international migration is directed. International migration represents 2% of the world population, the number rises steadily in recent years and reached in 2009 the absolute number of 214 million, according to UN DESA (2009) while in 2005 was 191 million. If the immigrant population continues to grow at the same rate as the past 20 years, it is estimated that by 2050 could reach 405 million (IOM, 2010). Even though a considerable amount of people decides to migrate it is still a narrow minority. Most of these people want to move towards western liberal states where economic and political conditions are better compared to their home state. Western liberal states on the other hand the last 50 years and especially since the end of the Cold War try to control international migration which is viewed as a growing problem by initiating restrictive policies but without succeeding (Cornelius et al, 1994:3). The prevalence of liberalism after the collapse of the Soviet Union has further promote globalization. Economic liberalism is against the containment of production factors and labor is a key one (Freeman and Kessler, 2008). Additionally, it is esteemed that international migration is complimentary to international commerce and the free movement of capital while their combination can magnify the profits of globalization (Hollifield, 2004). Furthermore, liberalism prerequisites equality, which is often violated when, states treat differently aliens and citizens (Joseph, 1987) and deny basic social rights to the first. Concluding, in the post-Cold War era western democracies are caught in a paradox by trying to regulate international migration while promoting liberalism. Simultaneously, in order to assess the policies pursued by western states as well as the degree of convergence towards restriction it is necessary to formulate an analytical framework.

2. Why choosing Comparative Analyses

International migration became a major policy issue the last century and it has climbed particularly high in the agenda of western liberal states policy makers the last fifty years. This resulted wide and diverse research focusing on the formation and the efficacy of various migration policies. Political economy was the first discipline to approach international migration and states responses, proposing theories that explain immigration policy as a function of macroeconomic factors (Borjas 2001; Rodrik 2002), welfare state politics (Bommes and Geddes 2002; Freeman 1986), and economic competition between natives and immigrants (Borjas et al. 1996; Scheve and Slaughter 2001). It has been though widely critiqued, as states with similar macroeconomic characteristics did not have similar policies (Money 1999; Meyers 2000). Moreover, these models have been criticized for not adequately specifying the motives that underlie state actions with respect to immigration policymaking (Freeman and Kessler 2008). In order to shed light to these motivations Freeman (1995) is trying to specify the costs or benefits of immigration to particular groups, and their attempt to exert greater influence over immigration policymaking. This theory while explaining agency of interest groups does not assess the role of institutional factors in policy making (Boswell 2007). Furthermore, political

geography is emphasizing the role of migrant networks (Massey et al. 1993) and the reaction of indigenous population to migrant ethnic clusters (Portes and Manning 2005). The resultant growth pressures impact how societal resources are used and challenges policy makers (Bommes and Geddes 2000; Rodrik 2002). These growth pressures are inversely related to the benefits of immigration; as they intensify, the gains localities obtain from immigration diminish. Ethnic and identity studies complement political geography as they stress the importance of the societal definitions of citizenship and belonging and the meanings members attach to these identities (Meyers 2000; Huntington 2004).

It became clear from the above brief presentation of the literature of international migration policy theories that even though there are sufficient theoretic tools there is a clear lack of comparative empirical studies, which will test and improve existing theoretic schemes. There are a few comparative studies such as Cornelius et al. (2004) Thielemann (2004) and Hammar (1985) while the majority of empirical studies consist either of in depth analysis of one state's migration policy or of a collection of state case studies (Hollifield 1992). In order to conduct a comparative empirical analysis that allows theory testing and enhancing, it is necessary to systematically test across the chosen states, institutional levels, economic configurations, groups, and period of time.

In conclusion, in order to test theoretical hypotheses on why states, and in this case western liberal states chose and implement migration policies as well as the degree of restrictiveness pursued it is proposed to line a comparative empirical analysis which by analyzing a few representative cases will be able to generalize its conclusions.

3. Categorizing migrant receiving states

EU and the USA have received in sum the last century the largest amount of net migration. In order to line a comparative analysis of western liberal states the first step is to describe the trends of international migration that shaped according policies. Human mobility due to demographic reasons, climate, economic circumstances and violent outbursts is part of human history.

During modern history European nation-state formation, colonialism and industrialization led to a rapid growth in migration (Cohen 1987, 1995, Moch 1992). Economic stagnation after the WWI and political instability led to reduced migration between 1918 and 1945. In the USA, 'nativist' groups claimed that Southern and Eastern Europeans presented threats to public order and American values. This vast opposition to migration decelerated large-scale immigration until the 1960s. France was the only country to recruit foreign workers during this time mainly from Italy and Poland. The Great Depression led to the first mass deportations and foreign population fell half a million by 1936 (Cross 1983).

After WWII, international migration expanded in volume and scope and more states experienced large-scale migration while traditional immigration countries received entrants from a broad spectrum of economic, social and cultural backgrounds. From 1945 to 1973 the dominant trend consisted of large-scale labour migration to Western Europe, North America and Oceania from less-developed areas. From the mid-1970s, capital investment shifted away from the old centers, and transnational forms of production and distribution reshaped the world economy while new immigration countries emerged in Southern Europe, the Gulf oil countries, Latin America, Africa and Asia (Castles 2000: 274).

The political transformation that began in the 1980s and culminated with the demise of Communist regimes in Europe and the Soviet Union led to a liberalization of international mobility in the former Communist countries and to significant outflows of migrants. Between 1980 and 2000 the number of international migrants in the world rose from 100 million to 175 million in 2000 rising faster than at any other period since 1960 (United Nations, 2004). However, a major contributor to that increase was not population mobility per se but rather the emergence of newly independent States after the break-up of the Soviet Union. The steady and rapid increase in the number of international migrants in the developed world has led to a greater concentration of international migrants in developed countries. The sharp rise in the number of international migrants in Northern America is noteworthy, since their number more than doubled during 1980-2000. In Europe, the number of international migrants also increased significantly, particularly in the 1990s. In the same time Southern European states (Greece, Italy, Spain, Portugal) underwent a major paradigm shift as they transformed from sending to receiving migration (Freeman, 1985: 893).

It is concluded by the above chronological reference to the major waves of international migration that the center of migrant attraction remains in western liberal states and that we can form three main periods of international migration with distinctive characteristics; A. Mid-Nineteenth to Early Twentieth century – Industrialization and Colonization, B. Post WWII – Labor migration, C. Post Cold War - “New Migrations”.

4. Lining the specifics of the analysis: Time and Cases

Before proceeding to the final selection of states/case studies it is necessary to set the time boundaries of the analysis. Since it is impossible in the context of a PhD to cover full modern history and as it has already been stated the aim of this research is to decode western liberal states migration policy with the broader aspiration of making a prediction of whether there is going to be further convergence as well as the degree of restrictiveness, it is concluded that the obvious ideological and geopolitical landmark that defined modern liberal states is the end of the Cold War. Regarding the end point of this research it is not yet finalized and it will certainly try to include the most updated empirical evidence that will be available by the time the research will be concluded.

In order to have the ability to fully appreciate the role of institutions both formal and informal in the drawing of migration policy it is proposed to choose one state from each of the aforementioned periods. Such a choice suits the traditional categorization of international migration researchers (Freeman, 1985: 882) according to which states can be divided into: settler societies, post WWII guest workers and colonial workers receiving states, and post Cold War receiving states.

Regarding settler states Australia, Canada, New Zealand, and the United States (Hartz, 1964) immigration is an integral part of their history and formation as nation states. They are archetypical states of migration and the only ones, which encouraged for a long time settling over immigration. This has provided them with extended institutionalization of migration and less anti-immigrant movements than European states. From settler states this research is choosing to further analyze as a representative case the USA. This choice is made for numerous reasons: Firstly it is the prevalent state of the Cold War and the greater promoter of liberalism. Secondly,

for geopolitical reasons as it has the greater problem of illegal migration of all other settler states. Finally for practical reasons as the literature about USA's migration policy is the most extended.

Regarding the European states that received mass migration after WWII their basic difference with settler's societies is that they were already established nation states. In this group of states there are Great Britain, Germany, Belgium, the Netherlands, Sweden and Switzerland. Further more they needed migrants not to expand their population bases but to counterbalance labor shortage during post war reconstruction. The main scheme of international migration of the time was the guest workers program (Miller and Martin, 1982). Max Frisch best describes the limit of control over the mass flow of migrants of the time: "We asked for workers. People came instead". From this category Germany stands out as the most representative state. Germany's migration experience has been defined by the inauguration of the guest workers programs (Constant and Massey 2002). What is interesting regarding the case of Germany is the institutional response after the end of the guest workers programs as it sets an example of how a state and a society chose to respond to unwanted yet legal migration.

Finally the new receiving states Greece, Spain, Italy and Portugal were for the past two described periods sending states and therefore had no institutional background of international migration management. Initially they began having more migrants than emigrants when after 1973 they experienced return migration (King and Rybaczuk, 1993:176). Later and especially after the end of the Cold War economic growth, cheap labor from the former communist states of Eastern Europe as well as lack of institutional migration control made them major centers of migrant attraction. From these states Greece is probably the most interesting case as it had its first law regarding immigration in 1991 (Triantafyllidou, 2005) and by 1998 there was no provision for migrants to acquire a legal status of residence or work. Additionally Greece's geopolitical place and morphology of borders is hardening border control and subsequently irregular migration is a great policy issue.

5. Conclusions and further directions

This paper aimed at presenting an analytical framework of lining a comparative analysis of post Cold-War migration policies of western liberal states. It was considered that theory testing that will allow concluding on the formation of migration policy and policy convergence is plausible by choosing representative case studies. In order to reach to a proper analytical scheme international migration trends and international migration policy literature were taken into consideration. Each case/state was chosen by each respective category of receiving states: settler societies, post WWII guest workers and colonial workers receiving states, and post Cold War receiving states. The criteria used for the final choice of states regarded both their individual impact factor and their overall profile in order to allow the construction of an empirical analysis of the Most Different Systems Design (Ankar, 2008).

Hopefully, comparing immigration policies of the USA, Germany and Greece will allow, on the next stage of this research, concluding on why different liberal states pursue similar or of the same direction towards restriction policies.

6. References

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GREECE AND THE COMMON EUROPEAN ASYLUM SYSTEM

Abstract

The constant growth of the number of asylum seekers in Europe and the subsequent raising costs for the processing of an ever-growing number of cases, are the main reasons why the Member States of the European Union decided to share the burden in this field and established a Common European Asylum System (CEAS). Taking into consideration the growing phenomenon of irregular movements as well as the emergence of large-scale flows of non *bona-fide* asylum seekers, States also introduced restrictive and deterrent measures in order to shorten the admission procedures and dissuade potential new asylum seekers from arriving in their territory. This paper aims to examine the role of Greece in this particular context. Traditionally considered as a transit country, Greece has turned out to be a «mandatory» host country due to the Dublin Regulation. The Dublin system works on the basis of a conclusive presumption that asylum seeker's fundamental rights in each Member State will be observed. Unfortunately, this is not true for a number of reasons in the case of Greece. Being incapable of fulfilling its international obligations to treat asylum seekers in conformity with Refugee Law and International and European Human Rights Law requirements, Greece has been found guilty and condemned in many occasions. Some concrete examples about protection concerns and inadequate reception conditions in Greece, which will be analysed in the present paper, are the greatest evidence that the CEAS does not reflect the present realities. Consequently, there is an urgent need for its global reconsideration, which should take into account the particular constraints of Greece as well as the asylum seekers' needs for protection.

The constant growth of the number of asylum seekers in Europe and the subsequent raising costs for the processing of an ever-growing number of cases, are the main reasons why the Member States of the European Union decided to share the burden in this field and established a Common European Asylum System (CEAS). Because when designing protection systems and attempting to calculate their fiscal, social and political costs, States operate with three interdependent determinants: 1) the number of beneficiaries, 2) the level of rights accorded and 3) the degree to which protection costs are shared with other states (*burden sharing*)¹.

Taking into consideration the growing phenomenon of irregular movements as well as the emergence of large-scale flows of non *bona-fide* asylum seekers, States also introduced restrictive and deterrent measures in order to shorten the admission procedures and dissuade potential new asylum seekers from arriving in their territory². We can distinguish two categories of this kind of measures: The first category includes non-entry and non-admission policies (ex. externalisation of asylum, visas/carriers' sanctions, international zones, readmission agreements, safe third country mechanisms) and the second category measures taken with effect in the country (ex. obstacles of access to refugee determination procedures, restrictive interpretation of the refugee definition, limitations to social and other rights).

However, asylum seekers still dispose rights established by Refugee and International and European Human Rights Law which are also generally reflected – more or less- in the relevant EU Directives: The Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status and the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

This paper aims to examine the role of Greece in this particular context. Traditionally considered as a transit country, Greece has turned out to be a «mandatory» host country due to the Dublin Regulation. The Dublin system works on the basis of a conclusive presumption that asylum seekers' fundamental rights in each Member State will be observed. Unfortunately, this is not true for a number of reasons in the case of Greece. Being incapable of fulfilling its international obligations to treat asylum seekers in conformity with Refugee Law and International and European Human Rights Law requirements, Greece has been found guilty and condemned in many occasions. Particularly by NGOs, UN, Council of Europe and a significant amount of European Court's of Human Rights litigation which culminated on January 2011 when the Grand Chamber ruled in *M.S.S. v Belgium & Greece* amongst other

¹ Noll, G. (2003). "Risky Games - A Theoretical Approach to Burden-Sharing in the Asylum Field", *Journal of Refugee Studies*, 16:3, 236-252.

² See p. 198, Lambert, H. (1995). *Seeking Asylum: Comparative Law and Practice in Selected European Countries*. Dordrecht: Martinus Nijhoff.

findings, that Greece had violated Article 3³ and 13⁴ of the European Convention of Human Rights.

Some concrete examples about protection concerns and inadequate reception conditions in Greece, which will be analysed in the present paper, are the greatest evidence that the CEAS does not reflect the present realities. Consequently, there is an urgent need for its global reconsideration, which should take into account the asylum seekers' needs for protection as well as the particular constraints of Greece.

I. The Greek practice concerning the Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status

It is worthy to be mentioned that the Directive itself raises a significant number of protection concerns and it might be considered as the worst example of the CEAS. According to the NGOs' criticism, the Directive does not contain any constraining engagement but rather a framework in which the Member States can adopt or continue their bad practices⁵. Its most controversial provisions intend to prevent the access to the procedures and to facilitate the transfer of asylum seekers outside the European Union. The distinction between "normal" and "special" procedures which establish rather different protection standards (currently we remark that exceptional procedures where lower procedural standards may apply become the norm), the restrictions upon legal aid, the detention of asylum seekers and the possible lack of suspensive effect are only some examples⁶.

Although the Directive is implemented by the Presidential Decree 114/2010 in the Greek legal order, its application starts being problematic since the first step of the asylum procedure as there is no access to the procedure and the registration of asylum claims is almost impossible. At the Attica Aliens Police Directorate, access for those who wish to apply for asylum is limited to 20 persons per week⁷, whereas other Aliens Police Directorates around Greece announce that "undocumented immigrants" who will appear in order to apply for asylum may be arrested.

As a result, asylum seekers can be arrested like any undocumented immigrant and be placed in detention under particularly problematic conditions. Except from the police holding cells and border guard stations where asylum seekers may be held for months, although these facilities were designed for a maximum stay of 24 hours, in summer 2012 Greek government established pre-removal detention centres which fall in the scope of the Return Directive (Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals). There are currently five detention centres (Amygdaleza, Korinthos,

³ Prohibition of torture and inhuman or degrading treatment or punishment.

⁴ Right to an effective remedy.

⁵ See *ECRE Information Note on the Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status*, October 2006, at <http://www.unhcr.org/refworld/docid/464317ab2.html> and *ECRE Comments on the European Commission Proposal to recast the Asylum Procedures Directive*, 28 May 2010, at <http://www.unhcr.org/refworld/docid/4c31812b2.html>

⁶ See p. 304-361, Battjes, H. (2006). *European asylum law and international law*. Leiden, Boston: Martinus Nijhoff Publishers.

⁷ According to Amnesty International "the queue forms days in advance and stretches hundreds long down the street". See at <http://www.amnesty.org/en/news/asylum-seekers-and-migrants-greece-hounded-police-operations-and-right-wing-extremists-2012-12->

Ksanthi, Komotini, Paranesti) where a significant number of asylum seekers including unaccompanied minors and victims of torture are detained under inhuman and degrading conditions. Moreover, article 13(4) of the Presidential Decree 114/2010 has been recently amended by Presidential Decree 116/2012 in order to extend the maximum period of detention for asylum seekers by twelve months, thereby permitting a total duration of detention of an asylum seeker for up to 18 months. Finally, there isn't any provision for legal aid.

II. The Greek practice concerning the Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers

Adequate reception conditions including material support are essential to the functioning of a fair and efficient procedure as they provide a dignified standard of living while asylum seekers are awaiting a decision on their applications. The Directive 2003/9 has contributed to strengthening the legal framework of national reception practices, particularly in those countries with under-developed reception systems. In this context, it is considered as a successful example of the CEAS in terms of protection.

Although the Directive 2003/9 has been implemented by the Presidential Decree 220/2007, asylum seekers in Greece still face significant legal and practical obstacles to access housing, health care, employment and education. Moreover, in light of the present economic crisis and recent racist violence, these problems raise serious concerns and the situation is currently alarming.

According to the UNHCR statistics, there are only about 1006 places in reception centres while there are over 40,000 asylum seekers residing in Greece. That's why according to Amnesty International, Greece's failure to respect the rights of migrants and asylum seekers is taking on the proportions of a "humanitarian crisis", as even the most basic requirements of safety and shelter are not guaranteed⁸. Consequently, asylum seekers including pregnant women and families with small children, have to face overcrowding or sleep on the streets⁹. Moreover, no financial allowance is provided for those who cannot be hosted in reception facilities due to insufficient capacities, despite the relevant provision of the Directive.

In order to counterbalance these effects, Greece was until recently the unique Member State allowing immediate access to the labour market¹⁰. However, a circular issued by the Ministry of Labour on 19 October 2012, stresses that priority should be given to Greek, EU citizens, refugees, and foreigners of Greek origin and that their unavailability for the position should be first demonstrated for an asylum seeker to access the labour market¹¹. In light of the present economic crisis and of an

⁸ See at <http://www.amnesty.org/en/news/asylum-seekers-and-migrants-greece-hounded-police-operations-and-right-wing-extremists-2012-12>

⁹ Migration and asylum: mounting tensions in the Eastern Mediterranean, Report, Committee on Migration, Refugees and Displaced Persons, PACE, 23 January 2013, available at <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19349&Language=EN>, para 45.

¹⁰ See p. 69 ODYSSEUS, *Comparative overview of the implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member states*, October 2006, at <http://www.unhcr.org/refworld/publisher/ODYSSEUS.html>

¹¹ See circular (in Greek) at http://www.unhcr.gr/no_cache/prostasia/nomiki-prostasia/o-nomos-stin-ellada/nomothesia-giaatomika-kai-koinonika-dikaionomata.html?L=0/&cid=825&did=857&sechash=6e84bbfb

unemployment rate among the highest in the EU (26.8%), this limitation clearly represents a de facto barrier to access the labour market¹².

Conclusions - future perspectives

The Greek case reveals the most important problem of the Common European Asylum System: it was structured on a wrong basis. This happened because its objective was applied before setting out the means. In other words, the distribution of the burden in the EU via the Dublin mechanism, started without having obtained harmonization of the procedures and the reception conditions first. This is exactly the reason why Belgium and Greece were condemned by the European Court of Human Rights in the famous *M.S.S* case. And if all the necessary measures are not taken, the whole European Asylum System risks to collapse following this decision which imposed (even indirectly) to EU Member States to stop the return of asylum seekers to Greece. The problem is perfectly resumed in the following lines of the Concurring Opinion of Judge Rozakis:

“As it has already been stated, almost 88 % of the immigrants (and among them asylum seekers) entering the European Union today cross the Greek borders to land in our continent. In these circumstances it is clear that European Union immigration policy – including Dublin II – does not reflect the present realities, or do justice to the disproportionate burden that falls to the Greek immigration authorities. There is clearly an urgent need for a comprehensive reconsideration of the existing European legal regime, which should duly take into account the particular needs and constraints of Greece in this delicate domain of human rights protection.”

The current challenge for EU asylum policy is to find some way to prevent or deter bad faith claimants from abusing the system while ensuring that persons in need of protection still receive asylum. In other words, a different kind of measures has to be adopted in order to diminish the impact of irregular migration on States' asylum systems. This goal could be only achieved if the international community invests in measures to address the root causes of irregular movement, whether voluntary or forced. Till then, the issue of asylum-seeking must be analysed within the context of broader migration movement. Because when fleeing political or religious persecution, ethnic tensions or generalised violence, persons often also try to move away from economic marginalization, environmental degradation, or lack of good governance¹³.

¹² See p. 16 of the Second Joint Submission of the International Commission of Jurists (ICJ) and of the European Council on Refugees and Exiles (ECRE) to the Committee of Ministers of the Council of Europe in the case of *M.S.S. v. Belgium and Greece* (Application no. 30696/09) and related cases, February 2013, at <http://www.ecre.org/component/content/article/64-elena-publications/280-joint-submission-of-the-international-commission-of-jurists-and-of-the-european-council-on-refugees-and-refugees-and-exiles-to-the-committee-of-ministers-of-the-council-of-europe-in->

¹³ See at p. 135 Bogusz, B., Cholewinski, R., Cygan, A. & Szyszczak, E. (2004). *Irregular Migration and Human Rights: Theoretical, European and International Perspectives*. Leiden: Martinus Nijhoff Publishers.

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