The Common European Asylum System and the Failure to Protect:

Bulgaria's Syrian Refugee Crisis

Abstract

The aim of this article is to investigate European Union's asylum framework and its national implementation in the case of Bulgaria; to demonstrate that national implementation is actually consistent with the deficiencies of the supranational framework; and to interrogate the normative struggle that, as the article argues, is in the root of the European failure to respond adequately to the ongoing refugee crisis. Using critical policy analysis (content and discourse) complemented by historical analysis of a recent political development, the article engages with the 'policy malintegration' within the Common European Asylum System produced in the context of refugee crisis in the case of Bulgaria. The article argues that the discrepancy between purpose and implementation in the national application of the EU framework is to be understood not so much as 'malintegration', but as a particular vision of European integration that is struggling against the idea of liberalizing asylum. Sustained by an overall uncertainty about the fate of the EU project, by economic crisis, and by nationalist ('xeno-racist') narratives on migration, such a vision of the Europeanization of asylum is bound to produce paradoxes. As the case study will demonstrate, it has effectively worked against the adequate provision of refugee protection, and against the credible Europeanization of asylum.

Key words: *Europeanization*, *migration, refugees, Syria, borders*

Introduction

The aim of this article is to investigate European Union's asylum framework and its national implementation in the case of Bulgaria; to demonstrate that national implementation is actually consistent with the deficiencies of the supranational framework; and to interrogate the normative struggle that, as the article argues, is in the root of the European failure to respond adequately to the ongoing refugee crisis. As of July 2013 the European Union (EU) boasts a Common European Asylum System which has been marked by a peculiar paradox. On the one hand, the system has been criticized for stepping ahead of member states in the re-making of a harmonized asylum framework (Costello and Hancox, 2014: 4). On the other hand, the harmonization of asylum has been seen as containing significant protection gaps (Velutti, 2014: 105; Stern, 2014; Webber, 2014). The clash between too much and too little Europeanization in the area of asylum – all at the same time – has pointed to an underlying tension in the Common European Asylum System (CEAS) which has lead to a visible gap between policy and implementation. It is what this article sets out to investigate.

Using critical policy analysis (content and discourse) complemented by historical analysis of a recent political development, the article engages with the CEAS 'policy malintegration' (Boswell and Geddes,

2011) produced in the context of refugee crisis in the case of Bulgaria. Despite the ever more sophisticated rules which member states have been asked to transpose into their national legislations by July 2015, and despite the vast resource pool offered by the possibility of sharing the burden of responsibility, Bulgaria's response to the Syrian refugee crisis of 2013-14 was neither liberal, nor well coordinated. But this article does not single out one of the poorest EU member states for defaulting from its obligations as implementor of the EU asylum framework. Instead, the analysis sets out to show how Bulgaria's response to refugee crisis in fact reflects all the tensions riddling the CEAS, and cannot be divorced from this context. What can allow for a better crisis management response would be more fully embracing the Europeanization framework, re-thinking the burden-sharing mechanism, and detaching the implementation of asylum from security concerns over irregular migration. The key contribution of this article is thus twofold. First, it problematizes traditional thinking about asylum in Europe from the perspective of national politics and demonstrates the benefits of the Europeanization perspective for understanding the failures of protection in Europe. Second, it interrogates the deficiencies of the existing framework and searches for avenues for its improvement.

Traditionally, the regulation of asylum has been framed in the debate on the ethics of restriction and liberalization (Gibney, 2004). On the one hand, there sit universal values of human rights protection and a liberal-humanist vision of the world, which brought the instrument of refugee protection into existence and which defined the normative fundament of European integration. They call for an open, liberal approach to asylum, and porous borders. On the other hand, exclusionary narratives articulated in the language of nationalism continue to see migration as an aberration from the normal course of human life, conceptualize the social welfare system and public services as an entitlement to members of the national (or European) in-group, and approach the presence of ethno-national otherness as a threat to the stability of the social and economic order. Within this worldview, refugees come to be seen as nothing more than irregular migrants claiming access to a world that is reserved to others, while national governments are expected to protect their territories from 'undesirables'. Ceding sovereignty to the supranational entity only complicates the task, given open borders and standardization of rules in the EU. Governed by the traditional logic of the ethics of asylum from the perspective of national politics, the chief focus of the literature on asylum in the EU has been on the motives behind EU cooperation, on the conditions for making it work, and, most prominently, on the reasons why it does not (compare Guiraudon, 2003; Ackers, 2005; Geddes, 2008; Kaunert, 2010; Kaunert and Léonard, 2011).

While keeping in mind the restriction-versus-liberalization debate, this article looks at it from the perspective of European integration, as the recent push for harmonizing asylum in Europe offers a *par excellence* case of Europeanization (emergence of distinct structures of governance at the supranational level [Cowles, Caporaso and Risse, 2001: 13]). Even though analysts were long concerned about its possible restrictive impact, the harmonization of asylum has taken a nominally liberal direction (Bonjour and Vink, 2013; Block and Bonjour, 2013). Indeed, liberalization is a reflection of the claimed identity of the EU as a universalist political project: the recast EU asylum framework purported to create 'an area of protection and solidarity within the EU' (Stockholm Programme, 2010). Yet, this is not how the functioning of the nominally liberalized CEAS has been assessed. Looking at the functioning of the recast

EU asylum rules in a specific national context, this paper examines the gap between nominally improved EU policies and their deficient implementation. The analysis closes in on a new EU member, Bulgaria, and its response to the sharply increased influx of asylum-seekers from Syria in 2013-14, in order to highlight the exact points of 'malintegration'. Bulgaria has responsibility for managing part of the external EU border (in its 240 km long section with Turkey) which places it into one of the refugee hotspots produced by a complex configuration of international crisis (Syria) and specific regional politics (Greece's closed borders, Turkey as a conduit of refugee flows to Europe). At the same time, as a new member state with only limited asylum capacity, Bulgaria has taken full advantage of the support offered through the recast CEAS. The country has been criticised for its highly restrictive national practices towards refugees which defy the goal of better protection. The analysis demonstrates, however, that these are but a reflection of normative struggles riddling the CEAS itself. The article argues that the discrepancy between purpose and implementation in the national application of the EU asylum framework is to be understood not so much as 'malintegration', but as a particular vision of European integration that is struggling against the idea of liberalizing asylum. Sustained by an overall uncertainty about the fate of the EU project, by economic crisis, and by nationalist ('xeno-racist', see Delanty et al, 2011: 3) narratives on migration, such a vision of the Europeanization of asylum is bound to produce paradoxes. As the case study will demonstrate, it has effectively worked against the adequate provision of refugee protection, and against the credible Europeanization of asylum.

The rest of this article is structured as follows. Section two maps out the key reference points of the CEAS and its key deficiencies within the wider dynamics of Europeanization. Section three follows the case study: implementation of the CEAS in Bulgaria and the 2013-14 influx of asylum-seekers fleeing the war in Syria. The case study demonstrates that the refugee crisis which Bulgaria has been struggling to manage is by no means an EU exception, and that the response to it is, ultimately, rather 'European'. The final section draws conclusions and offers a two-pointer on the possible solution to the key problem with the provision of asylum in Europe: its normative ambivalence.

The Common European Asylum System and the Limits of Protection in Europe

The intricate legal and policy framework regulating asylum in the EU overlaps international, supranational and domestic levels. As a conceptual tool for explaining the EU asylum system Lillian Langford (2013: 222-38) uses what she calls *the inverted pyramid model* to explain the dependencies between the different levels. At the bottom of the pyramid lies the principle of *non-refoulement* (most pronounced in prohibiting the return of an asylum seeker to a territory where he faces torture or death) codified in the 1951 Geneva Convention relating to the Status of Refugees and as a norm of customary international law. In the middle section of the pyramid, in Langford's model, are international and EU-level treaties (such as the European Convention on Human Rights), EU primary law (including the Charter of Fundamental Rights of the EU) and the case law of the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR). The 2013 updated Dublin Regulation, which was intended to speed up the asylum application process and to prevent abuse of the system, is part of that middle

section. The broad top of the pyramid consists of secondary EU law giving directives (issued between 2003 and 2005 and updated in 2011-13) to member states on the domestic legislation they need to enact in terms of procedures, reception conditions and qualification criteria for determining refugee status. It is important to note that while international law stipulates a right of states to provide asylum (but no obligation), since 2009 EU primary law explicitly codifies a right *to asylum* through Art. 18 of the Charter. The EU framework has therefore made a significant step up in the provision of international protection. What then is the problem with asylum in Europe?

Human Rights Vs Security

One of the issues with most serious ramifications identified in the literature points to an inherent tension in the CEAS between the imperatives of human rights protection and internal security provision which the theme of refugees has been attached to (Velutti, 2014: 5; Tolay, 2014: 123; Kaunert, 2009; Lavenex, 1999). In fact, this tension has been identified as central to the formulation of EU 'policy methods and instruments [working to] establish legitimacy for the denial of [refugee] protection', and for 'shifting the responsibility [to protect] away from the European territorial core' (Lindstrøm, 2005: 588; see also Triandafyllidou, 2014: 9 on 'externalization'). Securitizing asylum and refugees involves their discursive repositioning from the ethical sphere of human rights protection where they originally belonged to the position of a threat to the European security regime (Lindstrøm, 2005: 589) where they dwell at present.

While the move subverts the very meaning and legal contents of asylum, it also undermines the claimed normative identity of Europe itself. Analysts have long identified a link between liberal democracy and porous borders (Triandafyllidou, 2014: 10; Guiraudon and Lahav, 2000; Joppke, 1998; Freeman, 1995). This link rests on, among other things, respect for otherness and acceptance of its normality, which are integral elements of both liberal democracy (e.g. Sullivan et al., 1982) and the logic of Europeanization. The EU trend of securitizing migration and hardening the external EU border (Huysmans 2006) risks re-framing (ethno-national and ethno-religious) otherness as abnormality in the worst traditions of nationalism. Consistently approaching asylum together with migration in the process of EU policy making (e.g. European Commission Memo, Strasbourg, 11 March 2014) detaches the former from the area of human rights protection and attaches it to internal security concerns together with regulating migration. The normative focus of EU policies towards asylum (and migration) is therefore much narrower than the universal values which sustain the instrument of refugee protection: they prioritize the security of the 'imagined community' of Europe over the very physical security of the individual human beings who seek protection at Europe's borders. This is a departure from the normative individualism which underlies European liberalism. In fact, such an approach supports the worst critique of liberal democracy exposing its links to nationalism and its arbitrary interpretations of human rights (e.g. Mastropaolo, 2012: 3), in this case serving the purpose of 'European' nationalism (Karolewski and Suszycki, 2011). Particularly in the regulation of asylum as a policy area normatively bound by universalist visions of human rights protection, the paradoxes produced are especially visible.

National Vs Supranational Governance

Another problem identified with the harmonization of refugee protection is linked to the uneasy relationship between national and supranational levels, and specifically to the tension between intergovernmental and supranational policy making in the area of asylum (e.g. Velutti, 2014; Toshkov and De Haan, 2013). The process of harmonizing asylum at supranational level did not really begin until 1999, but EU member states had been acting together at an intergovernmental level to coordinate their responses to refugee issues for much longer. The rationale behind their efforts has not changed dramatically, as the essence of the intergovernmental 1990 Dublin Convention has been preserved in the supranational arrangement. But even though numerous specific steps have been made since then to further develop the system at the EU level, EU states have still been assessed as being 'far away from supranational government in asylum matters' (Kaunert and Léonard, 2012: 3). First, analysts notice omissions in the process of **harmonization** and persistent discrepancies in the implementation of the common framework in practice. Member states can still pick and choose portions of it and not subscribe to the rest (Costello and Hancox, 2014), or adopt the framework but fail to implement it to the European standard (Stoyanova-Yerburgh, 2008). Second, the call for **centralization** of policies and procedures has been met with a 'patchy and inconsistent' response (Hatton, 2012: 10). There has been a common fingerprint database since 2003 (EURODAC) but the delay in data transmissions from some member states made it necessary for its regulation to be updated for 2015 (Regulation 603/ 2013). FRONTEX, the common border control agency functioning since 2005 has come under particular critique for its dependence on national policies (Langford, 2013: 219). The European Asylum Support Office (EASO) active since 2010, though a key improvement of the system (Comte, 2010), is explicitly limited to a coordinating role (Regulation 439/ 2010). As a result, central direction and control remain 'highly circumscribed' (Hatton, 2012: 10).

It is obvious then that the Europeanization of asylum (taking the policy area from the former third pillar to the first with the Amsterdam treaty) has met resistance from national governments, even in view of compelling theoretical and empirical evidence that a EU level framework has the potential to both strengthen the humanitarian provision of the system and improve its efficiency (Thielemann, 2008, 2011). On the one hand this resistance is linked to reluctance to raise the minimum standard of protection already agreed in European states' international obligations in the face of economic austerity and popular disenchantment with government in Europe. On the other hand, anti-migration debates reflect the fragmentation of European political communities of the 21st century and social antagonization along national, ethno-national and ethno-religious lines. The general crisis of legitimacy of governance in Europe has translated into a crisis of the common European governance in the face of the EU. Resistance to Europeanizing, and thus nominally liberalizing, asylum is but one aspect of this general crisis of legitimacy.

Sharing of Responsibility

A third key problem of the CEAS is the disproportionate burden sharing arrangement which it contains (Hatton, 2012; Langford, 2013; Thielmann, 2013; Velluti, 2014). The imbalance is caused by the requirement (a defining tenet of the Dublin system) that the first member state which asylum-seekers reach is in most circumstances the one responsible for taking charge (i.e. examining the application,

providing protection if the outcome is positive, or arranging for return if the outcome is negative). Asylum-seekers usually reach the EU through the territory of the states along the external border, and in light of political upheavals in the Middle East and the North African region, it is the Southern external border that has come under particular pressure (Yardley and Piangiani, 2013). The outposts of Spain, Italy, Greece, as well as Malta, Cyprus and Bulgaria in the region bordering Turkey have consistently been the points of first contact of asylum-seekers with EU border authorities. The first-member-state rule completely disregards this trend, presuming equal exposure to refugee flows among member states. Even if asylum-seekers do not make a claim in the state of first arrival, they must be sent back to it when and where they do, unless they fall into one of the exceptions stipulated by the regulation.

There are several reasons why this is not always a good thing in terms of protection. The first is linked to differences in existing national policies and provisions between South and North (Castles, 2004). The ECtHR and CJEU have established case law drawing attention to sub-standard conditions in Greece (K.R.S. v UK ECtHR decision, 2008; M.S.S. v Belgium and Greece ECtHR decision, 2011) and the danger of inhuman and degrading treatment of asylum-seekers returned to Greece by other member states. Greece is not the exception. The reception of asylum-seekers in Italy has also made many a grim headline (Carr, 2014), and the case study below will highlight Bulgaria's omissions. But even if efforts are made towards a more comprehensive burden-sharing arrangement taking account of these pressures, as analysts recommend (Thielemann, 2008), the state-of-first-arrival rule would still be resented by asylum-seekers at a personal level. Many asylum-seekers have reasons (linguistic, ethno-cultural or religious affiliations, previous intercultural experience, professional qualifications, emotional attachment) to want to settle in a particular part of Europe, but these reasons often do not justify an 'exception' (even though the recast Dublin regulation stipulates a longer exceptions list). The fact that the CEAS does not take such factors into account suggests that the normative focus of EU refugee protection rules has shifted away from the refugee.

In terms of effective Europeanization, the first-arrival rule has been criticized as a chief cause for the unravelling of EU level solidarity (Langford, 2013: 223). On the one hand, member states along the external border complain of disproportionate pressure. On the other hand, even the safeguards which the recast system has made allowance for – the obligation for a member state to assess whether the member state it is returning an asylum-seeker to is actually safe – do in fact suggest a policy of mutual investigations, which is counterproductive to the functioning of a common system and, indeed, to EU member states' bilateral relations (Costello, 2012). Thus, the essence of the CEAS, the first-member-state rule, seems to perpetuate the discrepancy between regulation and implementation by introducing a contradiction in the provision of protection, and in its manner of coordination.

Intra-EU Differences and Adherence to Common Standards

This is linked to the CEAS's failure to secure a common standard of protection across the EU (Ippolito and Velluti, 2011). It is a statistical fact that some EU member states award refugee status more frequently than others (e.g. Fargue, 2014). It is an empirical fact that the refugee package which some states offer to status holders is more generous than elsewhere, evidenced by the increased number of

applications and approvals there (UNHCR 2013 and 2014 overviews for Europe with statistics for Sweden, France and Germany). These discrepancies sustain the so called 'asylum-shopping' phenomenon which has been used as a justification for putting in place the Dublin rules (Moore, 2013). But it defies the purpose of protection to oblige a refugee to remain on the territory of a state which does not offer sufficient support by way of language education, employment opportunities, health care, housing and schooling during the application procedure and after. In fact, the harmonization of the European asylum rules has been blamed for stirring a 'race to the bottom' in standardization: bringing EU-level protection down to the lowest common denominator of national policies (Geddes, 2000; Lindstrøm, 2005), while at the same time allowing member states to maintain far lower refugee capabilities than necessary for providing a decent standard of protection. Although the 'race-to-the-bottom' thesis has of recently been contested (Kaunert and Léonard, 2012), the continued imbalance of the system has remained a fact. When pressured to up the standard, member states have been responding by closing their borders, physically pushing prospective asylum-seekers back outside their territories, and tightening up the evidence requirements for qualification. Leaving aside the moral and ethical unacceptability of such responses, they are also illegal. Their close documentation by independent observers, NGOs and the media has evidenced the discrepancies within the CEAS between compliance with a common legal standard and compliance with the normative imperative of refugee protection.

It seems from the above paragraphs that the Europeanization of asylum has been crippled by inherent contradictions: a clash between internal security and human rights considerations, resistance to supranationalization, disproportionate burden-sharing, and inability to ensure adherence to legal rules and to normative standards. As far as they shape the EU asylum framework, these contradictions cannot be ignored when studying its national implementation. Failure to understand and address these contradictions effectively works against credible refugee protection in Europe as much as it works against the viable Europeanization of asylum. The following case study aims to reinforce this point by demonstrating the gap between liberal policy and restrictive implementation on the ground, and by highlighting the ways national implementation in fact reflects the tensions riddling the CEAS itself.

Bulgaria's Refugee Protection System and the Syrian Refugee Crisis

Bulgaria made headlines in late 2013 with the negative assessment of the way it was treating Syrians claiming asylum at the Bulgarian-Turkish border in sharply increasing numbers. From illegally long detention, squalid reception conditions, inability to process the sheer number of applications, to the lack of integration perspective it offered to successful applicants, nothing indicated Bulgaria's seven years' long EU membership and its participation into a recast and improved CEAS. The negative media coverage ('Bulgaria: a Nightmare for All') and the calls for action from international organizations, local NGOs and watch bodies (UNHCR observations 2 January 2014, Council of Europe Human Rights Commissioner comments 20 December 2013, Bulgarian Helsinki Committee open letter to the Bulgarian Ministry of Interior of 28 October 2013, Amnesty International News 2 January 2014, ECRE Bulletin 11

April 2014, etc) highlighted the unethical, illegitimate and illegal aspects of the way Bulgaria was handling the crisis. Statements on behalf of the European Commission highlighted the incompatibility of the situation with what Europe stood for (Michel Cercone, European Commission 19 November 2014). The analysis of the crisis, offered here, confirms all this. What it aims to demonstrate, however, is that neither of the ethically and legally objectionable elements in Bulgaria's response to the increased influx of refugees to its border is exceptional in the functioning of the CEAS. In view of the unresolved conflict over the limits of political community in Europe and the complex inclusion/ exclusion dynamics that riddles the EU, the treatment of Syrian asylum-seekers in Bulgaria differed from the treatment of asylum-seekers elsewhere in Europe perhaps only in degree – not in essence.

To begin with, Bulgaria's post-communist asylum and refugee protection system evolved together with Bulgaria's European integration aspirations and its preparation for EU membership (UNHCR Reference Book, 2004). This means that in building up its national legal and policy framework it consistently looked up to the 'moving target' of EU *acquis* in the area (Lavenex, 2002: 702), and the international law norms adopted in Europe. It joined the 1951 Convention and its Protocols in 1993, signed a country-agreement with the UNHCR in the same year, then adopted national laws (the 1999 Refugee Law and the 2002 Law on Asylum and Refugees) that generally followed the trajectory of reforms in other former communist states 'from liberalization to restrictions and back' (Lavenex, 2002: 706). Against Bulgaria's record of a refugee-producing and not a refugee-receiving country, the national asylum framework was not considered a priority (*ibid*.), its update being motivated only by requirements raised in the process of EU membership negotiations. Asylum was never flagged up as a problem area despite various recommendations (see EC progress reports on Bulgaria 1998-2004), suggesting that it was largely compatible with the forming *acquis*.

Since Bulgaria's accession to the EU in 2007, the country has been receiving an average of 1000 asylum-seekers per year (UNHCR observations, 2 January 2014), which allowed ample scope for the steady functioning of a system with a capacity to take in some 4,060 people across three reception centres in mid-2013 (Bulgarian State Agency for Refugees [SAR] statistics for 2013). In the second half of 2013, however, the number of people seeking asylum in Bulgaria escalated to 3,600 only in October 2013, the vast majority of them Syrians fleeing the prolonged war in their home country. A total of 7,144 applied in 2013 (SAR statistics on applications and decisions), with the overall number of irregular border crossings for the same period being over 10,000 (Amnesty Briefing, Dec 2013). The sharply increased numbers of people seeking protection at the Bulgarian-Turkish border reflect in part intensified efforts on behalf of Greece to seal off its border with Turkey (Amnesty International Briefing of 13 December 2013) as the primary mainland entry route for migrants from Africa and the Middle East. In this sense the influx to Bulgaria and the ensuing emergency is tightly linked to political outcomes in another CEAS member state and carries the impact of malfunctions of the system there.

In light of what was quickly turning into a crisis, the Bulgarian authorities opened four more emergency reception centres (in Voenna Rampa, Vrazhdebna, Harmanli, Kovachevci). The selected buildings (empty old schools and military barracks), however, could not meet basic hygienic and living standards and were overall mal-equipped for the purpose. Investigative journalist teams aired a hidden camera report from

one of the centres, which showed horrendous pictures of life there, including bursting sewage pipes and people sleeping on the corridor floors. Furthermore, the state was failing to provide essential medical care and services to vulnerable people many of them pregnant women and small children (who were generally kept in detention). Bulgarian authorities' incapacity to cope with the large number of claims quickly became obvious: the legal limits to the time between filing a claim and registering the application, as well as to the time for examining the application, were not kept, thus exacerbating the overcrowding of the reception centres. Despite not too favourable domestic opinion towards refugees (Amnesty International news of 2 December 2013, UNHCR observations of 2 January 2014), the national asylum system was widely seen as inadequate and failing – both internally and internationally. A UNHCR report from January 2014 recommended the suspension of Dublin transfers to Bulgaria (as previously with regard to Greece) in view of the 'degrading and inhuman' treatment that asylum-seekers risked in the country.

Indeed, the institutional failings aside, asylum-seekers in Bulgaria also had to deal with xenophobic public attitudes nurtured by negative media coverage and the instrumentalization of the refugee issue for the purposes of political contest (see Mediapool, 30 October 2013; Capital Newspaper, 8 November 2013, etc.). The influx of Syrian refugees was discussed from the late summer of 2013 in terms of fighting epidemic diseases (e.g. TV7 5 September 2013), spreading radical Islam and terrorism (e.g. Factor News 24 September 2013), economic intrusion (e.g. Standard News 7 October 2013), and a national security threat (e.g. Bulgarian National Television 21 November 2013). This negative construction of the refugee in effect dehumanized the image of a person fleeing fear of persecution and death and antagonized public opinion. Uncoordinated donation campaigns resulted in piles of unwanted clothes outside the camp (closed reception centre) in Harmanli (BTV News, 11 October 2013). Public protests against the camp united local residents who claimed they feared the safety of their children (BTV News, 1 March 2014). Incidents were documented of physical violence against Syrian refugees (Dnevnik Newspaper, 7 December 2013). Residents of a small village pushed away a refugee family seeking to rent a home, even before their arrival (Standard Newspaper, 30 April 2014).

As soon as the emergency was publicly recognized, Bulgaria asked for help from the EASO (October 2013), signing an operating plan as a result of which 22 teams of 51 EASO experts were deployed (November 2013) to provide technical and operational support on the ground. Member states and the European Commission also provided financial and in-kind support, demonstrating in practice the functioning of the common response in the area of asylum. A visit by the UNHCR also resulted in the provision of assistance for improving specific aspects of the asylum system through increasing the staffing capacity, improvements to facilities on the premises of the reception centres, training, information dissemination, monitoring, etc. Overall, the measures undertaken between December 2013 and March 2014 were deemed sufficient to justify renewing of Dublin transfers to Bulgaria. With the increased capacity of its personnel and under new leadership (the head of SAR had been replaced in October 2013), the SAR began processing the backlog of asylum applications and had managed to register them by February 2014, thus normalizing the functioning of the system.

This team effort, however, was not heralded as a resounding success by anybody else but the Bulgarian authorities. While the UNHCR recommended (Observations of April 2014) that an individual assessment of circumstances is still needed before transferring asylum-seekers to Bulgaria, even though a general suspension of transfers might not be necessary any longer, Amnesty International took a different stance while recognizing the improvements. In a March 2014 briefing it called for the outright suspension to continue as reception conditions in Bulgaria were still 'inadequate' in terms of overcrowding and lack of privacy, sanitation, access to education and food provision. An April 2014 ECRE statement confirmed this call, pointing to the long term unsustainability of the improvements (ECRE, Brussels, 7 April 2014). This has also been the general position on the stabilization of the crisis in Bulgaria: the emergency had been halted but the manner in which this was achieved raised serious concerns.

First, the **lack of sustainability** in the authorities' response has been pointed out. Even when factoring in solidarity in the operation of the CEAS (EASO and European Commission), many of the improvements were accomplished with the help of civil society activists, local NGOs and volunteers, rather than the responsible authorities (UNHCR and Amnesty reports). At the same time, the critical role of UNHCR and individual member state contributions cannot be overlooked. It suggests that the supranational arrangement in itself did not cover the emergency: joint international, intergovernmental, national and grassroots civil society efforts did. It has been reiterated that no arrangements have been put in place to prevent another refugee emergency either as a result of Dublin transfers or of further waves of asylum-seekers entering the territory.

This points to the second objection towards Bulgaria's response to the 2013 Syrian refugees crisis: its **questionable legality**. Managing the crisis has been made possible only because of the extreme measures the Bulgarian interior ministry took to restrict access to the territory (Human Rights Watch Containment Plan, April 2014). As of early November 2013 it deployed an additional 1500-strong unit of border policemen, at a distance of some 300m from each other, assigned to physically guard the Bulgarian-Turkish border. As a result, only 139 people in January 2014 and 124 in February 2014 crossed illegally, compared to 200 daily in previous months (Bulgarian Ministry of Interior, 26 March 2014). The statistical data in itself is a clear indication that access to the territory has been restricted, while numerous activists' reports confirm this. In addition, the defence ministry and the interior ministry started procedures for fortifying the border with a 30km long razor-edged wire fencing facility between the villages of Lesovo and Kraynovo, as well as through camera surveillance on the Turkish side of the border (Amnesty Report on Bulgaria, April 2014, 4; UNHCR Report on Bulgaria, April 2014, 5; Milev in Capital Newspaper 28 February 2014). The police force and the fencing project were estimated to be worth more than 10m BGN, indicating that the arguments about Bulgaria's inability to afford the intake of additional refugees were closer to populist rhetoric than to financial considerations. The spiralling spending on closing the border aside, these measures clash with Bulgaria's EU and international law commitments to provide access to procedure to everybody who wishes to claim asylum at its borders. With the physical barriers in place, the media and NGO activists began documenting cases of 'push-

backs' towards the territory of Turkey, in effect refusing such access (e.g. Yankov in Capital Newspaper 31 January 2014) in violation of existing legal norms.

A third objection to Bulgaria's response to the crisis points to the **ambivalent ethical basis** upon which the state has built its asylum system. Bulgaria lacks a comprehensive strategy and programme ensuring that asylum-seekers are treated with responsibility and respect for their human dignity from the moment they reach the borders, and that, once granted protection, they will be given the support necessary for their adaptation and integration (access to education, housing, health services, employment, etc). Despite the limits established by law to the time during which asylum-seekers can be held in detention (Law for Foreigners in the Republic of Bulgaria, Art. 41, Art. 44(6); Law on Asylum and Refugees, Art. 29(4)), one of the gravest human rights issues raised with regard to the 2013 crisis has been precisely the length and conditions of detention (Human Rights Watch, April 2014). This is not a new problem: as early as 2007 an investigative report on the Busmantsi asylum-seekers detention centre had caused an outcry (Burer-Tavanier in Capital Newspaper 15 June 2007). During the 2013 Syrian refugees emergency, in the face of rising concerns about degrading treatment, a legislative proposal was discussed in parliament (Plenary Session on 29 November 2013) to drastically extend the conditions for detention. The support it received is indicative of a divided public opinion towards the moral responsibility that the institution of asylum carries, and of an unclear vision of what asylum means exactly. This is also evident in the post-status treatment of refugees. The integration programmes compiled (in the majority of cases implemented only in the capital) are highly inadequate to meet the demands of high numbers of refugees, particularly those leaving reception centres outside Sofia. Improving the provision for housing, employment and education clashes with public concerns about spending in an austere economy, and largely lacks public support, even though the need for it is apparent. Again, this problem dates back to years before the Syrian crisis when cases of refugees with confirmed status deciding to return to their home countries attract activist and media attention (Capital Newspaper 18 March 2011). However, in the winter of 2013, after almost a year of anti-government protests against a political system seen widely as illegitimate, public tolerance levels had decreased and domestic communities had become increasingly antagonized. This might be one reason why ethical concerns about the wellbeing of non-members of the national community did not resonate highly.

The objections against the sustainability of Bulgaria's existing asylum system, against the legality of the measures taken by the Bulgarian authorities in response to the refugee emergency, and against the ethical underpinnings of the asylum and refugee protection framework the country can offer, point to **systemic deficiencies** that the 2013-14 Syrian refugees crisis revealed. Media coverage, both domestic and international, has tended to report refugee issues from the European periphery in terms of the scandalous and sensational (e.g. the boat tragedies in the Mediterranean). EU and international appeals for action in the face of the indignity of reception conditions and treatment offered to refugees have reinforced the perception of abnormality that needs to be addressed at any cost.

As the overview of the Bulgarian case suggests, however, nothing in the treatment of refugees in Bulgaria visibly contradicts the underlying principles of the CEAS and the tensions that riddle it. An inherent undecideability between the imperatives of human rights protection, and border management

and national security considerations has characterized Bulgaria's response to the escalating refugee numbers, as much as it has distorted the adequate provision of asylum in the EU. The clashing messages sent by erecting physical barriers at the borders and walking the extra mile to improve living conditions inside refugee reception centres seem to have been lost on Europe. But the EU's own ambiguity when it comes to the treatment of refugees, lumping the issue of asylum together with clamping down on irregular migration, improving security by tightening the external border controls, and protecting national identity while ensuring societal cohesion, comes to explain why.

The other trouble with the CEAS, the push and pull between the national/ intergovernmental and the supranational level, has also been manifested in Bulgaria's Syrian refugee crisis. While the development of events was domestically interpreted throughout in security terms (health issues, Islamic terrorism, economic stability, national identity and societal cohesion threat), the expectation of national authorities was to take better control of the situation. The authorities failed to meet it. Had it not been for the supranational arrangement – EASO and European Commission immediate support, as well as for local refugee NGOs and civil society activists, the national framework would have remained insufficient. Both financial means and staffing capacity were pooled towards guarding the border, not addressing the shortcomings in procedures and facilities. At the same time, the contributions of the UNHCR and individual member states cannot be overlooked. Their centrality suggests that the supranational arrangement in itself did not cover the emergency: joint international, intergovernmental, national and grassroots civil society efforts did.

The Bulgarian case also fits nicely into the evidence used to criticize the CEAS with regard to its lack of effective emergency planning mechanisms linked to regional and structural specificities, and its failure to ensure adherence to the rules for providing protection both in terms of lawfulness and in terms of popular resistance and attitudes. The fact that the one thing that ensured manageability of the crisis was the sharply reduced number of entrants is indicative of the problem that the Southern external border member states need to handle. The sheer number of irregular entrants claiming asylum, increasing with every conflict and crisis to the south/ southeast of the EU, as well as with the mandatory Dublin transfers of those who did not claim asylum in the first member state that they crossed, requires a significantly better emergency management mechanism than the one the CEAS has got in place. This mechanism must be tailored to the specific needs of these particular countries and their domestic political infrastructures. The fact that the CEAS is falling short of implementing anything close to that, despite recent talks about redistribution rules, is evidenced by the ever more frequent push-back practices, both ethically and legally objectionable, that allow national authorities to cope with their asylum-seekers without attracting too much public criticism. In this sense Bulgaria's response to the refugee emergency caused by an increased influx of asylum-seekers from Syria in late 2013 is not distinctly non-European. It should be criticized, but it cannot be analysed outside the bigger picture of the evolving European asylum framework and the tensions that riddle it. Only then can the constraints and the imperatives of regulating asylum in Europe be understood in their multi-level complexity.

Europeanizing Asylum: Liberalization or Restriction?

It appears then that the nominally liberalized CEAS contains many contradictions that obstruct its efficient functioning in practice and undermine the extent and quality of the protection it provides. This article framed the study of the national implementation of the EU asylum rules within the wider dynamics of Europeanization in order to highlight the linkages between the problems riddling the CEAS and the failure to protect at home. The analysis carried throughout a two-fold message.

On the one hand, the tensions that riddle the recast CEAS work against the effective provision of refugee protection. Fluctuating between the notions of protection of and protection from refugees, the system has come under increasing pressure. Prolonged periods of detention before and during the procedure, isolation and limited access provision, inequality and discrimination, are among the most poignant aspects of the refugee experience in the EU. In light of year-long protests in Germany and the Netherlands against these woes (McGuaran and Hudig, 2014), conditions in Bulgarian detention centres differ only in scale, not in quality. Bulgaria's moves to extend detention to the entire length of the procedure and to complicate the conditions upon which registered asylum-seekers can exit the closed camps, suggest that the normative imbalances of the system are managing to destabilize the very meaning of refugee and to re-frame it in security terms. The Bulgarian case is also indicative of the structural problems of the CEAS that prevent it from adequately addressing the pressures on the Southern external border. The sheer number of irregular entrants claiming asylum, increasing with every conflict and crisis to the south/ southeast of the EU, as well as with the mandatory Dublin transfers, requires a significantly better emergency management mechanism than the one the CEAS has got in place. Recent crises in Greece (the Kos route) and Hungary (the Macedonian-Serbian route into the EU) confirm this. The fact that the CEAS is falling short of this task is evidenced by the ever more frequent push-back practices, both ethically and legally objectionable, that allow national authorities to cope with their asylum-seekers without attracting too much public criticism. In light of the well documented cases in Italy and Greece (Webber, 2014; Giannetto, 2014), as well as Hungary, the Bulgarian interior ministry has come up with nothing original by physically blocking the border. If anything, such measures tap into popular anxieties about migrants and refugees and their impact on the stability of the state. Lumping asylum together with migration in the harmonization of the whole Justice and Home Affairs area has not allowed for the inherent normative aspects of asylum to come out. The fact that the asylum framework got caught in migration debates meant the antagonisms that accompanied the changing basis of political belonging, mobilization and contest in Europe, widely dressed in the language of populist nationalism, affected the way asylum was dealt with. Singling out insufficient capacity claims, inadequate policy provision and non-adherence to common rules in particular countries as the reason for the malfunctioning of the system means disregarding the interconnectedness and compliance that European integration requires. As the Bulgarian case study demonstrates, the deficiencies in the national application of asylum rules reflect the characteristics of the CEAS itself. They are actually conductive of recurrent refugee emergencies. The asylum situation in Greece and Italy confirm this claim.

On the other hand, the inadequate provision of protection in the EU even after recasting the rules towards nominal liberalization works against the normative logic of Europeanization. The normative power of the EU and its legitimacy stem from its radically different treatment of sovereignty, meant to transgress the antagonisms and constraints of nationalism. Challenged by its rapid growth after enlargement to post-communist Europe, economic crisis and the travails of the currency union, the dynamics of Europeanization has been halted by a shift towards re-defining political community along national lines. The recent push towards harmonizing asylum has been caught into these processes and assessed against them. Liberalization has thus been perceived as inadequate, as has the general course of Europeanization. This is unhelpful. It is important to recognize that the very identity of the EU as a political project is bound to a liberal approach to asylum. The opposite would mean reinforcing the logic of nationalism (albeit at a supra-national level), which defies the raison d'être of the EU itself. In view of the many challenges facing the European project, this seems counterproductive. The effective Europeanization of asylum would benefit instead from an approach that meaningfully addresses the omissions of the system, while recognizing its embeddedness into wider European processes and specific structural constraints on the ground.

The first step to achieving that would be re-enforcing the difference between asylum and migration. This means highlighting the key normative elements of asylum that are universal. They trump concerns about the economic, cultural and social cohesion of an 'imagined community' – whether in individual member states, or in 'Europe', despite the normative arguments that justify these concerns. This may not always be straightforward (Czaika and de Haas, 2014) but in the face of a humanitarian disaster such as the Syrian crisis the need for detaching asylum from other forms of irregular migration becomes much clearer.

A second, albeit more arbitrary, step towards building a truly functional and efficient asylum system in Europe would be to embrace the Europeanization framework which offers a unique opportunity for cooperation, centralization and harmonization. Reverting back to exclusively national level regulation of asylum is neither realistic at this stage, nor, indeed, practical. Even if an out-of-the-EU route eventually becomes an option, as recent anti-EU European Parliament voting trend suggested, internationalization of asylum has been a trend since the 1951 Refugee Convention. Furthermore, interdependence as a result of globalization has made both the responsibility to protect and actual refugee flows more immediate. In view of the very different positioning of states in Europe in terms of refugee flows directions and pressures, a form of burden-sharing seems nothing but sensible. European integration offers the ready context and institutional infrastructure to put it in place. In this sense the recast CEAS, with all its deficiencies in its current form, is a step in the right direction. Not making the next step – improving it even further – would be detrimental not only to the adequate provision of asylum in Europe, but to the European project itself.

Bibliography

Ackers, D. (2005) 'The Negotiations on the Asylum Procedures Directive', European Journal of Migration and Law, 7: 1-33.

Block, Laura and Saskia Bonjour (2013). 'Fortress Europe or Europe of Rights? The Europeanization of Family Migration Policies in France, Germany and the Netherlands' in European Journal of Migration and Law 15(2): 203-224.

Bonjour, Saskia and Maarten Vink (2013). 'When Europeanization Backfires: the Normalization of European Migration Politics' in Acta Politica 48: 389-407.

Boswell, Christina (2007) Theorizing Migration Policy: Is There a Third Way? In International Migration Review 41(1): 75-100.

Boswell, Christina and Andrew Geddes (2011) Migration and Mobility in the EU (Palgrave MacMillan).

Carr, Matt. (2014) 'We want to welcome the living, not the dead' in Statewatch Journal 23 (3/4): 7-9.

Comte, F. (2010) 'A New Agency is Born in the European Union: The European Asylum Support Office', European Journal of Migration and Law, 12: 373-405.

Costello C. "The Ruling of the Court of Justice in NS/ME on the fundamental rights of asylum seekers under the Dublin Regulation: Finally, an end to blind trust across the EU?" Asiel- en Migrantenrecht 83 (2012).

Costello, Cathryn and Emily Hancox, "The UK, EU Citizenship and Free Movement of Persons, Migration Observatory policy primer, COMPAS, University of Oxford, UK, May 2014.

Cowles, Maria, James Caporaso and Thomas Risse (2001) Transforming Europe (Cornell University Press).

Czaika, M. and de Haas, H. (2014), The Globalization of Migration: Has the World Become More Migratory?. International Migration Review, 48: 283–323. doi: 10.1111/imre.12095

Delanty, Gerard, Ruth Wodak and Paul Jones. Identity, Belonging and Migration. (Liverpool University Press: 2011).

Fargue, Philippe. 'Europe Must Take on Its Share of Syrian Refugee Burden, But How?' Policy Brief 14 February 2014 (Migration Policy Centre). Available at http://www.migrationpolicycentre.eu/europe-must-take-on-its-share-of-the-syrian-refugee-burden-but-how-2/ last accessed 18 June 2014.

Freeman, Gary. 'Modes of Immigration Politics in Liberal Democratic States' in International Migration Review 29 (4), (1995): 881-902.

Geddes, A. (2008) Immigration and European Integration: Towards Fortress Europe, 2nd ed., Manchester: Manchester University Press.

Geddes, A. Asylum in Europe: States, the EU and the International System (Manchester: Manchester University Press, 2000).

Giannetto, Leila. (2014) 'FRONTEX and Fundamental Rights: a Love Story?' in Statewatch Journal 23 (3/4): 12-5.

Gibney, Mathew (2004) The Ethic and Politics of Asylum (Cambridge University Press).

Goodwin-Gill, Guy S. Convention Relating to the Status of Refugees and the Protocol Relating to the Status of Refugees. United Nations Audiovisual Library of International Law, 2008. Available at http://legal.un.org/avl/pdf/ha/prsr/prsr_e.pdf last accessed 18 June 2014.

Guild E. and D. Bigo. "The Transformation of European Border Controls," in Extraterritorial Immigration Control: Legal Challenges, edited by B. Ryan and V. Mitselegas. Leiden: Brill, 2010.

Guiraudon, V. (2003) 'The Constitution of a European Immigration Policy Domain: A Political Sociology Approach', Journal of European Public Policy, 10(2): 263-282.

Guiraudon, Virginie and Gallya Lahav. (2000) 'A Reappraisal of the State Sovereignty Debate: The Case of Migration Control.' In Comparative Political Studies 33(2): 163-195.

Hatton, Timothy. (2012) 'Asylum Policy in the EU: the Case for Deeper Integration'. Discussion Paper No 660 of the Centre for Economic Policy Research (The Australian National University).

Huysmans, J. (2006) The Politics of Insecurity: Fear, Migration and Asylum in the EU (London: Routledge).

Ippolito, Francesca and Samantha Velluti. 'The Recast Process of the EU Asylum System: A Balancing Act Between Efficiency and Fairness' in Refugee Survey Quarterly 30 (3), (2011): 24-62.

Joppke, Christian. 'Why Liberal States Accept Unwanted Immigration' in World Politics 50(2), (1998): 266-93.

Karolewski, Pawel and Andrzej Suszycki (2011) The Nation and Nationalism in Europe: and Introduction (Edinburgh University Press).

Kaunert C. & S. Léonard (2012): The development of the EU asylum policy: venue-shopping in perspective, Journal of European Public Policy, DOI:10.1080/13501763.2012.677191

Kaunert, C. (2010) European Internal Security: Towards Supranational Governance in the Area of Freedom, Security and Justice, Manchester: Manchester University Press.

Kaunert, C. and Léonard, S. (2011) 'The EU Asylum Policy: Towards a Common Area of Protection and Solidarity?', in S. Wolff et al. (eds) Freedom, Security and Justice after Lisbon and Stockholm, The Hague: T.M.C. Asser Press.

Kaunert, Christian and Sarah Léonard. 'The European Union Asylum Policy after the Treaty of Lisbon and the Stockholm Programme: Towards Supranational Governance in a Common Area of Protection?' in Refugee Survey Quarterly 31 (4), (2012): 1-20.

Kaunert, Christian. ' Liberty versus Security? EU Asylum Policy and the European Commission.' In Journal of Contemporary European Research 5 (2), (2009): 148-170.

Langford, Lillian M. 'The Other Euro Crisis: Rights Violations Under the Common European Asylum System and the Unraveling of EU Solidarity' in Harvard Human Rights Journal 26 (Spring), 2013: 217

Lavenex, Sandra. "The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies" in Journal of Common Market Studies 39 (5), (2001): 851-74.

Lavenex, Sandra. 'EU enlargement and the challenge of policy transfer: the case of refugee policy.' In Journal of Ethnic and Migration Studies 28(4), (2002): 701-721.

Lavenex, Sandra. The Europeanisation of refugee policies: between human rights and internal security. (Florence: European University Institute, 1999).

Lindstrøm, Channe. 'European Union Policy on Asylum and Immigration. Addressing the Root Causes of Forced Migration: A Justice and Home Affairs Policy of Freedom, Security and Justice?' in Social Policy and Administration 39 (6): 2005: 587-605.

Mastropaolo, Alfio. Is Democracy a Lost Cause? Paradoxes of an imperfect invention. (ECPR Press, 2012).

McGuaran, Katrin and Kees Hudig. (2014) 'Refugee protests in Europe: fighting for the right to stay' in Statewatch Journal 23 (3/4): 28-33.

Moore, Kerry. ''Asylum shopping' in the neoliberal social imaginary' in Media Culture Society 35 (3), (2013): 348-365.

Stern, Rebecca. "Our Refugee Policy is Generous": Reflections on the Importance of a State's Self-Image in Refugee Survey Quarterly (2014).

Stoyanova-Yerburgh, Zornitsa. 'Asylum in the EU: Between Ideals and Reality' in Carnegie Council for International Affairs (2008) available at http://www.carnegiecouncil.org/publications/ethics_online/0022 last accessed 18 June 2014.

Sullivan, John, James Piereson, George E. Marcu. Political Tolerance and American Democracy. (Chicago, University of Chicago Press, 1982).

Thielemann, Eiko and Nadine El-Enany. (2010) 'Refugee protection as a collective action problem: is the EU shirking its responsibilities?' in European Security 19 (2): 2009-229.

Thielemann, Eiko and Nadine El-Enany. 'Common Laws, Diverse Outcomes: Can EU Asylum Initiatives Lead to More Effective Refugee Protection?' Paper prepared for the European Union Studies

Association's 12th Biennial International Conference, Boston, March 3rd – 5th 2011. Available at http://www.euce.org/eusa/2011/papers/1a_thielemann.pdf last accessed 18 June 2014.

Thielemann, Eiko. (2008) 'The Future of the Common European Asylum System: In Need of a More Comprehensive Burden-Sharing Approach' in European Policy Analysis (1): 1-8.

Tolay, Juliette. 'The EU and Turkey's Asylum Policy in Light of the Syrian Crisis' in Aydin-Düzgit, S. Global Turkey in Europe (Edizioni Nuova Cultura, 2014).

Toshkov, Dimiter and Laura de Haan. 'The Europeanization of asylum policy: an assessment of the EU impact on asylum applications and recognitions rates' in Journal of European Public Policy 20 (5), 2013

Triandafyllidou, Anna. 'Multi-levelling and externalizing migration and asylum: lessons from the southern European islands' in Island Studies Journal 9 (1), (2014): 7-22.

Velutti, Samantha. Reforming the Common European Asylum System—Legislative developments and judicial activism of the European Courts. (Springer Berlin Heidelberg, 2014).

Webber, Frances. 'The Cradle or the Grave? EU Migration Policy and Human Rights.' In Statewatch Journal 23 (3/4), (2014): 3-6.

Yardley, Jim and Gaia Piangiani, 'Out of Syria, Into a European Maze' in The New York Times of 29 November 2013 available at http://www.nytimes.com/2013/11/30/world/middleeast/out-of-syria-into-a-european-maze.html?_r=2& last accessed 18 June 2014.