

Lavrysen, Laurens (Ghent University)

The Interaction between the ECHR and European Asylum Law

During the 1990's and the 2000's the European Union (EU) has developed a huge body of instruments in the field of asylum law. The emerging European Asylum Law should however not be considered in a legal vacuum: ever since the 1951 Geneva Convention relating to the Status of Refugees and the subsequent 1967 Protocol, international law has been of paramount importance in this field. In the last decades refugee protection has been particularly shaped by evolutions in international human rights law.

At the level of the Council of Europe, the European Court of Human Rights (ECtHR), the supranational court supervising the European Convention on Human Rights (ECHR), has contributed significantly to the protection of asylum seekers in Europe.

Firstly, under Art. 3 ECHR, the prohibition of torture and of inhuman or degrading treatment or punishment, the Court has developed a huge body of case-law concerning asylum seekers. According to the ECtHR, "*expulsion by a Contracting State of an asylum seeker may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned faced a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the country to which he was returned.*" In this context, the possibility for an asylum seeker of demanding the ECtHR a binding interim measure under Rule 39 of the Rules of Court to prevent such an expulsion is of crucial importance. Secondly, the ECtHR has developed extensive procedural guarantees in asylum cases under Art. 13 ECHR, the right to an effective remedy against breaches of the ECHR or its protocols, and Art. 4 Protocol No. 4, the prohibition of collective expulsions. Finally, Art. 5 ECHR, the right to liberty and security, is particularly important in the context of detention of asylum seekers and Art. 8 ECHR, the right to respect for private and family life, provides some protection against the expulsion asylum seekers with a family in the host country.

This paper will focus on the impact of human rights law, in particular the ECHR, on European Asylum Law. As an exhaustive analysis would be beyond the scope of a simple paper, this paper will highlight a few important recent developments which will redefine this relationship. The entry into force of the Lisbon Treaty has made changes to the EU competences in the field of asylum law and to the EU system of human rights protection. Meanwhile discussions are on-going about the introduction of new pieces of legislation, replacing the current EU asylum instruments. The ECtHR on its turn has had the opportunity to rule on EU asylum instruments, in particular in the case of *M.S.S. v. Belgium and Greece*.

First this paper will give an introduction to the competences of the EU in the field of asylum law and on the main instruments of European Asylum Law (2.), as well as to the EU system of human rights protection (3.). Subsequently the paper will focus on some important human rights challenges presented to European Asylum Law, in particular the "Dublin II" system of responsibility for examining asylum applications (4.), the reception (5.) and detention of asylum seekers (6.) and the hindering effect of anti-immigration measures on asylum protection in the EU (7.).