



Book Review: Evangelia (Lilian) Tsourdi and Philippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law*

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Abstract

The nature of developments with asylum and migration procedures and policies have evolved over decades by the European Union (EU). The harmonisation of legislation and administration across Member States have been prime objectives of the EU. Nevertheless, the evolution of policy and legislation which seeks to guarantee the rights of individuals to international protection from States have been interwoven with the present challenge of combatting illegal forms of migration. This book review comprehensively outlines the key themes and approaches of the EU in the fast-evolving areas of migration, asylum, and illegal migration. It identifies further developments within EU asylum and migration law.

Keywords

EU Migration, Asylum Law, International Refugee Law, Legal Migration, Illegal Migration.

I. INTRODUCTION

Evangelia (Lilian) Tsourdi and Phillippe De Bruycker's *'Research Handbook on EU Migration and Asylum Law'* is the latest addition to numerous titles on European Union Law providing essential reading for academics and students, contributing to ongoing debates by providing influential knowledge and expertise in this area. It is an edited book with a collection of important contributions from experts who are members of the Academic Network for Legal Studies on Immigration and Asylum in Europe.

The area of asylum and migration continues to evolve over the past twenty years since the initial focus of this issue from the Treaty of Amsterdam which was drafted in 1997 and

¹ This book is priced from £225.00 from the Edward Elgar Publishing website.

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came into force in 1999.² More recently, there has been the creation of various European Union (“EU”) agencies such as the European Asylum Support Office (“EASO”) which is now called the European Union Agency on Asylum (“EUAA”) and the European Border and Coast Guard Agency (still commonly referred to as Frontex) who implement the policy objectives in this area alongside the reliance by authorities within Member States using specific EU databases.³

This handbook includes a comprehensive number of contributors offering expertise and knowledge on specific issues within EU migration law. It is split into four distinct parts, each detailing the law, amendments to these legal instruments and the practical implications arising which the EU is grappling with at the same time as balancing regular and irregular migration. The context in which the EU is legislating in this area took place at the same time as the Syrian refugee crisis unfolding in the Middle Eastern region where more than a million refugees escaped from Syria into Turkey into the EU’s borders.

The handbook can be read considering the present situation in the Ukraine where many people are seeking refuge within EU borders. In addition, the impact of border controls from travel restrictions during Covid-19 has brought issues to the political forefront.

II. PART I: CROSS-CUTTING THEMES

The opening part of the book by Daniel Thym examines several interesting issues on the institutional and constitutional framework of the EU and how they impact on migration and asylum law within the EU.⁴ This is some reference to the United Kingdom’s (“UK”) decision to leave the EU, especially as it no longer has access to the Schengen Information System or is bound by the Dublin regulations.⁵ It explains that cooperation between the UK and the EU Member States will be subjected to future international agreements, providing a certain level of anxiety as to how these issues will play out. It would have been interesting to have seen further discussion on the impact of Brexit here.⁶

Much of the commentary about the commitment to maintain free movement of persons⁷ takes place within the environment where there is an influx of migration to the EU because of political instability and war in other parts of the world. This presents its own challenges, and the handbook argues that extending the mobility rights of Third Country Nationals (“TCNs”) would have a positive impact on increasing growth within economic areas where there are low skilled workers. However, it is acknowledged that there is some resistance as to this approach to these proposals. Finally, within this part of the handbook, the use of technology in administering migration and asylum procedures is considered. It has been acknowledged by Niovi Vavoula in Chapter 5 of Part I that the use of such technology will have consequences and interferes with certain human rights such as the right to a family life, alongside other rights including the protection of data, human dignity, effective remedies, and

² Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Final Act OJ C 340, 10.11.1997.

³ There are five main databases. They are the Schengen Information System (SIS), EURODAC which hold the fingerprints of asylum seekers, the Entry Exit System (EES), the European Travel Information and Authorisation System (ETIAS) and the European Criminal Record Information System (ECRIS).

⁴ Daniel Thym, ‘Institutional and constitutional framework,’ in Evangelia (Lilian) Tsourdi and Phillippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (Edward Elgar, 2022).

⁵ The 1990 Dublin Convention was a treaty between the EU States to oversee the jurisdiction of asylum within the EU, and to determine which EU State was responsible for processing an asylum application.

⁶ For further reading see Brigid Laffan and Stefan Telle, *The EU’s Response to Brexit: United and Effective* (Palgrave Studies in European Union Politics, Palgrave Macmillan, 2023).

⁷ Article 45 Treaty on Functioning of the EU (TFEU): Free Movement of Workers.

the rights of children.⁸ Having said that, the use of technology will not reduce, and will form part of a wider strategy to implement asylum and migration policies in the years to come.

III. PART II: ASYLUM

The second part of the handbook offers an insightful commentary from numerous experts on several policy issues relating to asylum. The analysis in this area takes place in the context of the Common European Asylum System (CEAS) which ‘aims to harmonise Member States’ duties to grant asylum to refugees, as according to *The 1951 Convention relating to the Status of Refugees (Refugee Convention)*.⁹ The first part of this section explains how the European system through three main Directives, the *Qualification Directive (QD)*¹⁰, *The Asylum Procedures Directive (APD)*¹¹ and *The Reception Conditions Directive (RCD)*¹². The implementation of all the above complement the *Refugee Convention*. There is still the need for States to cooperate with other States when processing asylum applications. Despite this it is acknowledged that the present situation is more akin to where more States are implementing deterrence policies such as the ‘pushbacks’ of migrants and the prosecution of NGOs who assisted in helping migrants at sea, a practice which originated because of the 2015 Syrian Refugee Crisis. In addition, it has been shown that Covid-19 has provided some States with the opportunity to use the pandemic as a means of restricting entry to migrants based on grounds of public policy protection, using the health crisis as a justification for a tougher border control approach.

In the same way that the three Directives above fulfil the *Refugee Convention*, ‘subsidiary protection status complements refugee status by broadening the category of protected persons by incorporating ideas of the preceding regional arrangements,’¹³ and the EU has a Directive on temporary protection too.¹⁴ Subsidiary protection is only available to those who do not qualify as a refugee and is a form of international protection. This chapter examines the elements of the definition and offers a detailed explanation as to how this form of international protection differs from the *Refugee Convention*, namely that the grounds within the *Refugee Convention* are not relevant to subsidiary protection. An interesting discussion is the way that the Internal Protection Alternative or the Relocation Alternative can be used so that a person can safely live in another part of the country which they are seeking refuge. However, it is acknowledged that there are practical obstacles involved in this such as the safety of travelling to that part of the country and more importantly the risk that the person will not be able to settle in that part due to factors such as, but not limited to disability, religion, or language. This raises

⁸ Niovi Vavoula, ‘Digitalising the EU migration and asylum policy; a case study on information systems,’ in Evangelia (Lilian) Tsourdi and Phillippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (Edward Elgar, 2022) 139.

⁹ Paul McDonough and Tamara Tubakovic, ‘International refugee law and EU asylum law: accordance and influence,’ in Evangelia (Lilian) Tsourdi and Phillippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (Edward Elgar, 2022) 141.

¹⁰ 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 a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted [2011] OJ L337/9 (Qualification Directive (recast)).

¹¹ Council Directive 2013/32/EU of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection [2013] OJ L180/60 (Asylum Procedures Directives (recast)).

¹² Council and European Parliament Directive 2013/33/EU of 26 June 2013 Laying Down Standards for the Reception of Applicants for International Protection [2013] OJ L180/96 (Reception Conditions Directive (recast)).

¹³ Boldizsar Nagy, ‘Qualifying for international protection in the EU,’ in Evangelia (Lilian) Tsourdi and Phillippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (Edward Elgar, 2022) 168-169.

¹⁴ Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001] OJ L212/12.

further issues for trafficked victims who could be at risk of being stigmatised if forced to return and to relocate to another part of the country where the trafficking originated from, exposing them to the risk of being re-trafficked.

A discussion how the differences on gender and sexuality in asylum decision making is addressed later in this part by Thomas Spijkerboer.¹⁵ This provides a fascinating commentary as to the achievement gaps of LGBTQI cases and in gender specific cases being recognised. The way in which asylum seekers are treated is often an important topic and critiqued well, especially because some States have become more restrictive in their reception and welcoming of asylum seekers. A comprehensive summary of the way the EU has addressed this issue over several decades is extremely informative and demonstrates a strong framework which States must respect and be responsible for especially in accordance with human rights standards on human dignity.

This chapter also brings together a greater depth of knowledge of the topic of vulnerability of individuals, *per se* rather than individuals being part of a specific group. The rhetoric of labelling people within groups can often produce unintended stereotypical narratives which often do not bring through the issues that an individual experiences which makes that person vulnerable to either being trafficked or becoming an asylum seeker. This section comprehensively acknowledges that asylum seekers are vulnerable and require protection and safeguards which the EU has provided for such as the *Reception Conditions Directive*.¹⁶ It is widely acknowledged that Member States satisfying their legal obligations often conflict with their own political policy objectives, creating a difficult situation where States must balance the interests of vulnerable individuals whilst at the same time, consider the electoral consequences if the perception is that States are prioritising the interests of non-nationals over the interests of their own citizens. This is especially problematic where some States are taking on a heavier burden of processing larger numbers of asylum seekers at the expense of others. It also examines the idea of 'fair sharing' and the less effective way the Dublin Regulations have worked in practice, especially in the context of the increased refugee crisis being played out at simultaneously.

IV. PART III: LEGAL MIGRATION

Part III continues the themes of balancing the interests of States with those of the individual and the various competing arguments on each side which has been considered through ECHR case law.¹⁷ This is an interesting section as it is written considering the UK's present labour shortage and indeed the global shortage of low skilled workers which the EU has facilitated through legal migration into Member States. It sets out several general frameworks such as the *Single Permit Directive*,¹⁸ the *Blue Card Directive*,¹⁹ *seasonal workers*²⁰ and *intra-corporate*

¹⁵ Thomas Spijkerboer, 'Asylum decision-making, gender and sexuality,' in Evangelia (Lilian) Tsourdi and Phillippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (Edward Elgar, 2022) 194-195.

¹⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180/96, 29.6.2013.

¹⁷ See *Gul v Switzerland*, App no 23218/94 (ECtHR, 1 February 1996) [38].

¹⁸ Directive 2011/98/EU of the European Parliament and of the Council on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State [2011] OJ L 343/1 (Directive 2011/98).

¹⁹ Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, [2009] OJ L 155/17 (Directive 2009/50).

²⁰ Council Directive 2014/36/EU of the European Parliament and of the Council on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, [2014] OJ L 94/375 (Directive 2014/36).

*transferees*²¹ to be used harmonically across the EU to avoid non-discrimination of other EU citizens and third-country nationals. Moreover, it provides a platform to build integration whilst improving the economy of the entire EU.

This section also brings into sharp focus the importance of EU States to cooperate with each other to implement a consistent and effective immigration policy. This area has constantly evolved and produces a substantial summary of the frameworks with external States outside the EU to agree partnerships which has been shown to be a new and developing policy to focus on topics such as return and readmission policies. It provides a useful source of information to understand how this approach will be considered important as increased migration events occur in the future.

V. PART IV: THE FIGHT AGAINST ILLEGAL MIGRATION

The final part of the handbook offers an insightful critique of how the EU intends to control its borders and combat illegal migration. These issues have been and continue to be extremely important given the difficulties that transnational organised crime offers whilst operating within bona fide methods of entering another country illegally, primarily entering a State to claim asylum.

This section brings together knowledge on the *EU Visa Policy*²² which has been implemented to signal to some States that a specific visa²³ will be required for a host of reasons such as to counter illegal immigration, promote public policy and security and to boost economic benefit through tourism or trade.²⁴

The management of external borders is even more important given the Refugee Crisis seen in 2015 and how restrictions have been placed on travel by States during the Covid-19 pandemic. The way in which agencies such as Frontex and the European Border and Coast Guard (EBCG) have operated during these times is very interesting and their roles have changed because of events. This is especially true in Frontex's role where their role as operational as well as a supervisory one. The issue of whether Frontex has international legal personality and therefore has legally responsibility for any breaches under international law is an interesting discussion.

There is a risk that as part of the migration journey individuals are at risk of being exposed to crime and becoming a victim. Conny Rijken has called this situation, 'victimmigration.'²⁵ The direct impact has been shown to result in the criminalisation of migrants at the expense of being recognised as being vulnerable and identified as either a trafficked victim or a smuggled person. These two terms, human trafficking and human smuggling are often spoken about as being the same thing. When these crimes are spoken about in the wrong way, it can prevent understanding the deeper issues of each problem and consequently any policy initiative to combat either would be flawed. This section of the

²¹ Council Directive 2014/66/EU of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, [2014] OJ L 157/1 (Directive 2014/66).

²² Council Regulation (EC) 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement [2001] OJ L L81/1, Preamble.

²³ These can either be a Short Stay Visa (C Visas), Airport Transit Visas (A Visas) and Long Stay Visas (D Visas).

²⁴ Elspeth Guild and Maja Grundler, 'The EU visa policy: to deter and to facilitate,' in Evangelia (Lilian) Tsourdi and Phillippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (Edward Elgar, 2022) 390.

²⁵ Conny Rijken, 'Victimmigration: when smuggling becomes trafficking,' in Evangelia (Lilian) Tsourdi and Phillippe De Bruycker (eds), *Research Handbook on EU Migration and Asylum Law* (Edward Elgar, 2022) 471.

handbook which is written very well by Conny Rijken brings together a greater depth of knowledge to this area and focusses how the practice of smuggling can turn into cases of human trafficking in different ways. These discussions will be of benefit to all practitioners and academics who wish to understand more about the reluctance of States to acknowledge this phenomenon of criminalisation alongside immigration. A final point relates to the role refugee law can play in protecting victims of human trafficking which is also an informative read.

VI. CONCLUSION

A consistent theme which runs through the thread of this handbook is the important of cooperation between Member States to achieve the EU's policy aims and objectives. Additionally, the issue of States sharing the burden of processing and welcoming asylum seekers is stressed at various points in the handbook. The overarching justification for this approach is to eventually be considered as future European Union citizens. Despite numerous issues from various Member States on this worthwhile objective, it remains to be seen how the policies are further implemented and amended and how successful the agencies operate to combat irregular migrants simultaneously as attracting legitimate migrants and vulnerable people requiring sanctuary from the EU. This handbook is a worthwhile addition to the previous handbooks on EU law and provides a clear and comprehensive look at the topics involved which the EU are continuing to deal with and look for solutions. Furthermore, it will be interesting to see how the EU Commission interacts with the UK concerning the cross-border issues of legal and illegal migration discussed in the handbook because of the majority of the UK's electorate deciding to leave the European Union.