



Sant'Anna

School of Advanced Studies – Pisa

Summer school

**“Family life and rights of migrant children in the European Union”
Jean Monnet Module MARS**

Topic: The access to the asylum procedure and the non-refoulement principle.

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I. The access to the asylum procedure

1.Identification.

2.Everyone is entitled to protection against refoulement.

3.Vulnerable persons must be identified and adequately supported.

4.Best interest of the child takes precedence in all action concerning children

5.Anyone who may wish to apply for international protection must be informed about their right to do so

6.Everyone has the right to apply for international protection.

7. International protection seekers must not be penalized due their illegal entry or presence.

8.Each applicant must be registered or referred for registration to the responsible authority

9.The principle of non-refoulement must be assured even when a person does not apply for asylum.

SOME CHALLENGES TO ASYLUM PROCEDURES

1 "Security-bis Decree" no. 53 of 14 June 2019

The new law grants new powers to the Ministries of the Interiors, Defence and Transport, who will now jointly be able to restrict or prohibit the entry, transit or docking of ships in the territorial sea, except for military or government non-commercial vessels, for security reasons, when there are reasons to believe that the crime of aiding and abetting illegal immigration has been committed (Article 1). Violations of this provision are punished with administrative fines between 150,000 euros and 1 million euros, in addition to the existing criminal sanctions for aiding and abetting illegal immigration. If the violation is reiterated, the ship will also be confiscated by the authorities. You can consult the official text of the Law incorporating the amended Law Decree No. 53/2019 (in Italian)

So, the Decree Law poses questions about the respect of the following international standards on human rights and refugee protection.(Art2:right to life)

It is difficult or even impossible to have access to asylum

The case of Sea Watch 3

Sea-Watch 3 is a ship flying the flag of the Netherlands, which is used for search and rescue (SAR) of shipwrecked people in areas off the Libyan coast.

Sea watch-3 recovered 53 people in the waters of the Libyan SAR zone, of which 11 were immediately brought ashore for medical reasons, while the remaining 42 remained on board. The ship remained in a waiting position in international waters off Lampedusa without permission to enter.

On 26 June, the ship entered Italian territorial waters, despite the threat of heavy sanctions. Once disembarked, the captain was arrested because according to public prosecutors she clearly disobeyed an order by the authorities and her conduct wasn't justifiable due to acts necessary to avert the risk of a serious danger. Prosecutors claimed that the ship was constantly monitored and assisted by authorities so the state of necessity was not there.

Push back

The number of migrants arriving in Europe by land or sea has significantly decreased in the past few years. In 2020 the figure dropped to 100,000 from nearly 130,000 in 2019, 190,000 in 2017



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Libyan coast guards on Wednesday intercepted a boat carrying 108 Europe-bound migrants and returned them to Tripoli | Photo: Picture alliance/dpa/XinHua | Hamza Turki

The use of «Quarantine ships»

Quarantining newly arrived migrants on board ferries moored off shore in several ports in the south of the country

10000 migrants confined on quarantine ships as of November 2020

2 investigations about 2 unaccompanied minors dead after disembarking from quarantine vessels, allegedly as a consequence of lack of proper health assistance onboard

II.The principle of non-refoulement

Article 33 of the 1951 convention relating to the status of refugees defines it as:

The fundamental principle of the law that forbids a country receiving asylum seekers from returning them to a country in which they would be in likely danger of persecution based on race, religion, nationality, membership of particular social group or political opinion.

Applicants for international protection should not be punished because they entered or remained in the country irregularly under the condition that they present themselves to the authority without delay.

Non-refoulement also binds all EU Member States. Accordingly, they must not send people back to a third country or any place where they may be persecuted or subjected to inhuman treatment or punishment.

It also applies to third country nationals entering a country in an irregular way

Member states should grant access to a fair and efficient asylum procedure. Only after a thorough, individual examination of the case, Member States can decide if that person should be granted protection or not.

Thank you

THE END