

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

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Deportation Juggernaut

SURADHISH VATS¹

ABSTRACT

The only difference between the word 'humane' and 'inhumane', is the use of 'in' at the beginning and if such migrants, refugees and immigrants are never 'in' the territory of the European Union ('EU') and its member states, then such practices will always be deemed to be humane. The paper seeks to examine and analyse the themes and that still hold true and are relevant to the present public discourse, concerning the New Pact on Migration and Asylum. The treatment by Greece of the thousand migrants who were abandoned at sea, the destruction of the Moira refugee camp at Lesbos, brings to light the inhumane EU immigration laws and deportation programme. Themes such as setting up of targets with respect to the number of illegal refugees to be expelled or deported, the increasing influence of nationalist sentiments by nationalist and populist parties in enabling and implementing such measures, the use of force in the process, the dangers that such people face once returned and the impact of such policies on children will be discussed in the paragraphs to come.

Keywords: Migrant, Deportation, European Union, Migration, Asylum

I. SETTING OF TARGETS

The control that states exercise over how many people are to be given entry to a state also empowers them to remove those who do not enjoy the right to stay; thereby, removal grants credibility to an effective asylum process. Furthermore, let us look at some statistics, “*The number of asylum applications peaked at 1.28 million in 2015 and was 6,98,000 in 2019. On average every year around 3,70,000 applications for international protection are rejected but only around a third of these persons are returned home. The EU hosted some 2.6 million refugees at the end of 2019, equivalent to 0.6% of the EU population.*”²

There are multiple issues with the setting up on the number of people that are required to be deported, deportation or removal can only be considered fair in cases where an asylum seeker has been given a just and fair opportunity to present his case, and such cases have been dealt

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² European Commission, *Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions On A New Pact On Migration And Asylum*, EUR-LEX: EU LAW, https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF.

with fairly. However, this is not the case in the EU, as systems to fast track asylum cases have been introduced and there has been a reduction in the funding for asylum seekers to file appeals against rejections. The New Pact on Migration and Asylum also seeks to further such fast-track mechanisms by bringing in place, a new-pre-screening regulation, the end of such screening has to be concluded within five days. People who do not qualify can be directed to return and not enter the border, the new rules also stipulate that under the asylum border procedure, a return order must be issued simultaneously with a negative asylum decision, speeding up existing practices³, and only allows for a single appeal. To reduce the number of people who apply for such asylum, or decide to migrate, procedures to claim such rights are being raised and made more stringent, this enables the member states to send back those who do not meet such requirements. As seen from the above statistics, there is a sharp decline in the number of asylum applications, while there is a steady rise in the removal of such refugees in addition to the budget that countries are now willing to spend on forced removals. The New Pact on Migration and Asylum also introduces return sponsorship, it has been explained as, “*under return sponsorship, a Member State commits to returning irregular migrants with no right to stay on behalf of another Member State, doing this directly from the territory of the beneficiary Member State.*”⁴ Under the new policy states who do not welcome refugees, will now be able to sponsor and send such refugees back to their country of origin. The new pact, is a serious threat to asylum rights and “*the EU is effectively becoming the largest ‘return travel agency’ for migrants and refugees across the Mediterranean*”⁵. Dragos Ciulinaru argues that the treatment of Roma migrants in France and how the evictions and reparations were a fundamental rights issue due to the nature of such evictions being discriminatory. “*The estimated number of Roma migrants forcibly evicted was 21,537 for 2013, 14,483 for 2014, and 11,128 for 2015 (ERRC 2017). In 2016, ERRC noticed a decrease in numbers of forcibly evicted, but an increase in the number of evictions without any legal court decision*”⁶. The United Nations High Commissioner for Human Rights also took cognizance of the matter and stated that the systemic eviction for Roma migrants through state policy has become apparent. The setting of targets as undertaken by many countries is brought to the fore by way of statistical analysis which shows the increase in the number of deportations and how such

³ European Commission, *New Pact on Migration and Asylum: Questions and Answers*, https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1707#how-long.

⁴ *Id.* at 2.

⁵ EuroMed Rights, *Eu Pact On Migration: A “Fresh Start” For Human Rights Violations*, EUROMED, <https://euromedrights.org/publication/eu-pact-on-migration-fresh-start-for-human-rights-violations/>.

⁶ Dragos Ciulinaru, *When BInclusion Means BExclusion: Discourses on the Eviction and Repatriations of Roma Migrants, at National and European Union Level*, 19 *Int. Migration & Integration*, 1059–1073 (2018).

deportations are being increasingly funded by the state, this can be seen by the activities undertaken in countries such as Ireland, Sweden Spain, Germany and Britain. For example, “*In Sweden, the budget for removing failed asylum seekers rose from 42m SKr in 2000 to 73m SKr in 2003, with the figure for 2004 expected to be even higher owing to a 30 per cent increase in expulsions. Up until June 2004, 1,727 removals had been carried out, which was an increase of 21 per cent when compared to the same period in the previous year.*”⁷ As can be seen from this paragraph it is evident that the message communicated to migrants, immigrants and refugees is that they will be returned. Therefore, not only is this a violation of human rights and international law obligations it also undermines the 1951 Geneva Convention relating to the status of refugees.

II. THE INFLUENCE OF THE FAR RIGHT

The reference to the arrival of such refugees as a ‘crisis’ by nationalist and populist parties is alarming, as this is dismissive of the fact and circumstances which forced such people to flee their motherland in the first place and it is considered a crisis as it threatens the white population and social cohesion. The original intention of the drafters of the 1951 convention, was that the right to asylum is based on the need of individuals and not based upon the number. This was recognized to enable and grant protection to a large number of people in Europe who were displaced after World War 2, however, it seems that the original vision and intention behind such policy and protection seems to be lost due to the influence of the far-right.

The problem is not overburdening resources of the respective countries, as seen earlier refugees only constitute 0.6% of the EU population⁸, the “*UNHCR statistics from 2016 show that the countries receiving the largest numbers of ‘persons of concern’ in Europe were Germany (1.27 million) and Sweden (349,303). In relation to the total population of these countries—Germany 82.67 million and Sweden 10 million— ‘refugee’ numbers are a tiny percentage*”⁹, Rodriguez states it is a crisis “*conflated with racist fantasies of *Uberfremdung* (foreignization), a fantasy of loss of national identity and culture based on one people, race, ethnicity, religion, and language.*”¹⁰ Thus, by painting the migrants, immigrants, and refugees in parts of the EU, as sexual predators, deviants, terrorists, and those who threaten the white hegemony and Christian values, the nationalist and populist parties which have been gaining momentum since 2016

⁷ Liz Fekete, *The Deportation Machine: Europe, Asylum And Human Rights*, 47 RACE & CLASS SAGE PUB. (1), 64-789, (2005).

⁸ Id. at 1.

⁹ Encarnacion Gutierrez Rodriguez, *The Coloniality of Migration and the “Refugee Crisis”*: On the Asylum-Migration Nexus, the Transatlantic White European Settler Colonialism-Migration and Racial Capitalism, 4 CANADA'S JOURNAL ON REFUGEES, 2018.

¹⁰ Supra 9.

after the 2015 migrant crisis, have been successful at painting a picture of crisis through such discourses by creating a sense of fear and threat to security. The need to control the borders has gained traction aided by the idea of state sovereignty and protecting national identity and security from the threat of the migrant ‘others’ who might deplete the finite resources available to a country and are seen as competitors for such resources, however, such concerns are misguided. “Concerns focus on material goods (welfare, housing, education, health care), on abstract goods such as the identity of the receiving country and its citizens, and on a state’s need to be seen as in control of its borders”¹¹. To quote from the leader of the Danish Peoples Party, Pia Kjaersgard according to her, refugees are “a major financial burden’ and it is ‘our own citizens, and primarily the elderly, who are targeted for cutbacks”¹². The example of the Roma migrants and the construction of their image is further an example of the influence of the far-right, this can be seen from the comments passed by Éric Zemmour, a French right-wing television and radio commentator, who said and I quote, “that the barbarian pillage of Europe following the fall of the Roman Empire is being re-enacted today by ‘thieving violent gangs of Chechens, Romas, Kosovars, North Africans, and Africans’. There is evidently an ideological nexus of ‘non-European’-ness that increasingly conjoins the figures of ‘Roma’ with ‘migrant’ with ‘Muslim’ with ‘terrorist’ with ‘criminal’ with racialised Blackness”¹³. Thereby, treating such migrants as threats and a burden on a state’s resources, the influence of the far-right is evident and in doing so it legitimizes the use of force and implementation of policies for their deportation and removal which is reminiscent of xenophobic racism inherent in the EU’s deportation policies. Therefore, the far-right has been successful in creating a notion that such migrants, immigrants, asylum seekers and refugees are not only a burden on a state but also pose a threat, to help legitimize the use of force and such policy.

III. THE USE OF FORCE

The use of force in any instance should not be more than what is reasonably necessary. Despite the necessary use of force being made clear by The Council of Europe’s Committee for the Prevention of Torture, gross violations of excessive force being used to detain refugees, migrants and asylum seekers is evident. The recent death of George Floyd in the United States of America, where a police officer used his knee and suffocated a person to death, brought to

¹¹ Liza Schuster, *Common Sense or Racism? The Treatment of Asylum Seekers In Europe*, 37 PATTERNS OF PREJUDICE 3, 233-256 (2003).

¹² Liz Fekete, *The Deportation Machine: Europe, Asylum And Human Rights*, 47 RACE & CLASS SAGE PUB. 1, 64-789, (2005).

¹³ Can Yildiz Genova & Nicholas De, *Un/Free Mobility: Roma Migrants In The European Union*, 24 SOCIAL IDENTITIES J. FOR THE STUDY OF RACE, NATION AND CULTURE 4, 425-441 (2017).

light the excessive use of force exercised by law-enforcement officials. This is scarily similar to an incident that took place in Belgium where a Nigerian citizen was killed by asphyxiation, as a police officer used a cushion to silence her till she died, while the other officer held her hands. This passage seeks to address how such excessive force is used by officials in the EU to ensure removals. The setting of targets has legitimized the use of such force. Article 3 of the ECHR (European Convention on Human Rights), prohibits torture and states, “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”¹⁴. Despite the existence of such provisions, there are abundant instances of degrading punishment or treatment being meted out to such individuals. Instances where a person was blinded in the right eye during a deportation attempt, deportees being dragged on their backs while being boarded on aeroplanes, the use of racist slurs, instances of law enforcement officials kicking, punching and slapping individuals are well documented and reported. A report by the Birnberg Peirce & Partners, Medical Justice and the National Coalition of Anti-Deportation Campaigns¹⁵, brings to light such gross violations, in which they found “*that 48% of the assaults occurred at the airport before the detainee was placed on the plane and 12 % took place in the transport van on the way to the airport. 24% of alleged assaults took place on the aeroplane before take-off and 3% after take-off. 7% took place in the van back to the detention centre after the removal had already failed and 6 % took place within detention centres. Many of those assaulted made allegations of racism against the escort; there are repeated accounts of abusive language used such as ‘black bitch’ and ‘black monkey’, go back to your own country.*”¹⁶ Liza Schuster highlighted how practices such as people often being restrained with handcuffs, having their mouths taped shut are not uncommon or unheard of, deportees from Germany have often been sedated throughout the deportation process, people being deported from Germany have also been sedated¹⁷. It is evident that the systematic abuse of rights of such vulnerable communities is institutionalized and systematic and is done at the hands of state law enforcement officials. The existence of such legal provisions as under the ECHR is not of much help to such asylum seekers and refugees, as the process is often long and complicated, and the police officials do not take such complaints seriously, being the perpetrators themselves. The irony is that such people flee their own countries to protect themselves from violence, only to

¹⁴ European Convention on Human Rights, Article 3.

¹⁵ Birnberg Peirce & Partners, Medical Justice and the National Coalition of Anti-Deportation Campaigns, *OUTSOURCING ABUSE THE USE AND MISUSE OF STATE-SANCTIONED FORCE DURING THE DETENTION AND REMOVAL OF ASYLUM SEEKERS*, <http://www.medicaljustice.org.uk/wp-content/uploads/2016/03/outourcing-abuse.pdf>.

¹⁶ *Supra* at 15.

¹⁷ Liza Schuster, *Common Sense or Racism? The Treatment of Asylum Seekers In Europe*, 37 *PATTERNS OF PREJUDICE* 3, 233-256 (2003).

be subjected to violence in a country they seek shelter in from such circumstances.

IV. THE DANGERS OF RETURN

The rights of those who are deported back to their country or other safe third world countries need to be examined, as on the face of it these measures seem in the best interest of the people, however, such asylum seekers face persecution once they are sent back. Article 33 of the 1951 Convention states, that *“No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”*¹⁸ Despite the existence of such provisions, many such refugees and asylum seekers are sent back to their nation-states. Countries that are known for the persecution of political dissidents, refugees are often subjected to torture and detention upon their return, this in a way ensures that if such refugees and asylum seekers did not die at the hands of the police brutality subjected to them in the member states in which they sought shelter, the imminent threat to life is certain upon their return. If not directly sent back to their country of origin there also exists now the concept of chain deportation. To better understand this let us assume ‘A’ is a migrant who has entered Libya from Egypt he now attempts to seek asylum in Italy. ‘A’ is now trying to enter Italy from Libya, he will be immediately sent back to Libya, who in turn will then deport him back to Egypt. This is in lieu of the agreement that Italy has entered upon with Libya. Agreements such as these have been held to be in direct violation of humanitarian law, and the rights of asylum seekers as now Italian officials do not vet the veracity of the claims of such asylum seekers and all of them are sent back. Measures taken by countries such as Italy makes it the need of the hour for the imposition of heavy sanctions on such countries for contravention of obligations and international humanitarian law. There also exists no mechanism to monitor the conditions of such people once they are returned, it is interesting here to point out the comparison drawn between deportees and animals. Liz Fekete states that *“Every cow that goes in and out of Europe is tagged, documented and monitored so that EU officials know details of its movements and its whereabouts. It is fully traceable. But the fate of asylum seekers is nobody’s concern. They have less value than livestock”*¹⁹. Under the 1951 Geneva Convention no country can be considered ‘safe’, reiterating that each claim must be examined individually and carefully. The New Pact on Migration and Asylum, adds “safe third country” as a criterion in the determination of refugee

¹⁸ The Refugee Convention, 1951, Article 33.

¹⁹ Liz Fekete, *The Deportation Machine: Europe, Asylum And Human Rights*, 47 RACE & CLASS SAGE PUB. 1, 64-789, (2005).

status. This assumes that the refugee is coming from a safe third country, where there is no risk from persecution. The new pact is not reflective of the present society we live in and only adds to the problem of returning such migrants and refugees to countries where their security and life are at stake. Therefore, the security of member states and their populations takes paramount importance over the protection of such refugees, as the image constructed is that of a threat and not the fact that such people require protection from a humanitarian perspective.

V. CHILDREN AT RISK

Children are among the most vulnerable groups in such deportations, due to their tender age it is imperative that they are safeguarded and their best interests are always kept in mind as held in The UN Convention on the Rights of the Child (1989). To give an example officials in the UK are authorized to round up children and pick them up from school to be detained with members of their families, this was vehemently opposed in Norway by the parents association there, which held that schools must always remain as a place of safety. The long term mental health impacts of witnessing the deportation of their parents on the minds of young children often go unnoticed, the case of a boy in the UK who aged five witnessed his mother being deported where the police used a body belt to restrain her and wrapped tape around her mouth to stop her from screaming, the case seeking compensation for psychological damage suffered is ongoing. The New Pact seeks to bring about and protect children, it is stated, that unaccompanied minors and families with children under the age of 12 will be exempt from the border procedure. Unaccompanied minors' representatives should be selected immediately and given sufficient resources. At every stage, tailored methods should reflect the specific requirements of children, in addition, "*The role of the European Network on Guardianship should be strengthened. Family reunification will be strengthened by enlarging the definition of family members to include siblings and families formed in transit countries*"²⁰. It can be seen from the new pact that the best interests of children are being kept in mind from a plain reading of the text. However, only the future will tell if such provisions actually benefit the children. The fear of being deported is a host to multiple mental health issues which are faced by deportees, these often include self-harm and suicide, these very real issues are often denounced and considered manipulative to blackmail authorities. The impact on children witnessing their parents commit suicide and the mental health of such deportees, are very real concerns that need redressal and the attention of policymakers who are dismissive of the same.

²⁰European Commission, *New Pact on Migration and Asylum: Questions and Answers*, https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1707#how-long.

VI. CONCLUSION

The above themes have abundantly made it clear how the EU, its member states and policies of deportation have flipped the coin on the heads of such migrants, refugees, immigrants and asylum seekers. The victim is the EU, its member states and their populations and the refugees and migrants are the tyrants. Thus, the EU being termed the deportation machine is apt. In the present context of 2020 where the New Pact on Migration and Asylum has been introduced, it received widespread criticism, despite it claiming to take a human and humane approach as stated by President Ursula von der Leyen at the State of the Union Address 2020. It has been called “a diabolical pact of disenfranchisement” by Günter Burkhardt, the managing director of charity Pro Asyl²¹. These new policies are driven by the far-right parties, who have increasing influence on the decision making of the EU commission and seek to betray the right to seek asylum and erode the human rights of those seeking protection. The original intent of the 1951 convention seems to be lost where the need for such asylum was given importance, there is a need to protect such communities given the current pandemic and the situations of war, conflict, economic depressions, religious persecution, sanctions on political dissent only increasing.

²¹ Peter Schwarz, World Socialist Website, A MURDEROUS PACT: THE EUROPEAN UNION TO DEPORT REFUGEES, <https://www.wsws.org/en/articles/2020/09/26/refu-s26.html>.