

Індивідуальне дослідницьке завдання:

Перекласти та проаналізувати зміст документів, що регулюють процеси міграції в ЄС. Дати відповіді на питання *українською мовою*:

1. З якою метою була прийнята Конвенція про статус біженців 1951 року та які її основні ідеї?
2. На регулювання якого виду міграції був направлений Римський договір?
3. Створення Шенгенської зони вимагало прийняття низки рішень щодо правового регулювання даного процесу. Що це були за рішення?
4. Який пункт Дублінської конвенції має найбільше критичних зауважень і чому?

1. The 1951 Refugee Convention (United Nations Convention and Protocol Relating to the Status of Refugees)

The 1951 Refugee Convention was established in Geneva and was originally intended to deal with refugees from World War II and its provisions were therefore limited to “persons who had become refugees as a result of events occurring before [...] 1951.” (Ogata 1995, ix) Later, the Convention was extended by the 1967 Refugee Protocol which “removed the 1951 dateline in the Convention” (x). The Convention gives an authoritative, legally binding and comprehensive definition of refugees (ix): it states that refugees are people who are persecuted because of their “race, religion, nationality, membership of a particular social group or political opinion” (art.1, 1951 Convention). Furthermore, the Convention follows the principles of “non-discrimination, non-penalization, and non-refoulement.” (Weis 1995, 3).

Thus, the Convention states that its provisions “are to be applied without discrimination as to sex, age, disability, sexuality, or other prohibited grounds of discrimination.” (3) Furthermore, “refugees should not be penalized for their illegal entry or stay.” (3) Moreover, non-refoulement means that refugees are not to be expelled or returned “against [their] will [...] to a territory where [they fear] threats to life or freedom.” (3) The Convention also defines refugees’ rights and duties. The ratifying states therefore commit to granting refugees free movement within their “territory” (art. 26, 1951 Convention), offering welfare where needed (art. 20, 1951 Convention), and refraining from imposing any duties on refugees that exceed those of their nationals (art. 29, 1951 Convention).

2. Treaty of Rome (1957)

The Treaty of Rome is the first starting point for European migration policy framed by a European treaty between states of the EEC. The “economic boom” after the second World War resulted in a great demand for workers which led to liberal national immigration policies and bilateral agreements that facilitated the migration of guest workers within Europe, from former colonies, or from countries in close proximity (Stalker 2002, 153). The Treaty of Rome therefore established

freedom of movement for workers of the Member States within the EEC (art. 48, Rome Treaty). After the oil crisis of 1973-1974, however, and the recession and transformation of global economy and labor markets that came with it, national migration policies became more restrictive (Stalker 2002, 166).

3. The Schengen Acquis

The Schengen Acquis, in effect since 1995 (Pudlat 2013, 176), has its beginnings in a heads of state meeting in Paris in 1974 that stipulated the enhancement of European integration beyond economic cooperation (153). It was first signed in 1985 by France, Germany, Belgium, the Netherlands, and Luxembourg and was in 1995 ratified by the same countries in addition to Spain, Portugal, Italy, Austria, and Greece (181). In 1997 it was carried over into the EU Treaties with the Amsterdam amendments. The Schengen Acquis constitutes the abolishment of border controls to enable free movement within the Schengen area (154) and later the EU. In effect, border controls were reduced to sight checks of crossing vehicles without stopping them (171).

The introduction of free movement in the Schengen area, however, fostered a demand for regulation and international cooperation in several fields. The Schengen Acquis firstly necessitated the uniformization of passports (154) and, secondly, the harmonization of aliens law as well as immigration and asylum policies (154). Furthermore, the Acquis also led to the implementation of the Schengen borders code in 2006 which regulates controls and procedures for the Schengen Area's external borders (181) as well as the Schengen Information System (SIS) that facilitates communication between member states' authorities on criminal activities and crossing of external borders (183). These measures have been installed in order to compensate for the lack of internal border controls that came with the Acquis.

4. The Dublin Convention

The Dublin Convention was signed in 1990 and entered into force in 1997 (Zaun 2017, 64). It was later carried over into EU legislation as the Dublin Regulation known as Dublin II (2003) and remodeled into Dublin III in 2013. The Convention and the regulations define which member state has to take responsibility for an asylum procedure of a "third country national or a stateless person" (art. 1, Regulation 604/2013). More specifically, it determines that the member state where an asylum-seeker first applies for asylum has to take responsibility for their asylum procedure (art. 2, Regulation 604/2013). If, however, "an applicant has irregularly crossed the border into a Member State [...], the Member State thus entered shall be responsible for examining the application for international protection. That responsibility shall cease 12 months after the date on which the irregular border crossing took place." (art. 13, Regulation 604/2013) Therefore, if a person irregularly enters the EU, the member state that was first entered is responsible.

The current iteration of the Dublin Regulation, Dublin III, states that the responsible member state has to take up and lodge the asylum-seeker for the duration of the asylum-process (Ausländerrecht, Migration- und Flüchtlingsrecht 2015, 500). It also contains mechanisms for the protection of unaccompanied

minors (art. 8, Regulation 604/2013) as well as an early warning system for unexpected refugee influxes (Hofmann 2017, 212f).

One of the major points of critique concerning the Dublin Regulation is that the system does not account for the unbalanced and unfair distribution of asylum seekers across member states. As member states with an external EU border are more likely to be the member state first entered by an asylum-seeker, they have to take responsibility for the lion's share of asylum seekers arriving in the EU (Hofmann 2017, 217).

In 2015, Germany suspended the application of the Dublin regulation to receive asylum seekers from other member states as "asylum-seekers were systematically detained and subject to degrading treatment in the by then top-recipient country, Hungary" (Niemann and Zaun 2018, 4).