



## MYTHS AND FACTS ABOUT REFUGEES: REASONS FOR IRREGULAR BORDER CROSSING AND THE TRUTH ABOUT SOCIAL ASSISTANCE<sup>1</sup>

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**Abstract.** In this article, we aim to focus on and deal with two main myths about refugees. The first one is the myth that asylum seekers are allegedly law-breakers or even criminals, due to illegally crossing borders. The second myth that we address in the article is regarding the size of social assistance provided to asylum seekers and refugees. Both myths are found in host societies and are often invoked by xenophobic speakers in public debate.

**Keywords:** Refugee Law; Irregular Border Crossing; Reception Conditions; Integration

### Introduction

Myths are born when there is a lack of credible public information, social awareness or an adequate response by responsible institutions. Myths are the expressions of the fears of people that naturally surface when one is confronted with the unknown. Humans are used to follow their daily routine according to established models in fulfilling their duties and functioning as biological units. When a change comes from outside, we perceive it as a threat and resist it, even though it does not affect us in the same dimension and in the same way as we initially imagine.

The issue of refugees undoubtedly affects us all and requires significant work and good coordination among governmental bodies and institutions, the non-governmental sector and society as a whole. A lack of knowledge and adequate information, combined with the natural fears of people, has led to the occurrence of delusions regarding refugees, which are sometimes shared by the majority of the public and its representing politicians. The media that reflects the issue has often contributed to the development and proliferation of these myths.

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In Bulgaria, for example, following the significant increase in the number of asylum seekers since 2013, myths about refugees have become rampant and have ranged from allegations that Bulgaria has no obligations whatsoever towards refugees, to claims that the asylum seekers are actually criminals or even terrorists (in Bulgarian: БХК и Мулти Култи Колектив).

## **1. Why do asylum seekers often cross state borders irregularly? Is this a crime?**

### **1.1. Non-penalisation of asylum-seekers and refugees for irregular entry or stay.**

Almost 90 % of the refugees and migrants have entered Europe irregularly (European Commission, 2016). The question however, is why they do so, and whether crossing borders illegally for the purpose of seeking asylum is a crime.

Article 14, para 1 of the Universal Declaration of Human Rights (UDHR) proclaims the right to seek and enjoy asylum in other countries. The right to seek and to be granted asylum established in regional human rights documents such as the American Convention on Human Rights (Article 22, para 7) and the African [Banjul] Charter on Human and Peoples' Rights (Article 12, para 3), (International Justice Resource Center). The right to asylum is provided in article 18 of the Charter of Fundamental Rights of the European Union.

International refugee law specifically provides for the non-penalisation of asylum-seekers and refugees for irregular entry or stay. According to Article 31 (1) of the 1951 Refugee Convention:

*“The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”*

Regarding national law, for example, the Bulgarian Criminal Code, which in principle, criminalizes irregular border crossing, provides that “*(n)o one who enters the country in order to benefit from the right to asylum under the Constitution will be penalized.*” (Article 279, Paragraph 5 of the Criminal Code). The Criminal Code of Finland provides that “*A foreigner who ...seeks asylum or applies for a residence permit as a refugee in Finland shall not be sentenced to a border offence.*” (Chapter 17, Section 7 of the Criminal Code of Finland, (European Union Agency for Fundamental Rights, 2014)).

While International Law does not provide for a right to entry, it does not allow States to freely decide on the entry of asylum-seekers and refugees. There are obligations to not reject a person at the border (including sea border, airport zones, etc.) or to expel him/her from the territory, if this would result in the return of a refugee in any manner whatsoever to territories where his/her life or freedom would be threatened. This is the ‘non-refoulement’ principle, enshrined in a number of international treaties such as the 1951 Refugee Convention (Article 33) and the 1950 European Convention on Human Rights (Article 3). According to the non-refoulement principle, asylum seekers have a right to stay while their application for international protection is being examined.

### **1.2. States cannot refuse entry to asylum seekers in situations where a real risk exists.**

Arguments that States cannot refuse entry to asylum seekers in situations where a real risk exists can be found in several judgments of the European Court of Human Rights.

In the case of *Hirsi Jamaa and Others v Italy*, the applicants (Somalian and Eritreans) were part of a group of about two hundred individuals who left Libya aboard vessels with the aim of reaching the Italian coast. When the vessels were within the Maltese Search and Rescue Region of responsibility, they were intercepted by ships from the Italian Revenue Police and the Coastguard. The applicants were transferred onto Italian military ships and returned to Tripoli. According to the applicants, the Italian authorities did not inform them of their destination during that voyage and

didn't take steps to identify them. The Court found that the removal of the applicants was of a collective nature, and in violation of the prohibition concerning the collective expulsion of aliens. Furthermore, their return to Libya amounted to a violation of Article 3 of the ECHR. Italy was not exempt from fulfilling its obligations under Article 3, even when the applicants failed to expressly request asylum. The Italian authorities had known or should have known that the applicants would be exposed to treatment in breach of ECHR. Italy was obliged to apply the "non-refoulement" principle.

In the case of *Khalifa and Others v. Italy*, the applicants were Tunisian nationals who entered Italy during the events related to the "Arab spring". The applicants were detained in a reception centre in Lampedusa. The reception centre was partially destroyed by fire after an uprising by the detainees. The applicants were arrested and taken to Palermo where they were placed on ships. The applicants were then deported to Tunisia from the Palermo airport. The applicants stated that the conditions in the reception centre and on the ships violated Article 3 of the ECHR. The Court reiterated its case-law, which had been provided for in the absolute character of Article 3, where "an increasing influx of migrants cannot absolve a State of its obligations under that provision" and "persons deprived of their liberty must be guaranteed conditions that are compatible with respect for their human dignity". Consequently, migrants shall not be subjected to inhuman or degrading treatment, even if they entered the country irregularly, and even when there has been a mass influx of migrants in the country.

In the case of *M.S.S. v. Belgium and Greece*, the applicant entered the European Union through Greece. He travelled to Belgium where he applied for asylum. Greece was the responsible Member State for the examination of his asylum application according to the Dublin II Regulation. Therefore, the applicant was transferred to Greece by the Belgian authorities. The applicant was then detained under insalubrious conditions in Greece. Then he was living on the streets with no means of subsistence. In respect to Greece, the Court found a violation of the prohibition of inhuman or degrading treatment or punishment (Article 3 of the ECHR) due to the applicant's detention and living conditions in Greece. The Court found a violation of Article 13 (right to an effective remedy) in conjunction with Article 3 by Greece, because of the deficiencies in the asylum procedure in Greece. The Court found a violation of Article 3 by Belgium because the Belgian authorities had exposed the applicant to risks linked to the deficiencies in the asylum procedure in Greece, and to detention and living conditions in breach of Article 3 (European Database of Asylum Law). The Belgian authorities shall not transfer an asylum seeker to a Member State responsible for the examination of the asylum application where there are substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment in that Member State.

### **1.3. The right to stay**

The right to stay is explicitly recognized in EU legislation. Article 6 (1) of the recast Reception Conditions Directive provides that Member States shall ensure that, within three days of the lodging of an application for international protection, the applicant is provided with a document issued in his or her own name, certifying his or her status as an applicant, or testifying that he or she is allowed to stay on the territory of the Member State while his or her application is pending or being examined. Recital 25 of the Preamble to the recast Procedures Directive also explicitly recognizes "the right to stay pending a decision by the determining authority". The EU Return Directive provides that "a third-country national who has applied for asylum in a Member State should not be regarded as staying illegally on the territory of that Member State until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force." Therefore, under EU law, asylum seekers, even if they have entered the host country irregularly, are not unlawfully present on the territory.

### **1.3. International Law does not provide for the right of an individual to cross a border and enter another country without authorisation.**

International law has recognized a person's right to leave any country, including their own country of nationality. However, it does not provide for the right of an individual to enter another country without authorisation. The right to entry is within the ambit of state sovereignty and its inherent migration control (Demuth, Andreas, 2000).

The question of whether European Union Member States are obliged to grant visas (entry permission) to *prima facie* refugees was recently examined by the Court of Justice of the European Union (CJEU). The case of X and X v. État belge, C-638/16 PPU, concerned a Syrian couple and their three young, minor children living in Aleppo. The family had applied for a visa to Belgium at the Belgian embassy in Beirut, Lebanon. They then planned to travel to Belgium, where they would apply for asylum. The visa application was denied, with the Belgian Foreign Office arguing in court that the family wanted to stay longer than the 90 days granted by the visa. In his Opinion, delivered on 7 February 2017, the Advocate General in the case argued in favour of the right to a ‘humanitarian visa’. According to the Advocate General, a Member State is required to issue a visa on humanitarian grounds in situations where there is a serious risk of breach of the prohibition of torture and inhuman or degrading treatment or punishment. The Advocate General’s Opinion is not binding on the Court of Justice of the European Union.

In its Judgment of 7 March 2017, the CJEU ruled that EU Member States are not obliged to issue ‘humanitarian visas’ at their foreign missions. The reasoning of the Court is that the intention to apply for asylum immediately upon arrival in Belgium means that a humanitarian visa application cannot be classified as a short term visa under the EU Visa Code. Moreover, no EU legal instrument has been adopted so far regarding the issuance of long-term visas and residence permits by Member States, although the Treaty provides a legal basis to do so. Therefore, the case does not fall under the scope of EU law and remains a question to be decided by national authorities.

Therefore, a person in need of international protection cannot rely on either International, nor European Union law to obtain a permission to enter the territory of another State legally in order to apply for asylum. The European Court of Justice left the responsibility of granting humanitarian visas with the Member States. However, national legislation does not usually provide for a State obligation to issue a visa for the purpose of seeking asylum. For example, Bulgarian immigration legislation provides for the discretionary power of authorities to issue a short-term visa ‘for humanitarian reasons’ or ‘when the interest of the State so requires’, but there is no obligation, and respectively, no ensuing individual right to do so. The lack of safe and legal access to the territory of host countries is the reason why asylum seekers are left in the arms of human smugglers or at the mercy of dire meteorological conditions at sea or on land.

## **2. The truth about social assistance<sup>5</sup>**

Another myth that is often encountered in xenophobic rhetoric is that refugees allegedly heavily rely on social assistance to the detriment of the needy persons in the host society.

### **2.1. Right to dignified ‘reception conditions’ and ‘public relief’ without discrimination to asylum seekers and refugees**

Both EU law and the 1951 Refugee Convention recognize a right to dignified ‘reception conditions’ and ‘public relief’ without discrimination to asylum seekers and refugees. The recast EU Reception Conditions Directive allows Member States to delay access to the labour market for up to 9 months to the asylum seekers, starting from the date when the application for international protection was lodged. At the same time, the Directive sets standards for ‘material reception conditions’ that include housing, food and clothing provided in kind, or as financial allowances or in vouchers, or a combination of the three, and a daily expenses allowance. The recast EU Qualification Directive stipulates that Member States shall ensure that beneficiaries of international protection receive the same necessary social assistance as that provided to nationals of the Member State that has granted the protection. Member States may only limit social assistance granted to beneficiaries of subsidiary protection status to core benefits, which will then be provided at the same level and under the same eligibility conditions as nationals. Article 23 of the 1951 Refugee Convention provides that the Contracting States shall provide the same treatment with respect to public relief and assistance to refugees lawfully staying in their territory as is accorded to their own citizens. All these provisions

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<sup>5</sup>In this article we refer to ‘social assistance’ in the sense of ‘benefits paid to bring incomes up to minimum levels established by law’.

are in line with the right to respect for one's human dignity and the positive obligations of States in regard to the prohibition of inhuman treatment.

## **2.2. The implementation of the right to social assistance of asylum seekers and refugees**

In practice, however, the implementation of the right to social assistance of asylum seekers and refugees in host countries might be quite different. We'll take Bulgaria as a case study in this regard. The Bulgarian specialized legislation, the Law on Asylum and Refugees, in its Article 29 (1), point 4, declares that during their asylum procedure, applicants for international protection have "a right to social assistance in the order and in the amount provided for Bulgarian citizens". However, the body competent to grant social assistance is the Agency for Social Assistance, whose powers are stipulated in another piece of legislation, the Law on Social Assistance. The latter law elaborates the personal scope of its beneficiaries and the procedure to follow in order to access social assistance. Under Article 2, paragraph 6 of the Law on Social Assistance, the only foreign nationals that are entitled to apply for social assistance are long-term residence permit holders and the beneficiaries of international protection. Asylum seekers are not included in the personal scope of the application of the law. This lack of synchronization between the stated right of asylum seekers under the Law on Asylum and Refugees, on the one hand, and the concrete conditions for granting social assistance under the Law on Social Assistance, results in the reality that no asylum seeker in Bulgaria can access social assistance. In practice, there is no procedure under which asylum seekers can exercise their right to social assistance (in Bulgarian: Иларева, Валерия, 2015).

Secondly, one might ask whether asylum seekers in Bulgaria receive any financial or daily expense allowance. The answer is 'No'. Until 01 February 2015, asylum seekers in Bulgaria received a monthly financial assistance amounting to 65 Bulgarian leva (approximately 33 Euro). Since that date, this monthly allowance has been discontinued, because the authorities decided that its payment is contrary to the statutory social assistance arrangements. Instead, by Order of March 31, 2015, the chairman of the State Agency for Refugees ordered that free food be given twice per day to asylum seekers (in Bulgarian: Иларева, Валерия, 2015).

In sharp contrast to the reality described above, some politicians in Bulgaria have repeatedly stated in the media that each asylum seeker costs the Bulgarian State 1200 Bulgarian levs per month (approximately 600 Euro). The statements were made in such a manner as to allow the conclusion that the amount was provided as cash money given to each foreign national. At the trainings and discussion forums organized by FAR, it has been striking to witness how many persons actually believed in such a misinterpretation.

In regard to the beneficiaries of international protection, they are entitled to the social assistance set by law in Bulgaria under the same conditions and procedures as that provided to Bulgarian citizens. However, there are significant obstacles to exercising this right in practice. As a general rule, a Bulgarian identity document (card of a beneficiary of international protection) is needed in order to apply for social assistance. In order to apply for a Bulgarian identity document, one must attach to the application *inter alia* a certificate of address registration issued by the municipality (Foundation for Access to Rights – FAR). In this situation, an applicant must first go through the procedure for address (civil) registration. An essential element of this is providing proof of accommodation to the respective municipality. On the one hand, this might lead people into a vicious circle of not being able to obtain social assistance, because they do not have an accommodation/address registration/ID card. On the other hand, in 2017, there have been a number of cases in which municipalities have declined to fulfil their obligation under law to register refugees on their territory. The rise of anti-refugee and anti-Muslim rhetoric that accompanied the Bulgarian parliamentary elections in March 2017 resulted in a number of publicly discussed incidents concerning refusals by municipalities to provide address registration to Syrian refugees who had found accommodation there by themselves (Balkan Insight, 2017).

The fact that access to social assistance in Bulgaria is difficult is also reflected in the statistics on beneficiaries of international protection who have managed to receive it. According to a research report (Albena Nikolova and Nina Chernicherska) published by the Bulgarian Ministry of Finance in August 2016, less than 1% of all persons who were

recognized as being entitled to international protection in Bulgaria received social assistance under the Law on Social Assistance.

In some countries, asylum seekers are excluded from regular welfare benefits. In Germany, the Netherlands and the UK, they are subject to specific regulations. The financial support that asylum seekers receive in these countries might be below the welfare benefits that regular citizens are able to claim:

*“the financial support under section 95 in the UK was originally calculated and set at 70% of the regular social welfare benefits, but due to the fact that the rates have not been adjusted since 2011, nowadays asylum seekers only receive 52% of the rate for the UK national. In the Netherlands, an asylum seeker is not even receiving one fourth of the social welfare allowance for Dutch citizen”* (Klaudia Mierswa, 2016, p. 4).

In 2012, the Federal Constitutional Court in Germany ruled that the financial support rate for asylum seekers was unconstitutional due to the fact that the benefits that were provided to asylum seekers had not been changed since 1993 and that in the following years, they had not been comprehensibly calculated like the regular welfare benefits provided to citizens of the host country. As a consequence of the decision, asylum seekers were entitled to receive benefits that are similar to those that German citizens receive (Klaudia Mierswa, 2016).

### **2.3. Refugees can make a positive contribution to the economics of the host countries.**

It is a myth that refugees only benefit from the social systems of host societies. Refugees can make a positive contribution to the economies of host countries. Some refugees perform jobs that the local citizens spurn, for example, cleaning offices and caring for the elderly. This enables local citizens to do jobs that require greater skills and provide better pay. A study of the impact of refugees on the Danish labour market found that the impact of low-skilled refugees was that low-skilled locals moved to higher-skilled jobs and increased their wages:

*“We find robust evidence that less skilled native workers responded to refugee country immigration, mainly composed of low-educated individuals in manual-intensive jobs, by increasing significantly their mobility towards more complex occupations and away from manual tasks. Immigration also increased native low skilled wages and made them more likely to move out of the municipality. We do not observe an increased probability of unemployment, nor a decrease in employment for unskilled natives”* (Mette Foged and Giovanni Peri, 2015, p. 29).

There are also high-skilled refugees who contribute to the economy of the host society: *“Among recent male refugees (those in the EU less than 10 years), 16% were university educated, compared with 24% of an equivalent domestic workforce (aged 20–34). Among women, 25% of longstanding refugees and 22% of the equivalent domestic workforce were university educated, as were 19% of recent refugees and 32% of an equivalent domestic workforce.”* (Philippe Legrain, 2016, p. 27).

Enterprising refugees start businesses that employ locals and have a positive impact on the economy. For example, the second most valuable firm in the US – Alphabet, worth 522 billion US dollars, was founded by a refugee from the former Soviet Union. The million Vietnamese people who left Vietnam in the late 1970s and early 1980s were seen initially as a burden on the local economy. In the US, these Vietnamese refugees are now more likely to be employed and have higher incomes than people that were born in the US (Philippe Legrain, 2016).

According to a research of the German Institute for Economic Research:

*“the results show that the costs associated with the integration of refugees should be seen as an investment in the future. Even in the pessimistic scenario, the per capita income of those already living in Germany will increase in the long term (after a little over than ten years); in the most favorable scenario, the positive effect can actually come about more rapidly, even after just four or five years.”* (Marcel Fratzscher and Simon Junker, 2015, p. 616).

This conclusion is consistent with the findings of an institutional paper of the EU Commission, Directorate-General for Economic and Financial Affairs: *“The simulations point to an increase in the level of GDP by 0.4-0.8 % by 2017, depending on the skill level assumed”. “Employment is set to increase by about 1.3 % in 2020 in the high-skills*

*scenario, against a 0.6 % in the low-skills scenario”* (European Commission, Directorate-General for Economic and Financial Affairs, 2016, p. 23).

The refugees’ ability to contribute to the economy, however, not only depends on their characteristics, but also on the policy of the host country. For example, in Sweden in 2010, only 25% of Somali refugees aged 25–64 were employed, while the rate of the employed Somali refugees in the US was 57 % (Philippe Legrain, 2016). As stated in the institutional paper of the DG Economic and Financial Affairs, “*In the medium to long term, integration is key. If well integrated, refugees can contribute to greater flexibility in the labour market, help address demographic challenges, and improve fiscal sustainability*” (European Commission, Directorate-General for Economic and Financial Affairs, 2016, p. 4).

## Conclusions

In this article we have addressed two of the most common myths about refugees regarding their irregular entry and the social assistance that they are entitled to. The article has provided knowledge and information on the fact that it is lack of legal access to the territory that drives refugees to risk their lives and to cross borders irregularly. In spite of that, once on the territory of EU Members States, asylum seekers are authorized to stay and cannot be regarded as illegally residing. Secondly, the research has provided a concrete case study on the gap between the right to social assistance on paper and its implementation in practice.

As recognized at the beginning of the article, it is natural for people to have fears and to believe in respective myths. However, it is alarming when politicians exploit these fears and instigate them purposefully in order to achieve short-term political dividends. State policies regarding refugees should be based on knowledge and facts, and not on myths. Otherwise, policies lead to mythical results that do not correspond to the needs in reality.

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