

Institution: Newcastle University
Unit of Assessment: 20 Law
Title of case study: Establishing the Right to be Granted Asylum in EU Law
<p>1. Summary of the impact</p> <p>The research has changed the conceptualisation among policy-makers and practitioners of the nature of the right to asylum (from a right of states to grant it to a right of individuals to receive it). The research has led to a change in the law and policy of the United Nations and of the European Union in this field. According to UN data, an estimated 441,300 asylum claims were lodged in industrialised countries in 2011, representing an increase of 20% in relation to the previous year. In 2012 more than 45.2 million people were in situations of forced displacement, the highest figure in the last 18 years. Hence, the reach of the impact is global and its significance lies in strengthening human rights protection in situations of forced displacement.</p>
<p>2. Underpinning research</p> <p>Dr Maria-Teresa Gil-Bazo (Lecturer in Law, Newcastle Law School) conducted the research in 2007-2008. Gil-Bazo has been an academic at Newcastle University for the duration of the research, which examines the existence of a right to be granted asylum under article 18 of the Charter of Fundamental Rights of the European Union (EU) (2000). The research interprets article 18's content and scope by reference to international law, the constitutional traditions common to the EU's member states, and the drafting history of this provision. The research sheds light on the legislative process and on the will of the legislator by identifying the positions of the various national delegations to the Convention that drafted the Charter. In light of this investigation, the research establishes that those applying article 18 should reject a literal interpretation and adopt a purposive (teleological) one.</p> <p>This research challenges traditional conceptions of asylum in international law that deny the existence of a right to be granted asylum. The traditional position argues that international law recognises only a procedural right to apply for asylum and not to be sent back to persecution (<i>non-refoulement</i>). This traditional view understands the granting of asylum as a discretionary right or state prerogative. Moreover, it reflects the long-established practice of states to grant asylum in the exercise of their sovereignty.</p> <p>Gil-Bazo's research challenges this long-settled view of asylum. She argues that in the current state of international law, and by virtue of legally binding general principles and international human rights treaties, asylum is not only a right of states to grant; rather, individuals now have a right to receive it. A teleological interpretation of article 18 within the broader context of the EU's legal order as a system of law leads to this conclusion. Gil-Bazo's research thus contests the idea of state sovereignty in the control of its population (one of the defining elements of statehood).</p> <p>The findings of the underpinning research regarding the content and scope of the right to asylum in Europe have significant potential for on-going and future impact. This is because they have altered attitudes within the United Nations by contributing to renewed interest (among UN personnel) in the institution of asylum (as a concept different from refugee status). In order to identify the viability of conducting further research in the field, the UNHCR granted Gil-Bazo a Small Research Grant (July – November 2012) of \$3,500 to map state practice in Latin America and Africa, in order to obtain a picture of asylum across different legal systems in the world. The findings of this new research have been published in the New Research Issues Series of UNHCR in January 2013: http://www.unhcr.org/50e6d9a69.html.</p>
<p>3. References to the research</p> <p>M-T Gil-Bazo 'The Charter of Fundamental Rights of the European Union and the Right to be</p>

Impact case study (REF3b)

Granted Asylum in the Union's Law' (2008) 27(3) *Refugee Survey Quarterly* 33-52 (<http://rsq.oxfordjournals.org/content/27/3.toc>). REF2 output: 42743.

Peer-reviewed journal published by Oxford University Press (OUP); article made available free of charge 2008-2012, partly in recognition of the originality of the research and partly due to demand, notably among practitioners. OUP granted the European Legal Network on Asylum (ELENA) permission to distribute the article among its members for training purposes.

4. Details of the impact

The research has alerted the UN and the EU to the argument that article 18 of the Charter of Fundamental Rights of the European Union (hereinafter, the Charter) recognises the right of individuals not merely *to seek* asylum and therefore not to be returned to persecution, but also the right *to be granted* asylum. The United Nations High Commissioner for Refugees (hereinafter, UNHCR) has abandoned its traditional position and now advocates an interpretation of article 18 of the Charter that encompasses the broader interpretation argued for in the underpinning research, basing its position on the analysis put forward in the research. As the UNHCR is an Agency of the United Nations, this change in policy affects 193 countries in the world (out of 196 existing countries). The research has also influenced the way in which secondary EU legislation (adopted in 2011) has developed the right to asylum in the Charter, which includes the obligation of EU member states to grant asylum. Lawyers have cited the research before the Court of Justice of the EU and it has led to changes in judicial attitudes to the right to asylum in EU law, as well as to changes in attitudes by practitioners representing refugees before administrative and judicial institutions.

The research has been applied in a number of ways, generating international impact of universal scope (United Nations) and of regional scope (EU institutions) by shaping the law and policy of international organisations (the UN and the EU).

The research changed the policy of the United Nations High Commissioner for Refugees. The UNHCR, represented by Raza Hussain QC from Matrix Chambers (**IMP1**), cited the research in its written and oral submissions to the Court of Justice of the European Union (CJEU) in *N.S. v Secretary of State for the Home Department* (C-411/10) (**IMP2-3**). The UNHCR used the research to support its argument regarding the correct (purposive) interpretation of article 18 of the Charter of Fundamental Rights of the European Union. When challenging the traditional narrow interpretation of the right to asylum, the UNHCR's written submissions read as follows: "The scope of the right protected by Article 18 goes beyond protection from *refoulement*. [ftnt 35: For a comprehensive analysis leading to this conclusion see M-T Gil-Bazo, *The Charter of Fundamental Rights of the European Union and the right to be granted asylum in the Union's Law* [2008], *Refugee Survey Quarterly*, vol. 27 no. 3, pages 33-52 (Annex 21).]" (February 2011) (**IMP2**).

Given the relevance of the detailed argumentation in the research, the UNHCR also submitted the publication to the Court of Justice of the European Union (hereinafter, CJEU) as an Annex to its written submissions in *N.S. v Secretary of State for the Home Department* (C-411/10). This was the only academic paper submitted by the UNHCR to the Court in support of its arguments (p. 41, February 2011) (**IMP2**).

THE UNHCR cited the research again in its 'Statement on the Right To Asylum', submitted to the CJEU in the case of *Zuheyr Freyeh Halaf v the Bulgarian State Agency for Refugees* (C-528/11) to support its statement that "[t]he scope of the right protected by Article 18 goes beyond protection from *refoulement*" (para. 2.2.8.) (**IMP4**).

The underpinning research has changed perceptions of asylum by members of the European judiciary. Judge Lennaerts of the CJEU writing extra-judicially in an article published by the *International and Comparative Law Quarterly* (2010, Vol. 59(2), at 289) endorsed and cited the broader interpretation argued for in the underpinning research (**IMP5**).

Impact case study (REF3b)

The underpinning research also had impact in the proposal and adoption of EU secondary legislation on asylum. The European Commission (June 2008) and the European Parliament (October 2011) invited Gil-Bazo to give expert advice on the reform of asylum legislation.

In the context of the Commission's proposal for legislative reform on asylum, the European Commission held an Expert Meeting with government officials, UNHCR, judges and academics on 26 June 2008. Gil-Bazo was one of the seven European academics invited by the Commission to present her views on the implications of article 18 for the reform of EU asylum legislation. In October 2009, the European Commission submitted its proposal for the recast Directive on international protection including the right of individuals to be granted protection. Moreover, the Commission referred to the meeting of June 2008 as one of the background sources for its proposal (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0551:FIN:EN:PDF>, p. 3). The Deputy Head of Unit, from the European Commission, states that Gil-Bazo's research "was the only one [source/output] that had so thoroughly researched the international context and rigorously analysed the content and implications of this specific provision of the Charter. It proved therefore a precious source of information - and inspiration - for our revision of the Qualification Directive" (IMP6).

The Commission's proposal was the subject of negotiations in the Council of Ministers of the EU and in the European Parliament. In this context, in October 2011 the European Parliament held a hearing of experts to present their views on the outstanding issues in the negotiations and invited Gil-Bazo to address the European Parliament. Thereafter (on 13 December 2011), the European Parliament and the Council of Ministers of the European Union adopted Directive 2011/95/EU. Recital 16 of this Directive's Preamble states that it "respects ... the right to asylum of applicants for asylum" set out in article 18 of the EU Charter of Fundamental Rights. Accordingly, the legislative text includes (in articles 13 and 18 of the Directive) an express obligation on member states to grant asylum to individuals who meet the criteria (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:337:0009:0026:EN:PDF>). Asylum has thus become a subjective right of individuals guaranteed by EU secondary legislation. The member of The European Parliament Secretariat responsible for the procedure towards adoption of this Directive says that with Gil-Bazo's "clear, quick, duly justified legal answers we were able to tackle problems in legislative work at a technical, i.e. legal level that were acceptable for all parties involved" (IMP7).

The Special Issue of the Refugee Survey Quarterly in which the underpinning research was published was formally presented in 2008 to the meeting of the UNHCR Executive Committee, made up of government and UN officials. This made possible rapid dissemination of results among users and beneficiaries, in particular among UNHCR personnel, and led to invitations to provide expert legal advice and/or training to the UNHCR, the European Union and, practitioners and NGOs, allowing for the further dissemination of results to end users. UNHCR Bureau for Europe's Head of Policy and Legal Support Unit says that Gil-Bazo's research "has helped us develop arguments that have formed central elements in recent interventions before the Court of Justice of the EU [...]. We have also used it extensively in interventions and discussions with states on individual cases at national level; as well as in arguments around legislation and practical procedures that should operate in Member States in line with fundamental rights and protection principles [...]. We believe that [Gil Bazo's] analysis – which looks into aspects of the Charter's drafting history that are not otherwise documented – will continue to provide an important foundation for much of our future work" (IMP8).

The research has also changed attitudes among practitioners involved in litigation on refugee rights. Following the entry into force of the EU Lisbon Treaty in December 2009, the European Legal Network on Asylum (ELENA) concluded that it was important to train its members (legal practitioners across Europe) on the litigation possibilities offered by the new legal framework, notably the legally binding nature of the Charter of Fundamental Rights of the EU. To this end, it organised a course on *The Court of Justice of the European Union and the European Court of Human Rights as "asylum courts"* where Gil-Bazo presented the underpinning research (May 2010). At this event, ELENA also distributed hard copies of the underpinning research. Likewise,

the Academy of European Law (established by the European Union in 1992 in order to train lawyers across Europe for the better application of EU Law; www.era.int) invited Gil-Bazo in October 2012 to deliver its annual training on EU asylum law on the specific impact of the Charter in the field of EU asylum law. In making this commitment to human rights-related capacity-building, ELENA has contributed to the dissemination of results among end users and beneficiaries across Europe. The Senior Legal and Policy Officer from the European Council on Refugees and Exiles (ECRE) says that Gil-Bazo's research "has been an 'eye-opener' to many lawyers active in the field of asylum and refugee protection. It has provided new insights into its potential meaning, not only from a purely academic perspective but also from a practitioner's perspective. In arguing convincingly that the right to asylum must be interpreted as enhancing the subjective nature of the right of individuals to be granted asylum when they meet the criteria beyond the traditional interpretation of asylum, it has strengthened the argumentation used in individual cases but also in policy documents." (IMP9). Questionnaires completed anonymously by participants at an Asylum Workshop held in Brussels on 24 June 2013 show excellent feedback regarding the Workshop's ability to raise their awareness, improve their understanding, identify good practice and/or policies, and introduce them to new approaches concerning the protection of the subjective right. One participant wrote: "an excellent workshop, bringing together a very strong mix of academics and practitioners. It will certainly serve as the basis for further work and research within this field" (IMP10).

5. Sources to corroborate the impact

- (IMP1) Mr Raza Hussain QC, Barrister, Matrix Chambers (Email on file with Newcastle Law School)
- (IMP2) UNHCR written submissions to the CJEU in the case of *NS*, paras. 30-31. Available at: <http://www.unhcr.org/refworld/country,,,AMICUS,IRL,,4d493e822,0.html>.
- (IMP3) UNHCR oral submissions to the CJEU in the case of *NS*, Part I, para. 12. Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4e1b10bc2>.
- (IMP4) UNHCR 'Statement on the Right To Asylum', para. 2.2.8. Available at: <http://www.unhcr.org/refworld/country,,,BGR,,5017fc202,0.html>.
- (IMP5) Judge K. Lenaerts, 'The Contribution of the European Court of Justice to the Area of Freedom, Security and Justice' (2010) 59(2) *International and Comparative Law Quarterly* 255-310, at 289. Available at: <http://www.journals.cup.org/action/displayFulltext?type=1&pdfType=1&fid=7730540&jid=ILQ&volumeld=59&issuelid=02&aid=7730532>.
- (IMP6) Deputy Head of Unit, European Commission (Email on file with Newcastle Law School)
- (IMP7) European Parliament Secretariat, Committee on Civil Liberties, Justice and Home Affairs (Email on file with Newcastle Law School)
- (IMP8) Head of Policy and Legal support Unit, UNHCR Bureau for Europe, Brussels (Email on file with Newcastle Law School)
- (IMP9) Senior Legal & Policy Officer, European Council on Refugees and Exiles (Email on file with Newcastle Law School)
- (IMP10) List of Participants & Participants feedback questionnaires (anonymous), Asylum Workshop Brussels 24 June 2013. Original copies available on request.