

Impact case study (REF3b)

Institution: University of Glasgow
Unit of Assessment: 20 - Law
Title of case study: Informing the law and practice governing asylum procedures in the European Union
1. Summary of the impact

Of the over 300,000 applicants seeking asylum in the European Union each year, 85% enter the EU through Greece. A landmark legal case relied on EU-wide research, the UK component of which was led by University of Glasgow, to show that Greece was not implementing minimum EU standards in processing asylum claims. The research and the Judges' finding challenged the assumption, made by the UK and other states, that asylum applications were treated in an equivalent manner across the EU and the requirement, based on that assumption, that applicants make their claim only in the country through which they entered the EU. The findings and the legal action shaped widespread calls for asylum reform in Europe, leading to an 'Action Plan on Greece' from the EC's European Asylum Support Office.

2. Underpinning research

The European Union's Common European Asylum System (CEAS) aims to establish minimum standards regarding who should receive international protection, and the reception conditions and procedures they should benefit from when claiming asylum in any EU Member State. From its inception, the CEAS has been characterised by competing pressures which have hindered its potential to develop into a framework aimed at offering protection to those fleeing persecution. One element of the CEAS, in particular, that is criticised for its targeted deflection of refugees is the Dublin Regime; this mechanism creates a hierarchy of criteria for identifying the EU Member State responsible for the examination of an asylum claim. This responsibility lies predominantly with the Member State which the asylum seeker first entered and the aim of the Regime is to ensure that applicants only claim asylum in one EU State.

Sarah Craig (Lecturer, Public Law, 2006-present) has developed a body of research on legal and procedural aspects of asylum and immigration processes in the UK and Europe. Throughout her research, Craig has demonstrated how negative integration in the EU, which refers to integration that is achieved by removing barriers between countries, was bad for refugees. Craig has argued that negative integration, through the introduction of a CEAS, encouraged Member States to 'race to the bottom' by using it as a reason for unpicking national measures which protected the rights of asylum seekers at a higher level than the EU's minimum standards under the CEAS. National governments' anxiety not to be seen as a 'soft touch' for asylum seekers in comparison with their European neighbours further compounded this problem.

In 2005, by which time the relevant CEAS Directives had been framed and were starting to come into force, Maria Fletcher (Senior Lecturer, Law, University of Glasgow staff 2000-present) developed this theme with Craig in their book chapter "Deflecting Refugees: a Critique of the Asylum Procedures Directive" in P. Shah (ed.) *The Challenge of Asylum to Legal Systems* (Cavendish, 2005). From 2006, Craig (Principal Investigator), Fletcher and Kay Goodall (University of Stirling) worked on a research project funded by the Nuffield Foundation which examined the operation of novel paper-based onward appeal procedures, introduced throughout the UK in 2005, but with different specific procedures in Scotland; publishing the research in 2008 (Craig, Fletcher and Goodall, *Challenging Asylum and Immigration Tribunal Decisions in Scotland: an evaluation of onward appeals and reconsiderations*). During that period, the Deputy Director of the Nuffield Foundation put the researchers in contact with Professor Robert Thomas (Manchester University), who was conducting Nuffield Foundation-funded research into asylum appeals in England and Wales. This contact led, at Robert Thomas' recommendation, to Craig being approached by United Nations High Commissioner for Refugees (UNCHR) to be the UK's National Project Officer in their EU-wide research project into the implementation of the Asylum Procedures Directive (APD);

Impact case study (REF3b)

research which was also aimed at making recommendations for reform. Craig conducted this research in conjunction with June Fraser (Immigration Practitioner). Craig was able to bring both her expertise as a legal practitioner as well as her extensive academic knowledge to the research, which complemented Fraser's contributions. In particular, Craig was able to draw from her research undertaken as part of the Nuffield Foundation research into onward appeal procedures which involved qualitative interviews with asylum applicants, UK Border Agency (UKBA) and legal practitioners, and judges.

The research analysed the implementation of the APD in UK law and practice and compiled a National Report on the findings. Facilitating the examination of the UK's implementation in practice, the UKBA allowed the researchers high-level access to interviews, decisions and staff to facilitate the examination of the UK's implementation of the APD in practice. The same access was negotiated in the other 11 Member States involved in the study, and the National Reports were synthesised into a Key Recommendations Document, and Detailed Reports on Key Provisions, which were published in March 2010. The governmental support for the research, illustrated by the fact that all participating countries gave access to the decision-making process at the same time, was a crucial part of the study.

All 18 articles of the APD were covered in the investigation, as they are transposed in law and implemented in practice in the 12 participating states: Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Greece, Italy, the Netherlands, Slovenia, Spain and the United Kingdom. The UK had been used by the UNHCR as a benchmarker of good practice in asylum procedures for new Member States. Craig's research on the UK was therefore an essential element of the study.

The research team found numerous differences in the ways that asylum applications are assessed, and some practices that breached international refugee law. In particular, the UK arm of the UNHCR research, led by Craig, showed that the UK's procedures and practices allowed people to be removed to Greece for the processing of their claims, with no prior substantive interview to determine whether they had a stateable case and no right of appeal. This was particularly significant because the research revealed that Greece had procedures in place which would effectively *refouler* people to persecution contrary to the Refugee Convention.

The Refugee Convention requires that applicants are given an opportunity to present their claim to a determining authority which gives individual consideration to their protection needs. The main findings of the study were that applicants were not always afforded personal interviews, or were not given enough time to prepare for interviews or to explain their claims. Interpreters were not always available or qualified, some decisions were not individually motivated, and many claimants were channeled into accelerated procedures, with reduced safeguards. The UNHCR were concerned by such practices creating the risk that protection needs are not properly identified, and persons may be sent back to persecution or serious harm ([UNHCR, Press Release, 25 March 2010](#)).

3. References to the research

Craig, S and Fletcher, M. (2005). Deflecting Refugees: a Critique of the Asylum Procedures Directive", pp. 52-81 in P. Shah (ed.) *The Challenge of Asylum to Legal Systems*. Routledge-Cavendish, London. ISBN 978-1859419816. [RAE 2008] [Available from HEI]

Craig, S; Fletcher, M and Goodall, K. *Challenging Asylum and Immigration Tribunal Decisions in Scotland: an evaluation of onward appeals and reconsiderations*. Nuffield Foundation, London. (ISBN 978-0-85261-836-3) (2008): [Available from HEI] (*As reported, Nuffield Foundation only funds and publishes innovative research that can impact upon policy and practice.*)

UNHCR (2010). *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice*. Project Report. UN High Commissioner for Refugees, Brussels: ([Link](#)) (*This research used robust methodologies to undertake large-scale comparative research across EU*

Impact case study (REF3b)

Member States; its findings formed a reference point for further research and initiatives, e.g., prompting operational support to Greece by the European Asylum Support Office).

Craig, S. (2013) *Struggling with EU safe country practices in asylum*. In: Korkut, U., Bucken-Knapp, G., McGarry, A., Hinnfors, J. and Drake, H. (eds.) *The Discourses and Politics of Migration in Europe*. Series: *Europe in Transition: The NYU European Studies Series*. Palgrave Macmillan, New York, NY, USA, pp. 53-70. ISBN 9781137310897 [Available from HEI]

Grants:

Asylum and Immigration Tribunal Decisions in Scotland: an evaluation of onward appeals and reconsiderations, £60,421, The Nuffield Foundation, 2006- 2008, PI: Sarah Craig
 UNHCR Asylum Procedures Directive Project 2008-09, £8726.66

4. Details of the impact

On the basis of her research expertise on asylum law and policy, Craig was invited by the UNHCR to lead the UK arm of an investigation into the implementation of the Asylum Procedures Directive in 12 EU Member States. The resultant UNHCR Report, in which the findings of Craig’s UK-based research are cited more than 250 times, led to profound and lasting changes to European asylum law and policy.

CEAS measures –notably the Asylum Procedures Directive (APD), which assumes that all EU Member States guarantee certain minimum standards of decision-making to asylum applicants – and the Dublin regime, whose aim is to ensure that claims for protection are made once only in the EU– have supported the presumption that equivalent standards of asylum decision-making apply throughout the EU; these measures have been criticised for deflecting asylum seekers away from Northern Member States such as the UK, and for putting pressure on the asylum systems of EU “entry points” in Southern and Eastern Member States, including Greece. In the past, those who managed to travel onward from Greece and then applied for asylum would be sent back to Greece to make their application.

Craig led the UK component of a UNHCR Report which exposed numerous differences in the ways that asylum applications were assessed across 12 EU member states (contravening the APD) and some practices in these countries that breached international refugee law. The UNHCR report represented the first and most comprehensive publicly-available comparative analysis of asylum law and practice undertaken since the APD’s adoption. Craig’s UK-based contribution was fundamental to the Report given the UK’s extensive reliance on mechanisms, such as the Dublin Regime and the APD, for returning asylum claimants to other EU Member States to have their claims considered. The research revealed that Greece had virtually no procedures in place at all for the proper consideration of asylum claims, meaning that presumptions, shown to have been made by the UK and other Member States, that asylum claimants could be returned to Greece to have their claims considered safely, were wrong. Since almost 300,000 people apply for asylum annually across the European Union and 85% of them enter the EU via Greece, the findings of the research had important implications for a significant number of vulnerable people.

In 2011, the UNHCR relied on the findings in its submission to the Grand Chamber of the ECHR in the case *MSS v Belgium and Greece* (53 EHRR 2) that Greece was not implementing EU minimum standards for processing asylum claims. In January 2011, the ECHR decided, based on evidence which included the UNHCR research findings, that the transfer of MSS by Belgium to Greece would violate his right to an effective remedy. Specifically, the judgment stated that “*by sending him back to Greece, the Belgian authorities exposed the applicant to risks linked to the deficiencies in the asylum procedure in that State.*”

The decision in *MSS v Belgium and Greece* has been described as a catalyst in the rethinking of the mechanisms that return people to EU “entry points” to have their asylum claims considered because the Court accepted that the assumption of equivalent standards across EU Member States (which underpins such mechanisms) was unreliable.

Impact case study (REF3b)

As a direct result of the legal finding, based on evidence of practices in Greece including the UNHCR research and placing the burden of proof in cases concerning Greece on the sending country, other EU countries have stopped sending asylum applicants back to Greece. This has resulted in improved access to justice for this vulnerable group. Following the ECHR's ruling, the Federal Administrative Court in Switzerland issued a ruling indicating that transfers to Greece would have to be examined on a case-by-case basis. German courts also halted a number of transfers, to Malta and Italy, on grounds of alleged deficiencies in the asylum system. Additionally, on 31 October 2011 the Austrian Asylum Court quashed a decision to transfer asylum-seekers to Hungary to have their claims processed. The decision referred to the UNHCR research findings of contravention of the APD.

The UNHCR subsequently issued detailed recommendations for the improvement of procedures in all countries involved in the research study, including the UK. These recommendations contributed to the scope of the European Asylum Support Office (EASO) to coordinate support actions with Member States facing pressures on their asylum support systems. EASO, established by Regulation 439/2010 of the European Parliament and the Council in May 2010, strengthens EU Member States' practical cooperation on asylum, enhances the implementation of the CEAS and supports Member States whose asylum and reception systems are under particular pressure. Under Article 10 of the Regulation establishing EASO, it states that EASO will draw upon findings and documentation from UNHCR research in the course of its operations. From the very start of its activities, and following the ruling in *MSS v. Belgium and Greece*, support for Greece has been one of EASO's main objectives. On 1 April 2011, just 2 months after becoming operational as an EU Agency, EASO and the Greek government signed an agreement on the deployment of Asylum Support Teams (ASTs) to Greece. EASO prioritised Emergency Support to Greece through the deployment of additional ASTs throughout 2012.

As a result of these cases, the UNHCR Report, to which Craig's research made a significant contribution, has had a profound impact on asylum law and policy. The original court case and others following it have been widely covered in the press, contributing to public debate on asylum procedures and the assumptions surrounding their fairness.

5. Sources to corroborate the impact

1. UNHCR, *Asylum Levels and Trends in Industrialised Countries 2011* [Available from HEI] (confirming levels of entry by asylum seekers to EU via Greece)
2. European Court of Human Rights Judgement in *MSS v Belgium and Greece* (53 EHRR 2): [Link](#) (discussion of asylum procedures in Greece, references UNHCR among others, Section V)
3. Information on position of Federal Administrative Court in Switzerland and German Courts re: returning asylum seekers to Greece: [Link](#) and [Link](#)
4. Decision by Austrian Asylum Court not to transfer asylum seekers to Hungary-see pp.5-6 of a later ECHR Judgement which relied on the Austrian decision for full statement: [Link](#)
5. REGULATION (EU) No 439/2010 of The European Parliament and of the Council, of 19 May 2010, establishing a European Asylum Support Office (see in particular, Article 10): [Link](#)
6. EASO Work Programme, 2012 (for situation re: Emergency Support to Greece): [Link](#)
7. Example of Coverage of the significance of the finding:
 - (i) The Guardian, '*Dublin*' Court Cases, 7 October 2011: [Link](#); and *Home Office Loses Legal Battle over Asylum Seekers*, 21 December 2011: [Link](#)
 - (ii) Strasbourg Observer, *M.S.S. v. Belgium and Greece (2): The impact on EU Asylum Law*, 24 February, 2011: [Link](#)
 - (iii) Irish Legal Aid Board, *The Nascent Impact of the "Greek Transfer" Cases*, April 2012: [Link](#)