



SOTERIA INTERNATIONAL intervention on Friday, 23 September 2016 during

Working session 8: Rule of law I

The EU Judicial Collaboration Leads to Violation of International Law and the 1951 Geneva Convention for Refugees

One of the core principles of the rule of law when referring to the respect of refugee status is foreseeability, which means that the law must, where possible, be proclaimed prior to implementation and the effects must be foreseeable.

Our organization has worked with cases where fundamental principles of the rule of law, such as foreseeability and in the case of refugees, the principle of non-refoulement, have not been respected due to the blindness of the EU judicial collaboration. In particular, non-refoulement, implies the prohibition of all signatory states of the convention to force refugee or asylum seekers to return to the country in which they risk persecution, and to respect the decision of another signatory state to grant refugee status to a person.

It is apparent that due to a lack of clarity, the actual provisions of EU law lead to an open interpretation in manners that constitute violations of international law norms established between EU Member States, and other third party states, through treaties or norms having acquired the status of jus cogens (or peremptory norms).

The framework decision of the European Arrest Warrant does not stipulate the case of intra EU refugees, citizens of one member state which have been granted asylum in another member state. As such cases exist, and as long as this issue is not highlighted and amended, the same person can be considered both a refugee and a fugitive within the same judicial system. The same person is, therefore, persecuted and protected within the same judicial collaboration. The problems within the framework of the European Arrest Warrant have previously been highlighted, in 2014, by the European Parliament LIBE committee, but were never amended by the European Commission.

We have found that a refugee who exercised his right of free movement has been sent back to continued persecution, as a third party country considered itself more bound by the European Arrest Warrant issued by a persecuting EU member state than the asylum given by another EU member state. It should be noted that the situation was triggered as a direct consequence of Europol publishing the name of the refugee on their list of Europe's most wanted fugitives.

Even though the EU framework decision of the EAW seems to ignore the case of refugee citizens of EU member states, none the less, both the EU as an international governmental organization, and the EU states members, signatories of the Geneva Convention are bound to respect the obligations stipulated in the convention.

This situation demonstrates that the current EU judicial collaboration does not respect the obligations stipulated by the Geneva Convention and, therefore, compromises the rule of law. We urge competent bodies of the EU, as well as, the UNHCR and OSCE to urgently investigate the situation and not allow lofty principles to violate the rule of law.

Due to the violation of human rights, which still occur in the present EU system, at this point, we feel that the OSCE and the UNHCR must assume responsibility for and maintain an important role, in the process of safe-guarding the refugee rights established by international treaties.

The core principle of the Geneva Convention is non-refoulement, which asserts that a refugee should not be returned to a country where he/she faces serious threats to his/her life or freedom. This is now considered a rule of customary international law.

As an intergovernmental organization, also subject to international law, the EU can be said to be bound by customary international law, by treaties to which it is a party. As well as, by international treaties, entered into individually, by Member States through the principle of succession or substitution.

The status of jus cogens of non refoulement has the effect of invalidating conflicting rules of international law created by treaties, including rules derived from those treaties such as the acts of IGOs (international governmental organisations).

It is already clear that in international law, any rule created through the EU, which conflicts with rules, which are jus cogens in nature, will be void.

Although we acknowledge that the principle of non refoulement is recognized at a theoretical level within the EU legislation, it is not applied when it comes to the EAW.

However, a lack of integration and regulation, per se, as an exception in secondary EU legislation, of the application of the principle of non-refoulement has been denied when entering in conflict with the rules established by the Framework Decision on the European arrest warrant and the surrender procedures between Member States. Even if the framework decision itself states that it "shall not have the effect of altering the obligation to respect

fundamental rights, as guaranteed in particular by the Charter”, invoking the principles of mutual recognition and trust, the Member States violate international law peremptory norms and obligations.

It is for this reason that the principle of non refoulement, the right to asylum in a European Union state, should be included among mandatory non-execution grounds in the framework decision, in order to guarantee the respect of international law norms.

The Lisbon Treaty (Treaty on the Functioning of the European Union) contains limited provision when dealing with the relationship between EU law and international law. The Treaty does not contain explicit rules on how such obligations affect the EU itself, the application of the international law obligations within the EU, and the conflicts between EU legislation and international law.

Failing to regulate this situation can, and will, lead to the violation of individual human rights, giving rise to various interpretations regarding the application of international law norms vs EU legislation. This will result in serious repercussions for the individuals recognized with refugee status by EU Member States.

Due to a lack of clarity and lack of regulation, persons under international protection continue to be subject to persecution by their country of origin. In this context, the international protection given by one country becomes futile, therefore, not providing sufficient protection when the beneficiary of supposed international protection travels.

Under the EU regulation – see EU deregulations on Europol, for example- there are no adequate and effective safeguards to protect the rights of refugees to persecution from their country of origin, even though under international protection. We underline the fact that this problem was one of the main problems of Interpol system, and Interpol changing its policy in the matter in order to respect and protect the rights of refugees, as guaranteed under the 1951 Geneva Convention and other applicable conventions.

It is known that abuse of the EAW violates the rights of refugees and leads to extradition and deportation.

The same abusive situation threatens the very rule of law inside the EU. As an intra EU refugee, Gregorian Bivolaru, was recently sent back to continued persecution, even when his asylum (given by Sweden) still stands.

On 22th July 2016, the refugee was extradited by France to the country of origin, Romania. For the first time, EU ignored the fundamental refugee’s rights only because the case was between three EU member states. We would like to point out that this case has become a dangerous precedent, as the Refugee rights and Geneva Convention seem to no longer be respected in the EU.

This well-known case has now reached the phase we have been warning about for many years.

Recommendations:

Soteria International recommends for the EU, OSCE, UNHCR and other competent bodies to investigate the situation. A coordinated action is required from all actors involved, both at the national and international levels, in order to ensure that refugees are protected from further persecution.

Further, formalization of the principle of non refoulement should be considered. With the two cornerstones of democracy in mind, respect for the rule of law and respect for human rights, Soteria International recommends the regulation and integration of refugee rights and international law rules and principles regarding the non refoulement, as well as, integrating state obligations towards refugees into the primary and secondary EU legislation in order not to violate the rights of affected individuals, leading to serious and irreversible consequences for them.

Additional efforts should be made in order to ensure due application of non refoulement and national courts dealing with extradition. There should be clear legal regulations in the matter, to entirely avoid misinterpretation and violation of non refoulement and refugee/human rights.