



## Grassroots for Europe Round Table # 25 – Tues 10<sup>th</sup> May 2022 Report

### *The UK - a "world-leading" safe haven for refugees?*

**Chair:** Irina Von Wiese

**Speaker:** Dr Ruvi Ziegler, Associate Professor in International Refugee Law, University of Reading, School of Law: "UK's asylum policies, displacement from Ukraine, and the impact of our departure from the EU"

#### **The EU's treatment of Ukrainian refugees.**

The EU responded to the displacement from Ukraine with promptness, unanimity, and generosity. Over 20 years ago, following the Balkans crisis, the EU had adopted its Temporary Protection Directive, which sits alongside its ordinary processes for assessing asylum applications and granting protection. This Directive was intended for situations where large numbers of people come from one or more places in a short period of time, thus making individual assessment impractical. Yet, the directive was not activated during crises like Syria and Libya because there was not the political will among European Union member states to do so, and activation requires qualified majority.

The Russian invasion of Ukraine on 24 February 2022 triggered a different reaction. On 4 March, the EU Council had unanimously activated the Directive, and generously applied it not just to Ukrainians but also to third country nationals residing in Ukraine as asylum seekers and refugees. This approach can be contrasted with the approach adopted several months ago, when certain EU countries, primarily Poland, were pushing back refugees, mainly Iraqis and Afghans, trying to enter from Belarus. Now, they were obliged to welcome refugees because they were coming through Ukraine.

People will see these differing approaches as a result of the difference between people coming from a European country and people coming from other parts of the World. But there was also a practical reason, in that, before 24 February, Ukraine had a visa-waiver agreement with the EU, which meant Ukrainians, including tourists, had a right to enter EU countries for 90 days in every 180-day period, and could therefore claim asylum upon arrival. So, the EU did not have to put in place a mechanism to waive visas. That is very different from the situation with Iraq, Syria, Afghanistan, Eritrea, and similar refugee-producing countries, which are not visa-free countries.

Interestingly, the EU reaction to displacement from Ukraine differs markedly from the Dublin III regulation, in which there is no real attempt to share responsibility. According to Dublin, ordinarily, the country responsible for handling an asylum seeker's application is the first EU country they enter, thus creating pressure on the frontier states. In the present crisis, the EU has encouraged Ukrainians to move beyond the first country entered. It told

Ukrainian refugees they could go to any of the 27 member states and enjoy the same rights under the temporary protection directive for three years, including access to health, education welfare and an immediate right to work. This has led to a degree of responsibility sharing.

### **The UK treatment of Ukrainian refugees**

This contrasts markedly with the UK, for whom Ukraine is not a visa-free country. The UK could have waived its visa requirement to speed up processing applications, especially as there was little chance of mass influx into the UK given the EU's generous response. Indeed the number of Ukrainians coming to Britain is well below the number of UK citizens offering to help under the 'Homes for Ukraine' scheme. Yet the UK had decided not to waive the visa requirements and did not cast these schemes, under which Ukrainians are given immediate right to work, as based on refugee status, perhaps in order to avoid setting a precedent at a time when it pushed through the Nationality and Borders Act, refusing to accept Lords' amendments that would have allowed asylum seekers to work after a six months period.

The UK generally claims to be unable to process claims online from abroad and insists on asylum seekers using "safe and legal routes," but does not create any such routes whilst penalising those coming across the channel irregularly or illegally. But those applying to the UK under the two schemes mentioned above did apply from abroad, and from a 'safe' country, so if Ukrainians can apply from abroad, it is not clear why Afghans and others could not do so too.

### **What the UK loses by its actions**

Ironically, the UK's departure from the EU means that the UK has lost its 'advantage' under Dublin. As an island nation on the edge of Europe, the UK was rarely the first country of entry for asylum seekers, and so received fewer than other similarly sized countries. The UK has lost the right which it had under Dublin to return people to the first EU country of entry (subject to certain exceptions).

Moreover, the Nationality and Borders Act, and specifically the MoU for transferring asylum-seekers to Rwanda, which puts LGBTQ+ asylum seekers' life and liberty in danger, and the UK's announced plan to replace the Human Rights Act with a British Bill of Rights which will diverge from the European Convention on Human Rights may lead the British Government to the position of being unable to negotiate a Dublin-like arrangement with European countries, because those countries may not be willing to sign an agreement with a country that breaches international human rights law.

As an overall observation, the UK does seem to be world-leading in one sense - it is rare to find a country that is regressing so dramatically in its treatment of refugees and asylum seekers.

**Speaker: Enver Solomon, Chief Executive of the Refugee Council: "The Impact of differential treatment of refugees: A perspective from frontline refugee work in the UK."**

**Differential treatment of Ukrainians coming to the UK and to the rest of Europe.**

Ukrainians desperately fleeing the Russian invasion can just go to Germany, Ireland, Italy, France, or Spain. Germany even has a clear scheme to get people into work as quickly as possible. They don't need a visa, they are welcomed, assigned a host, a place to live, and are supported. In contrast, Ukrainians trying to get to the UK have to apply online, complete a 40-page form, upload documents that need translating, or go on to some Facebook DIY scheme to find a host. The differential treatment is very stark. Some Ukrainians, disheartened by the UK visa scheme, have given up trying to get into the UK. British people who want to welcome them into their homes feel 'stitched up' by the bureaucracy of the visa system, which clearly puts paperwork before people. The UK system is less about showing compassion and more about the British government's ingrained desire to control its borders, regardless of the refugee situation.

There is some merit in saying that the UK's visa scheme is uncapped, but if barriers and mechanisms of control stop people from getting to the UK, it is not, in reality, uncapped. British citizens, who may never before have engaged in refugee issues, are frustrated and angry enough to have protested in front of Parliament about the UK visa scheme. This frustration is a direct result of the government's obsession with "taking back control."

This obsession with having to be seen to be "taking back control" of borders is the driver of the Nationalities and Borders Act and shows why the government imposed the visa route on Ukrainian refugees. The Act differentiates, in a rather sinister fashion, between the ways people get to the UK, describing those coming here through so-called "irregular routes" as "Group 2 refugees." Such second-class refugees have inferior rights to protection under the Refugee Convention. These are people fleeing persecution and civil strife, they have a family member or a connection to the community here already. However, they are penalised and criminalised just because they have no option but to take an unsafe route overland and may even have had to pay people-smugglers. These human beings seeking our protection could face up to four years in prison for having entered the UK "illegally." In addition, the rights to family reunion are being reduced and asylum granted in the UK will only be temporary protection for just 30 months. So, in addition to treating people as if they were criminals, the Act closes down family reunion, which is the main safe route to the UK. The British Home Secretary has said that, in recent years, 40,000 people have come here through a family reunion route, but we calculate that this draconian legislation could almost halve that number going forward.

#### **Impact of the Nationalities and Borders Act on those already in the asylum system.**

100,000 people have been waiting more than six months, with nearly 70,000 waiting over a year, for their asylum application to be decided. The average time to receive a decision on an asylum claim in the UK is over 12 months. The Act will increase delays in the system because of the inadmissibility rules that replaced the Dublin Agreements in January 2021. People will now have to wait to be told whether they have been deemed inadmissible and will be removed. These rules enable the government to send people to Rwanda, for example.

The Rwanda deal is not just "offshoring". It is the wholesale outsourcing of the asylum system. Those sent to Rwanda will no longer be under the jurisdiction of the UK asylum system. Thus, the government is washing its hands of those needing protection and will no

longer share responsibility under the Convention. The huge impact on asylum seekers is evident: people are disappearing from the asylum system; young people are increasingly self-harming through fear of being sent to Rwanda.

**Deterrence.** These draconian attempts to “take back control” will not deter those desperate enough to make dangerous journeys to the UK. Indeed, the Permanent Secretary in the Home Office recognises that the Rwandan agreement offered no evidence of deterrence, nor that the bill will deliver the intended outcomes. The government is over-promising and under-delivering, further damaging public trust in the asylum system, and not tackling the problem that it professes it wants to tackle.

A more effective and humane approach than the Rwanda deal would be to start a sensible diplomatic dialogue with the French and the EU about how to deal with a European-wide challenge. Applications for asylum in the UK could be made through joint processing arrangements with other parts of Europe and hotspots around the World. Creating humanitarian pathways to the UK, and a fair, orderly functioning asylum system would act as far greater deterrents. People would then know their claim would be dealt with swiftly, and that they would be supported to return if they did not reach the threshold for protection. These are the elements that will act as a greater deterrent.

One could conclude that, in over-promising and under-delivering, the government cannot “take back control” of its borders.

## Questions & Answers

**Q: Is the lack of ID cards in the UK, unlike the rest of the EU, the main problem with “illegal immigration?”**

A: It is a factor, but not the main one. Refugees believe they will be given a fair hearing in the UK. Many choose the UK because of the English language, which proportionately more have a basic grasp of before coming, than other EU languages, though francophone country origin refugees tend to stick to France. Others come here due to family connections. ID cards would help the state control who is here and could be susceptible to counterfeiting on the black market.

**Q: Are the speakers aware of the elements in the Online Safety Bill and implications for asylum and immigration, e.g., 28 criminal offences listed?**

Government intends to remove the profit incentive for people traffickers in its Borders’ Bill, hence removing people’s right to post adverts aimed at would be migrants, using social media. However, the new On-line Safety Bill could restrict rights of individuals to post opinions in support of refugees online as it currently stands.

**Q: Are refugees being forced into a corner of evasion and hiding by this new legislation?**

A: There is a real danger of a repeat of the Windrush scandal scenario with EU and other refugees or migrants. Government is all about promoting a “hostile environment.” Wendy Williams’ report on the Windrush scandal is very instructive.

**Q:What scope is there for pro-EU Grassroots groups to organise and campaign against the injustices of government immigration policy?**

A: There is already a coalition in operation called, "Together with Refugees." The coalition brings together all major campaign groups and would be pleased for any additional support that may be offered by GfE and local groups.