



CONFLICT AND COMPROMISE BETWEEN LAW AND POLITICS IN EU MIGRATION AND ASYLUM POLICIES

Odysseus Annual Conference
Thursday 1 February 2018, Brussels

Bringing together different legal experts on asylum and migration from across Europe, this conference critically assesses "Conflict and Compromise between Law and Politics in EU Migration and Asylum Policies" as 2017 has been marked by several rulings of the Court of Justice in extremely sensitive cases on migration and asylum issues. The most important policy and legal measures are analysed in three streams:



Stream 1 : EXTERNALISATION

International Responsibility | External Representation of the EU



Stream 2 : HUMAN RIGHTS

Right to Leave | Collective Expulsion



Stream 3 : INSTITUTIONS

Border Surveillance | JHA Agencies

Information and Registration:

<http://odysseus-network.eu/conference-2018/>



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OVERVIEW

After the success of [the 2016 edition on the issue of solidarity](#) and of [the 2017 edition on the theme "Beyond Crisis?"](#) that attracted a total of 900 persons, the next edition of the Odysseus Law and Policy Conference that will take place **in Brussels** comes back on the agenda on **Thursday 1 February 2018**. The theme of this year is "**Conflict and Compromise between Law and Politics in EU Migration and Asylum Policies**" as 2017 has been marked by several rulings of the Court of Justice in extremely sensitive cases on migration and asylum issues. Six workshops (instead of nine last year because time was considered as too short by many participants) and two plenary sessions will be organized as detailed below.

The workshops will be introduced by one or two academics followed by comments from three or four high level policy makers from EU institutions/agencies or Member States. Around one hour will be left for questions and debate with the audience. The conference participants are invited to select the workshops they will attend from a choice of three parallel streams as below.

As the annual Odysseus conference intends to become the platform where organisations and professionals working in EU migration and asylum law and policy meet every year in Brussels, a specific networking event will be organised for the participants in the evening of Wednesday 31 January before the conference as well as an evening cocktail just after the conference. The conference will start on Thursday 1 February at 9:00 am and close around 5pm.

STREAM 1



EXTERNALISATION

WORKSHOP A

WHICH INTERNATIONAL RESPONSIBILITY FOR THE COOPERATION OF THE EU AND ITS MEMBER STATES WITH THE LIBYAN COAST GUARDS?

WORKSHOP B

VISAS FOR ASYLUM: NOT UNDER EU LAW OR NOT AT ALL?

STREAM 2



HUMAN RIGHTS

WORKSHOP C

THE HUMAN RIGHT TO LEAVE A COUNTRY: TO PROTECT OR FORGET?

WORKSHOP D

COLLECTIVE EXPULSION OR NOT? INDIVIDUALISATION OF DECISION MAKING IN MIGRATION AND ASYLUM LAW

STREAM 3



INSTITUTIONS

WORKSHOP E

EXTERNAL COMPETENCE AND REPRESENTATION OF THE EU AND ITS MEMBER STATES IN THE AREA OF MIGRATION AND ASYLUM

WORKSHOP F

THE NEW BORDER GUARD AND ASYLUM AGENCIES: A NEW MODEL OF EU AGENCIES HAVING DISCRETIONARY POWERS AND CONTROLLING MEMBER STATES?

OPENING PLENARY SESSION

ASSESSING THE IMPLEMENTATION OF THE AGENDA ON MIGRATION

Several legal questions related to the implementation of the European Agenda on Migration will be analysed in relation with the Commission Communication of 27 September 2017 about the delivery of this agenda, including the issue of policy evaluation at EU level.



WORKSHOP STREAM 1: EXTERNALISATION

WORKSHOP A: WHICH INTERNATIONAL RESPONSIBILITY FOR THE COOPERATION OF THE EU AND ITS MEMBER STATES WITH THE LIBYAN COAST GUARDS?

While avoiding carefully to trigger the application of the ECHR, the EU and its Member States collaborate closely with Libyan coast guards by providing them training, equipment and funding. Can these elements lead to international responsibility of the EU and its Member States and in case before which judge?

WORKSHOP B: VISAS FOR ASYLUM: NOT UNDER EU LAW OR NOT AT ALL?

While asylum seekers have recourse to smugglers because they cannot travel legally to the EU, the CJEU had to rule about a Syrian family requesting the delivery of a short-term visa that would have allowed them to apply for asylum in Belgium. The decision of the Court in X & X (C-638/16) denying its jurisdiction has been severely criticised and should be scrutinised. Moreover, the key question of what would have happened if the Court had decided that the issue fell under the implementation of EU law remains open.



WORKSHOP STREAM 2: HUMAN RIGHTS

WORKSHOP C: THE HUMAN RIGHT TO LEAVE A COUNTRY: TO PROTECT OR FORGET?

The freedom to leave any country including his own recognised under human rights law is more and more challenged by pull-back practices as part of the fight against irregular migration and the externalisation of the EU migration policy. Turkey is requested to prevent migrants and asylum seekers to leave its territory by the EU in the declaration of March 2016. Transit countries like Libya if not origin countries, are asked to act in a similar way. The compatibility of such measures with the right to leave going further than the limitations traditionally authorised and imposed by States will be assessed.

WORKSHOP D: COLLECTIVE EXPULSION OR NOT? INDIVIDUALISATION OF DECISION MAKING IN MIGRATION AND ASYLUM LAW

The Strasbourg Court delivered two contradictory rulings on collective expulsion in the case *Khlaifia*. The recent ruling in *N.D. & N.T.* about returns from Mellila to Morocco adds a seventh case to the list of violations of article 4 of Protocol 4 of the ECHR on the prohibition of collective expulsions recognised by the ECHR. What seems to be at stake is the level of individualisation of return decisions required by case law. This kind of principle of administrative law appeared also about family reunification in the case *Chakroun* of the CJEU. But what does individualisation mean and require precisely?



WORKSHOP STREAM 3: INSTITUTIONS

WORKSHOP E: EXTERNAL COMPETENCE AND REPRESENTATION OF THE EU AND ITS MEMBER STATES IN THE AREA OF MIGRATION AND ASYLUM

The General Court considered in the case *NF v European Council* (T-192-16 of 28 February 2017) that the EU-Turkey statement of 18 March 2016 was not adopted by the European Council but by the Member States. Is this ruling in line with the case law of the CJEU on the external competence of the EU, in particular the leading case *ERTA*? The current discussions of the global compacts on migration and refugees in the UN offer also a good occasion for this workshop to look at the external representation of the EU and its Member States in the area of migration and asylum.

WORKSHOP F: THE NEW BORDER GUARD AND ASYLUM AGENCIES: A NEW MODEL OF EU AGENCIES HAVING DISCRETIONARY POWERS AND CONTROLLING MEMBER STATES?

In the case of Frontex, the adoption of a “technical and operational strategy for European integrated border management” by Regulation 2016/1624 shows that EU Agencies are increasingly tasked with competences involving some discretionary powers. JHA agencies are also more and more asked to controlling if Member States fulfill their obligations and could acquire a position of line manager of national authorities. These trends that look problematic with the intergovernmental nature of agencies will be analysed in light of the case law of the CJEU from Meroni to ESMA. The undergoing transformation of the EASO into a European Asylum Agency as well as the new European Public Prosecutor’s Office will be included.

FINAL PLENARY SESSION

TOWARDS “JUDICIAL PASSIVISM” IN EU MIGRATION AND ASYLUM LAW?

The final session will deal with the position sometimes considered as judicial passivism adopted in the course of 2017 by the Court of Justice of the European Union in several cases on extremely sensitive issues like the humanitarian visas for asylum seekers, the declaration made by the EU and Turkey in March 2016 and the issue of relocation of asylum seekers in relation with the principle of solidarity. This session will be fed with summaries about the output of the previous workshops putting the emphasis on the (potential) role of judges in relation with each subject.