

THE "SAFE THIRD COUNTRY" CONCEPT AND THE CONCEPT OF "SAFETY" AS A MEAN TO DEFLECT PROTECTION OBLIGATIONS

EUROPEAN COUNTRIES' POLICIES AND PRACTICES

by GAIA ROMEO



OVERVIEW

- **Definitions:** the “safe third country” (STC) concept and the concept of “safety”
- The **STC legal concept** in Europe and in the EU
- **Policies and practices** informed by the STC concept and the concept of “safety”
- **Academic interest and criticisms** to the STC concept
- **The PhD research project**

DEFINING STC, SAFE, SAFETY...

- **Safe third country (STC):** A country where an asylum seeker **could have applied for and could have received international protection** -> a legal concept
- The **concept of “safety”** -> inspires other policies to deflect protection obligations, without a direct reference to the legal STC concept
- **“Safe port of disembarkation”** -> in the guidelines related to the SOLAS and SAR Conventions



THE STC LEGAL CONCEPT

THE HISTORICAL FRAMEWORK

- **The end of the 'old' asylum regime -> liberal approach**
 - end of the Cold War
 - economic recession
 - new mass influx of refugees
- **'new' asylum regime -> more restrictive practices**
- 1986 the "Danish clause"
- 1986-2000 STC policies and practices spread around Europe and the EU

THE INTEGRATION INTO EU LEGISLATION

- The **London Resolutions** (1992)
- The **first Asylum Procedures Directive** (2005)
- Actual formulation in the **Directive on procedures for international protection** (2013)

THE 2013 DIRECTIVE

- What does the **2013 Directive** say? It sets common standards on...
 - **Criteria to apply the STC concept** (respect of the life and liberty, no risk of serious harm and of torture or inhuman and degrading treatment, possibility of protection in accordance with the Geneva Convention...)
 - **Methodology and procedural safeguards** (reasonable connection between the applicant and the STC, TC must be safe for the applicant in his/her particular situation, the applicant must be able to rebut this presumption...)

- It is a ground for considering an application as **inadmissible**

THE INTEGRATION AND APPLICATION OF THE STC

- **Most of EU countries have integrated the STC principle** in their legislation
- However, in most of the EU countries **the use of this principle** in the assessment of application for international protection is **missing or only anecdotal**
- Only **few EU countries use it on a larger scale**, often in relation to a **particular nationality or a particular context**

POLICIES AND PRACTICES IN EUROPE AND IN THE EU

- The aim is to **deflect protection obligations** by returning asylum seekers to third countries or preventing them from reaching EU and European land
- They are **supported and justified** by the idea that a TC is “**safe**” or is a “**safe port of disembarkation**”
- They can be inscribed into a **general shift towards informalisation** in EU external asylum and migration policy
- E.g. the 2016 EU-Turkey deal, the 2017 Memorandum of Understanding Italy – Libya...

LATEST DEVELOPMENTS IN EUROPE

- New bills in **Denmark** (2021) and the **UK** (2022)
 - **Rwanda** as an implementation partner
 - Goodbye **connection requirement**
- Possible in the EU? No, but ...
- The **New Pact on Migration and Asylum** (border procedures, Regulation...) -> towards an increased application of the STC concept?

ACADEMIC LITERATURE AND CRITICISM TO THE STC CONCEPT

CONSISTENCY WITH HUMAN RIGHT AND ASYLUM LAW

- **Refugee Convention** -> does neither allows nor prevents from using the STC concept
 - **UNHCR** -> the STC concept is ok, but some guarantees must be ensured (only general guidelines)
 - **European Court of Human Rights** -> not challenging the concept, but guidance on procedural safeguards
- Still **ample room to debate** on the details of its application

SCHOLARS' DEBATE

- **What makes a country safe?** Which rights should be guaranteed to the asylum seeker/refugee?
- How much is the **sending state accountable** for the treatment the asylum seeker will receive? -> risk of chain refoulement?
- What does '**protection**' mean?
- Which **connection** should there be between the asylum seeker and the STC?

SCHOLARS' DEBATE

- **Do existing schemes** to share asylum seekers' responsibility based on the STC concept (e.g. the Dublin mechanism, the US-Canada agreement) manage to **avoid human right related risks?**
- **Scholars' conclusion:** it cannot be said that the STC concept is inconsistent with international human right and asylum law, but its application of the ground is dangerous and entails too many human right related risks

MAIN

- **The STC concept** has been used very **heterogeneously** across time and space in Europe, as for legal wording, application on the ground and connected policies and practices
- **Academic literature** on the issue has been focusing especially on theoretical problems connected to the use of the STC concept, but not very much on its practical implementation, and on the policies and practices connected

THE PHD RESEARCH PROJECT

- **How do the EU/European countries use the STC concept and the concept of “safety” as a mean to deflect protection obligations?**
 - Which factors have influenced the integration of the STC concept into national legislations and its application on the ground?
 - How have the EU/European countries been developing formal and informal policies and practices to promote the application of the STC concept and of the concept of “safety”?

THE RESEARCH DESIGN

- **Comparative study** on 4-5 EU/European countries (e.g. Denmark, Italy, Greece, Portugal, Spain, Sweden, the UK).
- **Timespan**: from the first appearance of the concept until nowadays
- **Content and discourse analysis** (legislation, court decisions, policy briefs, reports...I interviews with policymakers and experts in the field...)
- **Theoretical approach and methodology** still to define (Advocacy Coalition Framework, Europeanisation from a sociological perspective...)

THANK YOU



BRUSSELS
SCHOOL OF
GOVERNANCE

www.brussels-school.be

The Brussels School of Governance is an alliance between the Institute for European Studies (Vrije Universiteit Brussel) and Vesalius College.