

Morgades Gil, Silvia, *De refugiados a rechazados. El sistema de Dublín y el derecho a buscar asilo en la Unión Europea* (Tirant lo Blanch, Valencia, 2021), 496 pp. (Ebook available)

The book under review, *De refugiados a rechazados. El sistema de Dublín y el derecho a buscar asilo en la Unión Europea*, addresses the issue of European asylum law, and discusses the strengths and failures of the current asylum system. It examines the transformation of the right to asylum in Europe as a result of the establishment of the Common European Asylum System, in addition to the consolidation of the role of the European Court of Human Rights and of the European Court of Justice in the configuration of the refugee regime. In fact, the debate on whether, and in what manner, the right to seek asylum in the European Union should be conceptualised in legal terms is a long running one, and the author incorporates theoretical and jurisprudential perspectives in order to analyse the issue. *De refugiados a rechazados* seeks to contribute to the debate by examining how the right to request asylum has been treated by the legislative process and judicial bodies when it conflicts with other interests. The premise of the book is that refugees and other asylum seekers are stripped of the protection which States provide to their nationals. The thoughts contained in the book are the result of a rigorous and critical analysis endorsed by Silvia Morgades' research.

The focus of the book is not limited to the right to asylum in a narrow sense. This would have required the author to examine only the current legal framework. Instead, the book addresses the challenge of analysing the tensions which emerge when the protection seeker requests asylum within the framework of the Dublin system and the broader protection of their human rights may not necessarily be considered. Based on an evolutionary interpretation of the analysis, the author concentrates on finding the elements which articulate the access to some type of international protection within the European Union and, with this aim, Morgades studies: a) the *de facto* entry in EU territory or in spaces under the jurisdiction of a member State; and b) the *de iure* admission in one of these States with the aim of making a first examination of the admissibility of the petition. Silvia Morgades brilliantly explains the scope of the Dublin requirements, arguing that the preliminary examination should not exclusively consider the objective evidence relating to the State of entry, according to the Eurodac system.

The book contains three clearly differentiated chapters which follow a logical structure. Part I is entitled "The right to seek asylum in the European Union". She explains the origin and the milestones that have built the asylum institution in the EU. She takes as a starting point a broad concept of asylum, which is "the territorial protection given by a State in its territory to persons who are under its jurisdiction due to reasons related to the protection of human rights" (the quotation is the reviewer's own translation, p. 27). Then, she takes as the reference framework the Schengen Agreement and the Area of Freedom, Security and Justice. The power to admit foreign persons into the territory of States is an attribute of sovereignty. But the right to flee from one's own country is a recognized right in international human rights instruments. Therefore, any person may present themselves *de facto* at the frontiers of a foreign state and request to be admitted. Whereas entry is a matter of fact, admission is a legal act. In this context, special attention is given to the State practice of non-entrance or immediate return. Silvia Morgades contributes to the creation of a theory related to two types of return: a) collective and automatic returns from places not under the jurisdiction of the State (*Hirsi Jamaa v.*

Italy), and b) collective and automatic returns from territory under the jurisdiction of one Member State to another Member State (*Safari v. Italy*, and *Ilias and Ahmed v. Hungary*). The author demonstrates that the judgments of the European Court of Human Rights admit that under certain circumstances refugees and other persons who need protection have the right to remain in a Member State while a decision on their statute is being adopted.

Part II, “The Dublin system: its formal legitimacy and *de iure* admission in the territory of a State Member of the European Union”, refers more specifically to the Dublin system. It broadly examines the objectives and evolution of the Dublin system, and the different criteria established to assign to Member States the responsibility to examine asylum petitions, including discretionary and humanitarian clauses. She goes beyond the system in force, presenting an overview of the system’s functioning, and indicates the perspectives of the future Dublin IV. The author examines the nuances of the system’s formal legitimacy and explains with clear arguments that CEAS is incomplete. The unresolved issues can be summarized as follows. Firstly, the configuration of legal and safe pathways for entry, given that the option of humanitarian visas has not been successfully explored. Secondly, the fact that CEAS is not being respected in a rigorous way by all Member States. Thirdly, according to art. 78 (2) (a) of the TFEU “a uniform status of asylum for nationals of third countries, valid though the Union” shall be adopted, but it has not yet been established.

Finally, Part III is entitled “The exceptions to the application of the Dublin system: substantive legitimacy, solidarity, and the principle of mutual trust”. The Dublin system establishes a procedure according to which one sole State is responsible for examining each asylum petition, but the system does not guarantee that the destination State will respect human rights standards according to specific criteria. When the protection of the human rights of refugees and asylum seekers is not sufficiently guaranteed through the Dublin system, it loses all legitimacy from the substantive point of view. In addition, the system is based on the presumption that all Member States are safe States, “always and as regards to all international protection seekers” (p. 297). Consequently, asylum seekers do not enjoy the right to choose the country in which their petition could be examined (p. 337).

The member State that examines the petition does not guarantee that the petition will be examined as regards to the substantive dimension of the necessity of protection. At this point, the author reviews in depth the concept of a safe third country: its formal legitimacy, the principle of the admission in one sole responsible State, the conditions for the transfer of asylum between States and the risk of indirect refoulement resulting from the concept of safe third country.

Neither the regulatory harmonization on the safe third country regime, nor the fact that the European Union Member States are parties to the Geneva Convention on the Statute of Refugees of 1951 and to the main international human rights instruments ensures that every protection seeker will have at least an opportunity to have their application examined in one Member State according to human rights standards (p. 322). This is one of the demands made by the author.

The dichotomies with which the author plays are evocative: Schengen *vs.* Dublin, asylum policies *vs.* immigration policies, control *vs.* protection, the communitarian method *vs.* intergovernmental dynamics, human security *vs.* national security, internal security *sv.* human rights, the realm of human rights and European standards *sv.* a place of non-rights.

The conclusions are clear and suggestive. The author expresses her view of the conceptual boundaries from which the EU will have to move away. Closing borders as it is currently conceived is doomed to failure and the system should be replaced by a porous conception of borders. This would make for a reliable asylum policy. The porosity of borders implies the creation of legal and safe

pathways of entry in the European Free Movement Area. Likewise, the author dismantles the rhetoric related to the “common” character of the asylum system, adducing that the system is neither common nor a system. The low regulatory density of the rules, with numerous exceptions and discretionary clauses, make it difficult to identify the real framework and the boundaries of the system. Furthermore, the lack of a European standard for the protection of human rights leaves the configuration of a model which guarantees the application of a common system in hands of external actors such as the European Court of Human Rights.

The ten conclusions of the book are characterized by the idea that the Dublin system should be revised. The author defends that instead of being a formal mechanism which identifies the Member State responsible for examining applications, it should become a system for the distribution of the inherent function of solidarity. Not only does she explain that the enforcement of the rules contained in the Common European System remains a decentralized process, she also shows that the system lacks the essence of solidarity inherent to asylum; and she proposes that the solidarity principle should be incorporated in the asylum concept.

To sum up, it is a pleasure to read a book in which the author engages in deep, stimulating and inspiring arguments which are the result of documented research and reflection. It is not a coincidence that this book, written by Professor Silvia Morgades, received an award from the Barcelona Bar Association to projects on Asylum Law (Ferrer Eguizábal Award 2016). The author demonstrates, once again, her accurate and comprehensive knowledge on international *ius migrandi* and her capacity to argue legally with rigor and a broad perspective.

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