

Annual Report - 2016

Joint Project between the Institute for International Legal Studies of the CNR and the Institute for Legal Studies of the HAS on:

Human Rights of Asylum Seekers in Italy and Hungary
Influence of International and EU Law on Domestic Actions

in the framework of the bilateral Agreement on Scientific Cooperation and Its Executive Protocol between the National Research Council of Italy (CNR) and the Hungarian Academy of Science (MTA)

Social Sciences and Humanities, Cultural Heritage (SAC) Department

Project Area: *Research and Innovation*

1. Introduction

Italy has been a long target of Mediterranean crossings, while Hungary is a relatively new target of mass migration. This research is analyzing refugee law enforcement in the two countries.

The comparative analysis of the sector legislation of Italy and Hungary, and of their relation with European and international law, will highlight fundamental trends and challenges concerning the future of handling migration towards the EU. Therefore, it includes relevant international and transnational norms (United Nations, Council of Europe, and European Union), the related case law, national legislation, and domestic jurisprudence.

International law and EU law gives us a relatively detailed framework. The aim of this research is to find the limits and paths of state actions in Italy and Hungary, what obligations states have when they deal with refugees: whether they must use repressive power or not, whether they can be criminalized, whether sealing borders can be necessary or not. These steps should clarify whether and how the national jurisprudence and legislation have reacted to the international 'constitutional requirements'.

Two main sets of questions will be evaluated: the obligations of the states, in particular of the border states, and the implications on human rights.

The analysis of the effectiveness of European and international regulations in Italy and Hungary will be carried out as part of a broader assessment of the effectiveness of in particular EU sector legislation.

2. Activities carried out in 2016

The main activities carried out in the context of the Joint Project in 2016 were the following: a) exchange of researchers; b) organization of a lecture; c) realization of interviews with experts and representatives of national and international, governmental and non-governmental institutions, in Italy and Hungary; d) definition of individual research topics; e) opening of the research group to external voluntary collaborations; f) starting collaborations with other research groups.

a) Exchange of researchers

Balázs Majtényi was in Rome for a study visit from 5th July to 5th August. His study visit was particularly useful to him and the Hungarian team for the acquisition of a broader and more realistic view of the Italian system of hosting, not always well understood and represented in Hungary by national media. Majtényi also held a lecture (v. infra) and made some interviews with representatives / experts from organizations active in the field (v. infra), using a predefined list of written questions (Annex I).

Andrea Crescenzi and Rosita Forastiero were on a short work trip in Budapest from 5th to 9th September. They carried out their research at the library of the Central European University (CEU), and elaborated a rich common bibliography list.

Gianfranco Tamburelli made a study visit to Budapest from 14th to 24th November. He made some interviews with representatives / experts from governmental and non-governmental organizations, using the same basic list of written questions, revised to take into account the specific connotations of the Hungarian practice (Annex I).

Zsolt Kortvelyesi was on a short work trip in Rome from 15th to 20th December. He very actively participated in a work meeting with the Italian team held at the ISGI. The meeting allowed a first overall assessment of the identified research themes.

b) Lecture

Majtényi hold a lecture on: *Civil Solidarity with Refugees: The Case of Hungary in Rome*, at the CNR headquarters (20th June 2016, Aula Golgi).

Among other things, Majtényi highlighted the fact that “in response to the refugee crises, in order to help refugees, some of the Hungarian civil movements organized themselves and circulated information on Facebook. They provided humanitarian help and services for refugees. These activities were considered in many cases illegal under Hungarian law, but at the same time they were protecting universal values (e.g. human dignity, equality), which are the basis of international and of the European human rights protection system”.

c) Interviews

In Rome, Majtényi interviewed: the Attorney General at the Court of Appeal; experts / representatives from Amnesty International - Italy, the Italian Council for Refugees - CIR, the Africa and the Mediterranean NGO, the PRO.DO.C.S. NGO, and the Tomorrow Project - Culture and Solidarity NGO

In Budapest, Tamburelli met the counselor of the Italian Embassy, and interviewed experts / representatives from the International Migration Organization (IOM), the Hungarian Helsinki Committee, Amnesty International - Hungary, the Eötvös Károly Institute, the Hungarian Association for Migration.

d) Research themes

The Italian and the Hungarian research teams exchanged ideas and talked about possible coordinated individual research themes. They were finally identified as follows:

- *The Geneva Convention - An Analysis in the Light of Current Needs, Completeness and Effectiveness of Its Implementation in the EU Law* (Tamburelli)

- *The Principle of Responsibility in the Governance of the Common Asylum System* (Crescenzi)

- *The Twilight of Refugee Rights and the EU* (Dezso Ziegler)

- *Responses to Migration in the EU VS. Member State Dynamics: The Case of Hungary* (Körtvélyesi)

- *How the National Identities of Member States Relate to Issues of the Refugee and Other Migrant Legislation of the EU: The Hungarian Case* (Majtényi)

- *National Legislation and Best Practices on Integration Policies for Migrants, Including Asylum Seekers, with particular regard to the rights to education and sport* (Forastiero)

e) External voluntary collaborations

The very first activities carried out in Italy (and, in particular, the lecture hold by Majtényi) were welcomed with interest by various experts and researchers. Then, the Italian - Hungarian Team decided to open the group to external voluntary collaborations.

Two external researchers offered their collaboration and the respective research themes were discussed and defined:

- Elisabetta Frau will carry out a research on: *Legal Difficulties under National and International Law for the Assistance of the 'Transit Migrants' Who Want To Leave the Country and Go North: The Case of Italy*;

- Francesca Zappacosta a research on: *Issues Concerning Refugees Integration, in particular with regard to Employment Rights: The Case of Hungary*.

Finally, in November 2016 Sara Mannocchi (ISGI) has joined the team and she will define her research theme in the first months of 2017.

f) Collaboration with other institutions and research groups

During the year, the research team has evaluated the opportunity and initiated some cooperation with three other institutions / research groups:

- the Group on: “International and European Law of Migration and Asylum” of the Italian Society for International Law and European Union Law (SIDI);

- the ‘Laboratory’ on BRICS (Brazil, Russia, India, China, South Africa) of the EURISPES - Institute of Political Studies, Economic and Social;

- the Institute of Studies on East and South East European Countries - IOS of Regensburg (Germany).

With the SIDI, the Italian team has been exchanging some information since June 2016. These first contacts have been finalized to the identification of subjects of common interest. It should be noted that the SIDI Group is activating internal subcommittees on specific issues (unaccompanied minors, trafficking and smuggling of people, migration by sea, etc.).

The dialogue with the ‘Laboratory’ on BRICS of the EURISPES has also been initiated in order to identify issues of eventual common interest. In this regard, it should be noted that the

EURISPES 'Laboratory' on BRICS has drafted a project on: "Migration Compact. Analysis and evaluation of development scenarios of migration flows involving the countries of BRICS"

Exchanges of information were finally made with the IOS.

3. Activities planned for 2017.

The main activities planned for 2017 are:

■ Circulation of the interviews made with experts / representatives from various organizations through their online publication in the ISGI website. In particular, of the interviews with experts / representatives from: 1. the International Migration Organization - IOM (Budapest), 2. the Hungarian Helsinki Committee, 3. The Italian Council for Refugees - CIR, 4. the Hungarian Association for Migration, 5. Amnesty International - Italy, 6. Amnesty International - Hungary, 7. the Eötvös Károly Institute (Budapest), 8. the non-profit Association 'Africa and the Mediterranean' (Rome), 9. the NGO PRO.DO.CS - Tomorrow Project Culture and Solidarity (Rome).

■ The opportunity of publishing the interviews with the Attorney General at the Court of Appeal of Rome (interviewed by Majtényi) and the Counsellor of the Italian Embassy in Budapest (met by Tamburelli), as well as the opportunity to carry out other interviews for the preparation of a 'dossier', will be evaluated.

■ The exchange of researchers through short missions will continue:

- in the first semester of 2017, Crescenzi and Forastiero will be in Budapest and Tamas Dezso Ziegler and Zsolt Kortvelyesi will realize short work trips in Rome,

- in the second half of the year, Tamburelli will realize a research stay in Budapest and Majtényi will be in Rome. The research stays of the heads of the two national research teams will be aimed also at the definition of the content and purposes of the final international workshop for the presentation and dissemination of research results, which will be held in the last months of 2018.

■ Abstracts and first drafts of the research carried out on the following themes:

The Geneva Convention - An Analysis in the Light of Current Needs, Completeness and Effectiveness of Its Implementation in the EU Law;

The Principle of Responsibility in the Governance of the Common Asylum System;

The Twilight of Refugee Rights and the EU;

Responses to Migration in the EU VS. Member State Dynamics: The Case of Hungary;

How the National Identities of Member States Relate to Issues of the Refugee and Other Migrant Legislation of the EU: The Hungarian Case;

Issues Concerning Refugees Integration, in particular with regard to employment rights: The Case of Hungary;

National Legislation and Best Practices on Integration Policies for Migrants, Including Asylum Seekers, with particular regard to the rights to education and sport;

Legal Difficulties under National and International Law for the Assistance of the 'Transit Migrants' Who Want To Leave the Country and Go North: The Case of Italy

will be elaborated and discussed.

■ A workshop in Rome will be organized in Rome, at the CNR, for a first dissemination of research findings and the identification of issues of common interest to other research groups or individual experts.

4. The launched collaborations with the research group on “International law and European Migration and Asylum Law” of the SIDI, the Laboratory on the BRICS of the EURISPES, and the IOS of Regensburg will be maintained and strengthened.

Considering that in 2017 the annual conference of the SIDI will be precisely on issues relating to migration and asylum, the chance of giving a speech or circulating an intermediate report on the research findings of the joint project will be assessed.

The establishment of new contacts and the broadening of the existing network will also be evaluated. In particular, new research cooperation might be launched with the Eötvös Loránd University of Budapest, the Moldova State University of Chisinau, the Taras Shevchenko National University of Kyiv, the Adamas University of Kolkata, the University of Regensburg, the Unione forense per la tutela dei diritti umani - UFTDU (Rome).

5. The research is assessing, mainly from a normative point of view, but also considering political - sociological - historical aspects, the main lines of debates concerning the handling of the refugee question in Europe.

Findings of the research are likely to provide a significant contribution to the literature in the field and the results will be integrated into a more general study bearing on the effects of international and European regulation in the EU member states.

Finally, proposals for further harmonizing and making more effective international, EU and national legislations in this sector will eventually be defined.

Rome, 20.01.2017

A handwritten signature in black ink, reading "Gianfranco Tamburelli". The signature is written in a cursive style with a large, stylized initial 'G'.

Gianfranco Tamburelli

Responsible Research Activity on:

*Law and International Cooperation for Sustainable Development,
the Protection of the Environment, and the Management of Natural Resources and Space*

ANNEX I

List of Questions

- 1) What is your opinion on the existing national legislation ?
- 2) What do you think about the current rules and praxis concerning the recognition of the status of refugee ?
- 3) What do you think about the EU policy of funding and building camps for asylum seekers in Africa and elsewhere outside the EU ?
- 4) What do you think about the EU - Turkey Agreement ?
- 5) Do the State and / or the EU have the obligation to try to save as many migrants as possible in the Mediterranean Sea ? If so, what are the concrete actions that are necessary ? Do the State and /or the EU have the obligation to do it in international waters too ?
- 6) What is the public sentiment about refugees in Hungary ?
- 7) How are the newspaper and the TV News presenting the issue ? To what extent can you feel the government control the media ?
- 8) Is there a moral or legal obligation to accept the proposed refugee quota ? And, generally, what is your opinion about the quota ?
- 9) How is the society reacting to the announcement of the referendum results ?
- 10) What do you think: does the State have to use (police or military) force to return migrants ? ... does it have to stop them from moving on to other countries ?
- 11) What are, in your opinion, the specific obligations of the border States ?
- 12) To what extent the relation between Hungary and Serbia changed after September 2016 ?
- 13) Can you imagine a situation where state officials or judiciary make a decision based on their moral convictions rather than on the law in force ? If yes, what is the risk to break the law ?
- 14) What do you think, what kind of legislative changes are needed ?
- 15) In relation to the above mentioned subjects, what are the main tasks of human rights NGOs?

16) Are there situations in which human rights defenders and NGOs might not follow the regulations, because these regulations are inhuman according to their views ? If yes, what are the risks in ignoring or breaking the existing regulations ?

Budapest, 18th - 23rd November 2016