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Title: Refuge and asylum in European migration regimes. Metamorphoses of a controversial category, using the EU, Germany and Poland as examples

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Summary:

Migration in the EU has changed radically. This is also reflected in the state of the literature on the topic of migration. Falling numbers of asylum applications and a rising number of irregular migrants correspond to a shift in the academic and public debate: the topic of asylum has an increasingly low profile, while irregular immigration dominates the debates. The category of refuge and asylum, which only acquired a firm place in international law a few decades ago, against the background of events in the National Socialist period and political interests in the ‘Cold War’, is already waning in significance as an immigration option within the EU. Using Germany and Poland as examples, and considering developments in asylum policy at the EU level, the study shows how the significance of asylum law has changed in the last 20 years, how this change can be explained, and how it relates to the strategies of migrants.

Here the political construction of categories of migrant, as a central instrument of migration policy, forms the analytical starting point of the study. In the legislation of the countries of immigration, various categories of immigrants are constructed. These are connected to specific requirements for legal entry and the claiming of rights. The aim of these categorizations is to select migrants with certain ‘desirable’ characteristics and enable them to enter the territory in question, while keeping others out. The different categories of immigrant correspond to different legal statuses within the territory, each with a different level of rights – the categorization thus goes hand in hand with a hierarchization of legal situations. At the same time, it is the definition and regulation of ‘legal’ immigration which produces irregular immigration in the first place. The division of migrants into such categories as ‘refugees’, ‘work migrants’, or ‘illegals’ is therefore based on political constructions which can change over the course of time. The category ‘asylum’ is a special case in that it is based on international law obligations, and therefore cannot easily be subjected to selective attempts to establish criteria of ‘desirability’. Nonetheless, in recent decades the right to receive refugee protection in an EU member state has also been severely limited by a number of measures.

The study shows that the established definition of ‘refugee’, as developed after the end of World War II, has hardly changed. The conditions for making an application have been tightened, however, taking two central levers as starting points: access to the asylum procedure, and the social and legal situation of asylum seekers as they go through the procedure. Access to the procedure has been made more difficult through regulations about jurisdiction (Dublin II regulation and “safe third state” regulation) and tightened visa conditions. States such as Germany which have no external EU border have thus been able to markedly reduce the number of asylum applications, while responsibility for carrying out asylum

procedures is assigned to states on the external borders of the EU – such as Poland. These states conclude readmission agreements with the transit states and states of origin, as shown in the study using the example of the Ukraine. Regulations of this kind have thus led to an externalization of refugee protection to outside the EU and an illegalization of the migratory movement which nonetheless takes place. The worsening of the social situation of asylum seekers, as a further lever of migration management, was regarded as a deterrent, particularly in the ‘old’ member states: thus for example in the Federal Republic of Germany active efforts were made to exacerbate the social conditions in which asylum seekers lived. In the new member states on the EU’s external borders, the socially precarious situation of asylum seekers often has its roots in inadequate infrastructure and resources; nonetheless an increasingly similar tendency can be identified – in Poland, for example – to actively deploy strategies of restriction in the social realm.

The processes of externalization described above do not, however, mean the end of the asylum regime – instead the installation of this regime in the new member states on the external borders of the EU and the states adjacent to the EU is the central starting point and cornerstone of the migration regimes developing in those places. With the growing importance of irregular immigration and the transformation of the new member states into target countries for migration, a fundamental change in migration regimes in Europe is taking place.

The study therefore offers new insight into the field of asylum policy in three respects: on the one hand, asylum policy is analysed in the context of category construction related to migration policy. In this way the significance of the categorization and hierarchization of ‘desirable and ‘undesirable’ migrants as a central component of ‘migration management’ is revealed. On the other hand, the two studies of individual countries provide an extensive picture of asylum policy in Germany and Poland. By embedding the two case studies in developments at EU level, and relating them to each other, the study offers a new and comprehensive insight into the dynamics which have determined the changes in the European asylum regime in the last two decades.