

# Externalisation of the right to asylum

Personal impact behind a vague term.

Simon Flad  
Panteion University Athen  
Department of Political Science and History  
Topics in Contemporary Critical Theory: Statelessness, Citizenship, Dissent  
Athena Athanasiou, Dimitris Christopoulos

In this essay I would like to discuss, what externalisation means for the people concerned. In the context of asylum, externalisation refers to the practice of transferring responsibility for dealing with asylum seekers and refugees to external countries or regions. According to Frelick et al. (2016: 193), this practice can take different forms, including bilateral agreements, regional cooperation or the outsourcing of asylum procedures to external countries or institutions. They define the term externalisation of migration control. It “describes extraterritorial state actions to prevent migrants, including asylum seekers, from entering the legal jurisdictions or territories of destination countries or regions or making them legally inadmissible without individually considering the merits of their protection claims” (193). They say “border externalisation policies and practices can directly affect the human rights of migrants” (Frelick 2016: 196). In this essay I would like to discuss the personal impact for affected people when they are brought to third countries to apply for asylum. This so called offshore processing is a very topical and important subject after Italy decided to make an agreement with Albania (Semini 2023). According to this plan, asylum seekers will be send to Albania when they try to enter Italy, what usually happens on the sea route. It's a new path that Italy is going. This could be a model for the whole European Union. German politician also wants to examine plans of this kind (Parker 2023). United Kingdoms government was going this way before, when they presented plans to deport asylum seekers to Rwanda without any checks. But the first deportation flight was cancelled through a judgement of the European Court of Human Rights, which also applies to United kingdom. The British Supreme Court also considers these measures to be unlawful (BBC News 2023). The thesis is, Asylum seekers lose their personal right of asylum which has an big impact on a personal level. The question is, how will offshore processing affect asylum seekers. It is not only a look at the legal consequences, but also the very personal consequences for those seeking protection. It's more about, what this will look like in practice. Furthermore, it's about the truly tangible effects this will have on refugees. Because the Italian plan is not yet implemented and concerns the future, there is little literature and no empirical values. The extent to which asylum seekers could be affected is analysed on the basis of previous, similar procedures and ideas. I will try to show what these plans mean by looking at various aspects, like inhumane conditions in refugee camps, poor asylum procedures in third countries, an uncertain future for refugees, worsening living conditions for refugees and the general abolition of the right to asylum.

First I will talk about the inhuman conditions in countries who take over the asylum procedure. Refugees and migrants face a range of human rights violations both during their journey and in the countries where they seek asylum. Reception centres often provide inhumane conditions, and applicants often face long waiting times for a decision on their asylum application. These centres are often found in neighbouring countries or along the route to Europe (Bendel 2020: 8-9). The physical and psychological harm suffered by individuals in these camps is severe, and the countries they pass through or stay in are often unable or unwilling to prevent these violations. In addition to these direct violations, refugees also experience inadequate living conditions in protracted refugee situations. These situations severely limit or even deny access to basic services such as healthcare, education, and employment. Many refugees are unlawfully detained and subjected to mistreatment (Bendel 2020: 8-9). The European Union and its member states tries to support countries that serve as initial reception or transit countries for refugees in developing and improving their own asylum systems (Bendel 2017). The aim is to establish and continuously promote high human rights standards. But it may be unrealistic to expect third countries to immediately achieve the same human rights standards, which are not always met even within the EU, human rights should nevertheless serve as a guideline for agreements and cooperation with these states. This also applies to informal agreements concluded between the EU or its member states and third countries. It is important that the EU does not simply delegate its responsibility for respecting human rights to external states, but takes an active role in promoting and upholding these rights (Bendel 2020: 9). When people are sent to a country where they are afraid of poor treatment, a state is violating human rights. According to Murray (2022), states engaged in externalisation deny their responsibility for human rights abuses in third countries. Malena et al. (2023) say "Asylum-seekers and refugees thus end up in limbo, exposed to risks of refoulement and further human rights violations, such as indefinite stay in isolated places or in punitive conditions, at great harm to their physical and mental health."

This leads us to the next critical point, third countries do not have the same standards in their asylum procedures. As a result, justified asylum applications are rejected. In my opinion a state cannot guarantee that another state will process asylum applications according to the same standards. Judges in UK said genuine refugees sent to Rwanda would be at risk of being returned to their home countries, where they could face harm (BBC News 2023). This vulnerability becomes more pronounced due to the inherently subjective nature of determining what qualifies as a "well-founded fear" or falls under the category of "persecution" (Gündogdu 2014: 110). As stories of persecution come under scrutiny, the human body has taken on a pivotal role in asserting rights, leading to the emergence of what Didier Fassin appropriately terms "biolegitimacy". Gündogdu explains the "possibility of being relegated to an object of law" it "explains why the legal personhood of various categories of migrants remains precarious despite significant transformations in the field of human rights since the time Arendt completed her analysis of statelessness. Asylum seekers still find themselves in a fundamental condition of rightlessness to the extent that they can be subjected to detention given the monopoly that states continue to have on the legitimate means of movement" (Gündogdu 2014: 122). Gündogdu brings Hannah Arendt's famous sentence into the present day and with her analysis hits exactly the points that arise in externalisation policy. European states are thus shirking their duty to guarantee fair asylum procedures and thereby evading the Geneva Convention on Refugees.

Moving on to another crucial aspect, such practices mean that those seeking protection face a completely uncertain future and find themselves in an extremely vulnerable situation. One example of this is the situation described by Rosenthal et al. (2020): In 2011, refugees were deported from Israel to Rwanda, where they were only becoming a tourist visa. Without permanent residence status or adequate protection, they were expelled from Rwanda again after a short time. In desperation and without legal options, they turned to illegal smugglers to flee to Uganda. This illustrates the precarious situation of those seeking protection, which is exacerbated by such unsafe and legally questionable practices. Many refugees face a highly uncertain future and are looking for ways to migrate to other countries or reunite with their families.

In doing so, they often find themselves in situations in which they lose some or all of their ability to act and can slip into deep depression and apathy. Their precarious situation is exacerbated by the consequences of international agreements, including those initiated by the European Union, and by social developments in various African countries. The terms of these agreements are often unpredictable, arbitrary and highly questionable both legally and morally (Rosenthal et. al. 2020). This uncertainty not only affects the mentioned examples of Rosenthal, but also many other refugees who have to ask themselves questions about a future that they can hardly influence: Will a country remain a place where they can never be without danger to their lives? Will it continue to be a place of refugee from which they will not be deported? Are there opportunities to live in neighbouring countries? Or is there the possibility of settling in another country, perhaps even with their nuclear families? (Rosenthal et. al. 2020) They end up in a complicated situation without knowing what the future will bring. This lack of prospects has a strong impact on the personal mental health of asylum seekers. This uncertainty that is being imposed on the refugees is a failure of the European states.

Another very important point is, that populist ideas of this kind create a mood against those seeking protection. Even if this externalisation does not stand up to any law, it has an big impact on the refugees who are already living in Europe. The feeling that they are not welcome, leads to psychological stress. But that's not all, verbal and physical attacks are also becoming more frequent as a result. One example: In 2023 the number of politically motivated attacks on refugees in Germany almost doubled compared to the previous year. According to reports, 2,378 such incidents were registered by the police, compared to 1,248 in 2022. These crimes also included 313 acts of violence in which a total of 219 people were injured. It is also particularly alarming that attacks on refugee shelters have reached a record high not seen since 2017, with a total of 180 registered crimes. Clara Bünger, a left-wing politician who requested these figures, sees the increase in crimes as a direct consequence of the tightened asylum policy in the EU and the German government's stricter deportation rules. She points out that the success of right-wing populist parties such as the AfD contributes to racist perpetrators feeling encouraged to turn their prejudices into violent acts and attack refugees (ZEIT Online 2024).

Meanwhile, the SPD and its Chancellor Olaf Scholz are also in favour of a stricter migration policy and are campaigning for greater repatriation of rejected migrants. The centrist parties are adopting more and more of the AFD's positions, supposedly to win back lost voters. In doing so, they are normalising the mood against asylum seekers and bringing this positions into the centre of society.

Furthermore, projects such as these extend externalisation. As a result, the right to asylum itself is being increasingly undermined. "Externalisation jeopardizes the individual right to asylum making international protection negotiable for states and increasingly inaccessible for persons in need" (Malena et al. 2023). Even if these plans are not implemented, they normalize other plans for dealing with people seeking protection. In the discussions surrounding migration and flight, the challenges of how to effectively manage these movements while at the same time taking into account the requirements of international law and human rights take centre stage time and again. It is clear that there is a gap between the desire to control migration and refugee movements and the need to safeguard human rights. Particularly problematic are the border control and security measures that are implemented along migration and refugee routes outside EU territory, but also at the borders of the EU member states themselves. These can lead to practices that violate human rights. There is also a risk that the lack of regular access routes will increasingly push migration and flight into illegality. This makes it increasingly difficult for those seeking protection to gain legal access to EU member states at all. The debate therefore centres on the difficult balance between regulating migration and refugee movements and respecting fundamental human rights (Bendel 2020: 12). This isolation is forcing refugees to take even more dangerous escape routes. In some cases, this leads to people trying to reach the European mainland or the islands in Greece on unseaworthy ships. You can see what this can lead to on the news when another ship sinks. The most frightening recent example is the sinking of the ship *Adriana* off the Greek coast, in which up to 500 people died.

Considering these points, we need the non-refoulement principle more than ever and we must protect it. This principle, which prohibits the return of individuals to countries where they may face persecution or human rights violations, is a key aspect of human rights debates. The principle is particularly relevant when discussing offshore asylum procedures, which involve transferring asylum procedures to third countries. Although proposals for such procedures have been put forth by politicians like Tony Blair and Otto Schily, they have faced criticism from academics, human rights organizations, and political groups due to concerns about human rights and international law. The debate on outsourcing asylum procedures often arises when EU member states struggle to agree on harmonized procedures for the treatment of asylum seekers. For instance, in 2018, EU states failed to reach a consensus on how to distribute responsibility for asylum seekers rescued in the Mediterranean.

This highlights that the issue of outsourcing asylum procedures is not only a legal and moral concern, but also closely tied to political dynamics within the EU. The European Council has asked the EU Commission to develop a plan for the creation of so-called disembarkation platforms in third countries. These platforms are to be located outside the EU and are intended to receive migrants and refugees. However, the countries that have been considered as potential locations for such platforms have not yet agreed. There are significant concerns about the rights of refugees in such proposals. In particular, there are fears that outsourcing asylum procedures or initial screening to third countries could violate human rights. There are also practical and political questions, such as compliance with the principle of non-refoulement and the ban on mass expulsions. It also remains unclear how access to effective legal protection can be guaranteed and how the distribution of migrants and refugees between EU member states should be regulated, as there are considerable differences in the level of protection between countries (Bendel 2020: 10). Ayten Gündogdu's *Rightlessness in an age of rights* (2014) takes up Hannah Arendt's critiques of human rights and statelessness, rethinking some of her key arguments to address contemporary migrant rightlessness. She explores how legal personhood, which is supposed to endow all humans with rights regardless of citizenship status, remains tenuous in migrant detention and deportation decisions.

Under the headline rightlessness and deportation Gündogdu explains “the principle of non-refoulement, which prohibits refugees from being returned to places where their lives and freedoms could be threatened” (108). She refers to Arendt by bringing up the “right to seek and enjoy asylum according to the Universal Declaration of Human Rights”, but there is no “right to be granted asylum”. “As a result, she is vulnerable to the highly unpredictable, even arbitrary, consequences of an asylum adjudication process” (110).

In all the points I have mentioned here, the rights of people on the run are being trampled underfoot. These different aspects show us very clearly what externalisation means for those affected. This is a clear violation of human rights. With this essay, however, I would also like to show what other effects this has on refugees. They are fleeing from wars, environmental disasters, dictators and inhumane living conditions. We cannot accept that this practices are happening in a European Union that claims to be free and based on human rights. Furthermore the practice of outsourcing the asylum procedure is not the only way of keeping refugees at the EU's external border. What makes this discussion interesting for me is to see how far the externalisation practice of the European Union has already progressed and what this means for those affected. After all, much of this happens in the dark and is rarely publicized or reported in the media. Sending people back to other countries only affects those who have made it across the border. The much larger proportion is made up of refugees who are prevented from continuing their journey long before they reach the border. They don't even have the opportunity to reach the EU. This ever-increasing restriction of escape routes is making it ever more dangerous for people on the run. A society based on human rights cannot tolerate such conditions. The asylum system is already so bad, so there has to be a fight to stop it getting worse. In the inhumane procedure of externalising the right to asylum, there is only one small ray of hope for me. The people who are exposing the failures and inhumane practices, questioning them and dedicating their lives to this fight.



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