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CATALDI, G. – HILPOLD, P. (eds.). *Migration and Asylum Policies System's National and Supranational Regimes*, Napoli, Editoriale Scientifica, 2023, 283 PP.

During the four years of activity (2018-2022) of the MAPS project (Migration and Asylum Policies System. Weaknesses, Shortcomings and Reform Proposal) - a network led by the University of Naples L'Orientale and bringing together ten European universities - the overall situation in Europe and the individual national systems in the field of migration and asylum have been affected and reshaped by significant historical events, such as the health emergency due to the Covid-19 pandemic and the war in Ukraine. The same years have been marked by the debate at European and national level on the management of landings in the central Mediterranean and transit via the “Balkan route”, in an incessant search for a balance between humanitarian aspects and the control of the Union's external borders. The preference for the latter, both by the EU institutions and by the border Member States, is a direct consequence of the lack of solidarity between the Member States, finally acknowledged by European Commission proposing the New Pact on Asylum and Migration in September 2020, which was still under discussion during the MAPS activities. The collective volume *Migration and Asylum Policies System's National and Supranational Regimes*, resulting from the MAPS final Conference, fulfils the ambitious objective of providing an in-depth legal analysis of the set of challenges posed by all these issues, by bringing together in a single text a distinguished panel of experts from different countries able to provide a detailed overview of the subject. The volume is divided into two parts. The first, entitled ‘*MAPS National and Supranational Regimes: The General Framework and the Way Forward*’, comprises six contributions that address general issues of asylum and immigration law. The second, entitled ‘*Migrants and Asylum Seekers. The national experiences*’, includes nine contributions that are specifically

dedicated to exploring national contexts. Through its numerous contributions, the volume provides the readers not only with useful information on the state of the art of migration and asylum law at the international and national levels and on best practices to be shared and disseminated, but also with concrete proposals and articulated reflections on values and principles.

Based on these reflections, the volume contains an interesting debate on the customary value of the principle of *non-refoulement*, building on the writings of Hathaway and Goodwin-Gill. In his text, James C. Hathaway (Chapter II) identifies three aspects of the global refugee regime, which, according to his view, are unlikely to change. These are what he labelled “*the politics of non-entrée*”; the pattern of non-accession to the Refugee Convention and Protocol; and the failure to complete the burden and responsibility sharing project envisaged by the drafters of the Refugee Convention. To address what he defines “this tripartite dilemma”, Hathaway proposes to build regional refugee protection capacity, devising a global refugee financial burden-sharing mechanism and persuading extra-regional States to bind themselves to resettle a regular flow of refugee out of the state providing asylum within the region of origin. Guy S. Goodwin-Gill (Chapter III), rebutting the assumption from which the Hathaway’s proposals originate, affirms that the evidence in support of customary international law protecting the rights of refugee is “overwhelming”, and the status of the *non-refoulement* principle as customary international law is “indisputable”, even among States that have failed to ratify the Refugee Convention and Protocol. According to the Goodwin-Gill view, the powerful normative force of *non-refoulement* is the reason for States to look for ways around it or at times to question its obligatory scope. Therefore, he identifies and analyses the developments in obstructing asylum, focusing on externalization. Another aspect concerning the refugee protection is addressed by Anna Fazzini (Chapter XII), who deals with the difficulty to include in the definition provided by the 1951 Convention, the figure of the so called ‘environmental’ refugees or migrants. Considering the lack of an international legal framework protecting this category of people on the move, her contribution offers an overview of the main developments emerging at the jurisprudential level, both supranational and national. The author first analyses the UN Human Rights Committee decision in *Teitiota* case, and then focuses on Italian cases law, analysing the Ordinance 5022/2021 of the

Court of Cassation, which recognized protection in cases where the effects of climate change and environmental degradation compromise the «ineliminable core constituting the foundation of personal dignity».

The case of people fleeing from natural disasters or calamities is not the only case in which the lines between ‘migrant’ and ‘refugee’ is blurred. It is well represented by Giovanni Gozzini (Chapter I), who explains how armed conflicts tend to transform into endemic and “low intensity” wars, with the result that four of the top five countries of origin of refugees (Syrian Arab Republic, Afghanistan, South Sudan, Democratic Republic of Congo, with the exception of Myanmar) correspond to this typology of armed conflict. According to the author, the people fleeing these countries, as well as those from Venezuela and Ukraine, are a mixture of refugees and economic migrants seeking work, food and a better life. Consequently, the distinction between refugees and economic migrants is challenging and controversial, and can only be valid if a legal framework has established pathways and procedures for legal immigration. In contrast, the reality of the current situation is that people on the move face long and dangerous journeys where their fundamental rights are flagrantly violated. This pertains, in particular, to the right to health, which has been the subject of extensive analysis by Maja Savić-Bojanić (Chapter VI). The author outlines how migrants have little or no awareness of their right to access health care while travelling, and how States do very little to raise this awareness. She also highlights how health policies related to migration are often seen as a question of public health, rather than from a rights-based perspective, which, still problematic along transit routes, is grounded in medical ethics. Based on the latter, the author suggests improving the implementation of existing policies in States along transit routes to ensure an effective way of identifying the health needs of individual migrants and refugees, including their mental health care. Another form of systematic human rights violation along migration routes is the use of violence against migrants. Elspeth Guild’s contribution (Chapter IV) addresses the problem of impunity for violence at borders by examining the rules governing the use of force by state authorities in the context of border control operations. To this end, the author examines a case study of the firing of rubber bullets at migrants by the French police, allegedly to prevent them from attempting to cross the Channel in an inflatable boat from Dunkirk (France) to the United

Kingdom. The author also reflects on the difficulty of breaking a pattern of impunity and identifies specific issues related to border violence. Migrants' complaints are often simply ignored by the border authorities, who deny the validity of any evidence of the incident, and the victims' status as potential irregular migrants affects their ability to report the violence. Furthermore, the lack of independent monitoring prevents the identification of systematic shortcomings. For these reasons, the author encourages the involvement of Ombudspersons, National Human Rights Institutions (NHRIs) and National Preventive Mechanisms (NPMs) in border monitoring.

Turning now to the writings specifically dedicated to national experiences, the volume's contribution to the historical reconstruction of asylum and immigration policies of different States is of significant value, highlighting the close interrelationship between the history of a country and its current migration and asylum policies. François Féral (Chapter IX) deals with the issue of borders in France, tracing the evolution of France's colonial history, the tradition of hospitality of foreigners established in the French Revolution, the outbreak of xenophobia in the 1930s, the country's accession to the European Union, and a new phase of contemporary xenophobia. The author argues that today we are witnessing a "xenophobic evolution" of the legal framework for asylum and immigration, as evidenced by the functioning of the OFPRA (Office for the protection of Refugee and Stateless Persons) and the most recent French reforms (Law n. 2006-911 and Law n. 2018-778). According to him, the French Constitutional Council is the last bulwark against this development, since it ruled that those who have provided assistance to persons in danger or insecurity cannot be punished for the crime of aiding and abetting the entry and residence of foreigners, invoking for the first time the principle of "fraternity" enshrined in the Constitution. An historical reconstruction of German asylum and immigration policies is offered by Christian Tomushat (Chapter XII). He traces the most significant events in German history linked to migration flows, which include the reception by Prussians of religious refugees in the 17th and 18th century, following the revoke of the Edict of Nantes; the reception by the Weimar republic of people fleeing Russia after the Soviet Revolution; the reception of refugees after the end of World War II; the restriction of movements between the German Democratic Republic (GDR) and the Federal Republic of Germany (FRG); the accession to the European Union

and the freedom of movements among Member States; the Refugee crisis of 2015 and, finally, the Ukrainian crisis of 2022. The author's conclusion is that immigration may be more welcome when governments accept it as a useful addition to their human resources, since even sophisticated legal migration schemes remain vulnerable to local people's claims of "priority rights". Finally, the writing of Peter Hilpold and Franziska Lechner (Chapter VIII) analyses the development of Austrian migration and asylum law from the early years of 1990, addressing the end of the East-West conflict, the accession to the European Union and the refugee movements of 2015/2016. The authors then look at the current Austrian situation in the international context, exploring the interplay between communitarianism and cosmopolitanism, and revealing how the Austrian position reflects the complexity and ambivalence of asylum and migration management also at the level of the European Union.

Within this rich and comprehensive historical framework, the book includes a number of writings dedicated to analysing in detail the immigration and asylum legislation of some Member States. The French 2018 Act (Law n. 2018-778) already mentioned by François Féral, is in-depth examined by Kiara Neri (Chapter X). From one side, the author analyses the 2018 Act's improvement of the protection of certain categories of migrants, such as persons in situation of extreme vulnerability, victims of violence and unaccompanied minors, emphasising, however, that the Act proposes a certain vision of migration that favour "chosen" migration, such "talented people" and their family members. From other side, the author analyses the shortcomings of the 2018 Act, which include the violation of asylum seekers procedural rights; the increase of the length of the detention; the persistence of the possibility to detain minors, and of the "solidarity offence". In conclusion, she evaluates the 2018 Act as a "regressive step" in the protection of human rights in the context of migration. The writing of Anna Liguori (Chapter XII) is dedicated to the analysis of the Italian legislative developments, focusing on Decree n. 130/2020, and to the discussion of the Memorandum of Understanding (MoU) Italy-Libya of 2 February 2017, renewed in 2020 without any changes. After analysing Italian cases law concerning the prohibition to conduct rescued people to Libya, the author concludes that the rejection of the MoU should be "the priority" for the Italian authorities, together with the abandonment of any other kind of policies of externalization. Finally, Peter Knösel, Jens Lowitzsch and Stefan

Hanisch (Chapter XIII) offer an overview of German legal framework on migration and asylum, analysing in-depth the Residence Act, first introduced in 2005. The authors explore, specifically, the personal scope of the Act; the possibility to exercise the right to family reunification; the protection linked to humanitarian, political and international law grounds; the integration and residence consolidation and the rules concerning the termination of stay.

The diversity of national legislation on migration and asylum among Member States, and the shortcomings of this legislation, lead to questions about the effectiveness of a common immigration and asylum system in the European Union and its ability to protect fundamental rights. This question is the core of Gabriela A. Oanta's writing (Chapter V), which explores what she calls "the blue dimension" in the reform of the Common European Asylum System. After a brief examination of the challenges and opportunities presented by the new Pact on Immigration and Asylum, the author focuses, in particular, on the "Recommendation on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities" and on the "Commission Guidance on the implementation of EU rules on the definition and prevention of the facilitation of unauthorised entry, transit and residence". Both documents are evaluated by the author, in order to assess their ability to address the challenges posed by immigration by sea.

One noteworthy aspect of the volume is the inclusion of two essays on the migration context of two countries situated outside the European Union. The first one is the writing of Olga Koshevaliska, Ana Nikodinovska Krstevska and Elena Maksimova (Chapter VIII). The authors first explore the definition of xenophobia in the context of migration and asylum in the Balkans, with special emphasis on North Macedonia, and then examine its phenomenology by analysing the abuse of the migrant crisis in North Macedonia and the creation of the so-called "anti-migration rhetoric". Also, the authors provide an insight in the criminal legislation for preventing and punishing xenophobic hate crimes, concluding with some recommendations. The second one is the essay of Patricia Graziottin Noschang (Chapter XIV), which offers an overview of migration and refugee in Brazil. The author explores the evolution of Brazilian law, enlightening that only in 2017 through the Law 13.445/2017 (Migration Law) the nature of migratory policy in Brazil shifted from the

paradigm of national security and criminalization to a more “humanitarian” essence. The writing analyses the Migration Law and the decree 9.199/17 which regulates it, sharing the experience of the practical application of both legislations through the project Balcão do Migrante e Refugiado implemented in the Passo Fundo University in Brazil, which granted legal aid to more than 2.440 migrants.

One of the book’s principal strengths is its capacity to maintain coherence between two sometimes uncommunicative aspects of asylum and immigration research: the purely doctrinal and theoretical aspect (Hathaway and Goodwin-Gill), and the more practical, concrete implementation of the law. This is achieved through the description of case study experiences (Elspeth Guild and Graziottin Noschang) and the interpretation of norms and principles offered by national jurisprudence (Féral, Fazzini, Liguori). Another noteworthy aspect is the presence, in the Gozzini’s essay and in the contribution of Olga Koshevaliska, Ana Nikodinovska Krstevska and Elena Maksimova, of the presentation, by the use of graphs and tables in the texts, of the quantitative and qualitative data collected during the empirical research phases. This enables readers to form informed opinions, even beyond the scope of the authors’ contributions.

It is also fascinating to see how the various essays reconstruct the development of asylum and migration as a clear and direct consequence of the historical and political events in the countries concerned. This makes history the key to understanding future developments in this field, since the essays by Féral, Tomushat, Hilpold and Lechner show that it is not possible to look to the future of the European Union without a clear picture of the past of the Member States that are part of it. The potential for nationalist sentiments to prevail over the Union’s values of solidarity is, indeed, not merely a theoretical concern; it is a real and growing threat, as evidenced by the legislative analyses of Kiara Neri, and Knösel, Jens Lowitzsch and Stefan Hanisch.

The presence of contributions from scholars belonging to institutions outside the European Union, which can be disorienting at first glance, provides the readers with an invaluable opportunity to expand their perspective and gain insight into realities that may initially seem distant but are actually quite relatable. On the one hand, the description of the reality of the Balkans, including the difficulties encountered by migrants along the transit countries in accessing

fundamental rights (Maja Savić-Bojanić) and the prevalence of xenophobia (Olga Koshevaliska, Ana Nikodinovska Krstevska and Elena Maksimova), allows readers to comprehend the extreme vulnerability of those who, having crossed the Balkan route, eventually reach the “gates” of the European Union. From the other side, the introduction to the asylum and migration Brazilian law and its gradual overcoming of the conception of migration as a threat to national security, explained by Patricia Graziottin Noschang, invites the readers to reflect on the opposite tendency that the European Union is adopting instead, as evidenced by the proposed amendments to the Schengen Border Code.

In conclusion, the collective volume *Migration and Asylum Policies System's National and Supranational Regimes*, offers an interpretation of the current evolution of national laws, the European Union Law and International Law in migration and asylum, guided by some reflections expressed by Giuseppe Cataldi in the preface to the volume, which are a summary of the conclusions reached by the MAPS project. Prominent among these is the lack of a unified EU position on the issue of the migration and asylum system, which results in the continuation of an emergency approach that no longer has any reason to exist, and which must be replaced as soon as possible with a system based on solidarity between Member States and respect for human rights. On the other hand, there is a positive assessment of the fundamental guarantee role played by supranational and national courts, which, as in the case of the French Constitutional Council or the Italian Court of Cassation, continue to guide and censure governmental choices. A final reflection is dedicated by Cataldi to the issue of migration across the Mediterranean, which intolerably continues to represent the grave of those seeking a better future. According to Giuseppe Cataldi, tackling this issue is a measure of the continent's “degree of civilisation”, which all Member States and European institutions are called upon to raise and protect.

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