

Best Practices From Portugal In Refugee Protection System: Compliance With The Principle Of Non-Refoulement

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Abstract

Portugal is one of the EU member states that has the courage to take a stand to accept the arrival of refugees. In other words, Portugal wants to implement the principle of non-refoulement. In this connection, this paper intends to discuss Portugal's position in the refugee protection system, by looking at some of the best practices that it does. Hopefully, these practices can be followed by other countries. Therefore, in this study the author uses a type of normative legal research with a case approach.

Keywords: Best practices, refugee protection, portugal.

A. INTRODUCTION

The term 'non-refoulement' is derived from the French word 'refouler' which means to drive back.¹ This principle can literally be interpreted as a principle that forbidding to send back.² This principle first appeared at the initiative of the work of international societies of international lawyers which produced an international regulation on the acceptance and expulsion of foreigners in 1892. Another name for the regulation was Règles Internationales sur l'admission et l'expulsion des étrangers.³

International Regulations on the Acceptance and Expulsion of Foreigners are produced with several considerations that even though the state has sovereignty over its territory (so it has the right to recognize or not recognize the existence of foreigners or only recognize them under certain conditions) countries in the world based on humanitarian principles are obliged to use that right by respecting the rights and freedoms of foreigners who wish to enter the territory of their country. Or in other words, the rights of the state must also be balanced with the principles of humanity and justice with regard to state security, and the rights of foreigners.⁴

Non-refoulement is considered a basic principle of International Refugee Law.⁵ It existed as a prominent legal concept for more than fifty years before it was codified during the post World War II

¹Harun Ur Rashid, "Refugee and the Legal Principle of Non-Refoulement (Rejection), on *Law and Our Rights*, Vol. 197, July 2005, p. 10.

²Tamás Molnár, "The Principle of Non-Refoulement under International Law: Its Inception and Evolution in a Nutshell", on *Corvinus Journal of International Affairs (COJOURN)*, Vol. 1, No. 1, 2016, p. 51.

³This regulation was made in Session de Genève - 1892 by L'Institut de Droit International (Institute of International Law), with Rapporteurs: MM. L.-J.-D. Féraud-Giraud and Ludwig von Bar.

⁴These considerations are freely translated and summarized from the original text as follows:

Considérant que, pour chaque Etat, le droit d'admettre ou de ne pas admettre des étrangers sur son territoire, ou de ne les y admettre que conditionnellement, ou de les en expulser, est une conséquence logique et nécessaire de sa souveraineté et de son indépendance;

Considérant, toutefois, que l'humanité et la justice obligent les Etats à n'exercer ce droit qu'en respectant, dans la mesure compatible avec leur propre sécurité, le droit et la liberté des étrangers qui veulent pénétrer sur ledit territoire, ou qui s'y trouvent déjà;

Considérant que, à ce point de vue international, il peut être utile de formuler, d'une manière générale et pour l'avenir, quelques principes constants, dont l'acceptation n'aurait d'ailleurs impliquer aucune appréciation d'actes accomplis dans le passé;

⁵Erika Feller, "Asylum, Migration and Refugee Protection: Realities, Myths and the Promise of Things to Come", on *International Journal of Refugee Law*, Vol. 18, No. 3-4, 2006, p. 523. Feller said that non-refoulement principle as 'the most fundamental of all international refugee law obligations'.

period.⁶ Non-refoulement was formally codified in the 1951 Geneva Convention governing Refugee Status, specifically Article 33 which states that:

(1) No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of the territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

(2) The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

For refugees and asylum seekers, non-refoulement is considered as an entry ticket to the border area of a country because this principle can convince asylum seekers not to be afraid of rejection because actually it will not happen based on the principle of non-refoulement. Accordingly, Gregor Noll believes that the principle of non-refoulement can be described as the right to exceed administrative boundaries.⁷ No matter whether the country is ready to accept asylum seekers and refugees or not, those who come to the territory of their country will still be allowed to enter.

Nevertheless, the things that I mentioned above seem to differ 180 degrees from the reality. Asylum seekers or refugees are not necessarily accepted in the territory of a country, because there are certain considerations from that country. Such considerations are for example state or national security. This happened in the European Union when Europe was flooded with the arrival of many refugees. Most countries close their "door" to refugees, and only a few accept them. One country that accepts them is Portugal.

Portugal adopts policies or attitudes that are quite different from other EU member states. In this connection, through this paper the author will try to discuss how Portugal's position in refugee protection system, and the best practices carried out by Portugal that can be emulated by other countries.

B. RESEARCH METHODS

This research uses normative legal research with a case approach. The case approach in question is the author conducts a review of the practices carried out by the Government of Portugal relating to the issue being studied.

C. PORTUGAL'S POSITION IN THE REFUGEE PROTECTION SYSTEM

Portugal is one of nine countries that joined the European Union in 1991 after the entry into force of the Schengen Agreement.⁸ This agreement marks a new era for countries in the European region where there are no more boundaries between these countries. All examinations in the border areas are removed and free movement of people both local and foreign are guaranteed through this Schengen Agreement.

The Schengen Agreement succeeded in realizing the ideals of countries in Europe to be integrated with one another. Nevertheless, over time, European integration is under threat. There is a free movement of people from outside the European region which gives room for immigrants, including refugees to come in large numbers in European countries.⁹

The arrival of immigrants and refugees has been responded to differently by EU member states. For politicians who are pro-EU, this movement is a normal thing, it can even provide certain benefits. Nevertheless, there are also politicians who insist that this is a threat to the indigenous population, for

⁶Alice Farmer, "Non-Refoulement and Jus Cogens: Limiting Anti-Terror Measures that Threaten Refugee Protection", on *Georgetown Immigration Law Journal*, Vol. 23, No. 1, 2008, p. 5. See also Guy S Goodwin-Gill dan Jane McAdam, *The Refugee in international Law*, Third Edition. Oxford University Press, Inc., New York, 2017, p. 117-119.

⁷Gregor Noll, "Seeking Asylum at Embassies: A Right to Entry under International Law", on *International Journal of Refugee Law*, Vol. 17, No. 13, September 2005, p.665.

⁸The countries that joined the EU besides Portugal were Italy which joined in 1990, Spain which together joined Portugal in 1991, Greece in 1992, Austria in 1995, Denmark, Finland, Norway and Sweden who joined in 1996. See Humphrey Wangke, "Krisis Migran dan Masa Depan Integrasi Uni Eropa", on *Info Singkat Hubungan Internasional*, Vol. 8, No. 3, February 2016, p. 7.

⁹Gusnelly, "Migrasi, Kewarganegaraan, dan Partisipasi Imigran: Studi Kasus Imigran Turki di Belanda", on *Jurnal Kajian Wilayah*, Vol. 1, No. 1, 2010, p. 60.

example in terms of employment. When migrants get a job, it means they have "stolen" the place of indigenous people, or tax migration and social security.¹⁰ Then in terms of security, immigrants are often associated with terrorism networks, human trafficking, drug and weapons smuggling, exploitation, slave-like working environments and other serious crimes. As for refugees who in their efforts to enter the EU, often through the help of crime networks.¹¹

All negative predicates attached to immigrants and refugees for most EU countries need to be prevented. The connection with that, for them border control is the main key to overcome them. Therefore, EU countries that are members of the Schengen Agreement want to reinstate their control at the border. This is happening now, except Portugal.

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When other EU members closed their borders or reluctantly took part in accepting refugees and immigrants, Portugal took a different attitude. Kim-Jenna Jurriaans in her writings said that Portugal adopted a "come on down attitude" in accepting the arrival of refugees and immigrants.¹⁴ The attitude shown by Portugal is a brave attitude, and different from other countries. Even the Prime Minister of Portugal, Antonio Costa, did not hesitate to say that Portugal needed more immigrants to their country, and would not tolerate xenophobic rhetoric.¹⁵ Costa said that not without reason, because at the moment Portugal is being hit by a crisis of population or depopulation, where the country is known as the country with the lowest population births in Europe, and also the country where the highest aging rates are on the European continent.¹⁶ This is the reason for Portugal to accept as many immigrants and refugees as possible. To support this, the Government of Portugal opposes all xenophobia from indigenous Portuguese citizens to immigrants and refugees. Xenophobia is opposed because it has always been the main reason for refusing refugees in the territory of a country. Xenophobia is interpreted simply as an attitude of rejection, excluding foreigners from the native population. The International Labor Office (ILO), IOM, and the Office of the United Nations High Commissioner for Human Rights (OHCHR) as quoted by Sarah Deardorff Miller interpret xenophobia as follows:

Attitudes, prejudices and behavior that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity.¹⁷

Apart from the depopulation reasons experienced by Portugal, the acceptance of refugees specifically in the territory of their country is also due to Portugal being bound by the obligation not to return refugees to areas where the lives of the refugees are threatened (non-refoulement). This is a logical consequence of Portugal as a state party of the Geneva Convention 1951, where Portugal has been a part of the 1951 Geneva Convention membership for 59 years.¹⁸ This provision was also adopted in Portugal's National Law Article 47 Act 26/2014 as the first amendment to Act 27/2008.¹⁹ To see

¹⁰Yusnarida Eka Nizmi, "Globalisasi, Imigrasi, dan Keamanan Identitas Eropa", on *Jurnal TAPIS*, Vol. 12, No. 1, January-June 2016, p. 132.

¹¹Leo Lucassen, *The Immigrant Threat: The Integration of Old and New Migrant in Western Europe since 1850*, University of Illinois Press, Illinois, 2014, p. 200.

¹²*Ibid.*, p. 204.

¹³Humphrey Wangke, *Loc. Cit.*

¹⁴Kim-Jenna Jurriaans, "Portugal Offers Refugees a Warm Welcome, but Can't Get Them to Stay", <https://www.newsdeeply.com/refugees/articles/2017/09/01/portugal-offers-refugees-a-warm-welcome-but-cant-get-them-to-stay>, February 26th, 2020.

¹⁵The Straitstimes, "Portugal, the European Country that Wants More Migrants", <https://www.straitstimes.com/world/europe/portugal-the-european-country-that-wants-more-migrants>, February 26th, 2020.

¹⁶Paul Santana, "Ageing in Portugal: Regional Iniquities in Health and Health Care", on *Social Science & Medicine*, Vol. 50, No. 7-8, 2000, p. 1026.

¹⁷Sarah Deardorff Miller, "Xenophobia Toward Refugees and Other Forced Migrants", on *World Refugee Council Research Paper*, No. 5, September 2018, p. 2. See also Jean Pierre Misago, Iriann Freemantle, and Loren B. Landau, "Protection from Xenophobia: An Evaluation of UNHCR's Regional Office for Southern Africa's Xenophobia Related Programs", UNHCR, February 2015, p. 17.

¹⁸Portugal was bound by the 1951 Geneva Convention through accession on December 22, 1960.

¹⁹Article 47 "Prohibition of Expulsion or Refoulement" Act 26/2014 as follows:

Portugal's adherence to the provisions of non-refoulement, the following author presents a table of the number of refugees protected from 1990-2018.

Table 1. Acceptance of Refugees by Portugal from 1990-2018²⁰

Year	Number of Refugees	Annual % Change
1990	867,00	15,11%
1991	998,00	15,11%
1992	1.778,00	78,16%
1993	600,00	-66,25%
1994	248,00	-58,67%
1995	248,00	0%
1996	308,00	24,19%
1997	319,00	3,57%
1998	339,00	6,27%
1999	379,00	11,80%
2000	433,00	14,25%
2001	449,00	3,70%
2002	462,00	2,90%
2003	418,00	-9,52%
2004	377,00	-9,81%
2005	363,00	-3,71%
2006	333,00	-8,26%
2007	353,00	6,01%
2008	403,00	14,16%
2009	389,00	-3,47%
2010	384,00	-1,29%
2011	408,00	6,25%
2012	483,00	18,38%
2013	598,00	23,81%
2014	699,00	16,89%
2015	853,00	22,03%
2016	1.194,00	39,98%
2017	1.569,00	31,41%
2018	2.136,00	36,14%

Source: *Macrotrends*, 2020

The number of refugees accepted and protected by Portugal experienced ups and downs. In certain years, Portugal only receives 300-500 refugees every year, even in certain years it has decreased dramatically. For example in 2003 the number of refugees protected amounted to 418.00 decreased in the following year to 377.00 or decreased by 9.81%. This decrease is not due to the policies of the Government of Portugal that restrict the entry of refugees, but because Portugal is not a destination

1. When the loss of the right to international protection results in a process towards coercive removal, this is subject to the principle of non-refoulement defined in Article 2(1)(aa).
2. No persons shall be returned, removed, extradited or expelled to a country where they would be subject to torture or cruel or degrading treatment.

For further information you can look at Act 26/2014, 5th May amending Act 27/2008, 30th June: The First Amendment to Law 27/2008 of 30 June establishing the Conditions and Procedures for Granting Asylum or Subsidiary Protection and the Statuses of Asylum Applicant, Refugee and Subsidiary Protecting Transposing Council and European Parliament Directives, of 26th June.

²⁰ Macrotrends, "Portugal Refugee Statistic 1990-2020", <https://www.macrotrends.net/countries/PRT/portugal/refugee-statistics>, February 26th, 2020.

country for refugees. Refugees prefer to go to other countries in the European region than Portugal. This is due to the following reasons²¹.

1. Lack of an established Ethnic Community. The number of asylum seekers and refugees in Portugal is very small, so there are no relatives and friends who can provide assistance in the process of arrival of other refugees.
2. Management of Refugee Acceptance and Protection is not well organized, so that what is conveyed is not all realized.
3. Work Problems. Although the Portuguese economy has recovered since the financial crisis, the Portuguese economy is highly dependent on services and tourism that require good language skills. Most newcomers do not speak English or Portuguese.
4. Location of refugee settlements. Some refugees are placed in rural areas or areas where cultural isolation and language shocks are more pronounced.

D. BEST PRACTICES

Although it has several shortcomings as mentioned above, Portugal has several programs that have been carried out and can be considered as good practice for other countries. The programs referred to are as follows:

1. Família do Lado / Family Next Door²²

This program was first formed in 2004 in the Czech Republic. Under the concept of "inclusive neighborhood", the program relies on interactions between immigrants and indigenous people, and the importance of strengthening social relations as a way to contribute to more effective integration, remove barriers and promote cultural diversity. To make this happen, a family agrees to welcome and host another family they do not know in their home, to become a family couple (an immigrant family and a native family) by having lunch together on Sundays.

The High Commissioner for Migration promotes this initiative in Portugal and works with public and private entities throughout the country. The "Family Next Door" program began in Portugal in 2012. There are many public and private entities (immigrant associations, youth associations and others, cooperatives, NGOs, companies) that have been established throughout the year to carry out this initiative.

This transnational initiative takes place every year in other European countries and Portugal has become one of the countries with the largest number of participants. In six editions, around 600 lunches involving 1,463 families from 60 different nationalities were included in this initiative. In fact, in 2017 there were more participants than in previous years reaching 1,036 people consisting of 527 migrants and 509 original Portuguese residents.

2. Plataforma de Apoio aos Refugiados (PAR)/Platform for Refugees' Support²³

The Refugee Support Platform was formed to support refugees during their humanitarian crisis. PAR consists of various civil society organizations in Portugal. Every organization that shares this goal is invited to integrate the platform.

The PAR network includes 360 organizations. The mission of the PAR is to promote a culture of acceptance and support for refugees, both in Portuguese society and in their countries of origin and transit. PAR is officially recognized by the Government of Portugal through a cooperative protocol and is a member of the Working Group for the Migration Agenda.

In 2016, PAR has gathered around 90 organizing organizations (35 institutions or foundations, 26 religious institutions, 24 parishes, 20 Private Social Solidarity Institutions, 6 companies, 5 schools, 3 civil parishes and 2 city councils) with 119 offers to accommodate families refugees (around 600 refugees). In addition, PAR also succeeded in gathering 6,206 volunteers who were divided into several

²¹Kim-Jenna Jurriaans, *Loc. Cit.*

²²Alto Comissariado Para As Migrações, "Next Door Family 2019", <https://www.acm.gov.pt/-/familia-do-lado>, Februari 27th, 2020.

²³Sandra Mateus, and Filipa Pinho, *Welcome: Collection of Good Practices Already Existing for Refugees' Welcoming and First Inclusion*, CIES-IUL, June 2018, p. 13.

fields, including basic needs, technical support such as legal, psychological, social and health, integration support such as learning Portuguese, other languages, Education.

3. **Living in a Different Culture**²⁴

This program is held in the form of free courses for refugees with the aim of helping refugees in communicating and providing understanding of the importance of cultural, social, political, and language adaptation. This is important because the life that refugees will live in is different from their home country, and this is a challenge for them. With this program, refugees are provided with the knowledge to overcome these differences.

4. **Global Platform for Syrian Students**²⁵

The Global Platform for Syrian Students is a non-profit, multi-stakeholder initiative founded in November 2013, by Jorge Sampaio, former President of Portugal, with the support of a core group of institutional partners, namely the European Council, the League of Arab States, IOM and the Institute of International Education (IIE). The initiative is unique because it effectively combines the efforts and contributions of various stakeholders who are willing to support emergency mechanisms in supporting Syrian students: governments, international and regional organizations, donor agencies, universities, foundations, NGOs from various cultural backgrounds and faith-based organizations, the private sector and individuals.

Through a Network of Partners, Academic Consortia, and Special Emergency Funds, the Global Platform for Syrian Students works collaboratively. This program was created in order to provide access to tertiary education in safe haven countries for Syrian students affected by the war. It also seeks to promote higher education in Emergencies in general and place it on the international agenda.

5. **Make Food Not War**²⁶

Make Food Not War is a social project that began in October 2016 to help refugees have expertise in the field of cooking. In this way, it will be easier for refugees to build businesses related to these skills. This initiative was mentored by Arabic Master Chef with several people from Iraq, Palestine, Syria and Eritrea.

E. **CONCLUSION**

Portugal is currently in a position to support the acceptance of refugees. This position was taken because Portugal was a member of the Geneva Convention 1951 which was bound by the principle of non-refoulement. In addition, Portugal also experienced a population crisis in which most of the population was elderly. This has made the Government of Portugal vigorous to invite refugees in, even though the number of refugees who came was not enough due to several factors mentioned earlier.

Portugal's attitude illustrates that state sovereignty can be balanced with the implementation of the principle of non-refoulement. The key to this balance is the cooperation of all parties, be it the Government, NGOs, and civil society.

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²⁴*Ibid.*, p. 21.

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