Must EU Borders have Doors for Refugees? On the Compatibility of Schengen Visas and Carriers’ Sanctions with EU Member States’ Obligations to Provide International Protection to Refugees

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Abstract

Whereas the EU is developing a highly protective Common European Asylum System in purported compliance with the Geneva Convention, it is also displaying growing reluctance to provide unhindered access to it to those in need. The question of physical access to protection is ambiguously dealt with within EU law. On the one hand, it appears that entry to the Schengen zone has been designed disregarding refugees’ entitlement to special protection. Prior to admission, refugees seem to have been assimilated to the broader class of (potentially illegal) immigrants and thus required to submit to general immigration conditions.

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2) Articles 63 and 307, EC Treaty and new Article 63(1), Treaty on the functioning of the Union (Lisbon Treaty).


4) Here the notion of refugee is to be read widely, as encompassing all kinds of asylum-seekers.


6) In practice, refugees are distinguished from the immigrant mass only once the asylum request has been filed (Article 1, CISA: ‘asylum seeker shall mean any alien who has lodged an application for asylum within the meaning of this Convention and in respect of which a final decision has not yet been taken’) or the principle of non-refoulement (ex. Article 33 GC and Article 3 ECHR) has found territorial application. Access to the CEAS depends ‘not on the refugee’s need for protection, but on his or her own ability to