

What Austria's migrant crisis says about the country's sovereignty

On 7 September the Austrian government announced its intention to phase out emergency measures that allowed thousands of migrants to travel from Hungary into Western Europe. [Fabio Wolkenstein](#) writes that the nature of the current crisis has necessitated abandoning the so-called Dublin Regulation, which establishes that asylum applications should go through the state where an applicant first entered the EU. However the removal of emergency measures raises interesting questions both in terms of what will now happen to those individuals seeking to enter Austria and in terms of the impact on domestic politics in the country.



Necessitas legem non habet – necessity has no law. This principle, formulated initially in Gratian's *Decretum*, no doubt applies in the current migrant crisis facing Europe. As thousands of migrants tried to enter Austria via Hungary last week, Austrian authorities mobilised plenty of resources to help them cross the border safely. Assisted by a number of civil society organisations, the state-owned railway company ÖBB and a small [army of private helpers](#), migrants were brought to Vienna, where most of them continued their onward journey to Germany and other EU countries.

No fingerprints were taken, no questions asked. Instead, migrants were welcomed and provided with food, drink and clothes. If they wanted to apply for asylum in Austria, they could. If not, they were free to board the next train to Germany. This of course contravenes the so-called Dublin Regulation, which prescribes that the member state responsible for a migrant's asylum application will be the state through which the migrant first entered the EU. In the case of virtually all migrants who entered Austria last week (and who keep entering Austria as you are reading this text), that state would be Hungary.

But not least because of migrants' [desperate resistance](#) to Hungarian authorities' detaining them in refugee camps, Hungary eventually gave way and allowed them to enter Austria, where the Austrian authorities in turn helped them to travel to other EU member states. True, the Dublin Regulation has for a long time been applied with great inconsistency. But this time its contravention was more systematic. And perhaps because of Germany's decision to suspend the Dublin Regulation in order to help migrants from war-ridden Syria, state authorities were completely open about it.

So what we have here might be described as a state of exception, in which existing laws are suspended in order to deal with an extraordinary situation. Austrian political leaders were unambiguous about the emergency character of the measures taken. However, they also emphasised that this can only be a temporary solution. On 5 September, Foreign Minister Sebastian Kurz cryptically insisted that even if exceptional times require exceptional actions, the Dublin Regulation be "[still in force](#)". On 7 September, Chancellor Werner Faymann proposed to [phase out emergency measures](#) and return to a state of "normality" in "conformity with the law". In short, the state of exception ought not to persist.



Syrian refugees. Credit: [Dirk Emmerich](#)

This raises two interesting questions. The first concerns the consequences of phasing out the emergency measures. What happens if Austrian authorities suddenly wouldn't help migrants getting to Vienna? What if they'd prevent those who made it into Austria from travelling to Germany, or wherever? What if they would stop – perhaps arrest – activists who pick up migrants across the Hungarian border with their cars, and send the migrants back to Hungary? Would the situation escalate, as it did when migrants [refused to leave a train near Bicske last Friday](#)? These are tough questions, and it seems impossible to answer them at this point.

The second and prior question is who actually decides on the state of exception. The most obvious candidate would be the Austrian government, or indeed the German Chancellor who decided officially to suspend the Dublin Regulation in the first place – but the situation is more complex. First, there is a broad and increasingly visible coalition in Austrian civil society demanding more humane treatment of migrants. Consider that on 31 August more than [20,000 people](#) took to the streets of Vienna to demonstrate against the ill-treatment of migrants. These were not political activists, but ordinary citizens who wanted to take a stand against the suffering caused by the EU's current immigration regime.

Second, a growing number of Austrians actively assist existing charity organisations in the provision of basic goods to migrants, for example at Vienna's main train stations. And many have organised independently in order to collect donations and to effectively coordinate those who are willing to help. Initiatives of this kind are welcomed – if not appropriately supported – by the Austrian government, which has so far proven incapable of handling the crisis without the help of civil society. The government will therefore have a hard time justifying a return to the *status quo ante* without consulting those who are investing their efforts and energies into supporting migrants in some way. If it decides top-down, it risks losing popular support, and possibly also committed helpers.

The German constitutional theorist Carl Schmitt once famously proposed the capacity to decide on the state of exception as the defining feature of sovereign power. If this is correct, the decision over phasing out the current emergency measures might teach us something important about the locus of sovereignty in Austria.

If it turns out that the government won't take this decision top-down, independently from civil society, this signals reason to believe that state sovereignty is not only shared with other EU member states but also with engaged citizens. And that may well be a good thing. For when governments fail to act in the face of a growing humanitarian crisis, it seems only reasonable to involve a civil society that has proven capable of effective collective action in the making of key decisions – in Austria as in Europe more generally.

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Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

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