

IMPACT OF THE EUROPEAN REFUGEE CRISIS ON THE PROTECTION OF HUMAN RIGHTS OF ASYLUM-SEEKERS AND REFUGEES IN EUROPE*

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Abstract:

Scopul acestei lucrări este de a cerceta principalele caracteristici ale „crizei europene a migranților” care au condus la etichetarea drept un eveniment extraordinar în istoria modernă a Europei. În același timp, accentul este pus în mod special pe solicitanții de azil și refugiați și mai puțin pe întreaga categorie de „migranți”, deși țările europene au obligația de a proteja drepturile oricărei persoane din interiorul granițelor lor. Cu toate acestea, refugiații se bucură de un set mai larg de drepturi datorită imposibilității de a avea aceleași garanții în țara de origine. Ca atare, siguranța lor ar trebui să fie o preocupare majoră, protecția lor fiind prevăzută într-o serie de documente internaționale. Statele care au semnat aceste documente au obligația morală și mai ales legală de a proteja aceste persoane. Astfel, acest articol investighează dacă Europa și-a menținut pe deplin obligațiile față de solicitanții de azil și refugiați, chiar și într-o situație controversată ca cea a crizei.

Lucrarea se concentrează pe sistemul de drepturi ale omului, vizând în special drepturile refugiaților și sistemul de protecție din Europa. Sunt analizate cifrele și evenimentele principale ale crizei, precum și reacția imediată a mass-mediei, opiniei publice și guvernelor europene.

Scopul lucrării este de a oferi o cercetare academică cu accent pe identificarea variațiilor în protecția drepturilor noilor veniți din țările europene începând din 2015. Metodologia constă într-o evaluare critică a măsurilor controversate adoptate de Uniunea Europeană și guvernele naționale ca răspuns la presiunea crescândă a fluxurilor migratorii atât la granițele externe, cât și la cele interne. Cercetarea examinează, de asemenea, diferite încălcări ale drepturilor omului în statele membre ale UE.

Cuvinte cheie: Criza europeană a migranților, Convenția ONU din 1951 privind refugiații, solicitanți de azil, refugiați, protecție internațională, minori neînsoțiți, fluxuri migratorii.

Résumé:

L'objectif de cet article est d'examiner les caractéristiques principales de la „crise des migrants en Europe” qui en ont fait un événement extraordinaire de l'histoire moderne de l'Europe. En même temps, l'accent est mis particulièrement sur les demandeurs d'asile et les réfugiés, plutôt que sur l'ensemble de la catégorie des „migrants” malgré le fait que les pays européens ont l'obligation de protéger les droits de toute personne se trouvant à l'intérieur

* This article is part of a research conducted during the internship at the Romanian Institute for Human Rights.

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de leurs frontières. Les réfugiés jouissent néanmoins d'un ensemble de droits plus large en raison de l'impossibilité pratique de bénéficier des mêmes garanties dans leur pays d'origine. Ainsi, leur sécurité devrait être une préoccupation majeure et leur protection énoncée dans des documents sanctionnant leur statut spécial. Les États qui ont souscrit à ces documents ont l'obligation morale et surtout légale de protéger ces personnes. Ainsi, cet article examine si, même dans une situation controversée comme celle de la crise, l'Europe a pleinement maintenu ses obligations vis-à-vis des demandeurs d'asile et des réfugiés.

L'analyse est centrée sur le système des droits de l'homme, en particulier sur les droits des réfugiés et le système de protection en Europe. L'étude est fondée sur l'examen des données statistiques et des principaux événements qui ont marqué la crise, ainsi que de la réaction immédiate des médias, de l'opinion publique et des gouvernements européens.

L'objectif de l'analyse est de fournir une recherche académique visant à identifier les variations dans la protection des droits des nouveaux arrivants dans les pays européens à partir de 2015. La méthodologie consiste en une évaluation critique des mesures controversées appliquées par l'Union européenne et les gouvernements nationaux en réponse à la pression croissante des flux migratoires vers les frontières intérieures et extérieures. La recherche explore et examine également les diverses violations des droits dans les États membres de l'UE.

Mots-clés: crise des migrants en Europe, Convention des Nations Unies sur les réfugiés de 1951, demandeurs d'asile, réfugiés, protection internationale, flux migratoires.

1. Introduction

Nowadays, the flow of migration has a pivotal role in the public opinion in many EU member countries as well as in North America: populist movements are gaining consent all over, putting forward on their campaigns policies to regulate immigration, such as the case of Donald Trump in the United States¹. As also in Europe, encouraged by populists, people feel that rights protect only these 'other' people and not themselves. However, this view clashes with the definition of 'universal' that human rights acquired with the Universal Declaration of Human Rights (UDHR) of 1948: indeed, this means that rights are recognized globally to the individual, independently of identity and location². Most of the states that observe the UDHR are also signatories of the UN Convention related to the status of refugees drafted in 1951 in Geneva and its additional Protocol of 1967: these two documents are aimed at protecting a vulnerable category of individuals, the refugees, that sometimes are considered and counted in the broad term of 'migrants' or 'immigrants'. The Convention and the Protocol define and clarify which are the conditions that individuals have to meet in order to be guaranteed the status of refugees as

¹ See Roger Waldinger, "Immigration and the election of Donald Trump: why the sociology of migration left us unprepared ... and why we should not have been surprised", *Ethnic and Racial Studies* Vol, 41, no, 8 (2018), p. 1411.

² See United Nations, "Human Rights". accessed March 5, 2019. <http://www.un.org/en/sections/issues-depth/human-rights/>

well as the obligations that States who adhere to this framework have towards these peoples.

The fact that currently the management of the asylum system has a significant emphasis on a local, national and international dimension in Europe is attributable to the recent migratory flow that has had its peak during the summer of 2015. Media and scholars referred to it as ‘European migrant crisis’, because it challenged the order of the European Union, the free flow and circulation of people, from the time border controls were reintroduced within member states and as some of them were eventually closed³. Moreover, on a humanitarian level, in some of the countries, there were reported exceptional administrative detentions for migrants, which were not envisioned by national and international laws. Thus, it is important to seek a broad understanding of the phenomenon of migration from a juridical and political perspective, specifically aiming to discuss ‘forced migration’, associated with asylum-seekers and refugees. This is because scholars have been debating extensively on the way migration challenges the protection of human rights by States. Indeed, in the modern state system sovereignty plays an important role, and the protection of borders eventually subordinates the duty of protecting individuals displaced from their country of origin. Empirical evidence shows that individuals seeking international protection in Europe try to reach the continent because in their country of origin they have been subjected to persecution and human rights abuses⁴; thus, the assumption is that those individuals in Europe would find guarantees of shelter and respect of their rights according to international standards on refugees protection. This research looks into how human rights protection of refugees in Europe should also be tested empirically, to verify its effectiveness and to understand the effects of the refugee crisis in Europe and its impact on the rights of migrants and asylum seekers.

The populist rhetoric sees migration as the principal threat and as such, a state should be free to reduce the rights of refugees, immigrants and minorities⁵. Thus, it becomes relevant to investigate if these recent measures taken by European governments as a response to the waves of migration from outside Europe fully respect human rights or if they are part of a trend that refuses to recognize to migrants the same rights as for nationals. As it would

³ See Annalisa Lendaro, “A European Migrant Crisis? Some Thoughts on Mediterranean Borders”, *Studies in Ethnicity and Nationalism*, Vol 16, no. 1 (2016), p. 150.

⁴ See Heaven Crawley and Brad K. Blitz, “Common agenda or Europe’s agenda? International protection, rights and migration from the Horn of Africa”, *Journal of Ethnic and Migration Studies* (2018), p. 12.

⁵ See Annalisa Lendaro, *op. cit.*, p. 152.

be visible throughout the paper, from 2015 the approach of some countries to migration and protection changed and it is relevant to see in what way it happened. This research takes place in the context of policymaking and regulation of migration control on one side, and of human rights system and refugee protection on the other.⁶

The structure of this study includes an overview of the rights of refugees and asylum seekers in Europe, data showing the extraordinary amplitude of the refugee crisis and the assessment of controversial cases that happened in Europe from 2015 onwards, that is, when the crisis reached its peak.

2. Human rights of refugees in Europe and asylum system

The first convention ever issued for the protection of the rights of asylum seekers and refugees is the 1951 UN Refugee Convention. This is the cornerstone in the definition or the status of ‘refugee’, outlining the rights of displaced people and the legal obligations that the 148 states that undersigned it have to respect⁷. In addition, in 1967 the General Assembly of the United Nations approved the Protocol of the Convention: the salient variation there was the abolition of the geographical and time limits stated in the 1951’s document⁸. Initially, the limits of the Convention were applied to people becoming refugees due to events occurring in Europe before the 1st of January 1951. The Geneva’s convention establishes the rights to which the refugees are entitled and the obligations of the State towards those who were granted the status of refugee. A refugee, according to the Convention, is an individual who has a well-founded fear of being persecuted due to issues of “*race, religion, nationality, membership of a particular social group or political opinion*” that “*is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a*

⁶ The material is based on official legislation, countries’ reports and factsheets as well as on declarations, conventions and human rights institutions’ reports, accessed and analyzed thanks to availability of the Romanian Institute for Human Rights. The paper presents case studies which will be discussed presenting similarities and the reasons why they do not conform with human rights protection standards. Cases will cover different European countries to demonstrate the collective dimension of the effects of the European migrant crisis in Europe. Findings will show that the European Union and European countries make use of legal strategies in order to prevent the access of asylum-seekers to their own borders.

⁷ See UNHCR, *The 1951 Refugee Convention*, accessed March 5, 2019, <https://www.unhcr.org/1951-refugee-convention.html>

⁸ See UNHCR, *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol*, UNHCR, Geneva, 2011, p. 4

*nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*⁹

This definition helps to clarify the boundaries between a refugee and a migrant. What characterize refugees are two aspects not found when referring to migrants: firstly, refugees have a threat of persecution that forces them to flee, secondly they lack of protection in their own country. Instead, migrants move for reasons not concerned with an imminent danger in their own country, in which protection is guaranteed. Often, they move for employment, family reunification or study reasons. Since being a 'refugee' is not a condition, but rather a status given by the authorities of a country after a process in which the applicants to receive asylum are verified, the refugee is referred to as 'asylum-seeker' from the time the application is submitted until the acceptance or the rejection is issued¹⁰.

The 1951 Convention and its additional protocol are the basis for the system of international protection. They state the obligations of the states who adhered to the treaties and the conditions that allows them to deny shelter under certain conditions; for instance, whereas the presence of an asylum-seeker can constitute a threat for the national security or, when the applicant has committed crimes against humanity¹¹. At the same time, it is mandatory for the refugee to respect the laws of the country. States commonly have positive obligations towards refugees: to protect them and make sure their human rights are guaranteed. As such, according to the Convention, refugees must be guaranteed with rights, such as to work, to access education and healthcare. In addition, refugees should enjoy the freedom of movement within the territory of the country and the right of opinion and political belief. Within all the articles of the Convention one is considered as a cornerstone, the foremost principle, that is the one of *non-refoulement*. Article 33 states that "*No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of 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*"¹². Thus, a State should not repatriate refugees if in the country of origin the necessary conditions for their

⁹ See UNHCR, *op. cit.*, <https://www.unhcr.org/1951-refugee-covention.html>

¹⁰ See Amnesty International, *Refugees, Asylum-Seekers and Migrants*, accessed March 5, 2019, <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/>

¹¹ See UNHCR, *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol*, UNHCR, Geneva, 2011, p. 3.

¹² UN General Assembly, *Convention relating to the Status of Refugees*, 28 July 1951, *United Nations Treaty Series*, vol. 189, N° 2545, p. 137.

safety are not provided; however, the second comma of the article establishes *refoulement* in case the presence of a refugee could constitute a danger for the national security or if he/she has committed particularly serious crime.

The 1951 Convention and its Protocol of 1967 globally represent the base of the asylum framework. As much as we narrow our perspective, the implementation of the principles of the aforementioned documents on a regional level passes through a mechanism agreed by the member states. This is the case of Europe, in which the European Union formulated a shared agreement in terms of asylum protection. The European Council and Parliament adhered to the Regulation No. 604/2013 known also as Dublin III (as there were already implemented two previous versions)¹³. The reason to update the regulation was to clarify the hierarchy of the criteria to establish the Member State responsible for the screening of the asylum request¹⁴.

The criteria to determine which State Member should process the application of an asylum-seeker are applied in the following order: family unity (Art. 8-11), legal residence or visas (Art. 12,14) illegal entry, (Art.13)¹⁵. The principle of family unity establishes that asylum seekers who have family members who acquired the refugee status or who are in the process to apply will have their application processed in the state where their family is located¹⁶. Unaccompanied minors who have family members in another Member State will apply for asylum in that Member State¹⁷. If no family member is present, the asylum seeker with a legal entry visa or valid resident permit could have his claims assessed in that Member State. In case none of the aforementioned criteria applies, that is, when there is no family member and the applicant has not a residence permit, the entry is illegal as it happens through the illegal transit on the territory of another State of the European Union¹⁸. In that case, the first Member State where the applicant arrives, is responsible for the verification of the claims. Lastly, if the aforementioned criteria are not met, the system proceeds with the place of application, where the Member State in which the applicant files a claim of asylum takes under consideration

¹³ See Susan Fratzke, *Not Adding Up: The Fading Promise of Europe's Dublin System*, Migration Policy Institute, Brussels, 2015, p. 3.

¹⁴ *Ibidem*, p. 5.

¹⁵ *Ibidem*.

¹⁶ *Ibidem*.

¹⁷ *Ibidem*.

¹⁸ *Ibidem*.

the request¹⁹. The European Asylum Support Office (EASO) is designed to support Member States and foster cooperation and communication within.

3. The European or Mediterranean Sea crisis

The terms 'European' and 'Mediterranean' were used to denote the large-scale arrivals of migrants and refugees to Europe mostly through journeys crossing the Mediterranean sea; in the meaning of 'crisis' are also implied the tension within member states, authorities, locals and newly arrived as well as the number of deaths of migrants that were registered at sea²⁰. Europe faced several migrant crises in its history. The biggest still remains the one of the 60 millions of refugees during and after the WWII, more recent is the one of 700,000 asylum seekers after the fall of the Iron Curtain. In the past few years, there are also counted the Ukrainian citizens internally and externally displaced because of the Russian-Ukrainian tension on the Eastern border²¹. The crisis that had its peak in 2015 is the one that had the major number of non-European arrivals. At the end of 2015, there were 1,059,044 arrivals registered, by both land and sea; 80% reached Greece as first European country of arrival, and 15% Italy, the rest approached the shore or crossed the borders of Bulgaria, Spain, Malta and Cyprus²². If compared to the previous years, the number of arrivals gives an idea of the extraordinarily situation created in Europe: arrivals by sea where only 219,000 in 2014, and in the previous four years this amount could be reached only by adding the number of arrivals from 2010 to 2013²³. After 2015, the numbers showed a decrease of about two thirds in 2016 (390,432 unities) and of a half in 2017 (186,786 between migrants and refugees)²⁴. Meanwhile, the crisis hit the public opinion with the reports of the number of deaths of migrants and asylum-seekers verified

¹⁹ See Susan Fratzke, *op. cit.*, p. 5

²⁰ See Human Rights Watch, *The Mediterranean Migration Crisis: Why People Flee, What the EU should do*, published on June 19, 2015, accessed March 5, 2019, <https://www.hrw.org/report/2015/06/2019/mediterranean-migration-crisis/why-people-flee-what-eu-should-do#page>

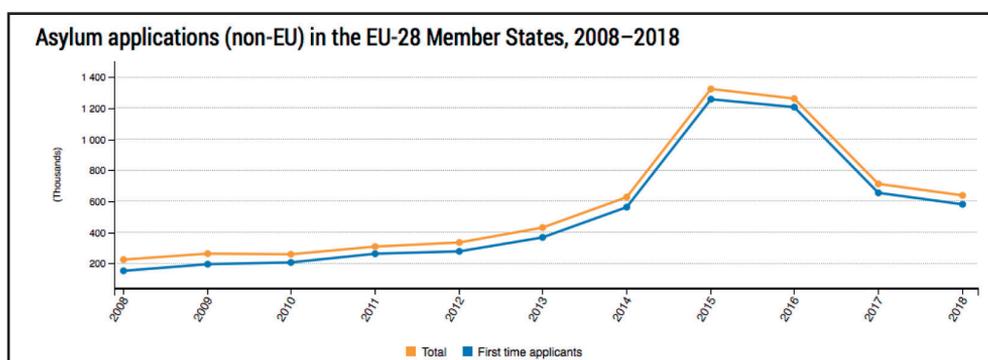
²¹ See Simas Grigonis, "EU in the Face of Migrant Crisis: Reasons for Ineffective Human Rights Protection" *International Comparative Jurisprudence* 2, (2016), p. 94.

²² See International Organization for Migration, *Europe- Mixed Migration Flows to Europe, Yearly Overview (2015)*, accessed 10 December, 2018, <http://migration.iom.int/europe?type=arrivals>.

²³ See UNHCR, *The Sea Route to Europe: The Mediterranean Passage in The Age of Refugees*, July 1, 2015.

²⁴ See International Organization for Migration, *op. cit.*, <http://migration.iom.int/europe?type=arrivals>.

in their journey through the Mediterranean: in total, 3,771 people died or were reported missing in the Mediterranean Sea in 2015. Of the 156,782 people arrived in Greece, 2,814 have been reported dead or missing in 2016²⁵. Within the total number of arrivals, the number of asylum applicants also sharply increased, as visible in the graph above; in 2015 the number of asylum applicants was of about 1.4 claims, while two years before, in 2013, there were ‘only’ about 400 thousands, registering a growth of more than the 200%²⁶.



Source: Eurostat, “Asylum Statistics”²⁷

One of the first short-term solutions advanced by the European Union was to distribute migrants among Member States according to quotas based on the total number of population, as proposed by the President of the European Commission Jean-Claude Juncker²⁸. This proposal did not find a fertile soil in Eastern Europe where the Prime Ministers of Hungary, Slovenia and Czech Republic refuted permanent quotas of re-allocation within Member States²⁹.

²⁵ See UNHCR, *Regional Refugee and Migrant Response Plan For Europe: Eastern Mediterranean And Western Balkans Route- 2016*, accessed on March 5, 2019, <https://reporting.unhcr.org/node13626>

²⁶ See Migration Data Portal, *The total numbers of international migrants in Libya*, accessed March 5, 2019, https://migrationdataportal.org/data?i=stock_abs_&t=2015&cm49=434

²⁷ accessed March 5, 2019, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_statistics&oldid=421545

²⁸ See Stewart M. Patrick, “The EU’s Migration Crisis: When Solidarity and Sovereignty Collide”, *Council on Foreign Relations*, September 9, 2015, <https://www.cfr.org/blog/eus-migration-crisis-when-solidarity-and-sovereignty-collide>.

²⁹ See Ian Traynor, “Refugee crisis: east and west split as leaders resent Germany for waiving rules”, *The Guardian*, September 5, 2015 <https://www.theguardian.com/world/2015/sep/05/migration-crisis-europe-leaders-blame-brussels-hungary-germany>

More in general, Eastern Europe responded to the crises with the erection of fences and the re-introduction (at least for those member of the Schengen area) of border controls.



Source: Author's own visualization of the crisis³⁰

More in depth, in the next section, we will see the measures and the strategies undertaken by Balkan countries and others to face the arrivals of such a large number of individuals of asylum applicants.

4. Case studies on the effect of the crisis

This section aims to discuss controversial cases between the European Union and other states on the partnership in the asylum system as well as between national governments and refugees. First, the deals that European Union undersigned with external countries will be considered, then the scope would narrow focusing on specific member states in terms of their internal provisions that brought to restrictions of the rights of refugees. Lastly, episodes of violence and violation of human rights will be discussed.

4.1 EU deals with no-members states

The ratification of the EU-Turkey deal has been one of the major event of the period following the peak of the crisis in 2015. Turkey plays a crucial role in the dynamic of migration to Europe as it represents the land access to

³⁰ See Stewart M. Patrick, *op. cit.*, <https://www.cfr.org/blog/eus-migration-crisis-when-solidarity-and-sovereignty-collide>.

Europe from the Middle East. Moreover, it is the country that globally hosts the highest number of refugees: in 2016, the official amount of refugees was about 2.8 millions of individuals, with unofficial numbers reaching more than 3.5 million³¹. The flow of arrivals to Europe, due to the war in Syria and other humanitarian crisis in Middle East and North Africa, for geographical reasons, had to transit through Turkey for all those willing to apply for asylum in any European country. Thus, the European Union sought to slow down the number of arrivals agreeing with the Turkish government on a set of procedures³². The first point established by the deal is that all new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 would have been returned to Greece in full accordance of international law, thus preventing collective expulsion and in respect of the principle of non-refoulement³³. Migrants eventually not filling an asylum claim and whose application had been found unfounded or inadmissible would have been returned to Turkey³⁴. EU institutions and agencies have fostered a dialogue between Greece and Turkey to take the necessary steps and agree to re-discuss bilateral agreements. The second point established a sort of ‘zero sum game’ in the number of refugees divided between Turkey and EU: as for every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria. EU agencies, other Member States and the assistance of the UNHCR would have ensured that the principle would have been implemented from the beginning of this ‘relocation scheme’³⁵. The priority had been given to migrants who had not previously entered or tried to enter the EU irregularly³⁶.

These two points are essential regarding the resettlement of refugees; the document further established conditions and acts to ensure the functioning of the agreement. However, it is worthwhile mentioning the benefits that Turkey received in exchange for the prevention of other migrants and

³¹ See Lisa Haferlach and Dilek Kurban, “Lessons Learnt from the EU-Turkey Refugee Agreement in Guiding EU Migration Partnerships with Origin and Transit Countries”, *Global Policy* 8, Supplement 4 (June 2017), p. 88.

³² See Council of the European Union. “EU-Turkey Statement, 18 March 2016” press release 144/16, March 18, 2016, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/pdf>

³³ *Ibidem*.

³⁴ See Council of the European Union, *op. cit.*, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/pdf>.

³⁵ *Ibidem*.

³⁶ *Ibidem*.

refugees attempting to cross borders: indeed, the European Union allocated three billions of euros for the Facility for Refugees in Turkey with an eventual mobilization of additional funding of three billion of euros up to the end of 2018³⁷. Moreover, it also took the responsibility to grant a visa liberalization for Turkish citizens if the other points of the agreement would have been met. Aside of the political agenda and the developments in the making of the statement, the EU-Turkey deal raised concern among international organizations, human rights institutions and scholars in International Law, as incongruences with the human rights system were found. The first set of critiques are addressed to the situation of Turkey in terms of the protection of human rights and internal stability. With the EU-Turkey deal, Turkey has been designed de facto as a 'safe third country'.³⁸ With this, according to EU regulation, it is meant specifically in Dublin III, to identify a country outside of the Member States where eventually the applicant could be relocated and where his life is not endangered. As such, article 38 states that the safe third country can be designated when authorities are satisfied that a person seeking international protection will be treated according to some criteria: first, "*life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion*"³⁹ ; second that there is no risk of serious harm; and third that the principle of *non-refoulement* is implemented according to the Geneva convention. A safe third country is also one where there is the right of freedom from torture and cruel, inhuman, or degrading treatment and where there is the possibility to request refugee status and to receive protection in accordance with the Geneva Convention⁴⁰. During the negotiation process of the statement signed on the 18th of March 2016, there were already controversies in Turkish asylum protection as reports surfaced documenting the unlawful internment of refugees in some of the detention centers in Turkey⁴¹. In the weeks prior to the agreement's signing, Turkish authorities deported hundreds of refugees to Syria, and when the deal was signed, Human Rights Watch reported that Turkish border guards killed five Syrians, attempting to cross the border⁴². Amnesty International pointed

³⁷ *Ibidem*.

³⁸ See Lisa Haferlach and Dilek Kurban, *op. cit.*, p. 88.

³⁹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 2013 OJ L 180/80.

⁴⁰ *Ibidem*.

⁴¹ See Lisa Haferlach and Dilek Kurban, *op. cit.*, p. 88.

⁴² *Ibidem*.

out practices of unlawful detention and coercion of refugees to return to Syria as well⁴³. The impact of the large-scale of arrivals in Turkey led to an arising anti-refugee sentiment among the general Turkish population. On one side, Syrian and no-Syrian refugees are seen as an economic burden, in terms of resources, health-care and employments. On the other side, in light of the terrorists' attacks, they were perceived as a security risk. As such, disapproving the national plan of assistance, demonstrations and clashes with security forces were registered in the country⁴⁴. Turkish government has also been disputed for the standard of freedom of expression, academic freedom and human rights⁴⁵. During the negotiations, evidence also arose about serious human rights infringements during the election of November 2015⁴⁶; moreover, the UN High Commissioner for Human Rights received proofs of on-going violations of international law and human rights concerns like civilian deaths, extrajudicial killings and massive displacement⁴⁷. As it is clear, Turkey does not present itself as ideally the best country to afford the protection of such a large number of refugees, in this given situation. The second criticism to the EU-Turkey deal is on the juridical position of Turkey on regards of international protection. As demonstrated by Haferlach and Kurban, Turkey's refugee policy does not fulfil international legal standards⁴⁸. The first issue is due to the fact that the country has never ratified the additional Protocol of 1967, thus it retains the geographical limitation by which the status of refugees is restricted to those “*who have become refugees as a results of events occurring in Europe*” and thus not considering as refugees those displaced outside of the continent⁴⁹. Turkey guarantees protection to Syrian nationals according to the Law on Foreigners and International Protection (LFIP) of 2014 as they are subjected to ‘temporary protection regime’ to safeguard essential rights to Syrians, for instance, against *refoulement* (which was not covered in the aforementioned situation)⁵⁰. The temporary protection, however, ensures that Syrians have fewer social rights than Turkish nationals. At the same time, it

⁴³ See Gogou, Kondiyliia, *The EU-Turkey deal: Europe's year of shame*, Amnesty International, March 20, 2017, <https://www.amnesty.org/en/latest/news/2017/03/the-eu-turkey-deal-europes-year-of-shame/>

⁴⁴ See Lisa Haferlach and DilekKurban, *op. cit.*, p. 88.

⁴⁵ *Ibidem.*

⁴⁶ *Ibidem.*

⁴⁷ *Ibidem.*

⁴⁸ *Ibidem.*

⁴⁹ *Ibidem.*

⁵⁰ *Ibidem.*

also does not allow Syrian refugees to apply individually for international protection through the UNCHR, which constitutes a violation of the 1951 Convention. As noted by Haferlach and Kurban, the legislation entails a discrimination of nationalities other than Syrian, a pattern that clashes with the principle applied by the European Union⁵¹. On a judiciary ground, even the EU-Turkey statement presents inadequacies. The cases of Syrian nationals to be re-allocated to Turkey in the same numbers as those Syrians in Turkey to be re-allocated in the EU, present a violation of the Article 4 of Protocol no. 4 of the European Convention of Human Rights on the prohibition on collective expulsion of foreigners⁵². The ‘readmission scheme’ of the Statement stipulates that all new migrants and asylum seekers in Greece who did not claim asylum or whose asylum claim was rejected should be sent back to Turkey, following the ‘safe third country’ principle. However, this measure has been taken considering that refugees in Turkey are not considered to be at risk of persecution or illegal *refoulement* to Syria, but the previous episode demonstrates that this is a false assumption.⁵³ In order to justify this ‘forced resettlement’, EU released an official communication allowing a so-called safe third country to take a margin to develop a protection framework that reflects ‘in principle’ the Geneva Convention. This created a paradox, according to Haferlach and Kurban, for Greek police officers⁵⁴. On one side, they were pressured by the political and humanitarian conditions to obtain the legal means by the Statement to re-allocate Syrians in Turkey. On the other side, however, they seemed to be forced to abide by the 1951 Convention, as officially, Turkey has not developed sound standards to be a ‘safe third country’⁵⁵.

Thus, it is visible how in the recent developments of the crisis, European Union has preferred to find a solution to the burden of the high number of arrivals that puts constraints in their judiciary applicability. This type of pattern is also traceable in another deal that the EU signed with a no-Member State, Libya.

Even if on a lesser degree than Turkey, Libya also is a country that generally receives migrants and asylum-seekers in large numbers. From 2010 to 2017, Libya saw an increase in the number of migrants from 684 thousand

⁵¹ *Ibidem*, p. 89.

⁵² *Ibidem*.

⁵³ *Ibidem*.

⁵⁴ *Ibidem*.

⁵⁵ *Ibidem*.

to 788.4 thousand⁵⁶. In addition, in terms of forced migration, the number of asylum applicants increased to more than the 300% from 2014 to 2017, from 8.9 thousand to 35.6 thousand, without considering those unable to ask for protection⁵⁷. Situated in North Africa, Libya gradually became the gateway for Africans to access Europe, as Libya's shores are the closest points to Europe from Africa. However, after a long journey for many people facing the difficulties of reaching Libya, the last step in order to arrive to European coasts is the crossing of the Mediterranean Sea. Unfortunately, many could not make it until the end, as many vessels shipwrecked on the way to Europe. Some others, helped by the coastal guards of the countries in the Mediterranean, finally arrived at destination, where their identification process started. However, a common practice that has been implemented recently by European countries is that of allowing Libyan Coast Guard to intercept boats, with the consequence of migrants and asylum-seekers being brought back forcefully to Libya⁵⁸. The European Union migration cooperation with Libya provides support to this practice, as it enables the Libyan Coast Guard to do so. Italy eventually took the lead in providing material and technical assistance, and thus allocating the responsibility to coordinate rescue operation at sea to contain the number of arrivals⁵⁹. If those measures were applied to a so-called 'safe third country', at least there would be the guarantee that migrants and asylum seekers would be relocated to a safe destination were their claims could be fairly processed and their rights respected. However, even if Libya signed the Geneva Convention and the Protocol, the situation in the country is dramatic and entailed two criticisms to this practice with regard to human rights protection. The first is that those intercepted by Libyan authorities are arbitrarily transferred back to Libya. Indeed, there is not any screening to check the identity of those leaving, and at the same time, those returned are subjected to arbitrary detention.⁶⁰ The second criticism refers to the condition of those detained in Libya. Human Rights Watch interviewed the detainees and despite the effort that EU is making in improving the conditions and treatment in official detention centers, migrants and asylum seekers face inhumane and degrading conditions

⁵⁶ See Migration Data Portal, *The total numbers of international migrants in Libya*, accessed March 5, 2019, https://migrationdataportal.org/data?i=stock_abs_&t=2015&cm49=434.

⁵⁷ *Ibidem*.

⁵⁸ See Human Rights Watch, *No Escape From Hell: EU policies Contribute to Abuse of Migrants in Libya*, published on January 21, 2019, accessed on February 28, 2019, <https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya#>

⁵⁹ *Ibidem*.

⁶⁰ *Ibidem*.

and the risk of torture, sexual violence, extortion and forced labor⁶¹. Amnesty International denounced the serious human rights violations taking place in the centers administered by the Libya's Department for Combatting Illegal Immigration (DCIM).⁶² If on the one side, EU is aware of this situation as the European migration commissioner Dimitri Avramopolous in November 2017 confirmed: "*We are all conscious of the appalling and degrading conditions in which some migrants are held in Libya*" and simultaneously funds the two factions ruling in Libya in order to maintain the detention center on standards level⁶³, on the other it is preventing the arrival of people in need of protection by relegating the issue to Libyan authorities, and thus, as seen, eventually leave people under risk.

4.2 Change in legislation

Part of the immediate reaction of European states to the crisis has also entailed a variation or a change in legislation for the national laws that constitutes the legal framework of protection in a given country.

For instance, in the Former Yugoslav Republic of Macedonia, on the 4th of April 2016, a new Law on Asylum and Temporary Protection was approved, with two restrictions in the rights of refugees and asylum-seekers. The first is that a refugee can exercise the right to family reunification only three years after asylum has been granted. The second declares that an asylum claim submitted by a person who seeks to enter Macedonia and has previously and irregularly entered the territory from a safe EU Member State, a NATO member country, or a country member of EFTA, is considered to be manifestly unfounded.⁶⁴ With regard to the first issue, it is clear that the attempt is to discourage asylum-seekers to apply for the status of refugee in Macedonia. On a juridical level, documents ensure that countries should make their efforts to accelerate family reunification: in this way, refugees would be separated for three years, at least, from their family. The second point also works to prevent asylum seekers to arrive in Macedonia: by excluding those set of countries,

⁶¹ *Ibidem*.

⁶² See Amnesty International, *Libya: Shameful EU Policies Fuel Surge in Detention of Migrants and Refugees*, published on May 16, 2018, accessed on February 28, 2018, <https://www.amnesty.org/en/latest/news/2018/05/libya-shameful-eu-policies-fuel-surge-in-detention-of-migrants-and-refugees/>

⁶³ See Human Rights Watch, *op. cit.*, <https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya#>

⁶⁴ See UNHCR, *Regional Refugee and Migrant Response Plan for Europe: Eastern Mediterranean And Western Balkans Route- 2016 (Revised May 2016)*, accessed on March 5, 2019. <https://reporting.unhcr.org/node13626>

the only two countries of provenience from which an asylum-seeker could cross and apply for protection are Kosovo and Serbia, both geographically located up North. As the majority of the newcomers came from Southern Europe (Turkey, Greece) and is aiming to proceed up North, this entails that the countries located South, such as Albania and Greece where many of the refugees passed by, should not be crossed, then impeding the asylum-seekers to keep ahead passing through Macedonia.

On the 27th of April of 2016, Austria also modified the rules related to the national asylum system with the amendments to the Asylum Act⁶⁵. Due to a disproportionate pressure on national asylum system in 2015 and 2016, in case of risk to public order and internal security, special provisions allow a reduction of the number of admitted asylum procedures⁶⁶. In case of a proclaimed state of emergency, there would be a closure of the border and the denial of access to asylum procedure⁶⁷. Similar to Macedonia, Austria restricted the duration of refugee status to three years and at the same time increased the waiting period for family reunification to three years, in a way that the refugee eventually would not enjoy the family reunification as its status would cease as soon as the right would be granted. Another issue is that, for those who had their claim rejected, appeal would only be possible once the return has taken place⁶⁸. The right to appeal against expulsion is guaranteed by the Article 32 of the Convention of 1951. However, the European Commission clearly spoke about a national strategy that served to bypass the obligations of the Convention⁶⁹. Aiming to increase the return of rejected asylum-seekers to their countries of origin, the strategy consists in the development of an emphasis on voluntary return: this includes a package of measures in the area of return and readmission and an information campaign targeting asylum-seekers about options for voluntary departure. In addition, Austria developed a pilot project “*Return Assistance- a new start with perspectives*” providing varying levels of return assistance to asylum-seekers from Afghanistan, Morocco and

⁶⁵ *Ibidem*.

⁶⁶ See European Commission, *Country Factsheet: Austria 2016 – European Migration Network*, accessed March 5, 2018, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/01_austria_country_factsheet_2016_en.pdf

⁶⁷ See UNHCR, *Regional Refugee and Migrant Response Plan for Europe: Eastern Mediterranean And Western Balkans Route- 2016 (Revised May 2016)*, accessed on March 5, 2019. <https://reporting.unhcr.org/node13626>

⁶⁸ *Ibidem*.

⁶⁹ See European Commission, *op. cit.*, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/01_austria_country_factsheet_2016_en.pdf

Nigeria. As flagged by Amnesty International, authorities between 2017 and 2018 continued to deport rejected asylum-seekers to Afghanistan despite the deterioration of the security situation in the country. Again, government measures expose asylum-seekers to risk.

4.3 Human Rights Infringements

Hungary has been among the countries highly involved in the ‘European refugee crisis’ as it was one of the countries part of the Western Balkans route. At the same time, it is part of the Visegrad Group, a block of countries in the Eastern Europe, who refused a repartition of the share of migrants within EU member States⁷⁰. Hungary experienced a substantial decrease in arrivals, as in 2016 there were registered 26,000 asylum seekers while in 2017 ‘only’ 3,035. A March law allows for automatic detention of all asylum-seekers in two transit zones at Hungary’s border with Serbia for the entire duration of the asylum process. At the borders with Serbia as well, second lines of fencing were erected to impede asylum-seekers to approach the border. There, repeated violence and other pushbacks of asylum-seekers constituted a significant drop in arrivals. The European Court of Human Rights condemned Hungary for the above measures⁷¹. The reason is because the confinement of asylum-seekers in ‘transit zones’, constituted in container camps heavily surveilled, is essentially an arbitrary deprivation of liberty⁷². Hungary has also been condemned for the poor conditions in which asylum-seekers were held and the lack of judicial appeal to the unlawful detention, which proved Hungary to fail in the provision of adequate protection against a risk of inhuman and degrading treatment⁷³.

A particularly vulnerable category within refugees consists of the unaccompanied minors. Greek authorities had registered over 3,300 unaccompanied asylum-seeking and migrant children in the first seven months of 2016. Without parents or adults responsible for them, these children are entitled to care and protection from Greek authorities. The shortage of suitable accommodation and shelter led Greece to the prolonged detention of children often in poor and degrading conditions in protective custody at police stations

⁷⁰ See Stewart M. Patrick, *op. cit.*, <https://www.cfr.org/blog/eus-migration-crisis-when-solidarity-and-sovereignty-collide>

⁷¹ See Amnesty International, “Hungary 2017/2018”, *Amnesty International Report 2017/18 – The state of the world’s human rights*, accessed on March 5, 2019, <https://www.amnesty.org/en/countries/europe-and-central-asia/hungary/report-hungary/>

⁷² *Ibidem.*

⁷³ *Ibidem.*

and in pre-removal detention centers⁷⁴. Under international law, national law and the European directives, the detention of children is an option that could only be chosen as a last resort, in exceptional circumstances and for the shortest appropriate period⁷⁵. However, children are being detained as a result of the prolonged periods. The protective custody, under Greek laws, allows detention of an accompanied minor for maximum 25 days, or up to 45 days in special circumstances; as Human Rights Watch investigated, children are found to be in detention for even two months. Quite often, it also happens to find children facing unsanitary and degrading conditions and abusive treatment.

The last case presented by this research is the one of France, which is based on researches conducted recently, to demonstrate how the legacy of the crisis lasted for a long time. From the beginning of the crisis asylum-seekers and refugees continuously reach the North-Western shores in proximity of the city of Calais; many people temporarily based there in order to try to cross the English Channel to arrive in the United Kingdom. The research conducted by a team of NGO's in the period November 2017 to November 2018 showed that after the demolition of the informal refugee camp called the 'Jungle', repeated acts of violence, abuse of power and harassment were perpetrated by police officers upon those displaced⁷⁶. Volunteers gathered information through the witnesses of displaced individuals around Calais. In one-year period, were registered 160 refugee arrests, that most of the time were rarely told to be taken into custody⁷⁷. In the same period, there were reported 244 acts of police violence, in which the majority included the use of a chemical agent upon migrants. In addition, migrants often report that they were victims of verbal intimidations and aggressions by the French Police⁷⁸. The results of the inquiry confirm and give a measure of a situation which many were already aware of. A week prior to the start of the field-research, Human Rights Watch have denounced the degrading and inhuman treatment inflicted to asylum-seekers by police officers, a version confirmed by the French Ombudsman and the

⁷⁴ See Human Rights Watch, *Why Are You Keeping Me Here? Unaccompanied Children Detained in Greece*, published on September 8, 2016, accessed on March 5, 2019, <https://www.hrw.org/report/2016/09/08/why-are-you-keeping-me-here/unaccompanied-children-detained-greece#>

⁷⁵ *Ibidem*.

⁷⁶ See Refugee Info Bus et al, *Police Violence in Calais: Abusive and Illegal Practices by Law Enforcement Officers*, accessed March 5, 2018, https://docs.wixstatic.com/ugd/5eb73a_ae875cd65dcc434588a7a69ed4cf3167.pdf

⁷⁷ *Ibidem*.

⁷⁸ *Ibidem*.

French Ministry of Interior⁷⁹. Thus, the situation in Calais proves an escalation of violence upon migrants, refugees and asylum-seekers that authorities did not manage to bring under control.

5. Discussion of the findings

The first cases introduced concern the management of migration control by the European Union in partnerships with countries such as Turkey and Libya, which are transited by the majority of asylum-seekers. Even if the agreements have some differences as in terms of re-allocation, whereas in Turkey has to be proportional to those allocated in Europe, while with Libya Europe opted for collaboration to prevent the arrivals to the shores. The two cases present a substantial similarity: Turkey and Libya do not present reliable standards in terms of the protection of human rights, and the fact that the European Union allows those countries to hold asylum-seekers under their authorities constitute a threat for their security.

Operating on a national scale, countries in Europe have a degree of autonomy in terms of legislating the access to the country of people in need of protection and the condition to be met for granting the status of refugee. Eventually, the cases of Austria and Macedonia show the restriction of the duration of their rights together with the prevention to obtain others. For instance, in Austria the right of asylum becomes incompatible with the family reunification, as the former would cease once the latter would be achievable. It clearly works in the opposite direction than the one traced by the 1951 Convention with the Recommendation B(1) with regard to the right of family unity, where countries should “*Ensure that the unity of the refugee’s family is maintained*”⁸⁰. Lastly, based on frequent episodes, the cases of violence and abuses of power registered in Hungary, Greece and France, even though they are different cases in different contexts, together they constitute a pattern of behavior that does not conform to the standards of protection towards vulnerable individuals. Rather, they describe an increasingly hostile and intolerant attitude towards the asylum-seekers and refugees.

Conclusion

To sum up, the research has been focusing on the issue of human rights protection in light of the phenomenon of migration, specifically targeting the

⁷⁹ See Human Rights Watch, *France: Inquiry Finds Police Abused Migrants in Calais*, published on October 24, 2017, accessed on March 5, 2019, <https://www.hrw.org/news/2017/10/24/france-inquiry-finds-police-abused-migrants-calais>.

⁸⁰ See UN General Assembly, op. cit., p. 137.

'forced migration' as a precise field of inquiry. The paper has been making use of the European migrant crisis, also referred as the European refugee crisis, as a case study to verify the effect of a large-scale movement of unprecedented record into the protection of the human rights of vulnerable categories, namely asylum-seekers and refugees. In order, the research has been placed in the context of the interrelation between migration and human rights. The conclusion of the overall research in the academic sphere is that migration now is 'international' migration as it happens under the current international system of states. Forced migration is the term indicating the movement of people in need of international assistance, to whom signatory states must offer and guarantee protection; however, states need also to regulate the arrivals to their country by others not entitled to the same rights. As asylum-seekers constitute a minority in the large migratory flows, states have difficulties in distinguish the two, and the need of protecting the country from 'the external threat' as advanced by populist rhetoric ensures that the obligations that countries have towards asylum-seekers are subordinated to the control of migration. Prior to provide empirical evidence of this behavior in the effects of the refugee crisis in Europe that had its peak in 2015, this study provides an overview of the rights enjoyed by refugees in Europe and the dimension of the massive pressure in terms of arrival registered by the crisis.

Thanks to the support of the Romanian Institute of Human Rights, this paper reflects an accurate discussion of the human rights framework to vulnerable categories of migrants, such as asylum seekers and refugees. Before introducing the concluding remarks, it is necessary to further clarify the motivation and aim for conducting this research. This inquiry has been thought to deepen into the effects of the European migrant crisis not merely in terms of the countries' reaction to the crisis: nor, eventually, to evaluate Europe's level of solidarity or to define Europe's as geopolitical entity incapable to guarantee protection to refugees. An assessment on the solidarity level of Europe in reaction to the crisis should have considered all episodes of discrimination as well as measures, acts and provision aimed to receive and integrate refugees.

This research has made use of controversial cases all verified after the peak of the crisis in 2015. The underneath assumption of this paper is that the crisis had effects on the protection of the human rights of asylum-seekers and refugees in Europe. Findings prove that the European Union has tried to slow down the number of arrivals by making use of agreements with external countries, which does not constitute a violation of human rights itself; but

those paying the consequences of these deals are the asylum-seekers because their life in those countries is further endangered. In order to solve the arrivals issues, countries have used their legislations to create rules to legally deter asylum-seekers to cross their borders, as the cases of Austria and Macedonia. On the last ground, from 2015, asylum-seekers and refugees in some countries in Europe have been subjected to discriminating behaviors by nationals, authorities and law enforcement officials. The overall conclusion is that, in general, the legacy of the European refugee crisis is a scarce consideration of the rights of asylum-seekers and refugees and of the obligations that states have towards them. The crisis was the factor that revealed to Europe its vulnerability to provide adequate, fair and sustainable shelter to those seeking shelter. The protection offered and guaranteed by the 1951 Convention, its Protocol and the regional declaration is not fully met in the ordinary practice of states, which make use of strategies to abide their accountability to protect, undertaken at the time of the ratification of the Refugee Convention.

This research offers insight to conduct a broader evaluation of the respect of the human rights of vulnerable individuals in Europe. A difficulty in conducting the research is the lack of an elaboration of the effects of the crisis, probably due to the facts being recent. However, beside formulating an account of the changes and the outcome brought by the crisis, Europe should reflect upon the incongruency and the hypocritical measures undertaken to slow down the number of arrivals: and, from its own mistakes, learn how to improve and sustain a valuable and efficient asylum protection system, in line with human rights standards.

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