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COMPLIANCE OF EUROPEAN UNION'S LEGAL RESPONSES WITH THE INTERNATIONAL REFUGEE LAW THROUGH SYRIAN REFUGEE CRISIS

Master's thesis

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ABBREVIATIONS

1. CEAS – Common European Asylum System
2. CFREU-Charter of Fundamental Rights of the European Union
3. CJEU – Court of Justice of the European Union
4. EASO- European Asylum Support Office
5. EC- European Council
6. ECHR – European Convention on Human Rights
7. ECtHR – European Court of Human Rights
8. EU – European Union
9. EURODAC – European Dactyloscopy
10. EUROPOL-The European Union Agency for Law Enforcement Cooperation
11. FRONTEX- European Border and Coast Guard Agency
12. LFIP- Law on Foreigners and International Protection
13. TEU- Treaty of European Union
14. TEU-Treaty European Union
15. TFEU – Treaty on the Functioning of the European Union
16. TPR-Temporary Protection Regulation
17. UN – United Nations
18. UNHCR – United Nations High Commissioner for Refugees

1 INTRODUCTION

International policy and military roadmap of great powers are shaping our world. One of these famous on-going politic games is the Great Middle East Project which is continuously defining the new Middle East starting from the early 2000s with the following wars and conflicts in Yemen, Iraq, Libya and Syria. Although determined international efforts, States are still unable to stop armed conflicts entirely and yet it is hard to say that they are fulfilling their humanitarian responsibilities for war victims. While States have different self-interests and final expectation about war, one absolute consequence that all of them wish to ignore is refugee crises. Especially U.S with the bias and national security concerns[1], U.K who wants to be excluded from UNHCR resettlement program in 2014(until later on accepts the relocation of 20.000 Syrian by 2020[2]) and EU with internal and external efforts and measures was acting in favour of not letting refugees inside their borders.

Conflicts in the Middle East caused humanitarian crises, terrorist armament, an increase in weapon trade and many other economic and social effects in addition to the displacement of people. The number of displaced people has dramatically increased especially with the Syrian war. First time in the history, Middle East is producing such a high number of war refugees.[3] About 18,000 refugees from Syria were resettled in the United States between years 2011-2016[4] and 8,269 in the UK. Meanwhile, EU countries in total settled approximately 1.1 m Syrian refugees until 2016. Nevertheless, compared to the neighbour countries that naturally received the most (Turkey 3,547,194, Lebanon 991,917, Jordan 659,063, Iraq 247,379 and Egypt 128,034)[5], Europe was criticised for not taking enough refugees but instead taking precautions to stop refugee flux towards its borders.[6] This thesis will focus internationally displaced people after the Syrian war and the application of the EU asylum legislation whether they are in conformity with the international refugee law.

In 2015, the highest number of irregular immigrants in Europe was Syrian nationals.[7] Also historically, Europe had never received such a large number of Syrian asylum seekers before and

[1]S. Jones. The Syrian Refugee Crisis and U.S. National Security. RAND Office of External Affairs. 2015.
[2]UK to accept 20,000 refugees from Syria by 2020. 07.09 2015. Accessible at: http://www.bbc.com/news/uk-34171148 (04.11.2018)
[3] F. Heisbourg. The Strategic Implications of the Syrian Refugee Crisis. 2015. Survival Vol. 57 Issue 6 p.7
[4]J. Zong, J. Batalova. Syrian Refugees in the United States. Spotlight. 12.01.2017.
Accessible at: https://www.migrationpolicy.org/article/syrian-refugees-united-states (04.11.2018)
[5] UNHCR Operational Portal Data. Accessible at: http://data2.unhcr.org/en/situations/syria
[6] M. Ceccorulli, Migration as a security threat: Internal and External Dynamics in the European Union, Forum on the Problems of Peace and War. 2009.
[7] European Stability Initiative. The 2015 Refugee Crisis through Statistics. 17.10.2015

this situation affected both EU legislation and foreign policy in many aspects. It influenced Schengen implementation of some EU states and caused a halt to the Dublin System. Europe also made a highly controversial readmission agreement with Turkey for the territorial exclusion of refugees.

European Union faced the refugee crisis with many controversial legal mechanisms such as relocation quotas and readmission agreements. During this crisis, Europe's main asylum acquis was argued to be problematic and criticised for causing a violation of refugee rights by both EU organs itself and international organisations. In this thesis, international law on refugee rights will be analysed to compare with Europe's asylum system whether it fully complies with international law or not.

After giving a broad understanding of refugee rights in EU in both law and practice, subsequently, this thesis will assess EU-Turkey readmission statement regarding refugee rights and with the aspect of human rights. Turkish municipal law and the conditions of the readmission agreement will be analysed to determine whether there is a risk of human rights and refugee rights infringement as a result of this agreement.

The first chapter will explain the definition of refugee in international law and the rights of refugees because initially, it is crucial to establish the legal title of internationally displaced Syrian people to define their rights. The question of 'are they refugees or not?' must be pointed to mention their merit rights. In the beginning, the author explains the different status of protections to give an overview. Research collects information from normative sources; treaties, customary law, general principles of human rights law.

The second chapter analyses EU Asylum Law. Certain asylum cases with allegations of human rights violations will be used as a ground to establish the question of 'Dublin system' in what extent (if it does) violates Article 3 of the European Convention on Human rights by some judgments of the European Court of Human Rights. The new legislation, namely resettlement quotas and recast discussions will be analysed to establish EU Asylum *Acquis*'s direction and a new position in compliance with international refugee law.

In the third chapter, research aims to find out if EU's treaty with Turkey about the readmission of refugees matches with the legal concept of international refugee law. The main question of the chapter is 'Does this treaty violate international refugee law principles, or it complies with it?' It

is important to address this question because it was one of the most criticised legal measures of EU after the refugee flows from the middle east. EU was accused of infringing international law on refugees with considering self-interests only instead of focusing on helping refugees. Research approaches the matter by asking what makes readmission agreements legal and is the agreement includes provisions that cause an open violation of refugee rights.

In general, this thesis reviews EU's legal instruments in the recent refugee crisis and the current asylum law with its implementation during the refugee flow. It analyses the Common European Asylum System and EU Turkey readmission agreement from the view of human rights and refugee law. Main purpose is to point problems of readmission agreements with Turkey and CEAS so that solutions can be found for the benefits of refugees.

The research problem is; although European Union Legislation must comply with the 1951 refugee convention and the 1969 protocol, European Union's readmission agreements and asylum policies might not be the ideals on the grounds of international refugee law as it was intended and desired. Even though countries are obliged to act together with UNHCR on refugee crisis within the main principles of refugee law, many of them choose illegal policies to expel refugees.

The main research questions are (i) whether EU legislation is undermining the right to asylum. ii) Is the EU turkey readmission agreement comply with the International refugee law.

The first hypothesis of the study is EU Asylum Acquis complies with the international refugee law and EU readmission agreement with Turkey is a balancing response between refugee rights and management of the increasing number of asylum seekers in Europe if it is implemented with the respect of human rights as it was agreed. Otherwise, the readmission agreement can be only considered a way out system of 'Fortress Europe' to keep the people in need out of sight and avoid the responsibility.

The second hypothesis is that accepting the fact, on the asylum seeker's aspect EU-Turkey agreement might create a risk of inequality and feeling of injustice comparing the general situation in EU and Turkey. However, Author claims that the EU-Turkey Deal does not conflict with the international refugee protection concepts. The hypothesis is with the standard protection and aid from Europe; Turkey can provide adequate protection to the refugees.

The objective of the thesis is to determine whether EU is contributing to cope with the crisis in legal grounds with its responses or neglecting its responsibilities by finding getaway solutions and whether the provisions of Common European Asylum System is adequate and successful to maintain international responsibilities of refugee protection. In general, EU's asylum acquis and new legislative bodies will be assessed with the connection of the crisis that was accelerated after the war in Syria.

Relevancy of the topic is that contemporary world dynamics keep causing migration flows and European Union continually reforms its mechanisms and laws about asylum matters. This thesis reveals the vulnerable parts of EU Asylum law and answer arguments about its cooperation with third countries: readmission agreements. In general the research will remark the potential of improvement in EU's both external and internal actions instead of labelling them as a complete infringements of international refugee law. The thesis might guide in shaping future agreements or future EU policies for refugees.

Methods of the research combine a review of domestic and international legal documents, European Union directives and literature on relevant law. The study combines human rights organisations' reports to establish if States approach this matter as a humanitarian issue or they try to protect their self-interests with their asylum policies. The comparative methodology was used to evaluate EU asylum law and International refugee convention. The comparison is on the scope of protection of refugees in law, international principles and relevant cases. In addition to the teleological approach to analyse EU-Turkey readmission agreement, the evaluative approach will be implemented in order to evaluate EU-Turkey refugee deal's feasibility in practice to solve the refugee crisis.

Keywords: Syrian Civil War (2011-), Refugees, European Union Law, Turkey

2 CONCEPT OF ASYLUM IN INTERNATIONAL LAW

It is the fact that our living standards and rights we have are provided us by our states. Our citizenship determines how humanly we live and whether our fundamental rights will be violated by our government or not. States should take care of their citizens' need and ideally, human rights should be universal instead of local quality variations because they are inherent to all human beings regardless of race, sex, nationality, ethnicity, language, religion, or any other status. However, in the worst case scenario, when someone has no state anymore, it becomes harder for them to maintain their basic rights because we use most of our rights linked to our citizenship which defines responsibilities of individuals to State and their right to claim protection from State that is an organised political community[8]. This is the reason why primary instruments of the refugee law often put States under the responsibility of equal treatment of refugees and stateless persons with their nationals in many areas. The Convention and Protocol relating the status of refugees Article 13(on movable and immovable property), 14(on artistic rights and industrial property) and 15(association right) are the provisions that provide refugees with equal treatment as nationals of their habitual residence.

Contemporary nation-state policies on immigration and the settlement of immigrants, in many ways, reflect the philosophy of the nation-state idea of excluding others who are not part of the nation. In 1961 when Turkey approved the Geneva Convention for Refugees, it was adopted with the following reservation; none of the provisions of the convention can be understood as refugees might be given more rights and benefits than a Turkish citizen, Refugee rights cannot surpass the rights of Turkish citizens.[9]

Closing borders to refugees serve the role of 'protecting' members of the community from outsiders. Therefore, against the tendency of Nation states protect themselves from refugees; refugee situations are handled in global level with United Nations High Commissioner for Refugees, UN body with the mandate to protect refugees.

The Statute of the UNHCR is annexed to Resolution 428 (V), adopted by the UN General Assembly on 14 December 1950. According to the resolution, the High Commissioner is

[8] K. Darling. Protection of stateless persons in international asylum and refugee Law. International Journal of Refugee Law Vol. 21.4 .2009. p. 752

[9] Law on ratification of The Convention on the relating to the Status of Refugees. Official Gazette. 05.09.1961. Number: 10898 p.7

responsible for providing international protection to people (refugees) when their state of origin was failed to do so.

2.1 Definition of Refugee in International Law

A refugee is someone that fall within the competence of UNHCR. Definition of this legal status that determines who falls under the competence of the United Nations Refugee Agency must be well established for the object of this thesis which is refugees but not migrants; According to the 1951 Convention and the 1967 Protocol a refugee is 'someone owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, 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 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.'[10]

A discussion regarding asylum seekers must include a definition of refugees compared with migrants. When legislative authorities make laws in this field, public bias, opinions and reaction of civil society show that many people equate these terms when in fact, they are quite different. Therefore, each group elicits different degrees of support from the governments of the nations in which they attempt to settle. Migrants are people who leave their homes in order to seek a new life in another nation or region of their home nation. This group consists of all the people who travel across borders including those people who do so with permission, such as those who possess a visa or work permit; the category of migrants also includes those people who are moving to new areas without permission such as undocumented migrants. While the first group of migrants perform a legal entry, last enters illegally *per se*.

However, addressing the entry of asylum seekers with the label of 'illegal' would stay out of the refugee concept and be semantically wrong. In international refugee law, this must be called irregular entry unless it is proved that legal/regular entry was possible even for an asylum seeker in under difficult circumstances. As an example, humanitarian visas via embassies which are granted urgently to provide humanitarian relief without a detailed assessment of a person's asylum case. Asylum seeker gets access to the territory of the State where they wish to apply for asylum directly instead of smugglers routes.

[10] Convention Relating to the Status of Refugees. 28.07.1951. e.i.f 22.04.1954 189 UNTS 137.Protocol Relating to the Status of Refugees. 31.01.1967. e.i.f 04.10.1967 606 UNTS 267. Art.1

A Refugee's right derives from the Universal Declaration of Human Rights Article 14: 'everyone has a right to seek asylum from persecution in other countries'. This declaration is the core of other binding treaties. Moreover, aforementioned the United Nations Convention relating to the status of refugees connected with the 1967 Protocol regulates refugee rights that are globally protected under the mandate of the Office of the United Nations High Commissioner for Refugees (UNHCR) that is established on 1 January 1951 by the United Nations General Assembly. Unfortunately, convention and the protocol does not have a jurisdiction body against violations.

International human rights law and refugee law are complementary with each other. UNHCR conduct activities are complying with other international and regional human rights declarations too. That is to say, in case human rights norms provide more protection in the situation, refugee law does not eliminate additionally given rights by any human rights instrument although it is *lex specialis*. UNHCR stipulates that human rights must be safeguarded in the prevention of today's refugee movements and the resolution of the problems of refugees'[11] .
Article 13 of UDHR set forth the right to leave any country. Everyone can leave including his or her own country and return to his or her country any time they want. Although, *vice versa* (a person's right to move any country) was not mention right to seek and enjoy asylum in other countries was clear.[12]

'Persecution' (general provisions Article 1) is a keyword for the refugee convention, yet it is not explicitly defined in the 1951 Convention or the 1967 Optional Protocol, so it does not put humanitarian protection into limits with the allowance of flexibility in different situations. However, what is considered as persecution is crucial to define a refugee as a legal title and to establish if internationally displaced Syrian people were refugees or not regarding the 1951 Convention. Article 33 of the Convention which is the principle of *non-refoulement* is interpreted that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. In practice, severe violations of human rights are considered as persecution. Refugee law is dynamic and progressive, and changes in the interpretation of human rights can make an influence regarding the persecution.

[11] Figures at a Glance: Syria Emergency. UNHCR, 2018. Accessible at: http://www.unhcr.org/figures-at-a-glance.html (03.10.2018).
[12] The Universal Declaration of Human Rights. 10.12.1948. UN General Assembly. Art.14

Only the literal meaning of the Article 1 A (2) will not be enough to define Syrians as refugees because one can think it does not explicitly say that it covers people who flee from war. However, initially reason of the refugee convention was the WW2. Historically, convention covered only people who needed refuge as a result of events occurring before 1 January 1951 in Europe. Later, the 1967 Protocol extended the protection internationally and without time limit. Teleological interpretation of the convention with its *travaux préparatoires* allows us to clearly say Syrians fell under the scope and protection of UN refugee agency. As Assistant High Commissioner for Protection, Volker Turk explained the contemporary application of convention; "…the drafters of the Convention knew very well what they had in mind and whom they had in mind in order to protect for the future. It was clear that the definition applies to people who flee persecution because of what happened to them in their type of circumstances, but it also meant that it applies to people who flee armed conflict and violence."[13] Moreover, upon the importance of recognition of people who flee from the war as refugees, he discusses that it is important for the credibility of the international refugee protection regime and if people flee conflict and violence, they generally fulfil the criteria of the definition and should be recognised as such.[14]

"Well-founded fear" of persecution is another discussed qualification by courts while attributing a claimant with the refugee convention. In *travaux prepatuare* of the convention, about the case law Joseph Adjei v. Minister of Employment and Immigration, the judicial view of the Canada Federal Court was criticised for narrowing the definition and limiting the humanitarian protection. The Court established that solid proof of the potential persecution might not always be so clear nevertheless convincing grounds was not nonexistent in that particular political asylum case therefore in case of politic asylum, UN states that persecution connotes both oppressive and harmful actions.

When an asylum seeker applies to legal permission to remain in some country by obtaining refugee status that is accompanied by certain rights and benefits, this status may be granted, but not every person is seeking asylum is ultimately recognised with refugee status. Each refugee, however, originates as an asylum seeker.

[13]Q&A: The 1951 Refugee Convention 'is as relevant today as it was at the time'. UNHCR. Accessible at: http://www.unhcr.org/news/latest/2016/12/584036047/qa-1951-refugee-convention-relevant-today-time.html (03.10.2018).
[14] Ibid.

2.2 Principle of *Non-refoulement*

The status of a refugee is defined by international law, which mandates that states protect refugees and not send them back to places where they may risk persecution or threats to their physical safety.[15] Consequently, this prohibition of expulsion (*non-refoulement*) which is also a *jus cogens* norm is the main principle of international refugee law as provides its functionality.[16] A literal interpretation of the term 'prohibition of expulsion' inferred as States cannot turn down an asylum application if this person can be considered as a "refugee" under the convention.[17] The purpose of this principle in the convention is clear; protecting people from unfair prosecution thus expulsion of a refugee to an unsafe zone is prohibited. The UN Convention Against Torture enshrined this principle without any limitations.[18] It is a constructive and favourable that *non-refoulement* broadens the protection with the customary international law. On the other hand, Jane McAdam explained the importance of the application of *non-refoulement* principle with strongly connected to the refugee convention because only then *non-refoulement* comes with a specified legal protection status: the 'refugee.'[19]

Infringement of this principle might occur either directly or indirectly. Direct *refoulement* takes place when a State sends back a refugee to where he or she faces persecution. Indirect *refoulement* happens if an asylum seeker has been sent to a State where she/he will be expelled to the country of persecution. *Non-refoulement* principle focuses the result; therefore if a State foresees or should have known a person will be deported by the third state, in this case, the first State is responsible for *non-refoulement* violation(indirect). In that sense, there are exceptions that do not infringe the objective of the refugee convention regarding *non-refoulement*. Firstly, a state might avoid giving refugee status under its territory but provide settlement in a safe third country under a political statement (for instance Turkey- EU readmission statement). When an asylum seeker has already entered a safe country, ideally he/she should be expected to apply for asylum there. Court of Justice of the European Union stated that 'As regards the alleged infringement of the right to remain in a Member State, which, it is argued, is safeguarded by the Geneva Convention, the Council contends that neither the Geneva Convention nor EU law gives an asylum seeker the right

[15] Op. Cit. UNHCR. Q&A: The 1951 Refugee Convention.
[16] J. Allain. The Jus Cogens Nature of *non-refoulement.* International Journal of Refugee Law. Vol. 13. Issue 4. 01.10.2001. p. 538
[17] Convention and Protocol Relating to the Status of Refugees. UN General Assembly, 1951-1967. Art 33.
[18] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. UN General Assembly.10.12.1984. e.i.f. 26.06.1987. Art 3
[19] J. McAdam. Complementary Protection in International Refugee Law. Oxford Monographs in International Law, 2007. p.200.

freely to choose his host country.'[20] Similarly, when the European Union's internal relocation quotas were accepted in 2015, refugees' option for choosing the state was limited with the Commission's decision of 22 September 2015 on establishing provisional measures for providing international protection for the benefit of Italy and Greece.

As a matter of fact, during the exceptional flows of migration, the asylum system of this particular country might be collapsed. This is one of the reasons in the practice refugees choose to relocate to different EU countries.

In the Convention *non-refoulement* in refugee law Article 32/2; "The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority[21]."

2.3 International Refugee Law and the European Union

Beside the 1951 Geneva Convention, other important bodies influencing the borders of refugee protection in international law namely are; Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, the 1954 Convention on the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
Article 44 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War puts enemy state refugees into a different position by saying these people who are displaced due to the persecution should not be treated with hostility.[22] The 1954 Convention on the Status of Stateless Persons considers that stateless people that obtain refugee status simultaneously are covered under the protection of 1951 Refugee Convention. Nevertheless, some stateless people are not refugees and need their fundamental rights to be protected. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits state parties to commit and cause acts of torture under their territory and also refer to the prohibition of *refoulement* of people who are in danger of torture where they return.

[20] Slovak Republic and Hungary v Council of the European Union. C-643/15 and C-647/15. Court of Justice of the European Union. 06.09.2017
[21] UN refugee convention: on unlawful entry, expulsion and *refoulement*. UN General Assembly. 1951. Art 31, 32, 33.
[22] Geneva Convention Relative to the Protection of Civilian Persons in Time of War. 12.08.1949

Beside the above mentioned international treaties, there are many regional protection mechanisms, but among them, this thesis focuses only Council of Europe's legal contribution to refugee protection and put other regional protection mechanisms aside because geographically it covers the situation in Europe. Since European Union Member States and Turkey are members of the Council of Europe, they are under the obligation that arises from European Convention on Human Rights(ECHR) to secure basic rights for anyone within their borders, including people from other nationalities. European Court of Human Rights (ECtHR) has jurisdiction when there is a breach of ECHR by parties. Therefore, ECtHR case-law has relevancy to address problematic and illegal parts of these countries' refugee law and its implementation.

Despite these international and regional treaties that some are signed almost all the nations in the world, the challenge in refugee law emanates in differing if not antagonising understandings of the concept of international responsibility among both the developed and developing countries around the globe. In this thesis, Author only considers and analyses refugee protection legislation of the European Union and also to some extent Turkey's differentiated approach to refugee law to assess the cooperation between EU and Turkey. TFEU, TEU and European Council Directives provides refugee protection provisions. EU's asylum policy deriving from these legislations will get some comments by the author in a limited scope, but the literal meaning of the provisions are the centre of her assessments.

Author claim EU is a successful example of standardising the asylum approach in a suitable way to human rights. The European Union States must show more unity in practice especially considering the efforts of building a well-functioning common asylum system.

TFEU, on the union policies and internal actions of the Union, Part Three, Chapter 1, and Article 67 stipulates that Union "…shall frame a common policy on asylum, immigration and external border control, based on solidarity between the Member States, which is fair towards third-country nationals." Chapter 2, Article 78/1 foresees "The Union shall develop a common policy on asylum, subsidiary protection and temporary protection to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*."

Article 78/ 2 provides, "the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising a uniform status of asylum for nationals of third countries, valid throughout the Union,

a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection, a common system of temporary protection for displaced persons in the event of a massive inflow, common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status, criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection, standards concerning the conditions for the reception of applicants for asylum or subsidiary protection, partnership and cooperation with third countries for managing inflows of people applying for asylum or subsidiary or temporary protection."[23]

Consequently, about the academic debates on the questions of whether EU Law must comply with EHCR and whether ECtHR has law enforcement function over EU[24], answers are clearly the Court of Justice European Union puts human rights as a condition of the legality of EU Law, it indeed comply with the human rights provisions of ECHR and despite the fact that ECtHR cannot put law sanctions against EU, it can to the European Member States because they were meantime ratified the ECHR. As a result, EU's harmonised asylum acquis indirectly under the de facto surveillance of the ECtHR[25] Also, EU Asylum law cannot entail the European States to neglect their responsibilities deriving from human rights. Otherwise, such particular EU provision would be invalid.

Refugee rights as fundamental rights are part of European Union Law. The treaty of the European Union recognises the fundamental rights that are protected by the European Convention on Human Rights. The Treaty of Lisbon guarantees these rights in Article 1a "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights…" and Article 6 " The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties." The Charter of Fundamental Rights of the European Union recognizes right to asylum in the following term, Article 18 The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.[26]

[23] Consolidated version of the Treaty on the Functioning of the European Union OJ C 326, 26.10.2012
[24] L. Roots. European Court of Asylum-Does it Exist? 2014 p.140
[25] OHCHR. The EU and International Human Rights Law. Europe Regional Office p.9
[26] Charter of Fundamental Rights of the European Union. European Union, 18.12.2000, Art 18.

As it was explained previously, Geneva Convention bars any nation from turning away genuine refugees, even in the act of exercising the said nation's sovereignty. The European Court of Justice stated that once a country has subjected itself to a treaty, the said action carries with it a burden of a "permanent limitation to sovereign rights"[27]. The EU as an international organisation is not a party of the Convention relating to the Status of Refugees, but EU Asylum Acquis as mentioned above binds itself to the Convention with its founding treaties and legislation, and again all member states are part of the 1951 convention and 1969 Protocol.

ECHR does not specify the right to asylum in the text, but with the interpretive method, it serves to protect refugee rights. ECHR Article 2 right to life, Article 3 prohibition of torture and inhuman treatment thereby is interpreted for the benefit of refugees. Clearly, in case of *refoulement* of a potential refugee would cause a risk of violation these human rights. Prevention of torture or inhuman or degrading treatment or punishment is within the responsibility of all Council of Europe Countries, a person might not be specifically given the refugee status, but there are reasonable grounds that states should provide subsidiary protection.[28]

ECHR Protocol no. 4 Article 4 prohibits collective expulsion of foreigners which it directly relevant to refugee crises when the frontline EU States is causing an infringement of this provision by expelling a group of asylum seekers without assessing their cases one by one. A case in ECtHR which is concerning 32 asylum seekers from Afghanistan, two from Sudan and 1 Eritrean had entered Italy from Greece; court held that Italy violated the prohibition of collective expulsion because they were not provided access to asylum procedures in the port. [29]

Moreover, ECHR Article 13, right to an effective remedy, is an indispensable part of refugee protection. Almost all the case law on refugee rights held before ECtHR, including above mentioned found a violation of effective remedy. European States are obliged to follow right to fair trial and right to an effective remedy when applying EU Asylum Law.[30] Consequently, Strasburg Court has a strong effect on protecting refugee rights in Europe, mostly because it allows refugees to submit an application for their rights.

European Union has its own fundamental rights charter, The Charter of the Fundamental Rights of the European Union provides a right to asylum in accordance with the Geneva Convention

[27] Op. cit. OHCHR. p.11
[28] G. S. Goodwin, J. McAdam. The Refugee in International Law. Oxford University Press, 2007. p.297
[29] Sharifi and Others v. Italy and Greece, UN High Commissioner for Refugees (UNHCR). 2014. App No. 16643/0.
[30] M. Reneman. EU Asylum Procedures and Right to an Effective Remedy. Hart Publishing, 2014.

explicitly in the text, unlike ECHR. In a way, CFREU is giving even more extensive rights by also including the principle of *non-refloulement.*

EU member states are under the obligation of following the Charter's provisions when implementing EU Law.[31] The EU Charter carries EU to the standards of other regional instrument's protection by recognizing right to seek asylum explicitly but also giving the right to be granted asylum.[32]

[31] Charter of Fundamental Rights of the European Union. European Union.18.12.2000. Art 18.
[32] M. Gil-Bazo. The Charter of Fundamental Rights of the European Union and the Right to be Granted Asylum in the Union's Law. Refugee Survey Quarterly. Vol.27. Issue 3, 01.01.2008. p.31

3 ANALYSIS OF THE EU ASYLUM ACQUIS WITH COMPARISON OF INTERNATIONAL REFUGEE LAW

This chapter examines and critiques the European Union Asylum Law with the focus of its development after the mass influx of refugee crises. To draw an informed analysis, author reviews what European Union provision is concerning asylum law and compare it with the international refugee law then see the discrepancy. Author will explain some of the crucial concepts and amendments of EU legislation and assess whether EU's asylum acquis is adequate to fulfill refugee protection responsibility set by international law.

3.1 Historical Development

The EU *acquis* includes the framework of universal rights and duties that is permanent on all EU Member States[33] and that is continually evolving, which comprises, "

1. The content, principles and political objectives of the Treaties,
2. Legislation adopted under the Treaties and the case law of the Court of Justice of the European Union (CJEU),
3. Declarations and decisions taken by the European Union,
4. Instruments under the Common Foreign and Security Policy,
5. Instruments under Justice and Home Affairs,
6. International agreements concluded by the European Union and those entered into by its Member States among themselves within the sphere of the Union's activities." [34]

European Community Institutional framework (now EU) was not involved with the asylum matters until 1992 Maastricht Treaty in which asylum related topic was mentioned in the areas of Justice and Home Affairs.[35] When Schengen Treaty became part of EU Acquis with the Amsterdam Treaty in 1997 in which also stated that EU must adopt common mechanisms on refugee protection. Since internal border checks were abolished a standard requirement on asylum, became crucial. In the following 5 years asylum related directives became part of the *acquis communautaire.*

[33] European Commission - Enlargement – Acquis Accessible at: https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/acquis_en
[34] G. Noll. Negotiating asylum: the EU acquis, Extraterritorial Protection, and the Common Market of Deflection. Martinus Nijhoff Publishers. 2000.
[35] Treaty on European Union. 29.7.1992

EU was processing to establish a Common European Asylum System (CEAS) since 1999. The base for the further development of the European system for the protection of the asylum seekers was the Article 63 of Treaty of the European Union and the Tampere Conclusions[36] which first referred to the "Common European Asylum System". The Tampere conclusions on 15 and 16 October 1999 state that regulations concerning refugee status have to be supplemented by measures on subordinate forms of protection, providing an appropriate standing to any needy individual of such protection. EU Directive of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status Article (2) 'The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a CEAS, based on the full and inclusive application of the Geneva Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31 January 1967 (Geneva Convention), thus affirming the principle of *non-refoulement* and ensuring that nobody is sent back to persecution.' Article (9) 'With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination'[37]

First set of legislative acts of CEAS was consisted of the four directives: Temporary Protection Directive, Reception Conditions Directive, Qualification Directive and Asylum Procedures Directive[38], which directives envisage only minimum standards that Member States needed to comply with and two regulations: Dublin II Regulation and Commission`s Regulation No 1560/2003 that establishes detailed rules for the application of the Council's Dublin II Regulation.[39]. The "Minimum standard" concept means that every Member State must incorporate in its national legislation the rules set out in directives, but had a liberty to regulate certain issues

[36] European Council. Presidency Conclusions. Tampere European Council 15 and 16 October 1999.SN 200/99. Brussels

[37] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. Official Journal of the European Union. 13.12.2005

[38] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212/12, 7 August 2001, Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers [2003] OJ L 31/18, Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [2004] OJ L 304/12., Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [2005] OJ L 326/13

[39] Council Regulation No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 50/1, 25 February 2003 (Dublin II Regulation) and Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

as it found appropriate and to use the flexible technique of harmonization. Taking into account different social-economy situations and different cultural-traditional aspects of Member States, the "minimum standard" harmonization resulted in disparate national legislations, non-common practice among Member States and diverge rates of recognition of the asylum requests.[40]

Identifying the negative effects and shortcomings of the first set of asylum legal instruments, the EU` institutions decided to revise those.[41] In parallel to the these efforts, the adoption of the Lisbon Treaty[42] that came into force on 1st December 2009 had significant value for the establishment of the EU asylum system since for the first time the notion of a CEAS has been constituted in a binding treaty in the Article 78 TFEU.[43]

3.2 Common European Asylum System

The second phase` EU asylum legislation system that is still in force consists of the recasts of some of the first phase` instruments[44]: Qualification Directive, Reception Conditions Directive, Asylum Procedures Directive and the Dublin III Regulation, while Temporary Protection Directive and Commission Regulation No 1560/2003 laying down detailed rules for the application of the Dublin Regulation remained unchanged.

[40] V. Chetail. The Common European Asylum System: Bric-à-brac or System? V. Chetail, P. De Bruycker and F. Maiani.(ed) Reforming the Common European Asylum System: The New European Refugee Law. Brill–Nijhoff. 2016

[41] European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Region, Policy Plan on Asylum: An Integrated Approach to Protection Across the EU, 17.06.2008, COM(2008) 360 final, p. 3

[42] Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, oj C 306, 17.12.2007

[43] C. Kaunert, S. Léonard; the European Union Asylum Policy after the Treaty of Lisbon and the Stockholm Programme: Towards Supranational Governance in a Common Area of Protection? Refugee Survey Quarterly. Vol. 31, Issue 4, 1.12.2012. p. 1–20

[44] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) (Dublin III) [2013] OJ L 180/31, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L 180/96 ; 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 180/60

As a support to the Dublin III Regulation, The Eurodac Regulation[45] has been recast, which establish the 'Eurodac', the system for the comparison of fingerprints. As it is referenced in recital 7 of the Recast of the Qualification Directive, the uniform rules and standards on the recognition and content of refugee and subsidiary protection status are established to limit the secondary movements of applicants for asylum between the Member States, where differences in legal frameworks purely cause such movement.

Each regulation and directives of CEAS contributes to the refugee law in areas not addressed by the 1951 Convention in such details. These principles relate to: (a) non-permanent protection; (b) the acceptance of refugees; (c) authentication of asylum seekers' status or "subordinate protection" and the status and rights to which successful applicants are entitled; and (d) qualities for protection procedures. Additionally, the "Dublin III Regulation" stipulates the criteria for establishing which Member State of the EU or other partisan country is obliged with scrutinising an asylum application.

EU Regulation of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-country Nationals Article 23 envisages that 'Application of this Directive is without prejudice to the obligations resulting from the Geneva Conventions relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967.'[46]

EU Regulation of 9 March 2016 on the Rules Governing the Movement of Persons across Borders Article 3 states that it is carried out without prejudice to the rights of refugees and persons requesting international protection, in particular as regards *non-refoulement*.[47]

Whilst, all the regulations and main treaties is stated to be applied in compliance with international refugee law, securitization policy and some other EU regulations in practice are preventing

[45] Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast) [2013] OJ L 180/1

[46] Directive 2008/115/EC of The European parliament and of the council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, 24.12.2008.

[47] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)

refugees from accessing these rights. Measures that are taken to prevent unauthorised access to EU territory critically undermines the fundamentals of refugee law. Under the EU Law, the Carriers Sanctions Directive foresees sanctions against those who transport undocumented migrants to EU borders.[48]

For instance, the Facilitation Directive provides definitions of unauthorised entry, transit and residence moreover put sanctions for breaches. This reflects the border protecting face of the EU legislation against refugees. EU asylum law tries to eliminate ways for the arrival of asylum seekers so that there is no need for asylum clauses. This mechanism almost directly pushes asylum seekers to seek the help of smugglers, therefore, creates irregular entries at the borders.[49]

Thomas Gammeltoft-Hansen likewise many other researchers describes this as a dilemma and a legal black hole as asylum seekers these often do not qualify for an ordinary visa to claim their rights from an authority of a country.[50] In case they managed to enter EU, expulsion mechanisms have been regulated in following directives; on assistance in cases of transit for the purposes of removal by air[51], on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders[52], on mutual recognition of decisions on expulsion[53] and implementation of guidelines on forced return.

Moreover, even today, the way that the CEAS is applied throughout Europe varies according to different nations therefore as a fact there is not a standard on refugee rights between the EU States.[54] Author agrees that EU exists as a union for many states with different economic and political muscles. Successful applicants of asylum in European are offered lucrative benefits packages depending on the host country's economic status. Such include rent stipend, upkeep, education, medical cover, work permits and even lawyers.

[48] Council Directive 2001/51/EC. 28.06.2001

[49] L. Laanpere. The Impact of the Fight Against Migrant Smuggling on the Rights of Refugees and Asylum-Seekers. 2016. p.5

[50] T. Gammeltoft-Hansen. Access to Asylum: International Refugee law and the globalization of migration control. Cambridge University Press, 11.02.2011.

[51] Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air. European Union: Council of the European Union. 25/11/2003.

[52] Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders. European Union: Council of the European Union. 06/08/2004.

[53] Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals. European Union: Council of the European Union. 02.06.2001.

[54] Factsheet: The Common European Asylum System. European Commission. 2018.

An assessment of the measures of the CEAS and associated principles measures concerning border monitoring and migration management divulges two sensitive reticulate issues: access to asylum application and duty for refugee protection. The integrated border management system and the Global Approach to Migration borrow heavily on migration control deliberations. They do not pay sufficient attention to human rights and default on recognising that international protection duty of the Member States can be exercised through such extraterritorial actions.

For example, the article 9 and 21 of Qualification Directive give broad space for refoul (return) of an asylum seeker, since the act of persecution is defined quite narrowly and only those acts that are sufficiently serious by its nature or repetition to constitute a severe violation of basic human rights can be considered as persecution, which existence is main condition for granting an international protection. Article 37 Application Procedure Directive which allows Member States to retain or introduce legislation that designate safe countries of origin for the purposes of examining applications for international protection lead to the directly opposite decisions on recognition and rejection of asylum protection among Member States . Moreover, there are number of court cases in which violation of international human rights and refugee law was determined.

Moreover, article 9 of Qualification Directive prescribes the definition of an act of persecution within the meaning of Article 1(A) of the Geneva Convention. In terms of article 9, an act must be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights (such as right to life, prohibition of torture, right of no punishment without law) or be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner and reason to persecution is related to race, religion, nationality or membership of a particular group or political opinion. By interpretation of this article, in order to obtain the international protection, an applicant's human rights need to be in severe violation. Comparing to the definition of an refugee given in the article 1(A) of the Geneva Convention) which apply to any person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, 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", it can be concluded that the Qualification Directive requires for more drastic form of violations of human rights in order to grant an international protection., than it is defined in Geneva Convention.

The CEAS operates under the so-called 'Dublin system' with the main purpose to regulate which Member State of the European Union[55] is responsible for deciding on an application for international protection, procedural principles and safeguards, eligibility criteria and so on. Therefore the detailed explanation of the Dublin Directives is important to assess EU's asylum acquis whether it is adequate to fulfil refugee protection responsibility.

Historically, Dublin regulation was first introduced in 1990 by the adoption of the Dublin Convention which entered into force 1997.[56] In 2003 it was replaced with Dublin II Regulation. European Commission put an additional regulation (No 1560/2003) that establishes detailed rules for the application of the Council's Dublin Regulation.[57] Later on, Dublin II is replaced by Dublin III Regulation (No. 604/2013) which constitutes the Dublin System together with the EURODAC Regulation (No 603/2013)

According to the Dublin III Regulation, ratified States must determine which Member State must examine the asylum application for international protection filed by a third-country national or a stateless person who applies on the territory of any one of them, as well as in territorial waters and transit zones. The territorial application of the Dublin III Regulation raises concerns since it is not in line with the decisions of the ECtHR, in which it widened the application of the *non-refoulement* principle not only to the national territory of Member State but also to the high sea. It is important for the rescued refugees in high seas. Namely, in Hirsi Jamaa case[58], the Somali and Eritrea migrants were intercepted on high see-the Mediterranean by the Italian authorities and sent back to Libya, without proper individual assessment of their cases, but were subject of collective expulsion. The court set up extra-territorial protection, arguing that those persons have the same guarantees as those within the territorial zone of Member State. It was expected that the recast of the Dublin System would bring the alignment with this decision and international law, but the application of it remain within the national territory, territorial waters and transit zones.

Due to the fact that countries of the refugee route are not economically and technically capable of handling a great number of refugees, this creates overburden for them. The asylum application systems of the southern EU countries were blocked due to the mass flux. The Dublin III Regulation

[56]Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities of 15 June 1990.Dublin Convention. OJ C 254. 19.08.1997

[57] Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

[58] Hirsi Jamaa and others v Italy. Council of Europe: European Court of Human Rights. Application no. 27765/09. 23.02.2012

envisages the Member State responsible for the examination of an application cannot be determined according to set criteria to return asylum-seekers to the country of the first entry in order to process their claims for asylum if that nation does not have a well-run asylum system.[59] Therefore, consideration of the States is crucial about the criteria and conditions in the first entry state must be considered as well.

Namely, criteria to determine which a Member State will hold responsible is foreseen in articles 7 to 15 of Dublin III Regulation. Member State that is designated responsible according to the Dublin III Regulation can be requested by another Member State where asylum seeker currently is to take back the asylum seeker. There are the criteria that need to be assessed before others, i.e. family ties, residency rights or visa permits. If the applicant does not meet these criteria, illegal entry criteria will be assessed, meaning that a Member State where the applicant made first illegal entry into the territory of a Member State is responsible for assessing the application for international protection. Finally, the first Member State in which an application is lodged shall be deemed responsible if no other contracting state can be identified.

The established criteria send a message that those states which have liberal visa system and those which allow family reunification will have greater responsibility. Moreover, those states which do not have an efficient system of border control are also targeted as responsible for handing the applications, prior to the first entry Member State. [60]

Initially, this system aimed to increase the effectiveness of asylum processes by eliminating multiple applications. However, the recent refugee crisis surfaced several adverse effects of this rule. In a nutshell, if an asylum seeker was travelling through another safe country's borders, his/her entrance once had registered there, a Member State in which application is lodged can expel this person back to seek asylum in the first entry country. Namely, Application Procedure Directive stipulates in article 33(2)(b) and (c) that if Member State determines that a country which is not a Member State be considered as the first country of asylum or a "safe third country", application will be deemed unfounded, it will be rejected as an inadmissible and applicant will be subject of removal. The fact that there is a common list of safe countries of origin, and that all Member States are considered as safe countries raise a serious concern.[61]

[59] Op.cit. Hirsi Jamaa and others v Italy.
[60] Helen O'Nions. Asylum – A Right Denied, A Critical Analysis of European Asylum Policy. Nottingham Trent University. UK. 2014. p. 102
[61] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). Recital 3

Dublin Regulation is based on the presumption that the Member States (as naturally all considered safe countries) will respect the principle of *non-refoulement* although neither *non-refoulement* nor safe country settlement rules were broken, other human rights concerns put the system on halt. For instance, in 2014, UNHCR demanded the EU States temporarily stop sending asylum seekers back to Bulgaria via Dublin Regulations.[62] This system showed that is not a solely efficient solution in such mass refugee situations when first entry countries are overwhelmed with the refugee numbers and does not have sufficient places or sources to treat refugees with human conditions. Therefore It should be combined with other arrangements.

Not only that those assumptions of safe countries legally exist, but the Member States are allowed to make and apply their lists of safe countries.[63] It is needless to say that this kind of national lists can make even more divergence between national systems. However, Member States are obliged to the designation of countries as safe base and support by a range of sources of information from other Member States, UNHCR and non-governmental organisations. Plus to notify the Commission about the countries that are designated as safe countries.

Predictably, despite the law says that the Member State where an irregular asylum seeker first entered is responsible for examining the asylum application on the contrary many refugees tried to flee to the countries of they select in the European continent according to their own 'safe country' agenda and list.

Case-law is helpful to analyse dimensions of the regulation because it assessed the compatibility of Dublin Regulation with the EU an international law. It is worth to mention the case. M.S.S vs Belgium Greece[64] was a milestone decision about the functioning of the European Union's asylum system; Dublin Regulation. The case was about an Afghan asylum entered the European Union through Greece, later on, went to Belgium where he applied for asylum. Belgium followed Dublin rules and returned him to Greece for examination of his application. However, Greece was where he faced detention in insalubrious conditions due to lack of capacity and inadequacy of Greek asylum system. The court found the applicant's transfer by Belgium to Greece gave rise to a violation of Article 3 of ECHR. Therefore Belgium found responsible for violating *non-*

[62] UN High Commissioner for Refugees. UNHCR calls for temporary halt to Dublin transfers of asylum-seekers back to Bulgaria. 03.01.2014
[63] 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. Art. 37
[64] M.S.S. v. Belgium and Greece. Application no. 30696/09. Council of Europe: European Court of Human Rights, 21.01.2011

refoulement on human rights context which prohibits the return of a person where he faces torture and inhuman treatment. Sending him to Greece exposed him to detention and living conditions that conflicting with human rights.

It should be noted that a similar ruling was rendered by the CJEU in the two joined cases[65] concerning the application of the Dublin II Regulation, in which the Court concluded that: 'European Union law precludes the application of a conclusive presumption that the responsible Member State observes the fundamental rights of the European Union' Following these judgments, in which both identified systemic deficiencies in the Greek asylum system, Dublin transfers to Greece from the other Member States have been suspended since 2011 and in December 2016, the Commission proposed the resumption of transfer.[66] . It can be concluded that presumption that all Member States can be considered as the countries safe for third countries` nationals cannot be upholded and taken for granted.

CJEU took it one step further also on evaluating human rights infringements in the implementation of Dublin Regulation. C.K. and Others v. Supreme Court of Republic Slovenia is another example to demonstrate that States should pursue Dublin procedures more carefully to not to violate human rights. In this particular case, transfer of an asylum seeker couple and their new-born child from Slovenia to Croatia was discussed with the consequences.[67] The woman was suffering from serious mental health problems, her physical condition was not good either moreover after childbirth she had suicidal tendencies. They were in need of medical care and were not ready for a journey. Court established that even though there might not be a reason to consider that the receiving State(Croatia) has systemic failures of asylum procedures or bad conditions on reception centres, still the transfer itself might be traumatic enough to entail an inhuman or degrading treatment under the Charter of the Fundamental Rights of the EU. Member State is responsible for assisting the whole transfer procedure to ensure that asylum seeker receives necessary healthcare. In case of need, Member State should postpone the transfer for as long as the applicant's health condition does not render him to perform the transfer.

[65] NS v Secretary of State for the Home Department and me, ASM, MT, KP and EH v Refugee Application Commissioner, Minister for Justice, Equality and Law Reform, Judgment, Grand Chamber. Joined Cases Nos C-411/10 and C-493/10. 21.12 2011

[66] Commission Recommendation (EU) 2016/2256 of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No 604/2013 of the European Parliament and of the Council. 8.12.2016

[67] UN High Commissioner for Refugees. UNHCR. Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation. 2017. Accessible at: http://www.refworld.org/docid/59d5dcb64.html (09.07.2018)

The CJEU expressed in its judgment as it follows "With respect to the treatment of persons falling within the scope of this Regulation, Member States are bound by their obligations under instruments of international law, including the relevant case-law of the European Court of Human Rights."[68] and stated that Dublin Regulation respects the fundamental rights and observes the principles of the Charter.

Another concern of Dublin system is the maintenance of exceptions on *non-refoulment* principal in the Qualification Directive. The Member State can refoul (return) a refugee, even though there is a risk of inhuman treatment and torture in returned country, in two cases: If there are reasonable grounds for a refugee as a danger to the security of the Member State in which he or she is present; or a refugee is been convicted by a final judgment of a particularly serious crime. This means that in these two cases a refugee can be taken back to country in which can suffer persecution or serious harm. Article 33(2) of the Refugee Convention allows such exceptions too.

On contrary, the ECtHR ruled in case Chahal v UK that Article 3 ECHR, which prohibits return if it is likely that a person will suffer torture or inhuman or degrading treatment on their return, is absolute and non-derogable and that national (in our case EU) provisions cannot restrict its application, not even for the reason of national security and irrespective of a victim's conduct. Thus, discrepancy in international law has direct impact on compliance of EU asylum acquis with the international refugee law. Exceptions to fundamental right of the *non-refoulment* set in Qualification Directive are consistent with the Refugee Convention, but not with the ECHR.

It should be emphasized that there are improvements made in the Recast Reception Conditions Directive to prevent the human rights violation shortcomings of the Dublin Regulation, by providing with more protective legal regime on detention of asylum seeker. Namely, asylum seekers cannot be detained for the sole reason of their application, which is in line with article 31 of Refugee Convention that provide that the Contracting States shall not apply to the movements of refugees who come directly from a territory where their life or freedom was threatened, restrictions other than those which are necessary. A decision of detention can be ordered only for reasons specifically enumerated in the Article 8 /3 and an individual assessment need to be carried out. Moreover, decision of detention can be issued only if it is the last resort measure, meaning that there is no less coercive alternative measures that could be applied effectively. The decision can be ordered by administrative authorities, and such decision is subject to judicial review *ex officio* and/or on request of detained person, who has right to free legal assistance. It can be

[68] C. K., H. F., A. S. V Republika Slovenija. Court of Justice of the European Union. 16.02.2017

concluded that the legal mechanism for prevention of ordering an arbitrary and non proportionate decision on detention is set, complying with the provisions of international refugee law.

Moreover, the recast of Dublin III Regulation introduce new safeguards of how procedures of applications` examination need to be performed, which contribute to the closiness of the Dublin system to international refugee law. Article 4 and 5 now set out the obligation of conduction of a mandatory interview with an applicant in which the information on criteria for determining the Member State responsible to decide on asylum application, right to challenge a transfer decision and to apply for a suspension of the transfer will be provided. The information need to be provided in writing, as well in a language that the applicant understands or is reasonably supposed to understand.

New procedural protections in terms of transfer are also implemented. Namely, a suspension of implementation of decision on transfer will take place upon the submission of an appeal against the decision.[69] A transfer will be valid after an appellate body approves a transfer decision. This is a very important procedural guarantee, because suspensive effect of an appeal prevent that an asylum seeker is transferred unlawfully and arbitrary.

In short, Dublin System is not annulled despite intense critics and still keeps its position of being a cornerstone of the internal security acquis of EU. However, the system is almost blocked nowadays due to alleged human rights violations for Border States who mostly receive Dublin Regulation returnees. After Domestic and European courts decided in many cases against asylum seekers, have sent back to the countries where they first enter (after the Dublin assessments criteria) notably in Belgium Greece case that have ruled against asylum seekers being returned to Greece. The court found Belgium in violation of ECHR for not minding shortcomings of Greece asylum system, not considering the risk of unnecessary detention and inhuman living conditions.

The Geneva Refugee Convention was considered before any active EU asylum legislation is created, the Member States must, in handling the asylum applications consider and apply the Geneva Refugee Convention`s general principles as well European Convention on Human Rights.

Public discussions said that legislation contradicts the provisions of the Treaty, the author does not agree with the opinion that the Dublin Regulation is flawed inherently. However, It is the fact that Dublin Regulation failed to provide in reality the procedural safeguards or proper burden

[69] Dublin III Regulation. Art. 27 (3)

sharing among the nations. Since the European States are not welcoming the burden sharing, it is difficult to hope there will be a chance for CEAS to become a better system for refugee rights. [70]

However, Dublin regulation does not infringe *non-refoulement* from nature because the Regulation's aim was never to expel refugees away from EU borders but to find a mechanism for share burdening and a single application. Its purpose is to guide the EU nations on how to handle and who will take care of the refugees. The author claims that with the emergency support funds and assistance of EU to the affected EU states namely Italy, Greece, Bulgaria, Croatia, Germany, Sweden and Spain CEAS will continue to follow international refugee law standards in practice[71]

The major goal of Dublin system is to ensure that EU asylum acquis is applied incoherent and standard manner that further pave the way for respectfulness of the international refugee law.[72] Examination of the recast of the asylum legislation has shown that there are still shortcomings that are contrary to international law, such as exceptions of the principle of *non-refoulment* in Qualification Directive and assumption that all Member States can be considered as safe countries for third nationals, when there are real examples of infringement of the *non-refoulment* principle.

3.3 Impact of the Syrian Refugee Crisis to CEAS Regarding Development and Reform

This chapter will compare and assess already reformed or recommended renovations in Asylum Acquis and will establish which will be better for refugee rights.

When more than one million refugees from many nations arrived on the European continent, as it mentioned in the previous chapter) new measures were essential because asylum systems of the EU States lacked administrative and judicial capacities as well as inadequate reception conditions. In other saying, EU Members failed to follow common standards of the Reception Conditions Directive and mainly because of that Dublin Directive kept causing human rights violations. For instance, treating asylum seekers like criminals and keeping them in detention centres long periods

[70] Compliance of the Dublin Regulation with the principle of non-refoulement.2013. University of Oslo p.50
[71] Press release. European Commission. Migration: Commission steps up emergency assistance to Spain and Greece. 02.07 2018
[72] T. Tubakovic. A Dublin IV recast: A new and improved system? European Policy Brief. 2017. No. 47 p.4

are unacceptable but for instance, in Khlaifia and Others v. Italy case asylum seekers were kept under custody like prisoners thus ECtHR found the violation of the right to liberty and security.[73]

Unfair, ineffective systems continue on asylum matters currently. CEAS criticised for consisting a patchwork of policies that produce uneven outcomes. The discretion that CEAS gives to the member states promoted refugees to do 'cherry picking' while applying for asylum. When uncontrolled migration increased in 2015, The European Commission has proposed in 2016 to establish a better system with sustainability in backlogs, based on standardised rules, the responsibility of sharing. Also, because of increased border closures in the Balkans as well as stricter border controls in Switzerland, Austria, and France, many migrants in asylum-seekers were stuck in Italy and Greece. Some of the European nations, including Sweden, Denmark, and Hungary, resisted the CEAS standards by adopting more stringent asylum laws while others pushed back at the borders, refusing to accept people seeking asylum. Also, there appears to be very little motivation among the governments of the EU nations to engage in sharing responsibility for asylum-seekers more evenly across the EU.

It should be recalled that before the adoption of the recast of Dublin Regulation, in 2008 there was proposal[74] which allowed Commission to temporarily suspended the Dublin transfer up to six months, on its initiative or upon the request of the State concerned, if countries are no longer capable of providing adequate conditions and level of protection. Such an arrangement in mechanism alleviates the burden of the Member States under heavy pressure due to the asylum-seekers influx. However, this proposal was not adopted in the final version of the recast of Dublin Regulation.

In the end, unfortunately, the rules that were created as a means of protecting the interests of both the refugees and the nations that host them are now just being used as a means to transfer the burden to other nations.

Article K.3/2a of the TEU foresees that the Council can adopt measures to promote co-operation for maintaining the EU objectives concerning asylum and immigration, [75] In 2014, In order to

[73] Khlaifia and Others v. Italy (no. 16483/12). ECHR. 15.12.2016
[74]Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Recast), Art. 31
[75] H. Staples. Decision-Making in Justice and Home Affairs. The Asylum Acquis Handbook. P. J.van Krieken (ed). Circulation. 1994. p.39

reduce and ultimately eliminate the problem of asylum-seekers turning to traffickers and smugglers to flee their homes, a voluntary resettlement program has been suggested that will allow these people to find ways to enter the EU that are safe and legal.[76]

On 23rd April 2015, the European Council set up an emergency relocation plan after the joint action points in which idea of emergency relocation mechanism for the sake of solidarity and responsibility, announced in 20.03.2015. Foreign and Home Affairs Council's 10 point action plan on migration had stated that the tense situation in the Mediterranean Sea requires common effort from all 28 Member States. EU Members must do necessary changes in their national law according to the Commission's agenda on migration in which structural problems were addressed. These 10 actions were;

1- Triton and Poseidon joint operations that are the Frontex operations for border management and saving refugees at the Mediterranean Sea will be reinforced, and their operational area will be extended.

2- Atlanta operation will be an inspiring example for future operations to catch smugglers and a systematic effort on destroying their vessels and arresting them is needed.

3- EUROPOL, FRONTEX, EASO and EUROJUST will cooperate, share information and assist each other.

4- EASO will arrange personnel to process asylum applications and cease the backlog.

5- All member states should follow directive on registration and fingerprinting

6- Emergency relocation system must be considered

7- An EU wide resettlement must be put on trial,

8- FRONTEX and frontline Member States coordinate the return of irregular migrants according to a program

9- Joint Plan with the neighbouring countries of Libya and Niger have to be stepped up.

10- Immigration Liaison Officers (ILO) must be established to get intelligence on migratory flows EU Delegations must play a role in key third countries.

Upon this report, the Council decided to establish the European Asylum Support Offices in the Member States that needs support for processing asylum. Three main areas of coping the crisis were i) resettlement/relocation, ii) readmission and iii) cooperation with transit countries. Interior relocation step received the worst reaction from EU states. Initially, European Commission

[76] Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decision No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC

proposed the reform with a communication to the European Parliament and the Council on the basis of TFEU Article 78/3 that allows the provisional measures for the benefit of the EU County which deals high refugee influx. Meantime, the Council's decision also included the derogation from Dublin Regulation Chapter III Article 13/1 so that frontline States Italy and Greece will not be responsible for processing asylum claims of all the refugees they have. In order to relocate people coming from Italy and Greece to other EU nations, EU decided to transfer 160,000 asylum-seekers from Italy and Greece to other European nations. This was greeted with a tremendous degree of resistance.

When the council voted for the proposal of having EU relocation program which was put forward by the European Commission, Hungary, Slovakia, Czech Republic, and Romania voted against it, but it was voted democratically with the majority voting its favour. CJEU approved the validity and rejected the case which was filled by Hungary and Slovakia challenging this new quotas system because they were expected such system would be adopted unanimously.

Based on the policy paper at the European Commission, each state's quota is based on quantifiable, verifiable and objective criteria that reflect the capacity of the EU member states to receive and integrate refugees. The population size of each member states is of interest in weighing the number of refugees to absorb. The gross domestic product functions as a reflection of how well refugees would be able to build and integrate the economy. Germany and France were to take 20 and 15 percent of all refugee population while Hungary and Romania will have to absorb two and four percent respectively.[77]

Ultimately only a small number of the necessary transfers occurred. Due to the failure to adequately process asylum claims, the EU set up "hotspots" in Greece and Italy.[78] These areas were designed to register, identify, and fingerprint all of the migrants who were coming into the EU countries, as well as redirecting them to either pursue asylum or return to their home countries. In actuality, these hotspots have turned into centres that are extremely overcrowded and understaffed, and have very little outside oversight to address these deficiencies.[79]

[77] S. Carrera. To adopt refugee quotas or not: Is that the question? Centre for European Policy Studies. 2015. p.31

[78] European Parliament Briefing. Hotspots at EU external borders. p.2

[79] Hotspots – Italy. .Asylum Information Database. Accessible at: http://www.asylumineurope.org/reports/country/italy/asylum-procedure/access-procedure-andregistration/hotspots(27.12.2018)

Progress regarding the resettlement of asylum-seekers extremely slow. One EU plan created in July 2015, to resettle more than 22,000 asylum-seekers within two years reported that by July 2016, only 8268 refugees had been brought to the EU.[80] The results of these violations of the CEAS have been to levy fines against nations that have been in violation of the asylum agreements. In 2017, for example, the European Commission initiated a legal case against the Czech Republic, Hungary, and Poland for their refusals to accept refugees. The case has been notable because it has invigorated the debate over the independent EU nations from Brussels.[81] Out of 160,000 refugees that were supposed to be relocated into those countries under an agreement from 2015, fewer than 21,000 have actually been relocated into those countries. Theoretically, these countries may be fined for each refugee that they refused to accept. Reasons given by these nations for their noncompliance with the agreement involve security concerns and the ineffectiveness of a quota system. The EU is standing by its resolve about the matter, saying that the EU is unable to tolerate countries who are disrespectful of the law which is based on fundamental values and respect for human rights.

Ultimately, the policy regarding external border countries was far from a shared commitment among nations; also, some member states were unwilling to share the burden of this crisis, forcing the European Union to seek other remedies; readmission agreement with Turkey which will be mentioned in the following chapter.

In 2018, there were still tremendous variations in decisions about granting asylum. This has resulted in asylum-seekers continuing to travel around Europe, applying for asylum in countries where they think that their chances of gaining a positive asylum decision are greater. Seven legislative proposals have been considered by the European Commission, aimed at making the system more efficient and more resistant to migratory pressure while eliminating pull factors as well as secondary movements, and fighting abuse and providing better support to the member states that are most affected.

The reforms also included; establishing improvements in the EU fingerprinting system database for people seeking asylum; creating a fully operational asylum agency for the EU; replacing the asylum procedure directive with regulations to improve procedures and minimize differences in

[80] Human Rights Watch. World Report 2018. Accessible at: https://www.hrw.org/world-report/2018/pushback-against-the-populist-challenge (12.10.2018)
[81] P. Wintour. EU takes action against eastern states for refusing to take refugees. The Guardian, 13.06.2017. Accessible at: https://www.theguardian.com/world/2017/jun/13/eu-takes-action-against-eastern-states-for-refusing-to-take-refugees (03.11.2018)

rates among member states; reforming standards for protecting the rights of asylum-seekers; making changes to the reception conditions directive to guarantee that people seeking asylum will benefit from dignified standards of reception; and creating a permanent settlement framework for the European Union. These reforms have not been fully implemented yet, but all have been under ongoing and serious consideration since they were proposed in early 2018. Even before recent Refugee Crisis, The European Commission sent a report to the European Parliament and the Council on Dublin System's evaluation of efficiency. As a result, Dublin Regulation is recasting.[82]

Commission proposed for the Dublin IV which includes a corrective mechanism that will work like current relocation schemes. Emergency relocation and burden sharing among member states will be automatically triggered when a certain State's fair share on asylum applications were surpassed. Therefore recast on Dublin system will prevent over burden to certain EU countries and ensure proportional distribution of asylum seekers.[83]

Author argues, EU can develop Dublin IV even more with the removal of refugees to settle in their desired countries. Nevertheless, while the Dublin System does not oblige states to consider refugee's integration conditions (existing distant family members, cultural connections and other preferences) in removal to another State, new relocation system provides these requirements, along with the obligation of the States to consider reception supports while implementing this system. This Amendment should provide with the greater quality of life of asylum-seekers and better integration into the community.

[82] Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) COM/2016/0270 final/2 - 2016/0133

[83] Ibid.

4 EUROPE'S COOPERATION WITH OTHER COUNTRIES

4.1 General Reaction of EU to Syrian Refugee Crisis

It is important to evaluate Europe's general asylum policy briefly to understand why EU Cooperate with other countries and what kind of legal mechanisms it uses.

Initially, the response of EU States had been to pass unilateral attempts that contradicted the core concept of a common space of travel and protection that was to be extended to all members of the EU (Schengen Acquis). In other means, this crisis is almost ended the Schengen agreement because of Member States wanted to secure their borders privately.

On the general approach, EU chooses the path of cooperation with transit countries and even origin countries of refugees.[84] Many of the controversies about policy actions between EU States involve worries about their national security, cultural identity concerns, and increasing support for populist parties that have xenophobic platforms.[85]

The policies developed by the EU concentrate primarily on outsourcing responsibilities for people seeking asylum and refugees as well as preventing their arrivals at all. Some evidence of the ambivalence regarding asylum-seekers and refugees is apparent, since, for example, despite the increased ability for search and rescue operations in the Mediterranean Sea were many refugees arrived, in addition to a wide range of non-governmental organizations involved in rescue missions, in 2016 more than 4000 people had died or were missing at sea.

On the bright side EU's approach to the crisis addresses and focuses the root causes of the immigration crisis, the EU is working with several major countries of origin and transit in Africa, including Ethiopia, Niger, Mali, Nigeria, and Senegal. These efforts are designed to reduce the transit flow-through funding by the EU to support self-employment in zones that are being used for transit. It has also established six migrant centres to help vulnerable migrants and hands-on EU support on the grounds to address smuggling and human trafficking.[86] The ultimate goal is to eliminate an uncontrolled flow of migrants while providing a regular way for refugees and asylum-

[84] S. Lavenex. Shifting up and out: The foreign policy of European Immigration control. West European Politics. 29:2, 2006 p 333
[85] T. J Hatton. European Asylum Policy. IZA Discussion Papers. No. 17212005 p.2
[86] European Commission - Press release. Partnership Framework on Migration: Commission reports on results and lessons learnt one year on. Strasbourg. 13.06.2017

seekers to enter the EU. Europe's general policy and respond to the refugee crisis is mostly efforts towards to externalize it. This chapter will put it through and discuss this argument with proves.

The European Commission has been addressing the Syrian refugee crisis by taking a wide range of measures to maintain the security of its own citizens while offering options to people seeking asylum in the EU. When there is a huge amount of smuggled immigrants at the Mediterranean Sea to the Border States, EU responded to these illegal activities by providing technical and operational assistance via Frontex to Italy and Greece.

The European Border and Coast Guard (FRONTEX) was planned to launched with more officers and with an increased budget to confront new challenging migration and security issues.[87]

Even though, refugee crisis bought most of the member countries to their edges, which has shaken the EU to its foundation. Most of the countries asked themselves whether the refugee crisis needs a European or national response**.**

Still, even from the very start, Europe did not turn its back to this humanitarian crisis. European Union divided a share from its Humanitarian Aid Budget to aid crisis in the Middle East. Lebanon and Jordan were supported with monetary aid among some other countries in the region. The EU budget has allocated more than €17.7 billion to address the migration crisis during the period of 2015 through 2017 and has also allocated more than €10.3 billion for funding outside of the EU such as Lebanon, Turkey, and Jordan. Part of this allocation has been directed towards providing a facility for refugees in Turkey involving assistance that is both humanitarian and non-humanitarian.

Further, the European Union has also been a major contributor in the global response to the crisis in Syria, and has already spent €10.8 billion for development and humanitarian assistance that has already been disbursed.[88] It is arguable that donating money to social funds and other government can be fully counted as an active involvement or not. The author considers this remote way of helping a step towards solving or at least acknowledging the problem.

[87] European Commission. A strengthened and fully equipped European Border and Coast Guard. 12.09.2018 Accessible at: https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-factsheet-coast-guard_en.pdf
[88] EEAS. The EU and the Crisis in Syria.24.09.2018 Accessible at:https://eeas.europa.eu/headquarters/headquarters-Homepage/22664/eu-and-crisis-syria_en (09.11.2018)

In the beginning, EU perceived the crisis as a local humanitarian crisis in the Middle East because Europe was not affected yet. General attitude showed Europe hoped this crisis would not spread, so they tried to quarantine it in its zone. Later on when EU got a dramatic rise in asylum application in 2015 with 1.2 Million asylum seekers.[89] At this stage, Germany has played a significant role in reception and protection of refugees and provision of asylum to qualifying applicants within its territories. Three years ago, Angela Merkel, the then Germany Chancellor opened Germany's borders to a surge of refugees from Syria's civil war, assuming that the country could accommodate as many migrants as possible. This move, despite stern criticism from other non-supporting EU states, is an act of humanitarian efforts which saw thousands of refugees from war-torn countries settled in Berlin. Merkel was however adamant that refugees had no right to choose a particular EU member state to get asylum. The author honestly agrees for someone whose life is at risk from origin country; safety is what matters. A person should not have a preference for the state in which they want protection from unless it might be thought the individual is not a genuine refugee when his/her case is being considered.

However, the current situation shows the fact that Germany solely cannot manage all the refugees and surely not the humanitarian and demographic pressures behind migration as well. In 2018 many refugees started leaving Germany and going back to Turkey due to the long waiting time in asylum application and unemployment. [90] A 20 years old refugee called Mahmoud explains his situation saying, despite the fact he had secured three years residency in Germany, future did not seem bright as he expected, his education would not be recognised thus he would not continue in a university due to the hurdles did by authorities.

This situation with refugees is difficult for any country with certain national plans for employment and education in balance and to adjust this plans to cope with millions of unexpected residence was challenging in the EU Member States.

Until 2014, EU continued assisting on helping humanitarian crisis via UN Agencies, Red Cross and other non-governmental organisations. Even though Turkey was also opening borders to the refugees, EU- Turkey cooperation or financial help to Turkey was not on the agenda until refugees

[89] The European statistical agency (Eurostat) 04.03 2016. Accessible at: https://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/790eba01-381c-4163-bcd2-a54959b99ed6 (01.12.2018)

[90] H. Al-jablawi. Why Syrian Refugees are Leaving Germany Atlantic Council. 30.01.2018 Accessible at: http://www.atlanticcouncil.org/blogs/syriasource/why-syrian-refugees-are-leaving-germany. (28.11.2018)

started passing to Europe by using Turkey as a bridge. In late 2014, EU attributed Turkey a role in its agenda since the crisis became closer to its territory. In 2016, the European Parliament's president claimed cooperation with Turkey will benefit refugees.[91]

Refugee flux damaged Europe's 'four-tier access control model' that includes procedures in third countries and neighbours' of the Schengen Borders. Visa regulations and carrier sanctions were no longer preventive enough on entries since refugees were using smuggler boats to enter EU. Thus, besides the control over Europe's borders, more transformative measures were needed. For instance, in 'Turkey Deal' that was announced on 12.11.2015. EU promised Turkey 3 billion euro in exchange for holding 3 million refugees. Another echoing deal was the Valetta Summit[92] on 12.11.2016 in which 1.8 billion distributed to African countries that host refugees.

Overall, in conclusion, EU builds partnerships with refugee origin and transit countries to provide refugees with a safe return to home or somewhere close to home. Europe's way of coping the refugee crisis is "*aiutiamoli a casa loro*" ("let's help at home")[93]

This approach is highly problematic, and such policy gets the criticism as it was stated in the introduction because international military interventions cause unease in the Middle East. This is why it is not correct to call the Syrian war as a civil war when there are so many countries is involved.[94] Therefore, involving countries deep down know that they are facing the consequences of their politic and military actions.

4.2 Readmission Agreements

Dublin Regulations implement a burden-sharing role in interiorly. When Dublin blocks other EU countries than the first entry one for the settlement of refugees, readmission agreements for third countries can be interpreted as an External Dublin regulations. Both have a similar mindset behind that is preventing secondary movements. Therefore, Dublin is a burden-sharing and readmission agreements are used as burden-shifting asylum mechanisms by EU.

[91] Schulz on the EU-Turkey Summit Accessible at: http://www.europarl.europa.eu/former_ep_presidents/president-schulz-2014-2016/en/press-room/schulz_on_the_eu-turkey_summit.html (12.08.2018)
[92] Valletta Summit on migration. 11-12.11.2015
[93] L. B. Landau. A Chronotope of Containment Development: Europe's Migrant Crisis and Africa's Reterritorialisation. A Radical Journal of Geography. 2018 p.4
[94] U. Friedman. Syria's War Has Never Been More International; the next phase of a seven-year conflict has begun.The Atlantic. 14.02.2018

There are various ways and forms between countries for committing to cooperate on readmission of people from one country to another such as classic readmission agreements, exchanged letters between external representatives of states with such promise, memoranda of understanding and similar.[95]

Readmission agreements are some kind of responsibility shifting mechanism that stands on a key notion called: safe country principle because obviously refugees cannot be sent to persecution. According to UNHCR, safe county principle is not a legal principle of 1951 Refugee Convention which does not mention of sending refugees elsewhere to seek asylum. This concept came into existence in Conclusion 58(XL) of Executive Committee of the High Commissioner in 1989 and it opened a door for States to send refugees elsewhere and close the doors for refugees who once found an option of protection and safety but seek another place for permanent settlement.[96] This Conclusion was covering irregular refugees that are doing secondary movement from a safe country to seek asylum. [97] There was not the definition of safety and the scope of protection in this Conclusion 58(XL). However, in the chapter No.8 recommend States the basic requirements of the refugee status; most importantly, the permission to stay in the country and this county authority must act full accordance with the principle of *non-refoulement*. [98]

It is preferable by the side of UNHCR that task for the protection of refugees and the examination of their applications falls on the country within whose control the request is made. Therefore, it is true that the probability to delegate that responsibility to some other country through inter-state collaboration or unilateral methods administered territorially and abroad has evoked great concern to EU Member States and organisations.

UNHCR allows transferring refugees and cooperation between states, but the criteria for being a safe third country must be well considered. First of all target country must have a well-functioning asylum and migration law complying with the international human rights law standards, there should be a specific department of the government to assess asylum claims. EU must be picky

[95] IOM. Global Compact Thematic Paper. Readmission. Accessible at: https://www.iom.int/sites/default/files/our_work/ODG/GCM/IOM-Thematic-Paper-Readmission.pdf(04.09.2018)
[96] J. Sztucki. The Conclusions on the International Protection of Refugees Adopted by the Executive Committee of the UNHCR Programme. International Journal of Refugee Law. Vol. 1. Issue 3. 01.01.1989. p. 285–318.
[97] UNHCR. EXCOM Conclusion No. 58(XL) Problem of refugees and asylum-seekers who move in an irregular manner from a country in which they had already found protection. 1989
[98] M.T Gil-Bazo. The safe third country concept in international agreements on refugee protection assessing state practice. p.45

while choosing agreement countries to avoid causing infringements because if these agreements are utilized as a security policy without prior selective evaluation, they will undermine the deserved rights of refugees in international law [99]

European Commission Migration and Home Affairs, defines a safe third country where asylum seekers are treated in accordance with the Geneva Convention;
1) being not under the risk of serious harm
2) not discriminated of race, religion, membership of a particular group, nationality
3) respected to the principle of *non-refoulement*
4) existing possibility to request refugee status.

The Asylum Act Section 2 defines the safe country and the Asylum Procedures Directive Article 38 sets criteria for a country to be considered safe.[100] If an asylum seeker has admitted by a safe third country, a member state may return this person back. [101]

1992 London Resolution II, provides *non-refoulement* is the only conditions of the potential destination of refugees in third host countries.[102] However, if the person made an asylum claim in EU, his/her case must be examined substantially to carefully establish a safe host country for him/her. This person can be sent back with certain safeguards protecting him/her from expulsion to persecution.[103]

Putting the safe country principle in the core, in the European Asylum policy, readmission agreements are well-used practices since the 1990s. Various scholar pointed out this pattern of deflection of protection responsibility is similar to western European country's approach to migration from eastern Europe after the Berlin Wall's fall. It has been observed that European Union's efficient and systematic return policy now goes beyond the current member states. [104] Author considers this is reflecting Europe's all time approach to the outsiders and fear of uncontrolled immigration.

[99] R.Byrne, G.Noll, J.Vedsted-Hansen. New Asylum Countries? Migration Control and Refugee Protection in an Enlarged European Union. Kluwer Law International p.18
[100] Handbook on European Law relating to asylum, borders and immigration.p.81
[101] 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
[102] Resolution on a harmonized approach to questions concerning host third countries. London Resolution. European Union: Council of the European Union. Adopted 30.11.1992
[103] S.Ericsson. Asylum in the EU Member States. European Parliament.2000 p.12
[104]Ibid. p.6

Readmission agreements were improved and widen its practice after the recent migration crisis, European Union also in the past was including readmission clauses into extensive cooperation and trade agreements with non-EU countries. Starting with 1996, readmission clauses were inserted agreements with many countries; such as Algeria, Azerbaijan, Chile, Egypt, Georgia, Croatia, Macedonia and Lebanon. In 1998, EU Commission started initiative of consultation procedure with non EU states on specifically asylum matters. Regarding the cooperation with non-EU countries, Bilateral agreements with Southern Mediterranean and the Eastern Partnership States are still targeting the causes of refugee flow. Although the EU Member States and third countries often sign bilateral readmission agreements when there is an EU agreement, it gets precedence from the bilateral agreement. Nevertheless, member states may make a more detailed bilateral protocol under the EU readmission agreement. For example, Finland signed such a protocol with Russia in 2013.[105] No doubt, Community agreements are way more efficient for implementing procedures and the preservation of the Schengen zone.

Agreements with countries that are the source of migration to Europe is indeed a good solution that creates a legal responsibility for these countries to take their citizens back.[106] UDHR Article 13/2 provides people with a right to leave any country, including his own, and to return to his country nevertheless it has been questioned by academics that if a country had a responsibility to take back its citizens when it is not citizen's choice to come back, but another country had forced them to return.[107] International Organization of Migration states that Countries does not fulfil theirfail their international obligations if they reject readmitting their own nationals.[108]

In case of readmission agreements a responsibility is certainly created for States to take back their citizens because, in customary international law, states are expected to act in compliance with provisions of the treaty they have concluded with another state.

It is true that international law does not sanction States to elude legal obligation through assigning their responsibility to other states. However, general rules limits readmissions in ways, first of all, asylum seekers claim should not have been processed yet, if so it must have been found

[105] Entry Bans and Readmission Agreements as Guarantees of efficient Return Process. European Migration Network. Finnish Migration Service. p.18 Accessible at: http://www.emn.fi/files/951/EMN_Return_ENG_ja_FIN_final.pdf (28.12.2018)
[106]EU Readmission Agreements: Facilitating the return of irregular migrants.24.04.2015. Accessible at: http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2015)554212(20.07.2018)
[107]K. Hailbronner. Readmission agreements and the obligation of states under public international law to readmit their own and foreign nationals. Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 57.1997 p. 41.
[108] IOM. Global Compact Thematic Paper. Readmission. Accessible at: https://www.iom.int/sites/default/files/our_work/ODG/GCM/IOM-Thematic-Paper-Readmission.pdf(04.09.2018)

inadmissible in substance. If their asylum case is not rejected, then, in theory, they should not be expelled. European Commission's opinion is sending an asylum seeker to a third country without processing the application constitutes *refoulement* and is therefore not permissible under EU and international law, it is clear

About *refoulement*, member States assume that the *non-refoulement* duty is applicable only to those individuals who fulfil these criteria: (a) arrive at the border of the country where they seek asylum (or are inside it); (b) there isn't safe third state to which they can be re-sent.[109] The author claims readmission agreements does not violate *non-refoulement* if the third country is persecution free, thus "safe". The legal concern behind the prohibition of *refoulement* was explained as international human rights duties must be conducted, no action should result in people being returned to humiliation, persecution and execution.

When it is not possible to immediately detect immigrant's origin country (in some cases the migrant does not carry the papers to prove his/her citizenship), when the determined origin country has no longer a stable state authority or working organs to contact to approve person's citizenship, and finally when origin country is not safe, readmission agreements with origin states cannot be applied. Therefore, the European Union makes agreements with other safe countries. For instance the EU-Turkey Refugee Statement.

When implementing the agreements and returns, EU provides coordination between the EU States and the third country on return processes of migrants. Such operational cooperation is crucial to establish common standards that will lead to mutually recognised decisions and prevent the complexity of the return process. The Agency for the Management of Operational Cooperation at the External Borders is responsible for assisting with joint return operations.

Readmission clauses can only be considered as a successful and human rights preserving solution if only it is executed with complementary welfare regimes for the expelled refugees in the third country. For example, in Italy- Libya Memorandum of Understanding, amounts of funds for support and development programs were not presented in a detailed project meanwhile monetary aid was channelled to EU Facility for refugees in Turkey to ensure needs of refugees.

[109] European Parliament Directorate-General for External Policies. Current Challenges for International Refugee Law with a Focus on EU Policies and EU Co-operation with the UNHCR. 2013. p.9

The EU is a successful international organization that supports creating important values around the world. Readmission agreements encourage receiving countries to promote refugee rights because a human rights respected readmission agreement must assure all the refugee rights will be defended in the country refugees were sent. On that sense, it should not be a deal of 'Take this money and keep these refugees away from my lands'.

Unfortunately, bad examples of such agreements are causing human rights activists to observe the situation in a negative way. For instance, Italy's readmission agreement with Libya, namely 'Italy-Libya Memorandum' was not following EU-Turkey Readmission Agreement's footsteps. Therefore, the expulsion of found asylum seekers in the sea was an open infringement to *non-refoulement* by Italy. First of all, Libya is neither a signatory state to 1951 Refugee Convention nor has a domestic asylum law. Secondly, the Memorandum was not giving necessary details of the resettlement clauses which are extremely important for the protection of refugee rights otherwise they may not block human rights infringements of the receiving country.[110]

Main conditions for readmission memorandums to comply with human rights can be listed as follows;

1) There should be sufficient reference to international refugee protection framework in the agreement about whether the receiving country has the institutional capacity to confront protection claims.
2) Conditions centres must follow the same standards like in EU, and they should provide legal aid for applications.
3) Destination of the aid that the country will provide must be well established from the beginning of the agreement.

4.3 EU-Turkey Readmission Agreements

Another Legal response of EU to the refugee crisis was readmission agreements with Turkey. This chapter will analyse and compare the EU Turkey Readmission Agreement and the last Readmission Statement. Firstly this readmission legislation's position in EU Law and International Law will be established. Secondly, the chapter will analyse both parties' responsibilities arising from these cooperations.

[110] A.Palm. The Italy-Libya Memorandum of Understanding: The baseline of a policy approach aimed at closing all doors to Europe? Istituto Affari Internazionali.02.10.2017

The latest EU Turkey Statement, dated 18 March 2016 refers to the provisions of the previous legal instruments and should, therefore, be considered together which are; firstly EU-Turkey Readmission Agreement signed in Ankara in 2013, come into force in 2014 with the provisions stating parties will implement the agreement after 3 years and secondly EU-Turkey Joint Action Plan 2015. With the final EU-Turkey Statement, it was established that the Readmission Agreement would be implemented starting on 1 June 2016 instead of original agreement text foresees after three years so in 2017.

The beginning of negotiations for the Statement between Turkey and the EU commenced at an informal meeting held by the European Council on 23 September 2015, and during which the ministers agreed to reinforce the dialogue between Turkey and the European Union. Less than one month later, a meeting took place at the Eastern Mediterranean Western Balkans route and was attended by Jordan, Turkey, Lebanon, and the Western Balkan states; the purpose of the gathering was to solidify the partnership and solidarity.[111]

The meeting produced a declaration that was designed to further establish cooperation with nations of origin and transit, including Turkey. A mutual action plan between Turkey and the EU was put on the agenda for the first time on 15 October 2015, by the adoption of the Joint Action Plan.[112]

On 7 March 2016, Heads of State and Government and the Prime Minister of Turkey reached an agreement to manage the tremendous influx of refugees arriving into the EU. An action plan established to address the problem of asylum claimants and refugees smuggling. On 18 March 2016, Turkey and the EU arrived at an agreement on readmission of irregular migrants, officially titled as "Statement", which was published in the European Council press releases. [113] The author considers the Statement as an activator and annexe to the Readmission Agreement of 2014.[114] Particularly increased refugee flow from Syria required an urgent and specific statement to

[111] The Conference on the 'Eastern Mediterranean – Western Balkans Route' was held to discuss the 'common challenge' with all relevant partners on the migratory flows coming from the Middle East to 'to respond collectively with solidarity'. 08.10.2015. Accessible at: at the http://www.eu2015lu.eu/en/actualites/articles-actualite/2015/10/08-conf-balkans/

[112]EU-Turkey joint action plan.15.10.2018. Accessible at: http://europa.eu/rapid/press-release_MEMO-15-5860_en.htm

[113]EU-Turkey statement.18.03.2018. Accessible at: https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/

[114] Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization OJ L 134, 07.05.2014

regulate EU funds to Turkey for management of deported refugees. Among other things, the EU-Turkey Statement included reconfirmation of commitment to the implementation of the Joint Action Plan reached on 15th October 2015 and activated on 29th November 2015.

According to the Statement, Turkey committed that all new irregular migrants crossing from Turkey into Greek islands will be returned to Turkey, as from 20 March 2016, respecting EU and international law, with no collective expulsion, but as an extraordinary measure, with respectfulness of the relevant international standards of migrant protection and in respect of the principle of *non-refoulement*. Moreover, Turkey obliged that it will take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU.[115]

In exchange, the EU promised following;
1) 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 (so-called "one to one mechanism"), but only up to 72000 persons, with priority of those migrants who have not previously entered or tried to enter the EU irregularly;
2) EU will speed up the disbursement of the initially allocated EUR 3 billion for funding the projects in the field of health, education, infrastructure, food and other living costs;
3) the process of visa liberalisation for Turkish citizens will be accelerated, under certain conditions and the negotiations for Turkey accession to the EU and formation of the Customs Union will be revitalised. It was agreed that all elements will be taken forward in parallel and monitored jointly on a monthly basis.

Upon the issuance of the EU-Turkey Statement, many debates arose in civil society and discussion among academics. Can this new Statement be defined as an international agreement regarding EU law and International law likewise the previous Readmission Agreement, taking into account the procedural rules and form it has taken? The question was essential to decide if parties must follow their promises in this Statement and is it binding for them.

Author views regarding EU Law it is not a legally binding treaty *per se* because EU steps of Treaty making is not followed, but in practice, it has legal effects as an international treaty, but there are ways to consider it as a fully binding treaty according to the international law of treaties.[116]

[115]M. Gleeson.In Focus: European Approaches To Irregular Migration. 23.05.2017. Accessible at: https://www.kaldorcentre.unsw.edu.au/news/focus-european-approaches-irregular-mi 01.01.2018
[116]M. den Heijer, T. Spijkerboer. Is the EU-Turkey refugee and migration deal a treaty? Accessible at: https://eulawanalysis.blogspot.com/search?q=statement

TFEU, article 79/3[117] gives the Union the power to conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States. Exercising this power need to be by the procedural rules set in the TFEU.

Article 218 (a)(v) regulates that agreements between the EU and third countries or international organisations shall be negotiated and concluded in the procedure where the Council shall adopt the decision of concluding the agreement, by a qualified majority, after obtaining the consent of the European Parliament, in the case of agreements covering fields to which the ordinary legislative procedure applies (such as asylum and migration set in Article 78-79 of the TFEU as well as agreements with important budgetary implications for the Union TFEU 218 (a)(iv).

International agreements covering the asylum matters require the prior consent of the European Parliament for the adoption of the decision before the Council. It should be emphasised that the European Council that represented the EU at the meeting with Turkey counterpart on 18th March 2016 not be one of the EU's legislating institutions but defines the EU's overall political direction, and priorities and as such has no competence in the conclusion of the international agreements.

Therefore, the EU-Turkey Statement cannot be classified as an international agreement in EU Law, because it would be unconstitutional since the European Council has no power under the TFEU to conclude it. This approach was taken by the European Parliament – Committee on Civil Liberties, Justice and Home Affairs on the meeting on 9th May 2016, argued that the Statement has not legal binding nature, since the European Parliament was denied to exercise its constitutional role on co-decision and the European Council could not have jurisdiction to handle the matters on asylum, migration and budget.[118]

Also, the EU-Turkey Statement has not been published in the Official Journal of the European Union, has not been signed and the terminology regularly used in international agreements has not been respected.

[117] Consolidated version of the Treaty on the Functioning of the European union Official Journal of the European Union, C 326/47, 26.10.2012

[118] Legal aspects of the EU - Turkey statement of 18.03.2016, European Parliament - Committee on Civil Liberties, Justice and Home Affairs, LIBE/8/06399. Accessible at:http://www.europarl.europa.eu/news/en/press-room/20160504IPR25801/committee-on-civil-liberties-justice-and-home-affairs-09-05-2016-pm

Even though the EU`s legislative procedure for the conclusion of international agreements with third countries is not respected, there are other dimensions to be considered in other to analyse the true nature of the Statement in international law. On the grounds of international customary law and European jurisprudence, the EU-Turkey Statement could be deemed as an international agreement. Namely, UN Convention of 1986 on the Law of Treaties between States and International Organisations or between International Organisations[119] signed in Vienna (not yet in force) defines a "Treaty" as an international agreement concluded in written form and governed by international law; whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

The EU did not sign Vienna Convention Law of Treaties, and subsequently, CJEU is not formally obliged to apply it. However, the importance of this Convention in the interpretation of the existence and effects of international treaties is significant because it embodied in itself customary international law. The CJEU recognised the value of it and ruled that "…even though the Convention does not bind either the Community or all its Member States, a series of provisions in that convention reflect the rules of customary international law which, as such, are binding upon the Community institutions and form part of the Community legal order".[120]

Moreover, if rulings of International Court of Justice are examined on the classification of all kind of instruments as international agreements, it can be inferred that the intention of the parties and the content of the instrument are aspects that should be taken into consideration in determining the legal nature of the instrument. Whether parties had an intention to conclude an agreement can be interpreted about their subsequent behaviour that is whether parties performed concrete steps to implement the commitments taken. In our case, both parties undertook implementation of the obligations set out in the EU-Turkey Statement. For example, in 2017, EU took 8.975 Syrian refugees and settled them in EU.[121]

In another aspect, the TFEU provides tools for challenging the decisions of the EU`s institutions. The legality of the adopted legislative acts and EU institutions` acts intended to produce legal effects *vis-à-vis* third parties can be reviewed by the CJEU[122]. It is so called action for annulment

[119] Vienna Convention on the Law of Treaties between States and International Organisations or between International Organisations. 21.03.1986 not in force.
[120]CJEU. Case C-386/08. Para. 42
[121] European Commission. 2017 Report on the Application of the EU Charter of Fundamental Rights. p.70
[122] Consolidated version of the Treaty on the Functioning of the European Union. OJ C 326, 26.10.2012. Art. 263 sec. 1

and can be raised by a Member State, the European Parliament, the Council or the Commission on the grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or any rule of law relating to their application, or misuse of powers. It can also be raised by a natural or legal person.[123] None of the authorised EU`s institutions did initiate the proceeding requesting from the CJEU to decide on the legality of the EU-Turkey Statement.

However, an objection case to the Statement was brought before CJEU by three asylum seekers in Greece, Afghan and Pakistani nationals on 22nd April 2016 helps the author on assessment.[124] Applicants requested from the Court to annul the Statement. The General Court dismissed the actions on the ground that it has no jurisdiction to decide on them because the EU-Turkey Statement was not an act of an EU institution; the European Council, but of the 28 Heads of State and Government of the EU Member States, acting as representatives of Member States. The Court points out 'the EU and Turkey agreed on … additional action points' therefore from the text, supposing an informal agreement might have been concluded in 2016 meeting despite the Council, the Parliament, the Commission and the representing European Council denied another way. The Court still considers that such Statement would have been an agreement concluded by the Heads of State or Government of the Member States of the European Union and the Turkish Prime Minister. The author sees the applicants and Courts point of view by taking into account that the meeting was not only attended by Heads of State and Government of the EU Member States, but also by the representatives of the EU.[125]

The content of the EU-Turkey Statement includes commitments that can be fulfilled only by the EU, such as acceleration of the visa liberalization process, development of the Customs Union, support of the Turkey`s accession to the EU and finally the disbursement of the funds for maintenance of the refugee and asylum systems in Turkey, the finding of the General Court that the EU-Turkey Statement does not originate from the EU institution, but from the Member States, is as controversial as the Statement itself. Also, in any case, this statement has a legal nature in practice, thus, with regard to TFEU Article 263 states that CJEU has competence on reviewing legality of acts of Member States, European Council and of EC's actions producing legal effects *vis* à *vis* third parties that is to say Court should have reviewed the legality of the Statement.

[123]Consolidated version of the Treaty on the Functioning of the European Union
OJ C 326, 26.10.2012. Art. 263 sec. 4
[124]CFEU. Cases T-192/16, T-193/16, T-257/16
[125] EU-Turkey Statement. 18.03.2016

Applicants who want the annulment of the EU-Turkey Statement then raised an appeals against the General Court order to the CJEU, as the appellate organ, but it has dismissed the appeals, as well, on the grounds that appeals are inadmissible in their entirety, without reviewing the core of the decision (whether the EU-Turkey Statement is act of the EU institution or not), but only the admissibility of the appeals.[126]

The response of the EU institutions in the objection case was called as 'It was not me' by researchers since none of them officially claimed that it was an EU Treaty with a third country despite the fact that EU was eagerly maintaining all necessary acts on implementations and the agreement created legal responsibilities for EU.[127]

The author concludes about this discussion as EU-Turkey Statement (the wording says it all), not an international agreement indeed but like a *de facto* appendix to the original EU-Turkey Readmission Agreement which came into effect in 2016 after the decision of the Joint Readmission Committee.[128] The statement is a record of a further cooperation dialogue upon already existing treaty rules between EU and Turkey. It would be a forced claim to define it as a separate 'treaty'. Upon the CJEU's inquiry, EC clarified that Statement was not a Treaty regarding the Vienna Convention on the law of treaties. They were not intended to conduct an agreement of Article 218 TFEU, and no legal effect was intended either, but its legal nature does not affect the ongoing implementation of its provisions strictly by EU at least in certain extent.

For the topic of the thesis, the author believes more critical discussion to be focused is whether this Statement and the previous Readmission Agreement causes violations of refugee rights or not. In short, Statement envisages similar obligations of contracting parties as the EU-Turkey Readmission Agreement which was adopted in ordinary legislative procedure envisaged in Article 218 TFEU unlike the Statement. Therefore, it was legal.

After the mentioned concerns on legally binding nature of the EU-Turkey Statement, Author now will address the concerns regarding the violation of human rights principles and will focus applications of these legislations.

[126] CFEU..Joined Cases C-208/17 P to C-210/17 P. 12.09.2018
[127] S. Carrera, L. den Hertog, & M. Stefan. It wasn't me! The Luxembourg Court orders on the EU-Turkey refugee deal. CEPS Policy Insights. 15.04.2017
[128] Council Decision. EU. 2016/551 to adopt the Joint Committee decision No: 2/2016. Accessible at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016D0551

In action point 3, Turkey promised to prevent Syrian to leave borders. This point raised question of 'what about people's fundamental "right to leave any country including his own?" but as it was accepted that this right is not absolute anyone who has a visa is free to go.[129] Professor Kay Hailbronner expresses that entry from the borders can be a precondition to seeking asylum in a country.[130] In that sense, he argues that the Member States does not have an admission responsibility for refugees that are found in high seas.

Another question was 'what about the right to seek asylum anywhere but cannot be sent to seek asylum elsewhere?' in theory people have a right to seek asylum anywhere if they reach there but if they were already accommodating in a safe county (Turkey) for years, EU Country where they sought asylum has legitimate grounds to refrain granting asylum due to they are not fleeing from persecution anymore.[131]

The Statement itself aims not to violate the prohibition of collective expulsion but the author believes processing every asylum seekers claim before send them to Turkey is causing even worst human rights violations. Amnesty International observed the situation of the refugees who are trapped in the Greek Islands fighting for their basic needs and waiting to be returned to Turkey.[132] Therefore, They should not be left in limbo in an island but sent to Turkey. Extraterritorial processing of their asylum application is a comparably better solution regarding their human rights.

As Prof. Daniel Thym affirmed that EU Turkey Statement is more of a burden-shifting with positive results for refugee rights beside the saviour measure for continuity of CEAS which was in the edge of collapsing in the crisis. [133]

The first requirement for this statement to comply with international refugee law and EU Law is Turkey must be a 'safe third country', and second Turkey must have a well functioning asylum

[129] H. Labayle, P.de Bruycker. EU Immigration and Asylum Law and Policy. The EU-Turkey Agreement on migration and asylum: False pretences or a fool's bargain? 01.04.2016 Accessible at: http://eumigrationlawblog.eu/the-eu-turkey-agreement-on-migration-and-asylum-false-pretences-or-a-fools-bargain/(29.12.2018)
[130] K. Hailbronner. Legal Requirements for the EU-Turkey Refugee Agreement: A Reply to J. Hathaway. 11.03.2016 Accessible at: https://verfassungsblog.de/legal-requirements-for-the-eu-turkey-refugee-agreement-a-reply-to-j-hathaway/ (01.12.2018)
[131] Directive 2005/85/EC Art. 26 1.12.2005
[132] K. Gogou. The EU-Turkey deal: Europe's year of shame.20.03.2017 Accessible at: https://www.amnesty.org/en/latest/news/2017/03/the-eu-turkey-deal-europes-year-of-shame/
[133] D. Thym. Why the EU-Turkey Deal is Legal and a Step in the Right Direction? 09.03.2016 Accessible at: https://verfassungsblog.de/why-the-eu-turkey-deal-is-legal-and-a-step-in-the-right-direction/ (30.12.2018)

law within standards of the Geneva Convention. Therefore the author will discuss whether Turkey fits the safe third country concept and asylum system's protection standards.

In order to analyse further if EU's Readmission agreement with Turkey complies with the refugee protection responsibility of international law and if Turkey can protect the refugees in international standards, the author needs to explain Turkey's approach to refugee protection.

4.3.1 Asylum Law in Turkey and Safe Third Country Assessment

The agreements promoting a close relationship between Turkey and EU raised some significant and serious issues about the legal compliance with international refugee law in addition to those governing human rights.

Turkey undertook the responsibility of providing temporary protection to Syrian refugees and stateless persons entering borders from Syria with the Statement, therefore accordingly with *pacta sunt servenda* responsibility must be kept.

Even though Turkey is the signatory of United Nations refugee convention since 1962, there was not one specific regulation for asylum and migration until 1994 Regulation[134] which mostly established security measures and other procedures, but the law was lack of providing basic refugee rights. Turkish authorities had taken over the procedures of assessment of the refugee status with the 1994 Regulation which was previously processed by UNHCR Ankara Office due to the lack of government and law body in Turkey about asylum matters. This major change was found worrisome concerning Turkish government might not have an as liberal attitude as UNHCR on determining refugee status. Besides the fact that Turkey's reservation clause to the 1951 Convention allows only Europeans to claim 'refugee' status in Turkey.[135] However in practice in that times Turkey processed asylum requests of non-European applicants too due to the various crisis. Asylum seekers from the rest of the world (non-Europeans) are given different statuses in

[134] Türkiyeye İltica Eden veya Başka Bir Ülkeye İltica Etmek Üzere Türkiyeden İkamet İzni Talep Eden Münferit Yabancılar ile Topluca Sığınma Amacıyla Sınırlarımıza Gelen Yabancılara ve Olabilecek Nüfus Hareketlerine Uygulanacak Usul ve Esaslar Hakkında Yönetmelik (Procedures and Principles related to Possible Population Movements and Aliens Arriving in Turkey either as Individuals or in Groups Wishing to Seek Asylum either from Turkey or Requesting Residence Permission in order to Seek Asylum From Another Country) 1994/6169 e.i.f 30.11.1994.

[135] K. Kirisci. Is Turkey Lifting the 'Geographical Limitation'? - The November 1994 Regulation on Asylum in Turkey. International Journal of Refugee Law. 01.07.1996. Vol 8/3, p.293–318.

Turkey. They were also provided certain protection but author claims in practice it is almost equivalent to the refugee status.

Starting with the accession negotiations of Turkey for the Union membership, EU influenced Turkish national law and policy. The initiative of the new asylum law in Turkey started as a part of accession negotiations, and EU obliged Turkey to make necessary amendments according to EU asylum *acquis*.[136] As a result, in 2013, Law on Foreigners and International Protection (LFIP) were adopted[137]. Subsequently, based on this law, the Temporary Protection Regulation (TPR) was issued in October 2014 in which the legal status, rights and social benefits of the Syrian refugees have been clarified. According to the TPR, Syrians are given a residence permit and provided with basic rights.[138]

According to the LFIP, asylum seekers that are from non-European countries are 'conditional' refugees and given temporary protection until there is a possibility of settlement in a third country. The author finds it is like a 'shortcut' for giving rights to refugees because provisions of the Law foresees protection and support to all asylum seekers despite their origin country.[139] Especially with the EU-Turkey Statement, Turkey provides recognition of their rights.

The rights that have been provided by Turkey give the legal grounds to the deal. Asylum Procedures Directive Article 38 envisages that asylum seekers must get protection in accordance with the Geneva Convention. Turkey provides protection within this scope. However, Article 39 of the same Directive explains the 'European' safe third country concept in which the requirement of ratifying Geneva Convention without a geographical limitation prevents Turkey to be a 'European safe third country'. Many scholars and human rights organisations claimed considering Turkey as a safe third country is a faulty assumption regarding international refugee law. Their claim mainly based on Turkey's geographic limitation to the 1951 Convention.

It is a reasonable assessment that EU's safe-third country key concept is only applicable to the States does not have geographical limitation to the Refugee Convention because before accession, EU demanded from Hungary, Malta and Latvia to lift the limitation in order to be a part of the

[136]A. Bürgin, D. Aşıkoğlu. Turkey's New Asylum Law: a Case of EU Influence. Journal of Balkan and Near Eastern Studies, 2017 vol. 19, no. 2, p.121

[137] Yabancılar ve Uluslararası Koruma Kanunu (Law on Foreigners and International Protection) No. 6458. 04.04.2013.

[138] UNHCR. Temporary Protection in Turkey, What is temporary protection. Accessible at: https://help.unhcr.org/turkey/information-for-syrians/temporary-protection-in-turkey/

[139] K. Kirişci, *op. cit.* p. 293–318.

Union.[140]However, this previous practice did not prevent EU to consider Turkey as a safe-country in the light of a 'terrifying' crisis.

In the case of A.G. and Others v. Europe and Turkey, limited geographical reservation clause of Turkey was discussed in the scope of ECHR Article 14 prohibition of discrimination. The applicant complained about Turkey's policy with intentions to deport non-European asylum seekers was discriminatory on the basis of race and national origin. Turkish Government responded Geneva Convention of Refugees gave this preference in time of ratification. Even though 1969 Protocol lifted the geographical and time limitations, Turkey is still keeping the geographical limitation. This attitude was accepted by UNHCR as an asylum policy preference and considered it does not prevent prosecution of general responsibilities arising from the rest of the Convention. ECtHR stated that Turkey did not constitute discrimination with this attitude. The author claims Turkey is maintaining this choice without neglecting humanitarian responsibilities by providing temporary permits during the crisis. Therefore it can be considered a safe country. Moreover terminological difference of 'refugee' or 'temporary refugee' create a slight difference with nuance in the current situation.

Eminent scholar James C. Hathaway who is one of the many who claims Turkey is not a safe third country for refugees, states that Turkey must provide 'have a fair and effective process in place' unless it is not going to recognise them as 'refugee'. Moreover, he states that Turkey must follow not only the *non-refoulement* provision but the material standards of the Refugee Convention.[141] As a matter of fact, Turkey just provides this necesities in the TPR Chapter 6 following articles 26, 27(Health Services), 28(Education Services), 29(Access to Labour Market Services), 30(Social Assistance), 31(Interpretation Services)[142] and provide the status with a difference only in terminology.

According to the European Commission, Turkey's temporary protection regime is sufficient and is the international standards.[143] The EU member states exercise full discretion in deciding which nation is called "safe" as it was explained in the previous chapter, this so-called safe country must

[140] U. Aydin and K. Kirisci. With or Without the EU: Europeanisation of Asylum and Competition Policies in Turkey. South European Society and Politics. Vol. 18. No. 3. 2013.
[141] J. C. Hathaway. Three legal requirements for the EU-Turkey deal: An interview with James Hathaway. 09.03 2016 Accessible at: https://verfassungsblog.de/three-legal-requirements-for-the-eu-turkey-deal-an-interview-with-james-hathaway/ (30.12.2018)
[142]Turkey: Temporary Protection Regulation. 22.10.2014. accessible at: https://www.refworld.org/docid/56572fd74.html (29.10.2018)
[143] European Commission. Fact Sheet. Implementing the EU-Turkey Statement Accessible at: http://europa.eu/rapid/press-release_MEMO-16-4321_en.htm

guarantee international protection for returned refugees. After EU requested readmission from Turkey concerning Syrian Refugees, Turkey can be assumed to be promised the protection with the EU standards protected with the Law on Foreigners and International Protection.

Supporting the Commission's view, the definition of the 'temporary protection' in Turkish TPR Article 7 is echoing the EU Temporary Protection Directive Article 2.[144]

Unlike the EU Directive (the period of temporary protection was foreseen as 1 year),[145] temporary protection regime in Turkey is not limited for a period of time, it does not eliminate the right to apply for citizenship after five years of residence in Turkey. Considering Turkey was adopting 'open door policy since the beginning of the Civil War, many Syrians switched to Turkish citizenship while many others find temporary protection more beneficial due to the social security money.

There were similar exceptions in past when geographical limitation clause of Turkey to the Convention was lifted; one is after the Soviet Union's collapse, *de jure* refugee status was given to people who flee from old Soviet Countries. In the 1980s, Iranians were permitted to stay in Turkey after fleeing from their regime. Moreover, in the 1990s during the Gulf crisis, many Kurdish refugees from Iraq found themselves a place. Finally, the Syrian refugee crisis is not far from being another exception.[146] Later on, irregular entries to Turkey increased with the migration from African counties too. However, comparing previous scenarios, numbers were never as high as now. In such a force majeure case when standard legal procedures are expected to be blocked, adopting a temporary protection regulation was to the point. When the concept of mass flux asylum was defined and regulated in compliance with the EU directive, EU provided legitimacy to its external actions for keeping Turkey as a buffer zone.

It is the fact that with this intentions, EU made the real contribution to the development of refugee law in Turkey. Turkey pace up with the EU by the law body and the organ; Directorate General of Migration Management as a department of under the entity of the Ministry of Interior, yet the Readmission Agreement has been the subject of endless criticism and debate about what is

[144] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. 07.08.2001
[145] Council Directive 2001/55/EC Art.4/1
[146] Soykan, C. Access to International Protection: Border Issues in Turkey. O'Sullivan, M.; Stevens,D. States, the Law and Access to Refugee Protection Fortresses and Fairness. Hart Publishing. 23.03.2017 p. 299

consistent with a policy that respects the rights of people seeking asylum in Europe. No doubt, it is not welcomed by people who could not make it to the European Union.

Less significant claims put forward the inconvenience of Turkey to receive refugees as a safe country, arguing the poor human rights practices and strained political atmosphere in Turkey.[147] If such a broad consideration of a country would be required very few countries would be eligible to accept refugees. Must any country that ever violated a human right or had a political tension recently be excluded from being a safe country? It is questionable that in this case, this countries' own citizen might have a legitimate ground to seek asylum elsewhere claiming general risk of being persecuted is high in their native country.

Turkey has ratified ECHR which means ECtHR has jurisdiction over Turkey and its municipal law. Human rights organisations object to the Statement due to Turkey's bad records of systematic violations of human rights of refugees in past. Author believes violations of refugee rights in Turkey are not violated by authorities deliberately but because of the lack of knowledge of the police and the border officers about refugee concepts. However no doubt that awareness is increasing after refugee protection is regulated in national law.

Relevantly, in case-law of Abdolkhani and Karimnia v. Turkey, ECtHR decided that Turkey violated ECHR articles 3, 5 and 13 by deporting applicants upon their illegal entry.[148]

4.3.2 Implementation of the Readmission Agreement and the Statement

Even though, Statement of 2016 does not have provisions about protection's scope given by Turkey, initial Readmission Agreement article 18 non-affection clause already preserves international law obligations of the Parties. EU have reasons to trust that Turkish national asylum law will provide the necessary rights to deported refugees.

Nevertheless, For instance, Article 7 of the EU- Turkey Readmission Agreement does look concerning, and understandably it is not very promising. It states that 'the Member States and Turkey shall make every effort to return a person referred to in Articles 4 and six directly to the country of origin.' In the case of Statement, country of origin (Syria) must be inconsiderable.

[147] J. Poon. EU-Turkey Deal: Violation of, or Consistency with, International Law? University of Western Ontario. 2016. p.1198

[148] Abdolkhani and Karimnia v. Turkey, Appl. No. 30471/08, Council of Europe: European Court of Human Rights, 22.09.2009

Appropriately in implementation, EU only sent people who did not apply for asylum in any EU country or the ones who withdraw their asylum request due to the long process time and chose to settle in Turkey. According to the data and the implementation report of EU, also Turkey did not commit collective expulsion of refugees since the beginning of the deal.[149]

Under the Article 3 and 4 of the 2014 Readmission Agreement, Turkey undertook the obligation to readmit its own nationals, third-country nationals and stateless persons who stayed on or transited through the territory of Turkey to reach EU territories. It is the fact that result (deportation) would have been the same for the applicant refugees even if there were no Statement signed in 2016. In comparison, this Readmission Agreement contrary to the EU-Turkey Statement does not include any economic aid or assistance about returned irregular immigrants from EU to Turkey, neither the "one to one" principle- for every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU. The author finds the statement more beneficial and specific for protecting refugee rights.

The first point of the Statement carries the risk of contradiction to the ECHR Article 4 Collective expulsion of aliens because it addresses all the people passing through the irregular roads to the Greek islands from Turkey will be returned to Turkey. Even though, it was written as refugees are protected against collective expulsion, statement point 1 continues with saying refugees who have not applied asylum or whose cases found inadmissible will be returned to Turkey. In practice, there is a risk that the chance to apply asylum might never be provided by authorities. Another popular concern is Greece's national asylum law foreseeing if asylum seekers were coming from a safe country their case is inadmissible and after all irregular immigrants coming from Turkey duly registered by Greek authorities they can be directly deported back to Turkey.[150] However, it does not mean Turkey is not assessing their asylum cases.

The author finds that processing asylum applications extraterritorially is not an illegal solution either. This is regulated as an exceptional and temporary arrangement possibly such external processing of asylum cases is beneficial during the backlog of asylum applications in Greece for instance. Turkey and EU must secure refugee rights by making sure of all the applications will be

[149]TBMM Insan Haklarini Inceleme Komisyonu Mülteci Haklari Alt Komisyonu Göç ve Uyum Raporu (Grand National Assembly of Turkey. Human Rights Examination Commission. Refugees Rights Sub Commission. Migration and Compliance Report).2018. p. 27

[150]O. Ulusoy, H. Battjes. Situation of Readmitted Migrants and Refugees from Greece to Turkey under the EU-Turkey Statement. University Amsterdam. 2017

assessed by either Turkey or Europe. As it had promised on the agreement, for those whose application is being considered by EU states, instead of waiting in reception centres, staying in Turkey is a better option.

Statement point 2 promises that for each refugee that is deported to Turkey, one refugee will be settled in Europe. This regulation was found discriminatory by the author due to it allows EU to pick refugees even though selection will be accordingly with the UN vulnerability criteria. It may cause unjust distinguishing of asylum seekers within the same criteria but still was not picked by EU somehow.

According to the report of the EU Commission on two year`s effects of the EU-Turkey Statement, irregular arrivals remain 97% lower than the period before the Statement became operational, the number of deaths in the Aegean decreased from 1,175 in the 20 months before the Statement to 130 and over 12,476 Syrian refugees have been resettled from Turkey to EU Member States so far. Concerning financial EU commitments, that is the amount of the €1 billion from the EU budget and €2 billion contributed by EU Member States, €1.85 billion has already been paid out through its Facility for Refugees. On the other side, EU Commission finds that more progress on returns to Turkey from the Greek islands is needed, because only 2,164 migrants returned since March 2016. With the monetary aid of EU to Turkey, living conditions of Syrians significantly improved. Here are some improvements: 500,000 Syrian children had the opportunity to access education, construction of 175 schools are in progress, more than 760,000 Syrians received health consultation, 220,000 children were vaccinated and 1,200,000 people received monthly cash transfers. [151]

Moreover, temporary protection regime does not prevent Syrians to apply for the citizenship. Last year, Deputy General Director Ahmet Sarıcan announced that approximately 12.000 Syrian refugee became Turkish citizen[152] which is close to number of refugees who settled in EU after the Statement.

The refugee statement has been of tremendous benefit to the EU because it has caused a drastic reduction in the number of refugees. On the other hand, Turkey has benefited to some degree but

[151] European Commission, EU-Turkey statement Two years on. 2018

[152]Anonymous. Number of Syrians became Turkish citizens in 10 years period. CNN Turk. 10.05.2017. Accessible at: (in Turkish): https://www.cnnturk.com/ekonomi/son-10-yilda-turk-vatandasi-olan-suriyeli-sayisi-aciklandi?page=1

not as clearly as the EU because funds coming from the European Union have arrived much more slowly than anticipated; in addition, the visa-free travel has not yet been granted. Continuity of this agreement is equally important for both EU and Turkey thus several efforts should be taken. By Ankara and Brussels. This agreement must be kept separate from other political matters. It is clear that both EU and Turkey is not able to manage the current influx alone.

Currently implementation of the Statement with the temporary protection regime is going smoothly but to preserve transparency and avoid challenging situations in future, EU must involve with the process of integration of the asylum seekers as well.

Financial aid packages must be controlled carefully and channelized to refugees more directly instead of administrative structures. Turkey should not be given full control of the EU funds.

5 CONCLUSION

Conflicts in Middle East resulted in thousands of migrants looking to reach the European continent in order to escape from devastating death and injuries. This numbers drastically increased especially after the war in Syria. Asylum seekers or migrants from other countries often pretended of being a Syrian citizen just to get refugee status. Many people from other regions joined the flow and forced the gates of the Fortress Europe.

There are many reasons for migration but fleeing from armed conflict is considered under another terminology which is 'seeking asylum' It makes people 'a refugee' instead of simply a migrant. Difference between a migrant and refugee briefly is; the first one might be under difficult circumstances thus choose to migrate to get a better living; the latest is fleeing from a life treating situation or a violation against his/her fundamental rights.

The refugee crisis that EU experiences recently raised many concerns about the adequacy of refugee protection legislation in EU. Moreover, it was argued by researchers that EU asylum law might not be even in compliance with the international refugee law and human rights therefore it causes human rights violations from the core. In addition, sufficiency of the 1951 Refugee Convention and 1967 Protocol was questioned as well. If refugee rights indeed are not preserved enough in legislation of EU or it is just a matter of negligence in implementations that causes violations was the research topic.

The 1951 Refugee Convention constitute the basics of the refugee protection but it lacks details on admission of refugees in contracting States. It does not include measures for managing regional refuge crisis situations with details of which country should take care of refugees.[153] It is a pioneer treaty in refugee protection in international law and it inspired many regional human rights protection mechanisms such as EU Charter and ECHR. Scope of the thesis was Europe Region and EU's position and concurrence of its legislation with international refugee law. Internally, EU Asylum Acquis provides protection with extended scope and in a detailed way in processing asylum claims.

As the first research question was whether EU successfully adapted international refugee law concepts in its Acquis and hypothesis claimed EU Asylum Acquis does not have a direct

[153] G.S. Goodwin-Gill. The International Law of Refugee Protection. The Oxford Handbook of Refugee and Forced Migration Studies.2014 p.11

controversy with international refugee law. Study found that EU successfully and fully internalize the necessities of refugee protection deriving from the international law and human rights. The result has been confirmed by the study with analysing EU directives and regulations that are forming EU Asylum Acquis.

EU's Asylum system, CEAS, planned to be a milestone for treating asylum seekers equally in with same standards throughout EU in addition to created cooperation between states, that endeavor continues to be a work in progress because of the uneven results that cause asylum-seekers to experience far different levels of acceptance and support, depending on which country they arrive in after landing on the European continent. The CEAS establishes minimum procedures relating to processing and making decisions about applications for asylum, as well as the ways in which asylum-seekers and refugees are treated. Hereof Dublin regulation showed it is a problematic system during such crisis because it brings the risk of certain states overwhelmed with asylum application despite it is not infringing jus cogens norms of international refugee law; non refoulement. While Dublin Regulation provides criteria and it held the first entry state responsible for the asylum claim it targeted the goal to restrict the multiplication of application, so called 'asylum shopping', that was a tool of manipulation of application by asylum seekers in order to find the most favorable national legislation.

The study found out that despite what EU legislation says and EU institutions proclaim in practice EU actions and reaction of the Member States on asylum are control oriented and there is need to be focused more on protection of asylum seekers in order to really comply with international asylum standards. The study concluded that objective of the CEAS is in the same ground with international refugee law but namely Dublin Regulation is not an effective instrument during the current refugee flow. Case-law showed that it leads severe human rights violations in practice even though its original aim is to facilitate asylum related matters.

Consequently, in 2015 the Council voted to conduct relocation quotas to distribute refugees to EU States proportionally. However, this plan of sharing the burdens between Member States, in terms of distribution of the asylum applicants, did not function as it is expected. There are Member States that continually disobey to obligations set by EU rules, but rather focus mostly on strengthening the boarders.

The European Commission acknowledging the problematic parts of the CEAS has proposed for the reform in asylum directives and regulations. Currently, next generation of Dublin system

(Dublin IV) is under consideration because the improvement of the practical implementation of the EU asylum acquis is necessary. EU must set mandatory, more harmonized and uniform solutions to prevent human rights violations.

Even though new proposal for recasting the Dublin system does not bring a fundamental change about the current Dublin rules, new emergency allocation mechanism and extended family scope on criteria will be helpful to reduce human rights violating results of the Dublin regulation.

In external ways, EU acts with the readmission agreements to help and settle refugees. Beside EU generate solutions to prevent crisis in first place by helping the States of origin of refugees. When European Commission suggested the implementation of a "Partnership Framework" with other countries in Africa and the Middle East as well as Turkey. This led to a significant degree of criticism by a wide range of stakeholders for making deals with countries that had terrible human rights records, as well as for conflicting with other protection frameworks on an international basis such as the right to escape from one's own home country.

One of this partnership plan was the EU-Turkey Statement following the readmission agreement. In 2016, the EU formed a statement with Turkey in which Turkey would attempt to stop people from traveling onward into the European continent.

The statement that was ultimately formed foreshadowed an increasingly close relationship between the EU and Turkey, in which Turkey was promised billions of euros and visa free travel for the citizens. This points of the statement was overshadowing the refugee protection side. Therefore, this particular arrangement got highly negative reaction as it is in a way exemplifies a practise in which the European Union connects development aid or financial incentives to commitments by nations to curb and manage the trends of movements of people coming from their territory. It is perceived as only a political act of aiming to keep refugees out. Even though EU-Turkey Statement and the Readmission agreement receieved bad reactions and was extremely controversial from human rights organizations and academics, thesis resulted as in practice it should not violate any refugee rights or cause the erosion of rights.

One thing is clear that a complete omission of EU law, inclusive of fundamental rights, is not allowable, even in extraterritorial scenarios. It is stipulated in Article 7 of TFEU that 'the EU shall safeguard consistency between its policies and endeavors, incorporating all its objectives into

consideration. Consistency is a critical quality of EU law that is guaranteed by the Court of Justice, in accordance with Article 256 TFEU.

Consequently, in accordance to Article 13(1) TEU, the Union shall have an institutional structure which shall be promoting its values, objectives and safeguard consistency, effectiveness and progression of its strategies and actions. Concerning its external policies specifically, Article 21(3) TEU proves that the Union shall promote consistency between its different areas of both external action and its other policies. Blatantly, contradictory outcomes between the two amounts to a breach of this legal call. To be certain that this consistency obligation does not widen the scope of the applicability of the asylum *acquis*, at the same time set a minimum acceptable standard for extraterritorial initiatives.

In conformity to Article 3(5) TEU, in external action, the EU has to uphold and promote its values and play a part in ensuring strict observance and promotion of international law. This course includes fundamental rights, as acknowledged in the EU Charter and meaningful collaboration with UNHCR concerning refugee law standards.

In the thesis, legality of EU's asylum related treaties with third countries in terms of international refugee law was assessed as well. Research question of EU Readmission agreement with Turkey undermining refugee law core principles or not was answered.

Second hypothesis was EU-Turkey readmission agreement does not conflicting with the international refugee law concept. Study found that Treaty foresees necessary protection for refugees therefore EU does not infringe human rights and refugee law with its legislation. Turkey who does not provide refugee status to Syrians naturally regarding Geneva conventions was bound to provide such protection thanks to the Readmission agreement and the Statement. As a result, Statement is not invalid and illegal because Turkey cannot provide international standards of protection, but on contrary, due to there is a Statement, Turkey must provide a protection within EU and International Standards.

Overall, thesis found EU Asylum Acquis is within the international standards and readmission agreement with Turkey complies with the international refugee law because Turkey is fulfilling safe-third country principle.

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