Università
Ca'Foscari
Venezia

Corso di Laurea magistrale (*ordinamento ex D.M. 270/2004*)
in Relazioni Internazionali Comparate

Tesi di Laurea

NEW WALLS. EUROPEAN UNION: AN AREA OF FREEDOM, SECURITY AND EXCLUSION

Relatore
Prof. Leimsidor Bruce

Correlatore
Prof. Marrella Fabrizio

Laureando
Innocenti Michela
Matricola 815518

Anno Accademico
2013 / 2014

NEW WALLS. EUROPEAN UNION: AN AREA OF FREEDOM, SECURITY AND EXCLUSION

Table of Contents

Abstract

Questa tesi ha come oggetto la risposta dell'Unione Europea alla crescente pressione migratoria che interessa principalmente i suoi confini orientali. In particolare, si concentra sulle conseguenze delle scelte operate da Grecia e Bulgaria al fine di restringere il flusso di persone che intendono entrare attraverso l'attraversamento irregolare dei loro confini. Grecia e Bulgaria sono state additate di aver dimenticato gli obblighi nei confronti dei diritti umani per aver messo in atto una serie di misure che hanno dato luogo a trattamenti inumani e degradanti ai migranti e dei richiedenti asilo e hanno sollevato molte discussioni nello scenario internazionale. Le cause di queste sgradevoli conseguenze sono di certo da ricercare all'interno delle caratteristiche individuali di questi paesi e delle loro scelte politiche, ma anche il sistema internazionale ha un ruolo importante in questi sviluppi, date le restrizioni al potere decisionale degli stati singoli causate dal crescente potere delle Organizzazioni Intergovernative, in particolare l'Unione Europea. Per questo motivo, la mia tesi intende collegare le scelte di questi due Paesi Membri con l'ambiguità che le stesse istituzioni europee hanno tenuto lungo tutto il processo di integrazione delle politiche di Giustizia e Affari Interni. Considerando che l'evoluzione del potere decisionale dell'Unione Europea ha interessato anche il settore di immigrazione e controlli alle frontiere, condizionando in maniera non indifferente le discrezionalità dei paesi membri, ritengo che un'analisi delle mancanze e dei fallimenti da parte dei Paesi Membri nei confronti della gestione dei flussi migratori e del sistema di protezione internazionale debba essere condotto con uno sguardo alle evoluzioni delle politiche comuni adottate all'interno dell'Unione Europea.

Negli ultimi anni la regione greca più a est attraversata dal fiume Evros e il confine tra Bulgaria e Turchia sono diventati il punto di maggior afflusso di migranti irregolari e richiedenti asilo diretti in Europa. Per meglio gestire la frontiera, data l'alta pressione che ha dovuto sopportare a partire dal 2008, quando il confine terrestre ha superato il confine marittimo in quanto a numero di intercettazioni di attraversamenti irregolari, la Grecia, dopo aver tentato di bloccare il flusso intensificando i controlli al confine terrestre, anche con l'aiuto dell'agenzia europea per la gestione della cooperazione operativa alle frontiere esterne, FRONTEX, ha deciso di adottare una soluzione drastica, completando la costruzione di una barriera di filo spinato, dotata di videocamere a visione notturna e strumenti sofisticati per permettere l'intercettazione di migranti irregolari. Questa decisione è stata contestata da numerosi enti internazionali e dalle principali organizzazioni intergovernative,

e non, che si occupano di diritti umani, in quanto sia prima che dopo la costruzione del muro il rispetto dei diritti umani nei confronti dei migranti irregolari presenti in territorio greco si è rivelato essere ben al di sotto dei minimi standard. Inoltre, la chiusura della frontiera greca ha avuto ripercussioni sui paesi vicini, in particolare sulla Bulgaria, la quale ha visto un incremento nel flusso di rifugiati a partire dalla fine del 2012, a causa dello scoppio della guerra civile in Siria e in coincidenza con il termine dei lavori di costruzione del muro tra Grecia e Turchia. Anche la Bulgaria, non essendo preparata a tale affluenza, si è trovata in difficoltà nella gestione dei confini e ha subito risposto inasprendo i controlli al confine e proponendo la costruzione di un muro simile a quello greco. Inoltre, le modalità con cui i controlli vengono messi in pratica sia da Grecia che da Bulgaria e le condizioni di detenzione, nonché le condizioni di accoglienza riservate ai richiedenti asilo sono state definite inadeguate e han scatenato la reazione di numerose ONG e attori internazionali interessati.

La mia tesi vuole sottolineare il legame tra la situazione della Grecia e della Bulgaria, in particolare l'inadeguatezza delle modalità di gestione dei migranti in arrivo, e il ruolo contraddittorio che l'Unione Europea ha affidato ai suoi Stati Membri in conseguenza del processo di integrazione europea. Infatti, le critiche avanzate dai diversi attori internazionali che si sono pronunciati contro la costruzione dei muri alle frontiere e in merito alle carenze nell'attuazione del sistema di asilo hanno avuto come perno centrale i diritti umani, e la contraddittorietà di questi atteggiamenti nei confronti dell'orientamento generale dell'Unione, che si fonda da sempre sulla promozione del rispetto della dignità umana, e recentemente sull'importanza di garantire una libertà di movimento all'interno dei propri confini. In altre parole, le violazioni dei diritti umani perpetrate da ufficiali greci e bulgari mostrano la mancanza di coerenza tra le priorità definite all'interno dell'Unione Europea e le modalità con cui gli stati mettono in pratica tali obblighi. Tuttavia, l'approccio dell'Unione verso le questioni riguardanti immigrazione si è mostrato sin da subito poco lineare e caratterizzato da una stretta connessione tra gli interessi relativi alla sicurezza e l'obiettivo di garantire il rispetto dei diritti umani. Nel processo verso una cooperazione in materia di giustizia e affari interni, lo sguardo delle istituzioni europee ha mantenuto un andamento altalenante, alle volte sostenendo il bisogno di assicurare sicurezza, alle volte portando in primo piano gli obblighi internazionali verso i rifugiati. Inoltre, sia le politiche di controllo alle frontiere sia quelle di protezione internazionale sono state guidate dall'obiettivo di trasferire le responsabilità in questi due campi verso gli Stati Membri situati alle frontiere esterne, sovraccaricando di oneri i governi di questi paesi.

Infatti, tra gli obiettivi raggiunti con successo durante il processo di integrazione tra i Paesi Membri dell'Unione, c'è la creazione di uno spazio di libera circolazione delle merci, dei capitali, ma soprattutto delle persone. La zona Schengen è caratterizzata dall'abolizione dei controlli sistematici alle frontiere interne. Tuttavia, questa apertura, se da un lato ha comportato l'avvicinamento tra gli Stati Membri, favorendone la tanto auspicata integrazione; dall'altro ha portato ad un'inevitabile progressiva chiusura dei confini esterni, ed un atteggiamento più severo nei confronti dei cittadini di paesi terzi. Di conseguenza, gli Stati centrali dell'Unione non potendo più esercitare un controllo diretto sui propri confini, hanno iniziato a far pressione sugli Stati situati alle frontiere esterne, affinché effettuino un controllo serrato, in particolare per quanto riguarda il contrasto all'immigrazione irregolare. Allo stesso tempo, il processo di integrazione europea ha portato cambiamenti anche nel campo delle politiche di immigrazione e di protezione internazionale. L'UE ha adottato un sistema d'asilo che attraverso il regolamento Dublino II ha stabilito un meccanismo per determinare quale Stato Membro è responsabile dell'analisi di ogni domanda di asilo presentata in uno dei paesi dell'Unione. Questo regolamento si basa, tuttavia, sulla presunzione che le procedure per il riconoscimento dello status di rifugiato siano uguali in ogni Stato Membro, per questo motivo, dal Consiglio di Tämpere, l'UE ha iniziato un processo di riforme che avrebbe progressivamente portato ad un'armonizzazione delle politiche riguardanti l'asilo nei vari paesi Membri. Nonostante gli sforzi e le continue revisioni delle direttive esistenti, gli standard di protezione presentano ancora sostanziali differenze e questo fa sì che l'applicazione del regolamento Dublino abbia l'effetto di concentrare l'onere maggiore sui paesi più esposti all'ingresso di potenziali rifugiati, spesso quelli meno attrezzati per garantire un'effettiva protezione.

Per questo, la Grecia e la Bulgaria, così come altri paesi frontalieri, si trovano divise tra il compito di guardiano alle frontiere esterne e garante di protezione delle persone in fuga da persecuzione e situazioni di violenza generale. È indubbio che le conseguenze che le azioni messe in atto da questi stati hanno avuto sulle condizioni dei migranti e dei rifugiati siano da attribuire principalmente agli attori che in prima linea hanno perpetrato le violazioni dei diritti umani riscontrate, e alle autorità statali che non hanno esercitato un effettivo controllo; tuttavia, esse sono, a mio avviso, la prova che il sistema di cooperazione intergovernativa, seppure portata ad un livello superiore dal meccanismo europeo, non sia adatto a far fronte alle nuove sfide migratorie.

INTRODUCTION

The present work describes the response of the European Union to the challenges posed by the increasing migratory pressure; with particular attention to the decision of Greece and Bulgaria to fence their borders, in order to contrast irregular immigration. In the last years, the eastern borders of Europe have become the main point affected by the irregular entry of migrants and asylum seekers heading to Europe. This situation pushed the Member States, under the aegis of the Union, to adopt a more restrictive policy in respect to the concession to third country nationals of the right to enter one Member State's territory. The way in which Greece and Bulgaria responded to the emergencies have been criticized by many NGOs, by the other Member States and by the Union itself, for being apparently contrary to the general orientation of Europe in respect to human rights. The criticism, though, has addressed mainly the governments, as the only factors causing these situations were national mismanagements of the matter. The only references to the European Union regarded the calls to intervene in the name of the solidarity principle which links together the Member States; and the old criticism addressing the inappropriateness of the Dublin System. In my opinion, given the importance that the European institution have gained in the decision process in the field of immigration and border management, the reasons lying behind the failure in providing protection to immigrants are to be found also in the supranational dimension. Provided that the Greek and Bulgarian authorities and officers have the greater share of responsibility in respect of the gross violations of human rights, which cannot be justified by the interference of the EU, the conflicting roles that they have come to cover in the name of the common purposes have contributed to further complicate their situation; and this is a consequence of a structural problem deeply rooted in the European Union approach.

Moreover, when international actors came to criticize the attitude of these two countries, the most stressed aspect was the contradiction between the European commitments on the human rights and the incorrect implementation of these provisions by the Member States in question. This is a correct observation, but it is based, in my opinion, on the assumption that the position of the European Union is firm and clearly arrayed on the side of the respect of human rights, while, on the other side, the Member States are pushing against this view. Nevertheless, the European Union is a political organization, and as such continuously under the pressure of the political stream interesting the Member States in a particular period; as I will try to discuss, the recent evolutions of the European policies regarding immigration, security issues and

human rights show how the European Union is shifting according to the modern political landscape.

Since 2008 Greece reacted to the migratory pressure through enhancing the capacities and increasing the personnel appointed to the border controls; it carried out a number of patrolling operations with the aid of the European Agency for the coordination in the management of external borders, Frontex, in order to curb the illegal border crossings. Despite these efforts, the migratory pressure did not decrease, so the Greek authorities decided to build a physical barrier to obstacle the arrival of irregular migrants. In the first chapter, I will describe the consequences of the construction of the fence between Greece and Turkey, with a special attention to the effects that the closure of the most affected border of Europe have had on human rights. Indeed, the construction of the fence, coupled with the activity of the border personnel, resulted in a series of violations of the human rights of those migrants intercepted, as well as a deterioration of the material conditions of people put under detention on account of their illegal entry. Among the consequences of the fence between Turkey and Greece, there is also a displacement effect, i.e. the phenomenon of the shift of migratory flows from one route to another. This result, besides further endangering the fate of migrants who attempt to cross the Mediterranean sea, caused an increase in the pressure on the Bulgarian border; which, since the end of 2012, had to face the same challenges characterizing the neighboring country two years before. Also in this case, the conditions of aliens apprehended at the border and those of refugees have seen a deterioration.

Although the causes for the failure of these two countries to comply with the legal instruments regarding human rights must be certainly searched in the countries' features, it can be assumed that also the international legal system, in particular the EU legislation, has some responsibilities. Indeed, although the existence of an international organization based on the rule of law, having a strong role in shaping the national policies also in the field of migration, such as the EU, should prevent the arising of restrictive policies led by national interests; not only fences and restrictive measures have been successfully implemented, but they can be seen as a consequence of the ambiguity of the Union itself. Therefore, I focused my research on the ambiguous role that the European Union conferred to its Member States, as a consequence of its swinging approach towards matters of home affairs. This thesis aims at showing the link between the Greek and Bulgarian deficiencies in the management of borders and related practices and the European Union policy-making process, characterized

by a confusion of commitments relating to security issues and those resulting from international protection norms.

Among the objectives achieved in the process of European integration there is the establishment of an area of freedom of movement of goods, capitals and persons; this achievement, besides comprising the abolition of frontiers at internal borders, required an enhancement of the controls at the external frontiers. This enhancement is important to grant an effective application of the Schengen provisions regarding the freedom of movement among Member States, yet it has led to a more restrictive approach towards third country nationals. This can be considered an undesired outcome of the Schengen accords, but strictly linked with the contradiction between the responsibility to cope with a massive influx of migrants by the Member States situated at the external frontiers, such as Greece and Bulgaria and their role in respect of protection seekers. In fact, the process of European integration has also brought with some changes in the field of immigration and asylum; which charge the countries at the frontline with the responsibility to manage the asylum claims. The system adopted by the European Union in order to manage the asylum claims lodged in the territory of the Union in a more integrated way, is not characterized by a solidarity approach, rather it seems to be aimed at confining the refugees to the edge of the Union. This practice ends to overwhelm the National asylum system of those countries who are affected by the irregular entry of a high number of protection seekers. As a consequence of these two contrasting tasks, the Greek and the Bulgarian governments have been tugged between the need to ensure protection and the need to reduce the access to the European territory. The result of their choices caused a series of violations of human rights in respect of individuals attempting to reach the peace enjoyable in the modern Europe. Certainly, the attitude of these two countries towards migrants can be read also as a consequence of the nationalistic and xenophobic view of their governments; yet this is a tendency characterizing the recent politics of many European Member States. The Union institutions themselves, instead of posing limits to the national interests, have elevated the natural political tensions existing within a State to a supra-national level, reflecting the contradictions characterizing its Member States.

Immigration is a complex subject, involving different dimensions, so it requires a multidisciplinary approach. The tension between nationalism and globalization, the influence of the general fear deriving from the new ‘war on terror’, economic crisis and the trend to criminalize the image of the alien are interesting aspects of arguments regarding immigration and restrictive measures. For the purpose of this research, I gave more space to the juridical

dimension of the matter, which is not analyzed outside the broad debate over the failure of the Dublin system. Indeed, a wide literature has had as object the link between the failures of the external Member States in respect to the asylum issue and the lack of a mechanism granting an equal distribution of the refugees through the Union. Yet, this literature does not consider the link between security and protection system that is rooted since the very first emergence of the common approach in the field of justice and home affairs as a factor influencing the attitude of Member States.

During the research, I found relevant also to consider the recent concern over the consequences of the area without internal borders with the recent proposals advanced by some Member States. The last chapter entails references to the progressive erosion of the mutual trust between the Member States, which seems to undermine any improvements towards the advocated Union of free movement of persons. The path followed up to nowadays by the Member States has been pushed by the objective of enhancing the mutual trust, in order to progressively reduce the distance between them; however, the recent events, the pressure of the right-wing movements and the economic crisis have arrested the progress in this sense; and a change of direction is happening.

1. THE FENCE BETWEEN GREECE AND TURKEY

SOMMARIO: 1.1 Migrants' Flows, Greek situation; 1.2 Reactions of international actors to the decision to build the fence; 1.3 Consequences; 1.3.1 New routes, increase of immigration through Mediterranean; 1.3.2 Push-backs and non-*refoulement*; 1.3.3 Detention and the Human Rights Law.

1.1 MIGRANTS' FLOWS, GREEK SITUATION

By 2013, the Greek-Turkish land border is one of the main points of entry for migrants wanting to reach the European Union in search for better conditions, and for asylum seekers wishing to obtain international protection. As reported by Frontex, "the risk of illegal border-crossing along the land border of the Eastern Mediterranean route, including the Greek and Bulgarian land border with Turkey, is assessed amongst the highest"[1]. There has been a shift in the migratory routes towards Europe, with a higher rate of migrants resorting to the Eastern Mediterranean route, both by sea and by land in the last 6 years. As regards the sea crossing, the already high detection rate had been raising since 2008, while the land border with Turkey has now reached the rank of the major hotspot, coming to cover, in 2010, the 90% of the total of irregular border-crossings at the external European borders.

There are many reasons why migrants choose to leave Turkey and attempt to enter Greece beside family ties and migration networks; for example, the conditions under which migrants are subject in Turkey have been reported to be deplorable and the tutelage granted under its international protection system is not among the most desirables. Hence, migrants and refugees who managed to reach Turkey, also by legal means, are disappointed and tempted to try the leap to the European Union, hoping for an improvement of opportunities. Another factor that can be deemed relevant is the increasing of the conditions causing forced migration from Asia; for example, the outbreak of the Syrian civil war can have a share in the thickening of the flows coming from Middle Eastern countries towards Europe. There are various reasons for this shift from the so-called central Mediterranean route to the Eastern Mediterranean region. Although the outbreak of the civil war in Syria and the Turkish conditions occupy a prominent position among them; in this paragraph, I will focus on the influence of the operational activity of Frontex on the changing of routes followed by irregular migrants; for I am convinced that the deterrent measures that Member States put in

[1] FRONTEX, *Annual Risk Analysis 2013*, available on-line at http://frontex.europa.eu/news/annual-risk-analysis-2013-published-WuhFH2 p. 6.

place in order to prevent irregular border-crossing, with the aid of Frontex, have the effect of multiplying the points of entry of irregular migrants. Thus, instead of solving the problem, deterrent measures cause a scattering effect, that will lead to a weakening of frontier Member States' capabilities to cope immigration and asylum matters in the full respect of international obligations and of human rights.

The fact that migrants resort to the border crossing of the Greek-Turkish land border, instead of sealing through the Mediterranean Sea, is a recent trend. Indeed, while the Greek islands have always been affected by several waves of irregular migrants, because of their geographical position, the land border has become a border-crossing point only in recent years.

One of the causes of the increasing of the flow of irregular migrants from Turkey to Greece is the combination of the visa free regime adopted by Turkey in respect of nationals of countries like Azerbaijan, Iran, Jordan, Kazakhstan, Kyrgyzstan, Lebanon, Syria, Tajikistan, and Uzbekistan[2], as well as the conditions under which these migrants are subject in that country. According to the Turkish law, nationals from the afore mentioned countries can enter its territory without a visa for a short period and for touristic or business purposes. Following the enhancement of border controls at the external frontiers of Europe, Turkey, has recently shifted from being a mere transit country to be a destination country for migrants and also asylum seekers; nonetheless, its capability to manage the migration issue is still insufficient, and the conditions under which migrants are subjects are below human rights basic standards[3]. That is one of the reasons why, many migrants still decide to leave the country and attempt to enter the Greek territory.

As it is predictable, flows of Syrians entering Turkish territory have been raising since the outbreak of the civil war, and the number of asylum applications increased. As the Special *Rapporteur* of the UN Human Rights Council noticed in occasion of his visit to Turkey in 2012, the Turkish government effectively responded to the demands for asylum, granting a temporary protection status to 35 000 Syrian refugees, and even more after his visit[4]; however, there is still a high number of them moving toward Greece. That is because, despite the

[2] http://www.mfa.gov.tr/visa-information-for-foreigners.en.mfa

[3] UNITED NATIONS (GA), Human Rights Council, *Report by the Special Rapporteur on the human rights of migrants, François Crépeau on his mission to Turkey*, 17.04.2013, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/46/Add.2

[4] UNITED NATIONS (GA), , Human Rights Council, *Report by the Special Rapporteur on the human rights of migrants, François Crépeau on his mission to Turkey*, 17.04.2013, p. 4.

improvements made in the field of international protection, the Turkish asylum system is not well structured. Firstly, although Turkey is party to the 1951 Geneva Convention relating to the status of Refugees, the major international tool granting protection to refugees, it did not extend the geographical scope of the Geneva Convention while ratifying the New York Protocol of 1967[5]; thus, it does not contemplate a proper refugee status for non-European nationals. Indeed, the protection of refugees is not comprised in a comprehensive legislation, and even though application lodged by non-European asylum seekers are processed and can bring to the granting of a 'conditional' form of refugee status, there is not a definitive solution for these applicants[6]. On the basis of the current Turkish legislation relating to this matter, the 1994 Asylum Regulation, "non-European asylum seekers eligible for the "refugee" definition incorporated in 1967 Protocol are allowed to reside in Turkey for a reasonable period of time and granted the right of temporary asylum […]until they are admitted as refugees by a third country"[7]. Second, Turkey has not adhered to the 1954 Convention on the Status of Stateless Persons, nor to the 1961 Convention on the Reduction of Statelessness.

It has to be said that, notwithstanding the absence or weakness of international instruments binding on Turkey to provide international protection to persons in need; Turkey has been showing its willingness to improve the material aid to the increasing of refugees on its territory. Although it has been up to now reluctant to improve the legal safeguards reserved to Asian refugees; since 1994 the level of protection has been progressively improved, thanks to the collaborative approach demonstrated by the Turkish authorities towards the local branch of the UNHCR. Yet it was only in the view of its accession to the EU, by the end of 1990s that the Turkish government started a process of structural reform in order to adapt gradually the legal system also regarding immigration and international protection to the European standards. After producing papers setting out the measures to be implemented in these fields since 2001; in 2004 the Turkish Prime Minister approved a *Migration and Asylum Twinning Program* to be implemented with the collaboration of Denmark and Great Britain, and a

[5] Turkey has ratified the Protocol on July 1st 1968, but maintained the geographical restriction prescribed in the Geneva Convention.

[6] UNITED NATIONS (GA), , Human Rights Council, *Report by the Special Rapporteur on the human rights of migrants, François Crépeau on his mission to Turkey*, *v. supra* footnote 3, pp. 14-15.

[7] *Regulation on the procedures and principles related to population movements and aliens arriving in Turkey either as individuals or in groups wishing to seek asylum either from Turkey or requesting residence permits in order to seek asylum from another country* , (1994 Asylum Regulation), adopted by Cabinet Decree No 6169 of 30 November 1994.

National Action Plan with the objective to align Turkish asylum and migration strategy to the European *aquis*[8]. Nevertheless, a report of the Commission edited in 2010, concerning the outcome of the screening process considered Turkey not to be compliant with the EU *acquis*. Therefore, to align with the EU standards does not mean to improve conditions for asylum seekers. Firstly, safeguards provided by the Member States themselves are not always the most favorable from the point of view of the individuals. Moreover, the interest of the European Union in the negotiation with Turkey on the harmonization of asylum policies has to be read as an extension of the discourse over security concerns, and in line with the attitude of the Commission always trying to outsource the managing of the international protection system[9]. For this reason, the aim of the EU was to obtain that Turkey recognizes any kind of definitive refugee status for non-Europeans, by lifting the geographical restriction of the Geneva Convention; from the point of view of the Commission, if Turkey would be able to grant a definitive solution for non-European refugees, other than resettlement, which is the only durable solution reserved to them nowadays in Turkey, a fewer number of asylum seekers would be tempted to continue their journey towards Europe. On the contrary, Turkey has no intention to lift the geographical limitation, for it does not want to become a target country for asylum seekers and keeps on dealing with the issue through granting temporary protection in the view of resettlement. However, this is not a big issue, for even without the geographical restriction, the habit to resort to resettlement, and when possible voluntary return, ignoring other solutions, such as integration, is the main cause of the disappointment of asylum seekers. The new Law on Foreigners and International protection approved in 2013 does not prescribe any durable solution, nor the lifting of the limitation.

The border between Greece and Turkey consists of 206 km of land border in the Evros region (major part of which overlaps with the Evros River) and a sea border in the Aegean Sea. These are the two routes among which Asian and African migrants travelling through Turkey are called to choose, when they decide to enter the Greek territory. Nevertheless, migration flows do not follow fixed routes, but they continuously change depending on several factors. It is worthwhile to underline that beside the traditional factors influencing the migrants'

[8] *Turkish National Action Plan for the adoption of the EU aquis in the field of asylum and migration*, adopted on March 25th 2005, available on-line at http://www.google.it/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=5&cad=rja&uact=8&ved=0CEoQFjAE&url=http%3A%2F%2Fwww.carim.org%2Fpublic%2Flegaltexts%2FLE2TUR003_EN.pdf&ei=cag-U-OuJsGBywOw4IH4CA&usg=AFQjCNHvCajjE0xS5cvBjVy2Iskg0zM_3A

[9] For example the safe-third country notion.

choice of the route to follow, such as geographical distance from the home country, the availability of illegal facilitators, i.e. smugglers, for a particular route has its share in the determination of the journey. Although many migrants simply undertake the journey independently, many others have the chance to move from a country only through the help of smugglers, who provide them with information over the means by which to cross the borders. In smugglers' choice of the route to suggest to migrants paying for their assistance, the consistence and effectiveness of border controls and deterrent measures put in place by the country of destination play certainly a huge role. As witnessed in occasion of *Operation Aspida*, an enhancement of border guards at the Greek land border, which will be analyzed later in this chapter[10], as a consequence of the tightening of controls on land, "there were increased detections of illegal border-crossing at both the Turkish sea border with Greece and land border with Bulgaria, indicative of weak displacement effects from the operational area"[11]. Despite the fact that according to the *Frontex Annual Risk Analysis*, the activity of border patrols in a particular crisis area has had effective results, leading to a reduction of the number of migrants crossing EU's external borders[12], the agency is widely aware of the existence of the so-called "displacement effect", i.e. the phenomenon of diversion of the irregular migration to alternative points of entry, as a result of the measures taken in order to prevent irregular border-crossings. This is also evident if we consider the concerns that the European agency itself expressed in the *RABIT Operation 2010 Evaluation Report*; in which, while defining the impact of the operation carried out at the Greek-Turkish land border, it counts among the objectives that of "ensuring the preparedness for relevant reaction against displacement effect towards Bulgaria"[13]. For the same reason, Frontex did not suspend during the implementation of the RABIT Operation in 2010, the *Poseidon Sea Joint Operation*, another activity implemented in the area which was focused on the patrolling of the sea border. Moreover, according to the same report, the choice of carrying on this activity simultaneously has helped to obstacle the expected increase of the interceptions at sea as a consequence of the enhanced land border controls.[14] At the light of what stated above, the fact

[10] See paragraph 1.3.1.

[11]FRONTEX, *FRAN Quarterly issue3, July - September 2012*, available at http://frontex.europa.eu, p.5.

[12] FRONTEX, *Annual Risk Analysis 2013*, *v. supra* footnote 1.

[13] FRONTEX, *RABIT Operation 2010 Evaluation Report*, available on-line at http://frontex.europa.eu/news/frontex-evaluation-report-on-rabits-publicly-available-MwGa0e, p. 12.

[14] FRONTEX, *RABIT Operation 2010 Evaluation Report*, p. 16.

that recently the border between Greece and Turkey has become the main point of access to the European Union can be seen as a consequence of the enhancement of Frontex joint operations in the sea. This is also true if we consider that among migrants and asylum seekers choosing the Eastern Mediterranean route we count not only Asian and Middle Eastern migrants but also an always-increasing number of North Africans, or sub-Saharan Africans.

Before 2008, the preferred route chosen by irregular migrants and asylum seekers to reach Europe was the Central Mediterranean area; they used to leave from the northern coast of Africa, travel aboard small vessels or inflatable boats, heading to the coasts of Spain, Italy and France. In order to cope with the massive influx of irregular migrants on its small islands in the sea, the Italian government in 2008 signed a "Treaty on friendship, partnership and cooperation" with Libya. In addition, Frontex has been organizing various operations in the area in order to assist these countries in the border management activities. Despite these efforts, the number of detections of boats carrying illegal migrants through the Mediterranean did not stop. On the contrary, it increased; especially with the outbreak of the Arab spring in Libya and Tunisia in 2011 and as a consequence of the conditions of migrants apprehended by the Libyan government. Indeed, the number of people fleeing from the civil war in Libya through the Mediterranean is not as high as the number of sub-Saharan immigrants and asylum seekers fleeing from the harsh measures imposed by the Qaddafi regime to migrants[15]. Beside those arriving to Libya with the intention to reach the Italian shore, even those who intended to remain in Libya and settle there, were forced to try to make their way to Europe after having faced the conditions imposed by the regime: irregular migrants arriving from the South and those returned to Libya after being intercepted in the sea while attempting to reach Italy were kept in overcrowded detention centers where they were beaten, raped, abused, and denied any opportunity to obtain international protection. Thus, the risk of illegal border crossing in the Central Mediterranean area is still a cause of concern for Frontex[16]. Nevertheless, the Italian diplomatic effort and the operations of Frontex have had the effect of discouraging the choice of the Central Mediterranean route in certain cases. In fact, the year 2008 saw an increase in the number of detections of illegal border-crossings in the so-called

[15] MAINWARING C., In the face of revolution: the Libyan civil war and migration politics in Southern Europe. *The EU and Political Change in Neighbouring Regions: Lessons for EU's Interaction with the Southern Mediterranean*, Calleya S, Lutterbeck D, Wohlfeld M, Grech O (eds). Malta University Press: Malta, 2012, p. 431-432.

[16] FRONTEX, *Annual Risk Analysis 2013*, *v. supra* footnote 1, p.6.

Eastern Mediterranean route, i.e. along the Turkish-Greek border[17]; since then, this route has maintained the status of major hotspot of irregular entry up to mid-2012. "Detections have followed a remarkably seasonal pattern invariably peaking in the third quarter of each year and concentrated at the border between Greece and Turkey, with a shift from the sea border to the land border visible in late 2009".[18] Particularly, between 2009 and 2010 the province of Alexandroupolis, in the southern area along the land border with Turkey, and the Greek islands were more affected by the irregular-crossings; starting from April 2010 the situation changed and the flows shifted from the sea route to the land border, affecting the northern part, i.e. the province of Orestiada.[19] This change in tendency was partly due to the action of Frontex in the Eastern Mediterranean; in fact, Frontex forces have carried out border patrol operations in the Eastern Mediterranean in order to support Greek border police officers since 2006. The most important of these was the "Poseidon Joint Operation", which was created as a sea patrolling operation[20]. For it was successful as a deterrent measure, migrants in 2010 started to choose the land border as a new route towards the EU, and the decision of the Greek government to remove anti-personnel mines in the region of Evros along the land border certainly made this crossing more feasible and attractive from the point of view of the smugglers[21].

The lacking of resources at a national level, added to the increase of migration flows that year, pushed the Greek Minister of Citizen Protection, Christos Papoutsis to request for the exceptional deployment of a Rapid Border Intervention Team on 24th October. It has to be reminded that in 2007, the European Union provided the frontier states with a new tool; under the Regulation (EU) 863/2007, Frontex puts at the disposal of requesting Member States a group of experts of border surveillance, the Rapid Border Intervention Team (RABIT). Under the provisions set in this regulation, any Member State has the possibility of requesting for the deployment on temporary basis of the team on its territory to receive assistance in surveillance activities and checks of persons at its border. Rapid Border Intervention Team

[17] FRONTEX, *Annual Risk Analysis 2013*, p. 5.

[18] FRONTEX, *FRAN Q3 2012*, *v. supra* footnote 11, p.21-22.

[19] FRONTEX, *RABIT Operation 2010 Evaluation Report*, *v. supra* footnote 13, p. 6-7.

[20] http://frontex.europa.eu/operations/archive-of-operations/WxZbeb

[21] UNITED NATIONS (GA), , Human Rights Council, *Report by the Special Rapporteur on the human rights of migrants, François Crépeau on his mission to Greece*, 17.04.2013, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/46/Add.4, p. 7.

comprises high-trained personnel and appropriate resources to assist the border guards of the Member State in case of emergency; it operates with the participation of experts from other Member States, under the coordination of the national authorities[22]. It was the first time the RABIT was deployed in a real emergency circumstance and the personnel was glad to have the chance to apply the training they had been doing until that moment[23]. The very next day the Frontex Executive Director, Ilkka Laitinen, signed a decision to deploy the RABIT at the Greek-Turkish land border; and 175 guests officers[24] sided the national border guards working on patrolling the border hot spots and assisting them in screening and interviewing, in order to determine the nationalities of undocumented third country nationals and collecting information on people-smuggling networks. *The Poseidon Joint Operation Land* was suspended during this period, and the resources previously used for it were employed in the implementation of the RABIT[25]. Eventually, the Greek operation, which ended in March 2011, has been considered a great achievement. According to the Frontex report, it has brought a reduction of 76% in the number of irregular migrants since its beginning; in fact, the number of detections per day decreased from 245 in October 2010, to the 58 of February 2011[26].

Nevertheless, despite the fact that after the conclusion of the RABIT Operation, the previous *Poseidon Joint Operation* was restored; the flow has gradually returned to its previous level, reaching during the third quarter of 2011 a higher number of detections comparing to the same period in 2010[27]. In conclusion, from the agency point of view, the RABIT Operation has been a success, for almost all the expected objectives have been achieved; yet the Greek

[22] Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending the Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guests officers, *O.J.E.U.*, L 199/30, 31.07.2007

[23]FRONTEX, *RABIT Operation 2010 Evaluation Report*, *v. supra* footnote 13, p.7.

[24]During the four-months operation they reach a total of 576 from 26 Member States, see *ibidem* p. 7.

[25]*Ibidem*, p.16.

[26] *Ibidem*, p.8.

[27] FRAN data as of 12 February 2013, in FRONTEX, *Annual Risk Analysis 2013*, *v. supra* footnote 1, p. 21; and FRAN data as of 10 November 2012, in *FRAN Q3 2012*, *v. supra* footnote 11, p. 21.

government since its very ending have been expressing its disappointment, deeming the reinforcement provided by other Member States insufficient[28].

Stating that it is the states' attitude of restricting the entry of third country nationals that conditions the choice of migrants, seems to ignore the reality that migrants do not always have the possibility to know these measures in advance and the fact that many of them are asylum seekers or minor and do not always have the opportunity to choose. Yet, the scope of these operations goes beyond simple checks of credentials of people crossing the borders, comprising operations actually preventing migrants from accessing the country. Thus, the reduction of border-crossing observed by the agency does not mean that migrants have decreased or voluntary started to choose alternative points of entry; but, after being pushed back on the Turkish shore by sea patrols, they are forced to try to accede Greece through the land border.

1.2 REACTION OF INTERNATIONAL ACTORS TO THE DECISION TO BUILD THE FENCE

At the beginning of 2011 the Greek government was desperate to find a definitive solution. With the European Union, Frontex and the individual Member States continuously calling for improvement in the border management and for a more effective contrast to irregular immigration, the pressure on the Greek government was becoming unsustainable. Moreover, the ongoing economic crisis did not make the situation bearable, forcing the Minister of Citizen Protection to complain for the insufficient financial and material aid received by the EU. These two factors, the political and economic pressure, combined with the nationalism, which finds always room to flourish in crisis periods, have turned the concern over the migration control into a urgent matter to be dealt with in a drastic way. Thus, the government started thinking that a massive action would be seen as a sign of the firmness of its intention to take its responsibility as a frontier state seriously and would be welcomed by the European Union. On the example of the two walls of Ceuta and Melilla, raised for the purpose to deter irregular migrants from crossing the frontiers of the two Spanish enclaves at the border with Morocco, the Greek government had decided to invest in the building of a barrier along its border with Turkey, in the Evros region. The fence is meant to be "a preventing measure to

[28] SMITH H., *Greece is now on the frontline of the Fortress Europe, as non-EU refugees pour in across the Turkish border*, on www.theguardian.com, 6 February 2011.

curb irregular immigration" and it will send a message: "Greece is not a friendly destination" for migrants willing to stay in the country clandestinely.

Member States and international actors have been fairly consistent in condemning this decision; although there have been some discordant voices. First, a local poll[29] shows a high consensus among the Greek population with the government position over the immigration policy in general; particularly, the 80% of interviewed people was in favor of the building of the fence. Second, France has been backing the proposed fence; and even Turkey did not express objections to it.

France

The French Interior Minister Brice Hortefeux, during a visit to Athens on January 2011, welcomed the proposal and boosted the Greek Minister to take action as soon as possible; for he was convinced that, as long as the human rights were respected, a fence would be a step in the right direction[30]. The reference to the respect of human rights is outstanding within this sentence, for it does not consider the wall itself as a violation of human rights. The Minister certainly intended clarifying that his endorsement was limited to the idea of blocking the entry of irregular migrants, without, by this, claiming that France would welcome any mean. However, the blocking of the entry of a person into a country can constitute itself a violation of human rights; in fact, the right to seek asylum comprises the right of free access to any country. The French administration continued to rule in favor of the construction of the wall on the Greek-Turkish border even the next year, when the head of the Office of Immigration and Integration, Arno Klasfeld, defined the proposal a matter of common sense. In this rhetoric, the image used by French to sustain the benefits of a wall closing the gate into Europe is that of ancient Rome, seen as an example of a prosperous empire lasted for centuries thanks to the security role of its external walls[31].

[29] Marc SA, poll published in Ethnos newspaper in January 2011.

[30] *France backs wall project at Greece-Turkish border*, on www.euractiv.com/justice/france-backs-wall-project-greece-news-501687, published 28 January 2011.

[31] *French officials wants wall at Greek-Turkish border*, on www.euractiv.com/justice/french-official-wants-wall-greek-news-511492, published 14 March 2012.

Turkey

The Turkish government did not obstacle the proposal; on the contrary, it saw it as a political tool, a chance to boost its request for a visa-free regime with the EU for Turkish nationals, and a step towards the awaited accession to the Union. The governments of Athens and Ankara are in good relations, and the respective representatives seemed to agree on the need for a coordinated effort in the border management, as well as on the construction of the wall. Indeed, the Turkish Prime Minister, on his visit to Athens, was impressed when he found out the number of irregular migrants crossing the border to Greece every day; and he expressed his solidarity with the Greek government, promising a better cooperation in this field, for it is considered a matter of common interest.[32] From the counterpart, the Greek Foreign Minister stated clearly that the fence was not meant to be a measure against Turkey or Turkish nationals; and he expressed his willingness to concede the visa-free regime between the two countries, for the opening the doors to the Turkish neighbors was deemed profitable for the Greek touristic sector. Nevertheless, the European Union is not so ready to undertake this discourse; the opening of frontiers to the free movement of persons is a sensitive point even among Member States. Indeed, some European Prime Ministers, in recent years, advocated for the closing of internal borders, hindering the free movement of European citizens within the Union. As we will see in the next chapter, the Central Member States are nowadays reconsidering their original opinion regarding the Schengen area, whishing for its dismantlement; it is predictable that a visa-free regime in respect of non-European citizen would be out of question in this period.

On the one hand, Greece, France and Turkey saw the wall as a great project that would help the two countries in improving their management of irregular immigration; on the other hand, Germany, the European Union institutions, in particular the Commission and the majority of NGOs directly involved in the issue strongly sided against this proposal. The most reported reasons of this opposition was the concern over the problems and dangers migrants would have to face as a consequence of the closing of the gate into Greece. Particularly, the displacement effect, which is expected to force migrants towards more perilous journeys. In addition, many others suggested that, even in the best case scenario, imagining that it presents no dangers for migrants, it would not be helpful in reducing the migratory pressure.

[32] VALENTINA POP, *Greece blasts EU 'hypocrisy' for opposing Turkey wall plans*, 10 January 2011 on http://euobserver.com.

Council of Europe

The President of the Council of Europe's Parliamentary Assembly Committee on Migration, Refugees and Displaced Persons, Giacomo Santini, expressed his opinion regarding the decision to build a wall at the Greek-Turkish border on February 2012. He argued that putting a physical obstacle to border-crossing is not a solution, it will have the same displacement effect witnessed in occasion of the enhancing of border patrols at sea; migrants will look for alternative and more dangerous routes in order to reach European shore. In addition, the president calls upon the European Union to take action and show solidarity to Greece, which is facing a migration crisis worsened by the unfairness of the Dublin System, the mechanism of distribution of responsibility to manage asylum application lodged within the European Union borders, and by the economic crisis[33].

UNHCR

The United Nations High Commissioner for Refugees shares the same concern about the fence plans, stating that such measure will force asylum seekers to undertake more dangerous crossings and it may put refugees at the mercy of smugglers, with the predictable breaches of their human rights[34]. The right to seek asylum comprises, indeed, the possibility to enter the country of potential asylum, by both legal or illegal means, in order to lodge the request for international protection[35]; thus, any measure aimed at preventing the access of these persons to one territory would be a breach of the commitment of the state not only under international treaties relating to asylum, particularly the Geneva Convention of 1951, of which Greece is a signatory state, but also in violation of the basic human rights principles. In addition, UNHCR spokesman reported that the Agency is concerned about the proved Greek practice of the systematic pushback of asylum seekers, among the others, at the border with Turkey[36].

[33] COUNCIL OF EUROPE, "*Giacomo Santini: Greece's anti-immigration fence 'will not solve anything'"*, February 9th, 2012. www.humanrightseurope.org/2012/02/giacomo-santini-greece%E2%80%99s-anti-immigration-wall-%E2%80%9Cwill-not-solve-anything%E2%80%9D/

[34] *UN concerned Syrian asylum-seekers denied entry to Greece, Bulgaria*, on www.worldbulletin.net 15th November 2013.

[35] Art. 31 of the United Nations Convention relating to the Status of Refugees, Geneva, 28 July 1951, available on-line at http://legal.un.org/avl/ha/prsr/prsr.html

[36] *UN concerned Syrian asylum-seekers denied entry to Greece, Bulgaria*, on www.worldbulletin.net 15th November 2013.

Greek office of IOM, International Organization for Migration

"The idea of building more walls around a Fortress Europe is outdated" said the head of the Greek office of IOM, Daniel Esdras. He added that a solution to the problem of irregular immigration has to be found by a deep analysis of the local factors causing forced migration, the institution should focus on international cooperation, in the view of bettering the condition of the country of origin of these migrants, in order to root out the reasons that force people to leave their country[37].

Germany

According to the major German newspapers, the reaction to the Greek decision appears as a coexistence of firstly a complaint about the predictable inefficacy of the wall as a preventing measure, and of a concern about the diplomatic outcomes of the act to build a fence between two countries party of the NATO; decision made even more absurd in the view of a potential future accession of Turkey into the EU and consequently into the borderless Schengen area[38]. Furthermore, other sources expressed the shared view of the German government and of the EU itself, stating that the wall could close the border, but it does not constitute a solution to the problem, for it will certainly lead to a displacement effect, forcing migrants and asylum seekers to risk their lives in the attempt to reach Greece or Europe through more dangerous routes[39].

European Commission

Since the beginning the European Commission has been expressing its dislike for fences at borders; nonetheless, the Greek government felt confident in submitting to the European Union a request for a co-financing to fulfill the project. The European Commission spokesman declared that the EU Home Affairs Commissioner, Cecilia Malmström, on behalf of the commission, decided not to follow up on the Greek request, because it was considered pointless. The Commission had repeatedly addressed fences and walls as "short term measures" that do not deal with the question of irregular immigration in a structural way, as

[37] LABROPOULOU E., *Concern over proposed Greek border fence*, on http://edition.cnn.com, 4th January 2011.

[38] PETZINGER J., SMEE J., *Greece's planned border fence is 'an act of despair',* on The World from Berlin, www.spiegel.de, reporting the position expressed on Frankfurter Algemeine Zeitung, 01/06/2011.

[39]PETZINGER J., SMEE J., *Greece's planned border fence is 'an act of despair',* on The World from Berlin, www.spiegel.de, reporting the position expressed on Die Zeit, 01/06/2011.

deemed necessary, particularly in the Greek case; for example, through discouraging smugglers and traffickers. The Commission expressed its readiness to finance other measures, for example the implementation of the Greek Action Plan on Migration and Asylum, aimed at improving the conditions of the managing of this issue[40].

Notwithstanding the strongly opposing public opinion, the Greek Minister Papoutsis continued to defend its plan, tearing into the hypocrisy of those Member States and the European institutions themselves, which keep complaining about Greek incapability to deal with incoming flows; yet, at the same time, criticizing its efforts to improve the situation. Particularly, target of the minister's complaints was the lack of willingness of the EU to revise the Dublin II Regulation, in a manner which would help Greece, as well as other southern frontier states affected by the same situation, to better face the burden of taking back asylum seekers returned within the Union Member States under the Dublin mechanism. Unwillingness, which from the point of view of the Greek Minister, shows the hypocrisy of EU policies in migration matters. Moreover, the Regulation of the External Borders Fund (EBF) provides for the eligibility of a financing request for the construction of the fence, according to Minister Papoutsis. In fact, the EU did not base its refusal on the ground of an alleged lack of legal bases for the request; yet it expressed a political opinion condemning the choice of the Greek government[41].

In this contest, it is clear that the Greek government was more and more determined in carrying out its mission to fight irregular immigration by any mean at its disposal. For this reason, in February 2012, Greece announced the official decision to build a razor wire fence, expected to cost around 3 million euro, financed using the national Public Investment Program. While the EBF had been accorded for the purchasing of new vessels at the disposal of the Hellenic Coastguard and it was used to finance the Border Surveillance Operational Center with thermal cameras[42]. In the end, the European Union did not accept to found the construction of the fence itself; but, providing the border guards with an Operational Center

[40] EUROPEAN COMMISSION, Answer given by Ms Malmström on behalf of the Commission, 06.12.2011, published on O.J. C 154, 31.05.2012.

[41] HELLENIC REPUBLIC CITIZEN PROTECTION MINISTRY, Press Release, *Statement by the Minister for Citizen Protection and former Commissioner, Mr. Christos Papoutsis, about the fence in Evros, following the statement made today by the Spokesman for the European Commission, Mr. Michele Cercone*, Athens, 07.02.2012.

[42] *Ibidem*.

and sophisticated equipments, it has shown not to be against the enhancement of controls and obstacles to the entry of third country nationals into the European territory. On the one hand, it would have been unacceptable that the European Union, which was in the running for the Nobel Peace Prize, had financed a wall aimed at preventing persons in need to reach its territory, and benefit from the peace and democracy enjoyable therein. On the other hand, the refusal to co-finance the construction of the wall did not mean to claim that Greece is exempt from exercising its role as watchdog of the frontiers of the European Union.

The construction started on 13 April 2012, the fence is 10.5 km long and it was completed by the end of 2012. It is, as expected, provided with razor wire, night-vision devices and thermal cameras.

Since the determination of the Greek government could not wait the end of the construction to see results; on July the 30th, it launched a new operation, called *Aspida,* the Greek for "shield", in order to contrast the massive inflow in the Evros region. It was a deployment of 1881 additional police officers and technical equipment at the border. Border guards' main task was to intercept irregular migrants on the Turkish side; then call for Turkish guards intervention to apprehend them, preventing them to cross the border. Sea patrols were also operative on the Evros River, with the same task, and a new fleet[43].

Within this framework of renewed concern about the fight against illegal immigration, the Greek government has ordered a number of countermeasures aside from the fence, and the Operation *Aspida.* In fact, in the same period, the efforts of the police did not limit to obstructing the entry of migrants, through patrolling the sea and arranging the operational centers; they have been also engaged in arresting persons already inside the territory without any authorization to stay, under the so-called *Xenios Zeus Operation,* which ran in parallel with the border controls of *Aspida*. Furthermore, the already disputable detention period of 6 months applied in cases of apprehension of irregular migrants has been lengthened to up to 18 months.

[43] UNITED NATIONS (GA), Human Rights Council, *Report by the Special Rapporteur on his mission to Greece*, *v. supra* footnote 21, p.7.

1.3 CONSEQUENCES

The building of the fence has had controversial outcomes; on one hand, from the point of view of migration control, it has been considered successful, for the illegal border-crossing rates have been decreasing since late 2012; on the other hand, it has brought various negative consequences, and a number of violations of human rights, which have given room to many criticism from the part of NGOs and international entities, as they have seen the fears expressed at the moment of the proposal turned into facts. Firstly, there is the displacement effect; as a consequence of the closing of the gateway through Greece, other points of entry have witnessed an increasing migratory pressure, such as Bulgaria and the Greek islands in the Aegean Sea. Second, the police efforts to intercept as many irregular immigrants as possible have caused an increase in the number of people put under detention in the already overcrowded Greek detention centers; with the consequent exasperation of detention conditions. And finally, the wall is an obstacle to the right to access to asylum procedures of people in flight from persecution or general violence; particularly worrying if we consider the low level of protection offered by Turkey. Needless to say all these negative outcomes comprise manifest violations of state's commitments to human rights and international norms protecting refugees. In this paragraph, I will describe these consequences of the building of the fence at the Greek-Turkish border, with a special attention to its effect on human rights standards.

1.3.1 New routes, increase of immigration through Mediterranean

As the consequences of deterrent measures put in place by Frontex and border guards have shown that closing a gate to immigration does not stop forced migration, they rather cause a diversion of the flows to other points of entry; in the same way, a physical barrier have brought to a change of trend in the preferred routes of migrants. Using the words of the President of the Council of Europe's Parliamentary Assembly Committee on Migration, Refugees and Displaced Persons, Giacomo Santini: "We have already seen this in the Mediterranean region; when obstacles are increased, migration routes shift."[44]

As we have seen in the first paragraph, up to 2010 the main route followed by irregular migrants heading to Greece was the Aegean Sea; that year the flows shifted to the land border

[44] COUNCIL OF EUROPE, "*Giacomo Santini: Greece's anti-immigration fence 'will not solve anything'"*, February 9th, 2012. www.humanrightseurope.org/2012/02/giacomo-santini-greece%E2%80%99s-anti-immigration-wall-%E2%80%9Cwill-not-solve-anything%E2%80%9D/

in the Evros region for the reasons mentioned above. Two years later, during the construction of the wall, Greece has seen a reduction of the detections at the land border and a shift of migrants flows to the sea route, with the increasing in the arrivals on Aegean islands of Lesvos, Samos, Symi and Farmknossi. According to the Frontex data of 2012, the period coinciding with the operational activity saw the lowest number of detection of illegal crossings since the beginning of the flows in 2008; and this decrease in number is deemed to be a consequence of the deterrent effect of the *Operation Aspida*, implemented in the Evros region in summer 2012.[45]. At the end of 2012, Greece completed the construction of the fence[46]. Looking at the table recording the statistics of detections of illegal border-crossing of external borders of the EU, published in the *Annual Risk Analysis* of Frontex, one can witness that while border-crossing at the Eastern Mediterranean route through the land borders decreased from 55.558 in 2011 to 32.854 in 2012, detections in the Aegean Sea increased passing from 1.467 to 4.370 in the same period[47]. And according to the Greek Police data, the trend continued the next year, when detections at the land border reached negligible figures, compared to the first part of the previous year, while detections at the sea borders peaked[48].

However, it has to be said that, as the FRAN data show, the irregular-crossings of Syrian nationals through the border between Turkey and Greece, remained high as it was before the building of the fence, and despite the enhanced controls. Though this apparently contradicts the thesis that such measures work as displacement factors, it has to be kept in mind that those migrants are asylum seekers escaping from war and, as such, they are desperate to find refuge. Thus, even the worse prospect regarding the treatment in the country of destination or the risks one can face during the flight cannot be enough to prevent them from attempting the border-crossing[49].

The situation of migrants attempting to cross the Greek border via sea has worried the international community; indeed, the route via sea is deemed more dangerous than the land border-crossing, for immigrants and asylum seekers are often in the hands of ruthless

[45] FRONTEX, *FRAN Q3 2012*, *v. supra* footnote 11, pp. 13, 16, 20-22.

[46] EUROPEAN COMMISSION, *Commission Reports on EU free movement*, Brussels, 03.06.2013, available at http://europa.eu/rapid/press-release_IP-13-496_en.htm , p.2.

[47] FRONTEX, *Annual Risk Analysis 2013*, *v. supra* footnote 1, Table 4, p. 21.

[48] www.astynomia.gr

[49] FRONTEX, *FRAN Q3 2012*, *v. supra* footnote 11, p. 22.

smugglers, who provide them with damaged boats or vessels. There has been an increasing in the number of deaths in the Aegean Sea since late 2012. By way of example, in September 2012, a boat sank off the coast of Izmir and 60 migrants lost their lives; in December 2012 a boat with about 20 people aboard sank on its way to Lesvos. Again on March 6th 2013, the same happened to a boat carrying mainly Syrian nationals attempting to reach the shore of a Greek island.[50] These kind of accidents continued to happen also in the first part of 2014.

Migrants and asylum seekers while attempting to reach the territory of a country have to face enough dangers, finding themselves to overcome natural barriers: desert, mountains, and the sea, with insufficient means and inappropriate equipment because of ruthless smugglers. As if this was not enough, the attitude of the Hellenic border guards, backed by Frontex personnel, pose a further obstacle; since, instead of "render[ing] assistance to any person found at sea in danger of being los" [51], they purposefully damage their vessels and carry out informal returns, during which migrants are subject to any kind of ill-treatment. As we will see in the next paragraph, NGOs such as Amnesty International and Pro Asyl, as well as the main IGOs expressed their concerns over this practice; which, beside being morally despicable, entails a series of breaches of the European Convention for the Protection of Human Rights and Fundamental Freedoms[52] (hereinafter European Convention, or ECHR), and simultaneously of its twin at EU level, the European Charter of Fundamental Rights, as well as violations of the United Nations Convention on the Law of the Sea of 1982[53] (hereafter UNCLOS), and of the 1951 Geneva Convention relating to the Status of Refugees, particularly to the principle of non-*refoulement* and the right to seek asylum.

[50] COUNCIL OF EUROPE, Parliamentary Assembly's Committee on Migration, Refugees and Displaced Persons, *Migration and asylum: mounting tensions in the Eastern Mediterranean*, Strasbourg, 23 January 2013, p.10

[51] Art. 98(a) of the UNITED NATIONS *Convention on the Law of the Sea*, Montego Bay,10 December 1982, available on-line at http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm

[52] COUNCIL OF EUROPE, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, available on-line at http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=1&CL=ENG&NT=&NU=005.

[53] UNITED NATIONS *Convention on the Law of the Sea*, Montego Bay,10 December 1982, *v. supra* footnote 51.

1.3.2 Push-backs and non-*refoulement*

Amnesty International edited a report concerning the situation of migrants trying to enter Greece, both by sea and by land. The report stresses the breaches of fundamental rights perpetrated by Greek coastguard and Frontex officers. Testimonies reported that, when boats are intercepted and reached by patrols, migrants, instead of being rescued, are, in many cases, beaten and deprived from their few belongings; before being pushed out of the edge of the Greek territorial sea[54]. The unofficial goal of sea patrols is, indeed, to carry out push-back operations, leading to collective expulsions.

In some cases, the Greek Coastguards deliberately damaged the overcrowded inflatable boats in order to prevent them from continuing the journey towards the Greek islands. A young Afghan told Amnesty that after having sealed for hours since the departure from the coast of Izmir, on a rubber dinghy with about 40 people onboard, the Greek authorities approached their boat and transshipped them onto the Greek vessel. There, they started beating very badly all these people, without explanations and with no exception for minors and women. The Greek police took all their belongings, money, mobile phones, and clothes. After further hours, when they reached the Turkish territorial sea, the Greek officials transfer the migrants back on their inflatable boat; scratched a side of it with a knife and damaged the engine, leaving them in the middle of the sea off the Turkish shore. Almost every interviewed reported the same kind of treatment; they were beaten, searched and their baggage were either confiscated or thrown into the sea. These migrants witnessed violence and disregard for the human life and dignity by the Greek coastguards that accosted their vessels. One of the interviewed said: "We asked for water to the Greek police, but they laughed at us and said 'you are like dogs'."[55]

The number of these testimonies suggests that it is not an isolated event, but it is regularly employed by Greek officers. The 79 migrants interviewed in Greece and Turkey by Amnesty International, affirmed that they were stopped while attempting to cross the border in 39 push-back operations, some of them more than once. Another report edited by Pro Asyl recorded that between December 2011 and August 2013, more than 2 000 irregular migrants have been

[54] AMNESTY INTERNATIONAL, *Frontier Europe, Human Rights abuses on Greece border with Turkey*, ed. Amnesty International Ltd, London, 2013, p.9-14.

[55] Testimony by a Palestinian, finding himself in a boat on the Aegean on March 6th 2013, in AMNESTY INTERNATIONAL, *Frontier Europe, v. supra*, p.11-13.

subject to informal return from Greece to Turkey, both at the land border and at the sea border[56].

The practice of push-backs is not limited to the sea border, the main refugee organizations and humanitarian NGOs provide also a number of testimonies reporting that collective expulsions are perpetrated also at the land border with Turkey. In fact, of the 39 push-back operations reported by migrants interviewed by Amnesty which took place between August 2012 and May 2013, 26 concerned the land border[57]. Migrants are not safe from informal expulsions, even after managing to cross the Evros River; because, according to the reports, when the Greek police apprehends them, the common scenario is that of informal return after a brief detention in deplorable conditions. A Darfur national described that the Greek police captured him and others at Orestiada, and put them in a small room of the police station for the whole afternoon. At night, they transported these migrants back to the river in a bus and left them on a small island in the middle of the river with their hands tied behind their backs. A Sudanese interviewed declared that he risked drowning after having fallen in the river with tied hands, during a similar operation aimed at landing him and other migrants on the Turkish shore.

The Pro Asyl and the Amnesty International reports, condemned the Greek officials as well as the Frontex personnel for the ill-treatment of migrants intercepted in the border-crossing. Nevertheless, the Greek government kept denying this reality at least until this year. On June 6th 2013 Frontex informed Amnesty International that since 2012 there had been issued 18 reports denouncing human rights violations, among which more importantly the practice of collective expulsion perpetrated by the Greek police. In order to verify the situation, Frontex contacted the Hellenic Authorities, but they responded denying that such operations had taken place[58].

The Greek government seems to have abandoned this indifference, as in January of 2014 it informed the Council of Europe's Human Right Commissioner, Nils Muižnieks, that an internal investigation has been ordered, aimed at verifying the alleged ill-treatments by the Greek border guards last year. The Minister of Citizen Protection and Public Order, Dendias,

[56] PRO ASYL, *Pushed Back, systematic human rights violations against refugees in the Aegean Sea and at the Greek-Turkish land border*, ed. Pro Asyl Foundation and Friends, Frankfurt, 7 November 2013.

[57] AMNESTY INTERNATIONAL, *Frontier Europe, v. supra* footnote 54, p. 9 ff.

[58] AMNESTY INTERNATIONAL, *Frontiers Europe, v. supra* footnote 54, p. 9.

ensured that the investigations will address any report of push-back and unlawful return to Turkey through the Evros river; and that appropriate penal or disciplinary sanctions will be imposed[59].

Beside the despicable nature of the alleged ill-treatments, and their deliberateness, informal returns are unacceptable also from the legal point of view; they constitute a violation of a number of international norms. Firstly, the practice of collective expulsion is explicitly prohibited by art. 19 (1) of the Charter of Fundamental Rights of the EU[60]; and by art. 4 of Protocol No 4 of the ECHR[61]; moreover, it has a wide applicability going beyond the traditional concept of territorial jurisdiction, as confirmed by various judgments of the main international human rights courts; in particular, the ECtHR, European Court of Human Rights, the judicial institution of the Council of Europe. In 2011, in occasion of the judgment of a plea lodged by irregular migrants who had been returned to Libya by the Italian government, the Court stated clearly that the of the prohibition of collective expulsions has an extra-territorial scope. In other words, it is binding for States also outside the territory; it must be observed not only in respect of everyone coming under their jurisdiction, but also in respect of people finding themselves under a direct control of the national authorities; as in the situation of people onboard of a vessel being approached by national patrols.

> "the primary purpose of prohibiting collective expulsions was to prevent States from forcibly transferring groups of aliens to other States without examining their individual circumstances, even summarily. Such a prohibition should also apply to measures to push back migrants on the high seas, carried out without any preliminary formal decision, in so far as such measures could constitute "hidden expulsions". A teleological and "extra-territorial" interpretation of that provision would render it concrete and effective rather than theoretical and illusory" [62]

[59] *Investigation into alleged Greek coastguard abuse of migrants,* 14th January 2014, published on http://www.enetenglish.gr/?i=news.en.home&id=1705.

[60] Charter of Fundamental Rights of the European Union, *O.J.E.C.*, C 364/1, 18.12.2000, Art.19, para.1.

[61]COUNCIL OF EUROPE, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, available on-line at http://conventions.coe.int/Treaty/en/Treaties/Html/046.htm.

[62] EUROPEAN COURT OF HUMAN RIGHTS (GC), judgment of February 23th 2012, case of Hirsi Jamaa and Others v. Italy, application no. 27765/09.

The UNHCR reported that on November 12th and 14th 2013 two collective expulsions perpetrated in the Evros region interested a group of 150 Syrian refugees and a mixed group of 65 people, comprising also many Syrian nationals[63].

In preventing irregular migrants to enter the territory, the Greek frontier guards violate also the international refugees' law. Indeed, the right to seek asylum comprises access to territory and a deep analysis on the personal situation by competent personnel designated to decide over the recognition of the refugee status, which is not compatible with a decision to obstacle the entry of any migrant taken by untrained border guards. Thus, the prohibition of collective expulsion is a safeguard in respect of asylum seekers, it is meant to boost a correct practice of evaluation of any personal situation, protecting people from refoulement.

Nevertheless, the access to the country, obviously does not entail the right to be granted protection. Indeed, in an advisory opinion on the extraterritorial scope of the principle of non-*refoulement*, the UNHCR argues that, while the state has discretion on the decision whether to grant asylum or not, it has the prohibition to return a person to a country where his life would be at risk; hence, it should be verified the absence of threat before any action of removal; The UNHCR concludes: "States will be required to grant individuals seeking international protection access to the territory and to fair and efficient asylum procedures."[64]

The most important norm which is violated in the perpetration of the practice of push-backs is the principle of non-*refoulement*. In general, the principle prohibits the forced removal of an individual to a country in which he runs the risk to be subjected to human rights violations.[65] The human rights to which the principle is a safeguard vary according to the treaty in which it is expressed. Although many international treaties regarding the respect of human rights contain either a clear formulation of the principle of *non-refoulement* or they consider it an implicit obligation linked to other provisions; its very first formulation appeared

[63] COUNCIL OF EUROPE, *Letter from the Commissioner for Human Rights, Nils Muižnieks, to the Greek Minister of Public Order and Citizen Protection and to the Minister of Shipping and the Aegean Sea*, Strasbourg, 5 December 2013.

[64] UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, available on-line at http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=4d9486929&query=advisory%20opinion%20extraterritorial, para. 8.

[65] WOUTERS K., *International legal standards for the protection from refoulement,* Intersentia ed., Mortsel, 2009, p.25.

in the 1951 Geneva Convention relating to the Status of Refugees. Art. 33 of the Geneva Convention defines the prohibition of *refoulement* as follows:

> "No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."[66]

In this case the principle is aimed at the protection of individuals from persecution, which is expected to occur in the home country or in the country of habitual residence; and the individuals to be protected from *refoulement* are refugees.

It is clear that the principle contained in other international instruments focuses on different human rights; it is aimed at protecting from, for example, torture and inhuman or degrading treatment or punishment; and it targets different categories of individuals. Art. 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment comprise the prohibition of *refoulement* to a country where a person may be subject to torture or degrading treatment.[67] Thus, it does not refer exclusively to refugees, but also to any individual coming from a country where the national authority fails to protect its people from serious harm[68].

As I explained, the principle was born as a guarantee of protection within the framework of refugees' rights. However, it has undergone a process of evolution; which strengthened its legal value and broadened the personal scope. Now, the prohibition of *refoulement* is a peremptory customary norm relating to the wide field of human rights law and addressing a wider range of individuals[69]. This evolution, in conferring to the principle a stronger legal value, has also changed the responsibility of States. In fact, what was originally a conventional norm; and as such, it created duties only upon States party to the Conventions in which it was expressed; now is a customary law, so it is binding for any state. Moreover, it

[66] Art, 33 of the Geneva Convention, *v. supra* footnote 35.

[67] Art. 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 available on-line at http://www.hrweb.org/legal/cat.html.

[68] WOUTERS K., *v. supra* note 65, p.25 ff.

[69] UNHCR, *Advisory Opinion on Extraterritorial Application of Non-Refoulement, v. supra* footnote 64, pp. 8-11.

has a peremptory non-derogative nature, that is, no derogation to it is accepted; and it has the highest rank among international norms, so it prevails in case of conflicting norms.

It is important to analyze the personal and territorial scope of the principle of *non-refoulement*; that is defining whom the State must protect from a forced removal and where it is bound by the provision. Since *non-refoulement* constitute an independent human right and, according to the interpretation of the European Court of Justice, its respect is also granted by the European Convention for the Protection of Human Rights and Fundamental Freedoms, I will base the following argument on the ECHR, which reflects better the content of the principle in its broader interpretation, overcoming the restrictive view of the Geneva Convention. According to art.1, the countries party to the ECHR "shall secure to everyone within their jurisdiction the rights and freedoms" contained therein. By "everyone" we shall assume that no discrimination can be made, so everyone means every individual regardless the nationality, the legal status or other characteristics, comprising refugees, stateless persons, as well as illegal aliens. As a consequence, the practice of push-backs is violating the principle of *non-refoulement* even in case the undocumented aliens are not eligible for asylum when they are returned to a country where their security would be at risk.

As regards the territorial scope, the above mentioned article prescribes that the States responsibility to ensure the rights entailed in the Convention arise when it has jurisdiction; thus in its territory or territorial sea and air zone. [70] However, as we have seen, the jurisprudence has determined that human right might be ensured to individuals also in cases where an effective control by national authorities exist even outside the territory of the state. In the words of the UNHCR intervening in the Hirsi judjment[71] "the decisive test in establishing the responsibility of a State was not whether the person being returned was on the territory of the State but whether that person fell under the effective control and authority of that State."[72]

In brief, since the principle of *non-refoulement* must be applied in respect of such a wide group of individuals, not only to refugees, the border guards have to analyze the personal situation of each individual, as well as the situation of the country of return, being it a transit

[70] WOUTERS K., *v. supra* note 65, p. 202 ff.

[71] EUROPEAN COURT OF HUMAN RIGHTS (GC), judgment of February 23th 2012, case of Hirsi Jamaa and Others v. Italy, application no. 27765/09, Strasbourg.

[72] Idem, para 69.

country or the home country, before issuing any decision of return. For this reason, the attitude of sea patrols officers and of border guards reported by Amnesty International is not acceptable in respect of people protected by the principle.

It is clear that this principle was born as a guarantee that the individual rights of anyone would be protected by a State, when the State of nationality fails to provide adequate protection; thus, States decided to protect people from being returned to countries where their lives would be threatened, in the interest of the individuals, since the human rights have been recognized to be more important than States prerogatives. It can be objected that Turkey is a 'safe third country', so the principle of *non-refoulement* is not relevant in the particular case. Indeed, the commitments to respect the principle are based on the presumption that all the European states ensure a sufficient level of protection to people coming under their jurisdiction; thus, the returning state is exempted from assessing the conditions in the country to which they deport people, relying on the fact that it committed to the respect of human rights through an international agreement. Nevertheless, as we have seen, even in Turkey, party to the Council of Europe, and in Greece, a Member State of the European Union, the human rights are not always respected. For this reason, recently the basis of mutual trust between European states have faced new challenges, to the extent that the European Court of Justice had to call for a revision of the above mentioned presumption; recommending that individual assessment on the actual absence of risk for the person being returned are made, even when the return country is considered compliant with international provisions on human rights.

Another aspect noteworthy in this discourse are the secondary movements; as the majority of migrants and asylum seekers do not intend to remain in Greece. Indeed, there is a high number of migrants who, after having entered Greece, attempt to reach other European countries. One of the most common movement is the flow by ferry towards Italy. Although a great part of the Greek police and resources are employed in controlling the external borders, they make an effort also in preventing these secondary movements and blocking irregular exit from the country, and putting under detention these migrants. However, for those who manage to reach Italy, the scenario is even worst; the Italian police exercise informal push-backs to Greece, simply preventing the irregular passengers found on the ferry from disembarking, without register their identities[73].

[73] COUNCIL OF EUROPE, *Migration and asylum: mounting tensions in the Eastern Mediterranean*, *v. supra* footnote 50, p.7.

1.3.3 Detention and the Human Rights law

Although Greece is bound by numerous international norms, and its national legislation has gradually come to reflect the international provisions, particularly in respect of human rights; the implementation of the provisions prescribed by law is not much in line with the principles stated therein. Despite the fact that the existing legislation provides general and specific safeguards for persons, particularly irregular migrants, under detention; the main *Rapporteurs* entitled with the task of monitoring the management of detention centers have noticed many failure in occasion of their visits to Greece.

In the framework of international human rights law, the right to liberty is undoubtedly a basic right of any individual, which shall be granted by states. Starting from the International Covenant on Civil and Political Rights, conditions under which detention is contemplated as an exception to the right to liberty has been formulated in every international treaty on human rights. At a regional level, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Charter of Fundamental Rights of the EU, which reiterated the provisions contained in the Covenant, are relevant for Greece. In fact, it is bound by those provisions, being a signatory state of the ICCPR, as well as of the ECHR; and being party to the EU Charter as a Member State.

Besides, any state has discretion to decide over the management of its borders and on immigration matters; and this is an international principle which lays at the basis of the sovereignty of a state, and, consequently, it is important for its recognition as an independent international subject[74]. This means that any state has the right to decide independently who, and under which conditions, is welcome to enter its territory and who is not. As a consequence, it is clear that states in order to benefit from this right should be allowed to comprise in their national laws the crime of illegal entry into the territory, and to prescribe penalties to persons who violate immigration norms. Thus, detention in itself is not in breach of the provisions regulating the right to liberty and security. At this regards, according to art. 5 of the ECHR, among the cases allowing the deprivation of liberty, it is contemplated the "lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country[…]"[75].

[74] L. ZAGATO, S. DE VIDO, a cura di, *Il divieto di tortura e altri comportamenti inumani e degradanti nelle migrazioni*, CEDAM, 2012.

[75] Art.5 (f) of the ECHR, *v. supra* footnote 52.

It is less clear from this article, though, whether this deprivation of liberty has to be implemented automatically, without considering other solutions. This is because the provisions contained in the ECHR are general and refer to any person deprived of their liberty in cases where this is prescribed by the law; and irregular migrants are only a part of these. Since we are talking about irregular aliens, we should take into account those legal tools addressing this group; particularly, for what concerns detention. Within the framework of the process of harmonization of migration policies among European Union Member States, the EU adopted in 2008 the Return Directive, meant to rule the detention of irregular migrants in the view of their deportation; thus, it is more specific than the ECHR in defining the terms of detention, and more relevant in this analysis.

There are two ways to consider the position of aliens once apprehended and put under detention. One is to assess that they are detained as outlaws, for they violated the laws regarding legal entry into the country. Another is to consider their detention as a mean in the view of their repatriation; in order to prevent them from escaping while their order of expulsion is being implemented.

The Return Directive provides that irregular migrants can be imprisoned for the purpose of deportation. Despite the Directive explicitly foresees detention as an extreme measure to be used only when "other sufficient but less coercive measures" cannot be applied; and when there is a risk of absconding or if the third-country national opposes to the removal process[76]; the Special *Rapporteur* of the Human Rights Council of the United Nations, as well as the Committee for the Prevention of Torture (CPT) of the Council of Europe, which visited Greece in 2013, noted that detention is applied indiscriminately, for it is seen by Greek officers as the only mean, there is no consideration for alternative solutions.

In addition, according to the Directive, the duration of detention should be as short as possible; yet, in practice, the periods of detention reported by the above mentioned committees go far beyond the time required for the management of the removal process.

In Greece, illegal entry is regulated by Law 3386/2005; art. 83.1 provides for the imprisonment of at least three months and the payment of a fine for people attempting to enter the Greek territory without legal formalities. In October 2012, the maximum duration for detention has been modified, so that now irregular migrants awaiting for the issuing of the

[76] Art. 15 (1) of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards for returning illegally staying third-country nationals, *O.J.E.U.*, L 348/98, 24.12.2008.

expulsion decision, and asylum seekers awaiting the decision on their application can remain under detention from a minimum of 6 months, to a maximum of 18 months[77]. The apprehension of third-country nationals already residing in Greece irregularly is regulated by another law, Law 3907/2011, which gives national implementation to the EU Return Directive.

Furthermore, the existing legislation provides general and specific safeguards for persons under detention; yet their practical implementation is not satisfactory as regards both procedural safeguards and material conditions. For this reason, recommendations addressing the adoption of new procedures, or the modification of the existing legislation would be meaningless; rather, the action of the monitoring institutions stressing on the need to a correct implementation of the existing provisions seems to be more suitable as a tool boosting an improvement. Nonetheless, the numerous recommendations and reports about the lacks in the practical implementation of human rights in Greece issued so far have fallen to deaf ears.

Firstly, the Return Directive prescribe that for the purpose of detention, "specialized detention facilities" have to be used as a rule[78]. The detention facilities of Greece are not sufficient to host such a high number of migrants and asylum seekers; in addition, they are held in police stations, border guard facilities and coast guard stations, locals which are not meant to be used for that purpose. Since they are not arranged to host people for a long period, the conditions of detention go continuously worsening[79]. In order to solve this problem, the Greek police resorted to different temporary countermeasures. On Greek islands, due to the lack of capacity of detention centers, migrants were released more quickly with an order to leave the country within a period going from seven to thirty days[80]. For this is in contrast with the interest of the Ministry of Citizenship and Public Order, Greece proposed to build more facilities and to enlarge the existing ones, up-grading the capacity from 3 700 to 7 000, using

[77] Art. 30.5, and 30.6 of Law 3907/2011; and Art. 76.3 of Law 3386/2005.

[78] Art 16 (1) of the Return Directive, *v. supra* fn 76.

[79] UNITED NATIONS (GA), Human Rights Council, *Report of the Special Rapporteur on his mission to Greece*, *v. supra* fn 21, p.11.

[80] AMNESTY INTERNATIONAL, *Frontier Europe*, *v. supra* footnote 54, p.17.

the European Return Fund[81]. As a consequence of this enlargement, though, we can expect that the longest period of detention will be used more frequently.

In order to grant that "all persons deprived of their liberty [are] treated with humanity and with respect for the inherent dignity of human person"[82], as stated in art. 10 (1) of the Covenant on Civil and Political Rights; the Return Directive entails specific provisions over the treatment of detainees during the period of custody, concerning both the procedural rights, comprising the right to judicial review of the lawfulness of the arrest; and the material condition, addressing rights inherent to the personal dignity of detainees.

Greece has been object of numerous visits by human rights committees, both operating in the framework of the UN and of the Council of Europe; as well as by the major NGOs; and all the reports published by these authorities have shown that the conditions of detention in Greece are unacceptable as regards both procedural aspects and material conditions. The Special *Rapporteur* of the Human Rights of migrants, at the time of his mission to Greece, visited 11 detention centers; and witnessed a worrying situation.

Firstly, as regards the procedural safeguards, detainees are not free to contact their families; in fact, only in one among the visited facilities, migrants are allowed to keep their mobile phones; while, in the majority of cases, they are confiscated by the police for security reasons, so migrants are able to make calls only if they can afford to pay by themselves the fees of public phones available inside the facility.

Second, access to legal assistance was limited in all of the visited centers, for migrants do not have means to contact lawyers; despite the fact that art. 16 (2) of the Directive, provides that detainees shall be allowed to contact their families, as well as legal representative and consular authorities[83]. There exist a number of national and international non-governmental organizations that provide free assistance to migrants and asylum seekers, to which the

[81] MINISTRY OF PUBLIC ORDER AND CIVIL PROTECTION, *Statement of Minister of Public Order and Citizen Protection of Greece Mr. Nikolaos Dendias 101st session of the IOM Council*, Geneva, 27.11.2012, p.3.

[82] Art. 10 (1) of the UNITED NATIONS, *International Covenant on Civil and Political Rights*, adopted 16 December 1966, entered into force on 23 March 1976.

[83] Art. 16 (2) of the Return Directive, *v. supra* footnote 76.

Directive ensure a right of accession to the centers[84]; yet in the Greek facilities this access has been proved to be problematic for these organizations.

Furthermore, the employment of interpreters and mediators goes from little to zero; thus, information about the reasons for imprisonment or over the duration of detention and the rights are not efficient; migrants do not receive as provided by relevant legislation, clear information in a language they can understand[85]. As this regards, the Greek government has denied this absence in its comments to the Report of the Special *Rapporteur*[86].

The lack of information, beside being against the provisions of the above mentioned international norms on the rights of detained persons, as well as of the national legislation, causes a serious problem also in respect of the asylum seekers. Indeed, many of them do not lodge an application, for they are not aware of the possibility to receive international protection, and they do not know the rights they are entitled with while the application is under examination. Despite the Directive laying down standards for the reception of protection seekers states that Member States must inform the applicants about their rights and obligations under the current legislation[87]; Greece reportedly fails to provide comprehensible information to those individuals. Furthermore, even when they are informed about these rights, the attitude of Greek authorities to cope with asylum claims and detention contributes to prevent potential refugees from applying. In fact, Greek authorities confirmed to Amnesty International that the practice to keep under detention the asylum seekers for the entire period until the examination of their application has ended, is a mean of prevention, justified by the abuses of the procedure by migrants. This practice has the result of discouraging an asylum seeker from lodging the claim, for by pretending to be an economic migrant, he raises the chances to be released quickly[88]. In other words, since the Greek police has had to do with many unfounded claims, made by migrants in order to be released while the application was examined, they decided to keep under detention any asylum seeker until his status had been

[84] *Ibidem*, Art. 16 (4).

[85] *Ibidem*, Art. 16 (5).

[86] UNITED NATIONS (GA), Human Right Council, *Report by the Special Rapporteur on the human rights of migrants, François Crépeau, following his visit to Greece, Comments by the State on the Report of the Special Rapporteur, 19.04.2013*, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/46/Add.5.

[87] Art. 5 of the 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, *O.J.E.U.*, L 180/96, 29.06.2013.

[88] AMNESTY INTERNATIONAL, *Frontier Europe*, *v. supra* footnote 54, p. 18.

confirmed; as a consequence, the real refugees are forced to give up their right to seek protection and risk to be *refouled*. This is a gross violation of the right to seek asylum; in fact, according to the Geneva Convention relating to the Status of Refugees, asylum seekers must not be penalized for their illegal entry into a country[89]. This mean that their arrest and detention is not acceptable. Moreover, the detention of asylum seekers, based on the fact that they have applied for protection, is prohibited by the Reception Directive[90].

Finally, the right to express an objection to the detention decision is another right on paper, but unfeasible in practice. Although the national law, in compliance with the ICCPR and with the ECHR[91], contemplates the possibility to request for a judicial review on the lawfulness of the arrest and of the detention, this has to be submitted in written form and in Greek; requirements which in absence of a proper information about Greek law, and in absence of an interpreter are difficult to satisfy by detainees[92].

The material conditions in detention centers have not improved either, despite the continuous recommendations of the most important institutions protecting human rights. They remains stuck at the levels of inadequacy observed over the years by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The Committee is an independent institution established within the framework of the Council of Europe starting from the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which came into force in 1989. Its task is that of monitoring the conditions in each state of the Council of Europe, as regards to the respect of the prohibition of torture and other inhuman treatment or any act having degrading effects. This Committee organises periodical[93] visits to places of detention, in order to attest the conditions in which detainees are held; and after the visits the delegate of the Committee edit a report on the situation witnessed. Although the reports are not a binding instrument, and Member States are not obliged to improve the recommendations contained therein, the non-

[89] Art. 31 of the Geneva Convention, *v. supra* footnote 35.

[90] Art. 8 of the Reception Directive Recast, *v. supra* fn 87.

[91] See art. 6 ECHR for a general formulation of the right to a fair trial; and art. 9(4) of the ICCPR; Art.5 (4) of ECHR; and art. 15(2) of the Return Directive for a specific rule of the judicial review.

[92] UNITED NATION (GA), Human Right Council, *Report of the Special Rapporteur on his mission to Greece*, *v. supra* note 21, p. 12-13.

[93] Usually once every four years, but, when deemed necessary, also ad hoc visits are organized.

fulfilment of the latter can be notified in a "public statement". The CPT, since 1993 has carried out 11 visits to Greek detention facilities and it has been expressing concerns about Greece since 1997; after a number of reports showing the absence of improvements of the situation, it resorted to the "public statement" in 2011[94].

The CPT found the detention facilities overcrowded to such an extent that the Committee's delegation had to walk over detainees lying on the floor to enter into the centre. The public statement reported about the presence of 146 migrants into a room of 110 m², with no possibility to move and no permission to spend some time outdoor. The situation has not changed as the Special *Rapporteur* in occasion of his visit observed the same situation reported by the CPT in the public statement two years before.

Firstly, migrants have little access to open spaces; many facilities, not having a fenced-in open-door area, are reluctant to leave detainees outside, so they are forced to stay locked in their cells most of the time, with no activities to pass the time. Particularly, children do not have appropriate activities or toys in their cells, with which to keep occupied.

Second, cells are not provided with toilets; and, in some cases, access to the common ones is restricted, so that detainees have to wait long time before being allowed to use them; thus, as witnessed by the *Rapporteur*, "they resorted to using plastic bottles for this purpose"[95]. Regarding hygienic conditions, it has been reported the insufficient amount of soap and hygienic products provided to migrants; as well as the poor cleaning of the premises; considering that migrants, due to the overcrowding, are often sleeping on mattresses on the floor, this is a matter of concern for the health of these persons.

Moreover, the medical service too has been considered inadequate, with often no permanent staff inside the centers. Third, some facilities do not have artificial lighting, so in cold season migrants are kept in the dark from mid-afternoon; others do not have heating, nor hot water; this, added to the lack of clothes and blankets, further contributes to make life under detention harder[96].

[94] COUNCIL OF EUROPE, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Public Statement concerning Greece,* Strasbourg, 15 March 2011.

[95] UNITED NATIONS (GA), Human Rights Council, *Report of the Special Rapporteur, v, supra* fn 21, p.11.

[96] *Ibidem*.

In some cases the ECtHR has determined that certain treatment to which detainees are subject can be considered inhuman or degrading. Thus, as such, they are in violation of art. 3 of the CAT[97].

[97] See para. 102-103 of the COUR EUROPÉENNE DES DROITS DE L'HOMME (PS), jugement du 25 Décembre 2012, affair Ahmade c. Grèce, requête no. 50520/09, Strasbourg ; and para. 70,74 of the COUR EUROPÉENNE DES DROITS DE L'HOMME (PS), jugement du 24 Octobre 2012, affair Mahmundi et autres c. Grèce, requête no. 14902/10, Strasbourg.

2. NEW FENCE BETWEEN BULGARIA AND TURKEY

SOMMARIO: 2.1 Bulgarian Containment Plan; 2.2 Reaction of international actors to the proposal to build the fence; 2.3 Push-backs; 2.4 Detention conditions; 2.4.1 Closed reception facilities for asylum seekers; 2.5 Asylum in Bulgaria and 'Dubliners'.

2.1 BULGARIAN CONTAINMENT PLAN

Bulgaria is one of the Member State situated at the external frontiers of the European Union; before its accession to the Union in 2007, it used to be a country of origin for migratory flows, or a transit country, rather than a destination for migrants. Its accession to the Union made its strategic geographical location even more attractive for people who look for a better life or for refugees in flight. However, it has never been affected by an alarming rate of irregular border crossings until 2012. In that year, the size of the flows of undocumented migrants from Turkey started increasing, raising the concern of the government, which decided to intensify the border controls. The trend continued in 2013; while the rate of irregular border crossings in 2012 amounted to 1700[98]; in 2013, more than 12 000 non-EU nationals have been entering the European Union through Bulgaria[99]. The majority of them were Syrian nationals; and the second biggest group in number were Afghans[100]. Indeed, the Syrian civil war created a massive movement of refugees; and even if a high number of them are host in the refugee camps inside Syria and in the neighboring countries; there is still a high number of refugees making their way towards Europe.

This raise in the number of migrants using Bulgarian border as a gate into Europe, beside being undoubtedly linked with the instability of the situation in Syria, is also deemed to be a consequence of the enhancement of border controls by the Greek border guards and of the construction of the fence in the Evros region. As observed in the previous chapter, the measures taken by Greece did not relieved the European Union from the migratory pressure, they just diverted the flows to another border and charged another Member State with the burden. In addition, the fact that since 2011 and 2012 the process of integration of Bulgaria in

[98] BULGARIAN MINISTRY OF INTERIOR. *Daily report on the situation at the borders with Turkey and Greece*, 14 November 2013, Bulgaria.

[99] UNHCR, *Bulgaria as a Country of Asylum, UNHCR Observations on the current situation of Asylum in Bulgaria*, 02.01.2014, Bulgaria.

[100] AMNESTY INTERNATIONAL, *Refugees in Bulgaria trapped in substandard conditions*, Amnesty International Ltd, London, 2013, p.3.

the Schengen Area was ongoing, has helped in transforming Bulgaria into a transit country towards more central Member States or into a destination country.

Particularly, the number of asylum seekers has grown, challenging the Bulgarian asylum system, with a consequent deterioration of the conditions of refugees already in the country. The number of Syrians entering in Bulgaria is very high; according to the Annual Risk Analysis of 2013, the share of Syrians among the irregular migrant crossing the external frontiers has been increasing in every route; yet "with over 3 000 detections, the largest share of Syrians illegally crossing the EU external border was reported between Turkey and Bulgaria."[101]

Bulgaria was unprepared to such a massive influx; therefore, in October 2012, when the situation at the border became unbearable, the Bulgarian government decided to resort to exceptional measures in order to obstacle the crossings, including the creation of a Specialized Police Operation, i.e. a deployment of additional guards, equipped with cars and trained dogs at the border-crossing points of Svilengrad and Elhovo; and, the implementation of a 58km long Integrated Border Surveillance System between the border-crossing points of Kapitan Andreevo and Lesovo.[102]

Nonetheless, similarly to what happened in Greece, the measures taken were not sufficient to extinguish the concerns, so the government decided to launch a new set of countermeasures contained in an action plan approved in November 2013, which the Council of Minister defined as "a plan for the containment of the crisis resulting from stronger migration pressure on the Bulgarian border"[103]. The objective of the plan is (1) to reduce the number of irregular border crossings between Turkey and Bulgaria; (2) to contain the risk of terrorism and radical extremism, and criminality associated with irregular migrants; (3) to maintain order, security and humane conditions at reception centers; (4) to reduce the number of persons seeking protection in the territory of Bulgaria; (5) a fast and efficient integration of refugees already in the country; and some other technical aspects.

[101] FRONTEX, *FRAN Quarterly issue 4, October-December 2013*,available on http://frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q4_2013.pdf , p. 5.

[102] FRONTEX, *Annual Risk Analysis 2013*, *v supra* footnote 1, p.24 ff.

[103] BULGARIAN MINISTER OF INTERIOR, *Report on the measures Adopted by the Government to Manage the Crisis resulting from the Enhanced Migratory Pressure*, Ref. No. l-1281, February 5th, 2014, p. 20.

The plan includes the deployment of 1500 additional police officers to patrol the border. However, this enhancement of personnel was implemented even before the formal approval of the plan; in fact, in November 2013 the presence of officers at the border had already been increased[104].

Also the European Union Agency for the Management of Border Cooperation, Frontex, have come in assistance of the national border guards, under the *Poseidon Land Joint Operation*, which was already operating since 2011 at the Greek border. Since the displacement effect has required the assistance of Frontex to the Bulgarian front, it has shifted some of the resources employed in the area.

Finally, in order to reduce the number of protection seekers, the plan provides for the construction of a 30 km-long fence along the most affected part of the border between Bulgaria and Turkey. The length of the wall has been modified, apparently it would be 3 km longer than predicted. The important thing, though, is not the size but its declared objective to curb the flow of asylum seekers. Indeed, this new plan approved by Bulgaria is noteworthy, for its declaration of intent is manifestly and clearly against the international commitments of Bulgaria and of the European Union towards protection seekers. The Bulgarian government stated that the aim of the fence is that of preventing refugees to accede the territory and apply for asylum in Bulgaria; a clear violation of the right to access to any country accorded to refugees. The Greek government had never been so explicit in its statements regarding the construction of the fence. Although the outcome is the same in practice, the goal was expressed through a careful use of words, referring to security against threats linked with illegal immigration, and efforts to ensure the benefit of the right to protection to asylum seekers. The manifest purpose to reduce the number of asylum seekers is a strong political stance; which, in fact, has been abandoned in the following statements and debate over the plan by the Bulgarian government. In a letter dated February 5th, 2014, the Minister of Interior Angelov wrote that the border is not close for people in need for protection. The personnel has been increased in order to ensure a more efficient service, and to encourage asylum seekers to enter through the official check points, rather than through the mountains in an illegal way[105].

[104] UNHCR, *Bulgaria as a Country of Asylum*, 02.01.2014, *v. supra* note 99.

[105] HUMAN RIGHTS WATCH, *Containment Plan, Bulgaria's pushbacks and detention of Syrian and other asylum seekers and migrants*, ed. HRW, USA, April 2014, p. 25, ref. to the letter from Plamen Angelov, deputy minister, Minister of Interior to Human Rights Watch, reg. no. l-14355/10.02.2014, Sofia, February 5th 2014.

This is a positive view, but it does not take into account the real situation of Syrian nationals. Unfortunately, the problem is not linked only with the entry into Bulgaria, but also to the exit from Turkey. As the majority of asylum seekers are undocumented, they are not allowed to leave Turkey in a legal and safe way. The only way is to find unofficial crossing points and attend a dangerous journey, hiding from the police of both the countries. In fact, data show that the majority of people apprehended upon the irregular entry refers to people crossing the woods rather than appearing at the official crossing points. From January to March 2014, 375 people were arrested at the 'green border', while only 86 at the official crossing points[106].

Furthermore, even if the purposes of the government were the most optimistic possible; the main human rights NGOs and the Commissioners who analyzed the situation at the border of Bulgaria in the last two years have found a number of violations of the human rights of migrants.

2.2 REACTIONS OF INTERNATIONAL ACTORS TO THE PROPOSAL TO BUILD THE FENCE

On 16th of October 2013 the Bulgarian government approved the construction of the fence in the Elhovo region on its border with Turkey[107]. It would be a 33km barbed wired fence, provided with video cameras and it will cost 5mln euro. As it was predictable, the proposal aroused the disfavor of the majority of international actors, as in the case of the fence between Greece and Turkey. The objections raised are also similar: the concern over the displacement effect, which would force migrants to undertake more dangerous routes is the most used. Yet, this time there is also an economic aspect, used to deter Bulgaria from constructing the wall. Some actors, perhaps influenced by the economic crisis, or having witnessed the high cost of the wall in Greece, have suggested the consideration of alternative ways to employ such an amount of money, with a special attention to the asylum system, given the high share of Syrians coming to Bulgaria.

[106] UNHCR, *Bulgaria as a Country of Asylum, UNHCR Observations on the Current Situation of Asylum in Bulgaria*, April 2014, p. 5.

[107] *Bulgaria plans to complete wire fencing work at the end of February in 2014*, on http://www.worldbulletin.net/news/121655/bulgaria-to-complete-wall-on-turkish-border-by-february, 28 October 2013.

Council of Europe

The Council of Europe's Commissioner for Human Rights, Nils Muižniesk, alerted Bulgaria about the inefficiency of the fence as a deterrent tool; and about the undesired consequences of closing the borders with material barriers. The barrier would have the undesired effect of further endangering the lives of those people already fleeing from terrible situations. The commissioner also suggested to allocate the money earmarked for the construction to improve reception facilities and to better the conditions of aliens already in the territory.[108] Indeed, the asylum system in Bulgaria is insufficient and, reportedly, the existing reception facilities are inadequate.

European Union

As in previous occasion, also the European Union representative expressed against the building and he suggested for a more profitable use of the money; considering the asylum issue the absolute priority. Indeed, the EU allocated 5.6 million euro as an emergency funding through the European Refugee Fund to Bulgaria at the end of 2013, in order to help the country in the management of the massive influx of asylum seekers; this money would be used to improve the reception facilities and accommodation for refugees[109]. The Commissioner for Home Affairs of the European Commission, Cecilia Malmström, repeated that walls are not a solution and that the EU will not back the project.

UNHCR

In November 2013, the UN High Commissioner for Refugees has expressed once again its concern over the direction taken by different European Member States in the management of the refugee issue. Particularly, the Commissioner noted that many of the frontier states are systematically in different ways trying to obstacle the entry of Syrians into their territory. It calls for a strong change in direction, from the protection of frontiers, to the protection of individuals; it exhort States that are implementing deterrent measures, aimed at restricting the access to the territory to refugees to suspend such practices; and to handle the issue with a person oriented approach, rather than with a security perspective. The situation at the

[108] *Council of Europe's Commissioner for Human Rights says Bulgaria must find better ideas than fencing its borders against refugees*, on http://www.worldbulletin.net/news/122298/eu-warnes-bulgaria-against-fence-on-turkey-border, 06 November 2013.

[109] EUROPEAN COMMISSION, *European Commission grants €5.6 million in emergency funding to Bulgaria to address the increased influx of asylum seekers*, MEMO 13/1075, Brussels, 29 November 2013.

Bulgarian border was under analysis at the moment of the proposal of the fence and the Commissioner has asked the Bulgarian authorities to provide more information about the deployment of more police guards. The agency expresses its concerns over the lack of training of the additional border policemen; these, not being ordinary border guards, are not prepared to recognize persons in need for protection nor informed on the measures to be taken in presence of asylum seekers and vulnerable groups under the national and the international law[110]. In addition, as in the case of Greece, the construction of the fence is seen by the UNHCR as a danger, for it forces migrants to cross mountains and rivers to bypass the barrier. Finally, the UNHCR reported that any measure taken by Greece and Bulgaria to confine asylum seekers to Turkey has the effect of posing a further burden on this country, already providing insufficient protection to vulnerable groups. Indeed, Turkey is the country currently hosting the highest number of Syrian refugees outside the Asian Continent.[111]

Nonetheless, the Bulgarian government did not get back and it did not withdraw the decision to build the wall. The construction was expected to be completed by February this year, but some procedural problems slowed the progress[112]. Apparently the debate caused tensions between the Defense Minister and the Interior Minister concerning the economic resourced earmarked for the wall. Finally, at the beginning of March 2014 the construction began[113].

Meanwhile, the implementation of the containment plan as regards the enhancement of border police has been successful; and some objectives have been achieved. Firstly, the reduction of the irregular crossings; previous to the announcement of the plan, in October 2013, the number of crossing amounted to 3 626, about 116 per day; while during the first five weeks of 2014, the rate had drastically decreased, coming to around 2-3 crossings per day[114].

---

[110] UNHCR, *Bulgaria as a country of Asylum*, 02.01.2014, *v. supra* fn 99, p.6.

[111] UNHCR, *Unione Europea: ingesso negato e respingimenti per i rifugiati Siriani*, 15 Novembre 2013, on https://www.unhcr.it/news/dir/23/view/1608/unione-europea-ingresso-negato-e-respingimenti-per-i-rifugiati-siriani-160800.html

[112] *Bulgaria plans to complete wire fencing work at the end of February in 2014*, on http://www.worldbulletin.net/news/121655/bulgaria-to-complete-wall-on-turkish-border-by-february, 28 October 2013

[113] CORCORAN A., *Bulgaria: work on border fence with Turkey begun*, 16 March 2014, on http://refugeeresettlementwatch.wordpress.com

[114] UNHCR, *Refugee Situation Bulgaria*, February 7th 2014, www.unhcr.org

This reduction is seen positively by the Bulgarian authorities, as a prove of the efficiency of the containment plan. However, as explained in the previous chapter, these achievement are illusory; since, migrants do not disappear just because the access to a country have been rendered impossible. The Human Rights Watch published a report in April this year about the outcomes of the containment plan of Bulgaria; showing the destiny of those asylum seekers and migrants denied access to Bulgaria and the conditions of those who managed to enter the country. The report shows that there is a high number of people who are not registered by the Bulgarian authorities after having crossed the border. Since the implementation of the plan, the border guards have been perpetrating informal push-back operations; during which migrants have been apprehended and returned to Turkey, without any legal proceeding; similarly to what happens in Greece. Moreover, testimonies alleged a number of violations of their human rights during these push-backs; denouncing thefts and abuses by the border guards, severe mistreatments, also comprising serious harms and disrespect for human dignity.

2.3 PUSH-BACKS

Like in Greece, the reduction of the number of irregular border crossing witnessed in the last three months at the Bulgarian border is a consequence of the deployment of a high number of officers at the border. This is not a positive achievement from the point of view of human rights, because as we have seen it does not mean that migrants have disappeared; they are just closed out. Although the Interior Minister ensured to the Human Rights Watch that the principle of *non-refoulment* is respected by the national border guards and by the Frontex personnel operating in Bulgaria[115], the NGO noticed that the practice of preventing migrants from entering the territory is not limited to the Hellenic Republic, but also the Bulgarian border police resorts to the unofficial return of irregular aliens over the border with Turkey, without giving the migrants the opportunity to lodge any application for international protection.

The same violations alleged in the Greek case are relevant also for the push-backs perpetrated at the Bulgarian border. The principle of *non-refoulment* is a non derogative customary law, and Bulgaria must respect it. Similarly, the prohibition of collective expulsions is binding for all the countries party to the Council of Europe. Therefore, the Bulgarian government has the duty to ensure that its representatives, such as the officers, respect the right to seek asylum

[115] Interview of the Interior Minister, Angelov, by the Human Rights Watch, December 6th 2013, see HUMAN RIGHTS WATCH, *Containment Plan*, *v. supra* fn 105, p. 26.

and observe the prohibition of torture and degrading treatments in respect of any person coming under their direct control.

Beside the clear violation of the right to seek asylum, which, as we have seen, comprises the right to freely accede the country in order to obtain international protection; the situation is outstanding because the manner through which these persons are deterred from entering is unacceptable from both a legal and an ethic point of view.

In April 2014, the Human Rights Watch published a report analyzing testimonies alleging such incidents at the Bulgarian border. The interviewed reported of 44 pushback operations being perpetrated between November 2013 and January 2014, involving 519 people[116]. All these testimonies told that the border guards or the police used excessive force in their apprehension and return, and did not explain the reasons of the arrest nor informed them about their right. An afghan reported that at the time of his apprehension he was beaten very hardly; his bones were broken, but the guards kept on beating him with fists and kicks, or using sticks and the bottom of their guns during all the walk towards the Turkish border. The only words they said in English were "No, no Bulgaria!"[117].

Apparently the attitude of Bulgarian guards is even more extreme than that of the Greek police. According to another testimony, the border guards used also firearms against the undocumented crossers intercepted. Reportedly, after having crossed the border, the group of migrants heard gunshots and saw two Bulgarian guards pointing their guns at them. When they raised their hands and surrendered, the guards instead of desisting, shot. They, scared, started running back towards Turkey. More noticeably, this was not an isolated event; another interviewed was hurt twice in the middle of a crossfire between Bulgarian and Turkish guards[118].

Many of the testimonies collected by the Human Rights Watch come from Syrian nationals, who were not given the chance to apply for asylum; even if in some cases they claimed their intention to ask for protection soon after being apprehended, but their words were ignored and they received the same treatment described above.

[116] HUMAN RIGHTS WATCH, *Containment Plan, v. supra* note 105, p.14.

[117] Idem, p. 1.

[118] HUMAN RIGHTS WATCH, *Containment plan, v. supra* note 105, p. 15-16.

Many of these incidents concern summary and immediate push-back operations, where migrants do not spend much time in the territory of Bulgaria, and do not have the chance to meet authorities other than the officers who apprehended them, and their dogs. The report entails also accounts on more organized return operations; during which the irregular aliens spend some time under detention before being transported to the border with Turkey; when the officers on the other side are not patrolling.

The Interior Minister denied the allegation presented by the Human Rights Watch; affirming that the border police does not carry any weapon as those described by the interviewed, nor they are provided with teasers, so the report would be full of defamatory lies. Moreover, the border is monitored by video cameras, thus the behavior of the border guards can be observed; he ensured that there is no violence on the arrest operations[119].

2.4 DETENTION CONDITIONS

Another aspect related to the irregular immigration is detention; as in the case of Greece, the resorting to the arrest of irregular aliens is frequent, and justified by the national law, as well as by the international norms. However, the manner in which this right is exercised by these countries has given space to a series of violations regarding the conditions of detention. There is a difference, though, between Greece and Bulgaria; in fact, the measures implemented by the former in order to restrict the entry of undocumented migrants have caused the worsening of the conditions of detention; while in the case of Bulgaria, the consequences of the enhanced border controls did not affect the detention conditions in a significant way. After an initial phase, characterized by the unpreparedness of this country to the massive influx of immigrants and asylum seekers has caused a deterioration of the conditions, but these problems have been solved quite rapidly. Thus, we can state that the measures contained in the Containment plan did not contribute to a worsening of the detention conditions; on the contrary, the number of people detained has decreased. Nevertheless, the incorrect implementation of the existing legislation on the matter led to the practice of detain asylum seekers, which is a violation of the rights of these individuals, and a denial of their right to be accepted without discrimination on account of the irregular entry into the country. Moreover, the Bulgarian government, while providing for the improvement of the material conditions of

[119] *Interior Minister denies allegations in Human Rights Report*, 25 April 2014, on http://www.novinite.com/articles/160081/Interior+Minister+Denies+Allegations+in+Human+Rights+Watch+Report#sthash.yArNYLuG.dpuf

detention of irregular aliens, propose to forge the national legislation on asylum to the wrong practice, advancing a proposal of a systematic detention of asylum seekers.

The Bulgarian law prescribe for detention into a premised detention center in case of undocumented entry; those people who do not apply for asylum are subject to removal and can be detained up to 18 months.[120]Upon apprehension, irregular border crossers are taken to the nearest police station, where they are expected to stay for a short period, i.e. for the time required to organize their transfer to the 'distribution center'. According to the Law of Foreigners, the hosting of irregular migrants in the border facilities should be limited to 24 hours[121], after which they have to be moved to either an open reception facility for asylum seekers, if they submitted an asylum claim, or to a pre-removal detention center if they do not apply for asylum.

Although there exist a clear legislation on the matter, the practice is not always in line with the commitments. Before the implementation of the Containment plan, the migrants apprehended at the border were held in deplorable conditions for days at the police stations. Amnesty International visited the Elhovo station in November 2013, and reported that it hosted around 500 people. The facility was not big enough, so the police turned a dismissed gym into a detention center to host the increasing number of apprehended irregular migrants; it arranged the six courts of the gym creating cages, where aliens were divided on the ground of the geographic region of origin and gender; one cage for women and children; one for Syrians (including Iraqis and Palestinians), one for Afghans (including Iranians and other groups) one for North Africans, another for Africans. However, also the gym did not provide sufficient accommodation; some migrants used to sleep on benches covered with blankets, while other used to sleep on the floor of the courts. The sanitary conditions were also bad; there were less than 10 dirty toilets, and, once again, migrants resorted to use plastic bottles[122].

According to the reports, also the behavior of the police officers was not respectful at all towards the aliens under their custody. A Palestinian young man from Syria told to Human Rights Watch that the police of Elhovo made him and other 17 persons who crossed the border with him stay at the police station for three days with a food package sufficient for one

[120] UNHCR, *Bulgaria as a Country of Asylum,* 02.01.2014, *v. supra* fn 99, p.7.

[121] Art. 63 para. 1, 64 of the Law on Foreigners, Ministry of Interior, Bulgaria.

[122] AMNESTY INTERNATIONAL, *Refugees in Bulgaria trapped in substandard conditions, v. supra* fn 100. p.4.

day. The men were made to sleep outdoor in the cold, lying on the soil, with no blankets. Furthermore, the police made fun of their complaints; when they informed the officers that one of them was ill, and needed some blanket and cares, they laughed and replied to make him run to warm up[123].

As for the length of stay, Amnesty found that the rule was not respected at the time of its visit. Although the station chief ensured to the Human Rights Watch in an interview dated December 2013 that no one had ever been held there for more than 24 hours, as prescribed by law[124]; the migrants interviewed by both the NGOs reported a different picture. The Syrian nationals were held in the police station or in this gym from two to four days; while other nationals had to wait up to 10 days in those conditions, due to the slowness of the registration procedures[125].

After the temporary stay at the police stations, the following destination is a 'distribution center', a transit detention center where the police interviews the border crossers in order to identify them, and to separate asylum seekers from illegal migrants; in fact, it is at this stage that protection seekers are expected to apply for asylum. The next step would be the transfer of people applying for asylum to the Registration and Reception Centers managed by the State Agency for Refugees (SAR); and of the illegal migrants to a detention center, the so-called Special Centers for Temporary Accommodation of Foreigners (SCTAF). Although the 'distribution center' have a substantial role as a guarantee that the rights of refugees are respected, avoiding that they are considered illegal migrants, and as such subject to detention and return policy; the practice is, once again, different from the theory. Amnesty found that no information was provided in those centers; the orders of detention and deportation were in Bulgarian language and many interviewed by the NGO admitted that they did not understand the paper they were asked to sign, and they did not know how to apply for asylum. Although the border station was provided with brochure of information in different languages, apparently, these were not accessible to the new comers.

It has to be said that the exceptional emergency situation caught off guard the Bulgarian officers; and that this is the main cause lying behind the clumsy response to the massive

[123] HUMAN RIGHTS WATCH, *Containment plan, v. supra* note 105, p. 31ff.

[124] HUMAN RIGHTS WATCH, *Containment plan, v. supra* note 105, p.32.

[125] AMNESTY INTERNATIONAL, *Refugees in Bulgaria trapped in substandard conditions, v. supra* fn 100.

influx, explaining these problems. Nonetheless, the Bulgarian authorities have made their best to overcome the initial phase of confusion and to improve the situation, with a noteworthy success.

As I said, the Elhovo station and the gym in November 2013 were overcrowded, hosting around 500 people; yet this was the situation before the implementation of the plan; in fact, at the time of the visit by the HRW delegates in December 2013, the Elhovo station was empty. The Bulgarian police took the HRW delegates to visit clean cells, responding to the international standards prescribed by law for the locals premises for detention; each cell had two or three beds and a toilet.

Apparently, the fact that more migrants and asylum seekers are closed out of the border, means that less people are closed inside the police stations. While the closing of the passage through Greece brought with an increase of the number of persons detained; in Bulgaria the number of detainees has decreased after the implementation of the plan to close the border. It has to be said that these figures has not to be read positively, for they do not take into account the number of people detained on the Turkish side, apprehended after being pushed back from the Bulgarian police, or who did not manage to reach the European shore.

Since in the case of Bulgaria the share of asylum seekers is much higher compared to the economic migrants number; the attention in this argument will be focused on asylum seekers. If the conditions of detention reserved to the irregular migrants have been harsh at the beginning, also the reception facilities premised to host asylum seekers have faced some difficulties.

2.4.1 Closed reception facilities for Asylum seekers

The unexpected increase in the number of Syrian nationals and other applying for protection in Bulgaria, more than 9 000 from January to December 2013, has challenged the national system. The inefficiencies of the reception procedures and the insufficient number of accommodations, as well as the deplorable conditions of reception have become evident in the last months. UNHCR wrote an assessment on the conditions of asylum in Bulgaria after the recent Syrian crisis, and suggested that some action was taken to counter the problems observed. Firstly, the material conditions observed in the reception facilities have been considered unacceptable. Second, the Commissioner for Refugees witnessed that the deficiencies in the procedure of registration of the claims caused a violation of the Reception Directive provision regarding the detention of asylum seekers. Finally, although the second

assessment paper published three months later reported that Bulgaria had made several efforts to comply with the commitments in respect of asylum seekers; on the policy ground, the government seems to go in the opposite direction. In fact, despite the improvement of the conditions of reception can be read as a will to correctly implement the relevant international law; in November 2013, the government proposed an amendment of the Law on Asylum and Refugees, foreseeing less favorable provisions as regards the reception of asylum seekers than those adopted until now; most noticeably, a proposal of restricting the mobility rights of protection seekers.

The main problem deriving from the reception deficiencies is the practice to detain asylum seekers; completely against the national law, prior than against the international provisions regarding refugees. Up to December 2013, the UNHCR noted that the process of regularization of an asylum claim by the Bulgarian State Agency for Refugees (SAR) was very slow; as a consequence, there was a systematic delay in the transfer of applicants from the transit center to the accommodations of the SAR. Thus, even people who lodge an asylum application at the Bulgarian border were detained in the distribution centers for several months. Despite the law provides for the release of asylum seekers while their application is under examination; those refugees were detained for months because the registration of their claim is not made until they physically arrive in the SAR's centers. Thus, before their transfer their application was not yet considered; and they were still illegal migrants.

When migrants are taken to the police station, the border personnel is expected to collect the asylum claims and to inform the SAR; which, after having received the communication, should invite the border police of the Transit center in Elhovo to transfer the applicants to one of the open reception centers. Upon their arrival, they are officially recognized as asylum seekers; and entitled with the rights accorded to this category, such as a monthly allowance, a medical assistance, the accommodation and meals provided by the reception center. Nevertheless, the SAR offices have been overwhelmed with asylum applications; and, not having sufficient and prepared personnel to register the application, the time frame passing between the notification and the transfer was very long.

Beside the slowness in the registration process, also the lack of places caused a delay in the transfer. The locals at the disposal of the SAR were insufficient; there were seven reception facilities in Bulgaria and their total capacity, as of December 2013, amounted to around 4 060 places; while the total of people hosted was 4 325. In September 2013, when the number of refugees reached 6 000, the SAR announced that the reception facilities had reached their

maximum capacity[126]; therefore, many applicants had to wait before being welcomed in the reception centers; and meanwhile, they were detained for several weeks with undocumented aliens in closed centers, meant to be temporary accommodations[127]. Moreover, since, as said, their registration as asylum seekers is made upon their arrival at the SAR's facility, they are considered irregular migrants until there is a place for them. Being irregular migrants, they do not have the rights accorded to asylum seekers, and they are potentially subject to deportation. Provided that the Bulgarian authorities are aware that this situation is due to a procedural defect, so they do not issue a removal order for those in this situation; still the detention of asylum seekers is a breach of the principle of non-penalization contained in the Geneva Convention[128] and a violation of their rights under the Reception Directive, entailing the prohibition to detain an asylum seeker on account of having lodged a demand for protection[129].

However, also the conditions of the reception centers were not optimal, due to deficiencies in the reception procedures and the lack of space. Since the national asylum service was not arranged for a high number of applicants, it lacked the necessary means to secure the high standards prescribed by law to all the new protection seekers; personnel was insufficient and untrained. In addition, the overcrowding of the reception facilities contributed to the worsening of the material conditions.

First, food was not provided regularly, and there was no other way for refugees to find or cook something autonomously; they received a five-day food package upon their registration, which they pay using part of the monthly financial support of approximately 33 euro. Private donors and NGOs started providing food, but not on a regular basis and insufficiently. Second, there was no access to medical assistance and heating, nor to hot water; sanitary facilities were insufficient and dirty; additionally, no recreational activities for children and families were provided.[130]

---

[126] AMNESTY INTERNATIONAL, *Refugees in Bulgaria trapped in substandard conditions*, *v. supra* fn 100, p. 3.

[127] UNHCR, *Bulgaria as a Country of Asylum*, 02.01.2014, *v. supra* fn 99, p. 6ff.

[128] Art. 31 of the Geneva Convention relating to the Status of Refugees, *v. supra* note 35.

[129] Art. 8 of the Directive 2013/33/EU laying down standards for the reception of applicants for international protection, *v. supra* note 87.

[130] UNHCR, *Bulgaria as a Country of Asylum*, 02.01.2014, *v. supra* fn 99, p. 9.

The only way to be released from the reception facility or from the distribution centers[131] was to inform the State Agency of an external address in Bulgaria; if asylum seekers had a private accommodation at their disposal, they were no longer obliged to reside in the reception centers. However, the Amnesty report shows that some external intermediaries have been offering the evidence of a fictitious external address under payment. Some asylum seekers were tempted to pay in order to be released, even if they knew that these people would not provide them any shelter. The result was that some of the 5 000 of refugees who proved to have external addresses were left homeless and with no State support. Indeed, when they provide evidence of an external address, they are asked to sign a document assessing that they renounce to receive assistance by the State[132].

This situation has stirred up some criticism from the Bulgarian Helsinki Committee, which noticed that, undisputed that fraudsters are the ones to blame for the fact that asylum seekers are homeless, also the State Agency is responsible for failing to provide the necessary protection to people entitled with some rights, most importantly the health insurance. Indeed, the practice of suspending the assistance is a violation of the national legislation; as the LAR contemplates the possibility to suspend the hosting of asylum seekers in case they have the possibility to reside in a private accommodation, but it does not prescribe any suspension of the assistance meant to be provided by the State Agency. In fact, art. 29, para.6 of the LAR states that the measure of accept external addresses can be taken only after the beginning of the examination process; that is only when the claim has been registered at the SAR's office. The asylum seekers can leave the reception center and reside in a private accommodation, while their application is under examination and they possess a document stating their right to health insurance[133]. Yet, the proceeding of the examination of applications was suspended for those residing outside the centers. Moreover, the above mentioned fraudsters provide this 'service' mainly while asylum seekers are in the transit center, before the SAR has even

[131] This possibility in the transit centers was accorded only to those who applied for asylum and were awaiting to be transferred to the SAR's facilities. The undocumented migrants were detained according to the law for their irregular entry and their transfer to the premised detention facilities for irregular aliens was faster; even if not as fast as required by law.

[132] AMNESTY INTERNATIONAL, *Refugees in Bulgaria trapped in substandard conditions*, *v. supra* fn 100, p. 6.

[133] BULGARIAN HELSINKI COMMITTEE, *Annual Monitoring Report on Refugee status determination procedures in Bulgaria*, 10 November 2013, issuu.com/bghelsinki/docs/2013_annual_rsd_monitoring_report_e, p.7.

registered their claim. Thus, these people are left outside the centers and without assistance, while their application has not been recorded.

It has to be said that, in the following months, the situation changed, seeing both an improvement of the material conditions and a regression as regards the legal provisions. On the one hand, the aid provided by the European Union with the allocation of the extraordinary fund has been used to improve the equipment of the reception facilities in order to reach acceptable standards in the material conditions of asylum seekers hosted therein. On the other hand, the government has proposed the adoption of closed-type reception centers for the accommodation of asylum seekers.

The UNCHR have reassess the conditions in the reception facilities three months later the first visit; and it observed a better picture. Firstly, food is provided regularly; while previously the UNHCR tried to provide this service on behalf of the State Agency; now the SAR took over the responsibility for the distribution of meals; and all asylum seekers receive two hot meals per day. Moreover, some of the centers have communal kitchens, and the plan for the construction of further communal kitchen is under discussion.

Second, medical care is accessible in all the centers; SAR has recruited doctors and nurses for three of the facilities; while the others rely on the service provided by *Médecin Sans Frontières*. Although some of the centers still lack sufficient sanitary facilities; SAR started renovation works to improve the number of toilets, bathrooms and the system of hot water supply.[134] In all the other centers laundry service is provided regularly, or washing machines are accessible for an autonomous use.

Furthermore, the applicants have also access to recreational activities, such as television, books in several languages and to open spaces suitable for children. Legal counseling and additional information brochures in Farsi, Arabic, Pashto, English and Kurdish languages have been provided by the Bulgarian Helsinki Committee, a legal partner of the UNHCR operating in Bulgaria; and interpreters have been put at the disposal of the Bulgarian police by Frontex[135].

As regards the proceeding of the application, the SAR's staff have been reinforced and the European Asylum Support Office (EASO) provided extensive training courses to secure the

[134] The more worrying situations concern the reception centers at Voenna Rampa and Vrazdebhna, in Sofia.

[135] UNHCR, *Bulgaria as a Country of Asylum,* April 2014, *v. supra* fn 106, p.7 ff.

competence of the new employed. Now all the applicants receive a registration card within 48 hours from the application; while people applying at the borders receive the card after 3 or 5 days, but they are finally protected by *refoulement* even while awaiting for being hosted in the reception centers.

Given the "numerous improvements" made in Bulgaria since the beginning of 2014 in the reception conditions, one can agree that the Bulgarian crisis was only an emergency and that the relevant authorities acted in a positive way, taking into account the interest of the individuals. In this perspective, Bulgaria seems to differ from Greece, where the deplorable conditions of detention have continued through years even before and after the more critical periods. At the light of this, we could expect that the steps forward will last and that in the following years Bulgaria would disappear from the black list of the human rights based NGOs. However, there is another aspect which seems to counter the improvements achieved; in fact, Bulgaria is also undertaking a path towards the adoption of less favorable provisions in respect to asylum seekers.

In November 2013, the government declared the intention to amend the Law on Asylum and Refugees with the purpose to fulfill the obligation of the country to transpose the new European legislations on asylum into the domestic law; specifically, the recast Qualification Directive and recast Reception Directives[136]. According to the official position of the government, the new law would introduce high standards for the treatment of asylum seekers, respecting the fundamental rights enounced in the Charter of Fundamental rights of the European Union; particularly with regards to detention conditions. Indeed, the draft contains a number of provisions regulating the conditions of detention for asylum seekers; even though, detention should not be applied as a rule. If the amendments were approved, asylum seekers would be subject to unconditional detention in closed-type centers[137]. It seems that the Bulgarian government has forgotten the principles stated in the Directives; according to which detention should not be used as a regular measure, but only when it is "necessary and on the

[136] Qualification Directive Recast: 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, *O.J.E.U.*, L 337/9, 20.12.2011; and Reception Directive Recast: Directive 2013/33/EU, *v. supra* note 87.

[137] BULGARIAN HELSINKI COMMITEE, Position *on the Law on Asylum and Refugees Draft Amendments*, 28 November 2013, Bulgaria.

basis of an individual assessment of each case"; and only "if other less coercive measures cannot be applied effectively".[138]

Moreover, the Directive lists the reasons justifying a temporary detention; that is:

> "An applicant may be detained only
> (a) In order to determine or verify his or her identity or nationality;
> (b) In order to determine those elements on which the application for international protection is based which could not be obtained in the absence of detention, in particular when there is a risk of absconding of the applicant;
> (c) In order to decide, in the context of a procedure, on the applicant's right to enter the territory;
> (d) When he or she is detained subject to a return procedure under Directive 2008/115/EC […]
> (e) When protection of national security or public order so requires; […]"[139]

The indiscriminate detention of all asylum seekers is a manifest violation of these provisions; as well as a strange contradiction. Indeed, the positive attitude shown by Bulgaria in the effort to solve the problems caused by the emergency, among which the opening of the only closed-type accommodation reserved to asylum seekers[140], clashes with the above mentioned proposal. The meaningful achievements in the material conditions of the reception centers obtained so far, would be erased by the introduction of closed-type facilities.

2.5 ASYLUM IN BULGARIA AND 'DUBLINERS'

As we have seen, Bulgaria was unprepared for the influx of asylum seekers, which increased drastically since mid-2013. Before, there existed international and national legal tools regarding international protection, as well as material structures to cope with the issue, but they were suitable for a small number of applications; the sudden increase has challenged the capacity of the State Agency for Refugees to manage the claims and the reception conditions.

[138] Art. 8, para. 2 of the Directive 2013/33/EU laying down the standard for the reception of applicants for international protection, *v. supra* fn 87.

[139] *Idem*, Art. 8, para. 3.

[140] UNHCR, *Bulgaria as a Country of Asylum*, April 2014, *v. supra* note 106, about the opening of the Harmanli reception center.

Indeed, Bulgaria, while since 2007 has been receiving around 1 000 asylum seekers per year; between January and December 2013, has received approximately 9 100 people who applied for one of the existing forms of protection. Over 4 000 claim to be Syrian nationals; and the majority of them arrive in Bulgaria through irregular means[141].

As regards the international commitments in the field of protection, Bulgaria ratified the Geneva Convention relating to the Status of Refugees and the New York Protocol in 1992. Moreover, since its accession to the European Union, it has adapted the national asylum system to the set of regulations and directives relevant in the field of international protection at the EU level, particularly, the qualification directive, the reception directive and that referring to procedures. The relevant national legislation consists in the Law on Asylum and Refugees (LAR), approved first in 1999, later amended and modified in 2002[142]. The LAR prescribes for the granting of a 'special protection', consisting in the following forms: asylum, the status of refugee, a humanitarian status, and a temporary protection.

The term asylum refers to the condition of people "persecuted for their opinions or activities in defending internationally recognized rights and freedoms"[143], according to an old definition contained in the Constitution; and it is conferred following a decision of the President of the Republic.

While, the refugee status is accorded to people coming under the definition of refugee contained in the Geneva Convention[144]; i.e. "people finding themselves outside the country of nationality or the country of habitual residence, and unwilling to avail themselves from the protection of that country, due to a well-founded fear of being persecuted on account of their race, religion, nationality, political opinion, or membership of a particular social group"[145].

The humanitarian status is based on art.9 of the LAR and is aimed at ensuring the observance of the commitment of Bulgaria under the ECHR; particularly, provisions of art.2 and 3.

---

[141] UNHCR, *Bulgaria as a Country of Asylum, UNHCR Observations on the Current Situation of Asylum in Bulgaria*, 02.01.2014, *v. supra* fn 99, p. 4.

[142] Law on Asylum and Refugees, SG issue 53/1999, replaced by the SG issue 54/2002.

[143] BULGARIAN HELSINKI COMMITTEE, *Annual Monitoring Report on Refugee status determination procedures in Bulgaria*, *v. supra* fn 133, p.1.

[144] According Art.8 of the LAR, *v. supra* fn 144.

[145] Art. 1(a) of the Geneva Convention, *v. supra* footnote 35.

Indeed, it protects aliens forced to leave or to stay outside their country of nationality or habitual residence because in such state they would face a real and personal danger of severe encroachment or punishment; or sever threat to their lives as a result of a contest of violence arising from domestic or international conflict. The relevant authority responsible for any decisions on the granting of the status of refugee, as well as of the humanitarian status, is the State Agency for Refugees.

Finally, the temporary protection, provided under an order of the Council of ministers, is applicable in case of a mass influx caused by conflict or civil war[146].

The set of the existent legislative tools provides sufficient standards regarding international protection and it is in line with the international commitments of Bulgaria, but the recent crisis has put under pressure the asylum system, as we have seen, worsening the reception conditions. Furthermore, the Interior Minister accused the SAR to have wasted the money allocated for the purpose of bettering the asylum system, spending them on awareness campaigns, trainings, brochures and specialized computers and software, instead of improving the accommodation facilities[147]. Nonetheless, the subsequent action of the SAR shows the will of the Bulgarian Agency to focus its endeavor on the material conditions in order to grant a more efficient service. In addition, the lacks in the registration procedure and the practice to forget the asylum seekers residing outside the premised accommodations contributed to render the collection of data relating to the number of people applying for asylum difficult.

While the available data speak of more than 9 000 protection seekers entering Bulgaria from January to December 2013; yet, there was also a number of refugees who do not fall in these figures, for they moved to other Member States after crossing the Bulgarian border, and lodged an application for asylum,[148]. The implementation of the Dublin mechanism, prescribing the return of those applicant to the first country they entered, posed a further strain on the national capability to deal with the matter. Due to the lack of personnel, and the double flow, from the border and from Europe, the procedural safeguards resulted inadequate. This situation forced the UNHCR to call for the suspension of the Dublin mechanism towards Bulgaria, at least until the obligation under the reception directive were respected. However,

[146] BULGARIAN HELSINKI COMMITTEE, *Annual Monitoring Report on Refugee status determination procedures in Bulgaria*, *v. supra* fn 133, p.3 ff.

[147] HUMAN RIGHTS WATCH, *Containment Plan*, *v. supra* fn 105, p. 22.

[148] UNHCR, *Bulgaria as a country of Asylum*, 02.01.2014, *v. supra* fn 99, p.4.

the Bulgarian government shown that the failure was only temporary, and managed to solve the initial problems faced by the SAR.

According to the UNHCR, persons who apply for asylum and those taken back under the Dublin mechanism, at the time of its first assessment in January, were not guaranteed that their application was examined, for the registration capacity of the State Agency for Refugee was limited. However, the agency have noticed a significant improvement in the procedural safeguards at the first of April. The personnel at the SAR's offices had been improved and the emergency had been stabilized.

The problem that concerned the UNHCR the most was a procedural fail which caused the impossibility for applicants being returned to Bulgaria under the Dublin Regulation of having their situation examined. Indeed, generally, the SAR after being informed of the asylum claim presented at the border authorities, invites the applicants to appear for the interview within ten days from the notification. In case the applicants fail to appear at the SAR's offices, their claims are suspended, but can be reopened whether they come after the deadline. In the case of a returnee under the Dublin Regulation, the term is extended to three months; after which, if the applicant do not appear in front of the SAR's authorities, their claim can be rejected in *absentia*, and the applicant will be subject to removal. The problem is that the return procedure takes more than three months; thus, in almost every case, refugees returned to Bulgaria under the Dublin Regulation end up being denied the right to have their personal situation examined. Being their claim rejected, they are considered as irregularly present in the country, and they are detained as illegal migrants, for the purpose of removal.

The UNHCR witnessing these gaps in the implementation of the existing legislation, on January this year, has called for the temporary suspension of the practice to return asylum seekers to Bulgaria under the Dublin mechanism; at least until the alleged inhuman and degrading treatments to which refugees are subject is contrasted[149].

At the light of the numerous improvements made in Bulgaria since the beginning of 2014 observed by the UNHCR in occasion of its reassessment visit, the agency has concluded that the suspension of the transfer of protection seekers under the Dublin Regulation recommended in January was no longer a necessity[150]. Although the situation is no longer

[149] UNHCR, *Bulgaria as a country of Asylum,* 02.01.2014,*v. supra* note 99, p.5.

[150] See the last chapter for the treatment of Returned people under Dublin.

alarming to an extent that justify a systematic suspension of the transfers, some deficiencies persist, so any Member State is asked to make individual assessments, in order to prevent the return to Bulgaria of people with specific needs or vulnerabilities; to which the country is not capable of granting adequate protection[151].

[151] UNHCR, *Bulgaria as a Country of Asylum,* April 2014, *v. supra* fn 106, p.3.

3 THE AMBIGUITY OF THE EUROPEAN UNION IN THE FIELD OF ASYLUM

SOMMARIO: 3.1The link between security issues and asylum in the European Union policy making; 3.2 Asylum in Greece and European harmonization of asylum policies; 3.3 Stepping back from an area of freedom security and justice; 3.4 Externalization of immigration control.

3.1 THE LINK BETWEEN SECURITY ISSUES AND ASYLUM IN THE EUROPEAN UNION POLICY MAKING

The structure of the European Union has changed significantly and the scope of its law-making power has broadened to an extent that, nowadays, it presents the highest level of political, judicial, as well as, of course, economic integration, not comparable to any other international initiative.[152] In addition, it has been said to constitute a *supranational* organization, rather than an *international* one, as it has the power to operate independently over (*supra*) states, not only to coordinate relations between (*inter*) them[153]. Although among the fields on which the EU has now law-making power there are immigration and asylum, the shift in competences in this field has not reach a full transposition of responsibility to the Union, as it happened in other fields such as market and economy; for, conferring authority over sensitive matter of security, would damage the unquestioned sovereignty of states; particularly, the prerogative to rule the entry and stay of third country nationals in their territory. Nevertheless, it is also true that although Member States still retain a discrete level of autonomy in decision making, they are bound to respect the general provisions agreed upon within the Union as well as the provisions contained in international agreements. The general principle of international law prescribing the right of any state to decide over the accession and stay of alien in its territory has been facing a hard challenge since the rise of international obligations under human rights treaties addressing the rights of protection seekers. The management of the new waves of immigration is no longer left at the unlimited discretion of national authorities, so they would be more difficult to control. [154]

[152] G. TESAURO, *Diritto dell'Unione Europea*, seventh ed., CEDAM, 2012, see introduzione.

[153] HARTLEY T. C., *European Union in a Global Context*, Cambridge University Press, Cambridge, 2004, see introduction.

[154] SHAIN M. A., The States Strike Back: Immigration Policy in the European Union, in *The European Journal of International Law,* Vol. 20, N. 1, 2009, p. 94.

On one hand, the Member States have to grant the human rights prescribed by the European Union and the international agreements to people under their jurisdiction, and to manage the asylum issue; on the other hand, the process towards the creation of an EU, without internal borders imposed that the Member States situated at the external frontiers exercise a strong control on people entering the Schengen area.

The conflict between these two commitments lays at the basis of the ambiguous attitude of Greece and Bulgaria towards irregular migrants. As we have seen, the interest to secure the borders, and close the frontiers of the European Union prevails in the analysis of balance. As a consequence, the respect of human rights fades into the background during the implementation of border controls.

In this chapter I will describe the process which gave rise to the institutionalization, under the wing of the EU, of the cooperation between Member States in the field of Justice and Home Affairs. Underlying the tight link between policies regarding control on external borders, comprising countering illegal immigration and those regarding provision of access to the protection system, I will show how the interlacement between such conflicting priorities, to which states have to deal simultaneously, can explain their contradictory attitudes.

As already said, originally, policies on asylum were a matter of inter-governmental cooperation between Member States[155]; every agreement on the subject was developed through negotiation between states outside the context of the European Community, being this beyond the scope of the EEC Treaties. The Dublin Convention of 1990 and the London Resolutions of 1992 are the main example of these treaties, as well as the Schengen Accords of 1985, followed by the Schengen Convention of 1990.

As the EU integration process moved towards a deeper consolidation, several changes have been made in the structure of the Community. First step was taken in 1993, when, through the treaty of Maastricht, the EEC was integrated with other two cooperation systems. Specifically, maintaining, yet with some changes, the structure of the existing Communities, the Treaty has created a new legal system, named European Union, based on three pillars. The first one is the set of the three existing treaties establishing the European Community, the only pillar based,

[155] DE JONG C. D., *Harmonization of Asylum and Immigration Policies*, in VAN KRIEKEN P., *The Asylum Acquis Handbook: The Foundation for a Common European Asylum Policy*, T.m.c. Asser Press, Berlin, 2000, p. 21; and PAPADIMITRIOU P. N., PAPAGEORGIOU I. F., The New 'Dubliners': Implementation of European Council Regulation 343/2003 (Dublin II) by the Greek Authorities. *Journal of Refugee Studies Vol. 18, N°3,* 2005, p.302.

at that time, on the community method of decision-making; the second one concerns a Common Foreign and Security Policy; finally, the third pillar refers to Justice and Home Affairs, comprising the matter of asylum. This innovative view, though, did not question the responsibility of Member States to decide and to take action individually to deal with issues coming under the third pillar and it did not confer any decision-making power to the EU. Yet, it opened the way towards the future enlargement of competences of the latter. Indeed, after having required the Member States to consider some issues, among which asylum policy, as "matters of common interest"[156], the Treaty, on the one hand, affirms that Member States "shall inform and consult one another within the Council with a view to coordinating their action"[157] in respect to these issues; thus, leaving untouched the national sovereignty on any decision. On the other hand, it confers to the Council the optional right to adopt joint positions to promote any cooperation, or to adopt joint action, when deemed that the objectives of the Union can be attained better by a joint action rather than by individual action of Member States, as well as the possibility to develop conventions, to which Member States had discretion over whether to adhere or not[158].

As a result, the period going from the entry into force of the Maastricht Treaty to the advent of the Amsterdam Treaty has seen the mushrooming of a number of non-binding resolutions and recommendations within the Union[159], that have been used to explain the growing concern around the need for a reconsideration of the asylum *aquis* of the European Union[160]. Particularly, this concern is evident in the Vienna Action Plan, a document adopted as a conclusion of a European Council held in Austria in 1998, containing guidelines "on how to best implement the provisions of the Treaty of Amsterdam on an area of freedom, security

---

[156] Article K.1 of the *Treaty of Maastricht.*

[157] Article K. 3 of the *Treaty of Maastricht.*

[158] *idem*

[159] e.g. Council Recommendation on bilateral readmission agreement between a Member State and a third country, 30/11/1994, O.J.E.C. 274/20, 19.09.1996; Council Resolution on burden-sharing with regard to the admission of displaced persons on temporary basis, 25/09/1995, O.J.E.C. C262/1, 7.10.1995; Council Resolution on minimum guarantee for asylum procedures 1995, O.J.E.C. C 274/13, 19.09.1996; Joint Position on the harmonized application of the definition of the term "refugee" in Art. 1 of the Geneva Convention […], 1996, O.J.E.C. L 63/10, 13.03.1996.

[160] DE JONG C.D., *Harmonization of Asylum and Immigration Policies*, in VAN KRIEKEN P., v *supra* note 140, p.27. See also BYRNE R., Harmonization and Burden Redistribution in the Two Europes, in *Journal of Refugee Studies Vol.* 16, N°3, 2003, p.340;

and justice"[161]. The Council in this document has observed that the measures taken up to the time of the summit, in the field of immigration and asylum, were characterized by two weaknesses: the non-binding nature, and the absence of adequate monitoring arrangements, and that the Amsterdam Treaty was meant to eliminate these weaknesses[162].

A further step towards the consolidation of the European integration process was the entry into force of the Amsterdam Treaty, in 1999, which transferred many of the competences of the third pillar under the first pillar or *Aquis Communautaire*; hence, overcoming the confused intergovernmental cooperation, with the advent of the EU method of law-making on matters concerning Justice and Home Affairs, with particular attention to policies on visas, immigration and asylum. Title IV of the Amsterdam Treaty[163] is aimed at establishing an area of freedom, security and justice, and in order to achieve this objective, it defines a hierarchy of priority among the issues on which the Council is called to act. On the same objectives the European Council has agreed in occasion of a summit held in Tämpere on 15-16 October 1999 and has developed the so-called «Tämpere Milestones», which will be discussed later in this chapter.

Several factors can be identified as the forces leading towards the harmonization process of the asylum procedures in Member States and as many scholars have reported, the increase of refugees flows into Europe and the concomitant pressure on the national asylum systems, can be pointed at as a major cause.[164] Still, in my opinion, the engine that gave impetus to a change in this sense was the growing consciousness of Member States over the need to provide themselves with a guide, which would remind them the priorities that laid under the choice of enhancing cooperation. In fact, Member States realized that inter-governmental approach was giving too much room to States' interests, rather than addressing the rights of individuals[165]. Considering that the shift of competences in the field of asylum ran in parallel

[161] COUNCIL and COMMISSION Action Plan of 3 December 1998 on how best to implement the provisions of the Treaty of Amsterdam on the creation of an area of freedom, security and justice, *O.J.E.C.* C 19, 23.01.1999.

[162] Vienna Action Plan Part I A, para. 8, *v. supra* footnote 160.

[163] Corresponding to Title V of the Consolidated Version of the TFEU, *O.J.E.U.*, C 115/47, 5.9.2008.

[164] See as example, BYRNE R., Harmonization and Burden Redistribution in the two Europes, in *Journal of Refugees Studies*, Vol. 16, N.3, 2003, p. 336; and VAN DER KLAAUW J., *The EU Asylum Aquis: History and Context*, in VAN KRIEKEN P., *The Asylum Acquis Handbook: The Foundation for a Common European Asylum Policy*, T.m.c. Asser Press, Berlin, 2000, p. 14.

[165] VAN DEN KLAAUW J., p14.

with the Union debate over the need to give shape to its ideological commitments on the respect of fundamental freedoms and rights[166], it could be expected that the sensibility of states started to be conscious of the dangers in leaving the rule over sensitive issues, as that of asylum, to the discretion of states, which face daily the conflict between their national interests and common values. Indeed, while states claim unanimously, in any international treaty, to choose cooperation in order to ensure a common behavior in the interests of individuals, sometimes the provisions contained in these treaties reveal the real reasons underpinning such cooperation, i.e. the need to protect the state from migratory pressure. For this reasons, the advent of the European Union policy making power in the field of immigration has been fostered, in order to create a binding system that would lead to the implementation of less restrictive policies related to the entry of third country nationals in the Member States territory.

"Because of the constraints imposed by international agreements, […] control would be embedded in international institutions and law, that were assumed to be less restrictive than national institutions."[167] Nevertheless, the European Union approach seems to be very similar to that of national states; so that now the conflict of interests is an intra-national tension, involving all the interests of the individual Member States. That is, the institutionalization of the matter of Justice and Home Affairs within the European decision-making system, instead of arresting the temptation to bypass the respect of human rights in virtue of the fulfillment of security tasks, has had the effect of enlarging it. Thus, with the opposition between the needs of Central states against the needs of the frontier states, the tension between security concerns and the duty to grant individual protection persists.

This contradiction, though, is deeply rooted in the European Policies related to Justice and Home Affairs. In fact, since the beginning the debate over matters of immigration and asylum have arisen within the discourse over border control and security issues rather than with a protection-oriented perspective, and every reference to these, in the Treaty of Amsterdam, as well as in the Tämpere conclusions, is combined with provisions regarding security. As it is

[166] The concern over the matter of fundamental rights gain momentum at the European Council in Cologne 1999, when the need to give visibility to the fundamental rights recognized by the Union has been raised officially, this summit gave start to the process of elaboration of the draft Charter of fundamental rights until its adoption in Nice in 2001.TESAURO, *Diritto dell'Unione Europea*, *v supra* note 137, p.13 ff.

[167] SHAIN M. A., The States Strike Back: Immigration Policy in the European Union, in *The European Journal of International Law,* Vol. 20, N. 1, 2009, p. 94.

evident also in the choice to include prescription concerning the three aspects under the same Title of the Amsterdam Treaty. Indeed, in art. 61 the link between border control and immigration or asylum is expressed clearly: "In order to establish progressively an area of freedom, security and justice, the Council shall adopt […] measures with respect to external border controls, asylum and immigration […] and measures to prevent and combat crime […] measures in the field of police and judicial cooperation in criminal matters aimed at a high level of security by preventing and combating crime within the Union […]"[168] As a result, the Member States face a tension between commitments to control irregular entry into the Union by third country nationals on one side, and to grant access to asylum procedures,[169]without penalization on account of the illegal entry of the applicant, as requested by the Geneva Convention.

Furthermore, the Amsterdam Treaty, including the Schengen *aquis* as an attachment of the European Union Treaty, elevated its provisions to the rank of primary European law[170]. Thus giving a strong legal basis on the allocation of the responsibility to cope with external borders control on the movement of persons exclusively on member states situated at the frontiers of the Schengen area. In fact, beside the abolition of controls at internal borders, there come an enhancement of the external controls, not only charging the frontier countries with a higher burden, but also with a responsibility towards the other Member States[171]. Any decision taken by those States with regard to the incoming flows, or inefficiency of the controls, affect also other Member States that cannot exert systematic controls on persons crossing internal borders[172]. Considering this, the fact that Member States may be tempted to lean towards the adoption of more restrictive measures, narrowing access to their territory or denying an effective possibility to present an asylum application, can be a consequence of the closed link between security issues and asylum characterizing the European policies.

[168] Art. 61 Treaty of Amsterdam.

[169] KARAMANIDOU L., SHUSTER L., Realizing One's Rights under the 1951 Convention 60 Years On: A Review of Practical Constraints on Accessing Protection in Europe, in *Journal of Refugee Studies*, Vol. 25, N.2, 2011, p.171.

[170] TESAURO G., *Diritto dell'Unione Europea*, *v. supra* footnote 137.

[171] G. CAGGIANO, L'insostenibile onere della gestione delle frontiere esterne e della competenza di "paese di primo ingresso" per gli Stati frontalieri nel Mediterraneo, in *Gli Stranieri* N2, 2011, p.54.

[172] Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Schengen, 14 June 1985, *O.J.E.C.* L 239, 22.09.2000.

3.2 ASYLUM IN GREECE AND EUROPEAN HARMONIZATIONS OF ASYLUM POLICIES

The problem of the overwhelming of irregular migrants in Greece is also worsened by the inefficiency of the Greek asylum system. There are many factors causing the lacks in the Greek asylum system, both at national and at European level. Firstly, among national problems, the fact that the managing of the asylum issue is left in the hand of untrained police officers, as well as the lack of correspondence between the provisions prescribed by the existing law and their practical implementation contribute to the system's failures. Second, there are some common features noticeable also in other Member States, long times for proceeding the applications, and problems relating to the coordination of the different offices, as well as communication difficulties with other relevant offices in other Member States; reflecting the failure to achieve the advocated harmonization of the asylum practices at the EU level. Third, the Dublin Regulation is still characterized by the absence of a burden-sharing approach, so that, in determining which country is responsible to deal with an application for asylum it does not take into account the difficulties such country is facing, nor the needs of asylum seekers. Finally, the dangerous link between security issues and protection related issues. This link is not only a national problem, deriving from the natural conflict of interests between the two Ministries coping such related, yet such different, subjects; but, as I explained, also a consequence of the European attitude towards these two fields.

Greece has to cope with a high number of founded or unfounded asylum claims. Indeed, among the irregular crossers coming to Greece, as we have seen, there is a high share of asylum seekers; moreover, economic migrants use to apply for asylum, despite not being refugees, in order to obtain temporary protection from expulsion. Thus, the already weak Greek asylum system is constantly challenged by the increasing number of applications for international protection.

In occasion of his visit to Greece in April 2013, the Special *Rapporteur* of the Human Rights Council, has addressed as one of the causes of the inefficiency of the Greek management of the migration issues the inter-ministerial approach. In fact, the Ministry of Public Order and Citizen Protection has the responsibility to manage land border controls, detention of migrants, and asylum system; while the responsibility to manage immigration at sea is in the hand of the Ministry of Shipping; finally, policy-making power on immigration and integration of third-country national is reserved to the Ministry of Interior. This scattering of responsibility,

according to the *Rapporteur*, does not permit to have a comprehensive view of the situation, rendering difficult to take appropriate action. Although the Greek government informed the Special *Rapporteur* of its intention to move the responsibility for the reception system to the Ministry of Citizen Protection, the *Rapporteur* expressed his reservations concerning this choice; expressing his concerns over the possibility that under such Ministry, whose main component is made by police officers, the protection of the rights of migrants would still not be considered a priority over security concerns[173].

The contradiction is that, national officers were called to take care of the interest of asylum seekers and at the same time they had the task to return irregular migrants[174]. Since every state has the right to decide over the criteria of accession to its territory, yet taking into consideration the indisputable right of an asylum seeker to access the national asylum procedures; the management of the frontier is problematic. On the one hand, the massive influx of migrants worries the national authorities to such an extent that they easily fell into the temptation of just push everybody out. On the other hand, they must respect the international law regarding asylum. In this situation, the Greek authorities are stuck and have problems in fulfilling both these commitments. They have to grant access to every migrant asking for international protection, at least until the admissibility of their asylum request is under examination, in respect of the provisions entailed in the Geneva Convention relating to the Status of Refugees; they have the right to put under detention illegal migrants in the view of their repatriation, granting them all the rights provided by the international human rights law; and, at the same time have a high number of migrants, and insufficient facilities to host them. Moreover, the high number of asylum applications, among which there is a high share of unfounded applications, makes the proceeding even slower and both migrants and real refugees are detained, and for long periods. In conclusion, these contradicting commitments lead the Greek authorities to be stuck with the impossibility to host high numbers of immigrants and the impossibility to return them to their country of origin. The conditions of detention described in the first chapter are a direct consequence of this dilemma.

[173] UNITED NATIONS (GA), Human Rights Council, *Report by the Special Rapporteur on his mission to Greece, v. supra* footnote 21, p. 6.

[174] KARAMANIDOU L., SCHUSTER L., Realizing One's Rights under the 1951 Convention 60 Years On: A Review of Practical Constraints on Accessing Protection in Europe. *Journal of Refugee Studies Vol. 25, N°2,* 2011, p.179.

It has to be said that, since this conflict of interest of the national officers has been sharply criticized, many attempt to improve the situation have been made until today. In 2010, the Greek government decided to adopt a 'National Action Plan on Asylum and Migration Management'[175]; this Plan sets out the strategy of the Greek government for the managing of migration matters, among which the screening of irregular migrants, the creation of a new Asylum System, improving detention facilities and conditions, repatriations. As regards the first matter, the Action Plan provides for the establishment of initially mobile screening centers, and of three permanent ones in Evros, the Dodecanese and Lesvos. The creation of a new Asylum service, managed by civilian personnel, independent from the police, is important for it is aimed at ensuring independency to asylum management, previously dangerously linked with security management; and it brought with the restoration of the second instance procedure, which allows asylum seekers whose request was rejected in the first analysis to appeal against the negative decision; this procedure was abolished by a Presidential Decree of 2009[176]. The Action Plan led to the adoption of Law 3907/2011, which entered into force in January 2011, providing for the creation of the desired independent Asylum Service, of an Appeal Authority, and establishing a First Reception Service[177]. Nevertheless, although the declared objective of this law is to give independency and impartiality to the officers or civilian personnel called to deal with asylum applications and appeals, they remained under the aegis of the Ministry of Citizen Protection[178]. The Prime Minister presented to the European Commission a revised Action Plan in January 2013, but the overall contents have not changed.

Furthermore, the policy making power the European Union has come to have in the field of asylum does not make the Greek situation easier. As we have seen, the Schengen Accords of 1985, the Dublin Convention of 1990 and the London Resolutions of 1992 are the first inter-

[175] HELLENIC REPUBLIC, MINISTRY OF CITIZEN PROTECTION, press release, *Greece sends its National Action Plan for Migration Management to the European Commission*, Athens, 25 August 2010, available at http://www.yptp.gr/index.php?option=ozo_content&perform=view&id=3246&Itemid=443&lang=EN.

[176] PD 81/2009, art.3, see also KARAMANIDOU L., SCHUSTER L., *v. supra* footnote 159, p.174.

[177] The new First Reception Centre is entitled with the task of screening irregular migrants, providing medical assistance when needed and most importantly providing information regarding the right and the procedures by which to apply for asylum; it consists of a staff trained by the relevant authorities in the field of protection of refugees, UNHCR and EASO, the European Asylum Support Office. See MINISTRY OF PUBLIC ORDER AND CIVIL PROTECTION, *Statement of Minister of Public Order and Citizen Protection of Greece Mr. Nikolaos Dendias 101st session of the IOM Council*, Geneva, 27.11.2012.

[178] KARAMANIDOU L., SCHUSTER L., *v. supra* footnote 159, p. 179-90.

governmental treaties in the field of Justice and Home Affairs signed by the European countries.

The Schengen Accords were aimed at the abolition of frontiers between the contracting states, although not targeting the field of asylum directly[179], they are noteworthy as the provisions contained therein affect the attitude of the frontier countries also in respect of the application of the asylum system. In contrast, the London Resolutions and the Dublin Convention were inter-governmental responses to the challenges deriving from the pressure national asylum systems were facing.

The four resolutions coming under the general definition of London Resolutions elaborated a number of measures aimed at lightening the burden of asylum procedures, concerning manifestly unfounded applications for asylum, the concept of safe third countries, the concept of safe countries of origin, and, expulsion of illegal third country nationals[180]. It is evident that the prerogative to protect states from an overwhelming number of procedures, rather than a real concern for the asylum seekers lays at the basis of these legal tools.

For this reasons the Member States welcomed the advent of the EU based approach on asylum, which was expected to give more importance to common values in contrast with the national interests. Then, Greece, as all EU Member States, starting from late 1990s, has been called to implement a number of measures aimed at the creation of a Common European Asylum System, comprising the achievement of common minimum standards regarding the asylum procedures. The Tämpere Council held on October 1999 set a hierarchy of priorities in this regard: the so-called 'Tämpere Milestones', i.e. a set of measures to be taken within a period of five years, comprising provisions on:

> "(a) Criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States,
> (b) minimum standards on the reception of asylum seekers in Member States,

[179] The original Schengen Accords did not contain provisions regarding asylum, while in the consolidating Convention, it appeared a chapter on the allocation of responsibility to examine an asylum claims. As noted the Dublin Convention and the Schengen Convention were signed in the same year, it is obvious that the concern over the problem of responsibility was a focus theme in the period, thus it is not surprising that Ministries felt the need to include provisions of this kind. VAN DER KLAAUW J., *v. supra* fn 149, p.10

[180] Cit. London Resolution

(c) minimum standards with respect to the qualification of nationals of third countries as refugees,
(d) minimum standards on procedures in Member States for granting or withdrawing refugee status;
[…][e] minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection"[181]

Other measures were conferred a long-term: importantly, the promotion of " a balanced effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons".[182]

According to the Tämpere Conclusions, the adoption of these measures within the terms prescribed, would lead in the long-term to the harmonization of Member States policies in the field of asylum. Unfortunately, the level of protection granted in Member States is still long from being harmonized.

In the implementation of the Tämpere provisions, the EU adopted two regulations (and further two regulation on their application), and four directives. The regulations are the "Dublin II" Regulation[183], replacing the Dublin Convention of 1990, and the Regulation establishing the Eurodac, a database containing the fingerprints of asylum seekers and other immigrants who illegally crossed the borders of a Member State, which is used to implement the "Dublin II" Regulation. These two instruments gave light to the 'Dublin System', responding to the need to set the criteria for determining responsibility to examine an application for asylum. While the directives are used to give response to the call for

[181] Art. 63 of the Treaty of Amsterdam, Consolidated Version of the Treaty establishing the European Community, corresponding to art. 78 of the Consolidated Version of TFEU, *v. supra* fn 148.

[182] *idem*

[183] Council Regulation (EC) 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, *O.J.E.U.*, L 50/1, 25.02.2003; amended by the so-called Dublin III: 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), *O.J.E.U.*, L 180/31, 29.06.2013, which entered into force on July 19th 2013, but it is applicable since January 1st 2014.

harmonization of the national asylum systems and are the so-called Directive on temporary protection, the Reception directive, the Qualification directive and the Procedures directive[184].

The Dublin II Regulation sets the criteria for determining the state responsible to analyze an asylum application lodged in one Member State; in particular, it is based on the principle that only one state is called to examine any application, whether it has been submitted to its authorities or not. The general criteria is that the state which shares the highest responsibility as regards to the entry into the European territory of the asylum seeker is the one entitled with the responsibility to decide over the concession of the status of refugee[185]. That is, more often, the state who issued a visa allowing the asylum seeker to reach an European country, or the frontier state in case of an illegal entry. As a consequence, in case an individual, after being entered irregularly into European territory, manages to lodge an application for international protection in a different state than the country he first entered, the state receiving the request has the faculty to return the asylum seeker to the country deemed responsible for the analysis of that application according to the Dublin Regulation criteria. Thus, the frontier states have to manage also the asylum application of people who was no longer in their territory, but has been returned from another Member State. The Dublin Regulation poses a further great burden on the Greek asylum system, as well as to the Bulgarian one, so any improvement is more difficult than it could be in non-frontier countries.

In fact, the Dublin Regulation has given room to many criticism, for besides being presented as a tool in favor of the asylum seekers, it is a means aiming at preventing them to choose the host state; as well as an obstacle to an equal sharing of the economic responsibility linked with asylum among the Member States. Indeed, until 2011, the asylum seekers were not allowed to leave the country deemed responsible for the examination of their claim, not even after being granted the status. Thus, the correct implementation of the Dublin mechanism had a central role in the allocation of burdens related to the reception and integration of protection

[184] 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, *O.J.E.C.*, L 212/12, 07.08.2001; Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, *O.J.E.C.*, L 31/18, 06.02.2003; 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, *O.J.E.C.*, L 304/12, 30.09.2004; Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, *O.J.E.C.*, L 326/13, 13.12.2005.

[185] Dublin II Regulation, Council Regulation (EC) No 343/2003, *v. supra* note 183 .

seekers going from the examination of the claim, comprising the related provisions regarding hosting and state support to be granted to applicants, to the integration into the country's society; also the costs of the arrangement of the return of the applicant, in case of unfounded claim was on the examining country. This obstacle to free movement was not in line with the advocated purposes of the European Union. Firstly, from the point of view of the area of freedom, security and justice, it was an unjustified discrimination restricting the freedom of movement inside the Union, which is accorded to Union citizens as well as to third country nationals legally residing in one of the Member States; consequently, it was in contrast with the Reception Directive, which since the very beginning stressed that refugees must be granted no less favorable rights than those reserved to the other aliens legally present in the country. However, only in 2011 the Union changed this restrictive approach, with an amendment of the Directive relating to the rights of third-country nationals, which originally did not apply to refugees in possess of a long-term residence permit[186]. This delay in the institutionalization of a simple principle, which would be a natural transposition of the European common values, is a prove that the Dublin mechanism was not adopted with a individual-oriented perspective; nor with attention to the principle of solidarity between Member States, on which the EU claim to be based.[187]

The harmonization of the national systems is a necessary achievement to ensure the effective application of the Dublin criteria. Indeed, the Dublin mechanism should be based on the assumption that all the Member States provide the same level of protection and recognize the same persons as refugees. The failure of the Dublin system is a consequence of the lack of harmonization in the reception, procedures and qualification of refugees, which is still the main problem underlying all asylum issues in the European Union.

Moreover, the definition of minimum standards was seen to be a guarantee that Member States would be bound not to adopt less favorable treatment or criteria, yet it has been addressed as giving space to a 'race to the bottom', with the opposite effect of lowering the level of provisions already put in practice by Member States before the appearance of the EU directives. Indeed stating which are the minimum standards to be observed was a temptation

[186] Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection, *O.J.E.U.* L 132/1, 19.05.2011.

[187] G. CAGGIANO, L'insostenibile onere della gestione delle frontiere esterne e della competenza del "paese di primo ingresso" per gli Stati frontalieri nel Mediterraneo, in *Gli Stranieri N°2*, 2011, pp. 51-52, and p. 59.

for States that accorded more favorable provisions to adapt their habitual practices to the new standards, thus lightening the burden on their national social system.

Additionally, at the moment of the adoption of these instruments the Council was called to take action based on consensus, according to the Art. 67 of the Amsterdam Treaty. Considering the pressure caused by the deadline, it is easy to guess that in order to gain consensus the minimum standard has undergone a gradual downgrade during the negotiation until they met the aspiration of the Ministers less willing to assent.

Finally, among the legal tools at the disposal of the European institutions[188], the directives are the ones that give more room to States discretion as regard the means to be used for the achievement of the objectives contained therein; while regulations contain precise provisions directly applicable in the national legislations in the forms elaborated by the Commission.

For this reasons, the desired harmonization has not been achieved. There are still actual and substantial differences in the way Member States apply the provisions of European directives. There are differing interpretation of the qualification directive; in fact, the same claim could be considered acceptable in a Member State, while be rejected if examined by another. In addition, as regards the reception, different Member States provide different conditions and sustain to refugees. A former Justice and Home Affairs Director General observed that while there had been considerable progress in the fight against illegal immigration and on the controls at external borders, there had been no progress in the harmonization of policies regarding immigration and asylum[189]. In fact, a report published by the UNHCR in 2010 shows the difference in the evaluation of the asylum claims between Member States. The agency made a research analyzing the manner in which 12 Member States[190] evaluate the asylum claims, and observed that not only the Procedures Directive[191] is applied in different

[188] Regulations, Directives, and Decisions (for the binding tools); Recommendations and Opinions (non-binding tools)

[189] FAULL J., *An immigration policy for Europe*, reference to a Joint Conference of the Center for European Studies at New York University and the European University Institute in Florence, 2005.

[190] Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Greece, Italy, the Netherlands, Slovenia, Spain, and the United Kingdom

[191] Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, *O.J.E.U.*, L 326/13, 13.12.2005; Recast: 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, *O.J.E.U.*, L 180/60, 29.06.2013.

ways, but, in some cases, they act in violation of more general international principles relating to refugees[192]. These differences create a risk that the needs of protection seekers are identified properly.

In conclusion, we can observe that the influence of the EU in the field of asylum has its share in the overall lacks characterizing the Member States national protection systems. Beside Greece and Bulgaria, also Spain, Italy, Malta and Cyprus have to cope with massive influx of asylum seekers and are restrained by the obligation deriving from the Dublin System. The approach of the Union is not, as desired, that of an impartial guardian bent to ensure that states interests do not jeopardize the rights of individuals; on the contrary, it gives greater resonance and legitimization to the vices of the Member States, through its growing influence in the international landscape.

3.3 STEPPING BACK FROM AN AREA OF FREEDOM, SECURITY AND JUSTICE

The transposition of competencies over border controls to the European Union has been hard; for, as already said, giving up one country's decision-making power over such a sensitive issue can challenge the sovereignty of that state. However, the European countries, since the very first appearance of a regional international community, gathered with the intent of coordinating their approach in the field of justice and home affairs. Then, they progressively improved such cooperation, finally deciding to confer to an external institution the right to supervise their action, and to exercise a comprehensive power in the borders management, in order to ensure the respect of common values. Since then, the idea that the European Union, besides being a strong international judicial and political organization, must aspire to become a territorial unit, comprising the sum of its countries' territories, became ever stronger, changing the face of the Union. Therefore, the creation of an area of free movement of persons under the aegis of the European Union is considered by the Commission "one of the most important and successful achievements" of all the process of integration in the field of Justice and Home Affairs[193]. The Schengen Border Code is based on the idea that the frontiers of the European Union are defined by the national frontiers of the more external Member States, and the frontiers between two Member States should be considered as they were two

[192] UNHCR, *Improving Asylum Procedures: Comparative analysis and recommendations for law and practice*, Brussels, March 2010.

[193]EUROPEAN COMMISSION, *Statement by Commissioner Malmström on the compliance of Italian and French measures with the Schengen Aquis*, Brussels, MEMO/11/538, 25 July 2011.

provinces of the same State. In fact, the Schengen rules prescribe for a coordinated management of the external frontiers, and the abolition of systematic checks on persons at the internal borders. This abolition has been achieved, as we know, the European citizens enjoy a wide right to free movement within the territory of the Schengen area.

Nevertheless, the recent increasing in the migratory pressure has put the Schengen System under a hard strain, forcing the European Union to rethink its approach on the matter; consequently, the idyllic vision that has surrounded any step forward in the creation of an area of free movement so far seems to have reached its end; and the mutual trust between Member States, expected to be the guarantee of the consistency between commitments and practice, has been challenged.

Moreover, the later evolution of the Schengen System shows how the European Union is tugged among the necessity to maintain its role as external institution ensuring that the common values linking together the European Member States are considered a priority, and the temptation to take sides according to the stakes of some of its Member States. In fact, in any debate over the Schengen zone, the Commission, while initially tends to be firm in the purpose to defend and improve the importance of an integrated decision-making process, ends to be subject to the interest of the more powerful states and to become an instrument at their disposal. Likewise, the European Union is progressively moving from a freedom centered to a security concerned perspective in its action; while, originally, the introduction of a European citizenship was based on the importance of the freedom of movement, now the main prerogative, stated in later discourses, is to grant the security of citizens.

The new tension surrounding all the discussions over security issues and immigration is characterized by a clear division between central States, e.g. Germany, Belgium, France and the Scandinavian countries, traditionally the final destinations of the majority of migrants and asylum seekers, and frontier States, such as Greece, Bulgaria, but also Italy, Spain, Malta and Cyprus. Soon after the outbreak of the Arab Spring in North Africa had caused a mass flight of refugees, the central Member States started raising a concern over the size of the flows entering the European Union through the southern-eastern borders of the Schengen area. Since the former gave up their decision-making power in the field of border management in the name of the European values; initially, they could only express their disappointment addressing and criticizing the efficacy of the managing of external borders by the latter, until they started to perceive the distance between their primary interest and the European values. Thus, coming to consider as obstacles the constraints imposed by the Union, they pushed to

gain greater authority in this field. Particularly, they called for a greater discretion in the decision over the restoration of the systematic controls on persons at the internal borders; and to rule the entry or exit of third country nationals in their territory in a more restrictive way.

Recently, this tendency seems to be eroding the foundations on which the European Union erected the system of common policies on border management in the view of the consolidation of an area of free movement. At the beginning, the European Commission was firm in stating that conferring to Member States the power to limit the freedom of movements within the Schengen zone was a step backward in respect of the purposes laid down in the Union Treaties by the Member States themselves. Eventually, it changed its position under the pressure of the national interests.

The debate began as a result of the measures adopted by Italy and France in response to the Arab Spring. In 2011, Italy decided to give resident permit to a huge number of Tunisian immigrants, allowing them to move freely into the Schengen area, in order to relieve the burden of their reception and integration. France reacted by temporarily closing its borders with Italy, and called for a revision of the mechanism at the EU level, wishing for a system that would give more room to the States' discretion in the decision over the cases when a suspension of the Schengen provisions is to be applied. Also Germany threatened to restore the frontiers in response to the Italian choice. Although, the Commissioner for Home Affairs recognized that the measures taken by Italy and France in this situation were not in violation of the relevant European provisions, it found that the spirit of the Schengen rules had been distorted, and the power of the two authorities have been used to comply with national interests, rather than to fulfill the European solidarity principle.[194]

Indeed, under the Schengen Border Code[195], the reintroduction of the internal controls was permitted in occasion of foreseeable events (art. 24), expected to cause a serious threat to public order or internal security, such as sportive events of international scope, conferences, political demonstrations, or high-profile political meetings, for the period of time required, not exceeding 30 days. The State hosting the event should inform the other Member States and the Commission in advance about the reasons and timeframe of the action and about the

[194] WATERFIELD BRUNO, *France threatens to 'suspend' Schengen Treaty*, 22 April 2011, Brussels, on www.telegraph.co.uk.

[195] Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders, *O.J.E.U.* L 105/1, 13.04.2006.

measures taken. In cases of unforeseeable events consisting in a urgent threat to the public order, they were allowed to reintroduce the controls without previous notification (art. 25). It is in the application of this last provision that the French government reintroduced the systematic checks at the border with Italy, adducing as a justification for the choice, the fact that the flow of Tunisian nationals from Italy put the French border under pressure, threatening the public order. The Commission expressed its fear that the recent migratory flows, paired with the nationalistic tendency of many Member States, will bring to an overall abuse of this discretion and lead to a progressive restriction of the free movement of people.

However, the Commissioner for Home Affairs agreed on the necessity to foresee a recast of the Schengen Borders Code, in order to set clearly and improve the exceptional circumstances, in presence of which the Member States can temporarily reintroduce controls at internal frontiers; yet, she stated that, being the limitation of the free movement of persons within the Union contrary to the purposes of the Schengen zone, it will not be introduced as a permanent solution[196].

In the end, it put forward two proposals on the Schengen governance to protect the area without internal borders and preventing unjustified obstacles to free movement. The new rules confer to the Commission the role of supervisor, introducing an evaluation mechanism aimed at assessing the correct implementation of the Schengen provisions. It is also aimed at ensuring that no unilateral decision concerning the reintroduction of the checks at the borders is made without the approval of the Commission. Apparently, the intention of the Commission was that of reinforcing the absence of controls at the internal borders, preventing the migratory pressure to become a justification for the Member States to foster a closure of the Schengen free movement zone. From the point of view of the Commission: "a coordinated EU-based response would allow all European interests to be taken into account"[197]. Still, the provisions regarding the exceptional clause seems to entail a reinforcement of the possibility to reintroduce those controls, yet under the Union supervision. Indeed, while the implementation of the new system should, according to the proposals, be sufficient to help the Member States to deal with any problem relating to the management of frontiers, it also

[196] WATERFIELD BRUNO, *Europe forced to propose passport controls in Schengen zone*, 04 May 2011, Brussels, available on www.telegraph.co.uk.

[197] EUROPEAN COMMISSION, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, COM (2011) 560 final, Brussels, 16.09.2011.

provides the possibility for the Member States to introduce controls at internal borders for a limited period of time " for truly exceptional situations where a Member State has been persistently failing to effectively control its section of the external border".[198] Therefore, the role of the Commission instead of being that of a guide to prevent the individual states to be dragged by the tensions of their nationalistic interests, ends up to be a mean that institutionalizes the needs of the most powerful states, and a step back from the purposes laid down with the adoption of the Schengen Accords.

Another aspect worthwhile to notice is the contradiction between the perspective lying behind the Tämpere Conclusions, setting the agenda of actions to be implemented between 2000-2004, and the subsequent Stockholm Program, adopted in 2009, relating to the period 2010-2014. While in the first phase the approach conferred more importance to the position of the individual in the implementation of the policies regarding home affairs, calling for a progressive expansion of the freedom of movements to a wider category of people; the Stockholm Program stresses the paramount position of security and further restrict the scope of the fundamental rights, enlarging the distance between citizens and third country nationals. At the beginning the intent of the Union, underpinning the steps towards a more integrated approach in managing the matter of justice and home affairs, was that of creating an area of free movement, in order to ensure the consolidation of a sense of European citizenship. The Tämpere Council claimed the long-term objective of extending this right of free movement to third country nationals legally residing into the Union.

> "The challenge of the Amsterdam Treaty is now to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all. […]
>
> This freedom should not, however, be regarded as the exclusive preserve of the Union's own citizens. Its very existence acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be in contradiction with Europe's traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory. This in turn requires the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop

[198] EUROPEAN COMMISSION, *New Schengen rules to better protect citizens' free movement*, MEMO/13/536, Brussels, 12 June 2013.

> illegal immigration and to combat those who organize it and commit related international crimes."[199]

The Stockholm Program adopted in 2009 is characterized by a new perspective; indeed, the preface stresses the importance to protect European citizens from crimes and threats, with a clear reference to the migration issue:

> "Access to Europe for businessmen, tourists, students, scientists, workers, persons in need of international protection and others having a legitimate interest to access the Union's territory has to be made more effective and efficient. At the same time, the Union and its Member States have to guarantee security for their citizens. Integrated border management and visa policies should be construed to serve these goals."[200]

The shift is clear also in the standards required to the new countries who intend to join the Schengen area; in the negotiation the main requirements to be welcomed concern the effective management of external borders. As already explained, it is important to combine the abolition of internal borders with a transfer of the security tasks towards the external frontiers; but, the tendency of the Union has gone further, comprising the objective of a progressive externalization of controls and immigration related procedures.

Furthermore, the change in the viewpoint is also outstanding for it create the premises for a widening of the distance between the European citizens and third country nationals, challenging the universal value of the human rights advocated by the international community. The Charter of Fundamental Rights and Freedoms of the EU accords the respect of the rights contained therein exclusively to European citizens. In spite of being a regional tool recalling the same right accorded under the ECHR, it confers to such general human rights a more restrictive scope. Indeed, the ECHR is meant to grant that any individual under the jurisdiction of the country the respect of human rights; while the Charter of the EU, since it was adopted to set the rights accorded to its citizens, does not distinguish between general and universal human rights and those accorded only to citizens. The freedom of movement, being a result of intergovernmental agreements is not a universal human right, but, although in

[199] TAMPERE European Council of 15-16 October 1999, Presidency Conclusions, available at http://www.europarl.europa.eu/summits/tam_en.htm

[200] EUROPEAN COUNCIL, The Stockholm Programme, an open and secure Europe serving and protecting citizens, *O.J.E.U.* C 115/01, 04.05.2010, preamble.

many occasion the Council expressed its wish to expand the scope of this freedom, as we have seen through the Tämpere Conclusions, it is still applied in a discriminatory manner.[201]

3.4 EXTERNALIZATION OF IMMIGRATION CONTROL

The attitude of the European Union towards migration has always been ambiguous; on the one hand, it has been developing a number of policies in order to create a "more open and secure Europe"[202]; on the other hand, it continuously, longs for a restriction of the chances to join this space. The declared objective underpinning the action in the field of Justice and Home Affairs has always been the purpose to open Europe in respect of the international mobility characterizing the modern globalized world; while the manner in which security tasks are exercised seems to pursue another objective; as the European strategy has shifted from simply controlling the frontiers, to operating beyond them. The objective, instead of managing the reception of aliens in full respect of human rights, is that of preventing people from entering one's country, so that the responsibilities fall on the neighboring country.

This tendency is not only a national weakness, finding its manifestation in the building up of fences to close outside migrants, but also a European feature, reflecting in the policy of extra-territorialization of the immigration control; i.e. the practice of transferring the responsibility to block the incoming immigration flows on the neighboring third countries; and of the proceeding of asylum claims.

The reasons laying behind this choice are linked with the strong legal value of the international refugee laws; which challenges the autonomy of individual states in decisions regarding the national social system. But also in a myopic visual conditioned by the fears characterizing the political opinion of Europe; that is, two aspects sustained by the media and the governments of the Member States lead to the perception that the costs of reception and integration are higher than those related to the managing of borders. Or at least they are less worthy. These two aspects are the negative image that immigration has assumed recently, and the importance that the securitization of borders has gain in the European discourses.

---

[201] R. SANLORENZO, Schengenland. Una politica europea per l'immigrazione, in I. PERETTI, a cura di, *Schengenland. Immigrazione: politiche e culture in Europa, saggi*, ed. Ediesse s.r.l., Roma, 2010, p. 50.

[202] EUROPEAN COMMISSION, Communication from the Commission to the European Parliament, the Council, the European and Economic and Social Committee and the Committee of the Regions, *An open and secure Europe: make it happen*, COM(2014) 154 final, Brussels, 11.03.2014, p.2.

In fact, when a potential refugee is inside the country, the international norms, as we have seen, force the state to accept this asylum seeker and to grant him safeguards and material provisions.[203] The Member States, not willing to deny the importance of these international tools, but bound by their national interests, tried to bypass such obligations preventing asylum seekers to reach their territory. The European Union, instead of curbing this trend has adopted the same strategy, fostering this process also in its external policies. In other words, the high level of protection of human rights means that under the jurisdiction of the European Union Member States any individual has access to the relevant judicial authorities. With the increasing of third country nationals residing or wishing to settle in Europe, the number of people enjoying these rights is expected to increase, and anyone who is protected by an international agreement, finding under the jurisdiction of one of the Member States, has a strong power and all the necessary means to obtain the State's observance of the obligations to which it is bound. Thus, the Union attempted to contain the number of people who can benefit from this power; preventing them to reach the territory in the first place. The EU requires that the neighboring countries take the 'burden' to host migrants and to ensure protection to refugees.

The European Union has discussed in the past over the consolidation of a centralized process of determination of the status of refugee, gathering all the claims lodged within Member States; as well as advocated for the creation of an extraterritorial system for the analysis of the asylum applications outside the Union. None of these proposal has been successful, for different reasons. The centralization of procedures of recognition, while being welcome by the UNHCR as a guarantee that the national differences in the qualification and procedures would be overcome, has not been pursued, due to the lack of will on the part of the national authorities to confer to the Union the power to grant the refugee status and to distribute the applicants through the Member States. The extraterritorial processing of claims has been criticized by the UNHCR and the relevant NGOs concerned by the dangers in passing the responsibility on protection of individuals to other countries, without verifying the absence of risks in the particular cases[204]. Nonetheless, in the existing policies on asylum the tendency to shift this responsibility both to marginal Member States, and to neighboring countries. For

[203] SLOMINSKI P., The Ambiguities of Legalization and EU's strategy of Extraterritorial Border Control, in *European Foreign Affairs Review 17*, 2012, p.25.

[204] GARLICK M., The EU Discussion on Extraterritorial Processing: Solution or Conundrum, in *International Journal for Refugee Law*, Vol. 18, 2006.

example, the Dublin regulation as we have seen lacking from a burden-sharing approach is the most evident attempt to confine the decisions on the asylum claims to the edge of the Union; and the rejection of asylum seekers justified by the safe third country notion is the main tool aimed at preventing a potential refugee from acceding the asylum procedures in Europe. In the field of immigration in general, relevant reference must be made to the bilateral accords signed by Member States, declared in order to coordinate the efforts of border management, in reality explicitly aimed at blocking the flows towards Europe, and the practice of financing and cooperate with neighboring countries to detain potential migrants outside the territory of the Member state; as well as to the numerous readmission agreements signed by the Union, also with States that do not guarantee an acceptable level of human rights standards.

Under the Dublin System, as we have seen a Member State can decide not to analyze an asylum application in virtue of the fact that the applicant have crossed another Member State, so the responsibility is transferred from a Member State to another.

According to the Procedures Directive a Member State can refrain from considering an asylum claim if it founds that the claimant entered in the territory irregularly, coming from a country which, according to some common criteria defined in the directive and based on a list edited by the Council, is considered a 'safe third country'[205]. In order to extend the cases when this provision can be applied, the Union made several efforts to help the neighboring country to install an efficient asylum service, through cooperation arrangements.[206] These provisions are problematic, for sometimes the countries considered secure do not grant a fair access to the asylum procedures; and at the light of the previous chapters, we can extend this concerns also to the Member States. As we have seen, being bound by the Geneva Convention or by international human rights law does not comprise an actual absence of inhuman treatments and risks.

As regards the externalization of migration controls, recently, the Member States advanced some proposals to install detention centers for irregular migrants in the territories of neighboring countries. These proposals have been criticized, as they do not grant that the

[205] Art. 36 of the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, *O.J.E.U.*, L 326/13, 13.12.2005.

[206] GARLICK M., The EU Discussion on Extraterritorial Processing: Solution or Conundrum, in *International Journal for Refugee Law*, Vol. 18, 2006, p. 612.

premised countries ensure the respect of international standards for detention and the respect of human rights. For example, the Italian Libyan partnership conferred the responsibility to obstacle the exit of migrants from Libya, regardless the absence of international obligations ensuring the respect of human rights, and the acknowledged inhuman and degrading treatments occurring under the Qaddafi regime. Despite this, the Italian government decided to finance the detention centers in the Libyan territory, focusing exclusively on its interest to relieve Italy from the migratory pressure.[207]

Finally, the European Union has arranged and continues to work on readmission agreements, in order to ensure that the neighboring countries manage in the full respect of human rights the return of third country nationals with no permission to stay in the Union. According to the declarations, the European Union, seems to be faithful that its power in the negotiation with third countries is effective to push them to improve their means and to take the responsibilities that otherwise would fall on the European shoulders without giving space for breaches of fundamental rights. This approach is based on the optimistic assumption that an agreement would be enough to grant the correct implementation of provisions. As we have seen, this is not the case, for not even the international norms adopted within the strong legal system of the EU were able to impose the respect of human rights within its Member States.[208] I deem very unlikely that the EU is not aware of this, so the only reason lying behind the need to cooperate with third countries is the intent to receive an insurance that the returnees are no longer allowed to move towards Europe, as it is evident by the stress posed by the Union in the need for countries cooperating with it to ensure a fair control on the exit of persons at the borders with Europe.[209]

In this contest, it is evident the tendency of Member States to ignore the commitments regarding the respect of individual rights in favor of the fulfillment of the State's security interests; as well as the compliance of the European Union, which, criticizing on one side the dangers to which immigrants are expose in such countries, keeps on considering the externalization of migratory management a cornerstone of its external policy.[210]

---

[207] R. SANLORENZO, Schengenland. Una politica europea per l'immigrazione, in I. PERETTI,*v. supra* fn 201, p. 56.

[208] EUROPEAN COMMISSION, *An open and secure Europe: make it happen*, *v. supra* fn 202, p. 5.

[209] See all the readmission agreements.

[210] EUROPEAN COMMISSION, *An open and secure Europe: make it happen*, *v. supra* fn 202, p.2.

CONCLUSIONS

The responses that Greece and Bulgaria have put in place to comply with their obligations under the European Union are not in contrast with the position of the Union on the issue; on the contrary, they are the exact transposition of the Union's position. The failure in the respect of human rights and in providing international protection are undesired effects of the ancient double face of the provisions adopted in the field of Justice and Home Affairs. The contradiction between the role of guardian of the external frontiers and that of provider of protection for persons in flight has been the force pushing the Member States to constantly swing between the adoption of measures in favor of asylum seekers and measures aimed at blocking their access to the territory, as well as policies containing less favorable safeguards to those who manage to arrive. It is undisputable that the witnessed ill-treatments in respect to the irregular aliens are unacceptable to an extent that no defect in the policy making process can be addressed as a cause for such behavior; but, the European Union, the UNHCR and relevant NGOs have been searching for solutions to this problem since the beginning, and they are working to ensure that the existing legislations proscribing these treatments are respected. However, the juridical and political dimension of the European Union is a more complex framework, where behind a morally acceptable declaration of intents lies a different stake, evident through a careful analysis of the contents of the policies.

Indeed, the recent attitude of the Member States towards immigration and asylum matters shows how their view has shifted from the focus on human rights, characterizing the post-war period, where the need to ensure protection to the victims of persecution, violence and wars was the paramount objective of the western European countries; to the focus on security concerns following the trend of the new international landscape, characterized by the criminalization of aliens, and an overall fear surrounding all the aspects of immigration. Likewise, the Union is a political organization, and as such it is continuously under the pressure of the political stream interesting the Member States in a particular period.

At the light of these events, one can state that the central role of the security discourse is on its way to definitively supersede the observance of the international human rights law, both at a national and intra-national level. Indeed, the trend to curb the progress of the international protection system is a worldwide problem, going also beyond the European Union. The most worrying aspect is the contradictory attitude of the European Union, which continues to adopt measures and policies which disguised as human rights provisions are intended to discharge

its Member States from liabilities; reflecting in the continuous attempt to outsource the protection system.

At this stage, the concerns regarding human rights are still on the table when policy makers discuss over policies also in the field of justice and home affairs, yet the contents of the decisions hide the opposite stake. This hypocrisy is slowly emptying the human rights commitments from their meaning; so that, in the following years, the habit to stress their importance in any regulation or directive is likely to persist as a mere meaningless legacy of the past.

BIBLIOGRAPHY

Monographs

- BATTJES H., *European Asylum Law and International Law*, Nijhoff pub., Boston 2006
- GOMEZ F., DE FEYTER K., *International Human Rights Law in a Global Context*, Humanitarian Net, 2009
- GOODWIN-GILL G. S., McADAM J., *The Refugee in International Law*, third edition, Clarendon Press, Oxford, 2007
- GOUDAPPEL F.A.N.J., RAULUS H.S., *The future of asylum in the European Union. Problems, proposal and Human Rights,*T.m.c. Asser Press, the Hague, 2011
- HATHAWAY J. C., *The Rights of Refugees under International Law*, Cambridge University Press, Cambridge, 2005
- HURWITZ A., *The collective responsibility of states to protect refugees*, Oxford University Press, Oxford, 2009
- KNEEBONE S., *Refugees, Asylum Seekers and the Rule of Law: Comparative Perspectives,* Cambridge University Press, Cambridge, 2009
- I. PERETTI, a cura di, *Schengenland. Immigrazione: politiche e culture in Europa, saggi*, ed. Ediesse s.r.l., Roma, 2010.
- L. ZAGATO, S. DE VIDO, a cura di, *Il divieto di tortura e altri comportamenti inumani e degradanti nelle migrazioni*, CEDAM, 2012
- MAINWARING C., In the face of revolution: the Libyan civil war and migration politics in Southern Europe. *The EU and Political Change in Neighbouring Regions: Lessons for EU's Interaction with the Southern Mediterranean,* Calleya S, Lutterbeck D, Wohlfeld M, Grech O (eds). Mata University Press: Malta, 2012
- UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, Geneva, 1992
- VON KRIEKEN P., *The Asylum Acquis Handbook: The Foundation for a Common European Asylum Policy,* T.m.c. Asser Press, Berlin, 2000
- WOUTERS K., *International legal standards for the protection from refoulement,* Intersentia ed., Mortsel, 2009

Reports and publications by NGOs or International Organizations

- AMNESTY INTERNATIONAL, *Frontier Europe, Human Rights abuses on Greece border with Turkey*, ed. Amnesty International Ltd, London, 2013

- AMNESTY INTERNATIONAL, *Refugees in Bulgaria trapped in substandard conditions*, ed. Amnesty International Ltd, London, 2013
- BULGARIAN HELSINKI COMMITTEE, *Annual Monitoring Report on Refugee status determination procedures in Bulgaria*, 10 November 2013, issuu.com/bghelsinki/docs/2013_annual_rsd_monitoring_report_e
- BULGARIAN HELSINKI COMMITTEE, *Position on the Law on Asylum and Refugees Draft Amendments*, 25 November 2013.
- COUNCIL OF EUROPE, "*Giacomo Santini: Greece's anti-immigration fence 'will not solve anything'"*, 09.02.2012, available on-line at www.humanrightseurope.org/2012/02/giacomo-santini-greece%E2%80%99s-anti-immigration-wall-%E2%80%9Cwill-not-solve-anything%E2%80%9D/
- COUNCIL OF EUROPE, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Public Statement concerning Greece*, Strasbourg, 15 March 2011.
- COUNCIL OF EUROPE, Parliamentary Assembly's Committee on Migration, Refugees and Displaced Persons, *Migration and asylum: mounting tensions in the Eastern Mediterranean*, Strasbourg, 23 January 2013.
- COUNCIL OF EUROPE, *Letter from the Commissioner for Human Rights, Nils Muižnieks, to the Greek Minister of Public Order and Citizen Protection and to the Minister of Shipping and the Aegean Sea*, Strasbourg, 5 December 2013
- EUROPEAN COMMISSION, *Commission Reports on EU free movement*, Brussels, 03.06.2013, available at http://europa.eu/rapid/press-release_IP-13-496_en.htm
- FRONTEX, *Annual Risk Analysis 2012*, available on-line at http://frontex.europa.eu/feature-stories/annual-risk-analysis-2012-NOEp8H
- FRONTEX, *Annual Risk Analysis 2013*, available on-line at http://frontex.europa.eu/news/annual-risk-analysis-2013-published-WuhFH2
- FRONTEX, *FRAN Quarterly issue 3, July-September 2012*,available on http://frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q3_2012.pdf
- FRONTEX, *FRAN Quarterly issue 4, October-December 2013*,available on http://frontex.europa.eu/assets/Publications/Risk_Analysis/FRAN_Q4_2013.pdf
- FRONTEX, *RABIT Operation 2010 Evaluation Report*, available on-line at http://frontex.europa.eu/news/frontex-evaluation-report-on-rabits-publicly-available-MwGa0e
- HUMAN RIGHTS WATCH, *Containment Plan, Bulgaria's pushbacks and detention of Syrian and other asylum seekers and migrants*, ed. HRW, USA, April 2014

- PRO ASYL, *Pushed Back, systematic human rights violations against refugees in the Aegean Sea and at the Greek-Turkish land border*, ed. Pro Asyl Foundation and Friends, Frankfurt, 7 November 2013

- UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, available on-line at http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=4d9486929&query=advisory%20opinion%20extraterritorial

- UNHCR, *Bulgaria as a Country of Asylum, UNHCR Observations on the Current Situation of Asylum in Bulgaria*, 02.01.2014

- UNHCR, *Bulgaria as a Country of Asylum, UNHCR Observations on the Current Situation of Asylum in Bulgaria*, April 2014

- UNHCR, *Improving Asylum Procedures: Comparative analysis and recommendations for law and practice*, Brussels, March 2010

- UNHCR, *Syrians in Greece: Protection Considerations and UNHCR Recommendations*, Greece, 17.04.2013, available at www.unhcr.gr/fileadmin/Greece/News/2012/Syria/pc/Greece_Syria_Note_for_Pressconference_English.pdf

- UNHCR, *Unione Europea: ingesso negato e respingimenti per i rifugiati Siriani*, 15 Novembre 2013, on https://www.unhcr.it/news/dir/23/view/1608/unione-europea-ingresso-negato-e-respingimenti-per-i-rifugiati-siriani-160800.html

- UNITED NATIONS General Assembly, *Report by the Special Rapporteur on the human rights of migrants, François Crépeau on his mission to Turkey*, 17.02.2013, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/46/Add.2

- UNITED NATIONS General Assembly, *Report by the Special Rapporteur on the human rights of migrants, François Crépeau on his mission to Greece*, 17.04.2013, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/46/Add.4

- UNITED NATIONS General Assembly, *Report by the Special Rapporteur on the human rights of migrants, François Crépeau, following his visit to Greece, Comments by the State on the Report of the Special Rapporteur*, 19.04.2013, available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/46/Add.5

Articles

- *Bulgaria plans to complete wire fencing work at the end of February in 2014*, on http://www.worldbulletin.net/news/121655/bulgaria-to-complete-wall-on-turkish-border-by-february, 28 October 2013.

- BYRNE R., Harmonization and Burden Redistribution in the Two Europes. *Journal of Refugee Studies Vol. 16, N°3*, 2003, pp. 336 – 358

- C. GABRIELLI, Sulla natura legislativa delle regole sui poteri coercitivi delle guardie di frontiera, in quanto materia sensibile ai diritti fondamentali, in *Gli Stranieri N°2*, 2012, pp. 189-196

- CORCORAN A., *Bulgaria: work on border fence with Turkey begun*, 16 March 2014, on http://refugeeresettlementwatch.wordpress.com

- *Council of Europe's Commissioner for Human Rights says Bulgaria must find better ideas than fencing its borders against refugees*, on http://www.worldbulletin.net/news/122298/eu-warnes-bulgaria-against-fence-on-turkey-border, 06 November 2013.

- DEN HEIJER M., Reflections on *Refoulement* and Collective Expulsion in the Hirsi Case, *International Journal of Refugee Law, Vol. 25, N°2*, 2013, pp. 265 – 290

- FISCHER-LESCANO A., LÖHR T., TOHIDIPUR T., Border Controls at Sea: Requirements under International Human Rights and Refugee Law, in *International Journal of Refugee Law Vol. 21*, 2009, pp. 256-297

- *France backs wall project at Greece-Turkish border*, on www.euractiv.com/justice/france-backs-wall-project-greece-news-501687, published 28 January 2011

- *French officials wants wall at Greek-Turkish border*, on www.euractiv.com/justice/french-official-wants-wall-greek-news-511492, published 14 March 2012

- G. CAGGIANO, L'insostenibile onere della gestione delle frontiere esterne e della competenza del "paese di primo ingresso" per gli Stati frontalieri nel Mediterraneo, in *Gli Stranieri N°2*, 2011, pp. 45-65

- GARLICK M., The EU Discussion on Extraterritorial Processing: Solution or Conundrum, in *International Journal of Refugee Law*, Vol. 18, 2006, pp. 601-629

- *Interior Minister denies allegations in Human Rights Report*, 25 April 2014, on http://www.novinite.com/articles/160081/Interior+Minister+Denies+Allegations+in+Human+Rights+Watch+Report#sthash.yArNYLuG.dpuf

- *Investigation into alleged Greek coastguard abuse of migrants*, 14th January 2014, published on http://www.enetenglish.gr/?i=news.en.home&id=1705

- KARAMANIDOU L., SCHUSTER L., Realizing One's Rights under the 1951 Convention 60 Years On: A Review of Practical Constraints on Accessing Protection in Europe. *Journal of Refugee Studies Vol. 25, N°2*, 2011, pp. 169 -192

- LABROPOULOU E., *Concern over proposed Greek border fence*, on http://edition.cnn.com, 4th January 2011
- M. MARCHEGIANI, Regolamento "Dublino II" e Convenzione Europea dei diritti umani: il caso M.S.S. c. Belgio e Grecia, *Studi sull'integrazione europea, Vol. 6, N°2*, 2011, pp.357 – 366
- MORENO-LAX V., Seeking Asylum in the Mediterranean: Against a fragmentary Reading of EU Member States' obligations Accruing at Sea, in *International Journal of Refugee Law Vol. 23 N°2*, 2011, pp.174-220
- MORGESE G., Regolamento Dublino II e applicazione del principio di mutua fiducia tra Stati membri: la pronunzia della Corte di Giustizia nel caso N.S. e altri, *Studi sull'integrazione europea, VII,* 2012, pp. 147 – 162
- NOLL G., Seeking Asylum at Embassies: A Right of Entry under International law?, *International Journal of refugee law, Vol. 17, N°4,* 2005, pp.542 – 573
- PAPADIMITRIOU P. N., PAPAGEORGIOU I. F., The New 'Dubliners': Implementation of European Council Regulation 343/2003 (Dublin II) by the Greek Authorities. *Journal of Refugee Studies Vol. 18, N°3,* 2005, pp. 299 – 318
- PAPADOPOULOU A., Smuggling into Europe: Transit Migrants in Greece. *Journal of Refugee Studies Vol. 17, N°2,* 2004, pp. 167 -184
- PAPASTAVRIDIS E., "Fortress Europe" and FRONTEX: within or without International Law, in *Nordic Journal of International Law 79*, 2010, pp.75-111
- PETZINGER J., SMEE J., *Greece's planned border fence is 'an act of despair',* on The World from Berlin, www.spiegel.de, 01.06.2011
- R. CHERCHI, Il respingimento dello Straniero, in *Gli Stranieri N°3*, 2011, pp. 75-87
- ROSENBERGER S., KÖNIG A., Welcoming the Unwelcome: The Politics of Minimum Reception Standards for Asylum Seekers in Austria. *Journal of Refugee Studies Vol. 25, N°4,* 2011, pp. 538 – 554
- SHAIN M. A., The States Strike Back: Immigration Policy in the European Union, in *The European Journal of International Law,* Vol. 20, N. 1, 2009, pp. 93-109.
- SLOMINSKI P., The Ambiguities of Legalization and EU's strategy of Extraterritorial Border Control, in *European Foreign Affairs Review 17*, 2012, pp. 19-34
- SMITH H., *Greece is now on the frontline of the Fortress Europe, as non-EU refugees pour in across the Turkish border*, on www.theguardian.com, 6 February 2011
- STROOBANTS J-P, PERRIER G., *Barrier is latest attempt to stem flow of illegal migrants attempting to enter the EU through Greece*, on www.theguardian.com, 11 January 2011

- THIELMANN E. R., Between Interests and Norms: Explaining Burden-Sharing in the European Union. *Journal of Refugee Studies Vol. 16, N°3*, 2003, pp. 253 -273
- *UN concerned Syrian asylum-seekers denied entry to Greece, Bulgaria*, on www.worldbulletin.net, 15th November 2013
- VALENTINA POP, *Greece blasts EU 'hypocrisy' for opposing Turkey wall plans*, 10 January 2011 on http://euobserver.com
- WATERFIELD BRUNO, *Europe forced to propose passport controls in Schengen zone*, 04 May 2011, Brussels, available on www.telegraph.co.uk
- WATERFIELD BRUNO, *France threatens to 'suspend' Schengen Treaty*, 22 April 2011, Brussels, on www.telegraph.co.uk

Web sites

- www.europa.eu
- www.unhcr.org
- www.hrweb.org
- hub.coe.int
- www.amnesty.org
- frontex.europa.eu
- www.astynomia.gr
- www.statewatch.com
- www.theguardian.com

International Acts

International treaties and instruments

- UNITED NATIONS, Convention relating to the Status of Refugees, Geneva, 28 July 1951, available on-line at http://legal.un.org/avl/ha/prsr/prsr.html
- UNITED NATIONS, *International Covenant on Civil and Political Rights*, adopted 16 December 1966, entered into force on 23 March 1976
- UNITED NATIONS, Convention on the Law of the Sea, 10 December 1982, available on-line at http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm

- UNITED NATIONS, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 available on-line at http://www.hrweb.org/legal/cat.html

- COUNCIL OF EUROPE, European Convention for the Protection of Human Rights and Fundamental Freedoms, available on-line at http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=1&CL=ENG&NT=&NU=005

- COUNCIL OF EUROPE, Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Council of Europe, available on-line at http://conventions.coe.int/Treaty/en/Treaties/Html/046.htm

- Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Schengen, 14 June 1985, *O.J.E.C.* L 239, 22.09.2000.

European Union treaties

- Consolidated Version of the TFEU, *O.J.E.U.,* C 115/47, 5.9.2008

- Consolidated Version of the TEU, *O.J.E.U.,* C 326/13, 26.10.2012

- Charter of Fundamental Rights of the European Union, *O.J.E.C.*, C 364/1, 18.12.2000

European Union legislation

- Council Regulation (EC) 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, *O.J.E.U.*, L 50/1, 25.02.2003 (Dublin II)

- 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), *O.J.E.U.*, L 180/31, 29.06.2013 (Dublin III)

- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, *O.J.E.U.*, L 31/18, 06.02.2003

- 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, *O.J.E.U.,* L 180/96, 29.06.2013

- 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, *O.J.E.U.*, L 304/12, 30.09.2004

- 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, *O.J.E.U.*, L 337/9, 20.12.2011

- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, *O.J.E.U.*, L 326/13, 13.12.2005

- 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, *O.J.E.U.*, L 180/60, 29.06.2013

- Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, *O.J.E.U.*, L 304/1, 22.11.2011

- Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending the Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guests officers, *O.J.E.U.*, L 199/30, 31.07.2007

- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards for returning illegally staying third-country nationals, *O.J.E.U.*, L 348/98, 24.12.2008

- Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across the borders, *O.J.E.U.* L 105/1, 13.04.2006 (Schengen Border Code)

- Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection, *O.J.E.U.* L 132/1, 19.05.2011

European Union documents

- EUROPEAN COMMISSION, *Answer given by Ms Malmström on behalf of the Commission*, 06.12.2011, published on O.J. C 154, 31.05.2012

- EUROPEAN COMMISSION, *European Commission grants €5.6 million in emergency funding to Bulgaria to address the increased influx of asylum seekers*, MEMO 13/1075, Brussels, 29 November 2013

- EUROPEAN COMMISSION, *Statement by Commissioner Malmström on the compliance of Italian and French measures with the Schengen Aquis*, MEMO/11/538, Brussels, 25 July 2011

- EUROPEAN COMMISSION, *New Schengen rules to better protect citizens' free movement*, MEMO/13/536, Brussels, 12 June 2013

- EUROPEAN COMMISSION, Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No. 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, COM (2011) 560 final, Brussels, 16.09.2011

- EUROPEAN COMMISSION, Communication from the Commission to the European Parliament, the Council, the European and Economic and Social Committee and the Committee of the Regions, *An open and secure Europe: make it happen*, COM(2014) 154 final, Brussels, 11.03.2014

- EUROPEAN COUNCIL, Tämpere European Council of 15-16 October 1999, Presidency Conclusions, available at http://www.europarl.europa.eu/summits/tam_en.htm

- EUROPEAN COUNCIL, The Stockholm Programme, an open and secure Europe serving and protecting citizens, *O.J.E.U.* C 115/01, 04.05.2010.

Public statements

- BULGARIAN MINISTRY OF INTERIOR. *Daily report on the situation at the borders with Turkey and Greece*, 14 November 2013, Bulgaria.

- BULGARIAN MINISTER OF INTERIOR, *Report on the measures Adopted by the Government to Manage the Crisis resulting from the Enhanced Migratory Pressure*, Ref. No. l-1281, February 5th, 2014

- HELLENIC REPUBLIC CITIZEN PROTECTION MINISTRY, Press Release, *Statement by the Minister for Citizen Protection and former Commissioner, Mr. Christos Papoutsis, about the fence in Evros, following the statement made today by the Spokesman for the European Commission, Mr. Michele Cercone*, Athens, 07.02.2012.

- HELLENIC REPUBLIC, MINISTRY OF CITIZEN PROTECTION, Press release, *Greece sends its National Action Plan for Migration Management to the European Commission*, Athens, 25.08.2010, available at http://www.yptp.gr/index.php?option=ozo_content&perform=view&id=3246&Itemid=443&lang=EN

Jurisprudence

- EUROPEAN COURT OF HUMAN RIGHTS (GC), judgment of February 23th 2012, case of Hirsi Jamaa and Others v. Italy, application no. 27765/09, Strasbourg.
- COUR EUROPÉENNE DES DROITS DE L'HOMME (PS), jugement du 25 Décembre 2012, affair Ahmade c. Grèce, requête no. 50520/09, Strasbourg.
- COUR EUROPÉENNE DES DROITS DE L'HOMME (PS), jugement du 24 Octobre 2012, affair Mahmundi et autres c. Grèce, requête no. 14902/10, Strasbourg.