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THE COMMON EUROPEAN ASYLUM SYSTEM: HOW COMMON IS IT?

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Landing of the Belgian Refugees by Fredo Franzoni

Contents

I. Introduction

The term *asylum* is Latin but coming from the Greek word *asylia* or inviolability. In ancient Greece, inviolability was possessed by people whose work necessitated travel outside their own state - such as envoys, merchants, athletes, and others - and was recognized by all states as a matter of comity[1]. There are also biblical references to cites of refugees though were not meant for people from abroad[2]. In Rome asylum provided temporary immunity from prosecution until evidence could be gathered and a formal trial could be held and after Constantine's Edict of Toleration in 313 CE, Christian churches became places for asylum[3].

But asylum became a major philosophical and political issue as political thinkers of 16th century introduced the concept of internationality. When Hugo Grotius attempted to articulate rules to govern an international society of states, identified asylum as a *casus belli* and subsequently argued in favor of extradition of fugitives[4]. Latter international jurists, such as Samuel von Pufendorf, Christian Wolff and Emerich de Vattel rejected the duty of states to extradite or punish fugitives but on the basis of state sovereignty[5]. Few years later, it was Immanuel Kant who in his Third Definitive Article of *Perpetual Peace* defines hospitality not as a matter of philanthropy, but of right, the right of a stranger not to be treated as an enemy when he arrives in the land of another. And of course one can refuse to receive him as long as this will not cause him destruction[6]. Finally, in 20th century political philosophy Hannah Arendt argued that human rights are rights within the framework of nation-states, where reciprocal recognition and treaties guarantee a minimal standard of state conduct. Arendt argued that international law has "*woven a web around the earth that makes it possible for the citizen of every country to take his legal status with him no matter where he goes*" but the person who "*is no longer caught in it finds himself out of legality altogether*." No longer a member of a political community, the stateless

[1] Ulrich Sinn, *Greek Sanctuaries as Places of Refugee*, in *Greek sanctuaries: new approaches* edited by Nanno Marinatos and Robin Hägg, London, Routledge, 1993, p. 90.
[2] Deuteronomy 4:41-43, 19:1-13, Joshua 20:1-9.
[3] Wayne A. Logan, *Criminal Law Sanctuaries*, Harvard Civil Rights-Civil Liberties Law Review, Vol. 38, p. 324.
[4] Hugo Grotius, *De jure belli ac pacis*, Batoche Books, Kitchener, 2001, II, 21 1-4.
[5] Samuel von Pufendorf, *De jure naturae et gentium*, VIII, 6 14.
[6] Immanuel Kant, Third Definitive Article in The Conditions Of A Perpetual Peace. The Rights of Men as Citizens of the World in a Cosmo-political System, Shall Be Restricted To Conditions Of Universal Hospitality', Online Library of Liberty, p.57.

person survives at the mercy of the world. Lacking an authoritative supranational alternative foundation for human rights, the protection of persons is dependent upon the concessions of states[7].

The first signs of international cooperation relating to refugees are can be detected in 1921, when the League of Nations appointed the first High Commissioner for Refugees (Fridtjof Nansen). The first international agreements were contracted in 1922 and 1926 to secure the return of Russian refugees from Bulgaria[8].

The 1933 *Convention Relating to the International Status of Refugees*[9] was the first attempt to create a comprehensive legal framework for refugees. It was the first international multilateral treaty to offer refugees legal protection and guarantee their basic civil and economic rights, and was second only to the 1926 *Slavery Convention* in establishing a voluntary system of international supervision of human rights.[10] The 1933 Convention, which itself drew on earlier precedents of the law of responsibility for injuries to aliens and international protection of national minorities[11], was a milestone in the protection of refugees. Crucially, it was the first international agreement to guarantee the right to *non-refoulement*[12] which, in broad terms, now proscribes the forced direct or indirect removal of a refugee to a country or territory where he or she runs a risk of being exposed to persecution. The right to non-refoulement is considered fundamental to modern international refugee law.

In 1943 the United Nations Relief and Rehabilitation Administration, which was succeeded by the International Refugee Organization (IRO) in 1946, was established to assist people who had been displaced by World War II[13].

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[7] Arendt, Hannah, *The Perplexities of the Rights of Man*, in *The Portable Hannah Arendt*, edited by P. Baehr. New York: Penguin Books, 2000, pp. 31–45.

[8] Katy Long, *Early Repatriation Policy: Russian Refugee Return 1922–1924*, Journal of Refugee Studies, Oxford University Press, 2008, pp.133-134.

[9] *Convention Relating to the International Status of Refugees* (adopted 28 October 1933, entered into force 13 June 1935) 159 LNTS 3663 (1933 Refugee Convention).

[10] *Convention to Suppress the Slave Trade and Slavery* (adopted 25 September 1926, entered into force 9 March 1927) 60 LNTS 25.

[11] James Hathaway, *The Rights of Refugees Under International Law*, Cambridge University Press, 2005, p. 75.

[12] The term derives from the French refouler, which means to drive back or repel. The prohibition on non-refoulement in international law is usually described in relation to three key areas: refugee law, human rights law and customary law.

[13] http://www.britannica.com/EBchecked/topic/616434/Office-of-the-United-Nations-High-Commissioner-for-Refugees-UNHCR.

II. International law and EU Asylum *aquis*

i. International law on refugees and asylum

There are two main legal documents protecting asylum seekers, the *Convention relating to the Status of Refugees* 1951 (CRSR) and the *Protocol Relating to the Status of Refugees* (also known as the New York Protocol) entered into force on 4 October 1967 (PRSR) which removed both the temporal and geographic restrictions.

All member states of the EU have ratified both the Convention and the Protocol so non compliance with their provisions constitutes violation of international law.

Convention relating to the Status of Refugees

According to Article 1 A (2) a refugee is a person who has well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Refugees are defined as :1) *de jure refugees*, whether legally or illegally enter a state seeking asylum, 2) *refugees sur place*, persons who were not refugees when they left their countries of origin, but who become refugees at a later date, owing to intervening events. 3) *de facto refugees* those who, according to the government's refugee determination procedure, do not fall under the Convention definition of a refugee but nonetheless are in need for protection and και 4) *refugees in orbit*, asylum-seekers unable to find a state accepting to examine their application in the EU.

Protocol Relating to the Status of Refugees

The Article 1 B (1) posed two restrictions over the refugee status as it would be granted only to persons who were forced to leave their country due to "*events occurring in Europe before 1 January 1951*". The amendment with the New York Protocol set new refugees under international protection.

Therefore an "*asylum seeker*" is someone who seeks admission to another state by claiming to be a Convention refugee, but whose status is not yet determined. An asylum seeker who is recognized as a Convention refugee and who therefore receives asylum is an "*asylee*". An applicant who fails to qualify for asylum, but who

nonetheless makes a strong case that he should not be returned to his state of origin, a non Convention refugee, is sometimes eligible for "*temporary protection*" or "*humanitarian protection*", a status that typically offers fewer rights and benefits than asylum.

The UN Convention does not place states under any international legal obligation to grant asylum to persecuted people, but it does impose somewhat narrower duty known as "*non-refoulement*": states may not expel or return Convention refugees to territories where their lives or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion.

Above all asylum is a human right and the *Universal Declaration of Human Rights* (UDHR) provides for it in its 14th Article where "*Everyone has the right to seek and to enjoy in other countries asylum from persecution*.[14]"

ii. EU Asylum *aquis*

European Convention on Human Rights

In Europe, there are two main regional human rights instruments. The firtst is the European Convention on Human Rights 1950 (ECHR) which is part of the Council of Europe (CoE) system, ratified by all Council of Europe member states. The TEU foresees the accession of the EU to the ECHR in Article 6(2). Article 3 ECHR prohibits torture, inhuman or degrading treatment or punishment and has been interpreted by the European Court of Human Rights as including a prohibition on being sent to a country where there is a substantial risk that such treatment will occur.

The Treaty of Lisbon

With the entry into force of the Treaty of Lisbon in (2009) the fifty-five articles of the Charter of Fundamental Rights of the European Union became indispensable part of the EU's legal system. According to Article 18 "*the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community*"[15].

But also the Treaty for the Functioning of the European Union (TFEU) made separate provisions for asylum in Article 78:

[14] Universal Declaration of Human Rights, (1948)
[15] Charter of Fundamental Rights of the European Union, (2000/C 364/01).

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;

(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;

(c) a common system of temporary protection for displaced persons in the event of a massive inflow;

(d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status

(e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;

(f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;

(g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an emergency situation characterized by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

UK and Ireland negotiated three related opt-outs in the Treaty of Amstersam that pertained to aspects of the Area of Freedom, Security and Justice (AFSJ), which have been preserved and modified in the Lisbon Treaty[16]. The Treaty of Amsterdam brought the Schengen Treaties into the EU legal order through a Protocol. The UK

[16] Steve Peers, *British and Irish Opt-Outs from EU Justice and Home Affairs (JHA) Law*,3 November 2009, available at: <http://www.statewatch.org/euconstitution.htm>.

and Ireland were not bound by the Schengen acquis, but the Protocol allowed them to participate in part or all of it, provided that the participating States agreed unanimously that this should be so. Both States have participated in certain aspects of the Schengen regime. The Lisbon Treaty preserved the Protocol relating to the Schengen regime together with the option for the UK and Ireland to participate in some or all parts of the regime, subject to unanimous agreement from the participating States[17]. The Protocol has been amended, however, to give the UK and Ireland a right to opt out of measures building upon parts of the Schengen acquis.

As for border controls the Treaty of Amsterdam also contained a Protocol that preserved the UK control over its borders. It was framed in broad terms, in order to preclude Treaty rules or international agreements concluded by the EU, from impinging on the UK's control over its borders. This Protocol has been retained in the Lisbon Treaty[18].

The Treaty of Amsterdam contained a further Protocol concerning AFSJ. It provided in essence that the UK and Ireland were not bound by Title IV EC, but that they could choose whether or not to opt in to proposed measures in this area. When a legislative proposal was made, the UK and Ireland had three months to decide whether to opt in to a measure. If they did not do so, they were deemed to have opted out. The UK and Ireland could, however, opt in to legislation after it was made, subject to permission from the Commission. The Lisbon Treaty has preserved and extended this Protocol, such that it now applies to the entirety of the AFSJ[19]. The default position is therefore that the UK and Ireland are not bound by measures adopted under the AFSJ Title. This constitutes an extension of the previous Protocol, since the Lisbon Protocol No 21 applies to all AFSJ measures, including those on crime and police cooperation. It is, as before, open to the UK and Ireland to signify that they wish to take part in the adoption of a proposed measure under this Title, and they can, as previously, choose to opt in after an AFSJ measure has been adopted.

The Lisbon Protocol No 21 extends the UK and Irish opt-out by providing in effect that it applies to amendments to measures in relation to which those States have previously opted in. There are consequential provisions dealing with the situation where the decision to opt out of an amendment to a measure by which they were

[17] Protocol (No 19) On the Schengen Aquis Integrated into the Framework of the European Union.
[18] Protocol (No 20) On the Application of Certain Aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland.
[19] Protocol (No 21) On the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice.

previously bound would lead to that measure being inoperable as between the other Member States.

The Lisbon Protocol No 21 contains a further extension to the opt-out by providing that the United Kingdom and Ireland are not bound by the rules laid down on the basis of Article 16 TFEU, which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V, where the United Kingdom and Ireland are not bound by the rules governing the forms of judicial cooperation in criminal matters or police cooperation which require compliance with the provisions laid down on the basis of Article 16.

The Schengen acquis

The *Schengen Agreement on the Gradual Abolition of Checks at their Common Borders*, of 14 June 1985, was signed between the Benelux countries, Germany and France and founded the Schengen area and cooperation. The Schengen area represents a territory where the free movement of persons is guaranteed. The signatory states to the agreement have abolished all internal borders in lieu of a single external border and common rules and procedures are applied with regard to visas for short stays, asylum requests and border controls. Simultaneously, to guarantee security within the Schengen area, cooperation and coordination between police services and judicial authorities have been stepped up. In 19 June 1990 the Schengen implementing agreement was adopted between the same states.

Schengen cooperation has been incorporated into the European Union (EU) legal framework by the Treaty of Amsterdam of 1997. A whole body of legislations, generally referred to as the Schengen *aquis*, were incorporated into the Union Legal Order, and accordingly, all the Member States of the Union, apart from the United Kingdom and Ireland, participate in the Schengen co-operation. Denmark has signed the Schengen Agreement, but it can choose whether or not to apply any new measures taken under Title IV of the EC Treaty within the EU framework, even those that constitute a development of the Schengen *acquis*. However, Denmark is bound by certain measures under the common visa policy.

In order to reconcile freedom and security, this freedom of movement was accompanied by so-called "compensatory" measures. This involved improving cooperation and coordination between the police and the judicial authorities in order to safeguard internal security and, in particular, to fight organised crime. For this

purpose the Schengen Information System (SIS) was introduced, a database used by authorities of the Schengen member countries to exchange data on certain categories of people and goods.

The SIS was operational since 1995, but a new system with enhanced functionalities and based on new technology was needed. The Council adopted two legislative instruments on 6 December 2001: Regulation (EC) No 2424/2001 and Decision 2001/886/JHA, making the Commission responsible for developing SIS II. These instruments were modified in 2006, extending the period of their validity until 31 December 2008.

The Commission published a communication [COM(2001) 720] on 18 December 2001 examining ways of creating and developing SIS II. Following studies and discussions relating to the architecture and functionalities of the future system, the Commission presented three proposals for legislative instruments in 2005. Two of the instruments in this package (Regulation (EC) No 1987/2006 on 1st pillar aspects of the establishment, operation and use of SIS II and Regulation (EC) No 1986/2006 on access to SIS II by the services responsible for issuing vehicle registration certificates) were adopted on 20 December 2006. The third instrument (Decision 2007/533/JHA determining 3rd pillar aspects of the establishment, operation and use of SIS II) was adopted on 12 June 2007.

The Justice and Home Affairs Council of December 2006 endorsed the SISone4all project (a joint effort by Member States coordinated by Portugal). SISone4all was a temporary solution, which enabled nine EU Member States that joined the EU in 2004 to connect to the current SIS system (SIS1+), with some technical adjustments. The successful completion of SISone4all, in conjunction with the positive Schengen evaluations, allowed the lifting of internal border controls with these new countries at the end of 2007 for land and sea borders and in March 2008 for air borders.

The lifting of internal border controls paved the way for implementing alternative and less risky approaches for migrating from SIS1+ to SIS II. Following requests by the Member States to allow more time for testing the system and to adopt a less risky strategy for migration from the old system to the new one, the Commission presented proposals for a regulation and a decision defining the tasks and responsibilities of the various parties involved in preparing for the migration to SIS II (including testing and

any further development work needed during this phase). These proposals were adopted by the Council on 24 October 2008.

The Schengen agreement has had quite an extensive effect on practice regarding asylum seekers and immigration within the Union. SIS, is an important feature in the Schengen co-operation and when it comes to questions concerning asylum, the common rules concerning the establishment of responsibility for applications for asylum provided for the Dublin agreement are of major importance.

However, in the recent years, no such harmonised international control or application of the Schengen agreement has been developed in reality. Therefore, the application and interpretation of the Schengen Implementing Agreement and legislation deriving from it, has been in the hands of national authorities of the State parties. The legal remedies available to individuals when they want to challenge legislation deriving from Schengen have only been those which the national legal systems provide. And the national legal systems and applications and interpretation of the Schengen aquis may actually differ quite a lot on such issues. The Schengen information system consists of a national section for each Member state and a technical support functions and central data base located in Strasbourg France. Each member state establishes a national section connected to the SIS-system where data can be submitted to the central data base, accessible to the authorities of all the other Member states.

According to Article 95-100 of the *Schengen Implementing Agreement*, the information contains to a large extent personal data. This has required the adoption of strict rules concerning protection of personal data in the system, and the information is only accessible to the police and immigration authorities. This information may for example concern request for arrest and extradition of persons and what is more important for our discussion here today, according to Article 96 a specific file is operated on socalled “undesireable” aliens from third countries. Thus, data on aliens for whom an alert has been issued for the purposes of refusing entry into the Schengen area, shall be registered in to the central system on the basis of a national alert resulting from decisions made in accordance with the rules of procedure laid down by national legislation, the administrative authorities or courts responsible.

Article 96 does not stipulate an exhaustive list of conditions for registration under this provision. Paragraph 2 states that this situation would apply to an alien who has been convicted of an offence carrying a custodial sentence of at least one year or if

there are serious grounds for believeing, that he has committed serious offences. However, para. 3 adds new open ended grounds for registration such as deportation or expulsion measures, arising from failure to comply with national regulations. It is clear that the Schengen states may have quite different legal requirements concerning deportation of aliens, and in addition quite different legal requirements for the registration under Article 96.

The European Council Programmes

In October 1999 in Tampere, Finland the European Council (EU 15) adopted a series of important decisions in the field of justice and home affairs to highlight the priorities that would define their action at a European level. One of the main themes covered was a common EU asylum and migration policy. As the European treaties guarantee the absolute freedom of movement throughout the EU for all EU nationals, and for all others legally in the EU, anyone can travel around, settle and work anywhere in the EU once they have legally entered it. From that emerged the need for common policies on asylum and immigration, which meant that the policy for asylum, visas and migration should be a harmonized or common way for immigrants and asylum seekers to seek and obtain entry to all EU states. This objective would be achieved by partnership agreements with the countries of origin of immigrants and asylum seekers, a common European asylum system, fair treatment of third country nationals and a the management of migration flows, including severe sanctions against the traffickers of illegal immigrants[20].

According to the Tampere conclusions, a common European asylum system should include in the short term ('first phase instruments'): a decision mechanism on the state responsible for the examination of an asylum application; common standards for fair and efficient asylum procedures; common minimum conditions for the reception of asylum seekers and the approximation of rules concerning the recognition and content of refugee status (i.e. what it confers). This should be completed with 'second-phase measures' on subsidiary forms of protection offering an appropriate status to any person in need of such protection.

Following the comprehensive and coordinated progress of the Tampere European Council, the Hague Programme of 2005 set among its ten priorities a common asylum area – establishing an effective harmonized procedure in accordance with the Union's

[20] European Commission, Fact Sheet, *Tampere Kick –Start to the EU's policy for justice and home affairs*, Published by the Information and Communication unit of the Directorate-General Justice and Home Affairs of the European Commission, B-1049 Brussels - August 2002, p.2.

values and humanitarian tradition. As immigration and asylum are areas where political statements and goals do not necessarily match the policy reality at hand, the level of policy convergence since Amsterdam has been rather low[21]. The Hague Programme calls for the final evaluation of the transposition and implementation of the first-phase legal instruments by 2007.

Compliance with the 1951 Geneva Convention on Refugees and the 1967 Protocol relating to the Status of Refugees, the prohibition of expulsion or *principle of non-refoulement* as well as other relevant international human rights treaties should have been the point of departure and main philosophy underlying any policy measure dealing with asylum. As EU legislations had low standards that may leave too much room for discretion in hands of the member states and as asylum is a human rights issue, efforts should be focused on the prevention of watering down standards and commitments of international protection.

The European Pact on Immigration and Asylum that emerged from the ministerial meeting chaired by the French EU Presidency on 8 and 9 September in Paris tones down the ambitions of the 27 member states. The document introduced the establishment in 2009 a European support office (EASO) with the task of facilitating the exchange of information, analyses and experience among Member States, and developing practical cooperation between the administrations in charge of examining asylum applications. Moreover invited the Commission to present proposals for establishing a single asylum procedure, provided that for those member states facing specific and disproportionate pressures on their national asylum systems, solidarity shall aim to promote better reallocation of beneficiaries of international protection from such member states to others and underlined the need to strengthen cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR)[22].

Finally, the Stockholm Programme of 2010 aims to pursue a Common European Asylum Policy (CEAP) to establish a common area of protection for asylum seekers[23] through the sharing of responsibility by EU countries[24]. The action plan also provides

[21] Thierry Balzacq and Sergio Carrera, "*The Hague Programme: The Long Road to Freedom, Security and Justice*" in *Security Versus Freedom?* Edited by Thierry Balzacq and Sergio Carrera, Ashgate Publishing, Hapmshire, 2006, pp. 16-18.
[22] Council of the European Union, *European Pact on Immigration and Asylum*, pp. 11-12.
[23] European Council, *Stockholm Programme,* 2010/C 115/01, Official Journal of the European Union, *§* 6.2.1.
[24] European Council, *Stockholm Programme,* 2010/C 115/01, Official Journal of the European Union*, §* 6.2.2.

for a strengthened external dimension through cooperation with the United Nations High Commissioner for Refugees and the development of the EU Resettlement Programme as well as of new regional protection programmes.

Directive 2011/95/EC

The Qualification Directive of 2011 must be interpreted in light of Member States' obligations under the broader international and EU legal framework. As mentioned before the TFEU explicitly obliges the European Union to ensure that a common European asylum policy is developed in accordance with the Geneva Convention and the Protocol New York[25]. The main amendments adopted by the Directive were:

(a) The extension of the family definition and the deletion of the requirement that minor children of the beneficiary of international protection are dependent (Art. 2(j))

(b)The clarification of the definition of actors of protection which must be effective and of a non-temporary nature (Art. 7)

(c) The internal protection concept is further aligned with the case law of the European Court of Human Rights and the possibility to apply this concept notwithstanding technical obstacles to return has been removed (Art. 8)

(d) The 'causal link' requirement between acts of persecution and the 1951 Refugee Convention grounds is amended to clarify that this link is fulfilled also where there is a connection between the acts of persecution and the absence of protection against such acts (Art. 9(3))

(e) The obligation for States to take into consideration gender related aspects (Art. 10(1) (d))

(f) The cessation provisions for refugee status and subsidiary protection incorporate an exception to cessation in relation to compelling reasons arising out of previous persecution (Art. 11(3) and Art.16(3));

(g) The rights for beneficiaries of refugee status and subsidiary protection are approximated with the exception of the duration of residence permits and access to social welfare (Chapter VII);

(h) Member States are no longer permitted to reduce the content of rights granted to international protection beneficiaries (deletion of Articles 20(6) and 20(7) in Directive 2004/83/EC)

[25] ECRE Information Note on the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011, p.2.

(i) Family members of subsidiary protection beneficiaries are entitled to the same content of rights granted under Chapter VII in accordance with national procedures and in so far as compatible with the personal legal status of the family member (Art. 23(2))

(j) There is an improved provision on access to employment requiring Member States to ensure that beneficiaries of international protection have access to training courses for upgrading skills and counselling services (Art.26(2))

(k) There is a strengthened provision on access to procedures for recognition of qualifications (Art. 28).

It is worth noting that UK, Ireland and Denmark have opt out of the Regulation.

Dublin II and III

Replacing the 1990 Dublin Convention, the Dublin II Regulation (applicable to 28 Member States and Norway, Iceland, Switzerland and Liechtenstein)[26] was designed to prevent two of the most undesirable phenomena in the area of refugee law - '*refugees in orbit*' and '*asylum shopping*' and to bring order to the process of examining asylum applications in the EU[27]. It establishes the principle that only one Member State is responsible for examining an asylum application and sets the criteria relating to a country responsible for processing an asylum application. These are:

- Principle of family unity considering both cases of unaccompanied minors and adults
- Issuance of residence permits or visas, according to which where the asylum seeker is in possession of a valid residence document or visa, the Member State that issued it will be responsible for examining the asylum application.
- Illegal entry or stay in a Member State constitutes for that Member state a 12 months responsibility.
- Legal entry in a Member State constitutes for that Member state responsibility for examining the asylum application.
- Application in an international transit area of an airport that Member State shall be responsible for examining the application.

The only exceptions provided are if no Member State can be designated on the basis of the criteria listed, the first Member State with which the asylum application was

[26] Dublin II Regulation No 343/2003.
[27] Joanna Lenart, 'Fortress Europe': Compliance of the Dublin II Regulation with the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Merkourios 2012 – Volume 28/Issue 75, Article, p. 5.

lodged will be responsible for examining it and at the request of another Member State, any Member State may accept to examine an asylum application for humanitarian reasons based in part on family or cultural considerations, provided that the persons concerned consent.

The Dublin system failed in providing fair, efficient and effective protection and increased pressures on the external border regions of the EU. The famous case *M.S.S. v Belgium and Greece*, judged on 21 January 2011 explicitly proved the inefficiency and the de facto violation of Art. 3 and Art. 13 of the ECHR.

While Dublin III (Regulation 604/2013) maintains the "entry state" criteria, it balances it with stronger guarantees for fundamental rights and individual protection.

Firstly, the Regulation explicitly acknowledges in Article 3(2) the unequal standards among Member States regarding asylum rights. While there already was a discretionary clause in Dublin II (Art. 15), under which Member States may freely decide to examine an application, although they are not legally bound to do so, Member States made a very timid use of it. This was partly due to the diplomatic implications of openly accusing a Member State of poor standards. It has also been argued that non-border states were reluctant to take their share in the administrative and financial burden of asylum seekers. The explicit obligation under Dublin III to prevent "systematic flaws in the asylum procedure" will hopefully put more pressure on each state to think responsibly about readmissions.

Secondly, the criteria determining responsibility have been widened, in order to better reflect an individual's actual bonds in Member States. In order to assess these bonds, the hosting state will have to conduct individual interviews, taking into account a full range of criteria, from family relations, to the length of the stay in the Member States, to the risk of flawed asylum procedures in another Member State.

Another improvement under Dublin III is the enhanced information provided to asylum seekers. Each individual susceptible of being readmitted to another Member State will now be immediately informed of this possibility, and what it means *in concreto*. The Regulation mentions a common information leaflet produced by the EU, and translated into a language the asylum seeker may understand. Information may also be supplied orally, should individuals be unable to read.

Finally, the right to appeal the readmission decision, and the legal assistance therefore provided, should also be clearly laid out[28].

Directive 2013/33/EU

Known as the Reception Conditions Directive (RCD), this law applies to all persons who have submitted an asylum application in the EU (except applicants in the UK, Ireland and Denmark, countries who have *"opted out"* of this Directive). According to this member states are obliged not to detain a person solely because he or she is an asylum applicant (Art 8.1) and the permissible grounds for detaining asylum seekers are (Art 8.3) are clearly mentioned. Detainees are to be kept for as short a period as possible (Art 9.1), must receive detention orders in writing (Art 9.2), and have access to speedy judicial review (Art 9.3). They must also be immediately informed in a language they understand, or are reasonably supposed to understand, the reasons for their detention and the possibilities for challenging their detention (Art 9.4). Their detention shall be reviewed at reasonable intervals of time by a judicial authority (Art 9.5) and they must have access to free legal assistance, Asylum detainees should be kept separate from migrants who are not applicants (Art 10.1) with access to open air spaces (Art 10.2), to UNHCR, NGO personnel, family, counselors and legal advisers (Arts 10.3, 10.4) and to information in a language they understand (Art 10.5).

Vulnerable persons and those with special needs must be especially monitored by member states (Art 11.1). Minors can be detained in places suitable for minors, only after less coercive measures are exhausted (Art 11.2). Unaccompanied minors can be detained in age-appropriate facilities, and never in prisons (Art 11.3). Female detainees must be kept separate from males, unless they are part of a family (11.5).

The Eurodac Regulation 603/2013

On 15 January 2003 Eurodac, the EU-wide database of asylum-seekers and irregular migrants fingerprints, came into use. Proposals for Eurodac were the subject of discussions in secretive Council working parties since at least 1994. According to Regulation all participating states are obliged to "*promptly take the fingerprints of all fingers of every applicant for asylum of at least 14 years of age*". This is subsequently transmitted to the Central Unit database and stored for ten years, along the following information:

- Member State of origin, place and date of the application for asylum;

[28] Noemi Manco, *A short introduction to Dublin III*, King's Students Law Review- Blog series, January 2014.

- Sex;
- Reference number used by the Member State of origin;
- Date on which the fingerprints were taken;
- Date on which the data were transmitted to the Central Unit;
- Date on which the data were entered in the central database;
- Details in respect of the recipient(s) of the data transmitted and the date(s) of transmission(s).

Under amended legislation coming into force in July 2015, this data will be supplemented by further information:

- Operator user ID;
- The date of the arrival of the person concerned after a successful transfer under the Dublin Regulation;
- The date when the person concerned left the territory of the Member States;
- The date when the person concerned left or was removed from the territory of the Member States,;
- The date when the decision to examine the asylum application was taken.

The Asylum Procedures Directive 2013/32/EU

The recast directive on common procedures for granting and withdrawing international protection was adopted on 26 June 2013 and set deadline of transposition is 20 July 2015. The United Kingdom, Ireland and Denmark are not bound by this directive.

The Directive 2013/32/EU introduced the following amendments:

- applications for asylum and subsidiary protection are now covered as "*international protection*". Granting and withdrawing international protection must be based on a single procedure.
- Clearer rules on how to apply for asylum
- Some aspects of the examination of the application are pointed out more concrete (trained staff).
- All applicants have the right to receive free legal assistance in appeal procedures.
- Some provisions regarding applicants with special procedural needs are added to the directive.

- Procedural rules are specified in a way to provide better guarantees to applicants (stricter terms, rules on interviews, more elaborate set of rules on appeal procedures) and speed up the procedure and prevent time loss (accelerated and prioritized procedures, preliminary examination and cases of inadmissibility, subsequent applications and border procedures).

III. The European Union, Schengen and Asylum Seekers

The *Schengen Agreement on the Gradual Abolition of Checks at their Common Borders*, of 14 June 1985, was signed between the Benelux countries, Germany and France and founded the Schengen area and cooperation. The Schengen area represents a territory where the free movement of persons is guaranteed. The signatory states to the agreement have abolished all internal borders in lieu of a single external border and common rules and procedures are applied with regard to visas for short stays, asylum requests and border controls. Simultaneously, to guarantee security within the Schengen area, cooperation and coordination between police services and judicial authorities have been stepped up. In 19 June 1990 the Schengen implementing agreement was adopted between the same states.

Schengen cooperation has been incorporated into the European Union (EU) legal framework by the Treaty of Amsterdam of 1997. A whole body of legislations, generally referred to as the Schengen aquis, were incorporated into the Union Legal Order, and accordingly, all the Member States of the Union, apart from the United Kingdom and Ireland, participate in the Schengen co-operation. Denmark has signed the Schengen Agreement, but it can choose whether or not to apply any new measures taken under Title IV of the EC Treaty within the EU framework, even those that constitute a development of the Schengen *acquis*. However, Denmark is bound by certain measures under the common visa policy.

In order to reconcile freedom and security, this freedom of movement was accompanied by so-called "compensatory" measures. This involved improving cooperation and coordination between the police and the judicial authorities in order to safeguard internal security and, in particular, to fight organised crime. For this purpose the Schengen Information System (SIS) was introduced, a database used by authorities of the Schengen member countries to exchange data on certain categories of people and goods.

The SIS was operational since 1995, but a new system with enhanced functionalities and based on new technology was needed. The Council adopted two legislative instruments on 6 December 2001: Regulation (EC) No 2424/2001 and Decision 2001/886/JHA, making the Commission responsible for developing SIS II. These instruments were modified in 2006, extending the period of their validity until 31 December 2008.

The Commission published a communication [COM(2001) 720] on 18 December 2001 examining ways of creating and developing SIS II. Following studies and discussions relating to the architecture and functionalities of the future system, the Commission presented three proposals for legislative instruments in 2005. Two of the instruments in this package (Regulation (EC) No 1987/2006 on 1st pillar aspects of the establishment, operation and use of SIS II and Regulation (EC) No 1986/2006 on access to SIS II by the services responsible for issuing vehicle registration certificates) were adopted on 20 December 2006. The third instrument (Decision 2007/533/JHA determining 3rd pillar aspects of the establishment, operation and use of SIS II) was adopted on 12 June 2007.

The Justice and Home Affairs Council of December 2006 endorsed the SISone4all project (a joint effort by Member States coordinated by Portugal). SISone4all was a temporary solution, which enabled nine EU Member States that joined the EU in 2004 to connect to the current SIS system (SIS1+), with some technical adjustments. The successful completion of SISone4all, in conjunction with the positive Schengen evaluations, allowed the lifting of internal border controls with these new countries at the end of 2007 for land and sea borders and in March 2008 for air borders.

The lifting of internal border controls paved the way for implementing alternative and less risky approaches for migrating from SIS1+ to SIS II. Following requests by the Member States to allow more time for testing the system and to adopt a less risky strategy for migration from the old system to the new one, the Commission presented proposals for a regulation and a decision defining the tasks and responsibilities of the various parties involved in preparing for the migration to SIS II (including testing and any further development work needed during this phase). These proposals were adopted by the Council on 24 October 2008.

The Schengen agreement has had quite an extensive effect on practice regarding asylum seekers and immigration within the Union. SIS, is an important feature in the Schengen co-operation and when it comes to questions concerning asylum, the common rules concerning the establishment of responsibility for applications for asylum provided for the Dublin agreement are of major importance.

However, in the recent years, no such harmonised international control or application of the Schengen agreement has been developed in reality. Therefore, the application and interpretation of the Schengen Implementing Agreement and

legislation deriving from it, has been in the hands of national authorities of the State parties. The legal remedies available to individuals when they want to challenge legislation deriving from Schengen have only been those which the national legal systems provide. And the national legal systems and applications and interpretation of the Schengen aquis may actually differ quite a lot on such issues. The Schengen information system consists of a national section for each Member state and a technical support functions and central data base located in Strasbourg France. Each member state establishes a national section connected to the SIS-system where data can be submitted to the central data base, accessible to the authorities of all the other Member states.

According to Article 95-100 of the *Schengen Implementing Agreement*, the information contains to a large extent personal data. This has required the adoption of strict rules concerning protection of personal data in the system, and the information is only accessible to the police and immigration authorities. This information may for example concern request for arrest and extradition of persons and what is more important for our discussion here today, according to Article 96 a specific file is operated on socalled "undesireable" aliens from third countries. Thus, data on aliens for whom an alert has been issued for the purposes of refusing entry into the Schengen area, shall be registered in to the central system on the basis of a national alert resulting from decisions made in accordance with the rules of procedure laid down by national legislation, the administrative authorities or courts responsible.

Article 96 does not stipulate an exhaustive list of conditions for registration under this provision. Paragraph 2 states that this situation would apply to an alien who has been convicted of an offence carrying a custodial sentence of at least one year or if there are serious grounds for believeing, that he has committed serious offences. However, para. 3 adds new open ended grounds for registration such as deportation or expulsion measures, arising from failure to comply with national regulations. It is clear that the Schengen states may have quite different legal requirements concerning deportation of aliens, and in addition quite different legal requirements for the registration under Article 96.

IV. ECtHR and EUCJ decisions

i. The influence of the case law of the European Court of Human Rights

The European Court of Human Rights (ECtHR) has played a precursor role since the mid 1980s by developing praetorian case law despite the fact that the *European Convention on Human Rights* only includes a few provisions on aliens[29].

The main ECtHR Judgements are:

Applicability of the Convention

- *07/07/ 1989, Soering v. United Kingdom* (*Application no. 14038/88*): the case involved a German national accused of capital murder in the United States. The court ruled that extradition from the UK would violate the European Convention on Human Rights' Article 3, regarding the right against inhuman and degrading treatment.
- *04/02/2005, Mamatkulov and Askarov v. Turkey (Applications nos. 46827/99 and 46951/99):* The applicants had resisted extradition to Uzbekistan from Turkey to stand trial on very serious charges, saying that if returned they would be tortured. There was material to show that that was not a fanciful fear. On application made by them to the European Court of Human Rights, it indicated to Turkey under rule 39 of its procedural rules that the extradition should not take place until it had had an opportunity to examine the validity of the applicants' fears. But in breach of this measure, and in violation of article 34 of the Convention, Turkey surrendered the applicants.
- *23/02/2012, Hirsi and Others v. Italy (Application no. **27765/09**)*: is the first case in which the European Court of Human Rights delivers a judgment on interception-at-sea. In the present context the latter term is a short-hand for referring to the enforced return of irregular migrants to the point of departure of their attempted Mediterranean crossing, without any individual processing, let alone examination of asylum claims. Unanimously, the Grand Chamber found a violation of Article 3 ECHR prohibiting inhuman and degrading treatment on a double count (risk of ill-treatment in Libya and risk of repatriation from Libya to countries where ill-treatment is rife), a violation of Article 4 of Protocol no. 4 prohibiting collective

[29] Henri Labayle and Philippe De Bruycker, *The influence of ECJ and ECtHR case law on Asylum and Immigration*, Study of the Policy Department C: Citizens' Rights and Constitutional Affairs, European Parliament, European Union, 2012, p. 4.

expulsion and a violation of Article 13 ECHR guaranteeing a domestic remedy for any arguable complaint of a violation of the Convention.

- *17/01/2012, Othman (Abu Qatada) v. United Kingdom, (Application no. 8139/09)*: Diplomatic assurances will protect Abu Qatada from torture but he cannot be deported to Jordan while there remains a real risk that evidence obtained by torture will be used against him. If Mr Othman were deported to Jordan there would be a violation of Article 6 (right to a fair trial), given the real risk of the admission of evidence obtained by torture at his retrial.

The right to asylum and subsidiary protection

- *20/03/1991, Cruz Varas and others v. Sweden (Application no. 15576/89)*: Whether expulsion to a country where an individual feared ill-treatment constituted a violation of Article 3 Convention for the Protection of Human Rights and Fundamental Freedoms. Whether a European Commission of Human Rights indication of interim measures made under Rule 36 of the Rules of Procedure was binding on Contracting States.
- *29/04/1997, H.L.R v. France (Application no. 24573/94*): the Court stated the protection of Article 3 against threats from private persons.
- *11/07/2000, Jabari v. Turkey (Application no. 40035/98)*: the European Court of Human Rights held unanimously that, in the event of the decision of the authorities of the respondent State to deport the applicant to Iran being implemented, there would be a violation of Article 3 (prohibition of torture) of the European Convention on Human Rights; that there has been a violation of Article 13 (right to an effective remedy) of the Convention. Under Article 41 (just satisfaction), the Court held unanimously that the finding of a potential breach of Article 3 and an actual breach of Article 13 constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicant.
- *21/01/2011, M.S.S. vs. Belgium and Greece (Application no. 30696/09)*: the Court prohibits the automatic application of the Dublin Regulation by the EU Member States and emphasises the vulnerable situation of asylum seekers.
- *29/01/2008, Saadi v. The United Kindom (Application no. 13229/03)*: the Court re-affirms under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms the absolute nature of protection against torture as a result of expulsion including in relation to the fight against terrorism.

The right to a family life

- *28/05/1985, Abdulaziz, Cabales, and Balkandali v. United Kingdom (Application nos. 9214/80; 9473/81;. 9474/81)*: the Court stated the principle of the balance of interest in the area of family reunification of aliens
- *19/02/1996, Gül v. Switzerland (Application no. 23218/94)*: the Court sets the limits for the right to family reunification in the area of access to the territory
- *18 /10/2006, Uner v. The Netherlands (Application no. 46410/99)*: the Court sets the extent of protection for family life in the area of expulsion (No violation of Article 8 where the right to respect for private and family life of the European Convention on Human Rights.)

Procedural rights

- *31/01/2012, M.S v. Belgium* (*Application no* 50012/08): Islamist extremist's human rights breached concerning extensions of his continued detention and return to Iraq: the case concerned the extension of periods of detention while awaiting removal from Belgian territory in respect of an alien having served his sentence.
- *5/02/2002, Čonka v. Belgium (no. 51564/99)*: the Court condemns collective expulsions
- *26/04/2007, Gebremedhin v. France (Application no 25389/05)*: The case concerns access to a remedy with suspensive effect by an asylum seeker, who claimed asylum at the French border, against a potential removal from France to a country where there is real reason to believe he would face the risk of being subjected to ill-treatment contrary to Article 3 of the ECHR. The Court condemns the lack of an effective appeal with suspensory effect available to an asylum seeker.

ii. The determinant intervention of the Court of Justice of the European Union

The CJEU is acknowledged to have been the driving force in the emergence of a distinctive "*European Union law*", separate from both national laws and traditional international law, and the field of migration and asylum could not be an exception, where has the opportunity to develop a strong and distinctive body of jurisprudence. It has to be signaled the importance of EUCJ's role in forestalling divergent interpretative approaches amongst Member States mainly by the following judgments:

The right to asylum and subsidiary protection

- *17/02/2009, C-465/07, Elgafaji v. Staatssecretaris van Justitie*: the Court considers that the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he/she is specifically targeted by reason of factors particular to his/her personal circumstances; the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his/her presence on the territory of that country or region, face a real risk of being subject to that threat.
- *17/06/2010, C-31/09, Bolbol v. Hungary: the Court* directly interprets the Geneva Convention to which it guarantees compliance by EU law.
- *21/12/2011, C-411/10, N.S v Secretary of State for the Home Department and M. E. and Others (C-493/10) v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform*: the Court considers that EU law precludes the operation of a conclusive presumption that the Member State which Article 3(1) of the 'Dublin' Regulation designates as the responsible State will observe EU fundamental rights and considers that Member States may not transfer an asylum seeker to the Member State responsible where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment, within the meaning of Article 4 of the Charter on Fundamental Rights. The Court added that the Member State in which the asylum seeker is present must ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time.

The right to family reunification

- *4/03/2010, C-578/08, Rhimou Chakroun v Minister van Buitenlandse Zaken*: the Court considers that since authorisation of family reunification is the general rule for members of the nuclear family, the faculty of Member States to set the conditions for family reunification must be interpreted strictly. The margin for manoeuvre which the Member States are recognised as having must not be used by them in a manner

which would undermine the objective of the Directive, which is to promote family reunification, and the effectiveness thereof. The Court also considers that Article 17 of Directive 2003/86 requires individual examination of applications for family reunification.

Procedural rights

- *6/12/2011, C-329/11, Alexandre Achughbabian v Préfet du Val-de-Marne:* the Court ruled that legislation repressing illegal stays by criminal sanctions cannot be applied during the return procedure but could be applied when the return procedure has been established and that the third-country national is staying illegally in that country with no justified grounds.

Borders

- *22 June 2010, C-188/10, Aziz Melki and Sélim Abdeli*: The Court of Justice has ruled, at the request of the French Court of Cassation, on the compatibility with Union law of national legislation granting priority to an interlocutory procedure for the review of constitutionality. The Court, on the basis of the absence of internal border controls provided for by the Treaties, ruled that Member States cannot carry out identity controls in a border area without providing the necessary framework to guarantee that these are not equivalent to border controls.

IV. The Syrian Case

In order to explicitly present the differences that characterize the asylum system of the 28 Member States it shall be used the case of Syrians and the data of 2013. The Syrian conflict that began in March 2011, and further escalated in 2013, has left millions displaced, most of them embarking on dangerous journeys across the Mediterranean. It is estimated that some 123,600 Syrians have sought asylum in Europe and the trend of rising numbers of asylum applications in 2011 and 2012 continued in 2013 (+109%[30]). In 2013 Syria became the main country of origin of asylum seekers in the EU28.

People fleeing the conflict in Syria can take three different routes to Europe, each of them corresponding to a likely status while in Europe[31]:

• Land route to Greece or Bulgaria: they travel through Turkey –a country Syrians enter without a visa—from which the point of entry in the EU is Greece or Bulgaria. Once in Europe, they are either ordinary travellers or irregular migrants, according to whether they have a visa or not[32].

• Air route directly to any EU member state: as ordinary travelers originating from a third country, Syrians are registered at the external border; They can either apply for asylum or stay in an irregular situation, and either remain in the first country they reach in Europe or continue their travel to another country.

• Sea route across the Mediterranean to Greece, Cyprus, Malta or Italy (and possibly France and Spain): only those lacking regular entry documents take this route to Europe, which they therefore enter as irregular migrants before some of them lodge an asylum claim and join the category of asylum seekers.

According to Eurostat (46/2014 - 24 March 2014) the total number of asylum application in the EU 28 during 2013 was 434.160 covering the 48.91% of asylum applications worldwide and making Europe the first destination for people seeking

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[30] European Asylum Support Office, *Annual Report Situation of Asylum in the European Union*, 2013 July, p.7.

[31] Philippe Fargues and Christine Fandrich, *The European Response to the Syrian Refugee Crisis What Next?,* MPC Research Report 2012/14, MIGRATION POLICY CENTRE (MPC) RESEARCH REPORT, MPC RESEARCH REPORT 2012/14 BADIA FIESOLANA, SAN DOMENICO DI FIESOLE (FI)p. 5.

[32] According to a FRONTEX report "In terms of secondary movements from Greece, Syrians were also detected on exit from Greece and on entry to German, Belgian and Dutch airports using counterfeit EU residence permits and forged Greek and Bulgarian travel documents." Frontex. (2012, October 03). *Situational update: migratory situation at the greek-turkish border*. Retrieved from http://www.frontex.europa.eu/news/situational-update-migratory-situation-at-the-greek-turkishborder-HATxN9.

protection. Of them 50.470 of asylum applicants come from Syria, representing the 11.62%. Syrians constitute the first group of asylum applicants in Bulgaria (4.510), Denmark (1.685), Croatia (195), Cyprus (570), Portugal (145), Romania (1.010), Slovenia (60) and Sweden (16.540), second group in Czech Republic (70), Estonia (15), Spain (725), Latvia (15), Netherlands (2.705), and third group in Malta (250), Germany (12.855), Austria (2.005) and Poland (255). According to "*AIDA Asylum Information Database"* Belgium received 877 asylum application by Syrians, Ireland 40, Greece 485, France 878, Italy 695, Hungary 977 and UK 2.040. Sweden by far the country with the highest number of asylum applicants per million inhabitants (5.680) followed by Malta (5.330)[33].

Of all first instance decisions in EU 28 (36.790) 62% of asylum applicants were granted subsidiary protection (granted to people who are located outside of their home country and who are unable to return there due to fear of suffering serious harm, such as inhuman treatment), 27% refugee status (granted to people who are fleeing their home country due to persecution for reasons of race, religion, nationality, political opinion or membership of a particular social group), 1% received a positive decision due to humanitarian reasons (form of protection of EU States may choose to grant for any other reason) and 10% of applications were rejected.

In the EU28, Bulgaria and Malta had the highest positive decision rate in the EU28 at first instance with 88 % and 84 %, respectively, likely due to the fact that both in 2013 received applications almost exclusively from nationals of countries with very poor security situations like Syria — a fact also evidenced by their very high use of subsidiary protection. By contrast, three States displayed recognition rates in the single digits: Greece with a positive decision rate of 4 % (23) even though the country borders Bulgaria and Turkey, Hungary with 8 % and Estonia 9 %[34].

[33] Eurostat, *Data in Focus*, 3/2014.
[34] European Asylum Support Office, *Annual Report Situation of Asylum in the European Union*, 2013 July, p.23.

Table 1

Syrians asylum applicants in the EU 28 in 2013*

States	Number of applicants	Percentage %
EU 28	50.470	12
Austria	2.005	11
Belgium**	877	4
Bulgaria	9.325	63
Czech Republic	70	10
Denmark	1685	23
Germany	12.855	10
Estonia	15	15
Ireland**	40	4
Greece**	485	6
Spain	725	16
France**	878	1
Croatia	195	18
Italy	695	2
Cyprus	570	45
Latvia	15	15
Lithuania***	-	-
Luxembourg***	-	-
Hungary**	977	5
Malta	250	11
Netherlands	2.705	16
Poland	255	2
Portugal	145	29
Romania	1.010	68
Slovenia	60	23
Slovakia***	-	-
Finland	55	7
Sweden	16.540	30
United Kindom**	2.040	8

* Data taken from Eurostat Newsrelease (46/2014 - 24 March 2014)

** Data taken from *AIDA Asylum Information Database*

*** Data taken from Eurostat (last updated 08.08.2014)

Data concerning the number of applicants are rounded to the nearest 5.

Data concerning percentage are rounded to the nearest 0,5.

Concerning the case of Syrians where common rules and standards are to be applied, the first instance decisions issued to Syrian applicants differ substantially among the 28 member states. Analysis of Table 1 (page 31).

The highest protection rates (above the average EU 28) can be observed in Malta, Bulgaria, Belgium, Denmark and Spain, but of all these countries only Bulgaria received a significant number of asylum applications (see Table 2, page 33). Malta is the only member state granting protection to 100% of applicants, and to that outcome a major factor must be the fact that EASO is located in the country. Humanitarian protection is granted only in three countries: in Malta, Netherlands and Czech Republic and mainly due to the fact that "*authorization to stay for humanitarian reasons*" is not applicable to Belgium, Bulgaria, Estonia, Ireland, France, Croatia, Latvia, Lithuania, Luxembourg, Austria, Portugal, and Slovenia.

In United Kingdom, Denmark, France, Austria and Hungary Syrians were mainly granted refugee status, while in Sweden, Germany, Bulgaria, Belgium, Romania, Malta, Cyprus, Finland, Spain and the Czech Republic Syrians were most commonly granted subsidiary protection status. These differences most likely stem from MS practices when interpreting the criteria of the Qualification Directive and national policies[35].

Finally, countries that geographically should constitute the first destination for asylum seekers from Syria must be considered Greece, Cyprus and Bulgaria. But except Bulgaria which officially recognizes protection to Syrians, Cyprus and Greece show unjustifiably low rates, 61% and 50% respectively.

While the EU instrument on eligible persons for asylum is based upon CRSR assuring common interpretation, the subsidiary protection though regulated also by the CRSR, and in accordance with Directive 2011/95/EC is granted among other reasons in cases of serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict. The problem arises from the fact that this clause is subject to interpretation of humanitarian international law by Member States and of course in case of recognition of humanitarian reasons EU 28 have even

[35] European Asylum Support Office, *Annual Report Situation of Asylum in the European Union*, 2013 July, p.40

TABLE 2

Type of support provided

COUNTRY	RESETTLEMENT	HUMANITARIAN ADMISSION
Austria		1.500
Belgium	150	
Denmark	140	
Finland	500	
France	500	
Germany		20.000
Hungary	30	
Ireland	310	
Luxembourg	60	
Netherlands	250	
Portugal	23	
Spain	130	
Sweden	1.200	

more freedom. But above all a significant part of Syrian asylum seekers are left without any protection.

In a qualitative analysis of the case and provided that a major part of Syrians fleeing from their country has access to Europe mainly through land borders of Turkey and its neighboring country Bulgaria, and from the sea borders of Cyprus, Greece, Malta and Italy as stated before, it is surprising the fact that most asylum applications were lodged Sweden and Germany, states that received 58% of all new Syrian asylum applications and that the top five receiving countries (Sweden, Germany, Bulgaria, UK and the Netherlands) received 76%.

Some European countries and EU institutions have shown generous support to those affected by the conflict, including expressions of solidarity beyond their obligations under international, EU or national law. These include 17 European countries offering over 31,800 places for resettlement, humanitarian and other forms of admission for refugees from Syria in 2013 and 2014 (Table 3).

Resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them as refugees with permanent residence status.

Humanitarian admission is a similar, but expedited, process providing protection in a third country for refugees in greatest need in the region. Residence under humanitarian admission may be either permanent or temporary depending upon State legislation.

In addition, the UK has created the Vulnerable Persons Relocation Scheme for Syrian refugees; Ireland launched the Syrian Humanitarian Admission Programme; while 15 federal states in Germany initiated their own reception programmes for Syrian nationals with relatives in Germany. Approximately 5.500 visas under the German scheme have been issued to date[36].

On 3 September 2013, the Swedish Migration Board revised its policy on Syrian applicants to ensure that applicants given subsidiary protection status were generally awarded permanent residence permits. The decision also paved the way for awarding permanent residence to those previously granted subsidiary protection status with

[36] http://www.resettlement.eu/news/crisis-syria

temporary permits. This policy led to the increase of application during the third quarter of 2013[37].

In Germany, on 1 October 2013 a special decision-making group for Syria was created to process applications from Syria using a prioritized procedure. Syrian applicants whose personal hearings were not yet scheduled thus had the opportunity to state the facts of their claim in written form.

The European Commission took steps to support MS coming under pressure due to the increased number of Syrian applications. Emergency funding from the European Refugee Fund was provided to Bulgaria, Germany, Greece, Italy, Malta, Cyprus, France, Hungary and the Netherlands. At the request of the Bulgarian authorities, the EU Civil Protection Mechanism (EUCPM) was triggered in order to provide civil protection assets from other MS necessary in order to host Syrian asylum seekers in the early stages of the crisis[38].

However, the protection response in some European countries is characterized by a number of gaps and practices of concern. These include troubling border practices, inadequate reception conditions, backlogs in asylum procedures, barriers to family reunification, the lack of mechanisms to identify and assist asylum-seekers with vulnerabilities or specific needs, and excessive use of detention. Pushbacks are also another major practice of concern. Additionally, eleven countries (Austria, Belgium, Czech Republic, France, Germany, Greece, Italy, Luxembourg, Netherlands, Spain and Switzerland) in the Schengen area continue to impose Airport Transit Visas for Syrian nationals. The United Kingdom also imposes Airport Transit visas on Syrian Nationals[39].

[37] European Asylum Support Office, *Annual Report Situation of Asylum in the European Union*, 2013 July, p. 38-39.
[38] European Asylum Support Office, *Annual Report Situation of Asylum in the European Union*, 2013 July, p. 39-40.
[39] ELENA European Legal Network on Asylum, *Information Note on Syrian Asylum Seekers and Refugees in Europe*, November 2013, http://www.ecre.org/component/downloads/downloads/824.html

V. Convergence and discrepancies between Member States

The comparison of asylum system as applied in EU 28 is between specific member states whose policies reveal the existing gap and the subsequent dysfunction in the examined field.

In ***Greece***, the vast majority of Syrians are arriving from Turkey, crossing the Aegean Sea to Greek islands. Due to the limited access to procedure and the dysfunctional asylum system, most Syrians arriving in Greece cannot or choose not to submit an asylum claim in Greece[40]. There have been reports from civil society[41] of pushbacks and accusations of ill treatment upon or shortly after apprehension, as well as reports of practices that place lives at risk. Some of the patterns and methods employed during these incidents are similar to reports received by UNHCR. In 2013 several allegations of such pushbacks by land and, increasingly, by sea, came to UNHCR's attention, in some cases by Syrian refugees who alleged they were pushed back in Greek territory or on international waters.

Even though Greece is traditionally one of the most important emigration countries and the major gateway of undocumented migrants and asylum seekers from Africa and Asia, according to data from Frontex, the Greek Asylum Service, the First Reception Service and the Appeals Authority only started operating on 7 June 2013.

On 24 October, the European Court of Human Rights (ECtHR) ruled in *Housein v Greece*[42], a case concerning an unaccompanied child from Afghanistan, who was arrested and detained for illegally crossing the border, that Greece violated his right to liberty due to his automatic detention for nearly two months in an adult detention centre (Art. 5(1) ECHR) and having been deprived of his right to an effective review of the lawfulness of the order (Art. 5(4) ECHR). The ECtHR decided that domestic remedies had not been exhausted in relation to his allegations of violations of Article 3 ECHR (prohibition of degrading treatment), with regards to his complaint of unacceptable detention conditions, and a violation of Article 9 ECHR (freedom of

[40] UNHCR, *Syrians in Greece: Protection Considerations and UNHCR Recommendations*, 17 April 2013.
[41] ProAsyl, *Pushed Back: Systematic human rights violations against refugees in the Aegean Sea and at the Greek- Turkish land border,* 7 November 2013, http://goo.gl/mM9Ewv; Amnesty International, *Greece: Frontier of hope*
and fear migrants and refugees pushed back at Europe's border, 29 April 2014, http://goo.gl/PlIUJq.
[42] *24/10/2013 Housein v Greece (Application no. 71825/11).*

religion), claiming that as a Muslim, he was allegedly forced to choose between eating pork and going hungry.

More recently on 5 June 2014 the Committee of Ministers of the Council of Europe, issued in a decision[43], that it remains unconvinced that the Greek asylum system is fully compliant with the European Convention on Human Rights (ECHR) nearly three and a half years after the *M.S.S. v Belgium & Greece* judgment . Its concerns are focused on the conditions in which asylum seekers and irregular migrants are detained, on practical obstacles to lodging complaints about detention conditions, detention pending removal, and detention on medical grounds.

Finally, in their submission, the International Commission of Jurists (ICJ) and ECRE[44], also highlight the lack of independence of the new asylum Appeals Committees, difficulties in accessing asylum offices, the inadequate provision of free legal assistance to asylum seekers, and the discretionary suspension of deportation orders pending appeal.

In 2013 ***Cyprus*** Syrian nationals filing subsequent applications from immigration detention were not released and remained in detention for the whole asylum process, nearly three years[45]. Moreover, those who were not detained while submitting subsequent applications remained without a formal asylum status, and at risk of detention and deportation pending examination of whether new elements were submitted with the subsequent application. Since July 2013, the Asylum Service in Cyprus issued decisions in over 330 cases of Syrians (63 % of those cases were provided protection)[46].

French authorities, who temporarily reintroduced the airport transit visa for Syrian citizens in January 2013, stressed that such practice was adopted for reasons of "public order" and that the main goal of this practice was to fight against a massive influx of Syrian nationals seeking to use airport transit to enter France, according to the French Council of State (*Conseil D'Etat*). French officials stressed that, with this system, Syrians can stay in the international area of an airport while waiting for a

[43] Committee of Ministers, Council of Europe, *Case No. 4, 1201st meeting – 5 June 2014*, Decisions.
[44] Third Joint Submission of the International Commission of Jurists (ICJ) and of the European Council on Refugees and Exiles (ECRE) to the Committee of Ministers of the Council of Europe in the case of *M.S.S. v. Belgium and Greece (Application no. 3 0696/09)* and related cases, May 2014.
[45] Report on the Asylum Procedures in Cyprus in 2012 by the Future Worlds Centre.
[46] UN High Commissioner for Refugees (UNHCR), *Syrian Refugees in Europe: What Europe Can Do to Ensure Protection and Solidarity*, 11 July 2014, p. 16.

connecting flight, and added that refugees have access to all French embassies and consulates[47].

The AIDA Report[48] shows that ***Malta*** has not yet improved its detention system following the 2013 judgment in which the ECtHR indicated measures that Malta is required to take in order to prevent the detention regime for asylum seekers from violating the ECHR). The ECtHR requested the Maltese authorities to establish a mechanism to allow individuals seeking a review of the lawfulness of their immigration detention to obtain a determination of this claim within a reasonable time-limit. It further recommended taking the necessary steps to improve the conditions and shorten the length of detention of asylum seekers.

The ECtHR ascertained violations of Articles 3 (Prohibition of torture, inhumane or degrading treatment) and 5 (Right to liberty and security and Right to have lawfulness of detention decided speedily by a court) in the cases of *Aden Ahmed v. Malta*[49] and *Suso Musa v. Malta*[50], which were decided in July 2013 and became final in December.

According to internal law anyone who enters the Maltese territory without the necessary documents is detained upon arrival. In 2013, around 1,900 individuals went through detention in Malta.

The report notes that asylum seekers who arrive in Malta in an irregular manner are not always effectively informed of the possibility and/or of the means of challenging the removal order issued against them. Finally, the Report highlights that, in 2013, the Office of the Refugee Commissioner raised the level of protection granted to Syrian asylum seekers to subsidiary protection (a status granted to people recognised as fleeing war, torture or inhuman or degrading treatment), mainly by eliminating the distinction made earlier between Syrians reaching Malta after the start of the conflict and those who arrived in Malta prior to the start of the hostilities. Where those who had been in Malta for some time and who only applied for asylum after the start of the conflict were found not eligible for refugee status, instead of being granted subsidiary protection, they were granted "*Temporary Humanitarian Protection*" a domestic form of protection which, while still providing protection from forced return and a selection of the same rights of beneficiaries of subsidiary protection, is not set out in

[47] ECRE/ELENA Information Note on Syrian Asylum Seekers and Refugees in Europe - November 2013 , P. 27
[48] AIDA, Asylum Information Database, National Country Report, Malta, May 2014.
[49] 23/07/2013 *Case of Aden Ahmed v. Malta (*Application no. 55352/12).
[50] 23/07/2013 *Case of Suso Musa v. Malta (*Application no. 42337/12).

law and is granted on a discretionary basis. In a number of cases, the Refugee Appeals Board overturned first instance and granted the asylum seekers concerned subsidiary protection. At the same time, all Syrian applicants who had been granted Temporary Humanitarian Protection had their protection changed to subsidiary protection. Currently, all Syrian applicants who prove their Syrian nationality are granted, as a minimum, subsidiary protection[51].

In ***Italy***, analysis of arrival and asylum statistics indicate that around 94% of the refugees from Syrian continue their journey to other countries. Of the 11.300 Syrians who arrived in Italy by sea in 2013, 6% applied for asylum (695 people). As a result of irregular onward movement, many Syrians who have not yet applied for asylum have been returned, some after being detained, to EU and non-EU states using Safe Third Country (STC) principles and readmission agreements.

As ***Bulgaria's*** shared border with Turkey makes it an entry point for many Syrian refugees the 30km razor wire fence on the Turkish border between the towns of Lesovo and Kraynovo was erected in order to prevent people from entering in the first place[52].

On 13 November 2013, the Bulgarian government adopted a draft bill, amending Bulgaria's Asylum Law to introduce systematic detention of asylum seekers arriving irregularly on Bulgarian territory. The draft bill renders detention a rule and not an exception. The detention facilities are labeled as "*centres of a closed type*"[53].

Irregular entry is considered a crime in Bulgaria (Article 279(5) of the criminal law) and newcomers have been convicted of these charges for years. However, if someone arrives in an irregularly to the country to apply for asylum, then this person should not be convicted, according to Article 31 of the Refugee Convention. Many asylum seekers tried to leave to go to other European countries but irregular exit of the country is also considered a crime and many of them are imprisoned.

Moreover as one of the first measures to stop refugees from entering Bulgaria, the Government decided to intensify border controls. Between the end of October and the beginning of November 2013, 1,400 police were deployed to the border. The border police and the migration police often claim that there are no asylum seekers in

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51 http://www.asylumineurope.org/news/20-06-2014/malta-has-not-yet-taken-steps-required-ecthr-improve-detention-system-updated-aida.

52 Human Rights Watch, *"Containment Plan" Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants*, April 2014, p. 31.

53 http://ecre.org/component/content/article/70-weekly-bulletin-articles/498-draft-bill-provides-for-systematic-detention-of-asylum-seekers-in-bulgaria.html

detention centers in Bulgaria. However, people who apply for asylum but are still not officially registered as asylum seekers by the Asylum Agency can be detained. Furthermore, they do not have access to the asylum procedure and to the entitlements of asylum seekers such as accommodation, social support and access to health care. This is why in 2014 Members of the European Parliament[54], Belgium and Denmark announced that returns to Bulgaria under the Dublin Regulation will be suspended due to the poor conditions experienced by asylum seekers. It was also the Conclusion UNHCR Observations on the Current Situation of Asylum in Bulgaria[55].

According to Human Rights Watch (HRW) ***Croatia's*** reception centres are already overcrowded with hundreds of unaccompanied children in need of specialised protection standards. The European Commission, for its part, says that the newest member of EU has met EU asylum standards but recognizes some areas could be improved. Croatia has access to financial support from EU funds should it run into trouble as well as additional aid from Frontex, the European Asylum Support Office or the EU police agency Europol. Member states may also voluntarily take in extra asylum seekers from Croatia should the need arise.

In **Croatia**, UNHCR has enhanced its cooperation with the Government on the implementation of the comprehensive durable solutions strategy for the remaining refugees in the country. With its recent accession to the European Union, Croatia is bound by EU norms. The regional initiative on refugee protection and international migration in the western Balkans which UNHCR has introduced in cooperation with IOM, could assist Croatia to respond to the increasing number of people seeking asylum and transiting through Croatia. It offers a framework, inter alia, for the establishment of protection-sensitive entry management and fair and efficient procedures to identify and address people's needs in a differentiated manner. In addition to monitoring the refugee status determination process, UNHCR provides free legal aid to all asylum-seekers[56].

On the other hand there are some MS willing to provide adequate framework for asylum seekers.

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[54] Report from the Committee on Civil Liberties, Justice and Home Affairs delegation to Bulgaria on the situation of asylum seekers and refugees, in particular from Syria Head of delegation: Frank ENGEL, Brussels, 1 February 2014.

[55] UN High Commissioner for Refugees (UNHCR), *UNHCR observations on the current asylum system in Bulgaria*, 2 January 2014, available at: http://www.refworld.org/docid/52c598354.html

[56] http://www.unhcr.org/pages/49e48d7d6.html

In ***Belgium*** the Aliens Office (AO) is the authority responsible for the registration of asylum applications, which is done immediately when the asylum seeker presents the application at their offices. At the border asylum applications can be made with the border police section of the Federal Police, and in penal institutions with the prison director.

The State Secretary for Migration and Asylum Policy, Social Integration and the Fight against Racism was in December 2011, entrusted with competences in asylum, migration and reception matters. During 2013 the work towards a coherent policy, linking asylum, migration and reception in a "chain" continued. Some legislative changes were made, inter alia to discourage multiple asylum applications. Cooperation mechanisms between asylum and reception authorities were reinforced to better monitor flows. In asylum the focus was again laid on improving the efficiency while maintaining the quality of asylum processes. In 2013, Belgian asylum authorities continued to promote European harmonization in the asylum field and they were active in developing a common asylum policy at EU level with a view to adopting the new "asylum package"[57].

The situation of Syrian refugees obviously raised considerable attention, inter alia from the Coordination of Initiatives for Refugees and Foreigners (CIRE) and the National Coordination Action for Peace and Democracy (CNAPD) pleading for activating, at EU level, a temporary protection status for Syrians and for supplying resettlement places for the most vulnerable Syrian refugees. Moreover the above-mentioned organizations invited Belgian authorities to adapt the visa and family reunification policies to allow Syrians to legally join family members in Belgium. [58]With regard to the latter requests, the State Secretary affirmed that visa applications introduced abroad on humanitarian grounds are examined on a case-by-case basis and all elements taken into account. She also announced easing measures taken in the field of family reunification for beneficiaries of subsidiary protection. Considering the number of Syrian beneficiaries of subsidiary protection, it is expected that they will find it easier to bring family members in Belgium[59].

In view of the current situation in Syria, ***German*** administrative courts have held that Syrians who have irregularly left Syria and applied for asylum, thus spending a

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[57] European Migration Network, *Annual Policy Report 2013 – Belgium,* pp. 12-13.
[58] *Two years of unrest in Syria: continuing violence and humanitarian crisis,* Press release from CIRE and CNAPD, 14 March 2013.
[59] House of Representatives Plenary Session from 19 December 2013, Analytical report, pp. 28-29.

longer time abroad, are likely to be subject to persecution upon re-entry into Syria, due to the suspicion of having dissident political beliefs. This justifies their recognition as refugees according to § 3(4) of the Asylum Procedure Act, in conjunction with § 60(1) of the Residence Act[60].

German law stipulates what asylum seekers can and cannot do. After the "initial reception" stage, asylum seekers are either housed in group accommodation or apartments. German states interpret that differently, but each applicant must receive 6.5 square meters. A so-called "*residence requirement*" determines the area within which asylum seekers can move in relation to their accommodation. For daily needs, such as food, they receive food packages, store coupons or cash. They're not allowed to work in their first nine months in Germany. Afterwards, the situation doesn't get much easier, since employers must first take on German workers, EU nationals or recognized refugees.

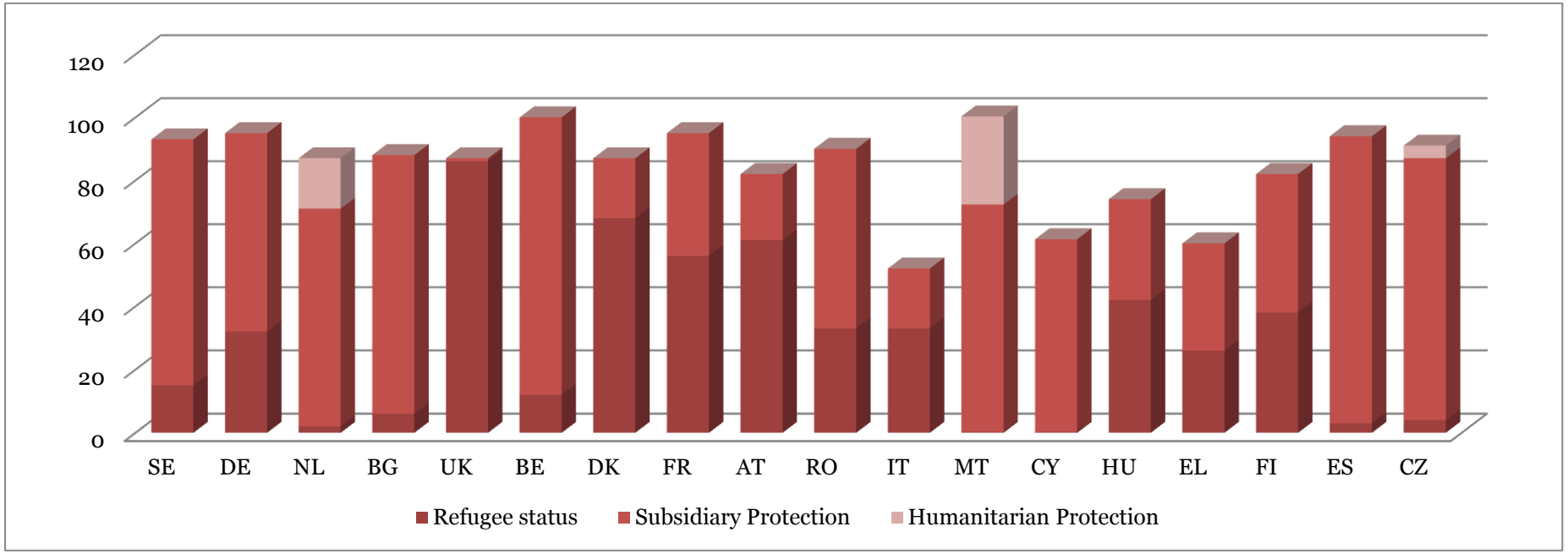
The ***Dutch*** authorities started a pilot project regarding the asylum applications of Syrian nationals. The Immigration and Naturalisation Service (IND) tries to handle all Syrian applications within the short regular procedure and in most cases the asylum seeker is granted a residence permit after four days. This project constitutes a positive practice provided asylum applications are examined with all the relevant safeguards[61].

In ***Austria*** the Ministry of the Interior announced on 19 April that 1,000 refugees from Syria would be resettled, thereby bringing Austria's resettlement commitment to 1,500 refugees. In August 2013, Austria pledged to accept 500 refugees from war-torn Syria under a humanitarian admission programme. According to Minister of the Interior women and children refugees will be prioritised and special consideration will be given to persecuted Christians. The resettlement of the refugees will be financed under the Joint EU Resettlement Programme, under which Member States that receive resettled refugees submitted for resettlement consideration by UNHCR will be eligible for a lump sum of €6,000 per person arriving.

[60] OVG Munster, judgment of 14 February 2012 – 14 A2708/10.A=BeckRS 2012, 47626; VG Aachen, judgment of 11 January 2012 – 9 K 1698/10.A=BeckRS 2012, 47611; VG Aachen, judgment of 11 January 2012 -9K 1698/10.A= BeckRS 2012, 46726; VG Stuttgart, judgment of 15 March 2013 – A7 K 2987/12=BeckRS 2013, 48932; VG Hannover, judgment of 8 May 2013 – 1 A 5409/12= BeckRS 2013, 51351. Judgments identified by McDermott, Will and Emery LLP.

[61] ECRE/ELENA *Information Note on Syrian Asylum Seekers and Refugees in Europe* - November 2013 p. 30.

Figure 1 ***Syrians granted high protection rates in the EU28***



European Asylum Support Office, *Annual Report Situation of Asylum in the European Union*, 2013 July, p.39.

While welcoming the announcement to resettle the more vulnerable refugees as an important contribution to relieving the dire humanitarian situation, Asylkoordination, Austrian NGO and member of ECRE, has warned that the selection and entry of the refugees should be carried out quickly and not take months as the first group of 500 refugees have not yet all arrived. According to the European Resettlement Network Focal Point in Austria, of the first group of 500 refugees, 250 Syrian Christians with family ties in Austria (or other linkages) were selected in cooperation with the Church (mainly the Syrian-Orthodox Church) and have arrived in Austria. Another 250 most vulnerable Syrian refugees were selected by UNHCR and to date 47 people have arrived[62].

Furthermore, to support the integration of the UNHCR cases, the Austrian government released a call on integration measures in March 2014. On the basis of a lump sum, the following deliverables were included in the tender:

- initial support services and counselling
- literacy and language courses
- education and employment counselling
- counselling on accommodation possibilities[63].

In ***Sweden*** in a case concerning a Palestinian asylum seeker from Syria the Migration Court found it non-contentious that the applicant was a statutory stateless person with residency in Syria. It ruled that Council Directive 2004/83/EC envisages a right for statutory stateless persons to receive refugee status, if they cannot take advantage of the protection they recently had from a UN body, on condition that the protection stopped due to circumstances beyond the person's control. The Court determined that when the authorities in the Member State responsible for the asylum examination have confirmed that the protection from the UN body has stopped, the Member State should recognize the asylum seeker as a refugee[64]. The Court found that the appellant was forced to leave the refugee camp in Yarmouk, which is under UNWRA's mandate, because of factors that he was not able to affect or control, and that his personal safety was seriously threatened and that UNWRA was unable to

62 http://ecre.org/component/content/article/70-weekly-bulletin-articles/685-austria-to-take-in-1000-more-refugees-from-syria-.html.

63 http://www.resettlement.eu/news/austria-expands-humanitarian-admission-programme-500-1500-syrian-refugees.

64 Swedish Migration Court tended to recognise refugee status to Palestinian refugees from Syria in general: Migration Court 2013-05-20, case No UM 527-13; Migration Court 2013-02-22, case No UM 9159-12; Migration Court 2013-04-22, case nr 170-13, identified by White & Case LLP office in Sweden.

guarantee such adequate living conditions. Consequently he was recognized as a refugee[65].

Moreover in September 2013, Sweden became the first European Union country to announce it will give asylum to all Syrians who apply for asylum in Sweden. This policy followed the new assessment of the situation in Syria by the Swedish Migration Board (SMB), according to which "*the present safety situation in Syria is extreme and characterised by general violence*".

Finally, only in a few EU countries, like ***Denmark***, the duration of residence permit is (four years) aligned for both refugees and subsidiary protection beneficiaries[66].

[65] Migration Court 2013-02-22, case nr UM 9159-12, identified by the White & Case Advokat AB in Sweden.
[66] ECRE/ELENA *Information Note on Syrian Asylum Seekers and Refugees in Europe* - November 2013 p. 8.

Conclusion

From 1985 with five Member States (Germany, France, the Netherlands, Belgium and Luxembourg) signing the Schengen Agreement that established common rules regarding visas, the right to asylum and checks at external borders, to The Dublin Convention of the 1990 and the "London Resolutions" (1992) and until the Treaty of Amsterdam introducing for the first time legally binding instruments and up to the first phase of the CEAS in 2006, the European Union either for ethical (human rights) either for practical reasons (post communist era, civil wars, etc.) has been forced to develop and to consolidate an effective but above all a common asylum system.

Subsequent to the unfinished, if not unsuccessful, integration of the EU, the asylum system as a part of a general migration policy is characterized by grave deficiencies which literally cost human lives. For the last three years this has been a subject at the top of the political agenda in many countries, mainly the Euro- Mediterranean member states, in which hundreds of thousands of people are preparing to make treacherous crossings on unseaworthy vessels.

As the most affected member states are pressing for the establishment of holding centers in North Africa and the Middle East in order to process refugees and migrants before they reach European soil or for an international seaborne taskforce to patrol the Mediterranean, the EU had not found effective mechanisms to insure the common character of it's asylum policy. Protection and solutions must be a shared responsibility for the EU and at this moment, in conditions of economic crisis in Southern Europe the need of support is urgent in order to uphold protection of displaced people.

The Common European Asylum System has to become an effective mechanism closely connected with the other policies. In line with the Union's founding values of solidarity, respect for human dignity, equality and tolerance the activities of the EU are not must not be limited to dealing with the immediate consequences of wars and conflicts, but they must focus on prevention, preparedness and response to humanitarian crisis. EU foreign and security policy, fairly defined as the weakest policy area of the Union, holds a major part of responsibility for the tragic scenes in the Mediterranean. Preserving peace and promoting international cooperation cannot be limited to post conflict conferences or statements which have no particular effect and degrade the Union's picture in the world scene.

Instead of that the EU has given a great importance to the border management by Frontex, to EU's Court of Justice decisions over member states' responsibilities after cases of infringement of fundamental rights causing rise of xenophobia in hosting and suffocating states of the South, failure to grant protection to vulnerable populations and finally the disgraceful pictures of floating bodies of refugees.

To preserve credibility of the Common European Asylum Policy the Union must reapproach it's general mission and position in the world scene and work against its misuse. Asylum is a humanitarian institution eroded by economic crisis, democratic deficit in the EU but also an intertemporal quality criterion for democracies.

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