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# Asylum Law of the European Union. An Ethical Approach forCommon Regulations

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**Abstract:**
Increased migration flows, which in Europe reached their peak between 2015 and 2016, revealed significant gaps in the current asylum system of the European Union and stays until now unsolved. The well founded European integration process was paradoxically brought to the edge. Some Member States have even tempted this to challenge the European value system, set out in Art. 2 TEU (see: The rule of law crisis in Poland) and in particular, the principles of solidarity and fair sharing of responsibility (Art. 80 in conjunction with Art. 78 (3) TFEU). The so-called "refugee crisis" grew up to an internal Union crisis. In some matter it seems to be an EU-solidarity-crisis. The unwillingness to advance the necessary development of the common asylum policy by standardizing the asylum system and even extending the European Union's competence, as well as the lack of willingness of some Member States to participate in the redistribution of refugees, seem to be a barrier to deeper integration. In some sense, it has been reduced to the Utopia of sole participation in the benefits, without showing the responsibility of states in crisis situations. In the light of this, the question arises as to whether the existing reception regimes of persons seeking international protection are ethically accountable. To address this issue, the European asylum system is analyzed, with a focus on the admission procedure of vulnerable persons. In fact, this constitutes a major limitation of the refugee and migration problem which, however, is indispensable for this study due to the range of topics.
**Key Word**: Asylum system, refugees, European Union, international cooperation, solidarity

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## I. INTRODUCTION

What's already evident, that the effects of the EU-*refugee-crisis* contributed significantly to the resurgence of nationalist tendencies, fueled in addition by populist slogans of right-wing conservative parties (such as the PiS-Party in Poland or the Fidesz-Party in Hungary) to see a way out of political non-existence in those extremes (Bauer, WT., 2018). Their common denominator is the demand to return to a homogeneous exclusion society, which is purposefully brought into opposition to an egalitarian and cosmopolitan culture of openness (Mack E. 2017). The role of the EU, if not completely deprived, should then be reduced to the distribution of goods at best. Due to the experiences of the late 1980s and early 1990s, in which numerous conflicts led to increased migration movements (between 1990 and 1993, more than 1.2 million asylum applications were filed in Germany), which resulted in xenophobic riots, the consequences of the recent refugee crisis in the form of an increase in the importance of nationalist parties could well be foreseen. It is not without reason that the European Commission is working from the Tampere Program (1999), through the Hague Program (2004), the Stockholm Program (2010-2014) and the European Agenda on Migration (13.5.2015), for a standardized European asylum law (Common European Asylum System - GEAS).

However, the stream of refugees revealed weaknesses (Wittreck F., 2018) in these programs (and in particular the Dublin-III-Regulation: Regulation (EU) No. 604/2013), which often questioned their *Pan-European* successes (Fratzke S., 2015). For instance, human rights organizations such as Amnesty International, Human Rights Watch, ProAsyl or AWO criticize border controls as human rights violations and demand safe and regular routes to Europe(Amnesty International, 2018), as well as a better maritime rescue (Amnesty International et ProAsyl, 2016). At the same time initiatives to redistribute the burden and reform the European asylum system, such as the "Dublin-IV-Regulation" were rejected, because they do not sufficiently take into account the "individual interests of those seeking protection" (Amnesty International, 2016). Also the establishment of registration centers – so-called "hotspots" at the end of 2015 (ProAsyl, 2016), as well as the EU-Turkey Agreement of 2016 (ProAsyl, 2016) and the agreements with Libya in 2017 (ProAsyl, 2017) were heavily criticized. On the other side, also the demands of the NGO's were strongly criticized and sometimes rejected as being unfounded or even superficial. For instance, the fundamental criticism at border controls

coming from NGO's were discarded as being "a superficial analysis of a complex issue that harms the claimed human rights more harm than good" (Riedel S., 2018).

At the Focus of any objectively justified or unjustified criticism, lays the question of the standardized humanitarian and generally acceptable procedural criteria for dealing with vulnerable persons, which take into account their human dignity. In the midst of this crisis, human dignity was by Chancellor Angela Merkel pointed out as an explicit constitutional principle that does not only oblige to action (Merkel A., 2015). Even Pope Francis engaged himself and brought the debate to another ethical level. In his Message for the 104th World Day of the Migrants and Refugees from 2018, the Pontifex identified the recent migration flows as a "*sign of the times*", responding with "*generosity, promptness, wisdom and foresight*" (Francis, 2017). The Pope went one step further. He stated that it is the human person as such who is meant to us - and by that means all believers and people of goodwill - to "always put the safety of persons before the safety of the country." This is a clear statement to the representatives of those governments that have always rejected participation in the redistribution of refugees.

## II. ASYLUM STATISTICS

To take account to the subject, the axiological analysis of the European asylum system, requires access to some quantitative data. This helps to visualize the refugee problem.

### 2.1. International Refugee Data

According to the *United Nations High Commissioner for Refugees* (UNHCR), 79.5 million people were displaced by the end of 2019 (UNHCR, 2019). About two-thirds of them (45.7M) were internally displaced persons, one-third (26M) refugees under the Geneva Refugee Convention of 1951 and it's 1967 Protocol, and 4.2M asylum-seekers. It's an increase over 21% in comparison to the end of 2016, who was considered as the height of the refugee crisis.

Most refugees under the Geneva Refugee Convention come from Syria (6.6M), Venezuela (3.7M), Afghanistan (2.7M), and South Sudan (2.2M), which accounts for approximately 58,5% of the total number of refugees worldwide. Most of the refugees from Syria are hosted by Turkey (over 3.6 M – 14 Aug. 2020), Lebanon (over 880,000 – 31 Jul 2020), Jordan (over 650,000 – 4 Aug 2020) and in Iraq (over 244,000 – 31 Jul 2020). Of these, approximately 33% are male and 20% are female between 18-59 years, and 0.8% are male and 1.3% are female over 60 years. It also shows that among Syrian refugees, the largest group is underage (about 45%). And since January 2013 these number are steadily rising (UNHCR, 2020).

2,253,226 refugees and asylum-seekers were registered form South Sudan until 31st Jul 2020 (UNHCR, 2020). Compared to March 31, 2014 (398,264) it represents an increase of over 565%. Most South Sudanese refugees and asylum-seekers were registered in Uganda (over 882,000 – 31 Jul 2020), Sudan (over 813,000 – 31 Jul 2020) and Ethiopia (over 364,000 – 31 Jul 2020). Comparable data on refugees and asylum-seekers from Afghanistan are not available in this way.

### 2.2. Refugee Statistics for Germany and the European Union

From all Member States of the European Union, Germany is the one, which host the most refugees (1,1M). Therefor mostly we'll concentrate on data from Germany. And the numbers published by the Federal Office for Migration and Refugees (BAMF, 2020) allow to keep an overview of the asylum numbers in this State. They show that during the refugee crisis between 2014 and 2018 over 1.8M asylum applications (first and subsequent applications) were submitted. A significant increase in asylum applications (first and subsequent applications) took place between 2014 and 2016. In 2014 a total of 202,834 asylum applications were submitted, compared to 476,649 in 2015 and 745,545 in 2016. In 2017, the number dropped by more than 70% to 222,683, including 198,317 initial and 24,366 follow-up requests. In 2018 were submitted 185,853 asylum applications, and in 2019 totally 165,938.

Almost uninterruptedly since 1998, the most applications are submitted by Syrians. In 2015 were registered 158,657 applications, and 2016 were 266,250. Between January and July 2020 they submitted 19,127 applications, including 18,399 first- and 728 subsequent applications.

In the current reporting year 2020, between January and July 2020 the Federal Office received 64,790 asylum applications, including 55,756 first- and 9,034 follow-up applications. So far, citizens from Syria represents the biggest group of migrants, who have applied for asylum. Iraqis with 6,044 asylum applications, including 5,356 first- and 688 follow-up applications, representing the second biggest group of asylum-seekers in Germany. Afghans are the third group, with 4,991 asylum applications, including 4,288 first- and 703 follow-up applications. They are followed by Turks with 3,678 asylum applications in total (first and subsequent applications), Iranians with 2,556 and Nigerians with 2,454 asylum applications.

To clarify the need for standardized and coordinated asylum regulations at EU level, it makes sense to compare the numbers of refugees admitted between the member states. In accordance to Art. 4 of Regulation

(EC) No 862/2007 of the European Parliament and of the Council on Community statistics on migration and international protection (Regulation (EC) No 862/2007, OJEU No L 199, 23), Eurostat compiles EU asylum statistics. These statistics (which are subsequently supplemented by the IGC - Intergovernmental Consultation on Migration, Asylum and Refugee and national authorities) show that in 2018, 22,565 first and follow-up applications were submitted in Belgium, 53,700 in Italy, in the Netherlands 24,025, in Spain 54,060, in Sweden 21,495 and 107,760 in France. By contrast, the sixth largest EU country, Poland, claims that 4,135 applications for international protection were filed in 2018 (not carried out). In the current year, in France, between January and May were submitted 34,910 applications for asylum, and in Italy 9,740 applications. In Spain, between January and June 2020 were submitted 44,560 applications, and in Greece between January and March 2020, 20,665 applications. In Poland, between January and June were submitted 1,300 applications for asylum. This show up a clearly difference of willingness to participate in the responsibility towards those in need of protection. Indeed it shows a lack execution of the solidarity principle on the legal level, but also an ethical lack of responsibility for humans in need.

At least three things can be taken out from this data. Firstly, asylum applications are significantly falling, while paradoxically, worldwide refugee numbers are increasing. It shows that the refugee-crisis on European level cannot be put *ad acta*. The next migrations flows, are just a matter of time (Schoneke W., 2018).

To stabilize the internal situation of the European Union, it seems to be necessary, to establish a responsible load coordination. This can only happen on the basis of an extension of the principle of solidarity, which should be given the possibility of practical intervention in emergency, determined by the condition of the unity needs. The standardization of the asylum law at European level appears to be one of the prerequisites for effective EU action in future crises.

Second, the ethnic variety of persons seeking international protection are a multicultural challenge for the host countries (Heimbach-Steins M., 2017). This refers also the values of the European Union and the culture of its Member States. Coordinated and unified education is needed, which not only enables those who are in need of protection to integrate into the social structures of society and the labor market, but also highlights the European value system and legal bases.

Third, the data shows, that on EU-level the sense of solidarity and shared responsibilities are in deficit. In the Mid of the refugee-crisis, member states in which conservative parties came to power, refuse to take the responsibility for solidarity and take responsibility. It suggests, that they not aware of the interactions between the internal affairs all of the states. The result is disturbing anti-European and nationalist tendencies. And this shows the importance of a coordinated education on EU-level.

## III. EUROPEAN REFUGEE POLICY

The removal of border controls between Member States under the Schengen Agreement of 1985, as well as broader rights for EU-citizens (Directive 2004/38/EC) and the removal of internal borders, make it clear, that closer cooperation between Member States is needed in the field of the right of residence of third-country citizens. The Maastricht Treaty of 1992 took the first significant steps by establishing the area of asylum, immigration and visas, in an institutional framework at European level. Some changes followed with the Treaty of Amsterdam of 1997 (Articles 61-69). The aim was to build a common area of freedom, security and justice, including: the accompanying measures on the free movement of persons, including the granting of asylum, admission of refugees, visa policy and immigration from third countries. It was followed by the Tampere Program of 1999, which established a collective asylum system and the adoption of common "minimum standards" for refugees. The Hague Program of 2004, which decided to develop a unified asylum procedure that would provide a single status for protection in all member states (OJEU No C-53/1).

The Treaty of Lisbon of 2007 (OJEU No C-306) was based on the adoption of common minimum standards for creation of a Common European Asylum System. This system encompasses: a unified asylum status for third-country citizens, a unified subsidiary protection status, a unified temporary protection regime, a unified asylum procedure, uniform reception conditions, uniform criteria and a procedure for determining the Member State responsible for examining an asylum application, and also partnership and cooperation with third-countries (Article 78 (2) TFEU). Since the Treaty of Lisbon all these areas are related to the principle of solidarity and fair sharing of responsibilities among the Member States (Article 80 TFEU). This principles are just limited by the right of the Member States to determine, how many citizens from third-countries allowed to enter their territory (Article 79 (5) TFEU).

The basis of these rules can also be found in international treaties, which have been incorporated into the legal framework of the asylum policy of the European Union. Worth to mention is the Geneva Refugee Convention of 28.7.1951 and its Protocol of 31.1.1967. The Geneva Refugee Convention determines the formal criteria who is defined as a refugee. According to this, a refugee is anyone who's outside of his own country and can't claim the protection of his country because of a justified fear of persecution on grounds of race, religion, nationality, belonging to a social group or because of his political convictions (Article 1 (A) 2). Two issues can

be taken out from this definition. First, the fears have to be "justified" - that is, they must actually exist (not merely be acknowledged). On the other hand, the protection of the home state cannot be claimed. It means, that the persecution comes from the state, from parties or organizations that controls the state or a substantial part of its territory, and those parties and organization are unwilling or unable to provide protection against persecution (Article 6 of the Directive 2004/83/EC). Consequently, it must be a persecution that has an organized, systemic and intended nature. These include in particular: the threat of grave violation of fundamental human rights, such as torture, inhuman or degrading treatment or punishment, slavery (Article 15 (2) ECHR).

In case C-353/16 of 24.4.2018, the ECJ extended the interpretation of international protection to mental health issues. A third-country citizen is eligible for subsidiary protection status, if previously he has been tortured by the authorities of his origin country but is no longer at risk of torture upon return to that country, but his physical and mental health is in serious risk, that he will commit suicide due the trauma from the torture. However subsidiary protection is only granted if the origin country intentionally deprived of the appropriate treatment, which has to be examined by national courts.

The provisions of the Geneva Refugee Convention, which is part of the European Asylum System, do not apply to persons, with legitimate suspicion that they: 1) committed crimes against peace, war crimes or a crimes against humanity; 2) committed a serious non-political crime outside the host country; 3) committed acts against the principles of the United Nations (Article 1F). However, if they are threatened with serious damage, like torture, inhuman or degrading treatment or death penalty, they are entitled to apply for subsidiary protection.

**3.1. Basic Regulations for asylum seekers in the European Union**

Under the conditions outlined above, the European Union (Council and Parliament) has adopted a number of legal acts which, despite all the persistent criticism, have contributed to the standardization of the common asylum system. The most important are: the Dublin-III-Regulation: Regulation (EU) No 604/2013, the Eurodac-Regulation: Regulation (EU) No 603/2013, the Qualification Directive: Directive 2011/95/EU, the Reception Conditions Directive: RL 2013/33 / EU, the Asylum Procedures Directive: Directive 2013/32/EU. In this regulations were constitute the framework of the Common European Asylum System (CEAS).

The Dublin III Regulation of 26.6.2013 sets out criteria and procedures for which Member State is responsible for examining an application for international protection (Bergman J., 2015). Basically, there is the first entry principle according to that Member State is responsible for the asylum procedure, in which the data subject has for the first time crossed the EU external border. If the Member State, in which an application for international protection has been lodged, finds an another Member State to be responsible for examining the application, it shall within a period of three months (Article 20 (2)) request this other Member State to include the applicant (Article 21 (1)). The requested Member State shall decide on the application for admission within a period of two months (Article 22 (1)). If no answer is given within this period, it can be assumed that the request has been granted (Article 22 (7)). According to those provisions, the Federal Republic of Germany would not be responsible, for the most part, for examining an application for international protection (Hailbronner K., 2017). However, Article 17 of the Dublin-III-Regulation introduces the discretionary clause (or self-admission) whereby each Member State is entitled to examine a request for international protection, even if it has no jurisdiction under the Dublin criteria (Wendel M., 2016). The discrepancy between the rightly disputed exclusive competence of a Member State for the implementation of an asylum procedure, ultimately leads to its de facto counteracting the principle of solidarity (Article 80 TFEU). Although Member States able to declare their competence subsequent (Heusch A., 2016) and help overburdened states in crisis situations. However, this is just an expression of their sense of responsibility (solidarity), sometimes also their farsightedness, but it's not a formal obligation. The recent refugee crisis has well demonstrated, solidarity and consistent sense of community cannot be anticipated. Therefore is a legal consolidation of the principle of solidarity with the criteria of competence is important.

The Dublin-III-Regulation, in addition to all its difficulties, has stronger family ties and interests of minors. It opens up a wider scope of legal protection for asylum-seekers by allowing an appeal against a transfer decision, leading to an automatic suspension of the transfer until a court has decided (within a reasonable time), whether to postpone the review for substantive and legal questions granted (Article 27). The asylum-seeker also has the right for legal assistance and information in a language, that he or she understands (Art. 26 in conjunction with Art. 4). If the concerned person is unable to bear the costs himself, the Member State must ensure that the legal advice is granted on application free of charge.

In recent judgments, the ECJ has strengthened the legal status of persons seeking international protection by prohibiting a transfer to a Member State, where the concerned person faces inhuman or degrading treatment, regardless of whether situations, during or after the asylum procedure. In C-163/17 from 19.3.2019, the ECJ found that a person applying for international protection can be transferred to a Member State, which is normally responsible for examining his application, unless there's a serious risk of inhumane or degrading

treatment. There is nothing to prevent such a transfer, unless the concerned person lays claim against the transfer decision. In that situation, a competent national court must determine, reliable, accurate and updated information, whether the standard of protection is guaranteed in the Member State normally responsible for the asylum seeker (see: Article 4 of the Charter of Fundamental Rights; Art. 3 ECHR). If the applicant has an objective risk of being put in a situation of extreme material distress in the event of a transfer, the court must grant his request, that is, the asylum seeker cannot be transferred to the Member State normally responsible for him. With regard to the Member States normally responsible for examining an application for international protection (in particular Italy and Greece), that judgment constitutes a significant extension of the legal remedies and humanitarian treatment (see: Swiss Refugee Aid, 2016). In C-318/17 from 19.3.2019, this protection has been extended to persons, who have already been granted subsidiary protection in one of the Member States, but have left that country and applied for refugee status under the Geneva Convention in another Member State. If the applicant were indeed at serious risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union and living in a situation which he would expect in the other Member State as a subsidiary beneficiary, his request should be granted. In C-391/16, C-77/17 and C-78/17 from 14.5.2019, the ECJ has again strengthened the refugee status. The Court confirmed that asylum-seekers, who are a threat to public safety or have been convicted of a serious crime, may lose refugee status in the host Member State. However, they do not lose their rights under the Geneva Refugee Convention and the EU Charter of Fundamental Rights, which continue to protect against torture or other inhumane treatment.

In fact this judgments create new standards. Willfully and intentionally abridged material benefits for applicants for international protection create a situation in which, Article 4 of the Charter of Fundamental Rights of the European Union is infringed in order to minimize the number of applicants or give them a reason to leave. Given the generally formulated minimum standards in the Reception Conditions Directive, this statement does not seem so far-fetched (Thym D., 2016).

The common standards set out in the Reception Conditions Directive concern the living conditions of persons applying for international protection (OJEU No L-180/96). Member States are required to notify applicants of the envisaged benefits and obligations within 15 days from the request, and to issue a certificate within three days confirming their legal status. This certificate constitutes a permit to reside in the territory of the Member State. However, under certain conditions, the Member State may restrict the applicant's freedom of movement to an assigned area. These included reasons of public interest, public policy or the swift processing and effective supervision of the applicant (Article 7 (2)). Material lines may be subject to this condition that the applicant actually stays in the place designated by the Member State. The Reception Directive has not specified the term material benefits. It is only pointed out, that they must comply with an adequate standard of living, which guarantees the livelihood and the protection of the physical and mental health of the applicant. The fact, that living standards in the Member States diverge greatly, doesn't contradict this. The Reception Directive also provides for the possibility of restricting or withdrawing the material benefits granted. If the applicant leaves the place of his location without informing the competent authorities or if the applicant fails to comply with his obligation to provide information or solicitation, the Member State shall have the right to resort the means. Sanctions may also be imposed, should the applicant grossly violate the rules of the accommodation centers.

Obviously, in the event of an unexpected and uncontrolled influx of people seeking international protection, these provisions cannot be adequately met. The personal and financial capacities of a host country, especially in regard to the first entry principle, are not unlimited. Therefore, coordinated cooperation of all Member States, not only at a later stage through relocation mechanisms or self-employment, but at the level of border crossing and initial registration, has to be considered.Only in this way can the solidarity principle and fair sharing of responsibilities be taken seriously.

## IV. REFORM ATTEMPTS OF THE COMMON EUROPEAN ASYLUM SYSTEM - "DUBLIN IV"

As mentioned earlier, the current refugee and migration crisis revealed essential gaps in the functioning of the existing Dublin-III-Regulation, which called into question the whole solidarity based asylum system. The uncontrolled influx of large numbers of irregular migrants and those seeking international protection, highlighted the need for a new, efficient and sustainable system solution at Member State level to safeguard the integrity of the Schengen area (Koehler U., 2017). Formally, this means a departure from the first resort principle in favor of a coordinated burden-sharing. Frans Timmermanns pointed this out: "*Managing migration better requires action on several fronts, to manage our external borders more effectively, cooperate better with third countries, put an end to smuggling and resettle refugees directly to the EU. We also know that people will keep arriving at our borders and ask for asylum, and we will need to make sure those who need protection receive it. Yet we have seen during this crisis how just a few Member States were placed under incredible strain because of the shortcomings of the present system, which was not designed to deal with situations of this kind. There's simply no way around it: whenever a Member State is overwhelmed, there must be solidarity and a fair*

*sharing of responsibility within the EU. This is what our proposal of today is meant to ensure*" (Press release, 4 May 2016). In addition, many migrants violate EU law and instead of applying for asylum in the Member State where they first crossed the external EU borders, they move on to the state, where they want to settle and apply for international protection. Last but not least, discrepancies arose in the proof of the jurisdiction of a Member State, as well as the reasons for a transfer refusal. Also, the transfer of responsibility to another Member State, if the applicant stays on his territory long enough, questions the whole system.

A revision of the existing regulations aimed at stabilizing the Common European Asylum System in a long term and the integrity of the European Union has become a priority at the EU Commission's agenda (Dörig H., Langenfeld C., 2016). On 6 April 2016, the Commission presented a draft for a reform of the Common European Asylum System. In order to remedy the structural inefficiency of existing arrangements, five priorities have been identified: Establishing of a viable and fair system to identify the Member State responsible for examining asylum claims, the extension of the scope of the Eurodac system, a higher degree of convergence and a genuine common approach EU asylum system, preventing secondary movements within the EU and a new mandate for the EU Asylum Agency.

**4.1. Five Priorities of the Common European Asylum System**

A sound and fair system for determining the Member State responsible for examining asylum applications, should modify the initial entry principle. The variant, in which the Member State is responsible for identifying and registering migrants and taking their fingerprints, as well as, for the return of the non-vulnerable persons to whom the initial entry was made, is recorded. As an expression of solidarity and fair sharing of responsibilities, the Commission proposes the introduction of a corrective distribution mechanism (so-called *fairness mechanism*) for the relocation of asylum-seekers based on a distribution key. First, it was proposed that the distribution key should be based on the size, wealth and absorption capacities of the Member States. Later, this proposal was corrected for the size of the population and total GDP of a Member State, which should be weighted equally at 50% each. Once the number of asylum seekers in a Member State exceeds a predetermined threshold (which is 150% of the benchmark), it would automatically be redistributed to other Member States until the number of asylum seekers falls below that threshold again. Member States that did not wish to participate in the redistributive mechanism on a permanent basis, would have to pay a solidarity contribution of € 250,000 per person to the Member State, which will take over an asylum seeker in their place.

Consolidation of the Eurodac system (biometric database) is another priority in the reform of the Common European Asylum System. The purpose of this reform is to broaden the scope of Eurodac to allow Member States to collect data from third-country citizens or stateless persons, who do not apply for international protection in order to identify them for the purpose of issuing travel documents for their return or readmission. The aim of strengthening the Eurodac system is to effectively combat illegal migration and to adequately monitor secondary movements within the EU. In order to achieve this, biometric data should already be collected from minors aged six and above, and under certain conditions, data exchange with third-countries should be made possible.

The aim of an effective common EU asylum system is to harmonize procedures by means of a new Regulation on a single common asylum procedure for the EU. The different regulations, as well as the maximum length of procedures in the first and second instance in the Member States, should be harmonized. This includes the creation of a common EU list of safe origin countries, which would meet the obligations of the Charter of Fundamental Rights of the European Union, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Geneva Convention. An EU-wide list of safe origin countries should make it possible to declare certain applications inadmissible, if protection could be obtained in a third country. As part of the common EU asylum system, the Commission also proposes to replace the current recognition directive (Directive 2011/95/EU). The aim is to achieve greater differentiation between refugee status and subsidiary protection status, as well as the rights associated with the respective protection status. Since these are basically temporary vulnerabilities, systematic and regular checks should also be carried out (and before the person is granted the status of long-term resident) in order to check whether the need for protection still exists.

Another priority was the prevention of secondary movements within the EU. In addition to sanctions for persons who do not remain in the Member State responsible for them, the Commission proposes far-reaching measures to limit secondary movements. This includes the obligation of a Member State to transfer asylum seekers, who stays illegal in its territory, to the Member State, which is responsible for them. In these cases, the competent Member State should be given the opportunity, to place an applicant, who's in danger to escape, in an assigned area or, if necessary, to be detained.

As a further consolidation measure of the common asylum system, the Commission proposes, that the application be more closely linked to the assessment of the credibility of the applicant. It refers to circumstances, in which the applicant objectively had the opportunity to file an application for international

protection, but did not immediately avail himself of that possibility. This should be included in the assessment of the asylum application. In order to prevent secondary movements, it should be also stipulated, that only in that Member State refugees can enjoy rights and benefits (including material benefits), which afford them protection and in which they are obliged to remain. This goes hand in hand with the need to revise the existing regulations for delegating responsibility for the examination of applications. Should an applicant leave the territory of the Member State responsible for him or her irregularly, there will be no reason for transferring responsibility to another Member State. Furthermore, material benefits should be linked to the registration of the applicant and the collection of his biometric data. This facilitates the identification of the competent Member State and the applicant's whereabouts.

An important point in the Commission's priorities is the extension of the mandate for the European Asylum Support Office (EASO), which should be transformed into a full agency. It should assume a new, strengthened and operational role in the implementation of asylum legislation. To this end, a specific evaluation mechanism is proposed, which should exercise a control function vis-à-vis Member States in the area of compliance with common asylum standards. If a Member State did not sufficiently comply with these standards, the Commission would be entitled to intervene. According to the Agency's recommendation, by means of implementing acts, the Commission would be authorized to lay down operational measures, which the Member State concerned would have to implement. The agency's remit also includes assessing whether third countries meet the criteria for classification as "safe third countries." However, the main task of the Agency under a reformed Dublin system, would be to operate the distribution procedure. In accordance with the distribution key, the Agency is responsible for ensuring a sustainable and fair distribution of applications for international protection between Member States.

**4.2. Criticisms**

The previous reform proposals of the Commission come partly to strong criticism. The draft were accused of deliberately restricting the rights of those seeking protection, which would make them incompatible with the principles of the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. On the other hand, they would not bring about the real problem of a solidary relief for the first entry states by introducing the so-called *fairness mechanism* (Amnesty International, 2016).

The Federal Council of Germany (Bundesrat) endorsed a fundamental reform of the Dublin III Regulation with the aim of achieving a fairer distribution of refugees between Member States in order to comply with the principle of solidarity (Article 80 TFEU). However, the Federal Council considers, that the regulations for the protection of uninvolved minors should be improved, so that they have access at all times to a regular procedure for the recognition of international protection. On the other hand, the Federal Council is critical of providing for a fixed period of 15 days for the courts to decide on remedies against the transfer decision. Effective legal protection within this period cannot be guaranteed on a regular basis. In addition, the Federal Council considers it sensible to establish the primacy of voluntary departure rather than compulsory transfer (Federal Council 390/16, 2016).

Sharp criticism of the Commission's reform proposals followed by the human rights organization ProAsyl. In its opinion of December 2016, it was pointed out, that the endeavor for reform ultimately led to a greater relocation of responsibility for those seeking protection to the first entry states, mostly Greece and Italy (ProAsyl, 2016). This is due to the fact, that it continues to be adhered to the first entry principle and possibilities of the change of responsibility are almost impossible. The introduction of the so-called *fairness mechanism*, which provides for a redistribution of asylum seekers to other Member States only when the number of asylum applications reaches more than 150% of the share according to the guide value of the distribution key, cannot provide de facto relief for the first entry states. The proposed mechanism will not be effective until the capacity of the receiving Member State has actually been exhausted, much too late. The redistributive mechanism does not take into account the individual interests of those seeking protection. ProAsyl sees access to a fair process for many asylum seekers threatened and that they must live in inhumane conditions. Also criticized was the proposal to strengthen the responsibility for the examination of the application of a Member State. The State designated for examining an application for international protection should retain its competence. However in practice this means, that even if a Member State fails to comply with EU standards on reception conditions and procedural guarantees, it retains its competence. In this case, the asylum seeker has no alternative but to live in inhumane conditions. To bind the competence to material benefits in order to force asylum seekers to remain in the Member State responsible for them, irrespective of the living conditions prevailing there, only confirms a recourse to respect for human dignity.

The points of criticism presented did not remain completely unfounded. Essential gaps in the reform project, which i.a. the concept of a fairness mechanism distribution key, exclusive competence or extension of the mandate for the European Asylum Support Office (EASO), has placed a heavy burden on reform approaches. The lack of solidarity of the governments of some Member States (in particular the Visegard-

Group), who strictly reject participation in the responsibility towards those in need of protection and rely on the Geneva Refugee Convention, as well as founded fears of the first entry states (esp. Italy and Greece), that after the reform, the burdens still remain attached to them, meant that the revision of the Dublin system was initially put on record. However, to aim at the fact that the crisis situation settles by itself, is at best to be described as remote from reality. Therefore, no reform is not a solution.

The EU Commission and the EU-Member States are aware of this. Soon became clear, that its not only a problem of the solidarity principle. The so-called refugee crisis has revealed nationalist tendencies in the societies of the Member States, that have been believed to be overcome in favor of a fraternity. In view of the somewhat "strained" European integration process, it turns more to be a problem of the future of the European Union's peace project. One of the purposes of the reform of the Common European Asylum System is not to build a "Fortress Europe" (Amnesty International, 2015), but to establish a harmonized, coordinated and fair asylum law, that can be shared by all Member States. The human dignity of those in need of protection is central here, which is explicitly underlined by the Commission (Communication form the Commission to the European Parliament and the Council). Recognizing the centrality of the human being, while recognizing the positive contribution of migrants to Europe's inclusive growth, the Commission is in favor of extending legal channels to Europe, which should be more orderly, more controlled, safer and more decent.

## V. CONCLUSIONS

The public debate on refugee and migration issues was dominated by pictures, that visualized the tragedies of people desperately trying to reach Europe. This focus has been instrumental in diverting attention from key issues. These are the actual causes of flight and migration and the migrant status associated with them; respect for the legal order of the European Union and the public order of its Member States, as well as the integrity of cooperation between EU-Member States, taking into account the integration process.

For an objective ethical analysis of the reception regimes of refugees, it is necessary to separate them from a subjective perception of the problem. On the one hand, it means making a distinction between the legal terms of migration and flight. The recent refugee crisis has significantly contributed to the blurring of these essential differences, through the collocation of the terms of the climate-refugee and, in particular, the economic-refugee (Jakobeit C., Methmann C., 2007 et Münch U., 1993). This does not mean, that climate change or material emergency are no needs, to leave home. Nevertheless, they must be legally distinguished from the immediacy of the causes of flight from the Geneva Refugee Convention.

The essence of migration is a deliberate change of its current place of residence, whether in the narrower national or global sense, with the intention of settling in a place (country) of its choice. For this reason, migratory movements are fundamentally geared to taking into account the legal requirements of the destination country, which make legitimate entry possible. This is the essential difference to flight movements or persons seeking international protection. The essence of flight consists in the objective and immediate necessity of leaving home or residence without delay in order to ensure the integrity of his life and limb. In other words, a refugee faces the danger of losing his life or carrying a serious injury, if he does not escape. In the case of migration, we are dealing with a voluntary decision, although it may benefit from material, political, climatic, ideological or social emergencies in the origin country. However, the migrant does not have objective fears to expect from his state or organizations supported by the state. In escape cases, voluntariness is lost. It is an explicit necessity dictated by a real danger to life and limb emanating from the state. For this reason, a refugee cannot decide freely, in which state he wants to seek protection or applies for international protection. Of prime importance to a refugee is to avoid the existing threats to life and limb in his home country and not to improve his material living conditions (or to ensure them through the efficient welfare system of another state). Efforts, to leave the refugees the choice of the host country responsible for them, so the choice of the state, in which the asylum application is to be made and processed, are in immanent contradiction to the nature of the escape. The difference between the causes of flight and migration, and hence between the refugee and the migrant, is essential to the integrity of the asylum system and to ensuring safe and orderly migration.

Second, the legal order of the European Union has to respected. The extension of legal entry into the EU for third-country citizens, as well as the creation of legal channels for asylum seekers, must be welcomed in principle. People who are forced to flee their homes are entitled to protection. But they have to adhere to the laws prevailing in the host country (Ther P., 2017), and respect the local culture and customs. In favor of a more comprehensive integration in the host country, this must be made the highest principle - and consistently demanded. This requirement is neither in violation of human rights, nor in contradiction to the centrality of man. Persons applying for international protection, but who do not comply with the legislation of the country, question they need for protection and thereby their refugee status. The high humanitarian standards of the European Union should not mislead abusive persons seeking international protection. It must be clear to everyone, that violations of the law speak against the need for protection.

Thirdly, the refugee crisis revealed major weaknesses in the integration process of European states. Differences in reception regimes have helped to revive nationalist tendencies that express the growing importance of populist and right-wing conservative parties across Europe (Hofmeister W., Friedek M., 2018).Those tendencies question the seemingly obvious successes of European integration (a peace over 70 years of age) and oppose their promotion. Some parties even call for the end of the European Union (Hasselbach Ch., 2019), in which they see an organized monopoly on the curtailment of state sovereignty, without realizing that the very form of participatory sovereignty could guarantee peace for so long. If one were to give up further integration efforts and return to mere economic cooperation, then the EU project would in fact be reduced to an elite and exclusive role. It threatens a failure. Signs of progressive integration are uniform measures of the EU-Member States. Since the well-being of one state is directly dependent on the well-being of the other, a strengthening of European action integrity with regard to the extension of the solidarity and subsidiarity principles should be considered. So that this does not lead to increased Anti-European tendencies, the advantages of a progressive integration must be explained argumentatively. Elke Mack puts it in a nutshell, by pointing out, that politics and economics must be declared to humans and plausible, in order to succeed in the long term (Mack E., 2017).In this sense, the integration efforts of the EU should be adapted *sui generis* citizens and only progress as fast as they can open mentally for it. It must be stated that the seemingly "European normality" in relations between the EU-Member States, the result of historical experience and multi-annual efforts to ensure peace through consensus and mutual responsibility. The last decades have proven this several times, as the states provided a part of their sovereignty, in order to achieve deeper cooperation and integration. In this sense, the demand of Chancellor Angela Merkel for more willingness of the states, to transfer parts of their sovereignty to the EU, as a continuation of the successful EU peace project, has be welcomed. What is needed, however, are new educational measures that not only explain the benefits of the European integration process and mutual dependencies, but also aim for a responsible middle class.

**5.1. Ethical approach of the asylum system**

The Common European Asylum System (GESA) aims to standardize asylum procedures for all EU-Member States. On the one hand, this involves a uniform procedure that would equally regulate the reception of refugees at the entire European level. On the other hand, the same conditions as possible for the most vulnerable, should be achieved in all Member States. As long as there are obvious disproportionalities in the reception regimes and the accommodation standards, there will be no efficient relocation mechanism. Its necessity is dictated not only by the ethical requirements of human centrality, but also by the future success of the European integration process. Without coordinated action that automatically incorporates the principle of solidarity, the integrity of the EU will always be threatened, when emergency situations arise. The problem of refugees can't be resolved unilaterally, but calls for the joint efforts of all Member States. To do this, one must first detach oneself from his nationalistic thinking slave, in order to open up for a future-oriented, cosmopolitan and responsible integration.

Nonetheless, the analysis of EU reception regimes clearly showed, that they were trying to meet the ethical requirements of the European value system. This already takes place through reception arrangements, through extended protection of minors, through to material benefits and access to social benefits in the Member States. The European Union always strives to ensure, that its legal system respects and protects human dignity. Admission and accommodation standards are not excluded.

However, the European Union cannot bear the burden of responsibility for the vulnerable. What is needed, is a closer and more efficient cooperation on a global scale that includes the international community and international organization. Pope Francis' demand to "prioritize the security of the person over the security of the state" represents a far-reaching wake-up call to the humanity of the international community and is justified to that effect. However, reducing it to the category of protection for refugees or full reception of migrants would not be sufficient. It would be dangerous to bring about the collapse of public security and the legal order of the host country, which would probably also go beyond the scope of the European integration project. In a community of states such as the EU, responsibility for people seeking international protection can't be placed on the shoulders of a single Member State - and at the same time demanded of it - to ensure the high reception and accommodation standards, that respect human dignity. The principle of solidarity and future-oriented, as well as responsible integration, require EU-coordinated action.

Reasonably enough, the Pope's claim may also be made to persons, who are already resident within the territory of the host country. Otherwise we would be dealing with a tautology. This would hardly be acceptable. Rather the asylum system should be reformed in the direction that protect the most needy, under the best possible conditions, but compatible with the host country's public policy and the safety of its inhabitants. This should be done under the sign of the centrality of the human person. The internal and external efforts of the European Union are pursuing this very direction. This is evidenced by a clear recognition of the required

centrality of man and the resulting ethical criteria for international measures to protect vulnerable persons, according to which the Member States have to align.

**5.2. Recommendations**

Achieving an acceptable consensus on asylum and migration issues, requires coordinated action by the whole international community, including international organizations (The UN-Global Compact for Migration, of 19.12.2018 however creates principles to deal with refugees, but they're not legally binding). First and foremost, the causes of flight and migration must be combated efficiently and sustainably. Significant for this is the reduction of global poverty, by expanding development programs. We need to create direct ways of providing immediate financial or material assistance, including food aid, with appropriate tax relief, as a basis for motivation. Finally, international security and peace must be strengthened through targeted peacebuilding in crisis areas, relaxation of conflicts and combating corruption.

In order to give meaning to these desired measures, it is appropriate to design a single and targeted intervention agency, which could take the form of a European army. This would enable the European Union to intervene in crisis situations and to counteract conflicts. For sure, this would be a milestone for the European integration process.

In addition, the introduction of a reception mechanism should be considered for the reform of the Common European Asylum System (GESA) which, as stated, automatically incorporates the principle of solidarity. It can't be sufficient to make that mechanism dependent on a distribution key, that takes into account only the number of inhabitants and the total GDP of a Member State. The distribution key has to take into account the size of the territory of the Member State and its financial capacity for accommodation and services. This would provide for the introduction of a Guaranteed Benefits Fund, which, taking into account appropriate control mechanisms, would help Member States in situations, where their own resources were increasingly strained. The distribution mechanism should also be effective immediately, and not only after the absorption capacities have been significantly exceeded.

In order to ensure this efficiently, registration centers in the first entry third-countries and Member States of the EU must be set up, which also immediately take over the registration, acceptance of biometric data and distribution of the refugees. Refugees would be immediately attributed to a Member State with sole jurisdiction. This means, that persons seeking international protection should not apply or change the application for protection in the state of their choice. However, with consent and on a voluntary basis, Member States should be allowed to delegate their powers. Such measures would promote the EU asylum policy and the intriguing process of its Member States, and take into account the human dignity of citizens and foreigners.

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