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AN ANALYSIS OF THE GREEK AND TURKISH IMMIGRATION POLICIES  
IN THE CONTEXT OF SYRIAN REFUGEE CRISIS

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SURİYELİ MÜLTECİ KRİZİ BAĞLAMINDA YUNAN VE TÜRK GÖÇ  
POLİTİKALARININ ANALİZİ

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## **Foreword**

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## **Abstract**

The aim of this dissertation is to forewarn the fact that the raising numbers of Syrian refugees has brought an alarming humanitarian crisis that created significant dilemmas on its effective and timely resolution. Because of the crisis, the neighbouring countries, Turkey and Greece, seem to have been bearing most of the refugee crisis burden. With the onset of the civil war in Syria, the plight that EU was not able to operate effectively the refugee crisis which had a great impact firstly in Turkey and then the Western Balkan countries, caused critical political dilemmas. Notably, Turkey and Greece were the most affected countries, with one country being an EU member and the second being a candidate country. The idea of comparing the two countries updated legislations regarding the migration policies and that the European Union should promote a new refugee policy mechanism which will be appropriate to human security and apply this policy under the provisional terms to the countries within the EU and potential members.

The essential argument of this dissertation is the comparative analysis of the migration policies of the two countries, although Greece acts under the provisions of the European Union and most of the initiatives have come under the oversight of the EU regulations, together with Turkey both have been the two countries which received the largest number of refugees. Another aspect of this dissertation is the dimension of migration policies which traditionally has been developed from a top-down approach, what is being argued in this dissertation is whether this process should have been reversed to bottom-up approach, which would mean that, the existing mechanisms, regulations, and policies should be set up in a way to meet the immediate needs of the refugees entering the host countries, eliminating to a great extent a number of bureaucratic limitations, security and safety measures which will protect the refugees. All these steps should be put under the umbrella of a common policy on refugees with the appropriate conditionality principle for both EU members and the candidate countries.

## Özet

Bu tezin amacı, Suriyeli mültecilerin sayısındaki artışın, mülteci meselesine etkili ve zamanında çözüm getirmede önemli ikilemler yaratan, endişe verici bir insani krizi getirdiğini ortaya koymaktır. Bu kriz sebebiyle komşu ülkeler olan Türkiye ve Yunanistan mülteci krizi yükünün büyük çoğunluğunu yüklenmiş gözükmektedir. Suriye’de iç savaşın başlamasıyla AB’nin mülteci krizini etkin bir şekilde yürütememesi öncelikle Türkiye, daha sonra da batı balkan ülkeleri üzerinde büyük etkisi olan kritik siyasi ikilemlere neden olmuştur. Biri AB üyesi, diğeri ise aday ülke olan Türkiye ve Yunanistan özellikle en çok etkilenen ülkelerdir. Bu iki ülkeyi karşılaştırma fikri göç politikalarıyla ilgili mevzuatları güncellemiş ve Avrupa Birliği’nin insan güvenliğine uygun yeni bir mülteci politikasını desteklemesi ve bu politikayı geçici şartlar altında AB içerisindeki ve AB ile adaylık için müzakere halindeki ülkelere uygulaması gerektiğini ortaya koymuştur.

Bu tezin en önemli argümanı iki ülkenin göç politikalarının karşılaştırmalı analizidir. Yunanistan, Avrupa Birliği hükümlerine göre hareket ediyor ve çoğu girişim AB düzenlemelerinin gözetimi altında gerçekleşiyor olsa da, Türkiye ile beraber bu iki ülke en fazla sayıda mülteci alan ülkeler olmuştur.

Bu tezin bir diğer görüşü ise geleneksel olarak yukarıdan aşağıya yaklaşımı ile geliştirilmiş göç politikalarının boyutudur. Tezde tartışılan ise bu sürecin aşağıdan yukarıya, yani varolan işleyişin, düzenlemelerin ve politikaların ev sahibi ülkelere giren mültecilerin acil ihtiyaçlarını karşılayacak şekilde düzenlenmesine, büyük ölçüde bürokratik limitlerin ortadan kaldırılmasına, mültecileri koruyacak güvenlik ve emniyet tedbirlerinin oluşturulmasına çevrilmeli mi sorusudur. Bütün bu adımlar hem AB hem de AB’ye aday ülkeler için uygun bir koşulluluk ilkesi içeren, mülteciler hakkında ortak bir politika şemsiyesi altına toplanmalıdır.



## INTRODUCTION

Refugees have existed since the beginning of civilization. In any place that conflict existed, an inevitable mass exodus of refugees ensued. The current and immense refugee crisis is also a part of a new order, which overturns traditional geopolitical and economic balances. The number of people worldwide that have been forcibly displaced stands at sixty million, the highest number ever recorded. Most of these refugees have been hosted by countries in the developing world. There, they wait on either in refugee camps or urban settlements, for the chance to one day, return home.

However, as conflicts remain and new ones form, the prospects of ever returning home become increasingly worrying. Poorer countries are struggling to accommodate their own population, let alone the rising number of people pushed into their borders by conflict. Resources become strained, living conditions worsen and eventually, a tipping point is reached. For many, Europe has not only emerged as a more attractive destination but one that is perceived as the only option that can maybe offer hope for the future. Unfortunately, the inadequacy of legal channels into the EU has caused many refugees fleeing political violence in the Middle East and Africa to rely on violent criminal networks that smuggle them on unsafe boats across the Mediterranean.

The extraordinary influx of refugees into Europe during 2015 has caused countries within the European Union (EU) to rush for a coordinated solution. This thesis will argue two main factors, a broken asylum system and the two countries ability to effectively tackle the crisis. The influx of refugees has created tensions between the EU structure and its member states.

## **1.1. MOTIVATION**

It started with thousands of people on the streets. It has resulted in millions of people on the move. Syria's civil war has resulted to the world's gravest refugee crisis in the last decades. Syria's civil war has been raging for almost six years, and a colossal 11.4 million people are on the run from the violence. Around 6 million of people are displaced inside the country and about 5 million refugees have fled for the relative safety of neighbouring countries. The European asylum system is a relatively advanced regional protection framework, in both legislative and policy terms. However, that same system lacks a mechanism to distribute responsibility fairly among the Member States, as well as legal channels by which persons in need of protection can access it.

To the backdrop of the Syrian crisis and the rising toll of migrant deaths in the Mediterranean Sea, this thesis analyses achievements and shortcoming in solidarity and fair-sharing of responsibility between Member States, as well as the external dimension of EU's common asylum system. In view of the adoption by the European Commission of a “European Agenda on Migration”, it offers tangible ideas for EU policy action that could meaningfully develop this policy and help address the humanitarian tragedy on the EU's borders.

## **1.2. OBJECTIVES OF THE THESIS (RESEARCH QUESTION)**

This thesis aims to study the pathway that Greece and Turkey followed in order to share the responsibility regarding the Syrian refugee crisis. It is to be considered, to what degree Syrians have been able to find protection in states outside the region. Both Greece and Turkey, by the end of 2014, have provided protection to the largest number of Syrian refugees outside the region. Although both countries differ in the level of protection provided to Syrians, both states have increased protection to Syrians via resettlement and asylum protection (and in the case of Turkey

temporary protected status since 2014). Thus, the following questions need to be answered: To what extent have Greece and Turkey overview their migration policies as a response to the Syrian refugee crisis; to offer a durable solution to the Syrian refugee crisis by sharing the responsibility? The case of Greece will be examined within the scope of an EU member state and the case of Turkey as non-EU member state. In both cases the conceptual framework will be with a focus on the top-down approach. In this thesis it will be argued whether the standard top-down approach on the policy making process should have been reversed to bottom-up about the crisis thus to enhance the elimination of delays and any other form of bureaucratic barriers.

In pursuit of these questions, this thesis is organized into four core parts; methodology and research question, literature review, the case of Greece and the case of Turkey.

In the methodology and research question section, there is a reference to the key conceptual framework; theoretical background on the top-down approach and analysis on how it has been incorporated into this thesis. Moving on, the second chapter is a literature review chapter dealing with essential legal definitions and review of EU migration policies. The next two chapters are elaborating on how Greece and Turkey developed their migration policies, and how were they implemented and evolved amid Syrian refugee crisis?

The case of Greece chapter gives a brief historical background on the migration policies analyzes the Greece's response to the migration crisis in 2014 – 2016 as host country and an EU member state. What have been the challenges and what have been the effective steps taken towards a solid solution regarding the issue.

Lastly the case of Turkey is examined, evidently the approach has been almost within the same frame as the Greece, firstly a historical background on the migration policies and later an emphasis is given on how Turkey has acted upon the refugee crisis given the fact that is the largest host country. In this context questions like –How effective has EU-Turkey refugee deal been? What have been the

challenges for the country and lastly is Turkey a "safe country" to host so many refugees? – will be answered.

The limitations of this dissertation are in relevance with the case selection, the selection of the two main variables; the two country-cases. The restriction which is brought from the fact that Greece is and Turkey is not an EU member state, and therefore that might rise questions on the accuracy of the findings. Nonetheless, in my opinion, I justify the case selection as the analysis is compelled in a comparison structure on the policies of the two countries, solely based on same country reports presenting annual overviews of the migration policies as a response to the Syrian refugee crisis, from which both countries have been the most affected.

### **1.3. METHODOLOGY**

The methodology cornerstone is a case study designed as a comparative investigation that shows the relationships between two subjects, in this case between Greece and Turkey. This analysis has been examined with the top-down approach including quantitative elements to address the question on how the Syrian refugee crisis has brought any developments on the migration policy making process of two countries. Moreover, a chapter is dedicated on the comparative analysis based on annual country reports from 2014 to 2016 for Greece and Turkey. All reports entail a summary of main legal overviews of the two countries in response to the refugee crisis. The analysis is done in relation to the institutional context of policy making process, policy makers human and financial capacity.

The methodology cornerstone will be the analysis with a top-down approach and quantitative elements to try to explain how the Syrian refugee crisis development has adjust the migration policy making of two countries that have crucial roles in the crisis, Greece and Turkey. The analysis is done in relation to the institutional context of policy making process, policy makers human and financial capacity.

The quantitative method that will be used in this thesis consists mainly of a thorough review of existing legal and political analyses, NGO reports, annual reports from the EU and various institutions will be introduced in the following chapters. In regard to the timeline, the paper will be mainly covering the years between 2014 – 2016 when the massive influx of refugees entered Turkey, to cross into Greece and moving further to crossing the borders to other European countries.

### **1.3.1. Top-Down Approach**

Policy implementation is a complex process characterized by the actions of multiple actors, levels of institutions and other sectors within a system of interrelations that generate a multiple chain of causality (DeGroff 2009). The more numerous the reciprocal relationships among the links, and the more complex implementation becomes (Hill 2002).

The policy implementation process can be explained from the two approaches; from the top, implementation is perceived as a purely hierarchical administrative process, which begins where policy ends, hence a separation between policy formation and policy implementation. From the bottom, it takes the form of a policy-action relationship, one which Barret & Fudge refer to as a policy action continuum. This involves a process of interaction and negotiations taking place over time between those seeking to put policy into effect and those upon whom the actions depend (Barret 1981). This establishes a link between policy formation and policy implementation.

The main difference between these two approaches is that the top down approach involves a hierarchical method and emphasizes the power of the government and public authorities (central actor) to determine policy activities by means of political-administrative control through policy programs, while the bottom up approach involves a non-hierarchical method and draws attention to how a wide range of

actors-street level bureaucrats might be influential in affecting both the policy formation and implementation process (Fischer 2007).

The top-down policy making process begins with the top ranking legislative institutions or officers and continues through a chain of more specific steps inside the same or different institutions while being detailed on what is expected from implementers at each level. The main actors in the policy making process are regarded to be the decision-makers who are responsible to formulate an efficient statute which suits to the existing problem. To increase the level of efficiency top-down theorists claim that there must exist a clear and consistent statement of the policy goals, a minimization of the number of involved actors, a limitation of the extent of change necessary and to find an institution which supports the point of view of the policy makers in order to guarantee that the implementers sympathize with the new statute (Matland 1995).

Top-down approach clearly favors the decision-makers as key actors in the process of implementation and does not pay much attention to the administrative staff that carries out the legal act. For them the politicians own the expertise to formulate a good law and the role the implementers play “to deliver the legislation to the people” does not receive much appreciation.

Top-down approach is often criticized because of its mere focus on the created statute (Matland 1995). It fades out the discussion process which has taken place before the agreement on one solution and treats the implementation process as if there is no other opinion or no political feature concerning the solution of the problem. Resentment among the implementers who have favored another solution is often the result.

The fact that in a democratic legislation process several different parties try to agree upon a mutual consent displays the often-contradictory content of a legal act in order to satisfy everyone in the coalition. However, the most striking criticism the top-down approach must deal with is the way it regards the single actors within the process (Matland 1995).

### **1.3.2. Institutional Context**

This thesis focuses on analysis in the institutional context during the time of the implementation process. It is indeed inarguable that analysis should include the actual social, economic, political and legal aspects. Nevertheless, instead of looking at each of these elements separately they will be analyzed in the context of institutions implementing the policies.

Regarding the institutional context it is essential to understand who the major institutional players are and what is the the nature of their inter- and intra-institutional relationships (Najam 1995). The top-down policy making is disseminated on many administrative levels with each level having different political interest affecting the result. Hence, attention must be paid to the influence of institutional context.

### **1.3.3. Capacity of the policy makers**

Without any financial or human resources no political program can be implemented. A good accessibility and disposability to capacities like financial and human resources are assumed to have a (positive) impact on the implementation process. The hypothesis in this research is that a top-down project has more capacities at deposit because top-management has more power than bottom-up implementers to apply for financial and human resources or to find sponsors. Najam declares in that context that “*middle and bottom level functionaries (including street bureaucrats) are less likely to influence capacity politics and their needs, arguably the most critical to effective implementation, may often be side-lined, leading to less effectual implementation*” (Najam 1995).

It is, intuitively obvious that a minimum condition for successful implementation is to have the requisite administrative ability, that is the capacity to implement it.

Indeed, administrative capacity is necessary for effective implementation. However, providing the necessary resources is nowhere a simple matter; in fact, merely knowing what the “necessary resources” are can be a non-trivial problem. More importantly, it is a political, rather than a logistic, problem-like implementation itself, resource provision deals with questions of “who gets what, when, how, where, and from whom.” The critical question, then, in understanding how capacity may influence implementation effectiveness is not simply one of “what capacity is required” but also of “how this capacity can be created and operationalized?”

The link to the institutional context is the two-way influence between institutional context and administrative capacity that determines the dynamic balance of bureaucratic power between relevant agencies, which, in turn, will impact implementation effectiveness. Moreover, the standard operating procedures are likely to shape what form of capacity provision is most suited to which agency.



## CHAPTER II

### LITERATURE SURVEY AND CONCEPTUAL FRAMEWORK

#### 2.1. DEFINITIONS

##### 2.1.1. Refugee – Legal Definition

The 1951 Convention relating to the Status of Refugees set the internationally recognized criteria defining a refugee. It was initially created to address the protection needs of millions of refugees displaced within Europe following World War Two.

According to Article I of the Convention (UN General Assembly 1951), a refugee is:

“any person who... owing to a 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.”

The treaty also defines the concept of non- refoulement, which prohibits parties of the contract from pushing refugees back into territory where they faced persecution. The concept is highlighted in Article 33 (UN General Assembly 1951):

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality,

membership of a particular social group or political opinion.” (UN General Assembly 1951).”

All 147 parties are expected to practice the treaty by implementing it in their respective national legislations. The EU has applied the principles of the Refugee Convention in its own legislation regarding refugees - the Common European Asylum System.

### **2.1.2. Economic Migrant vs. Refugee**

Over the years, new conflicts and threats have challenged the Refugee Convention’s definition of a refugee. For example, individuals fleeing persecution because of sexual orientation are not explicitly protected under the convention, nor is someone escaping natural disaster induced by climate change. Most problematic for economic migrants entering Europe is the fact that somebody escaping poverty is also not considered a refugee under the Refugee Convention. Naturally, European leaders who oppose immigration, such as the Prime Ministers of Slovakia and Hungary, claim that many of these “refugees” entering Europe are in fact “economic migrants” (“How many migrants to Europe are refugees?” 2015). How a person is labelled, ultimately determines their legal status and eligibility for international protection. There is a vigorous debate in EU politics and the mainstream media over the terminology applied to the thousands of migrants streaming toward Europe, situated as “economic migrant vs. refugee”.

The clear majority of people entering Europe come from refugee-producing countries plagued by political persecution. According to the United Nations, over 53% of those arriving irregularly by sea are Syrian followed by Afghans (18%), Iraqis (6%) and Eritreans (5%) (“Refugees/Migrants Emergency Response” 2015). Nationals from these war-torn countries usually qualify for refugee status after an official status determination is carried out. Economic migrants who endure the same risky journey to Europe are not protected as refugees yet. Given that the majority

of individuals fleeing the global south and headed for Europe through the Mediterranean and overland routes eventually qualify for refugee status, this thesis will use the word “refugee” in reference to anyone crossing the Mediterranean to reach Europe.

### **2.1.3. Asylum Seeker**

The asylum seeker is a person who is seeking protection as a refugee, even if he/she is not formally recognized as such. Usually the term refers to someone who is still waiting for a government to decide if he/she is a refugee. Until the application for asylum can be granted, the person is referred to as an asylum seeker. Only after the recognition of the asylum seeker application as a refugee, he/she enjoys the status of refugee, which carries certain rights and obligations under the law of the reception country.

In practical terms, the procedure of whether a person is a refugee or not is left more frequently in certain governmental entities within the host country. This can lead to a situation where the country will not recognize the status of refugee to the applicants, and will not “see” them as legal immigrants rather than illegal immigrants.

On the other hand, there are requests from people who are not entitled to asylum and in a relaxed environment it could lead in a diversion of resources from those in genuine need. The percentage of asylum seekers/refugees who do not meet international standards of refugees and for whom resettlement is determined to be equitable correct, varies from one country to another. The most frequent outcome of asylum seekers is the deportation, which can sometimes occur after imprisonment or detention.

A request for asylum can also be made ashore usually following an unlawful arrival. Some governments are relatively tolerant in accepting asylum seekers ashore,

whereas other governments not only deny but they can arrest or even detain those attempting to seek asylum.

The different migration policies often focus on combating illegal immigration and strengthening border controls, which can prevent the entry of displaced persons to a country where they could lodge an asylum application. The inability of asylum seekers to have access to third countries to apply for asylum, it can force them to try to enter the country illegally using methods often expensive and dangerous.

#### **2.1.4. Displaced Person**

A displaced person within the country is a person who was forced to flee from one part of the country to another. The fundamental difference between a displaced individual within the country and a refugee is that the last has crossed international borders. As well as refugees, internally displaced people within the country leave due to problems such as war, ethnic cleansing, religious persecution or famine. Displaced people within their own countries have human rights. Although the government is obliged to protect their rights, one of the problems they face is that their government is unable or unwilling to protect them.

#### **2.1.5. Immigrant**

Often the term refugee is being confused with the term immigrant. Therefore, for clarification, immigrant is a person who moves from one place to another. He/she is more likely forced to leave due to fear of his/her life, starvation or genuine fear for the safety and protection of his/her family, however, one may move voluntarily, as there could be many reasons contributing such a decision. Migrants have human rights such as the right to life, freedom of arbitrary detention, freedom from torture as well as an adequate standard of living.

## **2.2. HISTORICAL, POLITICAL AND LEGAL ASPECTS OF REFUGEES**

Never in the history, as it is case today, a human as an individual, had as much rights guaranteed by the international law, as well as national legal order in ever developed system of human rights and freedoms. Today, human becomes the bearer of human rights by the moment of his birth. Human rights granted to all people are divided into three generations (Cornescu 2009). First generation, “civil – political” rights are pertained to the physical and civil security (equality before law, no torture, slavery, inhumane treatment, etc.) as well as the civil – political liberties (freedom of thought, conscience and religion, political association, etc.). Second generation of human rights, “socio – economic”, refer to the provision of goods meeting social needs (nutrition, education, shelter, etc.) and provision of goods meeting economic needs (work, fair wage, social security, etc.). Third generation of human rights, “collective-developmental”, are referring to the self-determination of people (economic, social and cultural development) and to the special rights of ethnic and religious minorities (right to enjoy their own culture, language, religion).

As a matter of fact, “civil - political” rights have become the norms that countries must respect regardless of their own special consent, that is, if those countries want to be part of contemporary international community. Despite the existence of human rights and obligations of the countries to implement them, there still exist people in the world whose current position, due to political circumstances, created mostly completely outside of their influence, resembles the one from the time when the very idea of human rights still belonged to the distant future. Among those people undoubtedly are refugees and forcibly displaced people, who count up to 65.3 million worldwide as of end of 2015. From those 65.3 million, 41 million are internally displaced persons, 21.3 million refugees, and 3 million asylum seekers (“Figures at Glance” 2015).

### **2.2.1. The Creation and Evolution Of Refugee Rights And Laws**

Refugee issue has surfaced as a global international community problem during the aftermath of October Revolution. Some million and a half of Russian citizens fled, mostly to Europe, from emerging Soviet Union, which immediately found itself in international isolation. The refugees did not wish to return to their homeland where Bolshevik dictatorship was already founded. Refugees' passports were issued in a country that ceased to exist, and so they were left without legal protection. Luckily for them, the international community, which began to constitute the League of Nations, saw the help and protection of Russian refugees its strategic political interest in the fight against the first socialist country. Therefore, the League of Nations in 1921, appointed a Norwegian polar explorer and diplomat Fridtjof Nansen as a first "High Commissioner for the issue of Russian refugees in Europe" (Cutts 2000, p. 15).

The mandate of the High Commissioner soon included some previous communities of involuntary migrants - about 300,000 Armenians who fled Anatolia in 1915. For these two groups of refugees, a so-called "Nansen Passport", was introduced and it served as an identity document as well as a grant to international legal protection ("Note on Travel Documents for Refugees" 1978). The agreement confirming the identity of Russian and Armenian refugees, which the League of Nations adopted in 1926, legalized the international legal protection of refugees (League of Nations 1926). It was a big step forward for international law, because the individuals were first time introduced as valid entity.

The first attempt of generalization of the international definition of the term refugee has been made in 1933 by the Convention on the International Status of Refugees (League of Nations 1933). This definition did not include the reasons of exile, refugee status was defined based on the facts that refugees don't have the protection of country of origin and that they do not have citizenship. Nevertheless, this convention did not apply to all groups of refugees. So, for refugees from Germany

during the second half of 1933 the League of Nations established a special institution of the High Commissioner. The High Commissioner office was not related to the Council of the League of Nations, and the office only collected funds from private donors. High Commissioner office united with the Nansen office on December 31, 1938 under the new name of Office of the High Commissioner for Refugees under the Protection of the League with headquarters in London (Holborn 1938). The jurisdiction of High Commissioner for Refugees was covering a group of refugees (Russians, Armenians, Assyrians) and refugees from Germany, but not those from Spain after the fall of the Republic (over half a million). Main reason for such discrimination was that in fact International recognition of the status of the Spanish refugees could be understood as a political condemnation of Franco's government.

As the expansion of the Third Reich tightened, the problem of refugees from Germany, Austria and Czechoslovakia was becoming major. In order to deal with the status of these refugees, the Intergovernmental Committee for Refugees was established in 1938 and High Commissioner for Refugees Sir Robert Emerson was appointed for its director in 1939. The action of the Intergovernmental Committee has been expanded during the WWII to other groups of refugees as well. It is important to note that the definition of refugee was expanded in the bylaws of the Intergovernmental Committee to include political elements, where refugees were defined as the people who had to leave their country "because of political opinion, religious beliefs or racial origin" (Sjoberg 1992).

One of the consequences of the WWII was about 40 million refugees and displaced persons in Europe alone (Newman 2003). The clear majority of these 40 million were repatriated in the initial post-war years, mainly thanks to the organized actions of the Allied command and civil authorities. However, many of the other refugees did not wish to return to their homeland. Therefore, in 1947 Intergovernmental Committee for Refugees ceased with its operations and International Refugee Organization (IRO) was formed primarily with a goal to deal with the rights of refugees and displaced persons (around 1.5 million at the time of establishment)

(Loescher 2008). International Refugee Organization bylaws as well as the resolution of Third Committee of UN General assembly from 1946 states that a group of involuntary migrants after the war can be considered as refugees. Among them: (a) victims of the nazi or fascist régimes or of régimes which took part on their side in the WWII; (b) Spanish Republicans and other victims of the Falangist regime; (c) Persons who were considered refugees before the outbreak of the (Loescher 2008).

The work of IRO was rather effective and as a result around 73.000 refugees were repatriated, and over a million of refugees was resettled in third countries, mostly United States, Australia, Israel, Canada, and various Latin American countries (Cutts 2000, p.17). Nevertheless, post-war refugee issue was not resolved in total, as initially expected by the end of the mandate of IRO, which came in 1952. Therefore, since 1949 the General Assembly of the United Nations continued to discuss the problem of refugees. Eastern bloc demanded that all refugees should be unconditionally repatriated to their home countries. On the other hand, West emphasized the traditional right of asylum, accepting only voluntary repatriation. Accordingly, the East has sought the suspension of international action in the regulation of the refugee problem, and the West sought the continuation of action (such as resettlement in a third country) and resolving refugee issues through international mechanisms (Cutts 2000, p. 17). After numerous and long discussions the General congress of the UN adopted in December 1949 the establishment of new institution, namely the United Nations High Commissioner for Refugees (UNHCR) with a temporary mandate of 3 years which entered into force 1951 (“Statute of the Office of the United Nations High Commissioner for Refugees” 1950). The main functions of UNHCR were to offer refugees an international protection, seek lasting solutions to their problems and provide them with material assistance in the form of food, shelter, medical assistance, education and other social services. The legal and humanitarian bases for UNHCR work were laid down in the 1951 UN Convention Relating to the Status of Refugees. Negotiations on the Convention and the establishment of UNHCR took place in parallel and the



convention was adopted couple of months after formation of UNHCR at the Conference on the Status of Refugees and Stateless Persons held in Geneva on 2–25 July 1951 (Cutts 2000, p.24)

The 1951 Geneva Convention still remains the primary and the most important document for international recognition of refugee law. The Convention defines the obligations and rights of the refugees, and the obligations of countries towards refugees. It also promotes the principles of refugees' rights to work, education, housing, freedom of movement, court access, and non-refoulement (the forcible return of refugees or asylum seekers to a country where they are liable to be subjected to persecution) (UN General Assembly 1951).

Two most important points of the Geneva Convention can be found in Articles 1 and 33 (UN General Assembly 1951). According to the Article 1 the definition of refugee extends to refugees from IRO jurisdiction and additionally defines the refugee as;

“As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

Article 33 of the Convention is dealing with the non-refoulement concept and states that;

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

The Geneva Convention was adopted by Protocol Relating to the Status of Refugees in New York in 1967 (UN General Assembly 1967). The Protocol removed the geographical and time limitations in defining the concept contained in Geneva Convention. The Protocol further contributed to the development of international legal protection of refugees.

Relying on the corpus of human rights, international refugee law and rights progressed and evolved in the seventies and eighties. By the late seventies a complex system of international, regional and national responsibilities for refugees were developed. The system included large number of international treaties on refugees, as well as the regional instruments to resolve refugee problems. Thus, under the auspices of the Organization for African Unity (OAU) in 1969, Convention Governing the Specific Aspects of Refugee Problems in Africa was adopted (OAU Convention 1969). This Convention further extended the concept of refugees in relation to the Geneva Convention, seeking at the same time from the state parties to invest their best efforts in accordance with its legislation to accept the refugees and ensure their acceptance until their return is possible. OAU Convention recognized refugee status and to those who find themselves outside their countries of origin "... owing to external aggression, occupation, foreign domination or events seriously disturbing public order".

Likewise, the General Assembly of the Organization of American States (OAS) in 1984 adopted the Declaration of Cartagena (Cartagena Declaration on Refugees 1984) as a recommendation to member states of the Organization in dealing with refugees. OAS also recognized internal conflicts and massive human rights violations as reason for refuge. In the meantime, High Commissioner for Refugees expanded its mandate to provide protection and assistance not only to classic asylum seekers, but also to internally and externally displaced persons, de facto stateless people, quota refugees, people in a situation similar to refugees, refugees fleeing violence, refugees pertained to certain specified regional conventions.

## **2.3. LEGISLATIVE FRAMEWORK IN EUROPE**

Tens of thousands of people, many of whom have been maltreated, flee to EU every year to escape persecution in their country because of their ethnic origin or their religious and political beliefs or because they belong to a social group. Under international law, these individuals must be protected, even if they enter illegally the European Union. In 2003, the EU adopted minimum requirements for the treatment of asylum seekers, but the law allows considerable margin of discretion to the Member States, resulting in significant differences from one country to another (Council Directive 2003/9/EC 2013).

The European Commission also proposed a revision of these rules aiming at improving the living conditions of asylum seekers and ensure that they will be treated the same to all EU countries (European Pact on Immigration and Asylum 2008). Other proposals aim to facilitate countries like Greece, which is an important entry point of illegal migrants, as well as to improve access by national authorities to data, through them they will identify refugees and prevent multiple asylum applications. The Dublin regulation allows Member States to send refugees back to their country of entry in the EU. The Commission today proposes the establishment of a suspension mechanism of return of these individuals in countries that receive massive flows of refugees (The Dublin Regulation 2007).

### **2.3.1. The Asylum Policies In The European Union**

The EU is trying to create a uniform policy on asylum issues. The main objectives and principles of the common asylum policy were agreed in October 1999 at the European Council in Tampere (Finland) by the heads of state. They decided that they should apply a common asylum policy and a common European asylum system. A first set of standards and measures must be adopted by May 2004. This way, they recorded the results to fully clarify the respective responsibilities of

Member States, the Council of Ministers and the Commission in order to achieve this goal. Most of the elements of the first legislative phase have already been implemented. In the longer term, the rules should lead to a common asylum procedure and a uniform status for those granted asylum, which is would be valid throughout the Union. This was confirmed by of The Hague Program (adopted in November 2004 by the Heads of State), which was built on the achievements of the Tampere program, which sets the agenda for the next five years.

The fact that asylum is a European internal problem which should be addressed at European level is another concern - in Europe without borders, would be logical to have an approximation of the conditions for asylum seekers, so that one country may not appear more favored destination than another, and thereby encouraging unjustified movements and to ensure that, wherever they apply for asylum they will be able to have access to support, to a fair trial and not be disadvantaged by a more or less generous interpretation of who is a refugee of whether he had been in another European country.

The four main legal instruments on asylum - the Directive on Reception Conditions, the Directive on Asylum Procedures the Directive on the Dublin Regulation, designed for the asylum to be without competition and to lay the foundations of a common European asylum system, which could be further extended to structures for the safeguard of the EU as a single asylum space and ensure that the public could have confidence in a system that protects those who ask and respond properly and those without protection requirements.

The Dublin Regulation contains clear rules on the responsibilities of the Member State for the assessment of an application on asylum. This is an important instrument for preventing multiple claims. The Directive on reception conditions includes minimum standards for the reception of asylum seekers, including housing, education and health.

The qualification directive includes a number of criteria to have either refugee status or subsidiary protection status and sets out what are the rights attached to each

status. Typically, the Directive introduces a harmonized regime for subsidiary protection in the EU for people falling within the scope of the Geneva Convention but who nevertheless still need international protection, as a victim of generalized violence or civil war. This is of increasing importance as the number of people who need this kind of protection is growing both in Member States and worldwide.

Apart from legislation, solidarity has been strengthened with the creation of the European Refugee Fund (ERF). ERF promotes solidarity between the Member States and promotes balance in the efforts for the reception of asylum seekers, refugees and displaced persons. The ERF also supports actions in Member States to promote the social and economic integration of refugees and their return to their countries of origin if they wish.

### **2.3.2. European Act On Immigration and Asylum**

There has been considerable progress over the last half-century, the political and civil project that underlay the establishment and deepening process of the European Union. One of the most notable successes of this project is to create an extensive area of free movement that currently covers most of Europe.

This development has provided an unprecedented rise in freedom for European citizens and nationals of third countries who travel freely across this common territory. It also represents an important development and prosperity. The recent and future endangerment of the Schengen area enhances further the free movement of individuals. International migration is a reality, which will persist as long as there are inequalities of wealth and development between different regions in the world. International migration can be an opportunity because it constitutes a human factor and economic exchanges and also allows people to achieve their aspirations. It can contribute decisively to EU economic growth and its Member States that need migrants because of the situation of their labor markets or for demographic reasons.

Finally, it provides resources for the migrants and their home countries by contributing to the development of these countries. Furthermore, the hypothesis of zero immigration is both unrealistic and dangerous. The European Council has adopted in December 2005, the Global Approach to Migration (The Global Approach to Migration 2005) and confirmed its up to date nature. It reaffirms its conviction that migration issues are an integral part of the Union's external relations and that any harmonious and effective management of migration must be comprehensive and therefore faces both the organization of legal migration and combat illegal immigration, as instruments to promote the synergy between migration and development.

The European Union, however, does not have the resources to decently receive all the migrants seeking a better life. Poorly managed migration may disrupt the social cohesion of the countries of destination. Therefore, the organization of immigration must take into account Europe's reception capacity in terms of labor market, housing and health care, education and social services, and the ability to protect migrants against the risk of exploitation by criminal networks. By establishing a common area of free movement, Member States are also facing new challenges. The behavior of a Member State may affect the interests of others. The entry into the territory of a Member State authorizes entry to the territory of other Member States. It is consequently imperative that each Member State needs to take into account the interests of its partners in the formulation and implementation of national policies on immigration, integration and asylum. In this context, the EU Member States have sought for decades to converge their policies in these areas.

The progress that has been made towards a common immigration and asylum policy is tangible, but further advances are necessary. The European Council, in the belief that the need for a comprehensive approach to integrate the management of migration among primary objectives of the European Union, it considers that the time has come to re-launch, in a spirit of shared responsibility and solidarity between Member States, but also in partnership with third countries on a common policy on immigration and asylum policy which takes account of both the collective

interest of European Union and the specificities of each Member State. In this spirit and in the light of the Commission's Communication of 17 June 2008, the European Council decides to solemnly adoption of this European Pact on Migration and Asylum. Conscious of that full implementation of the Pact might require, in some areas, changes in the legal framework and to the treaty bases, the European Council makes five basic commitments, which will continue to be transposed into concrete measures, in particular in the program of the 2010 Hague program:

- organization of legal immigration, considering the priorities, needs and reception capacities of each Member State, and to encourage integration,
- fight against illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a transit country,
- enhancing the effectiveness of border controls,
- to construct a Europe of asylum,
- create a comprehensive partnership with countries of origin and transit to encourage the synergy between migration and development.

## **CHAPTER III**

### **THE CASE OF GREECE**

#### **3.1. THE MIGRATION POLICY IN GREECE AS A HOST COUNTRY**

Greece didn't have detailed migration policy until 1989. The practice of "not intervening" beyond the legal conditions of contracts between employers and foreign workers, the "temporary stay" of political refugees as well as their relocation to third countries, took place through international organizations without the state's intervention. Later in 1989 the issue of migration took a different turn in Greece, the migration policy was expressed by the adoption of a new strict law not only for immigration but mostly for the foreigners in Greece, while in 1997 the first bill of immigrants' legalization began. At the end of the 1980s, a non-functioning system alongside with a series of changes contributed to a greater entry of immigrants in the country, making it difficult for those who entered Greece to be able to live in the country even as "temporary residents". In the light of such events and changes, Greece's participation in the European Community followed up a prevailing practice of strict measures against the entrance of new immigrants outside the member countries (Fakiolas, 2003).

Migrants entering Greece can be divided into four categories:

- (a) Nationals of EU Member States – who can settle and work legally
- (b) Non-EU nationals – who can settle and work legally if conditions are met
- (c) Nationals of non-EU countries – who enter illegally or reside legally and work illegally in the country.
- (d) The refugees – entering the country illegally.



Until the 1990s, Greece's migration policy in respect to the categories mentioned above could be summarized as follows (Lazaridis 1996, Triandafyllidou 2014):

- The policy regarding nationals of EU-member states: this is a Community policy in which Greece is also involved as an implementer. In this context all EU nationals have the right to reside and seek job opportunities same as a Greek citizen.
- The policy regarding the legal establishment and labor of foreigners in the country has two strands: (1) the process of granting the residence and work permit and (2) the treatment of the legally residing and working person in the foreign country.
- The lack of a policy that regulates issues concerning the living of migrants in Greece is particularly noticeable as the number of foreigners is constantly increasing, the evidence of their marginalization can no longer be ignored.
- It is often difficult to distinguish in practice the illegal immigrant from the refugee entering the country. Even though refugees are protected by international conventions and protocols (UN General Assembly 1951, UN General Assembly 1967) ratified by Greece. This protection concerns the person who enters and resides in the country with a legally declared and recognized refugee status. The illegal immigrant does not receive any protection.

A migrant who enters the country and wishes to be recognized as a refugee must make a declaration to the police authority; the following step is for the authority to inform the High Commissioner for Refugees. The application for recognition of refugee status and asylum status under consideration is made by the Ministry of Public Order, which decides on; in time limits, which are not specified.

The Greek migration policy until the 1990s was exclusively oriented on issues of emigration, migration of labor from Greece and its return, while during this period it deals with the entry of foreign workers or asylum seekers through issuing a

limited number of short-term work permits and short-term residence permits for asylum seekers or refugees.

The Law 1975/1991 (Nomos 1975/1991) laid down for the first time the legality requirements for the main issues of entry, residence and work for all immigrants. Again in 1997, special conditions were adopted for the legality of residence and work with the normalization of migration and the reduction of illegality rates. The implementation of the process of legalization of migrants began in 1998 and covered a large but not satisfactory portion of all foreigners. On the contrary, the “expatriates” or “repatriated” have received a privileged, though disarranged, return of citizenship.

The need for modernization brought greater flexibility and less bureaucracy in procedures under the Law 2910/2001 (Nomos 2910/2001), which was revised in 2002 following the intervention of competent bodies, due to its ambiguities and gaps. However, the legislative problems remained and, most importantly, no clear immigration policy has been drawn. Following the pressures of the stakeholders, Law 3386/2005 (Nomos 3386/2005), which established the third phase of legalization of migrants, was adopted. At the same time, the Code of Greek Citizenship was reconstructed at a technical level, but without remarkable improvements in content, and migration policy in Greece remained without a coherent targeting and orientation.

In this context, one could say that the following issues have emerged in recent years about the migration issue in Greece:

- The legality of residence and employment of migrants and the benefits or otherwise of the economy by their presence,
- Public security,
- The protection of the human and social rights of migrants, especially those living in poverty (health, security, dignity, rights of migrant workers, etc.).

Under the circumstances, the shortcomings of migration policy and its implementation could be summarized as follows:

- The difficulties and constraints in implementing the rights of migrants (e.g. family reunification)
- The abusive and uncontrolled process of administrative deportation
- The general deceptive treatment of immigrants by the police and the public administration
- The inadequate protection of labor rights
- The absence of dialogue and procedures for the participation of migrants in the decisions concerning them
- The absence of institutional participation in political processes
- There is no provision for regulating the status of second generation of migrants, not only about the issue of residence permit, but mainly as to the acquisition of citizenship
- Non-targeting and content definition of integration policies and integration
- The ineffective guarantees regarding the safeguarding of rights to health, education and housing
- The legal framework for migrants in Greece

The legal status in Greece is governed by a complex institutional framework based on constitutional mandates for the protection of migrants and their legislative specialization. At the same time, the implementation of mechanisms by the International Organizations constitutes a parallel level of supranational law that now governs relations between administration and immigrants in different fields of economic and social life.

### **3.1.1. The Migration Policy In Greece As EU Member**

Since the early 1970s the immigration policy of the developed European countries has been redefined with the main objective of taking measures to restrict the entry of new immigrants. This is a result of the weakening of rates of economic development and industrial restructuring in developed countries. The change in policy and limiting entry of migrants created a stream of illegal immigrants who try to enter the Western European countries mainly from European Mediterranean countries. As a result, to the large numbers of migration to the countries of the European Union, several groups have been set up to take on the policies that Member States should implement on migration and refugees. The most important results of these efforts are the Schengen Agreement and the agreement signed on 15/6/90 in Dublin. The Schengen Agreement (1985) aims at the free movement of goods and services and on taking measures to achieve the free movement of persons. Essentially, agreement expresses the desire of undertaking strict control of entry in the free movement of those who are legally in the countries that sign the agreement. The Dublin Convention, signed by all the countries of the European Union, except Denmark, addresses the migration issue based on the following (The Dublin Regulation 2007):

- Common policy on visas
- Cooperation between national agencies in the maintenance of order
- Collection of asylum seekers' data

It is a fact that these state policies on immigrants and refugees conflict with human rights, as they are included in UN conventions. They also trigger racist ideas and behaviours.

In a comparative study done among 28 countries for the integration of immigrants in the European Union, which includes 130 political fields which are shared in six

indicator areas, Greece ranks among the last four countries, along with Cyprus, Austria and Latvia (Indicators of Immigrant Integration 2015).

Four of these indicators are highlighted as the “perks” of Greek migration policy (Indicators of Immigrant Integration 2015):

- Access to citizenship is described as closed, with no provision for second-generation immigrants who were born in Greece; it requires the most expensive fees in the European Union (€1.500), while the administration has no obligation to answer or deadline for examining the application.
- Lack of political participation of migrants in the formulation of the policies concerning them, both in consultation and in the political right to vote and to stand for election.
- Their access to the labor market is difficult and accompanied by limited rights, leading to the spread of informal or illegal forms of employment and, consequently, their residence status is perpetuated as “informal”.
- Difficulty is seen regarding the family reunification, with the main obstacle being the amount of income required for this purpose, bringing the country to the fifth place in this index.

Nonetheless, there are two areas the country is close to the average of the countries of the European Union: the anti-discrimination legislation of the country is sufficient, although the investigation does not examine how it is applied by the courts, but also the rights of immigrants with a long residence permit.

### **3.2. THE EXAMPLE OF THE PROCESS IN GREECE IN 2016**

The asylum application process in the summer of 2016 on the islands was an “experiment” that is first on European soil. Asylum officers from different countries participated, with different asylum systems and concepts, and together they formed

a group with the Greek service to decide on asylum under Greek law. Pre-registration process identified all the people who were candidates for relocation and the individual vulnerable categories. It gave a more accurate picture, beyond the issue of relocation, and the composition of the refugee population. This process was carried out in an intensive manner and was completed by the end of July (GCR 2016, Dutch Council for Refugees 2016).

### **3.2.1. Hosting – System and Voluntary Aid**

The weight of arrivals has been endured by the islands, where host centers have increased considerably since the last two years. Yet they are not efficient enough given the large amounts of the new influxes. Therefore, in Lesvos (where most of the arrivals have been documented), there are two main reception centers, Moria and Kara Tepe, with an overall accommodation of 2,800 people. As noted by the High Commissioner for Refugees, there is an immediate need to expand the reception capacity (including infrastructure improvements, preparing the accommodation centers for the winter, and the creation of a single managing authority, for the two centers, which will be dividing the people into groups in accordance with their needs and not a state of ‘self-service’). The reception facilities on other islands like Chios and Samos are quite small (about 300 people in each) and they should also increase their capacity. In Athens there are three operating centers: the number of capacity is not more than 700 people, in Galatsi at the Olympic facilities with a capacity of 1,000 people and the hockey stadium with a capacity of 600 people.

Despite the fact the reception centers in Athens operate under the responsibility of the Deputy Minister of Migration Policy, in the islands the coordination is shared between the Ministry of the Aegean, each Municipality and the Greek police, while the High Commission acts as co-coordinator in most reception centers.

At the same time, there are many organizations (smaller or larger, local or international) that act on their own initiative and provide important services of

rescue, reception, healthcare and general solidarity with the arriving refugees, however there is not any coordination between those groups. UNHCR is reluctant to undertake general coordination, while the Greek authorities are trying to improve both infrastructure and coordination without being able to do it completely.

Although the state and local authorities, as well as local volunteers, NGOs and international organizations, have been mobilized not only to address the emergency state of refugees, the situation remains critical, despite the difficult economic conditions, the public opinion remains generally welcoming to refugees.

The mobilization and solidarity, food donations, clothing and volunteer work have grown to impressive level, not only in the islands, but also in Athens and other municipalities, including civil society and citizens who, although they were not politically active before, felt the need to help.

### **3.2.2. Relocation**

The EU Relocation Program (EU Council Decisions 2015/1523 and 2015/1601, 2015) concerns the movement of people in need of international protection (asylum and subsidiary protection) from one Member State of the Union to another. It is a European mechanism for tackling the refugee crisis that aims at a fairer distribution of asylum seekers in the Member States. This is the procedure by which third-country nationals are transferred from a third country at the request of the UNHCR based on a person's need for international protection and settle in a Member State where they stay with one of the following schemes:

- “Refugee status” within the meaning of Article 2 (e) of Directive 2011/95/EU (Directive 2011/95/EU).
- “Subsidiary protection status” within the meaning of Article 2 (g) of Directive 2011/95/EU,

- Or any other schemes conferring similar rights and benefits under national and Union law.

Thus, the Relocation Program in practice concerns third-country nationals, for whom the European protection award rate is over 75% based on the European average, Eurostat data and hence very likely to need European protection.

After many years of thinking and planning, the EU adopted the coordinated relocation program. The aim was to increase and fairly allocate refugee relocation positions. With an emphasis on the need to implement such a program, the necessary attention has not been given to the sustainability of these programs. This fact is related to the failure to show the necessary attention to the integration of refugees.

Today, the Relocation Program concerns Syrians, Iraqis, Eritreans, Central African nationals and stateless persons from these countries. Greece is mainly concerned with the Syrians, and by September 2015, 66400 people were planned to settle in different EU Member States within two years. The first phase is a pilot phase. To include a refugee in the resettlement program (GCR 2016);

- A refugee must have entered Greece after 16/9/15.
- A refugee must have submitted an Asylum Application to the Asylum Service and must have gone through fingerprinting.
- A refugee must have been registered by the Greek authorities at one of the five entry points (Leros, Lesbos, Samos, Chios, Kos).

The Greek authorities, in collaboration with international organizations and the liaison officers involved in the decision, came up with a list of individuals based on the criteria of vulnerability, family ties and language skills. It provided refugees with a residence permit from the relocation country and chance of joining the country's host system to meet its basic needs.

Symbolically, the first refugee mission consisted of 30 refugees from Syria and Iraq who had gone to Luxembourg. This initiative aimed to demonstrate that instead of



fences, walls and barbed wire, solidarity and humanitarianism in refugee care should prevail in Europe. However, apart from its symbolic act, the Relocation Program seems to be moving slowly and Member States refuse to accept refugees on their territory, while far-right parties are becoming more popular in local European societies.

### **3.2.3. Reunification of families**

In various international texts such as Article 16 of the Universal Declaration of Human Rights, Articles 17 and 23 of the International Covenant on Civil and Political Rights, Article 74 of the Fourth Geneva Convention on the Protection of Civilian Armed Forces in Time of War, Articles 9, 10, 22 of the Convention on the Rights of the Child, Article 8 of the European Convention on Human Rights the world community has recognized that the family is the fundamental unit of society. The right to family reunification, which imposes certain obligations on the national authorities, is therefore recognized. The exercise of this right is very important for refugees, who in many cases escape their countries of origin, are forced to leave their family.

Family reunification remains one of the main reasons why many people move to the EU. Protecting the family life of migrants already living in Europe is particularly important for their integration into the host society. In the EU, there are common conditions for granting family reunification leave and related rights to family members.

Third-country nationals who are already legally resident in the Union are entitled, subject to any special conditions imposed by the host country (e.g. adequate accommodation and sufficient financial resources), to accompany their spouse and minors. EU Member States can also allow for family reunification when it comes to comrades of those who live with them in free association as well as dependent elderly patients and adult children. Upon entering the EU, family members receive

a residence permit and have access to education, employment and vocational training equivalent to other non-EU nationals.

Right to family reunification (Council Directive 2003/86/EC 2003) are granted to third-country nationals holding a residence permit of at least one year in one of the EU countries and having a reasonable prospect of acquiring the right of permanent residence. On the contrary, this Directive does not apply to family members of Union citizens or third-country nationals who seek recognition of refugee status and whose application has not been the subject of a final decision or to nationals enjoying temporary protection.

However, on the basis of Directive 2003/86/EC the Council of the Union considered that: Special attention should be paid to the situation of refugees due to the reasons that forced them to leave their country and prevent them from taking a normal family life there. Consequently, more favorable conditions should be laid down for the exercise of their right to family reunification.

#### **3.2.4. Return**

The “return” procedure of a third-country national is either voluntarily complying with the desire to return to the country of origin or compulsory - as defined in Article 3 of Directive 2008/115/EC. The European Return Fund provided €676 million to EU Member States for voluntary and forced return of migrants as well as joint return operations. The Fund also funded activities that improved the quality of information provided to illegal migrants on assistance provided in the event of a voluntary return and the dangers of irregular immigration. In particular, the EU has supported the cooperation of its Member States with the return countries in order to facilitate the reintegration of returnees into their country of origin.

“Voluntary Departure” is compliance with the return obligation within the time limit set for this purpose in the return decision - as defined in Article 3 of Directive

2008/115/EC. One of the parameters set by the Asylum, Migration and Inclusion Regulation (Union Resettlement Framework 2014) is that it should continue to support and encourage the efforts of Member States to improve the management of the repatriation of third-country nationals in all its dimensions, and with a view to the continued fair and effective implementation of common return standards.

Compulsory return refers to the process of forced removal of an alien from the host country either in his / her country of origin or in a transit country under Community directives (e.g. Dublin Regulation), bilateral readmission agreements or other arrangements or in another third country. The alien is admitted as defined in Article 3 of Directive 2008/115/EC; Forced return is subject to aliens whose stay in the country has previously been declared illegal by administrative or judicial decision or act. It is worth noting that at the Community level, the voluntary, rather than forced, departure of the foreigner from the country is prioritized. To this end, States are required to provide for voluntary departure procedures and to use the available Community funds of the Return Fund for this purpose. In Greece, the forced return of persons is executed by the Greek Police.

It should be noted that the existing Community Directive on the return of illegally staying third-country nationals (Return Directive) lays down the common rules and procedures applicable within Member States for the removal from their territory of illegally staying third-country nationals who are members of the European Union. The Directive provides for a return decision, “for any illegally staying third-country national”. This decision, in principle, sets a time limit for voluntary return, followed if necessary by forced removal.

## **CHAPTER IV**

### **THE CASE OF TURKEY**

#### **4.1. BACKGROUND**

After the war of independence, the Turkish National Movement was the key element in the formation of the new nation. Turkish migration policies were shaped by nationalism which saw population management as the main tool for building of the nation (Aydın-Düzgit 2013).

Before the establishment of the republic and during the first half of the republican era there was a cleansing of the Turkey's non-Muslim and non-Turkish nationals. This was done by bilateral agreements with countries such as Greece and Bulgaria in population transfers after the Turkish War of independence. Forced emigration was another policy. In 1915 nearly more than one million Armenians were forced to emigrate. This can be noted as the first wave of non-Turkish, non-Muslim emigration from Anatolia. The second wave of emigration of these people occurred after the implementation of The Wealth Tax of 1942 (Aydın-Düzgit 2013).

Due to the loss of the Ottoman lands, many Turks who lived in the outskirts of the Ottoman Empire were encouraged to immigrate back to the homeland. From the period of 1923 to 1939 nearly 1 million people of Turkish-Muslim origin returned to Turkey. The 1934 Law on Settlement was designed to serve as legal tool of immigration and settlement in the country. This law basically; facilitated the migration and integration of people with “Turkish origin and culture”; and prevented people to enter as migrants who didn't meet the criteria (Aydın-Düzgit 2013).

Factors that played a significant importance in the first period of emigration and immigration policies in Turkey were:

- the preservation of Turkish identity
- the homogenization of Anatolia through means of bilateral agreements
- forced migrations and immigration laws that only allowed the settlement of people who fit in the Turkish nation

Until the 1990s, Turkey wasn't considered as an immigration country. Instead, it was primarily a sending and/or a transit country, for both asylum seekers and labor migrants traveling to Europe (Kirişci 2014). Due to multiple developments in the political spectrum of the Middle East, many refugees were crossing the Turkish borders in order to seek asylum-primary form Afghanistan, Iran, Iraq and Syria.

It was then understood that Turkey's migration and asylum policies had to be revised. New legislation framework had to be adopt. A newly updated regulation about asylum and migration issues was adopted in 1994, even so, the new leap of Turkish legislation reform it was downgraded on the part which was putting more barriers to non-Europeans seeking asylum (Kirişci 2014).

In the early 2000's immigration trends can be summed up in four different categories (Aydın-Düzgit 2013):

1. *Irregular labor migrants;*
2. *Transit migrants;*
3. *Asylum seekers and refugees*
4. *Regular migrants*

Turkey was finally recognized to be a candidate to become a member of the European Union in Helsinki 1999. Turkey was set on a path to further democratize the Turkish state and implement reforms to become a member state. With AK Party coming into power in 2003, the traditional concepts of national identity started to

get altered. During this period, Turkey recovered from economic crisis and started becoming a model for the region. Turkey throughout the 2000s and in the 2010s started changing its Foreign Policy in terms of hard power to soft power, further integrating with its neighbors and signing readmission agreements and lifting visa restrictions to many countries (Aydın-Düzgit 2013).

With the growing prosperity, immigration to Turkey increased, but still Turkey was predominantly used as transit country to other European Union countries. Over a half of million transit migrants have gone through Turkey to reach Europe between 1995-2013. Turkey has taken greater leaps to manage trans migration, especially with refugees coming from Syria. Since the beginning of the civil war 2 million Syrians have found refuge in Turkey.

#### **4.2. LEGAL FRAMEWORK**

Regarding the asylum and immigration issues deriving from the need to ease the Syrian refugee crisis, Turkey has been going through some extensive developments since 2014, when a new law was enforced; “Law on Foreigners and International Protection” (*Turkey Law No. 6458 of 2013*). This law entails the establishment of a new government agency called “Directorate General of Migration Management” (DGMM). The DGMM is the single institution officially in charge for asylum matters. In essence, the institution formed to gradually take over a variety of tasks in relevance to immigration issues that have been managed by the UN and various non-government organizations in the past years.

The clear majority of Syrian refugees in Turkey are governed under a temporary protection regulation (the TPR), which was initially developed as a reaction to the mass influx of Syrians, and then regularized by a legislative act on 22nd October 2014.

The TPR means that Syrians do not fall under the international protection of UNHCR and have no right to make a claim to international protection. However, it also means that Syrians do not hold a full-fledged refugee status, in the sense that they can expect to reside in Turkey in the long-term and eventually obtain citizenship. The central features of the TPR framework as it is applied to Syrians are non-refoulement (i.e., non-deportation back to Syria and the right to remain in Turkey) and non-punishment of illegal entry or presence in Turkey.

TPR is not to be misunderstood as an unconditional open border policy, meaning that, Syrian refugees are not guaranteed a free access to Turkey. The TPR provides some sort of protection for Syrians who are in Turkey without valid travel documents. Under TPR, Turkey has right to apply certain protective measures to regulate the mass movement of people. According to some analysts, this can be understood that government can close borders without time limitations due to security reasons. The fact is that Turkey has indeed closed its borders to prevent Syrian refugees to reach Turkey in 2015.

One of the main points that has been widely criticized is the dual concept between the temporary status and the long term stay of Syrian refugees in Turkey. The aim of the temporary condition is to limit their integration into the Turkish society and also to limit their ability to maintain a long-term settlement in the country. The unclear definition about the conditions certainly carries out an important dilemma about the Syrian refugees' future in Turkey.

All Syrians, carrying a valid passport have the right to residence permit application, as it falls under the 2004 visa-free travel agreement between Turkey and Syria. Considering that most of the Syrians who arrive in Turkey are under extreme conditions, a very small number of them obtains a valid passport or any other sort of official documents. In correspondence to the AIDA database (AIDA 2015), by the end of 2014, there were around 100,000 Syrian refugees to hold such residence permits, under which they have the same rights as any other foreign national legally living in Turkey.

### **4.3. TURKISH POLICY MAKING IN REFERENCE TO THE SYRIAN REFUGEE CRISIS**

The Turkish policy-making has been operating under a collective try of operating on the immediate needs of refugees and strategic policy development, in many cases the Turkish policy developments in regard to Syrian refugees have been formed by the collective data on the “regional” level where the refugees are hosted. In the same line, profound has been the self-government on the regional and local level in handling the Syrian refugee influx, authorities have received funding from the national budget to use in the response to refugees needs. Moreover, with the same understanding there have been cases where local-level authorities have opted to move things through across different regions and have had a successful result. Many national level actors have been identified for their immediate and effective response to the crisis; the Turkish Red Crescent (TRC), the Ministry of National Education (MONE), the national disaster response agency AFAD, the Turkish NGO IHH Humanitarian Relief Foundation (IHH), the Ministry of Family and Social Policies and the DGMM.

Granting all this, and despite the fact of the effectiveness that local authorities are carrying out, Turkey’s strategic objectives about the refugee crisis emerge to be in constant progress. The official debates on the key priorities are:

1. for more Syrian children to go to school
2. to issue a labor policy for Syrians
3. to resolve the matter of long-term presence of Syrians
4. to reach international involvement in the management of Syrian migration
5. to provide an appropriate level of living conditions for Syrians in Turkey

As the priorities were mentioned, only the issue of education seems to have been seriously taken into consideration and there have been taken serious steps to put as



many as possible Syrian children at schools, according to the Ministry of Education's 2014 circular (AIDA 2015). The rest of the objectives seem to be not fully addressed while the authorities maintain mostly a level of improvisation to those issues.

A proper example of such issue is the debate over the Syrian's long-term stay. On one hand there are those criticizing the policy of “integration” which for some has a negative coloring because it could mean “absorption” and on the other hand there are those who support the term of “harmonization” which has been introduced by DGMM. The term “harmonization” was introduced mostly as a form of integration, in which the refugees will hold ties to their cultural identity and still live in “harmony” in the host country.

With respect to access of Syrians to the labor market, one could argue that has not been a fully concluded strategy on how to tackle the issue. It appears to be an inadequacy on the question about the labor market access for Syrian refugees. In that matter the lack of the executive top-down approach on the decision making at the center, has given the local and regional areas to resolve the issue with temporarily successful solutions.

Alongside the debate on the immediate objectives discussed above, there is another category of less openly discussed priorities directing Turkish policy in relation to Syrian migration issue, such as:

1. to restrict and/or control more effectively the flows of Syrian refugees
2. to manage the increasingly alarming and obscured foreign-policy aftermath resulted from the Syrian plight

#### **4.4. POLICY CHALLENGES IN TURKEY**

Due to an influx of refugees from Afghanistan, Iraq, Syria and other Middle Eastern countries in the past two decades Turkey has turned into an immigration country. Many choose Turkey as transit country while many others choose to settle in Turkey with/without intent of going back to the country of origin once the danger has passed. Nevertheless, Turkey does not have an official, comprehensive, integration policy targeting the settling migrants and refugees and their inclusion to the society. Most of the public discussions and policy debates on the integration issues have occurred in relation to the EU-Turkey affairs.

The influx of refugees and accession to EU has stimulated Turkey's legislation efforts. In that light, two laws are particularly interesting from integration point of view, first Law on Work Permits for Foreigners, passed in 2003, and another is Law on Foreigners and International Protection passed in 2013. The law from 2003 dealt exclusively with work permit issues and later dealt with residence permit and other integration issues.

These two laws provided foundation for residence and work of many refugees throughout the years of their implementation, however, they failed to accommodate needs of over two million of Syrian refugees that arrived in Turkey in short period of time after 2011. In January 2016 new Regulation on Work Permits for Foreigners under Temporary Protection was passed. The same year, in July, the International Labor Force Law was passed that now applies to all migrants. This law treats Syrian refugees under the special status of TPR.

Due to the acceptance of substantial number of Syrian refugees the international aid, was tunnelled towards NGOs that operate in Turkey as well as Turkish government. That aid was used to conduct projects to attempt to integrate Syrian refugees into society. An example of such project is an establishment of community centers in the areas with large population of Syrian refugees to attempt to help them adjust in the unknown environment.

International organizations including UN agencies; the Bureau of Population, Refugees, and Migration (BPRM); the European Commission’s Humanitarian Aid and Civil Protection Department (ECHO); as well as international NGOs such as the Danish Refugee Council (DRC) and Mercy Corps, have funded community center projects (İçduygu, 2016).

Despite the national and international efforts at creating and implementing the integration process, Syrian refugees still face serious obstacles at accessing private housing, health insurance, education and employment.

#### **4.5. EU-TURKEY REFUGEE DEAL**

At its core, the agreement was aimed to address the overwhelming flow of illegal migrants and asylum seekers traveling across the Aegean from Turkey to the Greek islands, by allowing Greece to return to Turkey “all new irregular migrants” arriving after March. In exchange, EU Member States will increase resettlement of Syrian refugees residing in Turkey, accelerate visa liberalization for Turkish nationals, and boost existing financial support for Turkey’s refugee population.

The EU and Turkey have reached an agreement on the issues of refugees that have raised considerable legal and political controversy in the public sphere. To look at the arguments in favor or against the agreement, the main body of the text is cited and commentary is made (The EU-Turkey Deal 2016).

“All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. This will take place in full compliance with EU and international law, thus excluding any kind of collective expulsion. All migrants will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement. It will be a temporary and extraordinary measure which is necessary to end the human suffering and restore public order, Migrants

arriving in the Greek islands will be duly registered and any application for asylum will be processed individually by the Greek authorities in accordance with the Asylum Procedures Directive 2013/32/EU, in cooperation with UNHCR. Migrants not applying for asylum or whose application has been found unfounded or inadmissible in accordance with the said directive will be returned to Turkey. Turkey and Greece, assisted by EU institutions and agencies, will take the necessary steps and agree any necessary bilateral arrangements, including the presence of Turkish officials on Greek islands and Greek officials in Turkey as from 20 March 2016, to ensure liaison and thereby facilitate the smooth functioning of these arrangements. The costs of the return operations of irregular migrants will be covered by the EU. Migrants having been returned to Turkey will be protected in accordance with the international standards concerning the treatment of refugees and respecting the principle of non-refoulement.”

The first sentence added is a violation of both European and International Legislation. However, this paragraph seems to be overturning; on one hand, it establishes the return of all irregular migrants, on the other hand it is stated that this process will be compatible with the existing European Law and the Charter of Human Rights, in keeping with the ban on mass returns.

It should be emphasized here that this paragraph states that the EU's Directive on Asylum Procedure explicitly refers only to arrivals in the Greek islands. It is not clear whether it “covers” also those found in Greek waters before reaching there.

Regarding immigrants who are not asylum seekers, the crucial question is whether they will be given an opportunity to seek asylum, as Directive demands. If an irregular immigrant does not apply for asylum then there is no barrier to his return to Turkey, and he is subject to the conditions as defined by the EU Redeeming Directive.

It should be noted that the Greek authorities will have to process asylum applications, which are a remarkable bureaucratic obstacle. It was also clear from

the Greek government that asylum services would not work in Edomeni, thus, the closure of the Western Balkans road.

EU decisions on the relocation of asylum seekers from Greece and Italy will continue to be tacitly enforced but only refer to the relocation of a minority of those arriving in Greece and applying in practice. If an application is rejected, it does not meet the criteria. If an application is not accepted, it does not mean that it was rejected because it does not meet the criteria. It means that it was rejected because Turkey is either a safe Third Country or the first country of asylum application.

The Commission's announcement suggests that Turkey could become the “first country of asylum”. The debate is mainly about whether Turkey is in fact a “safe third country”. Also, with the acceptance of Greek security guards in Turkey and Turkish in Greece, it transforms the refugee from European and international issues into Greek-Turkish issue (The EU-Turkey Deal 2016).

“For every Syrian being returned to Turkey from Greek islands, another Syrian will be resettled from Turkey to the EU taking into account the UN Vulnerability Criteria. A mechanism will be established, with the assistance of the Commission, EU agencies and other Member States, as well as the UNHCR, to ensure that this principle will be implemented as from the same day the returns start. On resettlement based on 1-for-1 principle: a) Priority will be given to migrants Syrians who have not previously entered or tried to enter the EU irregularly. On the EU side, resettlement under this mechanism will take place, in the first instance, by honoring the commitments taken by Member States in the conclusions of Representatives of the Governments of Member States meeting within the Council on 22/7/2015, of which 18.000 places for resettlement remain. Any further need for resettlement will be carried out through a similar voluntary arrangement up to a limit of an additional 54.000 persons. The Members of the European Council welcome the Commission's intention to propose an amendment to the within the limits and in accordance with the distribution

set out in [relocation decision of 22/9/2015 to allow for any resettlement commitment undertaken in the framework of this arrangement to be offset from non-allocated places under the decision - non-allocated places]. Should these arrangements not meet the objective of ending the irregular migration and the number of returns comes close to the numbers provided for above, this mechanism will be reviewed. Should the number of returns exceed the numbers provided for above, this mechanism will be discontinued. If the number of returns exceeds the number provided for by these commitments, this agreement will be subject to review.”

The idea of “1 to 1” exchange for irregular refugees for the resettlement of the Syrians appearing here may be ideological and politically contradictory, but legal issues do not seem to arise. The relocation of people who need protection from their countries of origin (home country) is a frequent practice but is not a binding obligation under international or European law. The legitimacy of the return of people to Turkey is undermined by international public opinion.

Note that if all relocations are now made by Turkey, all Syrian refugees in Lebanon and Jordan, where thousands of refugees are also accommodated, will be excluded from the process. Regarding groups that are not by definition “first priority”, it is the choice of the Member States to set the priority criteria that serve them. It is argued that the political intention being served is to prevent people from making unsafe travel through traffickers.

In conclusion, the EU does not seem to have increased the numbers of people that Member States are prepared to accept: the first 18,000 are the rest of the 23,000 people the EU has pledged to resettle in its territory from non-EU countries last year, and the other 54,000 are the rest of those to be moved from Hungary before the Hungarian state rejects this idea in September 2015. However, contrary to the mandatory quotas as they emerged from the EU decision on relocation these numbers are voluntarily accepted.

The final agreement clarifies that the maximum number of people to be returned to this base is 72,000. This part of the agreement is in effect until the return of 72,000 people or if the influx of irregular migrants is reduced / stopped. In the latter case, the EU will move to a voluntary humanitarian licensing scheme, which will be discussed below.

“Turkey will take any necessary measures to prevent new sea or land routes for illegal migration opening from up out of Turkey and into the EU and will cooperate with neighboring states as well as the EU to this effect. Once the irregular crossings between Turkey and the EU have come to an end are ending, or at least have been substantially and sustainably reduced, the Voluntary Humanitarian Admission Scheme will be activated. EU Member States will contribute on a voluntary basis to this scheme.”

This scheme emerged on the recommendation of the Commission and is explicitly mentioned in this agreement. However, there is no clear definition of the “obligations” of the Member States in the case of a “voluntary contribution”. It is worth noting that the final text refers to an in-depth reduction and a total interruption of illegal movements, as initially, as this would be an unrealistic, inapplicable expectation.

“The fulfilment of the visa liberalization roadmap will be accelerated vis-à-vis all participating Member States with a view to lifting the visa requirements for Turkish citizens at the latest by the end of June 2016, provided that all benchmarks have been met. To this end Turkey will take the necessary steps to fulfil the remaining requirements to allow the Commission to make, following the required assessment of compliance with the benchmarks, an appropriate proposal by the end of April on the basis of which the European Parliament and the Council can make a final decision.”

This commitment has been transferred from the statement of 7 March. The short-stay visa waiver applies only to the Schengen Member States and concerns the three-month stay. Following the EU's Turkey agreement, Turkey should accept

back anyone who stayed above. It remains necessary for Turkey to take the steps to meet the relevant criteria, and for the European Council and the European Parliament to accept this change in European legislation.

The Commission has proposed to the European Parliament and the EU Council to lift the visa requirements for Turkey's citizens considering that the Turkish authorities will meet the requirements. This proposal was presented with a report of Turkey's progress in meeting the Directive requirements.

There is, therefore, a divergence of views and intentions in the attitude of the European Parliament and the Commission to the issue of both the different timing of the issue and, above all, the difference in approach to the principle.

“The EU, in close cooperation with and Turkey, will further speed up the disbursement of the initially allocated 3 billion euros under the Facility for Refugees in Turkey and ensure funding of additional further projects for persons under temporary protection identified with swift input from Turkey before the end of March. A first list of concrete projects for refugees, notably in the field of health, education, infrastructure, food and other living costs, that can be swiftly financed from the Facility, will be jointly identified within a week. Once these resources are about to be used to the full, and provided the above commitments are met, Furthermore, the EU will mobilize decision on additional funding for the Facility of an additional 3 billion euro up to the end of 2018. [X] billion for the period [Y] for the Turkey Refugee Facility.”

It is pointed out that the funds to which reference is being made are not simply given to Turkey, as is often argued in the debate, but the legal framework states that they can only be given for projects aimed at supporting the Syrian refugee population and meeting the terms and conditions. The Commission Communication also clarifies details of the allocation of funds to be used, starting with a contract for the provision of food aid to over 700,000 Syrians.



“The EU and Turkey reconfirmed their commitment to re-energize the accession process as set out in their joint statement of 29 November 2015. They welcomed the opening of Chapter 17 on 14 December 2015 and decided, as a next step, to open Chapter 33 during the Netherlands presidency. They welcomed that the Commission will put forward a proposal to this effect in April. Preparatory work for the opening of other Chapters will continue at an accelerated pace without prejudice to Member States' positions in accordance with the existing rules.”

Finally, the EU and Turkey have agreed to open only a new chapter of the 35 that must be agreed in order for Turkey to join the EU. Only one chapter has been “closed” so far in the 10-year negotiation period. There is no commitment to open or close other chapters at this stage. And if there is a negotiation for an accession agreement, there are many legal and political impediments to accepting it, as all Member States must agree on its membership.

“The EU and its Member States will work with Turkey in any joint endeavor to improve humanitarian conditions inside Syria, in particular in certain areas near the Turkish border which would allow for the local population and refugees to live in areas which will be more safe.”

Here reference is made to the intention to create a “safe zone” within Syria. Whether this goal is achievable remains to be demonstrated in practice. There are reasonable doubts about the security of this zone and it is problematic to return people to Turkey as long as Turkey intends to promote them to the “safe zone in Syria”.

In conclusion, the final agreement is trying to address the two main concerns of previous agreement. It clarifies that the EU's asylum law framework will apply only to those arriving in Greece (unclear what is happening to those found in Greek waters) and that Turkey must meet certain conditions when returning refugees.

The key question regarding the legality of the agreement is how it will be implemented in practice. The main legal route to assert what is happening, is through the recourse of asylum seekers to the Greek Courts. Alternatively, if asylum

seekers must “cross” the entire Greek judicial system, or cannot successfully access it, they can resort to the European Court of Human Rights and to claim that there is a violation of the European Convention on Human Rights. In practice, however, it may seem that the issue of access to lawyers and courts is more theoretical than real.

It is false to argue that the EU did not try to ensure the legality of the agreement by implementing effective monitoring of Turkish commitments regarding the treatment of refugees and immigrants, by asking Turkey to fully implement the Geneva Convention on all refugees as a prerequisite of the agreement.

The EU will also bear a large part of the cost of the refugees’ stay in Turkey. Soon the CJEU will be called upon to translate the definition of safe third country into the EU asylum legislative framework. This will be decisive in determining whether it is legitimate to return people to Serbia, Turkey, Libya and possibly other countries around the world. However, the result of the agreement is what determines its legitimacy.

#### **4.6. TURKEY AS A SAFE COUNTRY**

The term “safe country” is attributed to countries that may be considered not to “create” refugees in countries where people who need protection can enjoy asylum (UNHCR 1991). An immigrant who may want to apply for asylum, can be returned to a third country, provided that: (a) the third country is safe; (b) it has been established that the country is safe for that person; (c) the migrant has the option of challenging that decision by legal remedies.

Turkey is a candidate for membership in the EU, but it has not been included in the list of safe countries. It seems to be a political manipulation for Turkey to contribute to the control of refugee flows to Europe from its territory. The United Nations warn states not to use the practice of “safe country of origin” as a means of encouraging

“regularity” and “democratization” and denouncing this practice as “inappropriate” with the politicization of a humanitarian process.

The commitments in the agreement with Turkey should match EU standards as listed in Directive's Procedures which defines a “safe third country” as a country where life and the freedom of the people are not threatened, by gender, religion, nationality or participation in a particular social group or political choice. Therefore, where there is no risk or serious harm, based on the logic of the EU definition of subsidiary protection (death penalty, torture and others, civil war in time of war), the people concerned will not be returned to another country that is unsafe.

This point is in question in the case of Turkey, as Turkey does not apply the Geneva Convention to non-Europeans. Therefore, the most optimistic interpretation of this claim is that it must do so to apply the clause. The Commission, the Council, Greece and academics consider that it is enough for Turkey to demonstrate sufficient competence in practice. Even if this last interpretation is correct, whether Turkey adequately meets the requirements in practice – that is a point open to question. It can be conceived as a theoretical plan, but if it can be valid, it will only be established if and when it is realized.

NGOs and human rights organization have already expressed strong objections. The general state of respect for human rights in Turkey, such as freedom of expression, is not directly linked to the return of refugees or other migrants there. The question is whether Turkey is a safe country as defined by European law for Asylum for refugees and immigrants.

**CHAPTER V**

**COMPARATIVE ANALYSIS OF GREEK AND TURKISH MIGRATION  
POLICIES BETWEEN 2014-2016**

This chapter presents the annual reports between 2014 – 2016 of the two countries, regarding the changes on the main legislative acts relevant to asylum procedures in Greece and Turkey, about the Syrian refugee crisis, which had a significant impact on both countries.

**5.1. GREECE 2014**

The main changes in policies as of 2014 were as follows (AIDA 2014);

- The Directors of First Reception Centers (FRC-Screening Centers) can decide on the retention of the aliens staying at the FRC. A Regulation on the Appeals Authority under the Asylum Service was in force until January 2014.
- The validity of ID cards for asylum seekers is four months, except for those coming from Albania, Bangladesh, Egypt, Georgia and Pakistan. The validity of their ID cards is 45 days.
- According to a Decision of the Minister of Public Order and the Protection of Citizen which endorsed Legal Opinion no. 44/2014 of the Legal Council of the State, after the 18-month maximum detention period under EU law, a new detention order can be issued without time limit if the alien does not cooperate with the authorities to get repatriated. The Greek Council for Refugees lodged the first appeal against the “endless detention duration”. The Athens Administrative Court of First Instance ruled on 23 May 2014

(Decision 2255/23.5.2014) that indefinite detention (in the form of compulsory stay in a detention center as defined by the Legal Council of the State Opinion 44/2014) is unlawful.

- Some decisions at second instance have stopped returns from Greece to Bulgaria under the Dublin Regulation. Nevertheless, during the last few months there has been an increasing number of decisions of first instance and some of second instance deciding on returns to Bulgaria under Dublin, even for Victims of Torture.
- Since September 2013 there are decisions rendered by the Secretary General of the Ministry, which do not renew subsidiary protection or status on humanitarian grounds. In the frame of these decisions, the Secretary examines, on a discretionary basis, the substance of the decision to grant subsidiary protection or humanitarian status. Pending the Secretary General's processing of their application for the renewal of their subsidiary protection or humanitarian status (which takes over six months), as well as the subsequent Appeal Committee's examination of the appeal against these negative decisions, the concerned individuals lose their right to work and do not have access to any medical treatment.

## **5.2. TURKEY 2014**

Overview of the main policy changes up until 2014 (AIDA 2014);

- Since the onset of the Syrian crisis in 2011, there has been transformational change in both responsible Turkish institutions, and the legal framework governing Syrians in Turkey.
- Under the 2012 Directive on Reception and Accommodation of Syrian Arab Republic Nationals and Stateless Persons who reside in Syrian Arab Republic, who arrive to Turkish Borders in Mass Influx to Seek Asylum, Syrian refugees were considered "guests" and essentially treated as visitors.

- Within three years, two foundational pieces of legislation were passed, the Law on Foreigners and International Protection (LFIP) no. 6458 was passed on 4 April 2013 and entered into force in April 2014, and the Temporary Protection Regulation (TPR) of 22 October 2014.
- It is a considerable testament to the political commitment of the Government of Turkey towards refugees, and to the consistent support of UNHCR, that these two pieces of progressive legislation were passed during an electoral period and while Turkey was experiencing a mass influx of refugees. Technically, the Syrians in Turkey and who are the subject of this evaluation are not considered by Turkey to be refugees, but are defined as persons under Temporary Protection, a special status under Turkish law that provides to persons arriving in Turkey as a result of a mass influx most of the same economic and social rights as refugees, while not requiring individual refugee status determination or granting the formal rights of refugees or persons benefiting from conditional protection (the status accorded to the vast majority of non-Syrian asylum seekers in Turkey).
- Two key features of the TPR are that temporary protection status can be terminated by order of the Council of Ministers (hence its temporary character), and that persons applying for temporary protection status shall not be penalized for entering the country illegally.

### **5.3. GREECE 2015**

The main changes in 2015 (AIDA 2015);

- From January 6 until September 30/ 2015, 390,814 persons are reported to have arrived in Greece compared to 43,500 during the whole of 2014. 72,946 persons out of 390,814 entered by sea during the first two weeks of September only, bringing the average daily arrivals at 4,500. Top nationalities include Syrians (70%), Afghans (19%) and Iraqis (4%).

Despite the Greek Government's efforts to decongest the islands, the unprecedented numbers have made it impossible for the reception mechanism to meet the needs. The severe lack of hosting facilities, the inadequate registration system, the lack of a proper identification and referral system for the most vulnerable amongst the newly-arrived have been major issues of concern.

- On 14 September 2015, the Council of the EU adopted the Decision to relocate 40,000 persons in clear need of international protection from Italy and Greece, of which 16,000 from Greece alone (EU Council Decision 2015/1523, OJ 2015 L239/146). On 22 September 2015, the Council adopted the Decision to relocate 120,000 more persons from Italy and Greece. According to this Decision, 50,400 persons out of these 120,000 will be relocated from Greece (EU Council Decision 2015/1601, OJ 2015 L248/80). The combination of the two Council Decisions leads us to a total of 66,400 persons to be relocated from Greece to other Member States over a period of 2 years.
- Push backs have remained an issue of concern at the Greek-Turkish border, with a number of incidents reported in 2015 to various NGOs, such as GCR, Amnesty International, Human Rights Watch, Médecins Sans Frontières, Refugee Support Program Aegean and the Network of Social Support for Refugees and Immigrants in Greece.
- The Regional Asylum Office (RAO) of Thessaloniki opened its doors on 8 July 2015 and so did the FRC in Lesbos, as per 14 September 2015.
- Syria has been the main country of origin of asylum seekers during 2015, as opposed to Afghanistan in 2013 and 2014. The larger numbers of Syrian nationals applying for international protection under the fast-track procedure has brought the average recognition rate to 50%, compared to 15% of last year.
- The one-year term of office of the Appeals Committees, starting in 24 September 2014, ended in 24 September 2015. The fact that, when the previous Committees' term of office had ended, it took 3 months to have

new ones in place, during which the examination of cases had to be postponed, raises particular concern, as this time the new Committees are not expected either to be able to start operations earlier than in 3 months' time.

- L 4332/2015, inter alia, amending certain provisions of the Greek Code of Citizenship and of L 4521/2014 (Immigration Code) was published on 9 July 2015. A most welcome change brought about by this instrument has been the “decriminalization” of the act of transporting newly-arrived refugees for the procedures of L 3386/2005 and L 3907/2011 to be applied. Under previous legislation, Lesbos citizens could be penalized for undertaking on their own initiative to transport the most vulnerable among the newcomers at their own expenses to the capital of the island, for them to avoid walking long distances, with a view to being registered by the competent authorities. On several occasions, these citizens were arrested and charged with criminal offences for transporting undocumented persons.
- The above-mentioned law (L 4332/2015) also introduced transitional provisions, regulating the renewal procedure for residence permits granted on humanitarian grounds under Article 28 of Presidential Decree (PD) 114/2010, allowing beneficiaries whose application for renewal of their permit has been rejected to apply for the renewal of their status before the relevant Office of the Aliens and Migration Division of the Ministry of Interior and Administrative Reconstruction (MIAR), within a deadline of 6 months following the publication of the Law (9 July 2015). According to L 4332/2015, the competent authority for both issuance and renewal of residence permits granted on humanitarian grounds is now the aforementioned Division of the MIAR.



#### 5.4. TURKEY 2015

Overview of main changes policy changers in 2015 in Turkey (AIDA 2015);

- “Temporary Protection” regime was put in place for refugees from Syria and the new “international protection” procedure that applies to all the other nationalities of individually arriving asylum seekers.
- Turkey currently hosted both a mass-influx refugee population from neighboring Syria and a surging number of individually arriving asylum seekers of other nationalities, most principally originating from Iraq, Afghanistan, Iran and Somalia, among other. These two populations of protection seekers are subject to two different sets of asylum rules and procedures. As such, the Turkish asylum system has a dual structure.
- Turkey maintained a “geographical limitation” to the 1951 Refugee Convention and denies refugees from ‘non-European’ countries of origin the prospect of long-term legal integration in Turkey. That said, in April 2013 Turkey adopted a comprehensive, EU-inspired new Law on Foreigners and International Protection (LFIP), which established a dedicated legal framework for asylum in Turkey and affirms Turkey’s obligations towards all persons in need of international protection, regardless of country of origin, at the level of binding domestic law. The new Law also created a brand new, civilian Directorate General of Migration Management (DGMM) mandated to take charge of migration and asylum. This new agency is currently still in the process of establishing full operational command on the asylum case load and building a full-fledged new asylum system from scratch.
- Turkey implemented a “temporary protection” regime for refugees from Syria, which grants beneficiaries right to legal stay as well as some level of access to basic rights and services. The “temporary protection” status is acquired on a prima facie, group-basis, to Syrian nationals and Stateless Palestinians originating from Syria. DGMM is the responsible authority for

the registration and status decisions within the scope of the “temporary protection” regime, which is based on Article 91 of the LFIP and the Temporary Protection Regulation (TPR) of 22 October 2014.

- When it comes to other nationalities of protection seekers in Turkey outside the group based “temporary protection” framework, they are subject to the new “international protection” procedure administered by DGMM based on the LFIP, which came into force in April 2014. As of 8 December 2015, a total of 134,140 persons were registered with DGMM in the framework of Turkey’s new “international protection” procedure. The LFIP, adopted in April 2013, emerged out of Turkey’s EU accession process and is largely based on EU migration and asylum acquis – albeit with some notable exceptions, including the “geographical limitation” policy on the 1951 Refugee Convention, which the Law maintains.

## **5.5. GREECE 2016**

Main changes in 2016 (AIDA 2016);

- Greece received a total number of 173,450 sea arrivals in 2016 (out of which 42.1% men, 21.1% women, 36.8% children). Most of arrivals by sea in Greece in 2016 have been nationals of Syria (47%), Afghanistan (24%) and Iraq (15%).
- The gradual imposition of border restrictions on the Greek-FYROM border and the definitive closure of the Western Balkan route in March 2016 led to about 50,000 persons stranded in Greece. The Asylum Service registered 51,091 asylum applications in 2016, a fourfold increase from 2015 figures. In the third quarter of 2016, Greece had the largest number of asylum seekers per capita after Germany.
- 2016 was also marked by the implementation of the EU-Turkey Statement of 18 March 2016.

- Serious concerns about the compatibility of the EU-Turkey statement with international and European law have been expressed inter alia by the Parliamentary Assembly of the Council of Europe (PACE), the Greek National Commission for Human Rights (NCHR), as well as organizations active in the field of refugee law and human rights. Following a joint inquiry, the European Ombudsman stated that the political aspect of the statement, which the European Commission invoked, “does not absolve the Commission of its responsibility to ensure that its actions are following the EU’s fundamental rights commitments. The Ombudsman believes that the Commission should do more to demonstrate that its implementation of the agreement seeks to respect the EU’s fundamental rights commitments.”
- At the end of February 2017, the General Court of the European Union declared that “the EU-Turkey statement, as published by means of Press Release No 144/16, cannot be regarded as a measure adopted by the European Council, or, moreover, by any other institution, body, office or agency of the European Union, or as revealing the existence of such a measure that corresponds to the contested measure.”
- Substantial asylum reforms, many of which driven by the implementation of the EU-Turkey statement, took place in 2016. L 4375/2016, adopted in April 2016 and transposing the recast Asylum Procedures Directive into Greek law, was subsequently amended in June 2016 and March 2017, while a draft law transposing the recast Reception Conditions Directive has not been adopted yet.
- The impact of the EU-Turkey statement has been a de facto divide in the asylum procedures applied in Greece. Asylum seekers arriving after 20 March 2016 are subject to a fast-track border procedure and excluded from relocation in practice.

## 5.6. COMPARISON

The outcome of the country reports on the Greek and Turkish legal reforms regarding the migration issue; both countries in 2014 started introducing new regulations and reversionary practices in accordance to the number of migrants entering the mainland, however all the actions taken were of a slower pace that needed to avoid procedural delays. When it comes to the Greek case it is seen that, the existing migration laws and regulations were to be revised but only in terms of entrance level and on the element of the validity of the ID card, besides several nationalities, and it also focused on the regulations regarding the act of detention, which could last for many months. On the other hand, Turkey has been going through transformational changes in both institutions, and in the legal framework governing Syrians in Turkey. Most significantly, within three years, two foundational acts of legislation were introduced, the Law on Foreigners and International Protection (LFIP) no. 6458 was passed on 4 April 2013 and entered into force in April 2014, and the Temporary Protection Regulation (TPR) of 22 October 2014.

Alongside, the 2015 country report shows that the Greek government has started to focus more on the large number of migrants entering the country, 2015 was the year in which 50% of the coming migrants were Syrians outnumbering the Afghan nationals which by then had the lead in numbers. Moreover, lots of emphasis was drawn to the reception centers on the main islands that migrants are firstly arriving. The poor conditions and the inadequate mechanism of registrations are creating significant concerns. No First Reception Centre (FRC) or Mobile Unit (FRMU) has been operating in Chios, Kos, Leros or Rhodes, while Samos is still only equipped with a FRMU, unable to meet the needs. Additionally, many relocations of Syrians in clear need of international protection from Italy and Greece alone, were underlined in the report over the year of 2015. Push backs have remained an issue of concern at the Greek-Turkish border, with several incidents reported in 2015 to various NGOs. Likewise, L 4332/2015, inter alia, amending certain provisions of

the Greek Code of Citizenship and of L 4521/2014 (Immigration Code) was published on 9 July 2015. A most welcome change brought about by this instrument has been the “decriminalization” of the act of transporting newly-arrived refugees for the procedures of L 3386/2005 and L 3907/2011 to be applied. Lastly, the same law also introduced transitional provisions, regulating the renewal procedure for residence permits granted on humanitarian grounds under Article 28 of Presidential Decree (PD) 114/2010, allowing beneficiaries whose application for renewal of their permit has been rejected to apply for the renewal of their status before the relevant Office of the Aliens and Migration Division of the Ministry of Interior and Administrative Reconstruction (MIAR), within a deadline of 6 months following the publication of the Law (9 July 2015). According to L 4332/2015, the competent authority for both issuance and renewal of residence permits granted on humanitarian grounds is now the Division of the MIAR. Correspondingly, the 2015 Turkey report put more weight on the key characteristics of both the “temporary protection” regime in place for refugees from Syria and the new “international protection” procedure that applies to all the other nationalities of individually arriving asylum seekers.

In conclusion, the 2016 report of Greece highlights the fact that after the definitive closure of the Western Balkan route in March 2016, Greece became had the largest number of asylum seekers per capita after Germany. Furthermore, 2016 was marked by the implementation of the EU-Turkey Statement of 18 March which followed serious concerns about the compatibility of the EU-Turkey statement with international and European law have been expressed inter alia by the Parliamentary Assembly of the Council of Europe (PACE). Results of the deal were substantial asylum reforms such as the L 4375/2016, adopted in April 2016 and transposing the recast Asylum Procedures Directive into Greek law, was subsequently amended in June 2016 and March 2017, while a draft law transposing the recast Reception Conditions Directive has not been adopted yet. The impact of the EU-Turkey statement has been a de facto divide in the asylum procedures applied in Greece.

Asylum seekers arriving after 20 March 2016 are subject to a fast-track border procedure and excluded from relocation in practice.

The failure to manage the refugee-immigration crisis in the first host country has put a lot of pressure on European countries, which initially did not realize the magnitude of the problem. Based on the organizational structure of the EU, the problem of Greece is also a concern for the Union. The refugee crisis in 2015 and 2016 is a central issue for the EU, which has so far affected the country's relationship with the rest of 27 EU members. Turkey has been identified as a key partner in the long-term management of the refugee issue, which greatly enhances the negotiating position of the neighboring country not only in talks with the EU but also in its crucial role in the issue of maritime safety borders of Europe in the Aegean.

Unfortunately, after the successive negotiations with the eurozone, the Greek government did not appreciate and manage the migratory flows, which escalated to the Greek coasts, up to 800,000 or more refugees came the Greek ground through time. The political failure to do so, little has helped good cooperation and understanding between Member States to properly manage and address the phenomenon. In my view, the Greek government was faced with a refugee crisis in an economic crisis, which for any country is unmanageable.

Since September 2015, the President of the European Commission has approached the Turkish side to begin negotiations on the refugee and without the participation of the Greek government (although it is fully understood that it is the most directly involved as the first entry country), an initial EU-Turkey Action Plan was created. Until then there were many who believed that Greece was being used as a passage and then the refugees would be dispersed in Europe.

The EU and Turkey approach in the winter of 2015 was under the weight of the escalating refugee crisis, but at the same time various issues such as the EU and its need to protect and safeguard the Schengen area, Greece, which is the main entrance gate for refugees and immigrants in the Eurozone and finally Turkey's relations with

the EU. At that summit it was decided to operate the hot spots on the islands until the beginning of December, although until then many were fighting for their operation on the Turkish coast. Thus, the Greek government has accepted the operation of the hot spots for the registration of immigrants and the separation of refugees from immigrants, has pledged to fully relaunch its relations with the neighboring country and to develop a European coastguard for better border guarding. For their part, the Turks committed themselves to condemn terrorism, as well as to record refugees, but the process of refoulement from the EU to Turkey was unclear and not detailed, as did Greece's participation in it.

The period before the March 2016 agreement between the EU and Turkey, has been very difficult for Greece, Europe, Turkey and of course the refugees themselves mainly due to the liquidity of those days. The situation was uncertain every day about what to do, whether the borders would be open, whether they would be closed indefinitely, even if Greece stayed in Schengen or not, was not sure. According to some analysts, the EU agreement with Turkey was not satisfactory and will not be effective in addressing the refugee migration crisis in Europe.

Greece, in cooperation with the European Union, is called in a very short time to create an effective mechanism for registering newcomers, submitting and examining asylum applications and then returning migrant refugees to Turkey. The challenges that Greece faces are the size of the project, time and bureaucracy. The weight that Greece must bear is large, as within a few months it is called upon to carry out a very difficult legislative and administrative work.

For its part, the neighboring country is called upon to bear a heavy burden hosting an even larger number of people, most of whom are immigrants. Of course, Turkey has very great motivation to realize the specific agreement with the most important financial support it will receive from the EU, as well as the gradual abolition of visa visas by Turkish citizens. The latter, of course, is in doubt as many countries have expressed their objections. In addition, we must consider the number of 72,000 refugees in total, which are unlikely to be overcome, and it has not been clear in

this case what the actions will be. It is understandable, therefore, that it is very easy to question the agreement on various occasions. It is also noteworthy that will be the fate of those immigrants who have been trapped in Greece before March 20, 2016.

In the months following the signing of the Agreement, was characterized by many as a historic and pioneering agreement, the which will open a new chapter in history. In many cases, the EU is in opposition to Turkey, either on human rights issues or on foreign policy issues, and it has created tensions between the two sides even after the agreement was signed.

So, on its side Turkey, due to the delay in the lifting of visas, has threatened to abolish the Agreement and that plans to denounce the readmission agreement. From that we understand that Turkey is trying to push the EU by taking advantage of the fact that this Agreement is essential for the returns and push backs of the refugees in Turkey, which is at the same time a very significant relief for the Greek side.

It is obvious that there is a general concern on all sides of the course of EU-Turkey relations. Of course, during the last few months, especially during the summer of 2016, there has been tension, deterioration of relations (considering the coup in Turkey) and Turkey has threatened several times with the dissolution of the Agreement, or the non-implementation of part of it in response to the non-implementation of this point on the part of Europe.

In conclusion, it is safe to assume that both countries seem to have a common intention to resolve the refugee issue swiftly and effectively, observing the above references, what is evident is that the refugee crisis has found both countries institutionally and socially unadulterated. Additionally, the outcome of this comparison emphasized the main objective of this thesis; despite the immense affect that refugee crisis brought into both countries, one can argue that there are significant differences on the approaches, on how to resolve the issue. Most certainly once can claim that there have been a number of similar steps taken under the EU provision, but within the countries, the governmental approach has been per



se dissimilar. Greece, on the one hand, as a member of the European Union, was based on a plan for a slider based on EU policies and policies, and on the other hand gradually made various amendments to the legislation on refugees. In the years 2014-2016, there is a generalized action to facilitate early registration of refugees on the islands. Substantial emphasis has also been given to reviewing certain legislation to facilitate and provide asylum in refugees. However, all of these are trying to be greeted while, unfortunately, the large number of people in need of emergency cannot be met directly and substantially, leaving many refugees in a situation of "imprisonment" in refugee camps.

On the other side of Aegean, Turkey appears to form a different anti-racist approach to the issue of refugees. While, as mentioned above, Greece and Turkey are sharing the same weight, as they are the two countries that accept the largest number of refugees in their territories. Turkey, unlike Greece, did not just modify some paragraphs or articles of its legislation, but proceeded to drastic measures, creating new policies to facilitate and alleviate the gangs who have been in Turkey for the last six years. Identifying the difference between the two countries in addressing the problem seems to be the lack of understanding that the refugee is a problem to be shared equally and it is a matter that has come to change and change the policies and perceptions of all the countries in terms of refugee issue and asylum.

## CONCLUSION

The alarm of the refugee crisis has raised within the European Union, an unexpected humanitarian crisis that created significant dilemmas on its effective and in time resolution. Because of the crisis the neighboring countries, Turkey and Greece, seem to have been bearing most of the crisis burden. In Greece, thousands of asylum seekers, without family reunification requests, have been trapped since the Greek border with FYROM was closed in March 2016, relocation has been one of the few official decisions available to most people to move around with safety elsewhere in Europe.

Even though EU as an institution is facing its own challenges and is being going through a phase of political experimentation, albeit has agreed on a package of measures to tackle the crisis. These include efforts to address the underlying causes of the crisis as well as a significant increase in aid to people in need of humanitarian assistance both within and outside the EU. Measures have been taken to relocate asylum seekers already in Europe, to resettle those in the neighboring countries and assist those who do not qualify for asylum to return. The EU has also tried to improve border security, combat the trafficking of migrants and provide safe ways of legal entry into the EU.

In response to those measures, there are strong reactions to the establishment of the European Border Guard as a novelty of great political importance cannot rule out similar shortcomings. This and all the political process around its creation has shrunk to a few weeks' communicative background, with the aim of rapidly introducing it into the acquis.

Of importance is the Commission's effort to establish, through the setting-up of the EAS, policies that have been rejected in the past. The new service, which can voluntarily take over border controls, will be able to coordinate cooperation in border control between European and third countries by bringing third country

consultants or starting joint ventures in the “European territory” or in the territory of third countries. One can see here the Greek-Turkish patrols or FYROM observers who wanted to invite FRONTEX on the northern border with Greece - proposals that have not been made in the past. The Commission insists on them because it perceives control of European borders as a process the implementation of which goes beyond the borders in the territory of third countries.

However, the EU-Turkey agreement of 18 March 2016 is the first agreement to jointly manage refugee status between the EU and Turkey, the phase of the deepening of the refugee issue and without a previous firm EU common foreign policy with Turkey. This agreement comes at a critical time as Turkey has been promoting refugees in Europe over the last few months and has not dealt with the smuggling of people and traffickers. From this perspective, it is a crucial step both legal and political, and for the first time it is a commonplace. It seems like Turkey comes before its responsibilities and particularly as a candidate country for EU membership.

At the same time, it transforms the refugee issue from European and international issue into Greek-Turkish. The March agreement, though it had to be Euro-Turkish, would end up being Greek-Turkish, since the EU is based on Greece and Turkey to solve the problem. The EU-Turkey agreement on 18 March opens a new chapter on the refugee and its response to the EU. From the point of view of the needs of refugees and immigrants, international legitimacy, refugee law and the protection of rights the agreement is a negative development.

The Agreement of March 18, 2016 makes it clear in the most formal way that the EU is trying to halt the refugee wave and, in its quest, seeks appropriate legal and operational means to curb refugee flows. The logic of closed borders is now the central political choice of the EU.

Based on the analysis conducted in Chapter IV, Turkey is not declared to be either “safe country of origin” nor “safe third country”. The fact-finding investigation of the implementation of Turkey's theoretical commitments poses significant risks to

thousands of migrant and refugees lives, as well as the defense of values such as freedom and protection of human life by the EU.

The agreement is “marginal”, both legally, with the annulment of the previous legislative framework (the Geneva Convention) on the grounds of the “state of emergency” and politically defining Europe as a continent of closed borders and accepting Turkey as a safe third country. The formulation of the Agreement and the effort to implement it will be a catalyst for the formation of the Union in the present and the future. The field of refugee-migration crisis remains a challenge for identification between “the legitimate and the moral community”.

Including this case, asylum has been used as a tool to manage migratory flows. And international and European directives and decisions are being boxed, respectively, with the political decisions and the national legal framework of each country. Refocusing the concept seeks to restore the spirit of the Geneva Convention, ensuring that asylum applications are treated individually, separately.

Harmonization of asylum policies by the Member States should be done vertically from the bottom up, regarding reception procedures and migration polices that have went through overview, waiting times and rights guaranteed to applicants. Urgent and effective start of the resettlement program to relieve the hosts countries and the fair distribution of refugees is an immediate need. Step up the effort to harmonize the allocation criteria in the countries with the immigration incentives of their own; and, finally, to carry out the Dublin II review directly, re-examining the asylum application in the country of entry (Mauze2015).

In line with the bottom - up approach, in the M&D (Faist and Fauser 2011) invites migrants and their associations, local authorities, civil society, NGOs, the private sector, the academic sector, etc. to become key actors in development cooperation. The international community has increasingly supported the creation of synergies with and between these small-scale actors, who have the potential to better link the migration and development dimensions of interventions in countries of origin, transit or destination.

Policymakers must create opportunities to involve small-scale actors in M&D, small-scale actors' capacities and capabilities need to be enhanced. Among these small-scale actors, policymakers have dedicated special attention to the role played by migrants themselves. Also, they should focus more intensively on the protection of migrants' rights (UN General Assembly 1990), the creation of more avenues for legal migration, and migrants' full participation in the societies of origin and residence (UNDP 2009, p.4), all of which are thought to influence their engagement in development.

At last, viewing migration and development through a human development lens its emphasized on a decentralized bottom-up approach, with organizations at the local and grass root level offering potential as actors and partners in migration and development initiatives. Subsequently, and based on the effectiveness of the policies and agreements from EU and other institutions it is safe to claim that with a reversed process; bottom-up approach might have been more appropriate and efficient to respond to the refugee crisis.

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