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EU challenges in the area of migration and refugees - Between nationalism, solidarity and human rights

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1. Introduction

European countries have a long history of providing safe havens for the persecuted. Thus, in 1956, after the Soviet invasion, over 200,000 Hungarians took refuge in Austria and Yugoslavia, and from there often moved permanently to the USA, Australia, Brazil, etc. A generation later, the war in the former Yugoslavia relocated nearly four million people. But these experiences do not seem to help Europe in the last wave of immigration, and EU Member States are facing the burning question of what to do with the growing number of immigrants, both legal and illegal. At least half a million people are set to embark on a dangerous journey to Europe this year, half of them fleeing the civil war in Syria and the violence in Eritrea.

While the EU has adopted the Dublin Regulation, which determines which Member State is responsible for examining an asylum application, the specific directives set out the conditions for the reception of asylum seekers and procedural standards. The EU has also set up the European Asylum Fund, which provides financial support to Member States' asylum systems, and Eurodac, an information technology system for comparing fingerprints and determining whether an asylum seeker has already lodged an application in another Member State. Despite the EU's efforts to harmonize the asylum law of the Member States, there remain significant differences in the scope of protection and reception conditions, but recently a particular problem is that Member States do not respect even those rules that have been harmonized at EU level in recent years. which undermines some of the fundamental principles on which the EU as a whole is founded - mutual loyalty, solidarity and the rule of law.

Hungary has built a fence on the border with Serbia and Croatia, Slovenia with the latter, countries at the external border are abandoning obligations from the European asylum system and encouraging

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migrants to move elsewhere in the EU, many Member States have temporarily reintroduced passport controls on their borders. borders. The new migration agenda, adopted in May 2015, also seeks to give Member States the feeling that they have control over migration flows in their hands. In the migration agenda, the European Commission proposed setting up a system for the temporary distribution of 40,000 people from Greece and Italy to other EU members - the government's response showed a willingness to accept just over 32,000 people. It is becoming increasingly clear that these are numbers inconsistent with reality. In this context, the article briefly defines the legal development of modern asylum law in the EU and some of its most current challenges in the light of the ongoing refugee crisis.

2. The EU legal framework for immigration

2.1. Historical overview of legal development

As the increasing closure of the EU's external border has led to more and more economic migrants trying to enter the EU illegally or through asylum procedures, Member States agreed in 1992 under the Maastricht Treaty to include in the EU Treaty a third, intergovernmental pillar on cooperation in the field of justice and home affairs. The areas of external border crossing, immigration, asylum, drug dependence, fraud, judicial cooperation in civil and criminal matters, customs and police cooperation have been identified as being in the common interest of the Member States. The third pillar operated on an intergovernmental basis, so that the sole purpose of the Member States was to coordinate policy and adopt common positions and conventions. Each decision had to be taken unanimously, and the EU institutions played only a side role: the Commission's role was described in the original Article K.4 TEU as "the Commission is fully involved" in judicial and police cooperation (which in practice previously meant ‘excluded’), and Parliament only needed to be informed of the measures. Progress has therefore been slow. Nevertheless, the EC Treaty also included provisions on immigration issues, including Article 100 (c), which gave the EU Council the power to determine which third-country nationals need a visa, and the Social Policy Agreement gave the EU Council the power to adopting measures concerning the conditions of employment of third-country nationals.

The inevitable overlap between the first and third pillars has led to significant practical and legal difficulties, especially given the fact that the Court of Justice has not had jurisdiction to adjudicate third pillar cases. As a result, the leaders of the Member States in Amsterdam agreed in 1997 to 'communicate' part of the third pillar, thus transferring key areas of free movement of persons (asylum, immigration and external border crossing rules) from the third to the first pillar. These provisions formed the new Title IV of the EC Treaty 'Visas, asylum, immigration and other policies relating to the free movement of persons', while in the third pillar the provisions on police and judicial cooperation in criminal matters remained. The transfer of part of the third pillar to the first posed a serious problem for three countries - the United Kingdom, Ireland and Denmark, which managed to secure an opt-out.

The Amsterdam Treaty also incorporated the Schengen acquis into the EU's institutional framework. Until Amsterdam, Schengen was a purely intergovernmental process from which the EU institutions

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were excluded. With the inclusion of Schengen in the Amsterdam Treaty, the Schengen acquis has become part of EC and EU law. In the EU Treaties, the EU Council set out the legal basis for all measures under the Schengen acquis. The Schengen Protocol also stipulates that all future measures and proposals building on the Schengen acquis must comply with the relevant provisions of the EU Treaties. Finally, the Treaty of Amsterdam also gave the Court of Justice the power to adjudicate on visa, asylum and immigration matters, but under modified conditions.

The Treaty of Nice of 2001 is important in this context mainly because, in the field of measures adopted under Title IV, it introduced a partial replacement of the unanimous principle in decision-making in the Council of the EU by qualified majority, thus facilitating the adoption of EU legislation in this field.

The Treaty of Lisbon has significantly expanded the use of the qualified majority, so that such decision-making has also become a principle (and not an exception) in the area of freedom, security and justice. This has also increased the role of the European Parliament and the Court of Justice in this area, as well as democratic scrutiny by national parliaments. Special arrangements are provided for Denmark, Ireland and the United Kingdom.

2.2. Establishment of an area of freedom, security and justice

Prior to the Treaty of Amsterdam, the provisions of EU law on the situation of third-country nationals were rather fragmented, especially given the unclear EU competences in this area. Title IV allowed for more coherence in this regard. He asked the EU Council to take action in the following areas:

- border control: measures to ensure the movement of persons, together with directly related accompanying measures on external border control, asylum and immigration;

- immigration policy: measures on asylum, refugees, displaced persons, including the protection of the rights of third-country nationals;

- judicial cooperation in civil matters;

- encouraging and strengthening administrative cooperation;

- police and judicial cooperation in criminal matters, aimed at establishing a high level of security in the EU.

For this reason, the Commission and the EU Council prepared an Action Plan in 1999 on how best to implement the provisions of the Amsterdam Treaty on freedom, security and justice, followed by a special European Council in Tampere, where the leaders of the Member States agreed on a common policy. EU in the field of asylum and immigration, based on the following four principles:

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a) Principle of partnership with countries of origin: this is necessary to address political, development and human rights issues in countries of origin and transit; the idea for this policy is that by eliminating the reasons that push third-country nationals away from home, third countries become more attractive to live in. In Seville, the European Council emphasized the need to include in any future cooperation and association agreement a provision on the common organization of migratory flows and mandatory readmission in the event of the return of illegal immigrants; EU leaders emphasized that "inadequate cooperation with the country could jeopardize the establishment of closer relations between the country concerned and the EU", and that countries willing to cooperate receive EU financial and technical assistance.
b) A common European asylum system, which should lead to a common asylum procedure and a uniform status for those granted asylum. This principle is based on the 1951 Geneva Convention relating to Refugees.
c) Principle of fair treatment of third-country nationals with a view to their integration into the host country: this principle guarantees third-country nationals admitted to the host country approximately the same rights and obligations as EU citizens. However, with the exception of some fundamental rights that migrants acquire immediately upon arrival, most of these rights are tied to the length of stay, in accordance with the conditions set upon entry. Thus, an individual usually first obtains a (renewable) temporary work permit, followed by a permanent work permit, followed by the possibility of obtaining long-term resident status and possibly even citizenship of one of the Member States.
d) The principle of effective regulation of migratory flows: this principle, set out by the European Council, was further specified by the Commission in its Communication on EC Immigration Policy, in which it advocated a more active immigration policy, taking into account the fact that “migratory pressures will continue and that there are benefits of immigration to the EU, migrants and their countries of origin. "according to this would be necessary legislative framework for legal migration into the EU and a common immigration policy for economic reasons, supported campaigns in countries of origin as regards possibilities for legal immigration EU. There are two reasons for this approach:
   - The EU needs both a skilled and an unskilled workforce to ensure the success of the Lisbon Strategy and to help address the EU's demographic problems caused by an aging population, low birth rates and shortages in certain occupations;
   - Under the GATS (WTO General Agreement on Trade in Services), the EU and Member States have committed themselves to allowing third-country nationals to provide services in the EU without having to take any economic needs tests.

2.3. The EU's competences in the field of the position of third country nationals

Member States' policies towards third-country nationals are very diverse: some countries have many years of experience, while others are just beginning to develop national policies in this area. The issue of immigration is primarily the responsibility of the Member States, so that Member States are largely

free to formulate national legislation in this area, and immigrants are allowed to enter the territory of the country individually after the country has judged their circumstances, usually according to strict criteria. Nevertheless, the EU legislator has gradually acquired certain powers to formulate immigration legislation at EU level.

From the complex procedural rules, it can be concluded that issues that are predominantly administrative in nature and do not involve significant costs (ie visas, expulsion, etc.) are subject to the co-decision procedure. On the other hand, Member States do not want to relinquish control over access to their territory, so the issues of entry, residence and family reunification are all subject to unanimity in the EU Council, and Parliament has only a consultative role. An interim solution has been adopted on asylum, where Member States wish to maintain control over the policy framework, otherwise more detailed issues are governed by the co-decision procedure. The desire to preserve the sovereignty of the Member States in these areas is understandable, but, as with the unanimity principle, critics point to the weaknesses of the supremacy of the executive in terms of democratic accountability and the protection of fundamental freedoms.

In the field of immigration, there is a strong concern among Member States against excessive loss of sovereignty in this area and, consequently, control over the provision of public security. For example, in 1985, Member States quickly intervened before the Court and challenged the adoption of a measure proposed by the Commission concerning immigration and integration of third-country nationals, which would only require Member States to provide information on their activities in those areas.

2.4. External border control and visas: The Schengen acquis

In 1985, five Member States decided to establish an area without internal borders - known as the Schengen area after the agreement was signed. The 1985 Schengen Agreement and the 1990 Convention Implementing the Schengen Agreement express the agreement of the acceding countries on the abolition of border formalities at the common borders. Article 5 provides that the entry of aliens into the Schengen area for a period not exceeding three months is possible provided that:

- have a valid travel document and visa, if required;
- documents defining the purpose of the visit and proving sufficient means of subsistence;
- are not defined in the Schengen Information System (SIS) as persons prohibited from entering;
- do not constitute a threat to public policy or national security or to the international relations of any of the signatory States.

The system is based on the presumption that crossing one of the Schengen external borders constitutes a permit for access to all parts of the territory, and on the presumption of automatic recognition of a short-stay visa issued by one of the signatory states throughout the Schengen territory.

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To compensate for the abolition of internal border controls, the Convention provides for a number of additional measures at the external borders - e.g. strict uniform rules on crossing external borders, in particular a common manual on border checks and common instructions on procedures and conditions for issuing visas. The agreements apply to all citizens of EU Member States, regardless of whether they are members of the Schengen area. All individuals receive the same (increased) checks when crossing one of the external borders, but when they are in the Schengen area, they enjoy freedom of movement across the internal borders of the area. The main measures of the Schengen group of countries include:

- abolition of internal border controls and their replacement by external border controls;
- a common definition of the rules for crossing external borders and uniform rules and procedures for their control;
- separation at airports and ports between people traveling within the Schengen area and those arriving from outside the Schengen area;
- harmonization of rules on entry conditions and short-stay visas;
- coordination between border control authorities;
- defining the role of carriers in the fight against illegal immigration;
- rules on asylum seekers - Dublin Convention;
- closer legal cooperation through a system of faster extradition and information on the enforcement of criminal judgments;
- the establishment of the Schengen Information System (SIS).

All these measures, including the 1985 Agreement, the Convention Implementing the Agreement, the Protocols of Accession, decisions and declarations, and the acts of the bodies to which the Executive Committee has delegated powers, constitute t.i. Schengen acquis. However, the abolition of border controls did not mean the abolition of police powers, nor the right of individual Member States to maintain the obligation of individuals to show identification documents to the authorities.

The Schengen system is based on the principle of mutual recognition of national decisions and not on harmonization. This fact has caused many problems. For example, Article 96 of the Schengen Implementing Agreement provides that a Member State shall include an individual in the SIS database if it considers that it constitutes a threat to public policy or national security. The assessment is therefore carried out according to national criteria, and Member States have developed different risk concepts. Taking into account the principle of mutual recognition, an individual will be excluded from all countries if he meets the criteria for exclusion in one of them. As a result, the New Zealand citizen, a Greenpeace activist, could not go to the Netherlands as France included her in the SIS, although many Dutch people did not consider her to pose a risk to public order.

By incorporating the Protocol to the Amsterdam Treaty into the EU framework, the Schengen area has become the first example of closer cooperation in EU law, pursuing the goal of free movement of EU persons under the 1986 Single European Act. The Council of the EU adopted a series of decisions by

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which it took over the role of the Executive Board and set up working groups to assist in action in this field, and above all it had to determine the legal basis for the Schengen measures in the EU Treaty.

In addition to the substance, cooperation between Member States in this area has gradually expanded geographically, with the Schengen area covering thirteen Member States in 1997, when the Amsterdam Treaty was signed. Each of them shared part of the external border and was involved in the abolition of internal borders: even countries that do not have a physical connection with other Member States, such as Greece, form part of the area without internal borders, e.g. concerns direct flights and voyages to and from other Member States; and also Member States surrounded by other Member States, such as Luxembourg, participate in the external border via international flights, although they would not otherwise have a border at all. The United Kingdom and Ireland are the only countries that have not acceded to the Schengen Agreement, so they are not bound by the Schengen acquis. The two countries considered that the insularity would make it easier for them to control third-country nationals than other Member States and that this advantage should not be waived. Their exclusion from the acquis is confirmed by Article 4 of the Schengen Protocol, but allows them to participate in some or all of the measures of the acquis, but only with the consent of the other countries. This possibility has been exploited by both countries and signed acts providing for police and judicial cooperation in criminal matters, but not those providing for the abolition of internal border controls. The Schengen Protocol also contains a special provision for Denmark (Article 3), which acceded to Schengen in 1996 and retains the rights and obligations deriving from the Schengen acquis before the Amsterdam Treaty. However, with regard to the future Schengen acquis, the Protocol on the situation of Denmark allows the latter to decide for itself whether to implement the decisions in national law. Such a decision creates an obligation of an international legal nature between Denmark and the other Member States and not an obligation of EU law, so that the Court has no discretion in this regard. Mention should also be made here of the Nordic Union of Travel Documents, which has abolished controls at the internal borders between Sweden, Finland, Denmark, Iceland and Norway. As Sweden, Finland and Denmark became members of the Schengen group with EU membership, Iceland and Norway became associate members of the region at the end of 1996, and this membership was further strengthened by an agreement signed in May 1999, shortly afterwards by the EU Council. that, from 25 March 2001, the Schengen acquis applies to the five countries of the Nordic Union travel documents. Shortly afterwards, the Commission also started negotiations with Switzerland and then with Liechtenstein on Schengen membership. These negotiations have led to agreements on the association of these two countries in the implementation, application and development of the Schengen acquis.

Member States that joined the EU in 2004 and 2007 are bound by the entire Schengen acquis and have begun to implement the provisions of the Schengen acquis at the EU's external border, including Slovenia's 670-kilometer border with Croatia, as early as accession to the EU. have established security, customs and inspection controls at this border. However, the protection of their part of the EU's external borders was taken over in full by entering the Schengen area when border controls were abolished. This was decided by the EU Council, based on the finding that SIS-II was working well and

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that the Member States concerned had passed a conditionality test ensuring adequate control of the external borders in return for the abolition of internal borders. Readiness in the field of police cooperation, data protection, issuance of visas and protection of land, sea and air borders, as well as integration into the computer information system was assessed. In this respect, a new timetable for the enlargement of the Schengen area was adopted by the EU Justice and Home Affairs Council in Brussels on 5 December 2006 with regard to the nine new Member States (with the exception of Cyprus, Romania and Bulgaria). Member States, including Slovenia, may abolish controls at the internal land and sea borders with EU Member States by the end of 2007, more precisely on 21 December 2007 and at the air borders on 30 March 2008.

Since the Schengen acquis was incorporated into the TEC (now the TFEU), the EU has adopted legislation on:

- the standards and procedures to be followed by Member States in the control of persons crossing external borders;
- third countries whose nationals need a visa when crossing the external border (and those who are entitled to do so) for a fixed period of stay in that Member State or in several Member States not exceeding three months;
- procedures and conditions for issuing visas by Member States; and
- uniform format for visas.

3. Voluntary and forced immigration into the EU

3.1. General information on immigration regulation in the EU

Based on the motive of leaving the country of origin, the theory distinguishes three main groups of immigrants: economic, forced and family. Among economic immigrants, it is basically different between legal and illegal, where they are the first to enter the host country with a visa or work permit or. studies, while others are usually linked to trafficking in human beings. It is often overlooked that a large number of t.i. illegal immigrants enter the new state legally and then lose that status by staying beyond the allowed time. We distinguish economic migrants from those who have left their country because they believe they cannot live safely in it. Such forced immigrants include asylum seekers as well as those seeking refugee status or subsidiary protection. In practice, the distinction between economic (voluntary) and forced immigration is often not obvious, as political and economic reasons often co-shape an individual's decision to emigrate. The last category, i.e. family immigrants are less politically exposed, but in recent years this has changed with the expansion of agreed (sometimes even forced) marriages.

The EU's modern approach to immigration issues emphasizes that it is a matter of migration management. The content of this approach is mainly such that EU law grants rights to those third-country nationals who benefit the EU and restricts them to 'non-beneficiaries'. The Tampere European Council emphasized the need to facilitate legal immigration into the EU.

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3.2. Asylum seekers

3.2.1. The road to a Common European Asylum System

Until the mid-1980s, Member States treated asylum seekers very liberally, thanks not only to the legacy of World War II but also to the fact that there were quite a few asylum applications at the time. This began to change when Member States got the impression that, as a result of their restrictions on economic immigration, immigrants tried to enter their territory through asylum procedures. In 1986, Denmark adopted a rule that it would not consider applications from asylum seekers who could apply for protection in the safe third country through which they travelled to Denmark. This rule has started a wave of restrictive national legislation across the EU, with restrictive visa rules for citizens of countries with the highest rates of asylum seekers still giving the latter a rather favourable economic and social position, especially compared to other immigrants.

In the early 1990s, the number of asylum seekers increased significantly, mainly due to the war on the territory of the former Yugoslavia, which burdened the Member States disproportionately. This created pressure, at least for intergovernmental cooperation on asylum issues, to share the administrative burden between Member States and put an end to legislative competition between Member States, in which Member States sought to direct asylum seekers to other Member States through restrictive legislation. This cooperation was not a real success, so the Treaty of Amsterdam transferred the field of refugees and asylum to the Community framework.

The TFEU today sets out four broad EU tasks in the field of asylum policy:

- the establishment of criteria and mechanisms for determining the Member State responsible for examining an asylum application submitted by a third-country national in one of the Member States;
- setting minimum standards for the reception of asylum seekers in the Member States;
- setting minimum standards for the recognition of refugee status to third-country nationals;
- the establishment of minimum standards on procedures in Member States for granting and withdrawing refugee status.

In carrying out these tasks, European leaders have sought an appropriate balance between the humanitarian principles of asylum law and the need to prevent its abuse. In Tampere in 1999, they adopted a liberal attitude and agreed on the need to "work towards a common European asylum system based on the full and inclusive application of the Geneva Convention, thus ensuring that no one is sent back to persecution". In Seville in 2002, however, the European Council became more practical, stressing that “in accordance with the 1951 Geneva Convention, refugees need to be provided with prompt and effective protection, On the basis of this, the Commission has adopted a 'new approach' to dealing with asylum applications and defined the objectives of the Common European Asylum System.

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3.2.2. Division of responsibilities for asylum seekers between Member States

The EU has set up a one-stop-shop system for processing asylum applications, according to which an individual asylum seeker may apply for asylum only once within the EU. In which country this should be, are determined by strict criteria, defined today in the third version of the t.i. Dublin Regulations. The hierarchy of criteria for the division of competences for examining asylum applications is set out in Chapter III. The first place belongs to the Member State in which the family member of the asylum seeker is legally resident, when the latter is still an unaccompanied minor or when it is the application of the next of kin of the legal resident. The next set of criteria requires the Member State to process the asylum application of the applicant to whom it has issued a residence permit or visa. The last set of criteria is linked to physical circumstances, so that in the event that other criteria are not used to process an asylum application, the Member State in which the applicant entered the EU is competent. The same Member State is also competent to apply if the asylum seeker has entered the territory of the EU illegally, insofar as it is possible to establish where this was.

These formal criteria seek to establish a fair burden-sharing system created for Member States by asylum applications. However, practice shows that this system has not been successful, as Member States rarely require any of the other Member States to assess the application, so that the vast majority of applications are considered by the countries where they are submitted. This means, however, that the administrative burden is very unevenly distributed in this respect, especially given the ratio between the number of asylum applications and the number of nationals.

3.2.3. Rights of asylum seekers and their restriction

The conflict between the humanitarian principles of asylum law and concerns about their abuse is most evident in the rules on the reception of an asylum seeker, which on the one hand ensure dignity and, on the other hand, reflect mistrust towards the applicant. The Directive on Minimum Standards for the Reception of Asylum Seekers reflects this conflict by, on the one hand, granting asylum seekers a range of rights and socio-economic benefits, but granting them conditionally and often in a way that raises doubts about their adequate protection. fundamental rights.

The Directive sets out the benefits that Member States must provide to asylum seekers. It is provided that asylum seekers are free to move around the territory of the host Member State or in an area designated by that Member State. Member States may grant accommodation to an asylum seeker for reasons of public interest, public policy or for the prompt processing and effective monitoring of his application. Asylum seekers have the right to respect for family life, as Member States are obliged to maintain as much as possible the unity of the family present in their territory - however, in certain cases the family may also be separated for administrative or economic reasons. The directive guarantees minors asylum seekers the right to access the education system under similar conditions as domestic nationals - as these are not the same conditions, education within accommodation centers is also possible. Member States may also ensure access to vocational training and employment (subject

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to the principle of preferential treatment) and must take into account the situation of people with special needs.

When applying for asylum, Member States are required to provide material reception conditions that ensure a standard of living that is adequate for the health of applicants and that can ensure their livelihood. These conditions are defined in the Directive to include accommodation, food and clothing provided in kind or as financial assistance or as vouchers, and a daily subsistence allowance. If the accommodation is provided in kind, it must be in one of the following forms or a combination thereof in accordance with the Directive:

- the premises used to accommodate applicants during the examination of an asylum application lodged at the border;
- accommodation centers that ensure an adequate standard of living;
- private houses, flats, homes or other premises adapted to accommodate applicants.

In such cases, Member States must ensure that their family life is protected from being attacked in these areas and that they have the opportunity to communicate with relatives, legal advisers and representatives of the United Nations. Member States must also provide emergency medical assistance. This should ensure that the human dignity of asylum seekers is respected, while accommodation and food allow for police control over them.

However, these benefits can only be obtained if certain conditions are met, otherwise they can be revoked or limited. Subject to the provisions of the Directive, Member States may limit or abolish reception conditions if the asylum seeker:

- leaves the place of residence designated by the competent authority without being informed or, if required, without authorization, or
- does not comply with reporting duties or requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down by national law, or
- has already lodged an application in the same Member State;
- concealed financial resources and therefore unduly benefited from the material conditions of admission.

Member States may waive the conditions if the asylum seeker has failed to prove that he or she has applied for asylum as soon as practicable after arriving in that Member State, and may lay down sanctions applicable to serious infringements of the rules in accommodation centres as well as to seriously violent behaviour.

The Directive stipulates that the assessment of those sanctions must respect certain principles of due process (right of written notice, reasonable time limits, right of appeal), in particular the circumstances of each case and the proportionality of sanctions. assistance. Nevertheless, some sanctions are

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foreseen for breaches of the rules by the asylum seekers would not be acceptable for other residents of the Member States, therefore criticize the many commentators sharply criticized by the United Nations High Commission for Refugees (UNHCR). At the request of the United Kingdom, the sanctions were incorporated into the directive under British asylum law, the relevant provisions of which were declared by the House of Lords in late 2005 to be contrary to the European Convention on Human Rights. Lords found that the denial of benefits as provided for by British law, in breach of Article 3 of the ECHR as asylum seekers subordinate to inhuman and degrading treatment (sleeping on the street due to late return to home, starvation, inability to cater for basic hygiene needs, etc.). Due to the similarity of the British law and Article 16 of Directive 2003/9 /EC it is consequently quite likely that the ECJ adopted a similar conclusion.

3.3. Refugees and subsidiary protection: Directive 2004/38/EC

3.3.1. Acquisition of refugee status and subsidiary protection

The task of the Common European Asylum System is also to ensure minimum standards for obtaining refugee status or international protection and procedures in this regard. Although asylum law and refugee law are closely linked, there is a difference in the EU that refugee law is more humanitarian than asylum law. EU refugee law provides protection to two groups of individuals: refugees and persons in need of subsidiary protection. The concept of a refugee directive is taken from the 1951 Geneva Convention relating to the Status of Refugees:

'' Refugee 'means a third country national who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, it is outside the country of his nationality and is unable or, owing to such fear, unwilling to take advantage of the protection of that country national or stateless person who is outside the country of former habitual residence for the same reasons as mentioned above, and because of that fear, unwilling to return to it. "

As this definition is too narrow to protect all those who may be affected, the Directive also provides for an alternative concept of subsidiary protection:

"'Person entitled to subsidiary protection' means a third-country national or a stateless person who is not identified as a refugee, but who has been shown to have reasonable grounds for believing that, if he or she returned, the person concerned to the country of origin or, in the case of a stateless person, to the former country of residence, is faced with a justified risk of suffering serious harm. "

The directive largely lays down the basic conditions for obtaining refugee or subsidiary protection status. In both cases, the burden of proof lies with the applicant, and Member States must consider each case individually, taking into account all relevant circumstances. The humanitarian nature of European refugee law is reflected in the fact that the directive broadly defines the concepts of race, religion, political belief or belonging to a particular social group, and mentions reasons of sexual

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orientation, atheism and gender not mentioned in the Geneva Convention. Reasons for forcible circumcision of women and child labor are also considered recognized reasons for obtaining refugee status. In addition, persecution by non-state actors is also relevant.

A Member State may withdraw or not grant refugee status if there are reasonable grounds for believing that:

- that the applicant has committed a crime against peace, a war crime or a crime against humanity;

- that he has committed a serious non-political crime;

- that he is guilty of acts contrary to the purposes and principles of the United Nations; but

- that there are reasonable grounds for believing that the person poses a threat to the security of the Member State; or if

- the circumstances leading to the persecution change.

Subsidiary protection, as an alternative form of international protection for persons who do not qualify for refugee status, is subject to the condition of serious harm. This includes:

(a) the death penalty or execution; but

(b) torture or inhuman or degrading treatment or punishment of the applicant in the country of origin; but

(c) a serious and individual threat to the life or personality of a civilian due to arbitrary violence in situations of international or internal armed conflict.

This means that any Member State that expels an individual who, upon his return to his country of origin, has been executed or otherwise treated inhumanely is in breach of Article 3 of the ECHR, which prohibits torture and inhuman treatment. There are a number of exceptions to this, similar to those applicable to refugee status. A special exception applies to persons who would be subject to severe sanctions for criminal offenses, which excludes from subsidiary protection many individuals fleeing their home countries for this very reason. In this context, the Directive provides:

"Member States may deny a third-country national or a stateless person the right to subsidiary protection if, before being admitted to a Member State, he or she has committed one or more criminal offenses (() which, if committed in the Member State concerned, would imprisonment and if he left the country of origin solely to avoid the sanctions resulting from these offenses. "

3.3.2. Content of international protection

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Rights from international protection can be divided into a group of rights to which both persons with refugee status and persons with subsidiary protection are entitled, only refugees are entitled to the second group of rights, and only persons with subsidiary protection to the third.

Both refugees and persons with subsidiary protection have the right to:

a) family reunification, in so far as it is present in the Member State concerned: there is therefore no right to family reunification located in other Member States; family members are represented by spouses and common-law partners, unmarried and dependent minor children;

b) education: minors have this right under the same conditions as nationals; adults have the right to education under the same conditions as other third-country nationals legally residing in a Member State;

c) access to accommodation: under the same conditions as other third-country nationals;

d) return assistance;

e) assistance to persons with special needs: children, the disabled, pregnant women, the elderly and persons who have been tortured, raped or subjected to other forms of psychological, physical or sexual violence. Appropriate medical assistance should be provided to these persons.

In addition to the above, refugees have the following rights:

a) protection against return: an exception to the principle of non-refoulement is provided only for cases where a refugee would pose a threat to the security of the Member State concerned or has been convicted of particularly serious criminal offenses which endanger the society of the Member State;

b) residence permit: for a period of at least three years;

c) travel document: Member States issue travel documents to beneficiaries of refugee status for the purpose of traveling outside their territory;

d) economic and social rights: refugees have the right to employment, vocational training and self-employment under the same conditions as nationals; they are also entitled to social assistance and health care, as well as to integration measures. These rights are similar to those enjoyed by EU citizens in the territory of other Member States.

The rights of persons with subsidiary protection are more limited, so that they do not have protection against non-refoulement, the residence permit may be limited to one year, and travel documents are only valid in cases where serious humanitarian reasons require that person to enter another country. members; they also have more limited economic and social rights.

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A Member State may withdraw or not grant refugee status if there are reasonable grounds for believing that:

- that the applicant has committed a crime against peace, a war crime or a crime against humanity;

- that he has committed a serious non-political crime;

- that he is guilty of acts contrary to the purposes and principles of the United Nations; but

- that there are reasonable grounds for believing that the person poses a threat to the security of the Member State; or if

- the circumstances leading to the persecution change.

Subsidiary protection, as an alternative form of international protection for persons who do not qualify for refugee status, is subject to the condition of serious harm. This includes:

(a) the death penalty or execution; but

(b) torture or inhuman or degrading treatment or punishment of the applicant in the country of origin; but

(c) a serious and individual threat to the life or personality of a civilian due to arbitrary violence in situations of international or internal armed conflict.

This means that any Member State that expels an individual who, upon his return to his country of origin, has been executed or otherwise treated inhumanely is in breach of Article 3 of the ECHR, which prohibits torture and inhuman treatment. There are a number of exceptions to this, similar to those applicable to refugee status. A special exception applies to persons who would be subject to severe sanctions for criminal offenses, which excludes from subsidiary protection many individuals fleeing their home countries for this very reason. In this context, the Directive provides:

"Member States may deny a third-country national or a stateless person the right to subsidiary protection if, before being admitted to a Member State, he or she has committed one or more criminal offenses (() which, if committed in the Member State concerned, would imprisonment and if he left the country of origin solely to avoid the sanctions resulting from these offenses. "

3.3.2. Content of international protection

Rights from international protection can be divided into a group of rights to which both persons with refugee status and persons with subsidiary protection are entitled, only refugees are entitled to the second group of rights, and only persons with subsidiary protection to the third.

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Both refugees and persons with subsidiary protection have the right to:

a) family reunification, in so far as it is present in the Member State concerned: there is therefore no right to family reunification located in other Member States; family members are represented by spouses and common-law partners, unmarried and dependent minor children;

b) education: minors have this right under the same conditions as nationals; adults have the right to education under the same conditions as other third-country nationals legally residing in a Member State;

c) access to accommodation: under the same conditions as other third-country nationals;

d) return assistance;

e) assistance to persons with special needs: children, the disabled, pregnant women, the elderly and persons who have been tortured, raped or subjected to other forms of psychological, physical or sexual violence. Appropriate medical assistance should be provided to these persons.

In addition to the above, refugees have the following rights:

a) protection against return: an exception to the principle of non-refoulement is provided only for cases where a refugee would pose a threat to the security of the Member State concerned or has been convicted of particularly serious criminal offenses which endanger the society of the Member State;

b) residence permit: for a period of at least three years;

c) travel document: Member States issue travel documents to beneficiaries of refugee status for the purpose of traveling outside their territory;

d) economic and social rights: refugees have the right to employment, vocational training and self-employment under the same conditions as nationals; they are also entitled to social assistance and health care, as well as to integration measures. These rights are similar to those enjoyed by EU citizens in the territory of other Member States.

The rights of persons with subsidiary protection are more limited, so that they do not have protection against non-refoulement, the residence permit may be limited to one year, and travel documents are only valid in cases where serious humanitarian reasons require that person to enter another country. members; they also have more limited economic and social rights.

4. The New Pact on Migration and Asylum

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Proposed in September 2020, the New Pact on Migration and Asylum sets out the European Commission's new approach to migration in the bloc. It addresses border management and aims to integrate the internal and external dimensions of migration policies.

Migratory movements of people in recent years showed the complexity of European migration management. This is a constant feature of human history and has a profound impact on European society, economy and culture. Managed well, migration can contribute to growth, innovation and social dynamism. An effective system that manages and normalises migration should ensure secure external borders, respect for fundamental rights and free movement within the Schengen Area. In order to benefit from opportunities and tackle challenges, the European Commission proposed, in September 2020, the New Pact on Migration and Asylum.

The New Pact on Migration and Asylum addresses migration, asylum, integration and border management. It aims to create more efficient and fair migration processes, reducing unsafe and irregular routes and promoting sustainable and safe legal pathways to those in need of protection. The New Pact revolves around solidarity and responsibility**.**

The New Pact introduces:

- Effective and fair management of external borders, including identity, health and security checks;
- Fair and efficient asylum rules, streamlining procedures on asylum and return;
- A new solidarity mechanism for situations of search and rescue, pressure and crisis;
- Stronger foresight, crisis preparedness and response;
- Efficient, EU-coordinated approach to returns;
- Comprehensive governance at EU level for better management and implementation of asylum and migration policies;
- Mutually beneficial partnerships with key third countries of origin and transit;
- Development of sustainable legal pathways for those in need of protection and to attract talent to the EU; and
- Support to effective integration policies.

5. Conclusion

At the time of the last refugee crisis, the people of the EU are forming their own opinions on whether the response of (national and European) authorities to the migrant crisis is appropriate, whether it is helping those in dire need, or whether the event is a relocation opportunity to the largest migration wave in history. There are estimates coming from Australia that Europe itself is promoting immigration from Africa and the Middle East. Australia is said to have become a very popular destination for migrants by boat during a mild policy towards asylum seekers, and the current government has tightened these conditions and even spread the message through social media and YouTube across

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Southeast Asia: “If you come without a visa, Australia will not your home”. As a result, illegal immigration has shrunk significantly.

The ocean around Australia is much larger than the Mediterranean Sea, but migration in both cases is not only affected by the situation in the migrants' country of origin, but also to a significant extent by the situation in the host country. Migration therefore follows opportunities, and residents of EU countries do not have a consensus on whether immigrants will improve or worsen their lives: immigrants will have less time to wait for a carpenter to finish their garden house, or an immigrant will finally bring them a Miss World ribbon. or there will be a cultural, economic, and civilizational conflict. Daily reports show that migrants are people who are determined to change their destiny for the better - if only they could see such determination in the crowd of locals who do not work, but merely seek the best benefits of social benefits.

But despite the determination, immigrants face many challenges. The journey from the Middle East to Europe is still short in kilometers, it is really long in all other respects. They come into a world of laws, formal conditions, and bureaucracy that they were not accustomed to at home; they may be uncertain as to whether the new community will respect their culture, religion, whether they will be given the opportunity to pursue a career, and so on. The journey from one world to another thus takes not just a few weeks, but at best an entire generation, and Europe must come to terms as soon as possible with the fact that a new world awaits not only migrants but Europe itself.

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