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AVRUPA BİRLİĞİ HUKUKU ANABİLİM DALI

IMPLICATIONS OF THE PRINCIPLE OF SOLIDARITY IN EU ASYLUM POLICY ON EFFECTIVE JUDICIAL PROTECTION OF INDIVIDUALS

YÜKSEK LİSANS TEZİ

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ABSTRACT

People have to leave their homelands and migrate to countries with better living conditions as a result of wars, political instability, oppressive regimes, human rights violations, economic and social troubles, civil wars, and ethnic wars. The number of refugees around the world has lately increased significantly due to the civil wars that emerged after the Arab Spring in the Middle East and North Africa as well as with the Russo-Ukrainian conflict. Millions of refugees have been hosted in countries neighboring Syria such as Turkey, Jordan, and Lebanon, especially since the beginning of the Syrian civil war.

Consequently, the refugee issue has become a major problem for the European Union (EU) with the movement of refugees towards to Europe since the beginning of 2015. The EU is to uphold its core values and comply with its human rights policy in the context of Asylum policy. The flow of people to the EU will be inevitable unless effective measures are taken in the places where it originates.

International cooperation and solidarity are key in helping to manage migration to and between states. Under international law, states have certain legal obligations as assisting and protecting the asylum seekers they accept on their territory. However, the legal duties of other states for providing aid and sharing that responsibility are less clearly codified.

The aim of the study is to examine the concept of solidarity in the Common European Asylum System (CEAS) by analyzing the EU asylum policy of the EU referring to the instruments developed to create an asylum policy. The study examines whether the asylum policy of the EU in practice puts forward a concept of solidarity based on the individual which would ensure the full respect of the rights of asylum seekers. This study aims to put forward the significance of a conceptualization of the solidarity principle within the asylum policy from the perspective of the effective protection of fundamental rights in the EU.

The study precisely aims to demonstrate the need for a more stable and predictable mechanism to manage irregular migration with the effective judicial protection of individuals while highlighting the need for an effective solidarity mechanism for the well-functioning the EU asylum policy.

Key words: European Union, Principle of Solidarity, Common European Asylum System, CEAS, Refugee Law, Human Rights, Effective Judicial Protection of Individuals

ÖZET

Savaşlar, siyasi istikrarsızlık, baskıcı rejimler, insan hakları ihlalleri, ekonomik ve sosyal sıkıntılar, iç savaşlar ve etnik savaşlar gibi sebepler sonucunda bazı insanlar anavatanlarını terk etmek ve daha iyi yaşam koşullarına sahip ülkelere göç etmek zorunda kalmaktadır. Arap Baharı sonrasında Orta Doğu ve Kuzey Afrika'da ortaya çıkan iç savaşlar ve Rusya-Ukrayna çatışması nedeniyle son dönemde dünya genelindeki mülteci sayısı önemli ölçüde arttı. Özellikle Suriye iç savaşının başlamasından bu yana Türkiye, Ürdün ve Lübnan gibi Suriye'ye komşu ülkelerde milyonlarca mülteci misafir edilmiştir.

Sonuç olarak, 2015 yılının başından itibaren mültecilerin Avrupa'ya doğru hareket etmesi ile iltica sorunu Avrupa Birliği (AB) için önemli bir sorun haline gelmiştir. Avrupa Birliği, temel değerlerini korumak ve aynı zamanda sığınma politikası bağlamında insan hakları kurallarına uymak zorundadır. Etkili önlemler alınmadığı takdirde Avrupa Birliği'ne insan akışı kaçınılmaz olacaktır.

Uluslararası işbirliği ve dayanışma, devletler arasında ve devletler arasında göçün yönetilmesine yardımcı olmada kilit öneme sahiptir. Uluslararası hukuka göre, devletlerin topraklarında kabul ettikleri mültecilere yardım etmek ve onları korumak gibi belirli yasal yükümlülükleri vardır. Ancak, diğer devletlerin yardım sağlama ve bu sorumluluğu paylaşma konusundaki yasal görevleri müphem bir şekilde belirlenmiştir..

Çalışmanın amacı, AB'nin iltica politikasını, iltica politikası oluşturmak için geliştirilen araçlardan ve son krizlerin yol açtığı politika değişikliklerinden hareketle analiz ederek, dayanışma kavramını Avrupa Ortak Sığınma Sisteminde incelemektir. Çalışma, AB'nin sığınma politikasının, sığınmacıların haklarına tam anlamıyla saygı gösterilmesini sağlayacak, bireyi temel alan bir dayanışma anlayışını ortaya koyup koymadığını tartışmaktadır. Bu çalışma, Avrupa Birliği'nde temel hakların korunması perspektifinden sığınmacı politikasında dayanışma ilkesinin kavramsallaştırılmasının önemini ortaya koyacaktır.

Çalışma ayrıca, Avrupa Birliği'nin iyi işleyen bir sığınma politikası ve bireylerin etkili yargısal koruması için etkili bir dayanışma mekanizmasına duyulan ihtiyacın altını çizerken, düzensiz göçü yönetmek için daha istikrarlı ve öngörülebilir bir mekanizmaya duyulan ihtiyacı göstermeyi amaçlıyor.

Anahtar kelimeler: Avrupa Birliği, Dayanışma ilkesi, Ortak Avrupa İltica Sistemi, Mülteci Hukuku, İnsan Hakları, Etkili Yargısal Koruma

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tez danışmanlarım, Prof. Dr. Mustafa Tayyar KARAYİĞİT ve Doç Dr. Tolga CANDAN'a,
Her zaman bana inanan, beni destekleyen ve zorlukları kolaylaştıran
hayat arkadaşım Ensar POLAT'a,
Hayatım boyunca bana inanmayı sürdüren ve desteklerini hep arkamda hissettiğim
aileme,
Manevi destek ve motivasyonum olan tüm dostlarıma,
Bu süreçte bana annelik duygusunu tattıran melek kızım Asya'ya
Sonsuz ve içten teşekkürlerimle…

Zahide Nur POLAT
İstanbul, 2024

ABBREVIATIONS

AG	Advocate General
AMIF	Asylum, Migration and Integration Fund
CEAS	Common European Asylum System
CELAD	European Committee to Combat Drugs
CFR	Charter of Fundamental Rights of the European Union
CFSP	Common Foreign and Security Policy
EASO	European Asylum Support Office
EC	European Community
ECC	European Economic Community
ECRE	European Council on Refugees and Exiles
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ESM	European Stability Mechanism
EU	European Union
EURATOM	European Atomic Energy Community
EUROPOL	European Police Office
EURODAC	European Union Fingerprint Database
FRA	European Union Agency for Fundamental Rights
FRONTEX	European Border and Coast Guard Agency
GCM	Global Compact for Safe, Orderly and Regular Migration
CFSP	Common Foreign and Security Policy
CGMMF	Compact through the Global Migration Monitoring Forum
GCR	Global Compact on Refugees

GDP	Gross Domestic Product
CRRF	Comprehensive Refugee Response Framework
IMRF	International Migration Review Forum
IOM	International Organization for Migration
IRC	International Rescue Committee
IRO	International Refugee Organization
ISF	Internal Security Fund
JHA	Justice and Home Affairs
OHCHR	United Nations Human Rights Committee
OPAL	Ostsee Pipeline Anbindungsleitung
SBC	Schengen Borders Code
SEA	The Single European Act
SEM	Single European Market
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TPD	Temporary Protection Directive
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refuge
WTO	World Trade Organization

INTRODUCTION

People, all over the world, have to leave their homes for a safer, better life standards due to crises such as persecution, armed conflicts, violence, or human rights violations in recent years. Some people no longer feel safe and might be targeted due to their ethnicity, religion, sexuality, or political opinions. Consequently, these people have to leave their country to seek protection in another country.

Seeking asylum is a human right and everyone should be allowed to enter another country to seek asylum. The CEAS aims to establish the legally binding rules and procedures that Member States must follow in order to guarantee that the rights of applicants for international protection are fully respected.

The main issue is to establish a comprehensive, well-functioning, and specific legal framework of solidarity that contains legal protection mechanisms for the effective judicial protection of individuals and an effective asylum procedure at the international, regional, and national levels. Unless effective regulations are imposed, asylum seekers will have to face worsened conditions throughout the borders of the EU or on route to migration. If the EU wants to protect itself and abide by its human rights policy, preventive and protective approaches need to be established.

For the foregoing reasons, the study aims to underline the importance the principle of solidarity in the CEAS by analyzing the asylum policy of the EU referring to the instruments and the policy changes caused by the recent crises. The study demonstrates the need for a more stable and predictable mechanism to manage irregular migration while highlighting the need for an effective solidarity mechanism for the well-functioning asylum policy of the EU. Within that framework, the thesis examines how the principle of solidarity in CEAS influences the effective judicial protection of individuals. This includes analyzing the legal and practical impacts of solidarity on asylum seekers' access to justice, the fairness of asylum procedures, and the consistency of judicial outcomes across EU Member States. By scrutinizing case law, legislative measures, and policy implementations, the thesis aims to understand the interplay between solidarity and judicial protection, and to identify potential areas for reform to enhance the rights and protections afforded to asylum seekers within the EU.

In this study, the development of the CEAS, the definition of the principle of solidarity for determining the Member State responsible for accepting asylum seekers, and the responsibilities of the Member States regarding the asylum policy have been examined. This study involves three main chapters reviewing the examination of ımplications of the principle of solidarity in CEAS.

In Chapter I, the history of the CEAS law has been explored especially in order to comprehend the development of asylum policy with its specific characteristics. It will be demonstrated with its legal framework in an evolutionary way throughout the reforms. The key aspect will be the configuration of legal framework of the CEAS.

In Chapter II, first, the scope of the general context of the principle of solidarity will be discussed by mainly analyzing the legal framework for solidarity and asylum as a general principle of EU law. Secondly, the principle of solidarity in EU case law will be scrutinized.

In Chapter III, implications of the principle of solidarity in CEAS on the effective judicial protection of individuals will be analyzed. The EU policy on asylum will be scrutinized in terms of the principle of effective judicial protection enshrined in Article 47 of the Charter of the Fundamental Rights of the EU (CFR). The obligations of the Member States arising from this principle and their implementation in the national legal systems will be discussed in light of the CJEU case law.

1. THE RIGHT TO ASYLUM AND EVOLUTION OF THE CEAS

1.1.THE RIGHT TO ASYLUM

1.1.1. THE CONCEPT OF ASYLUM

Asylum is a crucial aspect of international law designed to protect individuals fleeing persecution in their home countries. This humanitarian concept ensures that people facing serious threats to their life or freedom due to race, religion, nationality, membership in a particular social group, or political opinion can find safety in another country.[1]

The foundation of modern asylum law lies in the 1951 "*Convention Relating to the Status of Refugees*" and its 1967 Protocol. These international treaties outline the rights of asylum seekers and the obligations of host countries. The 1951 Refugee Convention defines who is a refugee and sets out the rights of individuals given asylum and the responsibilities of nations that provide asylum.[2] The 1967 Protocol removed geographical and temporal restrictions from the 1951 Convention, thus broadening its scope to include all refugees regardless of their location or the date of their displacement.[3]

The asylum process generally involves several stages, including application, interview, and adjudication. Asylum seekers must apply for protection in the country where they seek refuge. This typically involves submitting detailed information about their identity and the reasons for fleeing their home country. Immigration Officials conduct an interview to assess the validity of the asylum claim. During this interview, applicants must provide credible evidence supporting their fear of persecution. Based on the interview and any additional evidence, the authorities decide whether to provide asylum. If the application is approved, the individual is recognized as a refugee and is given the corresponding rights and protections.

The asylum process is fraught with challenges, both for the applicants and the host countries. Asylum seekers often face complex legal procedures and stringent requirements for proving their claims. In many cases, they lack access to legal representation, which can significantly impact the outcome of their applications.[4] Political climate and public opinion in host countries can also influence asylum policies. In some instances, negative perceptions of refugees can lead to restrictive laws and practices that hinder the asylum process.[5]

Asylum is a vital mechanism for protecting individuals fleeing persecution and preserving human rights. While the legal frameworks established by the 1951 Refugee

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[1] International Justice Resource Center, "*Asylum & the rights of refugees*" https://ijrcenter.org/refugee-law/
[2] United Nations High Commissioner for Refugees (UNHCR), (1951), "*Convention Relating to the Status of Refugees*" https://www.unhcr.org/1951-refugee-convention.html
[3] UNHCR, (1967), "*Protocol Relating to the Status of Refugees*" https://www.unhcr.org/3b66c2aa10
[4] Human Rights Watch, (2020), "*World Report 2020: Rights Trends in 100 Countries*" Human Rights Watch.
[5] Betts, A., (2018), "*Refugees and Forced Migration Studies*" Oxford University Press.

Convention and the 1967 Protocol provide a robust foundation, practical and political challenges continue to impact the effectiveness of asylum processes globally. Addressing these challenges requires international cooperation and a commitment to upholding the principles of humanitarian protection.

1.1.2. HISTORICAL CONTEXT AND ESTABLISHMENT OF ASYLUM SEEKERS PROTECTION

The concept of asylum emerged in response to the political upheavals and conflicts of the 20th century. The aftermath of World War I saw significant refugee movements in Europe, prompting the League of Nations to establish the first international agreements on refugee protection. However, these early efforts were limited in scope and effectiveness.[6] The foundation of contemporary asylum law is the "1951 Convention Relating to the Status of Refugees," commonly known as the Geneva Convention. Drafted in response to the mass displacements caused by World War II, the Convention defined "a refugee" as someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.[7] The Convention established main principles, including prohibition against returning refugees to a country where they face serious threats to their life or freedom called non-refoulment, access to courts, primary education, work, and documentation, obligations of states to cooperate with the UNHCR in ensuring the protection of refugees.

The 1967 Protocol expanded the scope of the 1951 Convention by removing the temporal and geographical limitations, thus applying its protections to refugees worldwide, irrespective of the events causing their displacement. This expansion reflected the growing recognition of global refugee issues beyond the immediate post-World War II context.

At the end of World War II, the international community recognized the urgent need for a coordinated response to the burgeoning refugee crisis. The establishment of the UN in 1945 created a platform for international cooperation on various global issues, including the plight of refugees. The responsibilities of the Intergovernmental Committee on Refugees were transferred to the International Refugee Organization (IRO) in 1946, marking an early effort to address asylum seeker issues through formal international mechanisms.

Universal Declaration of Human Rights (UDHR)[8], adopted on December 10, 1948, was an important document that recognized the right to seek asylum from persecution as a

[6] European Commission, (2013), "*Common European Asylum System*", European Commission website, https://commission.europa.eu/index_en
[7] UNHCR, (1951), "*Convention and Protocol Relating to the Status of Refugees*", UNHCR website https://www.unhcr.org/
[8] United Nations, (1948), "*Universal Declaration of Human Rights*", UN website, https://www.un.org/en/

fundamental human right. Article 14(1) of the UDHR states, *"Everyone has the right to seek and to enjoy in other countries asylum from persecution."* This declaration laid the groundwork for future international agreements and conventions related to refugee protection.

The Office of the UNHCR[9], December 14, 1950, was established with a mandate to provide international protection and manage asylum seeker issues globally. The UNHCR was tasked with ensuring that asylum seekers receive appropriate protection and support, reflecting the international community's commitment to addressing the refugee crisies.

The 1951 Convention was adopted during the UN General Assembly meeting in Geneva and came into force on April 22, 1954. Initially, the Convention was limited to addressing the situation of refugees in Europe but provided a comprehensive definition of a refugee, which has since been widely adopted. Article 33 of the Convention introduces the principle of non-refoulement, which prohibits the return of asylum seekers to territories where their life or freedom would be threatened. This principle is considered a cornerstone of international refugee protection, ensuring that asylum seekers are not forced back into danger.

While the Convention outlines the rights of refugees, it does not impose an obligation on states to provide an asylum but regulates the treatment of refugees once they are recognized. The primary responsibility for refugee protection lies with the states, particularly the asylum countries. The UNHCR plays a crucial role in facilitating states' compliance with the Convention and ensuring adequate protection for refugees.

The Convention's preamble emphasizes solidarity among states to prevent the refugee issue from becoming a source of international tension. Effective refugee protection requires coordination between states and the UNHCR to implement solutions like voluntary repatriation, local integration, and resettlement in third countries.

The 1967 Protocol was introduced to address the limitations of the 1951 Convention. The Protocol eliminated these temporal and geographical restrictions, broadening the definition and application of refugee protection. Signatory states committed to applying the fundamental provisions of the 1951 Convention to all refugees, irrespective of the 1951 cutoff date. This made the Protocol an independent document that countries could adopt, even if they were not parties to the 1951 Convention, thereby extending the protective reach of international refugee law.

To further address asylum issues, the UN General Assembly adopted the "UN Declaration on Territorial Asylum" on December 14, 1967.[10] According to the declaration, States must respect the right to asylum for individuals within the scope of Article 14 of the

[9] UNHCR, (1967), "*Protocol Relating to the Status of Refugees*", UNHCR website, https://www.unhcr.org/
[10] United Nations, (1967), "*Declaration on Territorial Asylum*", UN website, https://www.un.org/en/

UDHR, including those fighting against colonialism. Individuals who commit crimes against peace and human rights cannot benefit from asylum. States determine the conditions to provide asylum and, if facing difficulties, must cooperate internationally to share the burden and ensure protection. States must not reject, expel, or forcibly return individuals to areas where they risk persecution. This declaration reinforced the principles of asylum and non-refoulement, emphasizing the need for international solidarity and burden-sharing.

In 1977, the Council of Europe Ministers' Committee endorsed expanding the definition of a refugee to include humanitarian reasons, beyond the criteria outlined in the 1951 Convention. This broadened definition aimed to increase the number of individuals eligible for protection, recognizing the varied causes of displacement.

The historical context and establishment of asylum seekers' protections illustrate the evolution of international responses to refugee crises. From ancient practices of sanctuary to the sophisticated legal frameworks of the 20th and 21st centuries, the protection of asylum seekers has become a central tenet of international law. The 1951 Refugee Convention and the 1967 Protocol remain fundamental instruments for refugee protection, establishing crucial principles like non-refoulement and defining the rights and obligations of refugees. Despite ongoing challenges, international solidarity, supported by the UNHCR, is essential to address the complex challenges of refugee protection and ensure that asylum seekers receive the necessary support and protection in line with international standards.

1.1.3. THE DEFINITION OF ASYLUM SEEKER

UNHCR defines an asylum seeker as an individual who has fled their home country and is seeking protection in another country. This person has applied for refugee status but has not yet received a decision on their application.[11] Asylum seekers are individuals seeking international protection due to persecution or serious harm in their home countries. The legal definition and treatment of asylum seekers are critical for ensuring their protection and managing asylum processes effectively.[12] After World War II, there was a need for a more precise definition, leading to the Geneva Convention[13], which remains a cornerstone of international refugee law. This convention defines the refugee and this definition is incorporated into EU law and forms the foundation for the protection of asylum seekers. The Convention defines a refugee *as "someone who, owing to a well-founded fear of persecution based on race,*

[11] UNHCR, "Asylum-seekers", https://www.unhcr.org/asylum-seekers.html
[12] European Commission, (2020), "*Common European Asylum System*" https://home-affairs.ec.europa.eu/what-we-do/policies/asylum_en
[13] United Nations High Commissioner for Refugees (UNHCR), (1951), "*Convention Relating to the Status of Refugees*" https://www.unhcr.org/1951-refugee-convention.html Article 1.

religion, nationality, membership in a particular social group, or political opinion, is outside their country of nationality and unable or unwilling to return".[14]

Asylum seekers in the EU are entitled to certain rights and protections under the CEAS.[15] They have the right to have their application examined fairly and efficiently and access to housing, healthcare, education, and employment opportunities as well as the right to receive information and legal assistance throughout the asylum process. They also have non-refoulement right which is a protection against being returned to a country where they may face persecution or serious harm.[16]

To qualify as a refugee, an applicant must demonstrate a genuine fear of persecution, which includes both subjective fear and objective risk. This fear must be reasonable, foreseeable, and likely. Past persecution or torture is often seen as evidence of future risk. The fear of persecution must involve the violation of internationally protected rights. Violations of fundamental human rights or serious harm are sufficient grounds for claiming refugee status. Economic and social rights violations have also been increasingly accepted as grounds for refugee claims. In addition to proving a well-founded fear, applicants must show that their home country cannot or will not protect them. If the state can provide protection, the refugee claim is generally denied. Stateless persons must demonstrate that their previous country of residence cannot ensure their safety. The requirement to belong to a particular group—whether social, religious, racial, or national—has been a point of criticism, as it can limit effective protection of asylum seeker rights. A person's group membership and the persecution they face due to this membership must be thoroughly examined.[17] Discrimination or persecution based on race can qualify someone for refugee status. Race includes ethnic origin and encompasses physical and cultural differences. International agreements, such as the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, reject all forms of racial discrimination, including those faced by refugees. Discrimination against national minorities or groups,

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[14] UNHCR, (1951), "*Convention and Protocol Relating to the Status of Refugees*", https://www.unhcr.org/asylum-seekers.html

[15] European Union, (2005), "*Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status*" Official Journal of the European Union, L 326, 13.12.2005, p. 13–34., https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005L0085, European Union, (2011), "*Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*" "Official Journal of the European Union", L 337, 20.12.2011, p. 9–26., https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095, European Union, (2013), "*Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*" "Official Journal of the European Union", L 180, 29.6.2013, p. 60–95. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0032, European Commission, *"Migration and Home Affairs"* https://home-affairs.ec.europa.eu

[16] European Union, *"Asylum seekers' rights and protections under the Common European Asylum System (CEAS)"* Migration and Home Affairs, https://home-affairs.ec.europa.eu

[17] James Hathaway, (2012), *"Refugees and Asylum' in Foundation of International Migration Law*", Cambridge University Press, Cambridge, p. 183.

regardless of their size or official status, can lead to refugee status. Nationality includes cultural, ethnic, or linguistic groups. Persecution based on religion, including discrimination against non-believers, can justify refugee claims. The UDHR protects religious freedom, which includes changing, teaching, practicing, and spreading one's religion. Particular social group can include those with similar backgrounds, customs, or social status. Political opinions and sexual identity are also considered. Women facing gender-based violence and sexual orientation can also qualify as refugees. The 2011 Council of Europe Convention on preventing and combating violence against women supports gender-based asylum claims. So discrimination and violence based on sexual orientation and identity are grounds for refugee claims. The UNHCR has issued guidelines recognizing individuals persecuted for their sexual orientation as refugees.[18]

The definition of an asylum seeker in EU law is primarily derived from several key legal instruments. Article 78 of the TFEU provides the basis for a common policy on asylum, subsidiary protection, and temporary protection. It mandates that the EU develop a uniform status for asylum seekers valid throughout the Union. The Dublin Regulation establishes the criteria and mechanisms for determining the Member State responsible for examining an asylum application. It aims to ensure that each application is processed by a single Member State, typically the first country of entry. The Asylum Procedures Directive[19] sets out common procedures for providing and withdrawing international protection. It ensures that asylum seekers have access to fair and efficient procedures and provides safeguards against refoulement. The Reception Conditions Directive[20] lays down standards for the reception of asylum seekers, including provisions for housing, healthcare, education, and employment. It aims to ensure dignified living conditions for asylum seekers throughout the application process. The Qualification Directive[21] defines the criteria for providing international protection and outlines the rights and benefits of those given refugee status or subsidiary protection. It also provides a uniform definition of an asylum seeker as someone who has applied for international protection and is awaiting a decision. Despite the comprehensive legal framework, the

[18] Hailbronner, K., (2016), "*Detention of asylum seekers*" International Journal of Refugee Law, 28(1)

[19] European Union, (2013), "*Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*" Official Journal of the European Union, L 180, 60-95. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0032

[20] European Union, (2013), "*Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast)*" Official Journal of the European Union, L 180, 96-116., https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033

[21] European Union, (2011), "*Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)*" Official Journal of the European Union, L 337, 9-26. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095

implementation of EU asylum laws varies across Member States, leading to disparities in the treatment of asylum seekers.

The definition of an asylum seeker in EU law is well-established through a combination of international conventions, EU treaties, and specific directives and regulations under the CEAS. While the legal framework provides significant protections for asylum seekers, practical implementation challenges remain. Addressing these challenges requires an enhanced cooperation and solidarity among EU Member States to ensure consistent and fair treatment of all individuals seeking international protection.

1.2. EVOLUTION OF THE COMMON EUROPEAN ASYLUM SYSTEM

The issue of asylum policy within the EU has evolved significantly over the decades, influenced by historical events, geopolitical changes, and internal dynamics within the member states. After World War II, Europe was focused on rebuilding and ensuring stability. Countries recognized that cooperation was essential for economic recovery and political stability. This led to the creation of foundational institutions. European Coal and Steel Community (ECSC) in 1951 aimed to control and share essential resources to prevent future conflicts. European Economic Community (EEC) and European Atomic Energy Community (EURATOM) in 1957 created by the Treaties of Rome aimed to foster economic integration and cooperation on atomic energy. In 1965, the Merger Treaty streamlined the institutions of the ECSC, EEC, and EURATOM into a single framework known as the European Communities. This integration was a step towards a more cohesive and unified Europe.

The Maastricht Treaty, signed in 1992, formally established the EU. It incorporated the EC into its first pillar, which included economic, social, and environmental policies. The EU aimed to deepen political and economic integration, setting the stage for a more comprehensive approach to various policy areas, including asylum and immigration. The issue of refugees became prominent in the EU for several reasons. From the 1970s onwards, economic instability led to increased migration pressures as people sought better living conditions in Europe. The fall of the USSR and conflicts in the Balkans, notably the wars in Yugoslavia and Kosovo, resulted in significant refugee flows into Europe. On the other hand, different asylum laws and practices among European states led to inconsistencies and challenges in handling asylum seekers. So the increase in refugee numbers and the lack of harmonization in national asylum laws highlighted the need for a unified approach.

The 2015 refugee crisis, driven by conflicts in Syria, Iraq, and other regions, exposed weaknesses in the CEAS, including uneven responsibility sharing and inadequate support for

frontline states like Greece and Italy. And, differing national interests and political views on immigration have made reforms difficult, with some Member States resisting efforts to redistribute asylum seekers or harmonize policies further. So the EU continues to work on improving its asylum policies.

The evolution of the EU's asylum policy reflects the complex interplay between historical events, economic conditions, and political dynamics. While significant progress has been made in establishing a common framework, ongoing challenges necessitate continued efforts to ensure a fair, efficient, and humane asylum system across Europe.

In this section, the legal arrangements made by the EU concerning refugees and the regulations made to establish a common asylum system will be examined in chronological order.

1.2.1. SCHENGEN AGREEMENT

The Schengen Agreement was signed by Belgium, Germany, France, Luxembourg, and the Netherlands on 14 June 1985. These five countries agreed to remove controls at their internal borders and to introduce freedom of movement for all nationals of the signatory countries, other EU Member States and some non-EU countries. [22]

The Schengen Agreement aims to eliminate internal borders in Europe and it also brings regulations regarding the security problems that may arise with the elimination of internal borders and the right to asylum. For this reason, the Convention also includes regulations regarding passage through external borders in addition to regulating internal borders.[23]

The Schengen Agreement also aims to harmonize visa-related regulations and visa policies of Member States. The EU attaches great importance to effective border control in its visa policies. The visa process functions as an effective mechanism for monitoring asylum applications to member countries.[24] By Visa Information System, it is attempted to prevent entry with fake documents by checking the accuracy of the documents with biometric data that will identify the person applying for a visa to the Schengen area from non-EU countries. In addition, once registered in this information system, people do not have the opportunity to request asylum in another Schengen country.

In Chapter 7 of the Schengen Agreement, provisions regarding asylum are regulated between Articles 28 and 38. These articles stated that they accepted the Geneva Convention and

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[22] Schengen Agreement. (1985). "*Agreement between the governments of the States of Belgium, France, Germany, Luxembourg, and the Netherlands on the gradual abolition of checks at their common borders*.", https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A11985A%2FTXT

[23] Heijerman,(2010) A., *"The Harmonisation of European Asylum Policy Changes in The Netherlands, Belgium, Germany and the United Kingdom"*, (unpublished master thesis), Universiteit Twente, European Studies, Enschede, p.13

[24] Acer, Y., Kaya, ve Gümüş, M., (2010), *"Yasadışı Göç ve iltica Bağlamında Sınır Güvenliği: Avrupa Birliği Düzenlemeleri ve Türkiye"*, "*Yerelden Küresele Sınıraşan Suçlar"*, Ankara: Polis Akademisi Yayınları.

the 1967 Protocol without geographical limitations and that they would cooperate with UNHCR. Parties have accepted the obligation to evaluate asylum applications objectively while preserving their rights to refuse entry to their countries and send asylum seekers to third countries. Additionaly, The exchange of information between the party states was regulated. Whereas, party states are obliged to share information about the person applying for asylum with each other. The purpose is to determine the state that will be responsible for examining the asylum application, examine the application, and fulfill the obligations effectively that will arise.

The Schengen Agreement was to eliminate border controls between member countries and establish a common visa system. Cooperation has been increased by adopting common rules in the fields of visas, asylum rights and external border controls. Although the Schengen Agreement aims to ensure freedom of movement within its internal borders, it contains only 4 articles on open borders. In contrast, there are 138 articles focused on increasing supervision and control, particularly concerning non-EU citizens.

1.2.2. SINGLE EUROPEAN ACT

The SEA, signed on 17 and 28 February 1986 in Luxembourg and The Hague respectively, came into force on 1 July 1987.[25] One of the SEA's core objectives was to establish a single market within the EC by 1992. This goal involved the removal of barriers to trade and investment among Member States, aiming to enhance economic integration and cooperation within the EC.

The Ad Hoc Group on Immigration was set up in October 1986. The Ad Hoc Group on Immigration which has since consisted of the ministers responsible for immigration, and the European Committee to Combat Drugs(CELAD) set up their secretariats with the secretariat of the EU Council. Then, "The Coordinators Group on the Free Movement of Persons" was set up in 1988 to bring together the different groups covering immigration, asylum and legal cooperation. In 1989, they produced a coordinated work programme, the "Palma Document" and then moved on to draw up the new structures which were created under Title VI (Article K) of the Maastricht Treaty. The "Palma Document", dated January 1991, outlines the objectives and measures necessary for achieving an area without internal frontiers, facilitating the free movement of goods, persons, services, and capital within the European Community. The document includes discussions on immigration, legal assistance, and cooperation between

[25]European Union, (1986) "*Single European Act*, *Act establishing the European Communities*" https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:xy0027

law enforcement agencies to achieve these goals. The Palma Document was instrumental in shaping policies and coordination efforts across Member States to enhance the free movement of persons in the EU.[26]

The implementation of labor mobility through the SEA and the initial steps towards a borderless Europe via the Schengen Agreement have underscored the challenge of managing external immigration into the EU. This situation has demonstrated the need for a unified CEAS to replace the existing fragmented and inconsistent national systems.[27]

1.2.3. DUBLIN CONVENTION

The Dublin Convention was signed in Dublin, Ireland, on 15 June 1990 and first came into effect on 1 September 1997 for the initial 12 signatories. It has since been extended to other EU Member States and some non-EU countries. The Convention was the first binding agreement on asylum among European Community Member States, establishing criteria for determining responsibility for asylum application examinations. The first entry principle integrated asylum policy with migration control, leading to burden-sharing issues. [28]

Asylum is treated as a collective EU concern, not just an issue for individual states.[29] If one member country rejects an application, others can also reject it without further review, leading to debates about responsibility among Member States. So the Convention aims to distribute the responsibility for examining asylum applications across Member States, reducing the burden on high-demand countries. This system ensures balanced responsibility-sharing and prevents repeated applications. While cooperation on asylum policies increased in the early 1990s, the Convention's effectiveness is hard to assess due to reliance on individual Member States' decisions and lack of standardized procedures.

1.2.4. LONDRA RESOLUTIONS

The Ministers of the Member States of the EC responsible for immigration, meeting in London on 30 November and 1 December 1992, have adopted three important resolutions. The Ministers determined to achieve the objective of harmonizing asylum policies as it was defined

[26] Coordinators' Group on the Free Movement of Persons. (1991). "*The Palma Document: Free Movement of Persons*." European Community., https://www.statewatch.org/statewatch-database/the-palma-document/

[27] Dearden, S.J.H. (1997). "*Immigration Policy in the European Community",* European Development Policy Study Group, Discussion Paper. No:4.

[28] European Union, (1997), *"Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (Dublin Convention)"* Official Journal of the European Communities, https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/dublin-convention_en.

[29] Ezra, E., (2004), "*European integration and refugee protection: The development of asylum policy in European Union"* p. 98 Ludwig-Maximilians-Universität München Geschwister-Scholl-Institut für Politische Wissenschaft.

by the Luxembourg European Council in June 1991 and clarified by the Maastricht European Council in December 1991.[30]

The London Resolutions consist of three documents, which are *"Resolution on Manifestly Unfounded Asylum Applications"*[31], *"Resolution on Conclusions on Countries in Which There is Generally No Serious Risk of Persecution"*[32] and *"Resolution on Procedure for application of the concept of host third country"*[33]. These three documents aim to increase trust between Member States and to standardize asylum policies by bringing them closer. These resolutions are considered legally binding documents for the candidate countries that will join the Union afterwards.

1.2.4.1.The Resolution on Manifestly unfounded applications

The Ministers responsible for Immigration from the Member States of the EC have reaffirmed their commitment to the Dublin Convention of June 15, 1990. This convention ensures that all asylum seekers arriving at the borders or within the territory of a Member State will have their asylum claims processed, and it establishes the criteria for determining which Member State will handle these claims. The Ministers acknowledged that Member States have the discretion to permit the exceptional stay of non-citizens for compelling reasons beyond the scope of the 1951 Geneva Convention.[34]

The Ministers have acknowledged the growing issue of asylum seekers in Member States who do not genuinely need protection under the Geneva Convention. They are concerned that these unfounded applications are overwhelming the asylum systems, causing delays for genuine refugees, and compromising the asylum process's integrity. So they have adopted a resolution targeting clearly unfounded applications. This resolution broadens the definition to include both the abuse of the asylum system and intentional fraud. Consequently, if an asylum claim lacks clear evidence of persecution and involves deliberate deceit or system misuse, it is considered manifestly unfounded, failing to meet the Geneva Convention's criteria. Examining such applications has imposed significant financial and time burdens on Member States' asylum units due to the increasing number of requests.

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[30] European Union, (1992), *"Resolutions adopted by the Ministers of the Member States of the European Communities responsible for immigration"* Meeting in London, 30 November - 1 December 1992.

[31] Council of the European Union. (1992). "*Resolution on manifestly unfounded applications for asylum*." https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l33102

[32] Council of the European Union, (1992), *"Conclusions on countries in which there is generally no serious risk of persecution."* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Al33102

[33] Council of the European Union, (1992), "*Council Resolution of 30 November 1992 on a harmonized approach to questions concerning host third countries*." https://www.refworld.org/docid/3f86c3094.html

[34]Council of the European Union, (1992), "*Resolution on manifestly unfounded applications for asylum*" Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l33102

1.2.4.2.The Resolution of Conclusions on Countries in Which There is Generally No Serious Risk of Persecution

The Resolution on manifestly unfounded asylum applications includes in paragraph 1 (a) a reference to the concept of countries generally deemed to pose no serious risk of persecution. This concept refers to countries that can be demonstrably and objectively shown not to typically produce refugees. Additionally, it pertains to situations where it can be clearly and verifiably demonstrated that any previous conditions justifying recourse to the 1951 Geneva Convention have ceased to exist.[35]

According to this resolution, Member States have the goal of reaching a common assessment of certain countries that are of particular interest in this context. So Member States are expected to exchange information within an appropriate framework on any national decisions to consider particular countries as ones in which there is generally no serious risk of persecution.

"Some elements are stated to be taken into consideration in any assessment of the general risk of persecution in a particular country:[36]

(a) Previous numbers of refugees and recognition rates. The recognition rates are going to be checked for asylum applicants from the country in question who have come to Member States in recent years.

(b) Observance of human rights. The formal obligations undertaken by a country in adhering to international human rights instruments and in its domestic law are considered and how in practice it meets those obligations.

(c) Democratic institutions. This element stated that particular attention should be paid to democratic processes, elections, political pluralism, freedom of expression and thought, and the availability and effectiveness of legal avenues of protection and redress.

(d) Stability. An assessment will be made of the prospect for dramatic change in the immediate future."

If a country meets these criteria, refugees and asylum seekers coming from these countries will be considered to have come from a safe country, and their requests will be handled within the framework of an accelerated procedure and sent back. However, even if a

[35]Council of the European Union. (1992). *Resolution on manifestly unfounded applications for asylum*. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l33102

[36] Council of the European Union, (1992), *"Resolution on manifestly unfounded applications for asylum. In* Criteria for rejecting unfounded applications for asylum *(Section: Concept of "safe" countries)."* https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:l33102

person meets all these criteria, there is a legal possibility that a person has a well-founded fear of persecution in this country.

The "safe country" concept helps streamline the processing of asylum applications by presuming that individuals from or who have passed through these countries do not generally face a risk of persecution or serious harm, thus potentially rendering their asylum claims unfounded.[37] Asylum Procedures Directive[38] provides the basis for the safe country concepts in EU law, outlining the criteria and procedures for designating countries as safe.

Despite the established criteria, EU countries have struggled to create a common safe country of origin list. As a result, asylum seekers face varying practices across different countries. A country considered safe by one member state might not be classified as such by another, leading to inconsistent treatment of asylum applications.

1.2.4.3.The Resolution on Procedure for application of the concept of host third country

The ministers were particularly concerned about the issue of refugees and asylum seekers unlawfully leaving countries where they had already been provided protection or had a genuine opportunity to seek such protection.[39] So they believed a coordinated response was necessary. Article 1 of the decision defines the term "host third country," while Article 2 establishes basic criteria for determining a host third country. Article 3 of the Resolution outlines the procedure for implementing the host third country concept in line with Article 3(5) of the Dublin Convention. The Member State where the asylum application is lodged will assess whether the host third country principle is applicable. This state will then initiate the necessary procedures to transfer the asylum seeker to the host third country before shifting the responsibility of examining the application to another state. Nonetheless, the Member State maintains the right to send the asylum seeker to a third host country according to its national law. Despite these criteria, there are significant criticisms regarding the considerable differences in practice among Member States, highlighting the lack of harmonization. Consequently, it can be concluded that the increase in asylum applications in the 1990s led the EU to toughen its asylum policies and adopt deterrent measures.[40]

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[37] FRA, (2022). "*Safe country concept in asylum procedures*."https://euaa.europa.eu/sites/default/files/publications/2022-12/2022_safe_country_concept_asylum_procedure_EN.pdf

[38] "*Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)"* Official Journal of the European Union, L 180, 29.6.2013. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0032

[39] European Union, (1992), *"Resolutions adopted by the Ministers of the Member States of the European Communities responsible for immigration"* Meeting in London, 30 November - 1 December 1992.

[40]Hatton, T.J., (2012), *"Asylum Policy in the EU: The Case for Deeper Integration, Norface Migration Discussion"* Paper 16. http://www.norface-migration.org/publ_uploads/NDP_16_12.pdf

1.2.5. VIENNA DECLARATION AND PROGRAMME OF ACTION

The Vienna Declaration and Programme of Action was adopted by consensus on June 25, 1993, by representatives from 171 States at the World Conference on Human Rights and later endorsed by the United Nations General Assembly on December 20, 1993.[41] This declaration was the primary result of the 1993 World Conference on Human Rights. It confirms the commitment of all States to uphold human rights principles, asserts that human rights are inherent to all individuals, and stresses that international cooperation is crucial for achieving the UN goals in human rights.

"The 1995 Resolution on Minimum Conditions for Refugee Procedures" and "the 1996 Common Position on Harmonizing the Definition of 'refugee'" are to be transformed into binding legal instruments. This transition aims to standardize asylum procedures and definitions across the EU, ensuring uniformity and fairness in the treatment of asylum seekers.

The Action Plan has identified key areas requiring attention over the next two and five years to improve the EU's asylum policy framework. The aim is to respond swiftly to mass influx situations until permanent solutions are found. To ensure fairness among EU Member States, the Plan emphasizes equitable distribution of asylum seekers and refugees through coordinated efforts to share responsibility. Proposed enhancements to the Dublin Convention aim to streamline the process of determining which Member State is responsible for examining an asylum application, including improved mechanisms for efficiently transferring asylum seekers to the appropriate Member State.

1.2.6. TREATY ON EUROPEAN UNION / THE MAASTRICHT TREATY

The Maastricht Treaty, formally known as TEU, was signed in Maastricht on February 7, 1992, and came into force on November 1, 1993. [42] This treaty significantly transformed the EC into the EU, establishing a more cohesive and integrated framework for cooperation among Member States.

The Union was founded on the European Communities, with the addition of two new areas of cooperation which are the Common Foreign and Security Policy (CFSP) and Justice and Home Affairs (JHA). The three pillars structure comprised the European Communities (economic, social, and environmental policies), CFSP (foreign policy and military matters) and JHA (criminal matters, asylum, immigration).

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[41] United Nations, (1993), *"Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993"* Retrieved from https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx

[42] European Union, (1992), *"Treaty on European Union*" Official Journal of the European Communities C 191. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A11992M%2FTXT

The Council of Ministers, representing Member States, and the European Commission became involved in formulating policies on asylum and immigration. This institutionalization aimed to harmonize procedures and standards across the EU, addressing issues such as asylum applications and the rights of refugees in a more coordinated manner. The CJEU, initially, had no jurisdiction over asylum cases, reflecting the limited scope of the EU's legal authority in this area at the time. This restriction highlighted the challenges in creating a unified asylum policy and the incremental nature of integrating such sensitive issues into the EU's legal and institutional structures. The Maastricht Treaty thus laid the groundwork for a more integrated approach to justice and home affairs, although significant hurdles remained in achieving full harmonization and effective cooperation across all Member States. [43] The Treaty also established European citizenship, providing citizens the right to reside and move freely within Member States. This development was crucial in the context of the elimination of internal borders within the EC, bringing significant attention to issues concerning refugees and those seeking international protection.

According to the Article K1, the treaty aimed to cooperate with the European Police Office (Europol) on various issues, including asylum policy, border control, migration policy. Article K2 states that it stipulated that Member States would protect individuals persecuted for political reasons, in line with ECHR and the 1951 Geneva Convention. Member States were given partial authority over the visa regime for third-country nationals entering the EU. The Community was authorized to determine which third-country nationals would require visas and to create a uniform visa model, although visa issuance and common visa policies remained outside the Community's responsibility. In Article K9, Passerelle Clause allowed for the transfer of certain areas of decision-making from intergovernmental cooperation to the Community framework, facilitating deeper integration in asylum policy.[44]

Although the treaty did not establish a CEAS due to the limited powers of Community bodies and the non-binding nature of the legal instruments, it set in motion the process that led to the creation of a CEAS by the late 1990s.[45] Until the Maastricht Treaty, migration and asylum matters were primarily handled through intergovernmental cooperation. The treaty marked the beginning of their institutionalization within the EU framework. Starting in the 1980s, the EU began developing cooperation in asylum and migration, and the Maastricht Treaty was the first to provide the Union authority in these areas. [46]

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[43] European Parliament, (2018), *"Fact Sheets on the European Union"* Retrieved from www.europarl.europa.eu/factsheet
[44] Özcan, Ö., (2005), Avrupa Birliği Sığınma Hukuku. Ankara:Uluslararası Stratejik Araştırma Kurumu Kitapları. p.83.
[45] Hatton, T.J., (2012), *"Asylum Policy in the EU: The Case for Deeper Integration",* Norface Migration Discussion Paper 16. http://www.norface-migration.org/publ_uploads/NDP_16_12.pdf
[46] Kaunert, C. ve Leonard, S., (2012), *"The European Union Asylum Policy After the Treaty of Lisbon and the Stockholm Programme: Towards Supranational Governance in a Common Area of Protection?",* Refugee Survey Quarterly, 31(4):1-20.

1.2.6.1. Communication from the Commission to the Council and the European Parliament on Immigration and Asylum Policies (23 February 1994)

After the adoption of the TEU, developments have progressively occurred in the field of asylum. In 1994, the *"Communication from the Commission to the Council and the European Parliament on immigration and asylum policies"* was published by the EU Commission.[47]

The Commission highlighted that asylum issues are distinct from migration due to their humanitarian aspect, stressing the importance of finding permanent solutions and addressing human rights, environmental, and economic problems in the countries of origin comprehensively. The Commission concluded that addressing the root causes of asylum problems is essential. They also emphasized the need for harmonization in interpreting Article 1 of the 1951 Geneva Convention, establishing minimum asylum standards, providing temporary protection to asylum seekers outside the 1951 Convention, implementing effective burden-sharing measures, and setting up a monitoring system for transit situations.

1.2.6.2. Council Resolution of 20 June 1995 on Minimum Guarantees for Asylum Procedures

The EU Justice and Home Affairs Council adopted the *"Council Resolution on Minimum Guarantees for Asylum Procedure"* on 20 June 1995. [48] Member countries have agreed to take these principles into account in all amendment proposals regarding their national legislation and to harmonize their national legislation with these principles by the 1st of January 1996.

Following the entry into force of the 1990 Dublin Convention, the Member States wished to establish equivalent procedures for examining applications for asylum. To that end, minimum guarantees for procedures, to be complied with by all Member States, have been drawn up. The purpose of the decision is to accept common guarantees that will regulate asylum procedures for equal and fair decisions on asylum applications among the EU Member States. The Resolution consists of an introduction and 9 chapters. These include the following provisions; universal principles regarding fair and comprehensive asylum procedures, guarantees concerning the examination of asylum applications, rights of asylum-seekers during examination, appeal and review procedures, objection and re-examination phase, additional

[47] Commission of the European Communities, (1994), *"Communication from the Commission to the Council and the European Parliament on Immigration and Asylum Policies."* COM/94/23 Final.
[48] Council of the European Union, (1995), "*Council Resolution of 20 June 1995 on minimum guarantees for asylum procedures"* Official Journal C 274, (19.09.1996) Retrieved from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1996:274:0013:0017:EN:PDF

safeguards for unaccompanied minors, and women, the right of residence and additional measures if the criteria for classification as refugees are met.

Under the title of guarantees concerning the examination of asylum applications, it is stated that all applications must be examined individually, objectively, and impartially, and that providing refugee status cannot be based on any special evidence. If his application is rejected, the asylum seeker is given the right to appeal to a court or an independent review authority.

Under the title of rights of asylum seekers during examination, asylum seekers are given the right to stay in the country where they applied until their applications are decided. Asylum seekers are also given the right to access an interpreter and, if necessary, legal counsel or any other advisor who can contact UNHCR during the investigation. Asylum seekers will be able to apply at the borders. Before the application is admissible, it will be examined whether the application is unfounded or not. In the presence of a host country, some exceptions to the principle of non-refoulement may apply.

Under the title of additional safeguards for unaccompanied minors and women, It is envisaged that unaccompanied minors will be represented by a designated adult or institution throughout the examination. Member States shall seek to provide female asylum seekers with female officials and interpreters if this is necessary because of their cultural background or lived experience. Under the title of the Residence Right, with regard to persons, who are granted refugee status, a residence permit will be issued by the state that examines their applications.

1.2.6.3. Council Resolution of 25 September 1995 on Burden- sharing with Regard to the Admission and Residence of Displaced Persons on a Temporary Basis

Temporary protection in the EU emerged during the conflicts following the breakup of Yugoslavia. In 1992, the UNHCR initiated temporary protection to address the humanitarian crisis, urging countries to create systems for displaced Bosnians. European countries implemented different systems for the temporary reception of displaced persons during the conflict. [49] In response to these varied practices, the EC aimed for a collective approach. In November 1992, EC immigration ministers met in London and agreed to guidelines for providing temporary protection to people displaced by the Yugoslav conflict, requiring beneficiaries to come directly from combat zones and be unable to return home due to the conflict. Subsequent European Council meetings in Edinburgh, December 1992, and

[49] Van Selm-Thorburn, J., (1998), *"Refugee Protection in Europe: Lessons of the Yugoslav Crisis."* The Hague/ Boston/London: Martinus Nijhoff Publishers.

Copenhagen, June 1993, took small steps towards providing temporary housing and food but showed reluctance to share the burden.

To address this, the *"Communication of the Commission on Immigration and Asylum Policy"* highlighted the need for temporary protection systems and solidarity among front-line Member States. It emphasized the inconsistency in temporary protection provisions and called for system harmonization. In1995, the Council adopted a resolution on accepting displaced persons and sharing the burden of temporary housing, followed by a 1996 decision on emergency procedures for temporary entry and stay.[50] These decisions detailed who should receive temporary protection and established an accelerated procedure. While harmonization of Member States' systems was not mentioned, these decisions underscored the need for a unified response to massive influxes within the concept of solidarity.

1.2.6.4.The harmonized application of the definition of the term "refugee"

The EU Council of Ministers adopted the Joint Position in order to avoid the differences in the application and interpretation of the definition of refugee and to prepare a harmonized asylum procedure. [51] In the introduction, it is stated that the joint position does not bind the legislative bodies of the Member States and will not affect the decisions of the judicial authorities.

Asylum seekers often faced varying outcomes in obtaining refugee status due to differences in national legislation among EU Member States. This discrepancy, arising from diverse interpretations of the Geneva Convention's refugee definition, led to asylum seekers favoring countries with more lenient policies, causing some nations to experience a high volume of applications. To address this, the EU harmonized the refugee definition to ensure consistency across Member States. Additionally, minimum procedures were established for fair processing of asylum applications and shared responsibility in managing significant migration flows.

The decision outlines that Member States may protect individuals from being returned to their home countries if their safety and physical integrity are at risk, even if they do not meet the Geneva Convention's criteria. Each application must consider the current situation in the applicant's country of origin, with collective review possible in cases of mass persecution. If an

[50] "Council of the European Union", (1995), *"Council Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis (95/C262/01)."*
"https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31995Y1007%2801%29"
[51] "Council of the European Union." (1996, March 4). *"Joint Position of 4 March 1996 defined by the Council on the basis of Article K.3 of the Treaty on European Union on the harmonized application of the definition of the term 'refugee' in Article 1 of the Geneva Convention of 28 July 1951 relating to the status of refugees."* Official Journal L 087, 05/04/1996 P. 0001 - 0002.

asylum seeker's credibility is established, detailed verification may not be required, and a lack of prior persecution does not invalidate a claim.

While the 1951 Convention defined the concept of a refugee, the EU's Joint Position is the first substantive regulation harmonizing the definition across Member States. Despite challenges in achieving complete harmony due to national jurisprudence, the EU has made significant strides in standardizing asylum procedures and responsibilities.

1.2.7. TREATY OF AMSTERDAM

The Amsterdam Treaty signed on October 1997 and entered into force on May 1, 1999 made significant changes to the Maastricht Treaty.[52] The Treaty of Amsterdam provides a policy of full free movement of persons, including asylum, immigration and border control measures. The Amsterdam Treaty incorporated the Schengen Protocol or Schengen Code into EU legislation.[53] It aims to create a single area where there is no internal control between participating states.

The Treaty of Amsterdam also provided new powers to EU institutions to create asylum laws through a special institutional mechanism. This included a five-year transitional period with a joint initiative between the Commission and the Member States, requiring unanimous agreement in the Council after consultation with the Parliament. Additionally, the CJEU gained jurisdiction in certain cases. Within five years of the Treaty's entry into force, the Council was required to act on several fronts, particularly, establishing criteria and mechanisms for determining which Member State is responsible for processing an asylum request from a third-country national within the EU, setting minimum standards for the reception of asylum seekers and defining refugee status and related procedures.These measures aimed to create a more unified and efficient asylum system across the EU. [54]

Transferring the regulation of immigration, asylum and border matters to the Community pillar means strengthening the cooperation between the EU institutions through the extension of the Community method.[55] The Amsterdam Treaty introduced that asylum-related actions and policies, which were previously optional, have a new legal status under Community law, ensuring their enforceability.

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[52] European Union, (1997), "*Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts*" Official Journal of the European Communities, C 340., https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:4301858

[53] European Parliament, "*The Schengen Area and cooperation*" Fact Sheets on the European Union. https://www.europarl.europa.eu/factsheets/en/sheet/140/the-schengen-area-and-cooperation

[54] European Parliament, (2024). *"Fact Sheets on the European Union"*, www.europarl.europa.eu/factsheets/en

[55] Guild, E., Carrera, S. ve Balzacq, T., (2008), *"The Changing Dynamics of Security in an Enlarged European Union, Challenge Liberty and Security"* Research Paper No: 12, https://www.ceps.eu/wp-content/uploads/2009/08/1746.pdf

1.2.8. TAMPERE SUMMIT

In 1997, EU Member States agreed to the Amsterdam Treaty amending the TEU, and thereby committed themselves to creating an "area of freedom, security and justice". Four main goals are mentioned under the title of the Union's common migration and asylum policy. These are partnership with countries of origin, a CEAS, fair treatment of third-country nationals, and management of migration flows. In October 1999, during a special European summit held in Tampere, Finland, European leaders set the political direction for the legislative process of establishing standards. They also expressed their collective commitment to freedom, grounded in human rights, the rule of law and democratic institutions. The Summit Conclusions underlined their absolute respect for the right to seek asylum and promised to work towards establishing a CEAS based on the full and inclusive application of the Geneva Convention.[56]

The Summit Conclusions address migration policy and asylum as distinct areas, dedicating separate paragraphs to illustrate the interconnection between asylum, migration, irregular migration, and cooperation with source countries. The right to asylum is recognized as a clear human right, migration is influenced by factors such as socio-economic conditions, demographics, judicial matters, and police cooperation. The Conclusions also highlighted the need for a comprehensive EU approach to migration, addressing political, human rights, and development issues in origin and transit countries. Partnership with third countries is deemed crucial for the success of co-development policies.

Furthermore, the European Council reaffirmed the importance of respecting the right to seek asylum and agreed to work towards establishing the CEAS. This system will include clear procedures for determining the state responsible for examining asylum applications, common standards for fair and efficient asylum procedures, minimum conditions for the reception of asylum seekers, and harmonized rules on the recognition and content of refugee status. The aim of a CEAS is to ensure that the same standards apply in all Member States and that people applying for asylum are subject to the same procedure. Another goal is to harmonize the binding provisions of the Member States regarding asylum.[57] Important legal instruments have thus been adopted to enable CEAS such as Reception Conditions Directive, Dublin II Regulation, Qualification Directive, EURODAC Regulation, Asylum Procedure Directive, Temporary Protection Directive. [58]

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[56] Council of the European Union, (1999), "*Presidency conclusions: Tampere European Council, 15 and 16 October 1999*." Retrieved from http://aei.pitt.edu/43337 (Archive of European Integration).

[57] ECRE. "*History",* http://www.ecre.org/topics/areas-of-work/introduction/194.html, ECRE, *"Protection in Europe",* http://www.ecre.org/topics/areas-of-work/protection-in-europe.html

[58] European Commission, (2014), *"A Common European Asylum System."* Luxembourg: Publications Office of the European Union.

1.2.8.1. EURODAC Regulation

A system known as "EURODAC" is established by this Regulation.[59] It aims to assist in determining which Member State is to be responsible under the Dublin Convention for examining an asylum application lodged in a Member State. The purpose of the EURODAC Regulation is to establish a fingerprint database containing the fingerprints of asylum seekers. The fingerprint taken is transferred to the EURODAC system, regardless of which EU country the person applied to. Data from asylum seekers aged 14 and older are stored for 10 years to check if they have applied for asylum in another country.

1.2.8.2.Temporary Protection Directive

The Directive's purpose is to set minimum standards for providing temporary protection in the event of a mass influx of displaced persons from third countries who cannot return to their home countries. It aims to promote a balanced effort among Member States in receiving and supporting these individuals. [60]

Temporary protection is defined as an exceptional procedure to provide immediate and temporary protection to displaced persons during a mass influx or imminent mass influx when they cannot return to their home countries. This is particularly important if there is a risk that the asylum system will be overwhelmed, affecting its efficient operation, in the interests of both the displaced persons and others seeking protection. According to the directive, temporary protection can last for one year and can be extended for up to another year in six-month increments. Certain individuals are excluded from temporary protection, including those who have committed crimes against humanity, war crimes, crimes against peace, serious non-political crimes, crimes against the principles and purposes of the UN, and those who pose a threat to the public order of the host country. Individuals with temporary protection status are entitled to several rights, including the right to work, start a business, travel for business purposes, live in suitable housing, access social and healthcare services, and continue education for those under 18. The termination of temporary protection occurs when the conditions that led to voluntary return and asylum are resolved.[61]

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[59] Council of the European Union, (2000), *"Council Regulation (EC) No 2725/2000 of 11 December 2000 on the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention. Official Journal of the European Communities"* L 316, 15 December 2000, 1-7.

[60] Council of the European Union, (2001), *"Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof,"* Official Journal of the European Communities, L 212, 7 August 2001, 12-23.

[61] Council of European Union, (2001), "*Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving*

1.2.8.3. Reception Conditions Directive

This Directive sets out minimum standards of reception conditions for asylum applicants. The aim is to ensure that the applicants have a dignified standard of living and that comparable living conditions to be afforded to them in all Member States. [62]

It aimed to ensure a dignified standard of living for asylum seekers while promoting consistency in reception conditions across EU Member States. It was part of the broader framework of the CEAS.

1.2.8.4. DUBLIN II Regulation

The purpose of this Regulation is to prevent the transfer of asylum seekers from one country to another and also to prevent abuse of the system by the re-submission of an asylum application by the same person in another country. The aim is therefore to determine as quickly as possible the Member State responsible for examining the asylum application and to prevent abuse of asylum procedures .[63]

The designated Member State must take responsibility for the applicant and process the application. According to Article 4 of the Dublin II Regulation, the responsibility and authority to examine an asylum seeker's application lie with the country where the person first applied. This provision of the Dublin II Regulation has increased the burden on EU border countries, where initial applications are most frequently submitted, to finalize asylum applications.

1.2.8.5. Qualification Directive

This directive sets out the conditions for the qualification and status of nationals of non-European Union countries or stateless persons as refugees or as persons who otherwise need international protection. It also establishes the content of the protection to be provided to these persons.[64] The primary objective of the Directive is to address the protection needs against refoulement by providing essential services such as residence permits, travel documents,

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such persons and bearing the consequences thereof." Official Journal of the European Communities. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001L0055&from=EN

[62] European Parliament and Council. (2003). "*Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers*." Official Journal of the European Union, L 31, 18-25. https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:En:PDF

[63] European Parliament and Council. (2003). "*Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national*." Official Journal of the European Union. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003R0343

[64] European Parliament and Council. (2004). "*Directive 2004/83/EC on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*." Official Journal of the European Union, L 304, 12-23. https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0012:0023:EN:PDF

employment opportunities, education, healthcare, and housing, particularly for children and other vulnerable individuals. The Directive's foremost aims are to assist those requiring international protection and to ensure that decisions concerning these individuals comply with international legal standards.

1.2.8.6. Asylum Procedure Directive

This directive lays down minimum standards for the procedures for granting and withdrawing refugee status in order to reduce the disparities between national examining procedures and to safeguard the quality of decision-making in EU countries.[65] The Directive aims to ensure that asylum applicants receive the necessary support to articulate their circumstances. It seeks to establish a clearer and more efficient application process by precisely defining the asylum system, eligibility criteria, and procedural steps. Additionally, the Directive includes provisions to address the needs of applicants with special circumstances and offers guidance for those who intend to apply to the ECHR.

1.2.9. THE HAGUE PROGRAMME

The multiannual Hague Programme, adopted at the European Council on 4 and 5 November 2004, sets out 10 priorities for the Union to strengthen the area of freedom, security, and justice in the next five years. These are strengthening fundamental rights and citizenship, anti-terrorist measures, defining a balanced approach to migration, developing integrated management of the Union's external borders, setting up a common asylum procedure, maximizing the positive impact of immigration, striking the right balance between privacy and security while sharing information, developing a strategic concept on tackling organized crime, a genuine European area of justice, sharing responsibility and solidarity.[66]

The Commission intends to set up a new, balanced approach and an effective asylum procedure to deal with legal and illegal immigration. These measures introduced by the Commission to achieve this include the "Solidarity and Management of Migration Flows framework programme"[67], which covers the creation of an External Borders Fund, an Integration Fund, a Return Fund, and a European Refugee Fund. The Hague Program includes

[65] Council of the European Union. (2005). *"Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status"* "Official Journal of the European Union", L 326, 13 December 2005, 13-34.
[66] European Union, (2009), *"The Hague Programme: 10 Priorities for the Next Five Years."* EUR-Lex, https://eur-lex.europa.eu/EN/legal-content/summary/the-hague-programme-10-priorities-for-the-next-five-years.html.
[67] European Commission, (2007), *"Solidarity and Management of Migration Flows"* framework programme 2007-2013. Official Journal of the European Union, L 144, 6.6.2007, p. 22-44

the return of those without a legal residence permit, the signing of readmission agreements, as well as regulations regarding the formation of funds.[68]

1.2.10. STOCKHOLM PROGRAMME

The Stockholm Programme, outlining the EU's priorities for justice, freedom, and security from 2010 to 2014, focuses on enhancing these areas by addressing citizens' needs and interests.[69] Building on the Tampere and Hague programmes, it emphasizes protecting fundamental rights across all Member States and improving citizens' access to fair and efficient judicial processes within the EU.

To safeguard citizens, the programme advocates for localized security strategies tailored to community-specific safety concerns and promotes solidarity among EU Member States and with non-EU countries. A significant emphasis is placed on strengthening solidarity through enhanced border control and cooperation under FRONTEX[70] and the Schengen Agreement, leading to improved border security, immigration, and customs management. FRONTEX was established to enhance border management and security across the EU. Its main functions include coordinating and supporting Member States in managing external borders, providing operational assistance, and ensuring the effective and uniform application of EU border policies

The programme highlights the roles of the European Asylum Support Office (EASO) and EURODAC within the Dublin system. EASO assists Member States in managing asylum requests and implementing the CEAS, while EURODAC collects and processes fingerprint data of asylum seekers and certain illegal immigrants, facilitating the identification and processing of asylum applications.[71]

1.2.11. THE TREATY OF LISBON

The Treaty of Lisbon was signed by all EU Member States on 13 December 2007 and came into force on 1 December 2009. It restructured asylum regulations under the "Area of Freedom, Security and Justice," which is the fifth title in the TFEU. [72] Articles 67(2) and 78 of the TFEU serve as the foundational legal bases for the CEAS. These regulations aim to surpass the minimum standards of the asylum system, ensuring the rights of asylum seekers are better

[68] Şimşek, D., (2017), "*EU Asylum Policy and Applicant States in the Context of EU Enlargement Policy."* Retrieved from https://dergipark.org.tr/tr/download/article-file/599141
[69] European Council. (2010). *"The Stockholm Programme – An open and secure Europe serving and protecting citizens."* Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52010XG0504(01)
[70] European Border and Coast Guard Agency, (2004), "FRONTEX" https://frontex.europa.eu/
[71] Şimşek, D., (2017), *"EU Asylum Policy and Applicant States in the Context of EU Enlargement Policy." Retrieved* from https://dergipark.org.tr/tr/download/article-file/599141
[72] European Union, (2007), *"Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community."* Signed at Lisbon on 13 December 2007. Official Journal of the European Union, C 306, 17.12.2007

protected. Additionally, the Treaty of Lisbon expanded the jurisdiction of the CJEU to cover the CEAS. [73]

The Union's objective is to develop a unified policy on asylum rights, subsidiary protection, and the principles of non-refoulement, aligning with the 1951 Geneva Convention and the 1967 Additional Protocol. Article 78 of the TFEU outlines the measures the European Parliament and the Council should take to achieve the CEAS. Article 80 of the TFEU underscores the principle of solidarity and equitable responsibility-sharing among Member States, mandating appropriate measures to implement this principle. Unlike the Amsterdam Treaty, which provided a five-year transition period for implementing such measures, the TFEU does not specify a time limit, allowing for more flexible and immediate application of these principles.

1.2.12. CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (CFR)

The CFR enshrines certain political, social, and economic rights for EU citizens and residents into EU law. It was drafted by the European Convention and solemnly proclaimed on 7 December 2000 by the European Parliament, the Council of Ministers and the European Commission. However, its legal status was uncertain and it did not have full legal effect until the entry into force of the Treaty of Lisbon on 1 December 2009.[74]

Article 18 of the CFR governs the right to asylum. Article 53 of the CFR stipulates that the rights outlined in the CFR cannot be interpreted in a way that undermines or restricts international law, Union law, ECHR provisions, or the rights established by agreements involving the Union or its Member States. The CFR prohibits the mass deportation of asylum seekers and includes the principle of non-refoulement, which is regulated without any conditions or exceptions.

The CFR also includes the right to effective judicial protection in Article 47, which is directly effective[75] Article 47 of the CFR guarantees the right to an effective remedy and to a fair trial. This provision is crucial as it ensures that individuals have the ability to seek redress in case of violations of their rights. The Article reads:

"Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time

[73] Kaunert, C. ve Leonard, S., (2012), *"The European Union Asylum Policy After the Treaty of Lisbon and the Stockholm Programme: Towards Supranational Governance in a Common Area of Protection?",* Refugee Survey Quarterly, 31(4), p.16.
[74] European Union, (2012), *"Charter of Fundamental Rights of the European Union",* Official Journal of the European Union, C 326, 26.10.2012, "https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT."
[75] CJEU (2018). *"Vera Egenberger v. Evangelisches Werk für Diakonie und Entwicklung e.V.",* Case C-414/16, 17 April 2018.

by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice." [76]

The right to effective judicial protection is considered directly effective, meaning that individuals can invoke this right before national courts even in the absence of specific implementing legislation by member states. This direct effect underscores the importance of judicial protection within the EU legal framework and reinforces the principle of the rule of law.

The CJEU has consistently affirmed the direct effect of Article 47. In the case of *Unibet (London) Ltd and Unibet (International) Ltd v Justitiekanslern*, the CJEU emphasized that the right to an effective remedy constitutes a general principle of EU law and is binding on Member States.[77] The Court further clarified that this principle requires national courts to ensure that individuals can exercise their rights effectively, and if necessary, provide for procedural guarantees that facilitate access to justice. Moreover, Article 47 incorporates aspects of Articles 6 and 13 of the ECHR, which pertain to the right to a fair trial and the right to an effective remedy, respectively. This alignment with the ECHR strengthens the protective framework for individuals within the EU and harmonizes the Union's legal standards with those of the Council of Europe. [78]

In conclusion, Article 47 of the CFR plays a pivotal role in ensuring that individuals have access to effective judicial protection. Its direct effect empowers individuals to seek remedies directly before national courts, thereby reinforcing the rule of law and the protection of fundamental rights within the EU.

1.2.13. DUBLIN III REGULATION

The Dublin III Regulation, which came into force in 2013, reformed the Dublin Convention signed in 1990 and the Dublin II Regulation signed in 2003.[79] The Dublin III Regulation

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[76] European Union, (2012), *"Consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union"* Article 47 Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT

[77]CJEU, (2007), *"Unibet (London) Ltd and Unibet (International) Ltd v Justitiekanslern",* Case C-432/05. Available at: https://curia.europa.eu/juris/liste.jsf?language=en&num=C-432/05

[78] FRA, (2021), *"Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level"* Retrieved from: https://fra.europa.eu/en/publication/2021/applying-charter-fundamental-rights-european-union-law-and-policymaking-national

[79] European Union, (2013), *"Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)."* Official Journal of the European Union, L 180, 29.6.2013, p. 31-59. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0604.

determines the criteria and mechanisms for determining the Member State responsible for an asylum application made by a third-country national or stateless person for international protection in one of the Member States. It tries to afford applicants better protection until their status is established. It also emphasizes its aim to create a new system for detecting early problems in national asylum or reception systems and tackling their root causes before they develop into full-blown crises.

The Dublin III Regulation foresees the distribution of responsibilities among Member States in examining international protection applications. It makes arrangements to assign responsibility for examining the applications of people who go to another member state after submitting their application in one EU Member State. According to the different criteria listed in the Dublin III Regulation, the state that approves the applicant's entry into the common area of the Member States is determined as the state responsible for assessing the application. In order to determine from which country the applicant entered the common area, fingerprints are taken at the border and recorded in the EURODAC database. Thus, a practical method has been determined for the country in question to be identified and to assume responsibility. It has been stated that if no member state can be appointed on the basis of the criteria listed in Article 3 of the Regulation, the first Member State to which the international protection application is made will be responsible for the examination.[80] Chapter 3 of the Regulation includes the criteria for determining the responsible member state.[81]

Within the framework of EU law, the Dublin III Regulation provides time frames for states to respond to requests to take responsibility for asylum seekers. However, it requires the Member State to ensure the confidentiality of personal information before transferring the applicant to another country and to inform the person about the Dublin III Regulation, the planned transfer, and the available legal remedies. [82] Article 20 specifies that the decision-making process of the responsible state begins when an application form for international protection is filed in one of the Member States. An application is considered made once the form submitted by the applicant or a report prepared by the authorities reaches the competent authorities of the relevant Member State. Additionally, if a Member State receiving an application believes another Member State is responsible for examining it, it may request the relevant state to assume responsibility for the applicant within three months from the application submission date.[83]

[80] Regulation (EU) No. 604/2013, 2013, Art. 3(2)
[81] Regulation (EU) No. 604/2013, 2013, Chap. III
[82] Regulation (EU) No. 604/2013, 2013, Art. 26
[83] Regulation (EU) No. 604/2013, 2013, Art. 20(2)

If the responsibility for receiving the application is not assumed, then the first Member State to which the application was made will be responsible. Additionally, the Member State requesting to examine the application may request an urgent response after the international protection application has been rejected. A response is expected within at least a week. The requested Member State shall decide on the request to take charge of the applicant after the necessary checks have been carried out and within two months of receiving the request.[84] It is also stated that member states must provide information to the European Asylum Agency on the number of third-country nationals effectively resettled on a weekly basis.[85]

Article 27 states that Member States will provide a reasonable period in which the relevant person can exercise his or her right to an effective application. They will conduct appeals and reviews against transfer decisions by their own domestic law. The relevant person has the right to stay in that Member State during the appeal and review period until the result is announced. The applicant will also receive legal support and the Member State should provide access to interpreter support.[86] Article 28 stipulates that no person who is subject to the asylum application procedure and only seeks international protection can be detained. In cases where Member States see a serious risk of the person escaping, they may detain the person concerned on the basis of an individual assessment in order to secure transfer procedures. Detention shall be as brief as possible and shall be completed within a reasonable period of time to carry out the necessary administrative procedures with due diligence until the transfer is effected in accordance with these Regulations. According to this article, if a person is detained in custody, the transfer of that person from the requesting Member State to the responsible Member State shall be carried out as soon as possible and within 6 months at the latest.[87]

Transfer procedures are specified in Article 29. Accordingly, the transfer of the applicant or any other person as referred to in Article 18 (1) (c) or (d) to the requesting Member State shall be carried out in accordance with national law. The Member State may, as soon as possible and within six months at the latest, indicate that it is suspending the request of another Member State to request or accept the appeal and review decision against the person concerned. If the transfer is not made within six months, the responsible Member State is relieved of its obligation to take back the person concerned and competence is transferred to the Member State claiming responsibility. The limit may be extended by up to one period if the transfer cannot be effected due to the incarceration of the person concerned. It is ensured that transfers to the responsible Member State are made in a manner befitting fundamental rights and human dignity.

[84] Regulation (EU) No. 604/2013, 2013, Art. 22
[85] Regulation (EU) No. 604/2013, 2013, Art. 12(4)
[86] Regulation (EU) No. 604/2013, 2013, Art. 27
[87] Regulation (EU) No. 604/2013, 2013, Art. 28

Additionally, the applicant has the right to object to the transfer decision and apply for a stay of the transfer. [88] Article 34 of the Regulation states that the applicant's personal information, such as family members, place of residence, travel destinations, identity and travel documents, visa, and place of application will be shared between Member States. It has been explained that the information shared will be used to determine the responsible Member State, examine the international protection application and implement any obligations that may arise by this Regulation.[89] The principle of solidarity is integral to secondary legislation, particularly highlighted in the Preamble (8) of the Dublin III Regulation. It emphasizes that Member States should cooperate in a spirit of solidarity to equitably share the responsibilities related to the entry and residence conditions of third-country nationals.[90]

The Dublin system is the cornerstone of CEAS in ensuring that the applicant has rapid access to asylum procedures and in identifying strategies that do not encourage multiple applications. It was emphasized that it would provide efficiency to the asylum system and reduce the total cost by preventing the misuse of applications.

1.2.14. REFORMS OF CEAS

After uncontrolled migrants and asylum seekers arrived in Europe in 2015, the Commission issued its communication in 2016.[91] The Commission analyzes the strain that came upon the system of the countries at the external borders that had to deal with many applications. The Dublin Regulation is checked on the sustainability of the CEAS as well as the sharing of responsibility for asylum seekers across the EU. The Commission therefore proposes that the underlining principle of the Dublin III Regulation to ensure quick access to an asylum procedure by asylum seekers and its subsequent examination by single clearly determined Member State remain in force in the new proposal. Moreover, the proposal seeks to improve the system with a corrective allocation mechanism for a fair sharing responsibility.

The proposal is aimed at addressing the inherent deficiencies of the EU asylum system. Five priority areas have been identified for structural improvement. They include establishing a sustainable and fair system for determining the Member State responsible for asylum seekers,

[88] Regulation (EU) No. 604/2013, 2013, Art. 29
[89] Regulation (EU) No. 604/2013, 2013, Art. 34
[90] Lang IG, (2018) "The EU Financial and Migration Crises: Two Crises – Many Facets of EU Solidarity" Solidarity in EU Law 133.
[91] European Commission, (2016) *"270 final/2 Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, EUR-Lex.* https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0270(01)

reinforcing the EURODAC system,[92] achieving greater convergence in the EU asylum system, preventing secondary movements within the EU and a new mandate for the EU's Asylum Agency. The proposal seeks for the adoption of new Regulations establishing a single asylum procedure in the EU to repeal the 2013 revised Asylum Procedures Directive[93]. Additionally, a new Qualification Regulation has been proposed replacing the Qualification Directive[94] as well as an attempt to modify the Reception Condition Directive.[95]

A second proposal set was made in 2016 regarding "*regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted."*[96] The Regulation should ensure stricter rules against secondary movement of asylum seekers where the long-term residence status of an asylum beneficiary for a five-year waiting period will be triggered when found in a different country other than the member state the asylum seeker has the right to reside. In the same way, it will enhance convergence of recognition rate and the form of protection aid to strengthen incentives for integration for refugees.

The Commission submitted an amended proposal for a Regulation on a European Union Agency for Asylum on 12th September 2018.[97] According to the Commission this proposal focuses on the provisions concerning the operational and technical assistance to ensure that, at the request of the Member State, the Agency will be able to provide support to the fullest extent possible by carrying out the entire administrative procedure for international protection or parts of it, by assisting with or carrying out the procedure for determining the Member State responsible to examine an application for international protection and by assisting courts or tribunals with the handling of appeals, without prejudice to the competence of Member States

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[92] European Commission, (2016), *"Proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [the Dublin Regulation] and for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast)."* COM(2016) 272 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:272:FIN

[93] European Commission, (2016), *"Proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU"* COM (2016) 270 final/2.

[94] European Commission, (2016), *"Proposal for a regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, and repealing Directive 2011/95/EU"* COM (2016) 466 final.

[95] European Commission, (2016), *"Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast).",* COM(2016) 465 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2016:465:FIN

[96]European Union, (2011), *"Regulation (EU) No. 439/2010 of the European Parliament and of the Council of 19 May 2010 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted"* Official Journal of the European Union, L 132, 29.5.2010, p. 1-31. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010R0439.

[97] European Commission, (2018), *"Proposal for a Regulation of the European Parliament and of the Council on a European Union Agency for Asylum and repealing Regulation (EU)"* No 439/2010. COM(2018) 633 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2018:633:FIN

to take decisions on individual applications and with full respect for the organisation of the judiciary in each Member State as well as judicial independence and impartiality.[98]

These Proposals aim to reform the EU's asylum system by introducing new regulations that establish a unified Common Asylum Procedure across the EU. This proposal seeks to repeal the 2013 revised Asylum Procedures Directive, thereby streamlining and standardizing asylum processes throughout Member States. The primary objectives are to enhance the efficiency, fairness, and consistency of asylum procedures, ensuring that asylum seekers are treated uniformly regardless of the Member State in which they apply.

Additionally, the proposal includes the introduction of a new Qualification Regulation to replace the current Qualification Directive. The Qualification Regulation aims to harmonize the criteria for providing international protection status, ensuring that asylum seekers have the same chances of receiving protection regardless of where they apply within the EU. This change is intended to reduce disparities in asylum decisions across Member States and enhance legal certainty for both applicants and authorities. Moreover, there is an effort to amend the Reception Conditions Directive. The proposed modifications focus on improving the standards of living conditions for asylum seekers, ensuring they have access to adequate housing, healthcare, and education while their applications are being processed. The amendments also aim to prevent secondary movements of asylum seekers within the EU by creating more uniform reception conditions across member states.

These reforms are part of a broader strategy to build a more cohesive and efficient CEAS, addressing existing gaps and inconsistencies, and reinforcing the EU's commitment to protecting those in need of international protection while managing migration effectively and fairly. The proposed reforms under Communication[99] aimed to establish a single Common Asylum Procedure, replace the Qualification Directive with a new Qualification Regulation, and modify the Reception Conditions Directive. These reforms intended to streamline and harmonize the EU asylum process, ensuring more efficient and fair management of asylum applications, reducing secondary movements, and preventing abuse of the system.

Despite these efforts, the adoption of these reforms has faced significant delays and challenges. Divergent views among Member States on the extent of necessary reforms and the principle of solidarity have contributed to the slow progress. The proposed changes to the Dublin Regulation, Eurodac system, and the establishment of the European Union Agency for Asylum have been part of a broader effort to address the weaknesses exposed by the refugee

[98] Janderova, Jana, (2018), *"Common European Asylum System Evolution and its Perspectives,"* p.5

[99] European Commission, (2016), COM (2016) 270 final/2. *"Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration"* Brussels.

crisis and ensure a more equitable distribution of asylum responsibilities across the EU. As of now, the full implementation of these reforms remains an ongoing process, with some measures still under negotiation and requiring further consensus among EU Member States to become fully operational.

1.2.15. THE NEW YORK DECLARATION FOR REFUGEES AND MIGRANTS

Global migration and refugee movements have become prominent issues in international relations, demanding coordinated responses and collaborative frameworks. The New York Declaration for Refugees and Migrants, adopted during the UN General Assembly's high-level plenary meeting, marks a pivotal moment in the global governance of migration. This Declaration reaffirms the commitment of Member States to protect the rights of refugees and migrants and outlines a roadmap for more equitable and predictable responses to displacement.[100]

In response to the growing refugee and migration crisis, the UN General Assembly organized a high-level summit to address the issue with a more humane and coordinated approach. This summit, known as the *"UN Summit for Refugees and Migrants"*[101] aimed to bring together Member States to develop collective strategies for managing large-scale movements of people more effectively. At the summit, representatives from 193 UN Member States convened and adopted the *"New York Declaration for Refugees and Migrants"* on September 19, 2016.

The New York Declaration is structured around several core commitments. The Declaration emphasizes the importance of upholding the human rights of all refugees and migrants, regardless of their status. This includes ensuring access to education, healthcare, and social services. The declaration calls for a fair and predictable burden-sharing mechanism, recognizing that no single country should bear a disproportionate burden of hosting refugees. The Declaration also pledges increased support to countries and communities hosting many refugees and migrants, recognizing their significant contributions and challenges.[102]

In the New York Declaration, states pledged to ensure that the burden and responsibility of hosting and supporting the world's refugees are shared more equitably. This commitment led

[100] United Nations General Assembly, (2016), *"The New York Declaration for Refugees and Migrants"* Retrieved from https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf
[101] United Nations General Assembly, (2016), *"UN Summit for Refugees and Migrants"* Retrieved from https://www.un.org/en/ga/71/meetings/refugeesmigrants/
[102] United Nations General Assembly, (2016), *"The New York Declaration for Refugees and Migrants"* Retrieved from https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf

to the development of two key frameworks. These are *"Global Compact for Safe, Orderly and Regular Migration (GCM)"*[103] which aims to address migration comprehensively and internationally, focusing on ensuring safe, orderly, and regular migration, and *"Global Compact on Refugees (GCR)"*[104] which is specifically designed to support countries hosting large numbers of refugees, seeks to establish an international system for burden-sharing. It aims to ease pressures on host countries, enhance refugee self-reliance, expand access to third-country solutions, and support conditions in countries of origin for safe and dignified returns.

Since its adoption, the New York Declaration has catalyzed significant actions and initiatives. GCR adopted in December 2018 seeks to ease the pressures on host countries, enhance refugee self-reliance, expand access to third-country solutions, and support conditions in countries of origin for safe return. GCM also adopted in December 2018 includes 23 objectives covering various aspects of migration, from ensuring migrants' rights to addressing the drivers of migration and enhancing migration governance.

The Declaration represents a significant step towards more equitable and coordinated global migration governance. While substantial progress has been made, ongoing efforts are needed to address the challenges and fully realize the Declaration's objectives. By fostering international cooperation, shared responsibility, and comprehensive responses, the global community can better manage migration and protect the rights and dignity of refugees and migrants.

1.2.15.1. THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION

The GCM is an intergovernmental agreement under the auspices of the UN, adopted in December 2018. It represents a comprehensive framework for international cooperation on migration, addressing the multifaceted aspects of migration and promoting a shared responsibility approach. The GCM comprises 23 objectives, each with specific commitments and actions. The GCM is monitored and reviewed through the International Migration Review Forum (IMRF), which is a primary intergovernmental platform for discussing and assessing the progress of the GCM. The IMRF convenes every four years, with the participation of relevant stakeholders to review and share progress on the implementation of the GCM.[105]

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[103] United Nations General Assembly, (2018), *"Global Compact for Safe, Orderly and Regular Migration (GCM)"* https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195

[104] United Nations General Assembly, (2018), *"Global Compact on Refugees (GCR)"* https://www.unhcr.org/gcr/GCR_English.pdf

[105] United Nations Network on Migration, (2022), "*International Migration Review Forum 2022*" Retrieved from https://migrationnetwork.un.org

The Compact emphasizes the rights of migrants regardless of their legal status. However, the Compact is not legally binding, which addresses concerns from states about being compelled to follow specific directives. States are only required to monitor the implementation of the Compact through the Global Migration Monitoring Forum (CGMMF). The non-binding nature can be a major limitation because States often prioritize their national interests, including security, economic concerns, and foreign relations, which can conflict with international cooperation efforts.[106] Disagreements among states on responsibilities towards asylum seekers, migration control, and readmission policies lead to conflicts and hinder effective implementation.[107]

Despite States being reluctant to cede any control over their borders or to make further international commitments, viewing border control as a core aspect of their sovereignty, the Compact's cooperation mechanisms foster collaboration among states and other actors.[108] And, It provide a platform for future studies and initiatives that can build on the current framework. With broad support from states, the Compact has the potential to pave the way for more binding international agreements in the future.

The Global Compact for Migration represents a significant step towards international cooperation on migration issues. Although, its non-binding nature and the tension between national interests and international cooperation pose challenges to its effectiveness, the Compact provides a foundation for future efforts and emphasizes the need for a collaborative approach to manage migration globally. Its success will largely depend on the commitment and actions of individual states.[109]

1.2.15.2. GLOBAL COMPACT ON REFUGEES

The GCR, adopted by the UN General Assembly in December 2018, is a framework designed to improve the international response to refugee situations. It aims to provide more robust support to refugees and the countries that host them, emphasizing solidarity, responsibility-sharing, and comprehensive solutions.

The GCR aims to ease pressures on host countries, enhance refugee self-reliance, expand access to third-country solutions, support conditions in countries of origin for return in

[106] International Organization for Migration, (2023), "*World Migration Report 2024*" Retrieved from https://worldmigrationreport.iom.int

[107] United Nations, (2018), "*General Assembly endorses first-ever Global Compact on Migration, urging cooperation among Member States in protecting migrants*" Retrieved from https://press.un.org/en/2018/ga12113.doc.htm

[108] Office of the High Commissioner for Human Rights (OHCHR), "*Global Compact for Safe, Orderly and Regular Migration*" Retrieved from https://www.ohchr.org/en/global-compact-safe-orderly-and-regular-migration

[109] Yılmaz Eren, E. (2021). "Güvenli, Sistemli ve Düzenli Göç İçin Küresel Mutabakat" Üzerine Bir Değerlendirme. *TAÜHFD/ZtdR*, 3(1), p.67.

safety and dignity. The GCR reaffirms the importance of protecting the human rights of refugees, including access to education, healthcare, and legal employment. Emphasizing the need for international solidarity, the GCR calls for a fair and predictable distribution of responsibilities among states.[110] It also underscores that repatriation of refugees should be voluntary, safe, and dignified. It declares to advocate for the inclusion of refugees in national systems and development plans, promoting their self-reliance and contribution to host communities.[111]

Comprehensive Refugee Response Framework (CRRF)[112] is a central element of the GCR, aiming to provide a systematic and coordinated response to refugee situations. It involves a wide range of stakeholders, including governments, international organizations, civil society, and the private sector. The GCR also encourages the development of national and regional frameworks tailored to specific contexts, ensuring that responses are effective and context-appropriate. On the other hand, held every four years, the Global Refugee Forum[113] is a platform for stakeholders to make concrete pledges and contributions, share best practices, and review progress towards the objectives of the GCR.

Despite the broad commitments articulated in the GCR, the document notably lacks specific provisions addressing some of the fundamental rights and issues faced by refugees such as Non-Penalization for Illegal Entry, Detention, Right to Work. The absence of these provisions suggests a deliberate avoidance of a rights-based approach, instead emphasizing state initiative and discretion. The non-binding nature of the GCR reflects a pragmatic approach, recognizing the reluctance of states to assume new binding responsibilities.[114] Since the 1951 Geneva Convention, the international refugee regime has lacked a binding mechanism for burden-sharing. Although, the GCR was seen as an opportunity to address this normative gap, it provides merely a flexible framework for cooperation, causing states to determine their contributions based on their circumstances. The pragmatic approach taken by the GCR, emphasizing flexibility and voluntary cooperation, reflects the current geopolitical realities and the reluctance of states to commit to binding obligations.[115]

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[110] Yılmaz Eren, E. (2022). *"Can the Global Compact on Refugees Provide Durable Solutions for Syrians in Turkey?"* Public and Private International Law Bulletin, 42(2), p.793. https://doi.org/10.26650/ppil.2022.42.2.1084338

[111] United Nations High Commissioner for Refugees. (2021). UNHCR, 'Global Compact on Refugees Indicators Report 2021'. https://www.unhcr.org/indicators-report

[112] United Nations General Assembly & United Nations High Commissioner for Refugees, (2016), *"Comprehensive Refugee Response Framework (CRRF)"* https://www.unhcr.org/en-us/crrf.html

[113] United Nations General Assembly, (2019), *"Global Refugee Forum: Summary of pledges and contributions made."* Retrieved from https://www.unhcr.org/global-refugee-forum.html

[114] International Organization for Migration, (2018), *"Global Compact for Migration"* Retrieved from https://www.iom.int/global-compact-migration

[115] Refugees and Migrants, (2018), *"Global Compact for Migration"* Retrieved from https://refugeesmigrants.un.org/global-compact-migration

Despite these challenges, the GCM fosters collaboration among states and other actors, providing a platform for future studies and initiatives that can build on the current framework. With broad support, it has the potential to pave the way for more binding international agreements in the future.

1.2.16. PACT ON MIGRATION AND ASYLUM

The European Commission proposed a new Pact on Migration and Asylum on September 23, 2020, aiming to overhaul the EU's approach to migration with a focus on fair sharing of responsibility and solidarity among Member States.[116] After three years of negotiations, a political agreement on key issues of the Pact was reached between the Council and European Parliament on December 20, 2023, though technical discussions and formal adoption processes are ongoing.[117]

The Pact introduces changes to enhance solidarity through a structured and flexible mechanism based on various contributions, including relocation of asylum-seekers and support for returns or capacity-building in Member States facing migratory pressures. It proposes assessing migratory pressure based on factors like asylum applications, search and rescue cases, and geopolitical cooperation with non-EU countries. Member States are expected to ease pressure through relocation, prioritizing unaccompanied minors, or assisting with returns, with contributions determined by a formula considering population size and GDP. The proposal also includes mechanisms for search and rescue operations and vulnerable individuals, relying on voluntary contributions and addressing shortfalls through mandatory actions if necessary. The Pact does not include specific crisis management mechanisms but integrates crisis and force majeure proposals separately to handle mass influx situations.[118] Negotiations during the French Presidency in 2022 and subsequent proposals under the Czech Presidency aimed to finalize these reforms by early 2024, emphasizing predictability and flexibility in solidarity measures. [119]

The Pact on Migration outlines a multifaceted approach to address key challenges and opportunities within the EU's migration framework. The first pillar focuses on enhancing trust

[116] European Commission, (2020a), "*A New Pact on Migration and Asylum for Europe: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*" COM(2020) 609 final. Brussels.
[117]European Commission, (2020b), "*A New Pact on Migration and Asylum for Europe: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Annex 1*." COM(2020) 609 final. Brussels.
[118] European Commission, (2020a), COM(2020) 609 final. Brussels.
[119] Del Monte, M., & Orav, A. (2023). *"Solidarity in EU asylum policy"* European Parliamentary Research Service, Members' Research Service. PE 649.344. Retrieved from https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649344/EPRS_BRI(2020)649344_EN.pdf

through more efficient procedures, including the introduction of integrated border screening at EU external borders, encompassing health and security checks, fingerprinting, and registration in the Eurodac database.[120] Following the screening, individuals will be directed to the appropriate procedure, whether it be a border procedure for certain categories of applicants or a standard asylum procedure. This initiative aims to streamline asylum and return decisions swiftly, supported by upgraded digital infrastructure and enhanced monitoring by EU agencies.[121] The second pillar emphasizes fair sharing of responsibility and solidarity among Member States, ensuring all contribute to managing migration pressures and meeting humanitarian obligations through flexible and mandatory support mechanisms.[122]

The Pact also advocates for a paradigm shift in cooperation with non-EU countries to tackle migration issues collaboratively, while proposing a comprehensive approach to improve EU migration governance, strengthen external borders, enhance legal migration pathways, and foster integration across European societies and economies.[123]

On the other hand, human rights organizations highlight that the new legislation risks undermining fundamental rights and protections for asylum seekers, potentially increasing the use of deterrence and exclusion policies that force more people onto dangerous migration routes.[124] The International Rescue Committee (IRC) has called for stronger humanitarian leadership to ensure that the implementation of the Pact does not erode protections for those seeking safety in the EU. According to the Euronews report, it is argued that the legislation will worsen the consequences of Europe's current handling of illegal immigration, which they describe as ill-functioning, costly, and cruel.[125] Moreover, there are concerns about the effectiveness of the solidarity mechanism proposed in the Pact. Critics argue that the mechanism may not sufficiently relieve the pressure on frontline states or ensure fair burden-sharing among EU member states. The distribution formula based on population size and GDP is also seen as potentially inadequate in addressing the diverse capacities and challenges of member states.[126] Although the criticism focuses on the need for a more humane, effective, and

[120] European Commission, (2020a), COM(2020) 609 final. Brussels.
[121] European Commission, (2020a), COM(2020) 609 final. Brussels.
[122] European Commission. (2020b). COM(2020) 609 final. Brussels.
[123] European Commission, (2020c), "*A New Pact on Migration and Asylum for Europe: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Annex 2*." COM(2020) 609 final. Brussels.
[124] International Rescue Committee (IRC), (2023), *"IRC Responds to EU Migration Pact: Humanitarian Leadership Urgently Needed to Ensure Humane Solutions"* Retrieved from https://www.rescue.org/press-release/irc-responds-eu-migration-pact-humanitarian-leadership-urgently-needed-ensure-humane
[125] Euronews. (2023). *"'An ill-functioning, costly and cruel system': NGOs condemn EU's new legislation on migration"* Retrieved from https://www.euronews.com/2023/12/18/ngos-condemn-eu-new-legislation-on-migration
[126] European Union Agency for Fundamental Rights (FRA), (2023), *"Opinion of the European Union Agency for Fundamental Rights on the new Pact on Migration and Asylum"* Retrieved from https://fra.europa.eu/en/opinion/2023/new-pact-migration-and-asylum

rights-based approach to migration management in the EU, the New Pact is essential to demonstrate the EU's intent to find a solution to establish a reliable asylum policy.

In conclusion, the EU is conscious of the necessity of permanent solutions and the need to put in place a reliable asylum policy. With the new Pact on Migration and Asylum, the Commission aims to wipe out the concerns about the safety of people who seek international protection or a better life, the concerns of countries at the EU's external borders, which worry that migratory pressures will exceed their capacities and which need solidarity from others or the concerns of other EU Member States, which are concerned that, if procedures are not respected at the external borders, their own national systems for asylum, integration or return will not be able to cope in the event of large flows. Therefore, the Commission proposed to improve the overall system including cooperation with the countries of origin and transit, ensuring effective procedures, successful integration of refugees and return of those with no right to stay.

1.3.CONCLUSION

The EU has faced significant challenges in managing asylum seekers, particularly during periods of mass migration. The CEAS was created to establish common standards for asylum across the EU, ensuring that asylum seekers are treated fairly and their rights are respected. [127] Despite its objectives, the CEAS faces several challenges. Significant differences exist in how Member States implement the CEAS, leading to varying protection and reception conditions. The Dublin Regulation has been criticized for placing a disproportionate burden on frontline states like Greece and Italy, leading to issues of fairness and efficiency.[128] The 2015 migration crisis highlighted the limitations of the CEAS, as Member States struggled to cope with the influx of asylum seekers. Reports of inadequate reception conditions and prolonged detention have raised concerns about the protection of asylum seekers' rights within the CEAS.[129] The influx of refugees and migrants, particularly from Syria, Afghanistan, and Iraq, has exposed weaknesses in the system and prompted calls for reform. The EU has responded with measures

[127] European Commission, (2020), *"Common European Asylum System"* Retrieved from https://home-affairs.ec.europa.eu/what-we-do/policies/asylum_en

[128] Thielemann, E. R., (2018), *"Why refugee burden-sharing initiatives fail: Public goods, free-riding and symbolic solidarity in the EU"* Journal of Common Market Studies*, 56*(1), 63-82.

[129] Guild, E., Costello, C., & Moreno-Lax, V., (2017), *"The 2015 Refugee Crisis in the European Union*" *Journal of Common Market Studies, 55*(6), 1178-1192.

such as the EU-Turkey Statement[130] and relocation schemes, but these have been met with mixed success and criticism.[131]

The CEAS represents a significant effort to create a coherent and fair asylum system within the EU. However, it faces ongoing challenges that require concerted efforts and reforms. By addressing disparities in standards, enhancing solidarity, and improving asylum procedures, the EU can better respond to the needs of asylum seekers and uphold its commitment to human rights and international protection. To address the challenges facing the CEAS, the EU needs an enhanced solidarity and burden-sharing policy implementing fairer mechanisms for distributing asylum seekers across Member States. It is very essential to ensure the consistent application of CEAS standards to reduce disparities in treatment and protection and improve the efficiency and fairness of asylum procedures to reduce backlogs and ensure timely decisions. A well-functioning solidarity mechanism to meet the needs of asylum seekers is going to be an important attempt to manage the current crisis.[132]

[130] European Council, (2016), "*EU-Turkey statement: 18 March 2016*" Retrieved from https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement

[131] European Union Agency for Fundamental Rights, (2019), *"Migration: Key fundamental rights concerns"* Retrieved from https://fra.europa.eu/en/publication/2019/migration-key-fundamental-rights-concerns

[132] Hailbronner, K., (2016), *"Detention of asylum seekers"* International Journal of Refugee Law, 28*(1),* 21-45.

2. THE CONTEXT OF THE PRINCIPLE OF SOLIDARITY

The concept of solidarity, multifaceted and interdisciplinary, can be examined from various perspectives within the EU as a supranational entity. While its sociological foundations, human rights emphasis, and ethical principles align with EU core values, European integration faces scrutiny during economic, social, and political turmoil. The EU's commitment to human rights and ethical standards resonates with the solidarity notion, emphasizing cooperation and shared responsibility. However, European integration's fragility becomes apparent during crises, with economic disparities, social inequality, and divergent political interests among member states potentially undermining solidarity efforts. Economic downturns, migration crises, and political tensions highlight the complexities of balancing national interests with the EU's collective goals.

Despite these challenges, solidarity remains integral to the EU's identity and objectives. Initiatives such as social cohesion programs, economic solidarity mechanisms, and political dialogue underscore the EU's commitment to overcoming differences and promoting unity among its Member States. International solidarity serves as a guiding principle for global cooperation, justice, and human rights, emphasizing collective action and mutual support in addressing shared challenges and advancing common goals. While the EU espouses solidarity principles, their practical application faces obstacles, particularly in times of crisis. Addressing underlying disparities and fostering a sense of shared responsibility among member states is crucial for maintaining the relevance and effectiveness of European integration.

In this section, the solidarity principle will be examined in primary and secondary EU and CJEU jurisprudence in order to understand the perspective of EU law. Then, solidarity and responsibility sharing in EU asylum policy will be examined from its main elements to the latest developments.

2.1. **THE PRINCIPLE OF SOLIDARITY IN EU LAW**

Solidarity is a foundational principle of EU law, reinforcing economic and social cohesion within the Union and serving various roles across different fields, from constitutional-institutional to more substantive functions. The principle of solidarity holds constitutional status in the Treaties and secondary law, and it is regarded as a fundamental EU value. Due to its significant presence in primary and secondary law, many scholars view solidarity as a legal

principle with normative effect, despite the ongoing debate about whether it should be defined as a general principle of EU law.[133]

Article 4(3) of the TEU places the EU and its Member States under an obligation of mutual support in carrying out tasks arising from the Treaties, taking necessary measures to fulfill Treaty obligations, and aiding in achieving the Union's objectives. This principle, known as sincere cooperation, applies across all policy domains, including asylum and immigration.[134]

However, the concept of "solidarity" lacks a consistent and singular definition within the EU legal framework. The term appears in various articles of the EU Treaties concerning values, principles, and diverse policy areas. Notably, references to solidarity can be found in Articles 2, 3.3(2), 21, 24.2, and 31 of the TEU, as well as in Articles 67(2), 80, 122(1), 194(1), and 222(1) of the TFEU.[135]

2.1.1. THE PRINCIPLE OF SOLIDARITY IN PRIMARY AND SECONDARY EU LAW

The principle of solidarity is deeply embedded within the legal framework of the EU, as evidenced by its inclusion in various articles and provisions across the Treaties and secondary legislation. In this regard, it is noted in its preamble[136] of the TUE the States Parties' desire [137] as *"to deepen the solidarity between their peoples while respecting their history, their culture and their traditions."*

The TEU enshrines the principle of solidarity as a value-laden general principle in the EU legal system along with pluralism, non-discrimination, tolerance, justice and equality between women and men prevail. In this regard, Article 2 of TEU states that *"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men* prevail." [138]

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[133] Klabbers, J., (2018), *"An Introduction to International Organizations Law"* Cambridge University Press. Thielemann, E. R., (2018), *"Why refugee burden-sharing initiatives fail: Public goods, free-riding and symbolic solidarity in the EU" Journal* of Common Market Studies, 56(1), 63-82.

[134] European Parliament, (2015), *"The principle of solidarity in EU law"* https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_STU%282015%29519425

[135] European Union. (2023). Consolidated version of the Treaty on the Functioning of the European Union. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E%2FTXT.

[136] Treaty on European Union (TEU), Preamble, Paragraph 6.

[137] European Union. (1992). *"Treaty on European Union (92/C 191/01)"* Official Journal of the European Communities. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A11992M%2FTXT

[138] European Union, (1992), (TEU), Article 2.

Article 2 and Article 3 of the TEU establish solidarity as a fundamental objective and value of the EU, emphasizing its importance in guiding EU actions and policies.[139] Article 21 TEU mandates Member States to act with loyalty and mutual solidarity in the realm of CFSP, highlighting the importance of unity and cooperation in addressing common foreign and security challenges.[140] Morover, the preamble of the Charter recognizes solidarity as one of the Union's foundational and universal values, underscoring its significance in promoting social cohesion and collective well-being.[141] Chapter IV of the Charter, titled "Solidarity," further elaborates on the principles and rights related to solidarity, emphasizing its role in promoting equality, social justice, and cooperation among EU citizens.[142]

Articles 67 and 80 of TFEU require solidarity in border checks, asylum, and immigration policies, highlighting the necessity of collective support and cooperation in managing migration and security challenges.[143] Article 67.2 of the TFEU specifically underscores solidarity as a guiding principle in the development of asylum, immigration, and external border control policies. Additionally, Article 80 of the TFEU establishes the principle of solidarity concerning asylum, migration, and border control. It stipulates that policies on asylum, migration, and border control, as well as their implementation, should be guided by the principle of solidarity and the fair sharing of responsibility, including financial aspects, among Member States. [144] The explicit inclusion of financial implications highlights the importance of sharing financial burdens, but it also suggests that other forms of solidarity are possible.

The Article 78 of the TFEU also mandates the establishment of CEAS based on solidarity.[145] This article outlines the Union's obligation to develop a uniform status of asylum and subsidiary protection for third-country nationals, and to promote a common system for temporary protection in the event of a mass influx of displaced persons. Article 79 of the TFEU addresses the development of a common immigration policy aimed at ensuring the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of illegal immigration and trafficking in human beings.[146] This article further emphasizes the importance of solidarity in managing immigration policies and calls for the fair sharing of responsibilities among Member States.

Moreover, the EU has established various policy documents and programs that emphasize the role of solidarity in migration and asylum policies. For example, the 1999

[139] European Union. (2012). TFEU. Article 3.
[140] European Union. (2012). TFEU. Article 21.
[141] EU Charter of Fundamental Rights, Preamble.
[142] EU Charter of Fundamental Rights, Title IV (Articles 27-38).
[143]European Union. (2012). TFEU. Articles 67, 80
[144] European Union. (2012). TFEU. Articles 80
[145] European Union. (2012). TFEU. Articles 78
[146] European Union. (2012). TFEU. Articles 78

Tampere European Council conclusions emphasized the need for a common EU asylum and migration policy based on solidarity.[147] The 2004 Hague Programme and the 2008 European Pact on Immigration and Asylum further reinforced the importance of solidarity in addressing migration challenges.[148] The 2010 Stockholm Programme also highlighted solidarity as a core principle in the EU's approach to asylum and migration.[149]

Providing financial assistance to countries hosting refugees is often viewed as the most convenient and common way, as well as the easiest form of sharing responsibility. Typically, developed nations contribute to the UNHCR to support overstretched host countries.[150] As for admitting refugees, there are various complementary pathways, including resettlement, humanitarian visas, work or study opportunities, visa exemptions for specific groups, temporary evacuation schemes, labor mobility programs, and family reunification.[151]

Articles 122 and 194 of the TFEU address solidarity in economic policy and energy, emphasizing the importance of mutual assistance and support among member states in times of economic crises or energy shortages. Article 222 of the TFEU pertains to security and disaster relief, underlining the obligation of member states to provide assistance and support to each other during crises.

Given its pervasive presence in primary and secondary EU law, solidarity is widely regarded as a legal principle with normative effect by many scholars and EU legal experts. Its inclusion across various legal instruments underscores its importance as a guiding principle in shaping EU policies and actions, particularly in fostering cooperation, mutual assistance, and social cohesion among member states and citizens.[152]

2.1.2. THE PRINCIPLE OF SOLIDARITY UNDER THE CJEU CASE LAW

The CJEU did not significantly contribute to defining the principle of solidarity for a long time. Although it occasionally referenced this principle in its rulings, the Court avoided

[147] European Council, (1999) *"Tampere European Council conclusions"* Retrieved from https://www.europarl.europa.eu/summits/tam_en.htm

[148] European Council, (2004), *"The Hague Programme: Strengthening freedom, security and justice in the European Union"* Retrieved from https://ec.europa.eu/commission/presscorner/detail/en/PRES_04_349 European Council, (2008), *"European Pact on Immigration and Asylum"* Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Al14572

[149] European Council, (2010), *"The Stockholm Programme – An open and secure Europe serving and protecting citizens"* Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52010XG0504(01)

[150] UNHCR, *"Financial support"*, Retrieved from https://www.unhcr.org/en-us/financial-support.html

[151] UNHCR, *"Complementary pathways for admission to third countries"* Retrieved from https://www.unhcr.org/en-us/complementary-pathways.html

[152] Küçük E, (2018*), "Solidarity in EU Law: an Elusive Political Statement or a Legal Principle with Substance?"* Solidarity in EU Law 39.

outlining it comprehensively, doing so only partially and on an ad hoc basis, typically in cases where state measures were found to contravene this principle.[153]

The CJEU did not rely on specific Treaty provisions to elaborate on the concept of solidarity. The notion first appeared in a case decided in December 1969[154], followed by 12 more cases until the adoption of the SEA in 1985. Solidarity was invoked across various domains such as value-added tax, UK accession, staff regulations, agriculture, and fisheries, among other areas deemed significant today. Despite this, references to solidarity in the Court's case law remained relatively rare after the SEA of 1987 and even after the Treaty of Maastricht, which came into effect in November 1993 and explicitly introduced EU citizenship. An increase in cases post the Treaty of Amsterdam, effective by late 1999, can be attributed to two factors. These are the acknowledgment of EU citizenship as requiring Member States to show a degree of solidarity to other Member States' citizens, and the elevated status of EU social policy through the 1993 protocol on social policy and the creation of an employment chapter in 1997, promoting reasoning involving social policy and solidarity to balance individual rights and internal market rules.

Similar to the European legislator, the CJEU has linked the principle of solidarity with the principle of sincere cooperation, referring to solidarity as the fundamental basis of the Community system.[155] Solidarity implies obligations that Member States must respect, which are especially clear in the areas of asylum, immigration, and border checks.[156] The CJEU explicitly referred to such primary and secondary law, clarifying the obligations of Member States arising from it[157]. The CJEU, in its judgement held that the principle of solidarity is the foundation on which the entire legal system of the Union rests.[158]

Advocate General Bot expressed that the requirement of solidarity remains at the heart of the process of integration pursued by the Treaty of Lisbon[159] and Advocate General Sharpston, in turn, considered that solidarity is the lifeblood of the EU. She stated that;

"Through their participation in that project and their citizenship of European Union, Member States and their nationals have obligations as well as benefits, duties as well as rights. Sharing in the European 'demos' is not a matter of looking through the Treaties and

[153] Dos Santos Soares, A. (2022). *"Building solidarity in the field of asylum: From an abstract principle to an effective policy?"* Jean Monnet Network on EU Law Enforcement Working Paper Series, No. 18/22
[154] CJEU (1969). Case 6/69, "*Commission v France".* Retrieved from EU:C:1969:68
[155] CJEU (1969). "Joined Case C-6/69 and C-11/69, Commission v France, ECLI:EU:C:1969:68. & CJEU. (1973). Case C-39/72, Commission v Italy", ECLI:EU:C:1973:13.
[156] Vanheule D, Selm Jvan and Boswell C, (2011) *"The Implementation of Art. 80 TFEU"* tech 5.p31, European Parliament
[157] Eglė Dagilytė, (2018) *"Solidarity: a General Principle of EU Law?"* Solidarity in EU Law 86.
[158] CJEU, (2020), C-848/19 P *, "Germany v. Poland"* ECLI:EU:C
[159] CJEU (2017). "Cases C-643/15 and C-647/15", *"Slovak Republic and Hungary v Council of the European Union",* ECR II-618, Opinion of AG Bot, para 19.

the secondary legislation to see what one can claim. It also requires one to shoulder collective responsibilities and (yes) burdens to further the common good."[160]

There is a common consensus in the political and judicial spheres despite the dissent in the academic debate. Advocate General Campos Sánchez-Bordona asserted that;

"between those who refuse to recognize solidarity as having the status of a legal principle (or, at least, as a general principle of law) and those who advocate its status as a constitutional or structural principle, or a general principle of law, closely linked to loyal cooperation, the features of which have been more clearly defined".[161]

The solidarity aims to uphold order and the very existence of the global community while striving to achieve collective objectives that necessitate international cooperation and collaborative efforts. With the evolution of the Internal Market, solidarity has gradually become ingrained in EU legislation, extensively addressed in both primary and secondary legal frameworks. The principle of solidarity is evident in the EU Treaties and the jurisprudence of the CJEU, serving as a means to advance common interests. Despite the widely recognized normative significance of solidarity, there remains ongoing debate as to whether it should be formally defined as a fundamental principle of EU law.[162]

The principle of solidarity and equitable sharing of responsibility fulfills several key roles within the EU. It assists in the interpretation of both primary and secondary legislation, helps in evaluating the legality of secondary legislation, and forms the foundation for holding Member States accountable. Recognizing solidarity as a legal and overarching principle of EU law elucidates its role in establishing obligations for both the Member States and the Union. These obligations are explicitly defined in Asylum Law through primary and secondary legislation as well as judicial decisions. Similarly, the case law of the CJEU demonstrates that Member States are required to act in solidarity within the Internal Market by following the principles of sincere cooperation and mutual recognition. Additionally, this principle mandates that Member States act in solidarity in areas such as security, energy, and disaster response.

Several landmark cases in EU law have significantly interpreted and applied the principle of solidarity. They span various areas such as asylum, economic policy, and Member State obligations, underscoring the principle's broad relevance.[163] Some of these cases are

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[160] CJEU. (2019). Case C-715/17, *"European Commission v Republic of Poland, Republic of Hungary and Czech Republic"*, ECR II-917, Opinion of AG Sharpston, para 253.
[161] CJEU (2019). Case C-848/19 P, *"Federal Republic of Germany v Republic of Poland*", ECR II-218, Opinion of AG Campos Sánchez-Bordona, para 64.
[162] Küçük E, (2018) *"Solidarity in EU Law: an Elusive Political Statement or a Legal Principle with Substance?"* Solidarity in EU Law 38.
[163] Schiek, D., (2020), "Solidarity in the case law of the European Court of Justice – opportunities missed?" In H. Krunke, H. Petersen, & I. Manners (Eds.), "*Transnational solidarity: concept, challenges and opportunities"* (pp. 252-300). Cambridge University Press. https://doi.org/10.1017/9781108766593.014

examined below for their illustrative value and diverse representation of how the principle of solidarity is applied in different contexts. The cases were identified based on their prominence in legal literature, academic discussions, and their substantial impact on the EU legal frame.

2.1.2.1. PRINGLE CASE

The Pringle case revolves around the legality of the European Stability Mechanism (ESM)[164] and its compatibility with EU law. The ESM was established as a permanent crisis resolution mechanism for countries in the Eurozone, providing financial assistance to Member States experiencing severe financial distress. The ESM treaty was signed by the Eurozone Member States in 2012. [165]

Thomas Pringle, an Irish Member of Parliament, challenged the validity of the ESM before the Irish Supreme Court, which then referred several questions to the CJEU. The questions focused on whether the establishment of the ESM was consistent with the EU Treaties, particularly in relation to TFEU and the principles governing economic and monetary union.[166]

The CJEU ruled that the establishment of the ESM was compatible with the EU Treaties. The Court found that the ESM does not violate Article 125 TFEU. The no-bailout clause prevents the Union and Member States from assuming the debts of another Member State. However, the ESM provides financial assistance in the form of loans under strict conditionality, not assuming debts, thus not violating the clause.[167] The Court clarified that Article 122(2) TFEU was not the legal basis for the ESM. This article allows the Council to provide financial assistance in exceptional circumstances, but the ESM operates under an intergovernmental agreement among the Eurozone Member States, not under the framework of Article 122(2).[168] The Court noted that the European Council's decision to amend Article 136 TFEU adding a new paragraph allowing the Eurozone countries to establish the ESM was lawful. This amendment clarified that Member States could set up a stability mechanism like the ESM.[169] The Court also found that the participation of the European Commission, the European Central Bank, and the Court of Auditors in the ESM's functioning was lawful. These institutions provide technical

[164] European Stability Mechanism, "*About us.*" Retrieved from https://www.esm.europa.eu/about-us
[165] CJEU, (2012), "*Thomas Pringle v. Government of Ireland, Ireland and the Attorney General*", Case C-370/12, ECLI:EU:C:2012:756.
[166] CJEU, (2012), *"Pringle v Government of Ireland"* Case C-370/12, ECLI:EU:C:2012:756
[167] Craig, P., & de Búrca, G. (2015), *"EU Law: Text, Cases, and Materials"* (6th ed.). Oxford University Press.
[168] European Commission, (2012), *"Economic and financial affairs"* Retrieved from https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/economic-and-monetary-union/financial-assistance/european-stability-mechanism-esm_en
[169] European Council, (2011), *"European Council Decision of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro*" Official Journal of the European Union, L 91/1.

support and ensure compliance with EU law, without compromising their roles under the EU Treaties.[170]

The Pringle case is very important decision that highlights the principle of solidarity. The ESM embodies the principle of solidarity by providing a safety net for Eurozone countries in financial distress. By facilitating financial assistance to Member States, the ESM promotes stability within the Eurozone, reflecting a collective commitment to mutual support.[171] The financial assistance provided by the ESM is contingent upon strict conditionality, ensuring that Member States undertake necessary economic reforms. This conditionality ensures that solidarity is paired with responsibility, maintaining the balance between support and fiscal discipline. [172] The establishment and functioning of the ESM through an intergovernmental treaty among Eurozone countries underscore the cooperative spirit essential to the principle of solidarity. The ESM is a result of joint efforts by Member States to safeguard the financial stability of the Eurozone as a whole. The involvement of EU institutions in the ESM framework highlights the interconnectedness of Member States and the EU's role in fostering solidarity. These institutions provide oversight and ensure that the assistance aligns with broader EU objectives and legal standards.[173] The Court's interpretation of the no-bailout clause[174] reflects an understanding of solidarity that does not contradict fiscal discipline. The ESM's design, providing loans under strict conditions rather than assuming debts, aligns with the principle of solidarity while respecting the constraints of the no-bailout clause.[175]

The Pringle case is pivotal in defining the legal boundaries and operational mechanisms of the ESM, reinforcing the principle of solidarity within the Eurozone. By upholding the ESM's legality, the CJEU underscored the importance of mutual support among Member States in maintaining financial stability. The ruling balances the need for solidarity with fiscal responsibility, ensuring that the assistance provided under the ESM is both supportive and conditional, fostering a sustainable and cooperative economic environment in the Eurozone.

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[170] De Witte, B., (2013), *"Using International Law in the Euro Crisis: Causes and Consequences"* ARENA Working Paper 4/2013. Retrieved from https://www.sv.uio.no/arena/english/research/publications/arena-working-papers/2013/wp4-13.pdf

[171] Chalmers, D., Davies, G., & Monti, G., (2019), *"European Union Law: Cases and Materials"* (4th ed.). Cambridge University Press.

[172] Pisani-Ferry, J., (2014), *"The Euro Crisis and Its Aftermath"* Oxford University Press.

[173] Fabbrini, F., (2014), *"Economic Governance in Europe: Comparative Paradoxes and Constitutional Challenges"* Oxford University Press., Louis, J.-V., (2010), *"The No-bailout Clause and Rescue Packages."* Common Market Law Review, 47(4), 971-986.

[174] European Union (2012), TFEU, Article 125

[175] Kilpatrick, C., (2012), *"Are the Bailouts Immune to EU Social Challenge Because They Are Not EU Law*?" European Constitutional Law Review, 8(3), 393-421.

2.1.2.2. CASE OF LAND OBERÖSTERREİCH V. ČEZ

The case of *Land Oberösterreich v. ČEZ* revolves around a dispute concerning the operation of the Temelín nuclear power plant in the Czech Republic, located near the Austrian border. The Land of Upper Austria (Land Oberösterreich) and several Austrian municipalities and individuals challenged the plant's operation, citing concerns about the potential environmental impact and radiation risks posed by the facility. They sought legal remedies, including the decommissioning of the plant, claiming it posed a threat to public health and the environment.[176]

The CJEU ruled that the Austrian courts did not have jurisdiction to demand the decommissioning of the Temelín nuclear power plant because it was located in the Czech Republic. The Court emphasized that national courts cannot exercise extraterritorial jurisdiction to impose measures on facilities situated in another Member State. The Court acknowledged the importance of environmental protection and public health. However, it noted that the regulation of nuclear safety falls primarily within the competence of the Member State where the facility is located, in this case, the Czech Republic, under the framework of the Euratom Treaty and relevant EU legislation.[177] The CJEU underscored the importance of solidarity and cooperation among Member States in addressing cross-border environmental and safety concerns. The Court highlighted that Member States should work together to ensure high safety standards for nuclear installations and protect public health and the environment.[178]

The principle of solidarity necessitates that Member States cooperate closely on issues with cross-border implications. In this case, the Court emphasized the need for Austria and the Czech Republic to collaborate on nuclear safety and environmental protection. Effective cooperation and communication are essential to address shared concerns and mitigate potential risks.[179] The ruling underscores mutual trust among Member States and respect for their respective competencies. While Austria had legitimate concerns about the environmental impact of the Temelín plant, the regulation of nuclear safety within the Czech Republic's territory remained under Czech jurisdiction. Solidarity requires respecting each Member State's authority while addressing shared challenges.[180]

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[176] CJEU, (2009), "*Judgment of the Court (First Chamber) of 27 October 2009. Land Oberösterreich v ČEZ, Case C-115/08*" Retrieved from https://curia.europa.eu/juris/document/document.jsf?docid=72850&doclang=EN

[177] Craig, P., & de Búrca, G., (2015), "*EU Law: Text, Cases, and Materials (6th ed.)"* Oxford University Press.

[178] Kilpatrick, C., (2012), *"Are the Bailouts Immune to EU Social Challenge Because They Are Not EU Law?"* European Constitutional Law Review, *8*(3), 393-421.

[179] Fabbrini, F., (2014), "*Economic Governance in Europe: Comparative Paradoxes and Constitutional Challenges*." Oxford University Press.

[180] Chalmers, D., Davies, G., & Monti, G., (2019), "*European Union Law: Cases and Materials* (4th ed.)" Cambridge University Press.

The principle of solidarity is reflected in the shared responsibility for environmental protection and public health across the EU. Member States are expected to uphold high safety and environmental standards, considering the potential cross-border effects of their actions. The Court's ruling implies that both the Czech Republic and Austria must work together to ensure that the operation of the Temelín plant does not compromise public health and the environment.[181] The case highlights the role of EU law in harmonizing standards and providing a framework for cooperation. The Euratom Treaty and relevant EU legislation establish common safety standards for nuclear installations, ensuring that all Member States adhere to stringent safety protocols. This legal framework facilitates solidarity by ensuring a consistent approach to nuclear safety and environmental protection across the EU.[182] The CJEU's decision reinforces the idea that disputes with cross-border implications should be resolved through established legal and institutional mechanisms. By ruling that Austrian courts lacked jurisdiction to impose measures on the Temelín plant, the Court emphasized the need for Member States to seek resolution through cooperative mechanisms rather than unilateral actions.[183]

The case underscores the importance of the principle of solidarity in managing cross-border environmental and safety issues within the EU. The CJEU's ruling emphasizes the need for Member States to cooperate and respect each other's competences while addressing shared challenges. The decision highlights the role of EU law in providing a framework for harmonized safety standards and cooperative dispute resolution. In essence, the case illustrates how solidarity and cooperation are fundamental to ensuring environmental protection, public health, and mutual trust among EU Member States.

2.1.2.3. OPAL CASE

The *Ostsee-Pipeline-Anbindungsleitung (OPAL)*[184] case highlights the relationship between national energy security perspectives of EU Member States and the application of EU energy and gas laws. On July 15, 2021, CJEU rejected Germany's appeal against a 2019 General Court decision, underscoring ongoing debates about the solidarity principle in EU energy decisions.[185]

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[181] Pisani-Ferry, J., (2014), "*The Euro Crisis and Its Aftermath*" Oxford University Press.
[182] De Witte, B., (2013), *"Using International Law in the Euro Crisis: Causes and Consequences"* ARENA Working Paper 4/2013. Retrieved from https://www.sv.uio.no/arena/english/research/publications/arena-working-papers/2013/wp4-13.pdf
[183] Louis, J.-V., (2010), *"The No-bailout Clause and Rescue Packages"* Common Market Law Review, *47*(4), 971-986.
[184] European Court of Justice, Case C-848/19 P: "Germany v Poland", ECLI:EU:C:2021:598.
[185] CJEU, (2021), "*Judgment of the Court (First Chamber) of 15 July 2021. Germany v European Commission, Case C-848/19 P.*" Retrieved from https://curia.europa.eu/juris/document/document.jsf?text=&docid=244207&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=348194

The 2019 General Court judgement emphasized the importance of solidarity in energy policy. The judgement suggested that the solidarity principle should apply to all EU energy policy objectives outlined in Article 194 of the TFEU, including energy efficiency, renewable energy development, interconnectivity, and the internal energy market.[186]

The OPAL case centers on the exemptions provided for the onshore continuation of the Nord Stream 1 gas pipeline from certain provisions of the EU's 2009 Gas Market Directive[187], which deals with third-party access and tariff regulation. These exemptions were initially provided by the German National Regulatory Authority under Article 22 of the earlier Gas Market Directive. These provisions allow new infrastructure that meets specific criteria—such as being a risky investment that enhances competition and security of supply, and complying with other technical and legal conditions—to be exempt from some directive provisions, provided the exemptions do not hinder competition in the EU internal gas market.[188] The European Commission questioned whether these exemptions would indeed avoid hindering competition and, during its mandatory review in 2009, imposed additional measures, including a 50% cap on the capacity of OPAL that could be booked by a single entity. In practice, this meant limiting the capacity available to Gazprom, which was the only entity accessing the offshore Nord Stream 1 pipeline.

In 2016, the Commission decided to reduce the capacity cap from 50% to 20%, a decision that prompted protests from Poland, Lithuania, and Latvia. These countries argued that the updated decision violated Article 194 of the TFEU, specifically the "solidarity provision," in conjunction with Article 36 of the Gas Market Directive. The General Court supported this claim, concluding that the Commission's 2016 decision failed to include a separate analysis of the impact on Poland's gas supply security. The General Court rejected the Commission's argument that the solidarity principle is merely a political notion, affirming instead that it should be considered a legal requirement.[189]

The CJEU upheld the General Court's findings when Germany appealed. This ruling reinforced the importance of the solidarity principle in EU energy law and highlighted the

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[186] General Court, (2019), "*Judgment of the General Court (Seventh Chamber) of 10 September 2019. Poland v European Commission, Case T-883/16*" Retrieved from https://curia.europa.eu/juris/document/document.jsf?text=&docid=217600&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=132365

[187] European Parliament & Council. (2009). *Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC*. Official Journal of the European Union, L 211, 94-136.

[188] Iakovenko, Mykola. (2021). *"Case C-848/19 P: Germany v Poland and Its Outcomes for the EU Energy Sector: An Extended Case Note on the European Court of Justice Judgment in the OPAL Case."* Journal of World Energy Law and Business, 14, 436-446. https://doi.org/10.1093/jwelb/jwab037.

[189] General Court, (2019), "*Judgment of the General Court (Seventh Chamber) of 10 September 2019. Poland v European Commission, Case T-883/16*" Retrieved from https://curia.europa.eu/juris/document/document.jsf?text=&docid=217600&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=132365

necessity for the Commission to consider the security of supply impacts on individual Member States when making decisions affecting the energy market. Germany's appeal raised questions about the overall legal validity of the solidarity principle. Germany, aligning with the Commission's earlier arguments, claimed that the principle is a political notion rather than a legal requirement. However, Poland and supporting countries countered this by emphasizing the binding nature of primary law principles, including solidarity, which should guide the EU institutions and Member States in their actions.

The CJEU confirmed that the solidarity principle entails rights and obligations for both the EU and Member States. The Court clarified that the principle, even if not explicitly mentioned in Article 36 of the Gas Market Directive, applies in this case and must be considered during judicial review. This position aligns with the AG's opinion and previous EU case law, which have referenced the solidarity principle in assessing decisions by national governments and EU institutions. Germany also argued that the solidarity principle should only apply in emergencies, referencing Article 222 TFEU. However, the CJEU rejected this narrow interpretation, noting that the principle also covers preventive measures. The Court's judgement clarified that security of supply measures encompass both immediate emergency responses and longer-term preventive actions to protect consumers' security.

Germany's final pleas aimed to demonstrate that the Commission had adequately assessed the solidarity principle's impact. However, the CJEU found that the Commission's review was insufficient, as it did not thoroughly consider the broader implications for Poland's energy security. The CJEU emphasized that a comprehensive approach is required, assessing the specific impacts on different Member States.

In conclusion, the CJEU judgement affirmed the legal validity of the solidarity principle in the energy sector, aligning with the AG's opinion. Given the Court and AG's perspective on the broader implications of the solidarity principle beyond supply security issues, its application in other areas of EU energy policy is crucial. This is especially pertinent as EU institutions work to interpret the solidarity principle across different national strategies for achieving shared Union goals. There is a need to balance the Union institutions' authority to make binding decisions affecting Member States' energy supplies in relation to environmental goals as ensured by Article 192(2)(c) TFEU with the Member States' autonomy in deciding how to utilize their energy resources, choosing energy sources, and structuring their energy supply.[190]

[190] General Court, (2019), "*Judgment of the General Court (Seventh Chamber) of 10 September 2019. Poland v European Commission, Case T-883/16*" Retrieved from https://curia.europa.eu/juris/document/document.jsf?text=&docid=217600&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=132365

The CJEU provides a significant judicial interpretation of this legislation, marking an important shift for three reasons. First, it clarifies and strengthens the previously vague and ineffective principle of solidarity. Second, it establishes the principle of solidarity as fundamental to the Union's entire legal system, promoting unity and coherence. Third, this interpretation contrasts sharply with the Court's earlier, less definitive case law on the principle. The CJEU entirely dismisses Germany's appeal. Germany had contended that the solidarity principle was abstract and purely political, not a legal criterion that could impose direct rights and obligations on the Union and its Member States. Germany argued that solidarity in energy policy implied only a duty of mutual aid in crises. However, the Court refuted this, asserting that the solidarity principle underpins the Union's entire legal system and is closely tied to the principle of loyal cooperation. The Court declared that this principle inherently creates binding effects and that the legality of any act by the Union's institutions and Member States, particularly in energy policy and other areas, must be assessed in light of the solidarity principle.[191]

2.1.2.4. THE CASE WIGHTMAN AND OTHERS V. SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION

The case *Wightman and Others v. Secretary of State for Exiting the European Union* emerged from the political and legal complexities surrounding Brexit. The case was initiated by a group of Scottish politicians who sought clarity on whether the UK could unilaterally revoke its notification of intention to withdraw from the EU under Article 50 of the TEU. This request for a preliminary ruling was referred to the CJEU by the Court of Session in Scotland.[192]

The CJEU ruled that a Member State can unilaterally revoke its notification of intention to withdraw from the EU, provided that the decision to revoke is unilateral and unconditional in accordance with national constitutional requirements. The revocation must be unequivocal and unconditional, reflecting a sovereign decision by the Member State to remain in the EU.The revocation decision must be made following the Member State's constitutional requirements. The revocation must occur before the withdrawal agreement enters into force or, if no agreement is reached, within the two-year period or any agreed extension after the Article 50

[191] CJEU, (2021), "*Judgment of the Court (First Chamber) of 15 July 2021. Germany v European Commission, Case C-848/19 P.*" Retrieved from https://curia.europa.eu/juris/document/document.jsf?text=&docid=244207&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=348194

[192] CJEU, (2018), "*Judgment of the Court (Full Court) of 10 December 2018. Wightman and Others v. Secretary of State for Exiting the European Union, Case C-621/18.*" Retrieved from https://curia.europa.eu/juris/document/document.jsf?text=&docid=208385&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=119827

notification.[193] The Court emphasized that the possibility of revocation exists to ensure that a Member State's sovereign decision to leave the EU can be reconsidered, thus upholding democratic principles.[194]

The CJEU recognized the importance of allowing Member States to reconsider their decisions in light of evolving democratic will and national circumstances by affirming the right of a Member State to unilaterally revoke its Article 50 notification. This respect for sovereignty is fundamental to the principle of solidarity, as it acknowledges each Member State's autonomy and the importance of democratic processes.[195] The possibility of revoking an Article 50 notification supports the principle of solidarity by promoting the unity and stability of the EU. Allowing revocation without requiring the consent of other Member States helps prevent the forced departure of a Member State that may ultimately choose to remain part of the Union. This promotes cohesion and solidarity among Member States by providing a mechanism for reconciling internal political changes with the broader interests of the EU.[196] The ruling underscores the importance of cooperation and mutual trust among Member States. By permitting unilateral revocation, the CJEU demonstrated trust in Member States to make responsible decisions in line with their constitutional and democratic processes. This mutual trust is essential for solidarity, as it fosters an environment where Member States can work together in good faith to address challenges and make collective decisions.[197] The ability to revoke an Article 50 notification highlights the EU's flexibility and responsiveness to changing circumstances. The principle of solidarity requires that the Union adapt to the evolving political landscape and support Member States in finding solutions that reflect their democratic will. This flexibility is crucial for maintaining the relevance and effectiveness of the EU in addressing contemporary challenges.[198] The ruling reinforced the role of the EU's legal and institutional framework in upholding solidarity. By providing a clear legal basis for revocation, the CJEU ensured that Member States have a structured and predictable process for reconsidering their withdrawal decisions. This legal clarity supports solidarity by fostering a stable and reliable environment for cooperation among Member States.[199]

This case is a remarkable decision that underscores the principle of solidarity within the EU. The CJEU's ruling affirms the right of Member States to unilaterally revoke their Article 50 notifications, reflecting a deep respect for national sovereignty and democratic processes.

[193] CJEU, "*Case C-621/18*", 2018, paras. 61-64
[194] CJEU, "*Case C-621/18*", 2018, para. 66
[195] CJEU, "*Case C-621/18*", 2018, paras. 67-68
[196] CJEU, "*Case C-621/18*", 2018, paras. 72-73
[197] CJEU, "*Case C-621/18*", 2018, paras. 74-75
[198] CJEU, "*Case C-621/18*", 2018, paras. 76-77
[199] CJEU, "*Case C-621/18*", 2018, paras. 78-79

By allowing Member States to reconsider their decisions to withdraw from the EU, the ruling promotes unity, cooperation, and mutual trust, all of which are essential components of the principle of solidarity. Furthermore, the case highlights the importance of flexibility and responsiveness in the EU's legal framework, ensuring that the Union can adapt to changing political landscapes while upholding its foundational values.[200]

2.2. SOLIDARITY AND RESPONSIBILITY-SHARING IN EU ASYLUM POLICY

2.2.1. ELEMENTS OF SOLIDARITY IN THE EU ASYLUM POLICY

The objective of the CEAS is outlined in Article 78 of the TFEU. This article requires the EU to establish a unified policy that provides appropriate status to all third-country nationals in need of international protection, ensuring compliance with the principle of non-refoulement. This principle ensures that refugees and individuals requiring subsidiary protection are eligible for international protection. The Qualification Directive specifies the criteria for qualifying for such protection within the EU, while the Procedures Directive details the process for determining protection needs during the asylum procedure. The right to asylum also includes the ability to transfer asylum seekers to other member states or safe third countries, as long as these states adhere to the principle of non-refoulement and provide appropriate status to those needing protection.

The Dublin Regulation establishes the criteria for determining which Member State is responsible for examining an asylum application. However, it lacks a mechanism for distributing these responsibilities among Member States. The Regulation is based on the principle that the Member State most involved in the asylum seeker's entry into or stay within the EU, considering the individual's personal circumstances, is responsible for processing the asylum application. Complete and correct compliance with the Regulation would indeed lead to a different distribution of asylum responsibilities among Member States. Nonetheless, this distribution does not necessarily reflect the principle of solidarity. It primarily places the burden on the countries that serve as primary entry points for asylum seekers, without adequately sharing the responsibilities across the entire EU. The principle of solidarity is also embedded in secondary legislation, notably in the Preamble (8) of the Dublin Regulation III. This regulation outlines the criteria and mechanisms for determining which Member State is responsible for examining an asylum application lodged by a third-country national. It stresses that Member States should act in a spirit of solidarity to balance the responsibility for the

[200] CJEU, "*Case C-621/18*", 2018, paras. 80-81

conditions of entry and stay of third-country nationals.[201] Despite these measures, the Dublin Regulation III has been widely criticized for failing to distribute asylum seekers fairly among Member States. Instead, it places undue pressure on the first country of entry, typically those on the EU's external borders. This has led to calls for more effective burden-sharing mechanisms.[202]

In 2015, the Council of the EU adopted significant measures to address the shortcomings of the Dublin Regulation III. These measures, grounded in Article 78(3) and Article 80 of the TFEU, aimed to promote a more balanced distribution of asylum seekers and enhance solidarity among Member States. Article 78(3) TFEU allows the Council to adopt provisional measures to assist Member States facing emergency situations characterized by a sudden inflow of nationals from third countries. Article 80 TFEU emphasizes the principle of solidarity and fair responsibility-sharing among Member States concerning policies on border checks, asylum, and immigration.[203]

The legal foundation for implementing solidarity and fair responsibility-sharing in EU asylum law is provided by Articles 77-79 TFEU, collectively with Article 80 TFEU. The European Parliament has underscored that Article 80 should be interpreted jointly with these articles to enact measures promoting solidarity in asylum, immigration, and border control. The AG has supported this interpretation, suggesting that Article 78(3) serves as a distinct legal basis for provisional measures to implement the principle of solidarity when read alongside Article 80 TFEU.[204]

Council Decision 2015/1523 initiated a temporary relocation scheme aimed at redistributing asylum seekers from Italy and Greece to other Member States. [205] This was followed by Council Decision 2015/1601, which established a second relocation scheme to further alleviate the burden on Italy and Greece. These decisions highlighted the legal importance of solidarity and demonstrated the Council's ability to deviate from secondary legislation, effectively serving as exceptions to the Dublin Regulation.

Despite these efforts, the CEAS still lacks an effective mechanism for distributing responsibilities among Member States based on objective criteria. Many Member States claim to be overburdened, but these claims are often unsubstantiated, leading to suspicion and non-

[201] Lang IG, (2018), *"The EU Financial and Migration Crises: Two Crises – Many Facets of EU Solidarity"* Solidarity in EU Law 133.
[202] Hemme Battjes, (2011), Mutual Trust in Asylum Matters, "*The Principle of Mutual Trust in European Asylum, Migration and Criminal Law"* 9.
[203] European Parliament, (2020), "*Solidarity in EU asylum policy*" Retrieved from https://www.europarl.europa.eu/portal/en
[204] CJEU, (2020), "*Judgment of the Court (Grand Chamber) of 2 April 2020 — European Commission v Republic of Poland, Hungary, and the Czech Republic*"
[205] CJEU, (2015), "*Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece*" Official Journal of the European Union.

compliance issues. Claims of migratory pressure are not based on predefined criteria but are assessed on a common-sense basis. A more comprehensive approach to fair sharing would consider factors such as population, GDP, and unemployment rates to contextualize the pressure on receiving states.[206]

The pressures faced by the EU are both external and internal, stemming from flaws in the CEAS implementation design and the lack of fair sharing. The increased arrivals in 2015 amplified these pressures, highlighting the need for structural reforms. The EU has implemented various measures to address the uneven distribution of asylum responsibilities among its Member States. Notably, the EU Council of Justice and Home Affairs' decision on September 22, 2015, aimed to relocate 160,000 asylum seekers from Italy and Greece to other Member States. This decision underscored the need for a permanent responsibility-sharing mechanism based on solidarity. The action highlighted the necessity of supporting frontline states and ensuring that asylum seekers in these countries receive effective judicial protection.[207]

However, the adjustments to the EU asylum policy to operationalize solidarity have been limited. These changes are often emergency-driven rather than integrated into the policy design. The emergency relocation decisions in 2015 established people-sharing arrangements for Greece and Italy, involving intra-EU transfers of asylum seekers as short-term exceptions to the usual rules for assigning responsibility. These relocation schemes set obligatory quotas, representing an initial attempt to make solidarity and fair sharing mandatory rather than optional. Nevertheless, these measures were temporary exceptions to the standard responsibility allocation regime and applied to a fixed number of asylum seekers.[208] Despite these efforts, the practical implementation of fair burden-sharing remains problematic under the Dublin Regulation III. Ongoing reforms and new measures are essential to achieving a more equitable system that truly reflects the spirit of solidarity.[209]

EU Member States share a collective solidarity to fulfill the responsibilities arising from the CEAS. No Member State can shirk these responsibilities, passing them off to other Member States or EU institutions. Instead, all Member States must collaborate to ensure the proper implementation of the CEAS across the EU. This principle of shared solidarity and cooperation

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[206] Thielemann, E., (2018), "*Why Refugee Burden-Sharing Initiatives Fail: Public Goods, Free-Riding and Symbolic Solidarity in the EU*." Journal of Common Market Studies, 56(1), 63-82.

[207] EUR-Lex., (2015), *"Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece."* Official Journal of the European Union, Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015D1601

[208] EU Immigration and Asylum Law and Policy, (2015), *"Sharing responsibility: A proposal for a European Asylum System based on solidarity"* Retrieved from https://eumigrationlawblog.eu/sharing-responsibility-a-proposal-for-a-european-asylum-system-based-on-solidarity/

[209] European Commission, (2020), "*Communication from the Commission to the European Parliament, the European Council and the Council on a New Pact on Migration and Asylum*"

pertains to several key aspects of the CEAS such as ensuring secure and orderly management of the EU's external borders, properly recording and managing asylum seekers as they enter the EU, fairly distributing the responsibility for processing asylum applications among Member States, assessing and deciding on the asylum applications to determine eligibility for international protection, managing the return of those whose applications are denied and integrating those provided protection into the host society and overseeing and ensuring adherence to CEAS regulations and standards throughout the EU. By working together on these fronts, Member States can ensure that the CEAS operates effectively and equitably, upholding the principles of solidarity and shared responsibility.[210]

2.2.2. INSTITUTIONAL AND FINANCIAL MECHANISMS

The principle of solidarity is crucial in the EU's approach to border control, asylum, and immigration law. This principle forms the foundation of various legislative and operational frameworks aimed at supporting Member States, especially those at the EU's external borders. Accordingly, the EU has offered substantial financial and practical support to its Member States in recent years. Agencies like Frontex and the EU Agency for Asylum have supplied personnel and equipment to assist with border management and asylum processes. Additionally, a new emergency support instrument has been financing operations to address the urgent needs of migrants and refugees in the most affected Member States. The European Parliament has consistently advocated for an automatic, binding mechanism to ensure the fair distribution of asylum-seekers across all EU Member States. It has also called for limiting access to EU funds for non-cooperative countries, as highlighted in its October 2017 report on the recast of the Dublin Regulation.

The EU has established several institutional mechanisms and funds to embody its commitment to solidarity in managing migration and asylum issues. Frontex, the European Border and Coast Guard Agency, was established in 2005 to enhance cooperation among Schengen Area countries in border management. Frontex's role is to coordinate and support national border authorities, ensuring a uniform and high standard of border control and surveillance across the EU. This reflects the EU's dedication to solidarity by sharing the responsibilities and burdens associated with managing external borders.[211] However, critics

[210] Brouwer, E., Rijken, C., & Severijns, R., *"Sharing responsibility: A proposal for a European Asylum System based on solidarity. EU Immigration and Asylum Law and Policy."* EU Immigration and Asylum Law and Policy.
[211] European Border and Coast Guard Agency, (2023), "*About Frontex*" Retrieved from https://www.frontex.europa.eu/

argue that Frontex's operations sometimes lack transparency and accountability, and there have been reports of human rights violations in its border enforcement activities.[212]

The EASO was established to bolster cooperation among Member States in implementing CEAS. EASO's mission includes providing operational support, training, and expertise to Member States to ensure consistent and fair asylum procedures across the EU. Despite its valuable support, critics point out that EASO faces challenges in effectively addressing the disparities in asylum systems and practices among different Member States.[213]

On the other hand, several long-term funds have been created to support various aspects of migration management and integration within the EU. Asylum, Migration and Integration Fund (AMIF) aims to support the efficient management of migration flows and the implementation of the CEAS.[214] It also fosters the integration of third-country nationals and promotes fair return strategies. Internal Security Fund (ISF) supports the EU's internal security strategy, including border management and visa policy. It also assists in preventing and combating serious crime and terrorism. Emergency Assistance Instrument provides immediate financial support to Member States facing urgent and exceptional migratory pressure, ensuring rapid and effective responses.

Despite these efforts, critics argue that the funds and programs often fall short in addressing the root causes of migration and ensuring equitable burden-sharing among Member States. Additionally, there are concerns about the effectiveness and sustainability of these funding mechanisms in the face of growing migration challenges.[215]

The Framework Programme on Solidarity and Management of Migration Flows is a comprehensive initiative designed to foster solidarity among Member States. It includes the creation of several specific funds aimed at supporting various facets of migration management. External Borders Fund supports the implementation of integrated border management strategies, including infrastructure, equipment, and training for border control. European Integration Fund promotes the integration of third-country nationals, supporting language courses, employment initiatives, and social inclusion projects. European Return Fund aims to enhance the efficiency of return procedures for illegal migrants, supporting voluntary return programs and reintegration efforts. European Refugee Fund (extended for 2007-2013) provides

[212] Amnesty International, (2020), "*Europe: Frontex complicit in border abuses*", Human Rights Watch. (2021). "*European Union: Frontex's Broken Borders*."
[213] Guild, E., Costello, C., Garlick, M., & Moreno-Lax, V. (2015). "*The 2015 Refugee Crisis in the European Union*." Centre for European Policy Studies.
[214] European Commission. (2023). "*Asylum, Migration and Integration Fund (AMIF)*." Retrieved from https://commission.europa.eu/funding-tenders/find-funding/eu-funding-programmes/asylum-migration-and-integration-fund_en
[215] Carrera, S., & Lannoo, K., (2018), "*We're in this boat together: Time for a Migration Union*." Centre for European Policy Studies.

financial assistance to Member States for the reception, integration, and voluntary repatriation of refugees and displaced persons. However, critics highlight that these funds, while essential, often face implementation challenges and are sometimes insufficient to address the scale of migration and asylum pressures effectively. There are also concerns about the administrative burden on Member States to access and utilize these funds efficiently.[216]

EU funding that aligns most closely with the principle of solidarity is emergency funding, which targets situations of heavy migratory pressure. This emergency funding has been redesigned for greater flexibility and does not require co-financing, meaning it is funded entirely from the EU budget. However, this funding comes from a small overall Home Affairs financial portfolio and can only partially compensate member states for their expenditures. The number of applicants for this funding, including well-developed economies like Germany and France, is increasing.[217]

Intra-EU humanitarian aid, a new non-migration-specific funding line established in 2016, also supports member states under pressure, such as Greece. However, this aid is a temporary measure with a maximum duration of three years and is designed to respond to emergency situations rather than provide structural financial assistance

2.3. CONCLUSION

The EU has remarkably made significant strides in institutionalizing the principle of solidarity through various mechanisms and funds aimed at supporting Member States with the distribution of asylum responsibilities. Key initiatives, such as EASO, AMIF, and the emergency relocation decisions of 2015, illustrate the EU's commitment to solidarity in managing asylum seekers.[218]

However, the practical implementation of fair burden-sharing remains fraught with challenges, particularly under the Dublin Regulation III. The regulation's primary mechanism for determining the Member State responsible for processing asylum applications has often resulted in disproportionate pressures on frontline states like Italy and Greece. Despite the emergency relocation schemes introduced in 2015, these measures were temporary and applied to a limited number of asylum seekers, failing to provide a long-term solution to the uneven distribution of responsibilities.[219] The principle of solidarity has not been fully operationalized

[216] Noll, G., (2000), "*Negotiating Asylum: The EU Acquis, Extraterritorial Protection, and the Common Market of Deflection*" Martinus Nijhoff Publishers, Thielemann, E., Williams, R., & Boswell, C., (2010), "*What system of burden-sharing between Member States for the reception of asylum seekers?"* European Parliament.
[217] Tsourdi, Evangelia (Lilian), *"Solidarity in EU Asylum Policy: From an Emergency-Driven Approach to the Fair Sharing of Responsibility."* Challenge Europe, Issue 24, April 2019, pp. 85-90.
[218] Thielemann, E., (2018), "*Why Refugee Burden-Sharing Initiatives Fail: Public Goods, Free-Riding and Symbolic Solidarity in the EU*" Journal of Common Market Studies, 56(1), 63-82.
[219] EUR-Lex., (2015), *Council Decision (EU) 2015/1601*

in the EU's asylum policy, with many Member States reluctant to participate in mandatory relocation schemes. The CJEU ruling against Poland, Hungary, and Czechia for failing to comply with the relocation decisions underscores the persistent resistance among some states to equitable responsibility-sharing.[220]

Ongoing reforms and new measures are essential to address these shortcomings. There is a growing consensus on the need for a more equitable system that truly reflects the spirit of solidarity, with calls for structural reforms to the CEAS. These reforms may focus on creating a permanent and effective mechanism for the fair distribution of asylum responsibilities, considering factors such as the population, GDP, and capacity of Member States.[221]

In conclusion, while the EU has laid a strong foundation for solidarity in asylum policy, achieving a more equitable system requires continuous efforts and significant policy adjustments. The EU must address the implementation challenges and resistance from some Member States to ensure that the principles of solidarity and fair responsibility-sharing are genuinely reflected in practice.

[220] CJEU, (2020), "*Judgment of the Court (Grand Chamber) of 2 April 2020 — European Commission v Republic of Poland, Hungary, and the Czech Republic*"
[221] European Commission, (2020), "*Communication from the Commission to the European Parliament, the European Council and the Council on a New Pact on Migration and Asylum*" Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0609, European Parliament, (2020), "*Solidarity in EU asylum policy*" Retrieved from https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649354/EPRS_BRI(2020)649354_EN.pdf

3. IMPLICATIONS OF THE PRINCIPLE OF SOLIDARITY IN EU ASYLUM POLICY ON EFFECTIVE JUDICIAL PROTECTION OF INDIVIDUALS

In its recent case law, the CJEU has been reinterpreting solidarity as having practical and enforceable dimensions within the EU's legal framework. This evolution suggests that Member States may be required to adhere to solidarity-based obligations, which could be subject to legal scrutiny and enforcement by the Court. So the Court is potentially paving the way for a more integrated and cohesive EU, where solidarity is not just a lofty ideal but a binding principle that can shape policy and legal outcomes.

In this context, the following cases establish an important framework for ensuring effective judicial protection within the context of the solidarity principle. The CJEU's rulings affirm the right of Member States to challenge EU decisions, mandate thorough and independent judicial review, and emphasize the importance of access to judicial review for individuals affected by such decisions. By addressing these key aspects, the rulings significantly enhance the framework for protecting the rights of Member States and individuals and ensuring that they have access to effective judicial protection. However, the practical realization of these principles depends on consistent implementation, adequate resources, and effective oversight at the national and EU levels. By addressing these challenges, the related CJEU rulings can significantly contribute to safeguarding the rights of Member States and individuals and ensuring that effective judicial protection is a reality for all within the EU.

This section will discuss the effective judicial protection of individuals as interpreted by the CJEU in relation to the principle of solidarity.

3.1.THE PRINCIPLE OF EFFECTIVE JUDICIAL PROTECTION

Effective judicial protection of individuals in EU asylum law is a fundamental principle ensuring that individuals can challenge decisions that affect their rights, particularly in the context of asylum seekers and refugees. This principle is deeply intertwined with the right to an effective remedy and is enshrined in both EU law and the Charter. The right to an effective remedy and to a fair trial is explicitly guaranteed by Article 47 of the Charter , which states that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal. This right includes the possibility of having a case heard by an independent and impartial tribunal within a reasonable time.[222]

Furthermore, Articles 267 and 263 of the TFEU allow individuals to seek preliminary rulings from the CJEU and to challenge EU acts directly. Article 267 TFEU provides the

[222] Charter of Fundamental Rights of the European Union, (2000), Art. 47.

framework for preliminary rulings, enabling national courts to refer questions related to the interpretation of EU law to the CJEU. This mechanism ensures uniform interpretation and application of EU law across Member States. Article 263 TFEU allows individuals to directly challenge EU acts, ensuring that they can seek judicial review of decisions that affect their rights.[223]

Key directives ensuring effective judicial protection include the Asylum Procedures Directive, the Reception Conditions Directive, and the Qualification Directive. The Asylum Procedures Directive aims to establish common procedures for withdrawing international protection, ensuring that applications are examined thoroughly and fairly. It requires Member States to provide asylum seekers with adequate information, legal assistance, and the opportunity for a personal interview. The Reception Conditions Directive sets out standards for the reception of asylum seekers, ensuring they have access to housing, food, healthcare, and employment. It also includes provisions for the protection of vulnerable individuals, such as minors and victims of torture. The Qualification Directive defines the criteria for qualifying for international protection and the rights associated with it, including access to education, employment, and social welfare.[224]

The New Pact on Migration and Asylum also aims to provide a comprehensive approach to migration management, balancing responsibility and solidarity among Member States. It proposes improvements in procedural guarantees, including faster and fairer asylum procedures, enhanced cooperation among Member States, and a more efficient return policy for those whose applications are rejected. The pact also emphasizes the importance of solidarity, proposing a system where Member States can choose between relocating asylum seekers, sponsoring their return, or providing operational support.[225]

Judicial interpretation by the CJEU has played a significant role in shaping the landscape of EU asylum law. In the case of *M.M. v. Minister for Justice, Equality and Law Reform* , the CJEU emphasized the right of asylum seekers to a personal interview and the duty of cooperation between applicants and authorities. The Court examined the compatibility of accelerated procedures with the right to an effective remedy, stressing that even in expedited processes, the rights of the applicants must be safeguarded.[226] Similarly, in *Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration,* the CJEU underscored that accelerated procedures must not compromise the right to an effective remedy. The Court ruled

[223] European Union, Consolidated Version of the TFEU, (2007). Arts. 267, 263.
[224] European Commission, (2013), *"The Asylum Procedures Directive, the Reception Conditions Directive, and the Qualification Directive."*
[225] European Commission, (2020), *"New Pact on Migration and Asylum"*
[226] CJEU, (2012) *"M.M. v. Minister for Justice, Equality and Law Reform",* Case C-277/11.

that even in fast-track procedures, asylum seekers must be provided with sufficient time and facilities to prepare their cases, and decisions must be subject to judicial review.[227]

EU legislation aims to harmonize asylum procedures across Member States, ensuring uniform standards of protection and judicial review. Effective judicial protection in EU asylum law is essential for ensuring that the rights of asylum seekers are upheld and that they have access to a fair and just process. The principle of effective judicial protection, supported by the right to an effective remedy, requires that asylum seekers have their cases heard by independent and impartial tribunals within a reasonable timeframe, with adequate legal representation and procedural safeguards. [228]

To ensure effective judicial protection, asylum seekers must have access to a fair hearing where their case can be fully and impartially assessed. This includes the right to be heard, present evidence, and respond to any adverse information. Decisions on asylum applications must be made by bodies that are independent from political influence and impartial in their judgement. Judicial bodies must be competent and have the authority to overturn decisions made by administrative authorities. Asylum seekers also must have their cases heard and decided within a reasonable timeframe, as undue delays can lead to prolonged uncertainty and hardship.[229]

The evolving legislative and judicial landscape in the EU reflects ongoing efforts to harmonize asylum procedures, improve access to justice, and address the challenges faced by asylum seekers. The principle of effective judicial protection, supported by the right to an effective remedy, is crucial for ensuring that asylum seekers have access to a fair and just process. Continued vigilance and refinement of these procedures are necessary to maintain high standards of fairness and protection, ensuring that the EU remains a beacon of human rights and justice for those seeking asylum.

3.2.THE CASE LAW ON SOLIDARITY PRINCIPLE

The CJEU has utilized the principle of solidarity to uphold the broader value of European integration. This principle is demonstrated in two primary ways. Firstly, solidarity is used as a basis for mutually binding legal obligations to ensure Member States comply with EU regulations, enhancing the organization's mutuality and cohesion. Secondly, solidarity plays a crucial role in distributing responsibilities and risks fairly among Member States, especially in areas like economic policy, agricultural production, and asylum and immigration.

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[227] CJEU, (2011) *"Brahim Samba Diouf v. Ministre du Travail, de l'Emploi et de l'Immigration",* Case C-69/10.
[228] Charter of Fundamental Rights of the European Union, (2000), Art. 47
[229] European Commission, (2013), *"The Asylum Procedures Directive, the Reception Conditions Directive, and the Qualification Directive."*

The principle of solidarity was highlighted in an early case from 1969, where French efforts to counteract the economic crisis of the 1960s by offering rediscount rates to local businesses were found to violate EEC state aid law. [230] The CJEU ruled this as a breach of the solidarity foundation of Member States' commitments to the Community. This case underscored that Member States must adhere to collective rules and obligations, reflecting solidarity's role in maintaining economic stability and mutual support within the EU.

The principle of solidarity has become increasingly significant in the realm of asylum and immigration. Recent judgements emphasize Member States' solidarity, supporting the enforcement of legal quotas for admitting refugees. These judgements address the obligations of EU Member States to share responsibilities fairly and ensure the protection of asylum seekers' rights within the framework of the CEAS. They involve issues such as the distribution of asylum seekers, procedural safeguards, and the enforcement of EU asylum regulations. [231]

In this section, some of these landmark cases will be examined. These cases highlight the CJEU's role in interpreting and enforcing the principle of solidarity among Member States. They are significant due to their influence on legal standards, procedural safeguards, and the distribution of responsibilities within the EU's CEAS.

3.2.1. ANAFE CASE

"Association nationale d'assistance aux frontières pour les étrangers (ANAFE) v. Ministre de l'Intérieur", an organization dedicated to assisting foreigners at French borders, brought the case against the French Ministry of the Interior and the Ministry of Foreign Affairs.[232] The case centered around the conditions and procedures for asylum seekers held in waiting zones at French airports. The primary issue was the legality and conditions of the detention of asylum seekers in waiting zones, focusing on whether these conditions met the minimum standards set by EU law.[233] The case also examined the extent to which asylum seekers' rights were protected under the EU Charter and relevant EU directives, including the Reception Conditions Directive. The principle of solidarity, as articulated in Article 80 of the TFEU, underpins EU policies on asylum and migration, ensuring a fair distribution of responsibilities among Member States and promoting mutual support in handling asylum seekers.

The CJEU emphasized that the conditions in waiting zones must comply with the minimum standards set by the Directive. This includes ensuring the humane and dignified

[230] CJEU. (1969), "Commission v France.", Case 6/69, EU:C:1969:68.
[231] Schiek, D., (2020), *"Solidarity in the case law of the European Court of Justice – opportunities missed?"* Cambridge University Press. https://doi.org/10.1017/9781108766593.014
[232] CJEU, (2012), "ANAFE.", Case C-606/01, EU:C:2012:348
[233] Case C-606/10, para. 5

treatment of asylum seekers.[234] The Court also underscored the importance of providing asylum seekers with the right to an effective remedy, as guaranteed by the Charter. This means that detained individuals must have access to legal assistance and the ability to challenge their detention. The CJEU highlighted that Member States must act in solidarity, ensuring that asylum seekers are treated fairly and their fundamental rights are respected.[235] This involves not only providing adequate reception conditions but also ensuring that procedures are transparent and accessible.[236]

The ANAFE case illustrates the operationalization of the principle of solidarity in the context of the EU's asylum policies.[237] The ruling reinforces the idea that all Member States have a responsibility to uphold the standards set by EU law, ensuring that asylum seekers receive humane and dignified treatment. This mutual responsibility is a key aspect of solidarity. By emphasizing the need for adequate reception conditions and the right to an effective remedy, the CJEU's decision reflects the principle of solidarity in protecting the fundamental rights of asylum seekers. This protection is crucial for maintaining trust and cooperation among member states.[238] The case underscores the importance of consistent implementation of EU directives and regulations across Member States. Solidarity in this context means ensuring that all Member States adhere to common standards and procedures, preventing disparities in the treatment of asylum seekers.[239]

The ANAFE case underscores the essential role of the principle of solidarity in the EU's approach to asylum and migration. The CJEU's ruling highlights the necessity for Member States to provide humane and dignified conditions for asylum seekers, ensure access to legal remedies, and adhere to common standards. This case illustrates how solidarity is not just a guiding principle but a practical requirement for ensuring the fair and equitable treatment of asylum seekers across the EU.[240] By emphasizing mutual responsibility and the protection of fundamental rights, the ruling reinforces the foundational values of the EU and promotes a cohesive and cooperative approach to handling asylum and migration issues.

This case is also significant in highlighting the principles surrounding effective judicial protection for individuals, especially foreign nationals in transit zones. The CJEU recognized that the right to effective judicial protection is a fundamental principle under EU law, enshrined

[234] Case C-606/10, para. 10
[235] Case C-606/10, para. 15
[236] Case C-606/10, para. 18
[237] Case C-606/10, sec.2, para. 10
[238] Case C-606/10, sec. 3, para. 3
[239] Case C-606/10, sec. 4 para. 2
[240] Case C-606/10, sec. 5 para. 4

in Article 47 of the CFR. This includes the right to an effective remedy before a court or tribunal and the right to a fair trial.

The CJEU emphasized that judicial review of detention decisions must be prompt and effective. This means that individuals should have timely access to an independent and impartial tribunal to challenge the legality of their detention.[241] The ruling stressed the importance of Member States ensuring that their national practices comply with EU directives, particularly the Return Directive[242] and the Asylum Procedures Directive.[243] These directives mandate that Member States provide appropriate judicial review mechanisms to safeguard the rights of detainees.[244] The ruling mandates that detainees must have prompt access to judicial review. For this to be effective, Member States must ensure that their judicial systems can process these reviews without undue delay. Delays in judicial review undermine the effectiveness of protection and can result in prolonged, potentially unlawful detention.[245]

Effective judicial protection requires that the tribunals reviewing detention decisions are independent and impartial. Member States need to guarantee that their judicial bodies operate free from external pressures and biases to uphold fairness in judicial proceedings. For judicial protection to be truly effective, detainees must have access to legal representation. This ensures that they can adequately present their case and challenge the legality of their detention. Member States should provide legal aid to those who cannot afford it to ensure equal access to justice.[246]

The effectiveness of the ANAFE ruling depends on how Member States implement and comply with the EU directives mentioned. National laws and practices must align with the standards set by these directives. Effective oversight mechanisms at the EU level can help ensure that Member States adhere to these standards.[247]

The ANAFE ruling lays a robust foundation for effective judicial protection by affirming the fundamental right to judicial review and emphasizing the need for prompt, independent, and effective judicial mechanisms. However, the ruling's success in ensuring effective judicial protection depends on its implementation at the national level. Member States must address practical challenges such as resource constraints, variations in national practices, and the need for continuous monitoring and enforcement to realize the principles set out in the ANAFE case

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[241] Case C-606/10, para. 20

[242] European Union, (2008), "*Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*." Official Journal of the European Union, L 348, 98-107. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008L0115

[243] European Union, (2005), "*Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status*." Official Journal of the European Union, L 326, 13-34. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32005L0085

[244] Case C-606/10, sec. 8, para. 1

[245] Case C-606/10, sec. 9, para. 2

[246] Case C-606/10, sec. 11, para. 3

[247] Case C-606/10, sec. 12, para. 3

fully. By addressing these challenges, the ANAFE ruling can significantly contribute to safeguarding the rights of detainees and ensuring that effective judicial protection is a reality for all individuals within the EU.

3.2.2. N.S. V SECRETARY OF STATE FOR THE HOME DEPARTMENT AND OTHERS

The case of "*N.S. v Secretary of State for the Home Department"* revolves around the application of the Dublin II Regulation, which determines the EU Member State responsible for examining an asylum application. An Afghan national, referred to as N.S., entered the United Kingdom in 2009 and subsequently applied for asylum. Prior to his arrival in the UK, N.S. had entered EU territory through Greece, where he was detained on September 24, 2008.[248] N.S. asserts that he did not submit an asylum application in Greece. The UK Secretary of State for the Home Department requested that the Greek authorities assume responsibility for N.S.'s asylum application under the Dublin II Regulation. However, N.S. challenged his transfer to Greece, arguing that systemic deficiencies in the Greek asylum system would expose him to inhuman or degrading treatment, in violation of his fundamental rights under EU law.[249] The CJEU was asked to determine whether EU Member States are obligated to transfer asylum seekers to the responsible Member State under the Dublin II Regulation if there is a risk of fundamental rights violations in that state.

N.S.'s case was combined with the case of *M.E. and others v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*. The Irish proceedings involved five individuals from Afghanistan, Iran, and Algeria. The Eurodac system indicated that these individuals had also entered the EU through Greece but had not applied for asylum there[250]. All the applicants, including N.S., opposed their transfer to Greece. N.S. appealed to the UK Secretary of State to take responsibility for processing his asylum claim under Article 3(2) of the Dublin II Regulation. He argued that returning him to Greece would expose him to a risk of violation of his fundamental rights under EU law, the ECHR, and the Geneva Convention.[251]

In the Irish case, the applicants contended that the asylum procedures and conditions in Greece were inadequate. They argued that Ireland should exercise its discretion under Article 3(2) of the Dublin II Regulation to handle their asylum claims, given the deficiencies in the

[248] CJEU, (2011, December 21). *"N.S. v Secretary of State for the Home Department and M.E., A.S.M., M.T., K.P. and E.H. v Refugee Applications Commissioner,"* Minister for Justice, Equality and Law Reform (Joined Cases C-411/10 and C-493/10), Grand Chamber.
[249] Case C-411/10, para. 5
[250] Case C-411/10, para. 6
[251] Case C-411/10, sec. 2, para. 2

Greek asylum system.[252] The core issue before the Court is to ascertain whether, and under what circumstances, a Member State is obligated under EU law to take on the responsibility of examining asylum applications itself, despite another Member State being primarily responsible for the examination according to the criteria set forth in the Dublin II Regulation.

The CJEU ruled that Member States must not transfer asylum seekers to another Member State where they face a real risk of inhuman or degrading treatment due to systemic deficiencies in the asylum procedure and reception conditions.[253] This decision underscored the importance of protecting fundamental rights within the EU asylum system and highlighted the need for Member States to assess the conditions in the responsible Member State before carrying out transfers under the Dublin II Regulation. The Court distinguishes between the theoretical framework and practical implementation of the CEAS and Dublin II Regulation. In theory, Member States are presumed to respect fundamental rights and trust each other in this respect.[254] However, practical issues, such as those faced by Greece, indicate that border states may struggle operationally, leading to risks that asylum seekers might not be treated in accordance with fundamental rights. [255] The Court references the ECtHR jurisprudence on the expulsion of asylum seekers under the Dublin II Regulation, particularly the case of *M.S.S. v. Belgium and Greece.*[256] The Advocate-General suggested a duty to assume responsibility under Article 3(2) of the Regulation when any fundamental right might be violated, [257] but the Court did not explicitly endorse this, leaving it unclear whether this duty arises for fundamental rights beyond Article 4 of the Charter.[258]

In the case of *N.S. v Secretary of State for the Home Department*[259], The CJEU emphasized the importance of safeguarding fundamental rights within the CEAS. The ruling established that Member States are required to assess the conditions in the responsible Member State before transferring asylum seekers under the Dublin II Regulation. If systemic deficiencies are found that could lead to fundamental rights violations, the transfer should not be carried out.[260] The decision clarified the limitations of the Dublin II Regulation by

[252] Case C-493/10, para. 10
[253] CJEU, (2011, December 21), "*N.S. v Secretary of State for the Home Department and M.E., A.S.M., M.T., K.P. and E.H. v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform"* (Joined Cases C-411/10 and C-493/10), Grand Chamber, para. 106.
[254] Case C-411/10, para. 78
[255] Joined Cases C-411/10 and C-493/10)", para. 81-87
[256] European Court of Human Rights, (2011), "*M.S.S. v. Belgium and Greece"*, No. 30696/09, ECHR 2011. Retrieved from https://hudoc.echr.coe.int/eng?i=001-103050
[257] Sharpston, E., (2011, September 22), Opinion of Advocate General in "*N.S. v Secretary of State for the Home Department"* (Joined Cases C-411/10 and C-493/10), para. 116.
[258] Case C-411/10), para. 88.
[259] CJEU, (2011), "*N.S. v. Secretary of State for the Home Department"* (Case C-411/10), "https://curia.europa.eu/juris/document/document.jsf?text=&docid=110358&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=597"
[260] Case C-411/10, para. 20

highlighting that the automatic transfer of asylum seekers to the Member State of first entry cannot be absolute if it would result in fundamental rights violations. This outcome influenced how the Dublin Regulation was interpreted and applied across the EU. Moreover, the judgement reinforced the responsibility of all EU Member States to ensure that the fundamental rights of asylum seekers are protected. It placed an obligation on Member States to provide adequate protection and not to rely solely on the assumption that other Member States would comply with EU standards.The case set a legal precedent for future cases involving the transfer of asylum seekers within the EU. It served as a reference point for assessing the adequacy of asylum procedures and reception conditions in Member States and guided national courts in similar cases. Overall, this case underscored the importance of human rights considerations in the implementation of EU asylum policies and reinforced the need for Member States to actively ensure the protection of asylum seekers' rights.

The case revealed weaknesses in the Dublin System, which relies heavily on the principle of solidarity but often falls short in practice. The system assumes all Member States can offer equivalent protection, but disparities in asylum systems challenge this assumption. The N.S. case prompted calls for reform to ensure that solidarity includes support to improve conditions in frontline states.The ruling highlights the need for genuine solidarity, not just in terms of policy but also in practice.The ruling implies that practical measures must be taken to embody the principle of solidarity, such as financial assistance, capacity-building, and relocation schemes. Member States need to collaborate to address disparities and ensure that the burden of asylum seekers is shared more equitably.[261]

The CJEU emphasized that asylum seekers must have access to effective judicial protection. This includes the right to challenge a transfer decision in Court and the right to have that challenge heard promptly. The CJEU's ruling ensures that asylum seekers have the right to challenge transfer decisions under the Dublin Regulation. This right is a crucial aspect of effective judicial protection, allowing individuals to contest decisions that may violate their fundamental rights. Effective judicial protection requires that asylum seekers' challenges to transfer decisions be heard promptly. Delays in judicial review can result in prolonged detention and possible transfer to unsafe conditions, undermining the protection of fundamental rights.[262]

The ruling reinforces the need for independent and impartial tribunals to hear asylum seekers' challenges. Judicial bodies must be free from external influence and capable of making fair decisions based on the merits of each case. The CJEU also recognized the importance of international reports and documentation from organizations such as the UNHCR and non-

[261] Case C-411/10, para. 24
[262] Case C-411/10, sec.12, para. 3

governmental organizations. These reports provide critical information on the conditions in the receiving Member State, supporting informed and fair judicial decisions.

The case establishes a strong precedent for ensuring effective judicial protection within the EU asylum system. The CJEU's ruling affirms the right of asylum seekers to challenge transfer decisions, mandates prompt and independent judicial review, and requires Member States to consider fundamental rights and systemic deficiencies before proceeding with transfers. By addressing these key aspects, the ruling significantly enhances the framework for protecting the rights of asylum seekers and ensuring that they have access to effective judicial protection.

3.2.3. JAWO CASE

The *"Abubacarr Jawo v. Bundesrepublik Deutschland"* case involves Abubacarr Jawo, a Gambian national who applied for asylum in Germany. He had first entered the European Union through Italy, where he was registered and fingerprinted. According to the Dublin III Regulation, Italy was the country responsible for processing his claim. So German authorities sought to transfer Jawo back to Italy.[263] On 19 March, the CJEU delivered its judgement concerning the threshold for suspending the transfer of an asylum applicant under the Dublin III Regulation based on the living conditions in the Member State responsible, as well as the requirements for extending the time limit for transfer.

The applicant, a Gambian national, had applied for asylum in both Italy and Germany. The German authorities rejected his application as inadmissible and ordered his transfer to Italy. On appeal, the applicant argued that Germany had become the responsible Member State due to the expiration of the 6-month transfer time limit. He also contended that he could not be transferred to Italy due to systemic deficiencies and the living conditions faced by beneficiaries of international protection there. A request was subsequently submitted to the CJEU for a preliminary ruling on the interpretation of Articles 3(2) and 29(1) and (2) of the Dublin III Regulation, as well as Article 4 of the Charter.[264]

The CJEU ruled that, according to its case law, an asylum applicant may not be transferred under the Dublin III Regulation to the Member State responsible if the living conditions there would expose them to extreme material poverty amounting to inhuman or degrading treatment as defined by Article 4 CFR. The Court held that this threshold is met only

[263] European Union, (2013), "*Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*." Official Journal of the European Union, L 180, 31-59. "https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R0604"

[264] CJEU, (2019a), "*Judgment in Case C-163/17 Abubacarr Jawo v Bundesrepublik Deutschland*." https://curia.europa.eu/juris/document/document.jsf?text=&docid=212963&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1606430

when such deficiencies, considering all circumstances of the individual case, reach a particularly high level of severity beyond significant degradation of living conditions or a high degree of insecurity. This finding aligns with the jurisprudence of the ECtHR.[265] Therefore, national courts must examine, based on objective, reliable, specific, and updated information and considering the fundamental rights protection standards guaranteed by EU law, whether there is a real risk of the applicant encountering such extreme material poverty.[266]

This ruling clarified the standards and burden of proof regarding the reception conditions in the receiving country and the definition of absconding under the Dublin III Regulation. The decision reinforced the principle that asylum seekers should not be transferred to countries where they risk facing inhuman or degrading treatment but also set a high threshold for proving such risks. It underscored the necessity for national authorities to rigorously adhere to procedural timelines and provide clear evidence when claiming that an asylum seeker has absconded. The case highlights the balancing act between efficient processing of asylum claims and safeguarding the fundamental rights of asylum seekers within the EU's legal framework.[267]

The CJEU ruling in the Jawo case provides a significant perspective on the principle of solidarity in EU law, particularly concerning the Dublin III Regulation and the CEAS. The Jawo case underscores the practical challenges in achieving solidarity, particularly in ensuring fair burden sharing among Member States. The requirement for individualized assessments and the potential identification of systemic deficiencies lead to uneven distribution of asylum seekers, placing a disproportionate burden on states with more robust asylum systems.

Solidarity in the EU also hinges on mutual trust and cooperation among Member States. The Jawo case highlights that this trust can be compromised if Member States do not adhere to minimum standards of reception and asylum procedures. Ensuring that all Member States maintain adequate conditions is essential for the effective functioning of the Dublin system and for solidarity to be meaningful.

The judgement implicitly calls for systemic improvements across the EU to ensure that all Member States can provide adequate protection to asylum seekers. This aligns with the principle of solidarity, suggesting that stronger support mechanisms and resources are necessary to help member states with weaker systems. This case emphasizes the need for a balanced approach that ensures fair burden sharing among Member States while safeguarding the fundamental rights of asylum seekers. For solidarity to be effective, it requires not only the

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[265] ECtHR, (2021), "*Guide on the case-law of the European Convention on Human Rights: Asylum and Immigration*." Retrieved from https://www.echr.coe.int/documents/guide_asylum_eng.pdf

[266] CJEU, (2019b), "*Press Release No 32/19: Judgment of the Court of Justice in Case C-163/17*" Retrieved from https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-03/cp190032en.pdf

[267] FRA, (2020), "*Migration: Fundamental Rights Issues at Land Borders*" Retrieved from https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-migration-land-borders-report_en.pdf

equitable distribution of responsibilities but also the commitment to uphold high standards of protection and cooperation across the EU.

The Jawo case establishes an important framework for ensuring effective judicial protection within the EU asylum system. The CJEU's ruling affirms the right of asylum seekers to challenge transfer decisions, mandates thorough and independent judicial review, and requires Member States to consider the risk of inhuman or degrading treatment before proceeding with transfers. By addressing these key aspects, the ruling significantly enhances the framework for protecting the rights of asylum seekers and ensuring that they have access to effective judicial protection.

3.2.4. JAFARİ CASE

The CJEU rulings in the AS and Jafaricases, both decided on July 26, 2017, provide significant insights into the interpretation of the Dublin III Regulation and the principle of solidarity in EU law, especially in the context of the 2015 refugee crisis.

The AS case involved a Syrian national who entered the EU through Slovenia and then traveled to Austria, where he applied for asylum. Austria determined that Slovenia was the Member State responsible for his asylum claim under the Dublin III Regulation and sought to transfer him back to Slovenia. The applicant argued that he had not entered Slovenia irregularly due to the exceptional circumstances of the refugee crisis.[268]

The Jafari case involved two Afghan sisters who entered the EU through Croatia before traveling to Slovenia and then Austria, where they applied for asylum. Austria again determined that Croatia was the responsible member state under the Dublin III Regulation and sought to transfer them back to Croatia. The sisters argued that they had not entered Croatia irregularly because the Croatian authorities had tolerated their entry and onward travel.[269]

The CJEU clarified that an entry is considered "irregular" under the Dublin III Regulation even if the Member State tolerates the entry and onward movement of asylum seekers due to exceptional circumstances, such as a large influx of refugees. The CJEU also acknowledged the discretionary humanitarian clauses in the Dublin III Regulation, which allow Member States to assume responsibility for an asylum application on humanitarian grounds or

[268] CJEU, (2017a), "*Judgment in Case C-490/16 A.S. v Republic of Slovenia*" "https://curia.europa.eu/juris/document/document.jsf?text=&docid=193187&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1606430"

[269] CJEU, (2017b), "*Judgment in Case C-646/16 Jafari v Bundesamt für Fremdenwesen und Asyl*." "https://curia.europa.eu/juris/document/document.jsf?text=&docid=193188&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1606431"

in exceptional circumstances. However, these clauses are discretionary and do not impose mandatory obligations on Member States.[270]

On 26 July 2017, the CJEU issued its rulings in both cases, addressing the application of the Dublin III Regulation amid the mass border crossings in the Western Balkans during 2015/2016. The Austrian and Slovenian Courts sought clarification on whether facilitating mass border crossings during a humanitarian crisis could be considered the issuance of a "visa" or an "irregular crossing" under the Dublin Regulation III.[271]

Firstly, the Court determined that the definition of "visa" under Dublin Regulation III could not be directly derived from other EU acts such as the Visa Code. Instead, it must be construed based on Article 2(m) of Dublin Regulation III and the Regulation's overall framework. The CJEU concluded that a visa refers to an act formally adopted by a national authority, rather than mere tolerance of entry, and should not be confused with the grant of admission to the territory. This interpretation remains unchanged even in situations involving a large influx of asylum seekers. It also differs from the authority to permit entry on humanitarian grounds under Article 5(4)(c) of the Schengen Borders Code (SBC) and from the issuance of humanitarian visas with limited territorial validity under Article 25(1)(a) of the Visa Code. Therefore, the Court ruled that tolerating the entry and transit of third-country nationals during exceptional circumstances does not equate to issuing a "visa" under Dublin Regulation III.

Secondly, the CJEU noted that the concept of "irregular crossing" is not defined in Dublin Regulation III or any other EU act and must be interpreted in the context of Dublin Regulation III's objectives. A border crossing without meeting the legal conditions of the Member State concerned is generally considered "irregular," according to the rules set by the SBC. While the SBC allows for humanitarian exceptions, such authorization is only valid within the territory of the Member State that provided it, not across all Member States. Consequently, this provision does not regularize border crossings solely for the purpose of transiting to another Member State to seek asylum. In the cases at hand, third-country nationals were regarded as having "irregularly crossed" the border, irrespective of whether their crossing was tolerated or authorized. This interpretation remains valid despite the large number of arrivals, making Croatia responsible for the asylum claims under Article 13(1) Dublin Regulation III.

Specifically, in the Jafari case, the Court reiterated that, under Article 4 of the Charter and Article 3(2) Dublin Regulation III, an applicant for international protection must not be transferred to the responsible Member State if there is a genuine risk of inhuman or degrading

[270] CJEU, *C-490/16*, (2017a), paras. 41-42; CJEU,2017b, *Case C-646/16* paras. 39-40
[271] CJEU, *C-490/16*, (2017a), paras. 48-52; CJEU, 2017b, *Case C-646/16* paras. 45-49

treatment. In the A.S. case, the CJEU reaffirmed its position from the Ghezelbash ruling that the effective remedy under Dublin Regulation III covers both the examination of the Regulation's application and the review of the legal and factual situation in the Member State to which the applicant would be transferred. The Court also clarified that lodging an appeal against a transfer decision does not affect the 12-month period following an irregular border crossing.[272] However, the 6-month period to carry out the transfer does not start until a final decision on an appeal with suspensive effect is reached, including when a national court requests a preliminary ruling from the CJEU.[273]

The rulings highlight the challenges of burden sharing during mass influxes of asylum seekers. By maintaining that the first country of entry is responsible for processing asylum claims, the ECJ underscored the strain placed on frontline Member States, such as Croatia and Slovenia, during the 2015 refugee crisis. This interpretation of the Dublin III Regulation can lead to unequal burden sharing, contrary to the principle of solidarity. The humanitarian clauses in the Dublin III Regulation reflect an element of flexibility and solidarity, allowing Member States to relieve pressure on overburdened countries by voluntarily taking responsibility for asylum seekers. However, the discretionary nature of these clauses means that solidarity relies on voluntary cooperation rather than binding obligations.

The rulings emphasize the importance of mutual trust and cooperation among Member States. For the Dublin system to function effectively, Member States must trust that others will uphold their responsibilities and provide adequate protection to asylum seekers. However, the 2015 crisis exposed weaknesses in this mutual trust, as some states were overwhelmed while others were reluctant to share the burden.[274] The rulings implicitly call for systemic reforms to enhance solidarity and ensure a more equitable distribution of responsibilities. The 2015 crisis demonstrated that the Dublin system, as it currently stands, may not be fully equipped to handle large-scale refugee movements. Strengthening solidarity mechanisms, such as mandatory relocation schemes and increased support for frontline states, is necessary to address these challenges.

In conclusion,the AS and Jafari cases illustrate the complexities of applying the Dublin III Regulation during times of crisis and the inherent tensions with the principle of solidarity in EU law. The CJEU's rulings reaffirm the responsibility of the first country of entry but also highlight the need for enhanced cooperation and mutual support among member states. For the principle of solidarity to be fully realized, there must be a balance between adhering to the

[272] Article 13(1) of Regulation (EU) No 604/2013.
[273] CJEU, *C-490/16*, (2017a), paras. 61-62; CJEU, (2017b,) *Case C-646/16,* paras. 56-57
[274] FRA, (2020), "*Migration: Fundamental Rights Issues at Land Borders*." Retrieved from https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-migration-land-borders-report_en.pdf

Dublin rules and ensuring fair burden sharing, especially during exceptional circumstances like mass refugee influxes. This ruling affirms the right of asylum seekers to challenge transfer decisions, mandates prompt and independent judicial review, and recognizes the need for flexibility in applying the Dublin III Regulation during exceptional circumstances. By addressing these key aspects, the ruling significantly enhances the framework for protecting the rights of asylum seekers and ensuring that they have access to effective judicial protection.

3.2.5. CIMADE, GISTI v. Ministre de l'Intérieur

CIMADE "Comité Inter-Mouvements Auprès Des Evacués" and GISTI "Groupe d'Information et de Soutien des Immigrés" are organizations advocating for the rights of migrants and asylum seekers. The case was brought before the CJEU against the French Ministry of the Interior, focusing on the interpretation and application of the Reception Conditions Directive. [275]

The directive establishes minimum standards for the reception of asylum seekers across EU Member States, ensuring that their basic needs are met while their applications are processed. Central to the case was the question of responsibility for providing reception conditions when an asylum seeker is transferred under the Dublin II Regulation, which determines the Member State responsible for examining an asylum application.

The CJEU delivered its judgement regarding the obligations outlined in the Directive and Dublin II Regulation about providing minimum reception conditions to asylum seekers. The primary issue was whether a Member State that receives an asylum application must provide the minimum reception conditions specified in the Directive to an asylum seeker, even if it plans to request another Member State, identified as responsible under the Regulation, to take charge of or take back the asylum seeker. The CJEU ruled that the Member State initially receiving the asylum application is indeed required to provide these minimum reception conditions, regardless of its decision to request another Member State to assume responsibility.

Another issue addressed was determining when the obligation of the Member State that received the asylum application to provide these conditions ends and which Member State should bear the financial burden. The obligation to provide minimum reception conditions ceases when the asylum seeker is actually transferred to the Member State responsible for examining the asylum application. Until the transfer occurs, the Member State that received the

[275] CJEU. (2012). "*Judgment in Joined Cases C-179/11 and C-180/11, CIMADE and GISTI v Ministre de l'Intérieur*" https://curia.europa.eu/juris/document/document.jsf?text=&docid=123843&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=2276393

application and requested another Member State to take charge or take back the asylum seeker must bear the financial responsibility for providing the minimum reception conditions.

The CJEU clarified that the obligation for the Member State receiving the asylum application to provide minimum reception conditions begins when the application is lodged, regardless of whether the Member State is ultimately responsible for examining the application. This obligation applies to all asylum seekers within the territory of the Member State where the application was submitted, pending the determination of the responsible Member State, which can take several months.[276] Asylum seekers are permitted to remain in the territory of the Member State where the application was lodged until their actual transfer to the responsible Member State.[277] The obligation to provide minimum reception conditions ends when the asylum seeker is physically transferred to the responsible Member State.[278] The Member State requesting the transfer must bear the financial burden of providing minimum reception conditions until the transfer is completed. Additionally, the reception conditions can be reduced or withdrawn if the asylum seeker fails to comply with the rules, such as not attending personal interviews.[279]

The CJEU's ruling emphasizes the responsibility of the Member State that first receives the asylum application to provide and finance the minimum reception conditions until the asylum seeker is transferred to the responsible Member State. This interpretation ensures that asylum seekers are granted appropriate conditions during the entire process, reflecting the commitment to humane treatment and the efficient operation of the Dublin system.

In its judgement, the CJEU ruled that the Member State where the asylum seeker is present must ensure the reception conditions until the transfer to the responsible Member State is completed. The Court emphasized that the reception conditions are essential for safeguarding the fundamental rights and human dignity of asylum seekers. Denying reception conditions during the transfer period would undermine these rights. The Court also highlighted that the Dublin II Regulation, when read together with the Reception Conditions Directive, must be interpreted in a manner that promotes solidarity among Member States. This ensures that no Member state is overburdened and that asylum seekers receive adequate support irrespective of their location within the EU.

The CIMADE and GISTI case illustrates the practical application of the principle of solidarity in EU asylum policy. By mandating that the Member State where the asylum seeker is present must provide reception conditions, the ruling ensures that all Member States

[276] Joined Cases C-179/11 and C-180/11, (2012), para. 43
[277] Joined Cases C-179/11 and C-180/11, (2012), para. 47-48
[278] Joined Cases C-179/11 and C-180/11, (2012), para. 55
[279] Joined Cases C-179/11 and C-180/11, (2012), para. 57

contribute to the welfare of asylum seekers, thereby preventing undue pressure on any single Member State. The decision reinforces the idea that responsibility for asylum seekers should be shared fairly, aligning with the principle of solidarity. It prevents a scenario where asylum seekers are left without support during administrative processes, promoting a more equitable distribution of responsibilities. The ruling underscores the importance of coherence in the EU's legal framework, ensuring that directives and regulations work together harmoniously to uphold solidarity and the rights of individuals.[280]

The CIMADE, GISTI case underscores the vital role of the principle of solidarity in the EU's asylum and migration policies. By ensuring that reception conditions are provided throughout the asylum process, the CJEU reinforced the notion that all Member States must contribute to a humane and fair asylum system. This case highlights how solidarity is not just a theoretical principle but a practical necessity for ensuring the protection of fundamental rights and the equitable sharing of responsibilities within the EU.

The CJEU's ruling ensures that third-country nationals have the right to challenge detention and return decisions. This is a crucial aspect of effective judicial protection, allowing individuals to contest decisions that may impact their fundamental rights. Effective judicial protection requires that judicial review of detention and return decisions be thorough and independent. The Court mandated that national courts must assess both the legality and the proportionality of such decisions, ensuring that individuals' rights are protected. The ruling also emphasizes the importance of access to legal representation and relevant information. This ensures that third-country nationals can effectively present their case and understand the reasons behind the decisions affecting them.[281]

The case establishes an essential framework for ensuring effective judicial protection within the context of EU immigration law. The CJEU's ruling affirms the right of third-country nationals to challenge detention and return decisions, mandates thorough and independent judicial review, and emphasizes the importance of access to legal representation and relevant information. By addressing these key aspects, the ruling significantly enhances the framework for protecting the rights of third-country nationals and ensuring that they have access to effective judicial protection.

[280] Joined Cases C-179/11 and C-180/11, (2012), para. 49
[281] Joined Cases C-179/11 and C-180/11, (2012), para. 49

3.2.6. THE SLOVAKIA AND HUNGARY V COUNCIL CASE

The principle of solidarity is exemplified by the *Slovakia and Hungary v. Council* case.[282] This case was brought before the CJEU following the adoption of Council Decision,[283] which introduced provisional measures for international protection to aid Italy and Greece.[284] This decision was made against the backdrop of the 2015 Refugee Crisis, during which the EU experienced an unprecedented influx of migrants, placing a substantial burden on Member States. However, this burden was not evenly distributed among them.

The Dublin regulation cause border countries to be overwhelmed by the number of applicants. Italy and Greece, in particular, faced significant pressure on their asylum systems due to exceptional migratory flows. In response, the Council adopted Decision,[285] which implemented concrete solidarity measures.

Slovakia argued that the Relocation Decision wasn't needed to achieve its goal. Thus, the Court had to decide if the Council erred in assessing solutions and if a less strict measure could've worked. The CJEU found that, given the urgent situation in Italy and Greece, the Council had to act in line with solidarity among Member States. Therefore, the measures taken by the Council regarding the relocation system were seen as appropriate and necessary.[286] Essentially, the Court justified the Council's decision using the principle of solidarity.

Specifically, the decision adjusted the Dublin Regulation temporarily, allowing asylum seekers to be relocated from Italy and Greece to other Member States for a fairer distribution.[287] However, Slovakia and Hungary disputed the decision's legality, taking the case to the CJEU and raising objections. The CJEU ruled that, given the urgency in Italy and Greece, the Council had to act based on solidarity among Member States.[288] Hence, the Court upheld the provisional measures as legitimate, affirming the Council's decision based on solidarity.[289]

In paragraph 291, the Court underscored the significance of solidarity in EU asylum law, stating that when a Member State encounters an emergency under Article 78(3) TFEU, the burdens resulting from provisional measures must be distributed among all Member States in

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[282] CJEU, (2017), "*Judgment in Joined Cases C-643/15 and C-647/15, Slovakia and Hungary v. Council*" https://curia.europa.eu/juris/document/document.jsf?text=&docid=194081&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=6287019

[283] *"Council Decision (EU) 2015/1601 of 22 September 2015 on provisional measures in the area of international protection for the benefit of Italy and Greece."* **"**Official Journal of the European Union", L 248, 24.9.2015, p. 80-94. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015D1601

[284] CJEU, (2017),*"Slovakia and Hungary v Council",* Joined Cases C-643/15 and C-647/15, ECLI:EU:C:2017:631.

[285] *"Council Decision (EU) 2015/1601 of 22 September 2015 on provisional measures in the area of international protection for the benefit of Italy and Greece"* "Official Journal of the European Union", L 248, 24 September 2015, pp. 80-94. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015D1601

[286] Joined Cases C-643/15 and C-647/15, 2017, para. 279.

[287] Anja Radjenovic, (European Parliament 2020), *"Emergency Measures on Migration: Article 78(3) TFEU"*

[288] Joined Cases C-643/15 and C-647/15, 2017, para. 291

[289] Boniglia, E., (2021), "*The Principle of Solidarity in EU Asylum Law and EU Public Health Law*" (Master's Thesis, European Union Law, University of Amsterdam)

accordance with the principle of solidarity and fair responsibility sharing, as outlined in Article 80 TFEU. The court's language underscores that the principle of solidarity and fair sharing of responsibility among Member States is not just a theoretical concept but a rule to be put into action. This represents a notable progress for the CJEU, as it shifts solidarity from theory to practical implementation.[290]

Although the CJEU does not precisely define the principle of solidarity, the *Slovakia and Hungary v. Council* case established that solidarity imposes binding obligations for both Member States and the Union.[291] Previously, Solidarity was viewed as a voluntary concept promoting cooperation among Member States.[292] However, the Court clarified that solidarity now creates binding obligations for both the Union and Member States. The CJEU refuted Slovakia's argument that solidarity is non-binding and confirmed that Member States must act out of a duty of solidarity.[293] The Court's decision reaffirmed that the Council had to implement the principle of solidarity through the contested Decision, according to Articles 78(3) and 80 TFEU. In essence, the Court reaffirms solidarity as a duty in EU Asylum Law and places that this principle can be enforced through legally binding measures for Member States.[294] Consequently, EU states are obliged to share responsibilities, even if this imposes additional burdens on individual Member States, as demonstrated by the Relocation Decision.[295]

3.2.7. COMMISSION V. POLAND, HUNGARY, AND CZECH REPUBLIC

The *Slovakia and Hungary v. Council* case[296] judgement sparked political discontent in Hungary, which is particularly focused on protecting its constitutional identity and is resistant to the settlement of foreign populations on its territory. [297] Similarly, Poland and Slovakia expressed outrage at the verdict, contending that the CJEU had rendered a highly political decision rather than a strictly legal one. In addition, Hungary, Poland, and the Czech Republic persisted in their refusal to accept relocated asylum seekers, leading the European Commission

[290] Joined Cases C-643/15 and C-647/15, paras. 236-292.
[291] Andrea Circolo and others, (2018),*"The Principle of Solidarity between Voluntary Commitment and Legal Constraint"* 9 CYIL 155, 171.
[292] Andrea Grimmel, (Routledge 2018), *"Is the Migration Crisis a Solidarity Crisis? The Crisis of the European Union"* p.116.
[293] Andrea Circolo and others, (2018), *"The Principle of Solidarity between Voluntary Commitment and Legal Constraint*" 9 CYIL 155, p172.
[294] Fernandes, V. P. B., (2018), "*European Solidarity at Crisis?"* "*The Case of the Relocation Decisions of 2015"* (Doctoral dissertation, Catolica Global School of Law).
[295] Judgement in Joined Cases C-643/15 and C-647/15, 2017, para. 292-294
[296] CJEU, (2017), "*Judgement in Joined Cases C-643/15 and C-647/15, Slovakia and Hungary v. Council*" "https://curia.europa.eu/juris/document/document.jsf?text=&docid=194081&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=6287019"
[297] Anita R. Nagy-Nádasdi, (September 8, 2017), *"Hungarian Constitutional Identity and the ECJ Decision on Refugee Quota"*

to initiate infringement procedures against these countries for non-compliance with EU law.[298] The CJEU held these countries accountable for failing to fulfill their obligations under the Relocation Decision, highlighting the tangible consequences of disregarding the principle of solidarity. The Court strengthened the enforceability of the solidarity principle, establishing a stringent standard for exceptions.

The European Commission initiated an infringement procedure against Poland, the Czech Republic, and Hungary in the CJEU. The Commission accused these countries of not meeting their responsibilities under EU law. The CJEU ruled that Poland, the Czech Republic, and Hungary were indeed in violation of their obligations regarding the Relocation Decision, emphasizing the real repercussions of disregarding solidarity within the EU Law. The Court emphasized that permitting Member States to cite general prevention grounds to evade their obligations would undermine both the purpose of the Relocation Decision and the principle of solidarity. The CJEU reiterated the enforceability of the solidarity principle, establishing a stringent standard for any exceptions.The resistance from certain Member States prompted the Commission to put forward a new solidarity mechanism centered on relocation.[299] In this proposal, the Commission underscores the duty of Member States to facilitate relocations and sponsorships for returns, while providing them the discretion to determine the level of effort to be allocated among individuals to be relocated and returned.[300] Essentially, it appears that the Commission is permitting a degree of flexibility concerning the application of the solidarity principle.

In summary, the case of Slovakia and Hungary v. Council establishes the EU's legally binding obligation to uphold the principle of solidarity in asylum matters, as outlined in Articles 78(3) and 80 of the TFEU. This ruling clarifies that Member States must share burdens and responsibilities, prioritizing collective support over individual national interests, particularly in aiding countries facing significant challenges. The subsequent *Commission v. Poland, Hungary, and Czech Republic* case further underscores the court's commitment to enforcing this principle, highlighting its tangible consequences. Despite the Commission's proposal for a new, more flexible solidarity mechanism, the compulsory nature of the principle remains affirmed, ensuring that obligations within EU asylum law are both binding and enforceable.

This judgement is significant because it rejects the notion of the principle of solidarity as merely a value of the Union. Instead, it elevates solidarity to a legal principle, thereby

[298] CJEU, (2020), Joined Cases C-715/17, C-718/17 and C-719/17, *"European Commission v Republic of Poland, Hungary and Czech Republic"* ECLI:EU:C:2020:257, paras 24-26.
[299] Donatienne Ruy and Erol Yayboke, (2020, September 24), *"Deciphering the European Union's New Pact on Migration and Asylum"* Center for Strategic and International Studies
[300] European Commission, (2020), "*Commission Communication — New Pact on Migration and Asylum",* Brussels, 23.9.2020, COM(2020) 609 final.

creating binding obligations for all Member States. Hence, the Court has taken a significant step in affirming that solidarity is not just an abstract or political concept but a binding legal requirement that Member States must adhere to, especially in the context of EU asylum policy. This transformation underscores the practical and enforceable nature of solidarity, reinforcing its importance within the Union's legal framework and ensuring that Member States share responsibilities fairly and equitably in times of crisis.

In summary, the case established the EU's obligation to implement the principle of solidarity in asylum, requiring Member States to share burdens and support countries in greater difficulty. The case demonstrated the Court's determination to enforce this principle with tangible consequences. Although the Commission proposed a new, flexible solidarity mechanism, the principle's compulsory nature remains reaffirmed, ensuring that obligations under EU Asylum Law are binding and enforceable.[301]

3.3. CONCLUSION

The CJEU's use of the principle of solidarity underscores its importance in fostering European integration. By ensuring that Member States comply with EU regulations and share responsibilities and risks fairly, the principle of solidarity promotes mutual support, stability, and cohesion within the EU. This principle is crucial in various policy areas, including economic policy, agricultural production, and asylum and immigration. The CJEU's case law on the principle of solidarity in EU asylum law demonstrates the court's commitment to ensuring that Member States share responsibilities fairly and uphold the rights of asylum seekers. The judgement of CJEU reflects the ongoing efforts to create a cohesive and effective CEAS, where solidarity and cooperation are central to managing asylum seekers and refugees within the EU. The Court's interpretation of solidarity has evolved to encompass both legal and political dimensions. Solidarity is not merely a voluntary or political notion, the Court creates binding legal obligations. This was evident when the Court rejected the argument that solidarity is only a duty of mutual aid in crises. The CJEU asserted that solidarity underpins the Union's entire legal system and is closely tied to the principle of loyal cooperation. This principle inherently creates binding effects, and the legality of any act by the Union's institutions and Member States, particularly in asylum policy and other areas, must be assessed in light of the solidarity principle.

[301] Boniglia, E., (2021), *"The Principle of Solidarity in EU Asylum Law and EU Public Health Law*" (Master's Thesis, European Union Law, University of Amsterdam)

GENERAL COMMENTS AND CONCLUSION

The European region has recently experienced a significant emergency known as the Refugee Crisis. This situation has underscored the essential role of solidarity among Member States and within the Union. The principle of solidarity pertains to the obligations between the Union and its Member States, aiming to share burdens and resources through a system of sincere cooperation towards a just and equal EU. Due to the current Refugee Crisis, this principle has gained substantial importance in EU Asylum Law, evolving from a mere value to a legally binding principle. However, there has been considerable debate over whether solidarity is simply a normative value or a legal principle. Furthermore, it has proven to be crucial in fostering cooperation between Member States and the Union during emergencies.

Membership in the European Union brings both benefits and responsibilities. To ensure Member States uphold their shared responsibilities, specific principles have been established and incorporated into the EU Treaties. The principle of loyal or sincere cooperation, outlined in Article 4(3) of the TEU, mandates that Member States adhere to a mutually agreed code of conduct codified in EU primary and secondary law. This code of conduct requires Member States to fulfill their obligations in line with the EU's overarching objectives. Any Member State that implements measures hindering these objectives would be in violation of the principle of sincere cooperation, thus breaching EU law.

Ideally, the CEAS aims to create a solidarity-based approach where the responsibilities towards asylum seekers and permit holders are equitably shared among Member States. This system aims to ensure a fair distribution of the burden and to maintain a balanced approach to asylum across the EU. But there has been significant criticism regarding the uneven distribution of asylum applications and the associated responsibilities among the Member States of the EU. There are notable disparities in the number of asylum applications received by different Member States, both in absolute numbers and relative to their populations. Additionally, the methods by which these states handle asylum seekers and process their applications vary considerably.

Due to the large influx of asylum seekers into the EU, the debate over the unequal distribution of asylum responsibilities has intensified, prompting the implementation of several measures at the EU level. This current situation highlighted the necessity of establishing a permanent responsibility-sharing mechanism grounded in the principle of solidarity, which is seen as crucial for the effective functioning of the CEAS.

Considering the solidarity approach adopted in the decisions of the CJEU, it can be concluded that the Court's interpretative efforts are already fostering a better understanding,

acceptance, and correct enforcement of the principle of solidarity across diverse areas. In this context, the decisions of the CJEU play a significant role in moving beyond the notion of solidarity as merely abstract and voluntary, towards the creation of effective solidarity policies in the field of asylum and beyond. Achieving a consistent approach to the principle of solidarity, applicable in more cases, is still a work in progress. Such a development supports a more inclusive constitutional discourse on European integration, moving beyond solely relying on constitutional principles.

On the other hand, the principle of solidarity in EU asylum policy has significant implications for the effective judicial protection of individuals. Solidarity, a core value of the EU, entails mutual assistance and responsibility-sharing among Member States. This principle is crucial in managing the collective challenge of asylum and migration, ensuring fair distribution of responsibilities and supporting Member States that face disproportionate pressures.

States experiencing high influxes of asylum seekers may face resource constraints, leading to delays and reduced quality in judicial processes. Overburdened judicial systems may struggle to provide timely and fair hearings, compromising the principle of effective judicial protection. Effective judicial protection provides access to justice in overburdened states. So EU legislation aims to standardize asylum procedures across Member States to ensure consistency and fairness on effective judicial protection.

Solidarity measures often involve relocating asylum seekers from overburdened states to others. Relocated individuals must have their rights protected throughout the process, including access to legal remedies and the ability to challenge decisions. Ensuring effective judicial protection requires coordination between different national legal systems, maintaining consistency in the application of EU asylum law. Financial and operational support from the EU helps Member States enhance their judicial systems, improving access to justice for asylum seekers. Funding and technical assistance contribute to better-trained judicial personnel, more efficient processing of cases, and overall improved judicial protection. Moreover, the CJEU plays a crucial role in interpreting the principle of solidarity and its implications for asylum law. CJEU decisions have clarified the obligations of Member States under solidarity measures, influencing national judicial practices and ensuring alignment with EU law.The CJEU upheld the legality of the relocation scheme, reinforcing the principle of solidarity and ensuring judicial protection through adherence to EU standards.

The Dublin Regulation determines which Member State is responsible for processing an asylum application. According to the Dublin Regulation, the responsibility for examining an asylum application typically lies with the first Member State where the asylum seeker enters

the EU. The aim of the Dublin Regulation is to ensure that only one Member State is responsible for examining an asylum application, thereby preventing multiple applications in different countries and ensuring a fair and efficient processing system across the EU. As a result of this procedure, issues of solidarity arise when frontline states, like Greece and Italy, face disproportionate burdens. The principle of solidarity necessitates mechanisms to support these states, ensuring that asylum seekers in these countries still receive effective judicial protection despite the pressures on their systems.

Strengthening EU legislation to ensure that solidarity measures do not compromise the right to an effective remedy is crucial for strengthening judicial protection. It is also essential to incorporate explicit safeguards in relocation and resettlement programs to protect judicial rights. On the other hand, one of the important steps is to increase funding and operational support to frontline states to bolster their judicial capacities and provide continuous training for judicial authorities on asylum law and human rights. Coordination and Cooperation are also important to foster better coordination between national judicial systems to ensure consistency in the application of EU asylum law and establish mechanisms for judicial cooperation and information sharing to handle cross-border legal challenges effectively. It is useful to implement robust monitoring mechanisms to ensure compliance with EU standards on judicial protection and hold Member States accountable for any lapses in providing effective judicial protection to asylum seekers.

The principle of solidarity in EU asylum policy is integral to managing the shared responsibility of asylum and migration. While it aims to distribute the burden fairly among Member States, it also has significant implications for the effective judicial protection of individuals. Ensuring that asylum seekers have access to fair and timely judicial processes requires balancing harmonisation with national autonomy, providing adequate resources and support, and fostering cooperation among national judicial systems. Continued efforts to refine and implement solidarity measures are essential to uphold the fundamental rights of asylum seekers and maintain the integrity of the EU's asylum system.

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