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*Refugees in the European Union: history, legal status, and
challenges*

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ABSTRACT

The refugee conflict in the European Union is the result of a historical process that has deep roots in various parts of Africa and the Middle East. Community efforts to solve this problem have been accentuated since the serious migratory crisis that hit the group of twenty-seven in 2015. This dissertation aims to delve into the historical processes concerning the flow of refugees, the various legal statuses they can acquire, and the judicial and logistical obstacles faced by the European Union in this matter, with emphasis on the existing and debated legislation surrounding the problem.

KEYWORDS: European Union, refugees, asylum, international, migration.

RESUMEN

El conflicto de refugiados que vive la Unión Europea obedece a un proceso histórico que tiene profundas raíces en diversos puntos de África y Oriente Medio. Los esfuerzos comunitarios por resolver este problema se acentuaron a partir de la grave crisis migratoria que azotó al grupo de los veintisiete en 2015. Esta disertación pretende profundizar en lo concerniente a los procesos históricos de flujo de refugiados, los diversos estatus legales que pueden adquirir y los obstáculos judiciales y logísticos a los que se enfrenta la Unión Europea en esta materia, poniendo énfasis en la legislación existente y debatida en torno al problema.

PALABRAS CLAVE: Unión Europea, refugiados, asilo, internacional, migración.

Index

1.	Introduction.....	6
2.	History and clarification of the concept of refugee.....	7
3.	Evolution of the refugee situation within the European continent.....	11
3.1.	Historical processes and its impacts in the EU migration policy	11
3.2.	The conditions of refugees during the XXI century: social, economic, and educational spectrum	14
4.	Legal status of refugees in the European Union.....	18
4.1.	Relevant figures, asylum procedures and determination of refugee status	19
4.2.	Subsidiary and temporary protection.....	26
5.	Challenges facing the European Union.....	28
6.	Conclusions	30
	Bibliography.....	31

Abbreviations

UNHCR	United Nations High Commissioner for refugees
UNRRA	United Nations Relief and Rehabilitation Administration
IOM	International Organization for Migration
PBS	Public Broadcasting System
IRO	International Refugee Organization
IGCR	Intergovernmental Committee for Refugees
EEA	European Education Area
EUAA	European Union Agency for Asylum

1. Introduction

Through this work, the main object of study on which we will focus will be the processes concerning the flow of refugees in the European Union. Our main purpose within this project is to analyse the different procedures and immigration policies of the European Union regarding refugees, the conditions of refugees and asylum seekers during the twenty one century in the continent, and the several complex challenges that the international organization still needs to face, with the aim of concluding if the EU has been able to accurately understand and address efficiently the current refugee situation and evaluate its future mechanisms to improve the already existing system.

Specifically, we will start analysing the emergence of the first international displacements, the formation of the concept of modern refugee, and in turn the clarification of this concept in contrast with other terms commonly used in the current social environment and that can be confused. This is interesting due to the fact that we would like to investigate the events that provoke the first migration movements around the globe, as well as to observe how the concept of modern refugee has been formed and, at the same time, how it can be differentiated from other terms.

We will also delve into the main and most notable movements of refugees on the European continent throughout history and at the same time we will explain the conditions under which refugees who cross European borders find themselves in the 21st century. Throughout this section we intend to investigate the first refugee flows that took place within Europe and be able to describe the conditions in which refugees need to develop themselves during the twenty first century when entering the continent.

During the last stages of the investigation, we will explain the different statuses and legal processes that affect refugees once they begin their application for asylum in the European Union, and in turn we will analyse the figures based on the various categories explained. Finally, we will try to explain the various and complicated challenges that the European Union may face in the coming years in relation to this complex and current problem. In this final part, our main goal is to dive deeper into the several legal mechanisms that asylum seekers must go through and at the same time investigate the problems that the EU could need to overcome in the next decades regarding these refugee flows.

This work falls within the area of international law with special emphasis on politics and international relations. It is an area of study in which we can find countless sources of relevant information, however it is necessary to mention that throughout this work we have tried to analyse the most relevant studies, the most current articles, and the most cutting-edge debates with the objective of obtaining an updated and remarkable essay.

This essay consist in a qualitative work in which we focus on a bibliographic analysis based on legal instruments, scientific articles, relevant books in this area of study and information provided by international governmental and non-governmental organizations. Is important to clarify that, throughout this study, diverse international organizations have been cited under the name of the sub-agencies that are part of them for purely aesthetic and design purposes.

Among the various issues concerning international law, refugees are an area that currently raises various highly difficult conflicts in the European Union and in the world in general. Specifically, during this year, the European Parliament will vote on the new pact on migration and asylum previously proposed by the European Commission with the aim of addressing the various outdated policies of the last decade and, in this way, being able to face the various challenges in migration matters.

2. History and clarification of the concept of refugee

Throughout this section we will try to dissect the historical conceptualization concerning the term refugee, including several previous processes that could be understood as ancient international displacements of our history, historical facts that gave place to the arise of the modern concept of refugee and several differentiations between this concept and other terms that are usually confused and interchanged with the same. We will try to answer the following questions: which are the events that have been shaping the concept of refugee throughout history? How is the concept of refugee being framed throughout the history and which are other terms that should be differentiated from it?

During the course of history, we can observe several examples of what we could understand as the ancient concept of refugee, way before this term started to be used as so. In this sense, we should look closely to Europe, due to the fact that a significant purge of minorities occurred during the last stages of the Spanish reconquest (722-1492) (Ther, 2019). The authoritarian monarchies

composed by the Aragon and Castille kingdoms, led by Isabel of Castille and Fernando of Aragon, joined forces to expulse all the Jewish population within these territories, including the kingdom called “Nazari Kingdom of Granada”, through an edict called “the Granada Edict”, resulting in the expulsion of between 40.000 and 100.000 Jewish inhabitants (Public Broadcasting System (PBS), 2022).

Other ancient political events which consequences were mass international displacements of population from a certain culture to other peoples are a result of colonization and slavery, like the phenomenon of the African diaspora. Engaging with data from The Gilder Lehrman Institute of American History, we can observe how between 1526 to 1867 around 10.7 million Africans were forced to abandon their houses and travel all the way to America with the purpose of being used as labor forces (The Gilder Lehrman Institute of American History, n.d.).

In fact, it is interesting to observe how even though the slave trade implied the international displacement of millions of people during long periods of time, it was not until the moment in which these processes started to be regulated with the ultimate goal of being banned, that the problem began to be considered as an international struggle. After the WWI the American president Woodrow Wilson carried out several international agreements related with the eradication of slavery that where internationally consolidated after the WWII due to the crimes committed by the Nazis which, in its majority, involved forced labor activities (Welton, 2008).

If we were to go back to even more ancient times, we could talk about the Neo-Assyrian massive deportations that occurred between 934 BC to 631 BC. Concretely within this empire, around fourteen kings including Ashurnasirpal II which organized thirteen deportation processes or Sargon II with thirty-eight, formed part of a long tradition of forced international displacements that ended up with one million two hundred thousand inhabitants expelled from the empire (Tartakoff, 2023). It is curious to observe how the data collection exposed comes, sometimes, from official reports made by the monarchies of the time, which could explain the accuracy of the figures and the outstanding control of the migration processes that such an ancient empire had at that time.

Nevertheless, the refugee concept, as used in modern times, was firstly coined within the western society to refer to the Huguenots, which, according to The Huguenot society of Great Britain and Ireland, was the name given during the 16th century to the protestants living in France,

which from about 200.000 of them needed to abandon this country due to their religious faith during the reign of Louis XIV (The Huguenot Society of Great Britain and Ireland, n.d.).

In fact, France is a country to focus on when considering the timeline framework of the creation of the concept of refugee, giving the fact that it is also the mainly protagonist of the second biggest wave of refugees during the XVIII century. French nobility and clergy during the French Revolution were the main characters of a significant exile process product of the tensions created between the ordinary French population and the upper echelons which had been suffocating the people for many years. Data explained by Hammersley, from the Pennsylvania State University shows that almost 150.000 people were forced to leave France due to the fear and threat that the revolution supposed (Hammersley, 2011).

After these events, one of the most problematic moments for the international community in relation to the management of refugees was the First World War (1912-1923). It is especially important to underline the fact that during this war the refugee problem starts to be seen as an international problem in which all countries should be involved, rather than a bilateral problem between two countries and, therefore, we find ourselves in front of a more internationalized concept of refugee than ever before (Ther, 2019). It is relevant to understand that during this period of time, the number of refugees within the European Union was of about 9.5 million according to Madeleine de Bryas, which would suppose an increase of 97,9% in relation with the Huguenot refugees (Gatrell, 2007).

More recently, this term has been employed as a response to the notable increase in population international displacements that occurred after the Second World War which, according to Mary Tompsic from the University of Melbourne could be considered to be of around sixty million European citizens (Tomsic, 2024). During this period of time, the first anticipated response regarding the possible massive refugee's flow during a war was designed under the name of United Nations Relief and Rehabilitation Administration (UNRRA) (Gatrell, 2000).

After the war, in 1946, the International Refugee Organization (IRO) was created with the aim of being able to manage the high flows of refugees from Germany, Austria or Italy among others (Ther, 2019). As a consequence, and after years of negotiations, taking this organization as a reference, the first global organization exclusively dedicated to the processes in which refugees

were involved, known as the United Nations High Commissioner for Refugees (UNHCR)¹ founded in 1950 and which nowadays is in charge of the protection of around 89.3 million refugees around the world was created (United Nations High Commissioner for Refugees (UNHCR), n.d.).

In fact, this last international organization is the one giving birth to the most recent and internationally recognized concept of refugee. The UNHCR agency considers refugee to all the people that “have fled their homes to escape persecution, conflict, violence, serious human rights violations or other events seriously disturbing public order, and who seek safety in another country” (UNHCR, 2023)

This previously mentioned term is commonly confused with the concept of migrant, which is completely different and should not be interchangeable. In the words of the International Organization for Migration (IOM), the term could be defined as “reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons” (International Organization for Migration (IOM), n.d.). As we can observe, this term does not concretely include that life risked component present in the refugee concept.

Another important concept that should not be confused between the latter two is the “asylum seeker”. International Amnesty defines an Asylum seeker as “a person who has left their country and is seeking protection from persecution and serious human rights violations in another country, but who has not yet been legally recognized as a refugee and is waiting to receive a decision on their asylum claim” (Amnesty International, n.d.). Therefore, the asylum seeker could be understood as the person in a process between leaving their country due to a life risking situation and being recognized by the responsible country as an official refugee.

Finally, it is essential to clarify the differences between the concepts “internationally displaced”² and “internally displaced”. Considering the reports elaborated by the United Nations Office of the High Commissioner we can understand internationally displaced individuals to be refugees in all those cases previously mentioned in the definition provided by the UNHCR³ while a person who has been forcedly internally displaced, that is, has been forced to move within his

¹ The UNHCR is an organism that forms part of the United Nations since 1950.

² This concept has been previously mentioned to refer to the number of people forced to leave their homes after the WWII

³ Concept defined in page 2

own country, cannot be, in any case, consider as a refugee, due to the fact that they have not crossed any international border (United Nations Human Rights: Office of the High Commissioners (OHCHR), n.d.).

Along this chapter we had the opportunity to understand the different events leading to the origins of the modern concept of refugee. We have also delved into the historical facts in which several international organizations destined to the protection of refugees were created and, finally, we have clarified the meaning of different terms that sometimes, and erroneously, are freely interchanged with the concept of refugee by the media and within the public life.

3. Evolution of the refugee situation within the European continent

Along this section, we will dive into the different historical events that could help us to understand how refugee movements were taking shape within the EU, coming to differentiate various and very varied historical events that occurred both inside and outside the continent but that decisively changed the vision of the EU regarding this problem. We are also going to analyze the social, economic, and educational conditions in which the refugees have been living on since the beginning of the twenty-one century, with the aim of being able to create an image about their living conditions in democratic countries like the ones conforming the EU.

Within this section we will try to answer the following inquiries: What are the main historical events that have originated the most important immigrational movements in Europe? How has the European Union answer to this different migratory crisis?

3.1 Historical processes and its impacts in the EU migration policy.

Throughout history, there have been numerous events that have provoked the displacement of refugees from war zones and territories with political struggles, to countries where opportunities seemed to be more favorable. In the case of refugees moving to the European continent, it is important to configure a historical timeline that reflects these processes.

At first, we should analyze the refugee flows resulting from the Post-World War II reconstructions. As we already know, World War II resulted in the arise of almost fifty million

refugees, nevertheless, according to the National WWII Museum of New Orleans by the end of September 1945, one million and five hundred people remained as refugees in Germany and refused to return to their countries (Marshall, 2022). Some of the other refugees that didn't remain in Germany, were redistributed in camps within western zones thank to the UNRRA, organization which was not able to do more efforts due to its limitations at the time of establishing agreements with third countries.

At this moment, the creation of the Intergovernmental Committee for Refugees (IGCR) with capacity to negotiate with governments for permanent settlements of people within Europe occurs. At the end, all the efforts were focused on the creation of the International Refugee Organization (IRO), which was successful in organizing large scale resettlements of refugees between governments. Concretely the western European governments in collaboration with the IRO and according to the plan Marshall agreed to host the vast majority of refugees (James, 1982).

The Cold War (1947-1991) was also determinant when talking about the resettlement of refugees within the European continent. According to Klaus Bade who analyses the refugees flows as a result of the Cold War, about one million five hundred people were seeking for asylum within the countries of Europe between 1983 and 1990. The principal refugee receiving countries at the time were Germany (703.318), France (277.474), and Sweden (141.864) (Klaus, 2003). It is interesting to point out that by the end of the conflict, the Soviet Union demanded to the return of around one million eastern Europeans settled in Germany since the end of the WWII, although several powers such as the United Kingdom and the United States denied such petition (Wilson Centre, n.d.).

On the other hand, we could talk about the Arab Spring, which within this thesis, would be the first conflict in which its outcomes are being directly managed by the EU as an International Organization, rather than through the bilateral communication of countries belonging to the same continent. As we already know, the Arab Spring (2010-2012) is the name given to the different protests against oppression and the violation of human rights, as well as the restoring of dignity within several middle east countries such as Libya, Egypt, Syria, or Tunisia, being the latter the one where we find the best outcomes in terms of civil liberties and political rights after the protests (Robinson, 2020).

The effects of the Arab Spring in the context of the EU could be understood through the Libyan war and, at the same time, the increase concerning the asylum applications in the continent. The events that occurred in Libya provoked a sudden situation of solidarity as well as an increasement in the number of asylum seekers in Europe. This is especially relevant because challenged the capabilities of the continent at the time of being able to handle this kind of crisis and highlighted the especial necessity of creating a common migration policy. It is also relevant to understand that this duties are handled by the EU in a complete altruistic way since overcomes its necessities of action as an international organization to help in several political situations at a worldwide level (Migration Policy Institute, 2011) (European Website on Integration, 2012).

In regard with refugees, the European Commission compromised to support the refugees resulting from the conflict with economic support that reached eighty million and five hundred thousand euros, while individually, the collaboration of the EU members was of about 73 million euros concretely directed to the refugees of the North of Africa. It was since its formation as an international organization, one of the first big economic imbursements made by the EU to resolve a refugee's crisis (European Commission, 2011).

Despite of this economic and political efforts, the consequences of the Arab Spring and concretely the Libyan war were palpable at the time, with 24.000 refugees displacing to the continent (National Consultative Commission on Human Rights, 2011), nevertheless it is also important to understand that its consequences are still present nowadays. According to Karolewski and Benedikter, writers of the book "Europe's Refugee and Migrant Crisis", the EU encountered its biggest refugees struggle in 2015, where approximately one million five hundred thousand refugees coming from the north of Africa and the middle east arrived at European Mediterranean countries like Greece and Italy (Karolewski, I. & Benedikter, R, 2018).

It is from this refugee crisis in 2015 that the EU started to create several legal mechanisms, that we will address in the following chapters, in order to structure a common response at the time of facing this kind of population flows.

Finally, we will explain the agreement reached by the EU and Turkey regarding refugees. Through the European Council an agreement to stop irregular migration from Turkey to Europe was achieved on March 18, 2016. The agreement's main components included the resettlement of Syrian refugees in the EU, the return of new irregular migrants from Turkey to the Greek islands,

and steps to stop the creation of new migration routes. The EU announced a social safety net and started allocating cash for refugee projects. The European Parliament, however, underlined that outsourcing immigration solutions was not a long-term viable option and urged EU members to show solidarity at the time of talking about refugee management (European Parliament, n.d.).

3.2 The conditions of refugees during the XXI century: social, economic, and educational spectrum

When talking about the social conditions of refugees within the EU we specially need to consider the limits to which we are going to adhere during the investigation. Concretely, we will talk about the integration struggles, the access to housing and the support received due to the EU requirements and non-governmental organizations aid.

It is important to understand that the EU, although is the competent international organization at the time of coordinating and establishing common standards concerning the rights of access to asylum conditions, the states are the last competent legal entities in charge of managing this applications. Therefore, the EU is an agent with the responsibility of trying to redistribute the asylum applicants throughout the different countries (in favor of the solidarity principle), regulate their rights up to a certain extent, and evaluate the different measures and data regarding this processes in collaboration with the national competent organs.

First of all, regarding the integration struggles, Caritas recognizes that the language of the hosting country is one of the most determinant factors at the time of being able to integrate refugees within the different states of the EU, not only to be able to promote educational or job opportunities, but to develop a sense of community for the refugee himself (Lozano, 2019).

Once we already acknowledge the importance of language for the integration of refugees in different life aspects, nevertheless, what is the EU as well as member states doing to promote and enhance language teaching to refugees?. According to the European Commission, the EU has been discussing between 2016 and 2018 this problematic in which they agreed that reforms in language assessment, improvements in language and cultural diversity as well as integrational linguistical policies must be carried on (European Education Area (EEA), n.d.). Moreover, the European Council offers expert advice to be able to apply these recommendations to member states through peer counseling platforms.

The EU has also launched different programs such as the Sirius Network, the Erasmus+ linguistic support who is destined to help more than 100.000 refugees and the massive open online courses which goal is the direct inclusion of refugees within the European society with language as one of the main tools to do so (EEA, n.d.).

Nevertheless, are this language policies and recommendations, created at a European Level, being truly effective at the time of integrating refugees within the EU? According to the European site of integration, managed by the European Commission, less than 45% of the refugees that live in the EU have reported to possess and advance knowledge of the language of their host country. Nevertheless, the Commission clarifies that this could be explained because of the high wave of refugees accepted within the last years, which need time to adapt to the culture and the language of their respective host countries. Concretely, the European Commission explains that those refugees that have been in the host country for more than ten years have twice advance knowledge of the language compared with those that have lived in the country for little time (European Commission, 2016).

Talking about the economic conditions of refugees, we will try to address the employment rate (including the quality of the job) and the financial assistance received. The European Commission within their section regarding the integration of refugees, have reached the conclusion that only almost 56% of the refugees living in a European country are employed after ten years and, even more concerning, it takes up to twenty years for them to have a similar salary in comparison with native-born citizens (European Commission, 2024).

Concretely, in the first five years after the arrival, only one out of four refugees achieve to be employed, being this the lowest figures out of all “migrant groups”. This study also shows how refugees could be the most overqualified sector when talking about international displacements and native-born people. Concretely, 60% of the refugees with education and that also have a job are overqualified for the latter, while this figures are considerably lower when talking about migrants (31%) or native-born (20%) (European Commission, 2024).

Referring to a report elaborated by the European Commission, this situation comes up as a result of different factors englobed in several sectors from which social, legal, and economic challenges are among the most important.

In the social spectrum, the discrimination suffered by refugees from their employees as well as the inexistence of good and strong social connections are some of the most determinant factors at the time of not being able to achieve a good employment.

Concerning the legal obstacles, we find the administrative issues to be the most important barrier for refugees to be able to get access to the labor market. In some cases, it is related with the slow procedure regarding the asylum application as in, for example, France, Austria, Slovakia, or The United Kingdom, whereas in other cases it is related with the lack of integration programs to help refugees to be included into the labor market (European Commission, 2016).

Finally, talking about the economic factors, it is interesting to observe how one of the most important factors for refugees to have difficulties at the time of obtaining a job is the quality of the latter. In the words of the European Commission, exploitation, and undeclared work in countries such as Malta or Greece are concerning problems that provoke a precarious situation for the refugees that are already within the labor market (European Commission, 2016).

Finally, addressing the educational spectrum, we will mainly focus on the opportunities of refugees when accessing to education and, at the same time, the degree of success once they are already within the educational system. As we have already seen, the European Commission, through the European Education Area creates a prioritized framework for refugees to be able to learn the national language of the host country throughout several educational programs. Nevertheless, there are also different online resources available at the time of forming refugees in other areas.

Some of these resources include the SIRIUS network dedicated to the education of “children and young people with a migrant background with strategic activities on the national and international level” along with professional researchers and policy makers. The School Education Gateway is also a useful resource for practitioners to share information and materials which is similar to the eTwinning platform which also offers school leaders to share their knowledge and experiences (EEA, n.d.)

Nevertheless, all of these resources are only available in an online format. Diving deeper, we need to research the real opportunities of refugees at the time of receiving a quality, present and equal education within the EU. According to the UNHCR, in theory, international protection

beneficiaries are entitled to education under the same legal conditions as nationals, although they are not “automatically entitled to associated benefits” which, in fact, restricts the possibilities at the time of being able to get access to quality education.

Regarding asylum-seeking children, they also have the same legal benefits regarding educational rights compared with national citizens and, furthermore, the state should not postpone their access to education more than three months since they logged their asylum claim. It is also interesting to know that even if this asylum condition is revoked, the children still have educational rights within the host country until they are officially removed (UNHCR, 2019).

In practice, the UNHCR points out how several of these agreements are not being followed at the time of granting educational access to refugees and asylum seekers. Highlighting some of the countries analyzed within the report, we first encounter several problems regarding the way the different countries analyze data. For example, Italy only distinguishes between Italian and non-Italian citizens, while Germany does not register all data since it is not compulsory. Countries like Spain only capture data regarding refugees and migrant seekers hosted in reception facilities (UNHCR, 2019).

The situation of all the applicants already identified in different states is also worrying. With the example of these three countries, we can analyze some flaws that appear concerning this educational context, taking into account the 2023 report from the European Union Agency for Asylum.

Italy: it is really complicated for a lot of asylum applicants to get access to quality and official education resulting in their reduction of capabilities to get access to quality jobs in the future. A lot of these applicants reduce their opportunities to just learn the national language as a way of integrating faster in the country. An important part of them have a high interest in attending vocational training, although it is complicated because opportunities are little (European Union Agency for Asylum, 2023)

Germany: the situation of this country is complicated, mainly due to the differences that exist between the different federations regarding the possibilities of studying. The possibilities of refugees and asylum seekers at the time of studying depend mostly on their legal status and also the residence area. The childrens that come from “secure nations” face particularly higher

challenges due to the fact that they are commonly returned before being able to get access to official educational services (European Union Agency for Asylum, 2023).

Spain: Spain present particular challenges when offering valuable data concerning the education possibilities of refugees and asylum seekers. This lack of reliable data constitutes a barrier for the comprehension and therefore adress of the educational resources needed for this people. It is complicated to offer an equal educational support throughout the state due to the decentralization of the autonomous communities which have the power of the educational application and, at the same time, the little resources available in the financial and human sense (European Union Agency for Asylum, 2023).

Within this section we have been able to dive into the different historical periods regarding the refugees flows within the EU and, at the same time, delve into the social, economic, and educational conditions in which refugees find themselves when arriving to a hosting country inside the EU. Concretely, it is enlightening to observe the precarious situation in which this sector of society needs to coexist with native-born people and, in addition, to realize the illegal working scenario, on many occasions being this one the only alternative for refugees.

4. Legal status of refugees in the European Union

Along this section, we will address the legal spectrum regarding the situation of refugees within the EU. Concretely, we will firstly analyze the several updated data regarding the number of refugees and asylum seekers that apply and live within the EU as well as dive into the procedures concerning the asylum application, processing, and determination of the status of refugee. In addition, once a refugee is recognized as so, we must consider their rights and obligations, which the EU has regulated and established within several legal procedures, recommendations, and legislation. Finally, it is important to highlight the differences between the refugee status, from a temporary as well as a subsidiary protection which are legal protection mechanisms also carried out by the EU.

In this section we will delve into the following questions: What are the figures when we talk about refugees and asylum seekers within the European Union? Which are the main procedures to determine the refugee status? Are these procedures effective and efficient?

4.1 Relevant figures, asylum procedures and determination of refugee status

Within the EU there are, concretely, four hundred and 46 million inhabitants from which about twenty-three million (5% of the EU population) are non-EU citizens and 38 million (around 8% of the EU population) were born outside the EU (Statistics on migration to Europe, 2024).⁴ From this population and considering the data proportioned by the UNHCR by the end of 2021 “less than 10% of refugees were living in the EU” although after the Ukrainian war this figure increased to 20% in 2022 (UNHCR, 2023).

The European Commission highlights that, despite the fact that irregular migration is most of the time the most concerning figure, it is relatively small compared with the high volume of legal migration entering the EU, being 2015 the most concerning year with one million and eight hundred thousand irregular entries. Also, it is important to observe that most of the residential permits issued were given because of work reasons (42%), family reunification (24%) or educational purposes (13%) according to data from 2022. Within this same year the increasement in the number of residence permits given due to asylum seeking procedures was outstanding, being of more than 60% (Statistics on migration to Europe, 2024).

Focusing on this last group, in 2022, the number of asylum-seeking applications was of 950.000, being Syrians (83.000), Afghan (57.000), Venezuelan (40.000) and Colombians (37.000) the nationalities where most applications came from. It is especially interesting to notice that out of those 950.000 applications, 237.000 were individuals under eighteen years old and around 39.000 were unaccompanied (Statistics on migration to Europe, 2024).

Overall, in the EU 338.000 applications were answered positive but it is important to understand that thousands of petitions are still pending of an answer due to the fact that at the end of July of 2023 the European Commission recognizes a backlog in the procedures increased on about 25% since more than one year before (Statistics on migration to Europe, 2024). According to the EU Agency for Asylum, the EU countries received one million and one hundred and forty thousand applications of asylum in 2023 (European Union Agency for Asylum, 2024).

⁴ We will analyse the last data fully available which is the one from two thousand twenty-two since the data from two thousand twenty-three is still not fully available.

Taking into account the magnitude of the figures, we could ask ourselves how the procedure at the time of processing an asylum application takes place in the EU taking as context the communitarian legislation. The legislation concerning asylum procedures is really broad and designed by the European Commission in first place while being finally approved by the European Parliament.

When addressing the processes concerning the asylum procedures and determination of the refugee status, we should start by talking about the Asylums Procedures Directive. According to the European Commission, the Asylums Procedures Directive aims to create a “coherent system to ensure that decisions on applications [...] are taken efficiently and fairly” (Migration and Home Affairs, n.d.). This directive aims concretely to accelerate and protect application formulations, limit application decision times, train decision makers, ensure appeals and provide necessary care to people who need it due to age or illness, among other causes. This directive was put into force in 2013 (Migration and Home Affairs, n.d.).

Within this directive, concretely, we should dive into Chapter II, where we could find the basic principles and guarantees concerning this procedural organization. Specifically, is relevant to mention articles six, where the access to the procedure is established, fourteen, where the necessity of a personal interview appears as a necessary requirement to be able to concede the refugee status and finally the article twenty which grants free legal assistance and representation in procedures (Directive 2013/32/EU, 2013).

An important expert when addressing this Asylum Procedures Directive, Dr. Noll, explains that the main goal of this procedure is to be able to guarantee a fair processing of the asylum applications through the management of the same throughout the EU. This directive has implemented some important steps like the time of processing, making interviews or the offer of legal protection and consultancy, which now are faster (Noll, 2020)

This author also focuses on the challenges that this directive faces at the time of ensuring the protection of the rights of asylum applicants and the reduction of the overcrowded asylum centers in European states. These problems, according to him, come due to the way in which different nations apply the policy, resulting in some practices that may interfere with the rights of the applicants. This is mainly cause due to the differences in the tools and resources available in the

states, which provoke changes in the decision processes even when a homogeneous system is required (Noll, 2020).

The expert considers that a positive aspect of this directive is its focus on trying to protect some asylum applicants' rights such as the right to being interviewed or the right to have access to legal assistance, which are essential at the time of treating this asylum seekers with dignity and justice. He also gives emphasis in the fact that the directive doesn't attach all the challenges faced by the applicants, like the obstacles concerning the language difficulties or the procedures, which make it complicated for the applicants to go through the process without incidents (Noll, 2020).

On the other hand, in 2020 a new proposal concerning the Asylum Procedure Regulation was presented with some new ideas for the well-functioning of the whole process such as simplifying the process of application and processing, establishing new guarantees concerning the rights of asylum seekers, precautions regarding possible administrative abuses or accelerate the process and smooth the country designation among other proposals. This has not been transformed into a law subject to be approved by the Council and the European Parliament so far. (European Commission, 2016).

It is also important to take a look to the Reception Conditions Directive which establishes the minimum conditions of reception of asylum seekers within the different countries in the EU including the right for housing, education, or health assistance. Concretely this directive tries to ensure the access to all the before mentioned rights for refugees, is willing to provide specific attention for "unaccompanied minors or victims of torture" (specifically asking the EU countries to carry out individual assessments for these communities) and includes rules regarding the detention of asylum seekers (Migration and Home Affairs, n.d.).

Within this concrete directive is important to focus on chapters II ("General provisions on reception conditions") and III ("Provisions for vulnerable persons") since, on the one hand we can have a wide perspective about essential aspects of the conditions of living of refugees within the host country which are regulated between the articles 11 and 19 and, at the same time we can analyze the special treatments received by vulnerable refugees between articles 21 and 25 (Directive 2013/33/EU, 2013).

Concretely, this directive has been proposed for a reform in 2016, although its consideration has been postponed through the years until 2024, where the council and the parliament are expected to give an answer about the legislative proposal before the European elections (European Parliament, 2024).

Concerning the ability to provide procedures with greater robustness we should mention the qualifications directive which makes the conditions for granting and withdrawing international protection clearer, regulates the capacity of exclusion, and takes into account the difficulties suffered by beneficiaries of international protection among other aspects. It is also surprising to see that in this directive the role of the minor and gender-related people is taken into account in a more detailed way during the assessment and at the time of talking about new legislation (Migration and Home Affairs, n.d.).

Analyzing the directive in deep, it is interesting to focus on chapters II (“Assessment of applications or international protection”), III (“Qualification for being a refugee”), IV (“Refugee status”) and V (“Qualification for subsidiary protection”). Within this chapters it is explained in a clearer way (compared with previous directives) the needed procedures to be able to correctly assess the situation of people in need of international protection, the scope of the definition of refugee, the status and revocation of this condition and, at the same time, the required conditions to be able to receive some kind of subsidiary protection because of serious harm, cessation, or exclusion. Within this directive the figure of the “subsidiary protection” is deeply regulated and is a legal tool that we will develop later (Directive 2011/95/EU).

In July 2013, the European Commission approved what is called the Dublin III regulation (which is of mandatory application by all member states) in which the focus is put over the necessity of the state and only the state to assess the application arriving to its country in a more efficient way and other several provisions concerning guarantees and obligations explained later on (Migration and Home Affairs, n.d.).

Concretely it is novel the fact that this regulation includes a specific time frame that states must follow in order to manage efficiently the application. A country will only be able to hold the application for a maximum of eleven months and in case there is a negative answer to the application, the return should not last longer than nine months (Migration and Home Affairs, n.d.).

From this regulation, we should highlight chapters III (“Criteria for determining the member state responsible”) and VI (“Procedures for taking charge and taking back”). Concretely within this to chapters it is regulated on the one hand which, why and how is the state responsible of managing the different asylum applications and the management of positive and denied applications (Regulation (EU) No 604/2013, 2013).

To put as in perspective, the European Law Blog is against the measures adopted by the Dublin III regulation and gives us an investigation of the main controversies and flaws that it has founded. This blog understands that the main failure at the time of managing the refugee flow of 2015 is the application of the measure called “state of first entry”. It is famously known that most of the refugees get to Europe mainly through Mediterranean countries like Greece and Italy, which according to this policy are forced to manage the asylum applications and therefore are burdened (European Law Blog, n.d.).

The measures form the Dublin III regulation are none of compulsory application which is also a problem in which this blog focuses on. For example, it is not mandatory to apply article 33, that tries to alleviate the situation in case of a sudden migratory flow within the continent. This provokes nations to not be forced to manage the number of asylum seekers fairly between them. Germany is a clear example of exceptionality at the time of applying article 17 which allows states to, in an altruistic way, take asylum applicants from other nations (European Law Blog, n.d.).

This investigation explains that this persisting conflicts can lead to unfair and unequal treatment of asylum seekers. There are cases, according to it, in which asylum seekers receive inhuman conditions and have a lack of protective measures. Therefore, this blog highlights the important of changing this system, which is often unable to cope with all the existing asylum processes, and create another one which is based on efficiency matters (European Law Blog, n.d.).

Finally, concerning the legislative spectrum, we need to mention the EURODAC, which means the European fingerprint regulation established in 2013. In this case we are dealing with a purely administrative regulation concerning the management of refugee application that has been recently renovated through a provisional agreement the twenty of December of 2023 in which the way the information of refugees and, if so, which information is managed and storage (concretely this new regulation allows the storage of facial images and alpha numeric information and reduces the ages of identification from fourteen to six years old) (European Parliament, n.d.).

An important researcher, Anita Orav, focuses to relevant conflicts present in this Eurodac policies as, for example, the enforcement of the obligatory fingerprint gathering. Concretely, she understands that trying to recollect fingerprints by the use of coercion is a common practice which is looked as unacceptable. The Agency for Fundamental Rights of the European Union, which is also critical with this measure, is aligned with this opinions. The author understands that EURODAC network which was been designed to support the application of the Dublin's regulation, has overcome its initial functions at the time of recollecting fingerprints not only from asylum seekers but also from people arrested during illegal frontier trespasses (Orav, 2015)

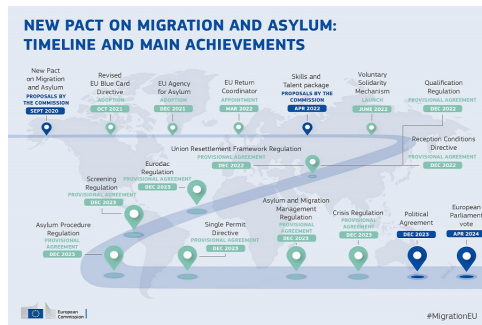
Regarding organizations the most notable European agency concerning the rights, obligations, procedures, and management of the situation of refugees is the European Union Agency for Asylum (EUAA) which was established in 2011 by the EU regulation 439/2010 and which could be seen as the regulatory center of procedures concerning refugees in the EU, providing technical and operational assistance to member states whenever it is required (Migration and Home Affairs, n.d.).

Once we have already seen the vast majority background of the European legislation concerning the management of refugees, we will introduce ourselves into a rabidly current legislation which is still in progress within the EU parliament as we develop this analysis. Concretely, we are talking about the new pact on migration and asylum approved by the European Parliament the ten of April of 2024 which establishes new rules on migration with the aim of being able to cope with multiple and severe issues that the EU is experimenting right now regarding this topic.

Concerning the legislative procedure, it is imperative to see a visual graphic about the procedure to which the new pact has been subject since 2020, taking into account the different European institutions through which it has passed until its current implementation.

Figure 1

New Pact on Migration and Asylum: Timeline and main achievements



Note. European Commission, 11 April 2024

As we can see in figure 1, almost four years have passed since the first proposals were carried out by the competent European institution, the commission, and the voting process done by the European Parliament (which has been positive in its majority). It has definitely been a complicated and long negotiations in which, at the end, several measures have been reached out.

In the words of the European Commission, the designer of this new pact on migration and asylum, this new legislation will “deliver results while remaining grounded in the European values” (Migration and Home Affairs, 2024). Concretely this new legislation aims to strengthen the EU in several migration areas.

- Secure and external borders: this security of external borders aims to be achieved by the complete identification of individuals which do not comply with the conditions to enter the EU, the improvement of the storage of their data through the EURODAC, a more efficient return to their home country alongside reintegration support and a new way of managing immigrational crisis with a connected and permanent communication between the member states (Pact on Migration and Asylum, 2024)

- Fast and efficient procedures: a clearance of the asylum rules, the guarantee of the rights of the asylum seekers, the strengthening of the refugee status qualifications and the prevention of abuses by member states are set to, on the one hand be able to improve efficiency and, at the same time, comply with the rights of the asylum seekers (Pact on Migration and Asylum, 2024).

- Effective system of solidarity and responsibility: the EU is seeking to create a permanent solidarity framework in which the member states ensure to receive the aid they need (operational and financial support), clarify the responsibility of the member states to assess applications and

prevent secondary movements between countries regarding applications (Pact on Migration and Asylum, 2024).

- Embedding migration in international partnerships: the prevention of irregular departures, the traffic of migrants, the cooperation on readmission of migration and the promotion of legal pathways are considered to be key at the time of empowering the capabilities of the EU when managing immigrational conflicts (Pact on Migration and Asylum, 2024).

Through this section we have been analyzing not only the already existing EU legislation which constitute the foundations of how the EU works on migration for a decade, but we have also been able to go further on ongoing legislation that focuses on the debilities detected how they could be resolved attending to future crisis and current management of immigrational flows.

4.2 Subsidiary and temporary protection

In this concrete space we will specify the definition and range of action of two really important legal concepts concerning the immigrational entrances in the EU, which are the subsidiary and the temporary protection.

According to Jane McAdam, subsidiary protection, also mentioned as complementary protection, is a tool that has been use within the international legal field when states recognize that a person does not fit the legal requirements to be subject of protection. In this sense, the EU has commonly allowed people who cannot be labeled as “refugees” (but that have the necessity to receive aid) to have some short of protection under the qualification of “b refugees”, “facto refugees” or “humanitarian asylum”. More in deep, the concept of subsidiary protection, as so, was defined by the Austrian presidency in 1998 as “protection for persons from third states who do not fall within the scope of the Geneva Convention but who still have need of some other form of international protection” (McAdam, 2005).

Therefore, the next natural question that we should ask ourselves is the following: which are the limits established in the Geneva convention that grant the status of refugee to third country individuals? And subsequently, what is the Geneva convention?

The Geneva convention, according to the international committee of the Red Cross, are “international treaties that contain the most important rules limiting the barbarity of war. They protect people who do not take part in the fighting (civilians, medics, aid workers) and those who can no longer fight (wounded, sick and shipwrecked troops, prisoners of war).” There exist four Geneva conventions and in the one organized in 1951 the regulation of refugees is widely developed (International Committee of the Red Cross, n.d.)

In its article one, this convention establishes the scope of the definition of refugee and agrees that protection should be granted to “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [their] nationality and is unable or, owing to such fear, is unwilling to avail [themselves] of the protection of that country; or who, not having a nationality and being outside the country of [their] former habitual residence, is unable or, owing to such fear, is unwilling to return to it” (UNHCR, n.d.).

Nowadays in the EU this legal figure is regulated under the directive 2011/95, and is defined as the “protection given to a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to their country of origin, or in the case of a stateless person to their country of former habitual residence, would face a real risk of suffering serious harm” (Migration and Home Affairs, n.d.).

On the other hand, it is interesting to clarify the concept of temporary protection. The European Commission considers the temporary protection an exceptional measure to be able to provide immediate protection to in the event of a max influx of displaced persons from non-EU countries who are unable to return to their country (Migration and Home Affairs, n.d.).

This legal concept is more developed within the Temporary Protection Directive of 2001 (Council directive 2001/55/EC) in which it is worth it to analyze article one where the basic standards providing the directives to grant temporary protection are set, article five which details the processes to grant this protection and finally article eight that endorses the obligations of individuals which have been granted that temporary protection (Directive 2001/55/EC, 2001).

Through this section we have been concretizing the scope of relevant legal terms such as the temporary and the subsidiary protection with the aim of clarifying its purpose and functions and distinguish them from other legal concepts.

5 Challenges facing the European Union

Once we have already understood the complex framework in which the refugee's situation is regulated in the EU is important to understand what are the problems that the community institution is facing and what are the main solutions that should be adopted to solve future conflicts.

For this concrete purpose, it is interesting to take a look to the guidelines established by the European Union Agency for Fundamental Rights, which in 2013 elaborated a report regarding the progresses and challenges of the EU throughout eight years of asylum (2015–2023) and migration policies.

The report focuses in seven specific areas of action which are: borders, access to asylum, reception, integration children in migration, immigration detention and return. In addition, it also limits the subjects of study to nine European countries which are key regarding the European migration policies, which are Spain, France, Italy, Croatia, Greece, Cyprus, Hungary, Poland, and Lithuania. (European Union Agency for Fundamental Rights (FRA), 2023).

Regarding the different areas of action that we have previously mentioned, the report highlights some weaknesses that should be improved by the forementioned member states:

- EU external borders: regarding the borders it is concerning to see that lots of people still die in their attempt to cross European borders. According to the IOM only in 2021 and specifically in the Mediterranean route almost 2850 people were founded dead trying to cross the border (IOM, 2022).

It also mentions the high volume of violations suffered at the EU external borders. For example, in 2023, the European Centre for Constitutional Human Rights denounced the impunity of the Spanish state at the time of dealing with the migrants trying to cross the Melilla border which resulted in 37 people killed and seventy-seven disappeared which is similar to what has been denounced within the report where it mentions that “victims of rights violations do not find redress

in national courts” (European Centre for Constitutional Human Rights (ECCHR), 2023) (FRA, 2023).

- Access to asylum: in this section the report focuses on the times existing between the applications and the decisions made by the national administrations, in the obstacles suffered by irregular people at the time of applying for an asylum and the issues regarding the linguistic assistance that can be offered in the host countries (FRA, 2023)

- Dignified living conditions: A persisting problem throughout all European countries is the congestion suffered at the EU reception centers and also at the time of addressing the needs of vulnerable people (even taking into account the improvements that we have already addressed before) as well as the dignification of the reception of minors which, according to the European Commission represent the 25% of the total of first time asylum applications recorded in the EU in 2021 (Eurostat, n.d.) (FRA, 2023).

- Children in migration: child detention and child disappearance should be the two biggest concerns regarding minors according to this report. Between 2018 and 2020 around 18.000 migrant minors disappeared in twelve European countries as said by the European Parliament (European Parliamentary Research Service, 2023) (FRA, 2023).

- Migrant and refugee integration: discrimination and hate crime are two major concerns that should be immediately addressed as well as the administrative barriers which hinder integration alongside the obstacles to family reunification which prevent social inclusion. According to the European Network Against Racism, in 2016 around 990 criminal offences against asylum centers occurred in Germany, while in 2015 in Greece seventy-five racist violent acts which target were immigrants were recorded (European Network Against Racism (ENAR), n.d.) (FRA, 2023).

- Immigration detention: arbitrary detentions in the EU still happen with frequency and, in addition, there are still several places in which inadequate detention conditions and procedures continue to be the norm. All of this violations are englobed in a bubble of misinformation regarding the asylum procedures for people detained and in a context where alternatives to this detention procedures are not used (FRA, 2023).

- Return procedures: finally concerning the return procedures, the report points out the violation of the principle of non-refoulment mainly. In the case of Spain, for example the European Court of Human Rights argued that this state did not violate the principle of non-refoulment (Article 4 of protocol number 4 of the European Convention on Human Rights as well as article 13) despite the returns of Moroccan citizens to their country after having crossed Spanish territory because the individuals “placed themselves in an unlawful situation when they had deliberately attempted to enter Spain on 13 August 2014 by crossing the Melilla border protection structures as part of a large group and at an unauthorized location, taking advantage of the group’s large numbers and using force.” Which means that sometimes this principle can even be subject of deep interpretation and controversy by European institutions (European Court of Human Rights, n.d) (FRA, 2023).

As we have already seen, despite the legislation designed, debated, and approved around the migration and asylum field, the EU still has several and complicated obstacles concerning different administrative and humanitarian areas at the time of dealing with migrants.

In light of the recent legislative events in this matter (new immigration pact which was approved on April 10, 2010), it is extremely complex to be able to carry out an advance analysis of its possible effects and therefore of the supposed improvements that the EU should carry out in this matter, since supposedly it has just recently done so. In this way, we should wait to obtain information about the social, economic, and humanitarian effects of these legislative decisions in order to be able to objectively analyze the most current challenges faced by member states.

6. Conclusions

Throughout this project we have, firstly, been able to constate the story concerning the first international refugee displacements within the European continent, the evolution of the refugee concept throughout these events and its clarification compared with other terms often missused in the political and media field

We have also been able to discover the basics about the economic, educational, and social conditions that the EU has disposed for refugees to start their new life in their new hosting country. At the same time, we have constated the most up to date figures regarding the number of refugees and asylum seekers in the EU.

We delved into the different legal, procedural, and administrative mechanisms that the European commission has designed, and the European Parliament has approved to, on the one hand facilitate the asylum applications and, on the other hand alleviate the already existing immigrational pressure in Europe.

Nevertheless, we have also been witnesses of the different difficulties that remain unsolved in several European countries and that, at the same time, require an urgent regulation. We recommend more focus to be placed within this areas of political international law due to the fact that they are key at the time of being able to carry out an immigration legislation based on justice and equity, in line with the main and most relevant problems currently being suffered by the EU and, above all, to be able to design an efficient legislation based on the respect to the European fundamental rights as its main purpose.

We conclude, by the exhaustive exploration of this area, and giving answers to our initial research purpose, that the European Union still has several and accused flaws when concerning the migratory policies within its frontiers, and that serious efforts must be done with the goal of being able to effectively address a crisis that is increasing. We also recommend further analysis to be done regarding the new path on migration an asylum policy to be able to go deeper in our concern of the measures designed by the EU to be able to improve the already existing migration system.

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