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The European Union's effectiveness in dealing with insubordinate asylum policies of Hungary and Italy: success or disappointment?

Comparative analysis of asylum seekers' human rights violations and the EU's effectiveness in addressing these violations: case of Hungary and Italy

Executive Summary

The European Migrant Crisis of 2015 has brought drastic challenges on national and European levels in regard to the reception of asylum seekers and in sharing responsibility among member states. Many eastern and southern member states, however, felt the necessity to cope with the consequences of the influx on their own terms by implementing specific policies that do not conform to the EU asylum policy, and in many cases, charters of human rights. These countries, including Italy and Hungary, often received criticism from the European and the International communities in the way they handle the asylum file. Breaches of human rights occurred frequently via disintegrational policies derived from historic and cultural sentiments that crystallised anti-migration and anti-EU approaches in Italy and Hungary. The aim of this report was to establish a comparative analysis of asylum seekers' rights violations between Hungary and Italy in order to examine the extent to which these rights are respected. Consequently, findings were reflected onto the general EU asylum framework to uncover the level to which selected member states adhere to EU law by examining relevant case law and secondary data imported from scholarly literature, NGOs and government reports. The main research question is as follows: "to what extent are refugees rights, as laid down in international treaties and EU's refugee and asylum policies, respected by Italy and Hungary? A comparative analysis". Research proved that violations have been occurring both systematically and purposely in both nations, triggering tensions with the EU that has frequently brought and is still bringing both nations under infringement procedures, for specific policies such as the Italian Pushback policy and the Hungarian Transit Zones policy. Analysis also showed that both governments are unwilling to address their violations since the EU punishment mechanism seems to be incapable of influencing Hungarian and Italian decision makers to improve their countries' asylum policies, after reviewing multiple cases submitted to European courts. Finally, research explained that the EU has proved to be partially unsuccessful in the protection of asylum seekers' human rights.

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Preface

The reason for selecting this topic and devoting time to conduct research is the personal attachment to the field of human rights in line with asylum seekers.

This report has been written to complete the European Studies programme at the Hague University of Applied Sciences.

I would like to start by sincerely thanking my thesis supervisor Mr. Maarten van Munster for his continuous support, detailed feedback sessions and flexibility with meetings which have helped me a lot in improving my research skills.

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List of acronyms

AIDA: Asylum Information Database

CEAS: Common European Asylum Policy

EADB: European Asylum Database

EC: European Commission

ECA: European Court of Editors

ECHR: EUROPEAN Court of Human Rights

ECJ: European court of justice

ECRE: European Council on Refugees and Exiles

EP: European Parliament

EU: European Union

HRW: Human Rights Watch

IRC: International Rescue Committee

OHCHR: Office of the United Nations High Commissioner for Human Rights

UN: United Nations

UNHCR: United Nations High Commissioner for Refugees

1. Introduction

Contemporary Europe has been always considered as a safe haven for humanitarian, political and economic prospects (European Parliament, 2020; Schilling et al, 2017) . In 2015, the status of safe haven was seriously tested when over one million people marched into Europe via the EU's southern borders, thereby crossing countries such as Hungary and Italy. Many were on their way to prosperous Western nations seeking asylum under the Geneva Convention provisions. During that 'critically-historical' year, the overwhelming majority of refugees arrived by sea via the Mediterranean while some made their way by walking, principally from Turkey and Greece (BBC, 2016). Almost half of them were Syrian nationals fleeing the civil war that erupted in their country since March 2011 (International Rescue Committee, 2020). Refugees, as defined by the United Nations High Commissioner for Refugees, are people who "have fled war, violence, conflict or persecution and have crossed an international border to find safety in another country"(n.d). Although the majority of refugees settle in neighbouring refugee camps to their countries of origin, smaller portions choose to seek refuge in extremely distinct nations to their own cultural norms and values, languages and religious backgrounds. Often settling in Western Europe and North America where the continuation of their normal lives after successful integration is almost certainly guaranteed (Kings College London, 2015).

In contrast, the arrival of migrants in hosting European nations and the latter's national asylum procedures correspond to certain international and European legal conventions that draw the rights, duties and the steps of the asylum process, conveyed upon asylum seekers and hosting nations. The process of the Asylum Application has been regulated on EU level since the year 1999, when the Common European Asylum System (CEAS) was created (European Commission, 2016). The EU's asylum policies are based on the principle of Solidarity among member states, which entails that MSs share responsibility in relocating refugees based on certain criteria, as well as ensuring an emergency mechanism to be triggered by any member state that undergoes an emergency situation such as the sudden increase of asylum applications (European Commission, 2018). These policies are derived from the treaties of the EU based on the provisions of the Geneva Convention in addition to the 1951 Refugees Convention of the United Nations (UNHCR, n.d). Member States of the EU must comply with the treaties and apply the provisions as laid down in EU asylum law upon receiving applicants.

However, the 2015 refugee influx was an unprecedented challenge to certain European nations acting as entry points to the continent, causing tremendous pressure on national asylum systems due to the urgency and the quantity of asylum applicants. Hungary was not ready to process and file tens of thousands of daily applications. The massive influx of asylum seekers in Hungary seemed to have been a starting point for the right-wing Orbán government to distance itself from the European asylum framework and implement its own emergency measures which are, in nature, turbulent focusing on securitization instead of loyal cooperation (Nagy, 2016). The manifestation of Hungary's asylum circulates in a different orbit, starting with the government's unwillingness to participate efficiently in EU Refugees Quota, through which refugees relocation is equally divided between member states based on specific criterion including national GDP and employment rate (Hayes, Foy, Neilan, Armstrong, Jackson & Power, 2015), as well as national legislation and policies that expanded the authority of Hungarian law enforcement agencies to uphold national emergency policies and regulations, often facilitating violence and human rights violations.

Furthermore, Italy did not have it any better due to the endless arrivals of asylum seekers via the sea, leading the government to adopt certain laws and collaborate with third-countries. Such countries, including Libya, focus on curbing the flow of incoming migrants. These actions drew the attention of the EU, the UN and international human rights organizations since their treatment was deemed mostly inhumane (Amnesty, 2019; Human Rights Watch, 2019). Additionally, Italy started regulating the asylum procedure without consulting the EU, which strengthened the possibility of Asylum Seekers' rights violations. The question regards the extent to which national governments of selected countries uphold refugees rights as laid down in International and EU asylum policies.

The aim of this thesis is to establish a comparative study on that issue by describing and analysing how both governments have reacted, and are still reacting, to the reception of asylum seekers by looking into their policies and legislation, and reflecting it back on the broader European legal Asylum Framework. Furthermore, findings are analysed to grasp on the Italian and Hungarian stances towards migration and towards the EU asylum agenda. Therefore, the central question of this thesis is: *To what extent are refugees rights, as laid down in international treaties and EU's refugee and asylum policies, respected by Italy and Hungary? A comparative analysis*

This question can be broad and for this reason it will be carefully answered and analysed by breaking it into the following sub-questions:

- What are the EU's refugees' rights policies?
- Do the national asylum policies of Italy and Hungary comply with international and European obligations?
- How can violations of international and European obligations be addressed?
- Are the Hungarian and Italian governments willing and able to address these violations?
- Is the European asylum system successful in sharing responsibility and protecting the rights of asylum seekers?

Six chapters outline this report starting with introducing the topic, the issue and research questions. The next chapter explains the research methods and analyses and answers each individual sub-questions' analytical and descriptive elements. Chapter 3 provides an overview of concepts and explanatory paragraphs to the sentiments that constitute motives for examined policies. It also defines other sources relevant to the research problem. Chapter 4 establishes a descriptive overview of results based on intensive desk research and use of secondary data while chapter 5 interprets these results, establishes comparisons and patterns that answer the sub-questions and consequently the central research question. Finally, a summary of the answers will be outlined in chapter 6.

2. Methodology

2.1. Type of research and questions' analysis

A combination of national and European legal foundations relating to asylum provisions, the asylum process and asylum seekers' rights and duties is examined. Additionally, the national policies and actions of the governments of Italy and Hungary are analysed, compared, and eventually reflected onto the procedural European framework of asylum. In addition, secondary data served to provide answers to the main central question and sub-questions inspire the analysis and discussion section as well as helping to provide recommendations both on a policy-level and future research.

The central question is comparative based on descriptive and analytical approaches. The descriptive approach revolves around categorising and describing national asylum policies of two European member states, the influence of these policies on human rights, and the relationship with the European asylum legal framework. Analytical elements are concerned with measuring the extent to which Hungary and Italy uphold refugees rights to form a broader perspective on the relationship with the EU and asylum seekers.

The first two sub-questions "What are the EU's refugees rights policies" and "do the national asylum policies of Italy and Hungary comply with international and European obligations" are primarily descriptive since they present asylum policies and most significant amendments of both the EU and national governments of selected countries.

The third and the fourth sub-questions "How can violations of international and European obligations be addressed?" and "Are the Hungarian and Italian government willing and able to address these violations?" are answered by deriving data from the answers on the first two questions followed with an analysis, and then examining specific case law and policy documents on European and national levels which helps in constructing a hypothetical point of view regarding the stances of selected countries and how willing they are in corresponding to EU asylum law. Finally, the last sub-question "Is the European asylum system successful in sharing responsibility among member states?" will serve as a conclusion for the Discussion and Analysis chapter, since the answer is aligned with other answers.

2.2. Research methods

The thesis contains a comparative analysis of Italy's and Hungary's adherence to international and European obligations. For starters, the findings outline the eventual answer to the central

question by conducting a qualitative and intensive desk research importing secondary data. Qualitative research is ideal for the purpose of this thesis, since it encapsulates numerous types of understandings needed to underline opinions, reasons, courses of events and motivation (Corbin and Strauss, 2008).

These sources are resembled in academic journals to provide scholarly insights on the topic, since it is the most effective method in establishing an unbiased point of view. Additionally, a number of relevant reports, journalistic articles from well-established media outlets will be consulted, such as BBC and the New York Times, and policy documents published by specific NGOs and European institutions, in which track the latest major developments on asylum policies and asylum rights' violations. Additionally, European case law will be presented in order to provide real-life qualitative data explaining the violation of rights and its legal consequences.

These sources focus on the period between 2008 – 2020, with exceptions relating to certain EU treaties. This period of time is the main focus since recent violations by both nations have occurred mostly in the last 6 years. Furthermore, European asylum policies have been amended throughout the century to contain the large migrant influx of 2015, and to adapt to new challenges for both the EU and the member states in the field of asylum.

2.3. Case selection: Hungary and Italy

The selection of Hungary and Italy is based on their relevance which illustrates the level of upholding European asylum laws and how certain member states retreat from the European legislative framework which often causes disputes with EU institutions as well as frequent asylum rights violations. It is often Hungary and Italy that occupy a large landscape of media coverage often discussing either asylum policies diverging from the EU asylum framework and documented asylum seekers' human rights violations. Reviewing the literature consulted for this dissertation revealed a wide range of systematic violations often legalised by specific national laws and policies that do not conform to supranational European laws. Additionally, previous research has concluded that these violations are still ongoing and disputes with the EU are still in progress, making the selection of these two nations a feasible choice.

2.4. Measuring the amplitude of violations

The extent to which illegal violations of asylum seekers' rights occurs is measured by means of data analysis imported from literature relevant on the topic as categorized in the first part of this methodology section. Todd Landman (2004) asserts that basic human rights and thus asylum seekers' rights can be measured by examining the outcomes of governmental policies. Such measurement methods include the "coding of formal legal documents," standard and events-based data. Additionally, the framework of indicators developed by OHCHR proposes the use of analysis of certain indicators to measure progress in human rights (OHCHR, n.d). Additionally, relevant case law is utilised in proving the severity of a certain policy on the situation of human rights, since any lawsuit filed by an EU court by individuals or organisations is a natural reaction to violations.

3. Literature review

This section presents the main concepts as defined by former research, journalistic articles, NGOs' reports, policy documents and relevant case law. In addition, the historic roots and societal elements for specific anti-immigrant sentiments in both countries are elaborated in order to formulate an overview of concepts and historic roots to sentiments of anti-migration and anti-EU asylum policy that encompasses the attitudes of selected nations towards migrants and the EU.

3.1. Definition of asylum seeker

An asylum seeker is any individual, a national of a country or stateless, seeking international protection after fleeing war, violence, conflict or persecution and who has crossed an international border to find safety in another country (UNHCR, 2005). An asylum seeker is different from a refugee in the sense that refugees are individuals whose claim for asylum is approved by the authorities. Consequently, the individual obtains a residence permit for humanitarian protection. Thus, every refugee was initially an asylum seeker whereas every asylum seeker might not be recognised as a refugee.

Additionally, the recognition of asylum seekers as refugees, and the conferral of rights and duties based upon, is made definitive once the person's case and circumstances fall into the definition of a Refugee enriched in 1951 Geneva provisions (Ziegler, 2013).

Based on data collected by UNHCR, more than 590,000 have arrived to European land via the sea in 2015 and roughly 630,000 new asylum applications were submitted across the EU (Metcalf-Hough, 2015).

3.2. Christian heritage and Islam and years long illegal migration: roots of scepticism

Violations of refugees' rights have been committed by both governments, encouraged by public sectors and civil societies in the member state countries of Hungary and Italy (Gammeltoft-Hansen, 2009; Nasser, 2016; Kallius et al, 2016). In Hungary the main cause is a centuries long, turbulent relationship with the east due to the Ottoman occupation in 1541-1699 and thus a negative view of the Islam, to which the majority of asylum seekers belong, asserts Nasser.

While in Italy, there has been an ongoing historic illegal migration, mostly from Africa, in which migrants, including asylum seekers, seek to reach yet further northern destinations. Nonetheless, they often remain trapped in Italy due to unattainable asylum procedures and national policies, created by populist and far right wing parties. (Scherer, 2018; Strazzari & Grandi, 2019).

3.2.1. Civil society and historic occupation: Hungary

Hungary has transitioned into democracy in the early 90s. However, with this transition, the level of xenophobia has risen among the Hungarian public, placing the country on top of the post-communist bloc in terms of intolerance (Krekó, 2020). Former research illustrates that in 1992, 15 percent of Hungarians have explicitly demonstrated xenophobic attitudes, increasing to 39 percent by 2014 and reaching a peak of 67 percent by the end of 2018 (24.HU, 2018). These views are exceptionally strong when it comes to Muslims. The Pew Research Centre has concluded that 72 percent of Hungarians, in 2016, had negative and unfavourable views on Muslims regardless of nationality, compared to the EU's average of 43 percent (Manevic, 2016). Same source argues that roughly 8 in 10 citizens believe that Muslim refugees, who make up the largest portion of incoming refugees to Europe, endanger cultural (Islam rise in the west), economic (taking over jobs and social benefits) and security (terrorists leaving Syria and Iraq) prospects (2016). Former research conducted by Utrecht University links these statistics and the general negative view on Muslims in Hungary with the nation's encounters with the Muslim world which were dominantly unpeaceful, and how these conflicts shaped a strong Hungarian national identity (Brouwer, 2013). Public opinion remains sceptical towards Muslims due to the Ottoman occupation (Sayfo and Pall, 2016).

On the other hand, other sources argue that the conflict with the Ottomans revolved about a foreign occupation, in the same way to Catholic Austrians or Soviets, rather than a mere Christian-Muslim conflict (Fodor, 2015). Collecting tax during the Ottoman occupation was more to the interest of Istanbul at that time rather than converting Hungarians to Islam. For this reason, the occupiers were viewed as an obstacle to Hungarian polity rather than a religious threat. In conclusion, Hungary's relation with the religion and cultural values of the majority of refugees is a cornerstone element in the country's national asylum policies that have led to asylum seekers' rights violations.

3.2.2. Public sector and decades-long illegal migration: Italy

Muslims in Italy make up to 2.6 percent of the Italian population (Statista, 2020). Although, historical factors play a less significant role in shaping the view on Islam, illegal immigration via the Mediterranean Sea has often spurred negative views on Muslims and encouraged Italian political parties to consider Islam, brought by migrants, as a major political issue in contemporary Italy (Guterbock, 2020). In contrast to Hungary and long before the 2015 migrant crisis, Italy has been always receiving migrants via the sea ending up stuck in the country instead of arriving to their northern destinations. Illegal migrants, regardless at their reasons to enter Italy, often dominate the news and are associated with criminality and freeloading (Benelli, 2013). Since the second Conte administration took office on the fifth of December in 2019, also referred to as Governo Giallo-Rosso, a range of measures were implemented in order to frame migration as an "existential threat" (Strazzari and Grandi, 2019).

Matteo Salvini, then Minister of Interior and Federal Secretary of the far-right Lega Nord political party, played a major role in shaping government policy by restricting the work of NGOs which provided humanitarian aid services for migrants (Amnesty, 2019; Carta, 2018; Morosini, 2018). While at the same time, the influence of Salvini and the willingness of the government to amend certain laws and policies, such as the Decree Law 2018 - to be presented later - have also encouraged people to adopt deeper negative views on asylum seekers.

Finally, the public sector, represented in the government, political parties and national figures are playing a major role in raising public intolerance to serve their political agendas, creating an impact on people's views on asylum seekers, views that are often both cultural and religious refusal.

3.3. Political prospects since the 2015 migrant crisis

Both Hungary and Italy disintegrated themselves from the European asylum legislative framework, since both countries were swarmed by unexpected numbers of asylum seekers, causing burden on national institutions and reception centres. Yet, most importantly, their actions have worsened the concepts of Solidarity and Mutual Trust (to be expanded later) among Member states.

For the purpose of this thesis, and following up on the section of 'Measuring the Amplitude of Violations' in Methodology, a contextual outline is established on the basis of political discourse and its relationship to racism in selected countries. Political discourse is shaped by political parties whether populist or left- and right wing, current circumstances and 'threats' that are deemed dangerous to a society, in addition to the vital role it plays in the production and widespread racism and fear of the "others" (Lakoff, 2014).

On the other hand, political discourse in southern European entry countries for migrants is also influenced by actual events and critical situations that shaped the public sentiment towards migration and the EU. The overwhelming arrival of asylum seekers in 2015 created tremendous pressure on Italian and Hungarian authorities and policies which, in turn, has destabilised coordination among member states with EU institutions, and with other member states in regard to resettling applicants, such as the tension between Merkel's Germany and Hungary (Lorenzetti, 2020). Moreover, a global contemporary concern over terrorism has risen in the past few years as a consequence of numerous terrorist attacks inside Europe, leading to reinforce immigration restrictions in most European nations in the midst of great fear of Islamic terrorism.

3.3.1 Hungary and identity rhetoric: a synonym for anti-immigration rhetoric

Xenophobic political discourse has been long ongoing in Hungary. The European Migrant Crisis of 2015, however, caused the country to adopt a hostile stance towards the EU and accepting refugees, since Hungary was deemed responsible to process them as laid down in the Dublin Regulation, being a first country of entrance (Prandana, 2018). Ever since, the Hungarian Government expressed disagreement with the EU in what it felt as unfairness in relocating asylum seekers, damaging the concept of European Solidarity. For that reason, Hungary built its disagreement on identity rhetoric, accusing the EU of imposing a 'western states agenda' (Mendelski, 2019). Identity rhetoric is means to the government of Hungary to mobilise fears and raise anxieties over the others, in that case asylum seekers and the EU.

According to a survey conducted by Gallup, an international data analytics organisation, Hungary topped the charts as the least welcoming towards refugees with strong favourability to distance the country from the migrant crisis, third after Macedonia and Montenegro (Esipova, 2019). The data of this survey was analysed in connection with the Hungarian government's sentiments in order to understand the basis of this Hungarian anti-immigration view.

The results explained that the public's fear, in regard to welfare, labour market, crime, cultural and religious threats, established a basis for governmental anti-migration sentiment, constituting itself as foundation for identity rhetoric. Here the government convinces the public that cultural replacement is inevitable, while also feeding the idea that the EU, undemocratically, forces people to allow 'dangerous' populations that bring along crime and terrorism (Nawrasteh, 2017).

Hungary's government depicts a cultural conflict in which one side is an exclusive group of people who share the same identity trying to protect themselves, their culture and Christian legacy from the "others" whom are different, described as "invaders" and as a real threat to the European identity (Prandana, 2018, pp. 259-60).

3.3.2. Italy and the political elite: role in framing migration

As examined, Italy's national institutions have been constantly struggling with illegal migration, decades prior to the 2015 Migrant Crisis. The Italian political discourse comprises many elements similar to Hungary including the importance of national identity and fear of the 'others'. However, Italy has witnessed, under numerous former Berlusconi plus two Conte administrations, an explicit affirmation of racially-biased myths and attitudes found usually in the right to the extreme right (Dotti, 2020).

Italy is a democratic country where citizens cast their votes to numerous parties and public figures of diverse ideologies. In fact, it is in the best interest of xenophobia-driven parties to prove themselves as democratic and acceptable as much as possible. Hence such parties avoid explicit statements of their racist ideologies and instead they remain subtle and indirect. In this case, discourse is the primary setting of production of racist sentiments where it is effective to marginalise and exclude certain minorities based on ethnoreligious prejudices, acquired and learned through means of communication (Perrone, 2018).

The Italian political society comprises of dominant group members including political elites with free access to numerous forms of public discourse, through which reproduction of racism and discrimination takes place. The way the political elite describes ethnic minorities or migrants shapes the public's attitudes toward them (Bonilla-Silva, 2015). In the context of immigration, populists and extreme-right wing political figures often describe immigration as "a crisis that requires restrictions", an unnatural statement arousing an "issue-defining frame" (Montoya, 2018). Additionally, many notorious politicians framed the 'others' as dangerous

using racial demeanors or animal personifications in a stigmatising language, leading to the gradual normalisation of such language possibly leading to the propagation of hate and xenophobia (Van Dijk, 2012).

Notable examples could be found in many statements of former notorious prime minister Silvio Berlusconi, who controlled large aspects of Italian media, who described illegal immigrants as an "army of evil" (Moore, 2008), while also refusing migrants yet welcoming their "beautiful girls" to stay (Squires, 2010). Moreover, at the end of 2019 approximately 45 percent of Italians said that racism in Italian society is justified since far-right extremism has been normalised, under former populist minister Matteo Salvini, responsible for a number of restrictive migration decrees (Colonnelli, 2019).

4. Findings: European asylum policy and national policies

In broad terms, legislation providing protection for asylum seekers, including the Refugees Quota, the Dublin Regulation and the Common European Asylum System (CEAS hereafter), were breached by Hungary and Italy. Moreover, international human rights principles were not fully respected in terms of reception and legal handling and filing, as well as to providing basic services to refugees. (Amnesty, 2019; Amnesty, 2015; Human Rights Watch 2019).

4.1. The legal framework of the EU in the context of asylum

Almost in each policy implemented by a government or an action undergone, the International Community and the EU often expressed disagreement starting from issuing warnings and ending with bringing the country involved under infringement procedures, for the reason that a policy does not correspond with International and EU law.

The following sections categorise the EU's asylum policies and offer a timeline of developments, challenges and amendments that were implemented throughout the last few decades.

4.1.1. Geneva convention and the protocol of 1967

The Geneva Convention on the Protection of Refugees was first to recognise the right for asylum as a fundamental human right. Meaning that its signatories are internationally obliged to grant it to individuals fleeing political persecution of serious harm in their own country of origin and who are therefore in dire need of protection (European Parliament, n.d.; Ziegler, 2013).

This treaty introduced the definition of Refugee, the rights of those individuals prior to, during and after the asylum process, while also determining the responsibilities of asylum-granting nations.

The provisions of this convention were expanded by introducing the protocol of 1967 which solely served the purpose of removing prolonged time limits regardless of the geographic positions of asylum-seeking individuals, according to a consolidated version of the Protocol on the website of the OHCHR (n.d.). Since asylum applications prior to 1951 were not taken into consideration, this protocol ensured equal status to all applicants.

This paper does not further explain the content of this convention since the only purpose of presenting these regulations is to establish a historical core-base upon which the CEAP was established.

4.1.2. Legal basis of EU's asylum policy

The Treaty on the Functioning of the European Union and the EU's Charter of Fundamental Rights set out the legal basis that visualised a common legislative asylum policy and made it into reality. Briefly, according to the European Parliament (n.d), the legal basis of the EU's asylum policy is laid down in:

- ❖ Articles 67(2), 78 and 80 of the Treaty on the Functioning of the European Union (TFEU);
- ❖ Article 18 of the EU Charter of Fundamental Rights.

Article 67(2) of TFEU establishes the EU's common policy on "asylum, immigration and external border control, based on solidarity between member states" (EU, 2007). Furthermore, Article 78 & Article 80 of the TFEU regulate the development of a common asylum policy and set the role of EU institutions in the process.

❖ Article 78 (2) ensures:

- Offering subsidiary and temporary protection to third-country national;
- Ensuring compliance with Non-Refoulement principle;
- Compliance with the Geneva Convention Provision and following protocols and treaties.

Article 80 of the TFEU emphasises the principle of common solidarity among member states that revolves around fair and adequate sharing of responsibility.

Article 18 of the EU Charter of Fundamental Rights ensures the right to asylum for third-country nationals with complete adherence to the regulations of the Geneva Convention of 1951 and the Protocol of 1967, in addition to conforming to the Treaty on European Union and Treaty on the Functioning of The European Union (Journal of the EU, 2007)

4.1.3. Dublin Regulation

The Dublin Regulation, or the Dublin Convention, was signed in 1990 and came into force in 1997. A major European Union law which outlines the procedural process of asylum in the EU and determines which member state is first responsible for the assessment of an asylum application (Maani, 2018). Applicants of asylum are those individuals that are defined as refugees seeking international protection according to the Geneva Convention provisions. Bear in mind that the Dublin regulation, as defined above, constitutes the Dublin System comprising of the EURODAC regulation.

EURODAC is the EU's biometric system between member states and EU institutions, which is considered as the first multinational biometric system in the world (Thales, 2020). This system has been operating since 2003 offering a wide database for almost all unauthorised applicants in the EU. This shared system stores the minimum required amount of personal information to enforce the Dublin Regulation, such as:

- ❖ Fingerprints;
- ❖ The state filing the data;
- ❖ The individual's gender and reference number as filed by the MS;
- ❖ The date and place of application.

4.1.4. Crystallising the Common European Asylum System (CEAS)

4.1.4.1. First steps to harmonise asylum policies, Tampere, Finland

Two years after the enforcement of the Dublin Regulation, the EU decided to reinstate its asylum policies (Giordano, 2019). For this reason, EU member states held a conference in Tampere, Finland to discuss the possibilities of harmonising standards among them. In October 1999, the EC had successfully established an Area of Freedom, Security and Justice in which political guidelines in the field of asylum were developed. This meeting decided that the CEAS had to be implemented in two phases: In the first phase, minimum common standards for asylum procedures were agreed upon. In the second phase common standards for individuals receiving protection were created, aiming to reach complete harmonisation. (European Commission, 2005).

Further, the Treaty of Amsterdam 1999 granted the EU expanded powers to legislate in the field of asylum through specific mechanisms (Levy, 1999). These new powers encapsulate the ability to draw legislation in the area of asylum, using a specific institutional mechanism. In addition, the Court of Justice of the EU gained jurisdiction in specific instances regarding the interpretation and implementation of EU asylum law as well as in looking into possible breaches by member states.

4.1.4.2. Common European Asylum System: CEAS

The two phases that were agreed upon in Tampere, plus the new provisions enriched in the Amsterdam Treaty in 1999 in addition to the Dublin System have led to establish the CEAS which improved the legislative and procedural framework of the EU's Asylum Policy.

According to the European Asylum Support Office (2016), the CEAS is a legislative framework designed in line with the 1967 Protocol amending the status of refugees. The CEAS introduces common standards for international protection and sets these standards by legislative mechanisms that establish, in turn, common concepts (Anagnostaras, 2020). The concept of International Protection refers to both refugee status and subsidiary protection status, temporary or unlimited (EU, 2011).

The first phase (1999-2005) introduced numerous legislative and administrative measures that defined minimum common standards to which member states should conform in terms of: "reception of asylum-seekers; qualification for international protection and the content of the protection granted; and procedures for granting and withdrawing refugee status" (European Commission, 2016). Additionally, the EU worked during that phase on strengthening financial solidarity with the creation of the European Refugee Fund, which is beneficial in aiding member states financially and logistically (Raithel, 2017).

The second phase, ending in 2010, aimed to reach complete harmonisation for asylum. The EU determined this could only be achieved by recasting previous legislations and introducing new amendments (Stoyanova et al, 2015). This phase started with the European Pact on asylum that underlined the following objective: "Establishing a common area of protection and solidarity based on a common asylum procedure and an uniform status for those granted international protection' on the basis of 'high protection standards" (Kaunert & Leonard, 2012). Additionally, the Dublin Regulation has been amended into the Dublin III Regulation which stressed the criteria for allocation of responsibility among member states.

4.1.4.3. Important asylum legislation: amending the CEAS

Several amendments were introduced to strengthen the financial solidarity among member states, as well as to improve the concept of Mutual Trust, entailing that Member States share the same common standards solely based on fundamental values of human rights, democracy and the rule of law (Brouwer, 2013). In addition, these amendments were means to adapt to new asylum challenges or to overhaul specific asylum regulations that are viewed as insufficient.

- ❖ Temporary Protection Directive: conveying legal duties and rights on asylum seekers who are seeking only temporary protection (Ineli-Ciger 2016).
- ❖ Family Reunification Directive: this directive lays out common rules to EU Member States for exercising the right for Family Reunification for individuals with protection status. (Milios, 2018).

The Green Paper was introduced in 2007 to evaluate the work of the EU in the field of asylum in the past years, giving birth consequently to the European Commission's Policy Plan on asylum in June 2008, making way for the following:

- ❖ Revised Asylum Procedure: harmonising asylum procedures and protecting the rights of applicants in accordance with the new challenges since 2015 (Schittenhelm, 2018);
- ❖ The Revised Reception Conditions Directive: improving the reception conditions of asylum seekers that member states are required to ensure (Velutti, 2016);
- ❖ The Revised Dublin Regulation: the EC defines the Dublin Regulation III as an improvement to the measures and conditions of admitting asylum seekers and determining the country responsible (MacCloskey, 2017);
- ❖ The Revised EURODAC Regulation: previous EURODAC was not implemented by specific member states in the way it should be. The new amendment authorised Europol and national police forces to adhere to the EURODAC system (Roots, 2015).

4.1.5. New European Migration Pact

Ursula von der Leyen, president of the EC, has announced earlier in September 2020 that the EU is working towards replacing the Dublin Regulation III with a “new European migration governance system” providing solid asylum measures and ensuring strong solidarity mechanism among EU member states (News Wires, 2020).

Scepticism among human rights organisations has surfaced since this policy would toughen border control and facilitate the process of expelling rejected asylum seekers, thereby pleasing anti-immigrant member states. As the Dublin Regulation is characterised with bureaucracy, the EU and involved member states often faced tensions (Ruy & Yaybuke, 2020). For this reason, the EU realised the need to establish constant and strong solidarity among member states.

The pact emphasises the following points, according to the European Commission (2020):

- ❖ An efficient procedure and clarity provided for applicants, prioritising streamlined processes;
- ❖ A new “compulsory, flexible” form of solidarity through border control and return enforcement
- ❖ Member States are allowed to choose their ideal form of solidarity between relocation or financial help (although dependent on a strict assessment criteria by the commission);
- ❖ An emphasis on the well-being of children, family ties and academic ties will be taken higher into consideration in terms of relocation criteria;

- ❖ Increasing the resources allocated for border agencies (Frontex) and data management systems (Biometric Database);
- ❖ Preventing the breaching of the principle of Non-Refoulement by creating new monitoring system that safeguards the human rights of asylum seekers;
- ❖ Establishing international partnerships to counter human-smuggling, improve returning efforts of rejected third-country national.

Major criticism by human rights organisations was expressed against the EC. The pact is labelled as just “another Dublin with emphasis on returning asylum seekers” (Human Rights Watch, 2020), being directed towards deterrence, containment and random returns.

Additionally, Hungary is consistent with opposing any migrant relocation plan. The spokesman of the Hungarian government reconfirmed Hungary's stance in “keeping the borders sealed” (Euronews, 2020).

Despite all scepticism from different parties involved in European migration and asylum pact, the EU promises a fresh-start by enabling a better cohesive migration policy.

4.2. National Policies

4.2.1. Italy

NGOs have confirmed that the government of Italy is keen on distancing itself from European obligations by creating policies aimed at restricting basic human rights to asylum seekers. (Amnesty 2015; Amnesty 2019; Human Rights Watch, 2019). Further academic literature and reports cover these violations and outline them. Italy establishes its asylum policy on a Pushback Framework as a main foundation upon which other national policies are founded.

4.2.1.1. Decree Law 113/2018- Decreto Salvini

The Italian Decree Law 113/2018 has brought dramatic changes to the Italian reception system. The previous 2015 Reception Decree (LD 142/2015) divided the reception system, according to the European Asylum Data Base (2018), into the following phases:

- First aid and assistance;
- First reception phase in government-regulated centres;
- Second-line reception phase.

However, Decree Law 113/2018 has amended its 2015 predecessor by reforming the second-line reception phase known as the system of Protection for Refugees and Asylum SPRAR¹ into the System of Protection for Beneficiaries of Protection and Unaccompanied Minors SIPROIMI². In doing so, the two systems no longer communicate, transforming into two distinctive systems. The current system, SPIROIMI, only confers rights on unaccompanied children who have direct access to it, while adults first need to obtain international protection.

In addition, local Italian municipalities can accommodate victims of trafficking, exploitation, persons with residence permits for medical reasons or for acts of specific civil value to Italian society. On the other hand, asylum seekers benefiting from the former SPRAR system, as of October 2018, were permitted to remain in their accommodation system until the end of their asylum procedure (Morosini, 2018). As a consequence, an estimated 24,000 people were completely denied legal status, restricting their access to health care, social services,

¹ SPRAR: Sistema di protezione per richiedenti asilo e rifugiati

² SIPROIMI: Sistema di protezione per titolari di protezione internazionale e minori stranieri non accompagnati

education, housing and work, and leaving them in danger of mistreatment and exploitation (Amnesty, 2019).

4.2.1.2. Italian-Libyan Anti-Migration Deal

Further findings indicate that the government has frequently cooperated with Libya³ in detaining departing migrants (Piscale, 2019; Reidy, 2020). In February 2017, Italian and Libyan authorities had struck a deal that authorises the Libyan coastguard to restrict the flow of refugees and migrants from reaching Sicily and Lampedusa, to which the Italian government agreed to finance, train and equip the Libyan coastguard as well as providing four patrol vessels (Piscale, 2019; Tondo, 2019). This deal was renewed automatically in October 2019 and was in fact supported by the European Union.

Since concluding the agreement, it is estimated that roughly 40,000 migrants had been either sent back to Libya from Italy, or caught in international water and forced to turn back to be filed by Libyan authorities (Oberti, 2020). Literature shows that Libya and Italy have been committing human rights violations. Italy has received a tremendous amount of backlash for its collaboration with Libya due to the inhumane treatment of returned refugees on Libyan soil. Treatment involving torture, slavery of mostly women and infants and even mass killings encouraged by the fragile security situation in Libya (Human Rights Watch 2019; Palm, 2019; Pascale, 2019). Libyan detention centres remain characterised as detestable and vile where asylum seekers face the above-mentioned inhumane actions, in addition to overcrowding.

Furthermore, these actions have brought the attention of NGOs, in particular Amnesty International, describing this accord and its extension as "beyond comprehension" (Amnesty, 2020). Amnesty accuses the EU and both governments in ignoring the suffering perpetrated on migrants in Libya.

In addition to migrants, NGOs employees are often left stranded, for example, on ships with asylum seekers, thus refusing their admission into the mainland as well as imposing fines on NGOs that rescue stranded asylum seekers. (Deutsche Welle, 2019).

According to the United Nations (Giuffré, 2012), Italy has infringed the sixteenth article of the Responsibility of States for Internationally Wrongful Acts (ARSIWA) of the United Nations (2005). Any state (Libya) that assists another state (Italy) in committing wrongful acts

³ The Libyan Government of National Accord (Internationally recognised)

(relocating refugees in Libyan detention centres) is internationally responsible if it does so with prior knowledge of the circumstance of the wrongful act (Amnesty, 2018; Giuffré, 2012). See 4.2.1.3. for the connection with Non-Refoulement Principle.

4.2.1.3. Violating Non-Refoulement principle and link with ARSIWA

As a consequence of Italy's deal with Libya, the government is continuously violating the principle of Non-Refoulement as laid down in article 33 (1) of the Refugees Convention (Gupta, 2020). Starting with the definition, this principle entails the prohibition of returning intercepted individuals to states where they will come at genuine threat of persecution or face a possibility of being sent back to a country where they would be oppressed, regardless of whether they have been formally registered as refugees.

On the other hand, Libya did not ratify the 1951 Refugee Convention, hence it does not have a national asylum system (Tucci, 2012). For this reason, there is no certainty of protecting people from being sent back indiscriminately to their countries of origin where they are subject to oppression. When Italy returns refugees to Libya, Libyan authorities in turn commit collective expulsions of asylum seekers back to their original counties, causing chain refoulement for prolonged periods of time (Amnesty, 2018). Additionally, the UNHCR (2018) classified Libya as unsafe due to its political unrest and reports of serious human rights violations. Detention centres are overcrowded and often provide inhumane living conditions lacking healthcare and nutrition, in addition to torture perpetrated by Libyan security guards and officials.

The conflict between Italy and the ECHR, built upon the S.S case v Italy (see previous section) was encouraged in the landmark case: *Hirsi Jamaa and Others vs Italy*. Mostly Eritrean and Somali asylum seekers whom were travelling from Libya to Italy, Hirsi Jamaa and Others were intercepted at sea by the Italian coastguard and were sent back to Libya, and as a consequence- according to the European Database of Asylum Law (2012)- deportation to Libya whilst disregarding their case and refusing to examine it has subjected migrants involved to the risk of "ill-treatment and amounted to a collective expulsion".

In short, the Non-Refoulement obligation is breached when individuals are expelled where there is a real risk of inhumane and degrading treatment for any reason.

4.2.1.4. Closed Ports Policy

The first cabinet of Prime Minister Conte devised an anti-migration policy which entails preventing people rescued at sea, by NGOs and any other private entities, from disembarking in the country (Amnesty, 2019; Carta, 2018). This policy is based on a set of directives issued by former Interior Minister Mr Salvini, targeting mainly NGOs. These directives authorise Italian maritime border control to prohibit entries into national Italian water and it prevents disembarkation of vessels transporting rescued individuals in Italy, deemed to present potential threat to "public order and security". In addition, the Law Decree 53/2019 which has enriched the closed ports policy, once again innovated by Salvini, was transposed into law in August of that year. Under this law, penalties ranging from a minimum €150,000 to €1 million were determined for any breach of the entry ban, for both the shipowner and shipmaster, as well as the seizure of the vessel involved (Geddes and Pettrachin, 2020).

In May 2019, the United Nations sent a joint letter expressing grave concerns, explaining that Italy's government has constituted a "politically motivated criminalisation of civil society" by contributing to racist and xenophobic sentiments and finally hindering rescue at sea (OHCHR, 2019). Until the present day, the OHCHR is still awaiting an official reply from the Italian government, according to the same source.

Since then, sea rescue NGOs were not admitted to Italy and were left stranded for prolonged periods of time, mostly full of asylum seekers that were picked up from waters, or from migrant vessels. In specific cases, more than a few vessels were held by Italian authorities either as evidence of criminal investigations or supposedly for "compliance reasons" (Deutsche Welle, 2020; Wallis, 2020).

4.2.1.5. Pushbacks policy as a main framework

As stated in previous sections, the last two Giuseppe Conte administrations have enacted specific asylum policies and collaborated with third parties. However, going back in time to 2018, the ruling coalition was established in Italy combining the anti-immigrant League and the populist Five Star Movement which was responsible for drastic changes in Italy's asylum policies (Kirchgaessner, 2019). Amnesty (2019) recorded numerous accusations of torture committed against asylum seekers in Italian asylum centres in order to forcibly remove them, file their finger prints or evacuate them.

Moreover, prior to the establishment of anti-migration governments, the European Court of Human Rights (Scherrer, 2020) has accused Italy of breaching its agreements under the Dublin Regulation in 2015, when it forcibly returned large portions of asylum seekers to Greece, even though Greece was deemed at the time as an excluded country for relocation or deportation in the context of the Dublin Treaty, according to a special report prepared by the European court of Auditors (2019).

The Council of Europe (2019), in one of its reports, defines "pushbacks" on the basis of Article 4 of Protocol No.4 to the European Convention on Human rights as a collective expulsion of aliens which in turn violates Article 3 of the Convention that prohibits torture, punishment inhuman treatment and degrading.

In short, systematic Pushbacks violate EU law and are prohibited by the European Convention on Human Rights.

4.2.2. Hungary

Hungary is not fundamentally different from Italy in regard to its work in the field of asylum, as claimed by humanitarian NGOs such as Amnesty (2015), Human Rights Watch (2018) and the Council of Europe (2019), designing its own policy schemes and implementing specific programs that aim to curb the arrival of asylum seekers and limit their entry into Hungary.

4.2.2.1. Border fence

Urgently responding to the European migrant crisis of 2015, the Hungarian Defence Force was authorised to construct a border fence with Serbia and Croatia (Keane, 2015). Commenting on the effectiveness of this wall, the Hungarian government concluded that such barriers are required across Europe's borders to protect their countries from illegal migration, yet, most and foremost from criminals and possible terrorists (Ayed, 2020). In this regard, Zoltán Kovács, Hungary's Secretary of State for Public Diplomacy and Relations, stated to Radio Canada (2020): "This is not about dividing a natural unit. But this is defending Europe defending itself against a global phenomenon and that is a global mass migration issue."

Back in 2015 Hungary assured the EC that the aim of this fence is to amplify not only Hungary's but rather the EU's security by preventing illegal immigrants from accessing the country, while also compelling asylum seekers to enter through official checkpoints dedicated to apply for asylum in Hungary in accordance with international and European law (Reporter, 2017). In fact, this wall has proved its feasibility since the number of illegal entries has declined massively after finishing the wall, which in turn severely decreased access to asylum in Hungary, Reporter claims.

Prime Minister Orbán commented that Hungary's job is only to register asylum seekers in the shared European Asylum Database without taking in those individuals, in the sense of issuing Hungarian residence permits (BBC News, 2015). He confirmed that many migrants are showing lack of interest in registering or in willingly providing fingerprints in Hungary (See: 4.2.2.4).

4.2.2.2. Refugee Quota

The European Refugees Quota was created in 2015 based on a proposal from the EC's president, at that time, Jean-Claude Juncker to distribute approximately 160,000 asylum seekers among EU member states, which is safeguarded and monitored by a newly established EU agency, the European Refugee Agency, tasked with investigating whether EU states are applying equal standards for providing asylum rights to migrants (European Commission, 2019). This system regulates the relocation process of asylum seekers entering the EU by equally dividing them between member states according to the principle that the number of asylum seekers other EU Member States should host is based on a distribution method planned upon objective, quantifiable and verifiable criteria, consisting of:

- Size of the population (40%);
- Total GDP (40%);
- Average number of asylum applications over the previous four years (10%);
- Unemployment rate (10%).

However, Hungary opposed the EC and expressed unwillingness to participate efficiently in the EU Refugees Quota (Hayes et al 2015). Hungary, alongside other Eastern European countries, refused taking its share of asylum seekers, estimated at 1,294 refugees (Stavis-Gridneff and Pronczuk, 2020) explaining that adhering to such policy will encourage millions of migrants to set sail for Europe, according to Orbán (Novak, 2015).

This immense opposition by Hungary led to the 2016 referendum which was a political response to the European Refugee Quota System as a means to protest against the EU's attempt to enforce, as the government claims, Brussels agenda (Bulman, 2016). 98 percent of voters have chosen to reject the European Union's decision of 'forcing the country to accept refugees'. However, the turnout was well below the legal 50 percent required for a referendum to be considered as valid under the Hungarian constitution (Kingsley, 2016).

4.2.2.3. NGOs Transparency Law (Under Soros Law)

The government of Hungary passed the "Stop Soros" decree into law in 2017 (Beauchamp, 2018). This law bans individuals and organisation from offering all forms of aid to undocumented immigrants which basically allows the government to arrest persons who provide food to migrants and asylum seekers or those who advocate their basic rights, including NGOs and human rights organisations, Beauchamp writes.

This law introduced new obligations for NGOs who receive annual funding from abroad (Cardiff University, 2017). NGOs are required by law to register themselves as 'organisations supported from abroad' and to provide statements of funding and the way they receive it to the Hungarian authorities. In case of failing to provide such statements, then NGOs face sanctions including the limitation of local funding, decreasing area of providing services and even termination. In short, this law prohibits individuals and organisations from providing assistance to asylum seekers and undocumented immigrants while also setting up strict guidelines regarding the funding of NGOs.

As a consequence, the EC has reviewed this law and concluded that it does not comply with EU law for provoking unlawful restrictions on the rights to asylum (EC, 2018). See Chapter 5 for explanation and analysis.

4.2.2.4. Counter Terrorism Legislative Package

Hungary has created a national general directorate for immigration In 2019. An entity under the management of the police that takes over the tasks of the Immigration and Asylum Office (Government of Hungary, 2019).

The Hungarian parliament amended the Hungarian Police Act and the Act on National Defence (European Council on Refugees and Exiles, 2019). These amendments, constituting the Counter Terrorism Package, expanded police authority in controlling situations of "crisis caused by mass immigration" such as: blocking roads or restraining the operations of public institutions. Additionally, the Hungarian armed forces were permitted to aid the national police in securing the border with Serbia and Croatia. The armed forces were permitted to ensure law and order by any means necessary against "waves of illegal immigration" to protect social security, including the usage of rubber bullets, tear gas grenades and pyrotechnical devices, as reported by the same source. Basically, Hungary sought to establish a quicker state of emergency by granting the executive branch stronger 'counter-terrorism' authorities, authorising increased surveillance and restricting rights of asylum seekers (Cantat, 2019).

4.2.2.5. Migrant Detentions: Migrant transit zones

Since the establishment of the border fence, tens of thousands asylum seekers were left stranded on Hungarian border entry points with no possibility to continue their journey within the country. Sealing the border blocked migration routes and only offered what were called as

Transit Zones, which are areas of several hundred square meters isolated along the Hungarian-Serbian border comprising of containers to shelter migrants, yet it is heavily guarded by barbed wire perimeters and intensive Hungarian security patrols (Dunai, 2020). Additionally, according to the Hungarian Helsinki Committee (2020), which is a Hungarian NGO for humanitarian aid, until the end of 2017 remote transit zones lacked proper educational activities for minors, except small activities planned by social workers, as well as shortages of basic services including clean water and electricity.

Refugees were forced for a minimum of 5 years starting from 2015 to stay in these transit zones with almost non-existent chances to either continue through Hungary, to apply for asylum in the country, or returning to Serbia which in return will likely refuse their applications. Asylum seekers were reliant on donations from public and private organisations and individuals as well as humanitarian NGOs to survive, which eventually attracted the attention of Human Rights groups that subjected Hungary to international lawsuits leading the CJEU to rule this practise as unlawful (BBC News, 2020).

Moreover, this binding rule is expected to drive Hungary to devise new national asylum policies in a way that might conform to EU law. Hungary recently abolished these transit zones and transferred asylum seekers to open or semi-open facilities within the country. Bearing in mind that this ruling was given in April 2020, thus 8-9 month prior to conducting this paper and therefore such new policies expected by Hungary are yet to be determined.

5. Discussion and analysis

5.1. Interpretation of national policies: similarities and differences

Both governments have adopted specific approaches in dealing with the migrant crisis and with the flow of asylum seekers in the years that followed. These approaches were often met with criticism by the EU due to specific disintegrational aspects shaped by the following elements:

The Italian approach seems to be more concerned with geographical limitations based upon concluding deals with third-country authorities (Libya), closing ports in the face of migrant boats or NGO vessels founded on a pushback framework. The Italians assume, according to Gostoli (2020), that it is more feasible to block migrants from entering the country rather than accepting them in, relocate them to reception centres and allocate expenditure to uphold their basic human needs for long periods of time until the final decision is made. This system is supposedly implemented to curb the number of incoming migrants and to significantly decrease economic pressure on authorities. When examining official reports and statistics on the number of migrants who had arrived by sea in the past 5 years, only 20,122 migrants and asylum seekers reached Italy in 2020, an increase of 9000 compared to 2019, yet a remarkable decrease compared to the numbers of migrants arriving in 2015-2017, peaking at 181,436 individuals (Varella,2020).

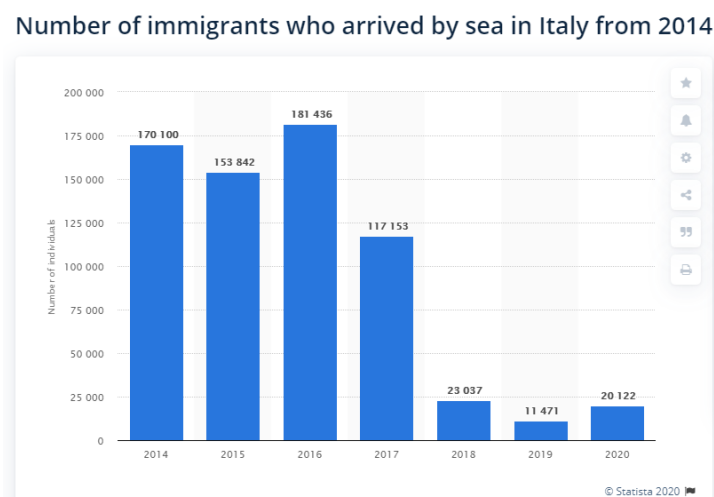


Figure 1: Annual number of arrivals in Italy by sea. Source: Statista

Additionally, the government seeks to block asylum seekers who made it to shores via a set of national decrees that resemble a blatant violation of European asylum policies. These decrees are thought of as the legitimisation of restricting rights and duties among asylum

seekers, therefore blocking them from the asylum process so they do not qualify as recognised refugees, hence the difference between an asylum seeker and a refugee. Later they are relocated elsewhere or deported, eventually decreasing the burden on Italian national institutions.

Hungary, on the other hand, focused immensely on amending law and numerous legislative packages aimed at denying asylum seekers from settling in the country, mostly arriving on foot. Hungary sought to establish an independent asylum system by delegating authority onto law enforcement agencies, resembling a violation of EU law, since members of these agencies used violence and force with asylum seekers. This treatment terrorised those who were already passing by, creating an image that Hungary is not a safe place to seek asylum, specifically for those who arrive from distant cultures. A statement confirmed implicitly by Hungary's PM when he stated: "If somebody takes masses of non-registered 50 immigrants from the Middle East into a country, this also means importing terrorism, communism, anti-Semitism and homophobia" (Deutsche Welle, 2016). Additionally, this statement represents a great reflection of the policy the country implements via the NGOs Law. Not only asylum seekers are not welcome, NGOs and human rights organisations are met with extreme intolerance and restrictive actions that halt NGOs from even considering providing humanitarian services in the country.

Furthermore, Hungary's fence and transit zones issue supplement each other in the sense that it keeps undesired quantities of individuals in one geographic place, ensuring that they will not leave it nor will they progress within Hungary. In fact, this fence has proved its feasibility since the number of illegal entries has declined massively after completion, which in turn has severely decreased access to asylum in Hungary (Reporter, 2017). Detention of asylum seekers, while blocking them from the aid of Humanitarian NGOs, blocking them from educational activities and from economic chances to prosper are elements of the main objective of Hungary's policies in distancing the country from taking people in, and from sharing the responsibility based on the concept of Solidarity, according to EU law.

Based on previous analysis it seems quite clear that there are no differences between Italian and Hungarian approaches in dealing with asylum seekers. They both aim to restrict arrivals, deny them from basic rights, aiming to make asylum in both countries less attractive for individuals, and most importantly disintegrating from the CEAS.

5.2. Relevant European case law and EU's reactions

Italy has been systematically breaching the International principle of Non-Refoulement in addition to Article 16 of ARSIWA⁴. Italian policy makers are significantly biased due to their affiliations with previously revealed populist parties and public figures. They devised the Italian-Libyan deal, combined with closing their ports in the face of asylum seekers, which is entirely founded upon a strict pushback framework, in order to divert migrants away and put the burden of reception on other states.

In this case, states to which asylum seekers are relocated are in most cases third-countries that do not adhere to international human rights principles and to the Geneva Convention provisions, (i.e. Libya), in addition to countries of origin that possess significant threat to individuals who flee from them. Italy's policies contradict basic human rights principles which create disagreements with the EU. Chapter 4 explained how the ECHR reacted to Italy and defined the infringement of article 4 of protocol 4 of the EU Convention of Human Rights, yet it can be understood here that the EU seems inefficient in addressing this issue other than condemning.

In international law, according to scholar Alexander Proeles at Hamburg University - professor in the law of nations and international law of the sea - governments and individuals are not obliged to offer aid to persons in distress (Feldon and Werkhäuser, 2020). On the other hand, EU law implies that the moment a person arrives in an EU Member State's territory, the person is automatically entitled to file an asylum application to be examined later. These conflicting legal statements prove ambiguity and lack of a well-established interpretation of EU law, eventually resembling a legal gap Italy is taking advantage of.

In line with infringing Non-Refoulement principle, and according to the ECHR (2020), case law *S.S and Others v Italy* intertwines with *Hirsi Jamaa and Others v Italy* by establishing state authority on asylum procedures, in which any relocation to third-country parties breaches the Convention of Human Rights.

The ECHR officially convicted Italy as a result of its pushback operations. Italy deported asylum seekers to unsafe locations without individual assessment or legal advisory which in turn constitutes breaching Article 4 of protocol 4 of the European Convention on Human Rights as well as articles 3 and 4 of the same convention (Gostoli, 2020). A verdict based on *Čonka Vs. Belgium Case* that established the notion that any measure forcing aliens to leave a

⁴ Responsibility of States for Internationally Wrongful Acts

specific country which they sought for humanitarian aid, is prohibited unless the measure is based on reasonable, legitimate and objective examination of the private case of each individual alien.

Hungary's policies and EU's reactions, on the other hand, take another course of events. Literature, secondary data and case law implies that Hungary's efforts were largely unprecedented for Brussels due to countless disintegrational policies.

First, it is safe to say that the response of the EC regarding the border fence is utmost condemning when they warned the Hungarian authorities of the implications this fence brings on the rights of migrants without undergoing any actual legal action, based on data gathered. On the other hand, the only practical action by the EU was rejecting the bill that was sent from Budapest to finance the fence, amounting to €400 million, often seen as a sarcastic response by the Hungarians ((Euractive.com and Reuters, 2017). Hungary's aforementioned scepticism on the effectiveness of EU asylum law played a role in motivating this fence. Hungary based its fear on accusing the EU of "being too slow to act" to the wide arrivals of asylum seekers (Nolan, 2015), and explained that the Dublin Treaty constitutes danger to Hungarian national security, since Hungary is the first Schengen country where individual asylum seekers are passing-by on their way to the north and to the west, asserts Nolan.

Additionally, the issue of the Refugees Quota is of great significance. Hungary disregarded its share of asylum applications on which the CJEU initiated procedures in 2017 against the government that justified its stance as protection of Europe and European culture, as viewed in chapter 4.

The CJEU said that Hungary "had failed to fulfil its obligations under European Union law" (Rankin, 2020). On the other hand, Hungary claimed that they were legally entitled to disregard EU law for the purpose of maintaining national security, public safety, and law and order. However, the court concluded that Hungary had failed to prove the necessity of invoking opt-out clauses in EU treaties, confirms Rankin. In response, Hungary disproved the verdict and considered that such decision made by the Court can only endanger the security and future of all Europeans, claiming politics "have raped European law and values" as stated by Foreign Minister of Hungary Péter Szijjártó (Intellinews, 2017). The government felt national security is threatened by the large number of refugees arriving since 2015, prompting the government to enforce this authority-expanding law so the police and the army can assist civil authorities in the asylum process (Cantat, 2019; European Council on Refugees and Exiles, 2019).

In 2020, the country faces possible fines for breaching its obligation (Ledwith, 2017). However, this case has been ongoing for five years without reaching a conclusion. This implies that the court was incompetent in dealing with this issue since Hungary remained inconsistent with its unwillingness to admit its share, while in the same time designing another asylum policies that do not correspond to EU law, such as the NGOs Transparency Law.

Analysing the implications and outcomes of this law, in 2018 the Hungarian government failed to address the concerns of the EC, later to be referred to the CJEU for infringement of EU law for restricting asylum seekers rights, enriched in Article 63 of TEFU (Parrock, 2020). Earlier in 2020, the ruling by the CJEU was made final thus binding to Hungary that should start amending its national law and allowing more freedom and flow for NGOs. However, the country did not yet respond and If it remains unwilling to do so then the EC is prepared to fine it.

Once again, Brussels was incapable of adopting a stern decision that can have implications on Hungary's NGOs law. Orbán seems careless for any fine to be imposed by the EU which proves in fact not only the European asylum policy is flawed, within the Hungarian context, even the EU's judicial mechanism is not fully respected. However, Hungary did in fact comply with EU rulings on the Transit Zones Policy.

The CJEU ruled Hungary of violating EU law by detaining asylum seekers in remote-closed centres on the borders, initiated by the case law of *FMS and Others v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság*⁵, that eventually forced Hungary to abolish this policy while the work on other policies is still in progress.

The ECJ has accused Hungary in April 2020 of violating EU law by committing "arbitrary unlawful detentions" after hearing the above-mentioned case consisting of 4 migrants from Iran and Afghanistan whose asylum applications were refused and were instead relocated to a camp in Roszke, a transit zone on the border of Serbia refusing their admission as well (Bryant, 2020). The ECJ considers transit zones to "be amounting to the deprivation of liberty" since asylum seekers are prohibited from legally entering Hungary or turning back to Serbia (ECRE, 2020). Additionally, the ECJ argues that 18 months is the legal maximum period of time for individuals to be detained who are subject to a "return decision" by the authorities. Finally, the legal duration of holding individuals at a country's border seeking international

⁵ Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság: National Directorate-General for Aliens Policing

protection in the EU is four weeks, after that these persons must be relocated to the country's territory (Hungarian Helsinki Committee, 2020).

This case is by far the only relevant case in which the EU was most capable of essentially altering a non-complying asylum policy, proving that despite all the flaws in the EU's ability to enforce specific measures or directives, it managed to improve a humanitarian situation in which fundamental rights are being violated. Not to forget the efforts of many NGOs and human rights organisations that launched campaigns against Hungary, shaping the public opinion against that policy.

5.3. Insufficiency of CEAS and Dublin Regulation?

The second phase of CEAS has introduced the concept of Mutual Trust (Brouwer, 2013). Within the context of asylum, mutual trust means that every member state shares the same common standards solely based on fundamental values of human rights, democracy and the rule of law, meaning the first country the asylum applicants were being sent through should adhere to these principles as well.

However, it is vital to mention that the EU has noticed these principles were only theoretical and not fully respected. In 2011, the ECHR in the *MSS v Belgium and Greece* case, concluded that Greece has failed immensely in respecting the values of human rights and rule of law in its handling of asylum seekers (Lavrysen, 2011). The court's judgment has excluded specific Dublin Regulation provisions from being applied to Greece, meaning asylum seekers were not sent back to the country anymore, since the treatment was inhuman and degrading.

On the other hand, the EC acknowledged that the country of first entry rule can be burdened to countries at the external border of the EU, including Italy and Hungary (Haake, Krieger and Minter, 2010). The Dublin III Regulation fails to provide adequate burden-sharing among member states. A great example is the large influx of 2015 that persuaded the EU in the insufficiency of the CEAS. It is believed that the problem concerns the nature of directives that bind member states with regard to the goals to be accomplished, rather than setting up the means member states should use to achieve these goals; directives of which the Dublin Regulation III is composed.

Additionally, national and governmental dissent towards the EU and its asylum policy can only be explained as a natural response to the inefficiency of the Dublin Regulation in ensuring that

responsibilities are shared in an equitable manner among member states. This is in particular important in states at the external border with a disproportionate responsibility.

5.4. Italian and Hungarian efforts to address violations

Starting with Italy, previous Salvini Decrees established a legal framework to ensure a quick-thinking mechanism for relocation, return and rejection of asylum applications. Despite all EU pressure, which rarely led to a significant change in domestic asylum policy, Italy opened up to EU requests earlier in 2020 and has adopted a decree to restore 'some humanity' into the previous Salvini decrees (Al Jazeera, 2020). Briefly explained, the fine of €1 million on NGOs and rescue vessels is decreased to €50,000. Furthermore, asylum seekers will not be expelled to Libya or a third-country anymore provided they risk being subjected to torture or inhumane treatment in their home countries. Seemingly, this amendment has improved Italy's image in Brussels for which it received an acclamation in improving human rights conditions. However, Italy's current government is still influenced by the Lega Nord and the Movement, which might lead to enforce more anti-migrant policies. On the other hand, this attempt to address violations is condemned by Human Rights Watch (2020) that argues that Italy continues with the criminalisation of Humanitarian Aid.

On the other hand, Hungary seems to be less responsive in adhering to EU's and NGOs' pressures. Literature and secondary data do not indicate any efforts by the government to improve its national asylum policy in a way that aligns with EU and international Human Rights principles. Other than the fact that Hungary had abolished the policy of transit zones (see: Analysing breaches of European and International Law and EU's capacities). It seems that the government is in fact working towards a stricter asylum policy in connection with the Covid-19 pandemic. In June 2020, the government adopted the Act LVIII on Transitional Rules and Epidemiological Preparedness, under which the government can severely block access to its territory and the asylum process (Laboris, 2020). The government deems migrants and asylum seekers as great transmitters of the virus into Hungarian society. A statement that can be justified since most nations around the globe, to the date of submitting this thesis, are implementing entry measures and often shutting their borders to protect national health.

6. Conclusion and recommendations

6.1. Conclusion

Chapter 2 has established background information on government approaches towards asylum and explained the motives of either anti-migration sentiments or hostile attitudes towards EU asylum policy. Next, Chapter 5 examined the findings and analysed imported data and the relationship between all parties involved in this thesis in the context of asylum.

Through its institutions such as the CJEU and the EC, the EU has reviewed the work of Hungary and Italy in the fields of asylum and migration and concluded that numerous policies do not comply with the legal foundations of the CEAS, and basic fundamental human rights. Literature, case law and reports categorised the violations of asylum seeker's human rights in policies that aim to reject their admission by either imprisonment in designated detention centres or pushing refugees away by relocating them in a country that does not respect human rights charters.

EU asylum policies were not respected by both member states that sought to control the migrant population by designing specific policies based on strong national identity and anti-immigration rhetoric. The two governments are not only 'less welcoming' to migrants, they are also sceptical towards the EU and its general asylum framework, under which the principle of Solidarity falls, although applicable in an unfair way, according to literature.

The sub-question: "Do the national asylum policies of Italy and Hungary comply with international and European obligations?" has been answered and it can be summarised that these policies strictly do not comply with EU obligations since the EU has condemned both nations for numerous times on their policies and issued warnings and binding rulings towards the betterment of human rights of asylum seekers, that were often not respected either.

Moreover, this research expanded the punishment mechanisms EU institutions have applied on relevant national policies and case law founded upon. The aim is to examine how violations are addressed. In conclusion, EU institutions including the EC and CJEU settled for imposing financial fines and addressing warnings to the national governments. Additionally, in specific individual case-law, the EU ruled in favour of migrants involved, such as the case of the Iranian and Afghan refugees against Hungary, which consequently led to the abolishment of transit zones. On the other hand, the EU announced its New Migration Pact (see: Chapter 4) that constitutes better conceptual application of the Solidarity principle among Member States that will ease up the pressure on states on EU's external borders, aiming eventually to decrease

violations by offering better alternatives to national governments. Previous information can be used to answer the following sub-question: "How can violations of international and European obligations be addressed?"

In connection with the previous questions, it is important to specify the efforts of Hungary and Italy themselves in addressing their own violations and how willing they are to do so. Based on data gathered and interpretation thereof, the Italian government is witnessing a breakthrough in the betterment of national asylum policies. The influence of Salvini is gradually vanishing. Yet, new amendments do not coherently improve the human rights condition for migrants. Hungary, in turn, is persistent with its hostility towards EU relocation plans and towards admitting asylum seekers that are now labelled as transmitters of the Covid-19 virus. Hungary is relentless with its position since the EUs' punishment mechanism is not powerful enough. Therefore, the sub-question: "Are the Hungarian and Italian governments willing and able to address these violations?" has been answered.

Consequently and hereby answering the last sub-question ("Is the European Asylum System successful in sharing responsibility and protecting the rights of asylum seekers?"). The European asylum system has not been fully successful in sharing responsibility with its member states in the field of asylum, founded upon the previously defined concept of solidarity. The tension between specific member states with the EU surfaced since the 2015 migrant crisis, after an unequal distribution of asylum responsibilities occurred, enriched in the Dublin Regulation and the Refugees Quota. The policies of relocation and return are coherent in all EU Member States. However, Italy and Hungary designed their own resolutions to deal with pressure on their borders regardless of possible violations of human rights, while also establishing their own schemes for relocation and involuntary returns.

Finally, the central question, split into the previous sub ("*To what extent are refugees rights, as laid down in international treaties and EU's refugee and asylum policies, respected by Italy and Hungary?*") has been answered in a cohesive study and proved that violations are broad and frequent without an effective punishment mechanism, which disintegrates case countries from EU's policy and weakens solidarity among member states.

6.2. Recommendations

Scholar-wise, future research can expand the work presented in this thesis by investigating policy-making procedures on national and EU level. These procedures help in delivering a sharper image on technical steps towards implementing such insubordinate policies. Additionally, it might be beneficial to generate data by conducting interviews with decision makers since the time and circumstance did not allow conducting such discussions for this thesis.

Moving on, this research encountered limitations within the context of case law since judicial language is fairly difficult to interpret by those with no experience in it. Therefore legal experts could be consulted for additional use of EU case law.

Regarding violations of rights, it is only feasible to increase pressure on selected governments and rework a better EU punishment mechanism that can implement serious penalties on countries that violate the law. Moreover, the EU must implement a better solidarity policy which ensures fairness to member states and their distinctive challenges.

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8. Appendices

8.1. Appendix 1: Migrants' situation landing in Italy from 2016-2019

Data concerning migrants landed in the years 2016-2017-2018 and 2019 as well as data on the ascertained casualties as a result of shipwrecks are reported below:

2016		2017		2018		2019 (as of 11/02)	
Events	Disembarked	Events	Disembarked	Events	Disembarked	Events	Disembarked
1.580	181.436	1.451	119.369	601	23.370	9	215

	2016	2017	2018	2019
Recovered corpses	390	210	23	1
Migrants being dead and missing in the Mediterranean	5.096*	3.139*	2.275*	212*

*(UNHCR provided data, as updated on February 4, 2019)

8.2. Appendix 2: Hungarian and Italian asylum applications

	Hungary	Italy
Applicants in 2019 (first time)	468	43,783
Pending at end 2019	234	42,803
Refugee status	22	10,711
Subsidiary protection	31	6,935
Humanitarian protection	7	616
Rejection*	650	76,798
Refugee rate	3.1%	11%
Subs. Prot. Rate	4.4%	7%
Hum. Prot. Rate	0.9%	1%
Rejection rate	91.5%	81%

Source: European Council on Refugees and Exiles/Asylum Information Database

<https://www.asylumineurope.org>

8.3. Appendix 3: relevant legislation

Article 16 Responsibility of States for Internationally Wrongful Acts:

Aid or assistance in the commission of an
internationally wrongful act:

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) the act would be internationally wrongful if committed by that State.

Source: the United Nations (2001)/ consolidated version of ARSWIA

Article 67(2) of the TFEU:

It (The EU) shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals.

Source: Eur.Lex/ Consolidated version of TFEU

Article 80 & 78 TFEU:

Article 80

The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.

Source: Eur.Lex/ Consolidated version of TFEU

Article 78

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.
2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:
 - (a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
 - (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
 - (c) a common system of temporary protection for displaced persons in the event of a massive inflow;
 - (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
 - (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;
 - (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
 - (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.
3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

Source: Eur.Lex/ Consolidated version of TFEU

Article 18 of the EU Charter of Fundamental Rights:

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

Source: European union Agency for Fundemtal rights/Consolidated version of the EU charter of Fundemtal Rights

8.4. Common European Asylum System entries

CEAS Instruments	Date of entry into force
The Temporary Protection Directive, 2001 ⁽²²⁾	7 August 2001
The Commission Regulation laying down detailed rules for the application of the Dublin Regulation, 2003 ⁽²³⁾	6 September 2003
The Qualification Directive (recast) (QD (recast)), 2011 ⁽²⁴⁾	9 January 2012
The Eurodac Regulation (recast), 2013 ⁽²⁵⁾	19 July 2013
The Dublin III Regulation (recast), 2013 ⁽²⁶⁾	19 July 2013
The Reception Conditions Directive (recast) (RCD (recast)), 2013 ⁽²⁷⁾	19 July 2013
The Asylum Procedures Directive (recast) (APD (recast)), 2013 ⁽²⁸⁾	19 July 2013

First phase CEAS instruments	Date of entry into force
The Eurodac Regulation, 2000 ⁽⁸⁾	15 December 2000
The Temporary Protection Directive, 2001 ⁽⁹⁾	7 August 2001
The Dublin II Regulation, 2003 ⁽¹⁰⁾	17 March 2003
The Regulation laying down detailed rules for the application of the Dublin Regulation, 2003 ⁽¹¹⁾	6 September 2003
The Reception Conditions Directive (RCD), 2003 ⁽¹²⁾	6 February 2003
The Qualification Directive (QD), 2004 ⁽¹³⁾	20 October 2004
The Asylum Procedures Directive (APD), 2005 ⁽¹⁴⁾	2 January 2006

Source: the European Commission/ CEAS analysis report

8.5. Student ethics form



European Studies Student Ethics Form

Your Yaman Attar

name: Mr. M. van. Munster

Supervisor:

Instructions:

Before completing this form you should read the APA Ethics Code (<http://www.apa.org/ethics/code/index.aspx>). If you are planning research with human subjects, you should also look at the sample consent form available in the Final Project and Dissertation Guide.

- Read section 2 that your supervisor will have to sign. Make sure that you cover all these issues in section 1.
- Complete section 1 and, if you are using human subjects, section 2, of this form, and sign it.
- Ask your project supervisor to read these sections (and the draft consent form if you have one) and ask him/her to sign the form.
- Always append this signed form as an appendix to your dissertation. This is a knock-out criterium: if not included the Final Project/Dissertation is awarded an NVD.

Section 1. Project Outline (to be completed by student)

(i) **Title of Project:** The European Union's effectiveness in dealing with insubordinate asylum policies of Italy and Hungary: success or disappointment ?

(ii) Aims of project:

The aim of this project is to study recent asylum policies in specific member states and how these policies do not conform to EU asylum law, since they facilitate human rights violations and disintegrate from the EU' asylum policy. Next it is important to conclude whether the EU was effectively responsive to these violations by exploring relevant case law on the punishments upheld.

(iii) **Will you involve other people in your project - e.g. via formal or informal interviews, group discussions, questionnaires, internet surveys etc. (Note: if you are using data that has already been collected by another researcher - e.g. recordings or transcripts of conversations given to you by your supervisor, you should answer 'NO' to this question.)**
No

If yes: you should complete the section 2 of this form.

If no: you should now sign the statement below and return the form to your supervisor. You have completed this form.

This project is not designed to include research with human subjects . I understand that I do not have ethical clearance to interview people (formally or informally) about the topic of my research, to carry out internet research (e.g. on chat rooms or discussion boards) or in any other way to use people as subjects in my research.

Student's signature _____ Date _____

Section 2 Complete this section only if you answered YES to question (iii) above.

(i) What will the participants have to do? (v. brief outline of procedure):

(ii) What sort of people will the participants be and how will they be recruited?

(iii) What sort of stimuli or materials will your participants be exposed to? Tick the appropriate boxes and then state what they are in the space below

- ☐ Questionnaires
- ☐ Pictures
- ☐ Sounds
- ☐ Words
- ☐ Other

(iv) Consent: Informed consent must be obtained for all participants before they take part in your project. By means of an informed consent form you should state what participants will be doing, drawing attention to anything they could conceivably object to subsequently. You should also state how they can withdraw from the study at any time and the measures you are taking to ensure the confidentiality of data. A standard informed consent form is available in the Dissertation Manual. Appendix the Informed Consent Form to your Final Project/Dissertation as well.

(vi) What procedures will you follow in order to guarantee the confidentiality of participants' data?

Student's signature:

Yaman Attar

Date 24/12/2020

Supervisor's signature:

Mr. Munte

Date 24-12-2020

(if satisfied with the proposed procedures)