LEGAL PLURALISM IN THE COMMON EUROPEAN ASYLUM SYSTEM AND ITS IMPLICATIONS ON REFUGEE PROTECTION: THE CASE OF LESVOS

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ABSTRACT

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As a complex legal regime, asylum regime is consisted of multiple level laws, norms, regulations, institutions, and actors. This complexity leads to multifaceted interactions among different actors and situations where legal orders and norms may be overlapping, clashed, in competition or complementary to each other. Therefore, asylum regime can be considered as a *semi-autonomous social field* within the literature of legal pluralism, which allows us to analyze the overlapping different legal regimes in the same legal space. From this perspective, hotspots announced within the European Agenda on Migration in 2015 appear as legal spaces that are regulated in international, supranational, regional, national, and local levels, and that involve various institutions, authorities, and non-state structures. As a result of the EU policies and the involvement of EU agencies, the operational dimension of global legal pluralism became more apparent in the hotspots. Apart from the operational dimension, the hotspots carry importance for the spatial dimension of global legal pluralism through the mutual constitution of law and space. Therefore, this thesis focuses on the case of Moria hotspot in the Greek island of Lesvos from intersecting approaches of global legal pluralism and critical legal geography to comprehend the global legal pluralism emerging in the Common European Asylum System (CEAS) and its implications on the refugee protection in Greece.

Keywords: Refugee rights, Common European Asylum System, Greek asylum system, global legal pluralism, legal geography, hotspots

ÖZ

AVRUPA ORTAK SIĞINMA SİSTEMİ'NDEKİ HUKUKİ ÇOĞULLUK VE MÜLTECİ KORUMASI ÜZERİNDEKİ ETKİLERİ: MİDİLLİ ÖRNEĞİ

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Karmaşık bir hukuki rejim olarak sığınma rejimi; çok düzeyli kanunlar, normlar, yönetmelikler, kurumlar ve aktörlerden oluşmaktadır. Sığınma rejiminin bu karmaşıklığı, farklı aktörler arasında çok yönlü etkileşimlere ve yasal düzenlerin ve normların birbiriyle örtüştüğü, çatıştığı, rekabet halinde olduğu veya birbirini tamamladığı durumlara yol açmaktadır. Bu özellikleriyle sığınma rejimi, aynı hukuki mekanda örtüşen farklı hukuk rejimlerini analiz etmemizi sağlayan hukuki çoğulluk literatüründe *yarı özerk sosyal alan* olarak ele alınmaktadır. Buradan yola çıkarak, 2015 yılında Avrupa Göç Gündemi'yle ilan edilen sıcak noktalar (hotspots), uluslararası, uluslarüstü, bölgesel, ulusal ve yerel düzeylerde düzenlenen ve aralarında devlet-dışı yapıların da olduğu çeşitli kurum, kuruluş ve mercilerin dahil olduğu hukuki/yasal alanlar olarak karşımıza çıkmaktadır. AB politikaları ve AB kurumlarının dahlinin bir sonucu olarak; küresel yasal çoğulculuğun operasyonel boyutu, sıcak noktalarda daha belirgin hale geldi. Eylemsel boyutun dışında, sıcak noktalar, hukuk ve mekanın birbirilerini karşılıklı yapılandırması yoluyla küresel hukuki çoğulluğun mekansal boyutu için önem taşımaktadır. Bu nedenle, bu tez, Ortak Avrupa Sığınma Sistemi'nde ortaya çıkan küresel hukuki çoğulluğu, bunun Yunanistan'daki mülteci koruma rejimi üzerindeki etkilerini kavramak için küresel hukuki çoğulluk ve eleştirel hukuki coğrafya yaklaşımlarının kesişimini kullanmakta ve Yunanistan'ın Midilli adasındaki Moria sıcak noktası örneğine odaklanmaktadır.

Anahtar kelimeler: Mülteci hakları, sığınma hakkı, Avrupa Ortak Sığınma Sistemi, Yunan sığınma sistemi, küresel yasal çoğulluk, hukuk coğrafyası, sıcak noktalar (hotspots)

To Binnaz Anneanne and all refugee mothers…

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LIST OF ABBREVIATIONS

AIDA	Asylum Information Database
AMKA	Αριθμός Μητρώου Κοινωνικής Ασφάλισης (Social Security Number in Greece)
APD	Asylum Procedures Directive
CAT	Convention against Torture
CEAS	Common European Asylum System
CFR	Charter of Fundamental Rights
CJEU	Court of Justice of the European Union
CLS	Critical Legal Studies
CoE	Council of Europe
DRC	Danish Refugee Council
EC	European Commission
ECDC	European Centre for Disease Prevention and Control
ECHR	European Convention of Human rights
ECtHR	European Court of Human Rights
ECJ	European Court of Justice
EKKA	Εθνικό Κέντρο Κοινωνικής Αλληλεγγύης (Hellenic National Centre for Social Solidarity)
ENP	European Neighbourhood Policy
EU	European Union
EURODAC	European Dactyloscopy
EUROJUST	European Union Agency for Criminal Justice Cooperation
EUROPOL	European Union Agency for law Enforcement Cooperation
EURTF	European Union Regional Task Force
EASO	European Asylum and Support Office

FRONTEX	European Border and Coast Guard Agency
FRS	First Reception Service
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IOM	International Organization for Migration
IPA	International Protection Act (Law 4636/2019)
IPSN	Identification of Persons with Special Needs
IRO	International Refugee Organization
MENA	Middle East and North Africa
MSF	Médecins Sans Frontières (Doctors Withouth Borders)
ND	New Democracy
NGO	Non-Governmental Organizations
PM	Prime Minister
PTSD	Post-traumatic Stress Disorder
QD	Qualification Directive
RABIT	Rapid Border Intervention Team
RAO	Regional Asylum Offices
RCD	Reception Conditions Directive
RIC	Reception and Identification Centre
RSA	Refugee Support Aegean
SYRIZA	Συνασπισμός Ριζοσπαστικής Αριστεράς - Προοδευτική Συμμαχία (The Coalition of the Radical Left – Progressive Alliance)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations

UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
UNRRA	United Nations Relief and Rehabilitation Administration

CHAPTER 1

INTRODUCTION

Refugee protection is a complex area that involves different legal regimes, multi-level actors, and policies affected by domestic, regional, and global political developments. Even though the global refugee protection regime is composed of the legal norms, rules, principles, organizations and institutions, as well as the state policies developed for responses to refugee situation, the international refugee rights are at the core of the regime. As a part of but not limited to the protection of fundamental rights, the international refugee law is based on the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention) and the 1967 Protocol relating to the Status of Refugees (1967 Protocol), together with the international and regional treaties and declarations that address the rights of refugees.

Europe has been a focal region for the international refugee protection regime. The 1951 Refugee Convention, which is the main legal source of the modern international refugee law, was drafted and adopted in response to the large scale forced displacement occurred due to the events before and during the Second World War (WWII) in Europe (Loescher, 1993). Since then, there have been significant developments for the protection of both human rights and refugee rights. The adoption of legal and policy instruments in the asylum area has become extensive, notably with the decision of the European Union (EU) to create a Common European Asylum System (CEAS) in 1999 (UNHCR, 2017, p. 22). While the main goal of the CEAS is to set standards to the asylum procedures and to harmonize the asylum systems in the EU, it also creates a multi-level governance system -international, supranational, regional, and national- by addressing the 1951 Refugee Convention and other relevant

areas of international law, the EU law, the European Convention of Human Rights (ECHR), and national law, as well as by involving multi-level institutions and actors.

The broad understanding of legal pluralism refers to the co-existence of different legal orders in the same political and legal space (Moore, 2001; Barber, 2006; Benda-Beckman and Benda-Beckman, 2013). Multiplicity of different legal orders may lead to a complexity in the legal framework of the respective systems. Even though complexity does not directly indicate negativity, in the situations where the legal orders overlap or lack of cooperation, it can cause complications including challenges to access rights or creation of black holes in the legal systems. Another dimension of the legal pluralism is the multifaceted interactions arisen among different institutions, authorities, and actors as a result of the overlapping legal orders (Merry, 1990). Different from the classical understanding of legal pluralism, which takes its roots in the existence of different legal authorities in former colonies, the contemporary approach -global legal pluralism- addresses the *multifaceted role of law* (Berman, 2007), fragmentation in international legal system, and multiplication of bodies of legal norms in specific areas such as human rights, crimes against humanity trade, law of the sea (Tamanaha, 2008). From theis angle of legal pluralism, refugee law involves interactions between different legal orders (international, EU law, ECHR and national law), different legal regimes (e.g. law of the sea, refugee law, human rights law), and different actors (e.g. State authorities, international organizations, supranational institutions, private actors, non-governmental organizations) (Poon, 2020).

As a *sui generis* organization, the EU poses comlex legal systems and institutions. In spite of embedded legal systems between the EU and the Member States, it still does not mean that they *blend into* one uniform system (Halberstam, 2012). Particularly with regards to the protection of human rights, the EU law and ECHR are overlapping and create complex interactions among national-EU law, national-ECHR, and EU-ECHR, which form "human rights pluralism" (Costello, 2015). As a part of human rights law but not solely, area of asylum is subjected to the legal and policy frameworks of migration and border control (Costello 2015).

Considering the multiplicity of the legal orders and various bodies in the field of asylum, the relationship between the CEAS and the EU Member States' asylum regimes emerges as a noteworthy inquiry of global legal pluralism. Alongside the normative commitments, the CEAS is largely influenced by security and border policies of the EU, as well as those of its member states. The EU asylum and immigration laws are framed under the Area of Freedom, Security and Justice (AFSJ). As the general provisions given in the Title V of the Functioning of the European Union (TFEU) Articles 67 and 78, AFSJ regulates the policies on border control, asylum and immigration, judicial cooperation in civil and criminal matters, and police cooperation, which started the debates on the EU's securitarian approach on migration and asylum regimes (e.g. Lavenex 2001). In addition to the EU law in asylum and fundamental rights, the EU border and security policies have direct impact on the re-shaping of the asylum regimes in the EU Member States. Hence, the CEAS is consisted of primary law - the TFEU, Treaty on EU and the EU Charter of Fundamental Rights- and secondary legislation in the forms of Regulations (e.g. the EURODAC Regulation, Dublin III Regulation, the Temporary Protection Directive, the (recast) Qualification Directive, the (recast) Reception Conditions Directive, the (recast) Asylum Procedures Directive). Alongside the complex legal framework, it is also important to analyse the impact of the EU policies to understand the relationship between the CEAS and the Member States' asylum regimes, as well as the interactions among authorities such as the national asylum services, European Asylum Support Office (EASO)[1] and FRONTEX.

The transformative impact of the EU's securitarian approach on the asylum regime became clearer in the period of 2015 and 2016, when over a million refugees crossed from Turkey to Greece (UNHCR, 2015a). In response to the refugee movement, in May 2015, the European Commission (EC) adopted the European Migration Agenda (COM/2015/0240 final). Within the frame of the European Migration Agenda, two

[1] While conducting interviews for the field work of this thesis, the EU level asylum support office's name was EASO. Nevertheless, as of 19 January 2022, the European Union Agency for Asylum (EUAA) replaced the EASO. In order to prevent the confusion and taking into consideration the period that this thesis refers to, the name of EASO is used in this thesis.

ad-hoc solutions were developed: the "hotspot approach" and the intra-EU relocation mechanism. "Hotspot approach" refers to the establishment of Registration and Identification Centres (RICs) in the main entry points of refugees in Italy and Greece[2]. Even though the term "hotspot" is not defined in any legal document or framework, the hotspot approach directly affected both the legal regime and the practices in the asylum systems in Greece and Italy in various ways including multiplication of institutions, proliferation of different asylum processes, territorial differentiation in the asylum procedures, and containment policy of asylum seekers.

Firstly, multiplication of institutions is observed in the hotspots. Alongside increasing the operation of the European Border and Coast Guard Agency (FRONTEX) for border surveillance at the maritime border zones, the EC deployed the European Asylum Support Office (EASO) and Europol. Notably, EASO's role was initially to assist and monitor national authorities to implement the CEAS (EC Com (2015) 240 final). However, due to the high level of asylum applications and the lack of capacity in the national asylum services, EASO's role expanded over time to include, among others, conducting of interviews with the international protection applicants, which complicated the relationship and interactions between the EASO and the national asylum services. The involvement of the EU agencies had particular significance for Greece since the Greek asylum system was previously judged as dysfunctional by the European Court of Human Rights (ECtHR) and the EU Court of Justice (CJEU) in 2011 (ECtHR, M.S.S v. Belgium and Greece; CJEU, Joined Cases C-411/10 and C-493).

Secondly, the proliferation of different asylum processes caused fragmentation in the legal procedures in Greece. In addition to the existing procedures -regular procedure, border procedure, accelerated procedure and Dublin procedure-, fast-track border procedure was added for Syrian nationals (AIDA, 2017a). In this way, both the Dublin

[2] Five hotspots were established in Italy (Lempedusa, Messina, Pozallo, Taranto and Tarapani) and five in Greece (on the islands of Chios, Kos, Leros, Lesvos and Samos) with the aim of expediting the process of the identification and the registration of the asylum seekers (EC Migration and Home Affairs website).

procedure and fast-track border procedure were created as a result of the EU asylum policies in addition to the national asylum law. The multiplication of asylum regimes did not only cause legal fragmentation, but also caused territorial differentiation for the asylum applications by separating the procedures in the hotspots (border procedure and fast-track border procedure) and those in mainland Greece (other procedures except the border and fast-track border procedures).

Thirdly, the territorial differentiation in the asylum procedures deepened even further with the adoption of the EU-Turkey Statement of March 2016. With the aim of preventing irregular crossings from Turkey to Greece, various measures were taken within the frame of the EU-Turkey Statement. This included the 1:1 Scheme, which targets the return of irregular migrants arriving in Greece after the 20th March 2016. According to the 1:1 Scheme, for each person returned from the Greek islands to Turkey, one Syrian refugee would be resettled from Turkey to the EU. Turkey accepted the returnees on the condition that only arrivals to Greek islands would be covered under the scheme. As a result, geographical restriction was put on the asylum seekers who arrived in the Greek islands. Until the asylum procedures were concluded, asylum seekers were no longer allowed to leave the hotspot islands.

The containment policy of the asylum seekers in the hotspot islands caused two important issues. First, together with the high numbers of arrivals in the islands and the geographical restriction, the refugee camps on the Greek islands became overcrowded. According to reports prepared by various NGOs and institutions, the camps' capacity was exceeded by over 500 per cent (e.g., Press release by DRC, International Rescue Committee and others, 18 September 2019). Second, the hotspots that were initially referring specifically to the RICs, expanded to "hotspot areas" in the sense of EU external border areas where high number of irregular migrants arrive. In this way, the islands became legal and political spaces that are hyperregulated by different legal orders and multi-level actors.

This research looks at the hotspot of Moria on the Lesvos Island, Greece. This particular location is chosen because of the presence of multiple actors working in asylum regime, having the largest capacity amon the hotspots established in Greece, its location as a border zone between Turkey and Greece (and so the EU's external border zone), and its symbolic importance for the EU's migration and asylum policies. The hotspot of Moria on the Lesvos Island in Greece has been used as a "laboratory" for the EU migration policies, becoming a symbol of failure of the hotspot approach (Tazzioli, 2017; RSA, 11 April 2019; Pallister-Wilkings, et al. 2020; Lesvos Solidarity, 2 July 2021). Intervention of various European and international agencies alongside the presence of Greek authorities and NGOs working in the humanitarian sector did not improve the access of asylum seekers to asylum rights and basic services in Lesvos. Moreover, this thesis claims that Lesvos became a *hyperregulated space* in which various legal orders at the international, European, and national levels co-exist. Yet, refugee rights are deteriorated even further. On one hand, the camp residents have been facing primary problems regarding lack of shelter, unhealthy living conditions, detention of unaccompanied children, gender-based violence, use of force by the police, and coercive measures to collect the fingerprints as repeatedly reported (e.g. HRW, 2016a; Amnesty International, 28 July 2017; MSF, 4 May 2018; FRA, February 2019; UNHCR, 26 August 2019). On the other hand, supranational, national and local actors find themselves in a regime of emergency with ambiguous and flexible legal context due to the *ad-hoc* policy interventions of the EU. From this perspective, Lesvos emerges as a compelling case to analyse legal pluralism in the CEAS and its implications on refugee protection.

1.1.Statement of Research Question

The relationship between different levels of legal orders creates legal pluralism in the EU's asylum system. While the proliferation of the legal procedures can be considered as a strengthening factor for a multilevel refugee protection system, the lack of coordination, changing political priorities, and *ad-hoc* emergency responses can create challenges for enforcement. As a frontier member state, Greece has been the entry

point for irregular migrants including refugees and asylum seekers. Despite the efforts to harmonize the Greek national legislation on asylum in accordance with the EU standards over the last decade, capacity and functionality problems of the Greek asylum system have remained.

In the period of 2015-2016 when the refugee arrivals reached their peak, the EU deployed its agencies to support the Greek authorities in the hotspots that were declared as a part of the EU policy. The EU's involvement through its agencies, as well as the multiplication of the asylum procedures directly influenced the Greek asylum regime. As a part of a pilot research project on migration, I had an opportunity to meet a number of migration scholars, NGOs and activists in Athens on January 2016 where the refugee movement from Turkey to the EU countries transiting through Greece and Balkan countries was at the peak. The adoption of the EU-Turkey Statement of March 2016 changed the whole picture by restricting asylum seekers who arrive in the hotspot islands to cross to the mainland of Greece. While witnessing the shift in the policy, there was another important dimension that drew my attention: the asylum procedures and various rights including access to education for children were territorially differentiated between the hotspot islands and the mainland of Greece. This differentiation was not only in practice, but it was also regulated as a result of European Agenda on Migration, which introduced the fast-track border procedure. As a researcher, it was an interesting research inquiry for me since the essential idea of the CEAS is to bring common standards in all member states. Nevertheless, the result of their policy adopted in 2015-2016 brought more differentiation and fragmentation within the same country. Moreover, in spite of the adoption of a series of new regulations and legislation, and the presence of multi-level authorities, asylum seekers have continued to face serious challenges to access asylum rights, as well as the fundamental rights. The proliferation of institutions, whose authorities overlap during the asylum applications, and frequent changes in the policy and legal framework both at the national and EU level have complicated the Greek asylum regime. From this perspective, I initially tried to understand the source of this fragmentation and differentiation. Therefore, this thesis asks: Does the EU's asylum regime carry the

characteristics of global legal pluralism? Does this legal pluralism have impact on refugee protection in Greece?

To answer these questions, the thesis elaborates the socio-spatial dimension of the asylum regime, the legal plurality and the implementation of multi-level system of refugee protection. Critical legal geography provides an extensive theoretical framework to trace the complexity of the legal framework consisting of international law, EU regulations, domestic regulations in Greece, as well as *ad-hoc* solutions created after 2015. In this context, interrelation between legal plurality, space and access to rights are at the heart of this thesis.

The concept of legal pluralism is "based on the possibility that law of various kinds, with different foundations of legitimacy, validity, power, and authority with different degrees of institutionalization and formalization, co-exist" (Benda-Beckman and Benda-Beckman, 2013). Legal pluralism does not only provide actors a variety of options to establish interactions and relationships, but it also pays attention on non-state legal forms alongside the hierarchy between legal orders. Taking into consideration that asylum systems involve complex interactions between different actors (case workers, guardians for unaccompanied children, practitioners, judges, cultural mediators and interpreters, etc.) which are regulated by national, international and supranational rules developed by different levels of bureaucratic institutions or court systems (Gill and Good, 2019: 18), they can be considered as *social fields* of legal pluralism.

The literature developed in legal spatiality in international law is especially important for this thesis. The geographic and temporary conditions of the refugee rights at the Greek-Turkish maritime border zone makes relevant the discussions on the temporality of law and space. Not only the influence of the "refugee crisis" in terms of temporality, but also the geographic location of the Eastern Aegean islands raises the question of whether the regulations in asylum system go beyond the traditional forms of the state regulations. Exploration of the *re-spatialization of legal* power by

re-thinking the relationship between law and space helps us to develop better understanding for the territorial conditions for the presence or absence of the protection of rights (Raustiala, 2005).

1.2. Literature Review

In the last decade, discussions on EU in the literature have been mostly related with the "crisis", such as Euro crisis, Greek crisis, demographic crisis, and also the "refugee crisis" or "migration crisis". According to the study conducted by Schweitzer, Consterdine and Collyer (2018), there is a sudden increase in the number of academic and non-academic works related to the "European refugee crisis" after the events of 2015. While the use of the term "crisis" has become so common, some critical scholars such as De Genova, Chetail, and Casas-Cortes (De Genova and Tazzioli, 2015, p. 3-4) highlight the necessity of re-thinking this concept and they refuse to take its meaning for granted. Moreover, New Keyword Collective[3] claims that the "crises" are used as a justification for new "emergency" policies and establishment of new mechanisms of control. Similarly, Chetail (2016, p. 602) warns us about "The language of crisis not only distracts attention from the real issues at stake, but its uncritical use might also have the side effect of undermining and threatening basic principles of international law and the foundational values of the EU itself."

More specifically, the discourse related to the migrants or refugees becomes more complicated and problematic with reference to "illegality". With the use of terms such

[3] As a result of a meeting of the research network on "The 'European' Question: Postcolonial Perspectives on Migration, Nation, and Race," convened by Nicholas De Genova and Martina Tazzioli at King's College London on June 25–26, 2015, New Keywords of "the Crisis" in and of "Europe" emerged. Soledad Álvarez-Velasco, Manuela Bojadzijev, Sebastian Cobarrubias, Nicholas De Genova, Elena Fontanari, Evelina Gambino, Giorgio Grappi, Charles Heller, Yolande Jansen, Bernd Kasparek, Shahram Khosravi, Sandro Mezzadra, Lorenzo Pezzani, Fiorenza Picozza, Lisa Riedner, Stephan Scheel, Laia Soto Bermant, Maurice Stierl, Zakeera Suffee, Martina Tazzioli, Huub van Baar, and Can Yildiz participate in this collective.

as “migrant crisis” or “refugee crisis”, the topic is tended to be personalized and further, the imagination of the crisis is embodied in migrants and refugees which moves us away from the recognition of EU’s role in the production of the crisis (De Genova and Tazzioli, 2015, p. 19). Instead, it can be described as the “crisis of the asylum system” and “European border crisis” (Fontanari and Ambrosini, 2018).

There is extensive literature that supports the idea that the source of the crisis is the failure in the CEAS rather than the migration movement. For instance, while Pries (2018) approaches to the recent refugee movement as a “new transnational social question”, he calls the failure of the European refugee regime to respond to the “refugee crisis” as the *organized non-responsibility* of the EU member states. The *organized non-responsibility* is defined as “the states do not feel responsible for protecting refugees according to the CEAS, but simultaneously feel entitled to lecture or criticize other member states with reference to something common” (Pries, 2018, p. 107). In this context, the European refugee regime was impotent to deal with the “refugee crisis” because of the institutionalization process of the CEAS starting from the Tampere Milestone in 1999. Although the CEAS ensures a regulative basis, there are many problems regarding its practical implementation (Pries, 2018, p.114). Almost all EU countries tried to avoid their responsibilities to grant protection to refugees or to implement the EU level legal regulations, and they also did not give importance to implement border defence measures incompatible with the CEAS until the international community and other actors reacted.

In support to this approach, Lavenex (2018) considers it as a governance crisis in her article in which she conceptualizes the “organized hypocrisy” in the CEAS. The conflict between the normative commitments and the protectionist practices during the Europeanization process of the asylum policies emerge as the main source of the *organized hypocrisy* (Lavenex 2018). The gap between the discourse and the practice raises the risk at diminishing the credibility of the EU (Lavenex 2018). She remarkably notes: “(…) the incapacity to bridge normative expectations and political action may, in the long run, challenge the very idea of a common European policy. For better or

worse, organized hypocrisy nourishes a persistent sense of crisis over the EU's capacity to 'fail forward' towards a 'Union of values'." (Lavenex, 2018, p. 1209).

Warnings with regards to the restrictive measures of the EU in the asylum and migration policy that do not comply with the standards of the international refugee protection date as back as in the early 2000s. The response given to the rising level of refugee movement was contradicting with the *universalist rights-based principles* which creates a challenge to European values. The *ad hoc* measures including "temporary protection provided for those fled from Croatian and Bosnian conflicts can be considered as the first signs of the diminishing standards in the international refugee protection in Europe in the 1990s" (Boswell, 2000, p. 542). The resentment of the certain EU countries for the responsibility and burden sharing, and more restrictive measures in asylum policy aggravated even further with the EU's insufficient and inconsistent response to the mass refugee movement after the uprisings in the Middle East and Northern Africa (MENA) region. This caused a certain degree of divergence from the *universalist liberal approach* in the asylum policies.

In the first phase of the Europeanization process of asylum and migration policies, two types of tensions emerged that have created the paradoxes in the Europeanization process (Lavenex, 2001). While first tension is between state sovereignty and supranational governance, the second is between internal security and human rights (Lavenex, 2001, p. 852). Even though the starting point of establishing a "common European asylum system" is rooted in shared commitment to humanitarian values following the criticisms against the European response to the Kosovo crisis, the asylum policies are shaped under the justice and home affairs (JHA) from a securitarian approach (Lavenex, 2001, p. 857). Yet, the reference to the human rights as the basis of a common European asylum system in Tampere Milestone can be considered as an antidote against the risk of a "fortress Europe" (Lavenex, 2001, p. 869).

Starting from the 1990s, the concept of "Fortress Europe" has been widely used in the literature to describe increasingly restrictive migration policies, reinforcement of the

border controls and surveillance, and consequently the exclusion of the certain categories of migrants (e.g. Kofman and Sales, 1992; Bigo, 1998; Massey, 1999; Geddes, 1999; Alscher, 2005; Carr, 2012). The public fears about the increasing irregular migration, in particular at sea, led the European states to adopt restricting measures for migration policies, as well as intensify the border surveillance by deploying a growing number of coast guards, new surveillance technologies and military equipment at the maritime border zones (de Haas 2009, p. 1309).

Political developments in the last decade of the Cold War and afterwards significantly increased the number of forcibly displaced people in the world. While some of the European countries were increasingly becoming popular destinations, the focus of the migration policy started to shift to the migratory routes going to Europe (Hess, 2012). While in 1990s, the Western Mediterranean route between Spain and Morocco was the most popular, Central Mediterranean route between Italy, Malta and Libya was drawing attention. It did not take long time that the Eastern Mediterranean route between Turkey and Greece became a transit zone that the asylum seekers were using. On one hand, the asylum applications in Turkey and Greece increased. On the other hand, the passages to the EU increased, which led to the emergence of two concepts in the literature in that period: "transit migration" and "irregular/illegal" migration (IOM, 1995, Içduygu, 2005, p.1). In this context, while the Northern countries in the EU were considered as the destination countries, Southern countries such as Spain, Italy, Greece, and Turkey as a non-EU country, were seen as the transit countries of migration (Içduygu, 2005; Düvell, 2012; Hess, 2012).

Even though the concept of "transit countries" was re-visited by the authors from a critical perspective, it left mark both on the migration literature and on the EU migration policies of the 1990s (Düvell, 2012, Hess 2012, Içduygu and Yükseker, 2012). Throughout the 2000s, the EU developed *externalization* policies as a response to the "risk" for irregular arrivals. The EU policies such as the European Neighbourhood Policy (ENP), the Barcelona process, the inter-governmental Dialogue on Transit Migration, and third country agreements, continued to externalise the

responsibility and shift the burden towards neighbouring countries to manage the migratory routes (Düvell, 2012; Hess, 2012).

With the proliferation of the EU agencies including Europol and FRONTEX, migration management was securitized. As Hess (2012, p.434) highlights, "(…) the definition of a space as 'transit' is coupled with a reduction of state sovereignty and renders the space as an object of 'risk analyses' by diverse agencies like the EU, Europol, UNODC or FRONTEX (…)". Furthermore, she notes that the perception of *risk* changed and adds "it is no longer the actual deed of border crossing as the porosity of the border is taken into account. Rather it is the movement, the 'transit'-mobility itself which became the object of governance."

Securitization of the European migration policy became a key topic in the literature after the creation of Frontex in 2004 and the emergence of a "global approach to migration" that aims to fight irregular migration and to reinforce the border management of Europe's Southern Maritime borders (Bigo, 2002 and 2005; Lutterbeck, 2006; Vaughan-Williams, 2015). EU's cooperation with third countries and bilateral re-admission agreements are considered as an expansion of this securitized migration border governance. In order to "reduce the influx" on the migratory routes and the "pressure" on the border zones, third country agreements have been used to close particular migratory routes such as the Balkan corridor, the EU-Turkey Statement for the East Aegean route, and the cooperation with the Libyan Government for the Central Mediterranean route (e.g. Kallius, 2016; Isleyen, 2018; Moreno-Lax, 2018).

Within the frame of this cooperation with third countries, processing the asylum applications and detention of refugees beyond the EU territory are referred to as the externalization of asylum in the literature (Andrijasevic, 2010; Triandafyllidou, 2010; Casas-Cortes et al. 2015). The extraterritorialization or externalization of the protection of the EU's exterior borders is primarily a strategy to give responsibility to countries of origin and to countries of transit for governing refugee movements. To

provide this, agreements between the third countries and the EU or the EU Member States have been prepared (Pries, 2018, p. 91). The main problem here is that the triangle between the rights, freedom, and security as the principles of the EU as an "area of freedom, security and justice" has been dominated by security-oriented policies. Accentuated by concerns on border and state security in the post 9/11 era, and the increasing perception of refugees as a threat, in particular following the uprisings in the MENA region, securitization of the EU migration policies intensified (Bigo, 2009; Carrera, Hertog and Parkin, 2012). While the border controls and prevention of irregular migration became policy priorities in the third country agreements, rights and freedoms of refugees were subordinated.

In align with the proliferation in securitization and externalization of migration policies, the re-configuration of border management has become inevitable for implementation of such policies. Border zones have turned into a playground for the governmentality of migration through the surveillance systems, technological practices, and various migration management tools including accommodation and detention of asylum seekers at the border zones. In the literature, the (re)production of borders and re-spatialization of border practices as a result of the EU's externalization policies have been widely argued in particular from the critical perspective (Rumford, 2006; Vaughan-Williams, 2009, Cassas-Cortes et al. 2011, 2013, 2016). Further, there is an increasing interest in the research concerning the surveillance technologies used for border controls as an extension of the securitization of migration policies of the EU (e.g., Broeders, 2007; Jeandesboz, 2011; Dijstelbloem and Broeders 2014; Dijstelbloem et al. 2017; Sadık and Kaya, 2020; Işleyen, 2021).

While externalization of the asylum is seen as an effective way to decrease the irregular crossings by the policy-makers, bordering countries such as Italy and Greece have been rendered into "gatekeepers" as a result of the EU's migration policies. This has been even more visible with the intense refugee movement in 2015-2016 from Turkey to Greece. Migration and border governance in the Aegean Sea since the refugee movement of 2015 can be given as an example for this transformation (Karadağ,

2020). For instance, the Search and Rescue (SAR) activities in this period demonstrate both militarization and humanitarianization of border spaces that lead to the multiplication of actors. At the point where humanitarian and military actors' roles and practices blur, "military-humanitarian assemblages" emerge in the Aegean Sea (Karadağ, 2020).

As a response to the "unexpected and exceptional migratory flows" in 2015, the hotspots were created in these two "gate" countries. Therefore, the hotspots locate as *territorial incubator* for the liminal EU territory (Papoutsi et al. 2018). The hotspots create liminality in two ways: distinction between the outside and the inside, and a space of exception where the rights are induced. Thus, space as the exceptional territory is produced by time that refers to the limited condition of the emergency as a result of the crisis (Papoutsi et al. 2018). Further, the operational insufficiencies in the hotspots have prolonged the precarious situation of the asylum seekers or "border-crossers" because of the securitization policies of the EU (Kalir and Rozakou, 2016). As a result of the intersection of various policies of migration and security policies, "hotspots along the EU borders aspire to become sites of order, absolute surveillance and humanitarian care" (Kalir and Rozakou, 2016, p. 5).

Flexible and temporary measures are at the heart of the functioning of the hotspot system in Greece and in Italy which imposes forms of containment of the refugees (Tazzioli, 2018). The *forms of containment through mobility* are enforced by the control in terms of surveillance and tracking. Containment through mobility can be described as "The migration movements are obstructed in their autonomy not only by generating immobility and conditions of strandedness, nor through constant surveillance but through administrative, political and legal measures that use (forced) movement as a technique of government" (Tazzioli, 2018, p.2). In this sense, the traceability of migrants emerges as a practice of migration governmentality that leads to the production of asymmetries of mobility and exclusionary divisions, as well as hierarchy between lives (Tazzioli, 2018).

Practices of migration governmentality grows the tension between the international norms associated with the Geneva Convention, human rights principles, the refugee law, and the European asylum policies. Further, alongside the multiplication of regulations and policies, ambiguous practices that contradict with the international norms cause further complexities in the asylum regime. The informal and indirect *obstructive bureaucratic practices* can cause erosion of the existing legal standards (Artero and Fontanari, 2019). Arbitrary decisions of the bureaucrats push the refugees into a condition of irregularity that can be considered as structural violence of bureaucracy (Artero and Fontanari, 2019). The EU asylum regime is re-shaped by the ambiguous practices by the diverse actors. Rozakou (2017), for example, highlights the importance of the bureaucratic practices on the borders for the access of the refugees to their rights and how bureaucratic procedures often separate from official policies. Emergency measures that create further gap between law and practices are usually not in line with the principles of human rights and refugee protection (HRW, 2006).

Due to the failure in the asylum system to protect the persons in flight and to put asylum seekers in a highly precarious situation, deterioration of human rights, and poor living conditions in the refugee camps, Greece has been a popular case in the literature. The challenges that asylum seekers are facing such as violation of the *non-refoulemen*t principle, lack of social support and legal assistance, lack of accommodation, and obstacles during the applications process are elaborated by a number of scholars (e.g., Cabot, 2014; Triandafyllidou, 2014; Kalpouzos and Mann, 2015; Rozakou, 2017;). Even though there are studies concerning the Europeanisation process and the harmonisation of Greek asylum legislation (e.g. Triandafyllidou, 2009; Papageorgiou, 2013, Dimitriadi and Sarantaki, 2019) and the country reports of Greece with regards to the legal protection of refugees within the RESPOND Project[4], there is a lack in the literature that provides a detailed legal landscape of the refugee protection in Greece,

[4] "RESPOND Multilevel Governance of Migration and Beyond" is an EU Horizon 2020 research project focusing on migration governance in the EU. Issue of "Refugee protection regimes" is one of the thematic fields of the project. Further information is available at https://respondmigration.com/projx.

in particular, in the post-2015 period.

From this perspective, this thesis aims to fill this gap not only by providing a detailed outlook of the complex protection legal regime but also by giving insights through empirical data collected from a fieldwork that took place between January and September 2020. Due to the significance of the period of the fieldwork, this thesis goes beyond the analysis of legislative changes but covers various themes that had direct impact on the refugee protection. Developments in the domestic politics with the change in the government after 2019 general elections, the global pandemic of Covid-2019 and the immobility issues, and growing tension between Turkey and Greece can be considered as the main issues that were influential on the refugee protection regime.

Within the scope of the theoretical dimension, legal pluralism with regards to the EU law is mostly argued from the constitutional legal pluralism approach (e.g. Avbelj, 2006; Itzcovich, 2012). For instance, in the edited book of Matej Avbelj and Jan Komarek (2012), there are various issues covered from constitutional pluralism (Maduro, 2012) to systems pluralism and institutional pluralism in constitutional law (Halberstam, 2012), and to legal pluralism and institutional disobedience in the EU (Cruz, 2012). Yet, there are fewer studies focusing on the fields of migration and asylum (Cornelisse, 2018). One of the most prominent studies belongs to Cathryn Costello (2015) with her book titled "The Human Rights of Migrants and Refugees in European Law", in which she makes a legislative and judicial analysis of human rights of migrants and refugees in European law by emphasizing human rights pluralism within the EU legal system. Another book edited by Nick Gill and Anthony Good (2019) focuses on the CEAS from legal pluralism approach combining with ethnographic perspectives on separate issues in different member states including the unaccompanied asylum seeking minors in Greece (Giannopoulou and Gill, 2019), refugee status determination policies in France (Gibb, 2019), asylum bureaucracy in Norway (Liodden, 2019), and refugee appeals in Italy (Sorgoni, 2019).

With regards to the migration governance out of the EU territory, McConnachie (2014)

provides a unique study on the governance of refugee camps on the Thai-Burma border zone from a contemporary understanding of legal pluralism by going beyond the essentialist understanding of state-centred law and involving the norm creating impact of the communities.

Despite the abovementioned studies, there is still lack in the legal pluralism literature to elaborate the migration and asylum regimes, in particular from its spatial dimension. Therefore, one of the goals of this thesis is to expand the discussions on legal pluralism by examine the legal and practical implications of legal pluralism in the CEAS in the context of Greece. At this point, it should be noted that this thesis is using a legal pluralism from social sciences view rather than a juristic view. Therefore, there is not extensive analysis of the judicial decisions given by the different national, supranational and international courts. By focusing on the case of Lesvos from the lens of critical legal geography, it further aims to explore the space-law-power nexus of the refugee protection which also carries the inquiry to the socio-spatial dimension of legal pluralism. According to Franz and Keebet von Benda-Beckmann and Anne Griffiths (2009), despite the emerging literature about law and space, there are few works that focus on "the complexities of the relation between law and space that arise from the coexistence of legal orders." From this perspective, this thesis while looking at the mutual constitution of law and space in the context of Moria hotspot in Lesvos, the spatial tactics used by the political power to reframe asylum rights and take control over asylum seekers, and analysing Lesvos as different forms of legal spaces in relation to changing migration and border policies will contribute to the literature by examining the practices under plural legal conditions from spatial context.

1.3. Methodological and Ethical Considerations

This thesis focuses on the legal pluralism in the CEAS through the example of Greece as a member state. Therefore, the analysis of the legal texts in relation to the asylum policy and refugee protection is the primary source to understand the complexity of the legal framework together with the semi-structured interviews with the stakeholders

in Greek asylum regime as the spatial dimension and the implications of the legal pluralism on the refugee protection form the focal points in this thesis. As mentioned above, together with the adoption of the European Agenda on Migration in 2015, the multiplication of legal regimes and the fragmentation in the legal framework had an impact on the dynamics on the Northern Aegean islands. In this context, Lesvos as a historical arrival point for refugees became the biggest hotspot in Greece that turned into a hyperregulated legal space where different levels of legal regimes in different areas intersect was chosen as case study. Lesvos has become notorious as a "precarious transit zone" (Hess, 2012) where the asylum seekers and refugees stuck in limbo with limited access to the fundamental rights despite the establishment of a multi-level asylum system, as well as the presence of various actors working in protection area in the last decade.

In order to develop a better understanding regarding the socio-spatial dimension of legal pluralism in the Greek asylum regime and to trace its implications, the research methods for this thesis involved literature review, including legal documents review, field observations, and one-to-one semi-structured interviews with stakeholders working on migration and refugee policies in Greece. Critical ethnographic research provided me a wide lens to interpret my observations concerning the functioning of the asylum regime in Lesvos during my fieldwork between January and September 2020. While the main site of the fieldwork is Lesvos, some of the interviews took place in Athens, as well as via teleconference due to practical reasons during the Covid-19 pandemic.

Ethnographic research is important to fully understand the interaction between the officers, NGO workers and migrants with the administrative procedures, the effects of the practices, and the relations between the actors. In particular, due to the complexity of the legal framework and its implementation, meso-level analysis through the NGOs providing legal aid becomes prominent during my research. The fundamental reason to choose critical ethnography instead of the conventional ethnography is that "critical ethnographies and methods of relational comparison provide tools for reconfiguring

area studies to challenge imperial visions of the world; for illuminating power-laden processes of constitution, connection, and disconnection; and for identifying slippages, and openings, contradictions, and possibilities for alliances" as claimed by Gillian Hart (2006). This characteristic of the research topic requires to investigate the relational comparisons as well as the socio-spatial questioning.

After receiving the approval from the METU human subjects ethics committee with the reference number of 28620816 on 12 December 2019, I started my multi-sited field work in Greece to understand the interactions among different actors and their practices (Appendix A). In January 2020, my primary aim was to establish initial connections with key actors to conduct interviews. Before going to Lesvos, I had two informal interviews in Athens, one with a caseworker in a European level agency (6 January 2020) and one with a caseworker working with unaccompanied minors (9 January 2020). Both had experiences in Lesvos, and they became a starting point for me to establish my network on the island. Following these interviews, I did my first official visit to Lesvos where I conducted the first round of interviews. These interviews were mostly based on the experiences of the practitioners and case workers in Lesvos and the changing situation in Greece after the 2019 general elections that brought the New Democracy political party into power. Shortly after I started my fieldwork in January 2020, the outbreak of the global Covid-19 pandemic largely affected my visits in the field, as well as my interviews schedule. The Covid-19-related disruption to my fieldwork lasted from January 2020 to July 2020. Nevertheless, during this time, I was able to stay in touch with my key contacts and even made new contacts through snowball effect.

Turkey's unilateral border opening on 28 February 2020 and the high tension on the land border zones in Evros had a direct impact on the people working in the humanitarian sector, as well as researchers and journalists. In March 2020, several NGO and UNHCR staff were physically attacked in Lesvos by fascist groups (UNHCR, 2 March 2020). In addition, the high tensions in Lesvos and the nation-wide lockdown that started on 23 March 2020, forced me to postpone my visits in Lesvos. Moreover, due to tensions between Greece and Turkey at the time, some of my

interviewees in Athens cancelled the interviews as they felt uncomfortable talking to a Turkish researcher. Specifically, some feared their career and jobs might be negatively affected if they spoke to a "Turkish national" researcher. A number of those who did agree to be interviewed, indicated that they cross-checked me from several sources to build trust. Taking into consideration the concerns of my contacts, the ones who accepted to sign the consent papers, signed only with their initials. Others, mostly refugees and those who work in international organizations, gave oral consent. For these reasons, all individuals who provided information, data, contacts, or insights for the purposes of my research are kept anonymous and untraceable.

During my stay in Lesvos from 6 July to 20 August 2020, I spent my whole time with the people working in the humanitarian sector. In this way, I had the opportunity to understand better the power dynamics between different actors, as well as the impact of the political conjuncture on their work. In addition to formal interviews as stated in the Appendix C, I undertook informal meetings with refugees, NGO staff, and staff working in a wide range of international and European organizations (repeated meetings with some of them) (for the questionnaires, Appendices D and E). During my fieldwork, there were many challenges due to the political atmosphere in the island, as already indicated above. Although I was always honest to my interviewees about my position as a researcher and the topic of my thesis, outside of my research, I preferred to be more cautious in my interaction with the locals. In fact, the tension on the island sometimes directly affected the way that I made interviews. For instance, one of my interviewees in a refugee-led NGO did not want to be seen with a researcher in the city centre and we had to drive to a small village around 40 minutes out of the city to conduct the interview. Another example was with some of my interviewees who were working in a European level agency in the island. Due to their concerns, in order not to bring attention to us, we conducted in-depth the interviews while playing chess in a small café.

My research also benefitted from significant field observation during a number of site visits to Moria[5] in the periods 29-31 January, 6-14 July, and 3-10 August 2020. During transect walks in Moria, I had opportunity to have conversations with tens of camp residents (exempted from Appendix C). All the camp residents I interacted with were adults. In some cases, there were children of the families present during the interviews and conversations, but no unaccompanied children or minors were involved either formally or informally in any of my interviews or conversations. Following the Moria fire on 8-9 September 2020, the Moria 2.0 was established in the Kara Tepe location of Lesvos. However, the new site had stricter access restrictions. Alongside the increasing political pressure on the NGOs working with refugees, the new regulations adopted in December 2020 brought a confidentiality clause that prevented NGO personnel from giving information (ECRE 11 December 2020). As a result, I could not prolong my field work in the post-fire period. Nevertheless, between 15 September 2020 and 26 January 2021, I was able to conduct four additional interviews with one NGO staff who did not work in the camp at the time, but was involved in the push-back cases, two policy advisors, and one senior personnel in an EU institution.

1.4. Thesis Plan

This thesis focuses on the legal pluralism and its implications on the refugee protection in Greece with the case of Lesvos. The establishment of the relation between space and law, and the involvement of a number of actors from different levels of analysis require the use of different but associated conceptual frameworks. The body of this thesis is formed by four chapters.

Chapter 2 elaborates the theoretical framework for the analysis of the following chapters. In this context, the critical legal geography is used to understand the legal spatiality of European asylum system. Within this scope, legal pluralism is conceptualized to understand the refugee regime complex that involves different legal systems (national, international and supranational) and different professional actors.

[5] Moria refers to both official and unofficial sites of the refugee camp.

In the last part of this chapter, the linkage between the irregular migration governance and the legal pluralism from legal geography approach is provided.

In Chapter 3, the legal framework related to the multi-level refugee protection regime in Greece is examined. The first section elaborates the international protection including the 1951 Refugee Convention and relevant areas of international law. The second section studies the regional level of protection provided by the Council of Europe and the European Union (EU). While the Convention of Human Rights and the role of the Council of Europe (CoE) (including the European Courts of Human Rights) take place in the first sub-section, the EU level regulations are examined in the second sub-section. Within the frame of the EU level, first the evolution of the CEAS is explained. Then, the regulations that form the CEAS both the primary EU law and the secondary regulations are examined. In the last section, the Greek Asylum System is analysed from the legal perspective. Within this scope, the related national legislations, differences between the first instance asylum procedure (regular, fast-track, border, accelerated, admissibility and Dublin procedures), and second instance asylum procedures are scrutinized for giving a better understanding of the legal landscape in Greek asylum system.

The Chapter 4 and the Chapter 5 have the analysis based on the empirical data that I gathered from the interviews and the field work that I conducted. In this context, the Chapter 4 explores the particularity of Lesvos in relation to irregular migration and focuses on the spatial dimension of the complex refugee regime that has been implemented. The transformation of Lesvos from a space of interconnecting North and South, East and West into "a space of separating" is explored in the first part from a historical perspective. Following this brief explanation of the historical position of Lesvos with regards to the human mobility, together with the institutionalisation and the harmonisation process in Greece in parallel with the refugee movements through the North Aegean islands, how Lesvos can be considered as a *nomophere* that transcends the characteristics of being just an island but becomes a hyperregulated legal space for a multilevel migration governance. As a result of the period of my field

work coincided with the outbreak of Covid-19 and the fire in Moria, the empirical data covers a specific transition period for the island in difficult times. Combining the substandard living conditions of asylum seekers and refugees in Lesvos, in particular in Moria, and the ambiguity in the legal procedures render the asylum seekers and refugees into rightlessness which is elaborated together with the implementation in the Chapter 4. In addition to the rightlessness, legal black holes appear as an important concept as a result of my research. In that sense, the (mal)implementations of the legal procedures, as well as bending the rules by using the spatial characteristics of Lesvos such as being an island relatively far from the mainland of Greece create the legal black holes in which the fundamental rights of asylum seekers and refugees deteriorated. This thesis concludes with the overall analysis of complex legal framework of refugee protection in Greece consisted of multilevel legal orders and different legal regimes, implementation of different EU level directives (notably the Reception Conditions Directive and Qualification Directive) into local context and different interpretations of the CJEU and ECtHR with regards to the directives and their implementation, mutual constitution of law and space in the context of Moria hotspot and Lesvos island, as well as spatial tactics used for controlling asylum seekers, and lastly operational dimension of legal pluralism in the context of Moria hotspot. Within the frame of operational dimension of legal pluralism, alongside the lack of basic services, the interactions among the asylum authorities in national and EU level, the impact of FRONTEX on the (in)access of asylum seekers to asylum rights, and the role of NGOs to fill the cracks in the refugee protection regime in Greece come forward as a result of the findings of this thesis.

CHAPTER 2

THEORETICAL FRAMEWORK: INTERSECTING APPROACHES OF CRITICAL LEGAL GEOGRAPHY AND LEGAL PLURALISM

The asylum regime has emerged as a complex regime constituted of various levels of legal orders and different fields of international law. The proliferation of regulations does not only create complexity for the current legal systems but also lead to overlapping and interwoven legal spaces. Co-existence of various legal orders at different levels -local, national, supranational, international- in the same political and legal space brings along enforcement of law on different scales. While having multi-level regulations on certain themes may strengthen the existing legal regimes, in some situations, it can also create resistance for the implementation of certain regulations as a result of competition or contestation among law, norms, customs or values. In such situations, the law may become ineffective or gaps between the law and practice may be grown.

Both critical legal geography and legal pluralism have interest in examining the relationship between space, power and law, and have a reciprocal influence for the attempts to develop a better understanding of complexity of mutual formation of spatial and legal. This thesis tries to understand the complex legal landscape of the asylum regime in Greece, mainly focusing on Lesvos as a hyperregulated space. For this purpose, the intersection of the literatures in critical legal geography and legal pluralism is helpful to understand the complexities emerging from the legal pluralism, as well as the re-spatialization through the mutual constitution of law and space.

In the first section of this chapter, the critical legal geography will be elaborated to establish the relationship between law and space, as well as to conceptualize different forms of legal spaces. Following this, legal pluralism is explored in the second section of this chapter. Within the frame of legal pluralism, the evolution of legal pluralism from colonial time to contemporary international legal regime which is formed by multi-layered legal orders. The mutual interest of critical legal geography and legal pluralism is also elaborated in this section by examining the spatial turn in legal pluralism. Last but not least, as irregular migration involves different themes from borders to refugee protection, it will be investigated to develop a better understanding for the relationship between law, asylum, and space.

2.1. Critical Legal Geography

2.1.1. Different approaches to legal geography

Legal geography is an interdisciplinary scholarship that explains interconnections between law and spatiality, and their reciprocal construction processes. According to the legal geographers, almost every aspect of law includes some spatial frame of reference through being located, regulating, being in motion, and so on. On the one hand, legal geography is not considered as a sub-discipline of human geography. On the other hand, it does not constitute an area of specialised legal scholarship either. As an interdisciplinary study, it connects different fields such as historical geography, law, legal anthropology, and legal history (Braverman, et al., 2014, p. 1). Nevertheless, the institutional presence of the legal geography is less than the other abovementioned study fields that also have inquires on interactions between law and society. According to Delaney (2015, p. 96), in addition to the main aim of "bringing the insights and resources associated with one field to bear on the interests and concerns of the other", the legal geography seeks to extend the mode of inquiry to social and social-theoretic questions.

In the literature, studies concerning the interrelationship between legal, governance, and space have been carrying great importance for a long time; however, until the 1980s, this investigation was narrower due to the establishment of a deterministic causality between legal provisions and the conditions of space and landscape. As from the 1980s, the "co-constitutive" approach began to take place in the centre of the legal geography during the exploration of the interrelationship between space, law and society (Bennet and Layarad, 2015, p. 408). In the literature of legal geography scholarship, three modes of legal geography research are identified as listed below:

(1) Legal geography that contains disciplinary work in law or in geography from conventional model with import and export;

(2) Interdisciplinary approach in which scholars pursue the development of a joint project;

(3) Beyond the interdisciplinary to trans-disciplinary, or post-disciplinary mode of legal geography research.

All three modes of legal geography research provided different angles to legal geographers to contribute to the literature on various issues from essential legal themes such as discrimination to the politicisation of law or to the intersecting issues in refugee law, labour law, and so on (Braverman, et al., 2014 p.2).

The first mode of legal geography appears in the 1980s and early 1990s, together with the studies conducted by scholars such as Gerald Neuman, John Calmore, and Gerald Frug. These early scholars of the legal geography focused on space in the form of territoriality without emphasising geography. The legal themes, in particular the discrimination, equal rights, and city-suburb distinctions were drawn attention (Braverman, et al., 2014, p.2). For instance, Calmore (1995) examines urban apartheid in the United States and the culture of segregation from a conceptual framework of "the racialisation of space". He uses the term "the racialisation of space" as the "process by which residential location and community are carried and placed on racial identity." (Calmore, 1995, p. 1235). Together with the legal analysis, he discusses the impact of the structural aspects of the economic disadvantage, the ideological construction of the "culture of poverty", and the political moves of the right-wing for

containment of civil rights process. He argues that together with these structural factors and political moves, spatial re-organisation facilitates the politics of exclusion and political isolation (Calmore, 1995, p. 1250). Nevertheless, these early scholars are criticised by the following critical human geographers for the reasons that they lacked the satisfactory engagement with complex and fluid nature of social space and that they did not use alternative intellectual resources while reflecting on the spatialities (Braverman, et al. 2014, p. 3).

In comparison to the first mode, the second mode of legal geography is shaped by interdisciplinary studies. At this point, the appearance of Critical Legal Studies (CLS) movement in the 1980s and 1990s inspired by neo-Marxist and post-structuralist works of literature became influential on the shift occurred in the legal geography. The CLS did not only challenge the way how to conduct the legal scholarship by benefitting from different intellectual resources; they also adopted a radical position for power-related questions. Hence, convergence emerged between legal scholars and human geographers due to reading the same theories, profiting from each other's disciplines, and reflecting on similar problematics. (Braverman, et al. 2014, p. 4; Bennett and Layard, 2015, p. 407).

The second mode of legal geography became visible with its pioneer scholar, Nick Blomley in the early 1990s. First, his article with Joel Bakan (1992) was released and then, his book titled "Law, Space and the Geographies of Power (1994)" was published. In this book, he exposes political implications of the interrelationship between law, space and power and how they have a direct impact on our daily lives. The core of his study is formed by the geography of law and legalisation of space. In order to reveal the politicisation of law and its linkage with space matters, he uses case-study method by taking cases from different periods and countries -US, UK and Anglo-Saxon Canada- (all ruling with common law), he engages geography with law, as well as analysing the economic dimension of law and space.

Following this milestone, several academic studies comprising law and geography from a critical perspective appear. In the 1990s racial segregation becomes an

important inquiry in the critical approach to legal geography. For instance, David Delaney (1998) examines racial segregation in the US in 19th and 20th centuries through historical and legal analysis in his book titled "*In Race, Place and the Law: 1836-1948"*. Going beyond the connection of the fields of cultural geography and legal studies, Delaney (1998) conceptualises important terms such as "geographies of experience" and "geographies of power". While the "geographies of experience" refers to the connection between the landscapes and the experiences of an individual, "geographies of power" shows how the power relations are expressed spatially. Further, the concept of "geopolitics" is considered as "social and political actions oriented towards reshaping the spatial conditions of social life" (Delaney, 1998, p. 10). In this sense, the refugee camps carry the characteristics of both geographies. First, from the lens of the inhabitants of the camps, the refugee camps become "geographies of experience" where they have to continue their daily life and to get various personal experiences under the camp conditions. However, the "geographies of experience" is not sufficient to identify the refugee camps. The governance of the refugee camps has multiple layers and actors. Alongside the presence of international, national and local authorities, there are also refugee-led communities, grassroot organizations, community-based organisations that involved in the exercise of power. This leads us to the second concept of "geographies of power". The power relations among these various actors in different levels transform the refugee camps into "geographies of power".

As a result of studies conducted by Blomley and Delaney, they have named as critical legal geography by making connections between the inquiries of critical legal studies and critical geography scholarship (Blomley and Bakan, 1992; Blomley, 1994, 2003; Delaney, 2003, 2004, 2010; Butler, 2009). Influenced by these abovementioned studies, the "spatial turn" in legal scholarship has started to be applied in legal research. In particular, studies investigating the spatial presumptions regarding international law and humanitarian policies have increased due to the legal scholars such as Jean Connoly Carmalt (2007), Zoe Pearson (2008), Tayyab Mahmoud (2010), and Kal Raustiala (2005). For instance, Pearson (2008, p. 490) demonstrates two aspects of a

spatial inquiry of international law. First, she develops descriptions and explanations of the international legal landscape by exploring the spaces of international law and underlining the hegemonic practices. Second, she argues how the "global cities" (New York and Geneva) have become privileged in international law due to the presence of the international legal and political institutions contrarily to the "space-less" conception of international law. As a conclusion, Pearson (2008, p. 508) states:

> Exploring the spaces of international law demands that closer attention be paid the practices by which the spaces of international law are created, interpreted, maintained or transformed, thus providing a further lens through which to approach the long-standing critical projects of international law. The concept of space assists these critical endeavours because of the rich, multidimensional and dynamic picture it suggests of how the spaces of international law are perceived, conceived and lived, and how the spaces of international law must be understood as being made up of each these dimensions.

Notwithstanding with this, presence of international legal and political institutions is not enough to make a space privileged in international law. Cities or islands where the refugee camps are established also host various national and international institutions (even supranational institutions in the EU context) working on the protection of human rights and refugee rights, but these spaces are not perceived as privileged in the sense of protection of international law, notably the fundamental rights. For instance, the “hotspots islands” appear as opposite examples to privileged legal landscapes despite the involvement of international, supranational and national legal and political institutions. Instead, they are perceived as spaces where the fundamental rights are violated daily basis from the rights-based approach or as spaces that create insecurity for the host society from the security approach.

Another contextualisation of legal spatiality in international law is Carmalt's (2007) "Rights and Place: Using Geography in Human Rights Work" in which he questions how to translate universal norms into local standards by using the geographic perspective for human rights violations. To achieve this, he exemplifies how geography has an impact on human rights through examining the applications of the right to housing and of the right to free political speech. In addition to these examples

of the spatial turn in applied legal research, legal geography perspective is utilised in a wide range of studies in law from doctrinal investigations (Erbsen, 2011; Oh, 2003-4; Zick, 2006, 2009, 2010) to works related to race (Ford, 1994), colonial societies (Kedar, 2003), land regimes and spatial transformation due to land dispossessions and occupations (Yiftachel et al. 2001; Yiftachel 2006).

The third mode of legal geography goes beyond the bi-disciplinary approach and also includes other disciplines such as anthropology, political science, sociology, history. With the aim of transcending different disciplines in this thesis, the third mode of legal geography research carries further importance for my research. In addition to the expansion among and beyond the disciplines, the research interests in the third mode also diversify to various themes, including democracy, identity, migration, labour relations, organisations, and many other topics. The topics concerning territory, borders, place, and landscape have also been parts of the inquiries of anthropology; cultural anthropology has the most robust engagement with legal geography (Braverman, et al., 2014, p. 2-4). In this sense, we see the contributions of the critical scholars such as Franz von Benda-Beckmann, Keebet von Benda Beckmann and Anne Griffiths (2009), James Danovan (2008), Sally Falk Moore (2005) with their studies related to law, anthropology and space. These scholars offer theoretical contribution as well as an empirical contribution by their studies taking place in non-Western spaces such as in Peru, Indonesia, Bhutan, and other locations (Benda-Beckmann, Benda-Beckmann and Griffiths (eds.) 2009).

In line with the purposes of the legal geography research, this thesis aims to go beyond the research on different layers of the legal framework in the European asylum regime but pursuing for the implications on the refugee protection affected by the formal and informal practices of different actors in daily basis. Further, Lesvos where fundamental rights including asylum rights, border and security policies, and asylum policies are knotted carries further importance for exploring the spatiality of law. Therefore, the spatial dimension requires a further attention as it is argued in the next section focusing on the relationship between space and law in the legal geography.

2.1.2. Core Concepts for Legal Geographers: Splice and Nomosphere

One of the analytical divisions in legal geography is that between "Law-in-space" and "Space-in-law" (Delaney, 2003; Blomley and Labove, 2015, p. 476). In the sense of "law-in-space", some scholars such as Erbsen (2011), Bland and Sibley (2010) draw attention that law helps produce or constitute space or brings it meaning and significance. The designation of boundaries and creating divisions between spaces are common and important ways for the production of space by law. In this sense, a range of boundaries and spaces from the physical and symbolical to the physical and legal can be addressed for this inquiry. Further, as the law produces legal-spatial process, drawing symbolic and legal boundaries may lead to imposition of differential law in the concerning spaces (Bland and Sibley 2010: 276). On the other hand, within the frame of "space-in-law", scholars explore how legal actors, legal representations, legal actions and practices may create spaces, spatial arrangements or representations in various ways (Blomley and Labove, 2015, p. 476). In this sense, judicial decisions concerning defining spaces as private or public space and construction of ethnic and/or racial, spatial segregations can be shown as examples for "space-in-law". From this perspective, as the designated spaces only for asylum seekers and refugees, the refugee camps including the hotspots in the particular context of Greece carry the characteristics of "space-in-law" in which legal actions and practices re-create various spatial arrangements and representations. As an example, separation of different protected sections in the Moria Camp in Lesvos for families, single mothers and fathers, and unaccompanied minors from the rest of the camp area, and implementation of different security rules for entrance and exit of these sections form "space-in-law" in "space-in-law".

Alongside this analytical division between "law-in-space" and "space-in-law", Delaney (2010) and Blomley (2003) aim to create a new language to determine the concepts indicating both "spatial" and "legal" in the cases where they are inseparable. From this perspective, Blomley (2003) offers the concept of "splice" which refers "a composite that is both space and law" (Blomley and Labove 2015, p. 477) while

"splicing (and re-splicing)" implies to the practical enactment of splices. Blomley (2003, p. 12) underlines "the importance of law and space to order". Proverbially, law is used to categorise, classify, and categorise such as the distinction between "citizen" from "alien", "employee" from "employer" - in this case, "refugee" from "citizen" (Blomley 2003, p. 12). Similarly, space as well "offers a powerful ordering framework". Hence, the example of refugee and state territory to demonstrates how "spatial orderings are simultaneously legal orderings, and *vice versa*." (Blomley, 2003, p. 12). Therefore, his concept of spatio-legal splicing depends on the mutual construction of spatial and legal. Taking into consideration the functioning of the hotspots, the mutual construction of spatial and legal orderings become more concrete. While the hotspots impose its own rules of functioning as a space designated for specific purposes including registration and identification, the law and the changes in law re-form the orderings in the hotspots as well.

Congruently with the conceptualisation of Blomley, Delaney (2004) introduces his conception of "nomosphere" where aspects of law and aspects of space are related and indispensable. According to Delaney (2004, p. 852), even though the term of "splicing" is compatible with the concept of "nomosphere", the concept of nomosphere aims to include a more *extensive and pervasive aspect of social existence*. Furthermore, he highlights the heterogeneous character of the nomosphere by showing different nomospheric figures (citizen, owner, squatter, etc.) who are *multiply figured* and *multiply spliced*. In that sense, nomosphere has horizontal and vertical splices. If the focus is on the meaning and practical importance of borders, gates, property lines. The nomosphere is analytically sliced horizontally. In order to be vertical, the focus should be on scale for a given location corresponding with overlapping legal spaces (including different levels of power) (Delaney, 2004, p. 851). Locating between Greece and Turkey, hotspots islands represent maritime borderzones between Turkey and Greece, as well as the EU's external borders. On one hand, representing the "reaching power" of the EU, on the other hand, separating Turkey and Greece, horizontal aspect of nomosphere appears at the first glance. Taking into consideration the location of the hotspots in Greece representing maritime border zones with Turkey,

horizontal aspect appears at the first glance. Nevertheless, alongside the refugees and asylum seekers as inhabitants of the camps in the hotspots, the presence of different levels of actors such as the Greek asylum service as the national authority, EASO as the European level of authority, UNHCR as an international organization, and various NGOs to represent the civil society create the vertical aspect of the hotspots as an example of nomoshpere.

2.1.3. Space-law-power nexus in legal geography

As discussed in the previous section, legal geography explores the interrelationship between space and law by emphasising the spatial characteristics of various social relations and sites of social power (Massey, 1994; Butler, 2009). According to Chris Butler (2009, p. 315), despite the growing interest in spatial dimension of legal studies, few scholars have argued profoundly the theoretical and methodological implications of the "spatial turn" for critical legal studies and have recognised the influence of Henri Lefebvre on the critical legal geographers. Indeed, a number of scholars in critical legal geography including the pioneers such as Blomley (1994) and Delaney (2004), and Boaventura de Sousa Santos (whose studies will be discussed in the sub-section concerning the legal pluralism) trace Henri Lefebvre's conceptualisation on space.

In his famous book, *The Production of Space* (1991, p. 4), Lefebvre aims to reconcile mental space (the space of the philosophers) and real space (the physical and social spaces in which people live and deal with material things. In the course of his reflection on space, he questions the connection between hegemony (from the perspective of Gramsci) and the space through demonstrating "how space serves, and how hegemony makes use of it" (Lefebvre, 1991, p. 11). To accomplish these purposes, he first analyses how space is produced, and how it is practised (Elden: 2007). In this context, there are two ways of the production. First, he presumes: " (Social) space is a (social) product" (Lefebvre, 1991, p. 26) in which he locates the mode of production in a central place in frame of the first way. The second way is the mental construction of

space. Here, he refers to the conception (of philosophers) while explaining the mental construction of space.

Lefebvre (1991) sets up a conceptual triad consisting of three concepts *spatial practice, representations of space*, and *representational spaces.* He also names these spaces in order as perceived (l'espace perçu), conceived (l'espace conçu) and lived (l'espace vecu). *Spatial practice* refers to the daily life routines and takes a physical form which can be considered as *real* space. *Representations of space* is conceptualised space, which is instrumentalised by scientists, urbanists, social engineers and so on. Different from spatial practice, the representations of space are mentally constructed. Here, Lefebvre notifies that this *conceived* space is the dominant space in any society. Last but not least, representational spaces address the spaces of "inhabitants" and "users". It is *lived* through images and symbols. A refugee camp in which asylum seekers and refugees are inhabitants is a concrete example for representational space. Sometimes, depending on the scale of the refugee situation and the perception, whole city and/or island where the refugee camps are located may transform as a representational space by addressing to the presence of refugees. Lefebvre signifies that all these three notions of spaces should be interconnected (Lefebvre, 1991, p. 38-39).

From this point of view, it is possible to say that space cannot be simply understood as a physical form or an imagined notion. Hence, we should consider a *multitude of spaces*. In many situations, space is produced and reproduced in material, instrumental, and symbolic forms. Moreover, Lefebvre (1991, p. 26) claims that these multifaceted spaces do not only serve "as means of production but also as a means of control and hence of domination, of power". Therefore, it cannot be simply divided as ideological or political, but it should be taken into consideration intersecting spaces that may encompass political, social, and economic lives. At this point, as Butler (2009, p. 322) states "Law needs to be understood as a set of techniques of spatial organisation and governance - a body of spatial representations- and as a framework for an ensemble of everyday spatial practices." Here, he reminds us of the concepts of splice and

nomosphere that both refer the simultaneity of physical and mental dimensions of spaces. Hence, law appears as well as an intersection of spatial practices and the representations of spaces.

In his article, Delaney (2004, p. 852) discusses how different social actors have different access to the power to confer or to operate interpretively in on the nomosphere. For instance, taking into account border as an example of nomosphere, the irregular migrant crossing the border and border security have totally different access to power on the nomosphere. In parallel with this idea, Blomley (2003) notes that alongside the entangled relationship between law and space, they are mutually constitutive and profoundly involved in power relations. Going beyond the presumption of Lefebvre, Blomley (2003, p. 6) argues:

> Socially produced space is saturated with power relations. The spatially defined environments we move in -the homes, workspaces, workplaces, streets, neighbourhoods, shops and so on- can serve to reflect and reinforce social relations of power, through complex and layered spatial processes and practices that code, exclude, enable, stage, locate and so on.

Another study analysing the overlapping space, law, and power is the article of Blomley and Bakan (1992) in which they elaborate the legal debate concerning federalism and the regulation of safety in cases of Canada and the United States. During their work, they emphasise the power of legal actors such as the courts or local governmental actors for the construction of spaces and to designation of boundaries between public and private spaces. Furthermore, these actors have capability of interpreting the law to construct the legal spaces. In that sense, the authors state "Space, like law, is not an empty or objective category, but has a direct bearing on the way power is deployed and social life constituted." (Blomley and Bakan, 1992, p. 669). In order to explore the ideological conjunction of legal and spatial distinctions, they critically analyse the dichotomies such as citizen/employee, local community/workplace that are implicitly constructed in the court decisions. When a citizen enters in her/his workplace, s/he is no longer a citizen but carries the legal entity of "employee" as distinct from the citizen. Due to the establishment of a spatial/legal boundary between private sphere of work, the employees sometimes may not be able profit the regulations designed to protect the local citizens in the cases where the safety

regulations in the workplace are not same with the local regulations for citizens' safety. Blomley and Bakan (1992) argue that in these situations, even though the worker and manager are *spatially* located within locality, they are redefined *legally* with a different set of rights and obligations which undermine the rights of workers for safety and health. Hence, they question the power and inconsistency of legal and spatial representations. They conclude their article with the critique of the "invisibility of space in legal studies" and reciprocally "the invisibility of law in geography" (Blomey and Bakan, 1992, p. 662). Therefore, the "law-space-nexus" provided by the legal geography brings complex inquisitions (Blomley and Clark, 1990, p.435).

Different from the previous scholars, Allen and Cochrane (2010) elaborate multi-scalar or multi-site power relations from a topological understanding of state spatiality as opposed to a vertical or horizontal consideration of the geography of state power. In order to clarify their topological understanding, they use the concept of "assemblage of political actors" developed by Saskia Sassen (2006) to explain the governance structures where public, private, central and local states, and supranational and international actors are "lodged", not operating "above". Therefore, in order to bring novelty to the state spatiality, they propose that the imagery of the geography of state power is *reach* instead of *height*. In terms of the powers of *reach*, they understand "the ability of authorities to reach into politics of the region, to draw others within close reach or to reach beyond the region to influence events within" (Allen and Cochrane, 2010, p. 1087). Thus, the power of the state is rather than being "above us" and its presence is more about the extensive spatial reach and its ability to infuse everyday life (Allen and Cochrane, 2010, p. 1704).

Due to the exploration of the interaction between law, space and power in various aspects including ideology, practices, narratives, non-human perspective, nature, and so on, legal geographers' approach is more flexible to the analysis of power (Braverman, et al. 2014, p. 13). Critical legal geographers take it further and examines power in relation to space and law in line with the concepts of governance governmentality, biopolitics and pastoral power inspired from Foucault (1977, 1980)

that acknowledge various forms of power (Merry, 2001; Blomley, 2012, 2014; Valverde, 2010, 2011). In this way, space, law and power form multi-dimensional sets of interactions that can be examined from various angles.

In her article "Spatial Governmentality and the New Urban Social Order: Controlling Gender Violence through Law", Sally Engle Merry (2001), discusses complexity of governmentality and its deployment in spatial forms through examining a program against gender violence (Alternatives to Violence) took place in Hilo in 1986. Starting from exploration of the concept of *spatial governmentality* described as "new mechanisms of social ordering based on spatial regulation" by Richard Perry (via Merry, 2001, p. 16), Merry argues that as opposed to the general understanding, spatial governmentality is not implemented for providing safety for those who can afford it against the people who are considered as dangerous. In her research, in the case of the gender violence, she observes that there is a different use of spatial governmentality by protecting the victims (both rich and poor women) from their batterers through excluding batterers from the life spaces of the victims by temporary restraining orders. Therefore, she challenges the general conception of the spatial governmentality which is governed by evolving the mechanisms of punishment, discipline, and security as Foucault suggests (Merry, 2001, p. 17-19).

2.2. Legal Pluralism

Following the primary inquiry of the legal geography scholarship in revealing and questioning the co-constitutive relationship between "law makes space" and "space makes law", the scholars highlight the dynamic interactions between the geographical spaces and scales, and the multiple sources and forms of laws (Graham, 2011; Robinson and Graham, 2018). Hence, one of the themes that the legal geographers started to focus on has been the legal pluralism while establishing the relationship among laws, legal systems, spaces, scales and territories. Legal Pluralism and inter-legalities become focal themes, both legal geographers and critical legal studies have been working. The combination of their approaches to power relations, law and space

helps us to develop broader view to analyse intersectional themes. In that sense, critical legal geography and critical legal pluralism complete each other. In this sub-section, first, the evolution of the legal pluralism from the classical understanding to the new legal pluralism will be examined. Then, the spatial turn in legal pluralism which create more commonality with the critical legal geography will be explored.

2.2.1. From Classical Understanding of Legal Pluralism to New Legal Pluralism

As defined by Sally Engle Merry (1988, p. 870), legal pluralism is where "two or more legal systems co-exist in the same social field." Thereby, the scholars who use legal pluralism as framework generally examine the situations in which more than one normative system formed by state and non-state actors rule the same social field (e.g., Moore, 1973; Galanter, 1981; Griffiths, 1986; Merry, 1988; Engel, 1980; Tamanaha, 2000; Benda-Beckmann, 2001, 2002). At this point, it is important to highlight the shift in legal pluralism scholarship throughout the years.

Early studies concerning the legal pluralism were mainly focusing on the relationship between colonial and indigenous legal systems. Merry (1988, p. 872) calls research on the legal pluralism emerged from the intersection of indigenous and European law as "classical legal pluralism". This initial approach to legal pluralism was mainly focusing on the conflict, overlap and mutual influence between the customary or religious law and practices, and the official state court decisions under the influence of the coloniser's standards (Merry, 1988; Tamanaha, 2008). For instance, Jacques Vanderlinden's (1971) initial conception of legal pluralism which addresses to "the existence of different legal mechanisms applied to identical situations within a single social order" based on his fieldwork in Zaire and Ethiopia (Vanderlinden, 1989). Nevertheless, following heavily criticism done by John Griffith, he revised his work in 1989 with self-criticism on his rule-oriented approach influenced by Belgian legal education Vanderlinden ,1989; p. 154-155).

According to John Griffith, there are two different views of legal pluralism: the "social science view" and "juristic view". From the "social science view", legal pluralism is "the coexistence within a social group of legal orders that do not belong to a single system" whereas "juristic view" refers to the problems caused by the dual legal systems. In Vanderlinden's initial study in 1971, he focuses on the dual legal systems created by European countries when they imposed their legal systems on pre-existing legal systems in colonised countries during the colonisation period (Merry, 1988; p. 871; Griffiths, 1986, p. 5-8). In his article "What is legal pluralism?", Griffiths (1986, p. 4) criticises the ideology of legal centralism which is defined as "the idea that what law is, is a single, unified and exclusive hierarchical normative ordering depending from the power of the state, and of the illusion that the legal world actually looks the way such a conception requires it to look.". Therefore, legal centralism would remain as a *myth, an idea, a claim, an illusion* whereas he considers legal pluralism as the fact (Griffiths, 1986, p. 4). The conception of legal pluralism is distinguished by two definitions: strong and weak. While strong definition concerns with the co-existence of legal orders which are not enacted within a single system, the weak conception of legal pluralism refers to legal commands in a "pluralistic" form given by the sovereign to different bodies of law in order to govern different groups in the society (Griffiths, 1986, p. 5, 8). Therefore, Griffith criticises early scholars such as Vanderlinden and Gilissen because of their approach legal pluralism from legal centralistic view. Hence, he notifies that even though Vanderlinden's conception first appears as strong sense due to his connection with the social state of affairs, following his connotation of the legal pluralism with the arrangement of state law his definition of legal pluralism slides to weak definition (Griffiths, 1968, p. 13). More, Griffith warns us about that the legal pluralism is beyond the colonial and post-colonial situation.

Starting from the late 1970s, the concept of legal pluralism has expanded to the studies focusing on the legal pluralism in the non-colonised and advanced industrial countries of Europe and the United States which is called "new legal pluralism". The novelty was not only the expansion from colonised societies to the industrial countries, but also from relations between coloniser and colonised to more complex relations

between dominant groups, subordinate groups, institutions, and social networks (Merry, 1988, p. 872). In particular, after the end of the Cold War in 1989, the transnational web of jurisdictional assertions and legal systems required a new type of explanation rather than a state-centric understanding that led us to global legal pluralism. At this point, global legal pluralism has become a suitable framework to explain hybrid legal spaces (Berman, 2009, p. 226). Within the frame of global legal pluralism, Berman (2020) does not exclude nation-states; however, he underlines that nation-states must function within a framework of multiple and overlapping jurisdictional proclamations by state, as well as of international and non-state communities.

Starting from the 1990s, with the rise of various modes of globalisation through development of new media for communication, increase in global transportation, deeper integration of financial systems, and the proliferation of international and regional institutions, regulatory regimes in different sectors multiplied. In particular, establishment of global, transnational and supranational political organisations and regimes such as the European Union, World Trade Organisation (WTO) and so on, has a direct impact on the state's traditional legal functions (Tamanaha, p. 2008). States are subjected to respect the norms, rules, and principles of the international regimes (that the states are part of) through the transfer of sovereign power in political, economic and legal area.

In addition to the international and supranational organisations, there are five dimensions that Tamanaha determines within the contemporary legal pluralism (2008). First, the private sector has expanded its legal presence through having private security forces to patrol and control the public places such as universities, schools, libraries, shopping malls or public events such as concerts and parks, or even running the prisons, refugee camps, and so on. Second dimension of the contemporary legal pluralism is the role of NGOs in the protection of human rights norms mostly through challenging state laws and practices or cultural law and practices. For this purpose, states are sued because of the violations of human rights before the international, supranational (CJEU) or regional human rights courts (e.g., the European Court of

Human rights) and within the UN mechanisms relevant to the violated rights. Third dimension of the contemporary legal pluralism is related to the *functionally differentiated systems* created as a result of the generation of legal orders by global and transnational reach such as the internet, transnational commercial transactions. Fourth involves the multiplication of "trans-governmental networks" that have regulatory authority and implications. These networks are not directly controlled by any national or international agency such as transnational forums on specific issues bringing different networks together such as officials in finance all over the world, network created by judges, forums created by NGOs, etc. Fifth dimension is related to the movement of people. Here, Tamanaha (2008) gives the example of the immigrants building their communities in their new country and practicing their cultural or religious norms which may be in conflict with the legal order in that country. Last dimension contains the creation of overlapping and/or competing legal systems at different levels in different contexts. At this point, the EU is given as one of the examples due to its establishment of many agreements and its institutionalisation that leads the legal plurality in the member states where their national legal systems and norms exist and get interaction with the EU level legal system and norms (Tamanaha, 2008, p. 387-389).

For instance, the change in the legal and political landscape in Europe with the establishment of the CoE, and then the EU paved the way to the multiplication of legal regimes. Apart from the proliferation of institutions, the advancements in the European integration, notably the adoption a number of the EU Treaties and the jurisprudence developed by the Court of Justice of the European Union (CJEU) became a research inquiry in the legal scholarship, mainly in the frame of constitutional law and the EU law. There has been a doctrinal effort concerning the constitutional pluralism in the EU starting from the early 1990s (Jaklic, 2013). Even though there are different claims within the constitutional pluralism such as empirical (e.g. MacCormick, 1993), normative (e.g., Maduro, 2003), institutional (e.g. Kumm, 1999), the main goal is to understand the nature of European constitutionalism by examining the overlapping sources of constitutional authority (nation state vs. the EU law) (Maduro, 2012; Jaklic,

2014). From this perspective, the relationship between the Member States' constitutions and the EU Treaties, the interaction between the judicial systems, and the hierarchy in the legal systems -notably, between the international law and the EU law- are the focal inquiries within the constitutional legal pluralism. On one hand, the constitutional legal pluralism provides a wide normative perspective on the debate concerning sovereignty in EU legality. On the other hand, it is restricted with the juristic view of legal pluralism, which lacks the social sciences view in the new legal pluralism.

These developments in the international arena led to another conception which is called "pluralist international legal system" (Burk-White, 2004). Before defining the international legal pluralism, Burk-White (2004) argues whether international law is undergoing a form of fragmentation or unity. With this aim, he elaborates several trends in international law such as the establishment of new international tribunals for particular issues (e.g. the International Criminal Tribunals for the Former Yugoslavia and Rwanda), *thickening* of international law through the proliferation of new bilateral and multilateral treaties in an extensive range of themes, strengthening of the dialogue between the courts in different levels (including giving references to different court decisions and creating jurisprudence among different supranational courts), and the establishment of "hybrid" tribunals by bringing together both national and international law, and local and foreign judges (e.g. the Special Court for Sierra Leone). Subsequent to this detailed analysis of new trends in international law that fuel the discussion on fragmentation of international law, Burk-White (2004, p. 977) identifies two forces that oppose to each other. On the one hand, one set of forces push international law toward fragmentation. On the other, another set provides interconnection and coherence. To conclude, he suggests that the new emerging system has more pluralistic characteristic rather than being wholly fragmented or unitary. Therefore, he describes the pluralist international legal system as involving "a range of different and equally legitimate normative choices by national governments and international institutions and tribunals, but it does so within the context of a universal system." (Burk-White, 2004, p. 977).

2.2.2. Where does the asylum regime stand in legal pluralism?

The concept of legal pluralism is "based on the possibility that law of various kinds, with different foundations of legitimacy, validity, power, and authority with different degrees of institutionalisation and formalisation, co-exist" (Benda-Beckmann and Benda-Beckmann 2013). Legal pluralism does not only provide actors with a variety of options to establish interactions and relationships, but it also pays attention to non-state legal forms alongside the hierarchy between legal orders. Therefore, examination of these complex interaction goes beyond the legal scholarship but needs to involve social sciences view as this thesis aims to do. Moore (2001, p. 107) classifies the legal pluralism in five different situations:

> (1) the way the state acknowledge diverse social fields within society and represents itself ideologically and organizationally in relation to them; (2) the internal diversity of state administration, the multiple directions in which its official subparts struggle and complete for legal authority; (3) the ways in which the state itself competes with other states in large arenas (EU, for instance); (4) the way in which the state is interdigitated (internally and externally) with non-governmental, semi-autonomous social fields which generate their own (non-legal) obligatory norms to which can induce or coerce compliance (...); (5) the way in which law may depend on the collaboration of non-state social fields for its implementation; and so on.

In order to clarify this classification, some examples can be given for each situation. In the first situation, Gill and Good (2019, p. 16) gives the example of Westminster and Scottish governments in the UK because of the pursue of different migration policies from each other. The second situation fits with the "weak legal pluralism" concept of Griffiths (1986) and different laws implemented for different religious, ethnic groups in some countries can be considered in this framework. The third situation may address to the supra-national arenas such as the CEAS where the member states create a supranational system where they link the member states' legal systems (Gill and Good, 2019, p. 16).

Before giving an example concerning the fourth situation, it is crucial to clarify the concept of *the semi-autonomous social field*. The semi-autonomous social field is "defined and its boundaries identified not by its organisation (it may be a corporate

group, it may not) but by a processual characteristic, the fact that it can generate rules and coerce or induce compliance to them" (Moore, 1973, p. 722). According to Moore, semi-autonomous social fields have already rules and customs through self-regulation and self-enforcement of certain legal, illegal and non-legal norms (Moore 1973). In her article, for this situation, Moore gives two examples with very different settings from each other. The first example is the activities in the garment industry in New York in which the self-regulation becomes prominent while the place of law is limited. In the second example, she analyses the social change in Tanzania by elaborating the *partially self-regulating social field* constituted by the local neighbourhood and lineage complex. In this example, the local neighbourhood and lineage complex appears as a social field in which effective rule-making and application of sanctions exist apart from the official legislative and administrative system of the state. At last, in the fifth situation, she mentions about the collaboration between state and non-state actors for the implementation of regulations. In this context, prisons, refugee camps, detention centres run by private sector can be shown as example (Also see Tamanaha, 2008).

Particularities in asylum regime can be exemplified with each situation of legal pluralism (Gill and Good, 2019, p. 17-18). Yet, fourth category has more commonalities with the characteristics of current asylum regimes in international and regional levels. Due to the 1951 Refugee Convention that creates an universalprotection system for refugees and the regional systems (e.g., the CEAS), the asylum regime complies with the third category. Taking into consideration the involvement of different actors (judges, lawyers, doctors, social workers, interpreters, etc) and different agencies as well as multi-layered regulations developed by national and international legislations, and court systems in different levels from local to supranational, the fifth category also carries the characteristics of "asylum" as an example of "strong legal pluralism" (Gill and Good, 2019, p. 18).

This thesis argues that refugee protection regime in Greece is an intriguing example to show the complex interactions between different legal systems and actors in the area of asylum. As examined in the Chapter 3, there are three levels of legal orders that

form the Greek asylum regime: International refugee protection system, European level, and the national legislation. With regards to the European level of refugee protection, there are systems that provide protection. The first system is established within the Council of Europe (CoE) and the European Convention of Human Rights, and its judicial organ European Court of Human Rights (ECtHR). The second system is formed by the EU law, which is a supranational level. In order to provide an effective protection for asylum seekers and refugees, synchronisation of these legal orders ought to be within a hierarchical relationship. However, what "ought to be" does not reflect the actual situation of protection. The issues concerning the final authority, norm conflicts between the legal systems, incompatibilities in transposition can cause incoherent practices. In addition to them, the asylum regime in Greece involves various actors (the Greek asylum service, EASO, FRONTEX, NGOs, etc) whose practices determine the extent of the protection. Apart from the different legal systems, implementation of legal orders and the complex interaction between these actors shape the daily operation of legal pluralism.

2.2.3. "Spatial Turn" in Legal Pluralism

This part aims to link between legal pluralism and legal geography while exploring the "spatial turn" in legal pluralism. As it was abovementioned, on one hand, the geographers began to have more interest in legal issues. On the other hand, legal scholars began to involve more the spatial concepts into their studies (e.g., Philippopoulos-Mihalopoulos, 2014; Valverde, 2011). The reciprocal influence on these scholarships led to ask more questions on the complex processes of mutual constitution of spatial and legal. At this point, the fundamental inquiry of legal geography that interrogates the understandings of "law makes space" and "space makes law" (Delaney, 2010). Blomley has intersected with the theme of legal pluralism about overlapping the different legal systems in one geographical space. Furthermore, the regulation of the same subjects (humans and non-human subjects) or same spaces by establishing different legal orders (Santos, 1987; Merry, 1988; Proulx,

2005) evokes Delaney's (2010) concept of "nomosphere" (Robinson and Graham, 2018, p. 4).

Due to the proliferation of regulations and the complexity of contemporary legal systems, various overlapping and interwoven spaces are created by legal regulations on specific issues (Tickamyer, 2000). In this sense, one of the essential conceptualizations is done by Boaventura de Sousa Santos who illustrates different spatial scales of law while examining legal pluralism. From his perspective, he offers the concept of "interlegality" to explain the coexistence of legal orders belong to different legal entities in the same political space where they function "simultaneously on different scales" (Santos, 1987, p. 288). The implementation of multiple laws and the regulations on different scales in order to create or to regulate or to disappear specific spaces may create complex situations such as competition, contestation, and resistance among the norms, values, or even customs which may lead to the infectiveness of law or the gaps between the written form of law and its practice.

The classical understanding of legal pluralism (e.g. Kelsen, 1960; Hart, 1961) that addresses to “the set of norms” with main three characteristics of state sovereignty (autonomy), exclusivity (authority), and its dynamic nature (Itzovich, 2012). Nevertheless, legal pluralism has two main tendencies towards the concept of legal pluralism: polycentric characteristic of legal orders in the sense of having multiple legal sources that create legal order from the view of constitutional legal pluralism (e.g. Barber, 2006), and anthropological or sociological approach to legal order that also involves norm-generating nonstate communities (e.g. Berman, 2007, 2020; McConnachie, 2014). As this thesis elaborates the global legal pluralism from social sciences, it uses the concept of legal orders by recognizing the multiple sources of legal and norm generating situations.

In their edited book "Spatializing Law", Franz and Keebet von Benda-Beckmann and Anne Grifitths (2009, p. 11) elaborate the relationship between law and space, in particular, by taking into consideration the complexities arise from the conditions of legal pluralism. They draw attention to the legal pluralism as a central position in the

analysis of the interrelation between law and space. The main reason for this particular attention is that the operations of the colonial law, national law, international law, religious or traditional law construct spaces or validate their spatial claims. Moreover, co-existing legal orders create multiple legal spaces that "open up multiple arenas for the exercise of political authority, the localisation of rights and obligations, as well as the creation of social relationships and institutions that are characterised by different degrees of abstraction, different temporalities and moral connotations" (Von Benda-Beckmann, Von Benda-Beckmann and Griffiths, 2009, p. 4). In that sense, the construction and multiplication of spaces can be used as a form of governance by the political authority or the contested political authorities. Nonetheless, there are various conditions created as a result of overlapping legal orders. For instance, specific space can be considered as a natural reserve and/or historical heritage and/or sacred areas which may bring different layers of regulations (local, national, international) for protection, preservation or control. In some situations, the political authorities may co-exist, harmonise or contest in these specific spaces which appear as *hybrid* spaces.

In these *hybrid* spaces, overlapping legal authorities are not necessarily in contestation or conflict, but they might look for possibilities for nation state-based solution or a universal harmonisation (Berman, 2012, p. 9). The hybrid legal spaces are created by overlapping jurisdictional assertions by states, international and non-state actors (Berman, 2012, p. 5). Two trends go hand-to-hand to respond to the legal hybridity. On the one hand, the states may try to avoid from outside influences (religiously, culturally or physically) by constructing the walls or obstructing the entry of foreigners through visa policies or by implementing regulations to keep their regimes close to the rest of world. On the other hand, there are harmonisation efforts through adopting norms, international treaties and institutionalising global governance that leads to a sort of "world law" (Berman, 2012, p. 11). At this point, *cosmopolitan* and *pluralist* jurisprudence emerge as a response to the hybrid legal spaces instead of using universal or state sovereigntist approach (Berman, 2012, p.11). Cosmopolitanism is different from universalism in the sense of recognition of multiplicity in affiliations from the local to the global including non-territorial affiliations. In this way, the

implementation of a cosmopolitan pluralist approach provides a more comprehensive conceptualisation to the "world of hybrid legal spaces" (Berman, 2012, p. 14).

Within the framework of cosmopolitan pluralist approach, the *procedural* mechanisms, institutions and practices that allow to be heard the plural voices of various actors are considered more preferably which it does not offer a hierarchy among *substantive* norms and values (Berman, 2012, p. 16). Nevertheless, this brings us several questions. First, how will these mechanisms, institutions practices function truly if there are no hierarchy among the norms and values? If there is no hierarchy, how the legal orders will be arrayed for their implementation? Second, how can the legal and quasi-legal systems maintain the protection of fundamental rights, in particular the rights related to the minority groups and to the disadvantageous groups taking into consideration the inclination of the majority or dominant groups to limit the voices of these groups within the society? As Berman predicts criticism that might come, he concludes his book that the suggestion made by the cosmopolitan approach for managing the hybridity may not be enough for satisfaction anyone including human rights defenders, environmentalists, or even sovereigntists because they would all prefer accent on their working areas. He answers to this criticism by stating that "pluralism is messy, but it is the necessary condition of a de-territorialised world where multiple overlapping communities seek to apply their norms to a single act or actor. In such a world, universal harmonisation is unlikely to be fully achievable even if it were normatively desirable" (Berman, 2012, p. 326). He considers that cosmopolitan pluralist approach's advantage is to search for practical ways to solve problems arose as a result of hybrid legal spaces. Nonetheless, this answer does not help us to understand how the chaos for implementation of these overlapping legal orders will be prevented if there is no hierarchy among the norms and values. More, it does not argue the possible risks of neglecting the acquired rights while implementing these "quick" solutions.

In line with Delaney's (2010, p.138) claim about the hyperterritoriality and the increase of overlapping legal spaces in order to solve socio-economic problems which lead to the creation of "regimes of continuity", von Benda-Beckmann and von Benda-

Beckmann (2014, p. 31) argue that "since every newly created space has its own regulation, hyperterritoriality implies hyperregulation, that is, a steep increase of overlapping regulations that requires ever more complex legal coordination". From this perspective, they draw attention on the paradox coming with the need for coordination required for once a regime established for an extended period that is in fact, followed with the regime of continuity. Due to the constant coordinative adjustments in these legal spaces, these legal spaces are far from creating feelings of certainty but instead, they cause a sense of uncertainty. Taking into consideration the time frames determined for each legal (sub)systems, the authors identify different types of legal spaces and places in relation to time: moving places (e.g. when river changes its route), alternating legal spaces (e.g. allowing a degree of physical injuries among the sports people in the sports areas), "fading-in" legal spaces (e.g. harmonisation process with the *acquis communautaire* during the candidacy of a country for the EU membership), disappearing legal spaces (e.g. demolition of the Berlin wall), lingering spaces (e.g. transition periods where multiple legal systems are implemented such as the decolonisation period), and accelerating spaces (e.g. creating new regimes through regulations for specific issues including migration) (von Benda-Beckmann and von Benda-Beckmann 2014, p. 36-46). All these types indicate different implications of legal pluralism in relation to the temporality of spaces.

Following these central discussions in the literature, it is understood that the use of legal geography in combination with legal pluralism offers us wider perspective for a further elaboration of the dynamics of legal spaces where multiple legal systems overlap and for puzzling more complicated relations with respect to the contested norms and values, the exercise of power, and the temporal dimensions of legal spaces.

2.3. Approaching irregular migration from the intersecting lens of critical legal geography and legal pluralism

The relationship between the proliferation of national, international, supranational and transnational regulations and legal institutions, and the constitution of legal spaces has

been located in the literature of both legal geography and legal pluralism (Merry, 1988, 2001; Santos, 1987, 2006; Delaney, 2004, 2015, Blomley, Bennet and Layard, 2015; Braverman, et al., 2014). As a part of international law, asylum and refugee law which contain different layers of regulations need to be examined from critical legal studies in order to investigate further the constitutive relationship between asylum, law and space. Therefore, the literature using the frameworks of legal geography and legal pluralism to approach irregular migration, asylum, and refugee law will be overviewed.

Although the concepts of refugee, asylum seekers, refugee camps have taken place in the theoretical discussions in the legal geography scholarship (e.g., Braverman et al., 2014; Blomley and Labove, 2015; Delaney, 2015), irregular migration and its relevant themes have been a theme overlooked in the theoretical debates within the frame of legal geography (Könönen, 2020, p. 2). Few studies are focusing on the detention and deportation of irregular migrants (Hiemstra, 2019; Martin, 2013; Könönen, 2020), the reception and accommodation centres (Kublitz, 2016; Kreichauf, 2020; Göler, 2020). Concerning the local refugee and asylum institutions, White (2002) has extensive research on the operation of asylum and immigration law in the UK through examining the power relations in different institutions in London. He suggests that local refugee and asylum institutions have crucial importance due to witnessing the legal struggles over the asylum. At this point, it is essential to have insights into the use of and the production of knowledge about law associated with the practices and asylum processes. He draws attention on the relations established in hegemonic and counter-hegemonic ways in particular for holding legal knowledge and for law and legal practices.

Despite a large literature offered by geography for examining the human mobility, we need to go beyond in order to develop better understanding for complexity of cross-border migration together with its spatial and legal dimension. The proliferation of borders has impact on our everyday lives and especially on those of migrants (Mezzadra and Neilson, 2013). By taking the border as a methodological point of view

and by investigating borders and border zones, we can bring into light the different processes in the production of "areas" and their integration to the global system of capital accumulation. While considering border as a tool for exclusion is a popular approach, focusing on this oversimplifies the function of borders. Apart from exclusion, borders have capacity to include that blur the division between exclusion and inclusion (Mezzadra and Neilson, 2013). At this point, temporality in the workings of border regimes together with the technologies of differential inclusion appear as a tool of governmentality. For instance, the legal regimes for skilled migrants such as EU's blue card, differential inclusion is created. However, not only the differential inclusion is created but different temporalities are produced as well through waiting, delays and rejection. Therefore, migrants have to find different ways to access labour market including illegality which transform them into deportable subjects (Mezzadra and Neilson, 2013). Within the frame of this analysis, the concept of "sovereign machine of governmentality" plays an important role to describe the intertwining between governance and sovereignty is that of labour power (Mezzadra and Neilson, 2013, p. 175). Further, borders and border zones are distinguished in the sense of removal of ordinary legal orders by states that creates "state of exception". Through the multiplication of legal orders, the practices of mobility are channelled and disciplined (Neilson and Mezzadra, 2013, p. 207-208).

Differential inclusion and production of temporalities are not only limited with the skilled migration scheme but also valid for the legal regime that regulates the forced migration. By the multiplication of legal regimes for asylum procedures, spatiality, temporality and inclusion/exclusion of certain groups of asylum seekers are determined by the sovereign. For instance, as it is explained in detail in the Section 3 of the Chapter 3, implementation of the different asylum procedures based on the location (hotspot islands vs mainland), nationality (country of origins with high recognition rate vs low recognition rate) and different time periods (e.g. pre EU-Turkey Statement of March 2016 period vs post EU-Turkey Statement) does not only differentiate the scale of protection but also multiplies the categories of asylum seekers based on their location, time of arrival, and nationality. In particular, this

differentiation becomes even more visible at the border zones, on the islands in the context of Greece, due to the fragmented legal framework based on the territoriality (regular procedures vs. border procedures and fast-track border procedures).

On the basis of the analysis above, approaching to borders by establishing the relation between power, sovereignty and borders is playing a crucial role to set the theoretical framework (e.g., Walters, 2002; Salter, 2006, 2012; Paasi ,2009, Vaughan-Williams, 2009; Mezzadra and Neilson, 2013). At this point, borders, migration management, and irregular migration emerge as an important topic both for empirical and theoretical analysis (e.g., de Genova, 2013, 2017). Therefore, in legal geography scholarship, borders are examined as locations where the plurality of laws, jurisdictions and legal practices occur, and are considered as an extension of sovereignty (e.g., Allen, 2011; Bladly and Sibley, 2010; Blomley and Labove ,2015). For instance, boundaries create "nomospheres" that are turned into exclusion zones to divide certain groups or individuals from others through the exercise of power (Bladly and Sibley, 2010).

In accordance with this, it is also drawn attention that borders may demonstrate a characteristic of legal and jurisdictional ambiguity, particularly, with regard to human mobility. Due to the restrictions on the access to asylum with delayed interviews, arbitrary detentions of asylum seekers, and differentiated asylum procedures, border zones turn into spaces where the asylum seekers stay in limbo in different parts of the world (Mountz, 2011). Despite the fact that asylum rights are explicitly recognized in various documents and regulations, in many occasions access of asylum seekers to international protection at the border zones is constrained due to legal and jurisdictional ambiguity and practices (Mountz, 2011). Thus, these border zones are transformed into exceptional spaces that represent spatial and legal liminality.
European Union’s border zones are not exempted from this transformation into spatial and legal liminality (Papoutsi et al., 2018). First of all, the concept of liminality can be described in two ways: separation between the outside and the inside; and a space of exception where the rights are restricted (Papoutsi et al., 2018). From this point of view, the hotspots created by the European Commission in the border zones of the EU

in Italian and Greek islands remind us of the same manner of liminality of space and law. Therefore, the hotspots situate as *territorial incubator* for the "liminal EU territory" (Papoutsi et al., 2018).

Even before the establishment of the hotspots, erosion of asylum rights including the principle of *non-refoulement* at the EU's shores, especially in the Mediterranean Sea was a focal issue with due to the extraterritorialization of the EU migration policy (Klepp, 2010). The EU's borders policy that is formed by two main pillars – intensification of cooperation with transit countries and strengthening joint border control missions – causes the deprivation of asylum seekers' possibility to access to asylum applications (Klepp, 2010). The cooperation between the EU and the third countries to prevent the irregular crossings at sea involve various actors that have impact on the asylum seekers' access to asylum applications. In this way, the practices of these actors in the local settings influence the legal basis and the formal regulations framed by the European refugee protection regime. Even though there are efforts to put common standards for European migration and asylum policy, legal norms are modified in the ground as a result of the practices (Klepp, 2010, p. 20). In particular, while the EU Member States are bound to comply with the EU norms and regulations, the thirds countries that locate in the periphery of the EU do not have the same consolidation process for their national laws. This causes contestation of different regulations and procedures in the asylum and refugee law at the border zones, especially the maritime border zones (Klepp, 2010).

This chapter provided the conceptualization of the relationship between legal, space and power, and explores different situations of legal pluralism. In this sense, there are two important pillars that connect the main arguments of this thesis with its theoretical framework. First pillar is concerning the typology of legal pluralism chosen for the analysis of asylum regime. In this sense, global legal pluralism approach is suitable to understand complexities in the asylum regime. Another important issue elaborated in this chapter is the mutual constitution of law and space and the multiplication of legal spaces, which constitutes the second pillar of this thesis.

The field of asylum can be considered as *semi-autonomous social field* that creates its own obligatory norms and coerce mechanism. The implementation of law requires an obligatory collaboration between different actors (case workers, guardians for unaccompanied children, practitioners, judges, cultural mediators and interpreters, etc.), leading to complex interactions which are regulated by national, international and supranational rules developed by different levels of bureaucratic institutions or court systems. In this context, the Chapter 3 will be providing detailed legal framework of asylum regime by examining different levels of legal orders, and different legal regimes form the CEAS, and particularly focusing on the context of Greece.

CHAPTER 3

LEGAL FRAMEWORK: MULTILEVEL SYSTEM OF REFUGEE PROTECTION IN GREECE

As largely discussed in the theoretical framework, legal pluralism broadly refers to the co-existence of multiple levels and sources of law in the same geographical space. In that sense, since the EU is a *sui generis organisation* (ECJ, Opinion1/91 ECR I-6079, par. 21), the relationship between the EU law, international law, and the national law of the Member States has been a research interest for the legal scholars for some years (e.g. Peters, 1997; Bethlehem, 1998; Barber, 2006; Besson, 2009). Due to its multi-layered nature, the protection of fundamental rights in Europe is at the core of doctrine in the constitutional pluralism.

Galina Cornelisse (2018, p. 375-377) questions the deep normativity of the descriptive characteristics of the constitutional pluralism which focuses on what "ought" to be. The relationship between the legal orders (national, international and supranational) is more complex than it is described by the normative approach of constitutional pluralism due to the configuration of the political authority, social, and legal realities (Cornelisse, 2018). The EU regulations, especially on the highly political areas, cannot be understood only in the frame of the legal orders. The area of refugee protection as an intersecting area of human rights, migration, and border control, and policies developed in these areas, add another dimension to the pluralistic character of asylum regime. In align with this, this thesis, in addition to the complex legal framework, explores the policies developed by the EC and the EU Member States and their impact on the asylum in order to consider a wider picture of the complications.

This chapter examines three levels of the protection regime: International level (international treaties related to the refugee rights), European level (both the EU level and the Council of Europe), and national level. Within the frame of the international protection of refugee rights, the concept of global refugee complex used by Betts (2010) is important to understand that the complexity of is not only vertical but also their different fields of international law -international human rights law, international humanitarian law, international maritime law, labour law, etc. - intersecting at the same level.

Following the examination of international law, the European level is crucial to understand the protection regime in Greece, since Greece is a High Contracting Party of the Council of Europe and a Member State of the EU. For this reason, the Greek law has to comply both with the ECHR and the EU Law. Also, the different judicial systems have authority to review the Greek national law and the practices: ECtHR with regards to the protection of human rights, and CJEU with regards to the compatibility with the EU law. The relationship between the ECHR and the EU law is also crucial in order to understand the conflicts arisen in the asylum system. Since this thesis focuses primarily on the social sciences view of legal pluralism, rather than the juristic view, judicial dimension is only referred to provide a broad understanding of the context.

Last but not least, the refuge protection regime in Greece will be elaborated in this chapter. The harmonization process of the Greek legislation and the increasing impact of the EU asylum and migration policies on the Greek asylum system will be the focal point. In this way, this chapter also provides the basis for the next two chapters where the spatial and temporal dimensions of the complexity of refugee protection, and their practical implications will be elaborated by focusing on the case of Lesvos.

3.1. International Protection of Refugee Rights

This section aims to explore the main sources of international refugee law to provide an overview of the international legal framework for the refugee protection. In the first part of this section, the 1951 Refugee Convention relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees will be discussed since they are the core legal framework of the international refugee law. In this context, alongside the definition of the refugee status and the principle of *non-refoulement*, the relevant rights and duties to establish the relationship between the states and the refugees will be argued. In this second part, the relevance of the international human rights law and of the other legal sources with the international refugee rights will be examined.

3.1.1. Background of the International Refugee Protection

Despite the existence of the notion of 'refugee' for long time in history, the international community started to make efforts to provide a legal framework for the refugee protection with the initiation of the League of Nations in 1920s and 1930s. Due to the collapse of the empires in Europe – the Austro-Hungarian Empire, Ottoman Empire and Russian Empire-, refugeehood and statelessness have become a growing issue in the region (Jaeger, 2001, p. 728-729). In order to assist the refugees and to provide a protection, several institutions were established under the League of Nations between 1921-1946: the Nansen International Office for Refugees (1931), the Office of the High Commissioner for Refugees coming from Germany (1933), the Office of the High Commissioner of the League of Nations for Refugees (1939) and the Intergovernmental Committee on Refugees (1938). While the Nansen International Office for Refugees and the Office of the High Commissioner for Refugees coming from Germany could last only until 1938, the Office for the League of Nations for Refugees and the Intergovernmental Committee on Refugees functioned until the end of the Second World War (WWII). The main tasks of these institutions were to grant international protection to refugees within the frame of the international legal instruments adopted by the League of Nations (Jaeger, 2001 p.729).

As a result of the World War II, the estimations show that over 40 million people were displaced in Europe (UNHCR, 2000, p. 13). In addition to this number, 13 million ethnic Germans were expelled from the Soviet Union, Poland, Czechoslovakia and other Eastern European countries. Besides, there were also over a million people fled from the Soviet Union (UNHCR, 2000, p. 13). Taking into consideration the other conflicts in different parts of the world, the world faced a serious humanitarian challenge in this period, mainly in Europe (UNHCR, 2000, p. 13). With the aim of dealing with the refugees the United Nations Relief and Rehabilitation Administration (UNRRA) functioned between 1943 and 1947. Despite the fact that UNRRA was not created as a refugee agency, due to the effects of the war, it had to give emergency assistance to refugees and displaces people in the areas controlled by the Allied Forces. Besides from the emergency assistance, it also engaged with the repatriation of the people who were displaced because of the Fascists regimes including Nazi regime, and the generalized violence due to the war in Europe. However, UNRRA did not have authority for the resettlement of the refugees. In spite of the efforts for the repatriation, many refugees and displaced people, in particular the ones fleeing from the Soviet bloc, were reluctant to return to their countries of origin. This remained one of the main problems in the post-war period (UNHCR, 2000, p.14).

In 1947, UNRRA was replaced with the International Refugee Organization (IRO) which was established as a non-permanent UN specialized agency. IRO's main objective was concerning the displaced people and different from the UNRRA's limited policy on the repatriation, the IRO assisted refugees to resettle to the third countries (IRO Constitution of 1946, Article 1(b)(ii) and (iii). Moreover, another important dimension regarding to the IRO Constitution is the definition of "refugees" (IRO 1946 Annex I, Part I/Section A, Article 1):

> (…) the term "refugee" applies to the person who has left, or who is outside of, his country of nationality or of former habitual residence, who, whether or not he had retained his nationality, belongs to one of the following categories:
>
> (a) victims of the nazi or fascist regimes or of regimes which took part on their side in the WWII, or of the quisling or similar regimes which assisted

them against the United Nations, whether enjoying international status as refugees or not;
(b) Spanish Republicans and other victims of the Falangist regime in Spain, whether enjoying international status as refugees or not;
(c) Persons who were considered refugees before the outbreak of the WWII, for reasons of race, religion, nationality or political opinion.

In addition to this definition, the IRO Constitution (Annex I, Part I/Section A, Article 4) recognizes the unaccompanied children under 16 years old who lost their parents in the war or whose parents have disappeared, as refugees. They are expected to be given priority for assistance.

In the IRO Constitution, there is a clear distinction between the term "refugee" and the term "displace person". As it is defined in Section B of the Annex I, a "displaced person" applies to a person who, as a result of the actions of the regimes mentioned above, has been deported from, or has been obliged to leave his country of nationality or former habitual residence. Even though the IRO made an important step to define the concepts of "refugee" and "displaced person", as well as to develop resettlement policy, it closed down in 1952 without bringing an effective solution to the refugee situation in Europe (Jaeger, 2001, p.732).

Both institutions of the UNNRA and the IRO can be considered as the predecessor of the UNHCR. With the continuation of the problem due to the hardening conditions of the Cold War and the generation of the new crisis, the General Assembly decided to form a new body within the UN system. Therefore, the United Nations High Commissioner of Refugees (UNHCR) was established in 1949 in order to provide international protection for refugees and to create durable solutions (Feller, 2001, p.130). Different from the previous institutions, the UNHCR's mandate was not limited temporally nor geographically. The Statute of the UNHCR (1950,Chapter II, Article A(ii)) states "Any person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reasons of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself

of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence." From this perspective, the UNHCR has a universal mandate to respond the refugee situation.

3.1.2. The 1951 Refugee Convention and the 1967 Protocol

Alongside with the institutionalization of the refugee protection as explained in the previous section, the creation of the international protection regime for refugees continued with the adoption of the 1951 Geneva Convention Related to the Status of Refugees (1951 Refugee Convention), which addresses the problem of the status of refugees. The 1951 Refugee Convention was adopted in the UN Conference on the Status of Refugees and Stateless Persons in Geneva on 2-25 July 1951 and entered into force in 1954. 1951 Refugee Convention was accepted as the first legally binding document to provide international protection for refugees. It has been ratified by 145 states. Together with the 1967 Protocol Relating to the Status of Refugees (1967 Protocol), they are considered as the core of the international framework of refugee protection.

Initially the 1951 Refugee Convention was created as an instrument responding to the refugee situation emerged in the wake of the WWII. Therefore, it was addressing to the events in a restricted area for a restricted time period. According to the Article 1(2) of the 1951 Refugee Convention, a person flees country because of "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" can deserve the refugee status. In order to be granted with the refugee status, the refugee must have crossed the international borders of the country of his former habitual residence origin. Another important concept in the definition of "refugee" is the well-founded fear of persecution. Even though there is no definition for the "persecution" in the 1951 Refugee Convention, the Articles 31 and 33 indicate the threats to life or freedom, therefore it includes the threat of death, or the threat of torture, cruel or inhuman treatments and/or punishment.

Nevertheless, at this point, the developments and the analysis within the frame of the international human rights law should be taken into account. For instance, together with the adoption of ECHR and the jurisprudence of the ECtHR, the scope of the torture, cruel or inhuman treatments and/or punishment was expanded to ill-treatments.

In the Convention, there were two main limitations: geographical and time. While geographical limitation was addressing to the events happened in Europe, time limitation was concerning the WWII. Therefore, initially only the ones who flee Europe before 1951 were able to be granted as refugees. Over time, in particular during the decolonization movements in the 1960s, new challenges emerged due to the displacements occurred all around the world which made clear that the refugee hood does not recognize time and space. Therefore, it was needed to draw a new legal framework. With the entrance into force of the 1967 Protocol, geographical and time limitations were lifted by the majority of the States. Thus, 1951 Geneva Convention earned universalistic character (Feller, 2001, p. 131). The 1967 Protocol has opened to the signature as an independent legal document but kept the main body (Articles 2-34) of the 1951 Refugee Convention except the time and geographical limitations. Nevertheless, although Turkey and Congo signed the 1967 Protocol, they put reservation on the article lifting the geographical limitation, so they continue to apply the geographical limitation. Other exceptions are Monaco, Madagascar, Saint Kitts and Nevis which signed only the 1951 Refugee Convention but have not adopted the 1967 Protocol.

Another important characteristics of 1951 Refugee Convention and the 1967 Protocol are having individualistic and persecution-based approach. It mainly aimed to respond individual fear of persecution. There are four main principles highlighted in the Convention: principle of *non-refoulement*, non-discrimination, social and humanitarian nature of the problem of refugees, and international cooperation (Feller, 2001, p. 132).

Among the principles highlighted in the 1951 Refugee Convention, the principle of *non-refoulement* lies at the heart of the international refugee protection regime. The Article 33 states "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion..." The principle of non-refoulement has a non-derogable nature. Even though a person does not fulfil the criteria to deserve the refugee status, the principle of non-refoulement still prohibits to return of that person if and where his/her life or freedom might be in danger.

Alongside the definition of "refugees" and developing the principle of *non-refoulement*, there are various rights and duties that refugees are entitled to under the 1951 Refugee Convention. As Hathaway (2005, p. 93-94) highlights the fundamental rights recognized in the 1951 Refugee Convention have originated from two main sources concerning the human rights: the 1933 Convention Relating to the International Status of Refugees and the 1948 Universal Declaration of Human Rights which is directly addressed in the Preamble of the 1951 Refugee Convention. Among these rights the right to freedom of religion and religious education (Article 4), the right of association (Article 15), the right to access to courts (Article 16), the right to work (Articles 17-19), the right to housing (Article 21), the right to public education (Article 22), the right to freedom of movement (Article 26), the right to be issued identity and travel documents (Article 27), and the right to naturalization (Article 34) can be listed. Therefore, states' duties are not limited to provide a refuge for the asylum seekers but also have to recognize their fundamental rights as listed above. The states have to take the necessary measures for asylum seekers and refugees to access their fundamental rights.

Besides the listed rights above, the right not to be punished for illegal entry into the territory of contracting state (Article 31) and the right not to be expelled or returned (except the defined conditions) (Article 32-33) are in the core of the refugee protection. The Article 31 provides an internationally recognized immunity to the asylum seekers

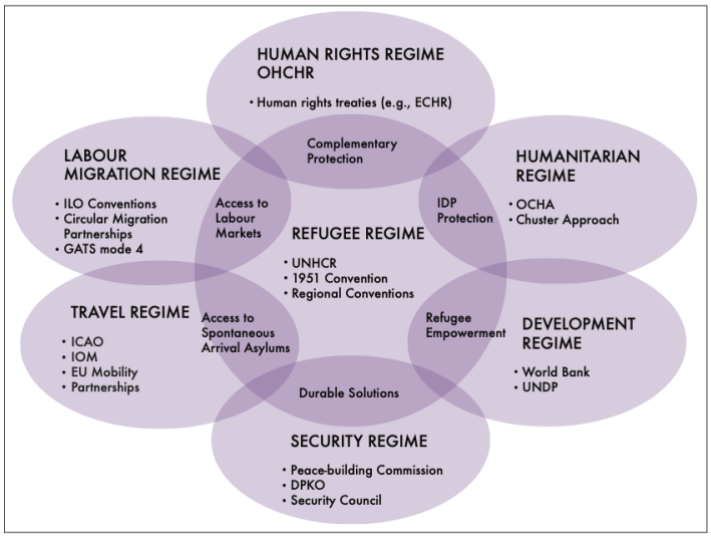
from penalty for the illegal entry into the territory where they seek asylum. In the cases where they face criminal charges without giving them opportunity to claim for asylum may be considered as violation of human rights (Goodwin-Gill, 2001, p. 31). Nevertheless, in practice, there are many occasions where these two rights are systematically violated by keeping asylum seekers in detention centres, charging them with criminal accusations, or pushing them even before their entry into the state territory.

Not but not least, as abovementioned, the protection provided within the frame of the 1951 Refugee Convention and the 1967 Protocol carry individualistic characteristic, rather than providing a protection for mass movements. Nevertheless, the developments in the world starting from the Hungarian Revolution of 1967, there have been situations of large-scale arrivals of refugees. For these situations, the UNHCR has developed *prima facie* approach meaning that the recognition by a State or UNHCR of refugee status on the basis of "readily apparent". Within the framework of a prima facie approach, it is acknowledged that the persons feeling the circumstances such as a generalized violence carry risks of harm that makes the refugee definition applicable (UNHCR, 2001). According to the UNHCR, once refugee status granted on a prima facie basis, the refugees continue residing in the host country until/unless the conditions for cessation are met (UNHCR, 1999 and 2003). Even though the UNHCR developed its approach to grant refugee status for those who flee in mass, the practices in the EU varied in different cases. As it is mentioned in the section 3.2.2., the Temporary Protection was found as a mid-way solution rather than granting refugee status for those who fled from Bosnia and Kosovo in the 1990s. Notwithstanding this, the refugee influx following the uprisings in the MENA region was met a different response that did not include prima facie approach or temporary protection. This shows us the weight of the EU's asylum and migration policy for the implementation of refugee law, and how the legal status granted for people escaping from similar conditions can vary based on the policy priorities.

3.1.3. Other Forms of International Protection

As discussed earlier, refugee protection regime goes beyond the international refugee law and creates a global refugee complex involving other bodies of international law (please see the image 1). The proliferation in the international institutions in since the end of the WWI overlaps with the refugee protection regimes sometimes in a complementary manner, sometimes in a contradictory manner. The global refugee protection regime is at the junction of multiple regimes such as human rights regime, security regime, humanitarian regime, development regime, labour migration regime, and travel regime (Betts and Milner 2019). In particular, together with the developments in these areas, in particular in the human rights regime, there is a significant proliferation of institutions and legal orders in the global refugee protection regime (Please see the Appendix F).

Image 1: The Global Refugee Complex



Source: Betts, A. and James Milner (2019). Governance of the Global Refugee Regime. World Refugee Council Research Paper No. 13, p.5. Available at https://www.cigionline.org/static/documents/documents/WRC%20Research%20Paper%20No.13.pdf.

International refugee rights cannot be understood apart from the international human rights law since all people have human rights. Taking into consideration of the zeitgeist of the early 1950s, it is possible to see a direct linkage between the 1948 Universal

Declaration of Human Rights (UDHR) and the 1951 Refugee Convention (Betts and Milner, 2019, p. 2). The Article 14 of the 1948 UDHR recognizes the right to asylum by stating "Everyone has the right to seek and to en in the other countries asylum from persecution." In addition to the recognition of the right to asylum, international human rights law aims to provide minimum standards for the people fleeing. Therefore, it obliges all states to afford minimum standards of treatment to the people within their territory or jurisdiction (McAdam, 2014, p. 2). In this context, the International Bill of Human Rights, which is constituted of UDHR (UN General Assembly A/Res/60/251), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), the International Covenant on Civil and Political Rights (ICCPR, 1966) and two optional protocols to ICCPR, are essential complementary rights to the 1951 Refugee Convention. As it is stated in the ICCPR (UN General Assembly 1966), the scope of civil rights applies to "all persons" and "everyone". Therefore, the rights protected within the scope of the ICCPR such as the right to life (Article 6), the right not to be subjected to torture, inhuman or degrading treatment or punishment and slavery (Articles 7 and 8), and the freedom of expression (Article 19) strictly apply to the refugees as well. Moreover, the Article 4(2) of the ICCPR states that most of these rights are non-derogable which means that these rights must be respected under all circumstances with no exception including public order or national security concerns.

Alongside the International Bill of the Human Rights, various human rights treaties focusing on different themes of human rights provide supplementary protection to the refugee rights. While the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 and Declaration on the Elimination of All Forms of Intolerance of Discrimination Based on Religion or Belief of 1981 can be complementary protection for preventing the discriminatory treatments against refugees, the specialized treaties such as the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child can bring additional protection to more vulnerable groups within the refugees (For the other relevant human rights instruments please see the UNHCR 2007).

As the core of the international refugee rights, the principle of *non-refoulement* is also protected and expanded in the international human rights treaties such as the ICCPR and the Convention against Torture (CAT). As argued in the previous part, the concept of "well-founded fear of persecution" should be analyzed with the developments in the human rights law. Therefore, the interpretation done by the courts (e.g., European Court of Human Rights) plays a vital role to expand the content of the term of "persecution" (please see section 3.2.2).

3.2. The Regional Refugee Protection Regime in Europe

As argued in the previous section, the growing number of refugees in Europe at the end of the WWII led to the establishment of international and regional legal instruments for refugee protection. Since *raison d'être* of the 1951 Refugee Convention was to bring protection for those who fled the events happened in Europe before 1951, Europe is considered as a region that engendered the international treaties of refugee law (Mathew and Harley 2016: 35). Nevertheless, the refugee protection regime in Europe is not limited with the international treaties of refugee law. The emergence of the regional legal instruments to protect human rights and refugee rights, and the proliferation in the legal framework in align with the regional integration process (European integration) gave rise to a complex system for the refugee protection. In this section, there will be two main parts: the protection brought by the CoE and the refugee protection within the framework of the common asylum policy in the EU.

3.2.1. The Council of Europe as an Actor in the Refugee Protection Regime

With the purpose of safeguarding and advocating for human rights, democracy, and the rule of law in Europe, the CoE was established in 1949. The CoE has been the fundamental organization focusing on the protection of human rights via adopting various human rights instruments. In that sense, the adoption of the European Convention on Human Rights (ECHR) in 1950, which entered into force in 1953 can

be considered as a milestone and the most significant legal document for the regional human rights protection regime. Within the frame of the ECHR, an international judicial organ, European Court of Human Rights (ECtHR) was established. The ECtHR has jurisdiction to find against the High Contracting Parties that violate the human rights in ECHR.

Even though the ECHR does not have an explicit article concerning the right to asylum or protection of refugees, as a matter of principle, the High Contracting Parties have to respect human rights of everyone within their jurisdiction. The Article 14 of the ECHR on the prohibition of discrimination indicates "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status." Besides, in the preamble of the ECHR, it reaffirms its foundation is based on the principles of the UDHR.

Nevertheless, the ECHR and its interpretation within the framework of the refugee rights by the European Court of Human Rights (ECtHR) have crucial importance for the expansion and implementation of the refugee rights in the Europe. Certain rights in the ECHR are interpreted in a way to remove barriers for asylum seekers to access asylum rights (ECHR, 2016). In particular, the Article 2 (Right to life) and the Article 3 (Prohibition of torture) address to the core principle of the international refugee law, which is the non-refoulement principle. Both Articles 2 and 3 prohibit direct and indirect refoulement.

With regards to the direct refoulement, the States cannot return persons to a place where s/he faces a real risk of her/his life in danger (Article 2) or of being subjected to "torture, or to inhuman, or degrading treatment or punishment" (Article 3). ECtHR gave a number of decisions that established this norm over time including the case of Sufi and Elmi v. the UK (*Sufi and Elmi v. the United Kingdom*, 8319/07 and 11449, ECHR 2011). In this case, the ECtHR decided that the applicants were at risk of ill-

treatment if they were deported to Somalia. Therefore, the deportation orders given by the UK breach the Article 3. Similar with this case, the case of Bader and others v. Sweden, the Chamber of Judgment decided that the deportation order given by Sweden for Syrian nationals who faced death sentence in Syria breached the Articles 2 and 3.

Articles 2 and 3 also play a role for prohibition of indirect refoulement. Indirect refoulment occurs in the cases in which the asylum seekers are expulsed to the State from where asylum seekers may face deportation without an appropriate assessment of their asylum cases. This rule has also been applied for the cases related to the Dublin System in the EU. For instance, the ECtHR gave an important decision of violation about the expulsions to Greece from other Member States due to the shortcomings in the Greek asylum system and barriers on the asylum seekers to access asylum rights (M.S.S v. Belgium and Greece, 30696/09, ECHR 2011). Another important jurisprudence developed is about the prohibition of collective expulsion (e.g., Conka v. Belgium 51564/99, ECHR 2002), including those who were intercepted by the naval units of the High Contracting Parties at the high sea (e.g., Hırsi Jamaa and Others v. Italy 27765/09, ECHR 2012). In these cases, ECtHR refers to forcible removal of foreigners, who were not given the opportunity to raise their arguments to the competent authorities. Moreover, ECtHR decided that member States exercise de jure and/or de facto jurisdiction while conducting border surverillance operations in the cases where they have effective control. Therefore, they are responsible for respecting human rights and the principle of non-refoulement "regardless of whether interception measures are implemented within their own territorial waters, those of another State on the basis of an ad hoc bilateral agreement, or seas" (Hırsi Jamaa and Others v. Italy 27765/09, ECHR 2012, prg 27 (9.3))

Protection of migrants[6] from discrimination and hate crime (e.g. Sakir v. Greece 48475/09 v. 2016), protection of family life and family re-unification (e.g. Nada v.

[6] Used as an umbrella term to cover all forms of migrants including irregular migrants, asylum seekers, refugees, and so on.

Netherlands 10593/08, ECHR 2012), arbitrary detention of migrants and asylum seeker (e.g. Amuur v. France 19776/92, ECHR 1996), prevention of detention of minors (e.g. Rahimi v. Greece 8687/08, ECHR 2011), prevention of ill-treatment, prevention of human trafficking (e.g. Palushi v. Austria 27900/04, ECHR 2010) and protection of survivors of human trafficking (L.E. v. Greece 71545/12, ECHR 2019) are also among the important themes that the ECtHR made a number of decisions (CoE November 2021).

In addition to the ECHR, there are several other human rights instruments that provide additional protection to the refugee rights in Europe: the 1961 European Social Charter, the 1992 Convention to the Participation of Foreigners in Public Life at Local Level and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings. Alongside these, there are additional legal documents directly addressing to different issues in refugee protection such as the 1959 European Agreement on the Abolition of Visas for Refugees (ETS No. 031) and the 1980 European Agreement on Transfer of Responsibility for Refugees (ETS no. 107)[7]. More recently, the 2011 Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as the Istanbul Convention, has become an important part of the legal framework (CoE, 2019).

The increase in the arrivals of the refugees and migrants and what has been happening during their journey including the death of children and the human rights violations alerted the CoE. As a response, the CoE developed a special focus on the refugee and migrant children, especially the unaccompanied or separated minors by preparing the Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019). The Action Plan has three main pillars: "(1) ensuring access to rights and child-friendly procedures; (2) providing effective protection; (3) enhancing the integration of children who would remain in Europe." (CoE May 2017: 6). In order to implement the objectives determined under each pillar, the CoE has been working in cooperation with

[7] Selected from the complete list of the CoE's treaties. Full list of the treaties can be found at https://www.coe.int/en/web/conventions/full-list2.

the organizations including the UNHCR, UNICEF, the World Food Programme, the WHO, the IOM, and the EU, as well as the relevant NGOs (CoE, May 2017).

The abovementioned legal instruments and policy frameworks adopted by the CoE are significant for the improvement of refugee protection in Europe. Even though the ECtHR does not have direct jurisdiction on the EU and the EU law, the Member States' legislations and practices have to comply with the ECHR. Therefore, ECHR and the decisions of the ECtHR have been indirectly influential on the EU law as well as the implementation of the CEAS.

3.2.2. Evolution of the Common European Asylum System (CEAS)

The CEAS is a framework that established common standards and rules for the procedures for refugee protection aligning with the 1951 Refugee Convention and its 1967 Protocol[8]. It aims to harmonize national asylum systems of the Member States and improve the cooperation in asylum within the EU (TFEU 78). Even though the establishment of the CEAS was announced in Tampere Conclusions in 1999, the efforts for cooperation have a longer history in the EU. In this section, the evolution of the CEAS and its different phases will be elaborated in relation to the EU policies. Following this section, the legislative instruments that form the legal framework of the asylum system will be explored in detail.

The origins of the CEAS trace back to the need for harmonization of domestic policies to abolish the internal border control with the purpose of establishing a "single market within the European Community. The adoption of the Schengen Agreement in 1985 and of the Single European Act (SEA) in 1986 can be considered as milestone for the realization of the elimination of internal borders (Chetail, 2016). Nevertheless, the abolishment of internal borders between the Community Member States required strengthening of the external borders of the Community, which had large impact on

[8] Here, refugee protection is used in the broad sense that covers asylum procedures, subsidiary protection, and temporary protection as different protection forms in the EU law.

the refugee and asylum policy in the region (Loescher, 1989: 617). "A structural approach and a long-term strategy" beyond the "ad-hoc humanitarian efforts" were needed to respond to the arrivals of refugees due to the regional conflicts in 1980s and afterwards (Loescher, 1989). Alongside a number of meetings among the Community Member States (Loescher, 1989), the "Palma Document" was adopted by the European Council in June 1989 that recommended the need for a "common policy" in the field of asylum (The "Palma Document" Free Movement of Persons, 1989, Part III/B).

Alongside with the gradual abolishment of internal borders, the Schengen Agreement (1985), which entered into force in 1993, also included measures for the irregular movements of flight and migration. In the same period, the Dublin Convention was adopted in 1990 to reinforce the implementation of the Schengen Agreement (Kasparek, 2016). The primary aim of the Dublin Convention (1990) was dealing with the asylum seekers and in particular, of preventing the "asylum shopping"[9]. Within the frame of the Dublin Convention, which entered into force in 1997, asylum-seekers have only one opportunity to submit their asylum claim within the EU Territory, and the State that receives the application is the main responsible for examination of the asylum procedure (Chetail, 2016, p. 6).

With the adoption of the Maastricht Treaty/Treaty on European Union (TEU) in 1992, in addition to the European Communities (first pillar), two areas of cooperation were established: The Common Foreign and Security Policy (CSFP, as the second pillar) and Justice and Home Affairs (JHA, as the third pillar). The intergovernmental approach to asylum policy continued with the TEU, by acknowledging the asylum as a common interest within the JHA (Chetail, 2016, p. 8). Framing the asylum cooperation within the JHA brought the criticisms with regards to increasing securitarian approach over the protection of human rights (e.g., Lavenex, 2001). In

[9] "The phenomenon where an asylum seeker applies for asylum in more than one EU State or chooses one EU State in preference to others on the basis of a perceived higher standard of reception conditions or social security assistance." Retrieved from https://ec.europa.eu/home-affairs/content/asylum-shopping_en

particular, the restrictive characteristics in the EU asylum acquis were found as a normative backlash in the refugee protection regime (Loescher, 1993; Lavenex, 2001).

Meanwhile around 3.9 million people were forcibly displaced because of the conflicts in Bosnia and Herzegovina, Crotia, and Kosovo between the period of 1991 and 1999 (Englbrecht, 2004). Hundreds of thousands of them arrived in the western Europe, mainly in EU Member States (e.g., Austria, Belgium, Denmark, France, Germany) but also in non-member European states (e.g., Switzerland). The main response to this mass displacement and mass arrivals by most of the European states was to develop "temporary protection". Since there was not a common policy at the time, temporary protection was implemented differently in each Member State according to their national law (Koser and Black, 1999). Yet, the "temporary protection" was considered as a step for burden-sharing and harmonization (Koser and Black, 1999). The need for a common approach became clearer following the refugee movements during the 1990s. Therefore, on May 2000 the Temporary Protection Directive (TPD) was adopted by the EU which came into force in 2001. A new approach was introduced with the TPD, which aimed at responding to emergency situations in the event of a "mass influx" with a "balance of efforts between Member States in receiving such persons and bearing the consequences thereof" (Council Directive 2001/55/EC). The TPD provides the basic legal rights including the *non-refoulement* so TPD recipients are able to enjoy residence permits for the duration of protection, right to education for minors, access to employment, accommodation or housing, access to medical treatment, right to family life. TPD recognizes the duration of protection maximum 3 years (Article 4), and when the maximum duration of the protection has been reached, it can be terminated at any time by Council Decision adopted by a qualified majority on a proposal coming from the EC (Article 6). The major shift did not only occur in the quality of the refugee protection with the implementation of the Temporary Protection which provides more limited protection than Geneva system but also it took place in evolution towards a common policy for asylum and migration management.

Meanwhile, European asylum and migration policy has been evolving towards a Common European Asylum System (CEAS) since the signature of the Treaty of Amsterdam in 1997, which entered into force in 1999. The Treaty of Amsterdam had a crucial step in the formation of the CEAS by shifting the asylum policy from the third pillar to the first pillar, which can be considered as a shift from intergovernmental approach to supranational approach (Chetail, 2016). With this step, the EU and individual member states had some competences for immigration and asylum topics. Following this, three phases of the CEAS consisted of the Tampere milestones (1999–2004), The Hague Program (2004–2009) and the Stockholm Program (2009–2014) were adopted concerning the migration policy which includes mainly the management of migratory flows, the fair treatment of third country nationals, and the partnership with countries of origin (Papagianni, 2014, p. 377).

In the first stage of the CEAS between 1999 and 2004, the core regulations and directives were adopted: TPD (2001), The Dublin Regulation II (2003), the EURODAC Regulation (2003), the Reception Conditions Directive (2003), the Qualification Directive (2004), the Asylum Procedures Directive (2005). In the context of CEAS, the so-called Dublin System[10] became a milestone for the determination of the asylum applications (EU Policy Department, 2015b). Following the Dublin Convention, Dublin Regulation II (2003) and latest Dublin Regulation III (No. 604/2013) came into force to determine the member state to examine the asylum applications for the international protection in accordance with the 1951 Geneva Convention. In order to provide the implementation of the objective of the first entry country, the European Dactyloscopy (EURODAC), a fingerprint database for identification of the asylum seekers, was established in 2003 (Kasparek, p. 2016). According to the rule, the asylum application should be done by the asylum seeker in the first EU country s/he entered. If there is more than one application or if it is determined that s/he tries to apply for the international protection in a different EU State than the first entry country, in these cases, the applicant is deported or

[10] Dublin system is mainly formed by the Dublin Convention (1990), Dublin II Regulation (2003) and Dublin III Regulation (2013).

'transferred' to that country. Moreover, this practice has been expanded by the concept of the 'safe third countries' which means the neighbouring countries considered 'safe' (providing international protection) for asylum seekers. Thus, the EU externalizes its asylum policy towards the neighbouring countries. Although the Dublin system has always been in discussion mainly in terms of limiting the right to access to the international protection and of creating imbalance between the EU states for the responsibility, it came to the top of the agenda after 2015 which will be examined in the next section.

Moreover, in the first stage of the CEAS, the European Agency for the Management of Operational Cooperation at the External Borders of Member States of the European Union (FRONTEX) was created through Council Regulation No. 2007/2004 of October 26, 2004. FRONTEX is considered to be responsible for the security-related aspects of migration policy by conducting the operations. Different from the other instruments related with the asylum policy, FRONTEX is not addressing to the fundamental human rights as well as the principle of non-refoulement (Faure et al. 2015). This lack shows the shift of the logic from the right based approach to security-based approach in the refugee protection regime.

In response to significant criticism to the EU, the Treaty of Lisbon/Treaty of Functioning of the EU (TFEU) was adopted in 2007 and entered into force in 2009. TFEU aimed at establishing the basic principles for common asylum and migration policies in accordance with the human rights (Article 67). Together with the adoption of the Lisbon Treaty which came into force on 1 December 2009, the EU ratified important chances in the EU treaties which are now consolidated in the TFEU of 2007. The Articles 78 and 79 are directly related to asylum and migration issues in the EU. In this way, TEU and TFEU became the primary EU law alongside the Charter of Fundamental Rights for the CEAS. TFEU is also significant for expanding the jurisdiction of CJEU concerning asylum (Errera, 2010, p. 93)

The Article 78(1) states: “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.” In this way, it draws the legal framework for the common policy on asylum by referring to the international refugee rights, namely the 1951 Refugee Convention and the other relevant treaties. Therefore, all the directives accepted within the CEAS should be in accordance with the 1951 Refugee Convention and the other relevant treaties. The second paragraph of the same article offers for adopting measures to define a “uniform status” for asylum and subsidiary protection, as well as to establish a “common system” of temporary protection, and to determine “common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status” (TFEU Article 78(2)). Lastly, the Article 78(3) has become more known after the so-called “refugee crisis” in 2015. The concerning paragraph addresses to provisional measures for the benefits of the Member States facing by “an emergency situation characterized by a sudden inflow of nationals of third countries” (TFEU Article 78(3)).

Article 79, then, offers a set of measures in a common immigration policy including the “efficient management of migration flows”, “fair treatment”, and prevention of illegal migration and trafficking in human beings. With this aim, it calls the European Parliament and the Council to adopt measures briefly in the areas concerning the conditions of entry and residence including visas, family re-unification, etc., the rights of the migrants residing in a Member State, the irregular migration, and combatting trafficking in persons (TFEU Article 79(2)).

Apart from the Article 2 and 3 of TEU which refer the EU’s values, Article 6 explicitly recognizes “the rights, freedoms and principles set out in the Charter of the European Union of 7 December 2000”. Based on the Article 6(2), the implementation and application of the EU legislation has to be in accordance with the EU Charter of

Fundamental Rights. As integrated the EU Charter into the EU primary law by this article, the provisions of the EU Charter are not only binding for the EU institutions, but also for the EU Member States during the implementation of the EU law (Article 52(1)). Moreover, the EU Charter has been referred in the legal instruments of the CEAS with the aim of providing the accordance of fundamental rights.

3.2.3. Overview of the CEAS Legislative Instruments

As examined above, the EU has been making efforts to establish a Common European Asylum System since 1999. While the EU primary law -TFEU, TEU and the Charter of Fundamental Rights of the European Union (the EU Charter)- determine and impose principles and rights, the CEAS is governed by the five legislative instruments (secondary legislation): the Asylum Procedures Directive, the Reception Conditions Directive, the Qualification Directive, the Dublin Regulation, and the EURODAC Regulation. In addition to the legislative instruments, the European Union Agency for Asylum has been created as the agency for the CEAS (European Commission, Common European Asylum System). In the following section, the legislative instruments (secondary legislation) of the CEAS will be explored.

3.2.3.1. The Asylum Procedures Directive (APD)

The initial Asylum Procedures Directive (The Council Directive 2005(85/EC) was adopted in 2005. Nevertheless in 2013, the revision of APD was adopted to replace the precedent Directive. The (recast) APD's purpose is to create a coherent international protection system which provides quick, fair and effective decisions (Directive 2013/32/EU prg 4). For this purpose, after providing the general provisions including the definitions, the scope of the APD, the provisions concerning the designation, tole and competence of responsible authorities (Articles 2-4); the AFD focuses on the principles, guarantees and procedures for the international protection. For example, it foresees the provisions concerning the basic principles and guarantees to access to procedures including the information, counselling and legal assistance

(e.g., Article 6, 7, 8, 19, 23), as well as the special procedures for unaccompanied minors and the applicants in need (Articles 24 and 25). It brings standards for procedures to follow during the examination of the applications (e.g., Article31 and 32), treatments of applications as inadmissible (Article 33 and34), and the procedures to be conducted at the borders or transit zones (Article 43). Again, within the AFD, the procedures concerning the withdrawal of international protection, appeals, and the accession to the effective remedy are foreseen. More details concerning the rights provided by the AFD and their implementation in light of the experiences in the field will be argued in the Chapter 5.

3.2.3.2. The Reception Conditions Directive (RCD)

The same year with the AFD, the recast Reception Conditions Directive (RCD) was also adopted. As it can be understood from the title, it aims at setting out common standards for the reception conditions for the applicants for international protection. As stated in the RCD, its purpose is to establish "a dignified standard of living and comparable living conditions for applicants for international protection in all Member States" (Directive 2013/33/EU Recital 11). The RCD (recast) is formed by seven chapters:

(1) Purpose, definitions, and scope of the RCD;
(2) General provisions on wide range issues with regards to reception conditions including the obligation relating to information (Article 5), documentation (Article 6), residence and free movement (Article 7), detention conditions (Articles 8-11), family unity (Article 12), medical screening (Article 13), schooling and education of minors (Article 14), vocational training (Article 16), and so on.
(3) Reduction or withdrawal of material reception conditions;
(4) Provisions for vulnerable persons;
(5) Appeals;
(6) Actions to improve the efficiency of the reception system;
(7) Final provisions.

Even though the RCD sets the minimum standards to be applied in all Member States, the majority part of the criticism with regards to the refugee protection in Greece is caused by the malpractices and insufficient reception conditions in Greece, especially on the hotspot islands. Therefore, the provisions in particular concerning the detention conditions, legal assistance, and the guarantees provided for the unaccompanied minors, as well as their implementation will be largely discussed within the context of Lesvos in the Chapters 4 and 5.

3.2.3.3. The Qualification Directive (QD)

With the aim of bringing clarification for granting international protection, and so making to decisions for the asylum cases, the recast Qualification Directive (Directive 2011/95/EU) was adopted in 2011. The QD is crucial in terms of creating uniform definitions for refugee status and the beneficiaries of subsidiary protection (Article 2), as well as for the concepts such as acts of persecution (Article 9), serious harm (Article 15).

Inspired by the 1951 Refugee Convention, the QD defines a "refugee" as:

> a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, [and to whom the exclusion clauses do not apply] (Article 2(d) QD (recast)).

Even though the QD's refugee definition is very similar with the definition given in the 1951 Refugee Convention, the QD has an exception by restricting with "third-country nationals or stateless persons". From this perspective, a citizen from a Member State who might in need of international protection -refugee status, subsidiary or temporary protection- remains out of this definition.

In addition to the refugee status, the QD establishes a complementary protection by establishing subsidiary protection. According to the Article 2(f) QD (Recital 33),

> person eligible for subsidiary protection' means a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) does not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

The recognition of the subsidiary protection is significant in the sense of providing protection for those who are not qualified for a refugee status, yet non-removable (Costello, 2015). In addition to the definitions, the QD invokes several rights both for the beneficiaries of international protection (refugees and subsidiary protection holders) such as right to employment (Article 26), the right to education (Article 27), right to access to social welfare (Article 29), right to access to housing (Article 32), right to freedom of movement within the Member State (Article 33), and so on. Further, the Article 21 of the QD obliges the Member States to "respect the principle of *non-refoulement* in accordance with their international obligations". Nevertheless, subsidiary protection holders have fewer rights than the ones who have refugee status. For instance, family re-unification is not among the rights of subsidiary protection holders (Costello, 2015).

The subsidiary protection and the QD have also additional importance from the perspective of legal pluralism. The ruling of *Elgafaji* of CJEU (CJEU, Case C-465/07)[11] (2009) with regards to the subsidiary protection under 15(c) of the original

[11] The Ruling of Elgafaji was made due to the refusal of the asylum applications made by Mr. And Mrs. Elgafaji from Iraq. Mr. Elgafaji was a Shiite Muslim who was working as a security officer for a British company in Iraq whereas Mrs. Elgafaji was a Sunnite Muslim. Their uncle who was working for the same company was killed. Following the death of their uncle, Mr. Elgafaji received life threatening letter. They excaped from Iraq asked for asylum where Mr. Elgafaji's father, mother, and sister were resident. However, the Dutch court refused to provide residence permit by referring to the difficulties in interpreting the provisions of the QD. Source: CJEU, Case C-465/07, *Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie*, Grand Chamber, 2009, ECR 1-921; (2009) 21 *IJRL* 297-307.

QD is the first decision about the substance of the QD. In this case, CJEU compared the Article 15 (c) of the original QD with the Article 3 ECHR (the prohibition of torture). The ruling of CJEU has two importance from the perspective of legal pluralism. First, the CJEU noted that the interpretation of the relevant article must be carried out independently from the ECHR, therefore the CJEU decides for the independent character of the EU law with regards to the refugee rights. Secondly, in relation to the interpretation of the substance of the subsidiary protection, CJEU decides that QD goes beyond the minimum standards set in the ECHR (Errera, 2010; Costello, 2015). From this point of view, we see the constructive implication of legal pluralism in refugee protection.

3.2.3.4. The Dublin System

The Dublin system is based on the Regulation (EU) 604/2013 (Dublin III Regulation) to allocate the responsibility for processing asylum claims in the EU. The Dublin system was originally established by the Dublin Convention signed in 1990 which came into force 1997. The Convention was later on replaced by Council Regulation 343/2003 (Dublin II Regulation) which was again replaced by the Dublin III Regulation in 2013. The main aim of the Dublin Regulation is to prevent "asylum shopping" by restraining asylum seekers to submit their asylum applications in multiple EU member states (European Commission, Dublin Convention – website). According to the Dublin regulation, the asylum claims should be submitted in the country of entry; therefore, the country of entry is responsible for examining asylum application. In order to implement the Dublin III Regulation, the Regulation (EU) 603/2013 (EURODAC Regulation) was adopted which allows the Member States to register fingerprints of asylum seekers (European Commission, EURODAC – website).

The hierarchy of criteria to determine responsibility to proceed an asylum application is regulated under Chapter III of the Dublin III Regulation. According to this, family

reunification is the “first and foremost” criterion for determining the responsibility. If a family member is already located in a Member State, that Member State is responsible for the asylum application made by another family member from the same family (the “nuclear family” for adults and “extended family” for minors). The family reunification criterion is followed by holding a residence document or a valid visa. If an applicant holds a valid residence permit or a valid visa from another Member State, that Member State becomes responsible for examining the asylum application. In the cases where these two criteria are not applicable, the Member State where the applicant enters including transit areas such as airports is considered as the responsible state to receive the asylum application (European Parliament, February 2020, p. 6).

Since the adoption of the Dublin Convention and the following regulations, the Dublin system was heavily criticised by scholars (e.g., Thielemann and Armstrong, 2012) as well as advocacy organisations including various NGOs (e.g., Amnesty International, 2010; HRW, 2015; DRC, 2018), ECRE (2018, 2020) and UNHCR (August 2017). On one hand, some of the criticisms focus on the risk of violation of the *non-refoulement* principle of the asylum seekers and the core principle concerning the selection of the country where the asylum seeker wants to live. On the other, it is criticised due to distribution of disproportionate responsibility for the bordering countries such as Spain, Malta, Greece, and Italy. Despite the goal of responsibility and burden sharing within the frame of the CEAS according to the Article 80 of the TFEU, the Dublin system does not provide equitable distribution of responsibility and obligations across the Member States. For this reason, the New EU Pact on Migration and Asylum announced on 23 September 2020 by the European Commission ends the implementation of the Dublin system and brings a different solidarity mechanism within the EU Member States with the promises of “rebuilding trust” and confidence between the Member States for a “predictable and reliable management system” (European Commission, 23 September 2020).

The importance of the Dublin system for the Greek asylum regime is not limited with the aforementioned criticisms. Due to the lack of an effective protection, Greece was

not able to provide a full asylum determination procedure as decided by the ECtHR in 2011 (*MSS*. vs. Belgium and Greece) In this context, Greece was required to make further reforms in the asylum system but the ECtHR also indicated reforms in the Dublin system by haltering transfers of asylum seekers to Greece under the Dublin Regulation (Moreno-Lax, 2012).

3.2.4. Evaluation of the ECHR and the EU Law from the Perspective of Legal Pluralism

Together with developments in the EU law, such as the Treaty of Lisbon (2007), Charter of Fundamental Rights of the European Union (2007) the amendments in the Treaty on the Functioning of the European Union (TFEU) and in the Treaty on European Union (TEU), the hierarchy between the European and international legal orders started to be an important inquiry for the European and international lawyers (Barber, 2006; Besson, 2009). In particular, the areas that require more contact between the EU law and the other bodies of the international and regional legal orders have gained importance. The fundamental human rights, asylum law, law of the sea, environmental rights, and labour rights can be considered some of these areas (Besson, 2009; p. 248).

In this context, the case of *Kadi* in front of the Court of Justice of the European Union (CJEU) (2008, C-402/5) brought vital discussions concerning the hierarchy between international law (in this case, the UN Security Council), and the norms and principles of the EU law before adoption of the Treaty of Lisbon. In this case CJEU followed a dualist approach and decided that the CJEU can review the lawfulness of the UN Security Council Resolutions in accordance with the EU law. Nichoas Barber (2006) and Samantha Besson (2009) who largely discussed the implications of the ruling of *Kadi*, agree that the presence of legal pluralism can be considered as a good basis to describe the relationship between the European legal order and the national legal orders of the Member States. Nevertheless, it does not constitute an appropriate model for the relationship between European and national law, and international law due to

the classical hierarchy of norms[12] (Barber, 2006, p.327; Besson, 2009 p. 264). Both scholars draw attention to the "overlapping" situation of the different legal orders as a main feature of legal pluralism. In that sense, they separate it from the formal ranking of the hierarchy of legal norms and sources in which the fundamental rights precede over national law (Barber, 2006 p. 312-217; Besson, 2009 p. 259). When the Lisbon Treaty entered into force in 2009, it made the EU's commitment to the fundamental rights more explicit by re-affirming the fundamental rights as the general principles of the EU law, accepting the Charter of Fundamental Rights as a binding legal instrument and acceding to the ECHR (Costello, 2015).

Following the adoption of the Charter of Fundamental Rights and the Lisbon Treaty, the risk of competition of authorities between the EU law, international legal order (UN treaties), and the ECHR has emerged in the protection of fundamental rights (Besson, 2009, p. 248; Di Federico, 2011, p. 15). First to note that ECtHR does not have direct jurisdiction to review the EU law or acts. Secondly, even though the EU Member States are all High Contracting parties of the Council of Europe (CoE), the hierarchical position of the status of ECHR varies among the different EU Member States. For instance, while the ECHR's status is at the constitutional rank in Austria and the Netherlands, it has a super-legislative ranking in Greece and Belgium, and a legislative rank in Denmark (Bourgeois, 2016). Therefore, there are different implementations in the cases of the conflict of norms between the national law and the ECHR. In addition, all EU Member States are required to fully comply with the EU law, and in the cases of conflict between the EU law and the national law, the EU law precedes over the national. Accordingly, the EU law has the primacy over conflicting situations. The problem is nevertheless arisen when the national law originating from the EU law conflicts with the ECHR. The ECtHR can assess the national provisions or practices that are originated from the EU law. Therefore, an EU Member State may

[12] Hans Kelsen was a European legal philosopher who developed the concept of the hierarchy of norms. According to his theory, a legal system is constituted of a hierarchy of norms. While the national constitution and treaties related to the fundamental rights are on the top (fundamental level) of the hierarchy pyramid, national and local laws form the middle level (legal level) and judgements, regulations, etc take place in the base level. For details please see, H. Kelsen (1945). General Theory of Law and the State, trans. A. Wedberg, Harvaed University Press.

break a breach of the ECHR while implementing an EU law. The co-existence of three legal orders in the protection of human rights leads to complex interactions among the judiciary systems (Di Federico, 2011, p. 26). This category of overlapping legal orders is approached by the constitutional legal pluralism.

3.3. Refugee Protection Regime in Greece

3.3.1. Background

Starting from the late 1980s, Greece started to receive a wide group of migrants including co-ethnic returnees,[13] refugees and immigrants from the former Soviet Union, and also from the Balkan region (especially from Albania). In the following years, new irregular migrant groups from Southeast Asia (Bangladesh and Pakistan) and Sub-Saharan Africa began to arrive in Greece. According to Triandafyllidou (2009, p. 159-160), the Greek migration policy in this period has two phases: the early period covering between 1991 and 2001 and the second phase between 2001 and 2009[14]. With the adoption of the law 1975/1991 entitled "Entry-exit, sojourn, employment, deportation of aliens, procedure for recognition of alien refugees and other provisions", the first phase was mainly formed by the restriction of migration policies that facilitated expulsions (Triandafyllidou, 2009, p. 160; Papageorgiou, 2013, p. 77). Since the law did not respond to the necessities of the thousands of irregular migrants present, coming from different routes including the Northern borders with Albania and Bulgaria, the Aegean islands or Crete, and overstayed migrants who arrived at the airports with touristic visa, the first regularisation programme began in

[13] The concept of "Ethnic Greeks" defines people who claim Greek descent based on *jus sanguinis*. Greece allowed the immigrants claiming Greek descent to stay in Greece without documentation under the Law 2130 of 1993 that frames the concept of "repatriated Greeks (*palinnostoundes*)". Mostly it was used for the arrivals of ex-Soviet Greeks. However, starting from 2000, some of the ex-Soviet Greeks and the returnees from other countries such as Germany received *homogeneis* cards that provide privileged status to the ethnic Greeks in immigration process (see Voutira 2004-3).

[14] In her article dated in 2009, she mentions "the second phase covering the period between 2001 and today" (p. 160). Nevertheless, taking into consideration that the new law of 3907/2011 was adopted in 2011, that phase can be prolonged to 2011 instead of 2009.

Greece at the end of 1997 with two presidential decrees 358/1997 and 359/1997. Despite the insufficiencies of the provisions, they showed the further need for more comprehensive legislation to regularise migration (Triandafyllidou, 2009, p. 165; Papageorgiou, 2013, p. 78).

The second phase of migration policy in Greece started with the acceptance of the law 2910/2001 named "Entry and sojourn of foreigners in the Greek territory, naturalisation and other measures". On one hand, this law was presented as an act to fight against the irregular migration, on the other hand, it was seen as a step for the Europeanization process of Greek migration policy in line with the EU migration legislation. However, according to Sitaropoulos (2002, p. 22, 30), it was still behind European standards for human rights and migration policy mainly because of the restrictive measures, partly discriminatory regulations and practices (e.g., for family re-unification), and arbitrary administrative decisions including deportations. In the beginning of 2000s, not only the law, but also the practices were not fulfilling the international human rights standards as the Council of Europe, UNHCR, and right based NGOs such as Amnesty International and Human Rights Watch heavily criticised in their various reports (AI 2008; HRW 2008; UNHCR December 2009; ECRI 2009). In this period, fundamental problems caused by the lack of protection in the asylum determination system and denials of the right to effective appeal, as well as the systematic violation of the non-refoulement principle were repeatedly highlighted. According to the report prepared by the European Commission against Racism and Intolerance (ECRI) (2009, prg 131), in 2007, only 140 persons being granted refugee status and 23 receiving humanitarian protection out of 27,140 cases that were examined both first instance and on appeal results. This number is extremely low that shows the practice of Greek authorities in order not to grant international protection despite the harmonisation process of the national legislations with the EU. Alongside the very low recognition rates, the securitization of the borders against the irregular migration became more and more visible in this period. FRONTEX - European Border and Coast Guard Agency- started joint operation named Poseidon in the Greek territorial waters, and on Greek-Turkish land borders in June 2006 with the

aim of “risk assessment and/or threat analysis at the external borders”. In the scope of this operation, FRONTEX was authorised to “detect” undocumented migrants who try to enter in the EU territory (FRONTEX 2006, p. 11). Despite all these violations and warnings in the relevant reports, asylum seekers continued to be transferred to Greece from the other EU countries in frame of the Dublin II System.

Between 2009-2011, the Eastern Mediterranean route between Turkey and Greece became more preferable for irregular migrants rather than the older routes such as Spain-Morocco and Libya-Italy or Malta. Hence, the border controls increased notably. Alongside the Greek government’s initiative, the European Commission’s aimed to regularise border control procedures in the Member States in compliance with the Schengen Agreement. Moreover, upon the request of Greece, in addition to the Poseidon operation, the Rapid Border Intervention Teams (RABIT) was deployed at the Greek-Turkish land border to decrease the irregular entries. Meanwhile, FRONTEX increased the numbers of personnel in Poseidon operation, as well as provided operational and technical expertise to the national authorities such as the police and the Coast Guard (European Commission MEMO/11/130). Together with the increase in irregular crossings, economic crisis and the lack of an efficient protection system in Greece and the inability of irregular migration governance has resulted with a humanitarian crisis (Triandafyllidou, 2014a, p. 4). This period is important in order to understand the continuation of the precarious situation of the asylum seekers and refugees in Greece even before the so-called “refugee crisis” in 2015 and the gradual involvement of the EU for the migration governance in Greece. In her awe-inspiring book of Heath Cabot (2014, p. 6), she highlights that the “crisis” does not indicate a turning point or critical shifts as its original meaning but the narratives of “crisis” in European and global level “re-insribe longstanding, even structurally entrenched histories of exclusion and marginality”.

3.3.2. The Developments Between 2011- 2015

An Afghan asylum seeker, M.S.S., after leaving Kabul in 2008, and travelling via Iran and Turkey, arrived in Lesvos on 7 December 2008. Here, his fingerprints were taken and he was detained for a week. As explained in detail in the Court decision (ECtHR - *M.S.S. v. Belgium and Greece*, 2011), after his detention, he was released with an order to leave Greece and he never applied for asylum in Greece. Through France, he arrived in Belgium where he applied for asylum with no identity documentation. Nevertheless, his fingerprints were found in EURODAC. According to the Dublin II Regulation (Regulation 2003/343/CE), the asylum seekers have to apply for asylum in the country they enter to the EU. In case that they do not apply for protection in the entrance country and transition to another Member State, they are subject to removal to the entrance country which is authorised for processing their asylum application. Despite M.S.S' objections against the deportation to Greece because of the difficulties to access the asylum procedure and poor living conditions, and UNHCR's letter to the Belgian Minister for Migration and Asylum Policy concerning the insufficiencies in the Greek asylum system and the reception conditions, he was removed back to Greece by the Belgian authorities. Finally, his lawyer brought his case to the ECtHR based on the complaints concerning his expulsion by the Belgian authorities and the treatments in Greece. The ECtHR decided that Greece violated the Article 3 of the ECHR which prohibits torture, inhuman or degrading treatment or punishment, due to the detention conditions and living conditions, and the Article 13 on the right to an effective remedy taken in conjunction with Article 3 due to the deficiencies in the asylum procedure. Belgium was also convicted for the violation of Article 3 by knowingly exposing M.S.S. to the risks emerged by the deficiencies in the asylum procedures, living and detention conditions that caused the degrading treatments in Greece. Again, the Article 13 was found violated in conjunction with the Article 3 because of the lack of the effective remedy against the expulsion order in Belgium (*M.S.S. v. Belgium and Greece*, ECHR 2011).

Based on this decision and the reports prepared in this period, it can be argued that despite the harmonisation process of the national legislation with the EU standards, the implementation was not aligned with these standards and that the gap between the law and its practice was getting bigger. This decision had significant impact on Greek asylum system, as well as the Common European Asylum System (CEAS) for several reasons. First of all, the Court decision proved that the reception and detention facilities such as provision of clean water, sanitation, and beds or mattresses in Greece were insufficient to provide standard conditions. Unsanitary conditions in detention and reception centres directly referred to the malpractices in refugee protection in Greece. By taking into consideration the EU Directives that had been transposed into the Greek domestic law, it was evident that the reception conditions in Greece did not comply with the Reception Directive (2003/9/CE) and failed to implement the standards. Secondly, procedural challenges for accessing the asylum application were an important indicator for the dysfunctions of the asylum system in Greece. Therefore, Greek asylum system was not compatible with the standards in the Dublin system. Thirdly, by deciding both for Greece and Belgium by breaching the Article 3 due to the poor living conditions in Greece, the Court showed that the socio-economic conditions of asylum seekers are also under the responsibility of the states, and they may have extra-territorial effects (Clayton, 2011, p. 760-766). Last but not least, while in the frame of the Dublin II Regulation it was presumed that the protection standards in all EU Member State were adequate for transferring asylum seekers to the first entry states, the case of M.S.S proved the regulation's limitations and recognized exceptions for the implementation of protection standards compatible with the European standards (Moreno-Lax, 2012, p. 29).

Following the case of M.S.S., the Greek government adopted a National Action Plan on Asylum Reform and Migration Management supported by the European Commission (EC), the European Asylum Support Office (EASO), and the UNHCR (UNHCR 2014). In the scope of the Action Plan, together with a strategic framework for migration management, an institutional reform was announced including the Law of 3907/2011 that established three main services -the Asylum Service, the Appeals

Authority and the First Reception Service. The First Reception Service (FRS) started its functioning in 2013 with the purpose of the reception of the third country nationals who irregularly arrived in Greece (Dimitriadi and Sarantaki, 2019, p. 6).

Meanwhile, as the number of arrivals was increasing, the rise of far-right Golden Dawn was also influential on the restrictive policies of the New Democracy government during this period. The government started to implement three major ideas: building barbed-wire fence in Evros, the Operation *Aspida* (Shield), and the Operation *Xenios Zeus*[15]. The government's initial idea concerning the construction of a fence in Evros along the 206 km land border with Turkey. However, since the border between Turkey and Greece in this region is naturally divided by river, the offer was to build a fence only around 10 km on the land band where migrants cross the border by walking. The project of the construction took place between October 2011 and December 2012 and costed more than EUR 3.16 million (MIDAS Report, 2014, p. 26-27). Before completion of the barbed-wire fence in Evros, in order to patrol the borders, the operation *Aspida* was put into effect with the deployment of 1,881 police officers to the 206 km river line in August 2012. Simultaneously with the operation *Aspida*, Operation Xenios Zeus was launched in the Attica region with mobilization of 2,000 police officers that resulted with massive detentions of irregular migrants (MIDAS Report, 2014, p. 28-29).

In the meantime, the migration trends were changing as well. Firstly, during this period there was a shift in the migratory route from land border to sea border as a result of the Rapid Border Intervention Team (RABIT) deployment in 2010. The number of arrivals by sea in 2014 reached over 40,000 while it was only 11,447 in 2013 (UNHCR, 2014). Another important change was concerning the nationality profile of the persons arriving in Greece changed since 2012. According to the UNHCR statistics, while

[15] It is ironic that the name of the operation was named as "Xenios Zeus". In Ancient Greece, the god Zeus was also called Xenios Zeus to refer his role as protector of travellers. According to the mythology, if any stranger comes to your door and asks for your help, you should not have refused him/her because s/he could be Zeus himself. This belief was embodied with Greek hospitality to strangers or travellers (Greek Reporter, 21 August 2022).

Pakistanis, Bangladeshis, Moroccans and Algerians were the majority of the arrivals in 2010-2011, Syrians, Afghans, Somalis and Eritreans composed 91 per cent of those arrived in 2014 (See Table 1). At this point, the change in the nationality profiles is not just important to show the migratory trends of the period but it is important to see how the new system and old system were implemented differently based on the nationality criteria during the asylum procedures.

Table 1: Arrests at the Greek-Turkish land and sea borders between 2010 and 2013

Year	Land borders (Evros region)	Sea borders (Islands of the Aegean Sea)	Total	Top 5 nationalities (all arrests in the country – excluding Albanians)
2010	47,088	6,204	53,292	Afghanistan, Pakistan, Palestinians, Algeria, Somalia
2011	54,974	1,030	56,004	Afghanistan, Pakistan, Bangladesh, Algeria, Morocco
2012	30,433	3,651	34,084	Afghanistan, Pakistan, Syria, Bangladesh, Algeria
2013	1,122	11,447	12,569	Syria, Afghanistan, Pakistan, Bangladesh Somalia

Source: Ministry of Public Order and Citizen Protection via UNHCR (2014), https://www.refworld.org/pdfid/54cb3af34.pdf.

3.3.3. The Developments between 2015 and the EU-Turkey Statement of March 2016

While the previous phases concerning the asylum regime in Greece were mostly separated according to the legislations or the reforms in the institutional system,

starting from 2015, the asylum regime in Greece started to be shaped by the dramatic changes in the field and the political decisions to respond these changes. On January 2015, SYRIZA, a radical left party, won the elections against the New Democracy and came into power. The political approach of SYRIZA towards migration was different than the previous government. Together with changes in the discourse, SYRIZA government also took action in the beginning of 2015. Although they did not take the fence in Evros down, they ended the Operation Xenios Zeus. Furthermore, The Ministry of Migration Policy was established, and a famous human rights lawyer Tasia Christodoulopoulou was nominated as the Deputy Minister and she announced to shut the closed detention centres down while proposing to transfer the migrants to "open centres of hospitality" such as empty state buildings, vacant apartments, etc (Nestoras, 2015, p. 16).

Despite of all these new policies being developed in the beginning of 2015 with the new government, the most important incident that distinguishes the year 2015 from the previous period is the sudden increase of the number of arrivals by sea that reached over 900,000 people while 3,550 drowned in the Aegean (UNHCR 2015). This was not only a sharp shift from land border arrivals to sea arrivals in Greece but also shift in migratory routes from Central Mediterranean route (Libya-Italy) to Eastern Mediterranean route (Turkey-Greece) (Alexandridis and Dalkiran, 2016). As a consequence of this, a number of political decisions made in this period re-shaped both the Greek asylum regime and the CEAS. The European Agenda on Migration adopted by the European Commission in May 2015 set the main policy to respond to the increased migration flow. From FRONTEX operations to reception centres in Greece and to resettlement programmes, many measures were taken by the European Commission which had direct impact (and still do) on the protection of the refugees.
In frame of the European Agenda (2015, p. 3), the budget for the FRONTEX joint operations Triton (between Italy and Libya) and Poseidon was decided to triple, in addition to be supported with assets such as ships and aircrafts. In order to prevent smuggling, Europol established joint maritime information (JOT MARE) to pool the data for the identification.

With the adoption of the European Agenda (2015: 6), the Commission accepted the "hotspot" approach where "the European Asylum Support Office, FRONTEX and EUROPOL on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants." For that purpose, hotspots -also called Reception and Identification Centres (RICs)- were decided to be established in Italy (Lampedusa, Pozallo, Porte Empedocle, Augusta, Taranta and Trapani) and in Greece (Samos, Lesvos, Chios, Kos, and Leros). According to the Statewatch (2015, p. 2), the hotspot approach aims at providing "a platform for agencies to intervene, rapidly and in an integrated manner, in frontline with Member States when there is a crisis due to specific and disproportionate migratory pressure at their external borders, consisting of mixed migratory flows and the Member State concerned might request support and assistance to better cope with that pressure". In order to implement this approach, the European Union Regional Task Force (EURTF) was installed in the FRONTEX Regional Office in Piraeus for the coordination with other EU agencies such as EASO and EUROPOLl (Statewatch 2015, p. 9).

In addition to the hotspot approach, the Article 78(3) of TFEU was activated for Italy and Greece with the purpose of responding the emergency situation. According to the Treaty, in case that one or more Member State(s) are "confronted by an emergency situation characterized by a sudden inflow", necessary provisions may be taken. Within this scope, a relocation program was set up by Council Decisions 2015/1523 and 2015/1601 for two years in order to distribute the persons in clear need of international protection. It was designed to relocate in total 160,000 asylum seekers from Italy and Greece to other Member States while 66,400 to be relocated from Greece. Accordingly, all Member States were asked to participate to the temporary re-distribution scheme based on criteria such as GDP, size of population, unemployment rate, and past numbers of asylum seekers and refugees. Nevertheless, only 30,836 places were officially offered to Greece by the Member States (AIDA, Country Report 2017).

The Relocation Programme took place between September 2015 and September 2017. According to the statistics provided by Asylum Information Database (AIDA), within this programme, 21,731 refugees were transferred by 28 January 2018. As it can be understood from the figures, only one third of the initial target could be achieved by the end of the programme. With the decision given on 2nd April 2020, Court of Justice of the European Union (CJEU) notified that Poland, Hungary, and the Czech Republic failed to fulfil their obligations under EU law by refusing to join in the Relocation Programme (ECLI: EU: C: 220: 257).

Alongside these developments concerning the EU governance, increasing number of refugees and migrants were using the Balkan route by walk after arriving in Greece to reach their destination countries (See Map 1). In this period, after arriving in the Greek islands, many refugees and migrants were crossing to Piraeus, then through Athens and Thessaloniki, they were arriving in Idomeni on the border with Northern Macedonia. In Idomeni, there was the largest makeshift camp since World War II, until it was closed on April 2016. In Idomeni, different activist groups, UNHCR and MSF were working to respond to the basic needs of refugees. While the passage was free in the summer of 2015, on 18 November 2015, Northern Macedonia together with Serbia, Croatia and Slovenia decided to close their borders to anyone except those who had official documents to prove that they were originated from Afghanistan, Iraq or Syria. With this sudden change in the border policy, thousands of refugees were trapped in Idomeni (Amnesty International, 2016, p. 9).

Map 1: Western Balkan Route of the Migratory Movement in 2015

Source: ECHO (2015), Western Balkan Route – Refugee/Migration Crisis. Available at https://reliefweb.int/map/world/western-balkans-route-refugeemigration-crisis-echo-daily-map-03092015.

In the period of January 2016 and April 2016, I had opportunity to make first-hand observation concerning the refugee movement and the impact of the border policies on their (im)mobility. Pilot field research[16] that I was involved in both in Istanbul and Athens in January 2016 provided me to access a number of activists and volunteers who were assisting refugees by distributing food and sanitary items. Even though it was a cold winter, after their arrival in Pireaus from the hotspot islands (mostly from

[16] I conducted the pilot field research within the frame of the Winter school of "Migration in the Margins of Europe: From Istanbul to Athens" organized by the the Institute of Migration and Ethnic Studies of the University of Amsterdam, the Department of Social and Cultural Anthropology of Vrije Universiteit Amsterdam, the Koç University Migration Research Center and the Netherlands Institutes in Greece and Turkey between 4 – 31 January 2016.

Lesvos) many refugees had to walk from Pireaus to the center of Athens (around 10 km). Some of them were picked up by the buses. Omonia Square and Victoria Square became the spaces of gathering not only for refugees but also for those who wanted to be in solidarity with the refugees. The ones who were not able to afford an accommodation elsewhere were either directed to the "squats" in different locations of the city (e.g., in Exarcheia or close to Platia Amerikis) by activists or grassroot organizations. Others might even stay on the streets close to these two squares.

The continuation of the mobility was mainly based on the information coming from the border zone between Greece and the North Macedonia. If the borders were open, refugees were moving towards Idomeni with the purpose of crossing the borders and to continue their journey on the Balkan route. Idomeni is a small village close to the border zone which transformed into a semi-informal refugee camp in that period. The North Macedonia had changing policies for opening/closing its borders to the refugees. Therefore, refugees' decisions had to be re-shaped on the daily basis, even sometimes hourly basis depending on the border policies of the North Macedonia during January 2016.

During one of my visits in Thessaloniki in February 2016, volunteers working in Idomeni were sharing their experiences about the poor conditions in the camp area which worsened with the heavy winter conditions and rain. Yet, the Idomeni camp was still getting more crowded with the hope of continuation the journey. Nevertheless, Northern Macedonia started to follow a more restrictive policy. While certain nationalities such as Iranians and Moroccans were refused in the first place, Afghans, Iraqis, and Syrians were accepted if they were carrying their official ID with them. On 9 March 2016, the borders between the North Macedonia and Greece were completely closed. As a result of this, the Idomeni camp became overcrowded since the refugees stayed in limbo. They could not go forward, they could not come back. In the camp area, alongside the UNHCR, a number of NGOs such as Save the Children, METAdrasi, Praksis, Arsis served to facilitate the lives of refugees during their stay in the camp. Alongside the infrastructural problems -shelter and WASH facilities-, the

bad weather conditions were putting more risk for health conditions - in particular for the vulnerable groups including pregnant women and children (MSF 2016) that even resulted with deaths. As reported by MSF as well, more than 10,000 people were staying in this transit camp which was not able to serve such big population. When the EU-Turkey Statement of March 2016 was adopted, the immobility of refugees became more visible. On one hand, the refugees stayed in limbo in the hotspot due to the geographical restriction on the asylum seekers as it is argued in detail in the next section (Section 3.3.4). On the other hand, the ones who were already on the move stuck in Idomeni camp. While the hotspots continued to serve as a space of containment, at the end of May 2016, Greek authorities evacuated the Idomeni camp and moved the refugees in newly established official camps.

3.3.4. The EU-Turkey Statement of March 2016 and Geographical Restrictions on the Asylum Seekers

Following the high number of crossings from Turkey to Greece in the summer of 2015, starting from November 2015, the Members of the European Council and Turkey had three meetings for addressing irregular movements. As a result of these meetings, the EU-Turkey Statement was announced with a press release by the European Council on 18 March 2016 in order to end the irregular migration (European Council, Press Release on 18 March 2016). For this purpose, they agreed on several elements. There are in particular three important action points related to Greece.

First action point involves that the parties decided to return all new irregular migrants who crossed from Turkey to the Greek islands as from 20 March 2016. In this dimension involves two significant elements. First, with the decision concerning the return of all irregular migrants meant that Turkey was presumed as a "safe third country". Second element is related to the location of arrivals in Greece of irregular migrations. As confirmed as well during my interview with the EU Delegation in Turkey (Interview with E4 on 26 January 2021), Turkey only accepted the returnees from the Northern Aegean Greek islands, which was considered as a proof that they

crossed from Turkey. Irregular migrants who were in the mainland or other parts of Greece were excluded from this deal. In order to return more irregular migrants and to facilitate the return operations, the Greek government brought geographical restriction on the asylum seekers to ban travel from the hotspot islands until their asylum applications were concluded. Geographical restriction on the asylum seekers had further implications for the daily lives of refugees who stuck in the islands, for the host society due to the transformation of the islands, and for the asylum system that faced serious challenges to deal with the increasing applications on the islands.

Second action point was the creation of the 1:1 scheme. According to 1:1 scheme was accepted which foresaw for every Syrian who was returned to Turkey from Greek islands, another Syrian would be resettled from Turkey to the EU (European Commission, 15 June 2016). Selection of Syrians for the resettlement from Turkey was decided to be done according to the UN Vulnerability Criteria. In this context, 72,000 places were allocated for resettlement.

Third action point was concerning the prevention of the potential arrivals. In this context, Turkey would take necessary measures to prevent new crossings from sea or land routes and Turkey would be in cooperation with neighbouring states as well as the EU. This action point together with first one (recognizing Turkey as a safe third country) became the focal point of the debates over the Statement. Debates over being "a safe third country" is mainly based on respecting the *non-refoulement principle*, providing a fair and efficient asylum processes, and respecting fundamental rights (UNHCR, 2001).

With regards to the *non-refoulement* principles Turkey followed an open door policy for Syrians between 2011 and 2016, which led Turkey to host the largest refugee population in the world (Şimşek, 2017). Even though Turkey ratified the 1951 Refugee Convention and its 1967 Protocol, it maintains "geographical limitation" only to people originating from Europe (UNHCR, June 2014). Nevertheless, Turkey introduced a temporary protection regime for people fled from Syria. The temporary

protection regime had initially unclear legal basis since it was described as a "Guideline with regard to the reception and admission of stateless and Syrian nationals" by the Turkish Disaster Emergency Management (AFAD) in 2012. The temporary protection regime in Turkey gained legal clarity following the adoption of Turkish Law on Foreigners and International Protection and Regulation No. 29153 on Temporary protection which came into force in 2014 (Ineli-Ciger, 2017). Due to the shortages of temporary protection in comparison with a refugee status notably the temporary characteristic of protection, lack of an international instrument on temporary protection, not granting the 1951 Refugee Convention's full protection (e.g. naturalization), and the obstacles in practice such as access to formal labour market, there have been debates about accepting Turkey as a safe country.

The Statement has been heavily criticised by right based organisations and scholars for the reason that it would lead to the violation of the *non-refoulement principle* (CoE, 19 April 2016; HRW, 14 November 2016; AI, 20 March 2017). The inaccessibility of asylum seekers to an international protection in Turkey due to the geographical limitation on the 1951 Refugee Convention as mentioned above is one of the main arguments with regards to the indirect violation of *the non-refoulement principle and incompliance with the EU law (CoE Parliamentary Assembly, Resolution 2109(2016)*. Another important point is that Turkey has been criticised with the violations of human rights by the EU for years, in particular increasingly in the last decade (e.g. European Commission Report on Turkey released on 10 November 2015). Since ensuring fundamental rights is one of the criteria for being a safe third country, returning refugees to a country where there are systematic violations of human rights would mean to put refugees in a potentially harmful situation.

Despite the fact that it was noted that the international law and the non-refoulement principle will be respected during the return operations, during the period of the implementation of the EU-Turkey Statement, the automatization of rejection decisions for Syrians proved the concerns over the implementation of the Statement rights. In the joint statement of International Rescue Committee, Norwegian Refugee Council

and OXFAM (17 March 2017), it is highlighted that after the Statement, the "admissibility" procedure that EASO and Greek asylum service conduct, has no longer been assessed on a person's individual need for protection, but they were questioning whether that person can be returned to Turkey. Hence, one of the core/fundamental principle of refugee regime has been violated by neglecting the individual assessment of the asylum seekers. In align with the joint statement, Chapter 5 Section 2 reveals the automatization of decisions, rather than processing individual assessments for asylum seekers. In that sense, country of origin has a greater role to decide whether that person can be sent back to Turkey or not as Turkey was accepted as a safe country for Syrians. At this point, it is also remarkable that EASO and Greek asylum service had different approaches towards non-Syrian asylum seekers in that period. The special report prepared by the European Court of Auditors exposes that majority of the inadmissibility "opinions" given for non-Syrian asylum seekers by EASO were overturned by the Greek Asylum Service. This shows us that while the EU level agency recognized Turkey as a safe third country for non-Syrian asylum seekers, the Greek authorities only accepted Turkey as a safe country for Syrians[17].

Another important impact of the Statement was concerning the regulations and practices of the asylum applications in Greece. Following the Statement, Law 4375/2016 on the organization and operation of the *Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC* was accepted. First and the foremost implementation was bringing restriction on freedom of movement of the asylum seekers, in practice, the restriction was exclusively applied to the asylum seekers who arrived in the Eastern Aegean islands after the Statement (AIDA, Freedom of Movement: Greece, Updated on 30 May 2022). Together with this restriction, procedures for the asylum applications were separated based on the location between the islands and the

[17] This changed following the announcement of the Greek government on designating Turkey as a safe third country for asylum seekers from Syria, Afghanistan, Pakistan, Bangladesh and Somalia (ECRE, 11 June 2021).

mainland. While regular procedures continued to be implemented for those who apply for asylum in the mainland, the fast-track procedure started to be applied for those who arrived and stuck in the islands of the Eastern Aegean. The differences between the procedures and their impact on access to the asylum system in these two different geographical locations will be further elaborated in the Section 3.3.8.

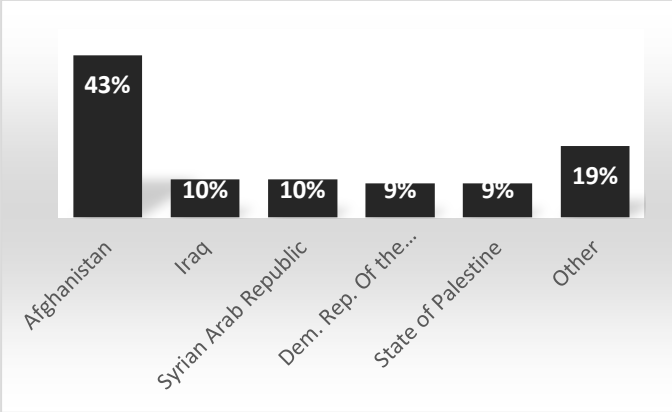
Furthermore, Greek authorities ceased transferring asylum seekers (except those examined under vulnerability criteria) from the hotspots to the mainland starting from 21 March 2016. Thereby, the hotspots became suddenly detention centres out of capacity with poor conditions and insufficient infrastructure facilities (Dimitriadi, 2015: 3). Just a year and a half after the adoption of the EU-Turkey Statement, the hotspot of Moria exceeded its capacity of 2300 with 5700 people[18] in November 2017 (MSF 2017). Due to the heavy violations of human rights in the hotspots, various reports have been coming out throughout the years published by different actors. MSF repeatedly drew attention to the limited access to healthcare, as well as to the further reduction of the provision for healthcare, particularly in Moria which is the biggest refugee camp in Greece that locates in Lesvos (MSF, 2017) (See Table 3, p.134). Following her visit, Dunja Mijatovic, the Commissioner for Human Rights of the Council of Europe, between 25-29 June 2018, she prepared a report to highlight the violence including gender-based violence, extremely poor living conditions, insufficient sanitation facilities, tensions between national or ethnic groups and many other problems in the camps (CoE, CommDH (2018)24). In parallel with this report, the Greek National Commission for Human Rights (GNCHR), an independent advisory board established by Law 2667/1998, expressed its concerns and asked for an urgent transfer of all vulnerable people from the islands to the mainland for safe and appropriate conditions, as well as for lifting the geographical limitation imposed on the asylum seekers that would help to de-congest the islands (GNCHR, Statement of 15 October 2018).

[18] This number drastically increased to over 20,000 people in the upcoming years as it is elaborated in the Chapter 4.

3.3.5. The New Democracy and New Migration Policies

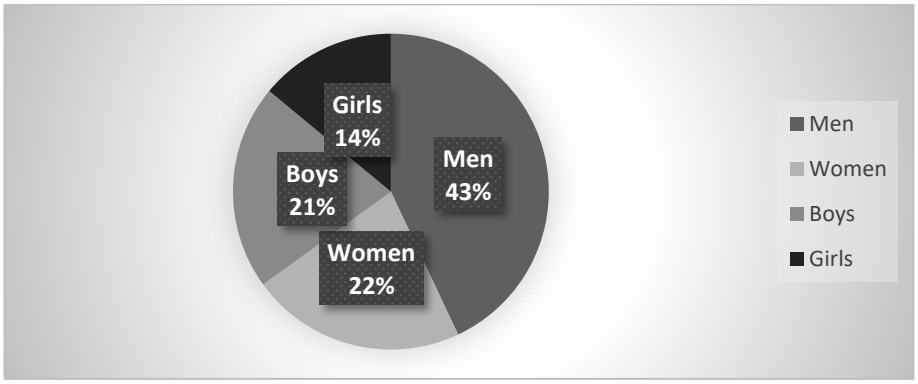
After the victory of the New Democracy (ND) against SYRIZA in the elections of July 2019, a new chapter for migration policies in Greece has started. When the ND took over the government, according to the UNHCR estimations there were 84,000 refugees and migrants who arrived and stayed in Greece since 2015-2016 flow (UNHCR, July 2019). While around 20,000 were residing on the Aegean islands, the rest was in the mainland. Both land arrivals and sea arrivals were in increasing trend during this period. Only in July 2019, almost 5,000 arrived by sea and 850 people crossed the land borders (UNHCR, July 2019). The majority of the population in the Aegean islands were from Afghanistan with 43% and followed by Iraqis (10%) and Syrians (10%) (Figures 1 and 2).

Figure 1: Country of origin of refugee and migrant population in Greece (July 2019)[19]



[19] Source: Prepared by the author based on the statistics provided by UNHCR, https://data2.unhcr.org/en/documents/download/70445.

Figure 2: Demographic characteristics of refugee and migrant population in Greece (July 2019) [20]



The new center-right government of ND started to implement its restrictive migration policies immediately after coming to power as they promised before the elections. As a clear change in the narrative of SYRIZA government, PM Kyriakos Mitsotakis claimed that the newcomers were not refugees but economic migrants, so they should not be granted international protection (Praktoreio Eidiseon, 4 October 2019). In parallel with this statement, the Citizens' Protection Minister Michalis Chrysochoidis called the rising number of migrant and refugee arrivals as "unmanageable" and "explosive" (Ekathimerini, 6 November 2019). This change did not only occur in the discourses, but it stated to be visible in the actions that the government took from the beginning of coming into power. The first action of the government was cancelling the social security number (AMKA[21]) given to non-EU national migrants, refugees and asylum seekers including unaccompanied refugee children (Keep Talking Greece, 13 July 2019; Circular of the Ministry of Labour and Social Affairs, No. 80320/42862/Δ18.2718, 1st October 2019). With the cancellation of AMKA, thousands of people were not allowed to access healthcare services. In the meantime, as one of the pre-election promises, police started to conduct operations in order to

[20] Boys and girls refer to the minors under 18 years old. P
repared by the author based on the statistics provided by UNHCR, https://data2.unhcr.org/en/documents/download/70445.

[21] Abbreviation is for "*Αριθμός Μητρώου Κοινωνικής Ασφάλισης*".

evict refugee squats in Exarcheia, Athens throughout August 2019. Another important institutional change was the abolishment of the Ministry of Migration Policy which was transformed into a General Secretariat for Immigration Policy, Reception and Asylum under the Ministry of Citizen Protection (To Vima, 9 July 2019). 6 months after this decision, the ND government decided to re-establish the Ministry of Migration and Asylum (Reuters, 15 January 2020). On late October 2019, a new strategy of the ND government including fastening relocations, establishment of closed detention centres and a new asylum law which entered into force in January 2020.

These developments in the domestic politics on migration were leading to politicisation of migration in Greece. With the adoption of the new law, starting from January 2020, further the restrictions were brought to the asylum seekers. For instance, post-traumatic stress disorder PTSD was left out from the criteria of vulnerability (AIDA 2021). This decision directly affected directly affected thousands of asylum seekers' asylum procedures in the hotspots and their living conditions since they were no longer benefitted from special care belonging vulnerable groups (AIDA, Identification: Greece, Updated on 30 May 2022). Another change came with the new law was the expansion of the geographical restriction implemented on asylum seekers. Before the new law, the vulnerable groups were exempted from the geographical restriction, and they were able to leave the islands to go to the mainland Greece. This was particularly important for several reasons including better access to the basic services and social security, anonymity in the city life, and so on (please see Section 5.4.3). It had also impact on the functionality of the asylum services by being a way of de-congestion of the hotspot islands. This decision of expanding the geographical restriction on asylum seekers led the hotspots to reach at their peak for overcrowding. For instance, there were 19.200 registered camp residents in the hotspot of Moria, which has the capacity of 2.840 (RSA, 24 January 2020).

While the restrictive policies were ongoing under the anti-migrant wind in the domestic politics, 27 February 2020, Turkish authorities stated that Turkey's western

borders would open. Following this announcement, thousands of people including children and families from Afghanistan, Syria, Iraq and many other countries went to the land borders to cross to Greece and Bulgaria. The next day, PM Mitsotakis responded to this announcement on Twitter: "Significant numbers of migrants and refugees have gathered in large groups at the Greek-Turkish land border and have attempted to enter the country illegally. I want to be clear: no illegal entries into Greece will be tolerated." (Greece Greek Reporter, 28 February 2020). In line with this statement, Greek police officers and soldiers attacked irregular migrants with tear gas, water cannons, plastic bullets who tried to cross the land border while the ships and boats were prevented to arrive to the islands by both the Greek coast guards and some of the local people (Amnesty International 2020, 4). In the meantime, London-based research group Forensic Architecture released a video on the killing of a 22 years' old Syrian refugee by the Greek fire at the land border with Turkey (Und- Athens, 5 March 2020).

Alongside the ill-treatments against the refugees, the most crucial step was taken with an emergency legislative Act on 2 March in 2020 that suspended the asylum applications for a month. Together with this suspension, PM Mitsotakis demanded to activate 78(3) of TFEU. The demand of the Greek government for activation the provisional measures against the emergency situation including the deployment of RABIT was welcomed by the Presidents of the EU institutions as understood from their visit at the land border with Turkey and their common statement following this visit on 3rd March 2020 (Press Statement – Greek Prime Minister Website, 3rd March 2020).

In addition to the suspension of the asylum procedures, during the period of effect of the Decree, asylum seekers arriving to islands were kept in various detention sites including the Rhodes Hellenic Navy vessel at the Port of Mytilene. Those who arrived on Leros (approximately 100 asylum seekers), and Samos (approximately 250 asylum seekers) were held in the Coast Guard station (RSA April 2020: 3). Meanwhile, two new detention facilities were established in the mainland in the north of Athens in

order to keep the new arrivals until they are returned to Turkey (Ministry of Migration and Asylum, 14 March 2020).

Taking into consideration the suspension of the asylum applications and arbitrary detention under inhuman conditions, international refugee law, EU law and domestic law were all violated in this case. Even though the Greek government announced the suspension of the asylum applications by referring to the Article 78(3) of TFEU, there is no legal basis for suspension of asylum applications or limiting right to individual assessment in the EU law or in international human rights law. Despite the fact that the European Commissioner for home affairs Ylva Johansson stated the EU law does not permit such suspension (The Guardian, 12 March 2020), and the UN Special Rapporteur on the human rights of migrants (OHCHR, 23 March 2020). explicitely warned Greece to violate the 1951 Refugee Convention, as well as international human rights law, the asylum applications remained suspended for over a month. Persistence of the Greek authorities to suspend for asylum seekers to access asylum rights despite the binding laws demonstrate two issues with regards to legal pluralism. First, in the cases of overlapping legal orders, vague expressions in legal regulations (here in the Article of 78(3) TFEU), and lack of coordination among the authorities, political will may benefit from the cracks to prioritize its political interest over law even if it causes the violation of human rights. Second issue is about the lack of mechanisms to prevent such violations. Despite the fact that the proliferation of treaties and regulations with the purpose of strenghtify the human rights protection including refugee rights, an unlawful act -suspension of asylum applications- could not be prevented to be implemented.

Around mid-March 2020, the outbreak of the Covid-19 brought questions about the detention of the newly arrived asylum seekers, as well as those living in the refugee camps in the islands. However, despite the Covid-19 measures and suspension of the readmissions to Turkey within the frame of the 1:1 scheme of the EU-Turkey Statement, the detention of the asylum seekers including unaccompanied children and pregnant women continued in these pre-removal detention sites (Kathimerini, 23

March 2020). In April 2020, with the end of the effect of the Decree, the asylum seekers under detention were informed that they would be released from detention; however, in practice the detention was not over by the end of April (RSA, April 2020, p. 4).

As aforementioned, Greece has been criticised for the poor conditions in the refugee camps in the Aegean islands for long time. In particular, as a result of the EU-Turkey Statement of 2016, with the geographical restriction, the asylum seekers were in the camps which led to overcrowded facilities. According to the latest numbers given by the HRW (22 April 2020), as of April 2020, the population in the camps of the Aegean islands reached to 34,875 whereas the total capacity is around 6,000. The NGOs such as HRW and MSF have been calling the authorities to safely transport the people starting from the ones at greater risks of chronicle illnesses, elderly, children, and pregnant women. In frame of the measures for Covid-19, a "shielding" programme was implemented by the UNHCR. In this context, the asylum seekers at the risk of Covid-19 were transferred from the RICs into ESTIA-programme apartments and/or hotels on the islands or the mainland (UNHCR, 16 June 2020). Starting from May 2020, recognized refugees living in Moria RIC were asked to leave the island and go to the mainland. Nevertheless, the government did not announce any accommodation plan for those who would leave the camps and arrive in the mainland. When this decision was made, there were around 11,000 recognized refugees living in the reception facilities (Infomigrants, 9 June 2020).

On 2 September 2020, seventeen camp residents in the Moria hotspot were diagnosed with Covid-19. Following this, it was decided to put the entire camp in quarantine for two weeks until 15 September 2020. By 8 September, the number of people who were infected in the Moria hotspot rose up to thirty-five. Nevertheless, the night of 8 September the fire that burned the entire camp down rendered thousands of people homeless, including the ones who were tested positive (Migration and Health, Situational Brief, 22 September 2020). According to the statistics provided by UNHCR, there were 12,000 residents including 4,000 children were living in Moria when the fire started (UNHCR, 11 September 2020). Following the fire, a new site

was built on a former military shooting area despite the lack of infrastructure including the lack of drainage and sewerages systems. Similar with the previous camp in Moria, tents that were not suitable for winter were pitched on a location that was exposed to strong winds coming from sea (OXFAM International, 21 October 2020). Shortly after the Moria fire, the Greek and the EU authorites agreed to construct Multi-Purpose Reception and Identification Centres (MPRICs) with high security measures on five Aegean islands including Lesvos (IRC, 8 September 2021). Both the civil society actors and locals on the islands showed reaction to the construction of closed camps. Yet, it is expected to open the new camps in 2023 despite the reactions (InfoMigrants, 28 September 2022).

3.3.6. Overview of the statistics for asylum applications

The calculation of the number of asylum seekers is different between UNHCR and the Asylum Service. While the Asylum Service announces all the first instance applications, UNHCR calculates the number of asylum seekers in Greece based on their cash assistance programme[22]. In order to be accurate in numbers and rates (gender, recognition, etc), the official statistical data given by the Asylum Service are used in this sub-section. According to the statistics shared by the Asylum Service when I started my field work, there were 299,620 asylum applications between June 2013 and February 2020. UNHCR estimated 115,600 refugees and migrants as of 31 January 2020 who arrived with the flow of 2015-2016 and remained in Greece (Please see the Table 2; also the Table 4, p.140).

[22] The Greece Cash Alliance (GCA) is a programme for cash assistance to refugees and asylum seekers in Greece. It establishes a partnership between UNHCR, Catholic Relief Services, the International Rescue Committee, Mercy Corps, the International Federation of the Red Cross and Samaritan's Purse to harmonize provisions for cash assistance. The eligibility criteria are set by the Greek Ministry of Migration Policy. The eligible refugees and asylum seekers are enrolled in the proGres v4 database and they have to be physically present in the country to receive cash (Source: UNHCR, The Greece Cash Alliance. Available at https://www.unhcr.org/5a14306a7.pdf).

Table 2: Number of Refugees and Migrants Who Arrived in Greece with the flow of 2015-2016 and remained in Greece (31 January 2020)[23]

Mainland	Islands	Total
74,400	41.200	115,600

While 32.5% of the applicants were women, 67.5% of the applicants are men (Asylum Service, March 2020). There was no statistic provided for the vulnerable groups except the unaccompanied children. 32,7% of the total applications are submitted by the unaccompanied children, mostly by the age group of 0-13 years old (Greek Asylum Service, March 2020).

According to the data provided since 2013, the majority of the asylum applications has been rejected in Greece. While 84.5% of the applications were rejected in 2013, there is an increasing trend for recognitions throughout the time (Greek Asylum Service, March 2020). In 2020, while 63.2% of the asylum applications were rejected, 38.4% deserved refugee status and 7.9% got subsidiary protection. In terms of the rate of recognition of the unaccompanied children, it is clearly seen that the rates of rejections are parallel to the total recognition rate: 53.7% of the unaccompanied children's applications were rejected between 2013 and 2020 February (Greek Asylum Service, March 2020).

[23] Table made by the author based on the information provided by UNHCR Greece Factsheet January 2020. Available at https://data.unhcr.org/en/documents/details/74134.

Table 3: Recognition Rates of the Countries of Origin[24]

Countries of origin	Recognition rate
Yemen	98.7%
Syria	98.5%
Palestine	97.2%
Somalia	91.2%
Stateless	89.5%
Eritrea	89.5%
Afghanistan	69.1%
Iraq	68.0%
Sudan	60.4%
Iran	58.1%
Egypt	9.0%
China	8.7%
Algeria	3.7%
Bangladesh	2.9%
Pakistan	2.5%
India	1.7%
Albania	0.2%
Georgia	0%

[24] The Greek Asylum Service provides data only 10 countries of origin with the highest recognition rates and 10 countries of origin with the lowest recognition dates. Source: The Greek Asylum Service, Statistical Data of the Greek Asylum Service from 7 June 2013 to 29 February 2020. Available at http://asylo.gov.gr/en/wp-content/uploads/2020/03/Greek_Asylum_Service_data_February_2020_en.pdf.

3.4. National Legal Framework Regarding Asylum Procedure and Refugee Protection

Greece, as a frontier member state, has been drawn in the centre of these discussions with the Europeanisation process of its asylum system and its practices in migration control at the maritime and land borders with Turkey. Despite various studies focusing on refugee protection, border policies, and EU governance, few studies emphasized the legal landscape of forced migration in the region. Therefore, this section aims to provide an overview of the legal landscape of the asylum regime.

While the Greek asylum system is shaped by the 1951 Refugee Convention and its 1967 Protocol, as well as international human rights treaties including European Convention on Human Rights (ECHR) and the EU Charter of Fundamental Rights, the harmonisation process of the Greek national legal framework with the EU law leads a multi-layered asylum regime in Greece. Reforms in the national legislation can be considered as a "hard" impact of the Europeanization on national immigration policies since the source of these developments was mainly due to external influences such as the European Commission, EU member states and the ECtHR (Triandafyllidou 2014b: 419). Yet, this thesis claims that the gaps between the different legal orders continue to exist in the Greek asylum system due to the EU and Greek policies of asylum and border control that surpass the asylum and refugee law, incompatibilities in transposition of the CEAS in national legislation (AIDA 2021, Annex I), and the clash of actors and their (mal)practices during the implementation of the law.

Following the adoption of the European Migration Agenda adopted by the European Commission in response to the so-called "refugee crisis" in May 2015, both in Italy and Greece, hotspots were established in order to identify, register and fingerprint asylum seekers. Within this framework, the fast-track border procedures for the asylum applications started to be implemented for those who arrive in the Eastern Aegean islands while the regular procedure continues to be applied in the mainland.

As discussed in the theoretical framework, the regulations in the immigration law have geographical dimension and should be explored within spatial frame (Vlopp, 2012). The distinction of the legal procedures to access to the asylum procedures between the islands and the mainland appears as a concrete example of the relationship between the space and law. Moreover, the geographical implications of the asylum law are not limited to access to the asylum applications but can be expanded to livelihoods of the refugees.

The consequences of this fragmentation in the legal procedures were aggravated since the geographical restrictions on travel from the Eastern Aegean Islands (where hotspots are established) to the mainland - which was brought as a result of the implementation of the EU-Turkey Statement of March 2016. On one hand, the complications in the asylum system put asylum seekers in a more precarious situation and have had direct impact on their access to rights and to the basic services including education and health care. On the other hand, in the face of the proliferation of regulations and legal documents for "better" governance, actors in various levels find themselves in a regime of emergency with a flexible legal context. In addition to this fragmentation of the asylum legal framework and multiplication of legal regimes, militarisation of the Aegean Sea and the gradual involvement of the institutions in different levels created new dynamics on the ground. Even though the main authority to receive asylum applications is the Greek asylum service, the presence of the European agencies such as EASO, Europol and Frontex together with the NGOs working on refugee protection bring new dimensions to the governance mechanism. Within the frame of this thesis, in order to examine the implications of the legal pluralism in the European asylum, this section traces the landscape of the legal framework of the Greek asylum system, as well as the multiplication of actors in the Greek asylum regime.

3.4.1. Legal and Institutional Reforms in the Greek Asylum System

In 1996, the Law 2452 brought the legal basis for regular and accelerated procedures and in line with the EU law, new concepts of manifestly unfounded applications and safe third country were introduced. During the 2000s, the Dublin Regulation (2003), the Directives on the Reception (2007), Procedures and Qualifications (2008) were transposed into the Greek national legislation. (Petracou et al., 2018, p. 28). As mentioned in the Section 3.3.2, the Law 3907/2011 was a momentous step for the Greek legislation on the asylum for two reasons. First is concerning the institutionalisation of the Greek asylum system by establishing the Asylum Service and First Reception Service. Second important dimension is the Europeanization of the Greek legislation through adaptation the provisions of Directive 2008/11/EC "with regard to the common rules in Member States for return of illegally staying third-country nationals and other provisions". The Law 3907/2011 changed the whole system existed since 2008 by bringing new standards concerning the first reception, making distinction between asylum seekers and irregular migrants, taking authority from the Greek police and giving to the civil asylum committees.

In 2015, the adoption of the hotspot approach by the EU as a response to the emergency situation brought major changes in the Greek asylum regime, as well as in the institutional structure. In the beginning, the Greek government was adopting *ad hoc* solutions such as boosting the number of reception places in line with the European directive and temporary distribution of refugees within the framework of the Relocation Programme. However, these initiatives did not have legal basis within the national legal framework (Dimitriadi and Sarantaki, 2019, p. 7-8). Finally, following the EU-Turkey Statement of 18 March 2016, Law 4375/2016 was accepted by the Hellenic Parliament that introduced a number of changes in the legal framework. As mentioned earlier, with the Law 4375/2016, the new Ministry of Migration Policy (now the Ministry of Migration and Asylum) was established to take responsibilities for immigration and integration related issues. A greater role for EASO and FRONTEX was allowed in Greece. In terms of procedural changes, a new procedure

"Fast-Track Asylum Procedure" was accepted to apply in the RICs (hotspots). The geographical restriction on the Aegean islands where the RICs were established started to be implemented. The returns of the irregular migrants that arrived in Greece after the Statement were regulated (Leivaditi et al., 2020, p. 15).

In 2018, the Law 4375/2016 was amended with the law 4540/2018 in order to upgrade the role of EASO once more. While EASO was only authorized to assess the vulnerability, to conduct interviews and draft opinions in the fast-track and border procedures, with this amendment, its authorization was expanded to implement these responsibilities in regular procedures as well (Leivaditi et al., 2020, p. 16).

The latest development is the new amendment got into force in January 2020 that made changes to asylum procedures, appeal procedures for reception and detention, and to determine a "safe third country list". The Article 87 of the Law 4636/2019 "on international protection and other provisions" (IPA) determines the criteria to define the "safe country of origin", as well as how to establish a list of safe countries of origin. The Article 87(3) states:

> To designate a country as a "safe country of origin", the authorities must take into account *inter alia* the extent to which protection is provided against persecution or ill-treatment through:
>
> - The relevant legal and regulatory provisions of the country and the manner of their application;
> - Compliance with the ECHR, the International Covenant on Civil and Political Rights (ICCPR), namely as regards non-derogable rights as defined in Article 15(2) ECHR, the Convention against Torture and the Convention on the Rights of the Child;
> - Respect of the *non-refoulement* principle in line with the Refugee Convention; and
> - Provision of a system of effective remedies against the violation of these rights. (Article 87(4) via the country report updated on 10 June 2021, safe country origin prepared by ECRE)

The Article of 87(3) is a concrete example of legal pluralism in refugee protection regime. While determining the criteria of "safe country list", it foresees for compliance with international and regional legal orders in order to prevent the overlapping legal orders in which a conflict may be arisen. In relation to the IPA, the Greek government

adopted a Joint Ministerial Decision on 4 January 2020 to declare twelve countries as safe countries of origin: Albania, Algeria, Armenia, Gambia, Georgia, Ghana, India, Morocco, Senegal, Togo, Tunisia and Ukraine. According to the 83(9) IPA, the applicants originating from these countries listed above are subject to accelerated procedures.

3.4.2. First Instance Procedures

One of the most prominent implications of legal pluralism in the Greek asylum regime is the multiplication of asylum procedures. There are five different asylum procedures implemented at the first instance: Regular procedure, border procedure, accelerated procedure, Dublin procedure, and the fast-track border procedure. Before examining the procedures in detail, it should be noted that the fast-track border procedure and the Dublin procedure are the product of the EU asylum policy in different periods. While the Dublin procedure comes with the Dublin system and regulates mainly the family re-unification, the fast-track border procedure is a novelty added with the hotspot approach of the EC. Thus, it demonstrates the strong interaction between the EU policy and the national legal framework of asylum.

After an asylum application is submitted before the Asylum Service, the Asylum Service determines a date for the interview. This interview is one of the most important steps in the asylum procedure. As a result of the significant increase of asylum applications starting from 2016, the examination of asylum applications became an important issue. The average time between the asylum seeker's application and the interview is 8,5 months. Moreover, the average time for an asylum seeker to apply for pre-registration is 42 days (ECRE, Greece country report). However, in some cases, in particular in Lesvos, it can take months for an asylum seeker to apply for asylum (the pre-registration).

In the context of the interview, the Asylum Service expects from the applicant to give all the necessary information on the identity, detailed description of the incidents,

journey to Greece, the reasons for escape, etc. During the interview, in case of a language barrier, presence of an interpreter is an obligation (Asylum Service website). However, in practice, there are occasions where this obligation was violated, and the applicant's application was denied as a result of lack of interpreter. One of the most striking examples of this situation happened between 15-20 November 2019 in the Regional Asylum Office of Lesvos when 28 sub-Saharan African asylum seekers' applications were rejected due to their "inability" to provide interpretation services for their cases. In one of the cases, the Asylum Service could not conduct the interview because it was "impossible" to find a translator for Portuguese. This scandal was brought in light when a protest letter was signed by HIAS Greece, Refugee Support Aegean (RSA), Greek Council for Refugees, Equal Rights Beyond Borders, Legal Center Lesvos, Danish Refugee Council (DRC) and FENIX Humanitarian Legal Aid (Letter signed on 22.11.2019, Lesvos).

Upon the request of the applicant, a lawyer or other counsellor such as a social worker, psychologist, doctor may attend the interview. The interview may be audio recorded and the Asylum Service employee writes transcript with the interview including all the questions and answers of the interview (EASO, December 2014). This transcript is checked and then signed by the asylum seeker. The Asylum Services gives the decision after this interview and notifies the decision to the asylum seeker. Asylum seekers have right to withdraw any time the application while the examination period is still pending, and they have right to appeal to the negative decisions (Asylum Service website).

There are various conditions (location of the application, nationality of asylum seeker, personal conditions in relation to special needs, and having a family member in a different EU Member State) that determine which procedure will be applied in each case. In this section, each procedure will be examined to understand the differences between them.

3.4.2.1. Regular Procedure

Before June 2013, the Hellenic Police was the authority for receiving and examining asylum applications. Since 2013, the Asylum Service that has central offices in Athens and Regional Asylum Offices (RAO) across the country are the main authority for fingerprinting the applicants, registration and examination of the asylum applications. According to the Article 51(2) of the Law 4375/2016, in the framework of the Regular Procedure, "the examination of the applications shall be concluded the soonest possible and, in any case, within six months". However, this time limit can be extended a further nine months (Article 51(3) of L4375/2016), where "(a) complex issues of fact and/or law are involved; (b) a large number of aliens or stateless persons simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the six-month time limit." The delay can also be recognized in case that the applicant fails to submit his/her documents in time. If the examination exceeds the maximum time limits, the Law gives right to the applicant to request information from the Asylum Service; however, the authorities do not have obligation to make a decision within a specific timeframe. Therefore, the number of pending applications was high as there were 97,023 pending applications (grand total) from out of 299,620 applications[25].

After the hotspot approach, the regular procedure has been implemented only in the mainland (all asylum units in Greece except the hotspots). The asylum seekers who are considered within the framework of regular procedure, do not have any travel ban. Since April 2016, within the framework of the Fast-track Procedure, EASO started to deploy personnel to "assist" the Asylum Service during the interview in cases. In June 2016, with the adoption of an amendment, this authority was extended to "conduct"

[25] According to the statistical data provided by the Greek Asylum Service, between 7 June 2013 and 29 February 2020, there are a total of 299,620 asylum applications in Greece (Available at http://asylo.gov.gr/en/wp-content/uploads/2020/03/Greek_Asylum_Service_data_February_2020_en.pdf). However, the UNHCR calculates the number of asylum seekers based on the number of beneficiaries of the cash assistance programme in which 96,324 people were assisted in March 2020 (Available at https://data2.unhcr.org/en/documents/details/75464).

an interview by an EASO caseworker. Finally, since May 2018, Greek-speaking EASO personnel could be deployed also in Regular Procedure in the mainland (AIDA 2019a).

3.4.2.2 Border Procedure

The Article 60 of Law 4375/2016 separates two different types of border procedures: normal border procedure and fast-track border procedure. In this sub-section, normal border procedure will be explained. The normal border procedure is applied in the transit zones such as ports or airports where the asylum seekers have same rights with the applicants who apply for international protection in the mainland. Therefore, it is separated from the fast-track border procedure in which the rights of the asylum seekers are restricted as will be discussed further in the next sub-section. Nevertheless, deadlines for the normal border procedure are shorter than the ones in the mainland. In the case that the decision concerning the international protection is not given, the asylum seekers have right to enter into Greek territory and the examination of the application continues under the Regular Procedure (Article 60(2) of Law 4365/2016). According to the report of AIDA (2019b), the asylum seekers remain in detention in practice during the 28-day examination period.

3.4.2.3. Fast-track Border Procedure

The fast-track procedure is a special border procedure that can be "exceptionally" applied when there are large number of arrivals and international protection applications at the border zones. Even though the fast-track procedure was prepared to be applied for 6 months by the Law 4375/2016, the Minister of Interior and Administrative Reconstruction would decide to prolong it for further 3 months period. The original law was amended several times (August 2017, May 2018 and December 2018) in order to allow the extension of the validity of the procedure (AIDA 2019c).

The fast-track procedure can be applied for the asylum seekers who are subject to the EU-Turkey Statement which means that the applicants who arrived on the Greek Eastern Aegean Islands after 20 March 2016. The applicants who already arrived in the mainland are excluded from this procedure. Moreover, the applicants who apply for asylum in the RIC of Fylakio in Evros region are again not examined under the fast-track border procedure (AIDA 2019c). Therefore, the fast-track procedure is a geographically restricted procedure in the Greek asylum system. In addition to the territorial differentiation for the application of the procedure, the fast-track procedure also excludes the vulnerable groups and the family re-unification cases (Dublin cases). From this perspective, the regulation itself leads to differentiated treatments based on the location of the asylum application and on the specific groups.

Different from the regular procedure, the Hellenic Police, the Armed Forces and EASO are also authorized for the registration of asylum applications, the notification of decisions or other procedural documents, and the receipt of appeals. Police officers assist the Asylum Service in the islands for taking fingerprints of the applicants and issuing or renewing the asylum seekers' permission cards (AIDA 2019c).

Another difference of the fast-track procedure from the regular procedure is the duration of the examination. The Law 4375/2016 and its amendment in 2018 foresees a very short time period for the conclusion of the asylum procedure. According to the Article 60(4)(d) and (e) of Law 4375/2016 and Article 28(3) of Law 4540/2018, the asylum procedure including the appeals should be decided within two weeks. This speed raises questions on access to an effective remedy as highlighted in various reports including the Report of the Special Rapporteur on the human rights of migrants on his mission to Greece in 2017. In the report (A/HRC/23/46/Add.4), he states:

> Law 4375/2016 specifies that the process shall be completed within 15 days including the appeal stage, which raises concerns over access to an effective remedy, despite the support of NGOs. The Special Rapporteur is concerned that asylum seekers may not be granted a fair hearing of their case, as their claims are examined under the admissibility procedure, with a very short deadline to prepare. Provisions under the fast-track regime are

> problematic due to the lack of individual assessment of each case, and the risk of violating the non-refoulement principle is consequently very high. (prg. 82).

Last but not least, as aforementioned, EASO staff have been assisting the national authorities during the interview of the asylum seekers. While the involvement of the EASO has been increasing according to the regulation, in practice, the EASO's role goes beyond monitoring and harmonising the standards. According to my interviewee who prefers to remain anonymous and works for an international organisation in Lesvos in the legal department, while EASO was present in the interviews for monitoring in the beginning, by time, the decisions on asylum cases started to be given based on the "opinion" of the EASO staff who assists the Greek asylum service. Even though the national staff was the main responsible person for drafting the decision, with the new regulations, EASO is also able to draft decisions on the asylum cases. Therefore, it is understood that the EASO, as mainly a monitoring agency of the EU responsible for the harmonisation, takes active part in the implementation.

3.4.2.4. Dublin Procedure

Dublin procedure is regulated under the EU Regulation No 604/2013 (Dublin III regulation) together with Implementing regulations. Dublin procedure is mainly applied for the cases where a third-country national or stateless person has family in another Member State and asks for re-unification for his/her family (Leivaditi et al., 2020, p. 19). At this point, there is an independent unit from the Asylum Service which is called Department of the National Dublin Unit that works for the application of the EU Regulation No 604/2013. The Asylum Service shares competence with the National Dublin Unit concerning the Regulation. The National Dublin Unit is authorized to cooperate with the other state departments in framework of the Regulation (Greek Asylum Service – website).

3.4.2.5. Accelerated Procedure

The Article 51(6) of the Law 4375/2016 determines criteria for the Asylum Service to register and examine by priority asylum applications: (a) belonging to vulnerable groups or being in need of special procedural guarantees; (b) application during the detention or staying at the transit zones; (c) being subject to the Dublin procedure (i.e. family re-unification); (d) manifestly unfounded applications; (e) subsequent application holders.[26]Since the accelerated procedure fastens the time period of examination of cases, the initial assessment of vulnerability and other conditions are crucial. Especially, while the first registration of asylum seekers is extremely important for minors (whether their age is correctly written or not), the interview phase plays the main role for vulnerability assessment (e.g identification of sex trafficking victims). In practice, there are various challenges with the determination of these special circumstances notably the age assessment (please see the Section 5.4.3)

3.4.3. Second Instance Procedures

Together with the establishment of Asylum Service and the First Reception Service, the Appeals Authority was founded with the Law 3907/2011 in Greece. After the adoption of the EU-Turkey Statement of 2016 and the Law 4375/2016, the legal framework of the Appeals Authority has been amended several times (AIDA Country Report: Regular Procedure/Greece, updated on 10/06/2021). According to the amendment of Article 5 of the Law 4375/2016, the Appeals Authority was consisting of two Administrative Judge and one member was appointed by UNHCR. In the cases where UNHCR was unable to appoint a member, the National Commissioner for Human Rights could appoint one. If a member was not able to be appointed by neither of them, the (now) Minister for Migration Policy could appoint one. The condition to be the third member was to hold a university degree in Law, Political or Social

[26] An asylum seeker has right to apply once more for international protection after a final negative decision for their prior application is given by the Hellenic Police or the Asylum Service. However, the applicant should have new reasons (new developments concerning their situation in their country) in order to make subsequent application (Article 59 of Law 4375/2016).

Sciences or Humanities with expertise on international protection, human rights or international or administrative law (AIDA 2021/Country report: Regular Procedure/Greece). Nevertheless, with the new amendment introduced with IPA, the composition of the Appeals Authority has been changed: it is now composed by three active Judges of First Instance Administrative Courts and Administrative Courts of Appeal. In addition to the change in the composition, a new form was introduced: a single member/Judge Committee.

P13/IO1 who works in an international organisation and has expertise on refugee rights underlines the fact that the administrative judges have very limited information about the refugee law because they are originally experts on the administrative law. Therefore, it was important to have one appointed expert by the UNHCR or the National Commissioner for Human Rights to bring insights about the international refugee rights.

Applications to the Appeal Authority are also differentiated based on the first instance procedure that the applicant was subjected to. In the regular procedure, an appeal must be lodged within 30 days whereas this duration shortens in the accelerated procedure to 15 days, and 5 days in the border procedure and Fast-track border procedure. Hence, the time dimension appears as an important indicator for the fragmentation in the legal procedures. P8/N4 who is a lawyer working with an NGO providing legal aid in Lesvos evaluates the amendments in the Appeal Authority in relation to the burden increased on the Courts after the EU-Turkey Statement of 2016. Furthermore, P8/N4 highlights the serious challenges for an international applicant to appeal in practice. S/he comments on the amendment passed in June 2020:

> Amendments to the 2020 law or 2019 when it passed, with this, it further place burdens on the appeals, making the deadline shorter, making time for you collect documentation earlier but within this current law [January 2020], in order to appeal you have to state the grounds why you are appealing at the time when you appeal which all these have to be in five days. I mean it is impossible. They are issuing the decisions in Greek, you don't have access to legal aid, and they will only allow you even to your appeal considered, even for someone your review your case, you have to say what are the reasons why you are appealing your case. This is impossible.

During the researcher's fieldwork in July 2020, the deadlines to appeal were considered one of the major problems in terms of accessing the rights due to the Covid-19 measures. Lawyers were not able to get in the camps because of the restrictions so they could not access their clients to help for their cases and the camps residents were not able to leave the camps either. The quotas applied per day to get the permission for leaving the refugee camp were very limited and mixed with asylum seekers who demanded to access health care, to appeal, and to the other needs. Therefore, many asylum seekers who were rejected at the first instance missed their deadlines to appeal. P8/N4 describes the situation during the pandemic time:

> (…) the asylum service was closed for 3 months, over 1400 negative decisions just in Lesvos. All of these people in the asylum service knew that when they open, there are 10 days to appeal. I mean there is no way that these people have the legal aid. Plus, they are on lockdown, and they cannot leave the camp unless they are given permission. The asylum office only accepting 100 appeals in a day. So, people have 10 days to appeal, there are 1400 negative decisions and asylum service works 5 days in a week, even numbers wise they did not allow people to appeal.

In the situations where the applicants have negative decision from the Appeals Authority, the applicants have right to lodge an application for annulment of the second instance decision before the Administrative Court of Appeals. The application has been done within 60 days from the notification of the decision. According to the law, for those whose asylum applications rejected at second instants are no longer legally "asylum seekers". Moreover, while they have automatic suspension for deportations during the second instance procedure, the new legislation in 2020 lifted the automatic suspension during the second subsequent asylum claim which brings direct deportation.

As argued in detail in this section, the asylum procedures both first instance and second instance are fragmented. Nevertheless, the fragmentation and multiplication of the procedures are not the only implication of the legal pluralism. While the first instance procedures are influenced by the EU policy (Dublin procedure and the fast-track procedure), the second instance procedures actively involved international level with the participation of an expert appointed by the UNHCR in the Appeals Authority

before the amendment. The involvement of the expert of UNHCR could be considered as a constructive implication of legal pluralism since it was for the benefit of refugee rights. The involvement of various actors in the Greek asylum regime leads to complicated interactions between the actors. These interactions can sometimes be complementary and sometimes conflicting depending on priorities and authorities of each actor.

3.4.4. Multiplication of Actors in the Greek Asylum Regime

A number of actors in various levels are stakeholders in the refugee protection in Greece. However, following the European Agenda on Migration in 2015 and the EU-Turkey Statement of March 2016, the role of European Agencies such as EASO and FRONTEX have increased their importance in the process. The involvement of multiple actors in information provision with regards to the asylum

Before the adoption of the Law 3907/2011, the Hellenic Police was the main authority to proceed the asylum procedures ("old procedure"). During the transition period from the old procedure to the new procedure, there was a high number of backlog cases remained from the old system. When the asylum service started its operation, there were 51,000 backlog cases from the old procedure, including some pending for over 7 years (UNHCR, December 2014). This shows again the inefficiency of the Greek asylum system before the reforms in 2011. Yet, the new system and the new actors starting of 2013 were already under a great burden remained from the old system just before new influx began in 2015. In the current situation, alongside the main responsibility for securing the external area of the hotspot facilities, the Hellenic Police has authority for identification and verification of the nationalities of new arrivals.

The Greek Asylum Service became the main authority for processing the asylum claims taken by the Registration and Identification Service, which was firstly established in 2011 as a fundamental service for the registration and identification of the asylum seekers, including fingerprinting. Together with the Directorate for

Protection of Asylum Seekers (DPAS) under the Ministry of Migration and Asylum are the responsible authorities for reception of third country nationals or stateless persons who apply for international protection (AIDA, Country Report/Types of Accommodation, 30 May 2022). Due to the lack of capacity, The Greek Asylum Service received support from two agencies: UNHCR, IOM and EASO.

The Greek Asylum Service adopted a Memorandum of Cooperation with UNHCR in order to improve the quality of the asylum assessments. In particular, in the first years of the establishment of the Greek Asylum Service, UNHCR was assisting the caseworkers through daily basis consultations (UNHCR December 2014). UNHCR does neither work for the registration of the asylum seekers, nor for the examination of the cases. Alongside the consultancy, it works with the government to fulfil the basic needs of asylum seekers and refugees such as shelter, water, sanitation, food, health, education, site management, and information provision. In this context, UNHCR has been conducting the ESTIA programme for accommodation and cash assistance funded by the Asylum, Migration and Integration Fund of the EU (UNHCR, ESTIA). When the EU-Turkey Statement of March 2016 was announced, the UNHCR emphasized its concerns for the implementation of the Statement since the capacity of the islands was insufficient for assessing asylum claims. Therefore, the UNHCR announced the suspension of their activities at all closed centres on the islands (UNHCR, 22 March 2016). Their role for monitoring and protection still continues.

Different from the UNHCR's role in the asylum system, IOM is assisting to the government for the site management and reconstructed accommodation facilities (IOM, 2018a). Together with the Site Management Support (SMS), IOM is implementing an action programme called "Filoxenia" for providing emergency shelters (temporary accommodation facilities through the activation of 6000 places in hotels) in order to decongest the Eastern Aegean Islands (IOM 2018b). Further, IOM started the "Assisted Voluntary Returns and Reintegration Programme (AVRR)" in collaboration with the Greek authorities in September 2019 which is planned to be

completed in August 2022. Within the frame of this project, they aim at facilitating returns (IOM, 6 February 2020).

The other important agency to assist the Greek Asylum Service is the EASO. The EASO was established on the basis of Articles 74 and 78 (paras 1-2) of TFEU in 2010 by Regulation (EU) 439/2010 of the European Parliament and the Council in order to ensure administrative co-operation in the CEAS, to assist to the implementation of the EU relocation programme, to provide expertise on asylum, to strengthen cooperation between the Member States, to provide practical and technical support to the national authorities for asylum, and to contribute to the EU policymaking in the area of asylum (EASO/EUAA website/our mission). In the beginning the EASO's role was limited to train the case workers based on the EASO Training Curriculum to bring standards for conducting interviews and assessing the applications. The European Agenda on Migration adopted in 2015 as a response to the crossings, the EU institutions and agencies were given tasks to conduct multilevel governance in the hotspots in Greece and Italy. EASO was assigned to support the national authorities in the hotspots including providing the necessary infrastructure including the interpretation services and equipment. The first crucial step to expand the role of EASO in the Greek hotspots was taken with the adoption of the EU-Turkey Statement of 2016; the EASO was assigned to support the implementation of the 1:1 scheme proposed by the Statement. Apart from the implementation of the Statement, EASO was mandated to provide information in the hotspots, to register applications for relocation, to support the Greek Dublin Unit for the family re-unifications, and to assist to fraud detection of documents (EASO Annual Report 2016, p. 9).

As a result of the reform packages in the CEAS in 2016 (first on 4 May 2016 and the second on 13 July 2016), the EASO was first transformed into a "fully-fledged agency". Not only the official role of EASO grew but also its budget also increased as a result of the expansion in the EASO's operational activities. While the initial budget of EASO was € 19.4M in the beginning of 2016, it has become €53.1 M at the end of the year. Nevertheless, the EASO's priority task in Greece in that period was support

the Greek asylum office to implement the EU-Turkey Statement. To do so, they started to conduct admissibility procedures for the Syrians coming from Turkey to the Greek islands in irregular ways after the adoption of the EU-Turkey Statement.

Alongside the agencies directly involving in the asylum system, as Greece is a frontier Member State of the EU, it has various entry points for irregular migrants at the sea and the land borders. Therefore, the border management has impact on access to the asylum procedures. FRONTEX, the European Border and Coast Guard Agency is fundamentally responsible for border surveillance together with the Greek Coast Guard. With this purpose, Operation Poseidon has been taking place in the Greek sea borders with Turkey and the Greek Aegean islands. In addition to the border surveillance and rescue operations, FRONTEX staff is also authorized to assist national authorities with the identification and verification process (FRONTEX, Main Operations: Operation Poseidon (Greece)). Nevertheless, in practice, due to the lack of capacity of the national authorities, FRONTEX is more engaged in the assessment of documents and translations. Its role in conducting the procedures is determined by an internal regulation (AIDA, Reception and Identification Procedure: Greece). In particular, the (mal)practices of FRONTEX have direct impact on the asylum cases and the treatments that the asylum seekers face during their asylum assessment. In many cases, the first registration of the irregular migrants coming from the sea is done by FRONTEX. The mistakes or deliberately made wrong registrations of personal data, notably the age, causes sometimes irreversible consequences such as keeping alleged minors in detention or even deportation (Please see the Section 5.4.3).

Apart from the national, regional, and international authorities, there are number of NGOs working as implementing partners of the Greek government in the refugee protection in Greece. Danish Refugee Council (DRC), Oxfam, Médecins Sans Frontieres (MSF), Terre des Hommes, and Doctors of the World are INGOs working on the provision of legal, medical, and other assistance to the asylum seekers and refugees. There are also national NGOs such as METAdrasi, Praksis, Refugee Support Aegean, Greek Council for Refugees, Solidarity Now, European Lawyers in Lesvos,

and Arsis actively working in various areas including legal aid, education, reception, accommodation, etc. In addition to the NGOs, in particular during 2015-2016 when Greece was facing the peak point of the "refugee crisis", the grassroot organisations were very active in assisting the basic needs of refugees. Nevertheless, the role of the NGOs was greater during 2015 and 2016 but it changed due to the policies adopted by the New Democracy after their election (Dimitriadi and Sarantaki, 2019). NGOs especially working in the areas of legal and medical assistance in the hotspot islands are facing the risk of crack-down and criminalisation (CoE, Conf/Exp (2020)4). The amendments that restricted the registration of NGOs that conduct activities related to migration, asylum, and social inclusion are found controversy with the international law, the EU law, and national law (Ombudsman Decision No. 341617/25/25.10.21, via RSA December 2021).

All these actors with different levels and authorities create complex interactions in the asylum regime. This becomes more visible in highly regulated spaces, such as the island of Lesvos, which is a Greek island used as a bordering space between Turkey and Greece, at the same time, used as a space of reception for asylum seekers and refugees in which the stakeholders of the Greek asylum regime re-shape the refugee protection by their daily practices. Therefore, alongside the mutual constitution of legal and space, practices of actors contribute to the-spatialization of legal spaces. The relation between space, law, and asylum will be further elaborated in the next Chapter (4).

This chapter delivered a detailed analysis of the legal framework of the refugee protection regime in the EU to understand the complexity of the CEAS consisted of national, supranational and international legal orders. In this sense, first the international refugee protection regime was elaborated together with the main principles and norms of the protection in align with the international human rights law. Secondly, the European level of protection was examined. Two levels of protection appeared at the European level: the ECHR within the CoE and the CEAS within the EU. The interaction between ECHR and CEAS formed a noteworthy example of

global legal pluralism from the perspective of independency of the EU law and the degree of its compliance with the ECHR. In addition to the legal framework, the significance of the EU policies that re-shape the protection regime was argued. In the last section of this chapter, the refugee protection regime in Greece was examined. Greece has complex multi-level system. As a State party of the 1951 Refugee Convention and its 1967 Protocol, as well as of a number of human rights treaties, Greece is bound by the principles of the international refugee protection regime. Moreover, by signing the ECHR, the legislation and practices in Greece have to comply with the human rights protection provided by ECHR. Together with this, as a Member State of the EU, there has been a harmonization process of Greek legislation with the EU *acquis* in the field of asylum. This creates a complex system of refugee protection in Greece. In this context, the hotspot of Moria in Lesvos island appears as a legal space where this complex refugee protection regime gains operational dimension together with involvement of multiple actors.

CHAPTER 4

SPATIAL DIMENSION: TRANSFORMING LESVOS INTO A HYPERREGULATED LEGAL SPACE

"Island, here is an island, in fact a natural prison"
From the interview with P6/N2, Lesvos, 30.01.2020

As discussed previously the proliferation of the legal procedures as well as the actors and its impact on the refugee protection regime in Greece, in this chapter, the spatial dimension of the Greek asylum regime and its implications will be argued from the critical legal geography perspective. As refugee protection is consisted of ensuring both physical and legal security of asylum seekers and refugees, living conditions and issues related to physical safety are directly related to assess the effectiveness of a refugee protection regime.

Sharing a similar fate with Lampedusa for the "borderization process" (Cuttitta 2014), Lesvos in Greece has been repeatedly re-spatialized as a result of EU's migration and border policies. Having said that the asylum procedures and the practices differ based on the geographical location in Greece -the maritime border zones, mainland, and the land borders- as a result of the EU migration policy starting from 2015, the analysis in this chapter focuses on spatiality of Lesvos for refugee protection.

In the first section of this chapter, I explore the l transformation of Lesvos from a historical perspective to analyse the impact of policies on the re-spatialization of the island. Further, I explore the use of the islands as the legal spaces where the fundamental rights of the asylum seekers are diminished. To argue "the borderization

process" of the island together with the confinement policy, I benefit from my analysis of the empirical date that I collected during my fieldwork between January 2020 and January 2021[27], as well as with my preliminary observations in different parts of Greece (Lesvos, Thessaloniki, and Athens) between 2015 and 2020. Here, in particular it will be important to ask how not only the refugee camp and detention centres, but the whole Lesvos Island is turned into a nomosphere/splices. This chapter ends with the discussion about different interpretations and approaches of ECtHR and CJEU for the reception conditions in relation to the concept of human dignity.

4.1. Re-spatialization of Lesvos in multiple forms: A historical approach

Human mobility and migration have been one of the oldest phenomena on the route connecting the Aegean and Anatolia. Due to the increasing border controls and changing migration policies including the most recent the EU's externalization policy, the Aegean Sea is perceived as a "space of separation" between Europe and Asia; nevertheless, the Aegean Sea was a space of interconnecting the South to North, and the East to West for centuries (Samuk and Pabuççular, 2018). In fact, the interconnecting role of the Northern Aegean islands has gone back to the Early Iron Age (herein after EIA) (Sweeney, 2016, p. 413). According to the research conducted by Naoise Mac Sweeney (2016, p. 424), people in this period in Aegean and Anatolia were mobile in both directions. Further, she notes that with the collapse of the "states" in the Aegean at the end of the Bronze Age and the formation of more flexible political structures in the beginning of the EIA, people gained "the ability to become mobile" which also "increased the desirability of the mobility" and she adds: "(…) at the beginning of the EIA, western Anatolia may indeed have seemed an attractive option for people seeking greater political stability" (Sweeney 2016, p.424-425). This little journey through time was given as an example to demonstrate the natural and long historical positioning of the Northern Aegean Islands in the middle of the human mobility and migration.

[27] Including the interviews conducted online via Zoom.

Even though the Aegean-Anatolia axis has never lost its importance, it is important to discuss the shift from space of interconnection to "space of separation". In their article, Samuk and Pabuççular (2018) argue how the Aegean Sea has been a historical route for the migration movements by examining four distinctive phases from a historical perspective: the late 19th century and early 20th century ending with population exchange between Greece and Turkey, the political crisis during 1930s and the WWII, the post-1980 period in which Turkey and Greece were considered as "transit countries", and lastly the most recent refugee movement that will be argued separately in the next section.

The first phase of the major "refugee crisis" was resulted by the use of migration as a "tool for nation-building process" in the late Ottoman Empire and as a consequence, the transformation of the Aegean islands into crossing points for the human mobility (Samuk and Pabuççular, 2018, p. 58). As Afroditi Pelteki (2020, p. 37) argues in her article, Lesvos was "transformed from undivided geographical territory with Asia Minor" into "an alienated border of the Modern Greek State" after its annexation to Greek State in 1912. Especially, the efforts for the homogenizing the newly established nations in both sides of the Aegean Sea had large impact on Lesvos. Even today, in order to commemorate the painful experiences occurred in that period, there is a statute of "*Mikrasiatisa Mana*" (the "Asia Minor Mother") (See the Annex H) locating in Epano Skala in Mytilene that is looking on the Turkey's shores. The Statute with a mother and her children symbolizes the refugee mothers who had to leave Turkey after the Turkish War of Independence that took place between 1919-1922. In order to provide their needs and to deal with their painful experiences, as well as the exclusionary policies of the Greek state in that time, the Asia minor refugees established "Asia Minor Refugee Association" in Lesvos in 1914 (Pelteki, 2020).

The 1923 Treaty of Lausanne that was signed at the end of the war included a compulsory population exchange. This compulsory population exchange regulated the population exchange based on the "exclusive criterion of religion" between Turkey and Greece (Kritikos, 2020, p.1). Within the frame of the compulsory population

exchange, it is estimated that around 400,000 Muslims were resettled in Turkey and around 1,200,000 Greek Orthodox arrived in Greece (Aktar, 2017; Kritikos, 2020). Many of the "Asia minor refugees" started their new lives in the urban areas -mainly Athens and Thessaloniki. Nevertheless, due to their geographical locations, the areas close to the borders (both land and sea borders) experienced an intense refugee movement. Lesvos was one of these locations where the refugee population exceeded between 40 and 50 percent of the native population (Kritikos, 2020, p. 6). In his research, Kritikos (2020) examines the difficulties including exclusion and exploitation that the Asia minor refugees faced after their arrival to Greece.

In the second phase of the mobility during the Second World War, people fleeing from the war were trying to cross from the mainland of Greece and the North Aegean Islands to Turkey. As argued by Samuk and Pabuççular (2018, p.62), the power relations between Turkey, Greece, and the Allies and their (changing) political position in the Second Word mainly shaped the (im)mobility in the region.

The developments in the Middle East, mainly the invasion of Afghanistan by former Soviet Union in 1979, the Iran Revolution at the same year, and tension between the Saddam regime and the Kurdish population in Iraq caused large refugee populations. In addition to the political crises in the Middle East, the Horn of Africa was also largely influenced by wars and famine that ended up with displacement of millions of people. According to the UNHCR number, while there were 2,8 million refugees in 1975, this number increased drastically to 15 million by the end of 1980s (UNHCR 2000, p. 105). During 1980s, the largest refugee population was consisting of Afghan refugees with more than six million (Ruiz, 2001). Even though majority of the Afghan refugees remained in Pakistan and Iran in that period, all these large displacements activated the migratory routes including the Eastern Mediterranean route to access to Europe during 1980s and 1990s. Northern Aegean islands (in particular Lesvos) has become one of the "gates" for irregular migrants' arrivals in EU. Lesvos, transformed into a space of reception, has been a symbol for a "precarious transit zone" as a result of the EU migrations policies (Hess, 2012).

4.2. Expansion of the maritime border zones and turning islands into nomospheres

In the third part of the second chapter, the theoretical discussions on the borders from the critical legal geography lens draw attention to the relation between power, sovereignty, and borders. In the literature, it is argued that within the triangle of law, security and space, different forms of legal spaces - extra-territorial spaces, in-between spaces, infinite border zones- are created by the sovereign power to limit or even suspend the legal rights for certain groups of people (Butler 2004; Neil, 2004; Basaran, 2008; Vaughan-Williams, 2009; Mezzadra and Neilson, 2013). Nevertheless, here the suspension of legal rights does not mean the absence of law. In fact, border zones appear as hyperregulated legal spaces. Further, border zones emerge as the legal spaces not only separating inside from outside but also as the space of government and of rights (Basaran, 2008, p. 340). Therefore, law has the major role not only in creation of legal borders but also in production of legal identities and of rights that regulate the legal spaces. As a consequence of the creation of legal identities, it gives sovereign power to decide who will benefit and to what extend will benefit the rights drawn by law.

Despite the fact that the borders are legally constructed and regulated by multiple levels of legal documents (international agreements, bilateral agreements or unilateral approaches by states), borders are not static or physically fixed. Rather, through the security and policing measures together with the governmentality tools, we witness more often the multiplication, fluidity, and shifting of the state borders (Walters, 2006; Basaran, 2008). Recently, with the increase of different technologies used for policing and governing the border zones, states are able to expand the legal spaces of government beyond their territory (Isleyen, 2021).

As argued previously in frame of the spatial turn in legal pluralism, legal regulations on specific issues, here on asylum regime, may create overlapping and interwoven spaces (Tickamyer, 2000). Together with the establishment of the Reception and

Identification Centres (RICs or hotspots) on the islands, a new legal space "fade in" [28] where the implementation of refugee rights and fundamental rights became unclear due to the overlapping legal regimes. Co-existence of different political and administrative actors, as well as the refugee community and the host society create unique power dynamics.

4.3. Lesvos: Becoming a key entry gate to EUrope

As argued before, Lesvos has a historical past to host the different types of migration movements, in particular refugee movements. As it is re-produced as a border zone not only between Greece and Turkey but also Europe and Asia, it has been perceived as an entry point to EUrope. Lesvos, both in historical and contemporary context has been carrying multiple forms of legal space -space of reception, space of government, and space of governmentality- As Delaney (2014) notes "Law as 'rules and rights' underpins spatial tactics such as confinement, exclusion, expulsion, and coerced mobility."

The adoption of the hotspot approach by the European Commission in 2015 as a response to the crossings from Turkey to Greece and from Libya to Italy has had many implications in refugee protection system as it is argued in previous sections. This section will describe the spatial implications of this policy which was consolidated with the EU-Turkey Statement of March 2016. In order to understand the context in the Greek islands, it is important to touch on the developments happened in Turkey regarding the Syrians back then. Together with escalation of the violence in Syria, the number of the Syrians has increased in Turkey after 2013. In the beginning of the civil war in Syria until the beginning of year 2018, Turkey followed open door policy to accept the Syrians fleeing from the conflict (Kale et al. 2018). From the border cities

[28] In the sense that it is used by Franz and Keebet von Benda-Beckmann (2014). Places that come and go: A legal anthropological perspective on the temporalities of space in plural legal orders. In Book: the Expanding Spaces of Law.

(Gaziantep, Şanlıurfa, Kilis, Hatay) more Syrians began to move in the big cities, mostly to İstanbul (Kaya 2019).

As earlier mentioned in the Chapter 3, due to the limitations of legal protection of Syrians in Turkey under the Temporary Protection, insufficient migration policies, shift in the open door policy to close the borders, problems to access to legal work market and increasing number of smuggling and trafficking activities, thousands of people started to cross from Turkey to Greece, mainly by using the sea route (Zaragoza-Cristiani, 2015, pp.7-14). While 50,830 people crossed from the shores of Turkey to the Greek islands in 2014, this number has increased into the approximately 1 million in 2015 (EU Policy Department, 2015a). Not only the high number of the irregular crossings but also, the high death toll at the sea together with the shocking image of Aylan Kurdi (The Guardian, 2 September 2015), the baby who died on the beach in Bodrum in Turkey, turned the heads towards the region and to the EU's response.

In 2015, the main strategy of establishing the hotspots in Greek and Italian islands was introduced by the European Commissioner for Migration, Home Affairs and Citizenship and the Greek Administration (COM(2015)240 final). Together with the establishment of the hotspots, other measures to respond to so-called EUropean "refugee crisis" took place in the European Agenda of Migration Management (2015) and subsequent European Communications (2015, 2016). The hotspot in Lesvos was determined as the Moria Reception and Identification Centre in October 2015 which was in operation since 2013 (Dimitriadi and Sarantaki, 2019).

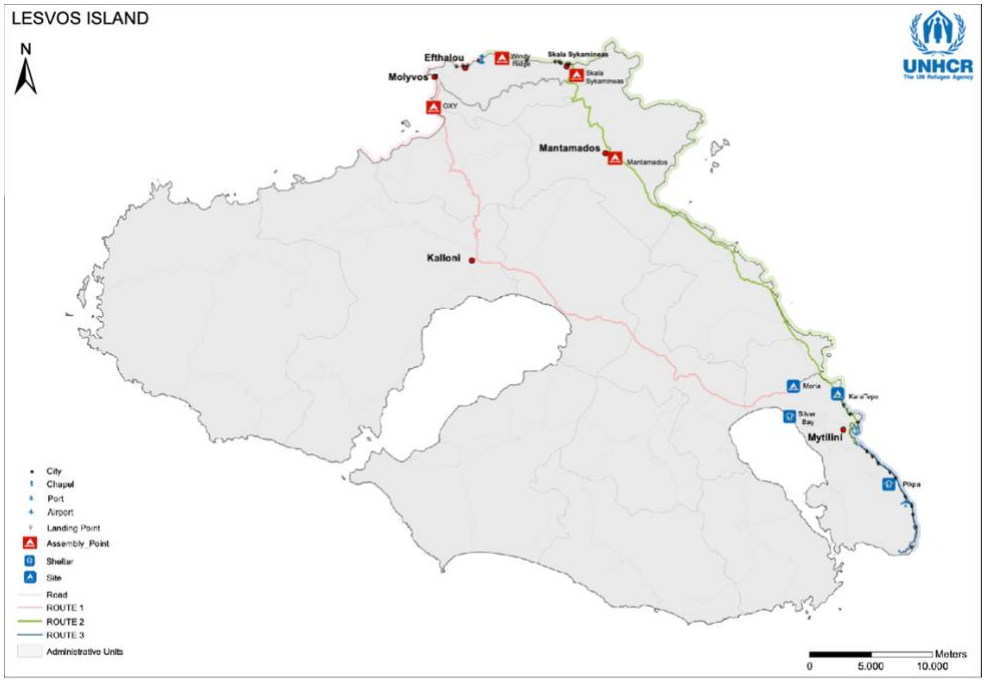
Once the hotspot was declared in Lesvos, the EU agencies – EASO, FRONTEX, Europol, and Eurojust – came to assist the Greek authorities for identification, registration and investigation. As previously discussed, the expansion of the operation of these agencies, their visibility on the island played role in transformation of the island. Nevertheless, in that period, both in the mainland and on the islands, there were high number of activists, grassroot organisations and NGOs helping refugees to supply

their basic needs like blankets, diapers for babies, food, water and so on. The whole scene on Lesvos gradually changed throughout time that I will elaborate in the next sections.

In 2015 until the EU-Turkey Statement of March 2016, the main route that the asylum seekers were arriving in different shores of Lesvos, mainly in the North since it is the shortest distance between Turkey and Greece, but also very dangerous due to the rocks in the shoreline. Once the boats were seen from the port, the fishers, the volunteers would get ready to jump in the sea to pick up the people from the sinking boats (Euronews, 29 October 2015). Due to the frequent arrivals back than (almost in every 10-15 minutes) and the number of the asylum seekers including children and babies, there were periods of time that people would get panicked if some of them (mostly babies) got underwater for long time. Following their arrival in the coast, the activists, locals and volunteers would assist them with blankets and other supplies to dry and heat them (The Guardian, 9 July 2015). After this first aid in the coastline, they needed to walk to a transit camp which the UNHCR was conducting for the first registration and also providing the necessary help[29]. Following this, the asylum seekers were going to the main city Mytilene either with the buses or cars (including the cars rented by the tourists) but most of the time by walk. From Mytilene they were guided to Moria RIC (the hotspot) for completing their identification and registration procedures. One of the results of the hotspot approach was differentiating the asylum seekers by the country of origin, not only for the asylum procedures but also for the location where they would stay. The Syrian families were taken to temporary holding camp of Kara Tepe (Map 3) camp whereas the non-Syrians were waiting in Moria (From the interview with P4/IO2). However, until the EU-Turkey Statement of 2016, the asylum seekers had freedom of movement so after their registration period, they did not have to stay on the island.

[29] That camp was closed in January 2020 when I was conducting my fieldwork that caused serious concern among the service providers.

Map 2: Important spots related to refugees' arrivals in Lesvos Island in 2015



Source: UNHCR (23 December 2015). Available at https://reliefweb.int/map/greece/greece-lesvos-island-20-dec-2015.

P6/N2 who has been working as a case worker for vulnerable children including unaccompanied children from the beginning of 2015 described the refugee movement on the island before the adoption of the EU-Turkey Statement of March 2016:

> When it started [the crossings], the borders were open. It means that whoever came here did not stuck on the island. After the registration, they were taking the registration document and they were able to travel. From here, they were going to Athens. From there, they continued to Idomeni, and then Europe. That [journey] became an industry here. New travel agents opened only in that period which had buses, and bus tickets were included in this package. There was a tour organized like that for example. Therefore, whoever came here was leaving. In the summer [2015], the arrivals increased a lot, sometimes 5000 per day – after April, it started with 300-400 per day and then hit to 5000 arrivals. In addition to these arrivals, there are also tourists coming from Athens to here [Lesvos], it became harder to find ferry tickets. It already takes time until you register since there are many arrivals, and once you are registered leaving takes time as well until you find ferry ticket. It may take some days. But in comparison with today [January 2020] it was nothing. No one was staying here in 2015.

As P6/N2 mentioned about the registration document that the asylum seekers were holding did not mean of any protection. In fact, many of them (except the Syrian refugees) were receiving administrative deportation order that required of expulsion of refugees from Greece within 30 days. Nevertheless, de facto this document would mean that they were free to move "voluntarily" somewhere else. The legal context for Syrians was separated in practice following the hotspot approach together with the relocation programme implemented until 2017. The document given to the Syrian refugees was granting them six months provision (also see Trubeta, 2015). While some of the asylum seekers continued their journey to Idomeni, some of them could be relocated from Lesvos directly to the other EU countries. Another differential treatment was taking place in the northern borders of Greece with North Macedonia after they arrive in semi-formal Idomeni camp. Until the winter of 2016, the transit passes were allowed after they presented their registration document to the authorities in the border (also see Franck, 2017). Together with the closure of the borders in the Balkan route starting from Hungary and then, spread to the other countries including North Macedonia, at first certain nationalities -mostly Syrians and sometimes Afghans- were allowed to pass the border (February 2016). In some situation, the Syrians were able to be relocated from Idomeni to the other EU countries within the frame of Relocation Programme adopted with the European Agenda on Migration. There were tensions between the refugee groups because of these differential treatments. With the EU-Turkey Statement, the borders totally closed for passages and following the overwhelming population in Idomeni with very poor infrastructure, the Idomeni camp was evacuated in April 2016.

In this period, not only the high circulation of the asylum seekers but also the diversity of the actors became an essential part of the life in Lesvos. Activists, volunteers, NGO workers and staff working in the EU agencies were coming from all over Europe. In this highly diverse and vivid environment, despite the overwhelming situation of constant emergency there was a strong feeling of solidarity between activists, locals, NGOs and refugees. Witnessing those times in Lesvos made think even further with

the drastic change of the reactions against refugees and NGOs during my fieldwork for my doctoral thesis in 2020.

4.3.1. The colour of freedom: Blue or black stamp

Transit passes first within Greece and then to the western European countries significantly slowed down at the instant with the adoption of the EU-Turkey Statement in March 2016. The Statement changed the faith of Lesvos and the asylum seekers more than the hotspot approach. As confirmed from my interviewee who is an EU official, the geographical restriction on the refugees' movement within Greece was a result of the condition put by Turkey on the Statement. In order to accept the asylum seekers who crossed from Turkey to Greece, they needed to be residing in the islands. Turkey excluded the ones who crossed to the mainland. In order to facilitate the returns of the newcomers to Turkey, the asylum seekers were no longer allowed to travel outside the islands except some exceptionalities. During my presence in Lesvos before and during my fieldwork, I was always hearing about the colour of stamps on the registration papers. To clarify this, I asked my interviewees what it means to have blue/black or red stamp on their papers. P6/N2 and P16/G2 explained me the secret of the stamps and so, the colour of freedom. P6/N2 gave details who remained on the islands and who were allowed to leave the islands after their asylum applications in details:

> [Before the EU-Turkey Statement] you were passing as transit. Register, take your document, go. Then, what happened? The EU-Turkey Statement. The islands have become suddenly places where the people are kept. Physically. (…) Island, here is an island, in fact a natural prison. There is no chance to leave here. That's it. What happened this time? All people applied for asylum [stayed]. Previously, the moment you were taking the document, you were leaving. Now, when you take your document, they say 'Aa stop! You haven't received your asylum seeker ID'. There are many phases. You need so see a psychologist, a doctor, then others. If you manage to take your asylum ID from EASO, this time they give you either with red stamp or blue stamp or black. Red stamp means, there is no permission to leave this island. Black or blue stamp means that you can leave here.

P15/G1, case worker in the asylum service, thinks that the blue/black stamp is an "urban legend". The important thing is not to have red stamp because red stamp means that "They have to stay in the island. It is indeed red." When I asked further questions who were able to receive the open card to leave the islands, P15/G1 informed me that there were only two options: vulnerable people and Dublin cases which means the family re-unification. Nevertheless, the situation with the vulnerable people also changed with a legislation passed during my fieldwork in 2020 which made the criteria more restricted to recognize as vulnerable and restrict the vulnerable people geographically, so they were no longer allowed to leave the island either.

Taking into consideration that the majority of the asylum seekers were not able to leave the island, I asked them where they supposed to stay. P6/N2 answered told me that they were staying in Moria, in fact, it is how Moria grew and the olive groves around the official camp area became informal camp area. When I was on the island in January 2020, the informal camp area "Jungle" in the olive groves were hosting more people than the official camp area. Until the decongestion fastened and then, the whole camp burned down in September 2020, overpopulation remained as the main issue in the Moria camp together with the "Jungle." P6/N2 also added that some of them were finding houses in the city or there were shelters in a few numbers. Depending on the capacity and vulnerability situation, some people could stay in a hotel or in a shelter, but this was very limited. In practice, the hotspots planned as "the spots" where the registration and identification process were taking place and so turned in to legal spaces, nomoshperes, were re-spatialized and transformed the whole island into a "natural prison" with the implementation of the geographical restriction. Therefore, not only the refugee camps and detention centres remained as the hyperregulated legal spaces where the fundamental rights diminished but also the whole island turned into a legal space where the freedom of movement of certain group of people was limited.

In addition to the asylum seekers who had to reside on the islands, there are also asylum seekers with "open cards" which means that they are allowed to leave the island but because of different reasons they are not able to leave. As a reason for

staying on the island, P6/N2 shows the economic reason as the first reason. First of all, it is difficult for asylum seekers to afford accommodation without joining in accommodation programs of UNHCR or other institutions. Therefore, many of them are waiting to be eligible for these programs in order to have a housing in the mainland. Secondly, even the ferry or plane tickets can be non-affordable for asylum seekers, especially if they are families. Being eligible in support programmes also fund their transportation to the mainland. Until their need for accommodation and transportation are provided, they wait on the island. For those who are able to afford their own accommodation and transportation, they are leaving the islands without queuing for these support programs (from the interview with P6/N2).

Alongside the economic difficulties, P15/G1 also witnessed some psychological aspect of choosing to stay on the island or even returning back to Moria. Back then, P15/G1 informed me that there were around 6,000 people who received the open card, but they were not leaving the island or even they were coming back to the island after their transfer to the mainland. In some cases, after spending some time in Moria without participating in social and professional life, they have difficulties to join in life in the mainland. Despite the hardship or "ugliness" of Moria, it became familiar for them, which is sometimes more preferable than the uncertainties of going a new place (from the interview with P15/61). In align with this, a recent study on the mental health of asylum seekers and refugees in Moria shows that the length of the asylum procedures in detention centre or in the camp has a "cumulative adverse effect" on mental health, which can also be a challenge for successful integration of refugees in host societies (Van de Wiel et al., 2021 p. 6).

The nation states have the ultimate power on the human mobility. The choices of geographical locations for the asylum procedures, as well as for detention are not coincidence. As Mountz (2011, p. 382) discusses that detention and practices on the islands have become "practices to deter potential asylum-seekers" to make asylum claims. In parallel with Mountz (2011), some of my interviewees touched on the relationship between the geographical restriction on the asylum seekers and the

deterrence policy of the EU. P8/N4 who has been working in an NGO that provides legal aid to the asylum seekers and refugees on the island reflected on the geographical restriction even further than keeping the asylum seekers in limbo but added:

> (…) implementation of geographical restriction from the beginning was a policy of deterrence. I mean, the state's goal was maintaining people on the island so they can easily return to Turkey. But this continued even though it became clear that the Greek asylum service was finding everyone inadmissible. So, Greece was not a safe country to apply asylum except for the Syrians but even so they still implemented geographical restriction. So, it is already known that these people are not subject to readmission to Turkey as, in terms of, a strict implementation of EU-Turkey deal that they should go to Turkey to apply for asylum. But instead, they restricted here. […] there are 2 goals here of the government. One is deterrence which […] is the main goal. But then also to be able to deport these people to Turkey in case that their asylum case is rejected. But what happened, there are so many problems other than the asylum procedure.

Concerning the problems emerged in the asylum procedure, P9/N5 points out that after the adoption of the Statement and the geographical restriction started to be implemented, even the cases of Syrians which used to take only one or two days started to take "super long" despite the fact that the name of the procedure is fast-track. The delays of the decisions also increased the number of people who stuck in the islands which increased even further the violations of fundamental rights on the island in the level of making the lives of asylum seekers miserable. Keeping asylum seekers contained on an island by using the geographical characteristic of being an island emerge as the spatial tool of controlling the population of asylum seekers and refugees. Space and law are used for the implementation of the policy of containment. The delays, prioritization and de-prioritization of processing the asylum cases, which form the temporal dimension of the socio-legal, are complementary to the use of space and legal to transform the policy of containment into the policy of deterrence. Despite the fact that the situation created in Moria does not comply with any layer of the legal orders in the refugee protection regime, in the practice, the sovereign acts according to the policy priorities that surpass the legal.

4.3.2. "EU is always talking about human rights. Isn't Moria EU?"

As explained in detailed in the Chapter 3, Greece is bound with various international, supranational and regional conventions to protect human rights of asylum seekers and refugees including providing adequate conditions in housing, temporary accommodation, as well as in detention centres (Westendorp, 2022). As a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), Greece is obliged to provide minimum housing rights. Despite the fact that the minimum housing conditions are not clarified in the ICESCR, the Recast EU Directive 2013/33 (RCD) determines the minimum standards for reception conditions for asylum seekers involving schooling and education of minors (Article 14), access to the labour market (Article 15), and material reception conditions which enables living adequate for their health (Article 17). According to the Article 18, different modalities are possible for accommodation such as accommodation centres, private houses, flats, hotels, and other premises where adequate living is guaranteed. States must ensure the possibilities for asylum seekers to access family members, UNHCR, legal advisers and counsellors, and relevant NGOs (Article 18/2(b)). Further, special reception needs for vulnerable groups such as minors, disabled persons, elderly people, victims of trafficking, persons with mental disorders and so on should be provided (Article 21). Within the minimum standards, access to health care and essential treatments of illnesses are also included (Article).

In spite of the legal obligation of Greece for provision of adequate accommodation for asylum seekers, there were not binding standards adopted in the Greek national legislation until 2018. UNHCR's internal standards were developed for the accommodation facilities (FRA, September 2017, p. 10). In 2018, the recast RCD was finally transposed into the national law (L 4540/2018, which was replaced with IPA in 2019 and amended in May 2020 with L 3686/2020) (ECRE, May 2022). Even though the UNHCR generally is not in favour of establishment of camps, the UNHCR Emergency Handbook determines standards and indicators for the adequacy of living conditions in shelters and/or camp areas for displaced people (Appendix H). For instance, camp settlement size for emergency standards is defined as 45 sqm per person, including kitchen and vegetable gardening whereas living area must be

minimum 3,5 sqm per person with minimum ceiling height of 2m. There must be 1 shower for 50 persons and 20 lt water per person must be supplied per day. Again, for 50 persons there must be one rubbish container of 100 lt (UNHCR Emergency Handbook). Alongside the hygiene and sanitary conditions, there are other standards related to accessibility to national services, markets, health facilities, relevant agencies, and security including seasonal conditions, environmental risks or other potentially sensitive areas.

Similar with the UNHCR's internal standards, EASO/EUAA also has "Guidance on reception conditions: operational standards and indicators" (September 2016). Even though the EASO's guidance on reception conditions is focusing on housing and not defining standards for camp-like situations, it sets various standards from sanitation to food safety and to access to potable water. For example, according to the Guidance, adults must be served three times meals and five meals for minors to ensure a balanced diet in line with the approach developed by the UN Food and Agriculture Organisation (FAO). A minimum of 2.5 lt of potable water per person is also foreseen in the provisions of the Guidance (EASO Guidance, 2016).

Nevertheless, my observations in the field and the official reports including the report prepared by CPT based on the visit to Greece between 13 and 18 March 2020 and the official letter prepared by the CoE Commissioner for Human Rights on 3 May 2021 addressing the Minister for Citizens' Protection, the Minister of Migration and Asylum, and the Minister of Shipping and Island Policy of Greece (CommHR/DM/sf 019-2021) clearly demonstrate that the reception conditions in Lesvos did not meet appropriate standards.[30] Further, throughout 2020-2021, the ECtHR granted interim measures[31] several times for the immediate transfer of vulnerable persons living in

[30] In the abovementioned reports, other reception conditions in Samos, Chios, Kos, and Leros are also criticized with the lack of suitable living conditions.

[31] Interim measure of the ECtHR is regulated under the Rule 39 in accordance with the Article 34 of the ECHR to intervene in the situations where the concerning persons are a *prima facie* risk of serious and irreversible harm, which mainly address the situations concerning violations of the Article 2 (right to life) and 3 (prohibition of torture and inhuman and degrading treatment) (UNHCR Rule 39 Toolkit).

Samos, Moria (before the fire), later in Moria 2.0 (new camp established in Kara Tepe after the fire) to an appropriate place with suitable conditions (RSA 24 September 2020; Legal Centre Lesvos 17 March 2021, 26 August 2021; ECRE May 2022). In this section, I elaborate inadequate living conditions of asylum seekers and refugees in Moria and how these living conditions violate fundamental rights of asylum seekers and refugees despite the EU directives and UNHCR guidelines.

During my visit in the "Olive Groves" on 30 January 2020, the first thing I noted on my notebook was "Everywhere is full of garbage". Big black plastic bags were all along the road going up to Moria camp (Appendix H). While walking among the tents and slum-type containers, young volunteers (mostly women) were picking up the rubbish from the ground and put them in the black plastic bags that were later on piling up next to the road waiting for the municipality to clean. Nevertheless, the municipality was not cleaning the inside of Olive Groves and not even taking the garbage from the road takes some days. After spending some more time in the "Olive Groves", it became more interesting not to see any women except the NGO staff or volunteers. Seeing only men in the camp area was unusual but I could not understand what was really happening.

After I came back to the city centre in Mytilene, there was a crowded group in Sappho Square, as well as the police forces. When I approached to the group, it was now clearer. It was a demonstration organised by refugee women, which was the reason of the absence of refugee women in the camp. A week before my arrival on the island, there was a young Afghan woman who was stabbed to death in the camp (Keep Talking Greece, 20 January 2020). During my conversations, it appeared that there were many other incidents happening in that period. The tension on the island was significantly higher than my previous visits that I had made since the summer 2015. The air of solidarity was transforming into more anger every other day.

In the protest area, the protestor group mostly formed by women were shouting and carrying various banners criticising the EU policies. Women asylum seekers, refugees,

and supporting groups were protesting against the EU and Greek migration policies that keep asylum seekers and refugees in dire conditions in Moria. They were all shouting how unsafe Moria was especially for women and children. Among all, one of the banners struck me: 'EU is always talking about human rights. Isn't Moria EU?' "(From my fieldwork diary / 30.01.2020). That banner demonstrates that the protest is beyond complaining about poor conditions but reflecting on double standards of the EU towards the human rights of citizens versus asylum seekers, and on the gap between the rhetoric and the practices. Therefore, within the framework of the debate on rightlessness of asylum seekers and refugees, one must show attention on not to render asylum seekers and refugees into powerless or passive voices. In this context, while distinguishing the presence of formal rights from practicality of having rights, Gündoğdu (2015) addresses to the lack of a political community, which paves the path for the "bare lives" in refugee camps. Yet, here the question is arisen if we can reduce the condition of personhood to the political community. Recognizing the importance of the political community or communal relations, on many occasions I have met asylum seekers and refugees, including minors, who have self-awareness of having rights and demand to be treated like "humans" regardless from belonging to any political community.

The security concers of women are not limited to the camp life but it exceeds to their social life outside the camp. While looking around to see a familiar face in the protest area, a man around his late forties approached and asked me: "μένεις στη Μόρια;" which means "Are you staying in Moria?". My answer was was "No", but he continued asking further questions. The level of my Greek was not really enough to understand all the things that he was saying so I told him that I do not speak Greek well. He was not speaking English well, neither. This time he made a gesture of eating something and asked me: "φαγητο; (food?)". My answer was again "No". After repeating and insisting questions of Moria and food, and my answer as constantly "no", he became clearer about what he was offering. He was not convinced that I was not staying in Moria. His confidence while asking the question made me think that it was probably not his first time to make this offer. The offer was food and "his place to sleep" in the

night. Exploitation, particularly sexual exploitation arises an inevident consequence of desperate situation created in the island. In order to dissuade him, I informed him about my researcher position at the university in Greek and got away from him by crossing to the other side of the street. When I shared my experience about this disturbing acquaintance with my friends living on the island, no one was surprised. One of them who was working with children back then even commented on the similar or even riskier situations that the minors living in the camp are having every day. “Staying in Moria” is already unbearable due to the poor, inhuman, and obsolete conditions but going out while “staying in Moria” keeps asylum seekers and refugees, in particular single women and minors in an unsafe position that leads to exploitation in various ways. Moreover, the poverty and hardship in Moria imbalances even further the relationship between the camp residents and the host society, the non-citizens and the citizens.

Having noted various times, the severe living conditions and poor infrastructure of the Moria camp (both official area and the olive grove), the barriers on access to the fundamental needs and rights are well recognized. Nevertheless, it has been aggravated throughout time instead of improving the conditions. In January 2020, during my first official visit for my fieldwork, there were 21,480 asylum seekers on Lesvos. 19,275 of them were camp residents in Moria which was initially designed to accommodate around 3,000 people (see Table 4).

Table 4: The Number of the Migrants Living on the Aegean Islands in Greece[32]

HELLENIC REPUBLIC
MINISTRY OF CITIZEN PROTECTION
NATIONAL COORDINATION CENTER FOR BORDER CONTROL, IMMIGRATION AND ASYLUM (N.C.C.B.C.I.A.)

Athens, 13/1/2020

NATIONAL SITUATIONAL PICTURE REGARDING THE ISLANDS AT EASTERN AEGEAN SEA (12/01/2020)

PLACE/LOCATION		LESVOS		CHIOS		SAMOS		LEROS		KOS		OTHER ISLANDS		TOTAL	
		OCC.	CAP.	OCC.	CAP.	OCC.	CAP.	OCC.	CAP.	OCC.	CAP.	OCC.	CAP.	**OCC.**	**CAP.**
R.I.C.		19275	2840	5759	1014	7353	648	2335	860	3846	816			**38568**	**6178**
OTHER ACCOMODATION FACILITIES		1219						164	120					**1383**	
HELLENIC POLICE FACILITIES	P.D.C.	82	210							162	474			**244**	**684**
	DETENTION FACILITIES	9		5		1		4		6		47		**72**	
U.N.H.C.R.		681	772	278	286	267	282	119	136	189	213	58	81	**1592**	**1770**
N.C.S.S.		140	148	14	18	15	18							**169**	**184**
OTHER N.G.O.s		74	100											**74**	
MAKESHIFT CAMPS		0		0		0		0		0		49		**49**	
MIGRANTS PRESENT ON THE ISLAND		**21480**		**6056**		**7636**		**2622**		**4203**		**154**		**42151**	
ARRIVALS		96		0		52		0		0		3		**151**	
TRANSPORTS TO THE MAINLAND		11		92		0		27		4		0		**134**	
DEPARTURES (EU-TURKEY STATEMENT)		0		0		0		0		0		0		**0**	
DEPARTURES (I.O.M.)		0		0		0		0		0		0		**0**	
TOTAL DEPARTURES FROM THE ISLAND		**0**		**0**		**0**		**0**		**0**		**0**		**0**	

CAP.	CAPACITY
OCC.	OCCUPANCY
R.I.C.	RECEPTION AND IDENTIFICATION CENTRE
N.C.S.S.	NATIONAL CENTRE FOR SOCIAL SOLIDARITY
P.D.C.	PREDEPARTURE DETENTION CENTRE

Until the fire burned the whole camp area in September 2020, it was overpopulated despite the efforts of decongestion. The overpopulation of the Moria camp brought many problems with it from difficulties to access to food and WASH facilities, security issues within the camp area, barriers on access to health services, as well as to the education, and last but not least, the severe conditions were extra challenging for the vulnerable groups including the unaccompanied minors. The living conditions and the hardship in Moria was the first answer of all my interviewees for the question concerning the challenges that asylum seekers and refugees face in Greece. P15/G1 explains how the long waiting process in bad living conditions affect the asylum:

> It is the living conditions first of all. And also, because everything happens faster people do not have time to realize what their obligations are and sometime what the

[32] Source: Ministry of Migration and Asylum, National Situational Picture Regarding the Islands at Aegean Sea, https://migration.gov.gr/statistika/.

> rights are. Sometimes you seek consultation further. If you are living in the centre in the hotspot for many months because sometimes procedures and prioritization change all the time, you lose faith in yourself. I see that very often. Sometimes they do not leave here. Most of the people lose any hope. If you are in the city, you may find yourself seeking a job or something like that. When on the island, even if you have the chance to do these things, you feel trapped. Even only these feeling makes you incompetent. I have seen some only few people, admirable people, even from the first day they did not know what happens, they waited, waited, waited and they did not give up. But it is exception. Because it has to be that you have to be a person like that. But some people have so much trouble by only travelling here. I am not commenting on their stories or their claims but only the trouble you are tired.

Spatial arrangements do not meet any of these standards mentioned above, in particular the Olive Grove was formed by hovels with few private space and without a proper infrastructure. Not only the spatial arrangements, but also food and water safety were not ensured in the camp area, which was the main source of many tensions and conflicts among the camp residents in many cases. Therefore, together with the poor living conditions, very bad hygiene facilities and insufficient food and potable water, one of the essential problems of the Moria Camp were the safety of the asylum seekers. According to the UNHCR's Statute and the Article 35 of the 1951 Refugee Convention, host states are obliged to ensure the physical security of refugees. Even though the recast RCD does not explicitely address the concept of "physical security" of asylum seekers and refugees, the article 17 of the recast RCD regulates the material reception conditions to guarantee "physical and mental health" of applicants. As UNHCR foresees in "The Operational Protection Reference Guide" (pp. 37-40), there are various reasons that pose threat against the physical security of asylum seekers and refugees such as lack of sufficient material and humanitarian assistance, criminality, personal or communal conflicts, abuse, discrimination, undisciplined local police or security forces in the camp, and so on. Even though empowering refugee community leaders to establish refugee volunteer guards and neighbourhood watch teams is considered as one of the good practices to solve the security issue, still the host country and the camp administration are the primary responsible authorities to ensure physical security of camp residents.

The tension among the communities was increasing everyday which resulted many injuries and murders including minors in the camp. On 4 August 2020, I visited the Olive Groves with a group of staff working for different NGOs and international organisations. They were telling that the situation was better after some of the unaccompanied children were relocated. Still, both the official camp area and the olive groves were very crowded. Moreover, due to the lockdown in the camp area, the residents were not allowed to leave the camp except the daily quotas given to people in need for medical examination or in appeal process. From my dairy notes on my visit on 4 August 2020:

> We were in Moria from 09.30 till the late afternoon. We walked in the Olive Groves where the families with children are staying the most. It was different from my previous experience in which I was walking around mostly the single men were living. There are slum houses made of the wood and cartoons, as well as the tree branches. Each time a jet flight passes the children are screaming all together. In some groups, adults taking care of the children made it like a game so first they scream and then they start singing.
> (…)
> I met a Hazari family (parents and 3 sons) were living together in a hovel the olive groves. The oldest child (13 y.o) told: 'I hate Moria. I don't want to die. There is always fight'. He told us that he could not sleep at night. He is always afraid if they burn the tents or if they attack with the knifes. Therefore, he stays awake in case that anything happens during the night when his family sleeps. He has 2 younger brothers. He is the only one speaking English in the family. He feels responsible for his brothers. He feels safe when he goes to the UNICEF school.

The interpreter who accompanied us was also an asylum seeker living in the camp. Because of his work, he had to leave his family alone for long hours, so he was scared for them when he was not around. They were all staying in Moria. The moment he was finished with us, he went to find his wife. "Nobody feels safe here." Alongside the poor living conditions and lack of basic services, security concerns have vital for camp residents in Moria.

The next day of my visit, I had an interview with P8/N4, a spoke-person of a refugee led NGO on the island. When I asked about more information on the security problems in the camp, what P11/N7 described me illustrates the severity of the situation:

> 5-6 years old kid prepares a knife to make sure that his family is safe. Kids cannot imagine how their life will be. There are different reasons for fight. Personal (about women) and NGOs or volunteers. They support some people, some have some don't have. It creates fight. Especially about food. People take 2-3 times. Also, showers are another reason to fight. The duration in the shower. Most of the time, it is because of the lines. People from different nationality in small space. Different languages, different culture, different religion.

Children were not the only ones who got afraid because of their security. The adults living in the camp area were mentally struggling to adjust with the conditions. It was a common practice one of the family members, usually the underaged boys or adult men in the family sleep in shifts to protect their family. While the family sleeps in the night, one of them waits in front of their tent. Depending on the communal relationships, it was also possible to come 2-3 families together, having tents close by, and providing the safety as groups that they were building. However, due to the religious and ethnic differences combining with the "competition" and "hierarchy" over the asylum procedures, tensions between different communities could turn into fights easily.

Alongside the unsafety in the camp, the camp residents that I talked to told me that it was getting harder when they did not know for how long they have to stay in those conditions. Despite the fact that the asylum seekers have to be informed about the procedures including the time frame, they were not well informed about how long it might take the procedures. One of the refugees that I met during my visit told me: "The prisons are better than the Moria camp because at least you know for how long you got punishment and for how long you are going to stay in the prison. Here, we do not know anything." The uncertainty about the time frame creates pressure on asylum seekers as much as the outcome of the decision for their asylum case. P1/E1 who used to work as a case worker in EASO also highlighted the difficulty of living in an unsafe place for an uncertain period. S/he added that even staying one night in Moria would be very scary for many people because it was not safe for anyone.

While safety was one of the major concerns for all camp residents, it was a more vital issue for unaccompanied minors living in Moria. Inside the official camp, the P5/N1,

P7/N3 and P10/N6 who were working with the unaccompanied minors in Moria and guesthouse in Madomado before it was closed explained me that there were sections in the official camp in Moria. Section A was for vulnerable families, Section B for unaccompanied minors, and Section C was for single women. When there was not enough place in Section B, it was also possible for unaccompanied minors to reside in Section A. Safe zones were relatively more protected area since the entries of other camp residents were restricted. Nevertheless, there were many serious risks of harm including rape, harassment and violence. During my visit both in January 2020 and July-August 2020, the sections were overcrowded until the relocations of the unaccompanied children started. In particular, in January 2020 when the camp was overcrowded with almost 20,000 people (together with olive groves), I was told that safe zones were also full so some of the unaccompanied minors were sleeping wherever they could find place including the olive groves which left them totally unprotected. During my interview with P7/N3, s/he told me that many of the unaccompanied minors were suffered from serious psychological problems. Alongside witnessing the violence where they were coming from and even loss of family members in many occasions, they were having serious traumas during their journey to Greece. As a response to my question with regards to main problems that the unaccompanied minors were facing in Lesvos, all my interviewees expressed that ALL children want to go to Athens, they do not want to stay on the island. Following this, it was followed by access to food and water. P7/N3 stated that food was a constant issue, both in terms of quantity and quality. Especially, in Moria, s/he highlighted several times the scarcity of food and potable water.

From the interviews and my observations, it became apparent that even the deficiency needs (food, sleep, safety, and so on) on the bottom in Maslow's pyramid were not met for asylum seekers, notably unaccompanied children, despite the presence of various actors in Moria and enormous funds provided by the EU. The European Commission's report on the EU financial support to Greece for migration management (November 2020) makes more apparent that the poor living conditions and inadequate conditions cannot be explained with the scarcity of the resources. According to the

report, the EU financially supported Greece with 2,81 billion Euros between 2015 and November 2020. There are three main funds used in Greece: Asylum, Migration and Integration Fund (AMIF), Internal Security Fund (ISF), and Emergency Support Instrument (ESI) (European Commission, November 2020). The funds under the emergency assistance were awarded both to national authorities and international organisations and agencies to be used in various purposes from installation of reception facilities to the procurement of Search and Rescue equipment. Based on the details provided in the report, the funds (more than 200,000 million euros) for construction and maintenance of reception facilities and accommodation centres are distributed among the ministries -mainly to Ministry of Migration and Asylum and to the Ministry of Defence for the immediate response in the Eastern Aegean Islands (European Commission, November 2020). Permitting these conditions and creating them for deterrence, that heavily violate their fundamental rights in a hyperregulated space, is a matter of rule of law. Creation of such dire conditions is neither the result of overlapping legal orders, since none of the legal orders in refugee protection allows it, nor of overlapping institutions. In fact, by not complying with law for the sake of the political interests, the sovereign is sacrificing the norms and principles that constitute the *raison d'être* for the entire system.

4.4. The use of chaos at the borders and the pandemic as excuses for extreme confinement measures

4.4.1. March 2020: Suspension of asylum rights

Shortly after the outbreak of Covid-19 in Wuhan in December 2019, the increasing numbers of Covid-19 cases in Italy alerted the EU to adopt gradual measures within the EU starting from the late February 2020 (European Council, Timeline – Council actions on Covid-19, official website). While the focus was on the new developments regarding the Covid-19 spreading in Europe, The Turkish government unilaterally opened its western borders on 27 February 2020. Following this announcement, thousands of people (families and individuals) with different nationalities rushed into

the borders with Greece and Bulgaria. On one hand, the Greek side of the land border with Turkey was immediately militarized and the troops were using excessive tear gas, water cannons (with blue coloured water to detect those who were able to cross), and plastic bullets against people who tried to cross the borders (Amnesty International 2020; HRW 17 March 2020). On the other hand, the boats approaching to the Greek islands were pushed back by the groups of people with the sticks.

Immediately the next day, on 28 February 2020, with his tweet, the Prime Minister Kyriakos Mitsotakis stated: "Significant numbers of migrants and refugees have gathered in large groups at the Greek-Turkish border and have attempted to enter the country illegally. I want to be clear: no illegal entries into Greece will be tolerated. We are increasing border security." [33] In this statement, there are two main elements to highlight. First element is the announcement of the security-oriented approach in the upcoming days at the borders. Taking into account the political approach of ND to migration and asylum policies, adopting securitarian approach could be expected (but maybe not in this level). Nevertheless, the second element is more important in particular for the legal implementations followed during that period. In his statement, PM accepts that those who attempted to cross the borders are migrants and -more importantly from the legal aspect- refugees. Apart from the push-backs at the border zones, there were other "measures" implemented as a response for the irregular crossings: suspension of the asylum applications and detention of those who entered irregularly in Greece after 1st March 2020.

On 2nd March 2020, by referring to the TFEU 78(3), Greece adopted a new "Act of Legislative Content" which suspended the reception of the asylum applications for a month for those who entered in the country from 1st March (Immigration.gr, 3 March 2020). UNHCR (2 March 2020b), in its statement underlined the illegality of the suspension of the reception of asylum applications and noted that the provisions

[33] https://twitter.com/primeministergr/status/1233399637345787904?lang=fr

foreseen in the TFEU 78(3) does not provide ground to suspend neither the principle of *non-refoulement* nor the right to seek asylum.

The second measure that was implemented in that time was the arbitrary detention of the asylum seekers. As a result of the suspension of asylum applications, the newcomers could not be sent to the reception facilities for asylum seekers. Further, the authorities transferred the asylum seekers into a navy ship named "Rodos" moored in Mytilene in instead of the hotspots in the islands (Amnesty International, 2021, p. 13). As my contacts in Lesvos informed me but also confirmed in the report prepared by different NGOs (e.g., Amnesty International 2021), almost 500 people including pregnant women and unaccompanied minors kept in the navy ship were not able to access legal aid or language assistance, apart from not being able to claim asylum. After spending 10 days in the navy without proper conditions, they were transferred to detention camps in the mainland of Greece.

During my interview with P9/N5, s/he was underlining that keeping the first group of arrivals in the navy ship could be as a part of *ad-hoc* solutions which led to many complications to access legal aid and health care:

> I don't know if it was a political decision or a practical issue or nobody because it was a very, it was a very unique situation for the authorities because they have their modus operandi to register. And suddenly they were receiving orders said no. They can put them there but there's no. Then we came to see them, and they don't know that we can see them. Then the port authorities would refer to the police and the police would call the port authorities, then they would call the prosecutor. It was a mess.

Alongside the procedural complications, P9/N5 also mentioned about new spaces used as "detention" even though they were not designed for detention. For instance, bus, empty spaces in the port, or even a warship were used to keep asylum seekers arrived in this period. The statement of P9/N5 demonstrates the severity of detention conditions in the pandemic period:

> (…) and then these people some of them were taken to Malakasaka but then it was a closed camp, some others were taken to Klisidikis in the north. Some others remained here in the bus, living in the bus and in the port and then they were taken to the camps. This [is] from the very first arrivals. The other arrivals were taken to different shores. They were down to sleep there because at the same moment with these we started to

> the quarantine. So, you've got this first group of people which we call the "warship people". Because they had a different a different journey. Let's say they came, they were taken to the mainland so they are in the regular procedure. To do that, as I said, there is a lot to say about these cases (…). For example, candidates with kidney failure. Another is the six, seven months pregnant women from Turkey live in terrible conditions. We did have the legal remedies, if we've been challenged detention. We lost them.

Apart from the inhuman detention conditions, freedom of movement of asylum seekers can be restricted only in necessary situations. Therefore, it should not become a common practice as it is applied in the hotspot islands. According to the Article 31 of the 1951 Refugee Convention:

> 1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.
> 2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

As Goodwin-Gill (2001, para 28) notes: "Refugees are not required to have come *directly* from their country of origin." Nevertheless, some states apply this Article in practice only if it seems that the transiting countries or territories pose risk or potential threats for refugees, or in cases where the protection or asylum is not granted. In this case in Greece on March 2020, in addition to the legality of detention, the space chosen for detention is noteworthy. During the period of detention in "Rodos", which is not legally designated as a detention center turned into space of detention without any legal basis but through practices. Yet, "Rodos" has transformed somehow into a temporal legal space where the fundamental rights were eroded.

The arrival of the second group coincided with the quarantine measures that were implemented nationwide. Even though the second group was not detained in navy ships or in the port areas like the first group, still they had hardship in terms of accommodation after their arrivals. P9/N5 comments on the challenges that the second

group who arrived on the island which also rises questions with regards to the discriminatory implementations against refugees living in camps during the pandemic:

> (…) then you've got the others, the quarantine cases (…). I would say that like the worst effects that say COVID measures will be seen because they were dumped in the forest, in the wilderness, in the middle of nowhere to sleep. They were given tents by UNHCR. And that was as much as they could because there were no sanitary facilities, they had to relieve themselves in the orphan nature. Many of them have spoken about snakes turned out on some accompanied minors among them and the prosecutor was never informed who is the person in charge.

4.4.2. "Μενουμε σπιτι" even though "home" is not safe enough

On 22 March 2020, the Greek government announced nationwide lockdown with the slogan of "*Μενουμε σπιτι* (we stay at home*)"* to be implemented starting from 23 March 2020 (Ekathimerini, 22 March 2020). The refugees and asylum seekers living in camps were restricted to leave the camp area, nevertheless without taking any further measure to ease the overcrowdings or to improve the hygiene conditions (HRW 2020). Earlier on the lockdown, on March 13, the Asylum Services went temporally out of service. Until the lockdown measures were lifted the Asylum Services did not take asylum applications. During this period, only registration at the first level in RIC was available. P9/N5 explained how the asylum system was working with the case of second group of arrivals (quarantine people) in March 2020:

> After one month, or two, they brought them [the second group of arrivals in March 2020] to Moria RIC, so they registered them. Even the asylum service was closed because of COVID, the registration was happening at the level of RIC. Because it is 2 different levels of registration. So, the Moria RIC level, they registered them. And then the ones in Malakasaka did as the first of the April. They were able to register there to apply for asylum, so they were officially registered as asylum seekers, but they haven't yet registered with asylum application to the asylum service. Because these people are in the mainland. They have to follow the procedure in the mainland. And it is quite mess. So, like the ones in camp they tell us through the skype.

In addition to the problems to access the right to asylum, together with the lockdown the accession to legal aid has become even more complicated. Receiving legal aid has already been incredibly challenging (please see the Section 5.4.4) but it became almost impossible during the lockdown since the NGOs and the lawyers were not allowed to

get in the camp area. However, even before the official nationwide lockdown started, due to the physical violence against the NGO workers on the island and deployment of police officers around Moria to prevent refugees to go to the city centre practically locked the refugees down in the camp (My fieldwork diary, 17 March 2020). Some of my contacts who work in different serviced in the NGOs and international organisations on the island got physically attacked by the violent groups while they were trying to reach to the camp area.

Not only the access to legal aid, but any kind of basic service including WASH facilities became very problematic in Moria. Based on the inside information came from my contacts on the island, in order to provide distribution of hygiene kits, initially two organisations could continue their services: Eurorelief (4 April 2020) and Team Humanity (7 March 2020). While Eurorelief is a Christian based organisation, Team Humanity is a volunteer organisation that had warehouse in opposite of Moria before the fire. Since the NGOs were not able to approach to Moria, they could not provide services via their staff. However, police allowed these two organisations, as well as the refugees' initiative to make their own masks. In this period, it was allowed to distribute 3300 masks in the camp are. In order to avoid congestion, there were 2 teams for distribution (one in Moria and the other was outside). They did 4 times distribution in a day from 3 different distribution tables. To provide the fair distribution, there was a ticket system and people got in line (Fieldwork diary, 1 April 2020).

With the limited allowance to only two organizations in the camp and to the refugee-led initiatives, self-organization of the refugee communities gained importance which can be also discussed within the frame of the community empowerment. As mentioned in article of Tsavdaroglou and Kaika (2022, p.235) as well, new self-organized groups emerged in this period. While these self-organized groups were making division of services (e.g., While Helmets for sanitation, and Moria Corona Awareness Team for professional assistance from pharmacists, teachers, and so on). By doing so, the camp governance has involved more actors which increased the fragmented nature of the administrative practices. Alongside the international, European, and national

authorities, and strong presence of NGOs, refugee-led organisations increased its role in the practical governance by taking over the provision of fundamental needs in the absence of state sovereignty and other official authorities. Ranabir Samaddar evaluates that such responses emerging in the times of crises have a transformative dimension of power figures that opens a discussion for his concept of biopolitics from below (interview with Ranabir Samaddar conducted by Biao Xiand, 15 May 2021).

Nevertheless, according to my contacts on the island including the camp residents, in a dire situation in which access to clean water was even problematic, camp residents had serious problems to keep up with the suggested sanitary conditions such as washing hands often. In addition to this, due to the strict restriction on the mobility in and out the camp, food scarcity was one of the issues that the camp residents complained about. During my interviews in July 2020, some of the camp residents told me that there were many fights caused by the competition over receiving food. Even though there was distribution of food in the camp area, most of the times it was not in an adequate level or form (please also see the HRW report dated on 22 April 2020).

Even though there was no diagnosed case in the first wave of Covid-19 in Moria and few cases in other camps in Greece, the lockdown on the refugee camps continued until 4 May 2020. According to the medical article of Kondilis et al., (2021), the poor sanitation and living conditions in the refugee camps significantly increased the transmission risk. Moreover, they underline the "administrative, geographical, societal and legal barriers to access mainstream healthcare" (Kondilis et al., 2021, p.2). The barriers continued even after the first lockdown was lifted. Covid-19 isolation centre established on Lesvos by MSF on May 6, 2020, to provide a safe space for camp residents who may show Covid-19 symptoms was imposed with fines in July 2020 (MSF, 30 July 2020).

As highlighted by Tsavdaroglou and Kaika (2022), Covid-19 measures taken related to the refugee community in the camps in Greece were mainly targeting to keep the host society "safe" at the cost of the health risks for refugee community in the camps.

While the government's primary objective was to keep everyone "safe at home", the "home" of the refugees and asylum seekers were far from being safe for them. In spite of the warnings made by the European Centre for Disease Prevention and Control (ECDC) to implement "measures to de-congest and evacuate residents" (ECDC, 15 June 2020), evacuation never occurred. Until August 2020, even unaccompanied minors were still kept in Moria. On 25 August 2020, 1600 unaccompanied children were relocated to 11 EU Member States with the cooperation of UNHCR, IOM, and UNICEF (UNHCR, 25 August 2020) Moreover, the ECDC guidelines (15 June 2020, p. 1) underlines: "There is no evidence that quarantining whole camps effectively limits transmission of SARS-CoV-2 in settings of reception and detention, or provides any additional protective effects for the general population, outside those that could be achieved by conventional containment and protection measures". In contrary, the guidelines specifying that taking into consideration the poor conditions and challenges on supplying basic needs in the camps, the prolonged restrictions of movements increase the possibility of Covid-19, as well as other mental health and social issues (ECDC, 15 2020, p.6).

General lockdown was implemented as one of the measures taken against the Covid-19 in Greece. Nevertheless, the restriction of freedom of movement through the lockdown was not applied equally to everyone. Asylum seekers and refugees who were residing in the camps had more restrictions than the host society for a longer period of time. Rather than an approach that provides protection for camp residents from further harmful situation, they were considered as threats against the public health. Therefore, the restrictive policies were not taking into account the health conditions, basic needs, and hygiene conditions of the camp residents whereas they supposed to be the primary considerations within the frame of measures against the Covid-19. The use of health measures was not limited to bringing further restrictions on the camp residents, but also it was used as an excuse for detention of the new arrivals in March 2020 in different locations, which were not designed detention centres (e.g., navy ship and waiting rooms in the ferry areas). This multiplied the spaces of containment in smaller spaces with further restriction on freedom of movement. In the summer of 2020, during

my visit in Moria, I could observe that the combination of dire conditions in the summer heat, particularly the water scarcity, with the restriction of mobility turned Moria into an unliveable space for asylum seekers and refugees.

4.5. Disappearing legal space and pluralistic view to RCD

10 days after returning from my field work to Athens, fire started in the night of 8 September 2020 turned the camp into ashes. As Franz and Keebet von Benda-Beckmann (2014) argues that legal spaces may disappear due to physical or regulated manners. In this situation, Moria camp as a legal space disappeared as a result of fire. Notwithstanding with this, the authors add: "Legal-political spaces may disappear not because their physical appearance changes but because they become part of a larger or different political, social, economic or administrative entity." (Benda-Beckmann, 2014). To replace Moria, the new camp site -Moria 2.0- was established in a former military zone in Kara Tepe, which does not comply neither with the UNHCR Guidance nor the EASO/EUAA guidelines due to its location (exposed to strong winds), lack of infrastructure (e.g. water supply), and inconvenient shelters (RSA 1 December 2020). Fire in Moria therefore represents more than a physical destruction of a refugee camp; it shows how human dignity can be minimized as a result of systematic violations of fundamental rights and inconsistent policies.

Beyond the philosophical sense of human dignity, it has a legal connotation in the EU law. The concept of human dignity takes place among the provisions in the Charter of Fundamental Rights of the European Union (the EU Charter). As argued in detail in the Chapter 3, the EU Charter is a reference to develop EU policies so the EU institutions and all Member States are expected respect the EU Charter (Jones 2012; Tsourdi 2015). Therefore, they are legally bound to respect human dignity for policy-making, as well as implementation of the policies. Alongside the universal values listed in the preamble of the EU Charter, the first chapter is entirely dedicated to the concept of dignity (Title I, The EU Charter). Article 1 states: "Human dignity is inviolable. It must be respected and protected", which is followed with the articles

concerning right to life (Article 2), right to the integrity of the person (Article 3), prohibition of torture and inhuman or degrading treatment or punishment (Article 4), and prohibition of slavery and forced labour (Article 5).

Tsourdi (2015) notes that the CJEU uses the article 1 of the EU Charter on human dignity rather than the Article 4 as an interpretation of the recast RCD, whereas the ECtHR assesses the situation of applications such as living conditions including extreme poverty, housing, or detention conditions under the article 3 of ECHR (prohibition of torture, inhuman or degrading treatment). With regards to the different approaches of interpretation between CJEU (formerly ECJ) and ECtHR, Krisch (2007) states: "The overall result is far from hierarchical and well-ordered: it might not be of 'Kafkian complexity', but it is certainly highly pluralist". From this perspective, this particular situation on RCD creates a concrete example for the pluralistic legal regimes in human rights protection despite the increasing convergence between the courts (CJEU and ECtHR).

Despite the general concerns about the risk of friction in legal pluralism, studies on the human rights pluralism in Europe -the overlapping EU-ECHR system suggest that pluralistic structure of the European human rights regime in fact have a constructive impact on the evolution of human rights protection as long as there is dialogue between the courts and cooperative relationship (Costello, 2015; Krisch, 2007). Particularly, the *incrementalism and openness of pluralism* seem to have a significant benefit for breaking the resistance of domestic courts due to the respect to autonomy of domestic courts for their final authority (Krisch, 2007, p. 32-33).

There are nevertheless two main issues arisen at this point. First, there is a great resistance of implementation of the ECtHR decisions, particularly leading decisions in politically sensitive issues. Latest statistics show that 47% of the leading judgments made by the ECtHR in the last 10 years are still pending implementation in the state parties CoE (European Implementation Network, January 2022). Even though there is a positive impact of the ECtHR on the evolution of asylum rights in the context of Greece, there is still resistance to implement leading decisions in the field of asylum.

The same statistics show that 35% of the leading cases are pending implementation in Greece (European Implementation Network, January 2022). Two of the leading cases still pending implementation are concerning the situation of asylum seekers: degrading treatment of migrants in detention (M.S.S. v. Belgium and Greece) and unlawful detention of asylum seekers and irregular migrants (S.D v. Greece). The communication submission by Greek Council for Refugees (GRC) in the M.S.S group case under the Rule 9.2. the Rules of the Committee of Ministers for the supervision of the execution of judgements, Greece fails to meet standards for certain issues including access to the reception capacity, asylum procedure, capacity of the asylum service and duration of the procedure, detention of asylum seekers, and detention conditions (DH-DD (2019)515). Following this, on the 1st October 2020, the CoE Committee of Ministers (CoM) issued a decision addressing these continuing problems and delays in practical implementation of the concerning cases (CM/Del/Dec(2020)1383/H46-7).

Second issue is neglecting the CJEU jurisprudence in the domestic cases in Greece (ECRE Legal Note, 2021). Even though there are decisions made by CJEU on the failure of Greece to meet the (recast) Asylum Procedure Directive (APD), these decisions have been ignored (ECRE Legal Note, 2021, p. 8). Moreover, recent CJEU decisions made in 2019 (Jawo, C-163/17, and Ibrahim and others, joined cases C-297/17, C-318/17, C-319/17, C-438/17), clarify the standards on living conditions under EU law and different from previous interpretation, CJEU's relevant cases evaluate the living conditions under the Article 4 of the EU Charter (Prohibition of torture prohibition of torture and inhuman or degrading treatment or punishment), which is also applicable for the case of Greece. Nevertheless, ECRE underlines the lack of reference to the CJEU jurisprudence in the Greek judicial context both for judges and lawyers. Therefore, despite the fact that there is even further convergence between ECtHR and CJEU on the living conditions of the beneficiaries of international protection in align with the evolutionary characteristic of European human rights regime, it does not reflect on the national judicial context in Greece yet (ECRE Legal Note, 2021).

As argued throughout this chapter, reception facilities and refugee camps can be considered as concrete examples for the mutual construction of law and space. Therefore, this chapter set the scene by describing the legal space, where the practical implementations of asylum procedures and the complex interactions between different actors take place as they will be examined in detail in the next chapter (5). In the case of Lesvos, it is clear that the island has been re-spatialized multiple times depending on the policies. Different from the previous periods, the most recent one has occurred due to a supranational policy response towards to a cross border movement, which led to the transformation of the island to a legal space where multiple actors co-exist under various regulations in different scales. Yet, the contradiction between the poor living conditions that do not comply with any regulation and a hyperregulated space gives us a hint for the further discussions with regards to the operational dimension.

When inadequate living conditions, lack of basic services, and severe security concerns for asylum seekers and refugees come together with the challenges to access legal rights as elaborated in the Chapter 5, refugee protection loses its effectiveness. As mentioned earlier, an effective refugee protection should ensure both physical security and legal security of asylum seekers and refugees. While in this chapter, the challenges against physical security due to the camp environment were discussed, in the following chapter, legal challenges to access asylum rights will be elaborated.

CHAPTER 5

DAILY OPERATIONS OF GLOBAL LEGAL PLURALISM IN LESVOS

As largely discussed in the previous chapters, the asylum regime in Greece has become both operationally and legally complex in the last decade. Daily operation of legal pluralism has direct impact on asylum seekers to access their rights. Here, legal pluralism is used in the sense of global legal pluralism by addressing the overlapping and/or competing legal regimes at different levels as a result of multiplication of institutions together with the European integration, as well as the proliferation of legal documents for refugee protection in different levels -international, supranational, regional, and national- (Tamanaha 2008). In that sense, hotspots appear as great examples as legal spaces where overlapping legal regimes and institutions co-exist for governance of asylum regime. While the legal governance of refugee protection involves multiple levels that lead us to the legal pluralism discussions, legal geography and topographical approach allow us not only to focus on overlapping legal regimes but also draw attention on the erosion of asylum rights in a highly complex protection system which is formed by various national, regional and international regulations, and actors responsible for the protection of asylum rights. As Tan and Gammeltoft-Hansen (2020, 338-339) discuss in their article, a topographical approach firstly focuses on the "sites" where the human rights are violated and legally fragmented by referring the concepts of legal geography such as splice and nomosphere. Secondly, inspired by the studies of rightlessness and legal black holes, it tries to highlight the legal avenues in which the legal black holes occur and lead to the *de facto* and/or *de jure* rightlessness.

The concept of rightlessness is originated from Hannah Arendt's seminal work *The Origins of Totalitarianism*. Reflecting on her own stateless status, she expands her famous notion of "right to have rights" to a broader analysis of statelessness and refugees. She looks for the root causes of the rightlessness in the collapse of the nation-state, and as a result of that the loss of protection of his or her country (Arendt, 2017 New ed.). Taking into consideration the first publishing year of The Origins of Totalitarianism in 1951 with the lack of an effective protection of refugee rights, losing the belonging to a nation without any international protection naturally renders individuals rightless. Nevertheless, together with the adoption of a number of human rights treaties including the establishment of an international refugee protection regime with the 1951 Refugee Convention, the question of rightlessness of refugees has been approached from different angles (e.g., Ingram, 2008; Benhabib, 2009; Gündoğdu, 2015; Mann, 2018; Adel-Naim, 2019). Being aware that there is a whole scholarship developed based on the political theory of Arendt, I aim to give the understanding of the concept of rightlessness as an implication of legal black holes created in the Greek asylum regime.

In addition to this, Adel-Naim Reyhani (2019) explores the externalization policies of the EU in the context of Libya from the perspective of rightlessness. Nevertheless, he does not just apply the Arendt's concept on the case of Libya, but he offers to classify different typologies of rightlessness in a gradual way. The main reason why he suggests using gradual forms of rightlessness is that the Arendtian notion of rightlessness emerges from the legally unprotected personhood. Therefore, stateless people and refugees create an *anomalous situation*. In order to bring solution to this anomaly in which refugees lose the protection of their country of origin, the 1951 Refugee Convention was adopted and in particular, the *principle of non-refoulement* is landmark before accessing extensive rights recognized by the 1951 Convention. From this perspective, the *absolute rightlessness* is "without access to the principle of *non-refoulement* in a country that is committed to 1951 Convention". On the other hand, if *non-refoulement* is practically respected, then in that situation we can speak of a *relative rightlessness*. Both absolute rightlessness and relative rightlessness take

place until asylum and/or a secure residence in a country is granted so the obtainment of "have right to rights" is possible. He classifies this situation where there is asylum and/or secure residence in a country as *dissolved rightlessness*. As a scholar who approaches with caution to state the rightlessness of irregular migrants and asylum seekers in hyperregulated spaces. Therefore, I find the gradual approach of Reyhani crucial. The analysis in this chapter provides an overview on how irregular migrants, asylum seekers and refugees find themselves in a spectrum of rightlessness.

In the first part, the problems arisen from the European migration policy that contradicts with the refugee protection and its impact on the ground are discussed. In the second part, rightlessness caused by the cracks in the Greek asylum regime which carries the legal pluralism characteristics will be elaborated. Here, following the interviews and the legal document analysis, the main issues can be counted as the inconsistences in the transposition of the EU law, the ambiguity due to the constant changes in the national legislation, the implications of the changing laws and of the differentiated treatments against refugees based on their location, country of origin, and special needs. In the following section, as a contribution to the literature of the study of rightlessness and legal black holes, I will elaborate the conflict between the actors is asylum determination process as a factor that leads the rightlessness of asylum seekers. Last but not least, the lack of the legal aid and its deepening effect on rightlessness will be discussed.

5.1. Conflicting law and policy in the EU asylum regime: The erosion of rights

The formation of CEAS is based on the laws and regulations that directly address the human rights treaties and the 1951 Refugee Convention. Nevertheless, the practices do not reflect the normativity of the asylum regime in EU. There are different reasons behind the mismatch between the protection regime on the paper and the actual situation in which the standards are far behind the regulations. As the protection system in the EU is a complex system with overlapping different legal regulations that leads the multiplication of legal regimes in order to govern the "crisis" times and that

creates fragmented legal framework as highlighted several times, it is not enough alone to explain why the rightlessness emerges from such a normative formation.

Furthermore, as argued in detail in the Chapter 2, in the literature of legal pluralism, one of the concerns in pluralist structure of human rights is the emergence of legal black holes as a potential outcome due to the overlapping legal orders or clashes and/or cracks in the legal regimes. For instance, in his study in which Itamar Mann (2018) explores the concept of the "legal black hole" based on the legal failure to prevent and to end the migrant drownings in the Mediterranean Sea, he acknowledges the characteristic of international law -the way it distributes responsibility among states and individuals- has capability of rendering individuals rightless. Mann (2018) categorizes the legal black holes under three typologies: (1) *the counterterrorism legacy* which intentionally leads the violations of fundamental rights including the prohibition of torture and inhuman treatments; (2) the migration detention legacy which arises as an outcome of deterrence policies and the structure of international law; (3) the legacy of maritime legal black holes in which the lacuna in responsibility causes deaths at sea. According to Mann (2018), in the first two categories the violation international law causes the *de facto* rightlessness whereas in the last category, the states render migrants *de jure* rightlessness in the areas at sea where no state has jurisdiction as he gives the example of the areas in the Mediterranean Sea which are out of the SAR zones of Italy, Malta, and Libya.

In align with the categories defined by Mann, in the context of refugee protection in Greece, deterrence policies both in national and EU levels emerge among the determinant factors for the creation of legal black holes. Lavenex (2018, p.1199) argues that conflict of values between the security and human rights is in the core of the asylum law. Yet, the asylum policies take place in the "Area of Freedom, Security and Justice" (AFSJ) which "needs to strike between these partly conflicting principles" (Lavenex, 2018, p. 1199). In fact, she uses the concept of "organized hypocrisy" from the organizational sociology (Brunsson, 1989) to describe the mismatch between the normative discourse of the EU and the protectionist policies takes its ground from this structural cleavage between the norms and values, and political priorities and

preferences. This incompatibility results with the sense of "hypocrisy" (Lavenex, 2018, p.1200).

A relatively new problem of rightlessness is caused by the extraterritorialization of asylum policies which is not caused by the loss of the protection of their country of origin, but the circumstances on the way for access to the territory of another country turn people in a condition of absolute rightlessness (Reyhani, 2019). For example, when people flee their country to seek for asylum, they have to first pass a territory that belongs to a dysfunctional or failed state or to a state where the 1951 Convention is not implemented. In this situation, the circumstances neither allow these people to go back to their country of origin nor move on to the territory of another state. They find themselves in an absolute *rightlessness sur place.* Following the conceptualisation, he provides an analysis on the case of Libya concerning how irregular migrations are rendered into an absolute rightlessness sur place as a result of the European asylum policy in which the deterrence policy has become a fundamental element. Due to the cooperation that the EU makes with the third countries (here with Libya) to keep irregular migrants out of the EU territories, the irregular migrants who aim to seek for asylum find themselves trapped in a state where the asylum system dysfunctions without access to the asylum rights if not lost their lives at sea (Reyhani, 2019).

The EU migration policy, in particular the consequences of deterrence policy, were heavily criticised during my interviews with many actors in the field. P17/PA1 points out how different preferences of the Member States re-shape the essence of the CEAS:

> When you say refugee law, it depends on what you are referring to. If you refer to the European asylum system, then I would say that, precisely because lots of areas of EAS is very vague and open to interpretation. With few exceptions, almost of EU members states stick to the letter of the law. Do they stick to the spirit of the law? That's a bigger debate because again the European law on the what, it is a little bit contradictory. On the one hand, it is the vision of cosmopolitan Europe there has been based on values, and the importance of guaranteeing the rights to asylum. (…) They do believe that they need to guarantee the rights to asylum. And on the other hand, there is the reality which has European publics, not all of them but a lot of them are getting little bit tired of you know not saying other areas prioritized like economy, education, etc and migration taking so much resources and also space. As a European. When it comes to

> the 1951 Convention I think there, you will find that the EU is increasingly going into the broader circle, broader group of Western countries, Western liberal countries, that have stood for many decades as proponents of Convention. Still as are the proponents of the Convention but increasingly re-interpreting how to apply it.

In addition to the salience between the norms and values, and securitarian approach, externalising the protection obligations to the third countries has become a strategy that the EU has been using for years (Chetail, 2015, p. 587). Together with the third country agreements that involved both the cooperation on the border controls and return of irregular migrants, the border controls became integral part of the asylum system (Chetail, 2016, p.587). Externalization policies had impact on the reinforcement of the containment policy by aiming at keeping irregular migrants outside the EU (Chetail, 2016, p. 588). Among the third country agreements, the EU-Turkey Readmission Agreement that was signed on 16 December 2013, can be given as an example. Yet, the containment policy became more apparent with the adoption of the EU-Turkey Statement of 2016 in two dimensions. The first dimension continues to aim at keeping asylum seekers out of the EU as an extension of the externalization policy. The second dimension is the containment of asylum seekers on the border zones (the hotspots in the case of Greece) if the first target of keeping them outside the EU failed. The interaction between the externalization of asylum policies and the containment policy creates the multiple-peripherisation in the asylum regime (Klepp, 2010; Bousiou, 2022). In addition to this, this thesis claims that the territorial differentiation for the asylum procedures is not only the result of the interaction between these two policies but also one of the implications of legal pluralism that multiplies legal regimes not only vertically but also horizontally. While vertical multiplication refers to the different layers of legal orders in the asylum regime, horizontal multiplication addresses the spatial dimension of the protection by splicing the legal spaces.

5.2. Cracks in the Greek Asylum Regime

As discussed in detail in the chapter 3 concerning the legal framework, the asylum regime in Greece has been criticised over years. Despite the fact that since 2011, the harmonisation process of the asylum law has been intensified and led to the establishment of a more concrete asylum system, there are still fundamental problems including challenges to access to asylum right, insufficient legal aid, arbitrary detention, long procedures, uncertainty, poor living standards and so on. Despite the fact that the adoption of a number of regulations at national, European and international levels to ameliorate the protection standards in Greece, fundamental rights of asylum seekers and refugees continue to be violated on a daily basis. In addition to the longstanding problems in the Greek asylum system, the restrictive migration policies of the EU in particular following the refugee movement in 2015 have direct impact on the rights of person aiming to access international protection.

In his research on the legal pluralism and fundamental rights in the EU, as Di Federico highlights (2011, p.15) "The co-existing national, supranational and international (universal and regional) systems of fundamental rights protection and the respective of enforcement suffer from a lack of coordination which may affect the possibility for an individual to obtain justice." In align with the statement of Di Federico, it will be argued more through the first-hand experiences of the practitioners in this chapter how a lack of coordination creates challenges for asylum seekers to obtain their rights. Nevertheless, within the context of the refugee protection in Greece, the lack of coordination for the enforcement of the legal instruments can be a limited explanation for the legal black holes and rightlessness. Yet, the political will has a determinant role on favouring orientation (rights-based or securitarian approach) during the implementation of the regulations. In particular, during the times called as "crisis" by the EU and the Member States, it is taken advantage not to fulfil the European legal standards as framed in the legal instruments (please see the Chapter 3, Section 2).

Due to the differentiated speed of harmonisation of the Member States with the EU asylum law creates inconsistencies. In the Greek context, the lack of an efficient asylum system (in particular before 2011) was already explored in the Chapter 3; however, it is important to highlight the role of the EU Commission to follow up with the harmonisation process in the Member States. While the institutionalisation process in the field of asylum speeded up together with the adoption of a series of EU Directives, their transposition into Greek legislation was not in the same pace as underlined by P17/PA1:

> Any part of EU law will be transposed into national legislation, there is no option to opt out. There is no way to opt out of it and so in that sense, transposition will happen all across the EU there is always a period of roughly three years to transpose in European legislation, because Parliament would work at different paces. Greece has sometimes delayed beyond that, that one other member states have also done. It has always transposed the legislation. Implementation though, this is where the Commission's role in principle comes in, in place right here, the Commission is there to guarantee it doesn't legislate. But it's there to guarantee that the legislation that's passed through Parliament is implemented, and why it's not implemented and start infringement procedures. That's the whole point of Commission, guardian it to an extent of the legislative work that's done in the parliament. Does it have the capacity to impose implementation or to enforce implementation? No.

With regards to the delayed transposition of the EU Directives into the Greek legislation, P18/PA2 sees the increasing numbers of arrivals which turned into a crisis as an impetus for fastening the harmonisation process. S/he stated: “I think the refugee crisis forced the government to look into the more specific laws that they wish they reformed and made them much more (…) compatible to the European standards”. Notwithstanding with this, P18/PA2 adds that although Europeanisation was a catalyst for change in Greece, implementation remains problematic. Still, the compatibility of the Greek law with the EU norms is an important indicator for P18/PA2.

P18/PA2, however, comments on the reverse process on the Europeanisation. As discussed earlier in the Chapter 2, the Europeanisation aims at bringing common standards that comply with the 1951 Refugee Convention and its 1967 Protocol, as well as the relevant international human rights treaties. Even in some EU level directives, notably the Original Qualification Directive were found above the standards

brought by the 1951 Refugee Convention (CJEU ruling of *Elgafaji*). In the context of Europeanisation, all Member States' national legislation and practices have to comply with the EU law, which aim to standardise the common rules and practices in the area of asylum. Nevertheless, According to P18/PA2, the policies and practices after 2016 have not lived up to the European standards but in contrary, the standards in the EU have been diminished:

> (…), the changes that take place after 2016 are not part of a Europeanisation process, I would say it's the opposite. I would say that Greece is if you'd like a pilot, where certain ideas notions and policies are tested. Alongside Italy, but Greece more so than Italy, because Italy sort of paved its own way. And a reverse process has happened, what worked or didn't work in Greece has spilled over into the changes that we're seeing gradually on how European law is implemented across member states. So it's not so much that the EU, the commission brought Greece closer to the European system. I think after 2016, it's the opposite. Greece has brought Europe closer to its system.

The gap between the EU directives and the national law was repeatedly mentioned during the interviews, in particular with the legal aid providers. In many aspects, the EU directives especially the Qualification Directive and the Reception Conditions Directive were not implemented as they should in the hotspots on the Greek islands for reasons such as the incompatibility in transposition, different interpretation of the law, or the lack of capacity and resources.

With regards to this issue, P3/E3 criticized the "margin of the freedom" left to the Member States to implement the EU directives. Moreover, it is not only about implementing the minimum standards provided by the EU directives but E3 highlighted that many times the practices do not comply with the EU law at all, so it is important to monitor the legality of the implementations. The arbitrariness of the implementation of the EU directives according to what suits the best for the Member State's interest rather than prioritizing the refugee rights has become a tool of governmentality. Arbitrary practices create ambiguity that is used to derogate the refugee rights since no one including the practitioners is sure how to proceed. Nevertheless, the ambiguity as a tool of governmentality is not only created through the malpractices or arbitrary practices, but it is also (re)produced in legal arena by

creating or abolishing or changing the law often that scud a giant grey cloud on the protection mechanism.

5.2.1. The only thing that doesn't change is change itself: Constant changes of regulations as a barrier to access to asylum rights

As explored in detail in the legal framework, the asylum regime in Greece is formed by multilevel regulations and legislations. Yet, the institutionalisation the refugee protection in Greece has a very recent background. The Greek asylum service and First Reception Service were established with the adoption of the Law 3907/2011 in 2011. While this law brought many changes in the system including the authority who receives and processes the asylum applications. Until 2015, the main reasons of the amendments in the law are the transpositions of the EU law into the national legislation; therefore, it can be seen as an impact of the Europeanisation process. Nevertheless, following the adoption of the European Agenda on Migration which founded the hotspots and brought many procedural changes in 2015 as a response to the refugee movement from Turkey to Greece, it is possible to observe very frequent changes in different areas concerning the asylum. Many of these changes are different from the previous periods are influenced by the developments in the ground.

During my fieldwork between January 2020 and September 2021, it was remarkable how the speed of the changes not only in the legislation, but also administrative regulations has increased which was noted by almost all my interviewees working in the ground on the refugee protection. One can think of the changes were made as a necessary response to the needs in the asylum regime. However, at this point the question of "whose needs" is arisen. According to my observations and the interviews that I have conducted with the stakeholders of the asylum system, many times both the content and the frequency of the changes have made the protection system more complicated and ambiguous for all the actors involved including the case workers working in the asylum service. As a result of this, there are various implications for asylum seekers including the vulnerable groups to access their asylum rights. Due to

the ambiguity created by the frequent changes in rules, none of the actors including the case workers in the field can be sure about how to proceed; therefore, there are time gaps in which no one takes asylum applications or does not really proceed until there is clarification. The time gaps can be in particular important for the vulnerability assessment, age assessment of the alleged minors or even the asylum decisions which can bring mid- or long-term consequences such as interruption of health treatment of an asylum seekers who is considered vulnerable because of the health conditions. At this point, it is possible to create legal black holes through frequent changes in legislations and causing time gaps to implement the law (neither the previous one nor the new one) which cause the *de facto* rightlessness.

In face of the constant changes of the legislations and the regulations, P1/E1 who used to work for a regional agency as a case worker and continued working as a lawyer highlighted the challenges to keep up with all these updates and the high number of asylum seekers together. P1/E1:

> (…) it's not only short-term practices, it's also fast changing. I mean, super-fast changing. So you know, the time that changed the vulnerability of 5000 people have gone through the procedure in Greece. It's impossible to follow up and track it. Because, I mean, we really tried. I mean, everyone tries, but it's because of this changing, constantly changing rules, rules, practices. it's it has been impossible to, to elevate it and to see if there is any accountability with regard to national law or EU law, nothing.

P15/G1 who has been working as a case worker in the Greek asylum service since the beginning of the establishment of the office gave insights about the impact of the changes on the asylum seekers' life in Moria:

> (…) everything happens faster people do not have time to realize what their obligations are and sometime what the rights are. Sometimes you [asylum seekers] seek consultation further. If you are living in the centre in the hotspot for many months because sometimes procedures and prioritization change all the time, you lose faith in yourself. I see that very often.

When it comes to the question concerning whose benefit all these changes, all my interviewees agreed on that the changes were not actually made to improve the protection system but to "protect" the European asylum by hardening the access of the

asylum seekers to the asylum system. P1/E1 explained how it became more challenging not only for asylum seekers to access to the system but also for NGOs giving legal aid to access people in need in the camps:

> It didn't go in the benefit of the protection of the people that are living here. In the contrary, not that it was good before, or it has never been good. Already, it was really bad. But okay, there were, there was more space for NGOs to work. That's one of the main changes I would say. Slowly, slowly, we saw how it's more and more difficult to access people in the camp.

Here, the problem is not only created by the frequencies of the changes but also about the content. In addition to the legal changes and the ambiguity created through these changes which are not implemented in favour of the asylum seekers, the practices are playing the major role at the end. Almost all the interviews that I have conducted drew attention to the gap between the practice and the law, and how most of the times the practices did not actually comply with the law. One of the most striking statements concerning the challenges created through the practices is made by P3/E3:

> The lawyers here, the Greek lawyers are always fighting (…) we are not dealing with the legal issues, we are basically fighting the practices. It's about practices. Like, you know, someone wakes up in the morning and decides that we would implement it that way. Without informing anyone, they always find out afterwards.

Frequent changes in the asylum regime directly addressing hotspots and the legal regime in the hotspots to adjust the coordination cause the sense of uncertainty rather than certainty not for all the legal entities who have access to the hotspots. The testaments of asylum seekers, lawyers, as well as national and supranational authorities demonstrate that the frequency of legal changes have adverse relationship with clarification of rights and duties of all legal entities taking part in the asylum regime. From this perspective the characteristic of hyperregulated spaces as defined by Benda-Beckmann (2014) with regards to the relationship between feelings of uncertainty and constant coordinative adjustments embody with the case of hotspot system in Greece.

5.2.2. Differential Treatments Based on Nationality

In the section concerning the conflict between the law and the policies in the EU asylum system, it is argued how this contradiction leads to the erosion of rights. One of the most concrete implications of the policies incompatible with the refugee law is the differential treatments emerged from the multiplication of the legal regimes. The EU's asylum policy has been increasingly nationality oriented which sometimes prioritizes certain nationalities for a faster asylum procedure or for being relocation within EU or sometimes leads to a preliminary filtering that may end with detention, deportation or to have low possibility to be relocated. Lawyers, caseworkers, and social workers that I spoke during my fieldworks, they repeatedly underlined how nationality plays a key role in different aspects in the currently implemented asylum system. For example, P1/E1 stated: "The whole procedure is based on the country of origin. From the start, […] from the moment you arrive, you're treated differently depending on your nationality. The whole system is based on this, assuming that."

First appears with the differentiated legal regimes based on the country of origin. Nevertheless, that's not static but it changes depending on the shifts in the EU policy. As the fast-track border procedure was created in the EU level with the adoption of the European Agenda on Migration in 2015, its initial effect was to speed up the asylum procedures of the Syrians on their benefit. Nevertheless, this prioritization continued until the EU-Turkey Statement of 2016. Following the Statement, since Turkey was accepted as a safe country for the Syrians due to the temporary protection regime, EASO has been conducting admissibility procedure to the Syrian nationals different from the other nationalities in the hotspots. During the admissibility procedure, it is expected from a Syrian refugee to prove why Turkey is not safe for him/her; however, as AIDA (2021, Admissibility Procedure) indicates that the majority of Syrians' applications under the fast-track border procedure have been found inadmissible. P2/E2 explained the impact of the EU-Turkey Statement on the prioritization/de-prioritization practices with regards to different nationalities:

> First is based on different countries. Possibility to be accepted or rejected. Before Syrians, Afghans were prioritized. But if you are Bangladeshi or Pakistani, you were rejected. Then Syrians, Arabs came. Afghans started to be deprioritized. After EU - Turkey Statement, Turkey became safe country for Syrian Arabs. Syrian Arabs have low chance. They say that Turkey is safe for you. Why do you come here? So it changed again. Afghans are in better situation but not really prioritized. It depends on the case. Single women and families have chance. They are accepted.

Becoming the nationality as the focal point, there are significant problems concerning the individual assessment which is the core of the 1951 Refugee Convention. Reduction in the quality of the interviews and automatization of the decisions with the copy-paste decisions are further discussed in the Section 5.5.3. Nevertheless, here P3/E3 pointed out how the nationality focused system applied in the hotspots limit the individual assessment on the cases.

During my both preliminary observations in 2017 and my official fieldwork, the practitioners were talking about a pilot programme called as "low profile detention scheme" applied in Lesvos. The pilot programme was mainly targeting single men coming from third-countries with low recognition rate (below 25%) and aiming to keep them in administrative detention. Nevertheless, this arbitrary practice neither complies with ICCPR (mainly the Article 9) nor the Greek national law. According to the Article 46 of 4375/2016 (amended by Law 4540/2018) which is regulating the administrative detention, "Detention of applicants" can only be applied to the persons who applied for international protection "while already in detention", and only "exceptionally", "if necessary" after completing the individual assessment (via HIAS December 2019, p.6). Since Lesvos is used as a *laboratory* of the EU as asylum and border policies (Pallister-Wilkins, Anastasiadou and Papataxiarchis, 2020), this pilot programme was replicated later on in other hotspot islands. P8/N4 explained how the "low profile detention scheme" was applied in Lesvos:

> From 2017 in Lesbos and now replicated in Kos, a pilot programme. Pilot because presumably they want to locate in other places they detain people based on their nationality: single men from low recognition rate countries. In the beginning it was 6 different nationalities, Northern African countries, Bangladesh, Pakistan. Now it has been expanded to any single men from the countries with the recognition rate less than 25% for giving international protection. So these men are detained upon arrival and

> spend the entire procedure under detention which means it is even more difficult for them to access legal aid. It is even more difficult to gather documentation that might support their cases. The detention conditions are horrific. There is no access to health care, there is no access to mental care, people are deprived. Many of them attempt to suicide, and there was suicide in detention centre this year. So they go through asylum procedure in these conditions. They are detained because the government assumes that their asylum cases will be rejected. And then they are directly deported to Turkey.

In addition to the incompliance to the international, European, and national law, the detention has further impact on the asylum seekers since they have limited access to basic services including health and mental care as P8/N4 underlines. Further, P8/N4 added:

> Single men from these countries are doing the procedure under detention. So in terms of accessing to the legal aid to prepare your case and gather your documentation, being in a mental stage where you can talk about the reason why you leave your country, it does make lots of difference of course.

During my interview with P6/N2 about the vulnerability which will be elaborated in the next section, s/he underlined that differential treatment on nationality basis starts even before the vulnerability assessment. P6/N2 pointed out that if someone was coming from the countries like Morocco, Tunisia, Egypt, they have difficult cases from beginning. The usual practice is to put the applicants coming from the countries listed into the detention centres; however, this practice also varies depending on the country in that list as well (From the interview with P6/N2). In her study, Ayten Gündoğdu (2015) draws attention to the precarious situation of undocumented migrants, asylum seekers, and refugees in particular in legal personhood. Thus, she distinguishes rights on the paper and rights in practice (Gündoğdu, 2015). Arbitrary detention of the asylum seekers based on the nationality and the treatments against the unaccompanied minors can be considered as solid examples how the implementations differ from the standards designated by the EU level regulations.

Further, P6/N2 explained some of the cases that they were looking in detention centre. Since P6/N2's essential work is caring both children with family and unaccompanied minors so he specifically clarified what he might do in the detention centres since the

unaccompanied minors have to be under protection rather than being in the detention centre with adult single men. P6/N2 clarified the situation:

> For example, I went there. We even had cases there. Now you will ask me since I am working with children, what am I doing there? Children with their families are already with their families. They don't put the families in the detention centres. Eh, if there is an unaccompanied minor, s/he has high level of vulnerability. Then what am I doing there? From PROKEKO, there is news coming from [X][34]. X makes us referral and tells us that there is a child inside but he is registered as 19 but he is under age.

To the question about the frequency of such cases, P6/N2 responded: "When I was working in Moria, 'alleged minor' problem[35] was one of the biggest problems that we were having there". P6/N2 does not work anymore inside the Moria, but continues working with minors outside the camp. The testimonies I gathered during my interviews demonstrate that the ages of minors around 16-17 years old are systematically wrongfully registered. The alleged minor issue together with the differential treatments based on nationality, mainly detention of single men coming from countries with the low recognition rate cause aggravated situations. Unequal treatments towards the asylum seekers including subjecting them different legal regimes also set further challenges for the vulnerability assessment as it will be further elaborated in the next section.

5.2.3. Assessing the vulnerability

There are various conceptual and operational definitions of vulnerability changing depending on the discipline in the literature. The UN Division of Social Policy and Affairs (UN, 2001, p. 183) defines the concept of "vulnerability" as a state of high exposure to certain risks, combined with a reduced ability to protect or defend oneself against those risks and cope with their negative consequences". When this concept applies in a humanitarian situation, vulnerability assessment aims to detect the persons

[34] Mentions about a lawyer's name, but due to the security reasons, it has been kept as X.

[35] "Alleged minor" refers to those who are registered above 18 years old but claim that they are under age. (For further discussion on this issue, please see the section 5.4.3.)

and groups with specific vulnerabilities in order to provide assistance to them (Patel et al., 2017). In line with this approach, the principles of international refugee law, human rights law, and other relevant legal documents (e.g. UN Convention on the Rights of the Child, the UN Convention on the Rights of Persons with Disabilities) based on the circumstances should be applied together with the domestic law to identify the vulnerability situation, and to define the risks of harm associated with that vulnerability. Even though situation of vulnerability is not static and may change depending on the circumstances, there are certain categories of people that are accepted as vulnerable groups in any condition such as unaccompanied minors, people in need of special care, and survivors of sexual abuse or gender-based violence, victim of human trafficking, and so on.

The screening and assessing vulnerability require expertise since it is a very sensitive area of the protection. In particular, during the interviews with asylum seekers, there might be different barriers to detect the vulnerability. Therefore, both UNHCR (Screening tool, 2016) and EASO (IPSN tool - website) developed tool for assessing the situation of vulnerability. According to the UNHCR (Screening tool, 2016) tool on identification of the situation of vulnerability, indicators of special needs to categorize the situation of vulnerability are listed as age (being below 18), sex, gender, gender identity and sexual orientation, health and welfare concerns (physical and mental health, risk of suicide, disability, elderly person, substance addiction, and destitution), protection needs (refugee and asylum seeker, survivor of torture and trauma, survivor of sexual or gender-based violence or other violent crime, victim of trafficking in persons, and stateless person), and other individual factors that might cause the risk of harm. Similar with the categories defined by the UNHCR, EASO (IPSN tool) takes into consideration age, sex, gender identity and sexual orientation, family status (in relation to the asylum procedure), physical, psychosocial and environmental indicators. Nevertheless, being refugee or asylum seeker are not listed within the categories as UNHCR does.

In spite of the tool to identify the situation of vulnerability prepared by EASO, there is no clear definition of the vulnerability in the asylum context. In the first phase of the CEAS instruments, the Member States were asked to take into account the situation of vulnerability and the special needs emerged by the vulnerability by the 2003 Reception Conditions Directive. In addition to this, there was no provision extensively regulated the vulnerability neither in the 2006 Asylum Procedures Directive nor in the Dublin II Regulation (AIDA, 2017b, p. 12-13). This ambiguity causes different implementations for vulnerable groups in different member states.

In parallel with the significant increase in the numbers of the international applicants in the EU, there have been higher number of survivors of torture, of sexual-based violence, victims of human trafficking, as well as unaccompanied minors. In light of these developments, in the second phase of the CEAS instruments, the vulnerability took more place than the first phase. The recast Asylum Procedures Directive (2013, Recital 29) refers to the special procedural guarantees to be given to the persons in need related to "age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders, or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence." Nevertheless, the lack of a definition for "applicants in need of special procedures" causes different implementations in the Member States and in different time periods as it can be seen in the case of Greece.

The recast of Reception Conditions Directive (2013, Article 22) foresees the special reception needs of vulnerable persons. To clarify the vulnerable persons, the Article 21 requires: "Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive."

The vulnerability, which is defined in the light of this Directive was applied as an exception for asylum seekers to lift their geographical restriction until January 2020. People who "were found vulnerable" were directed to the regular procedure rather than the border procedure and were able to move in the mainland of Greece. The main reasons for this were the inadequate living conditions in the refugee camps on the hotspot islands and the lack of the medical staff to provide necessary care for the persons in need. In relation to the procedures followed for the vulnerable people before January 2020, P15/G1 explained:

> (…) At first, people were found vulnerable passed to the regular procedure and we were not examining here. They were sent to the mainland directly. In 2017, that changed. Directives from Athens told we should examine regular procedure here as well. Although the hotspots were only for border. That came because we have so many arrivals and mainland was feed up. They were appointing interviews in 2-3 years. So they thought that the islands can assist. In Lesvos, they clearly led to a chaos. Because people vulnerable should go to normal procedure but they could not leave until the interviews were conducted. Then EASO was not conducting interviews in the vulnerability cases, they had started after Syrians with low recognition status countries, then high recognition status countries with admissibility, after that they started to do eligibility as well. But always stopped in vulnerability. That changed, I believe at the end of 2018.

In addition to this, P15/G1 reminded that there were very few numbers of vulnerability cases before 2016 because of the lack of experts and medical staff to screen the vulnerability in the island. Also, people who arrived in the island were able to go to the mainland just after their registration. They were not stuck in the island as they have been since March 2016. However, together with the geographical restriction on the asylum seekers, the numbers of the asylum seekers drastically increased. Both the increase in the arrivals and the living conditions in Moria directly influenced the numbers of the vulnerability cases as well. P8/N4 explained that period:

> Before the asylum law changed at the end of 2019, people who designated vulnerable were moved out of the border procedures and moved to the normal procedures which mean the geographical restrictions were lifted. And actually, the vast majority of the people were arriving to the islands were designated vulnerable. And they are vulnerable. I think anyone who travels from Turkey to here becomes vulnerable because one of the categories of vulnerability is PTSD, so everyone. Everyone has it because crossing is traumatic. Then you are forced to live in Moria which does not help to the process of healing. We are speaking of developing PTSD. Which meant that anyone who accessed to the medical care to show they are actually suffered from this which is a separate issue because it is difficult for people to document this, they

> are vulnerable. For the previous administration, it was one of the ways of decongesting the island without breaking the EU-Turkey Statement.

Here, it becomes more apparent once more how the policy (this time the national policy) re-shapes the legal, and the implementation of it. Apart from the EU Directive and domestic law, the impact of the political will and the government's approach become more prominent on how to detect vulnerable people and how to treat them both procedural ways and reception conditions. Nevertheless, with the change of the government, the policy concerning the vulnerable groups has also changed. The IPA that entered into force in January 2020 has brought crucial changes in the definition of vulnerable persons, as well as in the procedural guarantees that they should provide in compliance with the EU Directive.

First change is with regards to the definition of the vulnerable persons, the Article 39(5) and 58(1) of IPA list the groups of people who can be considered as vulnerable including "children; unaccompanied children; direct relatives of victims of shipwrecks (parents, siblings, children, husbands/wives); disabled persons; elderly; pregnant women; single parents with minor children; victims of human trafficking; persons with serious illness; persons with cognitive or mental disability and victims of torture, rape or other serious forms of psychological, physical or sexual violence such as victims of female genital mutilation". Even though the definition looks very similar with the previous regulation, in the new definition, the persons who have post-traumatic stress disorder (PTSD) have been excluded from this definition (via AIDA, Identification: Greece, 2021).

Second important change is made concerning the assessment of vulnerability and to "have special reception needs and thus benefit from the special reception conditions" with the amendment to the Article 58. Together with this amendment, the exception that was applied for the vulnerable persons to lift their geographical restriction was no longer valid. Therefore, starting from January 2020, the vulnerable groups also remained on the hotspot islands rather than transferring to the mainland.

Third change is linked with the previous change. According to the amended Article 67(1) relating to special procedural guarantees, the vulnerable persons on the hotspot islands are no longer subject to the regular procedure. P3/E3 explains how the category of vulnerability practically does not exist anymore:

> (…) there is no more people get treated better, because they're vulnerable, they don't get access to medical services, because they're vulnerable. It doesn't exist anymore. It's not, it was not really taken into account in the past, because they have never been enough medical services.(…) it's like highly insufficient services anyway. But now, it's not even a criteria for deciding on the procedure you're following. There is no more indulgence or additional protection for people in the in the procedure for vulnerable people. The only thing that matters is when you do your interview of call of course, if you're pregnant, if you're a minor, but if you are recognized as such at the registration.

Thus, the Greek government abolished the special procedural and reception needs of the vulnerable groups which are under guarantee of the EU Directives. Rather than the harmonization of the EU legislation, the overlapping legal regimes create a legal black hole with the shift in the government's policy. That leads to the rightlessness of a specific category of persons who are in need.

Moreover, there are additional problems in the practicing are. Situation of vulnerability has multifaceted and dynamic characteristics that may pause difficulty to be detected. In some cases, there might be several factors together that form the situation of vulnerability and the vulnerability can be more explicit than other cases. Nevertheless, in some situations, noticing the signs of the vulnerability may be more difficult due to various reasons. In some situations, the asylum seekers may not know themselves that they are in the vulnerable group, or they may feel shame to express due to fear, social pressure, labelling, and so on. P9/N5 addressed the problems emerged to assess vulnerabilities due to the time pressure on the interviews:

> There is no time in the law for preparation of the interviews. It's a three day for vulnerable people, but they don't respect the practice, because the vulnerability assessment sometimes takes place after the interview. So nobody knows of your vulnerable or not. The core issue with a vulnerability that I don't get, because now vulnerable people are not automatically exempted. So victims of torture, psychiatric cases, whatever that would mean, to have a different environment and preparation than you have in this procedure.

With regards to the sensitive cases such as the victims of torture or survivors of sex trafficking or gender-based violence, there is a clear need for extra attention to detect the exploitation, to determine needs of the survivors (e.g. medical treatment), to make risk assessment, and make them feel safe during the interviews. Besides, there are additional international standards on protection of such cases (e.g., UNHCR, Principles and Guidelines on Human Rights and Human Trafficking, 2002; UNICEF, Guidelines for Protection of the Rights of Child, 2003; IOM, Assistance for Victims of Trafficking, 2007). Notwithstanding with this, P3/E3 explained how difficult to detect the victims in practice due to the time pressure during the interviews, the lack of the training of case workers, and the lack of the effective medical examination:

> If there was enough time for that. So now the new vulnerability they are they are officially taking into account the vulnerability, they take during the interview the breaks. You can take more breaks great. I mean, you know, like it's crazy. (…). Caseworkers are not trained to identify those victims, not even a victim of torture. And there is no one else to guide them. So, either you're credible during your interview with that, or you're not, so it's assessed by EASO. It has always been assessed by EASO. Because the vulnerability assessment was not happening on time. For a long time and people were going to the interview straightaway without having seen a doctor. I mean they had seen a doctor or nurse for 30 minutes, you know that they used to go to the end that has changed. But in 2018, people were going to the interview without.

Another important issue with regards to the vulnerability assessment during the interviews is the background and personal circumstances of the asylum seekers which can have negative or positive impact on their interview. The credibility of the asylum seeker depends on how much s/he can express what happened in detail. However, both P1/E1 and P2/E2 drew attention to the different factors and personal circumstances that may be influential on an asylum seeker's capability to explain including the education level, cultural connotations, and trauma. A person who had studies in high education has a different capacity describe the details than a person who has never had chance to go to school. P2/E2 added:

> For example, a woman who doesn't know how to read and write coming from Afghanistan, does not know the European laws. So she doesn't really know how she should make the interview. Already they are very stressed because they know that everything, all their life is depending on this interview.

Being aware of the complexities and further complications in the vulnerability assessment, the last point of this issue is concerning the age assessment and the precarious situation of the unaccompanied minors. Even though my field work was not designed to have a focus on minors since conducting interviews with children (in particular the ones without having the families next to them) require further ethical considerations and special attention, during my interviews with the case workers and lawyers, the vulnerable situation of unaccompanied minors repeatedly came to the agenda. Therefore, I conducted interviews with care givers, legal guardians, and lawyers both in Athens and in Lesvos who provide assistance to the unaccompanied minors[36].In this section I will argue the major problems causing the violation of rights of the child in the protection system.

There are various reports prepared by the right-based NGOs about the violations of rights of the child and the refugee children at risk in Greece (e.g., HRW, 2016b; HRW, 18 December 2019, FRA 2021). As highlighted in the HRW (2016b, p.1) report, "Greece has a chronic shortage of suitable accommodation and lacks a comprehensive protection system for child asylum seekers and migrants". The precarity aggravates even further for the separated children or unaccompanied minors since they are travelling without their parents, family members or legal guardians. Systematic problems in the age assessment, arbitrary detention of children, degrading living conditions emerge as the major issues in the asylum practices in Greece.

According to the Hellenic National Centre for Social Solidarity (EKKA, the number of unaccompanied minors in Greece achieved to the peak point between December 2018 and December 2019 by increasing 42%. By the end of 2019, 5301 unaccompanied children were staying in Greece (via European Parliament briefing, May 2020/updated in January 2021. Just before the Moria fire in August 2020, there were 3386 unaccompanied children and according to EKKA, 1031 of them were living in insecure housing conditions whereas 830 children were staging in RICs, and 195

[36] Due to the ethical considerations, I did not meet any unaccompanied child for formal or informal interview.

were in Protective custody (EKKA statistics on 31 August 2020 - website) After the Moria fire, only the unaccompanied minors were allowed to leave the island. In December 2020, the European Commission facilitated the transfer of 406 unaccompanied children from the Moria camp (European Parliament briefing, May 2020/updated in April 2022).

The Greek law defines an unaccompanied minor as *"*a third-country national or stateless person under the age of 18 who arrives in Greece without being accompanied by an adult responsible for his or her care, by law or custom, for as long as he has not been placed under the substantial care of such a person, or the minor who was left unaccompanied after entering Greece*"* (Article 1 of Presidential Decree 2020/2007). The definition in the Greek law shows compliance with the international agencies' definition of unaccompanied children/minors (International Committee of the Red Cross, 2014).

A number of international, EU and national regulations (e.g., International Convention on the Rights of the Child, the EU Charter of Fundamental Rights, the 1951 Refugee Convention) foresee the protection minors, in particular unaccompanied minors. The Greek law obliges any authority who detects the entry of an unaccompanied or separated child into the Greek authority to take the appropriate measures, and to inform the Public Prosecutor's office and EKKA. At this juncture, registration of the children who seek asylum has a crucial role. The children crossing from Turkey with boats to the Greek islands (in this case to Lesvos) are registered by the FRONTEX at first. Registering minors who are around 16-17 years old as above 18 years old seems like an often "mistake" at this stage. Based on the interviews that I conducted, there are two reasons for wrong registrations. First is caused by the deliberate practices of FRONTEX. In that sense, the minors who "look older" are registered above 18. Second is the misinformation of children before their arrival in Greece. Though their network or smugglers, they are informed that the unaccompanied minors are kept in different sections, and they are not allowed to continue their movement to other EU Member States that they aim at going. In order to escape from the protective custody,

some of those who do not carry their IDs or any official document that show their age may say their age above 18 to the FRONTEX authorities. Nevertheless, this wrongful registration leads to the unaccompanied minors (mainly boys) to be treated as single adult persons (mainly men). In particular, this causes problem if they are coming from the countries with low recognition rate. As argued earlier, the single men from the countries with low recognition rate are kept in detention until their asylum cases are concluded. Therefore, a minor can find himself in a detention centre facing a high risk of deportation. P8/N4 described how the mis-registration effects the whole procedure and treatments against the alleged minors:

> (…) then there is everyone who is minor who has been registered as an adult by FRONTEX in a systematic way which we have also seen in the last 4 years. We have been documenting this. Children were coming and they are 16,17 and they are being registered as adults automatically. It becomes almost impossible for them to change it. A person who is registered by FRONTEX is making initial identification process. Either you have to present your original documentation from your home country which many people do not have and even if they do, sometimes FRONTEX doesn't take it for various reasons. They say we don't accept this document for whatever reason. Then the only option is to have age assessment by… Now it is with medical assessment. Doctors and psychologists. but this is not an exact science. It is very difficult to assess. There is no exact way to say some one is 16 or 18. Instead of… I mean law says a minor should be treated as a minor until it is found that s/he is an adult. It is opposite what has been here. So, they are treated as adults and then they have to prove that they are minors.

Here, the problem of "alleged minors" appears. P6/N2 and P8/N4 highlighted that they only have problem concerning the "alleged minors" with FRONTEX. Once the first registration is completed, it is a challenging process to correct it which may also require age assessment. P6/N2 gave information about the process once a person claims that he is under age:

> A person claims that he is under 18 years old but he is registered above 18. It can be by his consent or forcibly. At the end, he says that in fact he is below 18. Then how is the process? First, they ask about your document. It cannot be your document from x primary school; the document must be either your passport or your ID. But the original versions of them. Even for this, you have a limited time. Very limited… This is an area where the theory and the practice do not fit. It must be for the best interest of child.

The requirement of the original identification documents is not the only obstacle in this process. Time limitation to gather the documents from the country of origin or residence is also too short to arrange a complex organization. In particular, gathering information from the countries where the state system fails or where the data collection is not effective, can be extremely challenging. At this point, authorities use their initiative to extend this waiting period that required in law. P6/N2 described how the time frame is used in practice:

> After you claimed that you are a minor, you have 1 week or 10 days to prove it. Now, the child should inform his country, they will look for his documents, those documents will be sent to Greece in one week! There is no feasibility of this in practice. But they did not care that much here about the time limitation. If you bring your document on the 11th day, they accepted it. The written law is not practiced for the best interest of the child.

These obstacles pose difficulties in the situations where there is at least a certain type of documentation for identity. For some of the alleged minors, it is not even possible to gather any identification certificate because of the national identity card policies in the countries where they were born.

> Yet, there are other problems. In some countries, you cannot take ID card before you are 18. In fact, the reason why you don't have an ID is that you are below 18. But here they say that bring your ID if you are below 18. There can also be economic problems to provide the proof. (From the interview with P6/N2).

It is expected from children to finance the post of the documents with apostille stamp from their country. In many situations, it may be difficult for them to pay for the cost. According to P6/N2, in particular, children from the African countries or from Afghanistan are having the most difficulty to receive the documents via post from their countries because of the high prices, as well as the time that it takes. In the cases where the children are able to receive the documents, these documents are examined in the FRONTEX offices with special technics to understand whether they are original or not. During all this time, the alleged minors remain in detention centers with adults. If the documents are proved to be original and show that the alleged minor is actually

minor, then he must be transferred to the unaccompanied minors' section. However, during my field work the unaccompanied minors' section was full.

Another way of correcting the registration is the age assessment according to the Article 75(3) IPA. During the age assessment process, a guardian should be appointment to the child to protect the best interest of the child, as well as the rights. He needs to be informed about the methods and procedures used in the assessment before the examination of their application in a language which he understands. P6/N2 points out that there the different methods used in the age assessment in different parts of Greece and it is not standardized. Checking for the wisdom teeth, screening the bones via Xray or an interview with a pedagogue might be different ways to be applied for the age assessment (From the interview with P6/N29. During all these procedures, a social worker appointed for the alleged minor should accompany the minor.

Nevertheless, the problems do not end with the identification and registration. Even if the unaccompanied minors are registered correctly or their registration of age is corrected, due to the lack of an adequate shelter and services, unaccompanied minors are having serious problems. All the social workers, legal guardians, and lawyers showed the poor living conditions in Lesvos, as well as the difficulty of being stuck in Lesvos (Please see the Chapter 4).

Last but not least, the Guardianship Network for Unaccompanied Minors conducted with METAdrasi that started its activity in 2014 was several times interrupted in last years. During the uncertain times whether the program was going to be continued or not, my interviewees who did the guardianship were very concerned about the discontinuation of the program. In particular for the young minors who are below 14 years old, it is crucial to get support from a professional to be able to stay safe and under protection. As it is abovementioned, according to EKKA, more than half of the unaccompanied children do not stay in a safe accommodation which gives rise to various risks of harm to the children.

5.4.4. All Alone in the "Minefield"

Protecting and fulfilling the human rights of everyone on its territory or its jurisdiction without discrimination are part of state responsibilities (*Hırsi Jamaa and Others* v. Italy). Together with the principle of non-refoulment and the right to effective access to justice, the right to legal aid is one of the core guarantees provided by the 1951 Refugee Convention (Article 16) and 1967 Protocol, as well as the UNHCR's EXCOM Conclusion No.8. In addition to the legal aid, according to the para.192 of the UNHCR Handbook on procedures (1979, re-edited 1992) the States should provide the necessary guidance during the asylum application.

As mentioned in chapter 2, one of the sources of primary EU law that is applicable in the Greek asylum system is the Charter of Fundamental Rights. Alongside the recognition of the right to asylum (Article 18) and the principle of non-refoulment (Article 19), the Article 47 of the CFR acknowledges the right to an effective remedy and to a fair trial which includes a right to legal aid. Taking into account with the equality before the law (Article 20) and the non-discrimination (Article 21) principles, access to the right to legal aid applies for everyone including the asylum seekers and refugees on Member States' territory or in their jurisdiction.

In addition to the international law and the primary EU law, the recast Asylum Procedures Directive (recital 23) states: "In appeals procedures, subject to certain conditions, applicants should be granted free legal assistance and representation provided by persons competent to provide them under national law. Furthermore, at all stages of the procedure, applicants should have the right to consult, at their own cost, legal advisers or counsellors admitted or permitted as such under national law." Also, the Article 20 of the recast Asylum Procedures Directive regulate the free legal assistance and representation in appeals procedures. According to the concerning article, the Member States shall ensure free legal assistance and representation of the applications should not be arbitrarily restricted. Furthermore, the Article 20(3) indicated:

> Member States may provide that free legal assistance and representation not be granted where the applicant's appeal is considered by a court or tribunal or other competent authority to have no tangible prospect of success.
> Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority which is not a court or tribunal, Member States shall ensure that the applicant has the right to an effective remedy before a court or tribunal against that decision.

The same Directive also recognizes the legal and procedural information free of charge can be given by the NGOs, as well as professionals from government authorities or from specialized services (Article 21).

Having given the legal framework of the legal assistance and representation, this section will argue the challenges that the asylum seekers are facing to receive legal aid in practice. In January 2018, the Legal Aid Actors Task Force consisted of the 14 organizations providing legal assistance in Greece including the Danish Refugee Council, the Norwegian Refugee Council, HIAS, Refugee Support Aegean, and Oxfam prepared a report on the barriers and challenges that the asylum seekers are facing to receive legal aid. As report states that the provision of legal aid is designated by a number of international and European regulations, there are many obstacles caused by the administrative, legislative, and practical reasons. As a result of this, many applicants are not able to reach necessary information about their application/appeal processes, as well as the social benefits and the right to shelter and accommodation. Concerning the legislative challenges, the constant changes in the asylum procedures and the international protection law (please see the section 5.4.1) create additional difficulty for asylum seekers to understand the procedures that they are subject to. In line with the report, P9/N5 described the asylum system as a "minefield" due to the complexities and the "punitive" characteristic of the system instead of facilitating protection:

> It is what I once said, this is this is now not even the part that is complex. This is the legal aid you need because of the law, specifically with the new law because of the bad quality of the interview, sometimes specifically, when they were done by EASO. (…) but also for the admissibility case, because the Syrians become always rejected, unless they were vulnerable. But now you also need legal aid because the system is very punitive. So it's like a, it's like a minefield, every little thing that you do can get

> you out of the procedure. And that is also very law thing with which provisions gets you out of the procedure.

One of the biggest major issues in receiving free legal assistance is the lack of the capacity. Asylum seekers cannot benefit from state funded free legal assistant in the first instance. During the second instance procedures, the asylum seekers have right to benefit from free legal aid provided by the lawyer appointed by the Register of Lawyers of the Asylum Service. Notwithstanding with this, the Communication submitted by GCR (2019) to the CoM shows that only 21% of asylum seekers could benefit from state-funded legal aid (DH-DD(2019)515). The limit of the cases that a lawyer of the State Registry is 17 cases per month (RSA, 9 October, 2018). During my field work in 2020, there was no lawyer of the State Registry actively working on the island. The interviewees noted that there used to be one lawyer on the island appointed by the State Registry; however due to the intensity of the cases, the lawyer withdrew from his/her duty. For months, that lawyer was not replaced by new one(s). P1/E1 underlined the situation due to the lack of the lawyer:

> (…) people have the right to have a lawyer in the in the second instance procedure. And as I think over the last three years, in Lesvos there was either one lawyer or zero lawyer, or maybe two at the best moment, but they are so badly paid, and they have so much pressure to this job, without interpreters that contacting… and so many people rejected at the same time that it's impossible for them to do the job, right. They used to take the first 17 cases of every month, and then the rest would go to pro bono lawyers or lawyers from NGOs. The capacity of pro bono lawyers have never been enough, either.

Due to the lack of the lawyers appointed by the State[37], the NGOs are providing legal aid are under a great responsibility and workload to access as many asylum seekers as possible. There were only in particular, during the pandemic period together with the additional challenges to access the appeals, the workload of the NGO lawyers has

[37]During my fieldwork throughout 2020, as my interviewees who provide legal assistance stated that there was no lawyer in Lesvos appointed by the State. On 8 January 2021, the Ministry of Migration and Asylum published a list of selected lawyers. According to that list, there were 12 lawyers selected for Lesvos. Ministry of Migration and Asylum. (9 January 2021). Available at **https://migration.gov.gr/en/pinakes-epilegenton-epilachonton-kai-apokleiomenon-dikigoron-gia-to-mitroo-dikigoron/**

become unbearable. As an NGO lawyer, P8/N4 complained that many people remain without necessary information or legal assistance no matter how much they have been working since the beginning of the pandemic:

> We are not even filling the gap. I mean for example not the asylum service was closed for 3 months, over 1400 negative decisions just in Lesvos. All of these people in the asylum service knew that when they open, there are 10 days to appeal. I mean there is no way that these people have the legal aid. Plus, they are on lockdown, and they cannot leave the camp unless they are given permission. The asylum office only accepting 100 appeals in a day. So people have 10 days to appeal, there are 1400 negative decisions and asylum service works 5 days in a week, even numbers wise they didn't allow people to appeal.

The IPA regulates free legal assistance provided by the State only for the appeals. Therefore, legal assistance at the first instance is not legally included in the State-funded legal assistance. Due to the high number of applications, the NGOs disseminate guidelines or organize group sessions to provide legal information about the first instance.

P16/G2 who works in the Greek asylum service explains how much struggle for asylum seekers to find legal support. Even though the state is obliged to provide it, P16/G2 notes that the NGOs are left alone to provide assistance. However, P16/G2 mentions about a state-funded lawyer who was supporting from Athens via teleconference. Yet, it was very limited to very few people. Still, P16/G2 believes that if the case workers do a good job, despite all complications in the system, an asylum seeker does not need a lawyer for the procedures or for the interview. Notwithstanding with this, while few years ago (before 2016) there were fewer cases, the case workers had more time to check for the expression of the claims, country origin information and memorandums. P16/G2 expresses how much difficult it has become for the case workers to do a "good job" due to the time pressure that makes them feel to be "very fast". Once more, it becomes clearer how the EU policy gives priority to "quantity over quality" of the interviews to "clean" the cases as fast as possible. As it will be argued in detail in the next section, together with the involvement of the EASO due to

the slowness and ineffectiveness of the Greek asylum system, the pressure coming from the EU level on the case workers become more prominent.

5.3. Clash of actors in the asylum determination process: EASO vs. Greek Asylum Service

In this section, the overlapping institutions in the asylum determination process will be elaborated. In this context, the period before the involvement of EASO in the Greek asylum system will be examined. Following this, the growing operation of EASO and the expansion of its authority that overlaps with the Greek asylum service will be the focal point of the discussion. In particular, the question of "who decides?" is the central inquiry for processing the asylum cases, which also locates in the heart of the theoretical debate of legal pluralism with regards to the institutional overlapping.

5.3.1. (Mal)functioning of the asylum regime before the involvement of EASO

As explained in detail in the Chapter 3 concerning the legal framework of the refugee protection in Greece, the Greek Asylum Service and First Reception Service as separate structures were established with the Law of 3907/2011 adopted in January 2011. Nevertheless, lack of the capacity and the malfunctioning of the system have repeatedly been highlighted in various reports and court decisions. While the Greek Asylum Service has not fully been functioning, in the face of the refugee movement in 2015, the asylum system was in risk of collapsing due to the lack of trained staff in the newly established asylum service and backlog of cases remained from the old procedure (Please see the Section 3.3.9).

P17/PA1 explained the first years of the Greek asylum service with the lack of capacity and deep structural problems:

> First of all, [when] asylum service was created, it was created to process on an annual basis, something like 20,000 asylum claims. And obviously, that number has been exceeded well and beyond. And yet, it didn't receive a boost in its personnel until very

> recently. And even if that hasn't, it hasn't yet been implemented. People have been notified that they have been hired, but the law that had that. hiring has not been issued, it hasn't been issued for more than five months now. So, you have the limited administrative capacity in terms of processing asylum claims. I think it has played a role also a little bit into who was brought into the services.

P2/E2 came to Greece as a refugee and worked in different NGOs. He is currently working for EASO. P2/E2 indicated the problems related to the Greek Asylum Service:"EASO is a support office and it really supports to the asylum service. Before EASO, asylum service was not working well. They did not know much, they were not getting paid. There was always strike."

In line with the hotspot approach, within the framework of the fast-track procedure introduced with the L4375/2016 (Article 60), it was allowed to EASO personnel to assist the Greek Asylum Service for exceptional situations and "in case where third-country nationals or stateless persons arrive in large numbers" in April 2016. Following this first step of involvement of EASO in the Greek asylum system, in a very short time of period, in June 2016, the law was amended to permit EASO caseworkers to conduct the asylum interviews. At this stage, it was only allowed for those who were examined under the fast-track procedure. Hence, the Syrian nationals were the only ones who were examined within this context (AIDA Country Report: Greece 2020). Taking into consideration the insufficient capacity of the Greek asylum service, the initial approach of the lawyers was positive in the sense of EASO's involvement.

Even though there were positive approaches in the beginning of the involvement of EASO in terms of supporting the Greek Asylum Service, the ambiguity created by the EU-Turkey Statement of March 2016 also had impact on the institutional level concerning the determination of the authority for conducting the interviews with asylum seekers of different nationalities.

P16/G2 working in the Greek Asylum Service explains the initial division of work between the Greek Asylum Service and EASO, as well as gradual increase of the

authority of EASO. However, here more crucial point is that following the Statement, the Greek asylum service officers did not know exactly to whom they should register and involve within the framework of the Statement whereas the authority of EASO was limited to the assistance for the asylum application files submitted by the Syrian nationals. Therefore, she was admitting that they were not registering asylum seekers from the countries with low recognition rate which later on cause some rebels on the island:

> First of all, many changes have to do with EASO. In 2016, there were hundreds of people not being registered. Until if I remember correctly that autumn or start winter, we were registering people from countries with low recognition status, very low recognition status and Syrians. People from countries with recognition status with 25% or even higher were not registered because it was not clear in that time if the statement between the EU and Turkey would cover these nationalities as well beside Syrians.
> They are not few but most people back than were Iraqis, Iranians, there were Afghans. There were sub-Saharan Africans. But not all sub-Saharan countries are above 25%. As we were working in that time, we started interviews with sub-Saharan countries but with low recognition status. But the people were still coming and they rebelled also. So at some point, we started to register them too. At that point, EASO was only conducting interviews with Syrians and only with Syrians. It was supposed to be the reason for EASO to be created as an institution. If a vulnerability came up or a possible Dublin case came up, everything was stop, there was transfer to the regular procedure and people were leaving. After a while, within 2017 and 2018, step by step what EASO was doing was changing. At some point, the cases that they examine the other cases from other nationalities from countries with very low percentage and to examine only eligibility. After that it came, nationalities with higher recognition status but to examine only the admissibility part. Because even if it was not about the actual examination of the admissibility, we were still conducting interviews about it for Iraqis, Iranians etc.

On the same issue, P1/E1 thinks that despite the infrastructural problems the Greek asylum system including the insufficient number of staff, the Greek asylum service was less strict to provide refugee protection in the past. Nevertheless, it has changed with the involvement of the EASO:

> The thing that's in the past, the asylum service used to be more... I don't know how to say… More open to refugee status determination. They used to give refugee status to more people than EASO. They used to have broader standards, more open standards than the EU, EU level, I would say that. I think it is changing but I haven't got you know, like insights from that, to be honest, like concretely, but I feel like this is the ultimate tendency.

Even though P1/E1 stated that the standards of the Greek asylum system were more beneficial than the EU standards, it should be noted that it was limited to the arbitrary practices. As argued in the chapter 3, the asylum system was founded as a part of the Europeanization. Before the Europeanization process, there was not even a legislation to provide international protection for asylum seekers. Following the establishment of the Greek asylum service, the issues with regards to an efficient asylum system remained. However, the margin of initiation of the case workers was larger before the involvement of the EASO. Depending on the case workers' attitude, the implementation of the law might be benefit for the asylum seekers or in contrary, more restrictive. The involvement of the EASO put a limit for the margin of initiation for the caseworkers working in the Greek asylum service.

5.3.2. The Involvement of EASO and its growing operation

As discussed in the previous part, due to the lack of an appropriate asylum system in Greece and the insufficiency of the Greek asylum officers, the support given by the EASO in this period was welcomed by different actors in the field including the national staff and the legal aid providers in the island. The EASO is originally an EU agency responsible for monitoring the harmonisation process of the asylum procedures in the member states (Please see the Section 3.3.9). It played a crucial role during the implementation of the "hotspot" approach after 2015 (EASO 2020). In particular, with the adoption of the fast-track border procedure, EASO actively involved in the first instance asylum interviews. While in the beginning, they were only authorized to assist in the interviews in the hotspots, following the legislation in 2018, their authorization has been expanded to the regular procedure in the mainland (AIDA 2018).

P9/N5 who is a lawyer in an NGO that provides legal aid witnessed the gradual involvement of the EASO:

> EASO before was a more training supportive role in Greece quite welcomed by asylum lawyers because it was necessary. We had many serious issues with the asylum system, and I think EASO was a positive involvement. But back than before the EU-

> Turkey Statement, EASO's involvement was more aligned with the mandate so supportive to the states, trainings.

During my visit in Lesvos in July 2020, the number of the EASO staff was already more than twice than the Greek asylum service staff. Moreover, on January 2020, a Seat Agreement for the Host Operational Office in Greece between the EASO and the Greek Government was signed to deploy more EASO personnel to double the current number in that period. According to the 2020 Operating Plan, the number of EASO personnel which was 500 back than was to double and achieve to 1000 throughout the year. More importantly, while the initial operation of EASO was limited with the hotspots, it has expanded towards the mainland with the legislation adopted in 2018. In the 2020 Operating Plan, it was accepted to increase the operational presence on the mainland four times the level of 2019 (EASO, Press Statement, 28 January 2020). Thus, the expansion of the EASO was held in both vertical (presence in different procedures) and horizontal (territorial). P13/IO1 comments on the increasing presence and capacity of EASO as a "matter of sovereignty". S/he thinks that the Greek government wants to show it as a "European problem rather than a problem in Greece". In this way, the high-power issues between the Greek and the European authorities remain.

As stated above, the prioritized mandate of the EASO in the Greek hotspots was designated as the implementation of the EU-Turkey Statement. With this task, the EASO takes a political stance on implementing a policy which has been heavily criticised to violate the international refugee rights including the principle of *non-refoulement*. This stance raises the doubts about the objectivity and fairness of the asylum decisions made by the EASO. Hence, P9/N5 rightfully pointed out this problem:

> The fact that when their involvement was actually to support the implementation of the EU-Turkey Statement to which to me sounds like a conflict of interest because how you can be objective if you came to in fact to be sure this Statement is implemented.

Further on the conflict of interest concerning the asylum decisions drafted by the EASO despite its mandate on the implementation of the EU-Turkey Statement, it needs to be asked where the protection of refugee rights locates within the priorities of the EASO. In this issue, P17/PA1 commented on the raison d'être of the EASO as a political agency rather than a protection institution:

> [EASO] also is an EU agency, which means at the end of the day, it does have to follow certain political priorities. Even when they say they don't, in fact, they do, because their money and their very existence depends on the member states on the leadership of those member states and on the European Commission. And we need to be very clear about that. They don't work for the refugees, they work for the European Union, which means they're not really independent. And from what I've seen, they're not particularly well, monitored.

In fact, according to the EASO Regulation (Recital 14), EASO "should have no direct or indirect powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection." Nevertheless, as it will be further explored in the next section, even though it was not their initial duty, by time, they were allowed to conduct interviews and operate almost as Greek asylum officers, in particular after the hiring of the Greek nationals to replace the other European nationals working as case workers.

5.3.3. Who decides for the refugee status?

As a consequence of the increasing authority and territorial expansion of EASO, there are several questions arisen. First question is related to the impact of the EASO on the decision-making process of the asylum cases. Whereas the essential role of EASO is to support and monitor the national authorities, the interviews that I made with different actors in the field show that the mandate of the EASO goes beyond that. In fact, although the EASO was initially conducting the interviews with the Syrian nationals for the admissibility procedure, as mentioned before they started to take place in other interviews for regular procedure and border procedure as well. Therefore, it was perceived as they were replicating the job of the Greek asylum service and that they receive higher salary for the same job that the Greek asylum service officers are

doing. However, the discontent of the Greek asylum service officers is beyond unfairness of the salary, but it is also about questioning their competence and authority. In parallel with the competence of the case workers, during an informal interview, P1/E1mentioned that in the earlier stages of the involvement of the EASO, there were experienced case workers coming from all over. Nevertheless, by time (around 2018 and so on) these case workers were replaced by newly hired (mostly local) people but coming from different educational backgrounds with few or no experience working with the refugees in the field. Despite the fact that E1 spoke highly about the trainings provided by the EASO, s/he had still doubted about the competence of the newly hired social workers in "a such sensitive position" to "decide for the fate of the refugees" only with a short time of training.

In parallel with P1/E1, P3/E3 also touched upon the changes in the EASO operation, not only in terms of the replacement of the former staff but also in the structure. According to P1/E1, while the EASO staff were initially following the standards determined in the EASO guideline, so the standards defined in the EU directives, this has changed by time. On the same issue, P1/E1 stated:

> In the fact that in the past, it used to be like, experts coming from the UK, Germany and the Netherlands, being paid three times like the Greeks to do opinions, you know, based on other standards. I mean, it didn't make sense either. Right. So now the shift in Greek. (…) But they also change the structure, they are following the instruction of the Greek asylum service. So they are really like, you know, the servants locally as servants of the asylum service. (…).

From this point of view, it takes us back to the discussion made in the beginning of this chapter regarding how the "Europeanisation" of the asylum system has got in a reverse process gradually since 2016. At this point, it should be highlighted that even though EASO is now able to draft the decisions or giving opinions that directly influence the decisions, still, the decisions have to be written by the Greek asylum officers. Nevertheless, at this point, they are limited to two options. Either the Greek asylum officers will sign without going over the cases conducted by someone else or in addition to their own cases, they have to go every detail for other cases that were

conducted by EASO caseworkers. P16/G2 explained how they operate for the cases that EASO conduct:

> At that point, it did not make sense to conduct interviews if someone does interview but cannot write the decision. So, if they are the opinions, as we call them, you need Greek staff, not for the language but as an institution to put the signature on and take the responsibility of final decision. So, they were conducting interviews and writing opinions and the opinions were led to the Greek officers to write the decisions.

While the Greek asylum service and EASO have similar approach to accept Turkey as safe third country for Syrians following the EU-Turkey Statement of 2016, there was a striking diffierence on the approaches towards accepting Turkey as a safe third country for non-Syrian asylum seekers. In align with my interviews, a report published by the European Court of Auditors verifies my observation by stating that the EASO's legal opinion on inadmissibility for all nationalities except Syrians are "systematically" overturned by the Greek Asylum Service, which causes "back-and-forth referrals" (European Court of Auditors, 2019, p.38). Different interpretations of two authorities in different levels for the same issue is a concrete example for the clashing decisions of different actors in legal pluralism. Further, it is also important to show how the system slows down with repeated actions in the cases of clashes and becomes ineffective to provide immediate protection.

During my formal and informal interviews, another crucial point was concerning the automatization of the decisions. Here, in particular the lawyers were highlighting not only the lack of individual assessment, but also the "copy-paste" decisions with full of wrong information that may directly influence the refugee status determinations. Due to the time limitation, instead of preparing original documents for each applicant, case workers use samplings from previous decisions to change the details of the personal information on the documents. During this process, old information may remain on the documents (such as the details on birth place, date, country of origin), which cause vital mistakes to change the course of the application. Following the EU-Turkey Statement, according to my interviewees who provide legal aid for the asylum seekers, the copy-paste decisions for Syrian refugees significantly increased. Rather than doing

an individual assessment whether that person is really safe in Turkey or not, s/he is automatically considered under the category defined by the statement. P9/N5, lawyer working in a legal aid NGO comment on the how the EU-Turkey Statement had impact on the decisions of Syrian refugees:

> With the admissibility interviews for the Syrians, it is the same, it is very basic superficial interview. Maybe it is not so important because at the end of the day the answer is always copy-paste. Without also individualised assessment, because for example sometimes Turkish-Kurds but they won't assess this or not Turkish, Syrian Kurds or Syrian single women for example and they would not assess what it means for a Syrian woman going alone back Turkey for example so it was always a boiler plate, copy-paste and even for people give long testimonies how they have been pushed back return from Turkey to Syria, the answer is .. how was it 'the isolated incidents'. But obviously when you have plenty interview with 'this is an isolated incident', the answer would be yeah but this person returns through the EU-Turkey Statement, then there is a commitment, the Statement will be respected, the people will not be sent back. For me it was a bit funny.

As a response to this claim concerning the automatization of the carbon copy decisions, P16/G2 who worked as an asylum officer admits:

> You suppose to review it, even change but they expect too many decisions and in practice, it is very common situation that you just copy and paste. Unfortunately. But you supposed to, it started with the concept that you take the opinion, you change it, if interview is not enough for you, you call the person back for supplementary and additional questions. You do whatever you want because you are in charge. You have the responsibility. But in practice, many people cannot bear all this burden what they are expected by them.

At this point, automatization of the decision does not seem the only problem. The quality of the interviews is also diminishing which has direct impact on the decision-making process of the asylum applications. In this context, P12/IO1 pointed out that one of the biggest problems is concerning the individual assessment. According to I1, deterioration and degradation of individual assessments become more visible. S/he adds that following the changes in the appeals committee, the accession to effective remedies also got minimized.

Not only accession to the asylum system and the effective remedies are problematic, but also the ways of conducting interviews which can really be sensitive many times due to the traumas of the asylum seekers may have seem handled not in accordance with the (recast) Qualification Directive. Here, even though there are guidelines prepared by EASO as P3/E3 mentioned, in practice, the experiences of the lawyers show that the interviews with asylum seekers turn into a type of interrogation where the sensitivities are not really taken into consideration. P1/E1 highlighted:

> We've seen many problems with EASO. EASO, as entity, is supposed to technically support the Greek asylum service. They are not supposed to intervene in decision making. So it is very problematic from that point of view because they are not the ones who conduct the interviews but they are the ones writing transcripts, they are writing their opinion and sending to the Greek asylum service… All that they (Greek asylum service) have to do is what they have from EASO. We have seen many problems how EASO conducted their interviews like they run like an interrogation, guidelines that they are based on reality in terms of country-of-origin conditions. There has been lots of reporting on EASO. Also, EASO removes the decision maker one personal way from the person who is going to be deported. The person who is going to make the decision never met the person who is going to be deported.

P1/E1 who used to work as a caseworker for refugee status determination also explains the degree of the opinion given by the EASO which is followed without challenging by the Greek asylum service officers. In line with the NGO lawyers and the Greek asylum service officers, she also points out how problematic is that the EASO caseworkers conduct the majority of the interviews, make their opinion based on these interviews but the final decision comes out with the signature of a caseworker working in the Greek asylum service who does not even take part in the interviews. Therefore, the official responsibility of the decisions is incurred to the Greek asylum officers. S/he pointed out:

> EASO is making the opinion and asylum service is officially taking the decision, which they are, I mean, they are the ones responsible in the end, but it's another example of this subsidiarity principle that has never worked, and it will never work in the EU. And it should stop because no one is responsible for anything. And it's scandalous, and it's the same products. And you're the one that sees the person, you're the one who talks with the person, you're the one that's based your opinion, that's, I mean, it's not an opinion, it's like it is an opinion, but it's a very dismissive opinion. So most of the time, I think it's more than 90% of the cases, it's followed by the asylum service.

As one of the important reasons why the quality of interviews is reduced seems the time and quota pressure on the case workers. P2/E2 who works as interpreter in European agency shares his observations concerning the interviews:

> New government changed many things. Not only the law but also practices, dates. They want to clear the numbers, etc. They fasten. Both EASO and Greek Asylum Service were asked to do certain amount of interviews per month. So while 1 interview was taking 10-15 hours, not it is only 1 hour. Before they were asking for very detail; background, journey, experiences, reasons in Turkey, Iran, etc. Now they ask only superficial questions. If the other person (asylum seeker) does not know what to say, they don't ask further question. They just reject. For example, a woman who doesn't know how to read or write coming from Afghanistan, doesn't know the European laws. So she doesn't really know how she should make the interview. Already they are very stressed because they know that everything, all their life is depending on this interview. If she just says she was not happy in Afghanistan, she didn't have money, they don't ask any more the root causes. They just reject. But she cannot know.

P1/E1 also highlighted several times about the time pressure on the case workers to finish the interviews. While the interviews were taking 7-8 hours before, due to the new instructions that they received, s/he mentioned that they were pressured to complete an interview in a half day so they could do a second interview in the same day. S/he adds that the only time pressure is not only about finishing the interviews as early as possible but also on preparing the "comment" on the case which becomes the decision in practice:

> It [interview] used to be in English. Now, it's mostly Greek, except that if there is no interpreter for Greek. So, the problem is the time. The timing is you have a pressure to the importance, the priority is the number for them, how many opinion you draft in how much time so that doesn't allow you to speak, I mean, to speak a lot to the person first. That doesn't allow you to take a lot of time to think about what you're writing, in your opinion, you also have a limited amount of time to make research about the country of origin. And the specific case, because it's not. I mean, you know, like the reports on Afghanistan are like thousands and thousands of pages. So, if you will, proper research. This is complicated in this timeline. So, you're also encouraged to refer to other cases.

P8/N4 points out how the superficial interviews in fact have affected the decisions and led more rejections of the asylum applications:

> There is increasing number of rejections. Because people were having interview within a week after arrival. EASO staff changed the way how t8hey do interviews so they started to do much shorter interviews which doesn't necessarily mean that they are not doing through but kind a way this is implemented copy-paste decisions they are issuing. It is clear that the system is designed to reject people and to deport people. I mean there is still a lot talk about the procedure. Then, also the new requirements for appeals making pretty much impossible for people to make appeal. Your guarantee on the appeal but since 2017 in Lesvos at least, it has been denied since July 2017. There are a few moments maybe have been state appointing lawyer to some people but that does not guarantee the access to the lawyer which is part of the Greek law and European regulations since 2017.

As a result of these interviews, it is clear that even though the capacity of the EASO increased and involved more in the asylum procedures (practically drafting the decisions), interviews with the applicants and decision-making process of the asylum cases are far from the standards defined within the framework of the Qualification Directive. On one hand, the time pressure, the deterioration of the quality of interviews, and the ambiguity between the caseworker who conducts the interview and the one who signs the decision seem like the main problems. On the other hand, it should be noted that once the EASO whose role is essentially to monitor the national asylum services has bigger role on the decision-making process than it is designed. Then, the question arises: Who is going to monitor the decisions affected (practically given) by the EASO?

P8/N4 expressed the dilemma that they found themselves when they file a rejection or complaint against the interviews done by the EASO. Even though the Greek authorities make the last decision by taking account the opinions drafter by the EASO, there are political and practical considerations in case that they revise the decision or do not agree with the opinion drafted by the EASO. P8/N4 continued:

> It's a practical issue because if you are saying if the EASO is doing a terrible job, Greece has to then overturn these decisions. Greece's answer was like then this defeats the purpose because if we got to be doing this and then why did they come? I'm saying this because we got censored because we went with a decision and we said okay, you need to repeat all the EASO's cases because there is a problem quality. But then why are they here then? Like if we are supposed to be devotion in every call everything they do. Then we can do it ourselves […] Are these are the Greek authorities

> independent from the opinions? I don't think. It was always a political decision. And also be for sure, it was also practical one. Because if you have these people making their interviews, there was a lot of pressure of time on the Greek case workers to produce a lot of decisions every day. Exactly on the basis of you got somebody else doing all the work, you can just issue the decision. So if one case worker would take the initiative of like going back to the file, and double checking everything, they have done and checking up known. […] then comparing it with the transcript and listening to the recording to make sure that the interpretation was good. Practically this person will have to repeat the whole procedure.

In one of the early researches about the EASO's mandate in the Member States, Tsourdi (2016) rightfully questions whether the EASO's expert consultancy turns into an "integrated EU administration" with its "new" mandate in the hotspots established in Greece. Despite the fact that it was the beginning and there was comparatively limited involvement of the EASO, she indicates the fluidity of the limits between "emergency support" and "special support" of the EASO (Tsourdi, 2016, p. 1007). My research comes four years after her article clearly shows how the EASO has expanded its mandate in Greece with the purpose of "improving the quality" of the asylum assessments. Even though the decision-making is not part of the EASO's mandate (Tsourdi, 2016, p. 1005), various formal and informal interviews that I conducted in the field reveal that the "joint decisions" are mostly made based on the EASO case workers' opinions rather than those of the Greek asylum officers. In her article, Tsourdi (2016, p. 2012) distinguishes scenarios concerning the mode of operation: *assisted processing*, *common processing*, and *EU-level processing*. Although the pilot practices in the first phase of the hotspot approach were carrying the characteristics of the common processing, the current mode of operation is closer to EU-level processing behind the curtains. In the cases where only EASO caseworkers conduct the interview and draft an opinion which is written and signed as a decision by a Greek asylum officer who was never in the interview goes beyond the common processing in practice. P3/E3 who was working as a caseworker draws a parallel between a "private company" and EASO due to the externalization of services. Even though the main goal of the EASO by interfering the asylum cases is "to improve the quality", P3/E3 states that EASO caseworkers have to follow the instructions given by the Greek asylum

office so “EASO structurally depends on the Greek asylum office”. Yet, the EU level officers are heavily criticising how the Greek asylum office (dis)functions.

Alongside the issue related to the EASO’s mandate and its expanding authority, the perception with regards to the EASO, as well as the EASO’s perception about its spatiality, create different dynamics in Lesvos. P9/N5 who has to visit often the EASO office in Lesvos due to the caseloads draws attention to the “neo-colonialist attitude” of the EASO caseworkers. In one of her/his initial visits in the office to ask questions about his/her client’s asylum case, s/he was told that “This [EASO office] is not Greece, this is EU”. It is important to note that the time period that P9/N5 indicates, is when the EASO staff were hired from other EU nationalities, so it was before the “Greekisation” of EASO caseworkers. Interestingly, this statement concerning the separation of Greece from “Europe” is not particular to the EASO officers. During my conversations with asylum seekers in Greece, perception of Greece being ‘different’ from “Europe” was very prominent. When I asked them whether they want to stay in Greece, many of them told me that they want to go to “real Europe”. Nevertheless, such statement made by an EU level staff who is an EU citizen obviously knows that Greece is part of the EU signifies how Greece, through its broken asylum system, creates the liminality, particularly of the hotspots as spaces used for expansion of the border zone, in the EU and is de-spatialized.

From this point of view, the island of Lesvos, which became a hyperregulated space for testing various dimensions and complexities of the CEAS, is not perceived as a representative space for the “ideal” EU. Nevertheless, the island of Lesvos is indeed a representative space for erosion of rights as a result of the EU’s alienation from its founding norms and principles.

On one hand, *raison d’être* of a pluralistic structure of asylum regime similar with human rights regime is to strengtify the protection for asylum seekers and refugees. On the other hand, as this thesis claims, the pluralistic structure of asylum regime does not automatically provides effective protection for asylum seekers and refugees.

The last two chapters of this thesis reveal the challenges like gaps between legal and practice and emergence of legal black holes when the complex systems have overlapping regulations, actors in clash, and different interpretations and implementations by authorities. In particular, these challenges are aggravated and even block the system when the political will acts in opposite of the essence of the asylum regime, which is ensuring the protection of asylum seekers and refugees both physically and legally. From this perspective, use of spatial tactics to deter asylum seekers rather than providing adequate living standards to them as argued in the Chapter 4, manipulation of complexity of legal system to create legal ambiguity, clashes among the actors, and misconducts during the operations signify the ways to paralyze a protection system. Therefore, the case of Lesvos clearly demonstrates that even in a system, which aims at having the highest protection level for human rights can fail to protect refugee rights, and human rights of asylum seekers and refugees.

CHAPTER 6

CONCLUSION

The focal question of this thesis concerns the emergence of global legal pluralism in the CEAS and its implications on the refugee protection in the context of Greece. The proliferation of regulations leads to overlapping and intertwined legal spaces alongside the complexity of the current legal system. Therefore, answering this central question required the application of an intersecting approach of global legal pluralism and critical legal geography. On the island of Lesvos, as a hyperregulated legal space or *nomosphere*, interrelationship between governance, power, law, and space have direct impact on the daily lives of refugees. The empirical data based on my fieldwork revealed the everyday operation of legal pluralism emerging from the practices of a range of actors involved in the asylum regime in Lesvos.

Within the framework of legal pluralism, the field of asylum can be considered as *semi-autonomous social field* that creates its own obligatory norms and coerce mechanism. Secondly, the implementation of law requires an obligatory collaboration between different actors (case workers, guardians for unaccompanied children, practitioners, judges, cultural mediators and interpreters, etc.), leading to complex interactions which are regulated by national, international and supranational rules developed by different levels of bureaucratic institutions or court systems. Different from the classical understanding of legal pluralism, the global legal pluralism that refers to the co-existence of different legal regimes in different levels -international, suprationational, regional, national, and local- may sometimes be in a collaborative form but also in an overlapping or competitive forms. In align with this approach, asylum regime is not only an intersecting area of different fields of law and policies,

but also involving various levels of laws, as well as institutions and courts, which do not create necessarily a hierarchical order but more heterogeneous pluralistic order. From this perspective, the CEAS consisted of national, supranational and international legal orders, emerges as an example of global legal pluralism. As a state party of the 1951 Refugee Convention and its 1967 Protocol, as well as of a number of human rights treaties, Greece is bound by the principles of the international refugee protection regime. Moreover, by signing the ECHR, the legislation and practices in Greece have to comply with the human rights protection provided by ECHR. Together with this, as a Member State of the EU, there has been a harmonization process of Greek legislation with the EU *acquis* in the field of asylum. It carries certain characteristics of different typologies of global legal pluralism. Nevertheless, it should be noted that international law - the UN Conventions related to human rights and the 1951 Refugee Convention - has a different legal connotation from the regional and supranational legal orders in this legal regime by ranking in a higher degree. On the other hand, the interaction between ECtHR and CJEU in the field of asylum (as a part of the human rights) can be considered as a noteworthy case of jurisdictional legal pluralism. Despite their convergence over time, it is still possible to see different interpretations on the same issues, such as the RCD as elaborated in the Chapter 4.

Alongside the pluralistic order sourced by the courts, there are multi-level actors involved in the asylum regime, whose practices re-shape the refugee protection regime, which forms the heart of this thesis. From this point of view, the case of hotspots can be considered as such spaces where overlapping and multiple legal orders, institutions, and non-state actors have to be in dialogue. Yet, even though pluralistic order of human rights have constructive impact on protection by evolving the regime in various levels, there was a big question of why it did not reflect on asylum rights in the case of Lesvos.

The combination of inconsistent policies that surpass the law(s) and overlapping institutions, and mal-implementations reveal the negative implications that lead to *de facto rightlessness* of asylum seekers and refugees, rather than the constructive

implications. In that sense, it was important to look at various issues including the EU and national level policies, legal framework, and its operational dimension to solve the puzzle. For this purpose, apart from the detailed analysis of legal and political documents, the empirical data I collected, especially for the case of Lesvos, bring light on the cracks, clashes, and legal black holes created in the Greek asylum regime. During my field work throughout 2020, I had opportunity to talk with the stakeholders of the Greek asylum regime, as well as the EU level experts. Alongside the technical information I gathered, the insights given by the refugee communities were very valuable for me to understand how the cracks and legal black holes in the asylum regime directly create precarious situations for them legally, socially and physically. In that sense, the findings show that the daily operation of legal pluralism, which is re-shaped by the EU asylum policies including externalization and deterrence policies, overlapping authorities of institutions, and unmonitored expansion of authorities of institutions, cause the legal black holes in the Greek refugee protection regime. Therefore, this thesis helps to establish the relationship between macro level migration governance and local context of refugee reception through the empirical findings from the field work.

Alongside the global legal pluralism, the mutual constitution of law and space, and the multiplication of legal spaces form the second core of this thesis. In that sense, the changes in borders, and shifts in border and policies are directly linked to spatialization of Lesvos. Lesvos, as an island locating between two continents, was transformed into different types of spaces throughout time: space of interconnecting (before the nation-state building process), space of separation (following the collapse of the Ottoman Empire), space of (im)mobility (during the WWII), space of transit (after the end of the Cold War), space of containment (as a result of EU-Turkey Statement of March 2016), and lastly, hyperregulated legal space (with the establishment of hotspot approach in 2015 and ongoing).

As a response to the refugee influx during 2014-2015, the European Migration Agenda in 2015 was adopted which foresaw the official establishment of hotspots. Hence,

hotspots on certain Greek islands *faded-in* as a legal space. Over time, the same legal space, the hotpot of Moria on the island of Lesvos in this case, has been re-spatialized and re-shaped with the changing policies and creation of new regimes. The hotspot of Moria did not only expand from a "legal spot of RIC" to the whole island but also it transformed from a *space of transit* to a *space of containment* with the EU-Turkey Statement of March 2016. Further, within the frame of the measures to combat the Covid-19 pandemic, multiplication of *spaces of containment* was observed. Lastly, because of the fire in Moria in September 2020, the hotspot of Moria became a *disappearing legal space*. Multiple re-spatialization of Moria demonstrates us the exercise of power on the legal spaces, as well as the temporal dimension of legal spaces.

The period after the adoption of hotspot approach carries another dimension of the re-spatialization by adding supranational level with the EU migration and asylum policies and becoming a *hyperregulated space* for global governance of asylum regime by involving UN agencies (UNHCR and UNICEF), EU agencies both for migration and border management (EASO/EUAA and FRONTEX), national authorities, civil society, and refugee communities.

The case of Lesvos shows that the law is not only playing role in the creation of legal spaces but also (re)produces different legal entities and rights in the same legal space. In the case of Lesvos, differences in legal entities are not limited to the asylum seeker/refugee population and other actors working in the humanitarian and security sectors, but also a differentiation is created among the asylum seeker/refugee population as well. Multiplication of asylum procedures emerges as one of the ways to create more categories. In this context, separation between those who get in fast-track procedure and those who are subject to the border procedure can be given as example, as well as those who are considered within the vulnerability. Another differentiation is implemented through the decision over detention sometimes based on nationality (e.g., single men coming from Northern African Countries or Bangladesh and Pakistan within the frame of the "low profile detention scheme"),

sometimes based on the time of the arrival (Chapter 3, Section 4). For instance, those who arrived in the first wave of March 2020 were arbitrarily kept in detention in the navy ship "Rodos" (even called as "warship people" by legal aid providers). Multiple re-spatialization processes go beyond the relationship between power, sovereignty, and borders but it indicates how sovereign power re-formulates the relationship between law and space.

The last spatial tactic used is diminishing living conditions and fundamental rights to the level that aims to create deterrence for the potential irregular migrants. Here it is crucial to note that as ensuring the physical safety of asylum seekers and refugees are essential part of the refugee protection, not providing adequate conditions for their health and safety does not only violate refugee rights but also weakens the refugee protection regime. Despite the fact that the (Recast) RCD sets the minimum standards for reception centres, my observations in the field and the empirical data that I gathered clearly show that the implementation in Moria was far away from both international and the EU standards. Even though the (Recast) RCD was transposed into the Greek legislation in 2018 (IPA), the operational practices do not comply with the law. Taking into consideration the financial support of the EU, the lack of capacity is not sufficient to explain this situation. The political will determines to what extend the law is implemented, even though it is regulated by multiple levels of legal orders.

This thesis demonstrates that the main sources of creation of legal black holes, and in relation to that the *de facto* rightlessness are: the conflict between law and policy in the EU asylum regime, the frequent changes in the legal framework that deliberately restrict the rights of asylum seekers and refugees, lack of coordination between the institutions for the enforcement of the legal instruments, and differential treatments due to the multiplication of legal regimes.

There are further conditions that render certain groups, such as the alleged minors, into *de facto* rightless. In that sense, the case of alleged minor is extremely important to reveal how fundamental rights, including the rights of the child, can be systematically

violated as a result of the legal black holes created through the practices. FRONTEX, which is an EU agency with a primary task of protection of the external borders, can change the whole course of an asylum evaluation process of a minor. A supranational agency, notably FRONTEX, which is not even directly included in the asylum regime, can create legal black holes in the asylum system through its (mal)practices. Further, the consequences of these (mal)practices may be irreversible or hardly reversible by the authorities (i.e., Greek asylum service or even EASO) that are actually responsible for the asylum procedures. This is a concrete example of a negative implication of legal pluralism in the cases where there are overlapping and complex interactions between the institutions.

In terms of the rightlessness, it is important to discuss that violations of human rights may take place in a spectrum of rightlessness rather than an absolute form of it. Taking into consideration the protests and the uprisings in Greece (particularly in the camps on the hotspot islands) against the severe conditions and human rights violations, to what extend can we say that the asylum seekers and refugees are excluded from the political community? The protest of women refugees in Sappho Square can be taken as an example. Both in their manifestation and on their banners, they were explicitly demanding for the protection of human rights. Even though they were supported by activists and right-based NGOs, it was mainly conducted by women refugees coming from different countries with different education levels. The police were in the square, but not intervening the protest. Here, there several questions arise. First issue is concerning the dire conditions in the refugee camp that lead the violations of human rights including the right to life. On one hand, even though the national, regional and international regimes for the protection of human rights, as well as the refugee rights, prohibit the inhuman treatments, these fundamental rights on the paper are systematically violated in everyday practices which brings the discussion on the rightlessness. On the other hand, the asylum seekers and refugees whose fundamental rights are reduced are able to use their freedom of speech and of association against the same actors who violate their rights in the same location. Therefore, it would be

possible to discuss a spectrum of rightlessness in each case rather than generalisation of an absolute form of rightlessness.

The findings of this thesis demonstrate that a complex regime constituted of multi-level and intersecting different legal orders together with the practices of multi-level actors may not be enough to provide the necessary protection. The proliferation of legal orders and institutions may result constructive implications of legal pluralism if they cooperate with each other and if they are used to strengthen the refugee rights. Nevertheless, overlapping legal orders and authorities, incompatibilities in the transposition of the EU law to the Greek legislation, and frequent changes in the legal framework create ambiguity in the asylum regime. This ambiguity does not only create challenges for implementation of the existing law, but it is also used as a form of governmentality as argued in the Chapter 5. Ambiguity in the Greek asylum regime emerges as the most powerful tool of governance for controlling the undesirable population of asylum seekers and refugees. The multi-level system of refugee protection suffers from lack of coordination and overlapping institutions. Increasing complexity in the interactions between the institutions due to formal and informal practices are directly linked with the implementation of the CEAS, which leads to re-shape the refugee protection in the asylum system.

Apart from the multi-level legal orders, the asylum regime in the EU is largely influenced by policy. Even though the policies are important to generate strategies and create practical solutions, especially in the situations of emergency, they should be aligning with the EU law, and respecting the principles of international refugee law. Legal pluralism under the influence of the security-oriented policies grows the gap between law and practice. In particular, the policies developed to respond to the emergency situation during 2015-2016 surpassed the law, and further created larger impact on the legal framework by the multiplication of legal regimes (e.g., fast-track border procedure) that led to the differential treatments.

There are multiple forms of differential treatments in Greece: territorial differentiation, differentiation based on nationality (whether the origin country has high or low recognition rate) and differentiated treatments for vulnerable groups. In addition to the differentiation, there are also inconsistencies in implementation of differentiated legal regimes. Both time and space dimensions are influential on these inconsistencies.

With regards to territorial differentiation, before the hotspot approach in 2015, the procedures were only separated between border zones (also transit areas) and the rest through the border procedures and regular procedures. Nevertheless, with the adoption of the hotspot approach, a further fragmentation occurred with the implementation of separate asylum procedure and practices on the islands where the hotspots were established. With the geographical restriction on asylum seekers brought as a result of the EU-Turkey Statement, the differentiation of treatments deepened by restricting the freedom of movement of asylum seekers residing in the hotspots islands.

Concerning the differential treatment based on nationality, temporal dimension plays a key role. The nationality here refers to the countries with low and high recognition rates, which do not change only in each Member state but also changes depending on the conjunctural situation, notably shifts in policies or emergence of political instability. Another particularity of the differential treatment based on nationality appeared with Syrian nationals. Before the EU-Turkey Statement of March 2016, the ratio of acceptance of Syrian nationals was very high. Nevertheless, with the EU-Turkey Statement, there was a shift by recognizing Turkey as a safe country for Syrian nationals. Therefore, the rejection of Syrian nationals who crossed from Turkey to Greece after 20 March 2016, increased drastically since they could not pass the admissibility criteria. This demonstrates how shifts in policies play key role in inclusion or exclusion by re-shaping and re-producing legal regimes.

Vulnerable groups by definition may have specific needs in the protection regime. For this reason, differentiated treatments for vulnerable groups are natural consequences of the rationality of the protection regime. Nevertheless, in the case of Greece,

determination of vulnerability criteria and the protective measures that should be implemented fall apart from the rationale of protection, but instead they became tool for the management of migration.

Last but not least, despite the proliferation of the institutions and regulations in the asylum area, the Greek asylum regime is not effective to guarantee asylum seekers to access asylum and other relevant rights. Together with the regulations the implementation This shows us that the political will is selective to the application of the law to prioritize the state interests rather than protecting rights. Therefore, law is not used to provide protection of asylum rights but to exclude unwanted migrants by restricting them to access asylum and their fundamental rights.

This thesis was primarily focusing on the spatial dimension and daily operations of global legal pluralism, as well as the complex interactions among the institutions, so there were certain aspects beyond the scope of my research. However, there are mainly two new avenues for further researches. Despite the fact that refugee-led organizations were included within the interviewee list, it is not enough to reflect on their role for norm creation in the pluralistic order in the camp. As research conducted on the refugee camps on the Thai-Burma Border by McConnachie (2014), further research on the role of refugee communities and refugee-led organizations in a refugee camp in the EU from the legal pluralism approach would be intriguing. That kind of research would help us to understand the relationship between communities and norm creation in a camp locating in the EU, which is famous with its normativity. Based on my observations in the field, different refugee communities have a significant parole on the areas such as safety and education including religious education in the camp area. Therefore, research elaborating on the interaction between the political community leaders and refugee-led organizations with the multilevel institutions would have a great contribution in the literature.

Second is on the role of the courts with their decision on different themes relevant to asylum rights involving push-backs, reception conditions, and deportation. A legal

research that involves the jurisdiction of national court and its interaction with the ECtHR and CJEU, would shed light on the interaction between courts in different levels within the framework of legal pluralism.

This thesis contributes to the literature from both practical and theoretical perspectives. Starting from the practical impact, due to the timing of my field work, it allows to reveal the practices implemented during the Covid-19 pandemic including the extreme confinement measures for the asylum seekers and refugees in the hotspot islands, as well as the challenges that asylum seekers and refugees faced in this period. Secondly, the detailed analysis of the EU policies on the local context helps us to analyse the current debates in the European Commission on the migration governance with its potential outcomes. New measures proposed within the frame of the New EU Pact on Migration and Asylum in September 2020 contain elements such as the creation of new spots for pre-screening in different border areas within the Schengen Area and multiplication of legal regimes that the asylum seekers will be subjected to in these border areas, which have great similarity with the *ad-hoc solutions* developed in Greece after 2015. The implementation of the New Pact may lead to the creation of further hotspots in different border areas within the EU. *De facto* detention of asylum seekers at the border zones, differentiation in refugee protection through the multiplication of legal regimes, instrumentalization of legislative changes for political interests, and systematic violation of fundamental rights are some of the consequences that emerged from the experience of hotspot approach in Greece. By drawing the legal landscape of asylum regime, exploring the interaction of different level actors in a hyperregulated space, and establishing the mutual constitution of space and legal within the frame of refugee rights, this thesis becomes more relevant to understand the potential outcomes of the New EU Pact in the future.

The findings of this thesis are not only important on the practical terms to project the potential outcomes of the New EU Pact, but it also contributes to the literature of different disciplines, notably global/contemporary legal pluralism, critical legal geography, multilevel governance, and area studies. First and foremost, as indicated

in the literature review, it is less common in the literature to approach migration and asylum regimes from legal pluralism perspective. Therefore, this thesis expands the theoretical debate by exploring the spatial dimension of legal pluralism but also providing empirical data to demonstrate the daily operations of global legal pluralism in a one space -Lesvos-, as well as revealing the cracks, frictions, and gaps in overlapping legal orders. Further, analysing the spatial dimension also allows to improve the intersecting approach between legal pluralism and critical legal geography. Within the frame of space-law-power nexus, the hotspots show us clearly how space is instrumentalized for the implementation of law, and vice versa how law is used for controlling space and so the lives of asylum seekers and refugees. At this point, growth of the Moria camp towards outside of its edges to create informal refugee camp -Olive Groves or Jungle- just next to the official camp led us to the power relations between asylum seekers and the state, and a supranational organisation in this case. In spite of the deterrence policies by creating miserable conditions that do not clearly fit the normativity of the EU regulations, asylum seekers show resistance to pursue their life and find ways to empower themselves to overcome the challenges. Finally, I aimed to develop a better understanding of global migration governance and to reveal the complex interactions by focusing on a local context, which has historically deep connections with human mobility.

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https://www.youtube.com/watch?v=KKxWBvW7llE.

Twitter. Greek Prime Minister. https://twitter.com/primeministergr/status/1233399637345787904?lang=fr

Court Decisions:

A. European Court of Human Rights Decisions:

Abdulaziz, Cabales and Balkandali v. the United Kingdom, 9214/80, ECHR 2008

Amuur v. France, 19776/92, ECHR 1996

Bader and Others v. Sweden, 13284/04, ECHR 2005

Conka v. Belgium, 51564/99, ECHR 2002

Hırsi Jamaa and Others v. Italy, 27765/09, ECHR 2012

L.E. v. Greece, 71545/12, ECHR 2019

M.S.S. v. Belgium and Greece (GC), 30696/09, ECHR 2011

Nada v. Netherlands, 10593/08, ECHR 2012

Palushi v. Austria, 27900/04, ECHR 2010

Rahimi v. Greece, 8687/08, ECHR 2011

Sakir v. Greece, 48475/09, ECHR 2016

S.D. v. Greece, 53541/07, ECHR 2009

Sufi and Elmi v. the United Kingdom, 8319/07 and 11449, ECHR 2011

B. European Court of Justice (ECJ) and Court of Justice of the European Union (CJEU) Decisions

ECJ, Opinion 1/91, *Draft Treaty on the establishment of a European Economic Area (EEA)* [1991] *ECR* I-6079.

CJEU, Case C-465/07, *Meki Elgafaji and Noor Elgafaji v. Staatssecretaris van Justitie*, Grand Chamber, 2009, ECR 1-921; (2009) 21 *IJRL* 297-307.

CJEU, Case C-163/17, Jawo, EU:C:2019:218.

CJEU, Case-2197/17, C-318/17, C-319/17 & C-438/17, EU:C:2019:219.

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APPENDICES

APENDIX A. APPROVAL OF THE METU HUMAN SUBJECTS ETHICS COMMITTEE

UYGULAMALI ETİK ARAŞTIRMA MERKEZİ
APPLIED ETHICS RESEARCH CENTER

ORTA DOĞU TEKNİK ÜNİVERSİTESİ
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Sayı: 28620816/497

12 Aralık 2019

Konu: Değerlendirme Sonucu

Gönderen: ODTÜ İnsan Araştırmaları Etik Kurulu (İAEK)

İlgi: İnsan Araştırmaları Etik Kurulu Başvurusu

Sayın Dr. Şerif Onur BAHÇECİK

Danışmanlığını yaptığınız **Müge Dalkıran ALEXANDRİDİS'in "EU in LİMBO: International Norms and Local Practices"** başlıklı araştırması İnsan Araştırmaları Etik Kurulu tarafından uygun görülmüş ve **477 ODTU 2019** protokol numarası ile onaylanmıştır.

Saygılarımızla bilgilerinize sunarız

Doç.Dr. Mine MISIRLISOY
Başkan

Prof. Dr. Tolga CAN
Üye

Doç.Dr. Pınar KAYGAN
Üye

Dr. Öğr. Üyesi Ali Emre TURGUT
Üye

Dr. Öğr. Üyesi Şerife SEVİNÇ
Üye

Dr. Öğr. Üyesi Müge GÜNDÜZ
Üye

Dr. Öğr. Üyesi Süreyya Özcan KABASAKAL
Üye

APPENDIX B. CURRICULUM VITAE

1. PERSONAL INFORMATION

   Family name: DALKIRAN (ALEXANDRIDIS)

   First name: MÜGE

   Date of birth: 03/01/1988

   Place of birth: Istanbul

   Nationality: Turkey

2. EDUCATION

2016 – Present (expected graduation in 2022): PhD in Area Studies (Europe), Middle East Technical University, Ankara (4,00/4,00) (Instruction language: English)

Title of the Ph.D. thesis: Legal pluralism in the Common European Asylum System and its implications on refugee protection: the case of Lesvos (English)**,** under the supervision of Assoc. Dr. Başak Kale

2012 – 2015: MA in Human Rights Law, Istanbul Bilgi University
(3,67/4,00) (Instruction language: English and Turkish)

Title of the MA dissertation*:* Use of Body in Human Rights Activism: Voluntary Human Shields (Turkish), under the supervision of Prof. Turgut Tarhanlı

September 2010 – January 2011: *Institut d'Etudes Politiques de Grenoble*, France (Erasmus Exchange Programme) (Instruction language: French)

2007 - 2012: BA in International Relations, Galatasaray University
(3,00/4,00) (Instruction language: French)

Title of the BA Dissertation: The Millenium Development Goals and Human Rights (French), under the supervision of Assoc. Dr. F. Selcan Serdaroğlu

2002 - 2007: Saint Joseph French High School, Istanbul

3. WORK EXPERIENCES

Visiting Fellow at Austrian Institute for International Affairs – oiip: 11 October – Ongoing 2022

Junior Visiting Fellow at IWM Vienna (Institute for Human Sciences): 1 January – 31 March 2022

Main responsibility: Led the research project titled "The Impact of the Ad-Hoc Solutions on the EU Governance of Migration: 'De-Europeanisation' of the Protection of Asylum Rights". The main output was an academic article, publication pending.

Other activities:

- Actively participated in several workshops organised by IWM covering a wide range of topics including the war in Ukraine, rule of law, UN Declaration of Human Rights, and migration in the former Soviet Union.

- Contributed to a brainstorming session that developed a concept note for the forthcoming conference "*Digitized Migrants"*, which will take place September 15-16, 2022 in Istanbul, Turkey. The conference will be hosted by the Europe-Asia Platform on Forced Migration with Mahanirban

Calcutta Research Group (MCRG), the Institute for Human Sciences (IWM), and Migration Research Centre at Koç University (MiReKoc).

Adjunct Faculty at the Department of International Relations, Istanbul Kültür University: 9 October 2020 – ongoing

Responsibility: Lecturing in BA studies

- "International Migration in Europe" (in Fall Term)
- "EU's Mediterranean Policy" (Spring Term)
- French Language for IR students (Fall and Spring Terms in 2020-2021 Academic Year)

Non-Resident Fellow at the IWM Vienna (Institute for Human Sciences): 1 October – 31 November 2020

- Produced project report on the legal framework for refugee protection at the Greek-Turkish Sea Border (see also Section 3 Projects)
- Publication Pending: "Territorial Differentiation of the Refugee Protection in the Aegean Sea"

Visiting Researcher at the Institute of International Relations (Idis), Panteion University, Athens: October 2019 – January 2020

Assistant in the Office of the Rector, and the Department of International Relations at Kadir Has University, Istanbul: 8 January 2018 – 1 August 2019

Responsibilities:

- Assistant to Rector Mustafa Aydın during his term

- Assisting with course preparation, teaching, and invigilating exams for the BA level courses of "Introduction to International Relations" and "Turkish Foreign Policy" (Instructor: Prof. Mustafa Aydın)
- Managing all social media related content including Youtube channel and personal website of Prof. Mustafa Aydın

Extra-university responsibilities:

Greek-Turkish Forum

- Responsible for conference and event organisation (under Chatham House rules)
- Ensuring communication and liaison with the members including former diplomats, ministers, academics, and journalists
- Recording Secretary in the confidential meetings

International Relations Council of Turkey (UİK):

- Responsible for conference and event organisation including arranging logistics, ensuring communication and liaison with service providers, participants, and speakers
- Assistance for writing project proposals (including to NATO Public Diplomacy Department)
- Proof reading and copy-editing of submitted manuscripts for the Journal of International Relations (UI Dergisi)
- Maintaining documents and assistance for preparation of financial reports

Associate Fellow *at Al-Sharq Forum:* 2016 – 2018

Responsibility: Contribution to the migration series including writing policy papers, research papers, giving seminar

Project Officer at Amnesty International (Ankara): June – August 2017

Responsibilities:

- Supporting the Campaign and Activism Department
- Organising project meetings
- Maintaining documents related to the project
- Managing the project schedule
- Ensuring communication and liaison process

Graduate Assistant in the Department of International Relations, Istanbul Kültür University: December 2012 - April 2016

Responsibilities:

- Teaching Assistant for the courses of "Human Rights", "Research Methods in Social Sciences" (Instructor: Assist. Prof. Slyvia Tiryaki) and "Introduction to International Relations" (Instructor: Prof. Mensur Akgün)
- Webpage administration of the Department of International Relations
- Assistance in conference and event organisations
- Supporting departmental budget planning
- Assistance to the advisor of the International Relations Club including arranging student trips to Strasbourg (EU institutions and Council of Europe) and organizing workshops
- Mentoring foreign students registered in the department

Volunteer in Refugee Rights' Commission in Human Rights Association, Istanbul: October 2013 – March 2014

Responsibilities:

- Being part of the founding team of the Refugee Rights' Commission
- Social media administrator of the Refugee Rights' Commission

Internship at Amnesty International (Istanbul): July – September 2011

Responsibilities:

- Translation of the European Court of Human Rights decisions from English and French to Turkish
- Transcription and translation in the project of "Proudly Transgender in Turkey" prepared by Gabrielle Le Roux and Amnesty Turkey

Internship at Turkey-Europe Association (TAV-Türkiye Avrupa Vakfı): April - June 2011

Responsibilities:

- Content creation for the webpage of the association
- Preparing report on the news on education and cultural events in Europe

Internship at Cumhuriyet Daily: July-August 2008

Responsibilities:

- Assisting the Department of Culture
- Covering short news about the cultural events

4. PROJECTS

Junior Visiting Fellow, Individual research project: "The Impact of the Ad-Hoc Solutions on the EU Governance of Migration: De-Europeanisation of the Protection of Asylum Rights" supported by the **Europe-Asia Research Platform on Forced Migration**, January 2022-March 2022.

Mentor, **INTERSECT Project** taken by METUMIR (Middle East Technical University Migration Research), funded by Germal Marshall Fund Alumni Leadership Programme on "Inclusive Entrepreneurship: Bringing Together Refugee, Immigrant and Host Communities", and supported by TOBB Brussels Office (Belgium) and EntreComp Europe: 6 November 2020 – 20 November 2020.

Researcher, **Greek-Turkish Relations Project,** CIES (The Centre of International and European Studies) at Kadir Has University, the Department of International, European and Area Studies at the Panteion University of Athens, and Friedrich Naumann Foundation of Freedom: February-June 2021.

Researcher, **Europe-Asia Research Platform on Forced Migration, Institute for Human Sciences (IWM Vienna) and Kolkata (Calcutta) Research Group**: May 2020 – January 2021.

Multi-sited field research for the Ph.D thesis mainly in Athens and Lesvos: December 2019 – October 2021.

Facilitator and Reporter, **International Neighbourhood Symposium**, organised by CIES (The Centre of International and European Studies) at Kadir Has University **in partnership with** *UA: Ukraine Analytica***, the Foreign Policy Council "Ukrainian Prism" and Quadrivium: 18-23 June 2019.**

Expert on Refugee Rights, Fighting Human Rights Violations in a Semi-Authoritarian Political System: Human Rights Activism in Turkey and the Human Rights Mechanisms of the Council of Europe and the European Union, Visits of the EU Institutions and the Council of Europe in Strasbourg and Brussels, organized by FNF-ELF: 22-27 April 2018.

Istanbul-based Research Assistant under the supervision of Prof. Dr. Mensur Akgun at GPOT Centre in **SSHRC Partnership Development Grant – Migrants, Refugees, and the International State System,** hosted by University of Toronto: August 2014 - March 2016.

Researcher, **Pilot field research during the "Migration in the Margins of Europe: From Istanbul to Athens"** workshop organized by the Free University of Amsterdam and Netherlands Institute of Athens (NIA): 1-31 January 2016.

5. LANGUAGE SKILLS

Turkish: native
English: fluent
French: fluent (Diploma equivalent to BAC)
Greek: intermediate (B1- ongoing)

6. AWARDS & SCHOLARSHIPS

2022 (1 January - 28 February): Award of Junior Fellowship within the project of "Europe-Asia Research Platform on Forced Migration"

2020-2021: Micro-grants for Collaborative Turkish Study Projects, awarded by the committee formed by CIES, the Department of International, European and Area Studies at the Panteion University of Athens, and Friedrich Naumann Foundation of Freedom

2016-2017: Academic Year METU Graduate Courses Performance Award: The most successful student in the Ph.D. Program of the Department of Area Studies with CGPA of 4,00/4,00.

May 2015: Erasmus staff exchange grant to visit and to make a presentation at COMPAS, the University of Oxford (Please also see the section 7 Conferences)

2012-2015: Partial scholarship due to the academic success in the Master Program of Law at Bilgi University.

2010-2011: Erasmus Scholarship

7. PUBLICATIONS:

Journal Articles:

Zihnioglu, O. and M. Dalkiran (2022). From social capital to social cohesion: Syrian refugees in Turkey and the role of NGOs as intermediaries. Journal of Ethnic and Migration Studies, https://doi.org/10.1080/1369183X.2022.2047908.

Book Chapters:

Kale, B. and M. Dalkiran (February 2022). Securitisation of Migration and the Role of Frontex in Human Rights Violations, Women in Foreign Policy Platform, Almanac 2021 (English and Turkish). Available at http://wfp14.org/wp-content/uploads/2022/03/WFP-2021-Almanac-ENG_28.03.pdf.

Kourou, S. N., Dalkiran, M. and A. Alexandridis (2021). *Breaking Down Barriers: Trust-building through the mobility of academic elite between Greece and Turkey* within the frame of the Book on Greek-Turkish Relations Project. Available at https://greekturkishrelations.org/bridging-the-gaps-an-almanac-for-greek-turkish-cooperation/.

Dalkiran, M. (2014). Voluntary Repatriation Programme is For Whom? (Original title in Turkish: *Gönüllü Geri Dönüş Programı Kimin İçin?*) in Akgün, M. (Ed.) Küreselleşen Dünyada Farklı Sorunlar Farklı Perspektifler 2014. (pp. 123-140). Istanbul Kültür University.

Dalkiran, M. (2014). *Reflection of Human Rights on Turkish Foreign Policy.* in Akgün, M.

(Ed.) Strategizing Turkey: The Davutoğlu Era in Turkish Foreign Policy. (pp. 177-199). Istanbul Kültür University (Proceedings).

Research & Policy Papers:

Dalkiran, M. (March 2022). Is (the war in Ukraine) a Turning Point for the CEAS? (Written in Turkish). Perspektif. Available at https://www.perspektif.online/ab-ortak-goc-politikasinda-yeni-bir-donum-noktasi-mi/.

Dalkiran, M. (March 31, 2021). Do we agree on the Statement? (Written in Turkish). *Perspektif*. Available at https://www.perspektif.online/mutabakatta-mutabik-miyiz/.

Dalkiran, M. (February 18, 2021). To what extent is Europe honest to migrants? (Written in Turkish). *Perspektif*. Available at https://www.perspektif.online/avrupa-gocmenlere-ne-kadar-durust/.

Dalkiran, M. (October 13, 2020). Is the New Pact on Migrantion and Asylum a Pact of Return Policy? (Written in Turkish). Perspektif. Available at https://www.perspektif.online/abnin-yeni-goc-ve-iltica-pakti-aslinda-bir-geri-gonderme-pakti-mi/.

Dalkiran, M. (April 25, 2020). Analysis: A Short View to the International Refugee Law. (Written in Turkish). *Panororama UİK*. Available at https://www.uikpanorama.com/blog/2020/04/25/uluslararasi-multeci-hukukuna-kisa-bir-bakis/.

Dalkiran, M. (March 9, 2020). Refugees, "Clamped" by Turkey, Greece, and the EU (Written in Turkish). Perspektif. Available at https://www.perspektif.online/tr/jeopolitik/turkiye-yunanistan-ve-ab-kiskacinda-multeciler.html.

Alexandridis, A. & Dalkiran, M. (March 2017). *Routes Change, Migration Persists: The Effects of EU Policy on Migratory Routes.* Research Paper, Al-Sharq Forum (online), http:// sharqforum.org/2017/03/28/routes-change-migration-persists-the-effects-of-eu-policy-on-migratory-routes/.

Dalkiran, M. (May 2016). *Law on Foreigners and International Protection: A Real Shift in Turkey's Migration Policy?* Expert Brief, Al-Sharq Forum (online), http://sharqforum.org/2016/05/31/ law-on-foreigners-and-international-protection-a-real-shift-in-turkeys-migration-policy/.

Dalkiran, M. (2013). Voluntary Repatriation (Written in Turkish*)*. Global Political Trends Center (GPOT), Istanbul Kültür University. (http://www.gpotcenter.org/). (Working Paper)

Dakiran, M. (2013). Voluntary Repatriation: Afghanistan (Written in Turkish*)*. Global Political Trends Center (GPOT), Istanbul Kültür University. (http:// www.gpotcenter.org/). (Working Paper)

Reports:

Contribution to the report prepared following the Global Protection of Migrants & Refugees, Fifth Annual Research & Orientation Workshop & Conference organised by Kolkata (Calcutta) Research Group, 16-21 November 2020.

Contribution to the report 2016 prepared by ELF. *Human Rights Protection Mechanisms: Anatomy of Turkey's Human Rights Regime,* ed. Assoc. Prof. Bican Şahin (English and Turkish).

Book Reviews:

Dalkiran, M. (July 2, 2021), Book Review: *Policing Humanitarianism: EU Policies Against Human Smuggling and Their Impact on Civil Society*, Oxford University Border Criminology Department Blog. Available at https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2021/07/book-review.

Dalkiran, M (May 22, 2020). Book Review: *Refugees, Civil Society, and the State: European Experiences and Global Changes*. Oxford University Border Criminology Department Blog. Available at https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2020/05/book-review.

Other:

Dalkiran, M. (2021). "Chronicle of a Death Foretold": The Moria Fire. IWMpost 126: Democracy in Question, Available at https://www.iwm.at/publication/iwmpost/iwmpost-126-democracy-in-question.

8. CONFERENCES / PANELS / WORKSHOPS / PROGRAMS ATTENDED AS A SPEAKER

Guest lecture in Migration Seminar Series organised by METUMIR, 15 December 2020
Lecture title: Doing Fieldwork in a Period of Uncertainty: Pandemic, Turkey-Greece Tensions, and Moria Fire. Available at https://www.youtube.com/watch?v=KF-5ZMe-SfE&t=84s.

Global Protection of Migrants & Refugees, Fifth Annual Research & Orientation Workshop & Conference organised by Kolkata (Calcutta) Research Group, 16-21 November 2020
Panelist in the Session: Migrants, Refugees, and Issues at Statelessness in Europe -II

Forced Migration Workshop (virtual) hosted by IWM: 25-26 June 2020
Presentation title: Territorial Differentiation of the Refugee Protection in the Aegean Sea

ISA Annual Conference 2020: (Cancelled due to Covid 19)
Presentation title: Immigrants in Turkey and Greece: Bridging the Intercommunal Social Capital (Co-authored with Assoc. Ozge Zihnioglu)

EU at the crossroads of migration: Critical reflections on the 'refugee crisis' and New migration deals: 7-8 May 2018, Utrecht
Presentation title: Hotspots: A Biopolitical Practice of the EU (Co-authored with Antonios Alexandridis)

International Relations Council of Turkey, 8th Congress of International Relations Studies and Education, 3-6 May 2018, Antalya
Presentation title: The Biopolitical Practices in the Registration and the Identification Centres at the EU's External Borders (Presented in Turkish)

Migration Network for Asylum Seekers and Migrants in Europe and Turkey (Minaret) Project, Awareness-Raising Thematic Workshop 2: 23-24 March 2017, Istanbul
Presentation title: Perception on Migration: Old problems versus New Knowledge

Workshop on "Migration in the Margins of Europe: From Istanbul to Athens": 30 January 2016, Athens

Presentation title: The Dynamics of the Migrants' Interactions in Gentrified Neighborhoods: Tarlabaşı, Istanbul and Psiri, Athens (Presented with Mina Baginova)

"The Refugee Crisis: German, European, and Global Responses" organised by Munk School of Global Affairs: 18 September 2015, Toronto
Presentation title: Project Review: Early Warning System for Forced Displacement, the Case of Syria (Presented with Omar Sheira)

CARMFS 2015, Panel: Using Open-Source Data to Inform Humanitarian Responses to Forced Migration
Presentation title: Forecasting Displacement: The Case of Syria (Authors: Dalkiran, M., Mourad, L. Sheria, O. and Wei, Y.) – Presented by Mourad, L.

Turkish Migration Studies Network (TurkMis), 11th Workshop Migrants and Refugees in Turkey", University of Oxford, 29 May 2015 Presentation title: Struggling to survive: Syrian Refugees in Istanbul and the South Eastern cities in Turkey

"Strategizing Turkey: The Davutoğlu Era in: 26-27 October 2013, Istanbul

Turkish Foreign Policy" International Symposium
Presentation title: Reflection of Human Rights on Turkish Foreign Policy

9. OTHER PUBLIC APPEARANCES

Interview with Dr. Begüm Başdaş on the EU-Turkey Statement of 2016. Begüm Başdaş ile yollarda: Mutabakatın Gölgesinde, Medyascope TV (March 14, 2021), https://www.youtube.com/watch?v=XdrNLT7Qcso&t=608s.

Guest lecturer at METU MIR Webinar Series (December 15, 2020)

Presentation title: Doing Fieldwork in a Period of Uncertainty: Pandemic, Turkey-Greece Tensions, and Moria, https://www.youtube.com/watch?v=KF-5ZMe-SfE.

Interview with Menekşe Tokyat on the crossings of irregular migrations in March 2020. Euronews (March 4, 2020), "Mültecilere kapıların açılması Göçmen Mutabakatı'nın sonu mu?", https://tr.euronews.com/2020/03/04/multecilere-kapilarin-acilmasi-gocmen-mutabakatinin-sonu-mu.

Interview with Medyascope on the refugees at the Greek-Turkish borders (March 3, 2020), https://www.youtube.com/watch?v=C1XwxknRYwE&t=1s.

10. CERTIFICATES / WORKSHOPS

"Freedom of Movement - A Liberal Principle Challenged" organised by International Academy of Leadership / Friedrich Naumann Foundation for Liberty: 5-17 March 2017

"Armed conflicts and International Human Rights Law" 47th Annual Study Session organised by International Institute of Human Rights, Strasbourg (with scholarship by Friedrich Naumann Foundation for Liberty): 3-23 July 2016

Workshop on "Turkey, the European Human Rights Mechanisms, and the Monitoring of Civil Liberties" organised by FNF - ELF (Contributed as a reporter): 4-8 May 2016

Workshop on "Regional Development, Refugee Crisis, & Youth Unemployment", Hasan Kalyoncu University, Gaziantep, organised by Co-opinion: 26-28 February 2016

Workshop on Refugee Rights organized by UNHCR and Directorate General of Migration Management: 18-19 December 2015

Education Programme on Refugee Rights organised by Istanbul Bar Association and UNHCR: 5-6 December 2015

"Kadın Perspektifleri: Beden, Şiddet ve Aktivizm" (Woman Perspectives: Body, Violence and Activism), Boğaziçi University: 12-14 December 2014

"Nationalism, Religion and Violence in SE Europe" Summer School organised by International Hellenic University and Charles University in Prague: 1-12 July 2013

Global Relations Forum (GRF) Young Scholars Programme (http://www.gif.org.tr/Default.aspx): 2011 (November) – 2012 (March)

Model United Nations Conference at Galatasaray University (GSMUN) – Humanitarian Law, member of the Organisational board: 2011

Euroforum (Model European Union Conference at Galatasaray University): 2008, 2009, 2011

11. PROFESSIONAL MEMBERSHIPS

Expert in Mobility and Migration, and EU Mediterranean Policies, EuroMeSCo, https://www.euromesco.net/expert/muge-dalkiran/.

Expert at Women in Foreign Policy, http://wfp14.org/en/ourexperts/.

Member at UIK, https://www.uik.org.tr.

Editor in Blog Team, http://metumir.org.

Young Scholar at GIF/GRF, http://www.gif.org.tr/homepage

APPENDIX C. LIST OF INTERVIEWS

Interviewee code	Position	İnterview location	Date of interview	Formal/ informal
P1/E1	Caseworker in European level agency	Athens	06.01.2020	Informal
P2/E2	Interpreter in European level agency	Lesvos	24.07.2020	Formal
P3/E3	Former caseworker in European level agency	Lesvos	05.08.2020	Formal
P4/E4	EU Delegation (Turkey)	Via teleconference	26 January 2021	Formal
P5/N1	Working with unaccompanied minors in an NGO	Athens	09.01.2020 (repeated meetings several times)	Informal
P6/N2	Working in child protection in an NGO	Lesvos	30.01.2020	Formal
P7/N3	Working with unaccompanied minors	Lesvos	08.07.2020	Formal
P8/N4	Lawyer in an NGO providing legal assistance	Lesvos	09.07.2020	Formal

P9/N5	Lawyer in an NGO providing legal assistance	Lesvos	09.07.2020	Formal
P10/N6	Caseworker in an NGO	Lesvos	21.07.2020	Formal
P11/N7	Spoke person in a refugee-led organization	Lesvos	05.08.2020	Formal
P12/N8	Lawyer in an NGO	Athens	15.09.2020	Formal
P13/IO1	Working in legal issues in an international organization	Lesvos	30.01.2020 07.07.2020	Informal
P14/IO2	Working in child protection in an international organization	Lesvos	31.01.2020	Informal
P15/G1	Greek authority	Lesvos	07.07.2020	Formal
P16/G2	Greek authority	Lesvos	13.07.2020	Formal
P17/PA1	Policy Advisor/Researcher	Via teleconference	18.01.2021	Formal
P18/PA2	Policy Advisor/Previous experience in a high-level EU institution	Via teleconference	13.01.2021	Formal

APPENDIX D. QUESTIONNAIRE FOR REPRESENTATIVES FROM (I)NGOS, THE GREEK AND EUROPEAN AUTHORITIES, AND INTERNATIONAL ORGANIZATIONS

1. What is the scope of the organisation/institution concerning the refugee issue? Since when does your organisation work on the refugee issue in Greece?
2. How is the structure of your organisation/institution? Do you have different units in different parts of Greece?
3. If the answer is yes for the previous question, is there any difference in functioning? (e.g. emergency response in Lesvos, legal assistance in Athens, etc.)
4. What is the procedure that is followed once an asylum seeker reaches at your organisation/institution? Is there any difference between the mainland and the islands?
5. What are the main challenges refugees are facing during their asylum applications?
6. What are the main differences in the situation before and after 2015, and in the current situation after the EU-Turkey statement? Why do you think that there are fluctuations in the numbers of the people crossing through Evros and the islands?
7. What are the criteria for the acceptance of the asylum application?
8. How do the vulnerability criteria work? Are they equally applied to all nationalities and genders?
9. What is the rate of recognition per nationality and how does it work? Do you think that it is compatible with the Geneva Convention?
10. Are you working with local/Greek/European authorities? If yes, what are the convergent and divergent approaches between these authorities?
11. Do you think that the standards in the EU law and directives are implemented?

12. Based on your experience, is there any gap between the procedures and the practices in the field? If yes, how do you solve this problem? Do you think that this gap creates weaknesses in the asylum system?
13. How is the current situation concerning the non-refoulement principle? Does the hotspot approach and/or the EU-Turkey statement have any impact on the non-refoulement principle or push-back operations? If yes, how? (frequency, geographically etc.)

APPENDIX E. QUESTIONNAIRE FOR REFUGEES AND ASYLUM SEEKERS

1. Where are you from?
2. When and how did you arrive in Greece?
3. Did you know how to apply for asylum before the journey or did you learn the process after you arrived in Greece? How did you get the information?
4. Did you get any legal assistance before and during the submission of your application?
5. Can you please describe the asylum application process? Which institutions did you get in contact with (Frontex, EASO, Police, Greek Asylum Service, Solidarity Now, etc)?
6. What were the main challenges during your application? (e.g. language, lack of information, treatments of the officers) Do you think that these challenges affected your asylum application?
7. What are the main challenges that you faced with?

APPENDIX F. LIST OF LEGAL INSTRUMENTS AND TEXTS CONCERNING ASYLUM SEEKERS, REFUGEES, STATELESSNESS, AND OTHER PEOPLE OF CONCERN[38]

A. INTERNATIONAL INSTRUMENTS	
Refugees and Stateless Persons, UN GA Resolution 319 A (IV) of 3 December 1949	**REFUGEES, ASYLUM AND UNHCR**
Statute of the Office of the United Nations High Commissioner for Refugees of 14 December 1950 .	
Convention relating to the Status of Refugees of 28 July 1951	
Protocol relating to the Status of Refugees of 31 January 1967	
Agreement relating to Refugee Seamen of 23 November 1957	
Protocol relating to Refugee Seamen of 12 June 1973	
Convention concerning International Co-operation regarding Administrative Assistance to Refugees of 3 September 1986	
United Nations Declaration on Territorial Asylum of 14 December 1967	

[38] Prepared by the author based on the list provided by UNHCR. Source: https://www.unhcr.org/455c71de2.pdf.

Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees of 13 December 2001	
Constitution of the International Refugee Organization of 15 December 1946	
Convention relating to the Status of Stateless Persons of 28 September 1954	**STATELESSNESS**
Convention on the Reduction of Statelessness of 30 August 1961	
Convention to Reduce the Number of Cases of Statelessness of 13 September 1973	
Special Protocol concerning Statelessness of 12 April 1930	
Protocol No. 1 annexed to the Universal Copyright Convention as revised at Paris on 24 July 1971, concerning the Application of that Convention to Works of Stateless Persons and Refugees	
Office of the United Nations High Commissioner for Refugees, UN GA, Resolution 50/152 of 21 December 1995	
Draft articles on the Nationality of Natural Persons in relation to the Succession of States of 3 April 1999	
Guiding Principles on Internal Displacement of 11 February 1998	**INTERNALLY DISPLACES PERSONS**

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 18 December 1990	**MIGRANTS**
Migration for Employment Convention (Revised), 1949 (No. 97) (ILO)	
Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) (ILO)	
Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live of 13 December 1985	
Universal Declaration of Human Rights of 10 December 1948	**INTERNATIONAL HUMAN RIGHTS**
International Covenant on Economic, Social and Cultural Rights of 16 December 1966	
International Covenant on Civil and Political Rights of 16 December 1966	
Optional Protocol to the International Covenant on Civil and Political Rights of 16 December 1966	
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984	
Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 9 December 1975	

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 4 December 2000	**INTERNATIONAL HUMAN RIGHTS**
International Convention for the Protection of All Persons from Enforced Disappearance of 20 December 2006	
Declaration on the Protection of All Persons from Enforced Disappearance of 18 December 1992	
Code of Conduct for Law Enforcement Officials of 17 December 1979	
United Nations Standard Minimum Rules for the Administration of Juvenile Justice of 29 November 1985 (The Beijing Rules)	
Basic Principles on the Independence of the Judiciary of 13 December 1985	
Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of 9 December 1988	
Basic Principles on the Role of Lawyers of 7 September 1990	
Guidelines on the Role of Prosecutors of 7 September 1990	
United Nations Guidelines for the Prevention of Juvenile Delinquency of 14 December 1990 (The Riyadh Guidelines)	

United Nations Rules for the Protection of Juveniles Deprived of their Liberty of 14 December 1990	**INTERNATIONAL HUMAN RIGHTS**
United Nations Standard Minimum Rules for Non-custodial Measures of 14 December 1990 (The Tokyo Rules)	
Basic Principles for the Treatment of Prisoners of 14 December 1990	
Guidelines for Action on Children in the Criminal Justice System of 21 July 1997	
International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965	
UNESCO Convention against Discrimination in Education of 14 December 1960	
Equal Remuneration Convention, 1951 (No. 100) (ILO	
Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ILO)	
United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963	
Declaration on Race and Racial Prejudice of 27 November 1978	
Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 25 November 1981	

Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 25 September 1926 (Slavery Convention)	**INTERNATIONAL HUMAN RIGHTS**
Protocol amending the Slavery Convention signed at Geneva on 25 September 1926, of 23 October 1953	
Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 7 September 1956	
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 2 December 1949	
Forced Labour Convention, 1930 (No. 29) (ILO)	
Abolition of Forced Labour Convention, 1957 (No. 105) (ILO)	
Recommended Principles and Guidelines on Human Rights and Human Trafficking of 20 May 2002	
Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87) (ILO)	
Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ILO)	
Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979	
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979	

Convention on the Political Rights of Women of 31 March 1953	
Declaration on the Protection of Women and Children in Emergency and Armed Conflict of 14 December 1974	
Declaration on the Elimination of Violence against Women of 20 December 1993	
UN Security Council Resolution 1325 on women and peace-building of 31 October 2000	
Convention on the Rights of the Child of 20 November 1989	
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict of 25 May 2000	
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography of 25 May 2000	
Convention on the Civil Aspects of the Child Abduction of 25 October 1980	
Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption of 29 May 1993	
Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children of 19 October 1996	

Minimum Age Convention, 1973 (No. 138) (ILO	**INTERNATIONAL HUMAN RIGHTS**
Worst Forms of Child Labour Convention, 1999 (No. 182) (ILO)	
Declaration of the Rights of the Child of 20 November 1959.	
Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally of 3 December 1986	
UN Security Council Resolution 1612 on children and armed conflict of 26 July 2005	
Convention on the Rights of Persons with Disabilities of 13 December 2006	
Optional Protocol to the Convention on the Rights of Persons with Disabilities of 13 December 2006	
Declaration on the Rights of Mentally Retarded Persons of 20 December 1971	
Declaration on the Rights of Disabled Persons of 9 December 1975	
Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care of 17 December 1991	
Standard Rules on the Equalization of Opportunities for Persons with Disabilities of 20 December 1993	

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 7 November 1962	**INTERNATIONAL HUMAN RIGHTS**
Convention introducing an International Family Record Book of 12 September 1974	
Convention concerning the Issue of Certificates of Non-Impediment to Marriage of 5 September 1980	
Convention on the Nationality of Married Women of 29 January 195	
Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1 November 1965	
Universal Declaration on the Eradication of Hunger and Malnutrition of 16 November 1974 .	
Declaration on the Right to Development of 4 December 1986	
United Nations Principles for Older Persons of 16 December 1991	
Declaration of Commitment on HIV/AIDS of 27 June 2001	
General Comment No. 15, The position of aliens under the Covenant, Human Rights Committee (1986)	
General Comment No. 20, Article 7 (Replaces General Comment No. 7 concerning prohibition of torture and	

cruel treatment or punishment), Human Rights Committee (1992)	**INTERNATIONAL HUMAN RIGHTS**
General Comment No. 27, Freedom of Movement (Article 12), Human Rights Committee (1999)	
General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, Human Rights Committee (2004)	
General Comment No. 1, Implementation of article 3 of the Convention in the context of article 22 (Refoulement and communications), Committee against Torture (1997)	
General Recommendation No. 22, Refugees and displaced persons, Committee on the Elimination of Racial Discrimination (1996)	
General Recommendation No. 30, Discrimination against non-citizens, Committee on the Elimination of Racial Discrimination (2004)	
General Comment No. 6, Treatment of unaccompanied and separated children outside their country of origin, Committee on the Rights of the Child (2005)	
Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Excerpts)	**INTERNATIONAL HUMANİTARIAN LAW AND THE LAW OF NEUTRALITY**
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of victims of International Armed Conflicts (Protocol I) of 8 June 1977 (Excerpts)	
Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of	

Non-International Armed Conflicts (Protocol II) of 8 June 1977	
Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land of 18 October 1907	
Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948	**INTERNATIONAL CRIMINAL LAW**
Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 26 November 1968	
International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November 1973	
Principles of International Co-operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes against Humanity of 3 December 1973	
Rome Statute of the International Criminal Court of 17 July 1998	
United Nations Convention against Transnational Organized Crime of 15 November 2000 (Palermo Convention)	
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 15 November 2000 (Palermo Protocol on Trafficking)	

Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime of 15 November 2000 (Palermo Protocol on Smuggling)	
International Convention for the Safety of Life at Sea (SOLAS) of 1 November 1974 (Excerpts	**INTERNATIONAL MARITIME AND AVIATION LAW**
International Convention on Maritime Search and Rescue (SAR), as amended, of 27 April 1979	
United Nations Convention on the Law of the Sea (UNCLOS) of 10 December 1982	
International Convention relating to Stowaways of 10 October 1957	
Convention on Offences and Certain Acts Committed on Board Aircraft of 14 September 1963	
Convention for the Suppression of Unlawful Seizure of Aircraft of 16 December 1970	
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971	
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation of 24 February 1988	
Annex Nine to the Convention on International Civil Aviation, Ninth edition, July 1990 (Excerpts)	
Charter of the United Nations of 26 June 1945	

Statute of the International Court of Justice of 26 June 1945	**MISCELLANEOUS**
Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security, 1962 (No. 118) (ILO)	
Final Act of the International Conference on Human Rights of 1 May 1968 (Proclamation of Teheran) – Resolution on Co-operation with UNHCR	
Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations of 24 October 1970	
Vienna Declaration and Programme of Action of 25 June 1993	
United Nations Millennium Declaration of 8 September 2000	
Draft articles on Diplomatic Protection of 9 August 2006	

B. REGIONAL INSTRUMENTS	
OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969	**AFRICA**
Addis Ababa Document on Refugees and Forced Population Displacements in Africa of 10 September 1994	
Cotonou Declaration and Programme of Action of 3 June 2004	

African Charter on Human and Peoples' Rights of 26 June 1981 (Banjul Charter)	**AFRICA**
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights of 10 June 1998	
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa of 11 July 2003	
African Charter on the Rights and Welfare of the Child of 11 July 1990	
African Youth Charter of 2 July 2006	
Economic Community of West African States Convention on Extradition of 6 August 1994	
South African Development Community Protocol on Extradition of 3 October 2002	
Constitutive Act of the African Union of 11 July 2000	
Protocol on Amendments to the Constitutive Act of the African Union of 11 July 200	
Convention for the Elimination of Mercenarism in Africa of 3 July 1977	
OAU Convention on the Prevention and Combating of Terrorism of 10 July 1999	

Arab Convention on Regulating Status of Refugees in the Arab Countries (1994)	**NORTH AFRICA AND THE MIDDLE EAST**
The Riyadh Arab Agreement for Judicial Co-operation of 6 April 1983 (Excerpts)	
First Seminar of Arab Experts on Asylum and Refugee Law of 16-19 January 1984	
Second Seminar of Arab Experts on Asylum and Refugee Law of 15-18 May 1989	
Third Seminar of Arab Experts on Asylum and Refugee Law of 2-4 November 1991	
Fourth Seminar of Arab Experts on Asylum and Refugee Law of 16-19 November 1992	
Assistance to Palestine Refugees, UN GA Resolution 302 (IV) of 8 December 1949	
Protocol on the Treatment of Palestinian Refugees of 11 September 1965 (Casablanca Protocol)	
Arab Charter on Human Rights of 15 September 1994	
Universal Islamic Declaration of Human Rights of 19 September 1981	
Cairo Declaration on Human Rights in Islam of 31 July-9 August 1990	
Covenant on the Rights of the Child in Islam of June 2005	

Final Text of the Revised AALCO 1966 Bangkok Principles on Status and Treatment of Refugees (as adopted on 24 June 2001 at the AALCO's 40th session, New Delhi)	**ASIA AND AFRICA**
AALCO Resolution on "Legal Identity and Statelessness" of 8 April 2006	
Cartagena Declaration on Refugees of 19-22 November 1984	
Convention on Asylum of 20 February 1928	
Convention on Political Asylum of 26 December 1933	
Treaty on Political Asylum and Refuge of 4 August 1939	
Convention on Territorial Asylum of 28 March 1954	
Convention on Diplomatic Asylum of 28 March 1954	
San José Declaration on Refugees and Displaced Persons of 7 December 1994	
Rio de Janeiro Declaration on the Institution of Refuge of 10 November 2000	
Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America of 16 November 2004	

Principles and Criteria for the Protection of and Assistance to Central American Refugees, Returnees and Displaced Persons in Latin America (1989)	**AMERICAS**
Recommendation of the Inter-American Commission on Human Rights on asylum and international crimes of 20 October 2000	
International Conference on Central American Refugees, UN GA Resolution 46/107 of 16 December 1991	
International Conference on Central American Refugees, UN GA Resolution 47/103 of 16 December 1992	
American Declaration of the Rights and Duties of Man of 1 January 1948	
American Convention on Human Rights of 22 November 1969 (Pact of San José)	
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 17 November 1988 (Protocol of San Salvador)	
Protocol to the American Convention on Human Rights to Abolish the Death Penalty of 8 June 1990	
Inter-American Democratic Charter of 11 September 2001 (Declaration of Lima)	
Andean Charter for the Promotion and Protection of Human Rights of 26 July 2002	

Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors of 24 May 1984	**AMERICAS**
Inter-American Convention on the International Return of Children of 15 July 1989	
Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women of 9 June 1994 (Convention of Belém do Pará)	
Inter-American Convention on International Traffic in Minors of 18 March 1994	
Inter-American Convention to Prevent and Punish Torture of 9 December 1985	
Inter-American Convention on Forced Disappearance of Persons of 9 June 1994	
Inter-American Convention on the Elimination of all Forms of Discrimination against Persons with Disabilities of 7 June 1999	
Treaty on International Penal Law of 23 January 1889	
Treaty on International Penal Law (Revised) of 19 March 1940	
Montevideo Multilateral Convention on Extradition of 26 December 1933	
Inter-American Convention on Extradition of 25 February 1981	

Inter-American Convention Against Terrorism of 3 June 2002	
European Agreement on the Abolition of Visas for Refugees of 20 April 1959	**EUROPE** **COUNCIL OF EUROPE**
European Convention on Social Security of 14 December 1972 (Excerpts)	
European Agreement on Transfer of Responsibility for Refugees of 16 October 1980	
Declaration on Territorial Asylum of 18 November 1977	
Recommendation 293 on the Right of Asylum of 26 September 1961	
Resolution 14 on Asylum to Persons in Danger of Persecution of 29 June 1967	
Recommendation No. R (84) 1 on the Protection of Persons Satisfying the Criteria in the Geneva Convention who are not Formally Recognised as Refugees of 25 January 1984	
Recommendation No. R (94) 5 on guidelines to inspire practices of the member states of the Council of Europe concerning the arrival of asylum-seekers at European airports of 21 June 1994	
Recommendation No. R (97) 22 containing guidelines on the application of the safe 1403 third country concept of 25 November 1997	
Recommendation No. R (98) 13 on the right of rejected asylum-seekers to an effective remedy against decisions	

on expulsion in the context of Article of the European Convention on Human Rights of 18 September 1998	
Recommendation No. R (98) 15 on the training of officials who first come into contact with asylum-seekers, in particular at border points of 15 December 1998	
Recommendation No. R (99) 12 on the return of rejected asylum-seekers of 18 May 1999	
Recommendation No. R (99) 23 on family reunion for refugees and other persons in need of international protection of 15 December 1999	
Recommendation No. R (2000) 9 on temporary protection of 3 May 2000	
Recommendation Rec(2001)18 on subsidiary protection of 27 November 2001	
Recommendation Rec(2003)5 on measures of detention of asylum-seekers of 16 April 2003	
Recommendation Rec(2004)9 on the concept of "membership of a particular social group" (MPSG) in the context of the 1951 Convention relating to the status of refugees of 30 June 2004	**COUNCIL OF EUROPE**
Recommendation Rec(2005)6 on exclusion from refugee status in the context of Article 1 F of the Convention relating to the Status of Refugees of 28 July 1951, adopted on 23 March 2005	

European Convention on Nationality of 6 November 1997	
Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession of 19 May 2006	
Recommendation No. R (99) 18 on the avoidance and reduction of statelessness of 15 September 1999	
Recommendation Rec(2006)6 on internally displaced persons of 5 April 2006	
European Convention on the Legal Status of Migrant Workers of 24 November 1977	
Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, of 4 November 1950	
Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, of 20 March 1952	
Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto of, as amended by Protocol No. 11, of 16 September 1963	
Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of Death Penalty, as amended by Protocol No. 11, of 28 April 1983	

	COUNCIL OF EUROPE
Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, of 22 November 1984	
Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 2000	
Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances of 3 May 2002	
Protocol No. 14 to the European Convention for the Protection of Human Rights and Fundamental Freedoms amending the control system of the convention of 13 May 2005	
European Social Charter of 18 October 1961	
Additional Protocol to the European Social Charter Providing for a System of Collective Complaints of 9 November 1995	
European Social Charter (Revised) of 3 May 1996	
Framework Convention for the Protection of National Minorities of 1 February 1995	
European Convention on Extradition of 13 December 1957	
Additional Protocol to the European Convention on Extradition of 15 October 1975	

Second Additional Protocol to the European Convention on Extradition of 17 March 1978	**COUNCIL OF EUROPE**
European Convention on Consular Functions of 11 December 1967	
Protocol to the European Convention on Consular Functions concerning the Protection of Refugees of 11 December 1967	
European Convention on the Repatriation of Minors of 28 May 1970	
European Convention on the Suppression of Terrorism of 27 January 1977	
Protocol Amending the European Convention on the Suppression of Terrorism of 15 May 2003	
European Convention for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment of 26 November 1987	
Council of Europe Convention on Action against Trafficking in Human Beings of 3 May 2005	
"Twenty Guidelines on Forced Return" of 4 May 2005	
Council Regulation EC No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention on the State responsible for examining applications, for asylum lodged in one of the European Union Member States	

Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, (Carrier Sanctions Directive)	**EUROPEAN UNION**
Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof	
Council Directive 2003/9/EC of 27 January 2003 on minimum standards for the reception of asylum-seekers	
Council Regulation 343/2003/EC of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application (Dublin II Regulation)	
Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation 343/2003/EC establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Commission Regulation for Implementing Dublin II Council Regulation)	
Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification	**EUROPEAN UNION**
Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons	

who otherwise need international protection and the content of the protection granted	
Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status	
Charter of Fundamental Rights of the European Union of 7 December 2000	
Council Directive 2001/40/EC of 28 May 2001 on mutual recognition of decisions on the expulsion of third country nationals	
Council Framework Decision of 13 June 2002 on a European Arrest Warrant and Surrender Procedures between Member States	
Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings	
Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence	
Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents	
Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities	

Final Act of the Conference on Security and Co-operation in Europe of 1 August 1975 (Helsinki Final Act)	**OSCE**
Copenhagen 1990 – Document of the Second Conference on the Human Dimension of the CSCE	
Helsinki Summit 1992 – The Challenges of Change, (Decisions, chapter VI, paras. 39 to 45)	
Stockholm 1992 – Third Meeting of the Ministerial Council (Decisions, "The CSCE as a Community of Values", paras. 5 and 7)	
Lisbon Summit 1996 – Summit Declaration (paras. 9 and 10)	
Istanbul Summit 1999 – Charter for European Security (para. 22)	
Maastricht 2003 – Eleventh Meeting of the Ministerial Council OSCE Strategy to address Threats to Security and Stability in the 21st century (para. 38)	
Maastricht 2003 – OSCE Action Plan to combat Trafficking in human beings (chapter IV, para. 5.2, and chapter V, paras. 9.1 and 10.3); OSCE Action Plan on improving the situation of Roma and Sinti (chapter VII, preamble, paras. 108, 109, 110, 114)	
Addendum to the OSCE Action Plan to combat Trafficking in human beings Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance of 7 July 2005 (Decision No. 685)	

Sofia 2004 – Twelfth Meeting of the Ministerial Council – Decision No.2/04 on the Elaboration of an OSCE Border Security and Management Concept; OSCE Action Plan for the Promotion of Gender Equality (chapter IV, para. 42)	
Convention of 22 January 1993 on Legal Aid and Legal Relations in Civil, Family and Criminal Cases	**COMMONWEALTH OF INDEPENDENT STATES**
Protocol of 29 March 1997 to the Convention of 22 January 1993 on Legal Aid and Legal Relations in Civil, Family and Criminal Cases	
CIS Agreement on Aid to Refugees and Forced Migrants of 24 September 1993	
CIS Convention on Human Rights and Fundamental Freedoms of 26 May 1995	

APPENDIX G. THE STATUTE OF THE ASIA MOTHER

Photo: Müge Dalkıran, 26 February 2017

APPENDIX H. LIVING AND SANITARY CONDITIONS IN THE "JUNGLE"

Image 1: Garbage bags on the way up to Moria (Müge Dalkıran, 04.08.2020)

Image 2: Hovels and tents where asylum seekers were living in the olive groves next to the official camp of Moria (Photo: Müge Dalkıran, 04.08.2020)

Image 3: Hygiene conditions in Moria (Photo: Muge Dalkiran, August 2020)

Image 4: Toilets in the Olive Groves (Photo: Muge Dalkiran, August 2020

APPENDIX I. TURKISH SUMMARY / TÜRKÇE ÖZET

Mülteci koruması; yerel, bölgesel ve küresel siyasi gelişmelerden etkilenen farklı yasal rejimleri, çok düzeyli aktörleri ve politikaları içeren karmaşık bir alandır. Küresel mülteci koruma rejimi, yasalar, normlar, kurallar, ilkeler, kurum ve kuruluşlar ile mülteci durumuna yönelik geliştirilen devlet politikalarından oluşsa da, uluslararası mülteci hakları rejimin çekirdeğini oluşturmaktadır. Temel hakların korunmasının bir parçası olup bununla sınırlı olmamak üzere; uluslararası mülteci hukuku, Mültecilerin Statüsüne İlişkin 1951 Sözleşmesi (1951 Mülteci Sözleşmesi) ve 1967 Protokolü ile mülteci haklarına atıfta bulunan uluslararası ve bölgesel anlaşmalar ile beyannamelere dayanmaktadır.

Modern uluslararası mülteci hukukunun ana yasal kaynağı olan 1951 Mülteci Sözleşmesi, Avrupa'da İkinci Dünya Savaşı öncesi ve sırasında meydana gelen büyük ölçekli zorla yerinden edilme olaylarına yanıt olarak hazırlanmıştır (Loescher, 1993). O dönemden itibaren hem insan haklarının hem de mülteci haklarının korunmasına yönelik önemli gelişmeler meydana gelmiştir. Bununla birlikte, Avrupa'daki mülteci koruma rejimi, uluslararası mülteci hukuku anlaşmalarıyla sınırlı değildir. İnsan haklarını ve mülteci haklarını korumaya yönelik bölgesel yasal araçların ortaya çıkışı ve bölgesel entegrasyon süreciyle (Avrupa entegrasyonu) uyumlu olarak yasal çerçevede çoğalması, mülteci koruması için karmaşık bir sistemin ortaya çıkmasına neden olmuştur. Bölgesel olarak Avrupa'da iki farklı örgüt içinde koruma sistemi oluşmuştur: Avrupa Konseyi ve Avrupa Birliği (AB) kapsamında Ortak Avrupa Sığınma Sistemi (OASS).

Avrupa'da insan haklarını, demokrasiyi ve hukukun üstünlüğünü korumak ve savunmak amacıyla 1949 yılında kurulmuştur. Avrupa Konseyi, çeşitli insan hakları belgelerini benimseyerek insan haklarının korunmasına odaklanan temel kuruluş olmuştur. Bu anlamda, 1953'te yürürlüğe giren Avrupa İnsan Hakları Sözleşmesi'nin

(AİHS) 1950'de kabul edilmesi, bölgesel insan haklarını koruma rejimi için bir dönüm noktası olmuştur. AİHS'de sığınma hakkı veya mültecilerin korunmasına ilişkin açık bir madde bulunmamakla birlikte ilke olarak Yüksek Sözleşmeci Taraflar kendi yetki alanlarındaki herkesin insan haklarına saygı göstermek zorundadır. Buna ek olarak; AİHS ve Avrupa İnsan Hakları Mahkemesi (AİHM) tarafından mülteci hakları çerçevesinde yorumlanması, mülteci haklarının Avrupa'da yaygınlaşması ve uygulanması açısından büyük önem taşımaktadır. AİHS'deki bazı haklar, sığınmacıların sığınma haklarına erişiminin önündeki engelleri kaldıracak şekilde yorumlanmaktadır (ECHR, 2016). Özellikle, Madde 2 (Yaşam Hakkı) ve Madde 3 (İşkence Yasağı), uluslararası mülteci hukukunun temel ilkesi olan geri göndermeme ilkesine (*non-refoulement*) atıfta bulunmaktadır. Hem 2. hem de 3. Maddeler doğrudan ve dolaylı geri göndermeyi yasaklamaktadır.

Öte yandan, sığınma alanında yasal ve politika araçlarının benimsenmesi, özellikle Avrupa Birliği'nin (AB) 1999'da Ortak Avrupa Sığınma Sistemi (OASS) oluşturma kararıyla daha da kapsamlı hale gelmiştir (BMMYK, 2017, s. 22). OASS'nin temel amacı; AB'deki sığınma prosedürlerine ortak standartlar koymak ve üye devletlerin sığınma sistemlerini AB müktesebatıyla uyumlu hale getirmektir. Aynı zamanda bu sistem; 1951 Mülteci Sözleşmesi'nin yanı sıra mülteci haklarıyla temasta bulunan uluslararası hukuk alanları, AB hukuku, Avrupa İnsan Hakları Sözleşmesi (AİHS) gibi farklı hukuk rejimlerini içeren çok düzeyli bir yönetişim sistemi oluşturmaktadır. Bu karmaşık yönetişim sistemine aynı zamanda çok düzeyli kurumları ve aktörler de dahil edilmiştir.

Buradan yola çıkarak; bu tez, Avrupa Ortak Sığınma Sistemi'nde hukuki çoğulluğun nasıl ortaya çıktığına ve bu durumun Yunanistan özelinde mülteci koruması üzerindeki etkileri üzerine odaklanmaktadır. Farklı düzeylerde düzenlemelerin çoğalması, mevcut hukuk sisteminin karmaşıklığının yanı sıra üst üste binmiş veya iç içe geçmiş hukuki mekanların oluşmasına neden olmaktadır. Bu nedenler, tezin ana sorusuna cevap ararken hukuki çoğulluk (legal pluralism) yaklaşımı ile birlikte eleştirel hukuk coğrafyasını (critical legal pluralism) kullanmak önem taşımaktadır. Yunanistan'ın

Midilli Adası, aşırı düzenlenmiş (hyperregulated) hukuki mekan veya nomosphere olarak; yönetişim, iktidar, hukuk ve mekan arasındaki karşılıklı ilişkiler ağı mültecilerin günlük yaşamları üzerinde doğrudan etkide bulunmaktadır. Ocak 2020-Şubat 2021 tarihleri arasında yapmış olduğum alan çalışmasından elde ettiğim ampirik veriler, sığınma rejimine dahil olan farklı aktörlerin eylemlerinin ve uygulamalarının yasal çoğulluğun günlük işleyişini ortaya koymaktadır.

Bu tez, bir üye devlet olarak Yunanistan örneği üzerinden OASS'deki yasal çoğulculuğa odaklanmaktadır. Bu nedenle, sığınma politikası ve mülteci korumasına ilişkin yasal metinlerin analizi, yasal çerçevenin karmaşıklığını anlamak için birincil kaynak olarak kullanılmıştır. Yukarıda bahsedildiği üzere, 2015 yılında Avrupa Göç Gündemi'nin kabul edilmesiyle birlikte yasal rejimlerin çoğalması ve çok parçalı hale gelen yasal çerçeve Kuzey Ege adalarındaki dinamiklerini etkilemiştir. Bu bağlamda, mülteciler için tarihi bir varış noktası olan Midilli Adası, Yunanistan'ın en büyük sıcak noktasının (hotspot) kurulduğu ada haline gelmiş ve farklı alanlardaki farklı düzeylerde yasal rejimlerin kesiştiği aşırı düzenlenmiş hukuki mekana (hyperregulated legal space) dönüşmüştür. Bu nedenle, Midilli Adası'nda kurulan Moria sıcak noktası (hostpot) olmak üzere, tüm ada hukuki mekan olarak bu tezin araştırma konusu için vaka olarak seçilmiştir.

Yunan sığınma rejimindeki yasal çoğulculuğun sosyo-mekansal boyutunu ve etkilerini daha iyi anlayabilmek amacıyla; yasal ve politika belgelerinin de dahil olduğu geniş literatür çalışmasının ve belge incelemesinin yanı sıra, Yunanistan'da göç ve mülteci politikaları üzerinde çalışan paydaşlarla yarı yapılandırılmış mülakatların yer aldığı saha çalışması yürüttüm. Bu anlamda eleştirel etnografik araştırma metodlarından faydalandığım Ocak ve Eylül 2020 arasındaki saha çalışmam, Midilli'deki sığınma rejiminin işleyişini yorumlayabilmek için bana geniş bir mercek sağladı. AB seviyesindeki politikaları konuşmak üzere yaptığım görüşmeler ise Eylül 2020- Şubat 2021 tarihleri arasında telekonferans yoluyla veya Atina'da gerçekleşti.
Eleştirel etnografik araştırma yöntemi; sığınma ofisi, uluslararası kurumlar ve STK gibi farklı kurumlarda çalışanlar ve göçmenler başta olmak üzere farklı aktörler

arasındaki dinamikleri, etkileşimi ve güç ilişkilerini anlamlandırmak için önem taşımaktadır. Özellikle, yasal çerçevenin karmaşıklığı ve alandaki farklı uygulanalar nedeniyle, adli yardım sağlayan STK'larla yaptığım mezo-düzey analiz tez araştırmamda öne plana çıkmaktadır.

Ocak 2020'de resmi olarak saha çalışmamı başlatırken öncelikli amacım; mülakat yapmak için kilit aktörlerle ilk bağlantıları kurmaktı. Midilli'ye gitmeden önce Atina'da biri Avrupa düzeyindeki bir ajansta çalışan bir sosyal hizmet görevlisiyle (6 Ocak 2020) ve biri refakatsiz çocuklarla çalışan bir sosyal hizmet görevlisiyle (9 Ocak 2020) olmak üzere iki resmi olmayan görüşme yaptım. Her ikisinin de önceki yıllarda Midilli'de deneyimleri olduğundan adada iletişim ağımı kurmam için bir başlangıç noktası oldular. Bu görüşmelerin ardından Ocak 2020'in ikinci yarısında Midilli'deki ilk görüşme turunu gerçekleştirmiş oldum.

Bu görüşmelerin içeriği çoğunlukla, Midilli'deki uygulayıcıların ve vaka çalışanlarının deneyimlerine ve Yeni Demokrasi siyasi partisini iktidara getiren 2019 genel seçimlerinden sonra Yunanistan'da değişen duruma ilişkindi. Ocak 2020'de saha çalışmalarıma başladıktan kısa bir süre sonra, küresel Covid-19 salgınının başlaması, saha ziyaretlerimi ve mülakat programımı büyük ölçüde etkilemiş oldu. Saha çalışmamdaki Covid-19 salgını kaynaklı kesinti Ocak 2020'den Temmuz 2020'ye kadar sürdü. Bununla birlikte; saha çalışmam sırasında karşıma çıkan zorluklar Covid-19 salgınıyla sınırlı değildi. 28 Şubat 2020 tarihinde Türkiye'nin Batı sınırlarını tek taraflı açması ve binlerce göçmenin sınırı geçmeye çalışmasıyla Türkiye-Yunanistan sınır bölgesindeki gerginlik oldukça artmıştı. Bu dönemde özellikle araştırmacılar, gazeteciler ve insani yardım alanında çalışan kişilere yönelik saldırılar meydana geldi. Hem bu gerginlik hem de 23 Mart 2020 tarihinde Yunanistan genelinde ilan edilen karantina bu dönemde Midilli'de çalışma yürütmeme engel oldu; ancak bu süre zarfında adada kurmuş olduğum bağlantılarımla iletişimde kalabildim. Temmuz 2020'de adaya döndüğümde önceden kurmuş olduğum bağlantılarım sayesinde daha geniş bir görüşmeci ağını kurma şansım oldu. Bununla beraber, Türkiye-Yunanistan arasında artan gerginlik sebebiyle özellikle Atina'da yapmayı planladığım bazı görüşmeler iptal oldu. Benzer şekilde Midilli'de gerçekleştirdiğim bazı görüşmelerde

görüşmecilerin Türkiye'den gelen bir araştırmacıyla araştırma yapması konusunda çekinceleri oluştu. Bu nedenlerden ötürü, tezde resmi ya da resmi olmayan şekilde görüş bildiren herkesin ismi gizli tutulmuştur ve hedef olmalarına neden olacak herhangi bir kişisel bilgi (yaş, cinsiyet, kurum adı vs.) verilmemiştir. Sözlü ve/veya yazılı olarak onay alınarak yapılan görüşmelerin listesi ekte yer almaktadır. Ekte yer alan listenin yanı sıra Moria Kampı'na (çevresindeki "Jungle" adı verilen alan dahil) yaptığım ziyaretler sırasında karşılaştığım onlarca sığınmacı ve mültecilerle informal olarak görüşme yapma olanağım oldu. Doktora yaptığım ve göç alanında çalışan bir araştırmacı olduğumu bütün görüşmecilerimle açıkça paylaştım, dolayısıyla kimliğimi gizlemem gereken bir durumla karşılaşmadım. ODTÜ İnsan Araştırmaları Etik Kurulu'ndan aldığım 12 Aralık 2019 tarihli 2820816 sayılı izin doğrultusunda görüşmecilerimin tamamı yetişkin bireylerden oluşmaktadır. Özellikle refakatsiz çocuklarla ilgili edindiğim bilgiler refakatsiz çocuklarla çalışan sosyal koruma uzmanlarından ve hukuk danışmanlarından oluşmaktadır. Bununla birlikte, özellikle kamp alanında aileleriyle görüşme yaparken onlara eşlik eden çocukların yaptığı bazı yorumlara tezde yer verdim.

Tez, giriş ve sonuç dahil olmak üzere toplam altı bölümden oluşmaktadır ve tezin her bölümü OASS ve hukuki çoğulluk arasındaki bağın farklı boyutuna değinmektedir: Giriş, teorik çerçeve (ikinci bölüm), OASS'nin ve Yunanistan sığınma sisteminin hukuki çerçevesi (üçüncü bölüm), Midilli Adası'nın mekânsal olarak nomosphere'e dönüşümü (dördüncü bölüm), hukuki çoğulluğun Midilli Adası'nda günlük işleyişi (beşinci bölüm) ve sonuç bölümü.

Literatür taramasının ve araştırma metodunun yer aldığı giriş bölümü teorik çerçevenin çizildiği ikinci bölüm yer almaktadır. Bu bağlamda; yeni hukuki çoğulluk ile eleştirel hukuk coğrafyası yaklaşımlarının kesişimi ile çizilen teorik çerçeve içerisinde hukuk, mekan ve iktidar arasındaki ilişki kavramsallaştırılmakta ve hukuki çoğulluğun gerçekleştiği farklı durumlar ele alınmaktadır. Yeni hukuki çoğulluk kavramı farklı araştırmacılar tarafından güncel hukuki çoğulluk (Tamanaha, 2008) veya küresel hukuki çoğulluk (Berman, 2007) kavramı olarak da kullanılabilmektedir.

Yeni yaklaşımı, klasik anlamdaki hukuki çoğulluk yaklaşımından ayıran en büyük özelliklerden biri günümüz dünyasındaki farklı düzeylerde oluşan hukuk düzenlemelerinin bir aradaki işleyişine bakmasıdır. Öte yandan, klasik hukuki çoğulluk yaklaşımı daha aynı ülkedeki veya coğrafi alandaki sömürge döneminin bir sonucu olarak veya farklı din temelli hukuk düzenlemeleri ile devlet hukukunun bir arada var olmasını incelemiştir.

Günümüz dünyasında düzenlemelerin çoğalması sadece mevcut hukuk sistemleri için karmaşıklık yaratmakla kalmaz, aynı zamanda örtüşen ve iç içe geçmiş yasal alanlara da yol açar. Farklı düzeylerdeki -yerel, ulusal, uluslarüstü, uluslararası- farklı hukuk düzenlerinin aynı siyasi ve hukuki mekanda bir arada bulunması, hukukun farklı ölçeklerde uygulanmasını da beraberinde getirmektedir. Belirli konularda çok düzeyli düzenlemelere sahip olunması mevcut yasal rejimleri güçlendirebileceği gibi, bazı durumlarda hukuk, normlar, adetler veya değerler arasındaki rekabet veya çekişme sonucunda belirli düzenlemelerin uygulanmasına direnç de oluşturabilmektedir. Bu gibi durumlarda kanun etkisiz hale gelebilir veya kanun ile uygulama arasındaki boşluklar büyüyebilir. Bu anlamda benim de tezimde kullandığım küresel hukuki çoğulluk yaklaşımı farklı hukuki rejimlerde oluşan bu çoğulluğu incelemekte ve hukuka devlet merkezci anlayıştan farklı yaklaşmaktadır. Bu anlamda hukuki düzen kavramında devlet hukukunun yanı sıra, norm yaratan durumlar ve aktörler de bu kavramın içine dahil edilmiştir.

Küresel hukuki çoğulluk yaklaşımından yola çıkarak, OASS'de meydana gelen çoğulcu yapının hukuki çoğulluk kavramına ilişkin bazı özellikleri taşıdığını söylemek mümkündür. Öncelikle, sığınma hukuku yarı-özerk sosyal alan olarak değerlendirilmektedir. Yarı-özerk sosyal alan, kendi zorunlu normlarını yaratan ve bu normları zorlayan mekanizmaya sahiptir. İkincisi, hukukun uygulanması sosyal hizmet görevlileri, refakatsiz çocukların korunması için atanan sosyal hizmet görevliler, çevirmenler, uygulayıcılar, avukatlar, hakimler gibi birçok aktörün arasında işbirliğini şart koşmaktadır. Bu aktörler arasındaki karmaşık etkileşim ağı; yerel, ulusal, uluslararası ve uluslarüstü birçok kural ve yönetmelik ile düzenlenmektedir.

İkinci bölümde ele alınan bir diğer önemli husus ise; hukuk ve mekan arasındaki karşılıklı inşa süreci ve hukuki mekanların çoğalmasıdır. 2015 yılında ilan edilen Avrupa Göç Gündemi çerçevesinde Yunan adalarında kurulan "hotspot"ların hukuki mekanlar olarak ortaya çıkışı buna örnek olarak gösterilebilir. Hem eleştirel hukuk coğrafyası hem de hukuki çoğulluk yaklaşımları; mekan, iktidar ve hukuk arasındaki ilişkiyi incelemekte ve mekânsal ve hukuki karşılıklı oluşumun karmaşıklığının daha iyi anlaşılmasını sağlamaktadır. Buradan yola çıkarak, tezimde Yunanistan'daki sığınma rejiminin karmaşık yasal çerçevesini anlamanın yanı sıra, aşırı düzenlenmiş hukuki mekan (hyperregulated legal space) olarak Midilli'deki uygulamalara odaklanmıştır. Bu amaçla, eleştirel hukuk coğrafyası ve hukuk çoğulluk yaklaşımlarındaki literatürlerin kesişimi, hukuk çoğulculuğundan kaynaklanan karmaşıklıkların yanı sıra; hukuk ve mekanın karşılıklı inşası yoluyla yeniden mekansallaştırmanın anlaşılmasına yardımcı olmaktadır.

Güç, egemenlik ve sınırlar arasındaki ilişkiyi bu bakış açısıyla kurmak, teorik çerçevenin oluşturulmasında çok önemli bir rol oynamaktadır (örn. Walters, 2002; Salter, 2006, 2012; Paasi, 2009, Vaughan- Williams, 2009; Mezzadra ve Neilson, 2013). Bu noktada sınırlar, göç yönetimi ve düzensiz göç hem ampirik hem de teorik analiz için önemli bir konu olarak karşımıza çıkmaktadır (de Genova, 2013, 2017). Bu nedenle, hukuk coğrafyası biliminde sınırlar, çok sayıda yasanın, yargının ve yasal uygulamanın gerçekleştiği yerler olarak incelenmekte ve egemenliğin bir uzantısı olarak değerlendirilmektedir (e.g., Allen, 2011; Bladly ve Sibley, 2010; Blomley ve Labove, 2015). Örneğin; sınırlar, belirli grupları veya bireyleri güç kullanarak diğerlerinden ayırmak için "dışlama (exclusion)" bölgelerine dönüştürülen "nomosphere"ler yaratır (Bladly ve Sibley, 2010). Sınırların özellikle insan hareketliliği açısından hukuki ve yargısal belirsizlik özelliği gösterebileceğine de dikkat çekilmektedir. Sığınmaya erişime getirilen kısıtlamalar nedeniyle sınır bölgeleri, sığınmacıların dünyanın farklı yerlerinde arafta kaldıkları alanlara dönüşmektedir (Mountz, 2011). Sığınma haklarının çeşitli belge ve yönetmeliklerde açıkça tanınmasına rağmen, birçok durumda sığınmacıların sınır bölgelerinde uluslararası korumaya erişimleri, yasal ve yargısal belirsizlik ve uygulamalar

nedeniyle kısıtlanmaktadır (Mountz, 2011). Böylece bu sınır bölgeleri, bir yandan çok farklı düzeylerde hukuki düzenlemelere tabi olurken bir yandan da düzensiz göçmenler başta olmak üzere bazı grupların haklarına erişimlerinde sınırlayıcı özelliklere sahip mekanlar haline gelirler. Avrupa Birliği'nin sınır bölgeleri, bu mekansal dönüşümden muaf değildir ve literatürde "mekansal ve hukuki eşiktelik" (spatial and legal liminality) olarak kavramsallaştırılmıştır (Papoutsi vd., 2018). Öncelikle, eşik kavramı iki şekilde tarif edilebilir: dışarısı ve içerisi arasındaki ayrım ile hakların kısıtlandığı bir istisna alanı (Papoutsi ve diğerleri, 2018). Bu açıdan bakıldığında, Avrupa Komisyonu'nun AB'nin İtalya ve Yunan adalarındaki sınır bölgelerinde oluşturduğu sıcak noktalar, mekanın ve hukukun aynı şekilde eşikteliğini hatırlatmaktadır. Bu nedenle, sıcak noktalar (hotspot) AB'nin dış sınırlarında "eşik" görevi görürler (Papoutsi ve diğerleri, 2018).

Tezin üçüncü bölümünde, teorik çerçevenin değinmiş olduğu çok düzeyli hukuki düzenlemelerin Yunanistan'daki sığınma rejimi bakımından nasıl gerçekleştirildiği ele alınmıştır. Teorik çerçevede büyük ölçüde tartışıldığı gibi, hukuki çoğulculuk, genel olarak, aynı coğrafi alanda birden fazla hukuk düzeyinin ve kaynağının bir arada var olmasına atıfta bulunmaktadır. Bu anlamda, AB *sui generis* bir kuruluş olduğundan (ECJ, Opinion1/91 ECR I-6079, par. 21) AB hukuku, uluslararası hukuk ve Üye Devletlerin ulusal hukuku arasındaki ilişki birçok kez araştırma konusu olmuştur. (örn. Peters, 1997; Bethlehem, 1998; Barber, 2006; Besson, 2009). Çok katmanlı yapısı nedeniyle Avrupa'da temel hakların korunması, anayasal çoğulculuk doktrininin merkezinde yer almaktadır. Bu anlamda, Yunanistan'daki sığınma rejimini anlayabilmek için temel olarak üç farklı düzeydeki yasal düzenlemelere bakılmıştır. Bu düzeyler: (1) 1951 Mülteci Sözleşmesi'nin ve 1967 Protokolü'nün de içinde bulunduğu uluslararası mülteci koruma sistemi ile ilgili insan hakları sözleşmelerinin yer aldığı uluslararası düzlem; (2) Yunanistan'ın hem Avrupa Konseyi'ne taraf olması hem de AB üyesi olması nedeniyle iki ayaklı Avrupa düzeyi (biri bölgesel diğer uluslarüstü nitelik taşımaktadır); (3) Ulusal mevzuatın ele alındığı ulusal düzlem olarak yer almıştır.

Galina Cornelisse (2018, s. 375-377), çalışmasında "ne olması gerektiğine" odaklanan anayasal çoğulculuğun tanımlayıcı özelliklerinin derin normatifliğini sorgulamaktadır. Yasal düzenler (ulusal, uluslararası ve uluslarüstü) arasındaki ilişki, siyasi otoritenin, sosyal ve yasal gerçekliklerin yapılandırılmasından dolayı anayasal çoğulculuğun normatif yaklaşımında tanımlandığından daha karmaşıktır (Cornelisse, 2018). Dolayısıyla, AB düzenlemeleri, özellikle siyasi içerikli alanlarda, sadece yasal düzenlemeler çerçevesinde anlaşılamaz. İnsan hakları, göç ve sınır kontrolünün kesiştiği bir alan olarak mülteci koruma alanı ve bu alanlarda geliştirilen politikalar, sığınma rejiminin çoğulcu karakterine yeni bir boyut kazandırmaktadır. Dolayısıyla, bu tezde hukuki çoğulluk kavramına ve etkilerine saf hukuk bakış açısıyla değil sosyal bilimler bakış açısıyla yaklaşılmış ve küresel hukuki çoğulluk kavramı kullanılmıştır. Sığınma rejiminde ve uygulamalarda meydana gelen komplikasyonların daha geniş bir resmini ele almak için Avrupa Komisyonu ve AB Üye Devletleri tarafından geliştirilen politikaları ve bunların sığınma üzerindeki etkileri de araştırılmıştır.

Özellikle, Avrupa düzeyinde yer alan iki koruma düzeyi, Avrupa Konseyi içindeki AİHM ve Avrupa Adalet Divanı arasındaki etkileşim, AB hukukunun bağımsızlığı ve AİHS'ye uyum derecesi açısından dikkate değer bir hukuki çoğulluk örneği oluşturmaktadır (Krisch 2007). Her ne kadar AB kurumları ve Avrupa Adalet Divanı AİHS'ye atıfta bulunsa da AB olarak AİHS'ye taraf olunmadığından bu durum zaman zaman Avrupa Adalet Divanı ve AİHM arasında farklı görüşlerin ya da farklı hukuki yorumların ortaya çıkmasına neden olmaktadır. Bu durum da yargı bakımından hukuki çoğulluk (judicial legal pluralism) yaratmaktadır.

Öte yandan, AİHS'nin imzacılarından biri olması nedeniyle Yunanistan'daki mevzuat ve uygulamaların AİHS'nin sağladığı insan hakları korumasına uyması gerekmektedir. Aynı zamanda AB üyesi bir ülke olarak Yunan mevzuatının sığınma alanında AB müktesebatına uyum süreci de gerçekleşmiştir. Yunanistan, her ne kadar 1980'lerden itibaren farklı göçmen (Sovyetler Birliği'nden gelen mülteciler, Yunan soyundan olup Almanya ve Sovyetler Birliği'nden Yunanistan'a dönenler, Arnavutlar ve sonrasında Pakistanlılar ve Bangladeşlilerin de içinde olduğu yeni göçmen grupları gruplarına ev

sahipliği yapsa da bu dönemdeki göçmen ve sığınma rejimi oldukça ihtiyacı karşılamayan oldukça yetersiz bir yasal çerçeveye sahipti (Triandafyllidou, 2009, p. 160; Papageorgiou, 2013, s. 77). 1990'larda artan düzensiz göçü ve vatandaşlık konusunu ele alan 2001 tarihli yasa ile göç alanında Avrupalılaşma süreci resmi olarak başlamış oldu; ancak Sitaropoulos'a (2002) göre bu yasa da insan hakları ve göç politikası bakımından AB standartlarının çok altındaydı. 2000'ler boyunca Yunanistan'daki sığınma rejiminin etkin koruma sağlayamaması, sığınmacıların yaşam koşulları ve geri göndermeme ilkesinin ihlali gibi konular Avrupa Konseyi ve ileri gelen hak temelli STK'lar tarafından sıkça eleştirildi (AI 2008; HRW 2008; UNHCR December 2009; ECRI 2009).

Bu dönemde, OASS'nin içindeki gelişmeler de Yunanistan sığınma rejimini doğrudan etkilemiştir. Sığınmacıların AB'ye ilk giriş ülkesinde sığınma başvurusu yapmasıyla ilgili olarak geliştirilen Dublin Sistemi, akabinde AB dış sınır güvenliğini korumakla yükümlü olan FRONTEX'in Yunanistan-Türkiye sınırlarında operasyon başlatması bu gelişmelerin başında gelmektedir. Türkiye'den Yunanistan'a geçen düzensiz göçmenlerin sayısının artması, Yunanistan'daki sığınma rejiminin ve altyapısının yetersizliği ve Yunanistan'da yaşanan ekonomik kriz, "mülteci krizi" adı verilen dönemin başlamasında büyük rol oynamıştır. 2011 yılında AİHM'nin verdiği pilot kararla (ECtHR - *M.S.S. v. Belgium and Greece*, 2011), Yunanistan'daki sığınma sisteminin ve kabul koşullarının yetersizliği mahkeme kararı ile tescillenmiş oldu. Böylece, AB Üye Devletleri'nin Dublin Sistemi kapsamında Yunanistan'dan diğer Üye Devletlere geçiş yapan sığınmacıların Yunanistan'a geri gönderilemeyeceği karara bağlanmıştır. Bu mahkeme kararı Yunanistan sığınma rejimi ve göç politikası bakımından dönüm noktası olarak kabul edilmektedir. AİHM kararının akabinde, Yunanistan'da Avrupa Komisyonu, Avrupa Sığınma Destek Ofisi (European Asylum Support Office) ve Birleşmiş Milletler Mülteciler Yüksek Komiserliği (BMMYK) tarafından desteklenen "İltica Reformu ve Göç Yönetimine İlişkin Ulusal Eylem Planı" kabul edilmiştir. Ulusal Eylem Planı çerçevesinde, göç yönetimi için stratejik bir çerçevenin yanı sıra, İltica Servisi (Asylum Service), Temyiz Kurumu (Appeals Authority) ve İlk Kabul Servisi (First Reception Service) olmak üzere üç ana kurumu

kuran 3907/2011 numaralı yasa kabul edildi. İlk Kabul Servisi, düzensiz göçmenleri karşılamak amacıyla 2013 yılında hizmete girmiştir.

Gerek ekonomik kriz, gerek henüz oturmamış sığınma sistemi ve değişen siyasi konjontürle beraber 2015 yılında düzensiz göçteki olağanüstü artış ve 1 milyonu aşan sayıda sığınmacının Yunan adalarına geçmesiyle beraber bütün gözler Yunanistan'da yaşanan insani krize çevrilmişti. Bu duruma bir çözüm bulmak amacıyla Avrupa Komisyonu'nun hazırladığı Avrupa Göç Gündemi (European Migration Agenda) İtalya ve Yunanistan'da sığınmacıların ilk olarak ulaştığı belirli noktalara Kabul ve Kimlik Tespit Merkezleri (Reception and Identification Centres/RIC) kurmaya karar verdi. Sıcak nokta yaklaşımı (hotspot approach) adı da verilen bu politika çerçevesinde Sisam (Samos), Midilli (Lesvos), Sakız (Chios), Kos ve Ileryoz (Leros) Adaları'nda Kabul ve Kimlik Tespit Merkezleri kurulmuş oldu. Bu merkezlerde Yunan iltica servisi çalışanlarının yanı sıra, EURODAC, Avrupa Sığınma Destek Ofisi, EUROPOL gibi AB seviyesinde kurumların, BMMYK'nın ve yerel ve uluslararası STK'ların da yer alacağı çok aktörlü bir yönetişim biçimi ortaya çıkmış oldu. Ancak sıcak nokta yaklaşımı Yunan sığınma rejimini sadece aktör bazında değil, aynı zamanda hukuki prosedürlerin çoğalması ve parçalanması (fragmentation) bakımından da etkiledi. Sadece Kabul ve Kimlik Tespit Merkezleri'nde ve Suriyeli (sonrasında yüksek tanınma oranına sahip başka menşe ülkeler de eklendi) sığınmacılarla sınırlı olmak üzere hızlandırılmış sınır prosedürleri uygulanmaya başlandı. Bir yandan coğrafi olarak yasal prosedürler birbirinden ayrıştırılırken, öte yandan 2015 yılından itibaren sıklıkla değiştirilen kanunlar ve yönetmeliklerle zamansal olarak da farklılaşmış bir çok prosedür ve uygulama ortaya çıkmış oldu. Bu durum özellikle, 2016 tarih AB-Türkiye Mutabakatı sonrasında daha çok gözle görünür hale gelmiştir. Mutabat çerçevesinde sadece adalardan gelecek olan sığınmacıların Türkiye'ye dönmesine izin verileceğinden adalardaki sığınmacılara başvuruları tamamlanana kadar coğrafi çekince getirilmiştir. Bu nedenle, anakaraya geçmeleri ve AB'nin diğer ülkelerine devam eden transit yolculuklarının önüne geçilmiştir. Ancak bu durum oldukça sınırlı sayıda insanı ağırlamak için planlanan mülteci kamplarının kalabalıklaşmasına ve sığınmacıların bu adalarda bir nevi "hapis"te kalmasına neden olmuştur. Böylece

uluslararası ve/veya AB hukukunun doğrudan iç hukuku etkilemesinin ötesinde bir hukuk metni olmamasına rağmen önce 2015 tarihli Avrupa Göç Politikası sonrasında ise 2016 tarihli AB-Türkiye Mutabakatı doğrudan Yunanistan'daki sığınma rejimini etkilemiştir.

Karmaşık yasal çerçeveye ek olarak, sığınma rejiminde yer alan ve uygulamaları mülteci koruma rejimini yeniden şekillendiren çok düzeyli aktörler mevcuttur. Yasal düzen ve kurumların çoğalmasına rağmen, hukuki düzenlemelerin üst üste binmesinden, yasal boşluklardan veya hukuki rejimde olabilecek çatlaklara ek olarak farklı düzeylerdeki aktörlerin birbirleriyle girebileceği rekabetçi durumlar veya tutarsız uygulamaları sonucunda, sığınmacı ve mültecilerin fiilen haklarından mahrum olması mümkün olabilmektedir. Bu anlamda, sığınmacı ve mültecilerin insan haklarının bozulmasını anlamak için hukuki çoğulculuğun günlük işleyişine bakmak önem kazanmaktadır. Dördüncü ve beşinci bölümde incelendiği gibi, Midilli örneği için topladığım ampirik veriler, Yunan sığınma sisteminde yaratılan çatlaklara, çatışmalara ve hukuki kara deliklere (legal black holes) ışık tutmama yardımcı oldu.

Dördüncü bölüm, Yunan sığınma sisteminin coğrafi ve mekansal boyutunu ele almaktadır. Bu anlamda, sığınma prosedürleri ile mekan arasındaki etkileşimi ve birbirlerini nasıl dönüştürdüklerini saha çalışmasından elde ettiğim veriler doğrultusunda inceledim. Buradan hareketle mülteci kampları ve gözaltı merkezlerinin değil, tüm Midilli Adası'nın sığınmacıların yasal haklarından mahrum kaldığı bir aşırı düzenlenmiş bir hukuki mekana (hyperregulated legal space) veya nomosphere'e nasıl dönüştürüldüğü sorusu ortaya çıkmıştır. Bu soruyu cevaplamak için, değişen göç ve sınır politikaları ile adaların sınır bölgeleri olarak yeniden mekansallaşması arasındaki ilişki araştırılmıştır. İlk olarak, Ege Denizi'ne ilişkin algının birbirine bağlanma alanından ayrılma alanına kayması tarihsel bir perspektiften incelenmiştir. Ulus-devlet inşası sürecinde Modern Yunan Devleti ile Türkiye Cumhuriyeti arasında bir ayrıştıran bir mekan (*space of separation*), İkinci Dünya Savaşı sırasında hareketsizlik mekanı (*space of immobility*), 1980'lerin sonları ve 1990'ların başlarından itibaren düzensiz göçmenlerdeki artışın bir sonucu olarak ise

hem transit geçiş mekanı (*space of transit*) kabul mekanı (*space of reception*) haline gelmiştir.

Midilli Adası bir kabul mekanı olmaya devam etse de, 2016 tarihli AB-Türkiye Bildirgesi ile bu kabulün niteliği değişti. Sığınmacıların geçiş yaptığı bir kabul mekabından, sığınmacılara coğrafi kısıtlamalar getirerek bir çevreleme mekanı (*space of containment)* haline geldi. Bu dönem, AB'nin göç ve sığınma politikalarına uluslarüstü bir boyut katarak yeniden mekânsallaştırmanın başka bir boyutunu taşımaktadır. Midilli'nin çoklu yeniden mekansallaştırma süreçleri; güç, egemenlik ve sınırlar arasındaki ilişkinin ötesine geçerek egemen gücün, hukuk ve mekan arasındaki ilişkiyi nasıl yeniden şekillendirdiğini göstermektedir. Özellikle, 2020 yılında tüm dünyayı saran Covid-19 pandemesi adalarda yaşayan sığınmacı ve mültecileri de derinden etkilemiştir. Saha çalışmamın önemli bulgularından biri de pandemi sürecinde özellikle Midilli Adası'nda yaşayan sığınmacıların karşılaştığı zorluklara ilişkindir. Pandeminin yeni başladığı dönemde 28 Şubat 2020'de Türkiye'nin de batı sınırlarını tek taraflı açmasının üzerine, Yunanistan'da uygulanan genel karantina adalarda bulunan mülteci kamplarında daha sıkı ve uzun süreli olarak uygulanmış, STK ve hatta BMMYK'nın bile kamplara girişi bu dönemde sınırlandırılmıştır. Bir yandan kamplar geri kalan ada yaşamından izole edilirken öte yandan, adaya yeni gelenlere "aşırı kısıtlayıcı önemler (extreme confinement measures)" getirilmiştir.

Midilli örneği, hukukun sadece yasal alanların yaratılmasında rol oynamadığını, aynı zamanda farklı tüzel kişilikleri ve hakları aynı yasal alanda (yeniden) ürettiğini göstermektedir. Midilli örneğinde, tüzel kişiliklerdeki farklılıklar sığınmacı/mülteci nüfusu ve insani ve güvenlik sektörlerinde çalışan diğer aktörlerle sınırlı kalmamakta, aynı zamanda sığınmacı/mülteci nüfusu arasında da bir farklılaşma yaratılmaktadır. Sığınma prosedürlerinin çoğaltılması, daha fazla kategori oluşturmanın yollarından biri olarak karşımıza çıkmaktadır. Bu bağlamda, hızlandırılmış prosedüre girenler ile sınır prosedürüne tabi olanlar arasındaki ayrımın yanı sıra kırılganlık kapsamında değerlendirilenlere örnek verilebilir. Bir diğer farklılaştırma, bazen menşe ülkeye (örneğin, "düşük profilli gözaltı planı" çerçevesinde Kuzey Afrika Ülkelerinden veya

Bangladeş ve Pakistan'dan gelen bekar erkekler), bazen de varış zamanına göre gözaltı kararı ile uygulanmaktadır (3 ve 4. bölümlere bakınız). Örneğin, Mart 2020'nin ilk dalgasında gelenler, "Rodos" adında bir savaş gemisinde keyfi olarak alıkonulmuştur. Hatta bu kişilere, adli yardımda bulunan sivil toplum kuruluşları "savaş gemisi insanları (warship people)" lakabını vermişlerdir.

Kullanılan son mekansal taktik ise; potansiyel düzensiz göçmenler için caydırıcılık yaratmayı amaçlamaktadır. Caydırıcılık politikası kapsamında yaşam koşullarının iyileştirilmemesi ve temel haklara erişimde yaşanan sorunların sistematik olarak devam etmesi siyasi istencin sonuçları olarak karşımıza çıkmaktadır. AB Kabul Koşulları Yönetmeliği'nin (Reception Conditions Directive) kabul merkezleri için asgari standartları belirlemesine rağmen, sahadaki gözlemlerim ve topladığım ampirik veriler, Moria'daki uygulamaların AB standartlarından çok uzak olduğunu açıkça göstermektedir. Kabul Koşulları Direktifi, 2018'de Yunanistan'ın iç hukukuna aktarılmış olsa da, operasyonel boyutu kanuna uygun görünmemektedir. AB'nin mali desteği dikkate alındığında, kapasite eksikliği bu durumu açıklamak için yeterli olmamaktadır. Siyasi irade, birden fazla yasal düzen tarafından düzenlense de ,günün sonunda hukukun ne ölçüde uygulanacağını belirlemektedir. Bu anlamda mülteci kamplarındaki yaşam koşullarının insani şartlara uygunluğuyla ilgili olarak AB Adalet Divanı ile AİHM arasında farklı yaklaşımlarını görmek mümkündür. AB Adalet Divanı, kamplardaki yaşam şartlarını değerlendirirken AB Hukuku'nda da yer alan insan onuru kavramına vurgu yaparken ve şartların insan onuruna uygun olup olmadığına bakerken; AİHM, AİHS Sözleşmesi'nin 3. Maddesi olan işkence ve kötü muamele yasağı çerçevesinde durumu değerlendirmektedir. Bu anlamda, mahkelemeler bazında da hukuki çoğulluğu görmek mümkündür.

Beşinci bölüm, AOSS'deki hukuki çoğulluğun operasyonel boyutunu ele almakta ve aktörlerin günlük işleyişlerini ortaya koymaktadır. Özellikle, saha çalışması sırasında yürütülen mülakatlar sonucunda hukuki kara deliklerin (legal black holes) ortaya çıkmasına ve sığınmacıların haklarından mahrum kalmasına neden olan durumlar ele alınmıştır. Bu noktada, Hannah Arendt'in "haklara sahip olma hakkı" kavramından

yola çıkarak, sığınmacıların belli ölçüde haklarından mahrum kalması (rightlessness) değerlendirilmiştir. Bu durumların başında AB sığınma rejiminin dayandığı hukuki çerçeve ile mülteci politikası arasındaki çelişkiler, uygulamada boşlukların ve belirsizliklerin ortaya çıkmasıyla sonuçlanan iç mevzuatta yapılan sık değişiklikler, kurumlar arasında koordinasyon eksikliğini ve yasadaki menşe ülke veya varış yerine, zamanına göre farklılaşan muameleler gelmektedir.

Yukarıda belirtilen unsurlardan kaynaklanan haksızlığa ek olarak; "reşit olmadığı iddia edilen küçükler (alleged minors)" gibi belirli grupları fiilen haksız kılan başka koşullar da vardır. "Reşit olmadığı iddia edilen küçükler" vakası, uygulamalar üzerinden oluşturulan hukuki kara delikler sonucunda çocuğun hakları başta olmak üzere temel hakların nasıl sistematik bir şekilde ihlal edilebileceğini ortaya koyması açısından son derece önemlidir. Birincil görevi dış sınırları korumak olan bir AB kurumu olan FRONTEX, reşit olmayan bir kişinin sığınma değerlendirme sürecinin tüm seyrini değiştirebilmektedir. İltica rejimine doğrudan dahil olmayan FRONTEX başta olmak üzere uluslarüstü bir kurum, hatalı uygulamaları ile sığınma sisteminde hukuki kara deliklerin oluşmasına neden olabilmektedir. Ayrıca, bu hatalı uygulamaların sonuçları, sığınma prosedürlerinden fiilen sorumlu olan yetkililer tarafından bile geri döndürülmesi zor ya da geri döndürülemeyen zararlara yol açabilmektedir. Bu, kurumlar arasında örtüşen ve karmaşık etkileşimlerin olduğu durumlarda hukuki çoğulluğun olumsuz etkisine somut bir örnek teşkil etmektedir.

Bu tezin bulguları, çok düzeyli ve kesişen farklı hukuk düzenlerinden oluşan karmaşık bir rejimin ve çok düzeyli aktörlerin uygulamalarının gerekli korumayı sağlamaya yetmeyebileceğini göstermektedir. Hukuki düzen ve kurumların çoğalması, yasaların birbiriyle uyumlu olduğu, kurumların birbirleriyle işbirliği yaptığı ve mülteci haklarını güçlendirmek için kullanıldıkları taktirde, hukuki çoğulluğun yapıcı sonuçları olduğundan bahsetmek mümkündür. Bu anlamda Avrupa'daki insan hakları rejiminin çoğullukçu yapısı buna örnek gösterilebilir. Bununla birlikte, örtüşen yasal düzen ve yetkiler, AB hukukunun Yunan mevzuatına aktarılmasındaki uyumsuzluklar ve yasal çerçevede sık sık yapılan değişiklikler sığınma rejiminde bir muğlaklık yaratmaktadır.

Bu muğlaklık sadece mevcut kanunun uygulanmasında zorlukların ortaya çıkmasıyla sınırlı kalmamakta, aynı zamanda bir yönetişim biçimi olarak da kullanılmaktadır. Yunan sığınma rejimindeki belirsizlik, istenmeyen sığınmacı ve mülteci nüfusunu kontrol etmek için en güçlü yönetişim aracı olarak ortaya çıkıyor. Çok düzeyli mülteci koruma sistemi, koordinasyon eksikliğinden ve çakışan kurumlardan muzdariptir. Resmi ve gayri resmi uygulamalar nedeniyle kurumlar arasındaki etkileşimlerde artan karmaşıklık, doğrudan OASS'nin uygulanmasıyla bağlantılıdır ve bu durum da sığınma sistemindeki mülteci korumasının yeniden şekillenmesine yol açmaktadır.

Çok düzeyli hukuki düzenlemelerin dışında, AB'deki sığınma rejimi büyük ölçüde politikadan etkilenmektedir. Göç politikaları, özellikle acil durumlarda stratejiler oluşturmak ve pratik çözümler üretmek için önemli olmakla birlikte, AB hukuku ile uyumlu ve uluslararası mülteci hukuku ilkelerini kapsayacak şekilde geliştirilmeleri gerekmektedir. Güvenlik odaklı politikaların etkisi altındaki hukuki çoğulluk, hukuk ile uygulama arasındaki uçurumu büyütmektedir. Özellikle 2015-2016 döneminde yaşanan göç hareketliliğine müdahale etmek amacıyla geliştirilen politikalar, AB hukukunun zaman zaman üzerine çıkmış ve farklı muamelelere yol açan hukuki rejimlerin çoğalmasına neden olmuştur. Bu durum, mülteci korumasını oluşturan yasal çerçeve üzerinde orta vadeli etkiler yaratmıştır. Yunanistan'da kırılgan gruplara sağlanan koruma haricinde, varış noktasına ve menşe ülkeye dayalı farklılaştırılmış muamele ortaya çıkmaktadır. Farklılaştırılmış hukuki rejimlerin yarattığı karışıklık ve eşitsizliğin yanı sıra, bu rejimlerin uygulanması sırasında da zamana ve mekana bağlı olarak tutarsızlıklar mevcuttur.

Bölgesel farklılaştırmaya ilişkin olarak, 2015'teki sıcak nokta (hotspot) yaklaşımından önce sığınma prosedürleri; sınır prosedürleri, olağan prosedürler ve genellikle aile birleşimi için kullanılan Dublin prosedürü olarak üçe ayrılmaktaydı. Avrupa Komisyonu'nun sıcak nokta yaklaşımının (hotspot approach) benimsemesiyle birlikte, sıcak noktaların kurulduğu adalarda belli gruplar için ayrı sığınma prosedür ve uygulamalarının hayata geçirilmesiyle daha da parçalı bir durum ortaya çıkmıştır. Mart 2016 tarihli AB-Türkiye Mutabakatı sonucunda sığınmacılara getirilen coğrafi

kısıtlama ile sıcak noktaların bulunduğu adalarda ikamet eden sığınmacıların hareket özgürlükleri kısıtlanarak muamelelerdeki bu farklılaşma derinleştirilmiş oldu.

Menşe ülkeye dayalı farklılaşmış muamele söz konusu olduğunda, zamansal boyut kilit bir rol oynamaktadır. Bu noktada, geldiği menşe ülkeden yapılan sığınma başvurularının AB üye devletlerinde ne kadar kabul edildiği büyük önem taşımaktadır. Bu noktada tanınma oranı yüzde yirmi beşten düşükse, düşük tanınma oranına sahip (low recognition rate) ülkeler ve yüzde yetmiş beşten yüksekse, yüksek tanınma oranına sahip ülkeler (high recognition rate) olarak ifade edilmektedir. Bu oranlar üye devletler arasında farklılık gösterdiği gibi, konjonktürel bağlı olarak da değişiklik göstermektedir. Örneğin; düşük tanınma oranına sahip bir ülkede çıkan siyasi istikrarsızlık veya yaygın şiddet ortamı sonucu kitlesel göçlerin yaşanmasıyla birlikte bir anda yüksek tanınma oranına sahip olmasıyla sonuçlanabilir. Menşe ülkeye dayalı farklılaşmış muamelenin bir başka özelliği de Suriye'den gelen sığınmacılar özelinde ortaya çıktı. Mart 2016 tarihli AB-Türkiye Mutabakatı öncesinde Suriye uyrukluların kabul oranı çok yüksek iken, Mutabakat sonrasında AB politikasının değişmesi ve Türkiye'nin Suriye vatandaşları için güvenli bir ülke olarak tanımasıyla birlikte hem prosedürde hem de muamelede farklılık ortaya çıkmıştır. Bu kapsamda, 20 Mart 2016'dan sonra Türkiye'den Yunanistan'a geçen Suriye vatandaşlarının kabul edilebilirlik (admissibility) kriterlerini geçemediklerinden ötürü redlerin oranı büyük ölçüde artmıştır. Kabul edilebilirlik kriteri temel olarak Türkiye'de güvenli bir yaşam sürdürüp sürdürmemeleri üzerinden değerlendirilmektedir. Bu vaka, politikalardaki değişimlerin hukuki koruma rejimlerini yeniden şekillendirerek ve yeniden üreterek belli grupları dahil etme/dışlama sürecinde nasıl kilit rol oynadığını göstermektedir.

Kırılgan grupların, koruma rejiminde özel ihtiyaçları tanınmaktadır. Bu nedenle kırılgan gruplara yönelik farklılaşmış muameleler, koruma rejiminin temel amacıyla örtüşmektedir. Bununla birlikte; Yunanistan örneğinde, zarar görebilirlik kriterlerinin belirlenmesi ve uygulanması gereken koruyucu önlemler, koruma mantığından ayrı düşmekte, bunun yerine yönetimin aracı haline gelmektedir. Hangi grupların kırılgan gruplar içinde değerlendirileceği, kriterlerin nasıl belirleneceği, sürecin nasıl

yönetileceği gibi temel konular koruma prensibine göre değil, siyasi konjonktüre göre belirlenmekte ve değiştirilmektedir.

Son olarak, sığınma alanındaki kurumların ve düzenlemelerin çoğalmasına rağmen, Yunan sığınma rejiminin, sığınmacıların sığınma ve diğer ilgili haklara erişimini sağlamadaki etkisi oldukça sınırlı kalmaktadır. Bu durum bize siyasi iradenin, hakları korumaktan çok devletin çıkarlarını ön planda tutarak hukukun uygulanması konusunda seçici davrandığını göstermektedir. Bu bağlamda, siyasi iradenin hukuku belli zamanlarda sığınma haklarının korunmasını sağlamak için değil, istenmeyen göçmenlerin sığınma ya erişim haklarını kısıtlamak için araçsallaştırdığını söylemek mümkündür.

Bu tez, literatüre hem pratik hem de teorik açıdan katkıda bulunmaktadır. Öncelikle, son dönemdeki Avrupa Komisyonu'ndaki göç yönetişimi konusundaki mevcut tartışmaları potansiyel sonuçlarıyla birlikte analiz etmeye olanak tanımaktadır. Eylül 2020'de Yeni AB Göç ve İltica Paktı çerçevesinde önerilen yeni tedbirler, Schengen Bölgesi içindeki farklı sınır bölgelerinde ön tarama için yeni noktaların oluşturulması ve sığınmacıların tabi olacağı hukuki rejimlerin çoğaltılması gibi konuları içermektedir. Sınır bölgesinde oluşturulması önerilen bu alanlar, 2015'ten sonra Yunanistan'da geliştirilen geçici çözümlerle büyük benzerlik göstermektedir. Yeni Pakt'ın uygulanması, AB içindeki farklı sınır bölgelerinde daha fazla sıcak nokta (hotspot) benzeri mekanın oluşması ihtimalini ortaya çıkarmaktadır. Sığınmacıların sınır bölgelerinde fiilen gözaltında tutulması, yasal rejimlerin çoğalmasıyla mülteci korumasında farklılaşma, siyasi çıkarlar için mevzuat değişikliklerinin araçsallaştırılması ve temel hakların sistematik olarak ihlal edilmesi, sıcak nokta yaklaşımı deneyiminin ortaya çıkardığı sonuçlardan bazılarıdır. Yunanistan'daki sığınma rejiminin yasal düzenlemeleri ve uygulamalara dair detaylı bir resim sunan, aşırı düzenlenmiş hukuki mekanda (hyperregulated legal space) farklı düzeydeki aktörlerin etkileşimini ortaya koyan bu tez, önerilen Yeni AB Paktı'nın olası sonuçlarını anlamaya yardımcı olmaktadır.

Bu tezin bulguları, Yeni AB Paktı'nın potansiyel sonuçlarını yansıtmak için yalnızca pratik açıdan önemli olmakla kalmayıp aynı zamanda farklı disiplinlerin literatürüne, özellikle küresel/çağdaş hukuki çoğulluk (global/contemporary legal pluralism), eleştirel hukuki coğrafya (critical legal pluralism), çok düzeyli yönetişim (multilevel governance) ve bölge çalışmalarına (Area Studies) da katkıda bulunmaktadır. Öncelikle, literatür taramasında da belirtildiği gibi göç ve sığınma rejimlerine hukuki çoğulluk perspektifinden yaklaşmak literatürde yaygın bir yaklaşım değildir. Bu nedenle, bu tez, yasal çoğulculuğun mekansal boyutunu keşfederek teorik tartışmayı genişletmekte, aynı zamanda küresel yasal çoğulluğun tek bir mekanda, Midilli Adası'nda, günlük operasyonlarını göstermek için ampirik veriler sağlamaktadır. Bunun yanı sıra sığınma rejimini oluşturan farklı düzeylerdeki hukuki düzenlemeler ve aktörler arasındaki çatlakları, sürtüşmeleri ve boşlukları ortaya çıkarmaktadır. Çok düzeyli hukuki düzenlemelere ek olarak; sığınma rejiminin mekansal analizi, hukuki çoğulculuk ile kritik hukuki coğrafya arasındaki kesişen yaklaşımı geliştirmeye de olanak tanımaktadır. Mekan-hukuk-iktidar ilişkisi çerçevesinde, sıcak noktalar (hostpots) bize, mekanın hukukun uygulanması için nasıl araçsallaştırıldığını ve bunun karşılığında da, hukukun mekanı ve dolayısıyla sığınmacı ve mültecilerin yaşamlarını kontrol etmek için nasıl kullanıldığını açıkça göstermektedir. Bu noktada, Moria kampının sınırlarının dışına doğru büyümesi ve resmi kampın hemen yanında zeytinliğin içinde "Jungle" adı verilen yarı enformel mülteci kampını oluşturması, bizi sığınmacılar ile devlet ve hatta uluslar-üstü örgüt arasındaki güç ilişkilerini tartışmaya davet ediyor. AB'nin ya da BMMYK'nın belirlediği standartlara uymayan yaşam koşullarının da dahil olduğu caydırıcılık politikasının izlenmesine rağmen; sığınmacılar, yaşamlarını sürdürmek için direniş göstermekte ve bahsi geçen zorlukların üstesinden gelmek için kendilerini güçlendirmenin yollarını aramaktadır.

Son olarak; bu tezle, insan hareketliliği ile tarihsel olarak derin bağlantıları olan yerel bir bağlama odaklanarak küresel göç yönetişiminin ve farklı düzeylerdeki aktörler arasındaki karmaşık etkileşimlerin çözümlenmesine açıklık getirdiğime inanıyorum. Bununla birlikte; araştırmamın kapsamı dışında kalan bazı konuların ileride farklı araştırma konuları olarak ele alınmasının faydalı olacağı görüşündeyim. Bu anlamda

iki konu öne çıkmaktadır. İlki; mültecilerden oluşan sivil toplum örgütlerinin görüşülenler listesinde yer almasına rağmen, kamptaki çoğulcu düzen içerisinde norm oluşturmadaki rolleri üzerine yorum yapmak için yeterli değildir. McConnachie (2014)'nin Tayland-Burma sınırındaki mülteci kamplarını hukuki çoğulluk bakımından incelediği araştırmada mülteci topluluklarının devlet hukuku haricinde norm oluşturma ve bir nevi kendi "hukuk" düzenlerini nasıl oluşturduklarını ele almaktadır. Bu anlamda, AB gibi oldukça normatif bir yapı içerisinde yer alan bir mülteci kampındaki mülteci topluluklarının ve mülteci liderliğindeki kuruluşların rolüne ilişkin daha fazla araştırma ilgi çekici olacaktır. Bu tür bir araştırma, AB'de yer alan bir kampta topluluklar ve norm oluşturma arasındaki ilişkiyi anlamamıza yardımcı olacaktır. Sahadaki gözlemlerime göre, farklı mülteci topluluklarının kamp alanında güvenlik ve eğitim (din eğitimi dahil) gibi alanlarda önemli bir etkiye sahip olduğunu söylemek mümkündür. Bu nedenle, siyasi topluluk liderleri ve mülteci liderliğindeki kuruluşlar ile çok düzeyli kurumlar arasındaki etkileşimi detaylandıran bir araştırma, literatüre büyük katkı sağlayacaktır.

İkinci husus ise; geri itmeler, kabul koşulları ve sınır dışı etme gibi sığınma haklarıyla ilgili farklı konularda verdikleri kararlarla ve oluşturdukları içtihat ile mahkemelerin hukuki çoğulluk içindeki rolüdür. Bu tez boyunca AİHM ve Avrupa Adalet Divanı'nın kabul koşullarına ilişkin yaklaşımları incelenmiş olsa da, bu içtihatların ve farklı yaklaşımların ulusal mahkemeler üzerindeki etkileri iki nedenden dolayı sınırlı kalmıştır. Birinci neden, bu tez bir hukuk tezi olmadığından mahkemelerin etkileşimi araştırmamın birincil amacı değildi. İkinci sebep ise dil engelidir. Temel ulusal mevzuatların, AİHM ve Avrupa Adalet Divanı'nın kararlarının İngilizce ve/veya Fransızca olmasına rağmen, Yunanistan'daki ulusal mahkeme kararları bu dillere çevrilmemektedir. Bu nedenlerle, ulusal mahkemenin yargı yetkisini ve AİHM ve Avrupa Adalet Divanı'nın ile etkileşimini içeren bir hukuk araştırması, hukuki çoğulculuk çerçevesinde mahkemeler arasındaki farklı düzeylerdeki etkileşime ışık tutacaktır.

APPENDIX J. THESIS PERMISSION FORM / TEZ İZİN FORMU

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TEZİN ADI / TITLE OF THE THESIS (**İngilizce** / English): LEGAL PLURALISM IN THE COMMON EUROPEAN ASYLUM SYSTEM AND ITS IMPLICATIONS ON REFUGEE PROTECTION:
THE CASE OF LESVOS

TEZİN TÜRÜ / DEGREE: **Yüksek Lisans** / Master ☐ **Doktora** / PhD ☒

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