



**THE CLOSING BORDERS AND REFUGEES VIOLATIONS OF HUMAN RIGHTS:  
VULNERABLE GROUPS, RAPE AND GENDER VIOLENCE INTO THE  
TERRITORY OF EUROPEAN UNION**

IED Research Project: “Migration, borders control and solidarity: Schengen at stake?”

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*Abstract: The free movement of persons is one of the greatest achievements of the project of European integration. The implementation of the Schengen Treaty in 1995 starts a new part of the history of the EU. What the Europeans not realized is that the opening of the internal borders for their citizens would open also to the world a series of obligations as issues concerning to asylum and immigration. Such situation took huge proportions when the conflicts in the Middle East began and had let as balance thousands of refugees. Among them a parcel deserves special attention - the group of women and girls-, which are constantly victims of gender violence and rape during the crossing and on European soil. The closing of internal borders and the recent agreement between the EU and Turkey threatens the integration project in symbolic aspects, referring to the lack of coordination to administer the crisis and on the humanitarian aspect, when EU abandons the refugees to their own fate.*

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### **1. INTRODUCTION**

Democracy, Human Rights and Freedom of movement are three pillars of European integration. The search and sedimentation of the first two pillars gave rise to the embryo of the most developed supranational organization, in legal and institutional terms, which there is on the world today.

The last element, free movement of people, was implemented with the 1997 Schengen agreement by the Amsterdam Treaty. It came crown the efforts to implement the commercial and political union that was developed to date, over 40 years.

The European Union (EU), considered as a group, defends human rights inside and outside its borders. It was the creator of several Treaties, directives and recommendations in this regard.

It is a mirror for the world in defence and protection of human rights with its triple protection: National constitutions and their Tribunals; Charter of Fundamental Rights of the EU (adopted in 2000 and legally binding on EU countries since 2009) and the Court of Justice of the European Union (CJEU); the European Convention of Human rights (Adopted in Rome in 1948) and its European Court of Human rights.

Each one of these steps emphasizes non-discrimination of minorities, respect for life, liberty, among other rights. Recently the Council of the European Union published the



document "Human Rights and Democracy: EU Strategic Framework (2012)<sup>1</sup> and the EU Action Plan (2015-2020)<sup>2</sup>". It exposes the group concern with regard to human rights beyond the limit of its citizens, universality, presence in foreign policy and unrestricted cooperation with international organizations. However, the current situation of the Syrian war refugees put in check those principles and objectives. It was released on January 26, 2016 the report of UN Agency for Refugees (UNHCR)<sup>3</sup>, the United Nations Population Fund (UNFPA) and the Commission for Refugee Women (WRC) denouncing the alarming situation of vulnerable groups during the crossing to Europe, their arrival and granting of political asylum. They are considered vulnerable groups, according to the report "single women traveling alone or with children, pregnant and lactating women, adolescent girls, unaccompanied children, children who have early married (which in some cases are with their new-born babies), people with special needs and elderly people<sup>4</sup>".

In this study, I will focus my attention to cases of refugee women and girls. The report denounces the high rape rate; survival sex - when women are forced to have sex to get some kind of protection or in exchange for food or money; domestic violence; use of women as bargaining chips by the family to get documents or favouritism. If the Schengen weakening means the closing borders, isolation, armouring their territories (each State) against the "threat of refugees" and closing his eyes to the problems that knock on the door, we can say that we are dealing omission and omission is a form of violence.

Omit help within the Schengen territory, when it comes to human rights violations, goes against all applicable laws, Treaties and guidelines given by the European Union since its birth, when it was still composed of only 6 countries, almost 59 years ago.

The article aims to analyse: the current situation of vulnerable groups - especially women and girls -; the need to implement different policies for these groups; and the political

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<sup>1</sup> Council of the EU. (2012). EU Strategic Framework and Action. Plan on Human Rights and Democracy (Vol. 32, pp. 1-24). Retrieved from [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf)

<sup>2</sup> European Commission. (2015). COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS. EU Action Plan against migrant smuggling (2015 - 2020) (pp. 1-10). Retrieved from [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/eu\\_action\\_plan\\_against\\_migrant\\_smuggling\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/eu_action_plan_against_migrant_smuggling_en.pdf)

<sup>3</sup> United Nations Refugee Agency, United Nations Population Fund and Women's Refugee Commission. 2015. "Initial Assessment Report: Protection Risks for Women and Girls in the European Refugee and Migrant Crisis. Greece and the former Yugoslav Republic of Macedonia" By Rebecca Eapen, UNHCR; Fabrizia Falcione, UNFPA; Marcy Hersh, WRC; Katharina Obser, WRC; Ali Shaar, UNFPA.

<sup>4</sup> Ibidem, pág 6.

and legal consequences in the event to effect the closure of the borders, including the risk that the European integration project runs with the closing of borders and the agreement with Turkey and humanitarian international responsibility of the EU. Possible alternatives that are in line with European principles of universality of human rights and at the same time observe the situation of European citizens facing the social changes resulting from this crisis.

## **2. MAIN PART: RISK OF POPULISM FOCUSING ON:**

### **2.1 CURRENT SITUATION EUROPEAN AND NATIONAL LEVEL: CURRENT SITUATION ANALYSIS OF GROUPS IN VULNERABLE SITUATION: WOMEN AND GIRLS.**

The Middle East was always since the First World War, scenario of a big conflict because of the cultural diversity, the huge trend to dictatorial governments or by the Western constant interventions for geopolitical and economic interest.

Since the known Arab Spring in 2011, which have started in Tunisia and entrained by the rest of the Arabic countries, this region had a meaning role for its proximity with the European continent, which started to receive a increasing number of refugees – forced migration because of the local war situation.

According with the asylum statistics – data extracted on March 2nd 2016 and on April 20th 2016 – is calculated a number of 1.3 million in 2015 of asylum statistics for European territory entrance. Numbers of those who claim for asylum at the first time (first time application), increased in 693 thousand candidates in 2015, comparing to the year of 2014. “The number of first time asylum applicants from Syria rose to 363 thousand in the EU-28, which was 29% of the total. Afghani citizens accounted for 14% of the total and Iraqis for 10%, while Kosovo and Albanian accounted for 5% and Pakistanis for 4%.”<sup>5</sup>

Important data from the report that must be taken in consideration is the increasing of underage people who claim for asylum. In 2015 83% of the candidates in the asylum were

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<sup>5</sup> Initial Assessment Report: Protection Risks for Women and Girls in the European Refugee and Migrant Crisis. Greece and the Former Yugoslav Republic of Macedonia *Op cit*, behind the figures as a whole, but it approaches from the above report, reaffirming the Syrian majority among refugees: “From January to November 2015, Europe witnessed 950,469 refugee and migrant arrivals through the Mediterranean, with Greece receiving the vast majority of arrivals (797,372). Those arriving by sea are fleeing the Syrian Arab Republic (49%), Afghanistan (20%), Iraq (8%), Eritrea (4%), Nigeria (2%), Pakistan (2%), Somalia (2%), Sudan (1%), Gambia (1%) and Mali (1%). pp. 15

less than 35 years old and 29% were less than 18 years old. We are talking about children and teenagers, which in 23% of the situations, that is, 88, 7 thousand migrate without someone responsible for them (unaccompanied minor) – the minor who get in European territory unaccompanied by an adult or after got in European territory was abandoned.<sup>6</sup>

Other important data from the report is the big difference of genres by who claim for asylum. Where the men are majority among the younger age group, males accounted for 55% of the total number of applicants in 2015, and this disparity still bigger in groups of people who is 35 and 64 years old where 80% are compose by men<sup>7</sup>.

Usually the forced migration are connected to male people because they are the most evolved with political issues, however, the political consequences and civil wars (Syria civil war for example) are also experienced by women that equally are persecuted because of ideological and religious issues<sup>8</sup>.

We are against of a scenario where most of the asylums claims come from Syria citizens, most of them are younger and men, but have a important vulnerable minority group: women and children and in some particular cases, unaccompanied children. This group is the concept of vulnerable groups stipulated by the report, which claim for specific actions of protection.

Single women travelling alone or with children, pregnant and lactating women, adolescent girls, unaccompanied children, early-married children — sometimes themselves with new born babies — persons with disabilities, and elderly men and women are among those who are particularly at risk and require a coordinated and effective protection response<sup>9</sup>.

According with some information from UNICEF<sup>10</sup>, inside the women group refugee, teenagers are a group in evidence because they are more suitable for genre violence, about 20% of women in the world report that they have been victims of sexual violence during their

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<sup>6</sup> Ibidem, pp. 7

<sup>7</sup> Ibidem, 12

<sup>8</sup> Sansonetti, Silvia. 2016. *POLICY DEPARTMENT C: CITIZENS ' RIGHTS AND Female Refugees and Asylum Seekers : The Issue of Integration*. Brussels. pp. 12

<sup>9</sup> Initial Assessment Report: Protection Risks for Women and Girls in the European Refugee and Migrant Crisis. Greece and the Former Yugoslav Republic of Macedonia *Op cit*, pp. 3.

<sup>10</sup> CPC, UNICEF, 2014 cited by Sansonetti, Silvia, *Op cit*. pp. 8.

childhood, more than 60 million “child brides” are forced to marry before the age of 18, domestic violence by the intimate partner is a common fact in the world about one third of women around the world. Female genital mutilation/cutting is experienced for over 140 millions of women and girls.

These vulnerable groups insert themselves in a bigger group with migrates that travel long journeys, usually starting in Turkey, crossing the dangerous Aegean Sea by boat, next, taking different means of transportation, including walking to Macedonia, Serbia, Croatia, Slovenia and Austria – and so till get to their destination country, such as Germany and Sweden.

Humanitarian conditions of this trip are deteriorating itself with the closure of internal borders of Schengen – limiting the numbers of refugees allowed to cross. –the gathering of people increases because of a lack or delay in crossing between countries and because of the territory weather conditions<sup>11</sup>.

One of the reports here analysed, “the initial assessment report: protection risks for women and girls in the European refugees and migrant crisis. Greece, the former Yugoslavia and Republic of Macedonia.” Performed by United Nations refugee agency, United Nations populations fund and women’s refugee commission, as follows will be call it, Greece and Macedonia report, written by 5 members of ACNUR team, UNFPA and WRC who travelled by cosy refugees areas. The assessment team travelled for many places searching for information about the real situation of the refugees’ as well in Greece or in Greece and Macedonia<sup>12</sup>. The report portrays well the initial situation of the refugees since this region is the current main gateway of these people.

Talking about genre, the report Greece and Macedonia, noticed not only the women and girls issues, but also the boys issues, who ran away afraid of forced recruitment by armed groups and armies<sup>13</sup>.

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<sup>11</sup> Ibidem, pp. 3.

<sup>12</sup> The methodology used by the team was: “In order to meet his objective, the assessment team travelled to Greece, including Athens and Chios and Samos, two of the arrival is lands, then continued to the former Yugoslav Republic of Macedonia, including Skopje and Gevgelija, the entry point bordering Greece, as well as Tabanovce, the exit point bordering Serbia. In addition, field visits were conducted to detention centers, as well as sites where are fugues and migrants stayed for longer periods, such as the Eleonas, Victoria Square and Galatsi Stadium in Athens.” Initial Assessment Report: Protection Risks for Women and Girls in the European Refugee and Migrant Crisis. Greece and the Former Yugoslav Republic of Macedonia, *Op cit*, pp. 4.

<sup>13</sup> Ibidem, pp. 5.

The Greece and Macedonia report, noticed an increased in the families that come with young and children, women, single women, pregnant women – some of them in a advanced gestation stage – and unaccompanied children. One of the reasons to the report could be about children being more suitable to receive asylum.<sup>14</sup>

We disagree about the conclusion taken, since the reason of this increase is the result of armed conflict aggravation in Syria, for this group there is no other choice unless to join to the families that migrated or just because they do not have living relatives.

In opposite opinion to Greece and Macedonia report, authoress of “the study of female refugee and asylum seekers: the issue of integration”, points to the genre issue as a negative aggravating of asylum claim, since they often encounter in proving their claim for asylum since they generally can exhibit less evidence for their application in comparison to men. Yet to the authoress, even thinking that they could claim about the sexual violence issue, as a habit they do not report their experiences<sup>15</sup>.

One example that confirms our position is quoted in the Greece and Macedonia report, despite of talking about an Afghan woman, by similarity between the conflicts, is feasible to confirm that the same happen between Syrian women.

In this case an Afghan widow travels by herself with her 8 children, 7 are girls less than 17 years old. Before that she used to live as a refugee in Ira, being forced to move out because of the threats from her brother who wants to sell her sister’s children to marriage. The daughters describe the fear of men who are forced to live with just because the crossing<sup>16</sup>.

We understand that the main reason of this family migration – quite exemplifying of the vulnerable group concept – was not given to appropriate a potential facility of asylum concession but because was not found any worthy condition of live, mostly related to the violence of genre from home country.

The EU legislation law provides guidance on facilities for women and the asylum application of female asylum seekers, however, to be considered a member of the vulnerable

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<sup>14</sup> Ibidem, pp. 6.

<sup>15</sup> Bonewit, A. and Shreeves, R. (2016), Reception of female refugees and asylum seekers in the EU. Case study Germany, European Parliament, February, available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL\\_STU\(2016\)536497\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/536497/IPOL_STU(2016)536497_EN.pdf) citing by SANSONETTI, *Op cit*, pp. 7.

<sup>16</sup> Initial Assessment Report: Protection Risks for Women and Girls in the European Refugee and Migrant Crisis. Greece and the Former Yugoslav Republic of Macedonia *Op cit*, pp. 7

group, needs to be pregnant or to be a woman who has been victim of gender based violence<sup>17</sup>.

Does not seem wise to expect an unwanted situation happen like GBV<sup>18</sup> or even an unplanned pregnancy to crave a vulnerable situation status. For many reasons already mentioned, there is consent that females have specific needs as protection against GBV and guidance of contraceptive methods, yet when they found themselves in a situation of humanitarian crisis such as the one studied here.

The Greece and Macedonia report narrate in a disturbingly way the moment of crossing. By means of interviews made with refugee women. The interviewer faced reports of sexual and gender based violence – then only SGBV<sup>19</sup> – here are some examples: early and forced marriage, transactional sex – where exchange sex for passport or a boat ticket – domestic violence, rape, sexual harassment and physical assault.

In the refugee's issues, it was observed that these are reasons whereby women leave their home country, like in the case mentioned above, consequently also they are threatened during the crossing, this time in European land. Besides SGBV, the migrants suffer on the way to Greece, violence, extortion and exploitation, including human and organ trafficking.<sup>20</sup>

A lack of space has been found and reserved benefits only for women and children in all the ways, since a space to confidential interviews even that specialized translators.<sup>21</sup>

However, in some accommodation, sites there isolated accommodations and others facilities, but the risk is in the migrants arrive. The report refers directly to Samos Island in Greece, where the humanitarian conditions are poor and these conditions increase risk of SGBV.<sup>22</sup>

The interview team realized that there is a lack of information about the refugee rights and claim. In SGBV situation, there is a silence aggravation based on the cultural block, omit the incident, unless there is a serious and visible health implication.<sup>23</sup> The women, victims of these crimes, hardly feel comfortably to dilate, leading this to the authorities having no concern about this issue. In Greece and Macedonia there is a lack of government supported

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<sup>17</sup> Sansonetti, Silvia, *Op cit*, pp. 7.

<sup>18</sup> Gender-based violence

<sup>19</sup> Sexual Gender-based violence

<sup>20</sup> Initial Assessment Report: Protection Risks for Women and Girls in the European Refugee and Migrant Crisis. Greece and the Former Yugoslav Republic of Macedonia *Op cit*, pp. 7.

<sup>21</sup> *Ibidem*, pp. 8.

<sup>22</sup> *Ibidem*, pp. 9

<sup>23</sup> *Ibidem*, pp. 7.



system to identify and respond to SGBV concerns, and limited SGBV capacity and expertise among humanitarian actors.

Lack of factual data by means of complaints turn the SGBV in a not priority issue to the authorities, meaning that do not justify the arbitrariness. The report emphasizes that even with no factual data, it is necessary to promote policies to avoid this kind of violation and attend the victims appropriately. It supports in report of Inter Agency Standing Committee (IASC) GBV guidelines: <sup>24</sup> “it is also imperative to remind the international community that as per the recently issued (2015) INTER Agency Standing Committee (IASC) GBV Guidelines”. This recommends to be taken as real the existence of SGBV and make the necessary measures in this situation.

The number of pregnancy women, even in an advanced stage of pregnancy and lactating woman is another alarming data. These women are going through a big psychological and physical stress, which may cause preterm delivery, death and nutrition disorders to the children.

Also noticed that even having services of reproductive health, many women choose to do not delay the travel and leave even with no physical conditions, as example after one day having given birth, some after caesarean sections. <sup>25</sup>

The situation of these women is desperate, a humanitarian actor reported about one refugee woman that few hours after to give birth to her baby left the hospital and then just gone<sup>26</sup>. Any woman in the world is physically unable to take any kind of travel after give birth and we affirm for sure that no woman wishes that so, however, the conditions, uncertainties, fear of chances in the immigration policy make a child birth in a war zone looks like something simple comparing with what coming next.

Regarding to the humanitarian aid agencies, there is no standard operating procedures and post-rape kits had not been pre-positioned and there is no interest. The humanitarian actors, keep ignoring the importance of having a specific service for this kind of violence, this is what the report strongly reject. <sup>27</sup>

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<sup>24</sup> Inter-Agency Standing Committee. 2015. Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing risk, promoting resilience and aiding recovery. Citing by Initial Assessment Report: Protection Risks for Women and Girls in the European Refugee and Migrant Crisis. Greece and the Former Yugoslav Republic of Macedonia *Op cit*, pp. 2.

<sup>25</sup> *Ibidem*, pp. 11

<sup>26</sup> *Ibidem*, pp. 11.

<sup>27</sup> *Ibidem*, pp. 9.

One big problem is the lack of uniformly applicable vulnerability criteria. This makes difficult the screening and appropriate organization to identify the SGBV situation, mostly in the arrival and waits.<sup>28</sup>

Usually, the biggest complains in the report are in relation to the differentiate services to the victims and potential victims of SGBV, services like physical and psychological treatment to the victims, division of accommodations and bathrooms, disclosure of information, trained humanitarian workers to identify the SGBV situation and dealing with priority.<sup>29</sup>

## **2.2 THE FUTURE DEVELOPMENT: POLITICAL AND LEGAL CONSEQUENCES OF CLOSURE BORDERS.**

Less than one month to the European Union complete one more anniversary, a hard stroke worsen the crisis of the refugees in the continent. On march 9<sup>th</sup> 2016 the Macedonian government blocked the refugees crossing in the Greece boarder after Serbia, Croatia, Slovenia announced that they would close the boarders and would not be a passing country anymore and would only accept a restricted number of refugees, nothing more than settled by the system quotas of “Dublin regulation”. The Balkans route, as known, was used to the immigrants arrived to the central Europe countries, in particular Germany.

The measure had been discuss in the “the extraordinary dome about refugees” that happened on March 7th in Brussels when was decided to not incorporate to the document the word “border closure”. However, in practice that was what happened after.

The “Statement of the EU Heads of State or Government”<sup>30</sup>, document published on March 8th; point the main decided points in the dome in a day before. Among them is evident a concern from the European leaders with the human traffic routes and the organized crime arising profits which was expended by means of “trafficking”.

They reaffirmed what have been decided in the Europe council meeting from 18 to 19 in February about the full implementation of the Schengen border code and announced that “the irregular flow over the occidental Balkans came to end<sup>31</sup>”.

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<sup>28</sup> Ibidem, pp. 10.

<sup>29</sup> Ibidem, pp. 10.

<sup>30</sup> European Council. Council of the European Union. “Statement of the EU Heads of State or government”. Available at: <http://www.consilium.europa.eu/pt/press/press-releases/2016/03/07-eu-turkey-meeting-statement/>

<sup>31</sup> Ibidem.

The document says that for such objectives be achieved it is necessary coordinate actions with collective responsibility from EU such as group and from the states members seeking more assistance to Greece, both in sense of organization and in sense of more humanitarian help through financing and the actions from non government groups.

The external borders are a great concern, mostly the Greece borders with the old Yugoslavia republic and Albania, this countries are not part of EU (candidate countries), relate to the “registration centres, identification, registration and security and refuge control<sup>32</sup>”, and so compromise in cooperate with them.

Assume as high priority commitment the establishment of Schengen area before the end of the year to cease the temporary control of internal borders.

In the next day, Serbia, Croatia and Slovenia, followed by Macedonia, announced the closure of their internal border.

Thousands of refugees still coming – and now the prediction is an increase of this number because of the European summer – they are crowded in Greece with all the humanitarian issues.

In parallel, it has been developed since November 2015, the agreement between the EU and Turkey, highly criticized and by humanitarian actors around the world.

Came to a final agreement on March 18th 2016, <sup>33</sup> in which Turkey accepted the return of all the migrants who do not need international protection. – migrants for economic reasons do not fleeing the war.- and that had been arrived in Greece coming from Turkey, including those who were stopped in turkey sea. They agree and encourage the NATO intervention in Aegean Sea.

The EU commits itself in not practice “any kind of collective expulsion”. The agreement basically consists in “for every Syrian returned to Turkey from Greece Island, another Syrian from Turkey will be resettled in the EU, in consideration of vulnerability criteria from U.N.

As exchange, Turkey make big demands, such as, a controversy one: a advance of negotiations to make part of the EU. also demands a removal of visas from Turkey citizens to

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<sup>32</sup> Ibidem.

<sup>33</sup> European Council of the European Union. “EU-Turkey statement, 18 March 2016”. Available at: <http://www.consilium.europa.eu/pt/press/press-releases/2016/03/18-eu-turkey-statement/>

get in the EU. the Europe also promise a start-up financing of 3 million euro and other necessary financing.

### **2.2.1 – REPERCUSSION OF THE BORDER CLOSURE AND THE AGREEMENT WITH TURKEY. INTEGRATION IN RISK.**

Analysing the internal borders closure from a symbolic point of view, mostly because happened one day after the summit of leaders, the message passed to the international community was: the EU do not have power as a occupational directive organ and is totally disordered to tackles the crisis before the refugees.

This message does not echoes only externally. The decay of Schengen affect the project of European inclusion, once the open borders were one of the moments which have contributed to the regional integration stopped being a intergovernmental coordination organ to become in this way, today the EU consist in:

Currently 26 full Schengen members: 22 EU Member States plus Norway, Iceland, Switzerland and Liechtenstein (which have associate status). Ireland and the United Kingdom are not parties to the Convention but can ‘opt in’ to selected parts of the Schengen body of law. Denmark, while part of Schengen, enjoy sanopt-out for any new JHA measures, including on Schengen, although it is bound by certain measures under the common visa policy. Bulgaria, Romania and Cyprus are due to join, though there are delays for differing reasons. Croatia began the application process to accede to the Schengen area on 1 July 2015<sup>34</sup>.

A situation that we consider as “alert” happened recently in the Schengen area, which should be a reason for changes with regard to the migration and asylum in EU.

The revolution in Libya called as “Arab Spring” left as final balance thousands of war fugitives that started to get in Italian territory. Lack of assistance from EU, Italy granted permission of resistance and free circulation on the Schengen area.

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<sup>34</sup> Ortiz. Eimys.: “IED Bibliographies Edited by. Free movement of people: Schengen at risk. March 2016. n. 1. pp. 3.



The first reaction came from France, with the closure of its borders. This incident, happened in 2011, predicted in small proportion the kind of problem EU would face it.

At that moment, noticed a “lack of sympathy, a lack of mutual trust and a lack of measures taken and coordinated”<sup>35</sup>, at present time I can say the same, however, with a balance of deaths and humanitarian violations much bigger.

The European integration was created over the freedom element, here in this particular case, the free movement, which should provide safety and mutuality between the Member States. The coordination of these states relatively easy when we were talking about few and homogenous groups of countries.

The Europe of 28 increasingly introduce more difficult to financing, mostly had been founded in weak structures which proof an increasing “absence of an authentic *Animus Societatis Europensis*”.<sup>36</sup>

The non identification of the state member citizen as European citizen is represented on its own politicians, which at this time of big political instability; they take advantage of the current situation to appeal to the populist separatist speech or euro sceptical. Those who see the integration as something negative. As example, inflammatory statements we can mention the one made by the deputy Vicky Maeijer in February 2<sup>nd</sup> : “Wake up! Schengen is a failure and the EU is a fiasco. Shut the borders and protect the Dutch”.<sup>37</sup>

The current scenario gives enough material and basis to such thought become even more strength. First Europe is devastated because of the economic crisis in 2008 and noticed that do not have finance policies able to revive the economy.

When begins to show signs of recovery and do not pay attention to its external borders, thinking in the Schengen zone only on its internal aspects, the refugee crisis as mentioned already, was a crisis foretold and predicted, attack Europe and even more its governments cannot manage the crisis in a harmonious and effective way.

Another element that gives emphasis to this position are the negotiations made with Turkey, country that introduced an application for membership to EU, however, there is no agreement relating to the matter.

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<sup>35</sup> Laureano. Abel, and Rento. Altina. 2014. “Consequências Das Divergências Entre Os Estados Desenvolvimento Espaço Schengen Da Europa”. Porto. pp. 105.

<sup>36</sup> Ibidem, pp. 106.

<sup>37</sup> European Parliament. “The EU needs to overcome fear and divisions to safeguard Schengen, say MEPs.” Available at: <http://www.europarl.europa.eu/news/en/news-room/20160129IPR11903/The-EU-needs-to-overcome-fear-and-divisions-to-safeguard-Schengen-say-MEPs>

Reasons are not scarce: Turkey has a very low socioeconomic level compared to the others European countries, by its big territorial dimension and population, if there would be accepted, would have a great weight in decisions in the economic blocks; religious diversity having the majority of population composed by Muslims; external borders – which become the borders of EU – with countries in big conflicts, such as Syria and also the fear of Turkey mass migration in route to Europe.<sup>38</sup>

What matter is that we are facing a situation of an occidental country with all the cultural differences and on top of everything else it is protagonist of serious issues related to freedom, included the press, fundamental for any democracy, that getting as animus has free access to the European continent. This access is about to be given as exchange currency, for the Turkey do the work that EU was not able to do: manage the refugees' crisis, however, only in immediate way, without thinking about the consequences.

### **2.2.2 – INTERNATIONAL HUMANITARIAN RESPONSIBILITY OF EU.**

Both events, closure borders that prevent the crossing of refugees to the other country and agreement with Turkey about return of refugees; give legal repercussion in the international legal-political field.

On June 14<sup>th</sup> 1985, France, Germany, Luxemburg, Belgium and Netherlands established the Schengen treaty, subsequently established other agreement in 1990 with higher definitions of how would work the free movement zone and finally the Schengen zone entered into force in 1995. At this time, a community rule has been created regarding to visas, asylum rights and control protocols in external borders. The followed years, the small group had a huge accession of other countries. To improve the administration was created the Schengen information system.<sup>39</sup>

At this time, those countries could not wonder what have started with a intention of create a free market zone, people and capitals become source of problems equivalent to the ones faced by the modern state as we known today, however without the tools, for example the asylum claim situation. When creating a common space for their citizens, was created a common space for the rest of the world too.

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<sup>38</sup> Laureano, Abel, and Altina Rento, *Op cit*, pp. 111.

<sup>39</sup> Manuel, José, and Luque Gonzalez. 2004. "SCHENGEN UN ESPACIO DE LIBERTAD, SEGURIDAD Y JUSTICIA." *revista de derecho, universidad del norte* 21: pp. 20.



That in creating a frontier-free space for European goods, services and citizens, the EU Member States have a knowledge the (almost) unintended consequence of creating a frontier-free space for people from all over the world<sup>40</sup>.

Schengen and the Dublin regulation – establishes the member state responsible for the examination of the asylum application – were not planned to the current situation of asylum claims and not even the Dublin regulation II will meet the demands. The Dublin regulation II brings rules for more fair overall distribution of asylum where only a member state will be responsible for the analysis if asylums claim and other arrangements.

Dublin III already created in the enthusiasm of a current specific crisis like the unaccompanied minors issues.

However, the key of the problem of the violation will not be solved when established which state must process the asylum claim, but the asylum itself. If this refugee stay in France or go to the united kingdom, is necessary be observed half way: the conditions which these people are exposed in the refugee field, no matter if is in France, United kingdom or any member state.

Some authors criticized the extreme responsibility of EU and show in particular the action of Member States. To the author, by definition, the immigration and asylum issue is still being a European issue, however in practice it still a national issue, bearing in mind that issue like “ migration decisions of those individuals arriving in the EU whether legally, irregularly or as asylum seeker or resettled refugees”<sup>41</sup> they are still being discussed in a national level.

In addition, the migrants do not see the EU as a destination but they always see some country (national level) in particular. The policy of spread “the burden” and relocate people within the EU could only become a solution if protection were the same with any member state.<sup>42</sup> “An agreement at European level seems to be quite “unlikely” for many reasons: a

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<sup>40</sup> Selm, Joanne Van. 2016. “Destination : Europe Are Asylum and Immigration Really a European Union Issue ? Destination : Europe.” (January): pp. 55.

<sup>41</sup>Ibdem, pp. 32

<sup>42</sup>Ibdem, pp. 35

hard implementation in large scale, a lack of leadership to lead the states and all the different needs related to reach “demographic and socio-economic situation”.<sup>43</sup>

Simply give the responsibility to the member state with excuses, saying that is too difficult to make a European level deal, this means to give up of the free space idea, safety and justice that got special meaning when Schengen come into force.

In the history of the continent, is not unique big migratory flows as example the broad movement of foreign workers getting into the Europe after the Second World War that was considerate as a “big boost in the economy between 1945 and 1975”<sup>44</sup> they were knowing as “invited workers”. “In 2000, more than 2.000millions of foreign workers used to live in the European economic area, representing 5, 4% of the total population”. Many of these migratory flows were not seem as something negative, on contrary, were indeed supported by countries that needed labour force.

Nowadays, the high rate of migrants also can be seeing as something positive to the continent if we bearing in mind statistics that show the aging of European population and future lack of trained people to the work: “Europe’s ageing is so dramatic that the number of working age people to support each pensioner will have to reduce from four today to only two”.<sup>45</sup>

Is the idea supported in the study of Gildes Merritt who has the striking title “the refugee crisis : Europe needs more migrants, not fewer”. Where supports that the immigration must be seen by the Europeans as a opportunity, not as a threat. What the populist media deflagrate is contrary and the politicians do not refute and ended using the situation as political platform, nailing the message that the migrants “will impose intolerable social and economic burdens on Europe”<sup>46</sup>. The author irony the fact that one of the countries that are opposed to the arrival of more migrants is the one that benefited of the positive effects of immigration – United Kingdom.

In the same way, in basis of the report on the integration of migrants, its social security (2012/2131 (INI)) committee on employment and social affairs, the author Paul

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<sup>43</sup>Ibidem, pp. 39

<sup>44</sup> Manuel, José, and Luque Gonzalez, *Op cit*, pp. 15

<sup>45</sup> Merritt, Giles. Friends of Europe. “The refugee crisis: Europe needs more migrants, not fewer.” Available at: <http://www.friendsofeurope.org/future-europe/the-refugee-crisis-europe-needs-more-migrants-not-fewer/>

<sup>46</sup> Ibidem.



DUTĂ affirm that despite all of these problems with immigration, the European citizens understood that the immigration is important to the European economy:

European citizens have understood this and Euro barometer polls show that 70% of them believe that immigrants are important to the European economy. As obvious, however, is the fact that, without migration, strategy generates difficulties and endangers the competitiveness of the EU. The EU must assert in the global competition for the brightest minds. Member States should aim at a qualitative migration and not at a quantitative one. It is already apparent that attracting high qualified labour will be a challenge. The integration of EU citizens and third-country nationals coming from migrant families becomes a social problem of our time<sup>47</sup>.

A interest vision is brought by Andrei Banc, mentioned by Paul, when refer that “everything is repeated in history” just like 2 thousand years ago, at the same time of Barbaric Invasion, today, there are people at the Europe entrance, but not with guns or want to steal, but only wants to live well.<sup>48</sup>

The same EU that sometimes welcome and sometimes refuse migrants is, for the world, the symbolic point of responsibility at the current crisis and not the Member States seen in a individualizes manner.

The criticism to the agreement of EU with Turkey by means of international humanitarian organization is widespread by journals around the world, do not stop to multiply. The main complaints are about the collective expulsion and deportation to unsafe

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<sup>47</sup> The integration of EU citizens and third-country nationals coming from migrant families becomes a social problem of our time. See, Report on the integration of migrants, its effects on the labour market and the external dimension of the coordination of social security (2012/2131(INI)) Committee on employment and social affairs, 3, citing by Duță, Paul. 2013. “The Free Movement of Persons and the Borders of the European Union.” *Research and Science Today* 2(6): 96–108.

<sup>48</sup> Annual growth analysis on the 2013 requires that the effort set national and EU level to focus on five priorities: tracing for fiscal consolidation and favorable economic growth differentiated; restoring normal level of spending in the economy; promoting the growth and competitiveness of the present and the future; combating unemployment and the social consequences of the crisis; the modernization of public administration. See, Report on the first half of the European coordination of economic policies: employment and social issues in 2013 (2012\2257) Committee on employment and Social Affairs. Available at: [www.europarl.europa.eu](http://www.europarl.europa.eu)



countries (as example Turkey). The accused is not a specific country, but the EU, understood in this way consciously or unconsciously, as an own legal personality – that actually is.

Em concreto, el polémico pacto incumple al menos cinco convenciones o tratados sobre derechos humanos, desde la Declaración Universal de los Derechos Humanos hasta la Carta de Derechos Fundamentales de la UE, pasando por la Convención de Ginebra sobre los Refugiados (1951) o la propia Convención Europea de Derechos Humanos, em vigor desde 1953.

Acid critics also in American journal:

Now, however, the refugee crisis unfolding along the borders of the European Union has elicited a chaotic response. There is a clear danger that the union and its member states are losing their way, and are at risk of backsliding on fundamental commitments.

Inside the European continent is possible identify three levels of protection to the human rights: internal, European and international, respectively represented by constitutional courts of each member state by the court of justice of the European union and by European court of human rights.

The protection at international level of the European court of human rights is founded in the European convention on human rights, which was opened for signature in Rome on 4<sup>th</sup> November 1950 and came into force in 1953. All the EU countries are signatories to the convention; however, unfortunately, the EU as supranational institution did not join.

In this way, any violation relating to humanitarian tragedy lived by the refugees –most of them from Syria –shall be denounced to the EU organs and the case will be judge by the EU court.

The EU have a designated area by external borders, people who submit to a legal order pre-determinate, with constitutional nature, even though do not have a constitution in a formal sense have a group of legislative, executive and judicial organs, however, do not have international control of its acts and decisions concerning to the humanitarian violation.



We believe that the non-adherence of EU to the European convention on human rights is a delay to the protection of human rights.

### **3. POLITICAL OBJECTIVES AND RELATIVE STRATEGIES AT THE EUROPEAN AND NATIONAL LEVEL.**

To improve the common European asylum system, the commission proposed in April 6th 2016 the establishment of as European agency for asylum.

One of the main new tasks of the Agency will be to operate the reference key of applications for international protection under the new Dublin system and support a sustainable and fair distribution of applications for international protection. The Agency will also be tasked with ensuring a greater convergence in the assessment of applications for international protection across the Union, strengthening the practical cooperation and information exchange between Member States and promoting Union law and operational standards regarding asylum monitoring compliance with the Common European Asylum System and providing increased operational and technical assistance<sup>49</sup>.

The proposal of creating of European Union agency for asylum is interested from an organizational crisis point of view. However, the EU still aiming only the practical and immediate aspects, not attend for a possible future humanitarian right liability. We propose that within the competence of his agency to create an autonomous agency of inspection and humanitarians' actions. A EU agency, a kind of internal audit, where specialized personnel on the basis not only in reports like the ones mentioned in this article made by nongovernmental human rights organizations, but on the basis of their own reports this would remedy and avoid the breach that it can be noticed constantly in European territory. This agency would get information – from citizens and non-citizens – connected to violations, would investigate and then would proposal to the executive bodies of the EU.

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<sup>49</sup> Asia News Monitor. European Union: European Union: Questions & Answers - Reforming the Common European Asylum System. Bangkok. 2016.



Having a specialized department in vulnerable population applicant's right would be significant – in special women and children. This department would be composed by a multidisciplinary team of doctors, nurses, social workers, translators, psychologists and lawyers experts in women and children rights, able and trained to work in humanitarian crisis respecting the cultural differences related to oriental Syrian culture (most of the applicants are Syrian) bearing in mind mostly of the issues about rape and sexual violation as mentioned already, deserve differential treatment because of the specific situation which are committed.

The team should identify the vulnerable groups, register and give special treatment to the sexual violation issues. Subsequently, it is important to consider a differentiated strategy of these women socialization.

In case of EU – as group and legal entities – to ignore the events here presented shall be subject, from the procedural point of view, humanitarian repairing in the competent body, that in this case would be the court of justice of the EU. once it does not submit yet to the European court of human rights as a group. Yet that its Member States are signatories of the convention, this could lead complaints and individual responsibilities.

However, the non-observance of these violations definitely hurt the EU image as human right defender and hurt also its image of integrated group of countries subject to the largest supranational organization in history.

This organization motto is “unity in diversity”, will know as a Europe that could not manage its diversity, in fact do not respect principles created by itself and cannot perform a desired unit that fail in the integration project.

This image do not echoes only external, but shake its internal pillars when the legend of United Europe starts to disintegrate itself through it scandalous violations that already happened and the ones that can come if keeping going in this way.

## **CONCLUSION**

The project of European integration has been showing signs of erosion since some time ago. In 2004 it passed through a crisis of identity when it rejected the term 'constitution' to define its legal system. The Treaty of Lisbon appeared to calm the situation, which have balanced the interests of who wanted more integration and also those who felt they were fearful in relation to its sovereignty.



Subsequently, the economic crisis that exploded in 2008 and that the European Union failed to overcome itself shook the block in one of its pillars - the common currency. The euro zone has proved not to be able to coordinate as a block and resolve the crisis by a common monetary policy.

After the "spring arabic" in 2011, year after year, Europe sees knocking at your doors thousands of refugees who flee from degrading situations of war. As the crisis has intensified in the year 2015, it is directly connected to the worsening conflicts in Syria.

In retrospect, after World War II in 1950, the European Union was concerned to avoid more conflicts in the interior of their territory, allied with the phenomenon of globalization which could make their economies weak if they had not join together. However, EU was not devised to tackle the problems that are born beyond its borders, although it is predictable in the Schengen Treaty- to offer asylum and immigration-, it is inadequate when there are millions of asylum applications.

The vulnerable groups of people - single women traveling alone or with children, pregnant and lactating women and adolescent girls, unaccompanied children, children who have married early (which can be with their new-born babies), people with special needs and elderly people - need special attention. The situation of women and girls in this crisis is alarming: reports of gender violence and rape are constant, both in the country of origin and when crossing to European soil.

As the European Union cannot manage this crisis, it have closed its borders, leaving millions of people in distress situations and finally have made a scandalous agreement with Turkey to return refugees and immigrants to this country. Ironically, Turkey is criticized by the European Union itself due to have major problems with democratic institutions (for these reasons this country have never managed to enter the block, despite it have done the request some years ago). If Turkey is not a country enabled to enter into the club of civilized countries, democratic and human rights defenders, why is it a good destination for refugees?

The European Union has lost itself in its own standards. Their own principles created as solidarity and union in diversity does not make any sense when EU neither assume its international obligations and nor develops effective mechanisms to ensure safety, dignity and life of millions of human beings who come knocking at EU doors desperate for better conditions of life.



The EU lacks of management of the crisis not only mean to put at risk the Schengen Treaty, but also the whole project of integration.

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