Vilnius University Faculty of Law

Department of Public Law

Amin Panaliyev,

II study year, LL.M International and EU Law programme

Master's Thesis

Refugee law as a protection of human rights in Europe

Pabėgėlių teisė kaip žmogaus teisių apsaugos priemonė Europoje

Supervisor: assoc. assist. prof.dr. Victor Terekhov

Reviewer: lek. dr. Auronė Gedmintaitė

Vilnius

2023

ABSTRACT AND KEY WORDS

This paper studies the legal concept of a refugee and analyzes the development of European Union refugee law within the framework of international refugee law, the reflection of these rules in practice, and violations. This study examines the legal instruments for protecting the rights of refugees using regulations and directives on the European continent. The last analysis focuses on the role of the ECHR in protecting the rights Right to an effective remedy of refugees and asylum seekers.

Keywords: Refugee law, European Union, Asylum, Legal framework, Immigration,

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LIST OF ABBREVIATIONS

CJEU - Court of Justice of the European Union

EU – European Union

ECHR - European Convention on Human Rights

ECtHR - European Court of Human Rights

EU CFR - European Union Charter of Fundamental Rights

IOM - International Organization for Migration

UN - United Nations

UNHCR - United Nations High Commissioner for Refugees

UNRWA - United Nations Relief and Works Agency for Palestine Refugees in the Near East

INTRODUCTION

The problem of refugees has existed throughout the history of mankind, and it is necessary to perceive this problem as a global international problem. Refugee law emerged from the definition and protection of the rights of refugees and the need for a systematic system of countries' refugee policies. The main difficulty is finding a proper definition for the notion of a refugee. Many documents defining the legal status of a refugee have been adopted in order to determine exactly who belongs to the refugee category. At this time, the migration direction was towards Europe, due to the developed high standard of living and the member states of the European Union are the center of protection for people fleeing persecution, asylum seekers and immigrants. Unlike other regions, the EU has been a target for migrants around the world and is now also a target for flows of refugees and asylum seekers.

The topic of refugee law is still relevant in Europe at present, since the European Union is apparently rapidly creating a unified policy in the field of helping refugees and providing them with asylum. Refugee rights in force in the European Union demonstrate a positive tendency, thus deviating from traditional international legal standards for the protection of refugees. Here one can point to the Charter of Fundamental Rights of the European Union, which has become an important political document and makes an important contribution to the improvement of human rights in the field of migration and asylum. And Article 47 of the European Union's Charter of Fundamental Rights demonstrates that the rights of individuals guaranteed by European Union legislation are entitled to an effective remedy in the event of a violation. The defense is an effective right to take legal action.

The increase in the number of refugees thereby increases the number of cases in the courts for violations of the rights of refugees. And these cases are still relevant today; here, the main role is played by the Court of Justice of the European Union. The Court of Justice of the European Union comments on the areas of asylum in the European Union and plays an important role in contributing to the formation of international refugee law.

Structure.

The Master's thesis has 3 parts. The first part of the work explores the history of refugee law and analyzes the universal notion of a refugee, including its definition, features, and international organizations' involvement in defending refugees' rights. The second part examined EU refugee law and policy. This includes post-Maastricht agreements like the Charter of Fundamental Rights and EU directives on refugees and asylum seekers. In the last part of the paper, the role of the European Council in protecting the rights of asylum seekers is looked at. Specifically, the position of the ECtHR on the right to effective application and its cases are looked at.

The aim of the research.

The main purpose of the thesis is to study and provide a clear definition of a refugee and the development of refugee law in the EU, and in light of this information, to study the development and legal norms of refugee law in the European Union and to assess their response in practice within the legal framework.

The objectives.

The objectives of the research are following: 1) conduct a historical review of refugee law and identify problems in the interpretation of the definition of the concept of a refugee; 2) consider and evaluate the role of international and non-international organizations in solving the problems of refugees; 3) to analyze EU legislation on refugee rights; 4) analyze the decisions of the European Court of Human Rights and the Court of Justice of the European Union; 5) to study the role of the European Convention on Human Rights in the protection of the rights of refugees;

In order to define the tasks of the research, the thesis answers following questions: 1) Does the current International Legal Definition of a Refugee need to be amended and should a new universal definition of a refugee be adopted? 2) To resolve the refugee problem in the European Union, what changes have been adopted, and what related cases has the European Court of Justice considered? 3) What is the role of the European Convention on Human Rights in theoretical terms and the European Court of Human Rights in practical terms in protecting the rights of refugees?

Research methods.

Several methods of research apply to the current study: 1) A comparative historical method - which is used to identify the prerequisites for the historical formation and development of refugee law; 2) The doctrinal method - this method explains the essence of the concept of a refugee, as referred to in the 1951 Refugee Convention; it also describes and analyzes the EU refugee law; 3) Method of analysis - the analytical method will help to show the gaps in the EU legislation in relation to refugee issues, and this will help to describe the difficulties of applying the Convention to the problem of refugees.

Originality of the research.

One of the most striking and specific problems facing the EU is the creation of conditions for the effective protection of refugees, and the author of this work, unlike other authors, tries not only to go deep and indicate problems, but also using the method of comparison gives his suggestions on this issue. Although there are additional articles on this topic written by authors such as Guy Goodwin-Gill and Lyudmila Pavlova, this dissertation is one of the most striking examples in its field precisely by finding gaps and characterizing the definition of the concept of a refugee, showing a detailed role in distinguishing the EU Charter from other conventions in the field of refugee protection, and giving an interpretation of the provision of the right to effective protection. These gaps are filled in this work.

The most important sources.

For the sake of achieving the goals set forth, the author uses sources of precedent law, court cases, and normative legal acts of international and regional character. These include the following documents: the Charter of Fundamental Rights of the European Union; European Convention on Human Rights; the Geneva Conventions and their Additional Protocols; decisions of the European Court of Justice and European Court of Human Rights. Moreover, to deeply explore the topic and come to certain conclusions, the author considers the materials of the following main authors: Guy Goodwin-Gill, Helene Lambert, Ludmila Pavlova, Rafiqul Islam, Vladislav Denisov, Tevfik Odman, and Thomas Gammeltoft-Hansen.

PART I. The historical and theoretical background for Refugee law

1.1. Chapter I. Historical review of Refugee law

World history shows that the refugee problem has its roots in ancient times. Issues related to refugees and asylum began to be considered an international problem only after the creation of the League of Nations at the end of the First World War and with the emergence and formation of universal standards and protection mechanisms, and before that, it was considered as not a universal, but rather a personal problem.

Refugee law is an institution of human rights law and an independent branch of international law. With the development of international relations, the formation of the institution of refugee rights began (Pavlova,L., 2006, p.5).

The primary source of the refugee movement and international refugee law can be traced back to the beginning of the two world wars.

However, recent developments outside the European Region have impacted the development of refugee law. These events took place in India and Rwanda. It is clear how these refugee movements played an important role in developing international refugee law and in searching for more comprehensive and effective ways to deal with and solve the problem.

During this period, mass movements took place in many regions of the world, and she influenced the development of refugee law. The history of the development of refugee law can be divided into two periods. The first period can be attributed to the beginning of the First World War to the Second World War. And the second stage is the period after the Second World War, and at this stage, the process begins with the efforts of states to find a solution to the problem of refugees, and it continues to this day.

The postwar period's evolution.

One of the first and foremost bodies was the League of the Nations, created in 1919 to ensure peace and security after the First World War, and it took the first steps in solving the problem of refugees in Europe. By the decision of the League of Nations, the Office of the High Commissioner for Refugees was created, and F. Nansen was appointed the first High Commissioner. The League of Nations established F. Nansen to assist Russian refugees. In 1922, at a conference in Geneva, an agreement was adopted on issuing identity cards to Russian refugees for issuing international travel documents (Rafiqul Islam, 2013,p.15).

Several agreements were adopted that could contribute to solving the problems of refugees, and one of these was the 1933 Convention relating to the international status of refugees. This Convention combined previous agreements and included new provisions such as employment, personal status, social law, and education (Pavlova,L., 2006, p. 8).

In the 1930s, in Germany, the Nazis refused to grant German citizenship to Jews, and the repression of Jews began. For this reason, the Convention on the Status of Refugees Arriving from Germany was adopted in 1938 (Rafiqul Islam,2013, p. 16).

Then a year later, an additional protocol was adopted to it, in which the provisions of the Convention also applied to refugees from Austria.

By pointing out the above agreements, I want to show that the institutionalized international legal regime for the protection of refugees arose precisely through multilateral agreements. These agreements became the basis of the current refugee law, which included the formulation of several provisions enshrined in subsequent contracts, and the League of Nations played an essential role in this.

The bitter experience of the Second World War, and even though hostilities ceased, the refugee problem persisted and became even more complex.

After the hatred of the Second World War ended, the number of refugees reached astonishing results. There were approximately eleven million displaced persons of non-German origin in the occupied zones of Italy, Austria, and Germany, and more than 4 million in the occupied territories that were under the control of the Soviet Union. (James L. Carlin, 1982,)

In 1943, the United Nations Relief and Rehabilitation Administration was established to manage refugee camps during World War II. The UN administration carried out a large-scale repatriation program and was engaged in the return of prisoners of war. It can admit that there were positive results; for example, some 8 million refugees have been returned to their countries of origin. But, despite significant progress, the problems of a large number of refugees have not yet been resolved. And it soon became apparent that such temporary measures, which took only occasionally, could not solve this problem.

The United Nations has played a significant role in creating the modern international refugee protection system. In the first revolutions of the General Assembly of the United Nations, the ground was laid for the further structure of the mechanism for the protection of the rights of refugees. In 1947, the International Refugee Organization was established, the first specialized agency of the United Nations. The International Refugee Organization was the first international institution to deal comprehensively with all aspects of the refugee problem: status determination, resettlement, legal and political protection, repatriation (Sarashevskiy,2000,p.44-50). The International Refugee Organization was the successor to the previously existing United Nations Administration since they were both temporary, and finally, in 1952, the IRO also suspended its activities.

The International Refugee Organization achieved positive results in a short time. However, due to political changes in the international arena during the Cold War, there was a need for a broader body within the United Nations.

Some states were negatively inclined towards the further involvement of the United Nations in solving the problem of refugees, and the main subject of disagreement was the issue of expanding and unifying the competence of the new organization in the field of refugee protection. There were tense relations between the East-West bloc, significantly limiting cooperation in resolving the refugee problem, and a common consensus could not be reached (Loescher, 1993, p.55).The leadership of the Soviet Union did not participate in the efforts to create a new organization within the framework of the United Nations, as it would be an unreliable organization in the hands of the Western powers (Loescher, 1993, p.55).

Consequently, after the heated debate at the UN, the Office of the UN High Commissioner for Refugees was established, and it was established as a subsidiary body of the General Assembly. The management mandate of UNHCR was supposed to be valid for three years, but it was extended by resolutions of the General Assembly. This body is the main body that will continue its activities until the issues and problems of refugees are resolved.

In 1951, the Convention on the Legal Status of Refugees was adopted in Geneva, which was the most universal and important international legal instrument guaranteeing protection to refugees (Chichekli, 2009, p.236,).

With the adoption of the Geneva Convention in 1951, international law began to establish standards for refugee protection. This was a watershed moment because it was at this time that the first structures to meet the needs of refugees were established. Therefore, the Geneva Convention is universal, as well as the first international convention that regulates the rights of refugees and the obligations of the international community towards refugees and generally enshrines the fundamental principles of protection (Chelikel, 2013, p.20). In general, this document consists of 46 articles, regulates the rights granted to refugees in such areas as social security, education, employment, housing and freedom of movement. Unlike the UNHCR, in the UN Geneva Convention, in addition to the four grounds of persecution, there is another main ground of persecution, and that is belonging to certain social groups. This convention provided the first universal definition of the concept of a refugee, which was met with a number of criticisms, which I will discuss in detail in the following sub-part.

I would also like to touch upon the work carried out on the American and African continents. In 1969, within the framework of the Organization of African Unity, a convention was adopted regulating specific aspects of the problems of refugees in Africa. The signing of this document was preceded by a lot of preparatory work. And in this convention, an important fact is that only a humanitarian approach is recognized in solving the problem of refugees, and the granting of asylum is a peaceful and humanitarian act. In the 1980s, there were civil conflicts in Central America that led to a mass exodus of people. As a result of economic and social problems, the Cartagena Declaration on Refugees was adopted in 1984, which established the legal basis for the treatment of Central American refugees.

European states, after the experience gained during the Second World War, began to analyze their refugee legislation, and along with this, the European Union expressed its concern about the problem of refugees at every opportunity (Satvinder S. Juss, 2005, p.750). There was a need to change the existing system. It can be said that the creation of the European Economic Community and the signing of the Geneva Convention on the Legal Status of Refugees coincided in the fifties. However, until the mid-eighties, it was impossible to speak of a standard European asylum policy.

Migration movements were towards Europe, so the first step of the European Community in developing a standard policy was to prevent the penetration of refugees to the borders of the union. The plan was for asylum seekers to undergo an assessment process, that is, to establish a visa policy with more procedures.

It is evident that the European Union has tightened its general policy regarding the reception of refugees. One of the ways the European Union solved the problem of preventing refugee flows was to intervene and carry out legal initiatives in the regions to solve the problem of refugees and asylum seekers, but these efforts remained of little effect.

In 1990, the EU member states adopted the Dublin Convention, which determines the state responsible for examining asylum applications filed in one of the member states of the European community (Dublin Convention, 1990). In terms of implementation, perhaps the most important article of the Dublin Convention is that the asylum seeker's country of entry into the EU is responsible for examining that asylum application (Desmond, p.34, 2005). This convention was important because it formed the EU's common refugee policy.

Within the framework of the EU, such important agreements as the Maastricht, Amsterdam, and Lisbon treaties were adopted, as well as a voluminous package of regulations on refugees and asylum seekers. The above documents will be given in detail in the second part of the work.

1.2. Chapter II. Refugee Definition in International context

The definition of the concept of "refugee" is mainly closely related to the normative legal sources of international law governing the legal status of refugees, primarily contained in international treaties. Various options for defining the term "refugee" in international documents existed before the creation of the United Nations, primarily in treaties and agreements concluded under the auspices of the League of Nations. Nevertheless, in these agreements, the concept of a refugee had a simple criteria system, and the reasons for which the person had to leave the country of origin were not indicated. A group or categorical approach was used, in which appropriate nationality and lack of protection from the government of the state of origin were the main conditions for recognizing a person as a refugee (Pavlova,L., 2006, p.25).

For the first time, the concept of a refugee was formulated in 1926, in which a refugee was defined as "any person of Russian or Armenian origin who does not have the protection of his government and has not acquired another citizenship" (Arrangement Concerning the Issue of Identity Certificates to Russian and Armenian Refugees, 1926).

As a result of the efforts of the League of Nations, in the 30s of the XX century, such important documents were adopted as the Convention Relating to the Status of Refugees of 1933, the Agreement of 1936, and the Convention on the Status of Germans from Germany and Austria adopted in 1938. In the Convention of 1938 on the Status of Refugees, refugees arriving from Germany were considered to be "a person with German citizenship, not possessing another citizenship, and who does not use the protection of the German government." The concept of refugees given in the agreements adopted during the League of Nations had a limited scope and suffered from incompleteness, which did not indicate the reasons that prompted a person to leave their country. I would like to highlight the important fact that the concept of "refugee" was developed not only at the level of international bodies but also that a special role in the

development of the definition of the concept belonged to the Institute of International Law of a non-governmental organization, which adopted a resolution on the legal status of stateless persons and refugees in the 1936 year. In this resolution, a refugee is an individual who, due to sudden political events in the territory of the state of his nationality, left this territory, did not acquire another citizenship, and does not enjoy the diplomatic protection of another state (Grahl-Madsen A., 1966, P. 74).

Analyzing the agreements adopted under the auspices of the League of Nations, one must give due credit that their contribution to the formation and development of the international legal definition of a refugee is excellent, and they became the basis for the current definitions.

One of the main international bodies for the protection of the rights of refugees was the Office of the United Nations High Commissioner, established in 1950. To determine its competence, the Charter of the Office of the United Nations High Commissioner for Refugees combined elements of the concept of refugees, in which the provisions of previous documents were reproduced. The competence of the UN High Commissioner for Refugees included international protection under the auspices of the UN and only for those refugees who fell under the definition given in the Charter. According to the Charter, refugees are understood to be those persons "who, as a result of events occurring before January 1, 1951, and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, or political opinion, are outside the country of their nationality and cannot enjoy the protection of the government of that country, or are unwilling to enjoy such protection, either owing to such fear or for reasons other than personal convenience; or, having no nationality and being outside the country of their former habitual residence, are unable or unwilling to return to it owing to such fear or for reasons other than personal convenience (Statute of the Office of the United Nations High Commissioner for Refugees, 1950,Chapter II).

And here everything is clearly evident in the passage on evolution in the interpretation of the concept of a refugee. The concept of a refugee, formulated in the UNHCR Charter, is universal in scope, and more importantly, it does not include any geographical or temporal restrictions. (Volox,V. 2016,p.137)

However, according to Goodwin-Gill, the definition of “refugee” given in the UNHCR Statute suffers from several shortcomings and, in particular, involves an individualistic assessment of the concept of a refugee, taking into account subjective and objective aspects in each specific case (Klinova,2000, p.17).

In 1951, the Convention relating to the Status of Refugees was adopted, which states that the term "refugee" should apply to persons recognized as refugees by previously adopted international agreements and to any person who satisfies the provisions of Section 2. Art. 1 of the Convention states that a refugee is any person who "as a result of events occurring before 1 January 1951 and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable to avail himself of the protection of that country or is unwilling to help himself of such protection owing to such fear; or, having no particular nationality and being outside the land of his former habitual residence as a result of such events, is unable or unwilling to return to it owing to such fear (Convention Relating to the Status of Refugees,1951 Article 1).

However, the definition of a refugee in the 1951 Convention has two limitations: the first is a temporal limitation, meaning that the right to be considered a refugee under the Convention does not apply to persons who have come to be regarded as refugees as a result of events that occurred after January 1, 1951, and as a geographical restriction, these events could mean either "events occurring in Europe before January 1, 1951" or "events occurring in Europe or elsewhere before January 1, 1951" (Volox,V. 2016,p.138).

These two restrictions made it difficult to resolve refugee problems. And to solve these problems, a protocol was adopted in 1967 that removed the provision of the 1951 convention, which made the convention a genuinely universal agreement.

The simultaneous existence of three universal agreements that define a refugee - the UNHCR Covenant, the 1951 Convention, and the 1967 Protocol - creates another legal problem. Its essence lies in the fact that currently, there are two categories of refugees (Volox,V.,2016,p.139).The first category includes mandated refugees, and UNHCR treats them as refugees based on a statutory provision, and they can receive assistance directly from the Office. And the second category includes conventional refugees. These persons are designated as refugees by a state of asylum that is a party to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees. Unlike mandate refugees, this category of refugees enjoys the rights and benefits provided by the state of asylum.

When it comes to the differences in the definition of the concept of "refugee" given in the 1951 Convention and the UNHCR Statute, then they are different; the definition of the 1951 Convention, in particular, concerns not only race, religion, citizenship, and political opinion but also belonging to a particular social group. Although if we indicate the last criterion, G.S. Goodwin-Gill believes, it does not have much practical significance (Goodwin Gill,p.34,1997).

It is necessary to give due credit to regional international organizations that actively participated in the development and expansion of the international legal interpretation of the concept of a refugee. One of them is the Organization of African Unity of 1969, which adopted a convention that reproduced the definition of refugees given in the 1951 Geneva Convention and also expanded it to include people who were forced to flee their country (Odman,1995,p.50). In this convention, the term "refugee" is applied to any person who, owing to "external aggression, occupation, foreign domination, or events disturbing public order in any part of the country or the whole country of his origin or nationality, forced to leave their usual place of residence and seek refuge elsewhere outside the country its origin" (Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969, art.1).

After the Organization of African Unity, the Organization of American States also played an important role by adopting the Cartagena Declaration in 1984. The Cartagena Declaration, adopting the definition of a refugee from the Geneva Convention and Protocol of 1967, defines a refugee as a response to the needs of the continent. It has expanded to include refugees, "people who have fled their country because their lives, safety, or freedom are threatened by generalized violence, foreign oppression, internal conflicts, serious violations of human rights, or other situations that seriously disrupt public order" (Odman, 1995, p. 53).

Due to differences in the definition and practice of using the concept of "refugee" in national legislation, some countries easily and often grant refugee status to asylum seekers from the same country of origin who seek asylum in different EU member states on the same topics. Same reasons, other countries refuse and rarely grant refugee status. As a result, asylum seekers also turn to countries where it is easier to obtain refugee status. To address such issues, the Council of Ministers of the EU adopted in 1996 a "Common position on the harmonized application of the refugee definition in Article 1 of the 1951 Geneva Convention.

So, in order for a person to be recognized as a refugee based on international law, he must meet the following conditions:

1) be outside their country of origin;

2) have a well-founded fear of being persecuted;

3) these fears must be based on one of the five signs - race, religion, citizenship, belonging to any particular social group, political opinions;

4) he is unable or unwilling to avail himself of the protection of his country of origin or to return to that country for fear of persecution (Volox,V. 2016, p.140).

At this stage, international legislation itself needs to be adjusted, and of course, first, you need to start adjusting and improving the definition of the concept of a refugee. In this regard, we can see that African and Latin American countries are ahead of the existing international legal documents (Denisov, 2003, p.167). And one of the existing gaps in the 1951 Convention relating to the Status of Refugees' definition of a refugee is that it is very narrowly described and does not allow registration as refugees of persons who have become victims of war, as well as people fleeing human rights violations, aggression, or occupation.

Having looked at the universal agreements that define the concepts of a refugee, I want to draw my conclusions:

- that all universal agreements of an international legal nature contain similar definitions of the concept of "refugee."

- between the definition of the term "refugee," there is no main element, and this is a legal relationship; therefore, several categories of refugees have appeared, such as mandated and conventional.

There is no new definition of the refugee concept, which should indicate and consider the trends of migration flows. While new forms of forced migration appear, this deprives people of international protection on a legal basis. One crucial factor is that they are deprived of assistance from the state and the entire international community.

One important fact is that the 1951 Convention Relating to the Status of Refugees does not apply to Palestinian refugees, as they are excluded from the scope of this convention and fall within the competence of UNRWA. I am inclined to Denisov's definition, in which he believes that an additional protocol to the 1951 Convention relating to the Status of Refugees should be adopted and a new universal definition of the concept of a refugee should be formulated.

A refugee is a person who is outside his or her country of nationality owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group, or political opinion, and who is unable or unwilling to avail himself of the protection of that country or to return to it. due to fear of becoming a victim of persecution or external aggression (occupation, ethnic cleansing, mass unrest on the territory of the country of their nationality), as well as the danger of taking measures against him that exert unbearable psychological pressure; or, having no definite nationality and being outside his country of origin as a result of such events, is unable or unwilling to return to it due to such reasons (Denisov,2003,p.171).

I believe that a universal definition of refugees should be given, not in the form of an additional protocol to the 1951 Convention on the Legal Status of Refugees as an amendment or addition, but in the form of an independent international legal instrument that will be binding on all signatory states to this document. Since many states implement the norms of international law on the status of refugees in their legislation, thereby adopting such an international legal document, we can achieve broad participation of the state in this direction, and this will positively affect the improvement of the refugee assistance mechanism as well as international law itself.

Chapter III. 1.3. The role of International organization and NGOs

One of the first organizations that played a significant role in implementing and developing refugee law was the League of Nations. The first high commissioner was F. Nansen, who is considered the father of the founder of the international refugee protection system (Rafiqul Islam, 2013, p.32). During his work, several works were organized to provide humanitarian assistance, as well as their repatriation to various countries. Even though the League of Nations did not last long, it established the basis for a system of international refugee protection. After the Second World War, organizations began to be created that should resolve the issues of refugees and others that protect not only the rights of refugees but also human rights in general.

The structure of international refugee protection includes bodies established under the auspices of the United Nations specifically to address the problems of refugees. These organizations include the Office of the United Nations High Commissioner for Refugees and the United Nations Relief and Works Agency for Palestine Refugees in the Near East. And there are also general international human rights monitoring bodies that operate based on international human rights agreements. Some of these groups are the Commission on Human Rights and the Office of the High Commissioner for Human Rights at the United Nations.

At that time, there were great disagreements about the involvement of the United Nations in resolving refugee issues. Therefore, there were discussions about creating a new body, and finally, after the adoption of a resolution by the UN General Assembly in 1950, the Office of the United Nations High Commissioner for Refugees was created. The functions of the Office of the United Nations High Commissioner for Refugees include the leadership of the international

actions of refugees, the provision of international protection for refugees, as well as the solution of their problems through voluntary repatriation (Statute of the Office of the United Nations High Commissioner for Refugees, 1950, Paragraphs 8(c) and (b), 9 and 10 of the). In terms of its mandate, UNHCR protects any person who, "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, or political opinion," is outside their country of nationality and is unable or unwilling to avail themselves of the protection of the government of that country, to enjoy such protection, either out of such fear or for reasons other than personal convenience. Further on, this mandate introduced additional criteria and expanded the results of the active efforts of the General Assembly and the Economic and Social Council due to the changing refugee flows (Statute of the Office of the United Nations High Commissioner for Refugees, 1950, chapter II).

The Office of the United Nations High Commissioner for Refugees, immediately after its creation and to this day, continues to occupy a central place in solving the problems of refugees. There are historical examples of the UNHCR, such as the war in Algeria, the consequences of which led to the displacement of 1.2 million people, and after the war ended in 1962, it ensured the return of 250,000 refugees to their homeland (Demirtas, 2019, p.12). Even when the political war in Bangladesh in 1971 led to a large flow of refugees a year after Bangladesh gained independence, UNHCR played an important role in the return of refugees to their homeland. And from this, it is clear that the UNHCR has carried out important research on refugees and provided them with international protection.

After the Arab-Israeli war of 1948, by virtue of resolution 302(IV), the UN General Assembly in 1949 created as a subsidiary body the United Nations Agency for Relief and Works in the Near East for Palestine Refugees (Ivanov, 1998, p.152). Due to the deterioration of relations between Palestine and Israel and as a result of hostilities, more than one hundred thousand Arabs became refugees and took refuge in neighboring Arab states. The responsibility of UNRWA includes creating favorable conditions in the economic, social, and humanitarian fields with international and governmental organizations, as well as with the governments of the states in which there are camps created for Palestinian refugees. UNRWA's mandate extends to countries such as Lebanon, Jordan, and Syria. UNRWA's activities include programs such as education, emergency relief, social services, infrastructure and camp improvement, health, and employment. One of the important activities of UNRWA has been an educational program since 1950; the organization manages primary and secondary schools in which refugee children are educated free of charge (Pavlova, 2006, p.90). UNRWA also funds an employment program that creates jobs for refugees. In the health program, the organization provides medical services for refugees together with the World Health Organization.

There are serious doubts about the effectiveness of this organization. One important fact is that Palestine refugees were not included in the competence of the Office of the United Nations High Commissioner for Refugees, nor were they subject to the 1951 Refugee Convention (Ivanov, 1998, p.153). And therefore the main problem of the Palestinian refugees is not granting citizenship in the states in whose territory they are located. Israel does not grant citizenship to Palestinians, and neither is the Arab state interested in granting citizenship to Palestinian refugees. Several sources believe that employees are associated with terrorist organizations or are even involved in terrorist activities. But the main problem is that the international community

itself is not looking for ways to solve this problem. With this, I want to show the acuteness of the problem of Palestinian refugees; this is a very clear example of the ineffectiveness and instability of the international system of refugee protection itself.

The International Organization for Migration was created in 1951 to manage the largest flows of refugees and migrants after the Second World War (Bradley,2017,p.97). To date, more than 150 states are members of this organization. If we talk about the purpose and functions, then the international organization for migration organizes the distribution of migrants, refugees, and displaced persons who were forced to leave their countries (Ivanov,1998,p.154). Also, the International Organization for Migration, together with international organizations and states, is involved in the implementation of programs. Such programs include technical cooperation, that is, advising international partners and states to solve problems in the field of migration. Migration for Development Program: In this program, mainly international organizations for migration concentrate on training and providing skilled labor for partner countries. And one of the most important programs is migration for humanitarian purposes, assisting refugees and people affected by conflicts and their consequences. If we talk about the effectiveness of this organization and migration management in general, then there are many opinions. According to Martin, the International Organization for Migration is well positioned to carry out several actions, if necessary, including the adoption of international migration regimes (Martin, Susan.,2014,p.124). But on the other hand, Mountz believes that the international organization for migration mainly works for the benefit of nation-states at the expense of people (Ashutosh and Mountz, 2011, p.21). My opinion here is more inclined to that of Mountz; I believe that, of course, the work done by the international organization for migration cannot be denied, but it is clear that the organization needs to form a clearer protective response to forced migration.

Speaking about governmental organizations, one should not forget the work done by non-governmental organizations, both national and international, which occupy an important place in the international refugee protection system. NGOs can establish direct contact with refugees in such areas as the provision of legal assistance, the protection of their rights through the use of the media, and the exchange of information. Many non-governmental organizations can be distinguished, but the so-called "Doctors Without Borders" organization plays a special role; it is a non-profit medical organization that provides qualified medical care not only to refugees but also to all who have suffered from natural disasters and military conflicts. There is also Amnesty International, which publishes an annual report on refugees by country of origin. We can also single out the International Committee of the Red Cross, which is in full contact and at the most dangerous point of the conflict. Since I mentioned the areas in which these organizations work, they play an important humanitarian role in the lives of refugees, and if the question of the effectiveness of non-governmental organizations arises, we conclude that being in hot spots and having direct contact with affected refugees is invaluable. Speaking about the powers of non-governmental organizations, I meant that they do not have big obligations and are not included in the functions, and they cannot go beyond the set limits, so I think that the work of non-governmental organizations should be valued.

After reviewing the international refugee protection system, we understand that it is divided into different systems that are not linked by any international legal documents. Currently, the refugee protection system can be divided into the following categories: - in the UN system of refugee

protection, which is the most effective and occupies the first link; - in international intergovernmental organizations (IOM); - in regional systems (CIS, OAS, etc.); - in non-governmental organizations (Ivanov, 1998, p.156-157).

Concluding the system of international refugee protection, it is obvious that many of the bodies are effective, but they cannot cover the legal and political protection for all persons who are considered refugees and who need international protection. For this reason, it is necessary to unite those divided into several systems into a single system based on which universal international treaties will stand. To create a unified refugee system, states must be the initiators of such a decision since they are considered the main subjects of international agreements. And for the effective coordination and functioning of the international system for the protection of refugees, states must together create an international body and transfer their powers to it, which will take the main place, and, as a result, this body will become a single body in the international system of refugee protection. I agree with Klinova and Goodwin-Gill that it will be impossible to solve this problem in another way and that this is the only one.

PART II. Legal framework and policy of EU bodies

2.1. Chapter I. European Union Charter of Fundamental Rights

The European Union (EU) was established by multilateral International Law treaties; however, it differs from classical international law, as the subjects it regulates are generally related to national law. The EU legal system consists of the founding treaties and the arrangements made by the EU organs. EU law is independent of the domestic law of the member states and its purpose is to ensure that Union Law is applied directly and effectively in the national legal systems of the member states. The EU's tasks include establishing a common market and economic and monetary union, ensuring the harmonious, balanced, and sustainable development of economic activities within the Union, ensuring a high level of employment and social protection, equality between men and women, sustainable and non-inflationary growth, and ensuring a high level of social protection. Its mission is to carry out activities such as the integration of competitive and economic performances, the high level of environmental protection and quality, the improvement of the standard and quality of life, the improvement of economic and social integration, and the strengthening of solidarity among member states. The fact that the EU aims at a structure with an economic and technical character shows that it is late in the protection of a holistic fundamental right in human rights. With the absence of fundamental rights and freedoms in the founding treaties of the EU and the increase in the powers of the EU organs, it has come to the fore that the fundamental rights of individuals can be violated. The Draft Charter of Fundamental Rights was discussed and accepted at the Biarritz meeting of the Council of Europe on 13-14 October 2000, and was proclaimed with a ceremony by the European Parliament, the Council and the Commission at the Nice summit on 7 December 2000. It has become an important political document. The main purpose of the Charter is to limit the powers of EU organs in favour of fundamental rights. It is the only text that collects the civil, constitutional, economic and social rights of European citizens and European residents. Union citizenship was established in the preamble of the Charter, and it was stated that only citizens of the member states of the union could benefit from the rights regulated. The most important feature of the Charter is that it brings together the principles and principles contained in national and international human rights documents and presents them to its citizens and ensures that the document is accepted as the fundamental rights and freedoms section of the EU Constitution. It has been stated that it will be possible for the Charter of Fundamental Rights to fully meet the expectations, provided that the Charter is legally binding. As a matter of fact, the later inclusion of the Charter of Fundamental Rights in the EU Constitution has made the Charter binding on EU member states. With the entry into force of the Lisbon Treaty on 1 December 2009, the Charter of Fundamental Rights became legally binding. Article of the EU Treaty. The provision 6/1 states that the Union recognizes the principles, freedoms and rights set forth in the EU Charter of Fundamental Rights of 7 December 2000, adopted in Strasbourg on 12 December 2007, which have the same legal value as the Treaties. The bindingness gained by the Charter of Fundamental Rights becoming a part of the Treaty makes an important contribution to the human rights dimension in the field of migration and asylum.

Consisting of a preamble and seven chapters, the Charter contains 54 articles. The first part is "human dignity" (art. 1-5), the second part is "freedoms" (art. 6-19), the third part is "equality" (art. 20-26), the fourth part is "solidarity" (art. 27- 38), the fifth section is titled "citizenship

rights" (art. 39-46), the sixth section is "judicial rights" (art. 47-50), and finally the seventh section is "general provisions" (art. 51-54).

Article 47 of the Charter, which regulates the right to apply to an effective legal remedy and to a fair trial, is exactly taken from article 13 of the ECHR, which regulates the right to an effective application. However, ECHR art. 13, the protection afforded by the EU Charter is more extensive as it only guarantees an effective right of recourse to court. However, the fact that the right of effective application in EU Law is only accepted before the judiciary is an indication that it is handled more seriously and in depth. Because it is important that there is an impartial authority that will control the disputes of individuals with the administration and make an objective decision.

The Court of Justice of the European Union (ECJ) referred to the right of effective application in the Johnston case. In the case concerning discrimination against women, the Court ruled that all persons have an effective right of appeal to a competent court against treatment they consider to be contrary to the principle of equality between men and women in the directives, and that member states must provide effective remedies. The inclusion of this provision in the Charter is not intended to change the judicial system established by the treaties. Article 47 applies to the organs of the Union and of the Member States in the application of EU Law and in respect of all the rights guaranteed by Union Law.

According to article 47/1 of the EU Charter of Fundamental Rights; "Everyone whose rights and freedoms guaranteed by the Union law have been violated has the right to benefit from an effective legal remedy by applying to the court in accordance with the conditions set forth in this article." It is applied for the rights and freedoms guaranteed by the European Union Law. The protection that is afforded by the aforementioned article is restricted to merely a valid right of application before the court. The purpose of the right of effective application is to ensure the effective protection of fundamental rights regulated and guaranteed by EU Law.

The Charter of Fundamental Rights is a document that strengthens the legitimacy of the European Union, makes fundamental rights visible to the citizens of the Union and raises the level of fundamental rights protection. The application area of the right to an effective application and fair trial in the European Union is wider than other international conventions that guarantee the same rights.

The Charter of Fundamental Rights differs from the ECHR in that it regulates the right to asylum. According to Article 18 of the Charter, "The right to asylum should be guaranteed in accordance with the Treaty establishing the European Community, taking into account the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 on the status of asylum seekers." With this article, the right of asylum has been clearly recognized.

According to Article 7 of the EU Treaty, the EU Council of Ministers assesses an infringement of basic rights and freedoms. The form and conditions for this determination are specified in Article 6. As a result, the risk of any member state significantly violating the shared ideals of liberty, democracy, human rights and fundamental freedoms, and the rule of law should be detected. In terms of procedure, the EU Council of Ministers decision on this breach is an administrative decision that is open to judicial challenge by the European Court of Justice. The

EU Court of Justice believes that providing legal aid to refugees and asylum seekers is an obligation under Article 47. The EU Court of Justice is of the opinion that it is a requirement within the meaning of Article 47 that refugees and asylum seekers benefit from legal aid and interpreting services.

According to Article 3 of the ECHR; "No one shall be subjected to torture or to inhuman or degrading treatment or punishment" (ECHR article 3). Anyone living in the Contracting States can apply to the ECtHR for alleged violations of the ECHR (Whitney,K.,1997, p. 376). Implementation of the Convention can be requested by applying to the ECtHR (Lambert,H., 1999, p.516). Violation of Article 3 of the Convention is usually alleged in violation of the principle of non-refoulement. For this reason, it is must to explain the principle of non-refoulement.

The principle of non-refoulement plays an important role in protecting the rights of asylum seekers. The principle of "non-refoulement" means that a person whose fundamental rights and freedoms are in danger due to his race, religion, nationality, social group or political opinion is not to be sent back to the country of origin (Lambert,H., 2007, p. 48). The source of this principle is customary international law and international human rights law (Goodwin-Gill, 1985, p.6). The principle of non-refoulement in international law has been recognized for everyone, and the asylum seeker should not be sent back until it has been proven that the danger in his country has disappeared. The purpose of this principle is to protect asylum seekers from torture, inhuman and degrading treatment.

This principle is also regulated in regional conventions in America, Africa and Europe (Hailbronner,K., 1985, p.12). Many countries are under the obligation to comply with the principle of non-refoulement due to the international agreements they have signed (Martin, 1982, p.651). This principle is included in Article 33 of the 1951 Geneva Convention. According to the said article; "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 particular social group or political opinion" (Geneva Convention, 1951, art.33).

Article 33 of the 1951 Geneva Convention prohibits two situations: expel and return. With the prohibition of refoulement, it is prohibited to send the person from the country that is a party to the contract. With the prohibition of extradition, it is prohibited to send a person to a country where their freedom is in danger (Gammeltoft-Hansen,T., 2011, p.57). The principle of non-refoulement prohibits sending a person not only to the country from which they came, but also to a third country where they may be in danger. However, the person can be sent to another country that is considered a safe third country. In this case, it is necessary to be careful that the person is not sent to his own country indirectly. The principle of non-refoulement is not limited to the territorial borders of the requested state. This prohibition also covers the areas under the sovereignty of the country such as international airports, sea ports and territorial seas. Otherwise, the fact that states' obligations are limited to their territorial areas will render the application of the 1951 Geneva Convention ineffective.

Speaking about the provisions of the Charter of Fundamental Rights of the European Union in the field of refugee rights, it must be given credit that it takes its roots from the 1951 Geneva

Convention and the 1967 Protocol, which are key documents. But the convention itself does not give the right to asylum per se but gives procedural rights to those who are entitled to asylum (Toggenburg,G., 2021). Namely, Article 18 of the Charter of the European Union enshrines the right to asylum, the legal nature and applicability of which apply to all persons subject to Union law, and this distinguishes it even from the very text of the European Convention on Human Rights, which does not establish the right to asylum as such (Gil-Bazo,M., 2008, p.37). And here is the uniqueness of the provisions of the Charter of the European Union.

2.2. European Union Treaties and Directives

It is regulated that the directives, which are among the secondary sources of the European Union law, can be issued by the institutions for the use of the powers of the union, according to Article 288 of the Treaty on European Union. The Directives bind each Member State addressed in terms of the results to be achieved; however, the choice of form and method is left to the national authorities. In EU law, directives are immediately applicable and come into force for member states from the moment of notification. The transposition of directives in this sense is called transposition proceedings, and with this process, directives bind individuals like national laws. In the areas coordinated among the member states, it is seen that the EU generally establishes directives. The Directive is one of the legislative acts considered for EU countries. It reflects the norms for improving the internal legislation of European Union countries. However, directives define general indications on any issue. However, in order to achieve the goals envisaged in the directive, the states should take appropriate measures. In practice, the specific time when the directives will be implemented is known in advance. Normally, the time frame is two years after the cover of the official magazine. This case once again emphasizes how important the directive is. Sometimes, in practice, documents related to criminal law require a longer period of time.

A) Maastrich Treaty

Why was the Maastricht Treaty, which went into force in November 1993, considered as the turning point in developing a common immigration and asylum policy? First of all, this treaty integrated the migration policies that were tried to be formed during the Community period into the single institutional structure of the EU. The issues covering the fields of immigration and asylum were set out in Article K of Title VI named “Provisions on Cooperation in the Fields of Justice and Home Affairs”. According to the Article K, asylum policy, rules on external border controls, immigration policy, and rules for third-country nationals within the EU, combating drug addiction and international fraud, judicial cooperation in civil and criminal matters, customs cooperation, and police cooperation to combat terrorism, drug trafficking and other serious international crime were listed as the “matters of common interest” (Maastricht Treaty,1992, Title VI). Although the subjects concerning the fields of immigration and asylum were in the third pillar, only one subject in the field of asylum was integrated into the communitarised First Pillar by Art. 100(c) TEC which says “The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, would determine the third countries whose nationals must be in possession of a visa when crossing the external borders of the

Member States. The arrangement of this issue in the First Pillar shows that the member-states have reached an agreement on the issue yet the fact that consultation procedure would be applied instead of co-decision procedure was remarkable. In accordance with the consultation procedure, the countries whose nationals were supposed to get visa would be determined by the unanimous decision of the member-states due to the fact that the Council of Ministers was obliged only to consult the European Parliament (EP) meaning that it did not have to act in accordance with the opinion of the EP. This arrangement concerning the issue of visa showed us how important and sensitive it was for the member-states.

Another reason of considering the Maastricht Treaty as the turning point in developing a common immigration and asylum policy is that it laid the foundations of the motivating factors which showed the necessity to have a common asylum system and the mechanisms that would be formed to achieve this objective. So, on the one hand, a European common market in which the free movement of persons, goods, capital and services was assured in the EU and, on the other, the European Union citizenship was formed with the Article 17 of the First Pillar. According to the Article 17, the nationals of the member-states would be EU citizens. Hence the nationals of a member-state were granted the right to free movement and settlement in the territory of another member-state.

The EU citizenship brought with it many criticisms. The most important one was that the EU citizenship did not include the persons who were residing on the EU territories but were not nationals of any member-state. If we think about the fact that the number of third country nationals legally resident in the Union has exceeded 19 million and accounts for approximately 4 % of the EU population, then this exclusion paves the way for questioning the legitimacy of the EU citizenship.

In the structure formed with the Maastricht Treaty consensus has been reached over certain migration-related issues. They were mainly the Union citizenship, the free movement and settlement of the EU citizens and the specification of the countries that would require visa from the persons coming from the external borders of the EU. But there was no measure adopted in the field of asylum. The amendments that included this field would take place in the period following the signature of the Treaty of Amsterdam.

B) Treaty of Amsterdam

The second turning point in developing a common immigration and asylum policy is the Treaty of Amsterdam which has given a shape to the Third Pillar of the Maastricht Treaty by forming an “area of freedom, security and justice”.

The issues of free movement, checks at the external borders, asylum, immigration and the protection of the rights of non-EU nationals, and judicial cooperation in civil matters were transferred to the First Pillar. But we also have to note that even though the subjects of immigration and asylum were transferred to the First Pillar, the intergovernmental mechanism would still be the decision- making for the next five years. Only after five years, the matters will be subject to the co-decision procedure as a result of the unanimous decision of the member-states. In the areas where the co-decision procedure is applied, the member-states were not the final and single authority. Meanwhile, the issues such as prevention of crime, combat against terrorism, drug trafficking and judicial cooperation in criminal matters remained in the Third Pillar.

The transfer from the Third to the First Pillar was an important amendment of the Treaty of Amsterdam. The Council of Ministers was obliged to adopt measures concerning the abolition of checks of both the EU citizens and the third country nationals at the internal borders, the passing from the external borders, the third country nationals who would benefit from the freedom of travel on the territories of the member-states with the condition that travel would not exceed three months.
The other important amendment was concerning the Schengen Agreement. The Schengen acquis was integrated into the EU framework through a protocol annexed to the TEU and Treaty.The Council of Ministers was responsible for unanimously taking the decisions which would enable the implementation of the Schengen acquis. The Schengen area was extended with each enlargement of the EU. The CEECs have gradually participated in the Schengen system. The integration of the Schengen Agreement into the acquis is of considerable importance in the sense that it shows the consensus of the member-states about the communitarising the control of the external borders. Another reason of considering the Treaty of Amsterdam the other turning point in developing a common immigration and asylum policy is the fact that the issue of immigration and asylum is set up by a specific Article (Treaty of Amsterdam, Art. 63). The Council of Ministers would adopt measures on asylum, refugees and displaced persons, immigration policy, and measures defining the rights and conditions under which nationals of third countries who are legally resident in a member-state may reside in other member-states. After elaborating the two Treaties important in developing an immigration and asylum policy in the 1990s, it is time to have a look at what has been done in the 2000s. We may say that the process that would help us understand the point reached so far has begun with the Tampere EU Council of 1999.

C) Directive 2005/85/EC (Procedural Directive)

The right of effective application is regulated in Article 39 of the Council Directive on Minimum Standards for Granting and Withdrawal of Refugee Status in Member States of 1 December 2005 (Directive 2005/85/EC, art.39). Since it was adopted after the Amsterdam Treaty, minimum standards are regulated in this directive. According to the article in question, states are required to provide an effective means of appeal before a court or mixed courts, referred to as "tribunals". Member states have discretion to set time limits and other rules necessary for applicants to exercise their right of effective application under this article.

Inadmissible application regulated in Article 25 of the Directive, in the decisions regarding the applications made at the borders of the member states or in the transit zones regulated in Article 35, inadmissible decision made in case of compliance with the concept of a safe third country regulated in article 36, the decision to withdraw the application or to consider it withdrawn pursuant to Articles 19 and 20, the decision not to examine the subsequent application, in the case of a ban on entry or withdrawal of refugee status pursuant to Article 35/2, member states shall ensure that persons have an effective right of appeal before a court or tribunal against such decisions. Member states are obliged to do their part of responsibilities to fulfil this right in line with international obligations.

Article 39/4 allows member states to impose a time limit for the competent authority to review the decision. The cited clause also allows applicants to remain on the territory of the member

state while their application is resolved. However, article 39/3 (b) expressly stipulates that member states may not apply the suspension where member states must consider the potential of legal remedies or protective measures. It is vital that refugees and asylum seekers have the right to stay on the territory of the country until a decision is made about their objections. Because if the asylum seeker is sent to a country where they will face persecution, torture, inhuman or degrading treatment, it will be meaningless to recognize the right of appeal. It is critical that refugees and asylum seekers have the right to remain on the country's territory until a decision on their objections is reached. Because recognizing the right to appeal is pointless if the asylum seeker is transported to a place where they will face persecution, torture, cruel or degrading treatment.

According to Article 39, asylum seekers have the right of effective recourse against all immigration and asylum decisions, including those made with an expedited procedure. The right to an effective application provides the opportunity to appeal effectively against the decision in cases of non-recognition or withdrawal of refugee status.

In Articles 39/2 and 39/4, member states are given a wide margin of appreciation in setting time limits for the objection period. When evaluating time limits in asylum procedures in terms of the principle of effectiveness, the main question is whether these time limits make it impossible or difficult to exercise the rights provided by the EU. The CJEU has clearly stated that the member states are bound by the EU Charter of Fundamental Rights and EU Fundamental principles when making decisions within the field of EU law (Reneman, 2013V., p. 729).

Article 39 of the 2005 Council Directive on Minimum Standards for Granting and Withdrawal of Refugee Status in Member States, also called the Procedural Directive, is in line with Article 47 of the EU Charter of Fundamental Rights.

D) Directive 2008/115/EC (Return Directive)

Council Directive 2008/115/EC of 6 December 2008 was issued on common standards and procedures for the return of third-country nationals illegally residing in member states. It includes provisions on fair and transparent procedures for extradition decisions, minimum common legal standards, proportionality and effectiveness requirements in the use of coercive measures, and EU-wide bans on return to third countries. According to the 13th article of the said Directive, “third country nationals should be granted an effective right of application to object to the decisions regarding deportation and to request the review of the refoulement decisions by appeal.” means. This right may be before a competent judicial authority or before an administrative authority composed of impartial and independent members. That authority or competent authority should have the power to review, including temporarily suspending, the decision on extradition as applicable under national law. Where a provision of a convention is applicable to a deportation decision, the absence of a suspensive effect per se indicates that there is no possibility of effective recourse before the national authorities. If there is a possibility that the person's contractual rights may be violated in deportation decisions that have an irreversible

effect, there should be a legal mechanism under Article 13 in national law to ensure that the execution of the decision is suspended at the time of appeal.

According to the 4th paragraph of Article 13 of the Directive, "The concerned third country national should benefit from legal consultancy, legal aid and, where necessary, interpreting services" (Directive 2008/115/EC art.13). Member states provide the necessary legal consultancy and legal aid services free of charge upon request. It can ensure that it is subject to the provisions regulated in Article 15 of Directive 85/EC.

Directive 2008/115/EC (Return Directive) interacts with Directive 2005/85/EC (Procedural Directive). Both directives relate to the provision of appeal rights for asylum seekers and refugees. Although the Return Directive complements the first, it has several differences. 1) The first similarity is that both directives provide the right of asylum seekers to appeal, or the right of effective appeal. 2) A second similarity: both directives empower states to determine procedural rules related to the right of effective appeal. For example, the Procedural Directive says that states can set time limits for individuals to appeal to the court of appeals, etc. can determine itself. The Return directive says that the state may "suspend" the freeze on the return of individuals. Different aspects 1) The Procedural directive defines the right of appeal only through the court. and the second directive is through both judicial and administrative bodies. 2) The Procedural directive is related to the amendment of a specific article. That is, the sphere of influence is more limited. The Return directive is a complete document and has a wider impact.

E) Directive 2013/32/EU (Asylum Procedure Directive)

Directive 2013/32/EU of 26 June 2013 regulates the common procedures for granting and ending international protection. The right of effective application is regulated in Article 46 of this directive, which is also called the EU Asylum Procedure Directive. Article 46 of the Directive regulates that all international protection status applicants have the right to apply effectively before a court against the decision that their refugee or subsidiary protection status claims are unfounded or inadmissible (Directive 2013/32/EU, art.46).

According to the article in question, "member states' applications for refugee or subsidiary protection status are unfounded, an application is inadmissible pursuant to article 33/2, a member state receiving an application at the border or in transit areas as explained in article 43/1, in accordance with article 39, it will ensure that applicants have the right to an effective application before a court in cases where applications from safe third countries are not evaluated, a new application is rejected after the application is not followed voluntarily in accordance with Articles 27 and 28, and their international protection status is withdrawn pursuant to Article 45. In this context, it is a fundamental right that provides a fair and effective asylum procedure.

In Article 46/3, it is regulated that a full and "ex nunc" examination should be made in order to fully ensure the right of effective application in the member states. Accordingly, in order for the application to be effective, the Court must evaluate within the framework of the current situation and conditions while making a decision on refugees and asylum seekers. The court should make its assessment by taking into account the situations after the first date of the decision. Ex nunc examination is of particular importance, especially in cases where there are risks that may lead to

a violation of the prohibition of torture and ill-treatment regulated in Article 3 of the ECHR in the country of return. The time limit to be set by the member states for the exercise of the right of effective application should be reasonable and the time limit should not make the exercise of the right of effective application impossible or difficult. Member states will allow applicants to remain in the country until the expiry of the period during which they can exercise their effective right of application and, if they apply, until the application is concluded.

Article 46 of the Asylum Procedure Directive recognizes the right of an effective remedy against a decision on international protection, the refusal to reopen an application that has already been stopped, and the decision to abolish international protection. According to the aforementioned article, both events and legal points must be examined fully and ex nunc.

2.3. Decisions of the Court of Justice of the European Union

The Court of Justice of the European Union plays an important role in the construction of the union legal orders. The authority of the CJEU to comment on the EU asylum field and the criteria of international refugee law provide an environment and potential to contribute to the shaping of international refugee law. Further, there will be case studies that will practically show how the EU directives and the provisions of the EU Charter are used and how the EU Court of Justice deals with cases concerning asylum issues. And the cases will be on the Return Directive, the Procedural Directive, and the Asylum Procedure Directive in order to correctly and accurately understand the role of these directives.

2.3.1. Brahim Samba Diouf v. Ministre du Travail

In the case of Diouf, which deals with the expedited review procedure, on 19 August 2009, Samba Diouf, a Mauritanian national, applied for international protection to the competent department of the Luxembourg Ministry of Foreign Affairs and Immigration (Brahim Samba Diouf, parag.24). On 22 September 2009, the applicant was heard about the reasons for the application. In the interview, Diouf stated that he left Mauritania to escape from slavery and that he wanted to settle in Europe in order to live in better conditions. He also expressed his fear that his employer, from whom he stole 3000 Euros in order to come to Europe, might catch him and kill him. Samba Diouf's application for international protection was examined under the expedited procedure and was rejected on 18 November 2009 by the Luxembourg Ministry of Labour, Employment and Immigration as unfounded. The decision was notified to the person on 20 November 2009. Diouf was informed that his application would be subject to an expedited procedure because he misled the authorities by providing false information and documents. Later, his application for international protection was rejected by the Ministry of Labour, Employment and Migration and he was asked to leave Luxembourg. The first of the reasons Diouf's application was rejected was that he misled the authorities by presenting a fake passport, and the reasons he put forward were of an economic nature and he did not meet the criteria for

international protection. The fact that Diouf does not have a legitimate fear of being persecuted because of his race, religion, nationality, membership of a certain social group or political opinion, which is listed in the Geneva Convention, is not in question for Diouf, and his coming to Europe with the aim of improving his economic conditions is clearly outside the scope of the Convention. It was also stated that the Government of Mauritania had enacted a law against slavery, which came into force in February 2008, envisaging a 10-year prison sentence and a fine. The conditions required for the secondary protection status were also taken into consideration, and it was stated that Diouf could not be evaluated within this scope. Samba Diouf filed an action for annulment on 18 November 2009 against the Ministry's decision to evaluate his application in the expedited procedure, the rejection of the international protection application, and the deportation decision. The relevant article, which stipulates that there is no way of appeal against the decisions evaluated under the accelerated procedure, has raised questions regarding the joint interpretation of the right of effective application regulated in Article 39 of Directive 2005/85. Failure to file an appeal against the expedited review decision of the asylum application means that there is no right of effective application. However, it noted that, according to the Court, the Directive in question did not require a two-tier judicial system.
According to the provision 39/2 of Directive 2005/85, "member states may set time limits for the objection period." In the case of the CJEU Diouf, the 15-day period given for an objection in the expedited procedure does not appear to be sufficient in practice in general to prepare and present an effective case, and it is stated that held that it appeared reasonable and proportionate with respect to the rights and interests" (Brahim Samba Diouf v. Ministre du Travail, parag.67).

2.3.2. Abdoulaye Amadou Tall v. Centre public d'action sociale de Huy

In the Amadou Tall case, where the decision not to consider the second application was considered; Tall, a Senegalese national, applied for asylum in Belgium and was rejected by the Belgian Asylum and Immigration Board on 12 November 2013 (Abdoulaye Amadou Tall, parag.32) He filed a lawsuit against this decision on 10 January 2014. On 16 January 2014, Tall applied for asylum for the second time, on the grounds that he presented as new evidence. On 23 January 2014, the Commissioner for Refugees and Stateless Persons refused to consider the second application. On January 27, 2017, the social benefits that Tall received were discontinued on the grounds that the conditions for providing medical assistance were no longer in question. On February 10, 2014, he was ordered to leave the country. On 19 February 2014 the applicant objected to the fact that his second application to the Belgian Asylum and Immigration Board was not taken into account. Parallel to this objection, he also objected to the cut-off of social assistance. However, it is not possible for Belgium to bring an action with a suspensive effect before the court regarding its objection under domestic law. According to the Court, the only remedy against the decision not to consider the subsequent application is to file an action for annulment and request a temporary suspension. However, since these decisions do not have a suspensive effect, they are deprived of the right of residence and social assistance. In the case in question, the CJEU examined whether there was any incompatibility with the right to an effective remedy provided for under Article 39 of the Directive and Article 47 of the Charter of Fundamental Rights. Domestic law, which does not have suspensive effect in an action brought

against a decision, such as a decision not to consider the subsequent application at issue, must be interpreted in the light of the Directive and the Charter of Fundamental Rights. Pursuant to Article 39 of the Directive, member states are obliged to ensure the right of effective recourse against the decision not to examine the subsequent application and to do their part in line with this obligation. The Court of Justice has held that there must be a suspensive effect on an appeal under Article 47 of the Charter if there is a serious risk of being subjected to the death penalty, torture or other inhuman or degrading treatment on extradition. The Court of Justice held that there had been no violation of Tall's right to an effective remedy provided for in Article 39 of the Directive and Article 47 of the Charter. Finally, the Court of Justice did not find it unlawful in the light of Article 39 of the Directive and Article 47 of the Charter that the decision not to examine the subsequent application did not have suspensive effect on its appeal.

2.3.3. Centre public d'action sociale d'Ottignies-Louvain-La-Neuve v Moussa Abdida

In the case of Moussa Abdida, the main issue of which was the suspension regime, on 15 April 2009 the applicant Abdida applied for residence for medical reasons on the grounds that he was suffering from a serious illness (Moussa Abdida, parag.23). On 4 December 2009, the application was found to be acceptable and she started to receive social assistance by Abdida Social Assistance Center137. With a decision dated 6 June 2011, Abdida's residence application was rejected on the grounds that his home country could now afford the infrastructure necessary for the treatment of his illness. He was informed to leave Belgium on 29 June 2011. On 7 June 2011, Abdida appealed to the Belgian Asylum and Migration Board. On June 13, 2011, the Social Assistance Center withdrew Abdida's social assistance and stopped providing medical assistance. On 27 July 2011, it reviewed this decision and provided emergency medical assistance. The Court held that, pursuant to national legislation, Abdida did not have an effective right of appeal against the refusal of her residence application and was not entitled to any social assistance other than emergency medical assistance until her appeal was resolved by the court.

According to Article 13, paragraph 2 of Directive 2008/115, "the competent authority or authority may temporarily suspend the enforcement of the contested extradition decision if it does not apply a suspension regime pursuant to domestic law." This means that the said Article 13 does not necessarily prescribe the suspensive effect. However, if extradition, according to the Court, would result in a serious and irreversible risk of a serious and irreversible deterioration in the health status of the third-country national, the lack of suspensive effect on this extradition decision was interpreted as contrary to Articles 13 of the Directive and Article 47 of the Charter.

In the end, we know how important these directives are in such complicated cases from a practical point of view. For example, in the case of CJEU Diouf Article 39 of Directive 2005/85, "Member States may fix time limits for the opposition period", an expedited procedure may be sufficient to bring an effective case. As a result of the analysis of cases, we can understand how the Return Directive, the Procedural Directive and the Asylum Procedure Directive work. And by explaining what they do and how they help the EU Court of Justice and the applicants by giving them all the rules they need for a good process and the right of asylum seekers. Studying

these cases, the EU Court of Justice is filled with experience in dealing with such complex issues, and the body begins to interpret and comment on EU refugee law. Of course, the EU deserves credit, since it has grown and changed over the past 30 years thanks to important documents, agreements, and directives that have made the asylum system and Refugee Law in general easier to work with.

PART III. The functionality of the European Council regards to the protection of asylum-seekers rights

3.1. Chapter I. European Convention on Human Rights

The European Convention on Human Rights (hereinafter - ECHR),[1] signed in Rome on 4 November 1950 between the member states of the Council of Europe, aims to protect fundamental human rights and freedoms. All 47 member states of the Council of Europe are parties to the Convention, which entered into force on 3 September 1953. With the additional 16 Protocols to the Convention, which has 59 articles, the scope of the Convention has been expanded.

The ECHR lacks a specific clause addressing refugee and asylum issues. However, Articles 3 and 5 of the Convention provide a crucial safeguard for the right to seek refuge and asylum. Article 3 prohibits deporting refugees and asylum seekers to countries where they may incur torture, cruel or degrading treatment or punishment. The right to liberty enshrined in Article 5 of the Convention provides protection against unjust detention and deprivation of liberty.

3.1.1. The Right to an Effective Application According to the European Convention on Human Rights

The right to an effective application is regulated in Article 13 of the ECHR. According to this; "Everyone whose rights and freedoms recognized in this Convention are violated has the right to an effective remedy before a national authority, even if the violation has been committed by persons acting for the performance of an official service." It gives the right to apply to a competent authority in violations of the law and to ensure that this body takes an effective decision. The purpose of article 13 of the ECHR is to increase the protection offered to individuals who allege violations of their human rights. In this sense, the right to an effective remedy is an indispensable prerequisite for an effective human rights policy (Kuijer,M., 2014, p.1). The local authorities of the contracting states that are parties to the ECHR are primarily responsible for guaranteeing the rights and freedoms set forth in the ECHR.

Everyone can use the right to an effective application pursuant to Article 13 of the Convention, with the claim that his rights and freedoms set forth in the Convention have been violated. For Article 13 of the Convention to be applicable in a case, it is sufficient for the applicant to claim that there is no domestic remedy for the violation of a right in the Convention. Whether or not the other rights and freedoms set forth in the Convention have actually been violated is not a condition for the assertion of Article 13. Even if no right in the Convention has been violated, the ECtHR can decide that there has been a violation of Article 13. As a matter of fact, the ECtHR decided that the violation of Article 13 was not due to the violation of other rights in the Convention, and that no other right had been violated in the Leander v. Sweden decision (Leander v. Sweden, p. 79).

In the early jurisprudence of the convention bodies, article 13 did not receive much attention. The Court mostly found violations in accordance with separate provisions of the ECHR and

[1] See https://www.echr.coe.int/Documents/Convention_ENG.pdf (last accessed: 17 December 2022)

decided that it was not necessary to examine the applicant's case in accordance with article 13. This approach of the ECHR has been criticized in the Airey v. Ireland decision (Airey v. Ireland, 1979). The authority must also be empowered to render binding decisions, which is the second provision assuring the right to effective application. Article 13 requires that the solution be effective both in law and in practice. However, the application's effectiveness is not dependent on the applicant having positive results.

States are obligated to provide effective means of recourse in their domestic legislation, because the right to effective recourse is linked to the access to court and the freedom to seek rights decisively. Rights such as the right to access the case file, the right to be informed about all the accusations made against him, the right to defence, access to legal assistance ensure that the right to effective application is used in practice. What is decisive in assessing whether the legal remedy is effective is that it is accessible in practice.

The problems in the notification procedures that make the possibility of following up the result of the request accidental in order for the asylum seeker and refugee to apply for a legal remedy before the expiration of the period, the lack of financial means for attorney and attorney fees, the low number of specialized lawyers in the field of migration are actual obstacles that prevent access to the right to an effective application. In this sense, the existence of a court and the fact that a lawsuit is being filed is not considered sufficient for the manifestation of the right of effective application. It is very important at this point for refugees and asylum seekers to benefit from legal assistance and interpretation services.

3.1.2. The Relationship between Effective Application Right and Admissibility

There is a close relationship between article 13 of the ECHR and article 35/1, which regulates the conditions for the admissibility of an application. The right of effective application, which is closely related to the rule of exhaustion of domestic remedies, requires an assessment within the framework of the feasibility of obtaining a result. The provision of Article 35/1 of the Convention stipulates that domestic legal remedies must be exhausted before submitting an application to the Court. The Respondent State should first have the opportunity to correct the situation complained of through its own internal legal system and means. The regulation of the ECHR that it can deal with a matter only after the domestic legal remedies have been exhausted is based on the assumption that there is an effective legal remedy against violations of the rights and freedoms set forth in the Convention in national systems according to Article 13 of the ECHR. However, the domestic legal remedies to be exhausted, as set out in Article 35/1, are the existing and applicable ones. In addition, these ways of application should be effective not only in theory, but also in practice. The provision of effective domestic remedies allows the ECTHR to fulfil its supervisory role and reduce the workload of the Court. The decisions made by the ECTHR in repeated cases on the application of domestic remedies reveal that the right to effective application is not observed in domestic law. As stated by the ECHR, if States Parties do not provide effective recourse in domestic law, individuals will have to systematically apply to

the ECHR, and in the long term, the protection of human rights established by the Convention will be effectively undermined both at the national and international levels.

3.1.3. The Applicability of Right to a Fair Trial Contained in Article 6 of the ECHR to Immigration Decisions

Article 6 of the ECHR guarantees the right to a fair trial. According to this article "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." In addition to these elements, although it is not explicitly regulated in the wording of Article 6, individuals' right to access the court accepted for the first time in the Golder decision (Golder v. The United Kingdom, p. 26-36) with an expanded interpretation. The right of access to the court includes the right of individuals to claim all the legal rights they claim to have under national law and to challenge violations and interventions made before the judiciary.

The guarantees in Article 6, such as the right of access to justice, are applied in the determination of the criminal charge in disputes related to civil rights and obligations or in criminal charges.

The field of application to cases related to administrative justice has been determined by the case-law of the ECtHR and this field is expanding with new case-laws. The question of whether Article 6 of the Convention, which is entitled the right to a fair trial, can be applied to immigration decisions poses an important problem. In its first decisions, the ECtHR consistently stated that Article 6 would not be applied against administrative judicial decisions regarding immigration and asylum. However, in its later decisions, it was emphasized that in case of violation of the rights in other articles of the contract, it could be evaluated within the scope of Article 6.

In its previous decisions, the ECtHR decided that civil rights and obligations are rights and obligations arising from private law, based on the distinction between private law and public law due to the concept of civil law (Harris, Boyle, Bates, Buckley, 2009, p. 211). On this basis, the rights and some obligations arising from the relations between private persons automatically fall within the scope of Article 6. However, the rights and obligations between the individual and the state do not fall within the scope of Article 6. Limiting Article 6 to only disputes related to civil rights and obligations and criminal charges is seen as a restriction on the right to a fair trial.

The Court has stated in several cases that it is not obliged to give a final decision as to whether the concept of civil rights and obligations goes beyond rights in the field of private law. The private law-public law classification of the contracting states is not effective for the Court. The ECtHR may decide to apply Article 6 for a right that falls within the scope of public law in the legal system of the state party. According to the Court's case-law, the concept of civil rights and obligations cannot be interpreted solely in accordance with the domestic law of the State. For the purpose of Article 6, whether the state acts as a private person or by using its sovereign power has no effect on the classification.

As regards the application of Article 6, the focus for the Court is the nature of the right. For example, the Court considers the right to compensation for damages caused by the unlawful acts of the state as a civil right (X v. France, parag. 28-30). In addition, reasons such as unlawful deprivation of liberty (Göç v. Turkey, parag. 40-42) and failure to hear cases within a reasonable time are also included in Article 6. For a right or obligation to be considered a civil right, it must have a financial impact; however, the financial dimension is not the only criterion. According to the court case law, some rights that are not financial but accepted as civil rights; rights such as the right to life, bodily integrity, freedom, privacy, access to administrative documents, freedom of expression and assembly, and freedom of association.

Immigration decisions, deportation decisions of foreigners, refugees and asylum seekers remained within the boundaries of the field of public law. Article 6 of the ECHR does not apply to immigration decisions as it is accepted in the field of public law as explained above. The ECtHR has ruled that Article 6 does not apply to foreigners' entry, stay and deportation procedures, even if the decision in question affects a person's private and family life. The ECtHR, within the scope of Article 6 of the Convention, does not accept disputes regarding the status of foreigners, their entry into the country, their return to the country and the right to asylum, as rights and freedoms of a civil nature, even if they affect personal and property rights.

The risk of human rights violations occurring in immigration cases is quite high. In case of deportation decision for refugees and asylum seekers, irreversible damages may occur. Since human rights violations also occur in administrative disputes, the necessity of examining these violations within the framework of the right to a fair trial should be taken into consideration.

The dynamic interpretation of Article 6 that the Court should adopt must diverge from the current tendency to exclude areas where the state exercises a privilege based on public power. Rather, it would be more in line with human rights to interpret it as all the defensible rights and obligations that a person has under national law, regardless of what right he or she falls into. With the juxtaposition of the concepts of civil and criminal, the scope of article 6 should be expanded by interpreting the concept of civil as all kinds of non-criminal rights and obligations.

Looking at European Union Law, Article 47, which regulates the right to an effective legal remedy and fair trial in the EU Charter of Fundamental Rights, which is binding for EU member states, includes the right to an effective application and fair trial for all the rights and freedoms guaranteed without any discrimination. recognizes the right to be judged. While the application area of the right to a fair trial regulated in article 6 of the ECHR is only civil rights and obligations and criminal charges, the right to a fair trial is applied in all cases in the EU Charter of Fundamental Rights (Reneman, 2013, p.91). According to the article in question, everyone, including refugees and asylum seekers, has the right to a fair and public hearing within a reasonable time in an independent and impartial court previously established by law (Handbook on European law, 2014,p.100). In addition, Article 46 of the EU Asylum Procedure Directive No. 2013/32/EU regulates that all international protection status applicants have the right to apply effectively before a court against the decisions that their refugee or subsidiary protection status claims are unfounded or inadmissible. In the ECHR, expanding the scope of the right to a fair trial and applying it to all rights and freedoms will be more appropriate in terms of human rights, and it will be more appropriate for administrative cases to be concluded within a reasonable time, and for disputes where one of the parties is the administration, determination of

an independent and impartial court established by law, ensuring the right of access to a court, equality of arms. Compliance with the principle will reduce violations in this regard.

3.2. Decisions of the European Court of Human Rights

The decisions of the European Court of Human Rights on the right to an effective application will be examined in a limited way within the framework of refugees and asylum seekers.

3.2.1. M.S.S. v. Belgium and Greece Case, Violation Due to Failure to Provide an Interpreter or Legal Aid

A failure to ensure access to legal aid, especially for asylum seekers that prevent access to the path reference resulted in the case of M.S.S. v. Belgium and Greece (M.S.S. v. Belgium and Greece, parag.9), in which M.S.S., Afghan national in Kabul, the International Air Forces faced while doing the translation for soldiers in constant danger of being killed by the Taliban in Kabul in 2008 and by leaving, went to Greece via Iran and Turkey. His fingerprints were taken in Greece and he entered the European Union. The applicant was held in Greece for a week, did not apply for asylum and was released on the condition of leaving the country. The applicant arrived in Belgium on 10 February 2009 and applied for asylum. As a result of scanning the applicant's fingerprints from the Eurodac system, it turned out that the applicant was registered in Greece. On 18 March 2009, the Belgian Office for Foreigners requested the Greek authorities to take responsibility for the asylum application of the Recipient, based on the provision of Article 10/1 of the Dublin Directive No. 343/2003/EC. When the Greek authorities did not respond within the two-month period provided for in Article 18/1 of the Directive, the Belgian Aliens Office, based on paragraph 7 of the same article, decided that the request was tacitly granted and started the proceedings to send the applicant to Greece. In order to enforce this decision, the applicant was taken into custody and confined to a closed facility used for illegal aliens.

M.S.S.'s legal representative requested the annulment of the decision to be sent from the country and the stay of execution, based on the shortcomings of the applicant's asylum procedure in Greece, the lack of effective remedy for refugees and asylum seekers, and the existence of the risk of being sent back to Afghanistan. It was decided to hold a hearing on the same day at the Aliens Appeals Board in Brussels, and the request for a stay of execution was rejected on the grounds that the applicant's lawyer was not present at the hearing. On 29 May 2009 the applicant refused to board the plane and as a result his detention order was renewed. The applicant was informed that the date of his expulsion was 15 June 2009. The applicant's lawyer made a second request for the annulment of that decision, as if he were transferred to Greece, his asylum application was unlikely to be examined effectively and would face danger to life if he was deported to Afghanistan. The Aliens Appeals Board rejected this request. On 11 June 2009 the applicant applied to the ECtHR requesting that his transfer to Greece be suspended.

On 15 June 2009 the applicant was transferred to Greece. He stated that after his arrival in Greece, he was detained in a building near the airport, that he was locked up with twenty other

people, that they could only go to the toilets with the permission of the guards, that he was not allowed to go to the ventilation, that little food was provided, that he had to sleep on a dirty mattress or bare floor. Since the applicant did not want to live in such terrible conditions, he attempted to flee Greece, but was apprehended and sentenced to prison for attempting to leave the country with fraudulent documents. The applicant was detained while attempting to enter Italy again, and was then escorted to the Turkish border to be deported to Turkey. Due to the presence of Turkish police, the Greek police stopped deporting him at the last minute.

The applicant complained of a violation of Article 13, as there is no effective domestic remedy in Greek law in terms of his complaints regarding the right to life regulated in article 2ç and the violation of the prohibition of torture regulated in article 3 of the Convention.

The ECtHR stated that the duty of ensuring and implementing the guarantee of rights and freedoms primarily belongs to the national authorities, and that the application to the ECtHR is of secondary nature compared to the national authorities in the protection of human rights. The effectiveness of a remedy within the meaning of Article 13 of the Convention does not depend on whether it produces a result in favor of the applicant. Moreover, the authority within the meaning of Article 13 need not be a judicial authority. However, if the authority in question is not a judicial authority, the powers granted to this authority and the assurances provided by the authority are very important in determining whether the remedy is effective or not. Moreover, even if a single remedy does not fully meet the requirements of Article 13 of the Convention, there is an effective right of recourse within the meaning of Article 13 if the sum of the remedies provided under national law meets these requirements.

As the applicant could not afford to hire a lawyer, he was not informed about organizations that would provide him with legal assistance and guidance. According to the ECtHR, access to legal aid prevents access to the remedy especially for asylum seekers and causes a violation of Article 13 of the Convention. As can be seen, the lack of access to legal aid is seen as a reason preventing the use of the right to effective application.

3.2.2. A.D. and Others v. Türkiye Case, Given Violation Decision Due to Failure to Notify Notification

In the case of A.D. and Others v. Türkiye, where the failure to notify the applicants or their legal representatives of deportation orders violated their ability to appeal before the domestic courts, the applicants were A.D., A.A., Y.W., B.M., and H.T., Uyghur ethnicity and Muslims. On 29 April 2009 they lodged an application against Turkey. All of the applicants left China on different dates due to the fear of oppression and persecution they faced in China, of which they were nationals, due to their ethnic origins and religious beliefs. The second applicant had entered Turkey legally in August 2007, was caught during an identity check on 12 July 2008 on the grounds that his visa had expired and hence, he was caught on the grounds that he was staying in Turkey illegally and was placed in the Kumkapı Foreigners' Admission and Accommodation Center under the Istanbul Police Department. On 1 August 2008, the Ministry of Internal Affairs of the Republic of Turkey instructed the Istanbul Governor's Office to deport the applicant, A.A.

Turkish and Chinese officials met in Ankara to discuss the security measures to be taken regarding the 2008 Beijing Olympics. Noting that some members of the East Turkestan Islamic Movement, which is considered a terrorist organization by the Chinese government, fled to Turkey, Chinese government officials gave the Turkish authorities a list of suspects who might be involved in an attack. The list includes the names of the five applicants in question. On 25 July 2008 the Turkish Ministry of the Interior added the applicants' names to the list of names prohibited from entering Turkey. On 6 August 2008, the Ministry of Internal Affairs ordered that the suspects be detained in the Foreigners Department for the duration of the Olympics, provided that they are removed from the country at the end of the Olympics. He also requested that the deportation decision of 1 August 2008, which was given on the second applicant on the same date, be stopped until the end of the Olympics and decided to keep the applicant in Kumkapı Foreign Admission and Accommodation Center during this period. As a result of the police raids on the addresses of the other four suspects on 7 August 2008, the applicants were arrested and sent to the Kumkapı Foreigners' Admission and Accommodation Centre. It was established that the applicants had entered Turkey illegally.

With the end of the Olympics, the Ministry of Internal Affairs of the Republic of Turkey requested the expulsion of the people in question on 3 September 2008. The same instructions were given to the governor's office regarding the removal of the second applicant, for whom a deportation decision was made on 1 August 2008. The applicants alleged that their deportation decision was not officially communicated to them, but verbally. On 19 September 2008 the applicants sought asylum in Turkey as they would face persecution and torture if they returned to China. The Turkish authorities held talks with the applicants regarding their asylum claim. However, on 26 September 2008 the Ministry of the Interior sent a letter stating that the applicants' asylum claims were not accepted and that they would be deported. The applicants' lawyer claimed access to the judgments so that he could exercise his legal rights in the judgments rendered against the applicants, but claimed that he had not received a response.

On 13 October 2008 the applicants applied to the United Nations High Commissioner for Refugees for refugee status. On 27 October 2008 the applicants were granted asylum by UNHCR.

On 13 February 2009, the Ministry of the Interior issued a decision in which the applicants' asylum claims were rejected as they did not meet the criteria set out in the 1951 Geneva Convention and the relevant internal regulation, the 1994 Migration Regulation. The decision was notified to the applicants on 23 February 2009 and they were informed that they could appeal within two days. On 23 February 2009 the applicants filed a lawsuit with the Istanbul Administrative Court requesting that the deportation procedure against them be stopped. On 3 April 2009, the Istanbul Administrative Court dismissed the case, ruling that the applications should be filed separately. The applicants did not individually file a petition again.

On 9 June 2009, the second applicant A.A. filed a lawsuit at the Administrative Court seeking the annulment of the deportation decision. According to the allegation of the applicant, the asylum procedure was not conducted in accordance with the law, the translation service provided during the asylum-related interviews was insufficient and the two-day objection period regarding the rejection of the asylum claim was insufficient for a comprehensive and effective application. On 30 June 2010 the Administrative Court suspended the execution of the deportation procedure,

considering that the second applicant would be subjected to pressure and persecution if he returned to China.

The decision rejecting the other four applicants' asylum claims was served on them in 2011. Regarding the decisions, the applicants applied to the Ankara Administrative Court for the annulment of their deportation decision. The Ankara Administrative Court accepted that there was a risk that the applicants would be persecuted in China and annulled the deportation orders. The applicants allege that if they are sent back to China, they will face a violation of the right to life as set out in article 2 of the Convention and the prohibition of torture regulated in article 3. In this context, they complained that there was a violation of Article 13, as there was no effective domestic remedy to present their complaints.

The Court considered that by not notifying the applicants or their legal representatives of the expulsion orders in question, the opportunity for the persons concerned to raise objections before the domestic courts was effectively destroyed. In the Court's view, this is an indication of the state's insensitivity to the right to an effective remedy. For the remedy provided for in Article 13 to be effective, it must be effective in practice as well as in theory. In order for all administrative decisions, including deportation orders, to be brought under the supervision of local courts, access to such decisions must be provided. The unresponsiveness of the applicants' requests for access to decisions by their legal representatives was then considered by the Court to be a violation of Article 13. Based on these findings, the Court found that the Turkish authorities had failed to provide the applicants with an effective remedy. As can be seen, failure to notify the applicants or their legal representatives of the decisions taken against them is deemed to violate the possibility of the persons concerned to raise objections before the local courts.

These cases testify to the role of the ECtHR in cases involving refugees and asylum seekers. Specifically, the European Court of Human Rights, by deciding these cases limited to refugees and asylum seekers on the right to effective treatment, will demonstrate the general trend. This trend is negative, as the right to an effective remedy is violated, and it is violated by the national authorities. The purpose of Article 13 of the ECHR is to strengthen the protection offered to persons who claim that their human rights have been violated. The local governments of contracting states that are parties to the ECHR have the primary responsibility for ensuring the rights and freedoms set forth in the ECHR. But in practice, we see that countries refuse to grant asylum and do not provide adequate assistance to asylum seekers who left their country of origin due to fear on their part. Since the main subjects of the international system are the states, the main and primary duty of protecting human rights and freedoms lies with the national legal order. In this context, one of the most important duties of states is to provide people with an effective legal system in which they can appeal against violations of their rights. And the essence of these cases is that A.D. and Others v. Türkiye and M.S.S. v. Belgium and Greece violations by states providing effective legal protection. There was a breach in the cases for failure to provide an interpreter or legal aid and failure to give notice of the breach. and violate Article 13 by preventing the exercise of the right to effective treatment.

The fact that national authorities offer refugees and asylum seekers the right to apply effectively and that they may face irreversible consequences such as death, torture and ill-treatment in case of deportation, shows the importance of this issue, given the sensitive situation of refugees and asylum seekers. For these reasons, first of all, the right to an effective application in international

documents and the European Union acquis and the conditions necessary for the provision of this right have been examined and this right in Turkish law has been investigated by taking court decisions within the framework of refugees and asylum seekers.

Finally, a question arises as to why the Strasbourg court is more important in the asylum protection system. In my opinion, there are the following reasons for this: 1) The Strasbourg court is not only concerned with the protection of the rights of refugees in the European space, but it is also the most ideal legal instrument for the protection of human rights. 2) In recent years, the number of refugees from third countries has been steadily increasing in the EU zone, which increases the workload of the court and makes it difficult for judges to make more transparent and fair decisions. However, as it can be seen from the cases analyzed above, the Strasbourg court is able to handle many of these cases. 3) All these create conditions for the expansion of the sphere of influence of the European Court of Human rights and its extension to the non-eurozone. All this creates a demand for the asylum protection system to be more effective. In my opinion, at the center of the difficulties lies the weak monitoring mechanism of the European Court of Human Rights. Member states should participate in protecting the rights of refugees and asylum seekers in order to form an effective supervisory mechanism. This idea is also suitable for the purposes of the convention. As a result, although the Strasbourg court has a serious role in protecting the rights of asylum seekers in Europe, it should improve its function.

CONCLUSION

1. The concepts of refugees, asylum seekers and immigrants emerged especially after the World War II and the protection of the rights and freedoms of these disadvantaged groups in the context of human rights began to be emphasized. As a result of the analysis carried out on the concept of a refugee, we conclude that one of the main tasks facing refugee law is the correct interpretation of the concept of a refugee. Since it is necessary to correctly define the definitions and characteristics of refugees within the terminological problem that often arises in refugee law. And the concept needs to be adjusted, as well as the adoption of a new international document that will give a broad universal definition that will include the following characteristics: "does not want to be protected due to external aggression, occupation, ethnic cleansing, or mass unrest on the territory of his nationality, as well as, in case of fear, taking measures against him that exert unbearable psychological pressure".

2. In solving the problems of refugees in Europe over the past 30 years, the EU has done a great job with the adoption and signing of documents, agreements, and directives in which the basic rights and freedoms of refugees were given, as well as the procedure for obtaining refugee status.

3. A major change in EU refugee law, the adoption of the Charter of Fundamental Rights, which became part of the Treaty, has made a major contribution to the measurement of human rights in the field of migration and asylum. Unlike the Geneva Convention, which does not grant the right to asylum but grants rights to those who have this right, Article 18 of the EU Charter enshrines this right, which applies to all persons subject to the rights of the union.

4. Looking at the European Convention on Human Rights, it is seen that it does not contain a direct provision on asylum and asylum. Despite this, many articles of the Convention indirectly provide an important opportunity to protect the right to asylum and asylum. Article 3 protects refugees and asylum-seekers from being deported to countries where they may face the risk of torture, inhuman or degrading treatment or punishment. The right to liberty enshrined in Article 5 of the Convention provides protection against unjust detention and deprivation of liberty. The right to an effective application regulated in Article 13 is regulated as anyone whose rights and freedoms recognized in the Convention are violated can apply to an effective remedy before a national authority, even if the violation is committed by persons acting for the performance of an official service. The provision of effective domestic remedies allows the ECtHR to fulfill its supervisory role and to reduce the Court's workload. As stated by the ECtHR, if the states parties do not provide an effective right of application in domestic law, individuals will have to apply to the ECtHR systematically and in the long run, the protection of human rights determined by the Convention will be effectively weakened at both the national and international levels.

5. The jurisprudence of the ECHR on Article 13 provides important guidance on how immigration and deportation decisions should be made and on how the measures to be implemented should be. The fact that Article 6, which regulates the right to a fair trial, is not applied to immigration and deportation decisions is an issue that should be criticized. Expanding the scope of the right to a fair trial in the ECHR and applying it to all rights and freedoms will be more appropriate in terms of human rights and it will be more appropriate in terms of human rights to conclude administrative cases within a reasonable time and to determine an independent and impartial court established by law in disputes where one of the parties is the administration,

to ensure the right of access to a court, to comply with the principle of equality of arms. will reduce violations in this regard. The fact that the right to a fair trial is not applied to immigration and deportation decisions reveals that the only article providing control in these cases is Article 13.

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SUMMARY

Refugee law as a protection of human rights in Europe.

Amin Panaliyev

This master's thesis provides a clear analysis of Refugee law in Europe by examining historical development of refugee law, legal definition of refugee, legal framework of European Union, role of ChFREU and ECHR in sphere of protection of refugee and asylum-seekers rights. During the research, several methods were applied to the topic: method of analysis, comparative historical method, statistical analysis, linguistic (grammatical) method. The topic was studied using a variety of methodologies, including comparative historical, doctrinal and analysis methods.

The master's thesis consists of 3 parts. The first part of the work discusses the development of refugee law in the historical process and provides a detailed analysis of the universal concept of a refugee in the context of the definition and characteristics of refugees, as well as the role of international organizations in protecting the rights of refugees, the main problems were identified. The second part of the study analyzed the refugee legislation in the European Union and the policy pursued within the Union. In this context, post-Maastricht agreements are being discussed, including the Charter of Fundamental Rights and EU directives on refugees and asylum seekers. The third part of the work examines the functionality of the European Council in relation to the protection of the rights of asylum seekers, namely the position of the ECtHR on the right to effective treatment and the decisions of the European Court of Human Rights in such cases.

Considering these issues, the author comes to the conclusion that EU refugee law is much developed from traditional international refugee law and is ahead of its provisions in protecting the rights of refugees.