

The role of the European Union and international legislation in the government of the migration crisis



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Abstract This paper focuses on the over researched migrant and refugee emergency of 2015-2016, adopting a broader temporal and spatial lens. The 2015 refugee crisis shook Europe and its security and brought immigration and asylum policy to new political dynamics that are developing at a pace and with difficulty in coordination. This particular 'crisis' of 2015 gave a stronger political impetus to the migration and asylum agenda of the EU's destination and transit states. concerns about the limitations of the liberal state, including external border policy, the framing of migrants, European identity and the phenomenon of return migration security, which mainly affected Central and Eastern Europe. Through the analysis of a broad set of materials emerging from the research project, we identified several interacting features of governance in times of crisis, including a multilevel but complex actor landscape, complicated and fragmented legal systems and policy provisions that can change at the temporal level as well as at the territorial level and the current characteristics of a 'crisis governance mode'. Can we identify the specific features that form this state of crisis?

Keywords: asylum policy, limitations of the liberal state, mobilisation of nationalism, European identity, refugee crises

1. Introduction

As recent members of the European Union, Hungary and Poland are still in the process of aligning their legislation with EU regulations and have not yet developed a well-established institutional framework for asylum. Compared to the more established EU member states, the issue of asylum and immigration debates has held less significance in these countries. Regarding the expected crisis governing, the scenes in non-EU countries such as Turkey, Lebanon, and Iraq are slightly different. Many of those arriving in Europe during 2015, mainly massive numbers of Syrians and Afghans (in the case of Turkey), had already been displaced to these countries since 2011, and these countries also act as both transit and origin countries for migrants heading to Europe. They also have weak legal and institutional national asylum regimes, despite having a host of protracted refugee situations for decades.

The article has a section on developments in migration and asylum policies. In this section, European country reports predicted what the main features of migration and asylum governance were in the period before 2014, what policies were changed fundamentally with the 2015-2016 crisis period (such as proposals for laws, practices for border controls, creation of new categories, introduction of new institutions or new ways of cooperation, testing of new practices) and that continued to exist after this period and until 2018. For non-EU countries (Turkey, Lebanon and Iraq), 2011 was the starting point, 2015-2016 was a turning point due to the size of the birds and the echo in the region, and similar to EU countries, we look at policies that continued until 2018. We argue in this paper that the 'crisis governance' of migration is not simply a narrative or a representation that guides policy choices but is emerging as a mode of governance with specific characteristics.

Contemporary Europe never experienced the magnitude of inwards migration as it did in 2015–16: there were 1.8 million irregular border crossings into the EU in 2015, an increase of 546 percent compared with 2014 (Europol, 2016). Member states responded by reinstating pre-Schengen border checks and talking 'tough' (usually against Brussels or other member states). However, the migrant numbers showed no sign of abating: 147,000 irregular migrants had entered Greece by the end of March 2016 (Reuters News Service, 2016). At the same time, 53,941 migrants were stranded on their way to northern Europe – 50,308 in Greece alone – when EU member states began to close their borders in February 2016 in response to an anticipated deal of 'one Syrian in and another out' with Turkey.

As the EU's member states have developed their migration and asylum policies at different speeds and levels of integration, the Union's policy on these issues has become asymmetrical, differentiated, and, therefore, operates at varying levels of integration, making it difficult to coordinate at both the institutional and member-state levels, as well as challenging



to apply and often ineffective. Schilde and Goodman (2021) described the outcomes of the EU's policy on migration and asylum as 'highly differentiated, often uncoordinated, and ultimately weak in response to a crisis.'

This weakness was proven during the 2015 height of the migration/refugee crisis that shook Europe's security and internal policies, as well as the political party balance—thus making place for the nationalist and populist parties. Regarding the policy framework, the key has been the development of the concept of integrated border management (IBM), a concept that has never been clearly defined (Marenin, 2010), although in 2009, it was included in Article 77(1)(c) of the treaty on the functioning of the European Union (TFEU). The clearest definition of 'IBM' remains that included in the council conclusions on IBM (European Council, 2006) and subsequently developed in the Schengen catalogue of recommendations and best practices (Council of the European Union, 2009). Although Europe has been a destination for immigration for decades (especially for economic migrants and political refugees from nearby regions), the Libyan crisis led to an upsurge in the number of refugees in 2014. The warning issued by Frontex about this upsurge has gone mainly unnoticed. Many refugees have attempted to cross the Mediterranean to enter the EU; this situation grew in intensity, and in 2015, it became the all-encompassing immigration crisis we all know today. This situation was caused not only by the Libyan crisis but also by the escalation of the civil war in Syria and the declining living conditions in areas of Central and Northern Africa.

This study focuses on the 2015–2016 refugee emergency and covers a longer time frame (2011–2018). This paper reviews the emerging literature on the governance and framing of migration and asylum as a 'crisis'. This study advances this line of thinking by showing how the governance of the migration crisis is not simply a representation or a discourse but rather emerges as a mode of governance with specific features. Through meta-analysis, we identified several interacting features of governance in times of crisis. These include complex and fragmented legal systems and policy provisions that may vary both temporally and territorially; a narrative of renationalisation that seeks to unify this multifaceted and fragmented landscape of governance under the promise that the nation-state can reassert control and resolve the 'crisis'.

This paper aims to explore the extent to which it is appropriate to refer to a 'crisis' concerning migrants and refugees within the EU. It will also examine how a limited view of this 'crisis,' framed largely around the notion of increasing migratory pressure, has influenced the development of the EU's border control policies. This study is grounded in a meta-analysis involving eleven countries located along the so-called Eastern Mediterranean Route. The research includes case studies from both established EU member states and newer members like Hungary and Poland, as well as from non-EU countries such as Turkey, Lebanon, and Iraq, which are key countries of origin, transit, and destination for migrants and refugees. The established EU member states have a common asylum regime and long-term destination for migrants and asylum seekers from the Eastern Mediterranean route.

2. The Concept of Crisis is Contested

Europe has been experiencing integration and different overlapping crises since 2008 (Anderson, 2021). What makes the current situation stand out is its mediatization and, as Anderson points out, its complexity, duration, and the interdependence of its dimensions (Sahin-Mencütek, 2020). The overlapping crises confront European integration with new challenges, resulting in a new political dynamic in the member states and the EU itself. The overlapping crises confront European integration with new challenges, resulting in a new political dynamic in the member states and the EU itself. The current situation at Europe's borders can be interpreted as an 'epistemic crisis,' highlighting the inconsistencies and evolving nature of the terms and categories used when discussing human migration and the frameworks governing it.

'Crisis' is a catch-all word, a label that often confuses and obfuscates rather than explains events. Especially in political theory, the concept has never achieved a clear meaning (Buzan, 1990). It can be used to refer to the escalation of military tensions, to fundamental changes to a constitutional order, or even to a simple change in government. In this context, the 'crisis' is a turning point. Generally, a label denotes a situation that breaks with a routine and calls for immediate action. The occurrence of a crisis calls for immediate judgement and decision making, but in circumstances with limited room for manoeuvring, political actors are required to make decisions about the appropriate course of action, which might determine the survival of the political system. 'Crisis' may be considered almost synonymous with 'emergency'. By labelling a situation a 'crisis', one creates alarm, suggesting the existence of a threat to the ordinary lives of the populace that needs to be addressed by enacting exceptional measures (Rein & Schön, 1996).

In this research, the term 'crisis' is used with the meaning assigned to it by Keeler's definition: *"a situation of large-scale public dissatisfaction or even fear stemming from wide-ranging economic problems and/or an unusual degree of social unrest and/or threats to national security"* (Keeler, 1993). According to the specialised literature, complex, acute, and significant crises provide policymakers with greater freedom in shaping their policies. Capoccia and Kelemen (2007) call this phenomenon a *"window of opportunity"*. Such a situation could generate a broader scope of reforms or even an institutional transformation (Anderson, 2021).

To analyse these crises, we need to categorise them. All crises are case-specific and differ in intensity, scope, duration, interactivity, and nature (Anderson, 2021). As mentioned above, the EU has been experiencing a series of crises since 2008: the Eurozone crisis, the immigration/refugee crisis, Brexit, and crises related to the presidency of Donald Trump and Russian aggression against Ukraine. Moreover, one cannot disregard the impact of the COVID-19 pandemic and of the ensuing travel

restrictions (COM 2022/740) or the way the Belarusian political regime instrumentalised migrants in 2021. The majority of the aforementioned crises are not yet over, and consequently, this fact has created a situation that Zeitlin, Nicoli, Anderson, and other authors call a “polycrisis”.

The crisis between Turkey and the EU is still having effects, even though the agreement between the EU and Turkey (signed in March 2016) reduced the number of migrants/refugees arriving. This agreement is part of the so-called externalisation of border management. It allows the EU to keep migrants on Turkish soil in exchange for financial refunds and modifications to the visa policy towards Turkish citizens. However, media coverage of the Mediterranean routes has continued, despite the influx of migrants/refugees decreasing to levels similar to those before 2014, and thus has effectively kept the issue alive in the minds of European citizens. In this case, some scholars are inclined towards Pierson's typology of earthquakes, while others, such as Anderson, tend to embrace the idea that migration flows to Europe may become the new norm. Therefore, the latter consider the migration crisis a turning point in the long-term evolution of climate change (Anderson, 2021).

Another amplifying factor of the crisis was the response of the political elite to the situation—the most prominent being that of German Chancellor Angela Merkel in 2015 (Hall, 2015). Moreover, efforts to redistribute refugees equitably among member states have faced strong opposition, especially in Central and Eastern Europe (Niemann and Zaun, 2018). All these actions have fuelled the campaign rhetoric of populist parties and movements (Art, 2018; Niemann and Zaun, 2018), reinforced by the panic and fear of the citizens of the mentioned countries. A crisis is commonly identified as an extraordinary event leading to increased but temporal instability and uncertainty in the preexisting status quo or perceived ‘normality’. Policy and governance studies have long been interested in understanding policy processes in the context of financial, humanitarian, energy, and health crises at the national and international levels. Their first observation is that as there is no objective measure for identifying a ‘disruptive event’ as a crisis, the events need to be perceived as a crisis (Grossman, 2019). Policy makers and implementers try to make sense of the highly dynamic context during a ‘crisis’ through processes of naming, selecting and storytelling (Rein & Schön, 1996). A crisis often involves public policy responses, but the events themselves are often clouded by uncertainty and ambiguity (Grossman, 2019). Through cognitive framing, governance actors develop these policy responses (Geddes & AbdHouj, 2018).

A second point arising from the governance literature is that diverse actors operating at different scales become involved in the crisis management process, making it multilevel. Hybrid forms of coordination and contestations emerge in multilevel governance in crisis responses that are contingent upon policy and political legacies. Third, actors are mainly concerned with bringing “order” and a sense of “normality” rather than ensuring compliance with formalised rules (Gadinger, 2021) in such situations. Governance structures may aim to restore the precrisis status quo (based on reinstating “order and control”), maintain the system or overcome the problems experienced with patchwork, such as reforms at the margins of legislative and policy structures (Bourbeau, 2011).

This paper considers the 2015–2016 refugee emergency as a governance crisis. We acknowledge that the extraordinary flows of that period constituted an emergency that soon proved to be hard to manage with the existing governance capacity and migration policies. The inadequacy of the existing institutions and processes for dealing with the emergency paved the way for a governance crisis of institutional roles, the transformation of preexisting rules and norms and the emergence of new discursive frames. Thus, we focus on actors, legislative and policy structures and narratives to analyse how this crisis shaped migration governance in ways that had a lasting effect beyond the immediate crisis period.

The coupling of migration and crisis is not a recent phenomenon. The genealogy of the migration-crisis nexus shows that global migration was perceived as one of the ‘new’ threats challenging the international order and, thus, framed mostly as a security issue. This security lens formed the conditions of seeing and understanding global migratory movements as a ‘crisis-generating phenomenon’ in the 1990s (Weiner, 1992). In the early 2010s, migration as a crisis became dominant in the media, policy and academic discourses to discuss migration in Europe (Cantat et al., 2020). At the global policymaking level, such a view of migration as a crisis, juxtaposed to migration as orderly and regular, is corroborated in the vocabulary adopted by the Global Compact on Safe, Orderly and Regular Migration (2018) and has been criticised for its rigidity and lack of touch with reality (Triandafyllidou, 2022).

3. The Crisis of the EU Border Control Regime

In recent years, the main migration routes have clearly moved eastwards until the so-called migrant or refugee ‘crisis’ erupted in 2015 along the Eastern Mediterranean route, with repercussions on the Western Balkan route. The EU IBM system is therefore entangled in complex geopolitical formations that are constantly redefined by the attempt to control mobility and by the corresponding resistance of migrants who, in response to increased surveillance, constantly seek new routes into and across Europe, thus shifting the points of ‘crisis’ as local border control regimes consolidate.

However, what do we mean when we talk about a migrant or refugee crisis? What are we referring to exactly? As already suggested, ‘crisis’ refers to a turning point to something that breaks the routine and is an unexpected or unprecedented event. If understood in these strict terms, the concept of ‘crisis’ is well suited for expressing what happened in 2015, when the number of people reached the EU. The concept of ‘crisis’ is often abused in relation to migration policies, as national governments and

supranational actors often use the term to justify the adoption of exceptional measures or a different allocation of public resources. This was the case in 2006, during the crisis de la pateras, when the Spanish government called for support from the EU, which led to the launch of the first Frontex operational activities (Carrera, 2007); in 2010, when the increase in border crossings at the Greek land border with Turkey triggered the launch of the first, and to date only, Frontex 'rapid border intervention' (Carrera and Guild, 2010); and again, in 2011, when Italy declared a 'state of humanitarian emergency' at the border and obtained technical support from the EU with the launch of the Frontex-led joint operation Hermes (Campesi, 2011). EU migration policies have always been in a permanent 'crisis', and the 'state of crisis' with regard to illegalised migration across the EU's frontiers can be considered the norm rather than the exception (New Keywords Collective, 2016).

Another issue is the perspective from which one looks at the 'crisis'. Within the framework of forced migration studies, the concept of 'crisis' is currently used to refer to phenomena triggering migratory movements. 'Crisis' here implies acute pressure on the person or group that moves rather than the consequences that the movement of people triggers in destination countries (McAdam, 2014). In contrast, in the recent debate on the migrant or refugee 'crisis', the focus has been on Europe and the supposed destabilising effect that the increase in the number of arriving migrants and refugees was likely to have rather than on the endemic state of political and civil unrest, which is afflicting the regions immediately surrounding the Mediterranean (Pallister-Wilkins, 2016).

The use of the term 'crisis', however, has had a powerful depoliticising effect, obscuring the deep roots of what was happening at EU borders. In line with the prevailing interpretation of the concept, the migrant or refugee 'crisis' has been presented as a phenomenon triggered by predominantly *exogenous factors* over which the EU had no control or responsibility. Europe has been confronted with a 'crisis' that originated 'elsewhere', whose roots lie "in the incapacity or incompetence of (postcolonial) 'others' to adequately govern themselves (New Keywords Collective, 2016)." This has served to obscure the impact of *endogenous factors*. From my point of view, the so-called migrant or refugee 'crisis' has essentially been driven by the many contradictions affecting the EU border regime rather than by the rising numbers of migrants reaching EU shores. These contradictions were essentially related to the intrinsic legal and political weaknesses of the four-tier access control model.

One of the political weaknesses of the EU border control strategy is that its effectiveness is largely based on cooperation with neighbouring third countries. This cooperation has always been quite complicated, with countries such as Libya and Turkey pursuing unscrupulous migration-related diplomacy (Wolff, 2008). Moreover, the Arab Uprisings led to regime changes in many Mediterranean countries, and in its aftermath, the EU struggled to find new reliable partners in the region (Tömmel, 2013). Indeed, EU countries have been forced to reinternalise border controls while trying to establish a new basis on which to rebuild their regional strategy for the external governance of migration (Geddes, 2009).

The fact that the regime was largely built on a (more or less explicit) precarious balance between central and northern EU countries on the one hand and frontline EU countries on the other hand has also resulted in serious political weakness (Campesi, 2011). The latter received financial compensation and technical support for acting as EU gatekeepers, while the former tolerated a certain degree of secondary movements of migrants not properly identified and fingerprinted according to the EU rules. The combination of increasing numbers of refugees triggered by the Arab Uprisings and the tight budgetary constraints imposed on southern frontier countries contributed to the increase in political salience of the burden-sharing issue. The first diplomatic tensions had already emerged in 2011, when Italy granted residence permits for humanitarian reasons to all Tunisians landing on its shores (Zaiotti, 2013), but the political and diplomatic balance definitely broke down in 2014 and 2015. Facing an increasing number of arrivals by sea, Greece and Italy began overtly ignoring the 'first-country-of-entry' principle of the 'Dublin system' and allowed migrants to move on to their preferred EU countries of destination (Trauner, 2016; Den Heijer et al., 2016). The European border regime had, however, also shown many weaknesses from a legal perspective, with the European 'supreme courts' already undermining some of its foundations.

The first breach in the regime was initiated by the Court of Justice of the EU, which delivered a judgment in the case of an Afghan asylum seeker who was about to be deported to Greece from Belgium under the 'Dublin rules'. The court maintained that member states may not transfer an asylum seeker to another member state if they are aware of "systemic deficiencies in the asylum procedures and in the reception conditions" in that country of destination². This ruling, which was subsequently confirmed by a similar ruling issued in January 2011 by the European Court of Human Rights³, resulted in a (temporary) suspension of 'Dublin transfers' of AS to Greece, giving rise to what some scholars called 'the other Greek crisis' (McDonough and Tsourdi, 2012). When other judicial cases also raised questions about the Italian reception system⁴, it seemed that the European 'supreme courts' were about to fundamentally undermine one of the main foundations of EU asylum and migration policies.

The second breach was opened by the European Court of Human Rights, with its ruling in the Hirsi case. The Strasbourg Court maintained that during a number of border operations carried out in cooperation with the Libyan authorities, Italy violated the *nonrefoulement* principle by diverting migrants back to the Libyan shores. By blaming Italy for its cooperation with Libya, the European Court of Human Rights was at the same time implementing the whole EU strategy for extraterritorial border control. The controversy triggered by this unscrupulous cooperation with Libya forced EU institutions to revise and clarify the rules of engagement regulating sea border patrols (Slominski, 2013). This led to the enactment of regulation (EU)

No. 656/2014, which at Article 4.1 states that “no person shall, in contravention of the principle of *nonrefoulement*, be disembarked in, forced to enter, conducted to or otherwise handed over to the authorities of a country where inter alia, there is a serious risk that he or she would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where his or her life or freedom would be threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another country in contravention of the principle of *nonrefoulement*.”

Increasing migratory pressure has interacted with this legal and political framework, triggering a number of reactions at both the national and EU levels. In the post-*Hirsi* and post-Arab Uprisings political landscape, border patrols in the Mediterranean have essentially been turned into search and rescue operations, with thousands of rescued migrants then landed on EU shores (Carrera and den Hertog, 2015). This has put the reception systems of frontline southern member countries, already hit by tight budgetary constraints as a result of austerity policies, under further strain; the affected countries reacted by organising their own relief by not registering asylum seekers and stimulating their secondary movement. The political aim of this ‘wave through approach’, which amounted to an informal suspension of the EU asylum law, was clearly to open a discussion at the EU level on the appropriate sharing of the burden among EU countries and a revision of the ‘Dublin system’.

This triggered a reaction from central and northern EU countries, which reinstated controls at their internal borders with a sequence of unilateral measures, forcing the interpretation of the rules set out in the Schengen borders code (Guild, 2015). Moreover, although only 5 out of the 26 Schengen States reintroduced temporary controls at internal borders in response to the large number of refugees seeking asylum in the EU via Greece and Italy and that those that reintroduced border controls did so in a very restrained manner, focusing on small stretches of their internal borders or specific crossing points, these unilateral actions became part of a ‘border spectacle’ (De Genova, 2013), which raised the spectre in Europe of the ‘end of Schengen’. In the face of the convulsive sequence of highly sensationalised border closures, the ‘crisis’ was no longer only about the mere increase in the numbers of incoming migrants and refugees but started to be described and perceived as an existential threat to the whole European integration project that required urgent action.

4. EU External Migration and Border Control Policies and Migrants as a Threat

The EU institutions and the EU governments are divided about the mechanisms and strategies of the collective management of migration flows. Some contend Europe is facing a humanitarian crisis and speak out about the abuse of humanitarian principles by foreign people driven by disguised interests and irrational expectations. Many concede we are in front of an enormous humanitarian crisis but argue that Europe cannot open the door to all the victims. Financial assistance to migrants in camps located outside of Europe is the choice most preferred by the European heads of government in general. Immigrants alter the job market, overburden the national welfare system, bring trouble to the education system, and cause security problems such as the growth of crime in the streets, the infiltration of organised crime networks, and the intrusion of terrorist groups (Marenin, 2012). The collective refusal to share life with the ‘diverse’ and the ‘other’ is also an explanation of the anti-immigrant protest. This refusal is rooted in people’s social norms and innate culture. The perception of irreconcilable differences in religion also plays a role in this explanation.

Finally, personality traits and prejudices against all foreigners or certain people and nations are explanations for anti-immigration feelings at the individual level. At the same time, many people assess the threat perception of immigrants to be exaggerated and argue that benevolent reception, non-discriminatory behaviour, and integration facilities can address all the problems of reception. As time went on and the crisis urged European leaders to respond appropriately, they have shown uncertainty in making decisions for the management of the crisis and restraint in shifting from appeasing their citizens’ fears to discussing effective response measures. However, in 2014, the EU institutions and almost all the MS leaders reluctantly reached a consensus that the mass flow to Europe is a mixed migration flow. They concluded that sharing responses and enhancing joint management measures for asylum-seekers and non-refugee migrants is more effective than handling the situation independently.

However, differences persist regarding how to provide protection to refugees and how to block the entry of those who do not qualify for conventional refugee status. These issues involve the external border control system, which relies on the surveillance and defense systems of the Member States (MSs) with Union support, if requested, and the intra-EU border system, which is based on the free movement of people and the Schengen system. The reception and settlement of migrants who qualify for international protection norms also require leaders to gain their citizens’ consent to integrate a certain number of refugees into their countries. Within the EU constitution, the shared competence power regime dictates how to address these issues. In practice, the EU and national institutions make decisions collaboratively, provided national governments acknowledge that individual states cannot effectively manage these challenges alone. However, when a cross-border problem escalates into a crisis, the political inclination of all parties involved is to identify which asylum seekers are potentially admissible and, at the EU level, to reform the existing asylum legislation and the Dublin Convention.

In the EU constitution, the shared competence power regime regulates how to make a common response to these issues. In practice, the EU and state institutions decide together as long as the national governments acknowledge that the individual

state cannot manage the problems at stake well. However, when a transboundary problem arises and escalates into a crisis, it becomes politically convenient for all the parties involved to determine which of the following solutions is better: (a) coordinating national management actions, (b) creating ad hoc measures for co-management, (c) adopting EU shared competence power in the policy area of the crisis, or (d) transferring the policy area to the Union (Campesi, 2013). From the first to the last option, transboundary crisis management passes from the usual type of international and intergovernmental management to the Community and the supranational type of management. On such premises, knowledge about the border control policy and immigration policy of the EU is important for understanding the EU's management of the current migration crisis.

The EU has no power for border control, neither the external nor the internal border. This power belongs to the Member States (MSs). However, the EU does have a border control policy and plays two main roles in this area. The first is the role of standard setters and rule makers in selecting issues. The second is the role of the assistance provider and enabler of the coordination and convergence of the actions and operations of the MS agencies in this area. Both roles have been put in place progressively, especially since the Schengen Agreement on the Free Circulation of People was moved into the EU Treaty. In recent years, the EU has established a European border control regime through standard-setting and rule-making. This regime sets the criteria the MSs apply to foreigners who want permits to reside in their territory. Another standard the EU dumped into the MSs is finding an entry permit on security criteria that are defined in an extensive way. Terrorists, criminals and migrants must pass through security checks, as they put at risk one or more values, such as political order, material and economic property, physical integrity, and the societal values of countries and their citizens. The EU regime of border control also aims at developing digital technologies and networked datasets in view of expanding the use of smart and mechanisms of border control (Takle, 2012).

Although the EU plays a role in shaping the common control of the external border crossing by third country nationals, and this is also done to comply with the Lisbon Treaty articles about the EU power to legislate foreign entry and residence and about return and readmission, the states retain the power of legislating the integration of foreign workers within their society. This is understood by reminding the aforementioned extended security model of controlling the crossing of European borders by foreign nationals. However, it is acknowledged that the EU as an institution promotes the principle of the free movement for labour in the name of economic efficiency, while generally speaking, MSs seek to bring down the standard of migrant rights protection to respond to domestic interests. Nevertheless, the EU enlightened directives that protect migrant rights have a chance of success due to the domestic institutional protections existing in MSs, such as a strong court system, legal aid for immigrants, and state funding for pro-migrant NGOs (Ludtke, 2011).

The principle of promoting economic efficiency plays a crucial role in shaping EU immigration policy and its response to irregular migration flows in recent years. This is illustrated by the Global Approach to Migration and Mobility (GAMM), a document prepared and published by the Commission and approved by the Council in 2011. Recognizing the need for a common strategy to address the increasing migratory flows globally and in regions around Europe, GAMM updated the 2005 Commission's Communication titled "Global Approach to Migration." By complementing migration with mobility, the Commission underscored its preference for short-term stays of migrants in the EU. Mobility, defined as the stay of foreign workers in Europe as long as they have employment, aligns with the economic efficiency of migration. The GAMM also emphasized the economic rationale behind the EU's external migration policy, which focuses on managing migratory flows both beyond and within the EU's borders. To manage the influx of migrants, the Commission aims to develop mechanisms allowing foreign nationals—whether skilled migrants or workers alleviating Europe's aging population problem—to work and stay temporarily in the EU.

This approach indicates that there is no significant emphasis on integrating migrants as full residents of the European Union, a matter that remains within the purview of state power as recognized by the Lisbon Treaty. Nonetheless, GAMM commits to upholding all international obligations regarding the human rights of migrants and the protection of refugees. To manage incoming migration flows from abroad, the Commission and the Council focus on expanding the network of bilateral cooperation agreements with countries of origin and transit, as well as participating in regional forums and dialogues to enhance synergy in migration management initiatives. However, there are significant challenges to the effectiveness of these instruments. For instance, curbing the outflow of migrants does not always align with the economic and political interests of the countries from which migrants originate. Additionally, these governments often struggle to fulfill the requirements outlined in mobility partnership agreements due to widespread inefficiency and corruption in public service. Lastly, these agreements are not legally binding, lack provisions for evaluating the partner country's performance, and do not obligate EU governments that have not signed the documents (Crawley and Skleparis, 2016).

In conclusion, the GAMM shows the EU's understanding of migration and the response to growing migratory flows as follows. (A) Migration is principally an economic phenomenon. Persons migrate from countries and areas with no or very low economic growth and job opportunities to countries and areas with prosperous economies and many job opportunities. (B) Migrants bring economic growth to the receiving countries and economic development to the countries of origin as long as the former need manpower for their growing job markets, and the latter benefit from the financial resources the migrants' remittances provide to the local economy. (C) Such benefits are achieved when migration is well managed by the political

authorities of the sending and receiving countries. This objective is achieved by negotiating and sturdily implementing agreements on the return of the migrant to the sending country when jobs are no longer available in the hosting country and on development ventures in the receiving country funded by the financial remittances of the migrants. (D) Therefore, irregular migration impedes the well-established management of migration, and migration must be confronted and stopped. The country of entry has to return irregular migrants to the country of origin. To this end, bilateral readmission agreements and regional agreements on migration, mobility and border control are negotiated by the sending and receiving countries and are jointly implemented. (E) In managing migration, the human rights of migrants are respected throughout the migration process. International protection is given to refugees according to the existing international rules.

5. The Impact of International Legislation on Migration Policies

Both international and national legislation are key to migration governance. In addition to Iraq and Lebanon, many countries in the sample are signatories of the 1951 Geneva Convention and its additional protocols. Turkey is an outlier due to geographic limitations to its ratification, meaning that it grants refugee status only to those fleeing from European countries and provides conditional refugee status until they are resettled in third-party countries (Dalton, 2021). Many countries (except Iraq and Lebanon) recognise the European Convention of Human Rights (ECHR), together with its principle of protection against torture or inhuman or degrading treatment or punishment, as essential safeguards. All EU countries are bound by the EU acquis, which includes the Common European Asylum System (CEAS), which establishes common minimum standards for asylum, and the operation of the Dublin Regulation. As a non-EU country, the UK is only part of the first phase of the CEAS, which comprises the Refugee Qualification Directive (Directive 2004/83/EC), the Asylum Procedure Directive (Directive 2005/85/EC), and the Asylum Reception Conditions Directive (Directive 2003/9/EC).

Despite a level of policy convergence regarding legislation emanating from international and EU frameworks, the comparison of national asylum regimes of the countries shows evidence of potentially contradicting modes that can partially be explained by deviation from supranational legal frameworks during their adoption at the national level. These differences also emerged as the result of multiple fragmentary normative strategies jeopardising internal consistency and effectiveness, while few of them improved the rights of AS (Josipovic et al., 2018). Unlike what one might expect, the changes in legislation were not necessarily coherent or clear. Moreover, for both EU and non-EU countries, national legislation has been frequently updated, amended, changed and revoked.

The impact of complex legislation is mainly felt in asylum policies. Governments extended their adoption of diverging labels for migrants, such as protection seekers, guests, displaced persons, economic migrants or illegal migrants. These factors made the nexus between irregular migration/asylum/mixed migration more ambiguous than before (Crawley and Skleparis, 2016). The legal changes complicated bureaucratic procedures and extended the duration of decisions as countries aimed to reduce asylum applications. Additional accelerated, fast-track and border procedures were introduced to prevent and restrain access to international protection and speed up asylum applications and assessments (ibid.). In many countries, permanent protection schemes have been replaced by subsidiary and temporary protection mechanisms. The Qualification Directive introduced subsidiary protection in 2004, and it sets out protection for certain individuals who do not satisfy the 1951 Convention refugee definition rather than bringing such persons into an elaborate refugee definition. The rights connected to subsidiary protection status are much more limited than those connected to asylum or refugee status.

In almost all countries, legislative structures rarely involve constructive, participatory law-making processes because parliaments, civil society, and refugees, such as those in the UK, Sweden, and Greece, have a limited influence on policy changes. Parliamentary scrutiny or debate has also been circumvented in other ways. Recent regulations have been mainly developed via secondary legislation (e.g., bylaws, decrees, circulars, regulations, guidelines), as in Turkey or Italy. In almost all countries, legislation is decided upon by governments and often implemented by the ministries of the interior that are well known for having a security-oriented lens in approaching migration issues (Crawley and Skleparis, 2017). Secondary legislation is rarely subject to parliamentary debate. Both decision-making and implementation are concentrated in the hands of the executive, sometimes facing challenges from national or international judiciaries.

Since 2015, contested ad hoc external cooperation instruments, such as statements, deals, compacts, joint actions, and joint declarations, have also intensified; for example, according to the EU Turkey Statement of 2016, the Joint Action Plan agreed between Turkey and the EU and joined the return operations of the Frontex and Greek authorities (Frontex, 2016). These arrangements fall outside the ambit of international refugee law and the EU Treaties for migration governance. They are often designed in a way that not only contradicts EU norms and standards but also sidelines the European Parliament or the European Court of Justice (CJEU) (Ibid.). This is quite a unique feature noted in this crisis whereby informal arrangements are adopted as a policy innovation to address the crisis of migration governance.

Although integration is the subject of various immigration policies, the concept of integration still lacks proper legal definition. In this context of uncertainty, the notion of integration is at serious risk of being transformed into a tool for preserving the sovereignty of member states over immigration. This is especially true when it is used to strategically select the most socioeconomically and culturally desirable immigrants by excluding all those persons who are not supposed to fit well/assimilate into a preestablished national (or European) cultural, civic, and social model (Fekete, 2006). However, such a

paradigm appears at odds with an idealistic view, which conceives of integration as a process of reciprocal adjustment between immigrants and members of the receiving country, whereby all people participate on an equal footing into a pluralist society and may enjoy a full package of fundamental rights (Bottero, 2022).

To address this controversial EU conception of integration, this article proposes to investigate how the jurisprudence of the Court of Justice of the European Union (CJEU or Luxembourg) and the European Court of Human Rights (ECtHR or Strasbourg) has shaped and used this concept. In doing so, it questions the capacity of the two courts to improve the EU legal framework in such a way as to develop a pluralist and rights-based paradigm of integration. This approach follows a 'law in context' approach (Schinkel, 2017).

In summary, the legal framework concerning migration and asylum/international protection in all the countries under study became extremely complex and hypertrophic. Legislation has been changing continuously and often incoherently; frequently, lawmakers resort to decrees instead of proper statutes/acts of Parliament. The result has been a fragmented legal framework that cannot be consistently interpreted and implemented. The legal enforcement and guarantee of fundamental rights are jeopardized, eventually resulting in the discretionary power of single officers and individuals. Bringing the two together, the diversity of actors stated above and the fragmentation of legal provisions create an uneven playing field where the national level emerges as dominant, despite an otherwise complex multilevel governance system.

5.1. Integration in the 'Law'

With the unprecedented flow of immigrants coming to Europe in recent years, including millions of refugees displaced by the war in Ukraine, integration has assumed an increasingly central role in political discourses, and national and EU policies have attracted a great deal of scholarly attention, mainly in the areas of sociology, political science, economics, political economy, and political philosophy. Scholars in these social sciences have elaborated a theoretical framework on the concept of integration by taking into account not only the States' interest in preserving their sovereignty in the field of immigration but also immigrants' rights and prerogatives. The literature has acknowledged the multidimensional nature of integration and considered a variety of implications in relation to immigrants' nationality, wealth, social class, educational level, ethnicity, culture, religion, age, and gender (Murphy, 2010). While being traditionally addressed by those social sciences, the concept of integration is, at least in the EU, the subject of only limited research in the field of law. Legal scholars have not yet managed to develop an independent theoretical framework for the legal concept of integration. Arguably, a proper and unambiguous legal definition of integration does not emerge from the current EU immigration law framework (Carrera, 2019).

The existing legal framework formed by the EU Treaties, the Charter of Fundamental Rights of the European Union (CFREU), the European Convention on Human Rights (ECHR), and international human rights law (Gilmartin, 2019) contains a wide catalogue of rights and provisions that support integration. However, the notion of integration is not properly defined in any of these instruments. However, since many of the rights and obligations enshrined therein are directly related to the existence of a certain degree of integration, it is precisely this legal definition that would produce tangible effects on the legal position of the persons concerned.

In this legal vacuum, the concrete interpretation given by the CJEU and the ECtHR becomes particularly important because, even more than positive legislation, it has the ability to integrate with legally enforceable rights (for the immigrants) and obligations (for the states). As shown in the following jurisprudential analysis, the European courts have shaped and used the concept of integration as a criterion for granting individual rights and imposing related state obligations. By implication, the resulting legal concept of integration has become the yardstick for regulating the exercise of those rights and respect for those obligations. This questionable outcome requires a critical analysis of the rationale behind the European courts' construction of the integration concept, as well as of the modalities in which the latter exerts its legal effects. In this way, the model of integration advancement may be clearly discerned and understood. In performing this analysis, the present research draws inspiration from arguments of sociology, political science, and political philosophy to develop a theoretical notion of integration that is used as a benchmark against which European courts' jurisprudence is tested.

6. Failure of the EU in the Resettlement Scheme

The relocation of refugees and migrants across the EU has been largely a failure. This is not merely the result of the migration-sceptical policies that the majority of Central and Eastern European (CEE) countries follow but also of the less cooperative positions of other EU countries against each other. In September 2015, the EU agreed to reallocate 120,000 refugees from Greece and Italy over the next two years. However, according to EU Commission data, the number of refugees in EU countries ranges from 2 in Bulgaria and 140 in Finland to 540 in France, which accounts for less than 1% of the target (European Commission, 2016b). As Germany, Austria and Sweden received a large number of refugees, they were interested in establishing a burden sharing scheme by the EU. Many other governments (Ludlow, 2015) had incentives to undermine responsibility sharing proposals to avoid domestic pressures from anti-migration parties and movements that were on the rise in Austria, Germany and Sweden (Zaun, 2017a). In this sense, asymmetrical refugee pressure generated an uneven incentive structure.

Copenhagen was anxious about the economic impact of the crisis; it introduced measures to make migration less attractive. For instance, the police can confiscate money or valuables worth 10,000 (\$1,450) or more in some cases to pay for accommodation and care. The legislation was enacted in February 2016, and there were cases in which, for instance, migrants were travelling on false passports or broke law in another way. There was much critique of these measures abroad. It has been depicted as cruelty by, for instance, the *New York Times* (2016). However, some Danish human rights NGOs stress that the law was introduced merely with its symbolic aim of diverting economically motivated migrants rather than as a tool of repression and that there are other more serious issues (for instance, the lacking right of family reunion with many persons granted subsidiary protection) that need to be discussed (The Guardian, 2016). Whether this measure was effective in reducing the number of applications remains uncertain. Nevertheless, in 2017, Denmark saw the lowest number of applications in six years (in the first nine months of 2017, only 2,597 people applied for asylum, with 1,742 cases opened), which is a significant decrease compared to 2015 (when 3,694 new applications were filed in one month). Additionally, the percentage of people granted asylum diminished significantly from 85% in 2015 to 27% in the second quarter of 2017 (Bendixen, 2017).

The majority of the EU countries, including Poland, are full members of the European Common Asylum System (ECAS), which means that they have to follow common procedural standards in processing refugee applications and cannot reject any single refugee claim without applying the required procedure (Asylum Information Database, 2016). With Poland being located on a transit route from the East (Asia and former Soviet Union), the country saw an increase in refugee claims from 8,000 in 2014 to 11,000 in 2015 but almost no claims from the Middle East or Africa. In comparison, another country from Central and Eastern Europe, the Czech Republic, received a negligible number of asylum applications since the country is not on a migration route.

However, weak commitment to refugee relocation applies to larger EU member states. Although France publicly defends the relocation and requests European responsibility for the refugee crisis, Paris has done little to give more substance to this policy. As some critics argue, the French–German collaboration is merely a façade that camouflages France’s lack of investment in the asylum system and its more general avoidance of burden sharing. Additionally, France has lost its status as a destination country for refugees, which further diminishes the desire to support Berlin. Moreover, it is not only CEE countries (which often become demonised in the West European press as the main culprits draining EU funds but also that refuse to show solidarity) but also their Nordic counterparts who show reluctance towards relocation plans. Both in Stockholm and Copenhagen, there are minority governments facing ring-wing populists in parliaments (Sweden Democrats, as the third party, and the Danish People’s Party, as the second party). In Finland, the populist and Eurosceptic Finns Party is a part of the current government, and it also controls the Foreign Ministry; thus, a refugee-friendly policy in Helsinki is rather out of question. Meanwhile, other countries such as the Baltic states do not accept any refugees, promising to pay instead for the services of other EU countries on their own soil, without much concrete progress in this direction.

Against this backdrop, asymmetrical refugee and migrant pressure affected the EU Member States to varying degrees. Even countries of the same region, such as CEE, should not be treated as belonging to the same category, as the most affected country in 2015 was Hungary (measured by the number of applications in 2015 but not the number of approved asylum claims, which were quite low in Hungary, with a rejection rate of 91.54% in 2016), and the least affected Slovakia (6 claims), with Poland in the middle ground (mainly due to migration from the East, e.g., Chechnya and Georgia). The asymmetry of the crisis produced diverse interests in the different EU countries, making a concerted EU refugee policy particularly difficult. In addition, the size of the countries, their “absorption capability” and their economic conditions vary across the board, increasing the diversity of interests even more. While large countries such as Germany, with rapid economic growth and labour shortages, can view the influx of migrants and refugees as a potential economic investment, others such as Denmark (with a population of 5.7 million people) or Slovakia (with a population of 5.4 million people) might tend to identify this influx as an economic burden and threat to societal, political and cultural stability.

Austria and Slovakia are migrant-skeptical countries and have accepted relocated refugees (in symbolic numbers) only to avoid the EU infringement procedure (now enacted against Poland, Hungary and the Czech Republic), while the EU has been consistently criticising Vienna and Bratislava for their rather modest engagement. While in 2017, Austria was among the OECD’s most burdened countries globally in terms of migration and refugee influx and thus refused to accept more commitment, Slovakia considered itself too small and historically inapt to become a “multicultural society”, as its government declared on many occasions.

Indeed, regardless of the economic and political effects that the refugee influx may entail, there are currently two main approaches to migration in Europe. Countries such as Hungary and Austria decided to increase border controls and to raise fences. Others, such as Great Britain, decided to fund a wall at its border to France in Calais. The Netherlands put their hopes in the European “Partnership on Inclusion of Migrants and Refugees” pact, which was stipulated in March 2016 and formalised in May of the same year as the Pact of Amsterdam (European Commission, 2016a). Italy, as the second most affected country by arrivals after Greece, has put all its efforts since 2015 on a comprehensive European refugee pact that should guarantee the “fair” redistribution of migrants and refugees arriving at its shores to all other 28 European nations to share responsibility. Based on the preliminary EU decision in September 2015, which would last for only two years, Italy hopes for a permanent system of refugee relocation. Nevertheless, until June 2016, only 2280 people were relocated from Greece and Italy, indicating

the failure of the scheme. As of 7 December 2017, Poland and Hungary had accepted no refugees within the relocation scheme, Austria had accepted 17, the Czech Republic had accepted 12 and Slovakia had accepted 16. Germany still has to accept 17,812 (as it pledged 27,536), France 14,948 (pledged 19,714), the Netherlands 3,312 (pledged 5,947) and Romania 3,452 (pledged 4,180) (Council, 2017).

Against the backdrop of the failure of the relocation scheme, the issue of migration is bound to remain conflict-ridden among Member States. The European Commission will put more pressure on Hungary, Poland and Slovakia when it initiates a law infringement procedure with the Court of the Justice of the EU for “noncompliance with their legal obligations on relocation” (BBC, 2017). Should the Court of Justice decide against the defiant Member States, the CEE countries are likely to accept only a symbolic number of refugees, such as Austria and Slovakia, to avoid financial punishment. This approach would certainly not salvage the controversial relocation scheme.

7. Final Considerations

The recurring crises in Europe, from the 2008–2009 financial crisis to the 2015–2016 refugee crisis and the 2020–2021 pandemic, highlight the inherent contradictions in the governance of migration. These crises reveal the limitations of the liberal state and the paradoxical use of liberal norms for exclusionary purposes. The EU's response to migration has largely focused on short-term, emergency measures that often obscure the structural roots of the problems. This “crisis mode” of governance is characterized by uncertainty, ambiguous legislation, and a reliance on ad hoc measures, which ultimately stretch the limits of existing legal frameworks and violate institutional norms. Despite proposals for reform, such as changes to the Dublin Regulation, there has been little progress in addressing the underlying issues, leaving the crisis mode as the new norm in migration governance.

Ethical considerations

Not Applicable.

Conflict of Interest

We declare that there are no conflicts of interest.

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