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Department of International, European and Area Studies

"International, European Law and Governance"
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Master Thesis

"Uses and misuses of the vulnerability notion in the Greek asylum system during 2015-2021: The role of vulnerability on granting international protection as a reflection of the subjective nature of asylum".

"*When refugees cannot seek asylum because of offshore barriers, or are detained for excessive periods in unsatisfactory conditions, or are refused entry because of restrictive interpretations of the [1951 Refugee] Convention, the asylum system is broken and the promise of the Convention is broken, too*", United Nations Secretary-General Kofi Annan.

Rodanthi Violaki

Athens, 2021

To all the displaced people of the world who struggle to cross invisible walls and fortresses.

Whoever is afraid of you has not seen you in the eyes.
He has not seen the eyes of your children. Let us not
allow the Mediterranean to turn into a sea of dead.
Please, let us stop this shipwreck of civilization.

Pope Francis, December 2021, Lesvos.

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Dedicated to Jonas.

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Finally, to all the refugees seeking for asylum in Greece, I wish Europe will respect the fundamental humanitarian values and offer you a new home to build your lives in peace and safety.

Contents

Table of Abbreviations

1967 Protocol	1967 Protocol Relating to the Status of Refugees
APD	Asylum Procedures Directive Recast
CEAS	Common European Asylum System
ECHR	European Court of Human Rights
EU	European Union
GAS	Greek Asylum Service
Geneva Convention	1951 Convention Relating to the Status of Refugees
IRL	International Refugee Law
JMD	Joint Ministerial Decision
KEELPNO	Centre of Disease Control and Prevention
MoMA	Ministry of Migration and Asylum
LoN	League of Nations
RD	Reception Directive Recast
RIC	Greek Reception and Identification Centers
PGA	Regional Asylum Office
RIS	Greek Reception and Identification Services
RSD	Refugee Status Determination
SCO	Safe Country of Origin
STC	Safe Third Country
QD	Qualification Directive
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commissioner for Refugees
TCN	Third Country Nationals
TFEU	Treaty on the Functioning of the European Union

Introduction

The international refugee law regime has always been characterized by the tension between state sovereignty, migration control and obligation to respect the non-refoulement principle that sets limitation to states' prerogatives.[1] The legal framework of international protection comprises a variety of international treaties, legal instruments, principles of international law, human rights law and asylum developments on regional level.[2] The 1951 Geneva Convention relating to the Status of Refugees[3] is the cornerstone of international protection and provides a legal definition for the inclusion of refugee. The Convention was further supplemented by the 1967 Protocol Relating to the status of Refugees[4] which introduced the notion of universality of international protection. Together, they constitute the pillars of refugee law and are further enriched by international and human rights law with the aim to secure greater protection and mandate for refugees' rights. They aim to provide a minimum set of standards of protection for those outside their country of origin fleeing persecution on the provided five grounds of the Convention[5]. Furthermore, they encompass the principle of non-refoulement, a non-derogable and non-negotiable right, an erga omnes rule of customary law.

Despite the codification of refugee law and the established legal framework, the elements of fragmentation and subjectivity are the prominent features of modern refugee law. The interpretation and application of the Convention is subject to state's perception towards migration. Thus, at national level the refugee definition is neither neutral nor objective, as it reflects the national interests and priorities.[6] The Convention affirms the states' jurisprudence in establishing the RSD procedures and deciding whether an individual fulfils the inclusion prerequisites for refugee definition. As a result, access to asylum in procedural terms is a matter of concern as the fair and accessible systems give their position to a procedural labyrinth and inequality, a condition that erodes the notion of international protection. Within the European framework, asylum is not defined in a comprehensive humanitarian and human rights context. The asylum systems are characterized by a great geometry despite the

[1] J. Hathaway, "A Reconsideration of the Underlying Premise of Refugee Law", Harvard International Law Journal, 31(1), 1990, 129–184, at 144.

[2] Lauterpacht, D. B. and Bethlehem, D.: "The Scope and Content of the Principal of non-Refoulement", in Refugee Protection in International Law: UNHCR's Global Consultations on International Protection, edt by E. Feller, V. Türk and F. Nicholson, Cambridge University Press, 2003. Available here.

[3] The 1951 Geneva Convention available here.

[4] The 1967 Protocol relating to the Status of Refugees available here.

[5] Hathaway, J. and Forster, M. (2014): The law of refugee status, 2nd edition, Cambridge University, p. 17.

[6] Hansen, Th. G. (2011): Access to Asylum. International Refugee Law and the globalization of migration control. Cambridge University Press, p. 44-53

objective of CEAS to achieve harmonization of the asylum procedures and examination of the asylum applications on common standards. The European orientation of "non-entrée"[7] has culminated in great disparities among the member states and divergent asylum systems, as the national-interest assessment is the driving force for the established asylum procedures. EU has failed to achieve a procedural harmonization and thus the established system either encourages or denies qualitative procedural standards.

The fragmentation of asylum and implementation of national policies at the expense of a common unified policy was exacerbated in 2015, when Europe experienced the biggest influx of refugees since the Second World War, with the arrival of 1.3 million people fleeing persecution and in need of international protection. The refugee crisis[8] revealed the structural shortcomings and weaknesses of the European acquis and revealed Europe's fragile solidarity and humanitarian values, as migration turned into a synonym for border control and security. Today, six years after the crisis, EU hasn't achieved a comprehensive asylum policy under CEAS. On the contrary, member states are turning to national migratory policies and interpretation of the refugee law resulting in further nuances to the "refugee" definition and procedural fragmentation. The most remarkable developments that received wide condemnation was the hotspot approach and the controversial EU-Turkey Statement, which constitutes the basis of the "exceptional" fast track border procedure.

The element of fragmentation received a central point in the Greek asylum system the aftermath of the refugee crisis in light of unprecedented developments in the field of migration initiated by the European authorities. The Greek authorities have established a labyrinth of procedural layers within the existing asylum procedures for assessing asylum applications, in order to manage the arrivals and curd the flows at the borders. Asylum procedures are defined based on a geographic criterion and the substance of each application for international protection. However, the asylum seekers also experience a classification and membership into two pre-established groups based on distinguishable individual circumstances. More specific, the aftermath of the Statement, the rise of an additional procedural layer has been observed, relating to reception conditions and asylum procedure, the notion of vulnerability. The concept of vulnerability has been notably developed by the

[7] First referred by James Hathaway in 1999.

[8] For the purpose of this paper, the term crisis is used to describe the weakness and shortcomings of the Greek and European states to address the humanitarian impact of the mass influx at the European external borders.

high profile the M.S.S. judgement[9], in which ECtHR underlined the inherent vulnerable status of all the asylum seekers. The legislative instruments of CEAS acknowledged the need of safeguards for the vulnerable applicants. However, they disregard the inclusive approach of ECtHR by introducing a protection framework only for certain directed only for few.

The notion of vulnerability reached enormous dimensions in the Greek asylum system. At the Aegean islands, the recognition of the vulnerability was the escape valve from the degrading living conditions in the islands and the imposed geographic restriction. It signified the referral to the mainland and most importantly the participation in the regular procedure, away from the externalization of asylum and poor evaluation of cases due to the politically charged environment in the islands. The classification of the applicants into vulnerable and non-vulnerable groups was based on the outcome of the vulnerability assessment conducted by medical actors. However, the simplistic implementation of vulnerability following a group-based approach, combined with the subjective nature of the RSD culminated in disparities and fragmentation. The established groups of vulnerable persons and the poor medical screening failed to capture the realistic needs and conditions of the asylum seekers. The over-simplification of RSD procedures into two categories based on the medical record undermines the asylum process and challenges the equal and fair evaluation of the asylum claimants.

The primary purpose of my study is to enhance our understanding on the Greek asylum system RSD procedures, the role of the recognized vulnerability and how it reflects the element of subjectivity, prominent in the Greek asylum system. In order to draw credible and valid conclusions, the study is narrowed in relevant subcategories with the aim to provide a comprehensive understanding of the topic under discussion. More specific, it pursues to define the nature and elements of the vulnerability notion by identifying its role on all aspects of asylum. It focuses on presenting the ways under which the recognition of a vulnerability affects the RSD procedures by introducing concrete examples and the relevant reasoning. Therefore, it explores the interaction between the criteria for granting international protection and recognition of vulnerability and whether a vulnerability factor act as an additional criterion for the beneficiary of international protection. It continues by exploring whether the declaration of vulnerability by the respective authorities is a precondition for the full access to asylum and whether it redefines terms of refugee law. It will introduce the recognition of a

[9] With regards to the case, the Court stated that Asylum seekers are members of a particularly vulnerable population group in need of special protection (*M.S.S. v. Belgium and Greece*, Application no. 30696/09, Grand Chamber, 21 Jan. 2011.)

vulnerability changes the interview and decision drafting, reorientation of terms such as persecution, internal protection alternative and serious harm. Finally, the study will explore whether the over-simplification of RSD jeopardizes the right to asylum, imposes risks of turning vulnerability as a precondition of granting international protection and culminates in the rise of a two-tier asylum system.

My motivation for engaging with the subject in a scientific manner derives from my personal interest and professional background as a former Asylum Case Officer assigned to examine the applications of recognized vulnerable asylum seekers in the mainland. Having their geographic restriction lifted, thousands asylum seekers were transferred to the mainland, where their application was assessed under the regular procedure[10] with a more qualitative evaluation of the case, a circumstance that led to high percentages of recognition. Through my working experience I realized the fragmented nature of the international refugee regime and the existing grey zones, a circumstance that offers space for further subjectivity with the introduction of new processes and political interference in the RSD procedures. Through conversations with colleagues, we draw the conclusion that the way vulnerability is applied is controversial. Apart from ensuring the efficient access to asylum procedures for those with higher needs, simultaneously creates double standards and leave applications unexplored, even in cases when the forward-looking fear of persecution is well established.

The importance of the research relies on the provision of solid knowledge on the function of the asylum system and identification of potential barriers for the comprehensive access to asylum, especially in a period with radical developments in refugee producing countries and possibility of prospective arrivals. The establishment of fair and efficient asylum procedures with equal access to all asylum seekers is of fundamental importance for the notion of protection for the thousands of displaced seeking international protection. The acknowledgement of the shortcomings of the Greek asylum system through observations from Asylum Experts contributes to the identification of existing grey zones and enhance our understanding on topic widely discussed but scarcely documented. The applied methodology of semi-structured interviews will function as an indirect pathway for making the voices of those asylum seekers trapped within the labyrinth of procedural layers heard. This study significantly adds to our existing information, while it covers a topic that has not been thoroughly addressed yet in published literature and extend the research into a new topic area.

[10] In the majority of the cases under the eligibility procedure with the exception of vulnerable people coming from SCO and thus first they were examined on the admissibility of their case.

The added value derives from the presentation of the practical impact of the vulnerability in terms of interview and decision drafting and the ways under which the Convention's terms for inclusion are partially re-established. Also, it is among the first research papers that seek to explore the reasons for introducing and retaining the concept of vulnerability and the consequences of a group-based approach on asylum seekers according to pre-established groups.

The research is structured into four parts. The First Part commences with an overview of the international refugee law. It begins by tracing the origins and presents the main elements of the refugee regime. The analysis continues with the presentation of the European legal framework on asylum and refugee protection, by mainly focusing on the Recast Directives of the CEAS, as they constitute the basis for the current asylum systems in Europe. The Chapter concludes by providing an overview of the Greek asylum system and highlighting its complexity nature. It offers a detailed analysis of the asylum procedures and the categorization of asylum seekers based individual circumstances. It concludes with the asylum developments the aftermath of the refugee crisis and their consequences both on the asylum system and claimants. The starting point of the Second Part is a detailed analysis of the vulnerability notion within the international, European and Greek legal framework, its scope and objectives. It discusses the practical impact of vulnerability both on categorizing asylum seekers into different procedures, but also on structural differentiations for the conduct of interviews and decision drafting. It explores the theoretical background of the group-based approach that accompanies the vulnerability notion and the implications of the concept within the Greek legal framework and reality.

The third part is divided into two chapters. The First refers to the methodology and the second to the findings of the conducted interviews with former Case Officers. In the first chapter, aspects concerning the methodology and research design are explicitly analyzed, together with the strategy of the semi-structured interviews with focus group discussions. Moreover, the research method and the applied strategies in order to conduct credible and safe research are explained, ethical considerations regarding the participants and the sensitive nature of the topic. The second chapter concludes with the presentation of the findings of the interviews following a thematic analysis. The categories that arose during the interview highlighted the political dimension of the vulnerability notion as a means of regulating migration flows, the dichotomy among the applicants with the rise of two categories of asylum seekers. It focused on the established of the two-tier asylum system and provides an

extensive critique around the approach under which the vulnerability concept was implemented. The Forth Part aims to draw some conclusions based on the fundings and the theoretical background concerning the function of Greek asylum system and the application of the vulnerability concept within it. It concludes with some recommendation for a more inclusive asylum process in order to respect to the right to seek asylum. Finally, proposals for future research will be included, with the aim to enhance our comprehension of the asylum systems and how they are influenced by the surrounding environment.

The paper follows the methodology of qualitative research, both in terms of bibliography and analysis of primary and secondary sources but also by conducting semi-structured interviews. The two first parts of the research are based on analyzing the existing literature of international and European refugee law, current developments in the field of asylum in order to clarify the notions related to the topic under discussion. Considering that the topic of the research is understudied and the consequently absence of literature, the method of semi-structured interviews with Asylum Experts was employed together with a thematic analysis for the gathered data. The option of the semi structured interviews and explanatory design were chosen as they better serve the aims of the work and offer the potentials to be more productive, considering that interviews provide insightful information. An inductive-abductive position towards the collected info will facilitate the coding, while the semi-structured approach was chosen due to the importance of the experience and knowledge of the sample. Finally, the study employed a purposeful sampling strategy to identify "intensity-rich cases" and facilitate the research. [11]

First Part: The fragmented nature of international refugee law regime

Refugees have been a central matter of world politics since the establishment of the nation-state system. The codification and development of the international refugee law was interlinked with the migration flows and displacement that took place in the European continent, notably the aftermath of the World Wars. [12] The Geneva Convention 1951 and Protocol of 1967 mark an unprecedented step towards the codification of refugee protection and together with non-refoulement, a fundamental principle grounded in international human

[11] Susan R. Komives,Julie E Owen,Susan D Longerbeam,Felicia C Mainella,Laura Osteen, (2006): Developing a Leadership Identity: A Grounded Theory, Journal of College Student Development, p. 593-611.
[12] Betts, A. "International Relations and Forced Migration" in The Oxford Handbook of Refugee and Forced Migration Studies, Edt. E.F. Qasmiyeh, G. Loescher, K. Long, N. Sigona, 2014, Oxford University Press, p. 70-71.

rights law, constitute a universal minimum guarantee of basic liberties and rights of refugees.[13] However, the Convention is the outcome of political comprise and due to the large discretion that lies upon the states, the question of asylum and admission to it remains problematic.[14] The absence of an explicit connection between asylum and refugee status in the relevant legal instruments constitutes a loophole for the international protection and in combination with the states' jurisdiction to establish the RSD procedures may culminate in authoritative interpretations of refugee law.[15] The universality of the Convention, introduced by the Protocol 1967, is limited as the interpretation and application is conducted by the contracting parties following an approach of national-interest assessment. The state-centered approach is further portrayed by the conventional provisions that it is upon the parties to recognize refugees as such, without an international authority monitoring their decisions and systems.[16] The aforementioned conditions outline fragmentation and subjectivity of the international legal framework, features what will be detailed explained in the following chapters.

Chapter 1: The international and European legal framework of international protection

1.1: History, legal framework and loopholes of international refugee law

The international refugee law has been the outcome of European efforts to control the mass Exoduses in the continent and to regulate the legal status of the displaced people fleeing persecution. The origins of modern refugee law are traced back to the legal and institutional initiatives by the League of Nations (therefore LoN) to provide protection to displaced persons from the Union of Soviet Socialist Republics after WWI.[17] The first exodus lasted from 1917 to 1926 and marks the first phase of refugee law. It coincided with the rise of modern systems of social organization in Europe, a condition that brought the importance of boundaries to deter and intercept the "outsiders" to the surface, turning the refugee question

[13] Loescher, "The Origins of the International Refugee Regime" in "Beyond Charity: International Co-operation and the Global Refugee Crisis, Oxford University Press, 1993, p. 33.
[14] Critical issues in International Refugee Law strategies, strategies toward Interpretative Harmony (2010), Edt. James C. Simeon, Cambridge University Press "the fragmented nature of the international refugee law", 174-210.
[15] G.Goodwin-Gill, "The Refugee in International Law", Oxford University Press, 1996, p.22
[16] J. Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law', Harvard International Law Journal, vol. 31, no. 1 (Spring 1990, p. 130-134.
[17] Hathaway, J. (2021) The rights of refugees under international law, 2nd edition, p.19-26.

highly politicized[18]. In this historical context with the unprecedent flows of Russian and Armenian refugees across European states, refugee law functioned as an attempt to regulate the influx within a restrictive migration policy and provide protection only to selective displaced people, according to a national interest assessment.[19] The European states provided protection only to those fleeing from the soviet bloc in order to signalize that the soviet acts amount to persecution. Already from the first phase of refugee law, states were reluctant to recognize compelling humanitarian claims and recognized refugees only enjoyed a limited range of rights. [20]

The first documented organized attempts of cooperation for addressing the needs of the displaced population are identified in 1921 with the appointment of the first High Commissioner for the Refugees by the LoN, Fridtjof Nansen. The first international agreements were signed in 1922 and 1926 in order to regulate the flows of Russians and Armenians refugees, a responsibility that was taken up by international organizations. The latter were responsible for issuing travel and identity documents in order to facilitate the entrance of the displaced population to the country of destination.[21]Assistance was offered only to refugees whose displacement was the outcome of WWI and was irrelevant to compelling individuals humanitarian needs. The Convention of 1933 relating to the International Status of Refugees was the outcome of the first phase.[22] It was one of the first examples of states commitment to codify basic human rights and bound themselves to their implementation. During this first period, the recognition of refugee status was based solely on political grounds and the Convention included a first complex of fundamental entitlements for the refugees. Asylum remained firmly vested in national sovereignty and thus was not codified and guaranteed per se.[23] However, the principle of non-refoulment was included for the first time in the Convention, marking a turning point for the right to asylum.

The second phase of refugee law is traced from 1938 to 1950.[24] This period mirrors the shift towards an individualized conception of RSD based on a narrow protection of

[18] Goodwin-Gill "The International Law of Refugee Protection" in The Oxford Handbook of Refugee and Forced Migration Studies, Edt. E.F. Qasmiyeh, G. Loescher, K. Long, N. Sigona, 2014, Oxford University Press, p. 53.
[19]Hathaway, J. (2021) The rights of refugees under international law, 2nd edition, p.19-26.
[20] J. Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law', Harvard International Law Journal, vol. 31, no. 1 (Spring 1990), p. 135. Available here .
[21] J. Hathaway, "A Reconsideration of the Underlying Premise of Refugee Law", Harvard International Law Journal,1990, p. 129 -137. Available here.
[22] The 1933 Refugee Convention established the second voluntary system of international supervision of human rights
[23] Goodwin-Gill, "The Refugee in International Law", Oxford University Press, 1996, p.175.
[24]J. Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law', Harvard International Law Journal, vol. 31, no. 1 (Spring 1990), 140-143. Available here.

human rights. The individualized approach is reflected on the need for asylum seekers to substantiate an individual persecution and future-oriented fear. The weight was put on the civil and political rights as those were promoted by the western political thought.[25] Refugees with compelling humanitarian needs irrelevant to the aforementioned grounds were excluded from international protection, together with people originating from developing countries with social causes of displacement. Consequently, a linkage between refugee law and international human rights is recognized in a selective basis, a circumstance that describes the modern refugee law until today.[26] The first institutional initiative for addressing the massive refugee flows was the International Refugee Organization (IRO), founded in the aftermath of the Second World War in 1946 and later replaced by the United Nation High Commission on Refugees (UNHCR). IRO took up the resettlement of millions of Europeans until the termination of its mandate.[27] After the expiration of its mandate, it was apparent that not all the displaced could be resettled while the migration flows from the communist states of eastern bloc remained unsolved. States realized that they should establish a coherent system for granting protection and feasible solution for displacement.[28]

The Universal Declaration of Human Rights of 1948 was the first universal accord recognizing the right to seek asylum. [29] It constituted a source of inspiration for the modern refugee law as its narratives had a great influence on the Geneva Convention.[30] Of paramount importance is the article 14 which grants the right of a person to seek and enjoy asylum from persecution.[31] In 1949, the Secretary General of the UN proposed a revised convention concerning the status of all people without international protection. ECOSOC approved the drafting of a convention with the aim to extend humanitarian protection both for stateless persons and refugees.[32] However, the humanitarian-centered approach did not survive the political scrutiny. In 1950, UNHCR replaced IRO and the preparations for drafting the Refugee Convention commenced. The Convention was adopted at the Conference of Plenipotentiaries in 1951 in absence of the soviet alliance which refused to participate and

[25]Hathaway, J. (2021) The rights of refugees under international law, 2nd edition, p. 27,

[26]J. Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law', Harvard International Law Journal, vol. 31, no. 1 (Spring 1990), 148-151, 162-164.

[27]L. Holborn, The International Refugee Organization: A Specialized Agency of the United Nations (1956); Independent Commission on International Humanitarian Issues, Refugees: The Dynamics of Displacement (1986), at 32–38

[28] Hathaway, J. (2021) The rights of refugees under international law, 2nd edition, p. 27

[29] Goodwin-Gill, G and McAdam, J. (2007): The Refugee in International Law, 3rd edition, p. 358 και Helen O' Nions-Asylum-A rights denied, p. 7.

[30] Hathaway, J. (2021) The rights of refugees under international law, 2nd edition, p.11.

[31] Universal Declaration of Human Rights, 1948, art. 14.

[32] ECOSOC, Res248 (IX),1949

was implemented it in 1954. It includes guidelines for the inclusion, cessation and exclusion of a person to the refugee definition, the rights and obligations that accompanies the refugee status, states duties and jurisdiction.[33] The right to asylum wasn't codified as the Conference preferred to opt out a provision that might constitute red line. As a compromise, article 33 of Convention guaranteed the non-refoulement principle[34] of jus cogens nature, applicable to all the refugees irrespective of the legal status that constitutes the cornerstone of international protection. [35] States were unable to make any reservation on Article 33 as it constitutes an obligation erga omnes and a minimum guarantee of protection was established. [36]

Due to the political spectrum, neither a comprehensive view of humanitarian need nor human rights protection was the foundation for the Convention. There was great fear that a general commitment to refugees would constitute a "blank cheque"' that would oblige states to respond to prospective events in contradiction to their interests.[37] Due to the dominance of western states at the Conference of General Assembly, the Convention addressed refugee matters following an approach of western interests. Thus, the Eurocentric focus on refugee law reflected in the imposition of geographical and temporal limitation for refugees residing outside the European continent.[38] International protection was eligible only to European displaced persons for events that took place before 1951. The Convention remained silent on procedural matters and recognized the state's jurisdiction on the interpretation and application of the refugee regime. The states were responsible for the establishment of RSD procedures, a condition that reinforced the subjective normative and let discretion for political interference on the asylum systems. Few years later, the Convention was amended by the Protocol 1967, which removed the temporal and geographical restrictions and introduced the universality of international protection. However, it failed to make substantial changes on definitional aspects and recognize the social causes of migration.

The primary components of refugee law is the rejection of a comprehensive human rights and a humanitarian approach towards a restrictive regime narrowly interpreted by

[33] Critical issues in International Refugee Law strategies, strategies toward Interpretative Harmony (2010), Edt. James C. Simeon, Cambridge University Press, p. 174-175.
[34] Goodwin-Gill, (1996) The Refugee in International Law, 2nd edition, p. 179.
[35] Goodwin-Gill, The Right to Seek Asylum: Interception at Sea and the Principle of Non-Refoulement, International Journal of Refugee Law, p. 443–457, Oxford University Press, 2011.
[36] Hathaway, J. (2021) The rights of refugees under international law, 2nd edition, p. 29-32.
[37] Goodwin-Gill "The International Law of Refugee Protection" in The Oxford Handbook of Refugee and Forced Migration Studies, Edt. E.F. Qasmiyeh, G. Loescher, K. Long, N. Sigona, 2014, Oxford University Press, p. 52.
[38] Hathaway, J. (2021) The rights of refugees under international law, 2nd edition, p. 35-37, 55.

states combined with deterrence and interception measures.[39] The today's protection system is controlled by states, rather than an international authority for monitoring the access to asylum, RSD procedures and asylum decisions. Cumulative the aforementioned result in a system subject to procedural fragmentation as states are subject to little interference and minimal international oversight. The lack of meaningful international scrutiny regarding the procedures, mechanisms and decisions allow political interests to override the humanitarian concerns and influence the structure of national asylum systems. An expert scholar on refugee law, James Hathaway in his numerous bibliographies has widely mentioned the subjectivity and fragmentation of the refugee law and the dangers the latter situation imposes to the right to asylum and refugees' protection. The shortfalls are identified by the fact that since WWII refugee law is a compromise between national perceptions of migration based on states' interests and strategies to control and deter refugee flows. The outcome is problematic as it results in a week international commitment to international protection with profound repercussions for people seeking asylum.

The refugee definition is enriched in article 1 (A) of the Convention. The subjectivity dimension of the inclusion criteria make the Convention prone to multiple interpretations by nation authorities. The nuances of the refugee definition are further complemented by the individualized examination of well-founded fear of persecution and the reasonable degree of likelihood. As a result, both an encouragement and deterrence of refugee claims are applicable enabling states to interpose other priorities apart from the refugees' needs. This can be easily explained by the valid comment of Hathaway that "the self-interested assessments of claims to refugee status is clear". [40] The said system is subject to interposition of domestic considerations and political engagement, particularly in times of massive influxes of migrants, violating occasionally the universal dimension of the protection mandate. Todays' refugee law has adopted a more individualized approach by granting protection only to specific individuals that undergo RSD procedures exclusively administered by the states.[41] Each contracting party to the Convention make its own eligibility determination, as the purpose of harmonized asylum decisions even on regional level is elusive. The outcome is establishment of national procedures regarding the examination of the asylum applications

[39] J. Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law', Harvard International Law Journal, vol. 31, no. 1 (Spring 1990), 143-145.
[40] Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law', Harvard International Law Journal, vol. 31, no. 1 (Spring 1990), p. 148-183
[41] J. Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law', Harvard International Law Journal, vol. 31, no. 1 (Spring 1990), p. 166-171

with the national-interest assessment as the driving force. The lack of an harmonization process and a rationale towards a meaningful protection of refugees allows states to administer asylum in a manner consistent with their political agenda.

1.2: Asylum law in European Union

The international refugee law regime is complemented by developments on a regional level in order to reassure a comprehensive protection and mandate.[42] At a European basis, the regional refugee protection system is regulated by the Common European Asylum System (CEAS), a set of legislative instruments of primary and secondary source with the aim to regulate all aspects of asylum on a unified and standardized way.[43] In addition, the last decades, the caselaw of the ECHR and CJEU have a systematic engagement with asylum matters, especially when state practices violate non derogable rights. Their caselaw have culminated in improving the living conditions at the temporary camp facilities and clarifying fundamental terms of refugee definition and subsidiary protection for the legal analysis of the asylum decisions.[44] However, CEAS has been highly criticized as granted asylum hardly survives from national states' perception of migration and deterrence policies. The Directives and Regulations are not compatible with the constantly evolving nature of migration, are unable of forming a truly coherent migration policy and establishing common standards. As history has proved, member states are turning into national unilateral decisions in times of crisis mirroring the shortfalls of CEAS and obliging refugees to inadequate national asylum systems without regards for the requirements of the Convention. The Chapter will provide an overview of the European legal framework on asylum and particularly attention will be paid to the legislative instruments of CEAS.

The origins of CEAS are traced back to 1999, when the European Council's Tampere Conclusion included a commitment to the Refugee Convention and international human rights standards by reaffirming the fundamental right to seek asylum.[45] At the Tampere Conclusion, member states agreed on the need to establish a common system for the holistic implementation of Geneva Convention in order to ensure that no one is returned to a country

[42] Hathaway, J. (2021) The rights of refugees under international law, 2nd edition, 67-73
[43] Battjes, H. (2006): European Asylum Law and International Law, Martinus Nijhoff Publishers, p. 195-219
[44] H. Lambert, (2005) "The European Convention on Human Rights and the Protection of Refugees: Limits and Opportunities", Refugee Survey Quarterly, p.40
[45] Hansen, Th. G. (2011): Access to Asylum. International Refugee Law and the globalization of migration control. Cambridge University Press, p. 75

of origin with a well-founded fear of persecution.[46] Furthermore, member states recognized the need for introducing supplementary forms of international protection for those that are not included in the refugee definition, resulted in the creation of subsidiary protection. Whether the concept of subsidiary provides further protection remains questionable, however the analysis of its limited scope falls out of the current research. The Amsterdam Treaty of 1999[47] constituted the legal basis for CEAS and provided that within five years the Union would adopt a set of asylum measures in line with the international legal framework.[48] The legislative results of this first period of CEAS mainly included secondary legislation, which aimed to define minimum conditions and specifications.[49] The results were rather disappointing considering that asylum was viewed narrowly as a matter of immigration control and states were reluctant to cooperate on matters of national sovereignty. [50] As a result, lack of homogeny and coherence, disparities in the sharing burden and divergent decisions resulted in secondary movements, as applicants were seeking destination countries from which they would receive higher protection.[51]

The second phase of CEAS covered the period from 2005 to 2015 and aimed to fill the gaps and structural weaknesses of the first period by setting common standards. It focused on improving the existing legislatures as a means to achieve a higher level of harmonization of asylum systems and less divergent decisions. [52] The Lisbon Treaty is a reference point for the development of the CEAS. The EU Charter became legally binding and Article 67 TFEU explicitly calls for a common asylum and migration policy based on solidarity between Member States and fair procedures for third-country nationals. [53] In fact, Article 78 TFEU provided the legal basis for the development of the second phase mentioning that "*The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national and ensuring compliance with the principle of non-refoulement*".[54] Thus, Geneva Convention and the 1967

[46] Tampere European Council, Presidency Conclusions,15-19 October 1999
[47] Amsterdam Treaty, 1999. Available here
[48] European Center for Development Policy Management: Challenges to a comprehensive EU migration and asylum policy, 2015. Available here,.
[49] European University Institute: The Development of the EU Asylum Policy: Revisiting the Venue shopping Argument. Available here.
[50] Helen O' Nions (2014): Asylum- A right denied. A critical analysis of the European Asylum Policy, σελ. 73-99.
[51] Immigration and asylum law (text and commentary): second revised edition reforming the common european asylum system: the new european refugee law 2016, σελ. 3-39.
[52] Battjes, H. (2006): European Asylum Law and International Law, Martinus Nijhoff Publishers, p. 607-609
[53] Treaty on the Functioning of the European Union, p. 47–390. Available here
[54] Steve, P. (2016) : EU Immigration and Asylum Law, A Companion to European Union Law and International Law,p.519-533

Protocol constitute the pillars for the European asylum procedures and are constantly being enriched by the case law of the European courts. In order to improve the operational performances of the Union, the European Asylum Support Office (EASO) was established with the aim to provide support to Member States in the area of asylum.[55] The second phase consists of legislatures of primary and secondary law and was completed with the amended versions of the secondary legislatures of the previous period. The Recasts set higher standards of protection on domestic level and internal changes were observed for a more comprehensive implementation of the European acquis. Nevertheless, the practical implementation of solidarity between the States Parties proved to be problematic. The lack of harmonization was exaggerated with the disproportionate burden that the countries at the external borders of the Union were obliged to address under the Dublin Regulation. In addition to the above, a problematic integration of the European provisions into national law is observed.[56]

The main CEAS instruments that are relevant to the scope of this paper are the Recast Asylum Procedures Directive[57], Qualification Directive[58] and Reception Conditions[59] Directive. Together, with the Dublin Regulation, they constitute the core legal basis for the asylum procedures in Greece and the rest of the European member states. The Recast APD was initially warmly welcomed as an opportunity to establish standardized and fair procedures across the EU, that guarantee the legal rights of the asylum seekers and their comprehensive access to the procedures. However, soon the APD attracted great criticism and has been described as a catalogue of national practices that are inconsistent with the international standards.[60] The criticism derives predominantly from two aspects. Firstly, the amount of discretion provided to Member States on substantial legal safeguards[61]. Secondly, the whole concept behind the APD is the acceleration of the procedures and the designation

[55] Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

[56] Critical issues in International Refugee Law strategies "the fragmented nature of the international refugee law, p. 197-205

[57] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), *OJ* 2013 L180/60. The Directive recast Council Directive 2005/85/EC.

[58] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of protection granted (recast), *OJ* 2011 L337/9. The Directive recast Council Directive 2004/83/EC.

[59] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

[60] Helen O' Nions 2014): Asylum-A right denied. A critical analysis of the European Asylum Policy, Ashgate, Nottingham, p. 109

[61] Amnesty International The EU – Now More Free, Secure and Justice? Amnesty International's Human Rights Assessment of the Tampere Agenda (Brussels 2 June 2004)

of certain countries as "SCO" and "STC", deviating from the initial objectives of the Convention and externalizing asylum.[62] The aforementioned allow departure from refugee law and violate the right to individualized assessment of each application, provided in the Geneva Convention. Concerning the accelerated procedures, a concept that has a central point in the next chapter, the article 31 (8) of the Recast APD provides a variety of situations under which an application may be accelerated and found inadmissible or manifestly unfounded. The large number of situations that undergo the accelerated procedures raises concerns as acceleration is viewed to be the norm and still is not well defined. The APD introduces the border procedure in the art. 43 (1) for application lodged at transit zones or at the borders and includes a discretion of deadline for periods of mass arrivals.

The European orientation towards externalization of asylum is reflected from the introduction of notions that aim to deflect or minimize state's responsibility. A concrete example are the accelerated concepts of STC and SCO that swifts the burden for substantiation to the applicant. Despite the provisions objectivity and provision of the required safeguards to the applicants that undergo the said procedures, in reality they are neither neutral nor objectives as the respective authorities are biased at the evaluation in order to maintain low recognition rate and discourage prospective asylum seekers. Concerning the notion of SCO, in which the burden is upon the applicant to challenge the presumption of safety, Goodwin-Gill has mentioned that it is impossible for the applicant to challenge it under article 36.[63] Once it is established that the country of origin of the applicant belongs to the catalogue of SCO, there is no requirement for states to assess individual safety. The application is deemed unfounded unless the applicant is able to personal reasons for depriving state's protection.[64] Furthermore, another accelerated notion provided in the Directive, the "FCA" or "STC". Under article 26 of APD, an applicant that has already been granted refugee status or otherwise enjoys sufficient protection in a third country and can be reasonable expected to avail himself/herself of that protection, can have the application inadmissible under the justification that he/she will be readmitted and enjoy protection. The designation is based on a substantiation of safety which must be objectively demonstrated through the implementation of human rights.[65] The Directive affords too much discretion to

[62] Helen O' Nions 2014): Asylum-A right denied. A critical analysis of the European Asylum Policy, Ashgate, Nottingham, p. 122-125.
[63] Goodwin-Gill, G and McAdam, (2007): The Refugee in International Law, Oxford University Press, p. 291.
[64] Helen O' Nions 2014): Asylum-A right denied. A critical analysis of the European Asylum Policy, Ashgate, Nottingham, p. 122-125 .
[65] UNHCR 'The Concept of "Protection" Elsewhere' (1995) p. 123 and 126.

states on the determination of safety and how they establish a necessary connection between the applicant and the country, that structurally is limited to challenge. The absence of individualized assessments and evaluations of subjective and objective fear of persecution contains high risks of ignoring a valid fear of persecution both in the transit country and of origin and deny the refugee status due to the lack of personal evaluation.[66]

The Qualification Directives a central secondary legislation instrument of CEAS, intended to provide a common system for evaluating with applications of international protection. [67] It details the standards and criteria for qualification for a uniform status for beneficiaries of refugee status and subsidiary protection. In addition, the Qualification provides definitions of crucial terms for the Convention and the European acquis. Under the Directive, the term international protection refers both to the refugee status and the subsidiary protection, as it is prescribed in the Directive 2011/95/EU.[68] The non-refoulement principle constitutes a non derogable right based on the European Convention of Human Rights and it is customary binding for all member states. Article 21 calls upon member states to respect the principle in accordance with their international obligations. The central criteria for qualification for international protection are provided respectively in Articles 9-10 for refugee status and in Article 15 for subsidiary protection status. The first define the acts that amount to the required threshold in order to be considered as "persecution" by establishing the elements of severe nature, repletion or accumulative basis. Accordingly, article 15 enriches the acts of serious harm. In addition, in respect of qualification for both kinds of protection, the Directive defines the actors of persecution and protection and also the required nexus between the acts of persecutions and the five conventional grounds.

The European refugee law is developed by the caselaw of judicial organs that gained competence to rule on asylum provisions, both the ECHR and the CJEU, which plays a crucial role in guaranteeing the protection of asylum seekers. [69] A further significant development arising from the TFEU is the legally binding status of the EU Charter of

[66] UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, 2005, paras 37 and 38.

[67] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) [2011] OJ L 337/9.

[68] Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)

[69] Helen O' Nions (2014): Asylum-A right denied. A critical analysis of the European Asylum Policy, Ashgate, Nottingham, p. 77

Fundamental Rights which contains both a right to asylum and the prohibition of refoulement. A case before the CJEU of paramount importance for clarifying the 15c of subsidiary protection "indiscriminate violence" is the Eljafaji case[70]. In the present case, the Court has held that there is no need for the applicant to prove an individualized threat and serious harm as a consequence of indiscriminate violence because the burden of proof does not fall on him. The higher the level of intensity of indiscriminate violence reaches, the less individual circumstances needs an applicant to hold, to become a beneficiary of subsidiary protection and vice versa. The decision established the notion of sliding scale, which is used at the decision-drafting for assessing the serious harm of subsidiary protection. In a relevant case of utmost importance before the Court of the European Union were the C-411/10 και C-493/10, N.S. against Secretary of State for the Home Department and M.E. etc against Refugee Applications Commissioner & Minister for Justice, Equality and Law Reform. The Court pointed out that the member states should not ignore the structural malfunctions of the asylum procedures and reception conditions in Greece, which fulfill the threshold for third country nationals to undergo inhumane and degrading treatment.[71]

Chapter 2: An introduction to the Greek asylum law and reality

At the beginning of the 21st century, Greece constitutes a destination country and receive thousand asylum applications due to economic and social development it experienced. The level of flows radically changed in 2015 when the country witnessed the highest arrival of displaced people in need of international protection at the external sea borders with Turkey. European and Greek authorities implemented asylum development that receive wide condemnation, namely the hotspot approach in the Aegean islands together with the EU-Turkey Statement in their attempt to regulate the flows and manage those that would enter from the islands to the mainland or respectively being returned to Turkey. The established mechanisms and practices culminate in the fragmentation of refugee law, complexity of procedures and division of asylum seekers, elements that will be further discussed in the chapter. The aim of the chapter is to present the theoretical background of asylum in Greece, to offer a comprehensive understanding of the asylum system and the procedures by suggesting some insights points. In addition, attention will be paid to the

[70] Elgafaji case 2009. Available here

[71] Morgades- Gil, The Discretion of States in the Dublin III System for Determining Responsibility for Examining Applications for Asylum: What Remains of the Sovereignty and Humanitarian Clauses After the Interpretations of the ECtHR and the CJEU?, International Journal of Refugee Law, 2015, Vol. 27, No. 3, 433–456, July 31, 2015

procedural gaps that allow a narrowly interpretation of international protection and give space for political decisions to interfere to the procedures[72].

2.1: The Greek legislation of international protection

The national legal framework concerning the provisions of international protection has been significantly amended the aftermath of the refugee crisis in 2016. Before, the domestic legislation for assessing application was limited and the component departments nonexistent. To begin with, the Geneva Convention was incorporated into the domestic law with the Legislative Decree 3989/1959 and the 1967 Protocol with an obligatory law 389/1965. Together they formed the basis for the legal status of refugees in Greece. However, the adoption of the international instruments wasn't combined with the establishment of component institutions for evaluating asylum applications until 2011, fifty years after the adoption of the Convention. Already before the migration crisis of 2015, Greece used to receive asylum applications examined by the Hellenic Police with the recognition rate reaching only 1 %.[73] The Greek Asylum Service (GAS) and First Reception Service were established in 2011, with the vote of L. 3907/2011, that incorporated the international and European legal framework in domestic level. The latter developments came after Greece's condemnation in the ECtHR with the prominent *MSS*[74] *against Belgium and Greece case*. The case portrayed the level and structural nature of deficiencies of the Greek asylum system by deciding that the return of an asylum seeker to Greece would amount to violation of article 3 ECHR.

Today, asylum is domestically regulated by L. 4636/2019, named "International Protection Act", which replaced all the previous legislatives frameworks.[75] It was introduced in November 2019, implemented in 1st of January 2020 and later amended by L. 4686/2020. It aimed to establish common criteria for a unified status for refugee and subsidiary protection by incorporating the existing European legal framework and achieve harmonized asylum decisions throughout the country.[76] Attention should be paid to the fact that IPA was

[72] Relief Web: Closing Borders, Shifting Routes: Summary of Regional Migration Trends Middle East – May, 2016. Available at here.

[73] M. Baldwin, K. Apostolatou, "10 Greece" στο H. Fassmann, U. Reeger. W. Seivers, "Statistics and Reality: Concepts and Measurements of Migration in Europe", Amsterdam University Press, 2009, p. 244.

74 M.S.S. v Belgium and Greece App no 30696/09 (ECtHR 21 January 2011), For MSS: due to the structural shortcomings of the Greek asylum procedure, the asylum seeker deprives his right of having his application efficiently examined.

75 Law 4636/2019 "on international protection and other provisions" (IPA). Available here

76 article 1 4636/2019. Available here

underpinned by the need for more efficient and fast evaluation of applications. Thus, the element of "acceleration" was prominent throughout its content by expanding the circumstances under which applications are deemed inadmissible and manifestly unfound. The aforementioned legal framework, along with the relevant amendments, Presidential Decrees and Joint Ministerial Decisions constitute the legal basis for the evaluation of asylum applications in Greece. A development of paramount importance for the operation of the asylum system and evaluation of applications was the Common Ministerial Decision 42799/2021 based on which Turkey was included in the catalogue of STC based on art. 86 4636/2019 for the nationals originating from Afghanistan, Somalia, Pakistan, Bangladesh in addition to Syria which constitutes a STC already since 2016 with the EU-Turkey Statement.

Law 4636/2019 defines the established procedures that are implemented after the full registration of an application and determine the type of personal interview that will be conducted by complying with the rationale of the Recast APD.[77] The standards for a personal interview are enriched in art. 16 APD. The interview is the most crucial part of an asylum application and the unique opportunity of the asylum seekers to substantiate their application.[78] The added value of the interview is further supported by the fact that in absence of any documents and evidence, it constitutes the sole proof for assessment. Its primary purpose is to explore the reasons why the applicant left the country of origin or previous habitual residence, does not wish to return back and thus seeking for protection in Greece. Based on the aforementioned claims, the Case Officer decides on granting international protection, either refugee status or subsidiary protection or rejecting the application. The interview is recorded and upon request the transcript can be provided to the applicant, interpretation during the interview is provided in the mother tongue of the applicant or in a language that sufficiently comprehends, and there is the possibility of legal or another counsellor during the interview. The decision of the interview is issued exclusively by the Asylum Office on a reasonable time. The applicant has a right for an appeal against the first instance decision and right to a free legal support only after the second instance.

The asylum procedures are defined by a geographic criterion into the border and regular procedure. The regular is implemented in the mainland under which the evaluation of the applications has to be concluded with a maximum deadline of six months and 21 in total

77 Article 77 4636/2019. Available here

78 Μαρούδα, Ντ. Μ. (2020): Το νέο δίκαιο υποδοχής και ασύλου. Ο Ν. 4636/2019 «Περί Διεθνούς Προστασίας και άλλες διατάξεις», σελ. 39

after lodging the application (art. 83 par. 3). The border procedure applies in the islands and is subject to amendments in light of the asylum developments following the refugee flows. The procedure is applicable to those that have requested international protection at the border, airports, transit zones, or are accommodated in RIC. Its prominent feature is the brief time limits that question the ability of an applicant to have access to legal counseling and medical examination in order to support the asylum case. The accelerated procedures must be conducted without a prejudice and bias to a concrete evaluation of the claims. The applicant should not be deprived of safeguards and rights deriving from the APD. Law 4375/2016 established a special border procedure, art. 60 (4), the fast-track border procedure, originally a temporary and exceptional measure which provides an extremely truncated asylum procedure with less guarantees following the EU-Turkey Statement.[79] Within this procedure, Syrian nationals are subject to the STC notion, as Turkey was their transit country for entering Europe and first country of asylum. Thus, their application has first to be examined on its admissibility before proceeding with an evaluation on the merits. On the contrary, those that enter the Greek territory by land in Evros are excepted from the fast-track border procedure and examined by the regular procedure on the merits[80].

Under L. 4636/2019 the fast-track continues to be foreseen in article 90 (3). Under the border procedure, applications may be examined either under admissibility or eligibility procedure.[81] Law 4636/2019 has introduced new provisions that increase the circumstances under which an application can be examined under the accelerated procedure. It guarantees that the examination of an application under the accelerated procedure does not affect at the merits the application of international protection. Under both legal frameworks, there was an exemption clause from the accelerated procedures at the borders with different regards. Under 4375/2016, an automatic exemption from the fast track was feasible if the applicant belong to a pre-established vulnerable group. However, IPA provided an exemption from the fast-track border procedure closer to the Recase APD provisions. More specific, the lifting of geographical restriction and referral to the regular procedure in the mainland was applicable if the conditions in the camp are not suitable and adequate for the applicants' higher needs.

[79] Asylum Information Database, European Council in Refugees and Exiles, Fast-Track border procedure (Eastern Aegean Islands), 2021. Available here

[80] Following the JMD of June 2021, the admissibility procedure on the islands and mainland was applicable for the third country nationals originating from Syria, Afghanistan, Somalia, Pakistan, Bangladesh.

[81] Μαρούδα, Ντ. Μ. (2020): Το νέο δίκαιο υποδοχής και ασύλου. Ο Ν. 4636/2019 «Περί Διεθνούς Προστασίας και άλλες διατάξεις», σελ. 156-157.

The asylum process is further divided based on the content and type of evaluation of the application. There are two means of examination of a case, the admissibility and eligibility procedure. The eligibility procedure is the examination of an application at its merits, based on the country of origin, conducted both in the mainland and in the islands exclusively to those that do not fall under the scope of an admissibility procedure.[82] The prominent feature of the eligibility procedure is that it gives the opportunity to an applicant to fully present his/her the claims related to the country of origin On the contrary, the admissibility process disregards the material facts relevant to the country of origin and solely focuses on the event occurring in the STC. The admissibility procedure applies among others on the occasion of examining Turkey as STC, first provided in 4375/2016. Law 4636/2019 expanded the situations under which the admissibility procedure takes place in article 39 and 83[83]. At the examination of admissibility applications, the burden is upon the applicant to substantiate the application by establishing the specific facts that constitute the third country personally unsafe. In other words, he/ she has to prove why he/she has to challenge the presumption of safety. When the applicants reverse the presumption of safety by presenting the claims on a detailed and coherent way, then the Case Officer continues with the full exploring of the material facts and the well-founded fear of persecution related to the country of origin.

The problematic part of the admissibility notion is that the criteria for characterizing a third country as safe usually serve political objectives at the expense of an individualized approach in contradiction with the individualized approach of Geneva Convention. An enlightening example is Turkey, a country designated as “safe” for third country nationals originating from Bangladesh, Pakistan, Syria, Somalia, Afghanistan. However, the fragmentation of the Greek asylum system is mirrored by the fact that Turkey is not contained in the national catalogue for SCO, indirectly implying that the Greek authorities do not deem it safe. As it will be explained in detail above, the most challenging part for an applicant is to surpass all the procedural obstacles and undergo a personal interview that will examine the case on its merits based on the country of origin. Only through a qualitative personal interview and reasonable deadlines for case preparation and appeals is possible for an applicant to express in details reasons of displacement and forward-oriented fear of persecution. However, the broader EU policy focuses on a reorientation of RSD away from

[82] Μαρούδα, Ντ. Μ. (2020): Το νέο δίκαιο υποδοχής και ασύλου. Ο Ν. 4636/2019 «Περί Διεθνούς Προστασίας και άλλες διατάξεις», σελ. 36

[83] Article 39 and 83 4636/2019. Available here

the European territory and closer to the country of origin, as part of the externalization agenda. This political objective is portrayed in the sophisticated asylum systems that are consisted of complex procedural tools.[84]

2.2: Reviewing the European and Greek asylum policies after 2015, "A Europe of two dimensions"

In 2015, 1.200.000 people from war torn countries crossed European borders from whom more than one hundred thousand were trapped in the country due to the unilateral political decisions of member states to close their land borders.[85] On a procedural and operational level, the consequences of the crisis continued during 2020, when based on the data provided by MoMA, the total number of pending applications at first instance was more than 76.000 cases.[86] It was the gigantic number of pending applications that created an enormous burden to the Asylum Office and the need to accelerate the procedures in order for the backlog to be decreased. The aforementioned, together with the political pressures to decongest the five islands of the Northeast Aegean led to fragmentation of refugee law by accelerating the procedures disregarding international obligations. The current management of the existing backlog and the policy of deterring future asylum applications have significantly undermined the quality of case evaluation. On top, the applicants have to fulfill additional standards and requirements not explicitly mentioned on a legal basis in order to have full access to asylum.

The externalization of migration was the leading priority for the European Council, clearly portrayed in the European Migration Pact and the hotspot approach, which aims to prevent the full entrance to the European and Greek territory.[87] Hotspot approach was introduced by former Commissioner Avramopoulos as an exceptional temporary means for addressing and regulating the flows, filtering out the inadmissibility claims not allowing the transfer to the mainland. However, since 2016 it gets a more permanent character and the notion is applicable until today in the border fast track procedure.[88] The EU-Turkey

[84]Asylum Information Database and European Council in Refugees and Exiles (2016): Admissibility, responsibility and safety in European asylum procedures. Available here
[85]United Nations High Commissioner for Refugees (UNHCR), 'Refugees/Migrants Emergency Response Mediterranean'. Available here
[86]Information provided from the Ministry of Asylum and Migration to Asylum Information Database. Available here
[87] European Commission, New Migration Pact on Asylum, 2020. Available here.
[88] Karin Aberg, Examining the vulnerability procedure: group-based determinations at the EU border, Refugee Survey Quarterly, 2021.

Statement constituted a heavily politicalized movement and a reflection of the European perception of migration, notably in times of massive arrivals. For the successful implementation of the Statement and return of the inadmissible applications to Turkey, Syrian underwent the admissibility process and examined whether Turkey, the transit country for entering EU, was safe for them. [89] The designation of Turkey as a STC is of punitive nature considering that it demands from the asylum seeker to have applied for asylum there, even though there is not provision in the Convention obliging applicants to apply to the direct first safe country. However, even if the applicants wished to have applied for asylum in Turkey, they wouldn't have access to it considering imposed geographic limitation on the New York Protocol. On practical level, the Statement has led to a de facto dichotomy of the asylum procedures and mass evaluation of cases in contradiction with a personalized interview.

Reviewing the relevant decisions of the Asylum Service concerning Syrian nationals, it is evident that neither the interview nor the decision follow an individualized approach which is a prerequisite in order to avoid either a direct or an indirect refoulement. The political rationale of addressing the flows the aftermath of the EU- Turkey Agreement is mirrored by the rejection of thousand Syrians as inadmissible. [90] The legal analysis of the decision derives from article 84 L. 4636/2019, mentioning that the respective authority considers that the applicant enjoys sufficient protection from a country that it is not a member state and is deemed FCA according to art. 85 L. 4636/2019. IPA has received great criticism as it limited the scope of protection standards, accelerated the procedures giving no time to asylum seekers to seek for legal support and undergo medical examinations. On top, the acceleration of procedures, the excessive burden put on asylum seekers, the complex nature of appeals and deadlines in combination with the semi-closed accommodation centers where the communication with legal services is restricted might lead to inadequate address of the case and risk to refoulement.

As it is commented by refugee law scholars, the aim of the admissibility procedure is to exempt the asylum systems of applications that can be examined elsewhere or are unfounded. This is the main norm of the Joint Ministerial Decision 42799/3.6.2021[91] which substantially altered the asylum system of the country and marked a black page for

[89] Μαρούδα, Ντ. Μ. (2020): Το νέο δίκαιο υποδοχής και ασύλου. Ο Ν. 4636/2019 «Περί Διεθνούς Προστασίας και άλλες διατάξεις», σελ. 130.
[90] Asylum Information Database (2021). Available here
[91] Joint Ministerial Decision 42799/2021. Available edit

international protection. Greece decided in a day the characterization of Turkey as STC for additional four countries of origin, apart from Syria. Of grave importance was the selection of the four countries, as those amounted for the vast majority of asylum applications in Greece, a realization that mirrors the political background of the Decision. Third country nationals originating from Afghanistan, Somalia, Pakistan, Bangladesh and Syrian have to undergo the admissibility procedure based on the notion of the STC concerning Turkey. This political move portrayed the discretion of interference of political objectives and their radical implication on the asylum procedures. The said JMD, condemned by human rights organizations, has a retroactive effect. It is applicable not only to those arriving in Greece after its implementation, but also to those awaiting to conduct their personal interview for years, in contradiction with basic principles of international law.

The structural form of the JMD hardly allows an applicant to challenge the presumption of safety despite its originally reputable nature. This is the outcome of the interpretation of the precondition of "contact (connection)"[92] between the applicant and Turkey in order to extent the scope of its applications and deem the applications inadmissible, as it is considered that the required contact is established. This practice is further supplemented by the relevant decisions from the Appeal Committee, which mention that the connection should not be exclusively based on objective criteria and a passage can be considered enough[93]. Consequently, the vast majority of the asylum seekers are considered inadmissible and have their case rejected without being examined on their country of origin. In addition, the JMD excluded the possibility of the recognized vulnerable groups to be opt out of the scope of the procedure. The recognition of a vulnerability was accompanied with enjoying procedural guarantees during the admissibility interview and provisions of adequate living conditions but not the exception of the procedure. The only exception of the JMD is provided in art. 75 par. 7 concerning the unaccompanied minors and minors' victims of trafficking, sexual violence and other forms of psychological, physical and sexual violence who are always examined under the regular procedure.

The Eurocentric and strict interpretation of refugee definition has provided a mean of legitimating restriction policies and asylum procedures in contradiction with principle of international law. Categorizing the asylum seekers into complicated asylum procedures and constructing asylum systems in which new norms create new preconditions for international

[92] Art. 86 4636/2019 and Art. 38 APD

[93] Decisions 2347 from 2348/2017 from the Council of state

protection marks a swift from human rights to explicitly political objectives. The procedural layers give the impression of a marathon that asylum seekers have to undergo in order to be granted international protection as the possibility for their application to be rejected on inadmissible or unfounded grounds constitutes the norm. GAS is under extremely pressure to accelerate the conducted procedures on the islands sometimes undermining quality aspects for the interview and decision.[94] The next chapter, within this framework, vulnerability acted as a relief from the externalization of asylum and deterrence measures. Considering the prevailing conditions in the islands and procedural complexity, the border with the most importance for the applicants was the one dividing mainland from the islands, in which the vulnerability concept was the decisive factor.

Second Part: The notion of vulnerability: From inclusion to exclusion. The role and impact of vulnerability on the Greek asylum system.

The notion of vulnerability has gained momentum in the European legal framework and migration policies. It received significant dimensions the aftermath of mass influx at the Aegean islands, with the introduction of the EU-Turkey Statement and the implementation of the hotspot approach. The legislative instruments of CEAS set the framework for the objectives and role of vulnerability within the national asylum systems. They disregard the inclusive approach of European case law towards a selective method of pre-established vulnerable groups and put the burden upon the applicants to substantiate their membership. Following the provisions of the Recast APD, vulnerability assessment functions as the determining procedure for positioning the applicants to the asylum procedure according to their vulnerability status while at the same time is a management tool for regulating the flows on behalf of the European and national authorities. Since 2016, the vulnerability notion constitutes an internal part of the Greek asylum system interlinked with the admissibility procedure and the justification of referral to the regular procedure. Asylum seekers entering the Greek territory have to undergo a medical assessment and those who could not receive the adequate support in the islands were exempted from the accelerated procedures. Until today, vulnerability remains an ambiguous concept and fails to provide the necessary support to the asylum seekers due to the problematic implementation. The analysis of the Second Part proceeds in two chapters. The first chapter provides a detailed overview of the vulnerability

[94]Asylum Information Database, European Council in Refugees and Exiles, Fast-Track border procedure (Eastern Aegean Islands), 2021. Available here

notion as it is enshrined in the European legal framework and practice with an overview of the Recast APD. The second chapter is structured around the implementation of vulnerability within the Greek asylum system and concludes with the challenges arising from the over-simplistic application of the concept and the fragmentation of the asylum system.

Chapter 1: Vulnerability: Aim, scope and legal basis

1.1: An insight into the background and European framework on vulnerability

The etymology of vulnerability stems from the Latin vulnus which signifies the wound, and thus the elements of harm and suffering are central features.[95] Some scholars claim that vulnerability is universal, constituting an aspect of our human condition[96], while others argue that it applies to specific populations based on their individual characteristics, implying a categorization among humans.[97] As a legal concept, the notion of vulnerability remains vague, contested and lacks an agreed definition.[98] The terminology harbors different meanings based on the legal source that it is analyzed and consequently different nuances and dimensions are enriched under international human rights law, CEAS and when incorporated in domestic law.[99] In a general framework, vulnerability implies the support and protection for those with higher needs due to physical, mental or social circumstances. In international refugee law, the Geneva Convention does not refer to the notion of vulnerability nor recognize certain groups as such. However, it has been widely used by the mandate of UNHCR as a protection factor in its policymaking in order to draw a sensitive approach for people with higher needs. UNHCR has concluded a categorization of beneficiaries on a group-based approach, i.e. women and children have priority at the Resettlement Program. The classification of refugees into pre-established groups carries resemblances with previous modalities in the migration sector. More specific, membership to a specific group was a

[95] Turner, B.S. (2006): 'Vulnerability and Human Rights', pub. Pennsylvania State University Press, p. 28
[96] Martha Albertson Fineman (2004): The Autonomy Myth: A Theory of Dependency, pub. New Press.
[97] Audrey R. Chapman & Benjamin Carbonetti, Human Rights Protections for Vulnerable and Disadvantaged Groups: The Contributions of the UN Committee on Economic, Social and Cultural Rights, 2011.
[98] Lourdes Peroni and Alexandra Timmer, 'Vulnerable Groups: The Promise of an Emerging Concept in European Human Rights Convention Law', 2013, International Journal of Constitutional Law p.1056-1061.
[99] Jan Helge Solbakk, Vulnerability: A Futile or Useful Principle in Healthcare Ethics?, in The Ruth Chadwick, Henk ten Have & Eric M. Meslin (2011): SAGE Handbook of Health Care Ethics p.228-229.

means of refugee protection before the Geneva Convention, as those recognized eligible for protection were the displaced refugees for events relevant to the World Wars.[100]

Concerning the application of a group-based approach in refugee law for the identification and recognition of refugees the following timeframe enhances our comprehension. The group-based RSD is structured around a prima facie concept established by the states that relies on generalizing factors, characteristics or experiences of the individuals.[101] It is implemented in times of crisis for managing influxes of asylum seekers and was firstly implemented in order to address the needs of 800.000 Russian refugees. Under the first period of refugee law, the inclusion to the refugee definition was irrelevant to an individual assessment but focused on events prevailing in the country of origin and whether the person was included in a persecuted group. The group-based determination legitimizes the provision of material resources, ameliorated living conditions and safeguards for the persons belonging to a pre-defined group without being directly associated with political protection.[102] Today, the European Recast Directives provide a similar approach for the vulnerability assessment and accordingly are incorporated into the national asylum systems. For instance, following the unprecedented arrivals, the Greek authorities introduced the vulnerability process and implemented it by defining pre-established vulnerable groups. As a result, asylum seekers are firstly assessed and divided into groups based on an over-simplistic and generalizing method relevant to their health and family status before having their international protection claims evaluated.

The caselaw of ECtHR marks a significant point of reference for the notion of vulnerability and the protection of vulnerable groups. The high-profile case of paramount importance that greatly expanded the list of vulnerable groups by including the asylum seekers was the MSS case.[103] In the legal reasoning of MSS judgement, the Court adopted an inclusive approach and interpretation of vulnerability.[104] More specifically, the judgement

[100] Karin Aberg, Examining the vulnerability procedure: group-based determinations at the EU border, Refugee Survey Quarterly, 2021.

[101] Jackson, The Refugee Concept in Group Situations, The Hague, Boston, Martinus Nijhoff Publishers, 1999, 1 and 22; United Nations High Commissioner for Refugees, Self-study module on Refugee Status Determination, Geneva, UNHCR, 2005, 12.

[102] L. Holborn, Refugees: A Problem of Our Time. The Work of the United Nations High Commissioner for Refugees, 1951–1972, 2 volumes, Cambridge, Scarecrow Press, 1975, 440; Statement of Mr Rochefort of France, 11 UN ESCOR (161st meeting) UN Doc. E/AC.7/SR.161, 1950, 7.

[103] L. Peroni and A. Timmer, "Vulnerable Groups: the Promise of an Emergent Concept in European Human Rights Convention Law", International Journal of Constitutional Law 11, 2013, 1056–1085.

[104] Peroni, L., Timmer, A.: Vulnerable groups: the promise of an emerging concept in European human rights convention law, 2013, Oxford University Press and New York University School of Law., p.1057. Available here

defined asylum seekers as members of "particularly underprivileged and vulnerable population groups in need of special protection".[105] The reasoning derives from the inherent disadvantaged position of asylum seekers and their dependency on the host state for the provision of the most basic needs. The Court emphasized the decreased resilience and the situation of the asylum seekers in general. Thus, in its judgement concerning the return of an Afghan applicant from Belgium to Greece according to the Dublin Regulation despite the inhumane living conditions in the Greek camps, ECtHR recognized a violation of article 3 of ECHR due to the vulnerability of the applicant. The approach of EU law and policy relating to vulnerability is rooted in the principle of equality before the law and of non-discrimination, provided in art.21 of the EU Charter. It constitutes a cornerstone of EU law enshrined in both art. 2 of TEU and art. 15 of EU Charter.

Within the European framework, the notion of vulnerability in relation to asylum is not yet matured and harmonized. The legislative instruments of CEAS employ a group-based approach by recognizing characteristics that belong to a certain group of people as vulnerability indicators. CEAS disregards ECtHR's caselaw and endorses a selective approach with pre-defined vulnerable categories.[106] In general, vulnerability could be considered as a special situation of a person that limits the ability to exercise rights and comply with obligations.[107] The 2003 RCD was the first instrument that focused on the situation of vulnerable people by pointing out that special treatment should be given to asylum seekers identified with special needs.[108] However, it did not provide any definition neither for the vulnerable asylum seekers nor asylum seekers with special needs. The concept was reintroduced by the second legislative instruments of CEAS with the aim to harmonize and standardize the relevant procedures. They took substantive account of the vulnerability and set higher common standards for the protection of the asylum seekers. The term vulnerable persons, persons with special needs and procedural guarantees are used interchangeably among the Directives. Confusion around the notion of vulnerability was prominent among the CEAS' second-generation asylum instruments due to the different

[105] ECtHR, *M.S.S. v. Belgium and Greece*, para 251 and L. Peroni, A. Timmer, 'Vulnerable Groups: The Promise of an Emerging Concept in European Human Rights Convention Law' (2013).

[106] Frame: The protection of vulnerable individuals in the context of EU policies on border checks, asylum and immigration, p. 30-38. Available here.

[107]Vulnerable persons as a new sub-group of asylum seekers" in the "reforming the common European asylum system" in the Reforming the Common European Asylum System: The New European Refugee Law, eds Brill and Nijhoff, 2016, p. 350-360

[108] L. De Bauche, L. Tsourdi, 2013, 'Presentation and Analysis of the Main European Union Provisions to be Taken Into Account and the Identification of Vulnerable Asylum Seekers Reception Conditions Directive and Dublin Regulation'.

terminology applied for defining vulnerable persons. The Directives distinguish between vulnerable persons, persons with special needs or in need of special procedural guarantees based on the context examined each time. [109]

The Recast RCD provides a non-exhaustive list of persons considered as vulnerable, linking vulnerability with a personal situation of the affected.[110] Article 2(d) of the Recast APD defines vulnerable as "an applicant whose ability to benefit from the rights and comply with the obligations provided for in this Directive is limited due to individual circumstances". The vulnerable groups under APD need further support during the asylum procedure, as is provided in article 24 Recast APD. Article 24(3) of Recast APD clarifies that when applicants are identified in need of procedural support, it will be provided to them in order to benefit and comply with the provisions of the Directive. Accordingly, art. 24(4) emphasizes that member states shall ensure that the needs for special procedural guarantees are addressed. Furthermore, article 2(K) Recast RCD defines as vulnerable claimants those with special reception needs entitled to special reception guarantees and article 21 proposes certain persons as vulnerable.[111] Special needs could be considered those that have to be fulfilled for the applicant to participate in the asylum procedure. Despite the terminology confusion, the Directives aim to grant material assistance, ameliorated living conditions, safeguards and guarantees to specific asylum seekers. They link the special needs and vulnerability to procedural guarantees, as the person's ability to participate in the asylum procedure is limited and these needs have to be satisfied.[112]

The provision of the aforementioned guarantees is interconnected with the identification of the vulnerability, an examination of whether the applicant falls within one of the pre-established groups. The identification of the vulnerable population is of paramount importance for a meaningful implementation of the Directives' provision and also for guaranteeing a comprehensive access to the asylum procedures.[113] However, the Directives

[109]Directive No. 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)

[110]De Bauche (2012): Vulnerability in European Law on Asylum: A Conceptualization under Construction. Study on Reception Conditions for Asylum Seekers, p.103-105

[111]Directive 2013/33/EU the article mentions the following" minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation

[112] Recast Asylum Procedures' Directive (n 13) para 29 of the Preamble, Article 2(d).

[113] European Commission, Report from the Commission to the Council and to the European Parliament on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, COM/2007/0745 final, 26 November 2007, para 3.5.1.

did not provide an outline and provisions for a possible identification mechanism due to states' unwillingness to commit themselves to further obligations.[114] They agreed upon the realization of a vulnerability assessment rather than mechanism or procedure for the asylum claimants, [115] a process defined in art. 22 of the RD. State's discretion and sovereignty over the Directive is conceived by the fact that it is not imposed on them to conduct follow-up assessments even though the vulnerability is a constant process and new indicators might arise. Concerning the time to conduct the assessment, the Directives mentioned no more than within a reasonable period, while the recital 29 of the APD indicates that member states shall attempt to identify applicants in need of procedural guarantees before a first instance decision.

The Reception Directive emphasizes the independence between the vulnerability assessment and the decision of international protection and mentions that the assessment of vulnerability does not provide sufficient grounds for international protection.[116] Even though the vulnerability indicator itself is not sufficient for the inclusion of asylum seekers, it is connected with the asylum process. The identification of vulnerable cases facilitates the fair and efficient examination of the cases aligned with the requirements of QD. It enables the Case Officers to conduct interviews sensitively by implementing appropriate interview techniques. Concerning the potential linkage between vulnerability assessment and asylum, the QD recognizes the role and contribution of previous persecution for the evaluation of the forward-oriented fear of persecution or serious harm.[117] In this respect, any documentation of a vulnerability factor relevant to the previous act of persecution or serious harm contributes significantly to the evaluation of the material facts and supports the external credibility of the claims. On top, it provides strong indication for future treatment and is included in the legal analysis of the decision and thus an indirect link between the assessment and international protection is established. [118]

[114]Vulnerable persons as a new sub-group of asylum seekers" in the "reforming the common European asylum system" in the Reforming the Common European Asylum System: The New European Refugee Law, eds Brill and Nijhoff, 2016, p. 353-377.

[115] Vulnerable persons as a new sub-group of asylum seekers" in the "reforming the common European asylum system" in the Reforming the Common European Asylum System: The New European Refugee Law, eds Brill and Nijhoff, 2016, p. 360-365

[116]L. De Bauche, L. Tsourdi (2013): Presentation and Analysis of the Main European Union Provisions to be taken into account and the Identification of Vulnerable Asylum Seekers Reception Conditions Directive and Dublin Regulation, p. 32

[117]Art. 4(4) of Recast Qualification Directive.

[118] Costello C. and Hancox E, 'The Recast Asylum Procedures Directive 2013/32: Caught between the Stereotypes of the Abusive Asylum Seeker and the Vulnerable Refugee', Martinus Nijhoff 2015. p. 367-368.

The Recast APD sets out the asylum procedures and introduces the accelerated and border processes. The Directive includes provisions for siphoning the asylum claimants into relevant procedures and highlights that the ground for the implementation of an accelerated process lies upon the discretion of member states. However, the art. 31 (9) of the Recast APD guarantees that the accelerated procedures do not apply to applicants in need of special procedural guarantees and 31 (8) declares that the vulnerable are exempted from the accelerated border procedures when the necessary support is not adequately provided. In the ideal scenario that the vulnerability assessment is conducted by health specialists in appropriate facilities and mirrors comprehensively the health situation of the asylum seekers, then it functions as an effective tool in case examination under the requirements of QD. With the preconditions that all the potential vulnerability indicators are identified by a medical screening that does not leave vulnerability factors unnoticed, the procedure is not biased by gender-role constructions or political interference, then the assessment guarantees that applicants are examined equally and none is unfairly rejected. However, as will be discussed in the following chapter, the vulnerability notion is problematic both on a theoretical and practical level. The shortcomings of the process were apparent in the Greek asylum system as vulnerability is key process interlinked with the asylum procedures and the mental facilities on the islands were at the brink of collapse.

1.2: The ambiguous nature of vulnerability in the European Union. An analysis of the APD.

For the concrete evaluation of the vulnerability concept, both the process under which the notion is established and the objective it serves should be measured. To begin with, the ambiguous nature of the vulnerability concept is interlinked with the categorization and division of applicants and siphoning to asylum processes based on poor medical screening and documentations rather than an evaluation of asylum claims.[119] For understanding the double role of the vulnerability concept introduced by CEAS and implemented by member states, it has to be assessed together with the prevailing conditions in Europe and the politics of non-entrée, which constitutes the norm of migration control.[120] Within this framework, deterrence measures and externalization of asylum, restrictive interpretation of the Convention and perception of migration in security terms turn vulnerability to a de facto tool

[119] Asylum Information Database and European Council on Refugees and Exiles "The concept of vulnerability in European asylum procedures",2017. Available here

[120] Hathaway, J. The emerging politics of non-entrée 1992, p.40-41.

for migration management, intertwined with access to asylum. The oversimplistic categorization of applicants into pre-established groups de-individualizes them, takes the shift away from the asylum claims and fear of persecution to external distinguishable elements. At the same time, the overemphasizing towards documentation risks leaving behind those who cannot translate their individual circumstances into medical documentation due to the shortcomings of the health system in the host state, the gender constructions and stereotypes around vulnerability.[121]

A comprehensive analysis of the Directives' provisions on vulnerability reveals their problematic and ambivalent nature. Following the mentality of CEAS, the recognition of special needs exclusively for certain applicants that succeed to substantiate their belonging to a vulnerable category contrast and deviates from the inclusive interpretation of vulnerability under ECtHR jurisprudence.[122] The development of the vulnerability concept by CEAS mirrors a tension as the notion of selectivity rejects the special needs of the vast majority of asylum seekers. In practice, Recast APD includes two contradictory reflections of the asylum claimants the "abusive asylum seekers and the vulnerable".[123] This strict categorization follows the applicants and determines the asylum procedure they will undergo and the mechanisms that will be put in place for them. The said rationale cultivates and legitimizes the idea of preserving the regular procedure solely for the vulnerable applicants who are deemed worthy to enjoy further guarantees and support in order to have a comprehensive access to asylum. In the case of Greece, the vulnerability process as an additional procedural layer serves the aforementioned role: it filters out from the regular procedure the applications made from the "abusive asylum seekers". Those left behind and do not fall within the scope of protection, are undergoing the fast-track border procedure without enjoying any safeguard and risking having their legal rights violated. Vulnerability acts as an invisible wall between the mainland and Aegean islands and accordingly between the regular and the accelerated procedure.[124]

The APD Recast illustrates and encourages the fragmentation of asylum systems by providing additional procedures based on the categorization of asylum seekers to pre-defined groups. In addition, it presupposes the division of the asylum seekers and limits the

[121] Examining the vulnerability procedure: group-based determinations at the EU borders, p. 25-27
[122] Cathryn Costello and Emily Hancox, 'The Recast Asylum Procedures Directive 2013/32: Caught between the Stereotypes of the Abusive Asylum Seeker and the Vulnerable Refugee' in Vincent Chetail Philippe de Bruycker and Francesco Maiani (eds), Reforming the Common European Asylum System, p. 377-446
[123] As above.
[124] As above.

entitlements of material and procedural support only to certain applicants. Based on the outcome of the vulnerability assessment, the APD encourages the position of accelerated procedures to the non-vulnerable applicants as they are considered autonomous and capable to correspond to strict deadlines and different treatment of their application. The explained division and categorization is neither neutral nor politically uncharged. On the contrary, it shapes the images of the asylum seekers based on their belonging to the vulnerable or non-vulnerable group and influences our perception. More specifically, the enjoyment of special needs and safeguards presupposes the existence of an unprivileged applicant who cannot navigate the asylum system without additional guarantees. On the contrary, for those not recognized as vulnerable, the attitude changes radically and swift towards a negative aspect, a condition reflected into the asylum process applied to them. Due to their seeming ability to navigate the asylum system without external support they are subject to additional procedures and different arrangements. At a cumulative level and in combination with the current European approach on migration, the practice of categorization has received a political dimension and represents a series of assumptions against the migrants and their reason for seeking international protection.

Another concern derives from the repercussions of labeling in a field so politically charged as migration. A critical approach is required when categories and labels are introduced and an assessment of the role they serve on behalf of those that implement them. The division of applicants and differentiation of procedures based on the Recast APD implies and encompasses a labeling policy for the asylum seekers. The recognition of vulnerability from the component authorities follows the applicant throughout the procedure and determines his/her treatment. As such, when a vulnerability factor is declared, the applicant carries the outcome of the assessment until the final division and exit from the asylum process. The policy of labeling and categorization has been widely used the aftermath of the unprecedented flows in 2015 as a means of managing the so-called crisis and justifying containment measures at the expense of refugees' rights. The arising labels of vulnerable and non-vulnerable failed to capture the special needs of the applicants-particularly to those with invisible vulnerabilities. It does not capture their traumatized background, outcome of the displacement and the experience of the journey. It reinforces the dichotomy even among the applicants as they realize the imperative of acquiring the recognition of a vulnerability factor

in order to enjoy a more favorable treatment. [125] The established vulnerable groups and the membership to a category carries gender constructions and norms. The dichotomy is biased and portrays specific gender roles which marginalize and exclude single men from the scope of additional support as they fail to have their vulnerabilities easily recognized. The categorization into two groups reflects certain perceptions for those falling into the categories. Those recognized as non-vulnerable are perceived as not in immediate need of support and aim to benefit from and exploit the asylum system. Last but not least, the concept of vulnerability is contested due to its consequences on the people recognized as such. The persons recognized as vulnerable carry those elements throughout the examination of their application and try to conform with the attributed identity. They aim to identify themselves with the label that is given to them and adopt the image of a victim, a condition with detrimental effects on their personal identity.[126]

The asylum systems are structured and depended on the vulnerability notion turning the relevant documentation a precondition for navigating the procedural complexity. The ambiguity derives from the real objectives the notion aims to pursue and the consequences both on the system and the applicants. The provisions of the Directive prerequisites efficient and operational medical facilities, which in times of massive arrivals is elusive and unrealistic. In addition, as it will be explained below, the ways under which it was put in place, raises concerns about the gender roles, the consequences of dichotomy and labeling. The procedural fragmentation encouraged by the EU leads to nuances to the refugee definition and erodes the scope of international protection.[127] If a careful and well foreseen approach is not adopted, the vulnerability assessment might undermine the integrity and objectivity of the asylum system.

[125] Heaven Crawley & Dimitris Skleparis (2018) Refugees, migrants, neither both: categorical fetishism and the politics of bounding in Europe's 'migration crisis', Journal of Ethnic and Migration Studies, 44:1, 48-64

[126] Freedman, Jane "The uses and abuses of "vulnerability" in EU asylum and refugee protection: protecting women or reducing autonomy", 2018, Papeles del CEIC.

[127]AIDA, Wrong counts and closing doors: The reception of refugees and asylum seekers in Europe, March 2016. Available here , 39-40.

Chapter 2: The double dimension of vulnerability within the Greek asylum system

2.1: Domestic legal framework for the vulnerability assessment

The vulnerability notion within the Greek asylum system has been scarcely documented and under-researched due to the structural difficulties and non-standardized procedures among the different legal frameworks. The point of departure for the second chapter lies in the central role of vulnerability for determining and siphoning the asylum applicants into specific asylum procedures based on their medical and family state. The first Chapter provides an overview of the national legal framework with particular attention given on the interaction between the vulnerability assessment and the asylum procedures. The analysis in the second Chapter suggests the Greek reality that has arisen from the way the vulnerability concept has been implemented and used, the potential challenges and the impact on the refugee law regime. The Second Part concludes with observations and remarks concerning the repercussions of the applied procedures.

The vulnerability procedure was established in 2016 and regulated by Law 4375/2016, in the aftermath of the refugee crisis under the hotspot approach and introduction of the Eu-Turkey Statement. Law 4375/2016 was the first to foresee the implementation of the vulnerability procedure and incorporate the provisions of the Recast APD into the national legislation. Law employed a group basis method for the recognition of vulnerable persons and followed the Directive approach concerning the role of the vulnerability process for the accelerated border and regular procedure. More specifically, compatible with the reasoning of CEAS and the efficient implementation of EU-Turkey Statement, the vulnerability assessment determined who would enjoy special procedural guarantees and be exempted from the fast-track procedure which did not correspond to their needs. Law provided a more extended list of vulnerable groups in comparison to the Directives, including people with Post Traumatic Stress Disorder (therefore PTSD) as a distinct category.[128] Art. 14(8) defined the vulnerability indicators, mainly related to social issues, family life and physical health rather than traumatized experiences deriving from the asylum claims and journey. [129] Deviating from the APD interpretation and provision, Law 4375/2016 foresaw a

[128] Μαρούδα, Ντ. Μ., Σαράντη, Β. (2020): Το νέο δίκαιο υποδοχής και ασύλου. Ο Ν. 4636/2019 «Περί Διεθνούς Προστασίας και άλλες διατάξεις», Νομική Βιβλιοθήκη, p. 23-24

[129]Article 14 (8) 4375/2016: As vulnerable groups shall be considered for the purposes of this law: a. Unaccompanied minors, b. Persons who have a disability or suffering from an incurable or serious illness, c. The elderly, d. Women in

general exemption from the border procedure for the vulnerable persons and the examination of the case under the regular procedure. On the contrary, the Directive mentioned that the exemption would be provided in case the conditions in the islands do not serve the higher needs of the applicants. Vulnerability was the factor that concluded which procedure the applicants will undergo for the examination of their application. Art. 9 (1) states that those belonging to vulnerable groups will be siphoned to the relevant procedure and provided with specified protection and support.[130]Art. 14(8) Law 4375/2016 provided the categories of vulnerabilities that allowed an exemption from the fast-track.

The EU-Turkey Statement of 2016 was of paramount importance for the development of the vulnerability concept due to the imposed geographical restriction on the applicants entering the Greek territory through the Aegean Sea. Upon arrival, applicants were subject to the Statement's provisions and had to undergo an exceptional accelerated fast-track border procedure.[131] On behalf of the authorities, vulnerability gained ground as a management tool for regulating the asylum flows between the islands and the mainland by exempting specific groups from the possibility of returning to Turkey in case their application was rejected or manifestly unfounded. For the applicants, the recognition of vulnerability signified the examination of their application under more favorable standards, procedural safeguards and treatment that enabled them to fully substantiate their claims due to the ameliorated conditions they are entitled to. As a result, the identification by the medical actors of a vulnerability indicators was an imperative necessity in order to escape the accelerated procedures, the poor examination of their cases in the island due to the unprecedented backlog and the political pressure for the implementation of the Statement.[132] Within the said framework, vulnerability functioned as a relief from externalization and potential deportation to Turkey and the referral to a legal space in the mainland.

The procedural aspect of vulnerability should be understood in conjunction with the hotspot approach, which turned the reception facilities into detention centers for the

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pregnancy or having recently given birth, e. Single parents with minor children, f. Victims of torture, rape, or other serious forms of psychological, physical, or sexual violence or exploitation, g. Persons with a post-traumatic disorder, particularly survivors and relatives of victims of shipwrecks, 37 h. Victims of trafficking in human beings.

[130] Μαρούδα, Ντ. Μ., Σαράντη, Β. (2020): Το νέο δίκαιο υποδοχής και ασύλου. Ο Ν. 4636/2019 «Περί Διεθνούς Προστασίας και άλλες διατάξεις», Νομική Βιβλιοθήκη, p. 23-24

[131]Tazzioli, "Identify, Label, and Divide: The Temporality of Control and Temporal Borders in the Hotspots". See also Greek Asylum Service, Decision 10464/31.5.2016, 2016, which established the geographical restriction

[132]Aberg, Karin: Examining the Vulnerability procedure: Group-based determination at the EU border, Refugee Survey Quarterly 2012, Available here, p.8

applicants who had their application processed with the fast-track procedure.[133] Concerning the structure of the assessment, all TCN had to undergo a vulnerability assessment at RICs facilities. An outline of the chart flow respects the following steps: After their arrival and detention by the Greek authorities, asylum seekers are supposed to undergo a compulsory medical screening and psycho-social assessment by KEELPNO in order to identify vulnerable cases.[134] KEELPNO would assess the level of vulnerability and classify it accordingly, however the burden is upon the applicant to substantiate and prove the belonging to a pre-established vulnerable group. The recognized were excluded from the content of the Agreement, had their geographical restriction lifted and traveled to the mainland. Since September 2018, the medical assessment of vulnerability included two levels. The high level was translated into high vulnerability in which further referral was needed for immediate support. The medium level indicated that a vulnerability could be further developed if not precautionary measures are taken, and the third level named "no vulnerability". It is worth noting that the aforementioned classification is not provided by law and in practice only the applicants belonging to the high vulnerability level are exempted from the border procedure, as they cannot receive adequate support under the accelerated and border procedures. [135]

The explained approach was in place until 2020, when the implementation of Law 4636/2019 marked a step backward for the protection of vulnerable groups. IPA[136] introduced a new approach concerning vulnerability, with fewer safeguards and guarantees, and abolished the general exemption from the border procedure. It reflected a change of policy and perception of the vulnerable groups and a shift towards a more restrictive management of the arrivals. IPA's provisions were more aligned with the content of Recast APD relating to the vulnerable groups and the exemption from the accelerated procedures. As such, based on art. 31(8) Under IPA, the vulnerability assessment takes place upon the identification procedure, art. 58 (2). The recognition of vulnerability has a direct effect on the reception conditions in terms of medical assistance and accommodation rather on the asylum process, based on Article 58(3).[137] Concerning the vulnerability assessment of TCN, the process is

[133]European Commission, "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Agenda on Migration" COM (2015) final.
[134] Oxfam, Vulnerable and Abandoned: How the Greek Reception System Is Failing to Protect the Most Vulnerable People Seeking Asylum, 2019. Available here
[135] Greek Council for Refugees, AIDA Country Report: Greece, 2018, p. 85-99. Available here.
[136] Law 4636/2019 "on international protection and other provisions" (IPA), Gazette 169/A/1-11-2019, available at: here
[137] Μαρούδα, Ντ. Μ., Σαράντη, Β. (2020): Το νέο δίκαιο υποδοχής και ασύλου. Ο Ν. 4636/2019 «Περί Διεθνούς Προστασίας και άλλες διατάξεις», Νομική Βιβλιοθήκη, p. 23-24.

initiated after their asylum registration and the medical screening aims to the provision of required medical care and psychosocial support based on art. 39 (5). The assessment is conducted by EODY, successor of KEELPNO which was abolished by Law 4600/2019. Art. 39 (7) clarifies that the geographical restriction may be lifted and referral to the normal procedure in the mainland upon RIC's Manager decision.[138] The said is conducted following proposals of the medical actors operating in RIC and enough documentation on behalf of the applicant. Concerning the vulnerable groups, IPA adopted the categories provided in the Recast APD and thus removed the people with PTSD from the vulnerable groups. In 2019, 25967 applications were exempted from the fast-track procedure and channeled into the regular due to vulnerability.[139] In 2020, only 5543 asylum seekers had their restrictions lifted.[140] Under both legal frameworks, vulnerability acted as an escape valve from the externalization of asylum introduced by the EU-Turkey Statement for those who could correspond to the required hardship of documentation.

2.2: Analysis of vulnerability's role and rationale

CEAS does not incorporate the all-encompassing notion of vulnerability in its legislative instruments disregarding ECtHR judgement, a practice that divides the asylum seekers violating the principles of non-discrimination and equal access to asylum. It distinguishes between applicants that have the potentials to navigate through the asylum systems and those that cannot without support. There is the risk that the applicants of the first category may not have their asylum claims and refugee grounds examined if they do not pass the vulnerability "test", a condition that undermines the fairness and accessible RSD. Another consequence of vulnerability's regime is that overemphasizes the medical background of an asylum seeker and gives it equal importance as the codified requirements for the refugee definition. Together with the fact that granting refugee status is of a declaratory nature, it might be the case that refugees are excluded from granting protection because they did not fit with the required medical profile. On a cumulative basis, the oversimplification of the procedure, the group-based determination and the double effects of the vulnerability might exclude those without a medical record from enjoying their rights and access asylum. The non-vulnerable group risks staying behind in the externalization regime regardless from the

[138] Aberg, Karin: Examining the Vulnerability procedure: Group-based determination at the EU border, Refugee Survey Quarterly 2012, p.8 Available here.
[139]Greek Council for Refugees, AIDA Country Report: Greece, Athens, 2020, p. 90-93. Available here.
[140]Greek Council for Refugees, AIDA Country Report: Greece, Identification, Athens, 2021, available at here,

personal grounds and fear of persecution. [141] This depoliticization of the asylum claims deviates from the provisions of the Geneva Convention and shift towards the establishment of additional requirements.

In Greece, the pre-established groups failed to capture the real needs of the applicants, especially those who reside in the camps due to the well-known shortcomings of the medical facilities there. The classification of applicants does not reflect their ability to participate to the asylum procedure and ignored the traumatized experience of displacement and journey. The vulnerability assessment operated through pre-defined categories on account of external distinguishable elements instead of the individual circumstances. It was a notion with a strong political background as it was introduced by Law 4375/2016 which aimed to implement the Statement within the hotspot approach. Thus, the political pressure was apparent as the vulnerability concept was deemed both by national and European authorities as a strategy for regulating the profiles of those applicants who would fully enter the European territory and won't continue to be accommodated to transit zones. The result was the rise of a labyrinth of procedural layers and the establishment of a system which does not accord the asylum claimants equally. Prior to RSD procedures, an additional assessment of asylum claimants was conducted to determine the applicable procedure and the reception conditions. Even though Law 4636/2019 recalled the exemption clause, still the referral to the mainland was one way for the applicants due to the restrictive interpretation and application of refugee law and the expansion of accelerated procedures. However, the explained policy undermines the reliability and integrity of the asylum system and the respect towards the notion of international protection.

The non-vulnerable applicants subject to accelerated procedure do not enjoy the basics of the provisions established in the European acquis due to the short time limits from their registration until the first personal interview. Under the current conditions in the RICs, after the registration and lodging of an application to the Asylum Office, the applicant has less than a week for the assigned interview day. The aforementioned makes it impossible for the non-vulnerable to acquire legal counseling and in case they succeed, the do not have efficient time for case preparation. On top, a condition due to the brief time limits, even though asylum claimants undergo a first medical screening and evaluation from EODY, the medical results and health cards are only available after the personal asylum interview.

[141]Aberg, Karin: Examining the Vulnerability procedure: Group-based determination at the EU border, Refugee Survey Quarterly 2012, p. 21-27. Available here

Vulnerability served as an escape valve from the inhumane and degrading treatment and guaranteed access to the regular procedure. Overcoming the procedural complexity and achieving the vulnerability recognition turned into a standardized process culminating in the informal addition of new steps towards access to asylum and potential inclusion to the refugee definition considering the qualitative differentiation of the procedures.

The European and national policies established a two-ground reality by introducing a new procedural layer within the existing procedures interconnected with the regular procedure and a comprehensive examination of the case within a reasonable time-framework, access to legal counseling away from the politically charged process in the islands. Witnessing the reality around them and how they could escape the bureaucratic and procedural labyrinth, asylum seekers realized that the recognition of vulnerability offers the sole pathway to exempt themselves from the islands,[142] the externalization of migration[143] and not be returned to Turkey.[144] Thus, the recognition became the ultimate purpose to acquire in order to enjoy their fundamental rights and potentially be granted international protection.-The Asylum Service accepts the reports provided by EODY as it is the official medical actor and takes them into consideration for the interview and evidence assessment.[145] However, due to the shortage and significant gaps identified in the overcrowded camps applicants undergo the asylum procedure designated for them without medical and psychosocial assessment. In those cases, the EASO staff ad hoc identifies and explores the vulnerability through a relevant interview they conduct.

The asylum seekers that are denied the required documentation, receive them after the interview due to the shortcoming of the medical actor, or have non-visible vulnerabilities that were not identified during the medical screening, have unequal access to asylum. The "new system" deviates from the individualized examination of an application and shift towards practices during mass influx of asylum seekers with a group-based determination approach. It poses great challenges to those that are left behind, in the non-accountability gap following the second rejection of an application. Those not able to meet the requirements to be included to pre-defined groups of vulnerable person's risk being returned to Turkey and being subject

[142]M. Tazzioli and G. Garelli, "Containment beyond detention: The hotspot system and disrupted migration movements across Europe", Environment and Planning D: Society and Space, 38(1), 2018.
[143]Aberg, Karin: Examining the Vulnerability procedure: Group-based determination at the EU border, Refugee Survey Quarterly 2012, Available here
[144]Hebrew Immigrant Aid Society, EASO's Operation on the Greek Hotspots: An overlooked consequence of the EU-Turkey Deal, Lesvos, HIAS, 2018. Available at: here
[145] Asylum Information Database, Country Report Greece, 2019., p. 110-120. Available here.

to indirect refoulement.[146]There is a general critique concerning the ways under which the concept was made and the objectives it serves. In Greece, the notion is not neutral and objective. The ways under which vulnerability was introduced and implemented within the Greek asylum system under both legal frameworks, the role it served and its political dimension culminated in a over-simplification of the asylum procedure.

2.3. Conclusion and Remarks: Vulnerability and access to asylum

For a comprehensive evaluation of the vulnerability concept, a careful observation of the purpose they serve and the notions under which they are shaped is beneficial. The vulnerability assessment applied on the Greek islands resembled a regular asylum procedure in several regards and in cases substituted the official processes with decision-templates for those undergoing the border procedure. This tendency gave rise to a favoring for medical reports, as they played a decisive role in the categorization of asylum seekers and evaluation of asylum applications compared to international protection claims. To benefit from the exception and safeguards, documentation proof and procedural dexterity is demanded from the applicants to prove that the accelerated procedure violates their human rights as is incompatible with their high needs. As the implemented asylum procedure aimed to assert whether a person belong to a vulnerable group, consequently it limited the importance to question the reasons for fleeing the country of origin, seeking international protection and exploring the relevant material facts. Within the Greek asylum system, the observed "depoliticization" of the asylum claims seemed to steer clear of the initial scope of Geneva Convention and the RSD procedures are applied at the expense of non-vulnerable claimants. The emphasis on distinguishable elements and the health condition instead of high refugee profiles, in situations where vulnerability is not related with an asylum claim, signifies the favoring towards a new sub-group of asylum seekers. The emergence of vulnerable persons as a new sub-group of asylum seekers is the outcome of member states' practices to regulate the profile of those arriving in Europe and the criteria of granting protection following a selective approach. These national policies, deviating from the international refugee law,

[146] Cathryn Costello and Emily Hancox, 'The Recast Asylum Procedures Directive 2013/32: Caught between the Stereotypes of the Abusive Asylum Seeker and the Vulnerable Refugee' in Vincent Chetail Philippe de Bruycker and Francesco Maiani (eds), Reforming the Common European Asylum System: The New European Refugee Law, Martinus Nijhoff, 2015, p. 21-27.

undermine the integrity of asylum and RSD procedures, by turning the latter subject to political interference and national interests. [147]

As the political agenda and narrative have proved, the Greek asylum system has deviated from a rights-based approach to deterrence measures aiming at preventing migrants from entering the European territory. For doing so, it considers applications based on STC as inadmissible in order to filter out claims and move the responsibility to other countries.[148] Control over admission has so far proved to be not only one of the oldest, but also one of the most persisting forms of migration control.[149] A prominent example that illustrates the relationship between politics, asylum and the subjectivity of procedures is the composition of the Appeals Committees, in which the applicants have the right to appeal after a negative decision. After strong political pressure for implementing the Statement[150], the composition of Greek Asylum Appeals Committees, previously deciding that Turkey is violating the principle of non-refoulement, changed in order to be consist of two national judges and one member from UNHCR. Therefore, the decisions from the Committee define Turkey as STC, in an attempt to implement the content of the Statement and the European agenda.[151] Under the analyzed legal framework and the political reality of non-entrée, supplemented by the border and admissibility procedure, it is understandable why asylum applicants were seeking to acquire first the vulnerability recognition and then refugee status, as it constituted the most credible method for lifting the geographical limitation and be transferred to the mainland.[152]

Considering the aforementioned dynamics, vulnerability functioned as a pathway for the "internal border" between the Aegean islands and the mainland that claimants had to cross in order to have full access to asylum and a step towards the inclusion of the refugee definition. The established reality within the Greek asylum system could potentially exclude those whose individual circumstances are not aligned with state's perceptions and policies and thus face a disproportionate burden. The aforementioned found themselves trapped into

[147] Aberg, Karin: Examining the Vulnerability procedure: Group-based determination at the EU border, Refugee Survey Quarterly 2012. Available here.

[148]T. Gammeltoft-Hansen, Access to Asylum: International refugee law and the globalisation of migration control, Cambridge Studies in International and Comparative Law, 2011; Moreno-Lax, Accessing Asylum in Europe: Extraterritorial Border Controls and Refugee Rights under EU Law, Oxford, Oxford University Press, 2017.

[149] A. Shacknove, "From Asylum to Containment", International Journal of Refugee Law, 5(4), 1993, 516–533.

[150] Human Rights Watch: EU/Greece: "Pressure to minimize numbers of migrants identified as vulnerable", 2017.

[151] M. Gkliati, (2014): The Application of the EU-Turkey Agreement: A Critical Analysis of the Decisions of the Greek Appeals Committees, European Journal of Legal Studies, p. 10(1), 2017, 81–123, 110, 120.

[152] Μαρούδα, Ντ. Μ., Σαράντη, Β. (2020): Το νέο δίκαιο υποδοχής και ασύλου. Ο Ν. 4636/2019 «Περί Διεθνούς Προστασίας και άλλες διατάξεις», Νομική Βιβλιοθήκη, p. 23-24

an asylum system of "double directions and standards", that could not overcome the procedural layers and often were considered as the abusive asylum seekers. The vulnerability procedure without replacing the asylum procedure, provides a tool for migration management that carries importance in relation to access to asylum. The proliferation of the procedure does not enhance the identification of people with immediate needs. The problem arises from the fact that when a notion receives such a central role for classifying the applicants, siphoning them to the asylum procedure in order for the whole asylum system to operate, the efficient functioning of the medical actors is presupposed. All the applicants have to undergo a sufficient and exhaustive medical screening focusing on vulnerabilities beyond the physical state in order for the procedure to be fair. The identification is a core feature for the provision of the European acquis, otherwise people are deprived of important safeguards and the whole concept of vulnerable groups loses its meaning. As a result, the Directive's silence on the outline of the assessment have detrimental effects as it does not provide a minimum set of medical standards. In times of crisis and mass arrivals, the unimpaired operation of the medical facilities is questionable and consequently the asylum system in Greece as a whole since 2015.

The vulnerable categories are neither fixed nor neutral, but they are in a constant stage of change. They reflect the national interests and priorities and thus they are subject to change based on the legal framework and political objectives. This explains the removal of the PTSD under 4636/2019 and the full compliance with the Recast APD. The classification into two distinguishable groups and the labelling of the categories is controversial when employed to a sensitive topic with political dimensions as the migration sector. The labelling of the asylum seekers as vulnerable and non-vulnerable is accompanied with specific perceptions and assumptions for those groups at the expense of the latter, disregarding that both are in an immediate need. The policy of categorization limits the scope of protection of the international refugee law regime for those that excluded from the pre-established groups. The classification reinforces the simplistic dichotomy and divide the population that seeks to achieve the same objective.[153] Specific attention should be paid to those who do not fit to the protective groups as they are the recipients of hard migration policies. The policy of categorization has turned into a heavily politicized process in Europe as it mirrors specific perceptions and positions for the displaced people.

[153] Heaven Crawley & Dimitris Skleparis (2018) Refugees, migrants, neither both: categorical fetishism and the politics of bounding in Europe's 'migration crisis', Journal of Ethnic and Migration Studies.

The last remark that briefly summarizes what is previously explored and also departs the analysis for the next Part concerns the interconnection between the distinguishable external characteristics of recognized as vulnerable asylum seekers and the refugee definition, provided in the Geneva Convention. In the majority of cases, those features are irrelevant with the reasons of leaving the country of origin, the fear of persecution which is forward-looking, the inability of state's protection and possibility of internal potential alternative. However, the vulnerable groups succeed to access the regular procedure where the chances to be granted international protection are higher due to the qualitative evaluation of applications and careful implementation of refugee law together with the examination on the merits. The contribution of vulnerability to the recognition of international protection was widely comprehended after the implementation of the Joint Ministerial Decisions 42799/2021, under which all asylum seekers underwent the admissibility procedure and deemed inadmissible. As a result, it was assumed that within the Greek asylum system, for substantiating an application to international protection, fulfilling the criteria codified in the Geneva Convention and Qualification Directive are not enough. For the asylum seekers that are not de facto included to the refugee definition, i.e. Palestinian nationals who do not enjoy UNRWA's support, apart from a well-found fear of persecution based on the five grounds and the inability of efficient and non-temporary protection in the country of origin, today an additional requirement is needed for ensuring the comprehensive access to asylum, the belonging to a vulnerable group. It is a matter of concern whether the asylum seekers qua presumptive refugees is still feasible.

Third Part: Identifying vulnerability's scope of influence in the Greek the asylum system

Chapter 1: Methodology

Chapter 1.1: Research and method design

The purpose of the present study is to enhance our understanding of the Greek asylum system and the established asylum procedures in the aftermath of the refugee crisis 2016 until today. Within the analyzed procedural complexity, the study focuses on the concept and notion of vulnerability, its relation and dynamic within the national asylum system and the ways under which it affects its main components. The study aims to prove the central role of

vulnerability and discover its effects and consequences both on the asylum system, the RSD procedures and the asylum seekers. The aforementioned statement of purpose is developed by applying a qualitative research approach considering that the topic under discussion is under-investigated and thus the qualitative methodology is deemed more appropriate and fruitful. In this respect, qualitative methods are employed by analyzing the existing bibliography and conducting semi-structured interviews in focus group discussions for the collection of qualitative data.[154]

The option of the semi-structured interviews better serves the aims of the paper and offers the potentials to be more productive, considering that interviews provide insightful information from a sample with direct knowledge on the matter under discussion. Together the applied research approach and design will explain and explore a new phenomenon in depth. An inductive-abductive position towards the data is applied considering that this strategy will facilitate comprehension and coding, while the semi-structured approach was chosen due to the importance of the experience and knowledge of the sample and the researcher. In the majority of the cases, focus group discussions were realized, as they constitute a research method for the production of rich qualitative data through an interaction of the participants in a specifically established area of interest.[155] The established method offers the possibility of access into the way people are thinking, the reasons that they think in a certain way,[156] and means for learning from them.[157]

Concerning the research design and the procedure for collecting, analyzing, interpreting and reporting data,[158] the conducted research follows the example of an explanatory study. It seeks to identify the reasons and the ways under which vulnerability has received a central role within the Greek asylum system, by discovering and highlighting the relationships among different aspects of the topic of the study. This type of research design responds to the how and why aspect of the fundamental research question looks for the causes and reasons for the topic under discussion and provides the necessary evidence.[159] In this study, interview

[154] Creswell, J.W. (2011): Educational Research. Planning, conducting and evaluating quantitate and qualitative research. 4th edition, pub. Pearson, Boston. p.2-57

[155]Krueger, R. A. (1988). Focus groups: A practical guide for applied research. Thousand Oaks: Sage., p. 18

[156] Kitzinger, J. (1994). The methodology of focus groups: The importance of interaction between research participants. Sociology of health and Illness, p.16, 103-121. Available here

[157] Morgan, D. L. (1998). The focus group guidebook: Focus group v. 1. London: Sage., p.9

[158] Creswell, J., & Plano Clark, V. (2007). Designing and Conducting Mixed Methods Research. Thousand Oaks, CA: Sage, p.58

[159] Creswell, J.W. (2011): Educational Research. Planning, conducting and evaluating quantitate and qualitative research. 4th edition, pub. Pearson, Boston. p. 293

questions are designed to be semi-structured as they allow the study to benefit from a structural and an unstructured approach. The structured nature provides key questions that help to define the areas that need to be explored according to the research questions and problem. The unstructured approach allows the participants and researcher to diverge constructively in order to pursue an idea in more detail.

Chapter 1.2: Sample analysis and ethical considerations

The conduction of semi-structured interviews with focus groups discussions took place following a purposive sampling procedure to select the sample due to their ability to comprehend the research problem. The aforementioned selection enhances the data quality and richness. The eligibility criteria for participating in the study were established in accordance with the familiarization of the participants with the research questions in order to serve the purpose of the study. [160] Consequently, a prerequisite for the participation was the former professional experience of the interviewers as Case Officers in Greece examining asylum applications at the first instance decisions both under the admissibility and eligibility procedure. The established criteria were set in order to ensure that the sample had a solid knowledge of the procedures and the differentiations among them both in terms of conducting the relevant interviews and drafting the opinions. As such, the sample had experienced the different legal contexts applied in each application and witnessed the consequences for the evaluation of the cases. The interviewees belong to my personal network who voluntarily accepted to participate in my research. Concerning the sample size, the latter is guided by the concept of information power[161] and depends on the aim of the study, sample specificity, quality of dialogue and analysis strategy[162].

In our case, due to the valuable working experience of the participants as they have conducted more than 150 interviews under the regular procedure evaluating cases both on eligibility and admissibility, together with the aim of the research, a small number of participants was sufficient. The sample is relatively homogeneous due to the eligibility criteria of the individuals and thus the addition in numbers would not enrich the data as the familiarization and interaction with the procedures would remain the same. Furthermore, the purpose of the study is by no means to raise generalized conclusions about the notion of

[160] Marshall, M. N. (1996). Sampling for qualitative research. Family Practice, 13(6), 522-525. Marshall, C., & Rossman, G.B. (2006). Designing qualitative research (4th ed.). Thousand Oaks, CA: Sage

[161] It signifies that the more information the sample holds, the lower number of participants needed.

[162] Creswell, J.W. (2011): Educational Research. Planning, conducting and evaluating quantitate and qualitative research. 4th edition, pub. Pearson, Boston. p. 204-236

vulnerability, but rather to facilitate our understanding by providing insightful information relating to the specific impact of the concept on the asylum context. However, it should be noted that the development of comprehensive and meaningful themes and categories can be achieved from a small sample.[163]

Considering the sensitive nature of the topic under discussion as it indirectly engages the asylum seekers and the limitations concerning the Code of Conduct, all possible precautious measures were taken in order to guarantee the protection of the personal data both of the participants and third parties. The principle of anonymity and confidentiality were respected throughout the interview and at the analyzing of the gathered data. Any personal information that could potentially lead to the identification of the participants was excluded. Furthermore, the participants signed a consent form and were given an information sheet concerning their rights during the interview and afterwards, until the finalization of the master paper. More specifically, the participants had the right not to answer to questions, were given the transcripts for final approval, removal or addition of any statement. On top, the participants gave explicit permission to be audio recorded and were explained in detail the processing stages of the data collected. None of the participants raised any concern during the conduct of the interviews neither did they afterwards. Additionally, at the beginning of the interview the participants were again informed about their rights, the applied methodology and purpose of the study and were asked to verify their consent. Their right to remove their participation and ask for the exclusion of their personal data was emphasized. [164]

Chapter 1.3: Data analysis

The analysis of the data is based on a thematic analysis, applied to each question, in which the statements are translated into coding. A thematic analysis is employed, as it is deemed the most appropriate for qualitative research. It's a method of identification, description, categorization of repeating patterns, themes that arise from the research data and constitutes a basic tool for qualitative research. It provides the necessary flexibility for the aims of the study. The initial purpose of the data is to provide an insight into the function of the Greek asylum system, the interconnection and relation of the vulnerability notion within that system. It aims to address whether vulnerability constitutes a central notion and discover in which ways.

[163] Guest, G., Bunce, A., & Johnson, L. (2006). How Many Interviews Are Enough?: An Experiment with Data Saturation and Variability. *Field Methods*, *18*(1), 59–82. Available here

[164] Ίσαρη, Φ. (2015): Ποιοτική Μεθοδολογία Έρευνας Εφαρμογές στην Ψυχολογία και στην Εκπαίδευση. Εκδ. ΣΕΑΒ. p. 89

The interviews had a total length of 240 minutes. Based on the preference of the participants, the interviews were conducted either in Greek or in English. For those conducted in Greek, only the passages directly imputed into the paper were translated to English. The thematic analysis follows six steps. The first step includes the familiarization with the data with constant reviewing and observation of repetitive patterns that are relevant for the topic. After the transcription, the statements are organized gradually around a common coding system and categories. Each statement received a code, that briefly expresses the meaning that the researcher gives at this part of the data. The main codes arise from comparison and paring and lead to certain categories assigned to the topic based on the research questions. The different categories that arise give a short description of the content of the subcategories of the transcript. The categories are defined by certain codes and are translated into topics.[165] An inductive-deductive approach is implemented towards the data as both the codes and categories can derive from the transcript but are also on themes that fall a priori within the scope of interest in relation to the existing bibliography and theoretical framework. The themes are derived from a combination of inductive and deductive analysis, as it is the outcome both of the gathered data from the interviews but also based on the existing bibliography.

Chapter 2: Findings: Nuances of the subjective and fragmented nature of asylum deriving from the Greek reality.

Chapter 2.1: Defining the vulnerability notion

"*Vulnerability is another example of how fragmented the asylum system is in Greece*" [..] *On the one hand, they may want to show that we respect the people and there is the humanitarian part, so if he/she is considered vulnerable, then yes, the applicant is entitled to more safeguards, but the process itself is not credible".*

The vulnerability concept was an invention of Law 4375/2016, a notion to minimize the severe consequences of the EU-Turkey Statement and the imposed geographical restriction upon the migrants entering Greece from the Aegean islands. Theoretically, it was a set of safeguards in order to exempt exclusively the people with immediate needs and vulnerabilities from the border-procedure, defined by acceleration and problematic evaluation of applications. However, it was more than a catalogue of guarantees. For Greece,

[165] Charmaz, K. (2006). *Constructing Grounded Theory: A Practical Guide through Qualitative Analysis*. SAGE., p. 42-72

vulnerability was supposed to be a demonstration of respect towards international refugee law and principles by ensuring that those recognized as vulnerable will enjoy all the necessary safeguards that are enshrined at the European acquis. At the same time, it was a tool for regulating migration flows between Turkey, the Greek islands and the mainland and for "legitimizing" the policy of deterrence implied by the Statement for prospective Syrian asylum seekers. The vulnerable asylum seekers were seen as the exception to the strict policy implied by the Directives and imposed by the Greek state. As it was concluded by the participants, it was a not well-defined notion invented in a period of crisis in order to overcome a series of obstacles for the authorities. As observed by a participant:

"We had emergent decisions from the Ministry that would permit the applicants residing to the islands to be transferred to the mainland without vulnerability, only to give space to the new comings. [..] The decisions for the referral were issued by the First Reception and not the Asylum Service [..] The vulnerability was used as a tool to give space in the islands for the new arrivals, but it was not thoroughly examined".

Vulnerability should be analyzed in conjunction with the EU-Turkey Statement, the accelerated and admissibility procedures and the geographical restriction on the Aegean islands in a period with massive refugee flows and political unrest in Europe. As a concept, it was perceived by the informants as an additional procedural layer within the existing procedures purposively defined by vagueness and ambiguity in order to serve political objectives among others.

"*The Agreement and accordingly the introduction of admissibility reinforced the need for recognition of vulnerability. In this context, it is as if an additional step was introduced in the recognition process. [..] "However, in situation of crisis if we don't have the sources to follow credible procedures. Vulnerability can be used as a solution for administrative obstacles, like in the past*."

Vulnerability's interplay was mirrored at all the stages of asylum due to its multidimensional character, from the reception conditions until the final decision from the respective authority. It is interconnected with procedural safeguards and guarantees in order to reassure that access to asylum for the vulnerable will not be impaired due to their personal condition. Some of those guarantees are applicable to the reception conditions by providing adequate accommodation in accordance with their higher needs. Some others are related to the procedural safeguards at the conduction of the interview. However, for the asylum

seekers, none of the above were the case. For them, vulnerability substitutes the escape valve from the islands, well-known for the degrading and inhumane living conditions in the camps or for other "detention centers" to the mainland, where qualitative factors were in place for the evaluation of the cases.

"An unprecedented burden was given to vulnerability on behalf of the seekers as their predominant concern was to leave the island [..]The important was the exemption of the fast-track border procedure and the examination of their application under reasonable deadlines and maybe another quality in terms of interview and procedure, I would add".

The political nuance of the concept was highlighted during the interviews considering that its application has political a dimension and is aligned with the general subjectivity of asylum. The authorities have a direct engagement to the vulnerability rate and consequently could control the flows between the islands and the mainland. Applicants considered the vulnerability assessment as a safeguard from the risk of being sent back to Turkey in case of inadmissibility and a comprehensive evaluation of their application with less political pressure, which was prominent in the islands. In reality, this exactly was the role of vulnerability.

"*In the past it was very important to be vulnerable because if recognized as vulnerable, you would not be sent back to Turkey. You would be admissible, and Greece would be the responsible actor to examine the case*".

Under 4375/2016, for the asylum seekers recognized as vulnerable, vulnerability signalized their admissibility, transition to the regular procedure in the mainland and examination on the merits with guarantees. On the contrary, for the Syrians the lack of recognition meant the inadmissibility of their application, a deprival of their right to be heard based on the country of origin and a return to Turkey. For the other non-vulnerable nationals, they had to undergo the truncated fast-track border procedure on the merits within a strict time period, a compromise of guarantees and a problematic evaluation on the islands.

"*A person who would be identified as vulnerable, would secure the referral to the mainland, regular procedure, and probably "more favorable treatment" in terms of procedures. This is why it was a necessity of the applicants to be declared as vulnerable*."

The outcome of the aforementioned asylum developments was the establishment of fragmented asylum landscape that culminated in an over-simplistic division of the applicants

into two categories, vulnerable and non-vulnerable. The most central components of the asylum process were structured around the said categorization of applicants and procedures. However, the recognition of vulnerability was uncredible and dependent on the operational capacity of the medical facilities on the island. Vulnerability provided full access to asylum only to specific categories of applicants and put invisible obstacles and procedures to the non-vulnerable. For the Syrian nationals, the only refugees until June of 2021 deemed inadmissible based on STC, overcoming the obstacles was one way. A statement clearly describes the over-simplification of the procedure at the expense of asylum seekers:

"There are cases that this seems a game to me, ex. Syrian-vulnerable-mainland-eligibility-refugee status or Syrian-non-vulnerable-inadmissible-Turkey. The asylum procedure and evaluation of the applications are so important and those over-simplifications fragment it"

Chapter 2.2: Creation of invisible dichotomy among the asylum seekers

"*I think that the categorization and over-simplistic division between vulnerable and non-vulnerable fall out of the scope of asylum. Everyone who has experienced displacement and the journey is vulnerable. There is a judgement from ECtHR, namely the MSS v. Belgium and Greece, deciding that those divisions should not exist*".

The way vulnerability is applied within the Greek framework deviates from the principle of individualized examination towards a group basis determination. Defining the appropriate procedure of each applicant based on pre-established groups, providing certain safeguards solely to the vulnerable and retaining this categorization prominent at all phases of asylum results in inequalities. An imperative rose for the applicants to be recognized as such in order to have a different treatment, closer to the international guarantees and most importantly avoid the fast-track procedure, with the poor examination of the asylum claims during the interview and issuing of negative decisions. The informants concluded that inter alia a de facto dichotomy both of the asylum procedures and among the asylum seekers is the most prominent consequence of the employed vulnerability. This dichotomy is based on external and distinguishable characteristics of the applicants and in the majority of the cases the recognition of vulnerability does not relate to the reasons for seeking international protection. The oversimplistic categorization of procedures and applicants resulted in a two-tier asylum system with double standards structured around the vulnerability concept.

"There is an informal separation between asylum seekers that has to do only with personal circumstance and not with the living conditions in the country of origin, any past persecution or future-oriented fear of risk in case of their return. This may lead to additional problems with access to asylum procedures, although your right to apply for asylum is formally guaranteed, but this differentiation of procedures combined with the recognition of vulnerability may effectively deprive you of your right to be heard".

Even though the initial aim of the vulnerability was to identify the needs for the most traumatized, ex victims of sexual and psychological violence or torture, the way vulnerability assessment was conducted was at their expense because their traumas were unnoticed and unregistered. The oversimplistic categorization of procedures and applicants resulted in a two-tier asylum system with double standards structured around the vulnerability concept. An indirect implication is the arising of two profiles of asylum seekers with the attribution of the characterization of "autonomous" or less in need of protection. The focus on the individualized circumstances or the medical history of the applicants takes the shift away from the fundamental elements of the Convention. The discussed dichotomy in practice deprives the asylum seekers from the concrete right to enjoy the right to asylum, as they are subject to admissibility procedures or they have an extra burden to override, deriving as well from the interaction of gender roles on asylum. More specifically:

"*In practice, vulnerability means the dichotomy between "worth refugees" who have some special needs and the other migrants which appeared to be "more autonomous and not so much need of international protection. The dichotomy of vulnerability creates inequalities in asylum procedures. We create two categories with people who are vulnerable in immediate protection and those who are not and have to stay to the islands with different safeguards* [..]*For example, women who are perceived to have gender-specific roles are considered to be vulnerable because they are women and are alone. This exactly creates the dichotomy between women and men. This might lead to marginalization*"

At the legal analysis of the decision drafting, vulnerability factors influence the required threshold for an action to amount to persecution or serious harm. Accordingly, it affects variably the reasonable degree of likelihood of future fear in case of return to the country of origin and undoubtedly the examination of the Internal Flight Alternative (therefore IPA). In terms of evaluation of international protection, the most mentioned influence concerned the subsidiary protection, as the individual characteristics play a

determining role for the evaluation of the cases, both in 15 (a), (b), (c). The attention is given on the subsidiary protection of 15 (c) based on indiscriminate violence. The required level of indiscriminate violence that constitutes serious harm is influenced significantly by the recognition of vulnerability following the well-known Elgafaji case of the CJEU and the evaluation of 15 (c) under the notion of sliding scale. The individual circumstances limit the necessary level of indiscriminate violence. Considering the subjectivity of the asylum procedure on the part of drafting a decision at the legal analysis, a case officer can decide that the threshold of serious harm is reached in case of a family for instance, in which the best interest of the child contributes at the assessment.

"*In the worst-case scenario, a person not considered vulnerable, for example a young adult who has not a medical issue and a family, the absence of vulnerability might affect the case negatively because he might be considered not facing such serious persecution or harm in the country of origin*".

Chapter 2.3: The interplay between vulnerability and international protection

"*It certainly plays an important role in terms of international protection [..] Vulnerability is translated into an individual circumstance. Once you have recognized it, it follows throughout the examination of the application*"

Another relevant statement highlighting the contribution of vulnerability:

"*If a Syrian is deemed vulnerable, we know that by referring to the examination on the merits is like vulnerability ensures the refugee status. Vulnerability is very decisive*".

Among the questions is whether vulnerability influences and if so to what extend the RSD procedures, including the drafting of an asylum decision. It was commonplace between the participants that the whole asylum process is defined by subjectivity and fragmentation. This is prominent among the decision-drafting as the personal ontology of the Case Officers is reflected on the treatment and evaluation of the applications, in absence of national authority for checking and changing the final outcome of the decision. The Case Officers have the discretion to use the part of the legal analysis and grant international protection based on the personal interpretation of the required threshold of the inclusion. The vulnerability factors are additional helpful elements that accompany the individual circumstances of the applicants and can be used to justify the granting of international protection, on cumulative basis with other elements of the case:

"*Vulnerability emerges in determining on the basis of the sliding scale the granting of protection. Especially at the decision drafting, there are medium profile cases, without a past persecution and future risk. In those cases, there is ex-officio of issues related to vulnerability. Even if the asylum claim collapses due to credibility or we do not have a strong fear of prosecution based on what has been claimed, this can be transformed based on the ex-officio search and examination of these vulnerability-related items.*"

Vulnerability contributes to the recognition of protection but cannot stand by its own as a ticket for it. The informants agreed that is a valuable tool to be used throughout the decision-making process, affects the interaction with the international protection and complements on cumulative basis towards a positive outcome. The only limitation is the situation in the country of origin, as the general conditions have to give some ground and the personal stance of the Case Officer. Under 4375/2016, the only possibility for a vulnerable factor to act alone was the case of female Somalian asylum seekers who had undergone FGM and they were automatically included. However, the aforementioned varied based on the Regional Asylum Service. On top, the character of "an atrocious act" of past persecution was excluded from 4636/2019 and thus vulnerability is not sufficient on its own.

"*When we talk about drafting the opinion, vulnerability is part of their profile, when we examine the refugee risk in the country of origin, we have these additional characteristics that sometimes are the most important. For example, not only is in danger because of the established reasons, but also because she is a woman. This actually affects the result and final decision of the case*."

There are four distinct stages of influence at the opinion and legal analysis which are originally subject to wider interpretation by the Case Officers and in those cases, vulnerability has at times decisive role. Firstly, vulnerability is present at the evaluation of the general credibility of an application. The Case Officers can justify inconsistencies, lack of detailed analysis and description relating to the statements of an applicant and can measure whether they are minors and irrelevant with the claims or justifiable because of the recognized individualized circumstance. The reasoning behind the lower burden derives from the fact that in cases where the applicant is a victim of physical, sexual or other forms of violence this has detrimental effects on his/her ability to recall in a detailed and coherent way the relevant material fact due to the trauma.

"*The first thing came to my mind affects their credibility throughout the process. The burden of proof is lower for these cases*."

During the legal analysis of the forward-looking well-founded fear of persecution, the recognized as vulnerable position of the applicant affects the subsidiary protection and particularly the sliding scale. The subsidiary protection on the ground of indiscriminate violence is applicable during armed conflicts in the country of origin. Individualized characteristics are crucial for appreciating the necessary degree of indiscriminate violence regarding the application of sliding scale and the required threshold of serious harm. In that case, the personal circumstances together with the security situation in the country of origin determine the real risk of serious harm under 15 c.[166] A Case Officer could argue that substantial grounds have been shown that the possibility of serious harm is particularly high personally for the applicant because the medical conditions does not permit him to escape in case of an invasion to his region, avoid a bomb explosion or seek protection within this framework because of his/her individualized circumstances.

"*If, for example, there is a physical disability and the country of origin is in a situation of internal conflict I would take it into consideration […] if it would be in a region of Niger, for example, where bombings took place and I had a person in a wheelchair who could not live alone and had no supportive network, I would take it into consideration, that this person would not be able to survive alone / on his/her own"*.

"Therefore, to return a vulnerable person to a conflict environment, vulnerability is an aggravating circumstance that increases the chances of being exposed to danger or makes him/her less able to address potential risks and threats."

Last but not least, it was commented by all the participants that IPA, an important stage for international protection and where most cases can be perceived inadmissible, is highly affected by the recognized vulnerability. IPA constitutes the last part of the legal analysis and explores whether an applicant can be resettled in a different part of the country of origin. It is assessed based on two primary criteria, the element of safety regarding the proposed alternative region and the level of reasonableness to settle. Those said factors are subject to wide interpretation and there is no fixed and harmonized process on how to evaluate them. The burden for examining the possibility of IPA is upon the determining

[166] "The more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection. CJEU, Elgafaji, para.39".

authority and the Case Officer has to evaluate all the individual characteristics in order to reach a safe conclusion. Within this context, vulnerability offers the necessary legitimized flexibility to decide that IPA is not available for the applicants as the criteria of reasonableness based on art. 8 of Qualification Directive, are not fulfilled due to individual circumstances. For instance, in case of recognized vulnerable families, the Case Officer can value the best interest of the child to reject the resettlement because of non-accessible education and thus depriving the right to education for the children. Likewise, it can be considered unreasonable for an applicant with a medical record to resettle because access to medical services is a prerequisite enjoying fundamental human rights. The dynamic and interconnection between IPA and vulnerability was directly mentioned by a participant by stating that:

"*I also consider it very important when we have to examine the IPA, because when we say yes, the particular asylum seekers fall under the Convention, but can he enjoy the protection in another part of the country? this is where vulnerability comes and says, "no because he has these additional characteristics because he is vulnerable*".

The subjective element of refugee law is present at the legal analysis of the decision, a part that mainly reflects the stance of the Case Officer. IPA, as well all the part of the inclusion heavily depends on the writing dexterity and maneuvers on behalf of the Case Officer. It enhances them to overpass some obstacles in order to conclude that the applicants are beneficiaries of international protection. Thus, the interplay between vulnerability and international protection varies according to the Case Officer that the case is assigned to. Whether or not vulnerability would constitute an individual characteristic in favor of the asylum seeker depends on the discretion of the respective authority, specifically on the ways and purposes she/he will employ the recognized vulnerability.

"*Regarding IPA, sometimes we say vulnerable person like a one-parent family is not so easy to be relocated [..]. But, as Case Workers, we are flexible on this in order to help people to access international protection. So, we don't examine so strictly the supportive network in order not to relocate them*."

Chapter 2.4: The tricky rope between refugee status and deportation to Turkey: the case of Syrian asylum seekers

"*Syrians are the most representative case for the topic we are discussing. It could be that some recognized vulnerability factors were determinant concerning the status they would*

be granted. Obviously, this is a discrepancy [..] imagine that we have a family with three children and another one with four, they fled Syria for the same reasons and they are from the same place of origin, they have the same asylum claim but only the claim of the second family is assessed as a case of vulnerable applicants, as they are a numerous family and they would not undergo the admissibility procedure in order to get back to Turkey. This is the most notable inequality."

The most commented statement that occurred at all the interviews was the case of Syrians in relation to the STC procedure and the role of vulnerability:

"T*he examination for Turkey for the Syrians was deeply problematic and aggravating as they came from a war-torn country, met all refugee definition requirements, Turkey was very hostile and has not ratified the Protocol. This explains the focus of Syrians on the vulnerability. [..] For the Syrians there was a great need to be excluded and characterized as vulnerable because it automatically designated them as refugees*".

The case of Syrians is the most emblematic example for the importance of vulnerability, its contribution to RSD and the fragmented nature of the asylum procedure in Greece. The recognition of vulnerability is the ultimate purpose on behalf of the Syrian nationals because it is interconnected with the recognition of their refugee status. Otherwise, they were at risk of being considered inadmissible and being deported to Turkey based on the Statement. The characterization of Turkey STC for the Syrian nationals is problematic considering the fact that Turkey has reserved a geographical limitation on the Convention, is not a contracting party to the Protocol and Syrians enjoy a peculiar temporary protection regime. What is more contradictory with the provisions of the Convention is the disregard of allegations and documentation of pushbacks and refoulement to the north part of Syria, in which Turkey has invaded in order to create the strategic "safe areas". The decision of inadmissibility is based on template decisions that disregard the personal circumstances of the applicants, with limited exceptions the case of Yazidi or Kurds originating from the Afrin area, but still their exemption is not guaranteed. The sole pathway of exit from this fundamental violation of human rights for a population plagued by an ongoing civil war under an authoritarian regime that has committed war crimes, persecution in the hands of religious extremist groups, responsible for genocide is the positive vulnerability assessment.

Chapter 2.5: Critique on the implementation of the vulnerability notion. The rise of a two-tier asylum system

"*The over-simplifications fragment the asylum process. There must be an equal treatment of the vulnerable and non-vulnerable. There are cases where all this seems a game to me, simple math[..] In a very simplistic narrative from my part, you are completely dependent on the host state, and you have to play with its rules and terms*."

The critique on behalf of the interviewees was driven by the political nuance of the vulnerability and the creation of an asylum system of double standards, as a direct consequence of the procedural dichotomy. More specifically, the participants share their skepticism concerning the conceptualization and introduction of the notion in a day, without having predicted the possible consequences. In a nutshell, the condemnatory statements derive from the purposive abstract nature, its instrumentalized dimension in terms of political objectives and the potential marginalization of applicants due to the dichotomy of the Greek asylum system. The instrumentalization was particularly evident after the implementation of the Statement, in light of overcrowded camps which violate the human dignity of the residents and the pollical pressure to reduce the number of the recognized vulnerable in order for the Statement to be implemented. Due to the unbearable situation on the islands, the constant rise of the arrivals, vulnerability was mainly used by the respective authorities as a tool to regulate the flows from the islands to the mainland and decongest the islands. On top, there were situations of mass vulnerability recognitions and referrals in order to serve the promise of decongesting the islands and avoid the complete collapse of the system. In their eyes, the reality that arose around vulnerability was:

"A political trick, so vague and purposively abstract that consequently it is applied based on the political needs". Or another one: "At times, vulnerability was used as a tool to give space in the islands for the new arrivals, [..] only because the Ministry wanted to send people to the mainland."

The interviewees agree that in times of massive influxes of asylum seekers in combination with a framework of division and anti-migratory policies at European level, member states move towards spasmodic and unilateral national practices. The same applies to Greece with its decision to put in place a notion so "immature" and without having predicted the consequences among the applicants. The instrumentalization is reflected on the groups considered as vulnerable. The participants underlined that the definition of the notion and the

pre-established vulnerable groups are subject to the legal framework proposed by the governments. Law 4636/2019 repealed the exemption clause of vulnerability and limited the vulnerable groups. In their eyes, it was:

"I could assume there is a political dimension in the categories of vulnerability. For example, PTSD was excluded. I do understand the political dimensions and the subjectivity of the procedure."

Another evidence that participants brought to our attention was the fragmentation of the asylum procedures in terms of evaluating the applications. They mentioned that the recognition of vulnerability was often irrelevant to the material facts and more than often those that should enjoy the safeguards due to their medical record- eg. victim of torture or psychosocial violence- were unnoticed. On the contrary, the mere fact of single-parent family was occasionally sufficient for applicants to be recognized and enjoy the guarantees of the regular procedure.

"The diversification of the procedures as an aftereffect of the recognition of a vulnerability, probably deprives you, in fact, from your right to be genuinely heard, which is fundamental, and [the right for] your application to be assessed regarding its eligibility and concerning the reasons for which you fled the country of origin".

However, this categorization implied a different treatment and quality of the cases, more favorable towards the vulnerable. On the contrary, those that have to undergo the fast-track border procedure, apart from the lack of procedural guarantees, ought to have a better performance during the interview.

"Apart from the asylum procedure, in Greece the non-vulnerable are deprived of other rights provided by both the law and the Directives".

The inconsistencies and contradictions of their statement during the narrative are more difficult to be justified. The required degree of likelihood at the examination of future risk is higher in comparison with a vulnerable applicant. More specifically, in cases of non-vulnerable asylum seekers at the examination of subsidiary protection 15c, the necessary level of indiscriminate violence in order to amount to serious harm is higher due to the sliding scale. The same reasoning applies at the examination of the reasonableness of IPA. For the non-vulnerable asylum seekers, particularly for the single men, to override IPA is particularly

difficult for the Case Officer, as it seems reasonable for the applicant to resettle in a different part of the country without facing risk of serious harm:

"I always detected like a two-tier approach. For the vulnerable who had been declared as vulnerable, requirements/standards are lower concerning internal and general? Credibility. And it poses a fundamental role, diversifying the assessment of the asylum application".

The participants also brought to our attention that comparisons and categorizations among the applicants based on their vulnerable position are not compatible with international standards, European case law and falls out of the scope of international protection. They continued by highlighting the judgement of ECtHR on the MSS case of the inherent element of vulnerability describing the asylum seekers due to the displacement, journey and complete dependence on the state for covering the most basic needs. The disregard of the caselaw and insisting on further fragmentation and categorization culminates in a labyrinth of procedural layers and a dichotomy between the asylum seekers. The outcome is the creation of a two-tier asylum system of two dimensions. A reflective statement of the aforementioned concludes the following:

"In general, I believe that the categorization and the oversimplification of the vulnerable and non-vulnerable [asylum seeker] are misplaced, because in a wider sense every person who has undergone this journey, displacement and distress is vulnerable and, there are judgments of the ECHR that prove it, such as the MSS vs. GR and BE, they declared that those discriminations should not be applied. [..] It contradicts the purpose and content Convention, which is a "sacred text" of fundamental importance".

According to the interviewees, the overemphasizing on one notion presupposes the efficient functioning of the medical facilities in the camps in order to have credible assessment and treatment for the applicants. However, there was no guarantee that the medical services in the overcrowded, on the break of collapse camps would correspond to their obligation, conduct a qualitative vulnerability assessment by identifying both visible and non-visible vulnerabilities. The assessment was particularly focused on easily distinguishable characteristics, like the type of the family or mobilities impairment, leaving unnoticed vulnerabilities strictly connected with material facts. Putting on the forefront a procedure that is interconnected with services that malfunction jeopardizes the integrity and reliability of the rest interconnected processes. Consequently, there is a high risk that unrecognized vulnerable

would have to undergo a procedure not designated for them, but for the autonomous and independent.

"*Personally, it degrades the fundamental concept of international protection, when you push the asylum seekers to seek the recognition of vulnerability instead their primary concern to be the reasons fleeing the country of origin, for me it is degrading*. From the moment that this oversimplification and the fragmentation concerning vulnerability were invented, unfortunately, the essence was lost."

Regarding the motivations on behalf of the decision-makers for structuring the RSD procedures around a non-yet mature concept, an interesting statement of a participant referred to the realism school of international relations and the interconnection of the national interests to all the aspects of states' mechanism and procedures. This reveals the systemic and legal gap also relevant to the asylum context and reminds us of the second phase of migration in the 1940s when the driving force was a national interest approach rather than human rights. The lack of common, harmonized procedures and absence of a legally binding instrument limiting the national sovereignty in the migration sector constitute among others the primary reasons for the fragmented landscape we witness. The principle of non-refoulement, even though it's the cornerstone of international protection and obligation of the states does not imply how the systems will be structured. The unwillingness of the state to bond to European caselaw and international standards is mirrored by the selective implementation of European judgement. In this regard, states disregarded the MSS case, but both Elgafaji and Diakite are of paramount importance for applying subsidiary protection and are included in the asylum decisions from the Asylum Service:

"In the end, there is an asylum system of double standards, in which the state acts in accordance with its national interest, political will and government *because as a matter of fact, the displacement and journey causes the severe traumas to all asylum seekers*".

A well-structured statement of an informant underlying the vulnerable nature of the asylum seekers and the need for inclusive approach mentions that:

"*When you are an asylum seeker and the dependence of your fundamental human rights is inseparably linked to the host country and you have lodged an application for international protection, you are in a state of vulnerability. Further discrimination, categorization and oversimplification lead to further discrepancies.*

Fourth Part: Discussion

Chapter 1: General conclusions

The main areas of concern relating to the method under which the vulnerability notion has been employed by the national authorities are the establishment of a two-tier asylum system, the disadvantage position of those excluded from the vulnerable groups and the instrumentalization of the notion. In Greece, the vulnerability concept had a double role: to "alleviate" the severe implications of the political EU Deal for the most vulnerable asylum seekers who could not correspond to the fast-track procedures while at the same time legitimize the imposition of harsh asylum developments. At national level, the recognition of vulnerability does not follow a standardized procedure, while the shortcomings of the medical actors that depends on are well-known. The strongest vulnerability indicators remained unnoticed despite their connection with asylum claims and material facts. For instance, the identification of human trafficking constitutes a highly demanding process and evaluation, features that cannot be fulfilled inside overcrowded camps and understaffed facilities. Still, despite the deficiencies, the vulnerability assessment constitutes a central process and determined who would enjoy the safeguards of the regular procedure. Putting on the epicenter a contested process erodes the asylum system and the promise of Convention.

The vulnerability procedure did not replace the main asylum procedures for assessing of applications. Between the regular and fast-track procedure, vulnerability functioned as a "intermediate stage" provoking a procedural complexity. Its role, content and scope of application is directly managed by the national authorities. Consequently, the dynamic between RSD and vulnerability is subject to the state interpretation and position towards the concept. From the so far experience, it greatly contributes both to the access to the asylum process and at the interpretation of refugee law by the Case Officers due to the subjective application of RSD. For the European and national authorities, vulnerability was used a tool for migration management which carries importance in relation to access and externalization of asylum. Nonetheless, regulating the admission is one of the most prominent methos of migration control.[167]

[167] A. Shacknove, "From Asylum to Containment", International Journal of Refugee Law, 5(4), 1993, 516-533.

Following the conditions under which the concept was developed in the Aegean islands, we draw the conclusion that vulnerability does not constitute an inclusive and credible practice. In periods of mass arrivals the unstaffed medical facilities do not have the resources to detect the vulnerabilities, register and translate them into the required documentation. Rather, the assessment conducted from the medical actors in the islands is rapid by letting numerous vulnerability factors unnoticed and giving the provided "Health Card" to the asylum seekers with the reference as "Clinically Healthy". Those left behind at the islands, deemed as the "abusive" asylum seekers without valid reasons for international protection, were subject to a strict evaluation of their claims.[168] In addition, the vulnerability concept is influenced by gender constructions and roles that effects the outcome of the medical evaluation. In the vast majority, the asylum seekers not recognized as vulnerable are the single men mainly because of the perception of victimization and their difficult identified traumas.

For a single man with hidden vulnerabilities, the assessment will be biased by the gender roles and perceptions against men asylum seekers and the assumption that they do not carry a vulnerability indicator. They are considered autonomous and independent to navigate the asylum system.[169] Single men are expected to better substantiate their claims for international protection, to present the material facts in a coherent and detailed manner and meet the higher threshold of persecution or serious harm due to the attributed gender roles identified in the asylum systems. However, the said is incompatible with the fundamental principle of non-discrimination in refugee law. [170] Another area of concern lies upon the political nature and instrumentalization of the notion. The political dimension the interference of the national interests is mirrored on the limitation of vulnerable groups provided under 4636/2019, the request at times for mass recognitions for reducing the asylum seekers in the islands and the pressure for reducing the rate of vulnerability recognition in respect of the Statement.

The importance of the vulnerability notion should be valued in conjunction with the restrictive interpretation of Geneva Convention under the Greek asylum system, the interception measures and externalization of asylum. All those elements, together with the

[168] Costello C. and Hancox E, 'The Recast Asylum Procedures Directive 2013/32: Caught between the Stereotypes of the Abusive Asylum Seeker and the Vulnerable Refugee', Martinus Nijhoff 2015

[169] Zetter, Roger. 1991. Labelling refugees: Forming and transforming a bureaucratic identity. Journal of Refugee Studies 4 (1): 39–62.

[170] Costello C. and Hancox E, 'The Recast Asylum Procedures Directive 2013/32: Caught between the Stereotypes of the Abusive Asylum Seeker and the Vulnerable Refugee', Martinus Nijhoff 2015

acceleration of the applied procedures and evaluation of cases, underline the reasons why under 4375/2016 and 4636/2019 applicants seek to acquire a vulnerability status. Both legal frameworks the notion was in place and played a crucial role throughout the asylum procedure. Consequently, the recognition of a vulnerable characteristic was deemed the passport for the regular procedure where applicants could enjoy in greater extent their legal rights, better substantiated their application and be fairly evaluated. The provision of support is of utmost importance considering the vulnerable status of the applicants. In this respect, worth comparing the recognition rate of the asylum seekers having their case examined in the mainland, especially under the Project North, in comparison to similar cases in the islands. As a result, the guarantees that selectively some enjoy culminates in a more inclusive access to asylum and fair treatment of their case.

Concerning the interplay between vulnerability and RSD procedures, the way under which vulnerability was implemented guaranteed comprehensive access to asylum and an evaluation with higher standards for those undergoing the regular procedure. The recognition of a vulnerability factor connected with the reasons of fleeing the country of origin is of utmost important for the applicant in order to substantiate his/her claim and provide external credibility by handing the necessary documentation. In those cases, the medical documentation enhances the possibilities for being granted asylum. In those cases, the vulnerability factor was a prominent element that influenced the required level for substantiating the application, according to the type of vulnerability. For a victim of torture, sexual violence and human trafficking, the efficient documentation was of significant importance for the recognition of international protection and substantiate the application at a great extent. In addition, medical documentation is translated as external credibility for the assessment of the claims and justifies all the inconsistencies and contradictions deriving from the trauma.

Chapter 2: Recommendations

The aim of the dissertation is to highlight the shortcomings of the Greek asylum system that derive from the vulnerability notion in order to swift the required focus on them and ensure an accessible system for international protection based on objectivity and equality. It is evident that Europe and Greece accordingly are looking towards ways to deter prospective asylum seekers and have formed a specific rational for migration at the expense of those seeking asylum. However, the weight should be directed on the establishment of

accessible and non-discriminatory asylum procedures with the aim to increase the protection of asylum seekers. A minimum harmonization of procedural and substantive standards are crucial for achieving legal equality and reliability in the asylum procedure together with the interpretation of refugee law in good faith. The reality that arose in Greece from the procedural complexity due to vulnerability demonstrated the fragmented nature of RSD procedures, the subjective interpretation of Convention and most notably the creation of additional procedural layers unknown until before with specific rules to follow disregarding the substantial essence of international protection. The rise of immature and uncredible procedures that create further division and dichotomy to an already vulnerable population minimize the scope of protection. What is needed is to adequately capture the needs of the applicants, increase the level of protection and introduce procedures well foreseen in order to prevent any repercussion both to the system and the displaced. Procedural clarity is a necessity for the access to asylum and sine qua non for the recognition of international protection. Otherwise, the concept of international protection is broken.

The asylum law in EU has been surrounded with political controversies and has been a matter of great discussion as the European states seem hesitant to commit themselves to the level of protection provided by refugee law. The said attitude is reflected into the European and national policies of migration and the fragmented nature that arise due to the establishment of complicated asylum systems. States do have the freedom concerning the methods they will employ for determining international protection and the discretion of maneuvers in keys areas of asylum. However, asylum policies must be limited to the provisions of refugee law and states are obliged to respect the principle of non-refoulement and thus not return to a country with risk of persecution. "Over-sophisticated" asylum systems defined by procedural complexity and incredibility, with limitations on the legal rights of refugees and asylum seekers jeopardize the notion of the Convention and the right to asylum. Europe needs to redefine its attitude towards migration and reinforce the cooperation among member states in order for a rights-based approach to protection in the European context to be the driving force and offer feasible solutions.[171]

A genuine and comprehensive CEAS in conformity with IRL, human rights law and international standards, that guarantees that refugees, no matter the country of lodging an application, have an equal access to asylum and to be granted protection should be the

[171] Cherubini, F. (2016). Asylum Law in the European Union, p. 172-255.

priority of the Migration Agenda.[172] Within the current political environment and the dispersed competence on migration upon member states, the future of European asylum is uncertain, subject to future unknown developments with worrying indicators. The following should be taken into consideration concerning the accessibility to asylum both in terms of procedural and territorial accessibility. The first prerequisite is the entrance to the European territory and the second lies on the fair procedural arrangements for the processing and evaluation of the asylum claims. The aforementioned constitute the preconditions sine qua non for the protection of asylum seekers. This should be the starting point for the establishment of national asylum systems with standardized procedural and substantive criteria in order to succeed legal equality in terms of procedures. The notion of vulnerability assessment and medical screening is of utmost importance considering the health accord of the applicants due to the displacement and the journey they experience. As such, the notion should be implemented with a standardized manner in order to serve the immediate needs of the applicants following an inclusive approach. Its main objective should be to provide relief and support to the displaced people in order to enjoy their right to asylum.

Chapter 3: Suggestion for further research

The vulnerability notion within the Greek asylum system reflected the subjective nature of RSD that I chose to engage myself with in order to discover the dimensions of the states' discretion and subjectivity of refugee law. However, there are other interesting reflections of asylum subjectivity that remain undocumented. What would expand our knowledge on the functioning of the asylum system is the role of the Case Officers, who are responsible for the adjudication of asylum claims, and the interplay between their personal convictions influences and RSD. Some interesting research papers and dissertations have been conducted on that matter; additional attention will enhance our comprehension for asylum. Undoubtedly, the refugee regime is not irrelevant with the surrounding environment. Social and gender identities have a direct effect on the evaluation of an asylum application as the legal analysis of the decisions is subject to pragmatic and objectives circumstances among others. Thus, research on the interaction between gender constructions and refugee definition would reveal the areas of interconnection between the two elements. Last but not least, in light of the European state's obligation to respect the international legal framework and jus cogens principles, deep research on the operation of the asylum systems is of paramount

[172] The future of asylum in the European Union. Problems, proposals and human rights. The future of asylum in Europe, p. 135-141

importance. The identification of potential problematic notions that might impede the access to asylum and addressing those areas of concern is inevitable for achieving accessible asylum systems in a period of xenophobia and securitization.

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Annex

A/A	Cases of vulnerability according to art. 39 of .4636/2019	Exclusive actor for initial vulnerability assessment	Categorization of vulnerability as it will be written to Health Card
1	**Minors Accompanied or not**	Medical and Psychosocial	**1A**
2	**Relatives of shipwreck's victims (Parents and siblings)**	Psychosocial	**2A**
3	**People with disabilities**	Medical	**3A**
4	**Elder people**	Medical and Psychosocial	**4A**
5	**Pregnant woman**	Medical	**5A**
6	**Single parent family with minor children**	Medical and Psychosocial	**6A**
7	**Victims of human trafficking**	Psychosocial	**7A**
8	**persons with serious illnesses**	Medical	**8A**
9	**persons with mental disorders**	Medical and Psychosocial	**9A**
10	**Victim of torture, rape or other forms of sexual, psychological and physical violence**	Medical and Psychosocial	**10A**