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Refugees: Humanitarian Challenge
The Dublin System as a danger to Human Dignity
(of Refugees)

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(A) INTRODUCTION

Solidarity, which is a pivotal element in the CEAS [Common European Asylum System], goes hand in hand with mutual trust[1] – these words depict one of the most significant presumptions of the Dublin III Regulation, the regulation that determines the Member State responsible for examining an asylum application in the European Union (EU). But what happens where, on the contrary, there is no solidarity? Can mutual trust still exist in such situation? Also, does the CEAS without solidary basis operate properly, while sufficiently protecting the human dignity of refugees? Most notably the response to the latter shall be examined in this paper. Taking into account the overloading of a few Member States and considering i.a. fled people living in these countries on streets, in parks, abandoned buildings or in overcrowded apartments with limited or no access to sanitary facilities[2] it appears indeed more than questionable whether, in view of the recent past, the answer to that question can be affirmative.

To start with, this paper discusses the concept of human dignity under European law, and some of the related obligations to the EU and its Member States. Two things have to be admitted at this point. First: the fact that the concept of human dignity is broad. And secondly: the number of pages of this paper as well as the given time is not unlimited. For this reason, the explanations shall focus on a specific aspect of the guarantee to human dignity. Namely, on the implication of the guarantee through the prohibition of inhuman or degrading treatment. Being connected with the latter, the principle of *non-refoulement* shall be presented. To finish the first chapter, the paper examines briefly the right to seek asylum (if there is any) under international and European law.

The second chapter describes the Dublin System and the mechanism of determining the Member State responsible for examining a given asylum claim. This chapter also points

[1] Regulation (EU) No 604/2013 of the EP and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ L 180/31) [hereinafter: Dublin Regulation or *Dublin III*], preamble, subpara. 22.
[2] As it is very often the case in Greece. See in this context: *UN High Commissioner for Refugees (UNHCR)*, UNHCR observations on the current asylum system in Greece, December 2014, available online: http://www.refworld.org/docid/54cb3af34.html; last demand: 18 May 2016.

out major flaws and concerns regarding the Dublin System, which were virtually in existence since its creation in the 1990s, and which may be now – in circumstances of dramatically increasing numbers of refugees – even more painful.

Finally, this paper presents – by elaborating a few judgments of the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ) – actual violations of human rights, entailed by the implementation of the Dublin System. Despite these violations occurred under Dublin II (the former version of the current mechanism of allocating responsibility), flaws that caused them still exist and the recent recast of the mechanism does not give a sufficient response to them.

Indeed, the question that follows the topic 'The Dublin system as a danger to Human Dignity (of Refugees)' is, colloquially speaking: 'How come?'. And one possible answer could be: 'Because refugees inside the EU are faced, as a consequence of the Dublin (allocation) System, with the risk of being treated in an inhuman or degrading way'. If such statement is true, shall be discussed below.

(B) THE CONCEPT OF HUMAN DIGNITY UNDER EUROPEAN LAW

'Ladies and Gentlemen, the European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights.'[3]

Cecilia Malmström's (European Commissioner for Trade) words might sound familiar to the reader. Indeed, they quote partially what is set down in Article 2 of the Treaty of the European Union (TEU). To be more precise, *Malmström* names some of the values, on which the EU is founded, starting with the respect for human dignity. The human dignity is not only mentioned as a value but also as an imperative to respect it.[4] Art.2 i TEU can be seen as a mirror of the key decision of the Charter of Fundamental Rights of

[3] *Malmström,* The European Asylum Support Office: implementing a more consistent and fair asylum policy, speech held on 19 June 2011, available online: *http://europa.eu/rapid/press-release_SPEECH-11-453_en.htm?locale=EN;* last demand: 11.04.2016.
[4] *Hilf/Schorkopf,* in Grabitz/Hilf/Nettesheim (2015), Art.2 TEU, subpara.22.

the European Union (EUCFR), which is the decision to orient the EU Human Right's protection to human dignity.[5] After referring in its preamble to the human dignity as a core value of the EU, the EUCFR contains in its very first Article the inviolability of the human dignity and the imperative to respect and protect it. The dignity of a person can be described as an absolute inner value which is accorded to every human being in the same manner.[6] In this context, the citizenship or nationality is irrelevant.[7]

With regard to European Convention on Human Rights (ECHR) – an instrument that is binding for all Member States of the EU[8] – one can observe, that the concept of human dignity is not explicitly contained in the text. However, later settlements of the Council of Europe refer not only in their Preamble to the 'inherent dignity of all human beings'[9], but also cede a prominent spot to the concept of human dignity, such as the revised European Social Charter[10] and the Convention on Human Rights and Biomedicine.[11] Furthermore, the European Court of Human Rights admitted in his rulings to the concept of human dignity, which is especially at the basis of the right to life and the prohibition of torture and degrading or inhuman punishment or treatment, slavery and forced labour.[12] For example, in its ruling on *Pretty v. U.K*, the ECtHR emphasised, that 'the very essence of the Convention is respect for human dignity and human freedom'[13].

(BI) THE PROHIBITION OF INHUMAN/DEGRADING TREATMENT AS AN ELEMENT OF ART. 3 ECHR: FACTS AND CONSEQUENCES

Before examining facts and consequences of Art.3 ECHR, it has to be noted that the EUCFR also contains in its Art.4 a prohibition of torture, inhuman or degrading punishment or treatment on the territory of the EU. Nonetheless, the focus shall be now

[5] ibid.
[6] *Meyer-Ladewig* (2004), p.982.
[7] *Calliess,* in Calliess/Ruffert (2011), Art.1 EUCFR, subpara.8.
[8] As all EU Member States are also Member States of the European Council. See list of members of the European Council: http://www.coe.int/en/web/portal/47-members-states; last demand: 21 April 2016.
[9] See Protocol 13 to the ECHR, Council of Europe, CETS No. 184, Preamble.
[10] See European Social Charter (Revised), ETS No. 163 (1996), Preamble, Art. 26.
[11] *McCrudden* (2008), p.671; See Convention on Human Rights and Biomedicine, CETS No. 164 (1997), Preamble, Art. 1.
[12] *Borowski,* in Meyer (2014), Art.1 EUCFR, subpara.3.
[13] *ECtHR*, judgment of 29 April 2002, no. 2346/02 – Pretty v. U.K, subpara. 65.

on the former provision and its interpretation in the ECtHR's case law. Not least because Art. 52 (3) EUCFR refers to the provisions of the ECHR as being a kind of 'minimum standard' and general orientation for the rights contained in the Charter.[14] Apart from that, Art.6 (3) TEU classifies the fundamental rights guaranteed by the ECHR as 'general principles of the Union's law'.

As there is no definition of inhuman or degrading treatment, the exact dimension of the prohibition contained in Art.3 had to be examined by the ECtHR. Regarding the question, whether the provision is infringed, the first observation is: all depends on the individual circumstances.[15] Apart from that, the Court stated, a treatment is inhuman, if it was intended and lasted without respite for a long while and caused either a bodily harm or an intensive physical or mental distress.[16] Regarding the question, if a treatment is 'degrading', the ECtHR examines, whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Art.3.[17] In other words: a degrading treatment lacks in respecting the human dignity of the treated person or tackles his or her dignity.[18] Of importance in this context is, if it was intended to debase or humble the victim by means of the certain treatment.[19] However, if that is not the case, Art.3 can be violated too. This can be held for example for cases, in which the detention conditions are infringing Art.3.[20] More and more, Art.3 became relevant regarding the living and detention conditions of asylum seekers, the systemic flaws inside the certain asylum system and the problem of *chain of deportation.* The relevant cases were mainly connected with the Dublin System and the return of asylum seekers under this regulation. For this reason the so called *Dublin cases* shall be examined under Point D).

[14] *Dörr* (2003), p.50.
[15] *Meyer-Ladewig* (2011), Art.3 ECHR, subpara.22.
[16] ibid.
[17] *ECtHR*, judgment of 12 May 2005, no. 46221/99 – Öcalan v. Turkey, subpara. 181.
[18] *Meyer-Ladewig* (2011), Art.3 ECHR, subpara.22.
[19] ibid.
[20] ibid.; See e.g. *ECtHR,* judgment of 21 of January 2011, no. 30696/09 – M.S.S. v. Belgium and Greece*,* subparas. 221, 222.

(BII) THE PRINCIPLE OF NON-REFOULEMENT ←→ RIGHT TO SEEK ASYLUM

Connected with the guarantee to human dignity (as a general concept) and the prohibition of inhuman or degrading treatment (as a specific provision) is the *principle of non-refoulement*. In a nutshell, this principle requires that a state should not eject refugees from its territory or borders and must not send a certain person back to a place (e.g. his or her country of origin), where he or she might be confrontated with a danger to his or her life or physical condition (e.g. torture) or would experience persecution.[21] The rule of non-refoulement finds its roots in the conviction, that no human being shall be refouled to a state, where he or she would (probably) suffer fundamental human rights' violations.[22] It can be seen as an outcome of the elementary principles of humanity in the international community and the obligation to protect the human dignity.[23] It is often considered to be international customary law and therefore binds not only the contracting parties to the certain international/european agreement.[24]

On international level the principle of non-refoulement explicitly arises from Art. 33 *Convention of Refugees 1951* (together with its 1967 Protocol following referred as the CSR) and Art.3 (1) Convention against Torture (CAT), meanwhile on EU level, from Art.19 (2) EUCFR.[25] Whereas Art.33 CSR is only applied to refugees as defined in 1 A (2) CSR, Art.3 (1) CAT and Art.19 (2) EUCFR protect every human being.[26] The prohibition excludes in the same manner the refoulement of a person to a third country, when it is probable, that this state would send itself the refugee to another state, where he or she would experience persecution [*chain of deportation*].[27]

[21] *Duffy* (2008), p.373; *Breitenmoser/Weyeneth*, in Von der Groeben/Schwarze/Hatje (2015), Art.67 TFEU, subpara.45.
[22] *Hofmann* (1999), p.5.
[23] ibid.
[24] *Tometten* (2010), p.24; *Çukaj* (2015), p.156.
[25] *Lafrai* (2013), p.7.
[26] ibid.
[27] *Tometten* (2010), p.25.

However, one cannot derive a title to be granted asylum from the non-refoulement principle.[28] The right to seek asylum, on the other hand, can be found, in Art.14 (1) Universal Declaration of Human Rights (UDHR). This declaration, adopted in 1948 by the UN General Assembly, is, as such, not legally binding.[29] However, many rights contained in it are nowadays similarly set down in *real* conventions that are binding for the contracting states.[30] Regarding Art.14, apart from Art. 33 CSR, one should especially mention the ECHR and EUCFR which grant a certain protection to refugees in their provisions. However, the protection depends on the group they belong to and the situation, in which they find themselves.[31] All in all, one should keep in mind, that neither the CSR does provide a subjective right to seek asylum[32], nor does the ECHR guarantee the right to asylum or refugee status.[33] In turn, on European Union level, the EUCFR provides in its Art.18 the right to asylum 'with due respect for the rules of the [CSR] and in accordance with the Treaty establishing the European Community'.

(BIII) THE RELATIONSHIP BETWEEN THE PRINCIPLE OF NON-REFOULEMENT AND THE PROHIBITION OF INHUMAN/DEGRADING TREATMENT

On regional level of the EU Art.3 ECHR has become especially important with regard to the non-refoulement principle and its application in *asylum seeker cases*.[34] Although the Convention does not literally state the principle, it is considered, for a long-time already, to be implied in Art.3. Indeed, already back in 1965, the Parliamentary Assembly of the Council of Europe stated that, by prohibiting inhuman treatment, Art. 3 'binds Contracting Parties not to return refugees to a country where their life or freedom would be threatened'.[35] In its landmark decision *Soering v. U.K.*, against the background

[28] *Hofmann* (1999), p.8; *Fröhlich* (2011), p.16.
[29] *Gammeltoft-Hansen* (2008), p.441. Although main parts of it might be considered as International Customary Law nowadays, see in this context e.g. *Tometten* (2010), p.225.
[30] *Gammeltoft-Hansen* ibid.
[31] ibid.
[32] *Tometten* (2010), p.24.
[33] *Çukaj* (2015), p.157.
[34] The ECtHR judgment of 20 March 1991, no. 15576/89 – Cruz Varas and others v. Sweden was the first case before the Court concerning refusal of asylum (*Dean* (2014), p.46).
[35] Parliamentary Assembly Recommendation 434 (1965), Granting of the right of asylum to European refugees, Subpara. 3. The recommendation is avaiblable online: http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbnQvbncveG1sL1hSZWYvWDJILURXLWV4dHluYXNwP2ZpbGVpZD0xNDQ3MSZsYW5nPUVO&xsl=aHR0cDovL3NlbWFu

of a procedure that concerned the extradition of a German national to the U.S. where he would probably be faced with a *death row* situation, the ECtHR stated, that it 'would plainly be contrary to the spirit and intendment of the Article [3]', if Soering was transferred to a state, where he 'would be faced [...] by a real risk of exposure to inhuman or degrading treatment or punishment' as proscribed by Art.3 ECHR.[36]

Attention should be paid in this context to the fact that Art.3 has an *absolute character.* Unlike Art.33 (2) CSR, which allows an exception to non-refoulement for those refugees who constitute a serious threat to the security of the country of asylum, Art.3 ECHR (and therefore the principle of non-refoulement) is not open to any limitation.[37] The case *Ahmed v. Austria*[38] illustrated this fact: The applicant had been excluded from refugee status because of his criminal sentence. However, he was granted protection from removal under Art.3 ECHR.[39]

Having outlined the concept of Human Dignity under European law and the issues connected with it, the following two chapters shall focus on the current allocation system inside the EU. By doing so, not only the *fundamental structure* of the system will be presented but also or more likely, especially, the concerns in practise regarding the respect of human dignity of refugees.

(C) THE DUBLIN SYSTEM: AN OVERVIEW

After establishing the Schengen area without border controls, asylum seekers that could travel freely from one Member State to another were regarded as a threat to the system. [40] On the other hand, negotiations between Member States as a makeshift method to determine the state responsible for examining asylum claims led to delaying the access to protection and to leaving some asylum seekers in orbit, (where they lodged

dGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTE0NDcx; last demand: 21 April 2016.

[36] See *ECtHR*, judgment of 7 July 1989, no. 14038/88 – Soering v. U.K., subpara. 88.

[37] *Costello* (2016), p.179.

[38] *ECtHR*, judgment of 17 December 1996, no. 25964/94 – Ahmed v. Austria.

[39] *Costello* (2016), p.180.

[40] *Morgades-Gil* (2015), p.434.

unsuccessful asylum claims in consecutive states, because no country took responsibility for their applications).[41]

For these reasons, in 1990 the first mechanism of determining responsibility was established by the Dublin Convention.[42] After the Treaty of Amsterdam[43], this mechanism was 'communitarised' by the Dublin II Regulation,[44] which was adopted in 2003 and was binding for all EU Member States and a few non-member States, that became part of the Schengen Area (i.e. Iceland, Liechtenstein, Norway and Switzerland). It was finally replaced in 2013 by the Dublin III Regulation, which virtually incorporates provisions of former acts, clarifying obligations of Member States and rights of asylum seekers.[45]

The Dublin Regulation combined with the Regulation for the development of cooperation between the national authorities and for establishing DubliNet[46] (an EU specific system to secure electronic exchange of data) as well as the EURODAC Regulation[47] establishing a database for storing and transmitting asylum seekers' fingerprints constitute the so-called Dublin System.[48] Being accompanied by further specific directives (the Reception Conditions Directive[49], Procedures Directive[50] and

[41] *ICF International* (2015), p.2.
[42] Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (adopted 15 June 1990, entered into force 1 Sept 1997) (OJ C 254/1).
[43] Article 73.k of the Amsterdam Treaty attributed to the European Union a shared competence for the establishment of measures on asylum.
[44] Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50/1).
[45] *Morgades-Gil* (2015), p. 436.
[46] Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 222/3), Art. 18.
[47] Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints (OJ L 180/1).
[48] *Morgades-Gil* (2015), p.435.
[49] Directive 2013/33/EU of the EP and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180/96).
[50] Directive 2013/32/EU of the EP and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180/60).

Qualification Directive[51]) this Dublin System founds the Common European Asylum System (CEAS).[52]

The mechanism of allocation of the responsibility

The Dublin Regulation primarily was intended to establish a clear and workable method for determining which Member State is responsible for examining an application for international protection. In principle, as Article 3 stipulates: *The application shall be examined by a single Member State, which shall be the one which the criteria set out in Chapter III indicate is responsible*, and applications re-submitted in other Member States can be refused. Such regulation was expected to prevent 'asylum shopping' (which describes the situation where asylum seekers move freely and choose to submit an application for protection in a state where the asylum system appears to be favourable to their interests). On the other hand, it also aimed at avoiding the phenomenon of *asylum seekers ping-pong*; in other words: the state of asylum seekers being *handed round* because their request for protection is not admitted by any state as they are all considered by the other Member States as safe countries.[53]

The mechanism of allocating responsibility is built on hierarchized criteria that shall be applied in the order they appear in Chapter III of the Dublin III Regulation. The first set of criteria guarantees protection for minors (Article 8) and family unification (Articles 9-11). The next group of criteria might be described as *aim[ing] to determine which state has contributed to the greatest extent to the applicant's entry or residence in the territories of the member states, either by granting a visa or residence permit, or due to not being sufficiently diligent in controlling its borders*[54] (Articles 12-14).

[51] Directive 2011/95/EU of the EP 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 (OJ L 337/9).
[52] *Vicini* (2015), p. 53.
[53] *Morgades-Gil* (2015), p.434.
[54] ibid.

In the second set, Article 13 is especially remarkable. It provides in paragraph 2: Where *it is established, on the basis of proof or circumstantial evidence (...), that an applicant has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for international protection*. This criterion is placed almost at very end of the catalogue and is thereby in principle less significant. However, in practice it is the most commonly applied rule.[55]

Apart from that, Chapter IV of the Dublin III Regulation includes clauses that make the mechanism of allocation of responsibility more flexible. The first of them (Article 16) concerns dependent persons:[56] *Where, on account of pregnancy, a new-born child, serious illness, severe disability or old age, an applicant is dependent on the assistance of his or her child, sibling or parent legally resident in one of the Member States, or his or her child, sibling or parent legally resident in one of the Member States is dependent on the assistance of the applicant, Member States shall normally keep or bring together the applicant with that child, sibling or parent, provided that family ties existed in the country of origin, that the child, sibling or parent or the applicant is able to take care of the dependent person and that the persons concerned expressed their desire in writing.*

Article 17 (1) of *Dublin III* (Art.3 (2) if the Dublin II Regulation) contains the so-called 'discretionary clause' or 'sovereignty clause'[57]: *By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.*

One more exception and remarkable innovation is foreseen in Article 3(2), introduced by *Dublin III*, partially due to the ECtHR and ECJ rulings concerning *Dublin II* which will

[55] *ICF International* (2015), pp. 5, 16.
[56] In Dublin II, provisions relating to minors and to dependent persons constituted so-called 'humanitarian clause' (Article 15 of Dublin II Regulation), whereas in Dublin III they are splitted and placed in different chapter: the former in Chapter III 'Criteria for determining the Member State responsible' as a separate criterion , the latter in Chapter IV 'Dependent persons and discretionary clauses'. It is not clear if the provisions regarding dependent persons shall be considered as a special criterion taking priority over, for example, 'State of first arrival rule' (*Morgades-Gil* (2015), p. 451).
[57] *Morgades-Gil* (2015), p. 451.

be examined under Point D). It provides that: *Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.*

Article 3(2) stipulates also that in cases where no Member State can be designated as responsible on the basis of the criteria listed in the Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it. Moreover, where the transfer cannot be made to the Member State responsible (due to *systemic flaws in the asylum procedure and in the reception conditions*), the determining Member State shall become the Member State responsible.

General concerns regarding the Dublin System

Apparently, the Dublin System is a mechanism of *assigning responsibility*, not of *sharing responsibility* and does not take into consideration a Member State's capacity to process claims. The most clarified and most commonly applied criteria of allocation responsibility are those related to the documentation and first country of entry (Articles 12 and 13).[58] Such a mechanism, might have worked out in June 1990, where the Soviet Union still existed, and when (at that time) West Germany and Austria constituted partially the eastern border of the EU.[59] However, nowadays, given the great inflow of asylum seekers via the Mediterranean, such system leads to disproportionate burdening of front-line Member States and to a consideration of a few Member States as 'most desirable' regarding the implementation of the Common European Asylum System.[60] Indeed, in 2014, five Member States (Germany, Italy, Sweden, Hungary and Austria)

[58] *ICF International* (2015), pp. 5, 16.
[59] *Gilbert* (2015), p. 531.
[60] *ICF International* (2015), p.10.

dealt with 72% of all asylum applications submitted in the EU.[61] As a result, overburdened Member States may be unable to properly process asylum claims and to provide dignified reception standards for refugees.[62]

Furthermore such a situation of being overburdened motivated some countries to violate the *non-refoulement* principle by irregular returning asylum seekers (particularly) in the Mediterranean or by adopting agreements with the countries of origin or transit concerning the repatriation of *illegal immigrants*.[63] Such returns were preceded by no individual examination of asylum seekers (thereby contrary to ECHR which prohibits group expulsion of non-nationals) and frequently, they were carried out with the use of force (e.g. beating, firing stun grenades and tear gas) or accompanied by other abuses (such as stealing money from asylum seekers) .[64]

In the light of the Dublin Regulation, preferences of asylum seekers are irrelevant in determining the responsible state.[65] The obligations of Member States do not entail rights of asylum seekers. Family relations must be documented (and relate only to a narrow circle of relatives). Other factors, such as language skills, may (but don't need to) be taken into consideration only on the basis of the 'discretionary clause'. Asylum seekers – feeling that their interests are not sufficiently protected – may attempt to avoid Dublin procedures. In turn, this leads to the use of coercive means by Member States in order to implement the Regulation, including detention or escorted transfers.[66]

Furthermore, the Dublin System is underlaid by a false assumption that the processing of asylum claims and the reception conditions are equal in all Member States.[67] Given that each claim is examined only in one state and cannot be re-submitted in another, the Dublin system entails rather unfair treatment for asylum seekers. The reception

[61] *Nascimbene* (2016), pp. 104-105.
[62] *ICF International* (2015), p. 4.
[63] See in this context: *ECtHR*, judgment of 23 February 2012, no. 27765/09 - Hirsi Jamaa et. al. v. Italy where Italy was condemned for its policy of intercepting migrants' boats in the Mediterranean sea and returning their unidentified passengers to Libya and by doing so, violating the non-refoulement principle.
[64] *Breen* (2016), pp. 21-22.
[65] *ICF International* (2015), p.16.
[66] ibid.
[67] *ICF International* (2015), p.5.

conditions and the chances of being granted international protection significantly depend on which State is determined as responsible by the Regulation criteria.[68] Mutual trust and the presumption that all Member States observe fundamental rights (and are, thereby, 'safe countries'), which make up the foundation of CEAS[69], remain a major concern regarding transfers. The following point shall illustrate, in which way and why.

(D) THE CONSEQUENCES OF THE DUBLIN SYSTEM IN PRACTISE: THE EXISTENCE OF INHUMAN RECEPTION CONDITIONS/SYSTEMIC FLAWS IN SOME MEMBER STATES – CASE LAW

As elaborated under Point C), the whole Dublin system is based on the presumption that other Member States of the EU are safe countries for asylum seekers and that their claims will be properly processed.[70] The practise, however, shows that this presumption is not absolute and can be or has to be disproved in many cases. As a consequence, asylum seekers often bridle at being refouled under *Dublin* due to fundamental rights' concerns, either to *escape from* onward refoulement by the other Dublin State or to prevent from being mistreated by it.[71] Following, the focus shall be on three selected Dublin cases that had been decided in the recent past. Nonetheless, one should note, that cases concerning *Dublin returns* did not appear and begin with the oft-cited so-called *refugee crisis*. Already back in 2000, the ECtHR held in the case *T.I. v. U.K.*[72] that the obligations arising out of the ECHR for the transferring Member State persist notwithstanding the *Dublin Convention*.[73] Accordingly, 'blind trust is [...] unacceptable in this human rights-sensitive field'[74].

[68] *Vicini* (2015), p. 54.
[69] ibid., p. 55.
[70] *Costello* (2012), p.83.
[71] ibid.
[72] *ECtHR*, judgment of 7 March 2000, no.43844/98 – T.I. v. U.K.
[73] *Costello* (2012), p.83.
[74] *Costello* (2016), p.258.

ECtHR: M.S.S. vs. Belgium and Greece[75]

The case *M.S.S. vs. Belgium and Greece* concerned the return of an Afghan asylum seeker from Belgium to Greece under the Dublin II Regulation and can be described as one of the *landmark decisions* in the series of Dublin cases. Three important statements were made by the ECtHR: in the first time, the Court found that the reception conditions (both the detention and living conditions) reserved for asylum seekers in Greece violated the ECHR.[76] Secondly, the ECtHR, for the first time, acknowledged asylum seekers themselves as members of a vulnerable and particularly underprivileged group to whom states may have special positive duties.[77] Thirdly, it ruled that Belgium had also violated its obligation under Art.3 ECHR by transferring the applicant back to Greece and by doing so, exposing him to the systemic flaws both in Greece's asylum procedure and in the detention and living conditions in that Member State.[78] With regard to the latter, it has to be pointed out that Belgium was convicted for both *indirect* and *direct* refoulement.[79] Directly, because the applicant, when back in Greece, would face inhuman and degrading treatment due to poor living and detention conditions. Indirectly, because returning him to Greece would result in a threat to him to be expulsed by that country to Afghanistan where his life would be endangered[80] (danger of *chain of deportation*).

Beyond that, there had been a violation of Art.13 in conjunction with Art. 3 ECHR both by Greece and Belgium. In the Greek case the violation resulted from 'major structural deficiencies' in the Greek asylum procedure.[81] Belgium for its part violated Art.13 ECHR taken together with Art.3 by failing to provide an effective remedy to prevent the transfer to Greece (deficiencies of the Belgian *Dublin Procedure*).[82]

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[75] *ECtHR,* judgment of 21 of January 2011, no. 30696/09 – M.S.S. v. Belgium and Greece.
[76] *ECtHR,* ibid., subpara. 263.
[77] *Costello* (2016), p.188; *ECtHR*,ibid., subpara. 251.
[78] *Costello,* ibid., p.262. Although it has to be noted that the ECtHR did not exactly use the term 'systemic flaws'.
[79] *Brouwer* (2013),p.141.
[80] ibid.
[81] *ECtHR*,ibid., subparas. 300, 321.
[82] *Costello* (2016), p.262; *Moreno-Lax* (2012), p.27.

With regard to the reception conditions for asylum seekers in a certain Member State it has to be noted that no *specific* standard of living can be derived from rights guaranteed by the ECHR.[83] However, in *M.S.S. v. Belgium and Greece* the ECtHR clearly stated that in certain cases 'a situation of extreme material poverty' is able to raise an issue under Art.3 ECHR.[84] The Court emphasised, that a state can be also held responsible (under Art. 3) for a 'treatment' if the applicant finds him- or herself 'in circumstances wholly dependent on State support' and is faced with 'official indifference' when being in a situation of serious want 'incompatible with human dignity'.[85] However, the ruling of the ECtHR shows a lack of a more precise definition what the social minimum standard that states should provide is according to the ECHR and does not set out the benchmark for evaluating, whether or not, the circumstances faced by asylum seekers in another Member State lead to 'a situation of extreme material poverty'.[86]

In the hereby presented case the applicant had been living in a park in the middle of Athens for several months, with no resources or access to any sanitary facilities and without any means for providing his essential needs.[87] Faced with such situation that 'aroused in him feelings of fear, anguish or inferiority capable of inducing desperation', the applicant has been, according to the Court, 'the victim of humiliating treatment showing a lack of respect for his dignity'.[88]

Costello describes the finding that actual *material* living conditions in one Member State violated Art.3 ECHR as 'legally ground-breaking'[89]. 'Legally ground-breaking' insofar, as its foundation is the recognition that the legal commitments to guarantee certain reception conditions, especially under the EU Reception Conditions Directive together with asylum seekers' particular vulnerability, cause specific positive obligations under Article 3 ECHR.[90] The state obligation to protect asylum seekers who reside on their territory, and who do not find themselves in reception centres or in administrative

[83] *Ktistakis* (2013), p.47.
[84] *ECtHR*, ibid., subpara. 252.
[85] *ECtHR*, ibid., subpara. 253.
[86] *Thym* (2011), p.371.
[87] *ECtHR*, ibid., subpara. 263.
[88] ibid.
[89] *Costello* (2012), p.85.
[90] ibid.

detention, against extreme material poverty contains particularly the mandate to provide adequate standards of living in accordance with the standards set out by EU and international law.[91]

The judgment, once more, emphasised each state's obligation to ensure that ECHR guarantees were practical and effective.[92] The diagnosis of a pan-european non-refoulement principle has serious importance in practise: due to systemic flaws in Greece removals under *Dublin* should be suspended – at least as long as the deficits are that grave that there is no need to prove individual endangerment.[93] Following, another example of a Dublin judgment, this time ruled by the ECJ, shall be given. This ruling illustrates again, how international courts recently forced Member States to a humanitarian revision of their removal procedures under the Dublin Regulation.[94]

ECJ: N.S. v. Secretary of State for the Home Department & M. E. et al. v. Refugee Applications Commissioner et al.[95]

A few months after the aforementioned judgment in 2011, the ECJ decided on a similar set of problems in the course of preliminary references: the case concerned the proposed transfer of (overall) six asylum applicants from U.K. and Ireland to Greece under the Dublin II Regulation. Indeed, the difference between those cases is rooted in the examination criteria: whereas the ECtHR investigated a possible breach of the guarantees contained in the ECHR, the ECJ examined the problem from the EU law perspective and this means, particularly by applying the EUCFR.[96] The case illustrates that also EU human rights law sometimes demands Member States to refuse from transferring an asylum seeker.[97]

[91] *Ktistakis* (2013), p.47.
[92] *Costello* (2012), p.85.
[93] *Thym* (2011), p.377.
[94] ibid., p.368.
[95] *ECJ*, judgment of 21 December 2011, Joined Cases C 411/10 and C 493/10 – N.S. v. Secretary of State for the Home Department & M. E. et al. v. Refugee Applications Commissioner et al.
[96] *Bank/Hruschka* (2012), p.183.
[97] *Costello* (2016), p.256.

The ECJ reiterated in this case that the whole Dublin System is based on mutual trust and the assumption that fundamental rights of the asylum seeker are observed in the Member State primary responsible for examining the application.[98] However, it is not precluded that in practise there is a substantial risk in a Member State that asylum seekers may be treated in a manner not compatible with their fundamental rights when transferred to that state.[99]

Nonetheless, the ECJ emphasised that not every infringement of a fundamental right by the Member State responsible will prevent the other Member State from transferring the asylum seeker under *Dublin*.[100] Same can be applied for the infringement of any aspect of the Asylum Directives.[101] But according to the Court, Member States are indeed barred from transferring a person in the course of the Dublin Regulation, 'if there are substantial grounds for believing that there are systemic flaws in the asylum procedure and reception conditions for asylum applicants in the Member State responsible, resulting in inhuman or degrading treatment, within the meaning of Article 4 [...] [EUCFR], of asylum seekers transferred to [...] that Member State'.[102] This concerns all cases where the Member State 'cannot be unaware' of such systemic deficiencies.[103] Although it is not for the ECJ on a preliminary reference to assess the facts, the Court cited the ECtHR ruling on *M.S.S. v. Greece and Belgium*, stating the existence of systemic flaws in Greece's asylum system.[104] After this judgment one thing is certain: the presumption that all other states inside the Dublin Regime are safe and treat asylum seekers in compliance with fundamental rights has to be rebuttable from the European Law perspective.[105]

The ECJ's ruling raises questions though. The fact that not every single impending human right's violation depicts a transfer obstacle under *Dublin*, but only as a result of systemic flaws has to be considered as not unobjectionable, as it levels the importance

[98] *ECJ,* ibid., subparas. 78-80, 84.
[99] *ECJ,* ibid., subpara. 81.
[100] *ECJ,* ibid., subpara. 82.
[101] *Costello* (2012), p.87; *ECJ,* ibid., subparas. 84, 85.
[102] *ECJ,* ibid., subpara.86.
[103] *ECJ,* ibid., subpara.94.
[104] *Costello* (2012), p.88; *ECJ,* ibid., subparas.87 ff.
[105] *Bank/Hruschka* (2012), p.184, *ECJ,* ibid., subpara.104.

of the individual standing of fundamental rights.[106] Hence, *individual* suffering loses its relevance as it is only weighted when being part of a larger incident: a systemic flaw.[107] Thus, does the ECJ give a *charter* to the Member States for *any inhumanitarian* (in the sense of violating fundamental rights) transfers to certain states, only because systemic deficits have not yet been considered to be existing in these states?[108] Such statement seems somewhat exaggerated – taking into account its *Cimade and GISTI* decision where the ECJ emphasised that asylum seekers cannot be deprived, not even for a temporary period of time, of the protection of the minimum standards regarding respect and protection of human dignity.[109]

However, especially after the *Abdullahi v. Bundesasylamt case*[110] it is difficult to avoid the impression of the ECJ privileging the 'efficient' *operation* of the Dublin System over refugee rights.[111] Because in this case where two Member States already agreed on who is taking charge of the applicant, the ECJ applied a very tight standard. According to the Court, the *only*(!) way for asylum seekers to challenge Dublin returns in such situations is 'pleading systemic deficiencies in the asylum procedure and in the conditions for the reception' which would very possibly amount to a violation Art. 4 EUCFR with regard to asylum seekers.[112]

As a matter of fact, by limiting removal obstacles only to systemic flaws, the actual aim of the non-refoulement principle seems to be forgotten: it is the protection of human rights that is at stake here and not or in any case, not only, the enforcement of a system.[113] Consequentially, the *M.S.S. judgment* underlined for its part the primacy of non-refoulement over mutual trust.[114] Because in fact *individual* deficits are just as able

[106] *Weiß* (2012), p.202.
[107] *Barrera/Vetter* (2013).
[108] So stated by *Weiß* (2012), p.202.
[109] *ECJ*, judgment of 27 September 2012, C-179/11 – Cimade and GISTI, subpara. 56.
[110] *ECJ,* judgment of 10 December 2013, C-394/12 – Abdullahi v. Bundesasylamt.
[111] *Costello* (2016), p.276; of another opinion is *Lübbe* (2015), pp.128f. who states that one could not blame the ECJ for immolating the fulfillment of humanitarian aims of the Dublin Regulation in order to quickly decide who is responsible for examining of the asylum application.
[112] *ECJ,* judgment of 10 December 2013, C-394/12 – Abdullahi v. Bundesasylamt, subpara. 62.
[113] *Tiedemann* (2015), p. 123.
[114] *Moreno-Lax* (2012), p.28.

to cause a treatment of a single applicant not compatible with his or her fundamental rights.[115]

However, the Dublin III Regulation, as already mentioned above, henceforth incorporates in its Art. 3(2) the systemic deficiencies as *the* circumstances hindering a transfer under Dublin, if they would result 'in a risk of inhuman or degrading treatment within the meaning of Article 4 of [...] [EUCFR]'. Thus, exceptions to the *effet utile* of the Dublin Regulation are only admissible within the definite boundaries set by it.[116]

Against this background, it seems a pity that the Dublin III Regulation did not follow the COM's initial proposal which called for a suspension of transfers in cases where the standard of protection in the receiving countries does not reflect EU standards.[117] Such test would rather correlate with Art. 2 TEU containing the Union's foundation principles than the current Art.3 of the Regulation that clings to the existence of systemic deficits.

Moreover, Article 3(2) Dublin III does not guarantee that even systemic deficits – when occur – will inevitably lead to the suspension of transfers, since it is not clear how to adjudicate them. As a matter of fact, the term 'systemic flaw' is interpreted heterogeneously by Member States.[118] Some of them even stated that they would not suspend transfers to a given Member State unless such deficiencies are notified by the European Commission or other international organisations, as it was the case with Greece.[119] That means – at least for some Member States – serious violations of human rights must appear first, before a suspension of transfers will be possible.

From the pure legal perspective though, the ECJ has to protect human rights *at least as strongly as* Strasbourg.[120] If that is currently the case, is questionable. This illustrates the

[115] *Weiß* (2012), p.202; Also critical regarding that question: *Hoppe* (2012), p.410.
[116] *Hailbronner/Thym* (2012), p.409.
[117] *Costello* (2016), p.275; *COM*, proposal for a regulation of the EP and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, COM (2008) 820 final, p.52.
[118] *ICF International* (2016), pp. 21-22.
[119] *ICF International* (2015), p.16.
[120] *Costello* (2012), p.92.

following case ruled by the ECtHR, where the Court, in contrast to the presented ECJ judgment, stressed the importance of an individualised thorough assessment in *all* cases.[121] It is a decision that reinforces the impression that, presently, Luxembourg seems to be the 'less robust human rights court'[122] comparing to Strasbourg. Anyway, the question, if, in future, the ECJ will clarify, whether or not, EU law provides an even more extensive protection in this regard remains to be seen.[123]

ECtHR: Tarakhel v. Switzerland[124]

During the past few years, the ECtHR has been quite busy with *Dublin returns* to Italy. Only between April and September 2013 the ECtHR was dealing with 7 contentions by asylum seekers[125] against their return to Italy under the Dublin Regulation.[126] In all cases, the Court acknowledged that, in particular, the detention conditions in Italy were not at all perfect. But nonetheless and unlike the Greek case, the Court did not assert that these conditions constituted general systemic flaws in Italy's asylum system.[127] The case to be presented concerned the return of the *Tarakhel family* (an Afghan couple and their 6 children) from Switzerland to Italy under *Dublin.*

The ECtHR ruled that it would be a breach of Art.3 ECHR, if the Swiss authorities were to send the applicants back to Italy 'without (...) having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together.' [128] Of importance is that the ECtHR did not follow the narrow perspective, that *Dublin returns* are only excluded when the given asylum system has systemic deficiencies – as initiated by the ECJ and (till then) decided so by ECtHR's chambers.[129] The *renunciation*

[121] *Costello* (2016), p.275.
[122] *Costello* (2012), p.92.
[123] ibid..
[124] *ECtHR*, judgment of 4 November 2014, no. 29217/12 – Tarakhel v. Switzerland.
[125] To name 3 of them: *ECtHR*, decision of 4 June 2013 – Daytbegova et al./Austria; *ECtHR*, decision of 18 June 2013 – Halimi v. Austria and Italy; *ECtHR*, decision of 10 September 2013 – Hussein Diirshi et al./The Netherlands and Italy.
[126] *Tiedemann* (2015), p.121.
[127] ibid.
[128] *ECtHR*, judgment of 4 November 2014, no. 29217/12 – Tarakhel v. Switzerland, subpara. 122.
[129] *Tiedemann* (2015), p.122..

of limiting the removal obstacles to the existence of systemic flaws in the Member State primarily designated as responsible under *Dublin* can be appreciated due to the above already examined reasons. It is not the systemic deficiencies that provide the basis of the non-refoulement mandate, but the imminent violation of human rights.[130]

In any case, after this judgment it became clear that the situation in Italy causes that a high number of asylum seekers are left without accommodation or are accommodated in 'overcrowded facilities without any privacy, or even in insalubrious or violent conditions'[131] that do not respect in a sufficient manner the special need of protection of asylum seekers.[132] For this reason, the national authorities willing to return an asylum seeker under *Dublin* are obliged to obtain the insurance of Italian authorities (in every individual case) that the concerned applicant will be accommodated and that these lodgings conform with the general and (sometimes) special needs of asylum seekers.[133] That such decision really differs according to the circumstances (individualised assessment!) became clear in the ECtHR's decisions that followed the *Tarakhel judgment.*

In the decision *A.M.E. v. the Netherlands*[134] for example, the Court unanimously declared inadmissible the application brought by a Somali asylum seeker who claimed that he would be subjected to inhuman living conditions, if transferred to Italy under *Dublin*. The Court particularly noted that unlike the Tarakhel family, the applicant in that case '[was] an able young man with no dependents'.[135] Moreover according to the ECtHR, the situation at that time existing for asylum seekers in Italy could 'in no way be compared to the situation in Greece at the time of the M.S.S. […] judgment', for this reason 'the structure and overall situation of the reception arrangements in Italy cannot in themselves act as a bar to all removals […] to that country'.[136] Similarly decided the Court in *A.S. v. Switzerland,* where it ruled i.a. that there has been no violation of Art. 3

[130] ibid., p.123.
[131] *ECtHR*, ibid., subpara. 115.
[132] *Tiedemann* (2015), p.124.
[133] ibid.
[134] *ECtHR,* decision of 13 January 2015, no. 51428/10 – A.M.E. v. the Netherlands.
[135] *ECtHR,* ibid., subpara. 34.
[136] *ECtHR,* ibid., subpara. 35.

ECHR, as the applicant was 'not critically ill' and as there was currently no indication that he would not receive appropriate psychological treatment if removed to Italy.[137]

(E) CONCLUSIONS

The presented judgments show that the current European system of allocating the responsibility to examine asylum applications raises huge humanitarian concerns in practice. Due to the overloading of some Member States (especially, as here illustrated, Greece and Italy), these states struggle to comply with their obligations arising out of the ECHR and EUCFR. This concerns especially the prohibition of inhuman or degrading treatment under Art.3 ECHR and Art.4 EUCFR against the background of the detention and reception conditions provided for asylum seekers. However, this paper and especially the prior chapter is not meant to blame certain Member States for their failing to accomplish sufficient protection of human rights of asylum seekers on their territory. It aims rather the illustration how the Dublin System endangers the fulfillment of basic human rights obligations. Indeed, both courts, the ECtHR and the ECJ, agreed on one important thing: blind mutual trust inside the Dublin system is not compatible with fundamental rights and their protection.[138] The rights contained in the ECHR and EUCFR cannot be simply *neutralised* by the principle of reciprocal trust.[139] As *Costello* puts it: ' A strong presumption of compliance with fundamental rights has little rational basis in the asylum context.'[140] This can be especially obtained due to the specific vulnerability of asylum seekers. Being strangers to the community, asylum applicants are 'subjects to the indignities of the asylum process'.[141] Apart from the, to some extent, miserable reception conditions (especially in the first reception facilities), one of these indignities is the arbitrary and disproportional detention of asylum seekers (*asylum arrest*) - especially in countries like Greece, Bulgaria, Malta and Hungary.[142]

[137] *ECtHR,* judgment of 30 June 2015, no. 39350/13 – A.S. v. Switzerland, subpara. 36.
[138] *Costello* (2012), p.92.
[139] *Bruns* in Hofmann (2016), §27 a AsylVfG, subpara. 58.
[140] *Costello* (2012), p.90.
[141] ibid.
[142] *MacLean* in Bildungswerk Berlin der Heinrich-Böll-Stiftung e.V. (2015), p.21.

Accordingly, it seems more than right that the courts acknowledged the fact that a transfer to another EU state might violate the non-refoulement principle. But one should visualise this mentally: inside the European Union – a supranational organization which claims for itself to be founded i.a. on the respect of human dignity and the ensuring of human rights and whose members all signed the ECHR – human rights of a particular group of people are to some extent systemically violated, depending on where the certain asylum seeker 'runs abeach'. It is difficult to say, one is hyperbolising when speaking of a 'poor show' on the part of the Union in this regard.

Of course: the Union is confronted with a *crisis* or an *emergency.* This has to be taken into account when judging the status quo. However, it has to be seen that a system which leads to significantly different treatment for the individual depending on where he or she seeks for asylum is neither just nor humane.[143] Against this background, it is hardly surprising that voices calling for a reform of the Dublin system raise. It is difficult though to imagine any allocation system that is forced and is both, efficient and human rights protective.[144] But a system that overburdens a few states situated at the external borders of the Union quite clearly causes actions that try to screen *Europe* from the refugee flows, let it be by refouling fleeing people in the Mediterranean back to their countries of origin, let it be by building fences. The image of the EU being a 'fortress' is indeed not new. And as its walls rise higher and higher, the fortress should take care of not leaving its founding principles of human dignity, solidarity, freedom, democracy, equality and human rights at the door.[145]

[143] *Dallal* (2015), p.16.
[144] *Costello* (2016), p.277.
[145] *D'Oultremont/Martin* (2015), p.2.

ABBREVIATIONS

Art. – Article

COM – (European) Commission

e.g. – exempli gratia

et al. – et alii.

EP – European Parliament

EU – European Union

I.a. – inter alia

I.e. – id est

OJ – Official Journal (of the EU)

p. – page

pp. – pages

subpara. – subparagraph

UN – United Nations

BIBLIOGRAPHY

Bank, Roland/Hruschka, Constantin (2012), Die EuGH-Entscheidung zu Überstellungen nach Griechenland und ihre Folgen für Dublin-Verfahren (nicht nur) in Deutschland [The ECJ judgment on transfers to Greece and its consequences for *Dublin procedures* (not only) for Gemany] , ZAR, pp. 182-188.

Barrera, Eliana/Vetter, Friederike (2013), "Systemic Deficiency": Legal Standard Setting, Human Rights, and Its Effect on the Individual in the Common European Asylum System, SPECTRA, Vol. 2 No. 2, available online: https://spectrajournal.org/index.php/SPECTRA/article/view/95/102; last demand: 08 May 2016.

Breen, Duncan (2016), Abuses at Europe's borders, FMR, Issue 51, pp. 21-23.

Brouwer, Evelien(2013), Mutual trust and the Dublin regulation: Protection of fundamental rights in the EU and the burden of proof, Utrecht L Rev, Vol. 9 No.1: pp. 135-147.

Calliess, Christian/Ruffert, Matthias (2011), TEU/TFEU, 4th edition.

Costello, Cathryn (2016), The human rights of migrants and refugees in European law, Oxford.

Costello, Cathryn (2012), Dublin-case NS/ME: Finally, an end to blind trust across the EU?, A&MR, No. 02, pp. 83-92.

Çukaj, Lisjana (2015), Non-Refoulement principle according to Article 3 of ECHR, ARSA, Vol.4, pp. 156-158.

Dallal, Stevens (2015), The Humanness of EU Asylum Law and Policy, in Warwick Law School (ed.), Legal Studies RESEARCH Paper no.1, pp.1-18, available online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2560269; last demand: 08 May 2016.

Dean, Meryll (2014), Bridging the Gap: Humanitarian Protection and the Convergence of Laws in Europe, ELJ, Vol. 20, No. 1, pp. 34–65.

Dörr, Oliver (2003), Der europäisierte Rechtsschutzauftrag deutscher Gerichte [The *Europeanized* remedy mandate of German courts], Tübingen.

D'Oultrement, Clémentine/Martin, Anna, (2015), The Migration Crisis: A Stress Test for European Values in Egmont Institute (ed.), European Policy Brief, No.38, pp.1-13,

available online: http://www.egmontinstitute.be/wp-content/uploads/2015/09/Policy-Brief-Migration-final-CO.pdf; last demand: 08 May 2016.

Duffy, Aoife (2008), Expulsion to Face Torture? Non-refoulement in International Law, Int J Refugee Law, Vol. 20 (3): pp. 373-390.

Fröhlich, Daniel (2011), Das Asylrecht im Rahmen des Unionsrecht [The right to seek asylum under Union Law], Tübingen.

Gammeltoft-Hansen, Thomas (2008), The right to seek - Revisited.On the UN Human Rights Declaration Article 14 and Access to Asylum Procedures in the EU, European Journal of Migration and Law, Vol. 10, pp. 439–459.

Gilbert, Geoff (2015), Why Europe Does Not Have a Refugee Crisis, IJRL, Vol. 27, No. 4, pp. 531–535.

Grabitz, Eberhard/Hilf, Meinhard/Nettesheim, Martin (2015), The European Union law, 57th edition, Munich.

Von der Groeben, Hans/Schwarze, Jürgen/Hatje, Armin, (2015) European Union Law, 7th edition, Baden-Baden.

Hailbronner, Kay/Thym, Daniel (2012), Vertrauen im europäischen Asylsystem [Trust within the European Asylum System], NVwZ, pp. 406-409.

Hofmann, Bianca (1999), Grundlagen und Auswirkungen des völkerrechtlichen Refoulement-Verbots [Basics and consequences of the non-refoulement principle under international law], in: Menschenrechtszentrum der Universität Potsdam [ed.], Studien zu Grund- und Menschenrechten [Surveys regarding fundamental and human rights] (3), pp. 3-49.

Hofmann, Rainer M. (2016), Ausländerrecht [Aliens' law], 2nd edition, Baden-Baden.

Hoppe, Michael (2012), Aktuelle Rechtssprechung zum Asyl- und Flüchtlingsrecht [Recent case law concerning asylum and refugee law], ZAR, pp. 405-411.

ICF International (2015), Evaluation of the Dublin III Regulation. Final Report (prepared for the European Commission), available online: ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/docs/evaluation_of_the_dublin_iii_regulation_en.pdf; last demand: 18 May 2016.

ICF International (2016), Evaluation of the Implementation of the Dublin III Regulation. Final Report (prepared for the European Commission), available online: ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/examination-of-applicants/docs/evaluation_of_the_implementation_of_the_dublin_iii_regulation_en.pdf; last demand: 18 May 2016.

Ktistakis, Yannis (2013), Protecting migrants under the European Convention on Human Rights and the European Social Charter [ESC] - A handbook for legal practitioners: Council of Europe [ed], Strasbourg.

Lafrai, Cleopatra (2013), Die EU-Qualifikationsrichtlinie und ihre Auswirkungen auf das deutsche Flüchtlingsrecht [The EU Qualification directive and its consequences for the German refugee law], Bremen.

Lübbe, Anna (2015), Prinzipien der Zuordnung von Flüchtlingsverantwortung und Individualrechtsschutz im Dublin-System [Principles of allocation of responsibility for refugees and individual protection in the Dublin system], ZAR, pp. 125-132.

McCrudden, Christopher (2008), Human Dignity and Judicial Interpretation of Human Rights, EJIL, Vol.19 no.4, pp. 655-724.

MacLean, Percy (2015), in Bildungswerk Berlin der Heinrich-Böll-Stiftung e.V [ed]., Verletzte Rechte und verletzte Menschenwürde - Flüchtlinge: Lästige Objekte oder schutzsuchende Träger von Menschenrechten?
[Violated rights and violated human dignity - Refugees: Irritating objects or human rights holders seeking for protection?], Berlin.

Meyer-Ladewig, Jens (2004), Menschenwürde und Europäische Menschenrechtskonvention [Human Dignity and European Convention on Human Rights], NJW, pp. 981-984.

Meyer-Ladewig, Jens (2011), Europäische Menschenrechtskonvention (European Convention on Fundamental Rights), 3rd update.

Meyer, Jürgen (2014), Charta der Grundrechte der Europäischen Union [The Charter of Fundamental Rights of the European Union], 4th edition, Baden-Baden.

Moreno-Lax, Violeta (2012), Dismantling the Dublin System: M.S.S. v. Belgium and Greece, European Journal of Migration & Law, Vol. 14 (1), pp. 1-31.

Morgades-Gil, Sílvia (2015), 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?, IJRL, Vol. 27 Issue 3, pp. 433-456.

Nascimbene, Bruno (2016), Refugees, the European Union and the 'Dublin System'. The Reasons for a Crisis, European Papers, Vol. 1, No 1, pp. 101-113.

Tiedemann, Paul (2015), Rückführung von Asylbewerbern nach Italien [The return of asylum seekers to Italy], NVwZ, pp. 121-124.

Thym, Daniel (2011), Menschenrechtliche Feinjustierung des Dublin-Systems zur Asylzuständigkeitsabgrenzung - Zu den Folgewirkungen des Straßburger M.S.S.-Urteils [Humanitarian revision of the Dublin system - the consequences of Strasbourg's M.S.S. judgment], ZAR, pp. 368-378.

Tometten, Christoph (2010), Der internationale Schutz von Katastrophenflüchtlingen [The international protection of refugees fleeing from catastrophes], ZAR, pp. 22-27.

Vicini, Giulia (2015), The Dublin Regulation between Strasbourg and Luxembourg: Reshaping non-refoulement in the Name of Mutual Trust?, EJLS, Vol. 8, No. 2, pp. 50-72.

Weiß, *Wolfgang* (2012), Grundrechtsschutz in der EU: Quo vadis? [Human Rights Protection in the EU: Quo vadis?], EuZW, pp. 201-202.

ABBREVIATIONS IN THE BIBLIOGRAPHY

A& MR - Asiel en Migrantenrecht
ARSA - Advanced Research in Scientific Areas
EJIL - The European Journal of International Law
EJLS - European Journal of Legal Studies
ELJ - European Law Journal
EuZW - Europäische Zeitschrift für Wirtschaftsrecht
FMR - Forced Migration Review
IJRL - International Journal of Refugee Law
NJW - Neue Juristische Wochenschrift
NVwZ - Neue Zeitschrift für Verwaltungsrecht
SPECTRA - the Social, Political, Ethical, and Cultural Theory Archives
Utrecht L Rev - Utrecht Law Review
ZAR- Zeitung für Ausländerrecht und Ausländerpolitik