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European Union's New Pact on Migration and Asylum: Enhancing the Legal Protection of Refugees and Asylum Seekers or Restoring the Old Paradigm?

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Summary: In this article, I seek to examine how the legal and political changes introduced by the European Union's New Pact on Migration and Asylum enhance the legal protection of refugees and asylum seekers fleeing to the EU territory across the central Mediterranean migration route. Empirically drawing on the discourse of the European Commission representatives and the discourse around the new Pact on Migration and Asylum, I will engage in analyzing the EU's human-focused narrative about migration management that the Pact promotes. The emphasis is put on how the dominant legal categories, in particular the category of *refugee*, are (re)constructed and the purposes such re-articulation has for the rights of the people on the move. Situating the study into critical legal theoretical framework, my aim is to demonstrate that although the EU's new narrative acknowledges migrants' vulnerable position, persons in need of international protection are simultaneously put into the discursive frame of irregularity – the same discourse the EU is vehemently fighting against. Hence, due to the conceptual ambivalence of the legal identities, under the new Pact, the persons legally entitled to protection will find it more difficult to claim their right to safe asylum in the EU.

Keywords: the New Pact on Migration and Asylum, the EU, refugee protection, the central Mediterranean migration route

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1. Introduction

The European Union's (the EU's) New Pact on Migration and Asylum (the Pact) launched by the European Commission on 23 September 2020 has gained a considerable attention among both legal and political science scholars. Officially announced in 2019, the Pact has been listed, inter alia, as the flagship initiative of the elected College of Commissioners (2019-2024) working under the leadership of the Commission's President Ursula von der Leyen.[1] Consisting of both legislative and non-legislative instruments, the Pact has come as the product of extensive debates between the representatives of the Commission, the European Parliament, Member States and other relevant stakeholders.[2] Although the proposals contained in the Pact hinge upon the reform of the Common European Asylum System (CEAS) the EU embarked on in 2016 and 2018, the newly introduced package reportedly constitutes a "fresh start" on migration and asylum management.[3]

The contemporary reform towards "truly" European system is presented to be designed to harmonize asylum, reception and return systems and hereby institute a sustainable framework to migration governance in line with the principles of solidarity and fair sharing of responsibility as laid down in Article 80 of the Treaty on the Functioning of the EU (TFEU).[4] The current rhetoric of the Commission has been accompanied by claims stressing that the EU purportedly "withdrawn and drawn a line" under the Dublin system which suggests the Pact comes as a remedy for the previous failures to cope with the large number of arrivals that were managed on an ad hoc basis.[5] However, despite the declarations of the ultimate revocation of the Dublin regime and the plans the EU announced for the establishment of a common, humanitarian and sustainable approach towards

1 EUROPEAN COMMISSION. Directorate-General for Communication, Leyen, U., *A Union that strives for more: my agenda for Europe: political guidelines for the next European Commission 2019–2024*, Publications Office, 2019. Available at: https://data.europa.eu/doi/10.2775/753401

2 EUROPEAN COMMISSION. New Pact on Migration and Asylum: A Fresh Start on Migration in Europe, 2020. Available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-mi-g-ra-tion-and-asylum_en

3 EUROPEAN COMMISSION. Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020. Available at: https://eur-lex.europa.eu/legal-content/EN-/TXT-/?uri=COM%3A2020%3A609%3AFIN

4 EUROPEAN COMMISSION. New Pact on Migration and Asylum: A Fresh Start on Migration in Europe, 2020. Available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-mi-g-ra-tion-and-asylum_en

5 EUROPEAN COMMISSION. *Speech by Vice-President Schinas on the New Pact on Migration and Asylum* [online]. Available at: https://ec.europa.eu/commission/pressco-rner/detail/en/SPEEC-H_2-0_1736

migration and asylum, analysts point to the gap between the discourse articulated on the political level and the one that informs the legislative and non-legislative instruments put forward by the EU.[6] On a closer inspection, the human security considerations that are raised as the guiding principles to the new approach are starkly contrasted with the EU's endeavour to further strengthen the partnerships with third countries on migration and its external border dimension. Eventually, the concerns are being raised that this reality will boil down to a lack of adequate protection mechanisms for those who are heading to the EU while fleeing violence and persecution in their countries of origin or habitual residence.

This article aims to contribute to the debate about the European Commission's enterprise that involves the creation of a new, sustainable framework on migration and asylum. The primary goal of the article is to answer the question of how the legal and political changes introduced by the new Pact enhance the legal protection of refugees and asylum seekers fleeing to Europe via the central Mediterranean route. The approach adopted in the article makes use of the arguments promoted by the critical approach to law whereas from the methodological point of view, I employ the narrative analysis as a special form of qualitative discourse research method.

Putting the emphasis on discursive factors that have shaped the formation of the new measures on migration and asylum, in this article, the narrative analysis is oriented to the analysis of the instruments that the Commission proposed under the Pact[7] on 23 September 2020 as well as the discourse coming from the relevant political actors within the Commission both prior and after the package was launched. Examination of the political rhetoric and legislative changes that accompany the development of the new narrative has a potential to reveal peculiar obstacles that confront the refugee protection regime in the EU context. It is argued that the new narrative the Commission strives to institutionalize has rendered the legal categories of a "refugee" and an "asylum seeker" in the ambiguous positions. The conflictual relationship between positions that are vested on these legal categories is manifested in the fact that besides being portrayed as victims of human rights abuses, persons in need of international protection are simultaneously represented as a part of the irregularity/illegality discourse that the EU vehemently opposes and seeks to abolish. On this account, the EU

[6] NOVOTNÝ, V. The New Pact on Migration: A Set of Innovative Proposals with an Uncertain Outcome. *Wilfried Martens Centre for European Studies*, 2020.

[7] We have to take into consideration that the initiatives that will make up the new legal architecture are about to be introduced by the Commission and will embrace the following elements: an Action Plan on Integration and Inclusion, a Strategy on the future of Schengen, a Strategy on voluntary returns and reintegration, an operational strategy on returns, an EU Action Plan against Migrant Smuggling and a Skills and Talent package.

compromises the rights of those in need of international protection and impedes their access to the territory where their claims shall be examined and further safeguards guaranteed.

By lying the focus on the implications that the provisions of the Pact create for persons that are fleeing to Europe via the central Mediterranean route, this paper seeks to examine what kind of legal solutions the Pact sets out in relation to the management of the migratory flows in an area that represents "one of the deadliest and yet most surveilled seas"[8]. Given that the search and rescue aspect have been particularly emphasized by the crafters of the Pact, I believe that understanding of the situation in the Mediterranean adds the important knowledge to our general understanding of the nature of the legal and political solutions the EU envisages for the conduct of maritime search and rescue operations and saving the lives of refugees and migrants at the Mediterranean Sea.

The paper is structured as follows. In the first section, I offer a brief overview of the adopted theoretical and methodological framework. Then, I look at the framing of the Pact on the political level as well as on the formulations of the Pact's provisions with special prominence given to the search and rescue element. The third section is devoted to the analysis of the implications of the new approach on the rights of refugees destined to the EU territory which is followed by the conclusion and the discussion of the main findings.

2. Critical legal theory and narrative analysis

In this paper, I adopt the critical approach to law situated in the framework of the Critical Legal Studies (CLS) that originally emerged in the early 1970s as a strand of critical theory.[9] From the ontological perspective, this trend in legal scholarship has drawn the intellectual inspiration from legal realism[10] that – despite being oriented in the traditional legal analysis paradigm – sheds light on the biases in legal decisions and strives to "unmask" ways in which judgments are informed by hidden value.[11] Similarly to legal realists, CLS adherents reject the notion that law is a neutral set of rules that can be implemented in an objective

[8] MARTIN, M. *Prioritising Border Control over Human Lives: Violations of the Rights of Migrants and Refugees at Sea* [online]. Available at: https://euromedrights.org/publication/prioritising-border-control-over-human-lives-vio-lations-of-the-rights-of-migrants-and-refugees-at-sea/

[9] HUNT, A. The Theory of Critical Legal Studies. *Oxford Journal of Legal Studies.* 1986, vol. 6, no. 1, pp. 1–45.

[10] STANDEN, A. Jeffrey, Critical Legal Studies as an Anti-Positivist Phenomenon. *Virginia Law Review*. 1986, vol. 72, no. 5, pp. 983–998.

[11] WISE, V. Of Lizards, Intersubjective Zap, and Trashing: Critical Legal Studies and the Librarian. *Legal Reference Services Quarterly,* vol. 8, no. 1–2, 7–27.

manner aiming thus to "debunk" the formalist legal philosophy.[12] Yet, in contrast to legal realism, CLS does away with positivist epistemology, and rejects the premise about the feasibility of reaching just outcomes, that is, the conduct of the legal procedure without prejudice.[13] Critical legal scholars posit that judgment cannot be the outcome of a purely legal reasoning, i.e. the product of "objective application of legal expertise".[14] In this respect, one of the central tenets that informs the CLS thinking is the belief that political judgments pervade all legal doctrines and systems mirroring the hegemonic position of the makers and shapers of law[15]. That being so, CLS challenges the practice of separating the law and politics, the fact and value[16] while suggesting that law shall be viewed as "politics by other means".[17]

Generally speaking, being "critical" in the CLS discipline refers to "querying mainstream, classical legal thought, especially of the variety that views law as a structured, coherent whole that is typically accessed via the application of long-established, logical legal rules and norms".[18] On this basis, what underlies the theorizing of the CLS is the view that the examination of the nature of legal discourse shall be carried out as a way to problematize legal concepts and doctrines.[19] More specifically, the proponents of the CLS contend that the actions of legal agents are defined by political and socio-cultural influences and the process of challenging the legitimacy of dominant legal norms entails inquiring into these conditions for the sake of exposing the hidden structures i.e. relations of power.[20] In this way, the critical methods of CLS refrain from essentialism and seeks to uncover the limits of the hegemonic (legal) discourses with a view to bring about change in favor of those who are disempowered by dominant articulations.[21]

In the paper, I utilize the key premises that inform the critical program in law not limiting the assumption of inseparability of law and politics to legal

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12 Ibid.

13 GORDON, W. R. Unfreezing Legal Reality: Critical Approaches to Law. *Florida State University Law Review*. 1987, vol. 15, no. 2, pp. 195–220.

14 KAIRYS, D. *The Politics of Law: A Progressive Critique*. New York: Pantheon Books, 1982, pp. 1–752.

15 INNISS, B. L. 'Other Spaces' in Legal Pedagogy. *Harvard Journal of Racial and Ethnic Justice*. 2011, vol. 28, Cleveland-Marshall Legal Studies Paper No. 11–231, 67–90.

16 STANDEN, A. J. Critical Legal Studies as an Anti-Positivist Phenomenon. *Virginia Law Review*. 1986, vol. 72, no. 5, pp. 983–998.

17 Ibid.

18 INNISS, B. L. 'Other Spaces' in Legal Pedagogy. *Harvard Journal of Racial and Ethnic Justice*. 2011, vol. 28, Cleveland-Marshall Legal Studies Paper No. 11–231, 67–90.

19 Ibid.

20 Ibid.

21 STANDEN, A. J. Critical Legal Studies as an Anti-Positivist Phenomenon. *Virginia Law Review.* 1986, vol. 72, no. 5, pp. 983–998.

judgments but rather applying it to the international legal architecture as a whole with the special emphasis on the EU's refugee protection regime developed under the Common European Asylum System (CEAS). I make particular use of the notion of deconstruction[22] which refers to uncovering the elements that are structurally silenced within the established hegemonic legal discourses also known as "metanarratives". As I am interested in how narrating legal provisions in particular way can improve or undermine the position of group of people on the move, I find it essential to concentrate on the analysis of the narrative regarding the management of migration flows the European Commission offered in an attempt to institutionalize the new discourse. Below, I reflect on the narrative as a concept and as a methodological tool to be employed in the analysis.

As a starting point, I take the view that narratives stand for the sense-making practices through which actors discursively articulate knowledge about certain objects and social relations in the form of a story that gives meaning to the social environment in which they operate.[23] Narratives are thus the means through which subjects create their identities and political behaviour.[24] As a research method, narrative analysis focused on the collection of written and oral narratives is based on "uncovering ways in which a story is constructed, for whom, and for what purpose".[25] In this way, narrative analysis concerns critical gathering of stories focusing on the meanings that actors attribute to their renderings. According to Molly Paterson and Kristen Renwick Monroe, narrative stands out from other modes of representation as it first and foremost necessitates agency whereas actors – guided by particular goals – are positioned in the story as subject who (re)produce the behavior in accordance with the role they are ascribed with. In addition, given that the narrators maintain the freedom to decide how the story is to be recounted, what matters in the analysis are not only spoken responses but also elements of the story that are silenced.[26] Moreover, by looking at how events are recounted, the speaker's self-definition is disclosed and on this basis, the story "explains and justifies why the life went a particular way, not just causally but, at some level, morally". [27] Finally, it must be noted that instead of looking for any causalities between actor's articulations and the respective behaviour,

[22] WARD, I. *An Introduction to Critical Legal Theory*. London: Cavendish Publishing, 1998, 1–225.

[23] PATTERSON, M., RENWICK, M. K. Narrative in Political Science. *Annual Review of Political Science.* 1999, vol. 1, no. 1, pp. 315–331.

[24] SOMERS, R. M. The Narrative Constitution of Identity: A Relational and Network Approach, *Theory and Society*. 1994, vol. 23, no. 5, pp. 605–649.

[25] SUBOTIĆ, J. Stories States Tell: Identity, Narrative, and Human Rights in the Balkans. *Slavic Review*. 2013, vol. 72, no. 2, pp. 306–326.

[26] PATTERSON, M., MONROE, R. K. Narrative in Political Science. *Annual Review of Political Science. 1999,* vol. 1, no. 1, pp. 315–331.

[27] Ibid.

in this paper, I adopt the view that narratives do not demonstrate explanations of action in the sense of linear causality, but rather that they "exhibit" explanations instituting certain "cognitive boundaries" that either enable or constrain the behaviour of political actors.[28] Along these lines, narratives are seen social constructs that are fluid i.e. they are constantly being (de)constructed by various actors who "create them for specific political purposes and can also deconstruct them for alternative political goals".[29]

3. Unpacking the EU's "New" Migration and Asylum Package

This section looks at the framing of the Pact on the political level as well as on the narrative formulations of the Pact's provisions with special prominence given to the search and rescue element. This part builds on the findings of the rights-based scholars and legal practitioners who reflected on the ambiguous nature of the proposed package of legislative instruments.

By and large, the new Pact has been predominantly composed of three main elements that the Commission's vice-president, Margaritis Schinas metaphorically compared to floors of a house.[30] What constitutes the central component of it is the external dimension of migration governance that relates to the EU's conclusion of a tailor-made and beneficial partnerships with countries of origin and transit as well as to its aspiration to strengthen the capacity of third countries to manage migration on their own. The second floor of the house concerns management of external borders at land and sea based on a common system of returns informed by the cooperation of recently developed EU Return Coordinator with the European Border and Coast Guard (Frontex) – whose competence for the implementation of the European integrated border management has been recently expanded establishing shared responsibility with other Member States' competent authorities.[31] Finally, the third floor relates to

[28] SUBOTIĆ, J. Narrative, Ontological Security, and Foreign Policy Change. *Foreign Policy Analysis*. 2016, vol. 12, no. 4, pp. 610–627.

[29] SUBOTIĆ, J. Stories States Tell: Identity, Narrative, and Human Rights in the Balkans. *Slavic Review*. 2013, vol. 72, no. 2, pp. 306–326.

[30] EUROPEAN COMMISSION. *Speech by Vice-President Schinas on the New Pact on Migration and Asylum* [online]. Available at: https://ec.europa.eu/commission/pressco-rner/detail/en/SPEEC-H_2-0_1736

[31] EUROPEAN COMMISSION. Regulation on the European Border and Coast Guard and repealing Regulations 1052/2013/EC and 2016/1624/EC, 2020. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?u-ri=CELEX:32019R1896

the new balance between solidarity and responsibility that has been established under new solidarity mechanism.[32]

For the most part, on the EU level, the actors who took part in crafting of the package of proposals attempted to "normalize" the phenomenon of migration and depict it as something that is inevitable and enriching for the European society.[33] In her first State of the Union address, President of the European Commission, Ursula von der Leyen, presented the new measures that have laid the foundations of a "human and humane" model of migration governance. By virtue of this, the Commission President recognized the specificity of rescue operations at sea insisting that saving the lives at sea will "no longer be optional" and a more prominent role will be given to "applicants rather than applications".[34] In a similar vein, since her appointment as the European Commissioner for Home Affairs, Ilva Johansson vehemently campaigned for desecuritization of refugees and migrants heading towards the EU and stressed that efforts should be made to ensure that international protection is accessible for those who need it.[35]

Nevertheless, as a part of the humanitarian considerations that dominate the political discourse on the new Pact, the Commission articulated another domain as being constitutive of the "threat" against which the EU and the Member States shall jointly fight against. This threat has been formed out of the irregular flows enabled by human smugglers and traffickers in human beings who act against the rights of refugees and migrants and as such against the values and interest of the EU itself. In this respect, the EU positioned itself as an area of protection whereas the fight against such criminal networks and stemming illegal border crossings has been portrayed as giving the major impetus for the formation of the newly proposed measures.

One of the novel instruments the Commission set forth has made the case for linking the asylum and return border procedure to create "truly" European framework for handling the asylum applications more efficiently.[36] This amendment

[32] EUROPEAN COMMISSION. *Speech by Vice-President Schinas on the New Pact on Migration and Asylum* [online]. Available at: https://ec.europa.eu/commission/pressco-rner/detail/en/SPEEC-H_2-0_1736

[33] EUROPEAN COMMISSION. Press statement by President von der Leyen on the New Pact on Migration and Asylum [online]. Available: https://ec.europa.eu/commission/presscorn-er/detail/-en/statement_20_1727

[34] State of the Union Address by President von der Leyen at the European Parliament Plenary [online]. Available at: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655

[35] Ylva Johansson's answers to the European Parliament questionnaire [online]. Available at: https://ec.europa.eu/-commission/commissioners/2019-2024/johansson_en

[36] EUROPEAN COMMISSION. Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 2020. Available at: https://eur-lex.europa.eu/legal-content/-EN/TXT/?uri=COM:2020:611:FIN

along with a new regulation that introduces screening of migrants at the external borders shall guarantee that before people have been granted permission to enter the EU territory, they shall undergo identity, health and security checks based on which they are directed to appropriate procedure i.e. asylum, return or the refusal of entry.[37] The proposals for fusion of asylum and border procedure that will be preceded by a mandatory screening allegedly reflect an evidence-based approach to policy-making given that such provisions have been introduced against the backdrop of challenges of the current system documented since 2016 (such as issuance of the abusive claims for asylum or requests made at the external border by applicants coming from third countries with a low recognition rate).[38] However, many observers argue that among the provisions concerning the new advanced pre-entry phase, there are also less clear points, namely the ones that specify the locations for the conduct of the border procedure. Specifically, as regards the procedure for carrying out return, Article 41a of the amended proposal revising the Asylum Procedures Regulation stipulates that member states dealing with the applicants subject to a return procedure can keep them "at or in proximity to the external border or transit zones".[39] Such clause allows Member States to process the (rejected) applications at a different location where the asylum application was initially made as well as to set up their facilities at or in the proximity of the external border in the first place. In this way, the above-named instruments also provide for the recourse to measures for detention of illegally staying third-country nationals in an extra-territorial manner. Much criticism has been expressed by NGOs as regards to stipulations on the possible detention practices and the possibility to carry out screening without migrants having entered the EU territory.[40] Moreover, according to some analysts, the accommodation of applicants subject to return and asylum border procedure in locations at or in proximity to the external border or transit zones may create "fiction of non-entry" which is a legal tool already utilized by some Member States.[41] In this vein, the new approach, it

[37] EUROPEAN COMMISSION. Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 2020. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:612:FIN

[38] Migrants arriving from countries with recognition rates lower than 20%.

[39] EUROPEAN COMMISSION. Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 2020. Available at: https://eur-lex.europa.eu/legal-content/-EN/TXT/?uri=COM:2020:611:FIN

[40] HUMAN RIGHTS WATCH. *The Pact on Migration and Asylum* [online], https://www.-hr-w.org/news/2020/10/08/pact-migration-and-asylum

[41] NOVOTNÝ, V. The New Pact on Migration: A Set of Innovative Proposals with an Uncertain Outcome. *Wilfried Martens Centre for European Studies*, 2020.

seems, does not completely abandon the hotspot logic that proved to be leading to unlawful confinement of people in the wake of the 2015 humanitarian crisis[42].

In addition, it is pertinent to consider that the Pact further promises to reconcile Member State's competing interests in managing high numbers of arrivals at the EU frontiers and alleviate pressure from Member States that face disproportionate amount of burden. In this respect, the Commission generated the notion of *mandatory solidarity* which denotes that those EU Member States hostile to participating in relocation of migrants can engage in *return sponsorship* and hereby assist with the migrant deportation and their re-integration in the countries of origin or another hosting communities that would constitute a "safe territory". In doing so, the Commission's vice-president, Margaritis Schinas claims solidarity will eventually become a norm and provide for effectiveness in dealing with large numbers of arrivals.[43]

As a matter of fact, one can call to mind that the first country of entry principle is what the EU introduced itself by the Dublin while the international legal standards namely the 1951 Refugee Convention do not require states to apply refugee status in the first country in which the vulnerable persons arrive.[44] Although the Commission purportedly abolished the Dublin regime[45], many argue that in practice not much has changed.[46] The primary responsibility for deciding on the asylum claim remain in those countries that migrants enter the first. Even though the compulsory solidarity can be triggered in the case countries are facing migratory pressure or in the context of disembarkation of people rescued at sea, the fact that the first country of entry principle endures is especially alarming given the ongoing reluctance of the southern European Member States to launch rescue operations at sea in the first place[47]. In a similar vein, the Pact is silent on whether the compulsory screening exercises are also to be the sole competence of the frontline

[42] EUROPEAN UNIVERSITY INSTITUTE, *The EU pact on migration and asylum in light of the United Nations global compact on refugees: international experiences on containment and mobility and their impacts on trust and rights*, Andrew Geddes, A. (ed.), Sergio Carrera, S. (ed.). European University Institute, 2021. Available at: https://data.europa.eu/doi/10.2870/541854

[43] EUROPEAN COMMISSION. Speech by Vice-President Schinas on the New Pact on Migration and Asylum [online]. Available at: https://ec.europa.eu/commission/pressco-rner/detail/en/SPEEC-H_2-0_1736

[44] GILBERT, G. Why Europe Does Not Have a Refugee Crisis. *International Journal of Refugee Law*. 2015, vol. 27, no. 4, pp. 531–535.

[45] Ibid.

[46] KIRIŞCI, K., ERDOĞAN, M. M., EMINOĞLU, N. *The EU's "New Pact on Migration and Asylum" is missing a true foundation* [online]. Available at: https://www.brooki-ngs.edu/b-log/order-from-chaos/2020/11/06/the-eus-new-pact-on-migration-and-asylum-is-missing-a-true-foundation/

[47] MORENO LAX, V., PAPASTAVRIDIS, E. Boat Refugees and Migrants at Sea: A Comprehensive Approach: Integrating Maritime Security with Human Rights. *International Refugee Law Series*, volume 7. Leiden: Boston: Brill/NIjhoff, 2017, 1–461.

member states – a point raised even inside the EU institutions.[48] Importantly, when looking at the implications of fostered border procedure along with the "immediate protection regime" devised for the asylum seekers of a particular kind, we need to recognize that such re-conceptualization of the category of asylum seekers needs to be rethought with the special attention devoted to the understanding of such practice may lead to fragmentation of the asylum seeker category[49].

With a view to demonstrate that it has learnt from the past failures in respect of managing the migration crises, the Commission introduced specific provisions concerning asylum and return procedures in crises situations including the crises related to the seaborne migration. Given that the practice has shown that NGOs and individuals carrying out humanitarian search and rescue to save people in distress have been judicially investigated and prosecuted,[50] for the purpose of providing greater clarity of the points on non-penalization of humanitarian activities, the Commission adopted the new guidance on Facilitators Directive. It affirmed that facilitation in the form of humanitarian assistance carried out by NGOs or any other non-state actors that uphold the relevant legal framework cannot be criminalized and "amounts to a breach of international law, and therefore is not permitted by EU law".[51] In like manner, a new Recommendation on Search and Rescue operations by private vessels[52] has been proposed that addresses the use of private vessels for search and rescue and aims to encourage increased cooperation between Member States.

While majority of the proposed measures deal with how to stem arrivals of migrants that travel irregularly rather than specifying measures that would save the migrants who find themselves in the situation of distress, the Commission highlights its coordinative role and inability to dictate disembarkation points[53].

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48 LAZARO, A. (2020). *European Union's proposed new migration pact generates dissatisfaction on all sides.* Euronews [online]. Available at: https://www.euronews.com/2020/09/26/eu-migration-pact-will-institutionalise-xenophobia-claims-mediterranean-rescue-group

49 MOUZOURAKIS, M. More laws, less law: The European Union's New Pact on Migration and Asylum and the fragmentation of "asylum seeker" status. *European Law Journal*, vol. 26, no. 3–4, pp. 171–180.

50 VOSYLIŪTĖ L., CONTE, C. Crackdown on NGOs and Volunteers Helping Refugees and Other Migrants. *The Research Social Platform on Migration and Asylum*, 2019, 1–52.

51 EUROPEAN COMMISSION. Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence, 2020. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020XC1001(01)

52 EUROPEAN COMMISSION. Recommendation on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities, 2020. Available at: https://eur-lex.europa.eu/legal-content-/ga/-TX-T/?-u-ri=CELEX:32020H1365

53 Ylva Johansson's answers to the European Parliament questionnaire [online]. Available at: https://ec.e-uropa.-eu/commission/commissioners/2019-2024/johansson_en

As such, the Pact is focused "neither on the protection of seaborne migrants and refugees nor on the elimination of the structural factors that push them to take the sea to reach safety in the first place".[54]

4. The EU's Migration and Asylum Pact: a Step towards a Common Rights-Based Policy or an Attempt of Selling False Hope?

In this section, I seek to exhibit inconsistencies in the European Commission's narrative about proposed migration management approach by looking at the implications of the Pact's provisions for the rights of people on the move who are fleeing violence and striving to reach the EU shores via the journey across the central Mediterranean.

It must be noted that the Commission's narrative acknowledges that among persons who are taking to the Mediterranean and heading towards the EU territory, there are people who are the victims of human rights violations that are facing risk of persecution and fundamental rights abuse in their countries of origin or habitual residence. In other words, the EU recognizes its legal obligations towards people who are in need of international protection and clearly positions itself as a safe territory and a place of protection. Against this background, each of the proposed initiatives expressly calls on the respect of the *non-refoulement principle* and the full implementation of international protection standards in all actions the EU takes.

However, while displaying the vulnerabilities to which migrants coming to the EU are likely to be exposed to, the narrative the Commission has constructed through its package of measures invested the potential refugees and asylum seekers with ambivalent positions. More specifically, by labelling the fight against unauthorized arrivals as the crucial element for achieving the fair and orderly migration, the EU has depicted refugees and asylum seekers as victims of organized crime while simultaneously embedding these legal categories into the larger frame of discourse on irregularity. Firstly, by stressing that people in need of international protection may fall victim to the criminal networks of human smugglers and traffickers that operate at the Mediterranean Sea,[55] the

[54] MORENO LAX, V., PAPASTAVRIDIS, E. Boat Refugees and Migrants at Sea: A Comprehensive Approach: Integrating Maritime Security with Human Rights. *International Refugee Law Series*, volume 7. Leiden: Boston: Brill/NIjhoff, 2017, 1–461.

[55] EUROPEAN COMMISSION. *Speech by Vice-President Schinas on the New Pact on Migration and Asylum* [online]. Available at: https://ec.europa.eu/commission/pressco-rner/detail/en/SPEEC-H_2-0_1736

Commission has made the reduction of unauthorized movement as the legitimate goal. In the second place, the EU has recognized that the mixed nature of migratory flows while consistently classifying these flows as essentially irregular. This practice of silencing the fact that among people who are attempting the journey across the Mediterranean are both people who are forcible and voluntarily displaced is not something new.[56] What is more, the Pact's provisions are alleged to address the management of irregular migration while the Union has pledged to work on the promotion and creation of the legal channels for migrants, mostly through the development of partnerships with third states. Yet paradoxically, the Commissioner Johansson kept reiterating that the "legal pathways are not for everybody" and that the distinction between those eligible and not eligible to stay in the EU has to be made.[57] The latter part of Commissioner's argument would be valid if people who travel by irregular means would have a chance to lodge asylum application in the first place. In this way, the EU acts as an arbiter for deciding on whether the rights of individuals will be circumvented or upheld based on the attribute of irregularity it itself assigned to large scale movements heading to its territory. Additionally, the fact that the potential beneficiaries of the international protection are denied access to it by virtue of arriving to Europe through irregular means stands in contravention to the 1951 Refugee Convention itself i.e. there is no legal ground for punishing refugees for reaching the place of safety illegally, each case of exerting such disciplinary measures amounts to violation of non-refoulement principle. Although the previous EU discourse exhibited similar contradictions.[58]

Moreover, another contentious issues is the EU's commitment to portray strengthening the cooperation on migration with third states as something in the interest of migrants themselves. In the past, the EU has consistently put the conclusion of agreements with third countries at the top of the political agenda. This, however, meant not only a formal transfer of responsibility on them for care and protection of asylum seekers[59] but also the increased instances of push-pack operations on sea i.e. the application of measures to prevent migrant boats reach EU territorial waters by sending people back to

[56] See: MORENO LAX, V., PAPASTAVRIDIS E. Boat Refugees and Migrants at Sea: A Comprehensive Approach: Integrating Maritime Security with Human Rights. *International Refugee Law Series*, volume 7. Leiden: Boston: Brill/NIjhoff, 2017, 1–461.

[57] CEPS THINK TANK, *Webinar: The EU Pact on Migration and Asylum: International Partnerships in light of the UN GCR.* Available at: https://www.youtube.co-m/watch?v=65M-J9r-qv-T08

[58] GILBERT, G. Why Europe Does Not Have a Refugee Crisis. *International Journal of Refugee Law*. 2015, vol. 27, no. 4, pp. 531–535.

[59] HAMOOD, S. EU–Libya Cooperation on Migration: A Raw Deal for Refugees and Migrants? *Journal of Refugee Studies.* 2008, vol. 21, no. 1, pp. 19–42.

their points of departure.[60] There have been reports of push-backs carried out by the authorities of individual Member States[61], commercial vessels as well as ones conducted by the Frontex to the third states.[62] As a further matter, the push-back operations have been complemented by the financial support the EU used to allocate for states hosting large refugee populations as a part of migration cooperation agreements. The push-back practices were condemned in judgment *Hirsi Jamaa and Others v. Italy* by the European Court of Human Rights based on a complaint lodged by migrants from Eritrea and Ethiopia, victims of such operation in 2009 carried out by a cooperation of Italian and Libyan coast guard authorities.[63] At that point, the ECtHR specified that national authorities in the EU Member States shall remain steadfast in their efforts to apply the principle of non-refoulement on the high seas. The ECtHR further iterated that in the case of migrant interception in the high seas, people found in distress fall under the jurisdiction of the state where the intercepting vessel is registered and shall be the beneficiaries of the same rights as any person under that state's jurisdiction. On the other hand, the judgment highlighted that after migrant interception in EU territorial waters, the disembarkation of those rescued to a "place of safety" is inevitable, that is, migrants have to be brought to the EU territory in application of the right to a fair remedy and the principle of non-refoulement.[64]

One of the central problems of such approach is that some of the third countries take little or no regard to human rights of migrants and refugees residing on their territories, it is justifiable not to deem these countries as "safe territories" for migrant disembarkation. In particular, in the context of the North African states, the EU has been criticized for its cooperation with countries such as Libya that largely prioritize strengthening the border controls instead of human rights principles.[65] In fact, such cooperation amounts to a vicious cycle where the restrictive border policies "relegate refugees and asylum seekers to the status

[60] EUROPEAN PARLIAMENT. Directorate General for External Policies of the Union. Migrants in the Mediterranean: Protecting human rights. LU: Publications Office, 2015. Available at: https://data-.europa.e-u/do-i/10.2861/342397

[61] EUROPEAN PARLIAMENT. Directorate General for External Policies of the Union. EU external migration policy and the protection of human rights: In depth analysis. LU: Publications Office, 2020. Available at: https://d-ata.eur-opa-.eu/doi/10.2861/07288

[62] COSTELLO, C., MANN, I. Border Justice: Migration and Accountability for Human Rights Violations. *German Law Journal*. 2020, vol. 21, no 3, pp. 311–334.

[63] *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Council of Europe: European Court of Human Rights, 23 February 2012. Available at: https://hudoc.echr.coe.int/eng#{"itemid":["001-109231"]}

[64] Ibid.

[65] COSTELLO, C., MANN, I. Border Justice: Migration and Accountability for Human Rights Violations. *German Law Journal*. 2020, vol. 21, no 3, pp. 311–334.

of illegals leaving them with little choice but to take dangerous routes and place their lives in the hands of smugglers"[66] while at the same time reproducing the dominant narrative of irregularity.

Moreover, in the countries such as Libya, detention practices are widespread and the human rights violations such as rape, torture, hunger, or forced labor occurring in the detention facilities are largely documented[67]. While condemning the abusive conditions migrants face in detention centers and pledging to urge for the Libyan authorities to close them, the EU concurrently engages in training of the Libyan Boarder and Coast Guard whose activities put the rights of migrants at sea in jeopardy by bringing people intercepted at sea back to the detention centers. Whilst the Commission justifies the conduct of such training exercises by human rights concerns arguing that saving the lives of migrants at sea and dismantling the smuggling networks lies at the heart of such cooperation[68] by engaging in these actions, the EU further disregards the fact that the cooperation on asylum should be established only among entities with "comparable protection standards"[69], a criterion which Libya as not being a party to Refugee convention does not fulfil. On top of that, entering into agreements with states that do not comply with the international standards and knowingly assisting the transfer of migrants to environments where they are about to be abused stands in contravention to Article 3 (5) of TEU that stipulates promotion of the EU's fundamental values in all its external actions as well as the observance of international standards.

Finally, notwithstanding the European Commission's strong disapproval of push-backs and its proclamations about improving monitoring measures in each Member State with maritime borders, in the new Pact, the Commission failed to account for how its own structures namely, the Frontex are going to be held accountable for the documented human rights violations. While addressing the human rights impact of Frontex's cooperation with non-EU countries, the Commission stressed that it has no competence to indicate points of disembarkations shedding the light to the applicability of international legal framework

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66 MORRISON, J., CROSLAND, B. The Trafficking and Smuggling of Refugees: The End Game in European Asylum Policy? 2001, *Working Paper 39.*

67 HUMAN RIGHTS WATCH. *EU: Time to Review and Remedy Cooperation Policies Facilitating Abuse of Refugees and Migrants in Libya* [online]. Available at: https://www.hrw.org/n-ews/2020/04/28/eu-time-review-and-remedy-cooperation-policies-facilitating-abuse-refugees-and

68 Ylva Johansson's answers to the European Parliament questionnaire [online]. Available at: https://ec.europa.eu/c-ommission/commissioners/2019-2024/johansson_en

69 MORENO LAX, V., PAPASTAVRIDIS E. Boat Refugees and Migrants at Sea: A Comprehensive Approach: Integrating Maritime Security with Human Rights. *International Refugee Law Series*, volume 7. Leiden: Boston: Brill/NIjhoff, 2017, 1–461.

in this respect. Indeed, according to the international law of the sea, states are obliged to provide assistance to people or vessels in distress at sea. This principle is contained in the United Nations Convention on the Law of the Sea, the International Convention for the Safety of Life at Sea (SOLAS) as well as in the International Convention on Maritime Search and Rescue (SAR). Yet, another complication arises given that not all EU Member States signed the 2004 amended versions of both the Convention on Safety of Life at Sea (SOLAS), 1974 and the Convention on Maritime Search and Rescue at Sea (SAR), 1979 i.e. not all states are confined to the same obligations.[70] This reality leaves the concepts of "distress" and "safe third country" amenable to interpretation of individual member states.[71]

5. Conclusions

The analysis of the narrative surrounding the new legislative package proposed by the Commission has shown the presence of the ambiguous discourse on the legal category of a *refugee and asylum seeker*. At first glance, policy debates in the EU have framed the development of the Pact as a component of the EU's commitment to a comprehensive response to humanitarian crises that since 2015 prompted large number of people to undertake the journey through the Mediterranean and seek sanctuary in Europe. On a closer inspection, we could observe a considerable mismatch between political rhetoric and content of the Commission's proposals. At the EU level, it has been argued that the sustainable rights-based solution can be achieved only if the Union makes compromises without "compromising on its principles"[72], but, nevertheless, as I argue, the Commission has done the exact opposite compromising on its values.

In addition, we can argue that the Commission attempts to institutionalize two separate narratives on migration – the one which relates to the irregular migration flows and the other one concerning the legal migration. One could observe that the EU identifies the absence of the legal pathways to EU territory which ultimately lead migrants and refugees to risk their lives by crossing the Mediterranean, but, in spite of that it posits that the Member States will always

[70] MARTIN, M. *Prioritising Border Control over Human Lives: Violations of the Rights of Migrants and Refugees at Sea* [online]. Available at: https://euromedrights.org/publication/prioritising-border-control-over-human-lives-violations-of-the-rights-of-migrants-and-refugees-at-sea/

[71] Ibid.

[72] EUROPEAN COMMISSION. Press statement by President von der Leyen on the New Pact on Migration and Asylum [online]. Available: https://ec.europa.eu/commission/presscorn-er/detail/-en/statement_20_1727

possess a discretion over regulating the legal migration, a field that in the words of Commission's vice president Schinas "deserves its own narrative divorced from discussions on irregular migration".[73] This implies that when talking about the creation of channels for legal entry, the EU discourse does not refer to channels that would enable people trapped in the war-torn countries in Africa to escape and find shelter in Europe but rather it refers to reinforcing the already well-established labor migration whereby the Union could maintain the competition of its labor markets and tackle the demographic challenges.

List of references

CEPS THINK TANK, *Webinar: The EU Pact on Migration and Asylum: International Partnerships in light of the UN GCR.* Available at: https://www.youtube.co-m/watch?v=65M-J9r-qv-T08

COSTELLO, C., MANN, I. Border Justice: Migration and Accountability for Human Rights Violations. *German Law Journal,* 2020, vol. 21, no 3, pp. 311–334.

EU Charter on Fundamental rights [online]. Available at: https://europa.eu/european-union/law /treaties_en

EUROPEAN COMMISSION. Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, 2020. Available at: https://eur-lex.europa.eu/legal-content/-EN/TXT/?uri=COM:2020:611:FIN

EUROPEAN COMMISSION. Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of ‚Eurodac' for the comparison of biometric data for the effective application of Regulation (EU) XXX/XXX [Regulation on Asylum and Migration Management] and of Regulation (EU) XXX/XXX [Resettlement Regulation], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulations (EU) 2018/1240 and (EU) 2019/818, 2020. Available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52020PC0614

EUROPEAN COMMISSION. Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence, 2020. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020XC1001(01)

EUROPEAN COMMISSION. Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020. Available at: https://eur-lex.europa.eu/legal-content/EN-/TXT-/?uri=COM%3A2020%3A609%3AFIN

[73] EUROPEAN COMMISSION. *Speech by Vice-President Schinas on the New Pact on Migration and Asylum* [online]. Available at: https://ec.europa.eu/commission/pressco-rner/detail/en/SPEEC-H_2-0_1736

EUROPEAN COMMISSION. Directorate-General for Communication, Leyen, U., *A Union that strives for more: my agenda for Europe: political guidelines for the next European Commission 2019–2024*, Publications Office, 2019. Available at: https://data.europa.eu/doi/10.2775/753401

EUROPEAN COMMISSION. New Pact on Migration and Asylum: A Fresh Start on Migration in Europe, 2020. Available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum_en

EUROPEAN COMMISSION. Press statement by President von der Leyen on the New Pact on Migration and Asylum. [online] Available: https://ec.europa.eu/commission/presscorn-er/detail/-en/statement_20_1727

EUROPEAN COMMISSION. Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, 2020. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:612:FIN

EUROPEAN COMMISSION. Proposal for a Regulation of the European Parliament and of the Council addressing situations of crisis and force majeure in the field of migration and asylum, 2020. Available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52020PC0613

EUROPEAN COMMISSION. Recommendation on an EU mechanism for Preparedness and Management of Crises related to Migration (Migration Preparedness and Crisis Blueprint), 2020. Available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32020H1366

EUROPEAN COMMISSION. Recommendation on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities, 2020. Available at: https://eur-lex.europa.eu/legal-content-/ga/-TX-T/?-u-ri=CELEX:32020H1365

EUROPEAN COMMISSION. Regulation on the European Border and Coast Guard and repealing Regulations 1052/2013/EC and 2016/1624/EC, 2020. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1896

EUROPEAN COMMISSION. *Speech by Vice-President Schinas on the New Pact on Migration and Asylum.* [online] Available at: https://ec.europa.eu/commission/pressco-rner/detail/en/S-PEEC-H_2-0_1736

EUROPEAN PARLIAMENT. Directorate General for External Policies of the Union. *Migrants in the Mediterranean: Protecting human rights.* LU: Publications Office, 2015. Available at: https://data-.europa.e-u/do-i/10.2861/342397

EUROPEAN PARLIAMENT. Directorate General for External Policies of the Union. *EU external migration policy and the protection of human rights: In depth analysis.* LU: Publications Office, 2020. Available at: https://d-ata.eur-opa-.eu/doi/10.2861/07288

EUROPEAN UNIVERSITY INSTITUTE, *The EU pact on migration and asylum in light of the United Nations global compact on refugees: international experiences on containment and mobility and their impacts on trust and rights*, Andrew Geddes, A.(ed.), Sergio Carrera, S. (ed.), European University Institute, 2021. Available at: https://data.europa.eu/do-i/10.28-70/541854

GILBERT, G. Why Europe Does Not Have a Refugee Crisis. *International Journal of Refugee Law.* 2015, vol. 27, no. 4, pp. 531–535.

GORDON, W. R. Unfreezing Legal Reality: Critical Approaches to Law. *Florida State University Law Review,* 1987, vol. 15, no. 2, pp. 195–220.

HAMOOD, S. EU–Libya Cooperation on Migration: A Raw Deal for Refugees and Migrants? *Journal of Refugee Studies,* 2008, vol. 21, no. 1, pp. 19–42.

Hirsi Jamaa and Others v. Italy, Application no. 27765/09, Council of Europe: European Court of Human Rights, 23 February 2012. Available at: https://hudoc.echr.coe.int/eng#{„itemid":[„001-109231"]}

HUMAN RIGHTS WATCH. *EU: Time to Review and Remedy Cooperation Policies Facilitating Abuse of Refugees and Migrants in Libya* [online]. Available at: https://www.hrw.org/n-ews/2020/04/28/eu-time-review-and-remedy-cooperation-policies-facilitating-abuse-refugees-and

HUMAN RIGHTS WATCH. *The Pact on Migration and Asylum* [online] https://www.-hrw.o-rg/news/2020/10/08/pact-migration-and-asylum

HUNT, A. The Theory of Critical Legal Studies. *Oxford Journal of Legal Studies,* 1986, vol. 6, no. 1, pp. 1–45.

INNISS, B., L. 'Other Spaces' in Legal Pedagogy. *Harvard Journal of Racial and Ethnic Justice*. 2011, vol. 28, Cleveland-Marshall Legal Studies Paper No. 11–231, 67–90.

KAIRYS, D. *The Politics Of Law: A Progressive Critique.* New York: Pantheon Books, 1982, pp. 1–752.

KIRIŞCI, K., ERDOĞAN M. M., EMINOĞLU, N. *The EU's "New Pact on Migration and Asylum" is missing a true foundation* [online]. Available at: https://www.brooki-ngs.edu/b-log/order-from-chaos/2020/11/06/the-eus-new-pact-on-migration-and-asylum-is-missing-a-true-foundation/

LAZARO, A. (2020). *European Union's proposed new migration pact generates dissatisfaction on all sides. Euronews* [online]. Available at: https://www.euronews.com/2020/09/26/eu-migration-pact-will-institutionalise-xenophobia-claims-mediterranean-rescue-group

MARTIN, M. *Prioritising Border Control over Human Lives: Violations of the Rights of Migrants and Refugees at Sea* [online]. Available at: https://euromedrights.org/publication/prioritising-border-control-over-human-lives-violations-of-the-rights-of-migrants-and-refugees-at-sea/

MORENO LAX, V., PAPASTAVRIDIS, E. Boat Refugees and Migrants at Sea: A Comprehensive Approach: Integrating Maritime Security with Human Rights. *International Refugee Law Series*, volume 7. Leiden: Boston: Brill/NIjhoff, 2017, 1–461.

MORRISON, J., CROSLAND, B. The Trafficking and Smuggling of Refugees: The End Game in European Asylum Policy? 2001, *Working Paper 39.*

MOUZOURAKIS, M. More laws, less law: The European Union's New Pact on Migration and Asylum and the fragmentation of "asylum seeker" status. *European Law Journal,* vol. 26, no. 3–4, pp. 171–180.

NOVOTNÝ, V. The New Pact on Migration: A Set of Innovative Proposals with an Uncertain Outcome. *Wilfried Martens Centre for European Studies*, 2020.

PATTERSON, M., MONROE, R. K. Narrative in Political Science. *Annual Review of Political Science. 1999,* vol. 1, no. 1, pp. 315–331.

RIESSMAN, C. K. *Narrative Methods for the Human Sciences*. Los Angeles: Sage Publications, 2008, 1–262.

SOMERS, R. M. The Narrative Constitution of Identity: A Relational and Network Approach, *Theory and Society.* 1994, vol. 23, no. 5, pp. 605–649.

STANDEN, A. J. Critical Legal Studies as an Anti-Positivist Phenomenon. *Virginia Law Review*. 1986, vol. 72, no. 5, pp. 983–998.

State of the Union Address by President von der Leyen at the European Parliament Plenary [online] Available at: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655

SUBOTIĆ, J. Narrative, Ontological Security, and Foreign Policy Change. *Foreign Policy Analysis.* 2016, vol. 12, no. 4, pp. 610–627.

SUBOTIĆ, J. Stories States Tell: Identity, Narrative, and Human Rights in the Balkans. *Slavic Review*. 2013, vol. 72, no. 2, pp. 306–326.

VOSYLIŪTĖ L., CONTE, C. Crackdown on NGOs and Volunteers Helping Refugees and Other Migrants. *The Research Social Platform on Migration and Asylum*. 2019, 1–52.

WARD, I. *An Introduction to Critical Legal Theory.* London: Cavendish Publishing, 1998, 1–225.

WISE, V. Of Lizards, Intersubjective Zap, and Trashing: Critical Legal Studies and the Librarian. *Legal Reference Services Quarterly,* vol. 8, no. 1–2, 7–27.

Ylva Johansson‘s answers to the European Parliament questionnaire [online]. Available at: https://ec.europa.eu/commission/commissioners/2019-2024/johansson_en