

**HUMAN RIGHTS VIOLATIONS COMMITTED BY THE EUROPEAN
UNION AND ITS MEMBER STATES WITHIN THE CONTEXT OF THE
EUROPEAN MIGRANT CRISIS**

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Abstract

Human rights violations have occurred in Europe during the European migrant crisis. This master thesis will argue that the violations of migrants' rights have been conditioned by the strong anti-immigration and many times even xenophobic rhetoric used primarily by the right-wing political parties in several EU countries. The use of violence has become legitimate on the state level as countries considered the massive inflow of migrants to Europe as a security threat for them. Due to the lack of common EU migration policies, countries acted individually which had further impact on the development of the situation.

Key words: Anti-immigration rhetoric, European Union, Human rights, Migration, Right-wing political parties

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List of abbreviations

CFDP	Common Foreign Defence Policy
CFR	Charter of the Fundamental Rights of the European Union
CFSP	Common Foreign Security Policy
CJEU	Court of Justice of the European Union
CS	Copenhagen School
ECHR	European Convention of Human Rights
EC	European Commission
EU	European Union
HDZ	Hrvatska Demokratska Zajednica
ICJ	International Commission of Jurists
IGO	Intergovernmental Organization
IO	International Organization
IOM	International Organization for Migration
HRW	Human Right Watch
GNA	Government of National Accord
LNA	Libyan National Army
NGO	Non-governmental Organization
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UNHCR	United Nations High Commissioner for Refugees
UN	United Nations

Introduction

Due to armed conflicts and political instability in the Middle East and Africa, hundreds of thousands of people from countries such as Syria or Afghanistan started emigrating from their homelands and heading primarily towards countries in Western Europe in search of a better life, asylum, or refuge. With the outbreak of the European migrant crisis in 2015, the European continent and the European Union started facing unprecedented challenges related to the sudden arrival of such a large amount of people, namely what exactly should be done with the new immigrants.

Throughout the year, many migrant routes developed, allowing these people to head towards countries such as the UK, France, or Germany. Many migrants managed to reach their final destinations, but many of them encountered obstacles and resistance along the way instead. According to many international organizations like Amnesty International, Human Rights Watch or International Organization for Migration, migrants' human rights have been violated on many occasions and the help and support they received have not been sufficient enough. All of these violations happened despite the fact that the European Union and all its Member States are signatories of the most important treaties encompassing the protection of human rights including the Charter of the Fundamental Rights of the European Union or the Universal Declaration of the Human Rights. Notwithstanding the foregoing, the European Union has taken action steps to better manage the massive inflow of the migrants. Nevertheless, many of the challenges has still remained unsolved until nowadays.

Therefore, the research question of our master thesis is: Why did the human rights violations occur within the context of the European migrant crisis? Throughout this master thesis, we will first undergo a thorough analysis of the above-mentioned documents in order to find out what exactly constitutes a human right, and under what conditions they can be considered as violated. The second part of our research we will apply the theories of securitization and nativism on specific countries of the EU, most notably Greece, Italy, Hungary, and Croatia, which have committed human rights violations or were accused of doing so. Analyzing these theories within the context of these countries will allow us to find out whether they can be considered successful in explaining why they committed human right violations. Finally, after analyzing what human rights are and the specific countries and their reasons for committing them within this crisis, the last part of our thesis will present several suggestions, which could be considered beneficial for the European Union and its Member States in order to deal with this crisis, or with similar crises that might take place in the future.

Methodology

1.1. Methodological approach

As our thesis analyzed the reasons why human rights violation occurred in Europe, we had to first define what types of violation of human rights can be observed. In order to do so we had to use various types of sources, including newspapers, government publications, press releases but also reports published by the non-governmental organizations and international organizations. As we had to analyze the relevant documents for our thesis, we applied the documentary methodological approach. According to Bailey, “documentary research method refers to the analysis of documents that contains information about the phenomenon we wish to study” (as cited in Ahmed, 2010, p.2). Documentary approach has also its quality control criteria, some of which we took into consideration. It includes authenticity, credibility, representativeness and meaning. Nevertheless, scholars argue that not all of the criteria should be regarded rather they should be seen as interdependent (ibid.).

In our thesis we focused especially on the credibility of our sources which is based on the trustworthiness and expertise. As majority of our sources are either official governmental publications, press releases, or the reports of the non-governmental organizations that are actively dealing with the problems encompassing human rights violations, their credibility is very high. A possible limitation can be the fact that some of the sources may lack the objectiveness but we attempted to include as many similar reports and statement as possible in order to assure the objectiveness in our thesis.

Once the credibility of the sources has been assured, the second factor that we focused on the understanding the meaning of the information that the documents intended to convey. Usually the meaning should be clear and comprehensive (ibid.). The documents that we analyzed to a high extent point out the serious violations of the human rights committed on the migrants during the European migrant crisis. Notwithstanding the forgoing, the governmental press releases only very rarely admitted that there were abuses of the human rights occurring on their territory. The scholars who are using documentary approach are recommending doing the interviews with people who are familiar or knowledgeable about the phenomenon that we want to observe which will bring additional value to the thesis. Unfortunately, the capacity of our thesis did not allow us to include the interviews with relevant participants, however, the reports which we analyzed have already contained some of the interviews conducted with the migrants and refugees, who had experienced violence during their journey.

Documentary approach was very beneficial for our research, but in order to answer to our research question, the documentary approach itself is not sufficient enough. Therefore, the theoretical assumption will be needed as well. In this thesis we will apply the critical securitization theory and nativism, which will help us explain why human rights violations occurred within the context of the European migrant crisis.

1.2.Types of sources

The types of sources we ended up using were influenced by the angle we chose to write the thesis in. As we did not take on the angle of discourse analysis but instead focused on using primarily factual information in order to acquire as accurate overview as possible of the events that actually took place prior and during the European migrant crisis, we have mainly focused on primary sources. Many of them were released by the European Union itself, such as its official statements and reports, as this entity was the central focus of our research. Moreover, since our goal was to find out the reasons why the European Union and its Member States acted the way they did, we needed to analyze the framework which allows them, or does not allow them, to act in a legal way, and therefore determine whether their actions could be considered human rights violations. Thus, we also analyzed several treaties, charters, and deals that were released by intergovernmental organizations, such as the United Nations or the European Union, and which were, or were not, signed or ratified by specific countries or intergovernmental organizations. Additionally, we have also employed reports from various NGOs which have a vast knowledge and expertise, and are closely working with refugees, in order to get a balanced perspective on the whole crisis. Examples of relevant NGOs include Médecins Sans Frontières, Oxfam, Amnesty International, Human Rights Watch, etc.

The fact that we decided to write our thesis about a very recent topic also had a great impact on the types of sources we ended up using for our research. In addition to the primary sources released directly by the intergovernmental organizations, countries' officials, or NGOs, we have also applied secondary sources, most notably newspaper articles. These were being released along the way as the crisis was unfolding, and thus provided us with the latest information from the time when they were released regarding the events that were taking place, as well as to the behavior of countries and their political leaders. We also employed several studies and research papers, however, the available amount of such sources which we would consider relevant and up to date for the thesis was limited. This is due to the fact that European migrant crisis is a recent phenomenon and the impacts of which stretch all the way to the present day. Despite this drawback, we have also employed this type of sources in our thesis.

1.3. Limitations

An obvious, yet very crucial limitation to our master thesis was the lack of available time we were given to produce the final work. A four-month period we were granted proved not to be sufficient enough to dive into too profound details which could have enriched this thesis. Examples of such additions are original and relevant interviews or surveys, which were considered but ultimately not implemented as their production, transcription and subsequent analysis would have taken a lot of time.

An additional limitation was the worldwide COVID-19 pandemic, which occurred during the early stages of our thesis writing and remained present all the way through. It has further impacted the possible content we could have included in the master thesis. Due to travel restrictions, it was not possible to physically move and do an interview with a subject that could be relevant for our thesis, such as refugee, or a representative of an important NGO or other organization that deal with refugees. Because of this, the data regarding the refugees, their numbers, and their testimonies were not produced by us, but we were required to rely on the materials that were produced by other organizations. While such interviews were not absolutely necessary for our thesis, they would have complemented it by adding a value of originality and authenticity.

Final limitation comes down to the restrictions in regard to the countries, which we have included for the analysis in our master thesis. As the European Union is a supranational organization made out of 27 Member States, each of them needs to agree when an international treaty is being signed. This is also true for deals which we have analyzed in the thesis, such as the EU-Turkey Deal, or the declarations and charters which apply for these countries. Analyzing each the individual position of each country and the reasons why they decided the way they did was not feasible due to the limited page number, but also because it would make it difficult to narrow down our focus of the thesis.

The choice of the main countries we talked about came down to the countries which were particularly affected by the European migrant crisis. Therefore, we have focused specifically on presenting the actions of the countries, which committed human rights violations. Most of them happen to lie on the external border of the European Union, while some of these countries are not EU Member States themselves, but which might be EU candidate or possible candidate countries, they might have a particularly interesting deal with the EU, or their actions within the crisis might have appeared as relevant for our thesis. We have also decided to include countries, which committed different type of human rights violations, such as pushbacks, physically preventing the migrants to

enter a country's territory, physical and sexual harassment, not providing sufficient living conditions for the refugees and migrants, or keeping them in the detention centres against their will.

1.4. Additionally considered theory

Throughout the writing of this thesis, the rational choice theory was the closest candidate for a third theory we considered applying in order to find out whether or not it could explain the commitment of human rights violations throughout the European migrant crisis. Ultimately, however, we decided not to include it and dedicate more focus on analysing the actions of countries through the lenses of the theories of securitization and nativism.

The primary reason why we opted for this decision was related to the limitations in terms of number of pages that were available for us. As we already decided to work with the theories of securitization and nativism, we ended up applying them to an extensive amount of countries since we primarily dealt with the EU and its Member States, many of which committed human rights violations of different kinds. Applying yet another theory would require us to compromise on the extent and depth we could reach with our application of the other two theories.

Moreover, we chose not to include this theory as it claims that a characteristic feature of political actors is an “unchanging set of preferences over all conceivable global outcomes” (Amadae, 2017, para.2). This feature, however, would not provide an explanation for the events during the migration crisis, as for example the re-election of Viktor Orbán and the human rights violations that occurred. This political figure based his campaign on applying strong anti-immigration rhetoric where he and other members of his political party Fidesz depicted the migrants as a security threat for Hungary (Juhász, 2017). While Fidesz managed to convince the audience and achieve re-election, the rhetoric and the subsequent actions cannot be defined as an unchanging set of preferences as they were completely new. The party itself only adopted the anti-immigration rhetoric within the context of refugee crisis in order to boost its own image (ibid.). In other words, applying such a rhetoric and actions against human rights was not an unchanging preference but rather a novelty, which the ruling party adopted in an attempt to secure re-election (ibid.).

The final reason for omitting the rational choice theory was that it is often criticised for being not comprehensive enough, and therefore unable to provide a reliable explanation for the political actions, which are resulting from the complex behaviour of people (Petracca, 1991). As the topic of our master thesis is heavily political and complex in nature, we deemed rational choice theory not to be sufficiently broad to help us answer our research question.

2. Theoretical overview

2.1. Critical Securitization Theory

The concept of securitization has been developing for the past three decades. During the Cold War, the security threat was understood from the realist's perspective as military conflict and state as a referent object of security has a right to force to protect its nation (Browning & McDonald, 2011). The realist's traditional explanation of the security became questioned when the Cold War ended. The bipolar world changed to the multipolar one and the original idea of securitization has not been able to explain the new phenomena on the international scene. One of the most significant contributions to defining and explaining the securitization in the 1990s was provided by Barry Buzan and Ole Waever who describe securitization as "successful speech act through which an intersubjective understanding is constructed within a political community to treat something as an existential threat to a valued referent object and to enable a call for urgent and exceptional measures to deal with the threat" (as cited in Stritzel, 2007, p. 358). Another scholar, Thierry Balzacq (2010) also argues that looking at the securitization from the poststructuralist point of view, power of language, hence a speech act, is one of the preconditions that construct a security threat. The speech act philosophy described above but also some other variables later provided a foundation for the so-called Copenhagen School (CS) approach to securitization.

2.1.1. Copenhagen School approach

The basic idea of understanding the securitization and security as such by the CS lays in the argument that once something is defined as a security threat by a securitizing actor (government, state, political leaders, etc.) the normal politics goes beyond the established rules and become exceptional (Buzan, Waever, de Wilde, 1998). Moreover, as Waever put it, "by uttering 'security,' a state-representative moves a particular development into a specific area, and thereby claims a specific right to use whatever means are necessary to block it" (as cited Stritzel, 2007, p.360). This means that the securitizing actor is possessed with a special power that can be used to act in the way he/she would not otherwise do. However, specific security rhetoric followed by the extraordinary action steps would not be possible without the third variable, hence the audience. The first conceptualization of the securitization by Buzan and Waever in the 1990s did not stress the attention on the role of the audience. The scholars realized this problem and moved towards a more comprehensive understanding of the securitization. The new model of the security action consisted of three elements:

(1) the speech act, (2) the securitizing actor, and (3) the audience (ibid.). As cited in Buzan's et al. book *Security: A New Framework for Analysis* (1998), "a discourse that takes the form of presenting something as an existential threat to a referent object does not by itself create securitization—this is a securitizing move, but the issue is securitized only if and when the audience accepts it as such" (p.25). Put in the other words, security is not only about the threat and the way how the securitizing actor interprets it, but it is also about the willingness of the audience to obey and accept the exceptional measures presented by the actors. It does not matter how good the speech act of the actor is if the audience does not follow up on it.

Therefore, a successful securitization must include certain conditions: there has to be an existential threat first that will be followed by the emergency action communicated by the securitizing actor, which must seek acceptance among the audience. So far, we described deeply the importance of the speech act as well as the role of the audience, however, we have not talked about the existential threat as such. What is it seen as an existential threat for the CS, and why is something defined as a threat? The realist's explanation for these questions would be very obvious. Every potential security threat would have had a military-based background. Nevertheless, the modern understanding of the origin of the existential threat can have more than simply the military background. Buzan et. al mentioned in their book (1998) that the nature of the existential threat depends on the type of sector that we are talking about. According to their definition, "sectors are viewed on the international system through a lens that highlights one particular aspect of the relationship and interaction among all of its constituent units" (Buzan et al., 1998, p.27). It means that each sector is unique and will respond to the existential threat differently. Buzan et al, distinguish between military, political, environmental, societal and economic sectors. As this thesis is particularly dealing with the European migrant crisis, the societal sector is the one that we have to look at in greater depth. In the societal sector, the collective identity is embedded thus some of the external changes might be seen as too dangerous for the identity that they will be treated as an existential threat because they can destroy the original collective identity. On the other hand, some of the changes can be accepted because society perceives it as a part of the evolution of the identity (ibid.). Therefore, the position of the particular EU Member States on the migration crisis may vary from country to country despite being part of one big unit such as the EU. Furthermore, looking at the situation from the position of the securitizing actors, the language they used to address the migration crisis as the security issue allows them to act in an extraordinary way, e.g. closing borders or using military troops, while at the same time avoiding the international responsibilities, such as not respecting the international treaties (Browning & McDonald, 2011). Because the whole issue has been treated as an existential/security

threat, the security action steps taken by the states have been tolerate, however, under normal circumstances, these steps could be typically seen in case of the war (ibid.).

Seen in the light of this theory, our problem formulation could be explained by the following hypothesis: The reasons why the violations of human rights of migrants and refugees occurred within the context of the European migrant crisis can be to some extent explained by the concept of securitization, in which migrants are seen as a security threat for some EU Member States, and the extraordinary actions taken by the EU and its Member States are acceptable even though the most fundamental principles of human rights are not respected.

2.1.2. Human rights protection in the concept of securitization

Undoubtedly, the CS approach privileges the state-centered security over human-centered security. It means that security is in the hands of the state and the state has a right to use all the necessary measures in case the issue has been marked as an existential threat. Thus, the security agenda is always superior to the other priorities which are under the normal circumstances fully aligned with the principles of democracy, rule of law but also with human rights (Krasteva, 2018). In case when an existential threat is present, the state deemphasizes the protection of the welfare of its citizens. As the migrants coming from the third countries are collectively seen as a security threat, the chances to provide them with human rights protection are even lower (Zapata-Barrero & Gabrielli, 2017). Another problem is that migration as such is very often associated with more general security-concerned issues like terrorism or organized crime (ibid.). Based on these (il)logical premises of linking migrants to terrorists and vice versa, states put aside the ethical principles. Therefore, the way the migrants are being treated only proves the position of the state on this issue. The reports from Human Rights Watch, IOM, or Amnesty International provide obvious evidence that the violations of human rights committed on the migrants are a common practice despite all of the human rights conventions and declarations that have been ratified by the Member States (ibid.).

Unsurprisingly, the CS concept caused a huge discourse among scholars. For instance, Ken Booth argued that “traditional approach to security wrongly privileged the state and the preservation of the state regime at the expense of individuals” (as cited in Browning and McDonald, 2011, p.244). Therefore, there should be a shift from the state-centered security to human-centered security. The term ‘human security’ has been developed from the United Nations Development Programme called Human Development Report which associates security with people rather than with territory and it also deeply analyzes national and global concerns of human security (UNDP, 1994).

Although the concept of the primacy of human security would help to deal with the protection of the human rights of migrants and refugees, the critics are saying that human security became the cover for the Western liberal countries to imply neo-imperialist policies that can include, for example, ability to militarily intervene in the developing countries if the human security of the local citizens is in danger (Browning & McDonald, 2011). As it is known from the past, some of the interventions were neither successful nor did they respect human rights. In the case of the migration crisis in Europe, Jef Huysmans claims in his book *The EU and the securitization of migration* (2000) that asylum, commonly associated with the human rights protection, is not framed in the same way when the migration is seen as a security threat. States are mobilizing their military troops or police to control the internal borders and regulate the inflow of the migrants on its territory. A similar approach is seen also on the external border where the EU decided to apply a very strict control in order to stop the illegal inflow of the migrants (Zapata-Barrero & Gabrielli, 2017).

Looking at the securitization theory through these lenses, we can observe that there is a clash between security and human rights. To elaborate on it, the protection of human rights is put aside once the issue is classified as a security threat. Nevertheless, human rights do not have to be a necessarily threatened. Rhode E. Howard-Hassmann provides the explanation in which she distinguishes between the narrow and broad view of human security. The broad view privileged the state and subordinate human security. The broader view of human security is characteristic of the CS approach. Contrary to that, the narrow point of view “proposes stronger enforcement mechanisms for the international community to remedy extreme human rights violations, whether interstate or intrastate” (Howard-Hassmann, 2012, p.98). Furthermore, she added that despite looking at the human rights protection from the narrow point of view, human rights are still not in the center of attention of the states as they should be. The problem might be the strong monopolized position of the states which do not consider human rights protection as the top issue that should be looking at when it comes to the security threat.

2.1.3. Limitations of the Critical Securitization Theory

Like any other theories, even critical securitization theory has its limits which could affect the explanation of certain phenomena in our thesis. One of the weaknesses often criticized by scholars is the lack of explanation of the relationship between the two above mentioned elements of the security action, the securitizing actor and the audience. The main communication channel between the actor and the audience is through the actor’s speech act. Based on the actor’s speech, the audience may

react in two ways: accepting or rejecting the actor's proposal. Once the audience accepts the proposal it means that people believe that the problem is real. However, here are two concerns that can arise. First, the model of the actor-audience relationship can be applied only when we talk about liberal democratic countries (Stritzel, 2007). Several questions might be asked, such as: *Are we always talking about one audience? What if there is more than one? Which one is then more relevant? How one can say that the audience has been persuaded?* These questions can be relevant when it comes to liberal democracies but *what if the country is not considered to be democratic? Can we talk about the relationship between actor and audience at all?* Although Buzan and Weaver realized some of the problems that could be explained in greater detail, Stritzel insists that the CS approach could go even more beyond and be even more comprehensive, especially, in the social sphere, hence focusing more on the position of the audience (ibid.).

The second concern rests on the verification of the actor's statement. For CS the act of approval of the actor's statement by the audience is the sign that the statement is real. However, this does not have to be necessarily true. The actor's interpretation of the issue can be an absolute lie, but the actor's linguistic skills can make it look real. Thierry Balzacq (2010) argues that "language does not construct reality, at best, it shapes our perception of it" (p.12). Undoubtedly, language is an important element, nevertheless, some of the threats are not based solely on the use of language.

Therefore, in our thesis, we will not only focus on the positions of the EU and its Member States on the migration issue, but we will analyze the reports of the various international organizations to get an objective opinion on this issue. Moreover, we will argue that states are still obliged to respect the international treaties, especially, those which are dealing with the protection of human rights. Despite the criticism of the Critical Securitization Theory, the core of the arguments is essential for our thesis because it can help us to explain the action steps taken by particular Member States which further led to the violation of human rights. However, the extraordinary situation cannot be and will not be accepted as an excuse to try to avoid the responsibilities that the countries have towards the international treaties.

2.2. Nativism

One of the theories of international relations that might explain the violations of human rights committed by the European Union within the context of the European migrant crisis is the theory of nativism. Xenophobia and nativism are related concepts as they both represent ideas of exclusion of certain groups. The word xenophobia is in itself made out of words 'xenos' and 'phobos,' which translate to Greek as stranger or guest, and fear, respectively (Hervik, 2015). Due to the fact that the

word 'racism' might provoke strong reactions in many cultures, xenophobia has ever since come to represent this term in many countries as well, and now serves as a word to describe not just the fear of other, but hatred towards the other as well (ibid.). The subject of hate is an entity opposing a given collective identity, while at the same time, this given collective identity is created by this subject of hate. This is because being contrary to the subject of hate constitutes the foundation for the collective identity itself (ibid.).

Nativism is characterized by assigning privilege for the self-appointed 'native' group in a certain area, which is also the group that represents the majority. This group opposes a minority group, which receives excluding treatment due to its perception of being foreign, or because it arrived to the same area later than the 'native' group (Hervik, 2015). Many nativists also believe that there are many cultures and people's connection to a specific place and culture is firmly 'natural,' which means that this given belonging is what defines their identity. From the anthropological point of view, the 'native' society can recognize a threat to the existence of its culture by the other cultures with the reasoning that they are incompatible and impossible to integrate (ibid.). This recognition drives 'the natives' to consciously attempt to maintain or even restore certain parts of its culture, making xenophobic tendencies and extraordinary reactions justifiable (ibid.). As the perceived feeling of threat increases, the preservation of this social identity starts to take place by strengthening the membership and definition criteria of the in-group, along with resistance tendencies towards the out-group (Daigle et al., 2019).

Another characteristic of nativism is that not only it views identity as natural, but it also considers cultural differences and identity as stable and unchanging. Due to the natural assignment of people to a specific place, cultures will unavoidably clash with one another once they come to interaction. The reasoning behind this idea is that contact between them is a result of removal from their natural homeland (Hervik, 2015). Even though anthropological research proves that cultures have a much more complex nature and that internalizing the nativist ideology is not natural but socially constructed, people's subscription to the nativist ideas is diffused through media and the process of socialization (Hervik, 2015). Nativism is in fact constructed by a particular discourse conveying ideas of exclusion or xenophobia and can be institutionalized with the introduction of restrictionist laws (Gans, Repplog, & Tichenor, 2012).

Nativism can be clearly visible in the political sphere, most notably by dividing the society along the 'us vs. them' faultline. Nativists view and treat the 'us' group, which consists of the self-appointed 'natives,' as inherently privileged and superior over 'them,' which is typically a group of inferior immigrants entering the society from the outside (Daigle et al., 2019). Immigration is

therefore perceived as a negative phenomenon for the already established group, as by allowing outsiders to enter a society and bring their differences with them, the 'native' group is exposed to a risk of potentially losing its or disappearing completely (ibid.). Some of the most common differences between the two groups, which are pointed out by nativists, are values, culture, religion, ethnicity, or language. Because nativists view one's identity as constant and unchanging, the two worlds represented by the two groups will inevitably clash if they come to contact. With such a negative view on immigration, the political parties which have embraced the nativist ideas the most are those leaning to the far-right of the political spectrum, or parties or holding extremist views (Betz, 2007). Nativist sentiments can be observed and reflected in the rhetoric of xenophobic political figures, but also in policies of such political parties and the extent to which they are successful at elections (Daigle et al., 2019).

2.2.1. Nativism in the United States

The primary context where the theory of nativism was applied was within the scope of settler nations, notably the United States. Within the context of this country, nativism came to define the minorities as the people who hold ties to foreign element which are not to be found in the land they came to inhabit, and for this reason they were the subject of fierce hostilities (Hervik, 2015). Many nativists considered people to be either superior or inferior on the cultural or intellectual level, leading these nativists to oppose immigration of some people. They would also oppose immigration based on fear of losing jobs to these people, or due to scepticism in regards to their ability to adapt to the majority culture, or by believing that they would be a burden on the state, as the government would be responsible for the provision of public services for them (Gans, Replegle, & Tichenor, 2012).

Upon the establishment of the first colonies, the group that came to inhabit them were primarily people from Great Britain who for the most part spoke English, belonged to the Protestant branch of Christianity, and were convinced capitalists. These values came to clash with those of the Native Americans, whom the self-appointed superior white Anglo-Saxons considered underdeveloped, which served as a basis for their subsequent defeat or annihilation (Gans, Replegle, & Tichenor, 2012). These people, along with African-Americans, were deprived of voting rights in the country and were not allowed to join the in-group until much later, even though they could have been physically present on American soil much longer than other white Protestants immigrants coming from Europe (Casanova, 2012). Large numbers of immigrants from all over Europe, many of which were members of Catholic Church, were also a target of hostilities because this branch of Christianity was viewed as a foreign, hierarchical, and authoritarian religion (ibid.). Due to its recognition of pope

as an authority, Catholics were believed not to be culturally adaptable to free democratic principles (Hervik, 2015).

2.2.2. Nativism in Europe

The concept of nativism can be adapted to the European context as well in many areas. The term Islamophobia does not have a precise definition, it is generally referring to an aggressive form of unproven antagonism towards the Islamic faith and its followers, especially after 9/11 attacks in 2001 when the term entered mainstream prominence. Muslims have ever since become the primary target of accusations for a range of problems existing in the West, ranging from violence and fundamentalist attitudes, to crime and defiance of European neoliberal values (Hervik, 2015). Many Islamophobes believe in the conspiracy theory of Eurabia, which entails the idea that the ultimate goal of Muslims is the establishment of sharia law and a caliphate on the European soil. Muslims are, according to this myth, currently in the process of conquering Europe through mass immigration, collaboration with left-wing traitor European politicians, as well as a high level of fertility rate (Hervik, 2015). While this is merely a conspiracy theory, its impact has been far-reaching as it is responsible for portraying Muslims as a separate race, while also giving incentive for tackling the 'problem' in a spectacular way (ibid.).

On the political spectrum, Europe's right-wing political parties have come to represent the nativist ideas, as their anti-immigrant programs are filled with heavy objection to the idea that multicultural societies were able to exist in functioning democracies (Betz, 2007). This has been especially true with in the recent years as anti-immigration rhetoric has gained a significant popularity across the continent. These parties and political leaders construct their anti-immigrant discourse in a way to put a strong emphasis on the differences between 'us,' local native Europeans, and 'them,' the foreign immigrants. The rhetoric stresses the harm that foreigners with a different non-European culture, can cause negative alterations to the countries' cultures, economic prosperity, or religious composition, and therefore calls for extraordinary actions to preserve the 'native' values (ibid.). Moreover, the rhetoric regarding immigration depicts it the 'non-native' characteristics to be incompatible with the culture of the hosting country. Finally, Islam as a religion, and Muslims as a religious and cultural group are often portrayed by these groups as being a foreign, incompatible (ibid.).

2.2.3. Advantages and disadvantages of nativism

An advantage to the application of nativism is that it describes the anti-immigrant discourse and actions in new ways, namely as they are undertaken during the time of a large-scale migration. It clarifies the distinctions that exist between the self-appointed native populations and the alien population during the imagined or actual crisis, as well sheds light on how people internalize particular views, ideas, or connections vis-à-vis immigrants, which have traditionally been exclusively associated with the political right. All of such innovations allow for broadening of perspective on anti-immigration and transcending the traditional left vs. right fault line (Guia, 2016). Moreover, nativism has also been successful in adapting to the background of countries all around the world because of its high level of versatility, which allows it to discuss phenomena happening outside the original context of settler nations (ibid.).

Nativism has a number of drawbacks, namely when it comes to fulfilling the criteria of an ideology. One of the criteria dictates the need for coherence of specific beliefs and ideas, which, in the case of nativism, depend largely on the space and time and cannot be generalizable. Moreover, the notions that nativism attempts to carry are not well-fixed, nor can the exact ideology of nativism be traced to a specific initial document, social movement, or particular policies (Guia, 2016). Such drawbacks in defining the nativist ideology have led Guia (2016) to reconsider whether or not nativism really is an ideology and not merely a sub-branch of nationalism. An argument for this reclassification is that it often incorporates populist discourse, which allows it to draw parallels between specific in and out-groups in a particular society and define the different level of entitlement these groups receive. Nativism could therefore be considered a flexible line of reasoning with the ability to adapt to contexts of specific countries (ibid.). Another drawback is the fact that nativism allows for self-identification of the native population, which also strives to bring back or maintain its original cultural practices. While nativism is primarily applied when describing the rhetoric and policies against immigrants, its shortcomings lie in instances where several groups could claim to be the natives to a certain land (ibid.).

Seen in the light of this theory, our hypothesis is that the nativist theory will help us explain why European Union and many of its member states committed human rights violations on the refugees during the European migrant crisis. It is probable that the EU and some of its member states consciously made steps to make it difficult for refugees to physically enter their countries' territories by erecting walls, or by making asylum provisions difficult through changes in legislation. This could be due to the fact that they perceive the migrants and potential asylum seekers as a threat to the traditional European values, which could eventually cease to exist if no crucial steps are undertaken. These actions of the EU and its member states are therefore justified, even though they might

contradict some of the most important documents protecting the basic human rights. The media outlets and politicians across Europe played an important role in spreading the idea of a ‘native’ Europeans in-group, and the out-group made of the incoming Muslims migrants, both of which had separate given and unchangeable identities, which would be mutually incompatible. Refugees and asylum seekers were given a collective generalized identity, while they were presented as inferior, backwards, violent, or inadapted.

3. Overview

3.2. The EU competences

The EU is only entitled to act within the scale of competences that are conferred on by the Treaties (EUR-Lex, 2016). Anything else that is not included in the Treaties is solely in the competences of particular Member States. The division of the competences is specified in the Lisbon Treaty which divides the competencies into three main categories: exclusive competences, shared competences, and supporting competences (ibid.).

The EU has exclusive competences in the areas like custom union, monetary policy for euro areas countries, establishing the competition rules necessary for the functioning of the internal market, common commercial policy, conservation of marine biological resources under the common fisheries policy, and conclusion of international agreements under certain conditions (ibid.). To have exclusive competences means that only the EU can legislate and adopt the acts and the Member States can only implement them (European Parliament, n.d.).

Shared competences are the ones in which the EU and Member States are both participating in the legislation process. These competences are in the following areas: internal market, social policy, economic social and territorial cohesion, agriculture and fisheries, environment, consumer protection, transport, trans-European networks, energy, area of freedom, security and justice, research, development cooperation and humanitarian aid (EUR-Lex, 2016). Moreover, the EU has shared competences with the Member states when it comes to immigration policies. For example, Article 79 (5) Treaty on the Functioning of the EU allows the EU to control the number of migrants entering any EU Member state (European Parliament, 2019).

Last but not least, supporting competences enable the EU to support or complement the action of the Member States. The areas in which the EU has only the supporting role are protection and improvement of human health, industry, culture, tourism, education, civil protection and administrative cooperation (ibid.). A typical example of the exclusive competence of the Member

States is also an asylum politics. Even though the EU established so-called Dublin Regulations, the responsibility for examining the applications by the third-country nationals or stateless people is solely in the competences of the Member States (Tubakovic, 2017). To elaborate more on the Dublin Regulations, the first idea to create a common mechanism that will make states responsible for asylum protection came in the 1990s. Moreover, the Dublin Regulations also assures that third-country national will be not able to apply for asylum in several EU countries to speed the process of being accepted by at least one them (ibid.). There is also a special set of rules that determine which Member States are responsible for the asylum application process. Throughout the years, this mechanism has gone through several amendments, with the last one coming in 2016 when the EU has been challenged by the massive inflow of irregular migrants. During the migration crisis, the Dublin system nearly collapsed as the countries laying on the external borders have not been able to process that many applications coming at the same time. Therefore, the EU Commission introduced Dublin IV in which three important action steps have been taken. The first one “foresees that an applicant must apply in the member state either of first irregular entry or, in the case of legal stay, in that member state” (Tubakovic, 2017, p.4). The second step ties the particular member state the take the responsibility for every asylum-seeker who has been registered on its territory. Last but not least, in case that the Member States are facing an unbearable number of the asylum requests the corrective allocation mechanism will be applied which means that Member States will share the responsibility in this matter and will accept some of the applicants (ibid.).

Thanks to the Lisbon Treaty, the unique power has the Charter of the Fundamental Rights which is not directly incorporated into the Treaty but through Article 6 the Treaty on European Union:

“[...] recognizes the rights, freedoms, and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties” (EUR-Lex, 2016, p.19).

It means that the Charter of Fundamental Rights has also legally binding character as any other EU treaties (European Parliament, n.d.). Therefore, the Member States have to comply with it. However, there are several reports published by international organizations like IOM or HRW that confirm that the EU and its Member States are violating the Charter of the Fundamental Rights and also other human rights conventions that the Member States signed. The particular cases will be deeply explained in the following chapters of our thesis.

In terms of the migration and refugee crisis, it is also important to mention the Common Foreign and Security Policy (CFSP) and its Common Foreign and Defence Policy (CFDP). CFSP was established by the Maastricht Treaty in 1993. Its main objectives were to safeguard the common values, fundamental interests, independence and the integrity of the Union, promote international cooperation, strengthen the international security as well as develop the rule of law and respect for human rights (Borragán & Cini, 2016). Since 1993 the CFSP and CFDP went through some amendments and changes. The latest change has been done by the Lisbon Treaty when two very significant clauses were incorporated. The first one was the Solidarity clause which “confirms that the EU states are obliged to act together when another member state is the victim of the terrorist attack or a natural or man-made disaster” (Borragán & Cini, 2016, p.247). The second one is the Mutual Assistance which “states that if an EU state is a victim of the armed aggression, other EU states have the obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nation Charter on self-defense” (Borragán & Cini, 2016, p.247). Nevertheless, the Solidarity clause should be highly questioned as the migration crisis showed that some of the Member States have not shown the solidarity to the states that had been affected by the massive inflow of illegal migrants the most (Bendiek, 2017). For instance, countries like Hungary or Slovenia have decided to act on their own and they closed either entirely or partially their borders which means that they shifted the problem of the migration to their neighboring states. Undoubtedly this is obvious proof that solidarity obligation has not been fulfilled (ibid.).

The enforcement of the legally binding documents and acts set by the EU in the hands of the Court of Justice of the European Union (CJEU). The Court is allowed to proceed against Member States if the states fail to fulfill the obligations (European Parliament, 2020). The jurisdiction of the CJEU is extended to all activities of the EU, however, there is an exception in the case of CFSP where CJEU has only limited competences (Bendiek, 2017).

3.3.EU-Turkey deal

Turkey shares almost 200 kilometers-long land borders with Greece, a country laying on the EU external border. Ever since the migration and refugee crisis has hit Europe, the Turco-Greek border has become one of the main gateways for illegal migration. In 2015, when the crisis was in its peak, the total number of migrants trying to reach Europe's land via this Eastern-Mediterranean route was around 885,000 including crossing by sea and land as well (FRONTEX, n.d.).

The situation on the border has changed a year later when the number of illegal border crossings plummeted from almost 900,000 to 182,000 due to an EU-Turkey agreement on the migration crisis (ibid.). The EU and Turkey started to negotiate already in 2015 but the final agreement has been reached on March 18, 2016. Both, the EU and Turkey pledged to combat illegal migration by implementing several action steps. As it is stated in the agreement, Greece will return all new illegal migrants who managed to get on its land back to Turkey. The exception can be made if the refugee decides to apply for asylum. In that case, the request for asylum will be processed individually by the Greek authorities in accordance with Asylum Procedures Directives, set of the common rules for granting and withdrawing international protection settled by the EU Commission. In the case of rejection, the applicant will be returned back to Turkey (European Council, 2016).

The second step offers an opportunity for the resettlement of Syrian refugees taking into consideration a UN Vulnerability Criteria and 1951 Refugee Convention. According to UN criteria, vulnerability is defined as:

“the risk of exposure of Syrian refugee households to harm, primarily in relation to protection threats, inability to meet basic needs, limited access basic services, and food insecurity, and the ability of the population to cope with the consequences of this harm” (UNHCR, n.d., p.1).

The Resettlement Programme, proposed by the EU, has been done in cooperation with UNHCR (Radjenovic, 2019). The role of UNHCR was to ensure that refugees are entitled to the resettlement. It means that only the refugees who fall under the definition of the 1951 Refugee Convention are eligible for relocation (ibid.). Once the preconditions are fulfilled, [...] “third-country nationals are transferred from a third country and established in a Member State where they receive refugee status, subsidiary protection status or another status offering similar rights and benefits under national and EU law” (Radjenovic, 2019, p.3). The initial number of relocated people from Turkey was limited to up to 54 000. The priority should have been given to those of them who have never entered the EU

territory illegally before. The reason for resettling particularly the Syrian refugees was based on statistics ranking the Syrian refugees as the largest population of forcibly displaced people in the world (UNHCR, 2020). Around 5,6 million Syrians were forced to flee their country and 3,5 million of them sought help in Turkey (ibid). In March 2019, hence three years after the EU-Turkey deal was signed, European Commission published a statement on resettlement in which 20,292 Syrian refugees have been resettled to some of the Member states of the EU (European Commission, 2019).

Last but not least, Turkey's responsibility is to control the border and prevent new sea or land routes for illegal migration to form (European Council, 2016). To fulfill all the requirements mentioned above, the EU initially allocated € 3 billion and promised to provide another 3 billion of funding up the end of 2018 (ibid.). Furthermore, the EU and Turkey were supposed to continue upgrading a Custom Union as well as allowing visa-free traveling to EU member countries for the Turkish citizens if Turkey met all the benchmarks. It included fighting against corruption, data protection, enhanced cooperation with EUROPOL or changing the law on counter-terrorism (ibid.).

Two months later after the agreement was made, EU Commission reported that Turkey was making a progress in the implementation of the benchmarks and therefore the EU should lift the visa requirements for the Turkish citizens (EU Commission, 2016). Notwithstanding the foregoing, Turkey has rejected to fulfill one of the conditions which are the change of the anti-terror law. Moreover, the situation in the country has become tense as Turkey decided to open its border at the beginning of March 2020, and hence allow migrants to get in Europe (BBC, 2020).

Undoubtedly, Ankara's decision caused a huge criticism on the Greek side as the deal between the EU and Turkey from 2016 was not fulfilled. The Greek government said, "Turkey, instead of curbing the traffickers' channels of migration and refugees, has itself turned into a trafficker" (BBC, 2020, para.24). The reasons behind Turkey's decision to open the border rest in the escalation of the conflict in the Syrian northwestern province of Idlib where thousands of Turkish soldiers have been fighting against rebels who support Assad's regime and 33 of them have been killed at the beginning of March 2020. Idlib offensive has forced millions of people to move towards the Syrian-Turkish border and Turkey does not have the capacity and sources to take care of them (Smith & Busby, 2020). Additionally, Turkey accused the EU of failing to fulfill the agreement from 2016 saying that € 6 billion are not enough money to provide decent living conditions for around 4 million forcibly displaced people who are currently located in Turkey (Rankin, 2020).

Amnesty International also reported that the EU's deal with Turkey was about reducing the number of illegal arrivals to Europe rather than maintaining human rights protection (Amnesty International, 2017). Furthermore, many of the Syrians who have been seeking asylum in Greece

were forcibly returned to Turkey albeit they had had the right to ask for protection (ibid.). When the tension on the Turkey-Greece border increased in March 2020, Greece decided to suspend the asylum applications. The UN reacted that neither international nor EU law provided “any legal basis for the suspension of the reception of asylum applications” (Baczynska, 2020, para.5). Additionally, conditions for the migrants and refugees in Greece were also not favorable. Camps were overcrowded, providing people with inadequate drinking water or broken toilets and showers (Rankin, 2020). All Member States of the EU, as well as Turkey, signed the 1951 Refugee Convention, yet, the way the refugees and migrants are treated is in contradiction to what the convention dictates (Vari, 2020).

Unsurprisingly, any of the parties involved does not take responsibility, and instead, they are blaming each other. Turkey is blaming the EU for not fulfilling the condition from 2016, Greece is blaming the EU for not giving enough support, and the EU is accusing Greece of not being able to deal with funding properly (ibid.).

3.4. Detention Centers in Libya

After the death of Libyan dictator Muammar Gaddafi in 2011, the situation in Libya has remained very unstable. A short period of peace was followed by violence in 2014 when two engaged parties started to compete for legitimacy. Two separate governments have been created and the UN together with the EU officially recognized the Government of National Accord (GNA) that was based in Tripoli. In 2018, the conflict between the two governments appeared again. The situation in the country became very dangerous that NGOs like Médecins Sans Frontières and other UN agencies decided to temporarily reduce the number of humanitarian workers operating in the most dangerous areas (Human Rights Watch, 2019).

Considering the circumstances mentioned above, the people’s security and rights protection could not and were not maintained at all. According to Human Rights Watch (HRW), several cases of abuse on the migrants by smugglers and militias have been reported including killings, beating, sexual harassment, etc. (ibid.). Moreover, HRW found out that smugglers are very often connected to government officials, even with those who are representing GNA (ibid.). As dozens of migrants were willing to risk their lives by crossing the Mediterranean Sea, smuggling has become a very profitable business for the smugglers. In 2015, the number of migrants coming from Libya to Italy via the Central Mediterranean route was around 154,000, and in 2016 this number even increased to 181,000 (European Stability Initiative, 2017). The death toll was 2 869 people in 2015, and the

number almost doubled in 2016 to 4 579. In comparison to the Eastern Mediterranean Route through which new arrivals were coming to Greece from Turkey, the difference was very significant. In 2015, 806 out of 885,000 people did not survive the journey, and the statistics from 2016 showed the number 434 out of 182, 000 of new arrivals (ibid.). Furthermore, the decrease of migrants arriving by Eastern Mediterranean Route in 2016 was due to the EU-Turkey agreement. Based on the statistics of FRONTEX, European Border and Coast Guard Agency, the number of illegal crossings from Libya to Europe culminated in 2016. During the following year, the number dropped to 119,000. In 2018 the total number plunged 80% to 23 485 which was the lowest number since 2012 (FRONTEX, n.d.).

The massive inflow of the migrants to Europe through the Central Mediterranean route led to the strengthening of the partnership between the EU and Libya. Based on the EU Charter of the Fundamental Rights as well as the 1951 Refugee Convention and its 1967 Protocol, the EU, and all its Member States have had a legal obligation to protect all the migrants and refugees who reached the EU territory (Vari, 2020). Libya is not a signatory of the 1951 Refugee Convention and its Protocol from 1967, which means that the country is not required to fulfill the human rights standards to the same extent as the convention requires (ibid.). The cooperation with Libya allowed the EU to directly avoid this responsibility while at the same time it carried on financially supporting the GNA and the NGOs operating there. The EU has allocated € 266 million from the EU Emergency Trust Fund for Africa and an additional 20 million through bilateral assistance (Human Rights Watch, 2019). This money was intended to be spent on training and increasing the capacity of Libya's border control as well as to improve the conditions in detention centers. While the border control seems to be showing the results in reducing the number of illegal crossings, the guards deal with rescued people in questionable ways. For instance, in November 2018, the guards used tear gas and rubber bullets to violently disembark 80 migrants from the Cargo ship *Nivin*. As HRW reported, some of the people were injured and transferred either to prison or to the detention centers where the torture and violation of human rights continued (Human Rights Watch, 2019). Aggressive and violent behavior of Libyan coastal guards was also reported in other cases. Giuseppe Perrone, Italian ambassador to Libya, admitted the inappropriate behavior of the guards but at the same time mentioned that the concerns had been addressed and guards have been working on its improvement (ibid.). It is important to mention that Italy has a very close cooperation with Libya, as in 2017 they even signed a Memorandum of Understanding in which both parties commit to combat illegal migration. Italy has been financially and materially supporting Libya, and in exchange Libya has been keeping the migrants and refugees on its territory (Vari, 2020). Despite the warnings from the international organizations about unlawful and inhuman conditions, Italy has been continuously cooperating with

Libya. On February 2, 2020, both countries even extended the Memorandum for the next three years (Amnesty International, 2020). Although it might seem that Italy is no more responsible for the degrading conditions in detention centers or the abuses committed on migrants by Libyan guards, the International Law Commission (ILC) issued the Draft Article on State Responsibility (Vari, 2020). Chapter IV of the Draft Article (2001) specifies when exactly is the state responsible for internationally wrongful acts. This applies also in the case when the state is in connection with another state which commits the wrongful act itself. In the commentary section it is stated:

[...] “internationally wrongful conduct often results from the collaboration of several States rather than of one State acting alone. This may involve independent conduct by several States, each playing its role in carrying out an internationally wrongful act. Or it may be that several States act through a common organ to commit a wrongful act. Internationally wrongful conduct can also arise out of situations where a State acts on behalf of another State in carrying out the conduct in question.” (UN, 2008, p.64)

Additionally, Article 16, Chapter IV mentions:

“a State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State.” (UN, 2008, p.65)

Based on the statements mentioned above, Italy can be still responsible for the wrongful acts committed by Libya on the migrants and refugees as Italy is fully supporting Libya by sending there the vessels, money and other equipment (Human Rights Watch, 2019). Another criticism also came from the Italian Association for Juridical Studies which concluded that “The EU betrays basic rule of law principles and infringes the democratic basis for the peaceful coexistence of citizens” (ASGI, 2017, para.2). Moreover, the EU may be responsible for the violation of the principle of *non-refoulement*, which “guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This principle applies to all migrants at all times, irrespective of migration status” (UNHCR, n.d., para.1).

Undoubtedly, pushing people who are seeking international protection back to Libyan territory or keeping them in detention centers is a shred of clear evidence that the principles of non-refoulement have not been fulfilled.

The fact that Libya has not signed the 1951 Refugee Convention does not only affect the migrants and refugees whose rights are not respected but it has a profound impact also on the functioning of the IOs and the NGOs on its territory. For instance, the UNHCR has been pointing on weak cooperation between them and GNA, which makes the job of the humanitarian workers less effective. One of the many problems is, for example, the presence of the IOs during the disembarkations of the refugees who had been caught on the sea. In Libya, there are 12 official disembarkation points but dozens of others that are unofficial. The UNHCR or IOM can be present only at the official points and hence they are missing the opportunity to provide the basic material and health assistance to thousands of other rescued people (Human Rights Watch, 2019).

When it comes to detention centers, the situation there remains critical. In the middle of the year 2018, there were around 8,000-10,000 migrants and asylum seekers located in detention centers but according to the UN, the total number of the migrants living in Libya can be more than 680,000 (ibid.). Even though 25 detention centers have been already closed in Libya by November 2018, migrants who are in the centers that remained open are experiencing inhumane conditions (Amnesty International, 2020). The HRW undertook a visit of four official detention centers in 2018 in order to analyze the local living conditions, and their findings showed that the centers lacked the basic material and medical staff as well as human resources. Moreover, the quality and quantity of food, drinking water, and cleaning materials was insufficiently low due to the government's irresponsible behavior (Human Rights Watch, 2019).

To mitigate degrading live conditions of people in detention centers, the IOM with the EU collaboration launched Voluntary Humanitarian Repatriation (HVR) program in 2016. The main purpose of the program was to help the people who voluntarily decided to return to their home country. The repatriation program includes: “individual counseling and vulnerability screening, immediate direct assistance, assistance to obtain travel documents and other consular services, pre-departure health checks, coordination with countries of origin for specific assistance to returnees and victims of trafficking and arrival assistance and reintegration assistance” (IOM, n.d., para.2). During the first year of the program, IOM helped 2,777 migrants to return home, and in 2017 the number increased to 4,030 (ibid.). There was also another program launched in 2017 by UNHCR which started to facilitate the transfer of the asylum seekers from detention centers in Libya to Sudan, Ethiopia and Chad. Even though the action steps have been taken the results are not sufficient enough

as the demand of the migrants to be either resettled or repatriate is higher than the actual capacity and resources of both IOs (Human Rights Watch, 2019).

3.5. The Western Balkans Route

The region known as the Western Balkans is comprised of the following countries: Serbia, Bosnia and Herzegovina, Montenegro, North Macedonia, Albania, and Kosovo. The majority of these countries used to be a part of Yugoslavia, a country which has seen a violent dissolution in the 1990s. The bloody legacy has marked the region to this day, as it is nowadays home to some of the poorest countries in Europe.

The region has been put into the spotlight as it has witnessed the emergence of the so-called Western Balkans Route in July 2015, which has been used as a land route for refugees and migrants heading towards Western Europe. The route started in Greece, following into North Macedonia, Serbia, and finally into Hungary. After the decision by the Hungarian government to build a fence along its southern border with Serbia, the route was redirected westwards to Croatia, and once Hungary erected another fence along the border with Croatia, and the route was redirected towards Slovenia (Sabić & Borić, 2016). The Western Balkans Route officially came to an end on March 18, 2016, with the signing of the EU-Turkey deal and the erection of a fence along the border between North Macedonia and Greece (Hume, 2016). In the period from July 2015 until March 2016, an estimated amount of 700,000 migrants have passed through this route (Sabić & Borić, 2016). Although the route ended formally, many refugees have continued using it, as well as other countries in the region to reach Western Europe by foot (Pundy, 2019).

Ever since the wars in the 90s, the Western Balkan nations, and other countries in the region have come to differ from one another quite significantly in terms of development, political arrangement and their relationship with the European Union. Slovenia was the first one to become an EU member in 2004 and a member of Schengen in 2007 (European Union, 2020). Croatia has become a full EU member state in 2013 and is currently negotiating acceptance into the Schengen Area (Guggenheim, 2019). Serbia, Montenegro, North Macedonia, and Albania are EU membership candidate countries, while Bosnia and Herzegovina and Kosovo are potential candidate countries (European Cluster Collaboration Platform, 2019). Their respective relations with the EU and the developments towards accession to the EU membership, as well as domestic political situation and their different level of economic development are factors which have impacted the way the Western Balkan nations have acted during the European migrant crisis.

3.6. North Macedonia

The initial point on this route is North Macedonia, at the time called the Former Yugoslav Republic of Macedonia, and the main entry location into the country was from the Greek village Idomeni, leading into the Macedonian border town Gevgelia. Once the migrants crossed the border, they were accommodated at the Vinojug camp in Gevgelia, after which their route continued north towards Serbia by passing through Macedonian town Tabanovce, entering Miratovac in Serbia, right across the border (Sabić & Borić, 2016). According to UNHCR, around 697,228 migrants passed through Idomeni and Gevgelia from June 1, 2015, and the UN resident's coordinator office claims that the year 2015 saw over 750,000 refugees stepping foot into the Macedonian territory (ibid.). On a daily basis, there could be around 10,000 or 5,000 refugees entering Macedonia during October 2015 and November 2015 respectively (ibid.).

Not being a part of the European Union, the North Macedonian authorities claim that handling the burden is too big of a challenge. As the country's president Gjorge Ivanov claimed: "We are facing innumerable illegal entries, the destruction of state and private property, the use of counterfeit passports and violence against security forces on the border – all of this by migrants intending to avoid registration and the verification of who actually has a right to asylum. Yet we are not in the European Union" (Ivanov, 2016, para.2).

While the country first applied to be an EU member state in 2004, the media coverage of the European migrant crisis emphasized that North Macedonia's ascension to the bloc has been blocked for a long time by the EU itself. This led to defying the idea that the country should be regarded as the EU's partner during the crisis (Sabić & Borić, 2016). Despite the fact that a large amount of people has passed through Macedonia, only 83 applications for asylum were submitted in 2015, making North Macedonia primarily a transit country. While the camps in Gevgelia and Tabanovce possess the facilities to accommodate refugees staying only for a short period of time, Macedonian authorities claim that they could not withstand the costs of accommodating the migrants who are staying long-term. It attempted to provoke the EU into increasing the flow of funds into the country to handle the crisis, and it did so by declaring the state of emergency along its borders and tackling the incoming migrants with teargas (ibid.). The EU has since the dawn of the crisis provided more than € 4.7 million in humanitarian funds so that the transit and reception camps could provide food, water, hygiene, protection, and other basic needs to the refugees and their infants who have stayed in the country after the EU-Turkey deal (European Commission, 2018).

North Macedonia has also been accused of human rights violations within the context of the European migrant crisis following the erection of a fence along its southern border with Greece. This

led to the formal end of the Western Balkans Route, but also to a dire consequence where up to 14,000 migrants were left abandoned on the Greek side of the border, being forced to stay in conditions lacking appropriate housing and hygiene (Hume, 2016). North Macedonia and other countries in the region have also enforced a national screening program, allowing only the citizens of Syria, Afghanistan, and Iraq to enter the country's territory. A later agreement that came into force restricted the passage even further by only allowing the entry based on humanitarian aid to those who presented a valid ID on the border (Sabić & Borić, 2016). Without the intention to seek asylum in Germany or Austria, and without having the Syrian, Afghan, or Iraqi citizenship, thousands of potential asylum seekers were left behind on the Greek side of the border and were not allowed to enter North Macedonia despite having a rightful reason to apply for asylum (Human Rights Watch, 2016). As North Macedonia is a signatory to the Universal Declaration of Human Rights, its actions to only allow nationals of certain countries to apply for asylum are going directly against the declaration (ibid.). This has led the migrants to seek alternative routes across the border, which have often included paying high fees to smugglers, and they were also subject to beatings and abuse by the Macedonian police as they were trying to cross illegally (ibid.).

3.7.Serbia

The next country along the Western Balkans Route is Serbia, where the migrants typically entered by passing the Macedonian southern border town Tabanovce, entering into the Serbian town Miratovac. From there, their intention was to continue further north and reach Hungary, which is a country that is a part of the European Union and the Schengen Area. However, Hungary has started to build a fence along its border with Serbia and imposing more severe punishments for crossing it illegally, which inspired the migrants to seek other routes to Western Europe passing through Croatia (Sabić & Borić, 2016). UNHCR estimates that 815,000 migrants entered Serbia in 2015 with 6,500 people entering on average every day in October and November (ibid.). Similarly to North Macedonia, Serbia was also primarily viewed as a transit country where only a handful of migrants applied for asylum before the country closed its borders. Later on, in March 2016, the amount of applications rose up to 693, while around 1,700 migrants were present in the country, which was due to the fact that the borders were closed (ibid.).

For the European Union, Serbia is a key partner within the refugee crisis. It acknowledges that Serbia's asylum system is not very developed and that the country lacks in accommodation possibilities and functioning institutions, and thus understands that the sudden arrival of a big amount of migrants or asylum applicants challenged Serbia from within and without, leading it to adapt short-

term solutions to cope with the crisis (European Parliament, 2016). The Commissariat for Refugees and Migration is the main Serbian body dealing with finding a solution to questions surrounding refugees, internally displaced persons, returnees under the readmission agreement, as well as asylum seekers (Commissariat for Refugees and Migration). The EU's investment in Serbia have amounted up to € 80 million since 2015, the majority of which was spent on providing the basic needs for the migrants, such as clothing, food, or short-term housing (Zarić, 2018). Additionally, the EU funds for the Commissariat and NGOs were invested into children protection, improvement for the reception of migrants, healthcare, education, as well as the local communities which are hosting the migrants (European Union Support to Migration Management in the Republic of Serbia). As the country is currently undergoing negotiations to become a member of the European Union, Serbia has adopted a cooperative approach with the EU during the crisis. The country's asylum legislation has been recognized to be partially compatible with the EU *acquis communautaire*, falling into the area of negotiations over Chapter 24. Serbia has therefore agreed to follow the EU's justice, freedom, and security models, and has also expressed the will to join the EU quota system for refugees (European Parliament, 2016).

Nonetheless, Serbia has committed several human rights violations within the context of the recent refugee crisis as well. A 'pushback' is described as a forceful expulsion of a migrant from the territory of one country into the territory of another country with the intention to prohibit the migrant from being able to stay protected in the country's legal system. Such actions are perpetuated by the countries' authorities themselves, and according to Article 4 of Protocol No 4 to the European Convention on Human Rights, they are illegal due to the fact that migrants are being stripped of the possibility to apply for asylum, but also because of the lack of legitimate resolution to expulse them, or because the migrants could potentially be sent to places which are not considered safe (Belgrade Centre for Human Rights, Macedonian Young Lawyers Association, Oxfam GB). Between January 30, 2017, and February 17, 2017, the Belgrade Centre for Human Rights and Macedonia Young Lawyers Association conducted interviews with 140 migrants and refugees in Serbia and Macedonia. Their testimonials have concluded that 75 of them have indeed been forcibly pushed from one country to another, and the testimonials confirmed the already existing data, which claimed that pushbacks were taking place on a regular basis throughout the entire region and were often accompanied with physical violence (*ibid.*). Amnesty International accused Serbian Border Police of organizing pushbacks back into North Macedonia on a regular basis without going through every migrant's specific reason for arrival in Serbia and therefore finding out whether or not they were seeking

asylum. Moreover, the physical abuse of migrants was commonplace during these illegal pushbacks (Amnesty International).

Even though Serbia is mainly a transit country, it suffers from an insufficient system for asylum applications for those migrants who wish to apply for it. Despite the fact that the country's 2008 Law on Asylum gives migrants the possibility to register their intent to apply for asylum while they are at the border or inside Serbia itself, the process is often discontinued for most migrants (Sabić & Borić, 2016). This is because of bureaucracy as the Serbian authorities regularly display an inability to deliver the protection needs to the migrants in a fast and efficient way. Such delays force migrants to leave the country and seek protection elsewhere Rather than dealing with the insufficiencies of the Serbian system (Amnesty International).

3.8. Croatia and Slovenia

The last two countries on the route to Western Europe are Croatia and Slovenia. Both of them are EU Member States, while Slovenia is also a part of the Schengen Area. As the migrants were in Serbia, their original route towards Western Europe passed through Hungary, but the route was redirected towards Croatia immediately after the construction of the wall on the Serbo-Hungarian border by the Hungarian government. Croatia's response was to shut down its border with Serbia in order to be able to cope with the sheer amount of arrivals, as well as redirecting them to Hungary from its territory. Once Hungary erected yet another wall along its border with Croatia, the migrants started to aim towards Slovenia (Sabić & Borić, 2016). Croatia was accused by the European Commission to fail to live up to the Eurodac regulation, which requires registering the incoming migrants, take their fingerprints, and send them to European Central System within 72-hours (ibid.). Slovenia attempted to summon the international community in order to receive the necessary assistance as it was suddenly overwhelmed by the sheer amount of arrivals, but after being incapable to handle the situation, Slovenia too has constructed a fence along its borders with Croatia (ibid.).

Across the region, Croatia, in particular, is the leader in human rights violations when it comes to illegal pushbacks accompanied by physical abuse of the migrants. Croatia is regularly getting itself rid of the responsibility of dealing with migrants by pushing them back into Serbia or Bosnia and Herzegovina (Tondo, 2018). Médecins Sans Frontières reported 24 cases of intentional trauma among migrants in Serbia from January 2017 to June 2017. The majority of them claimed practices such as beatings, kicking, punching, as well as confiscating or destroying of the migrants' personal belongings. Moreover, the organization claims that in the same period, there were around 1,100 people forcibly moved to Serbia (Médecins Sans Frontières). The position of Border Violence

Monitoring Network is that: “collective expulsions violated the Geneva convention on refugees, the EU charter of fundamental rights and article 14 of the universal declaration of human rights” (Tondo, 2018, para.7). While Croatia denies such claims and defends itself by claiming so solely act within the Schengen Border Code with the intention to prevent illegal migration, it has been proven that such actions are not in accordance with Schengen Border Code as there is a requirement to interview the migrants and process them prior to returning them back (ibid.). Croatia has also acted against the Dublin regulation in 2015 when it allowed the passage of migrants through its territory without allowing persons in need of international protection to submit their application (Amnesty International, n.d.).

3.9.Hungary

The reactions of some of the Member States of the European Union had a particularly important effect on the further evolution of the European migrant crisis. One of the most notable EU Member States to take on a decisive action was Hungary.

In terms of discourse, the Hungarian politicians adopted a very hostile rhetoric in regard to migrants within the context of the European migrant crisis. The prime minister of Hungary, Viktor Orbán, expressed numerous negative remarks toward the migrants, such as claims that the incoming migrants, who might be Muslims, represent a threat to the fundamental Christian values that Europe is rooted in (Traynor, 2015). He and the government would also not make distinctions when applying the words migrant, immigrant, refugee, or asylum seeker in speeches and media, and therefore the arrivals would receive equally pejorative labels, often being accused of illegal or economic immigration, regardless of what their real intention to migrate was (Bocskor, 2018). The notion of migrants being genuine refugees was also largely disregarded according to the government as they could have applied for asylum earlier on their journey but chose not to (ibid.). They would often be described as an economic burden and a security threat for Hungary, as well as having contradictory culture to the Hungarian one (ibid.). Furthermore, Hungary’s foreign minister Peter Szijjarto claimed that immigration is ‘not a Human Right’ (Al Jazeera, 2018), while this particular claim it true, the Hungarian government was accused on several occasions of introducing anti-refugee laws, as well purging the country of certain judges and controlling the media in regard to passing its agenda (ibid.).

Orbán’s rhetoric has also been accusatory of the European Union, as he claimed that the bloc’s “misguided immigration policy is responsible for this situation” (Traynor, 2015, para.3), and the EU’s policies were negatively criticised for being ‘liberal’ and delivered in a ‘politically correct’ manner (Bocskor, 2018). According to Orbán, some European politicians made empty promises to the

migrants about a better life that awaits them in Europe, and therefore motivated them to take on a dangerous journey in order to reach Europe (Traynor, 2015).

Domestically, Hungary has implemented a series of measures since 2015 which portrayed the immigrants in a negative way for the Hungarian public, such as billboards that were set up across the country with writings expressing hostilities towards migrants (Juhász, 2017). However, the action by the Hungarian government, which had a crucial impact on the evolution of the crisis, was the declaration of a nation-wide consultation on terrorism and migration in early 2015, the process of which consisted of sending out a letter from Viktor Orbán and a consultation paper to nearly 8 million people across the country (ibid.). The 12-questions survey highlighted the impossibility to separate immigration and terrorism, and blamed the European Union for not being able to protect itself against illegal migration (Bocskor, 2018). The effects of the insufficient EU actions in regard to migration could, according to Orbán, be seen in the increase of terrorism across the region, such as during the Charlie Hebdo terrorist attack in early 2015 (Juhász, 2017). The consultation has caused the Hungarian government to receive lots of criticism, pointing out namely the high cost of setting up such a consultation, lack of legitimacy due to low turnout of returned surveys, as well as the misuse of this consultation for justifying the anti-immigrant policies (Bocskor, 2018).

The most notable such act was the construction of 175-kilometres long and 4 metres wall made of steel and supported by barbed wire all along its southern border with Serbia. The fence received an extension along the border with Croatia soon after since the flow of migrants started entering Hungary from Croatia, as the border between Serbia and Hungary was sealed off (Juhász, 2017). The purpose of the fence was to stop the influx of migrants entering Hungary, and this goal was largely achieved as the number of irregular migrants entering Hungary on a daily basis dropped from around 1500-3000 during summer up to mid-September 2015, to 150-200 after the construction of the fence (ibid.). Another measure was to update the existing body of laws as well as the country's Asylum Law, which turned irregular crossing of the border through the wall into a criminal act (Amnesty International, 2015). This particular act violates the principles of the 1951 Refugee Convention, which states that it is prohibited to inflict a penalty on refugees and migrants when they enter a country on an irregular basis (ibid.). Such an action limited irregular migration (Bocskor, 2018), but also the chances for the migrants to obtain asylum in Hungary (Juhász, 2017). Despite the fact that the number of asylum seekers in Hungary amounted up to 161,000 in 2015, such measures demonstrate the unwillingness of Hungary to help these people, but instead relocating its focusing on keeping the migrants away from its territory (Amnesty International, 2015).

The Hungarian actions have received a lot of criticism domestically, as well as on the international and EU level, namely because its actions resulted in human rights violations on several occasions. The amount of migrants that the country could register upon arrival was low due to the insufficient spaces for reception, and despite being reminded of it by UNHCR, Hungary declined the idea to increase the capacities for reception (Amnesty International, 2015). Hungarian authorities were also accused by several interviewed asylum-seekers of imposing the Dublin system by fingerprinting them, which was according to some migrants often done using physical force and against their will. Violence was also commonplace when the migrants were deported to the border, or entirely expelled back to Serbia, causing them to get injuries (Köves, 2017). All of this was done while the Hungarian officials have also failed to provide the incoming migrants with crucial information, such as the conditions for obtaining asylum, EU asylum-laws, as well as their own rights (Amnesty International, 2015). The lack of provided information extended to the temporary transit zones which were erected along the Serbian-Hungarian border and were allowing the possibility to apply for asylum as well as provide shelter for the potential asylum seekers. However, because the Hungarian officials did not demarcate these places properly, and because they did not inform the migrants of these possibilities in any way, many potential asylum-seekers were denied entry in Hungary and were sent back to Serbia. By not allowing people in need of international protection to enter a country's territory, Hungary committed human right violations against the international human rights law as well as the EU law (ibid.).

Many human rights violations were embedded within the amended Asylum Law, which allowed for an accelerated processing of the asylum application, but also because it introduced a list of safe country of origin and safe third countries (Amnesty International, 2015). Hungary's infringement of the EU law and international human rights law was done by not giving the applicants sufficient means for translation or to exercise legal aid, but also because the Asylum Law allowed for a judgement of asylum applicant based on the country of origin without considering other factors which could have led to the asylum application. Moreover, as the Asylum Law designated Serbia a 'safe third country', it allows for a rejection of asylum applications submitted by the asylum-seekers coming from this country with the reasoning that they had the possibility to do so there already. However, Amnesty International does not consider Serbia to possess appropriate capacity for asylum, and because their presence in Serbia could result in a pushback to North Macedonia or Greece, it violates the principle of non-refoulement (ibid.). Hungary as a country has therefore committed a series of human rights violation as it was a signatory of the 1951 Refugee Convention, the Charter of Fundamental Rights

of the European Union, the International Covenant on Civil and Political Rights, but also the Hungarian Constitution itself (ibid.).

4. Definition of human rights and its sources

Before starting to dig deeply into the main problem in which we will analyze why the violations of human rights of the migrants and refugees coming from the third world countries occurred during the European migrant crisis, it is crucial to define what the human rights are, and which internationally-recognized documents should be taken into consideration when we are talking about human rights. The milestone document ensuring the protection of the rights of human beings is the Universal Declaration of the Human Rights (UDHR) adopted after World War II by the United Nations General Assembly on December 10, 1948. For the first time, fundamental human rights became universally protected by the states (UN, n.d.). According to its definition “human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights includes the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination” (UN, n.d., para.1). Throughout the years, the other conventions and documents (International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights) enforcing the Human Rights protection have been adopted and together with the UDHR formed so-called International Bill of the Human Rights. To make sure that states respect the human rights treaties the set of rules of law is required. Therefore, International Human Rights Law came into power setting the obligations and duties that States need to avoid the human rights abuses.

Only two years later after the adoption of the UDHR, the European Convention on Human Rights (ECHR) was signed at that time by 47 Member States of the Council of Europe. Inspired by the UDHR, European states also felt the necessity to establish the universal, effective, and collective recognition of human rights. The creation of the ECHR further led to the establishment of the European Court of Human Rights in 1959. The Court was responsible for the enforcement of the Convention by the Member States and it has the power to judge them in case they did not respect it (Amnesty International, n.d.).

When the EU was formed in 1993, a new set of civil, economic, human, and social rights called The Charter of the Fundamental Rights of the European Union was established. It is many times confused with the European Convention on Human Rights, however, their difference is in their legal framework. While The Charter of Fundamental Rights of the European Union (CFR) was drafted by the EU and is interpreted by the Court of Justice of the European Union (CJEU), the European Convention on Human Rights was drafted by the Council of Europe in Strasbourg and is interpreted

by the European Court of Human Rights (Equality and Human Rights Commission, n.d.). The importance of the Charter of the Fundamental Rights on the EU level highlights also the fact that thanks to the Lisbon Treaty the Charter gained the same legally binding character as any other EU treaties.

Since our topic closely analyzes the violation of human rights on migrants and refugees, one of the conventions that must be included in our thesis is the 1951 Refugee Convention and its 1967 Protocol. This Convention has been signed by 145 countries and in Article 1 (2) specifically define the term ‘refugee’ as anyone who:

“As a result of events occurring before 1 January 1951 and owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”
(Convention relating to the Status of Refugees, 1951, p.2).

Apart from the definition of the term ‘refugee’ the Convention also contains the set of the rights that should be respected as well as the obligations of the states to protect these people if needed. Furthermore, part of the Convention is also the principle of the *non-refoulement* which means that the refugees cannot be returned to the country of the origin where their life can be in danger or threaten (ibid.). The principle of non-refoulement became part of Customary International Law, hence it is in the states’ high interest to ensure the protection to the refugees who are seeking it (UNHCR, n.d.).

Based on the documents mentioned above, we can claim that human rights protection is very well defined and entitled to various treaties and conventions. For this thesis, we will use the combination of them as their content slightly varies from treaty to treaty. Additionally, not all the countries are part of the same treaties and conventions therefore we need to include more of the sources of human rights protection. Nevertheless, our research will show that not all the states, despite their obligations to ensure the protection of human rights, are acting under the documents they had signed.

4.2. The differences between the sources of human rights

Although it might be perceived that the core principles of all treaties and conventions dealing with the protection of human rights are to a large extent identical, it is crucial to explain what makes the treaties and conventions unique from one other. The focus will be put on the CFR and UDHR due to the fact the EU has its own rules and laws which are in some policy areas superior to the national laws of the Member States but at the same time, every EU member state is also a signatory of the UDHR which encompasses the whole range of the obligations that are legally bound as well (UNHCR, n.d.).

While signing several documents with similar content might not in itself be considered problematic for a country, it is important to distinguish between them as they differ in complexity. For instance, the rights recognized by the EU Law are not as comprehensive as the rights guaranteed by the UN treaties. The UDHR addresses that “all Member States must promote and protect human rights and fundamental freedoms as stated in the Charter of the United Nations and elaborated in the Universal Declaration of Human Rights, the International Covenants on Human Rights and other applicable human rights instruments,” (as cited in UNHCR, n.d., p.7) However, the EU Law only dictates not to violate human rights without mentioning anything about the promotion or protection of the rights, as it is stated in the UDHR (UNHCR, n.d.). The narrow definition of the CFR can have a profound impact on the Member States because it can create a gap between the duties, they have under UDHR and the EU Law. On the one hand, from the perspective of the UDHR, Member States have duties to protect and promote human rights but only when it comes to policy areas in which the states have the exclusive competences. On the other hand, as far as we talk about the shared competences or the once that are entirely in the hands of the EU, Member States must follow the rules of the EU Law, and hence respect the less comprehensive range of human rights. This can lead to the creation of the two-tier system in which some policy areas of the state are covered by the national law, a subject of the UN treaties, and some are covered by the CFR, thus they are subjects of the EU Law (ibid.).

Even though some concerns may arise, like which of the documents to follow or which of these two is superior to another, the answer is, surprisingly, very straightforward. From the theoretical point of view, the EU is extraordinarily complex, and even scholars cannot find a unanimous definition of what it specifically is. However, looking at the EU from the perspective of the International Law, it can be seen as an entity established by the states with a certain set of competences which means that it automatically falls into the category of an IGO, and therefore, the EU has the same rights as any

other state but it must also respect the same obligations of the International Law related to the protection of human rights (ibid). As the International Law is based on the various UN treaties and documents, the EU is directly but also indirectly via Member States legally bound to comply with the UN human rights standards even though the EU as an IGO cannot be considered as an official signatory of the treaties. There are only two exceptions that the EU is part of, the Committee on the Rights of Persons with Disabilities (CRPD), and the European Convention on Human Rights which has been amended to allow the EU to sign it (ibid.).

Furthermore, although the Member States transformed part of their competences on the EU level, the gap between the EU Law and UDHR, must not cause any legal boundaries for the Member States to fulfill the pre-existing obligations they have under the other treaties. Article 351 of TFEU “preserves for the EU Member States those obligations incumbent upon them before acceding to the EU” (as cited in UNHCR, n.d., p.24). Additionally, integration into any IGO does not liberate the state from fulfilling the duties and obligations they have undertaken through existing treaties. States are thus *de facto* and *de jure* legally bound to act in the best possible way to perform their duties. (ibid.).

To enforce the fulfillment of the treaties, the rule of law must be present. In the case of the UDHR, it is an International Law and in the case of the EU, it is the CJEU. However, the core of the human rights principles recognized by the CJEU is mostly based on the European Convention rather than on the human rights principles settled by the UN. One of the potential limits could be the fact that the European Convention is more focused on the protection of civil and political rights than deeply focus on the protection of vulnerable groups like refugees and migrants (ibid.). Moreover, as the CJEU does not adopt the UN human rights standards which are wider and more comprehensive, it is very hard to keep the equal and universal implementation of the rights and duties undertaken through the UN treaties. Another overt disparity is between the EU legal order and the European Convention as well. Although the CFR contains some additional articles that cannot be found in the Convention, when it comes to human rights, the formulation is different (Kuijer, 2018).

Kuijer (2018) further argues that such a collision in a different interpretation of human rights between the CJEU and ECHR affects long-term effectiveness and interconnectedness between regional courts which focus on the enforcement of a similar issue, hence the protection of the human rights. The disparity in the interpretation of human rights can not only have an impact on the regular EU citizens but more importantly, can very seriously affect people coming from the third countries. One of the problems which may erupt is related to the non-discrimination of the third-country nationals. The Member States are not bound by the EU regulations and law to offer the same level of

protection to the third-country nationals as the European Convention or the UN human rights treaties safeguard. The third-country nationals are then losing the chance to be treated equally as any other EU citizen even though both fall into the same category from the International Law perspective. Notwithstanding the foregoing, as the Member States must respect also the UN treaties as well as the Convention which require to protect any person regardless its nationality, religious background, sex, gender, etc., the third-country nationals should receive the same level of protection as any other EU citizen (*ibid.*).

Despite the world uniqueness of the EU, there are some challenges that the EU should work on. One of them is the narrower scope of the protection of human rights in comparison to other international human rights documents. Especially, during the European migrant crisis, the lack of universality among the treaties can have a negative influence on the provision of basic human rights (UNHCR, n.d.). Due to these disparities, we will build upon the several human right documents to make an objective judgment why human rights violation occurred in many EU countries.

5. Analysis

The analytical part of this thesis will be divided into three sections. In the first one we will discuss in depth the various kinds of human rights violations that have been reported either by the EU or by several IOs within the context of the European migrant crisis. As each country employed its own measures in order to secure its borders and deal with the massive inflow of the migrants, refugees and asylum-seekers, even the violations of human rights that occurred varies from country to country. Some of the most common violations that have been reported are illegal pushbacks, violation of the principle of non-refoulement, degrading conditions in the detention centers, and physical attacks on the migrants by the border police or militias.

Once the basic human rights are defined, the second part will focus on explaining the reasons why the violations of human rights occurred during the European migrant crisis. We will apply the theories described in the theory section in order to see whether they can be considered appropriate for answering our problem formulation.

The last part of the analysis will include a set of recommendations for what could be done in the future in order for the EU and its Member States to deal with similar crises in the future without committing human rights violations. All the suggestions presented in this section will be based on the facts and actions, which we had the opportunity to observe thoroughly as we were writing this thesis. The nature of these recommendations will be strictly theoretical and the sole purpose of this section

is to reflect upon possible improvements to the current system, not to argue for a specific policy nor to provide guidelines on how to reach a better system for handling migration.

5.1. Types of the human rights violations

5.1.1. Violation of the human rights on the Turkey-Greece border

Greece is the first-country receiver of the migrants and refugees who are coming via Eastern Mediterranean route to Europe. The enormous amount of people caused several challenges for Greece, and despite the financial and material sent from the EU, many international organizations have been reporting the insufficient fulfillment of basic human rights (Human Rights Watch, 2020). However, this is not the first time when Greece has been found responsible for not fulfilling the obligations under the human rights treaties. In 2009, UNHCR published an observation report in which serious shortcoming in Greek asylum-procedure was found. One of the main criticisms was based on the inhumane and degrading treatment of the asylum seekers who had to live in horrible conditions which are in contradiction with the International and the EU Law as well (UNHCR, 2009). Another shortcoming that UNHCR found was the risk for migrants of being deported back to the home country, or to Turkey, which may not be safe, and therefore, it may violate the right of non-refoulement protected by the UN treaties but also by the European Convention in its Article 13 ‘The right to an effective remedy’ (UNHCR, n.d.). Ever since, the EU asylum policy went through several amendments which partially helped to improve the conditions for the migrants, refugees, and asylum seekers coming to its territory. Nevertheless, the recent migration crisis confirms yet again that the EU asylum system is not ready for a massive inflow of people at the same time. The HRW accused Greece and also the EU for not providing adequate protection to people seeking for it. To be more concrete, when the conflict on the Greece-Turkey border escalated in the early month of 2020, Greece sent its security forces on the border to stop the illegal inflow of the migrants coming from Turkey. People were assaulted, beaten, robbed, or sexually abused (Human Rights Watch, 2020). The refugee rights research and the advocate of the HRW, Nadia Hardman, said: “The EU should protect people in need rather than support forces who beat, rob, strip, and dump asylum seekers and migrants back across the river” (Human Rights Watch, 2020, para.2). Hardman is mentioning the EU because FRONTEX, the EU external border control, has been helping the Greek military forces to keep migrants on the Turkish territory (ibid.).

The conflict which occurred between Turkey and Greece can be seen as a reason why the Greek authorities decided to stop accepting new asylum applications (Baczynska, 2020). Such a precaution has been highly criticized by the IOs and also by the EU. The Article 18 of the CFR clearly states that

“The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and under the Treaty on European Union and the Treaty on the Functioning of the European Union.” (Charter of The Fundamental rights of the European Union, 2000, p.12)

The president of the EU Commission, Ursula von der Leyen, also expressed her discontent with the Greek reaction and added that all the fundamental rights must be respected and implemented, including the right to asylum. Furthermore, she called for investigation of the violent incident that happened on the border and classified it as unacceptable (Burchard & Herszenhorn, 2020). It is important to mention that this response of the President of the EU Commission came a week later after the incident had happened and her rhetoric immediately after was diametrically different as she had described Greece as a ‘shield’ of Europe (ibid.). Such a comparison caused resentment among the various human rights organizations including the European Association for the defense of Human Rights, European Democratic Lawyers, Are You Syrious, etc., who wrote a letter in which they accused Greece and the EU of violating human rights on Greece-Turkey border. As it was stated in the letter “(m)igrants and refugees are not a threat the EU should shield itself against but are themselves threatened by state violence all along their precarious trajectories. We aim to use the tools of human rights to shield migrants and refugees from the brutality targeting them” (Migreurop, 2020, para.4). They further added that they will take legal action steps to find justice for these vulnerable people who had been exposed to such an inhumane and life-threatening experiences (ibid.).

The migrants and refugees experienced degrading conditions not only on the border but also within the detention camps where they were held. Amnesty International visited the camps on the Greek islands of Lesbos and Chios in which serious violation of the European but also International law has been found. For instance, the asylum-seekers living in these camps who are under International Law protection cannot be detained because of their inherent vulnerability (Amnesty International, 2017). The Greek camps were full of these people which held Greece accountable for the violation of International Law (ibid.). Furthermore, sending illegal migrants, but also asylum-applicants back to Turkey is also in contradiction to the International Law, since Turkey is not

considered a safe third country according to 1951 Geneva Convention, and moving migrants there increases their risk of experiencing torture, sexual harassment or other forms of human rights violations (ibid.). Many times, the migrants are forced to return to Turkey because of the bad conditions in the Greek camps (Alpes, Tunaboylu & Liempt, 2017).

However, seeing Turkey as a place where migrants will find better living conditions and protection of their human rights can be questioned. There is an ongoing debate about the definition of the safe third country. The core document which defines the conditions when the country can be considered safe is the 1951 Refugee Convention, also known as Geneva Convention of 28 July 1951. Even the EU has its directive, the Common European Asylum System, which defines the criteria which must be met to classify a third country as safe. According to Council Directive 2005/85/EC, the EU asylum system is fully based on the application of the Geneva Convention of 28 July 1951 (Official Journal of the European Union, 2005). The establishment of this directive granted the EU the possibility to create a common list of safe countries of origin, and it also permitted its Member States to add to it their own list of the safe countries which will comply with the EU directive (AIDA, 2015). Nevertheless, the CJEU in May 2008 annulled Articles 29(1) and (2) and 36(3) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in the Member States for granting and withdrawing refugee status, which enabled the European Council to “adopt a minimum common list of third countries which shall be regarded by the Member States as safe countries of origin” (European Parliament v. Council of the European Union, 2008, para.16). The court supported the argument of the EU Parliament that the EU Council lacks the competences to enact the contested provision according to Article 67(5) EC (ibid.). Thus, the Member States could have kept their right to set a list of the safe countries of origin, however, the criteria for designating it must be based on the EU Council Directive. The EU is approving the safe third country only if:

“(a) it has ratified and observes the provisions of the Geneva Convention without any geographical limitations; (b) it has in place an asylum procedure prescribed by law; and (c) it has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, including the standards relating to effective remedies. (...) The applicant shall be allowed to challenge the application of the concept of European safe third country because the third country concerned is not safe in his or her particular circumstances” (as cited in AEDH, EuroMed Rights & FIDH, 2016, p.5).

Although, the Court annulled the attempt of the EU Council to create a common list of safe third countries, the EU has not given up on that idea and in 2016 drafted the regulation in which it listed seven ‘safe’ countries (ibid.). It included Albania, Bosnia and Herzegovina, Serbia, Macedonia, Kosovo, Montenegro, and Turkey. However, several organizations expressed their disagreement with the EU because there is not any guarantee that once the country is designated as safe its status will not change in the future. Moreover, the country might be safe for one person but does not have to be safe for another one. The unified classification is thus in contradiction with the core principles of the 1951 Refugee Convention that the EU fully comply with (Official Journal of the European Union, 2005). The aforementioned arguments further lead to the question of whether under these circumstances Turkey can be considered as a safe third country or not. It is true that according to the EU, Turkey is considered a safe third country, and therefore all rights of the refugees should be maintained (Human Rights Watch, 2016). Nevertheless, the 1951 Refugee Convention specifies when the country can be marked as ‘safe’ as well. The conditions like the right to education, health care, or right to work must be fulfilled if we want to talk about safety. Based on the criteria of the 1951 Refugee Convention, Turkey is not able to provide these conditions to the migrants who are sent there from Europe (Alpes, Tunaboylu & Liempt, 2017). Thus, it can be considered questionable whether the criteria set by the EU itself should be respected, as doing so will not meet the criteria from the 1951 Refugee Convention. Despite this fact, the EU put Turkey on the list of the safe third countries even though several organizations are reporting the violations of human rights happening there. For example, an inhumane and degrading conditions in the camps which may put some of them into life-threatening risk, or no right to apply for asylum are very common (ibid.). Alpes, Tunaboylu, and Liempt further argue (2017) that the EU-Turkey deal is shifting the responsibility of the EU to the shoulders of Turkey instead of being fully in charge and trying to come up with a proper solution which will maintain the protection of the rights of these vulnerable people. However, it is important to add that the EU tried to adopt the common asylum system in which the common list of the safe third countries would be presented, but the Member States did not agree to give up on their competence to make their national list of the safe third countries (UNHCR, n.d.). Without the unanimous agreement of all Member States on this issue, the EU is not entitled to make further decisions.

5.1.2. Illegal pushbacks on the Balkan Route

Balkan countries, either those which are part of the EU but also the ones which are not, are seen as transit countries for migrants rather than their final destination. Many of them reacted to the massive influx of the migrants on an individual level, while many of them even built the razor-wired fences guarded by the police or military forces. The journey of the migrants has been already dangerous and building a physical barrier further complicated their journey.

With the closure of the Western Balkan Route in March 2016, the violence started to increase. The migrants were detained in camps, or often pushed back to the countries where they came from, such as Serbia or Bosnia and Herzegovina. Furthermore, the new Dublin regulations requiring the EU Member States to register migrants by taking their fingerprints were largely bypassed, and the migrants have also experienced unprecedented violence and torture by the Croatian authorities (European Council on Refugees and Exiles, 2019). Across the region, Croatia has become the leader in human rights violations when it comes to illegal pushbacks accompanied by physical abuse of the migrants (Tondo, 2018). In July 2019, the Swiss Federal Administrative Court suspended the return of an asylum-seeker to Croatia claiming that there is a high level of risk that asylum-seekers would be violently pushed out of Croatia (Amnesty International, 2019). The Croatian President admitted that there were illegal pushbacks accompanied by the violence but as she added, such an action has been done to prevent the illegal migration (*ibid.*). However, Croatian authorities denied such a claim of the president but promised to investigate any complaint filed by the migrants who were pushed back to Serbia and Bosnia and Herzegovina (Human Rights Watch, 2019). Even though the violation of the International and European Law is more than obvious, the EU did not punish Croatia for not respecting its obligations. Instead, the EU declared that Croatia is ready to join the Schengen Area adding that if Croatia joins Schengen Area it will be easier to control and monitor the Croatian border guard's action (*ibid.*).

5.1.3. Violation of human rights in Hungary

During the European migrant crisis, Hungary was willing to go as far as to commit several acts of human rights violations against the migrants. Among other, Hungary constructed a 175-kilometers long and 4- meters high wall made of steel and supported by barbed wire all along its southern border with Serbia and Croatia, updated its existing Asylum Law in order to criminalize irregular migration and redefine the conditions under which a person can apply for asylum, and systematically avoided the provision of the necessary information and basic need to the immigrants (Amnesty International, 2015). Such acts are considered as violating human rights, and specifically the case of building a wall as it physically prevents potential asylum seekers from entering the territory of a country where they

could possibly seek asylum. Similarly, by updating its Asylum Law in a way to only consider certain nationalities over other and by designating its list of third countries which are deemed 'safe,' Hungary disrespected the Amnesty International's list of actual safe third countries. These actions resulted in having a pretext not to accept the potential asylum seekers and move them back to Serbia where they came from, which increases their risk of refoulement (ibid.). Moreover, as the asylum application could only be submitted at the 'transit zones,' Hungary failed to provide sufficient information in regard to the migrants' right and the legal procedure, translation, legal aid, or enough time to submit the application and consider all the details (ibid.). Hungary has also notoriously declined the vast majority of the asylum application with the reasoning that Serbia is a 'safe third country' and therefore they could have in theory applied there. The migrants were subsequently transported back to the border, the process of which was often accompanied by physical violence (ibid.).

All of these acts, among others, can be considered human rights violations according to the Charter of Fundamental Rights of the European Union. Moreover, as Hungary is a member state of the European Union, and as the EU is regarded as an intergovernmental organization by the International Law, the EU may also held accountable for committing human rights violations along with Hungary, since Hungary committed them as one of its Member States (UNHCR, n.d.).

5.1.4. The EU cooperation with Libya

Since the end of the Gaddafi dictatorship in 2011, Libya has started to build a democracy from scratch. Although Libya has an elected government, the political system is still very fragile and followed by the violence and conflicts between two ruling administrations, GNA officially recognized by the EU and UN, and LNA led by the warlord General Khalifa Haftar (Politico, 2020). Although Libya was for a very long time undemocratic, it is a party to seven core international human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), and the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (Human Rights Watch, n.d.). However, one of the most important treaties that Libya has not signed is the 1951 Refugees Convention and its 1967 Protocol, which recognizes the basic rights of the refugees. According to the International Commission of

Jurists (ICJ), the problem is also the Libyan accountability for crimes under International Law which has not been ensured (Pollard, 2018). Libya argues that all the international treaties which it has signed take precedence over the Libyan law. Moreover, some Libyan judges even mentioned that there is no need to cite International Law because the Libyan law reflects all international obligations (Human Rights Watch, n.d.). The ICJ does not share the same opinion and instead it is accusing Libya of unfair and unlawful violation of human rights (Pollard, 2018).

When the migration crisis hit Europe, one of the main routes used by migrants coming from Africa was going through Libya. The situation became unbearable in 2016 when the number of illegal crossing via the Mediterranean Sea to the Italian coast reached 181,000 (European Stability Initiative, 2017). The EU reacted very quickly and started to cooperate with Libya. There were €266 million from the EU Emergency Trust Fund for Africa allotted to Libya which were supposed to be spent on the training of the guards on the border as well as on providing decent conditions for the migrants and refugees who have been allocated to the detention centers (Human Rights Watch, 2019). Based on the reports of the Human Right Watch, the EU effort was not sufficient, and by providing support to Libyan Coast Guards, who are many times using violent practices like beating migrants, torturing them or even sexually abusing them, indirectly makes the EU responsible for such a horrible act (Human Rights Watch, 2019).

Although Libya did not sign the 1951 Refugee Convention and does not have any proper asylum system that can protect migrants and refugees staying on its territory, the International Law does apply, and Libya is accountable for the abuses committed on the migrants and refugees. The EU is aware of all the mistreatment and degrading conditions that migrants have to experience in Libya. According to International Law, active cooperation between the EU and Libya makes the EU (in)directly accountable for all the violations of the human rights that have happened on the Libyan territory to migrants and refugees (ibid.).

As was previously explained, the EU is seen from the perspective of International Law as an IGO. It means that the EU must respect the same obligations as all the states that are part of the IGO. Applying this to the EU-Libyan case, one of the EU Member States, Italy, has signed a Memorandum of Understanding in 2017 in which they pledged to fight illegal migration together (Vari, 2020). Being aware of the practices of the Libyan Guards and conditions in the detention centers, Italy became directly responsible for the wrongful acts committed by Libya. The Customary International Law exactly specifies when the other states are responsible for the wrongful acts committed by the other state. In the comment section of Article 16 it is stated:

“a State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State” (UN, 2008, p.65).

Italy is fully aware of the circumstances in Libya, thus it is held accountable for violation of human rights. Another criticism was expressed by the Italian Association for Juridical Studies which said that pushing migrants who have been caught in the Mediterranean Sea back to Libya is a clear violation of the principle of *non-refoulement* as Libya is not considered to be a safe third country (ASGI, 2017).

5.2. The reasons why human rights violation took place

5.2.1. Securitization in Greece

If we want to understand why human rights violations occurred in Greece and most specifically on the Greece-Turkey border from the securitization point of view we need to take into consideration three crucial elements. First, we need to define the securitizing actor(s) who are deciding whether an issue can be classified as a threat or not. Once the securitizing actor(s) defines the threat, the second step is the speech act of the securitizing actor that must be communicated to the audience. Third, the audience must respond to it either by accepting or rejecting the message that has been sent by the securitizing actor(s) (Buzan et al., 1998).

In the case of Greece, the securitization of the migration, in general, has a long history. Due to its geographic location, Greece has been facing migration flows throughout its history. Recently, the migrants have started to be seen as a threat mostly because of the discourse of the political leaders, hence securitizing actors. The most significant beneficiary of securitization of the migration has become a far-right political party Golden Dawn which managed to increase its voting turnout from 0,29% in 2009 to 5,29% after the parliamentary elections in 2010. Their entire campaign was based on strong anti-immigration rhetoric, where this party has many times associated the migrants with criminal activity, blaming them for the economic crisis as well as for destroying the cultural identity of the country, etc. (Karamanidou, 2014). Such exaggerated claims about the negative impact of the migrants on the well-being of the country affected the audience which has developed a higher tendency to perceive the migrants as something harmful (Karyotis, 2012). Despite the claims of the Golden Dawn, this negative perception does not necessarily reflect the reality. The negative perception

about the migrants is created by the discourse of the Golden Dawn leaders, not by the objective facts. In fact, the arguments presented by the Golden Dawn political party about the migrants may have been a partial lie, but the success of the political leaders to persuade the audience was due to the way they interpreted it. If we add the unfavorable economic situation that Greece had to face during that time, Golden Dawn gained very strong support among the electorate. Thus, the securitization move of the Golden Dawn can be seen as successful (ibid.).

Nevertheless, winning the elections by the Golden Dawn caused the spread of extreme form of racism in Greece, which resulted in violence committed against the migrants. As an example, an incident occurred on one of the strawberry fields where many migrants worked. Few of them were shot and killed simply because they asked for getting paid for the past six months of unpaid work. As Lazaridis and Skleparis, (2015) argue in their paper, such an action has been undoubtedly triggered by the anti-immigration rhetoric of the Golden Dawn party as one of their slogans was ‘Every foreign worker is a Greek unemployed.’ Unsurprisingly, Golden Dawn refused to take a responsibility for this horrible crime by responding: “these issues arise because jobs were stolen from Greeks and given to immigrants and that the only solution to the problem is the immediate expulsion of illegal immigrants living and working in Greece” (Lazaridis & Skleparis, 2015, p.186). The rhetoric used by Golden Dawn political leaders has never been prosecuted by the Greek authorities despite the fact that spreading racist and anti-immigration attitudes had a high impact on the basic principles of the Greek democracy as well as on the public opinion (Karamanidou, 2014).

Even though the example above shows the violation of human rights committed by a person from the public, who may have been influenced by the narrative of the far-right political leaders, there are also examples when Greece as a state used violence against migrants, arguing that it is necessary to protect the Greek citizens. For instance, a border guard has been persecuted for shooting the Albanian migrant who was trying to illegally enter the country. At that time minister of interior defend the guard saying that it was his duty to protect the country, and thus his action was legitimate. As Karamanidou argues in her paper (2014),

“this ‘protectionist’ narrative legitimates the use of violence within state-exercised migration controls as a necessary part of safeguarding collective security – a legitimate exercise of state sovereignty. Not only is state-exercised violence legitimated, but the police are extolled for its effort praised for its humane behavior towards migrants and even constructed as needing

protection against allegedly untrue or malicious allegations by migrants”
(p.12).

Once the issue has been securitized the actions taken by the securitizing actor are tolerated by the audience although it may violate the rules of law.

These examples point out the successful securitization move from the national perspective. However, as Greece is part of the EU, part of its competences has been transferred to the hand of the institutions of the EU. The way Greece treats the migrants on its territory and also the performance of the Greek governments throughout the past few years did not find support among the EU representatives. For instance, Ursula von der Leyen, the president of the EU Commission, criticized the violence that occurred on the Greek-Turkey border in March 2020. During the incident, border guards reportedly shot into migrants who were trying to cross the border. Von der Leyen also stressed the duty to protect the human rights of migrants and refugees (Burchard & Herszenhorn, 2020). The EU and its members are, in fact, legally bound to act under the International and European Law in which there is not such a thing as ‘illegal’ migration, thus any migrant should not be stopped on the border or should not even be exposed to any kind of violence (Weber, 2020).

To sum it up, securitization theory is very useful in explaining why the violations of human rights occurred in Greece during the European migrant crisis. The long-term exposure of Greece to the influx of migrants has become the basis for the political leaders to define the migrants as a threat to society, economy, and cultural traditions. By applying very strong anti-immigration rhetoric, the far-right political party gained power which further led to the escalation of the violence against migrants. While the national audience (Greek citizens) has been respecting the human rights violations committed by the state, the regional audience (the EU) openly criticized the Greek government and called for the investigation of the human rights abuses.

5.2.2. The role of nativism during the European migrant crisis in Greece

Nativism has played a crucial role in Greek politics for many years. The link between politics and national values is based on the fact that Greece is one of the most homogenous countries in Europe in terms of religion and ethnicity (Karyotis, 2012). Prevalence of the strong Greek identity can be observed already in the 19th century when discussion about the “endangered purity” of Greece was widely used. The ‘Greekness’ has been embedded in society for centuries and we can observe it even now. Especially, when we look at the political leaders, in their speeches they very often used words

like ‘nation,’ ‘culture,’ or ‘national interest,’ which are indicating the identification of the political leaders with the core Greek values (ibid.).

When the European migrant crisis hit Europe, Greece was one of the first countries that had to experience a massive arrival of migrants on its territory. Soon after, the political leaders adapted a rhetoric, which strongly emphasized a correlation between the securitization of migration and national interests that have been put into risk (ibid.). The most known example of the nativist party in Greece is Golden Dawn. As it was described in the previous section, Golden Dawn managed to get to the parliament after the 2010 elections because of the anti-immigration and racist narrative and maintained its position as the third force until the elections in 2019. Its members used slogans like ‘Greece only for Greeks’ or ‘Get the stench out of Greece’ which are undoubtedly the symbol of the nativist ideological perception (Ink, 2016).

Nativist tendencies are embedded in the beliefs that the representatives of the far-right parties possess. Moreover, in cases when nativist rhetoric is applied in combination with the securitization threat, the anti-immigration sentiments may easily be tolerated by the public (Mudde, 2012). Nevertheless, as Mudde further argues (2012), “there is no straightforward relationship between immigration patterns and radical-right voting. Immigration has to be translated into a political issue, which involves many different steps. And while immigration is certainly not the single issue of the radical right, it clearly plays an important role in their propaganda and their electoral success” (p.31).

To elaborate on that, Hangartner et al. (2019), published a research paper in which they focused on the hostility of the native Greeks towards the migrants during the crisis. The findings showed that Greeks who have been directly exposed to the European migrant crisis exercised more hostile, anti-immigration attitudes towards migrants than those Greeks who have not been in direct contact with them. However, it is crucial to add that the Greeks who have been affected by the crisis indirectly also showed slightly negative attitudes but not nearly as high as in the case of the directly exposed group (ibid.). Based on these results, Hangartner et al. assumed that direct and indirect exposure to migrants will also have an impact on the voters’ choice during the elections. However, the results showed that this assumption turned out not to be correct, as Golden Dawn found support also among people who were indirectly exposed to the crisis (ibid.). Political discourse applying anti-immigration rhetoric used by Golden Dawn turned out to be effective among the Greek population regardless of its direct or indirect exposure.

The role of nativism has deep roots in Greece and that is the way it is very often used by the political leaders. Therefore, negative attitudes of the population as well as the political leaders help us explain why the violation of human rights occurred in Greece. The violence was the last form of

the strong nativist perception that escalated due to the presence of the far-right political party Golden Dawn. Furthermore, we see this theory as very useful because it is not only explaining the reasons for the human rights violation from the perspective of nativism, but it also creates a link between the securitization theory and its understanding of this phenomenon.

5.2.3. Securitization of migration in Italy

To better understand the action steps taken by Italy during the European migrant crisis we need to analyze several changes that happened in Italy which significantly influenced the process of securitization. In this part, we will argue that there were two securitization moves in Italy, one of them failed and one can be considered as successful. The most important condition that must be fulfilled if we want to talk about successful or unsuccessful securitization move is the role of the audience. As Buzan et al. (1998) claim in their book “[...] issue is securitized only if and when the audience accepts it as such” (p.25). However, the audience does not always represent the same unit which means that it can be plural and diverse as well (Hintjens, 2019).

The first securitization move started in 2015 when the European migration crisis becomes a real challenge for Europe. By then the Italian Prime Minister, Matteo Renzi, started to see the migration crisis as a securitization issue. At that time, he expressed his concerns about the massive inflow of migrants coming via the Mediterranean Sea to Italy. “There is a scourge in the Mediterranean and on our continent, this is the new 21st-century slavery trade. We must block these new slave traders because it is about human dignity and security” (as cited in Hintjens, 2019, para.30). Nevertheless, the way Renzi communicated the message made the refugees and migrants the referent objects rather than a threat to Italy. The refugees have been framed as vulnerable people who deserve the help not only of Italy but also in Europe as a whole. In order to further strengthen the image of the ‘rescuer,’ Renzi and his government supported the work on NGOs which were rescuing the lives of migrants in the Mediterranean Sea (ibid.).

Here we can see two different forms that the securitization can take, namely the discursive and non-discursive one. Renzi applied discursive strategies as the main persuasive tool, but at the same time he also non-verbally showed the support to NGOs trying to legitimize their action steps in the Mediterranean Sea. In terms of response by the audience, Renzi’s interpretation worked on the Italian citizens who were more sympathetic with the refugees, whereas the EU leaders were implementing a completely different strategy. Instead of welcoming migrants, the EU worked on building cooperation with Libya (ibid.). The presence of several audiences can be observed here, as the first group

represents the Italian population and their acceptance of the securitization move presented by Renzi, while the second group is the EU which possessed a very clear rejective position towards this securitization move. The reason why the EU reacted the way it did can be explained by the fact that migrants and refugees had been already labeled as a security threat for Europe, which ultimately triumphed over Renzi's interpretation (*ibid.*). Furthermore, the action steps taken by the EU very rapidly changed the opinion of the audience, which started to associate the migrants, refugees, and asylum-seekers with threat rather than pity. In the end, Renzi's securitization move has failed as it did not find support among the Italian citizens nor among the EU representatives. According to Helen Hintjens, the Assistant Professor in Development and Social Justice at the International Institute of Social Studies, securitization moves have a higher tendency to fail during the crisis because securitizing actors are more keen to take the risks that might not find the positive response among the audience (*ibid.*).

The second securitization move is associated with the situation in the Mediterranean Sea which was getting more and more critical over the years. Thousands of migrants were reaching the shores of the Italian territory, and Italy was not anymore able to handle the situation without the prompt help of the EU. Meanwhile the parliamentary elections in Italy were coming, which allowed the populist and far-right political parties to take advantage of a deteriorating situation. An example of such a party in Italy was Lega Nord led by Matteo Salvini. His very strong anti-immigration rhetoric during the campaign brought allowed him to gain 17% of the national vote in the parliamentary elections (Albertazzi et al., 2018).

Due to the increasing awareness of associating migrants with the notion of threat, Salvini's securitization speech contained the topics that were concerning Italy the most at the time, namely the economic insecurity and the threat of losing the Italian identity due to the massive inflow of migrants. Here it is possible to observe the shift from the securitization narrative presented by Matteo Renzi, as the rhetoric presented by Salvini depicted the migrants as a threat, and the Italians were put into the position of the referent object. This example is not a new phenomenon as far-right political parties often employ anti-immigration speech in their political programs in order to persuade the people that multiculturalism can damage the cultural identity of the particular country and therefore framing it in a way so that it is seen as something unacceptable (Betz, 2007). Moreover, if such a speech act is combined with the action steps taken by the EU leaders, which intended to stop the influx of migrants to Europe, Salvini with his radical approach has become a symbol of change for Italian citizens. The fear, frustration, and anger helped Salvini to become the party with the third-highest turnout in the 2018 elections. Salvini's securitization move can be described as successful because the audience

(Italian citizens) decided to vote for his party, believing that he will introduce policies that will eliminate the threat which migrants and refugees represent (Salazar, 2019). Indeed, Salvini took action steps to make his securitization move not only legitimate by applying the rhetoric that managed to persuade voters, but he also made institutionalized changes that were directed against migrants (ibid.). His victory had very devastating implications on the protection of the human rights of migrants, refugees, and asylum seekers. Italy experienced an escalation of racist and xenophobic violence including the attacks on the black people or closing of the refugee camps in the south of Italy (Schumacher, 2019). However, Salvini's politics did not last for a long time because the Italian Prime Minister Giuseppe Conte announced his resignation, which led to the collapse of the government as well. Even though Salvini, as a Minister of the Interior, was out but migrants still endure his anti-immigration and racist policies (ibid.).

Once again, the use of the securitization theory proved to be effective as the theory helped us explain the indicators that conditioned the creation of the securitization moves that occurred in Italy during the European migrant crisis. Although the securitization moves of Renzi and Salvini can be explained by the theory of securitization, certain factors that had an impact on the success of the moves need to be analyzed by the theory of nativism. We suggest that while the securitization helps us to explain how Salvini managed to persuade the audience by his speech act, the content that he used can be analyzed by applying the nativist theory.

5.2.4. Migrants as a threat to national identity in Italy

When the migration crisis hit Europe, many far-right political parties took it into their advantage and incorporated it into their political strategies. The same situation can be observed also in Italy, where Lega Nord, which used to be defined as a regionalist populist party, changed its area of interest when Matteo Salvini became its leader. During a campaign before the 2018 election, Salvini shifted the party's ideological focus from regionalism to nativist nationalism (Albertazzi et al., 2018). Before the 2018 election, Lega Nord had been popular mostly among the North Italian population, but the new ideology gained popularity in the other regions of Italy as well, including the South (Patriarca, 2018). As Patriarca further argues the growth of popularity was undoubtedly connected with the anti-immigration rhetoric that Lega Nord used during the campaign (ibid.). Salvini very often talked about putting 'Italians First' which made Italians look superior to the other nations. However, the roots of a strong national identity that Salvini incorporated in his rhetoric is not a new phenomenon in Italy. The first attempts to present 'native' white Italians can be dated back to the 19th century, but the most

significant example of nativism is the fascist era when Italians were described as an Aryan race which made other races automatically excluded from the society. Although the end of fascism formally banned racial discrimination, its spirit continued to live among the Italians even during the following years (ibid.). In 1992 a new citizenship law came into force based on the principle of *ius sanguinis*, citizenship by bloodline, which means that only Italians or people of descendants of Italians are entitled to apply for Italian citizenship. As a result, many Italian descendants could enjoy a relatively easy process of citizenship acquirement, while at the same time, many people who were born in Italy but had a different ethnic origin, do not have Italian citizenship, just as the migrants and refugees who came to Italy during European migrant crisis (ibid.). This example clearly demonstrates the preferential treatment of a group that is in some way considered ‘native’ to Italy, as opposed to the ‘non-natives.’

Take into consideration all the things mentioned above, Matteo Salvini combined the existing legacy, migration crisis, and transformation of the party’s ideology in his favor, which helped him to gain a very strong electoral support during the elections. In particular, the problem of immigration became a hot topic during the campaign during which Salvini accused migrants of being harmful to Italian identity (Albertazzi et al., 2018). Looking at it from the nationalist point of view which says that “states should be inhabited exclusively by members of the native group (‘the nation’) and that non-native elements (persons and ideas) are fundamentally threatening to the homogenous nation-state,” Salvini’s anti-immigration narrative persuaded Italians that migrants are real threat for the society (as cited in Albertazzi et al., 2018, p.659). His rhetoric did not change after the elections, as he carried on spreading racist and xenophobic claims, while he also implemented them into new laws and regulations (ibid.). Migrants, refugees, and asylum-seekers became even more marginalized and unwanted by the ‘native’ Italian society. Such an attitude has remained in Italy even after Salvini’s role as a Minister of Interior ended in 2019. Migrants have become the victims of the populist narrative and have been exposed to an increasing violation of their rights (ibid.).

To sum it up, the theory of nativism can be considered helpful in understanding how deep the roots of the Italian national identity are and to what extent the role of ‘Italianness’ shaped the victory of the far-right political party Lega Nord led by Matteo Salvini. As we argued, Salvini’s anti-immigration rhetoric was a key factor that influenced the popularity of the party among the electorate. The fear of being suppressed by the other culture brought by the migrants, has been a very common argument presented by the populist and far-right political parties which very quickly found support among the majority of the ‘native’ population. Therefore, nativism proved to be a useful theory for explaining the preconditions that led to the violation of the human rights of migrants in Italy.

5.2.5. Hungary and securitization

To analyze the success of the securitization theory in Hungary, it is crucial to primarily analyze the acts of speech in which the threat was presented and described. Within the context of our thesis, these acts were undertaken by the Hungarian Prime Minister Viktor Orbán and other members of the ruling Fidesz party. The subsequent focus of the attention will be put on the audience and the extent to which they were convinced by the acts of speech, and finally the specific extraordinary measures on the domestic level will be considered in order to determine whether or not the securitization theory was really successful. Additionally, the extraordinary actions on the EU level will also be considered in order to get a more complete picture of the situation.

According to the Copenhagen School, the concept of security has been broadened by a dimension of speech act. In other words, the security threat for a country is no longer represented by an actual military capability of another country, but rather it can be constructed through specific rhetoric of the politicians (Miholjic, 2017). Specifically, in the case of Hungary, the act of speech during the European migrant crisis revolved around presenting the incoming migrants as a security threat, specifically in terms of religion, culture, as well as economy. The members of Fidesz were attempting to convey the idea that such risks are not only real for Hungary, but also for the entire European Union (Rizova, 2019). The term ‘migrant’ became associated exclusively with negative connotations, and it was quite often paired with the adjective ‘illegal.’ As mentioned previously, the Hungarian officials systematically avoided any distinction between a refugee, migrant, asylum seeker, or other such words, but simply applying them interchangeably, regardless of what the real status of the people was (Bocskor, 2018). The migrants were also presented as thieves, whose idea was to come to Hungary and take advantage of it. Examples such rhetoric was presented on billboards sending hostile messages to the migrants are for example: “If you come to Hungary, don’t take the job of Hungarians” or “If you come to Hungary, you have to respect our culture!” (Gigitashvili & Sidlo, 2019). Such rhetoric was spreading across the country through a billboard campaign around the time when the “national consultation on immigration and terrorism” was launched, which specifically focused on linking immigration and terrorism together while remembering the Charlie Hebdo attacks and warning that similar atrocities might become more frequent in the future if no measures are undertaken (Szalai & Göbl, 2015). While the turnout for the survey was not sufficiently high, Orbán decided to legitimize his action based on it (ibid.).

All things considered, the securitization theory can be successful on the domestic level in the case of Hungary, as the result of the speech act communicated by Orbán and his party managed to convince the public that migrants are indeed a security threat for the nation and that extraordinary action is necessary in order to return to the state of normality. The symbol of such successful securitization were the reforms that became real after once the security threat has been defined, namely the construction of the fences on the southern border with Serbia and Croatia, or the amendment of the country's Asylum Law which was directly discriminatory against the migrants (Amnesty International, 2015). The fact that Hungary was willing to go as far as to commit a series of human rights violations further demonstrates the extraordinary conditions, which are in place while a country is in a state of securitization. According to this theory, during such a state the regular rules do not apply and extraordinary rules are taking hold in order to convey the message of urgency to the public. In this particular case, the respect for human rights is not considered a priority as the inhabitants of the country were convinced that their home is being slowly invaded by immigrants holding different cultural or religious beliefs, and which might bring about their eradication (Gigitashvili & Sidlo, 2019).

However, when the effect of the same speech act is applied within the context of the European Union, the securitization theory cannot be considered successful. The outcome that Hungary anticipated delivering through its rhetoric and actions did not match the reality, as by refusing to accept refugees within the mandatory EU relocation scheme, Hungary did not convince the EU public of the rightfulness of its actions and was required to pay a fine (Rankin, 2020). Trying to convince the EU representatives that the country acted the way it did because the immigrants represent a significant security threat for Hungary did not prove to be a sufficiently valid reason for the EU (ibid.). The final decision on the matter was later on delivered by the Court of Justice of the European Union in form of a complete rejection of the inhumane actions of Hungary and other EU Member States, which failed to comply with the official EU procedures (Court of Justice of the European Union, 2017).

5.2.6. Hungary's understanding of nativism

During the time of the European migrant crisis, the Hungarian government made an active effort to define which groups of people can be considered 'native' to Hungary, and which attributes would make somebody classified as a 'non-native.' Descriptions of 'native' Hungarians can be analyzed in speeches and acts of the Hungarian government, most notably by observing the ruling party Fidesz

and the country's Prime Minister Viktor Orbán. Some of the characteristic features are the Hungarian ethnic origin, affiliation with Christian faith, or even the white skin color (Galston, 2018). In the narrative presented by Fidesz, there is a clear-cut distinction between the 'us' group and 'them' group, where the 'native' Hungarians receive exclusively positive attributes, while the 'non-native' migrants are being notoriously associated with negative labels, such as being economic migrants, or criminals (Amnesty International, 2015). The idea of multiculturalism spreading in Hungary is viewed as undesirable in the educational and cultural sphere, as it is presumed that the encounter between the natives and non-natives would lead to a clash (Galston, 2018). One of Orbán's claims was the following: "We do not want to see a significant minority among ourselves that has different cultural characteristics and background" (Traub, 2015, para.2).

Furthermore, not only is Orbán assigning these the positive values to Hungarians, but also Europeans in general. He sees the traditional European civilization as being made of white Europeans adhering to the Christian faith, and he mainly describes the civilization as such by pointing out that these very characteristics are currently being under threat from within by the political elites of the European Union (Walker, 2019). Viktor Orbán has on multiple occasions accused the EU politicians of supposedly spreading their agenda, aiming to separate Europe from its Christian values and attempting to introduce new values by embracing cultural diversity and Islamization (ibid.). The liberal and multicultural values are seen by Hungary as non-native to the European continent, and they could bring collapse to the European identity as we know it, according to Orbán (ibid.). Overall there is a strong emphasis on the natural, stable, and unchanging aspects of the characteristics that constitute the identity of the 'native' and 'non-native' groups.

The territory which nowadays constitutes the country of Hungary used to be parts of larger countries or empires throughout history, most notably the Kingdom of Hungary and the Austro-Hungarian Empire. The characteristic feature of these Central European entities was the coexistence of a large number of ethnic groups, such as the Germans, Hungarians, Slavs, Jews, Romanians, etc. (Goździak, 2020). After the end of WW1, the Austro-Hungarian was partitioned and many successor states appeared on the map, one of them being Hungary. Due to the partition, Hungary ended up being a largely homogenous country and nowadays only around 1.5% of all people in the country are citizens of different nationalities (Traub, 2015). Many of the ethnic minorities, such as the Germans, Slovaks, or the Roma, were historically attacked or marginalized by the Hungarians, which explains why nativist tendencies are higher in Hungary than elsewhere (ibid.).

During the majority of the 20th century, Hungary was primarily a country which has experienced waves of emigration. Its citizens were leaving for the most part for better economic

opportunities, but also because of the oppressive communist regime and the 1956 Hungarian Revolution, which was an unsuccessful attempt to overthrow the communist government (Goździak, 2020). In it only in recent years that Hungary became a country of immigration, however, the extent of it was very limited and the majority of the new arrivals to Hungary were people of Hungarian descent from neighboring countries. This was because this was the primary group that was interested in moving to Hungary, but also because Hungary had a particularly selective approach to the acceptance of newcomers (ibid.).

Nowadays, the Hungarian government has acted upon these set of principles and have been treating people differently, depending on whether or not they were considered 'native.' Hungary's treatment of the 'native' in some way is characterized by a high level of privilege over other groups, which can be observed in some cases.

Hungary is practicing a policy of cross-border nation-building, through which the state establishes ties with ethnic Hungarians residing in neighboring countries. Among other ties, such as maintaining the cultural heritage in these countries, Hungary has expressed full support for the immigration of these ethnic Hungarians into Hungary (Walker, 2019). The country sees itself as a motherland for them given the fact that Hungary used to rule over the territory of the countries in which they currently reside. When it comes to immigration and integration into the Hungarian society, these people were given noticeably bigger privileges over other people of other origins, seeking the same. In 2011, the country's government passed a law, which allows immigrants to gain full Hungarian citizenship as long as they can provide evidence of their Hungarian origin and demonstrate sufficient Hungarian language skills (Melegh, 2016). Many ethnic Hungarians living outside of Hungary see the benefit of acquiring Hungarian citizenship, as the countries in which they reside might not give them as many advantages since they might not be a part of the Schengen Zone, and are thus limited to smaller labor markets (ibid.). Since the introduction of this law, 710,000 people have applied for citizenship and 670,000 people have received it (ibid.).

Hungary also recognizes its current population decline as an important problem to address, and the solution to it presented by the government officials is of nativist nature as well. To combat the low birth rates, the Hungarian families who decide to have at least three children are being offered an interest-free loan of 10m forints (£27,000) without the necessity for a payback. From 2010 to 2019, the money allocated for family support in Hungary has been doubled to increase the fertility rate in the country (Walker, 2019). The solution to foster Hungarian families is much preferred by the Hungarian government in comparison to softening up the immigration policies and allowing outsiders to settle in easily (ibid.). The motivation behind the goal to sustain a population of mainly ethnic

Hungarians in Hungary is based on a worry that population growth is an ongoing trend in Asia and Africa, and if no measures are done, the Hungarian people will soon find themselves outnumbered. According to Orbán, Europe could soon find itself lose its native European population due to a population exchange, which is directly sponsored by the European Union and its political elites (ibid.).

In recent years, Hungary was also willing to host 300 refugees from Venezuela on the basis that they provided evidence of their Hungarian ancestry, which could be dating to as far as WW2 or the Hungarian Revolution of 1956. Such evidence would make them eligible not only for being relocated to Hungary for free but upon arrival they would also be granted enormous support for integration into the Hungarian society free of charge. Examples of such support are English and Hungarian language classes, residence or work permits, accommodation, or help with getting employment (Melegh, 2016). In this case, the arrivals from Venezuela were not to receive the label 'refugees' or 'migrants' but rather simply 'Hungarians' in a desire to return to their homeland due to the unfavorable political situation in Venezuela (ibid.).

Examples such as these demonstrate the trend in Hungary where preferential treatment is applied to those people, whom the country sees as 'native' to its land, no matter if we are talking about the locals, people from neighboring countries, or faraway lands. The Hungarian ethnic origin is the desired attribute for the government to sustain its population and prevent ethnic diversity to take hold in the country.

On the one hand, Hungary might give unprecedented privileges to its 'native' people, while on the other hand, the country has acted in a very hostile manner in regards to other immigrants, which are not bearing such label. Particularly hostile actions came throughout the European migrant crisis, during which Hungary received the highest amount of asylum applications in relation to the country's population in the entire European Union (Galston, 2018). Viktor Orbán has decided to take advantage of the situation and use it to boost support for his party Fidesz, which has seen a decrease in support due to exposed corruption scandals (ibid.). His rhetoric started revolving around demonizing the immigrants, while also reserving the label 'migrant' strictly for negative connotations and association with something illegal. At the same time, he and his government started actively applying the terms 'migrant,' 'refugee,' 'asylum seeker,' or 'immigrant' interchangeably without differentiating their actual meaning, and therefore blurring the differences between them (ibid.).

In comparison to the ethnic Hungarians living outside of Hungary, third-country nationals are very much discriminated against when it comes to the treatment they receive. This group of people does not receive any language class, nor do they receive financial support for accommodation or

families upon arrival. Applying for citizenship or long-term housing is nowhere as easy for third-country nationals as it is for ethnic Hungarians since it has been pointed out that non-Hungarian immigrants from third countries are required to pay astronomic amounts of money to government-sponsored firms merely to get to the same level as the 'native' Hungarians (Melegh, 2016). Moreover, while Hungary's asylum system might have been harmonized with that of the EU, in reality the country did not always act in a transparent way when it came to granting asylum and rejected many of the asylum applications. This is true even for the period prior to the European migrant crisis, as in 2013 the entirety of Eastern Europe hosted less than 30,000 refugees out of 1.5 million in Europe (ibid.).

In addition to embracing the ethnic Hungarians as a privileged group with native connections to the Hungarian motherland, Hungarian politicians have also been focusing on discursively portraying the immigrants as a common threat not only to Hungary but also to the entirety of the European Union and the 'traditional' European values. Such discursive constructions can be specifically perceived in the words of the president of the Hungarian Parliament, László Kövér. In his 2015 interview he spoke about the fact that the native population of both Hungary and Europe is decreasing, which will eventually result in them being completely erased. The reason for the possible eradication of nations is according to Kövér because the traditional set of values is progressively disappearing. He is also stressing the fact that overpopulation may currently be a worldwide issue, but Europe is dealing with the opposite problem, the loss of population (Melegh, 2016). He further claims that the population void will be filled by invasive immigrants, who will inevitably threaten the very survival of the European population and identity, and thus Europeans should stand up together against the current situation (ibid.).

Similarly, when Viktor Orbán met with David Cameron in 2016, his discourse portrayed Hungarians as fellow Europeans instead of as a threat to the UK. If Hungarians chose to move to the UK to find work there, it was not because they wanted to make a profit from the country, but simply because free movement of persons is economic freedom provided by the European Union for every European (Walker, 2019). For this reason, Hungarians should be given respect for the hard work they do, and they should therefore not even be given the label 'migrants'. This label is according to Orbán reserved for those, who go to the UK in order to take advantage of it, and since Hungarians are not to be considered migrants, they should not face discrimination as they share the same belonging to Europe (ibid.).

In conclusion, the theory of nativism is successful in explaining why Hungary, and therefore the European Union as well, have committed human rights violations within the context of the

European migrant crisis. Hungary has a clearly defined set of attributes, which it considers given and natural, and which characterize a person that can be considered 'native' to Hungary. Immigration of white, Christian, ethnic Hungarians residing in the countries of the former Austro-Hungarian Empire, or elsewhere in the world, is being supported to a much higher level as opposed to immigration of third-country nationals, which do not have Hungarian origin. By combining a discourse where traditional values are being threatened by 'dangerous and illegal' migrants, and by actually treating these individuals as such through erected fences and increasing the difficulty for the conditions for getting asylum, Hungary is presenting itself as a defender of Europe and its native values.

5.2.7. Securitization of the European migrant crisis in Croatia

Whether the issue is considered as a threat or not is many times influenced by the type of government that is currently in power. As we will argue in the case of Croatia, different political orientation played an important role in the rhetoric and action taken during the European migrant crisis. The following section analyzes two approaches, namely the humanitarian and the security approach that can be observed in Croatia. Additionally, our goal is to attempt to find out why the security approach prevailed over the humanitarian one and what were the consequences for the migrants after that.

In the beginning of the crisis, the situation in Croatia was more favorable for the migrants as the country was showing solidarity by offering humanitarian help to third-country nationals (Župarić-Ilić & Valenta, 2018). The humanitarian approach was influenced by then social-democratic Croatian government which was fully dedicated to its humanitarian work and managed to successfully transport thousands of migrants through their territory to the west. When the EU introduced the redistribution quotas, the Croatian government accepted it, although a huge anti-immigration criticism came from the national rightist parliamentary opposition and also from the neighboring countries like Hungary or Slovenia (ibid). Furthermore, even the Croatian President, member of the right-wing party Croatian Democratic Union (HDZ), used very strong anti-immigration rhetoric and appealed to the PM to stop the influx of the migrants on Croatian territory. The PM Milanović responded that "we're not dealing with bags of cabbage – it's about people – people who are desperate, fleeing from their difficult situations, taking the risk and you can't greet them with batons" (Jakešević & Tatalović, 2016, p.1259). The message of the PM was very clear, hence that migrants are not seen as a threat but rather as vulnerable people who need the help of Croatia. Contrary to this approach, the opposition and the president classified the migration crisis as a security threat for the country and continued to push for stricter measures of protection of the country and its citizens. As it can be observed, the clash of rhetoric between two political opponents was evident, and even though

the media typically possess the necessary influential power to shape the perception of the population in one way or another, they were not able to assist one particular party to win the argumentation fight (ibid.).

The tension between securitization and humanitarian practices escalated when the Balkan corridor was closed in March 2016. Two months prior to this event, the new government has been formed in Croatia that consisted of right-wing political party HDZ and MOST, a coalition of independent lists. The newly formed government introduced to parliament an amendment of the State Border Protection Act and Defence Act which would allow the army to protect the state border (ibid.). This amendment received criticism from the opposition saying that such a move would also enable the army to use the violence, which would be against the human rights treaties. At the end, the parliament passed the amendment which was a first sign that the new government is shifting to securitization move (ibid.).

When around three hundred people were returned to Croatia from Austria and Slovenia and thousands more were entering the country from the Serbia and Bosnia and Herzegovina, the position of the government has been shifted from humanitarianism to securitization because Croatia could have become a new 'hot-spot' for migrants. Župarić-Iljić and Valenta (2018) described the Croatian approach as opportunistic humanitarianism which can be understood as temporary assistance provided by the state but without possessing any kind of responsibility towards the final consequences of its actions. Croatia acted in the way it did because it saw itself as a transit country rather than a final destination. Helping migrants to pass through its territory looked very appealing in the eyes of the EU and it was praised by many humanitarian organizations as well (ibid.).

Croatia is a very unique example that shows how fast can the rhetoric of the securitizing actors change from solidarity to hate and violence. As in other EU countries that perceive the migration crisis as a securitization threat, Croatian right-wing political leaders also applied the same securitization speech act leaning on the loss of the national identity that has been accepted by the local audience. The parliamentary elections in 2016 brought the change of the government which started to implement more anti-immigration policies and became famous for the illegal pushbacks (Louran, 2020). Therefore, we can argue that the securitization move can be seen as successful not only on the national but also on the regional level as well. The EU congratulated Croatia for a very satisfactory management of its border and decided to offer the country the accession to Schengen Area. Unlike in the case of Greece, which has been criticized by the EU for the violation of human rights within the same issue, the response of the EU in the case of Croatian violation of human rights was more restrained. The explanation to such a different position towards two EU Member States can

be offered by Simas Grigoris, who argues (2016) that “absence of comprehensive EU-level migrant policy restricted EU’s ability to prevent the crisis and to mitigate its consequences as well as human rights violations” (para.1). The problem of the EU is that it does have a common position on the migration crisis and thus it is in the interest of the Member States to act in a way to protect its territory and citizens from the massive amount of migrants (ibid.). While the EU did make attempts to act and respond to the given situation, the refusal of the states to act unanimously prevented them from taking place fast enough. As a result, several violations of human rights occurred despite the fact that all Member States of the EU signed the CFR and also other international treaties.

Securitization theory once again proved to be useful in explaining the situation that occurred in Croatia during the crisis. Undoubtedly, the ideological orientation of the parties is one of the indicators that can tell us how the rhetoric of its political leaders will look like, what arguments they will use, and what kind of the law they may pass. As it was observed not only in Croatia but also in Greece and Italy, right-wing political parties have a higher tendency to base their arguments on the anti-immigration issue than the left-wing political parties which are keener to take a humanitarian approach as we found out during our research.

5.2.8. Can we talk about nativism in Croatia?

The basic characteristics of the theory of nativism could be observed in the analyses of the states that we previously described. However, in our attempt to analyze the documents related to nativism in Croatia, we found out that there are no relevant studies that would argue for the role of nativism in Croatia and its connectedness to the European migrant crisis. Notwithstanding the foregoing, the migration crisis had an impact on the rise of the nationalistic tendencies which were used by the right-wing political leaders to increase their popularity among the electorate.

The threat which migrants represented was mainly connected to arguments such as lack of job opportunities for Croatians, fear of the unknown, or fear of terrorism (Jurlina & Vidović, 2018). Furthermore, according to a survey published by the Center for Peace Studies ‘Representation and Indicators of Discrimination and Xenophobic Attitudes in the Republic of Croatia’ in 2013, the migrants and refugees were the third most unwanted group after Serbs and Roma people (ibid.). Although the attitudes towards migrants and refugees became more negative in the following years, the majority of the Croatian population perceived the migrants as people who do not have any intention to stay in their country because it is not economically attractive for them (ibid.).

The above-mentioned statements do not show the characteristics of nativism, but rather we can talk about the ideological perception related to nationalism. There is a difference between these two notions as nativism understands the nation as superior and any foreign, non-native elements are seen as a threat to the native population (Hervik, 2015). Nationalism, however, is an “ideology based on the premise that the individual’s loyalty and devotion to the nation-state surpass other individual or group interests” (Kohn, n.d., para.1).

Therefore, the theory of nativism did not prove to be helpful in explaining why human rights violations occurred in Croatia. Even though several IOs reported their violation on the Croatian border, the reason why they took place could have been based on the nationalist rather than nativist ideological perception.

5.3. Recommendations for prevention of further violations of human rights on migrants

The purpose of the final chapter of this master thesis is to discuss the possible measures that could be undertaken by various actors, such as the European Union or its Member States, in order to prevent that the violations of human rights vis-à-vis migrants occur again in the future. What we would like to stress is that the following recommendations are based on our observations we acquired throughout the writing of this master thesis, such as the various political entities and states, their policies, the currently available treaties, behavior of the countries and their leaders, etc. We acknowledge that the set of suggestions we present in this section is solely based on our presumptions and current trends due to the fact that it is not possible to provide a completely accurate predictions of what will happen in the future, which exact crises will occur, and what will be their exact extent.

The purpose of this section is not to suggest that the European Union and its Member States should strive to implement the recommendations we present in this section, nor do we provide guidelines on how to achieve them. Furthermore, we do not claim that these suggestions are the perfect solutions to the problems that occurred during the European migrant crisis and that they would have fully worked had they been in place, or that they will be the ultimate solution for similar or the same problems in future crises. We simply state that according to our analysis of how the European Union currently functions, and after conducting a thorough research about its current situation and how this organization and its Member states reacted during the European migrant crisis, the following set of suggestions could be considered beneficial for the EU in order to achieve a more efficient management of such crises, or to prevent human rights violations from occurring again in the future.

An observable phenomenon during the crisis in Europe was the fact that each EU did not act as a cohesive unit, but rather that each of its Member States acted differently in terms of how to deal with the new arrivals. The attitudes differed dramatically among the countries, as some acted in a way to provide help and refuge for these people, while other countries viewed them as something undesirable and negative, which was ultimately reflected in their actions. Viewing the immigrants as a security threat has in many cases led to human rights violations, despite the fact that all EU members are signatories of Charter of the Fundamental Rights of the European Union and are in theory required to respect the human rights of each human being. The current crisis, however, has demonstrated that countries were in fact able to erect fences, shut down refugee camps, apply violence along the borders, or commit pushback, had they themselves deemed it necessary.

A measure which could be considered beneficial in terms of protecting the lives of the immigrants and their human rights within such a crisis is to prevent the member states from acting individually and base their actions on their national interests or securitizing or nativist rhetoric. As the EU Member States form a union and are deeply interconnected, the EU could enlarge its spectrum of competences it has over them and therefore act more as a single unit. More specifically, the EU could benefit from a common EU immigration policy, which would be supranational in nature and would be centrally coordinated. Had the matters of immigration been in the hands of the EU as a whole, rather than its individual Member States, each decision made by the EU would also apply for them, which could have a result of a dramatic increase in the speed of its reaction towards urgent affairs, such as the European migrant crisis. Moreover, it could also prevent countries from resorting to inhumane treatment or other forms of human rights violations, as the final decisions would be conducted within the big picture of what is beneficial for the EU as a whole.

However, the simple shift from local coordination of such urgent affairs to the supranational one might in itself not be completely sufficient to stop human rights violations. In fact, countries might end up committing them regardless of what the EU regulations are if they really deem it necessary. A similar case took place within the European migrant crisis when some of the EU Member States, most notably two members of Visegrád Group, Hungary and Slovakia, refused to participate in the EU mandatory quota system of refugee redistribution in 2015 (CJEU, 2017). The consequence of the disobedience was the involvement of the European Court of Justice, which indeed confirmed that these two countries acted against the EU laws (Quell, 2020). However, no significant outcomes resulted from the case by the April 2020 when CJEU published the statement in which it said that the consequences may be drawn (but do not have to) if the EU Commission asks the Court to make a judgement (ibid.). This example is a demonstration that Hungary and Slovakia could be able to get

away with their actions on the EU level despite clearly violating the Charter of the Fundamental Rights of the European Union.

A measure that could be implemented, which could have a particularly strong effect in decreasing or preventing the motivation of the EU member states to commit human rights violations, is to set up a stronger system of punishment for non-compliance with the EU regulations. This measure would make it clear that human rights are not negotiable and not up to debate, but rather that their violation will have negative consequences for the countries committing them. The punishment could be set in a way so that it would be sufficiently severe for a member state that it would not perceive the violations of human rights as something beneficial for itself, but instead as something damaging. With a severe punishment in place, the calculation of pros and cons of not respecting human rights should be inclined to the side of the cons, and the inadequate behavior towards the human rights of the migrants and refugees would not outweigh the penalties that would follow. At the same time, the punishment of a specific member state should not be set up in a way that also damages the EU as a whole, which could also occur as the EU Member States are interconnected. This is because the observation that EU is hurt as well along with the guilty Member State would not motivate it to respect the human rights as it would not feel impact of the punishment.

Lastly, the final recommendation deals with the enlargement of Charter of the Fundamental Rights of the European Union, since as of today, this document is in many, but not all aspects, less comprehensive in comparison to the Universal Declaration of Human Rights, which served as its basis. While the Charter might be based on the Declaration, it solely defines the human rights as such and the conditions under which they can be classified as violated. The UN document includes additional passages, which call for promotion and protection of the human rights. Looking at the European context, because the European Court of Justice is an EU organ, it is being primarily driven by EU laws and regulations, also those found in the Charter of the Fundamental Rights of the European Union, rather than the Universal Declaration of Human Rights. However, by prioritizing the EU definitions of human rights over those of the UN, the EU is possibly depriving itself of solving a bigger amount of cases when human rights are violated, because the EU document is missing the passages included in the Declaration. A possible solution to this could either be the amendment of the Charter of the Fundamental Rights of the European Union and inclusion of the missing points in it, or alternatively, the European Court of Justice could in addition to the EU Charter put a stronger emphasis on the Declaration, especially in the areas which the EU document does not explain.

Conclusion

To conclude, there is no doubt that human rights violations have been committed vis-à-vis migrants within the European migrant crisis. The definition as to what exactly is a human right and what rights do migrants and refugees have are primarily given by the Universal Declaration of Human Rights and the 1951 Refugee Convention, and on the European Union level it is the Charter of the Fundamental Rights. However, with the sudden arrival of a large number of migrants into Europe seeking refuge from their homelands, the respect for these documents has been challenged and several countries acted against them and committed human rights violations. Due to the lack of a common EU migrant policy and rapid response, many EU Member States and other countries along the migrant routes decided to deal with the crisis individually.

The countries located on the external border of the EU have been exposed to the influx of migrants as first. In Greece, this migration crisis was not the first one in its long history. Thus, the government has already considered this issue as a threat to the country and even appropriate steps have been taken, including the strict external border control. From the securitization point of view, the narrative of the right-wing political parties helped to shape a negative anti-immigration perception among the local audience. Thus, the action steps were seen as legitimate despite the obvious violation of human rights. The very important role in explaining the situation in Greece played also the nativism. Greece is one of the most homogenous countries in Europe and different cultural and religious backgrounds of the migrants did not find acceptance there. With an active engagement of the rightist political parties, strong racist and xenophobic became widely spread which further led to severe human rights abuses.

In Italy, the second country on the external EU border, the securitization theory can be considered successful, as with the heavily spread anti-immigrant rhetoric by Matteo Salvini, his political party Lega Nord managed to become the third most represented party in the Italian parliament, after the parliamentary elections in 2018. Salvini's actions have often resulted in human rights violations, namely in the case when he ordered the closure of certain refugee camps in the south of the country, as well as often not allowing the debarkation of ships carrying potential asylum seekers, which prohibited them from being able to apply for asylum. Nativism too can be considered successful since nativist sentiments and racism became widespread in Italy as a result of Salvini's effort to define 'Italianness' and attribute certain labels to those who are seen as 'native,' while openly excluding the immigration and integration of the 'outsiders.'

The reasons why countries were willing to act in a way that violates the human rights of the migrants vary, but many of the actions can be explained by the theories of securitization and nativism.

The securitization theory seems to successfully explain Hungary's actions, as the country's authorities depicted the immigrants as a security threat to the country's culture, religion, and national identity. The government managed to convince the Hungarian population about their claims and proceeded to extraordinary actions, such as the construction of a fence all along its southern border with Serbia and Croatia, as well as amending its asylum law, which made it significantly more difficult for migrants to enter the territory of Hungary and apply for asylum there. The human rights violations occurred mainly because the Hungarian authorities deprived many potential asylum seekers of access to the Hungarian territory, where they could safely apply for asylum, while also physically abusing them and pushing them back to Serbia, and thereby increasing their chances of refoulement. The theory of nativism can also successfully be applied for Hungary, as the country's president Victor Orbán and the members of his Fidesz party advocated for, and acted in a way that gives privileges to people, who are seen as 'native' in Hungary in one way or another. Immigration of people with Hungarian origin or member of the Hungarian minority in neighboring countries is encouraged and supported, while it is systematically discouraged for the recent immigrants, who are seen as not being 'native' due to their religion, skin color, or mentality.

In case of Croatia, securitization can also be considered successful, as during the crisis the right-wing party HDZ, which was previously in opposition, managed to gain the majority of the votes in the 2015 parliamentary elections, which was mainly due to their rhetoric, portraying the immigrants as an economic and cultural threat to Croatia. With the closure of the Western Balkans Route in 2016 came about a new set of policies from the new government, mainly in form of extraordinary actions, such as allowing police and military to guard the borders of the state, which could lead them to the use of violence against the migrants, and therefore violate their human rights. In terms of human rights violations per se, Croatia as a country has had the highest number of reported pushbacks among the countries along the Western Balkans Route. When it comes to nativism, this theory does not explain the actions undertaken by the Croatian government within the European migrant crisis due to the lack of available sources, which could be because the government employed a different strategy to deal with the crisis rather than applying rhetoric, which emphasizes 'native' elements and excluding people not possessing them.

As many human rights violations have been committed by various Member States, this crisis has exposed an imperfect system within Europe, where each Member States of the European Union deals with the immigrants on an individual level. The reason why there was not a coordinated response of the EU to the crisis is due to the missing comprehensive EU migration policy, which would be legally binding for all of its Member States. If the EU wants to prevent its Member States

from dealing with similar crises on an individual level in the future, it needs to develop a common set of rules, which would apply for all EU countries, and these rules would need to stand above the national laws of the Member States. Supranational control of this issue could ensure a more fair approach to solving such crisis, but the question is whether the current political climate of securitization or nativism in the certain EU Member States creates the sufficient conditions for further European integration and the willingness to surrender some of the power to a supranational entity, such as the European Union.

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