

Tilburg University
LLM in International Law-Track Human Rights Law
Master Thesis



The development of the Common European Asylum System and the Greek example

Tilburg, August 2011

Author: Georgios Oikonomou

Academic Supervisor: Dr Helen Oosterom-Staples

Table of Contents

List of Abbreviations.....	4
Chapter I-Introduction.....	5
1.1. The case of M.S.S against Belgium and Greece.....	6
1.2. The findings of the ECtHR.....	9
1.3. Evaluation of the judgment.....	10
1.4. Dublin II Regulation and the Common European Asylum System (CEAS).....	11
1.5. Central Research Question-Plan of Work.....	13
Chapter II -The origins of the EU’s asylum law.....	15
2.1. The Universal Declaration of Human Rights (UDHR).....	15
2.2. The European framework.....	16
2.3. Schengen Agreement.....	18
2.4. The 1990 Dublin Convention.....	19
2.5. The creation of the European Union.....	21
2.6. The Tampere Presidency Conclusions.....	21
2.7. The Wijsenbeek case (EJC).....	24
Chapter III- EU Legislation on Asylum and the Greek case.....	26
3.1. The Dublin II Regulation.....	27
3.2. Article 10 of the Dublin II Regulation and Greece	29
3.3. The Eurodac Regulation.....	31
3.4. Directives.....	32
3.5. The European Refugee Fund (ERF).....	37
3.6. The challenges that the CEAS has brought to Greece.....	37

Chapter IV- The Evaluating the Dublin System

4.1. The double objective of the Dublin-II Regulation.....38
4.2. The weaknesses of the Dublin System.....40
4.3. Proposals towards a reformed “new CEAS”41

Chapter V-Conclusions.....43

5.1. Conclusions.....43

Bibliography.....44

List of Abbreviations

CEAS	Common European Asylum System
CFSP	Common Foreign and Security Policy
EC	Treaty of Amsterdam
ECHR	European Convention of Human Rights
ECJ	European Court of Justice
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EEC	European Economic Community
ERF	European Refugee Fund
EU	European Union
JHA	Justice and Home Affairs
NGO	Non-governmental organization
TCN	Third country nationals
TEC	Treaty Establishing the European Community
TEU	Treaty on European Union
SEA	Single European Act
SIA	Schengen Implementing Agreement
UNHCR	United High Commissioner of Refugees
UDHR	Universal Declaration of Human Rights

Chapter I

Introduction

The right to asylum is as old as humankind. It has been developed, as a common characteristic of every human society since antiquity. In the beginning it was connected with religious beliefs and places (sanctuary). In modern times, asylum reflects a State's will and power to grant protection to non-nationals or stateless persons. Every state has the discretion to grant or not grant asylum status, according to its domestic legislation. The granting of asylum is in one way closely related to politics, as it can affect international relations of the particular State but also its domestic issues, for this reason the term **“political asylum”** is also used¹. There are several definitions for political asylum, but none of them is unanimously accepted at the international treaty level. The basic concept that characterizes **“asylum”** is that of **“protection”**. So, according to certain scholars *“political asylum refers to the protection given to political refugees from arrest by a foreign jurisdiction”*². Others support the view that it is *“the practice of housing, temporarily or long term, persons in need of protection, usually on the basis of refugee claims”*³. The person who requests asylum is called **“asylum seeker”**. So, we can assume that *“an asylum seeker is someone who is seeking protection as a refugee and is still waiting to have his/her claim assessed”*⁴.

Because of geopolitical reasons the phenomenon of looking for asylum in Europe is widespread during the last years⁵. Especially for Afghan and Iraqi nationals, but also for others originating from countries devastated by war, such as Somalia and the former Yugoslavia or dominated by suppressive regimes like Iran, Europe seems to be a safe haven compared to their countries. The life and dignity of asylum seekers seems to be better protected in Europe than in their homelands.

It is easy to understand that this large influx of numbers of persons looking for protection creates a variety of issues, making urgent for the European Union not only

¹ Olga Ferguson Sidorenko “The Common European Asylum System, Background, Current State of Affairs, Future Direction”, The Hague, 2007, p. 1

² <http://definitions.uslegal.com/p/political-asylum/>

³ <http://www.duhaime.org/LegalDictionary/A/Asylum.aspx>

⁴ <http://www.refugeecouncil.org.au/docs/news&events/rw/2010/0%20-%20Full%20Resource%20Kit%202010.pdf>

⁵ There were nearly 261 000 asylum seekers registered in Europe in 2009

http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-10-027/EN/KS-SF-10-027-EN.PDF

to protect those who need protection but, at the same time, to create a framework organizing the cooperation among the EU Member-States in the most effective way. This is without any doubt a great challenge for the EU. Succeeding in this objective is crucial for Europe, in its attempt to be a leading force in the development of human rights at a global level.

1.1. The case of M.S.S against Belgium and Greece

In order to obtain an insight in the problems that many asylum seekers face in Europe, it is really helpful to examine the facts of a recent (21/01/2011) judgment of the European Court of Human Rights (ECtHR) (**M.S.S against Belgium and Greece**)⁶. The case of M.S.S is characteristic of the conditions in which the majority of asylum seekers live and of the difficulties that they have to face. M.S.S could be one of the thousands of illegal immigrants seeking protection in Europe. His case is interesting because the judgment, for the first time, undermines the current European system for protection of asylum seekers as it finds its expression in the **Dublin II Regulation**⁷. Moreover, there are plenty of similar cases pending before the ECtHR⁸ and thus it can be considered that this judgment creates a precedent that will guide the examination of the rest of the cases.

A short description of the circumstances of the case is necessary. The applicant (M.S.S) is an Afghan national; he had worked as an interpreter for the N.A.T.O forces before he left Kabul early in 2008 trying to save himself from the Taliban. After crossing Iran and Turkey he finally entered the European Union through Greece, where his fingerprints were taken on 7 December 2008, in the capital of the Greek island of Lesbos, Mytilini, near the border with Turkey. The fingerprint taking is a procedure that aims at the identification of everyone entering the EU illegally and is regulated by **Eurodac**⁹. As it is mentioned in the judgment (p. 10) “*in Greece he was detained for a week and when released, was issued with an order to leave the country. He did not apply for asylum in Greece*”.

⁶ ECHR M.S.S v Belgium and Greece, 21/1/2011 Application no. 30696/09.

⁷ Council Regulation (EC) No 343/2003 of 18 February 2003 also known as Dublin II Regulation, OJ L 222, 5.9.2003.

⁸ Europe an Court of Human Rights, Factsheet – “Dublin cases” Press Unit.

⁹ EURODAC was established by Council Regulation (EC) No 2725/2000 of 11 December 2000, OJ L 316, 15.12.2000.

On 10 February 2009, M.S.S arrived in Belgium, travelling through France. In Belgium he finally applied for asylum. When the Belgian authorities started examining his application they found, using the “Eurodac” system, that his fingerprints were taken in Greece so, consequently, M.S.S was registered in Greece, which was the first Member-State of the EU on his way to Belgium. The Belgian authorities put him in a detention centre for asylum seekers. On 18 March 2009, the Belgian authorities requested Greece to take charge of the applicants asylum application as required by Article 10 § 1 of Dublin II Regulation¹⁰. Greece did not respond within two months to Belgium’s request, consequently Belgium considered this to be an acceptance of its request. On 19 May 2009, two months after the submission of his asylum application in Belgium, the Belgian authorities, more specifically, the “Aliens Office”, decided not to allow him to stay and ordered him to leave the country. According to the “Aliens Office”, Belgium, applying Article 10 of the Dublin II Regulation, was not responsible to examine the applicant’s request for asylum instead of Greece.

It is worthy to say that Belgium believed that Greece would fulfil its obligation to protect asylums seekers according to law and the 1951 Geneva Convention relating to the Status of Refugees, although on 2 April 2009 Belgium was informed by the UNHCR on the inefficiencies of the Greek asylum system and the bad reception conditions to which asylum seekers were exposed in Greece¹¹. The Belgian authorities considered that they were not obliged to apply the derogation clause of Article 3 § 2 of the Dublin II Regulation¹² and they reassured the applicant that he could apply for asylum in Greece.

Finally, they arranged the departure of the applicant to Greece for 29 May 2009. The applicant underlining the dangers that he would face in Greece, lodged an appeal on 29 May 2009 before the Aliens Office, but it was rejected. Consequently a second transfer to Greece was arranged for 15 June 2009. In the meanwhile, on 11 June 2009, the applicant requested interim measures against Belgium in order to have

¹⁰ Council Regulation (EC) No 343/2003 of 18 February 2003, OJ L 222, 5.9.2003, Article 10: “When an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for asylum.”

¹¹ http://www.unhcr.se/Pdf/Position_countryinfo_2008/Greece_return_as_UNHCR_position.pdf.

¹² Council Regulation (EC) No 343/2003 of 18 February 2003, OJ L 222, 5.9.2003, Article 3 p. 2: “Each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation.”

his transfer to Greece suspended, but this claim was also rejected. Finally, the applicant was transferred to Greece on 15 June 2009.

When the applicant arrived in Greece he was placed in a detention centre where, according to him, the detention conditions were far from humane. More specifically, *“he was locked up in a small space with 20 other detainees, had access to the toilets only at the discretion of the guards, was not allowed out into the open air, was given very little to eat and had to sleep on a dirty mattress or on the bare floor”* (p. 34). This lasted for three days before, on 18 June 2009, the applicant was released after being informed by the Greek police that within two days he had to inform the Athens police headquarters of his address in Greece *“in order to be informed in progress with his asylum application”* (p. 35). He was given an asylum seekers card (also known in Greece as the “pink card”)¹³.

On 1 August 2009, the applicant tried to leave Greece using a false Bulgarian identity card. He was arrested at Athens International Airport and *“he was sentenced by the Athens Criminal Court to two months' imprisonment, suspended for three years, for attempting to leave the country with false papers”* (p. 45). Consequently, the Ministry of Public Order of Greece on 4 August 2009, applying Article 76 of Law No. 3386/2005, considered that the applicant was to be expelled from Greece to Afghanistan. After five months, on 18 December 2009, the applicant renewed his pink card for another six months at the Athens police headquarters and he did the same on 18 June 2010. On 21 June 2010, he received a notice informing him that he was invited on 2 July 2010 to the police headquarters for an interview on his asylum application. He never appeared for this interview because the paper he had received was written in Greek and the interpreter, present when he renewed his pink card on 18 June 2010, did not inform him about that interview.

The applicant tried to leave Greece again and go to Italy, but he was stopped by the Greek police in Patrai. From there he was transferred to Salonika and then, to the border with Turkey where he was to be expelled to, but at the last moment the Greek police decided not to expel him because of the presence of the Turkish police.

¹³ The authority responsible for receiving and examining the asylum application issues an asylum applicant's card free of charge immediately after the results of the fingerprint check become known and in any event no later than three days after the asylum application was lodged. This card, called the “pink card”, permits the applicant to remain in Greece throughout the period during which his or her application is being examined. The card is valid for six months and renewable until the final decision is pronounced (paragraph 89 of the M.S.S v Belgium and Greece, (Article 5 § 1)).

In view of the aforementioned events, M.S.S lodged an application against Belgium and Greece before the ECtHR (Application no. 30696/09) under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms¹⁴, on 11 June 2009. On 16 March 2010, the Chamber to which the case was assigned relinquished jurisdiction in favour of the Grand Chamber.

1.2. The findings of the ECtHR

According to the judgment of the ECtHR there was a violation of **Article 3** of the ECHR¹⁵ on behalf of Greece, firstly, because of the conditions of the applicant's detention (pp. 205-234) and, secondly, because of the applicant's living conditions in Greece (pp. 235-264). At the same time the ECtHR found that Greece had violated **Article 13** of the ECHR¹⁶ taken in conjunction with **Article 3** "*because of the deficiencies in the Greek authorities' examination of the applicant's asylum request and the risk he faces of being returned directly or indirectly to his country of origin without any serious examination of the merits of his asylum application and without having access to an effective remedy*" (pp. 265-322).

As it concerns Belgium, the ECtHR also found a violation of the ECHR. The ECtHR found that Belgium, by sending the applicant back to Greece, had exposed him to the risks arising from the deficiencies in the asylum procedures in Greece, and thus, Belgium had also violated **Article 3** of ECHR (pp. 323-361). In addition, the violation of Article 3 on behalf of Belgium was also founded on the exposure of the applicant to conditions of detention and living contrary to Article 3, which resulted from his transfer to Greece (pp. 362-368). Moreover, according to the ECtHR,

¹⁴ ECHR Article 34 – Individual applications “The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

¹⁵ ECHR Article 3 – Prohibition of torture “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

¹⁶ ECHR Article 13 – Right to an effective remedy “Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

Belgium had also violated **Article 13** in conjunction with **Article 3** (pp. 367-397).

Finally, the ECtHR upheld the applicants claim and found that Greece had to compensate him for non-pecuniary damages with EUR 1,000 (p. 406). Belgium also had to compensate him with EUR 24,900 in respect of non-pecuniary damages (p. 411). Moreover, as it concerns the costs and expenses of the trial, the ECtHR found that Greece and Belgium had to pay him EUR 3,450 (p. 414) and EUR 6,075 (p. 420) respectively and an additional EUR 1225 each (p. 423).

1.3. Evaluation of the judgment

As it has already been pointed out, the recent judgment is of great importance since it opens the way to the adoption of similar decisions in a great number of pending cases, concerning the expulsion of asylum seekers back to the first country through which they entered the EU.

As it is stated in the judgment (p. 125) “88% of the foreign nationals who entered the European Union in 2009 entered through Greece.” This number includes both asylum seekers as well as illegal economic immigrants. Considering that according to Article 10 (1) of the Dublin-II *Regulation* “an asylum seeker that has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for asylum”, it is easy to understand that countries in the periphery of the EU, particularly Greece with its extensive land borders in the North and the porous maritime frontline in the East, has to handle the examination of asylum application and the reception of the greatest number of these persons.

Judge Rozakis, who a propos is a Greek national, in his concurring opinion, put great emphasis on that issue. So, according to him “*In these circumstances it is clear that European Union immigration policy – including Dublin II – does not reflect the present realities, or do justice to the disproportionate burden that falls to the Greek immigration authorities. There is clearly an urgent need for a comprehensive reconsideration of the existing European legal regime, which should duly take into account the particular needs and constraints of Greece in this delicate domain of human rights protection.*” He continues by making reference to the fact that the

protection of asylum seekers (as it is expressed by providing accommodation and decent material conditions to them), according to Article 3 of ECHR, derives from a variety of legal texts, of both international and European character. More specifically, “the Geneva Convention, the activities of the UNHCR and the standards set out in the European Union Reception Directive” (p. 251 of the judgment) are of great importance for the protection of asylum seekers.

Judge Rozakis was not the only one to criticize the inefficiencies of the Dublin-II Regulation. Bjarte Vandvik, the European Council on Refugees and Exiles Secretary General, stated that: “*This judgment is a major blow to the Dublin system. The assumption that all EU Member States respect fundamental rights and that it is therefore safe to automatically transfer asylum seekers between EU countries no longer stands. Europe must seriously rethink the Dublin system and replace it with a regime that ensures the rights of asylum seekers are respected*”¹⁷.

But even before, criticism against the practice of sending asylum seekers back to Greece to have their applications examined in this country was intense. The Council of Europe’s Human Rights Commissioner (Thomas Hammarberg) had already stated, in September 2010, that the European countries should stop this practice¹⁸.

This severe criticism against the Dublin-II Regulation poses many questions concerning the protection of asylum seekers in Europe. In any case, it is necessary to keep in mind that Dublin-II, as it s now stands is the cornerstone of the European asylum policy.

1.4. Dublin-II Regulation and the Common European Asylum System (CEAS)

In order to better understand the position that the Dublin-II Regulation occupies within the European legal order, it is useful to go back to the conditions that have led the EU to the adoption of this particular regulation.

As it is pointed out in the first article of the regulation, Dublin-II was adopted “to lay down the criteria and mechanisms for determining the Member State responsible for examining an application for asylum lodged in one of the Member States by a third-country national.” But, if we try to go a bit deeper exploring the

¹⁷ http://www.ecre.org/files/2011_01_21%20ECHR%20MSS%20case%20_ECRE_final-1-1.pdf.

¹⁸ <http://eu.greekreporter.com/2010/09/02/call-to-stop-transfer-of-asylum-seekers-to-greece/>.

purpose of this regulation we will realise that this was a first attempt to create a common policy on asylum within the EU. As it is clearly underlined in the first paragraph of the preamble to Dublin-II Regulation, *“a Common European Asylum System is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.”* This objective was strongly underlined during the **Tampere Summit** (October 1999) that followed the signing of the Treaty of Amsterdam. In Tampere, the European Council adopted the **Tampere Presidency Conclusions** which are a decisive step in the development of **Common European Asylum System (CEAS)**. From this document it is obvious, that the call for change and co-operation between the EU Member-States should always be in accordance with international treaties protecting the rights of asylum seekers. In paragraph 13 of the preamble of the Tampere Presidency Conclusions we read: *“It has agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention.”* It continues by describing the form of this System in the following paragraph: *“This System should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status.”*

The recent judgment of the ECtHR in *M.S.S v Belgium and Greece* made clear that the EU asylum system, as it now stands, is not always able to effectively protect asylum seekers. Particularly, Member-States which are confronted with large numbers of asylum seekers, like Greece, fail to provide them full protection. At the same time Member-States are not encouraged to transfer their asylum seekers back to other Member-States where their protection is not guaranteed. In this way, Article 10 of the Dublin-II Regulation, that defines which Member-State is responsible to examine an asylum application made by somebody who has crossed the borders illegally, becomes a dead letter.

In view of this, it becomes urgent to reconsider if the Common European Asylum System, as it is expressed through the Dublin-II Regulation, is still viable.

1.5. Central Research Question:

Is the implementation of a Common European Asylum System viable, considering the influx of immigrants seeking access to the European Union at its southern borders, in particular Greece that already challenges the current EU common policy on asylum and refugees?

Sub-questions:

- 1) What are origins of the CEAS?
- 2) What challenges has CEAS brought for Greece?
- 3) Does the CEAS provide the solutions needed within the EU to ensure effective cooperation in asylum and refugee matters?

Plan of Work: As an introduction to the thesis a recent judgment of the European Court of Human Rights (The Case of M.S.S v. Belgium and Greece) has been discussed. This judgment illustrates and condemns certain aspects of the EU asylum policy. Using this as an example I will start to examine the EU asylum policy as it is expressed by the Common European Asylum System.

So, the first part of the thesis will be an analysis of the origins of the Common European Asylum System. A short reference to the history of the European Union's asylum policy will be made particularly taking into account the general EU policy towards immigration and human rights protection. The international standards for the protection of refugees as set out in international treaties (e.g. the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol) will be used in order to understand the basis upon which the EU adopted the Tampere Presidency Conclusions. Then, the constituent parts of the CEAS, as it stands now, will be analysed.

More specifically, the current legislation that was adopted after the Tampere Summit will be analysed. In particular, the Dublin-II Regulation, which is of great importance to the CEAS since it establishes the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, will be carefully described and analysed. Then, relevant EU documents related to the obligations of the

Member States vis-à-vis asylum seekers, e.g. Regulation establishing Eurodac will be discussed. Moreover, there are a few Directives related to asylum seekers (e.g. Temporary Protection Directive, Reception Directive, Qualification Directive, and Asylum Procedures Directive) that will also be discussed. The way in which these documents have shaped the current EU system of asylum and refugee protection will be analysed. In order to understand these challenges that make the implementation of the CEAS across Europe difficult, an analysis of the Greek situation will be given (case study). This analysis will be based on the recent judgement of ECtHR (*M.S.S v Belgium and Greece*). The analysis will reveal that, the problems detected in the case of Greece are largely related to the implementation of Article 10 of the Dublin II Regulation and to the poor reception conditions that asylum seekers face in Greece.

Further the challenges that the CEAS face will be discussed. The adopted legislative measures will be examined and evaluated in order to establish if they are adequate to ensure the existence of a fair and efficient CEAS. Moreover, some proposals towards the further “harmonization” of the EU asylum system will be mentioned. The last part of the thesis will consist of the conclusions over the workability of the CEAS.

Chapter II

The origins of the EU's asylum law

As it has already been pointed out the decision to create a Common European Asylum System was taken at the Tampere Summit. In the Tampere Presidency Conclusions, it is stated that: *“The European Council reaffirms the importance the Union and Member States attach to absolute respect of the right to seek asylum. It has agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of **non-refoulement**”*¹⁹.

2.1. The 1951 Refugee Convention

In order to understand this commitment of the Tampere European Council we should go a little bit back in time. If we do so, we will see that the right to asylum, as it stands today, made its appearance soon after the Second World War, in 1948, with the **Universal Declaration of Human Rights** (UDHR). In this influential though not binding international declaration, it is clearly stated that *“Everyone has the right to seek and to enjoy in other countries asylum from persecution”*²⁰.

A few years later, in 1951, and having as legal ground Article 14 of the UDHR, **the 1951 Refugee Convention was adopted**²¹. Initially, this Convention had a limited influence; its objective was to protect persons having fled from their countries before 1951 and as a result of the WW-II. Moreover, it also contained a geographic restriction as it referred to displaced persons within Europe. The **1967 Protocol** that was adopted in 1967, removed these two limitations and thus the Convention obtained universal coverage²². Today, the 1951 Convention and the 1967

¹⁹ Paragraph 13, Tampere Presidency Conclusions.

²⁰ Article 14 (a) UDHR. The text of the UDHR is available here:
<http://www.un.org/en/documents/udhr/index.shtml>

²¹ Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the “Status of Refugees and Stateless Persons” convened under General Assembly resolution 429 (V) of 14 December 1950 Entry into force: 22 April 1954, in accordance with article 43.

²² The “Protocol relating to the Status of Refugees” entered into force 4 October 1967, in accordance with article VIII.

Protocol are considered to be the cornerstone of the protection of refugees. They have been ratified by the vast majority of sovereign States²³ including all EU Member-States and they provide the definition of “refugee” as well as an extensive set of rights.

So, according to the 1951 Convention, “*a refugee is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion*”²⁴. In addition, the Convention determines the obligations and the duties of both the refugee and the host-State. The basic guidelines that are followed are those of non-discrimination as to race, religion or country of origin on behalf of the State against the refugee²⁵, non-penalization of the refugee who entered the territory of the State unlawfully²⁶, and non-expulsion or return of the refugee to the frontiers or territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (principle of non-refoulement)²⁷. Finally, the Convention defines the minimum standards of protection that a State should provide to its refugees. Among others, these rights feature judicial protection of the refugees²⁸, access to elementary education²⁹, access to social security³⁰ and administrative assistance³¹.

Finally, the preamble of the 1951 Convention underlines the need for international cooperation as “*the grant of asylum may place unduly heavy burdens on certain countries*”.

2.2. The European framework

Now we should examine a parallel procedure that also began in the 1950s. This was the creation of the **European Economic Community (EEC)**. With the adoption of the **Treaty of Rome in 1957** the European Economic Community was

²³ 147 States according to <http://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>.

²⁴ Article 1A (2) of the Convention relating to the Status of Refugees.

²⁵ Ibid, Article 3.

²⁶ Ibid, Article 31 (1).

²⁷ Ibid, Article 33.

²⁸ Ibid, Article 16.

²⁹ Ibid, Article 22.

³⁰ Ibid, Article 24.

³¹ Ibid, Article 25.

established³². We should always keep in mind that, in the first stage, the EEC had as an objective the creation of a European economic market. Economic cooperation between its Member-States was the cornerstone of this Agreement. In view of this, issues related to immigration, asylum and refugees were arranged through bilateral or multilateral agreements by the Member-States and third countries and not by a central authority³³. In other words, every Member-State enjoyed exclusive competence to address these issues.

This started to change with the introduction of the **Single European Act (SEA)**³⁴ in 1986. With the adoption of the SEA the term “*internal or single market*” made its appearance. “Internal or single market” can be defined as “a market in which the free movement of goods, services, capital and persons is ensured and in which European citizens are free to live, work, study and do business”³⁵. This term although it is similar to the previously used one (“economic market”), was actually quite innovative since the EEC Member-States moved one step further from the principle of economic cooperation that up until then was characterising the EEC and from now on among the objectives of the EEC was the establishment of an area of freedom of movement “*without internal frontiers*”³⁶. In order to achieve this objective the four “freedoms” were introduced: the free movement of goods, persons, services and capital³⁷. It is easy to understand that the freedom of movement of these four categories would become easier with the abolishment of internal border controls among the EEC countries. In other words, no border-control between the EEC countries would mean easier movement of goods, persons, services and capital. As we will see in the following chapters, the aforementioned four freedoms, especially the free movement of persons, affected the position of asylum seekers inside the EU.

³² http://ec.europa.eu/economy_finance/emu_history/documents/treaties/rometreaty2.pdf

³³ Olga Ferguson Sidorenko “The Common European Asylum System, Background, Current State of Affairs, Future Direction”, The Hague, 2007, p. 2.

³⁴ http://ec.europa.eu/economy_finance/emu_history/documents/treaties/singleeuropeanact.pdf

³⁵ http://europa.eu/legislation_summaries/internal_market/index_en.htm

³⁶ Art 14 TEC, now Art 26 of the Treaty on the Functioning of the European Union: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:EN:PDF>.

³⁷ In the Treaty on the Functioning of the European Union there are provisions on these four categories: At Title II of the Treaty (Articles 28-37) the free movements of goods is regulated. At Title IV of the Treaty (Articles 45-66) the free movement of persons, services and capitals is regulated.

2.3. Schengen Agreement

At the same time that the Single European Act was adopted another development played an important role towards the evolution of the European policy on asylum. This was the **Schengen Agreement**³⁸. It is worth saying that originally the 1985 Schengen Agreement was not part of the European legal order. This was just an international agreement among governments of States that were also members of the EEC; a treaty adopted by the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic in 1985.

The main idea of that treaty was the gradual abolition of checks at their common borders. On 19 June 1990, the same States signed the Convention Implementing the Schengen Agreement³⁹. As it concerns the right to asylum, the **Schengen Implementing Agreement (SIA)** contained rules determining the State that is responsible for examining an asylum application, but this provision never took effect because, as we will see, the Dublin Agreement entered into force before the Schengen Implementing Agreement (SIA) entered into force⁴⁰. The Schengen Implementing Agreement (SIA) entered into force on 1 September 1993 and practically took effect on 26 March 1995 creating in this way the **Schengen Area**; an area without checks and frontiers at the internal borders of the participating States⁴¹.

The “Schengen acquis” was integrated into the framework of the EU with the **Treaty of Amsterdam** in 1999 (Art. K12.5 TEU) and the States that were not party to the EU treaties by that time accepted the “Schengen aquis”, as part of the pre-existing EU law, with their entrance into the EU. Currently, all Member-States of the EU (except the United Kingdom, Ireland, Romania, Bulgaria and Cyprus) and three non-EU Member-States, Norway, Iceland and Switzerland, are parties to the Schengen Agreement. So, the creation of a region without internal borders became a reality for certain Member-States of the EU⁴².

³⁸ The first document that was adopted after the Schengen Agreement was the “Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders”. OJ L 239, 22.09.2000 P 0019-0062. The whole text of the “Schengen Aquis” can be found in the following link : <http://www.consilium.europa.eu/uedocs/cmsUpload/SCH.ACQUIS-EN.pdf>.

³⁹ OJ L 239, 22.09.2000 P 0019-0062.

⁴⁰ Articles 28-38 SIA.

⁴¹ Helen Staples, “Adjudicating the external Schengen Border” in K. Groenedijk, E. Guild and P. Minderboud, *“In search of Europe’s Borders”*, Kluwer Law International, The Hague, 2003 pp. 215-250.

⁴² Helen Staples, “Adjudicating the External Schengen Border”, in K. Groenedijk, E. Guild and P. Minderboud, *“In search of Europe’s Borders”*, Kluwer Law International, The Hague, 2003 pp. 215-250.

With the abolishment of controls at the internal borders of the signatory States and the subsequent free movement of persons, the external borders became the main entrance to the Schengen Area. This is particularly important for the asylum procedure, since, theoretically, from the moment that an asylum seeker enters the Schengen Area he can move from one Member-State to another.

2.4. The 1990 Dublin Convention

The 1990 Dublin Convention⁴³ was the first attempt to create a system determining the responsibility of each Member-State to examine an asylum application; always, of course, in accordance with the 1951 Convention relating to the Status of Refugees and its 1967 Additional Protocol. It was signed on 15 June 1990 as a treaty under international law, so it was not an instrument of European law within the meaning of the TEC (Treaty Establishing the European Community). The Dublin Convention entered into force on 1 September 1997 for the twelve initial signatory States⁴⁴. On 1 October 1997 it entered into force for Austria and Sweden and on 1 January 1998 for Finland.

The main idea that characterises the 1990 Dublin Convention is that every asylum application should be processed by one Member-State. So, in the 1990 Dublin Convention, it was determined which Member-State was responsible to examine every asylum claim (Articles 4-8). More specifically, a State was responsible to examine an asylum application when it had already recognised a member of the applicant's family as a refugee (Article 4); when it had issued a valid residence permit or visa for the applicant (Article 5) and when it was the entry point of an illegal applicant (Article 7). In all other cases, the State responsible was where the first application for asylum was filed (Article 8). When an asylum seeker has been removed from the State where he had applied for asylum to another Member-State, the last one should send him back to the Member-State where he lodged his asylum application (Articles 3 (7) and 10 1 (c)). The aforementioned Article (3 (5)

⁴³ Full name: "Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities" Dublin Convention (15 June 1990). OJ 19.08.1997, No C 254, pp. 1-12.

⁴⁴ Germany, Benelux, France, Italy, Denmark, Greece, Ireland, Portugal, Spain and the United Kingdom

recognised every Member-State's right to send an applicant back to a third State, always, of course, in accordance with the national laws and the 1951 Convention⁴⁵.

Before moving on, we should mention that the Member-States in order to prevent a possible conflict between the "Schengen acquis" and the 1990 Dublin Convention, agreed that when the Dublin Convention would enter into force, the identical provisions in the Schengen Implementation Agreement (SIA) would cease to apply⁴⁶. So, after 1 September of 1997 the Dublin Convention was the only system responsible for the examination of asylum claims.

One positive characteristic of the Dublin Convention in particular and of the Dublin system in general is that it was based, at least in theory, on the principle of mutual trust in the asylum procedures among all Member-States. Mutual trust guarantees that every Member-State of the EU will respect the European acquis. More specifically, thanks to the aforementioned principle every Member-State should promote the cooperation and the solidarity among the Member-States and should respect the minimum standards that the EU defines as necessary for the protection of asylum seekers.

Other than that, the Dublin Convention did not oblige one Member-State to recognise the asylum decision of another Member-State. As it will become obvious in the next chapter, the same lack of obligation remained as a characteristic of the Dublin-II Regulation. Moreover, the Dublin Convention was applicable only in the case that the asylum seeker was not able to be sent to a third country⁴⁷.

In any case, the 1990 Dublin Convention did not create a common policy on asylum, since, according to Article 3, Member-States continue to examine asylum applications based on their national laws, but it was the first attempt for closer cooperation in asylum issues.

⁴⁵ Olga Ferguson Sidorenko "The Common European Asylum System, Background, Current State of Affairs, Future Direction", The Hague, 2007, p. 15

⁴⁶ Ibid, p. 15.

⁴⁷ Article 3 (5) of the 1990 Dublin Convention reads "Any Member State shall retain the right, pursuant to its national laws, to send an applicant for asylum to a third State...."

2.5. The creation of the European Union

The Maastricht and the Amsterdam Treaties

Upon the entry into force of the Treaty of Maastricht on 7 February 1992⁴⁸, the EU was a reality. The Maastricht Treaty introduced the pillar structure of the European Union. The first pillar comprised of the European Communities (EC), the second of the Common Foreign and Security Policy (CFSP) and the third one the policies on Justice and Home Affairs (JHA). Intergovernmental cooperation was essential for the second and the third pillar to be functional. Asylum issues together with immigration policies formed part of the last pillar of the European Union.

The Treaty of Amsterdam, which was signed on 2 October 1997⁴⁹, transferred asylum policy from the third pillar to the first one. This was part of the communitarisation of the Union, meaning that issues like asylum and immigration among others were not any more under the exclusive responsibility of the Member-States. From now on, issues like the aforementioned were under the shared responsibility of both the EU and its Member-States.

2.6. The Tampere Presidency Conclusions

Issues like the creation of an Area of “Freedom, Security and Justice” are so crucial for the future of the EU that only the European Council can handle. In other words, it was the European Council that had to give the impetus and the necessary political guidance in order for the EU to start moving towards the direction of creating the aforementioned Area of “Freedom, Security and Justice”⁵⁰. It is essential to mention that the European Council gives only the general guidelines. After this it is up to the Community instruments to put them into effect⁵¹.

The European Council that took place on 15 and 16 October 1999, in Finland (Tampere), is a milestone in the development of a Common European Asylum System (CEAS). First of all, the Tampere European Council reaffirmed its commitment to

⁴⁸ <http://www.eurotreaties.com/maastrichtec.pdf>

⁴⁹ <http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf> it entered into force on 1 May 1999

⁵⁰ http://ec.europa.eu/archives/european-council/glance/index_en.htm.

⁵¹ Ibid. “...proposals from the European Commission voted on by the European Parliament and the Council of the European Union, followed where necessary by implementation at national level.”

develop the European Union as an Area of “Freedom, Security and Justice”⁵² in accordance with the Treaty of Amsterdam. As far as asylum policy is concerned, it is clearly stated that the envisaged asylum system will be in compliance with the obligations of the 1951 Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity⁵³.

More specifically, the European Council acknowledged the differences between asylum and immigration issues by making a distinction between the two notions⁵⁴. Considering that asylum seekers and immigrants have different needs and reasons to leave their home-countries, this is an important development. The European Council considers that the common EU policy should include cooperation with the countries of origin and transit of the asylum seekers and immigrants⁵⁵ in a variety of issues such as combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic States and ensuring respect for human rights, in particular the rights of minorities, women and children⁵⁶.

In the following paragraphs of the Presidency Conclusions, the European Council becomes more specific as it concerns the CEAS. The establishment of the CEAS becomes an objective of the EU. This System should always be in accordance with the international refugee protection treaties and principles e.g. the principle of non-refoulement⁵⁷.

As it is stated this System will include *“a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection”*⁵⁸.

⁵² Tampere Presidency Conclusions p 1-9

⁵³ Ibid paragraph 4: “The aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity. A common approach must also be developed to ensure the integration into our societies of those third country nationals who are lawfully resident in the Union.”

⁵⁴ Ibid, p. 10: “The separate but closely related issues of asylum and migration...”

⁵⁵ Ibid, p. 11.

⁵⁶ Ibid, p. 11.

⁵⁷ Ibid, p. 13.

⁵⁸ Ibid, p. 14.

In the following paragraph it is underlined that the “*Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union*”⁵⁹.

Before continuing the evaluation of the Tampere Conclusions, it is really helpful to explain the reason that had led the EU to the adoption of this objective, the creation of a Common European Asylum System (CEAS). The main justification behind this objective can be found in the EU decisiveness to avoid “**asylum shopping**”. Asylum shopping is a practice of asylum seekers of submitting asylum applications in more than one State. In other words “*asylum shopping is the intentional making of multiple refugee claims in order to ultimately choose the state which offers the most favorable conditions of asylum*”⁶⁰. The objective of eliminating “asylum shopping” was already obvious in the 1990 Dublin Convention with the establishment of the hierarchy of criteria, defining the responsible Member-State and remained a characteristic of the Dublin II Regulation that followed.

Under the current legislation of the EU, as it will presently become obvious, the practice of asylum shopping is something to be avoided. Asylum shopping can have negative results as it concerns economic immigrants, as this practice allows “asylum shoppers” to “*asylum shop amongst countries that are signatories to the Geneva Convention and queue jump normal immigration waiting lists to the country of their choice*”⁶¹. In Tampere, the Member-States of the EU agreed on the creation of a system, which will determine which Member-State will be responsible to examine an asylum application in order to eliminate the phenomenon of “asylum shopping”.

Going back to the Tampere Presidency Conclusions, in a nutshell we can say that the European Council in Tampere gave the necessary impetus to the Community in order to start establishing the CEAS based on the 1990 Dublin Convention.

As it became clear, thanks to the aforementioned documents and Treaties, the *raison d’être* of the CEAS can be found in “the concept of the internal market and the consequences of the “**Schengen acquis**” implementation”⁶².

⁵⁹ Ibid, p. 15.

⁶⁰ <http://www.duhaime.org/LegalDictionary/A/AsylumShopping.aspx>.

⁶¹ Ibid.

⁶² Olga Ferguson Sidorenko “The Common European Asylum System, Background, Current State of Affairs, Future Direction”, The Hague, 2007, p. 39.

2.7. The Wijsenbeek case (EJC)

The Wijsenbeek case (EJC) was one of the first manifestations of this new period, which is characterized by the abolishment of border controls at the internal EU borders⁶³. In a nutshell, Mr. Wijsenbeek, a Dutch national, while entering the Netherlands from France, refused to present his passport and to prove his nationality, contrary to the applicable Dutch laws. Mr. Wijsenbeek denied that he had committed an offence, claiming that Article 25 of the Dutch Immigration Order demands “*Dutch nationals who enter the Netherlands to present and hand over to an official the travel and identity papers in their possession and establish if necessary by any other means their Netherlands nationality*” is contrary to Articles 7a⁶⁴ and 8a⁶⁵ of the EC Treaty⁶⁶.

Finally, the EJC concluded that: “*As Community law stood at the time of the events in question in the main proceedings, neither Article 7a nor Article 8a of the EC Treaty (now, after amendment, Articles 14 EC and 18 EC) precluded a Member State from requiring a person, whether or not a citizen of the European Union, under threat of criminal penalties, to establish his nationality upon his entry into the territory of that Member State by an internal frontier of the Community, provided that the penalties applicable are comparable to those which apply to similar national infringements and are not disproportionate, thus creating an obstacle to the free movement of persons*”⁶⁷.

The Wijsenbeek case is connected to the CEAS since the freedom of movement that was introduced with the EC Treaty, also affects asylum. With the establishment of the aforementioned freedom, even illegal immigrants can enter the EU and moving from one Member-State to another, claiming to be asylum seekers.

⁶³ECJ C-378/97 Wijsenbeek Judgement, Sept. 21, 1999) available at <http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=en&Submit=Submit&docrequire=alldocs&numaff=&datefs=&datefe=&nomusuel=&domaine=&mots=C-378%2F97&resmax=100>.

⁶⁴ Article 7a of the EC Treaty (currently Article 26 of TFEU) reads that: “*The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992*” and that “*The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty*”.

⁶⁵ Article 8a of the EC Treaty (currently Article 21 of TFEU) reads that: “*Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States*”.

⁶⁶ The full text of the EC Treaty is available here: <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html#0001000001>.

⁶⁷ http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61997J0378.

So, the surveillance of the external borders of the EU, the only “real borders of the EU” became very important.

So, to sum up, the basic principles upon which the creation of the CEAS was based can be found in the following documents:

- 1. The 1951 Refugee Convention and the 1967 Additional Protocol**
- 2. The Schengen Agreement**
- 3. The 1990 Dublin Convention**
- 4. The Maastricht and the Amsterdam Treaties** (within the EU framework) and
- 5. The Tampere Presidency Conclusions**

Moving forward we should examine the legislation adopted by the EU, after the Tampere Summit, in order to achieve the establishment of the CEAS and how Greece challenges this legislation.

Chapter III

EU Legislation on Asylum and the Greek case

When the Treaty of Amsterdam entered into force on 1 May 1999, it required the EU legislator to adopt within 5 years (so before 1 May 2004), a series of measures related to asylum⁶⁸. The measures to be adopted should include: criteria determining which Member-State is responsible to examine an asylum claim⁶⁹, minimum standards on the reception of asylum seekers⁷⁰, minimum standards with respect to the qualification of nationals of third countries as refugees⁷¹, minimum standards on the procedures used by Member-States for granting or withdrawing refugee status⁷², minimum standards for giving temporary protection to displaced persons from third countries⁷³ and promotion of balance between the Member-States in receiving and bearing the consequences of receiving refugees and displaced persons^{74, 75}.

Despite the adoption of the necessary legislation by the EU that followed the Tampere Summit, the recent (2011) judgement of the European Court of Human Rights (*M.S.S v Belgium and Greece*) that was analysed in the introduction, undermines some of the aims of the CEAS (e.g. examination of an asylum application by the first Member-State in case that the asylum seeker has crossed the borders irregularly and the minimum standards of protection that should enjoy every asylum seeker).

The responsibility of Greece for this failure to create a workable CEAS, is important but not exclusive. The burden that this country has to bear, under the adopted legislation (in particular under the Dublin-II Regulation that will be examined in the following paragraph) is huge compared to her means and resources. Because of her geographic location and as it has already been mentioned in the introduction “88% of the foreign nationals who entered the European Union in 2009 entered

⁶⁸ Article 62(1) and (2) of EC.

⁶⁹ Article 63(1) (a) of EC.

⁷⁰ Article 63(1) (b) of EC.

⁷¹ Article 63(1) (c) of EC.

⁷² Article 63(1) (d) of EC.

⁷³ Article 63(2) (a) of EC.

⁷⁴ Article 63(2) (b) of EC.

⁷⁵ Olga Ferguson Sidorenko “The Common European Asylum System, Background, Current State of Affairs, Future Direction”, The Hague, 2007, p. 41.

through Greece”⁷⁶. In any case, it is important to understand that the Greek failure to provide the asylum seekers, that have irregularly crossed the borders entering the EU, with the adequate protection, has an impact to the overall enforcement of the CEAS, as it is expressed by the adopted legislation.

In this Chapter the adopted legislation that followed the Tampere Summit as well as Greece’s compliance to this legislation will be analysed.

3.1. The Dublin II Regulation

According to the Treaty of Amsterdam, one of the important issues to be regulated was to determine which Member-State is responsible to examine an asylum application⁷⁷. In 2003, the Council adopted the Dublin II Regulation⁷⁸. This name reflects the fact that this Regulation replaced the aforementioned 1990 Dublin Convention⁷⁹.

In the preamble of the Dublin-II Regulation the legislator reiterates that “*A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.*”⁸⁰ Moreover, from the preamble of the Regulation some basic principles, characteristic of the new legislation, become apparent. First of all, respect for the 1951 Convention Relating to the Status of Refugees as well as to the 1967 Protocol is underlined⁸¹. In addition, the “*family unity*” should be preserved⁸². Finally, special provision is made that the asylum applications should be evaluated “*at regular intervals*”⁸³.

As is stated in the first Article, “*the Regulation lays down the criteria and mechanisms for determining the Member State responsible for examining an application for asylum lodged in one of the Member States by a third-country*

⁷⁶ Page 10.

⁷⁷ Article 63(1) (a) of EC.

⁷⁸ Council Regulation (EC) No 343/2003 of 18 February 2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. OJ L 222, 5.9.2003

⁷⁹ Ibid, Article 24.

⁸⁰ Ibid, preamble paragraph 1.

⁸¹ Council Regulation (EC) No 343/200 of 18 February 2003, Preamble, paragraph 2.

⁸² Ibid, preamble paragraph 6 and 7.

⁸³ Ibid, preamble paragraph 14.

national”⁸⁴. So, the Dublin-II Regulation has as a purpose to establish an hierarchy of criteria in order to make easier the examination of asylum applications. The basic principle, apparent in every provision of the Regulation, is that every asylum application should be examined by a single Member-State. So, first of all, responsible is the Member-State where the asylum seeker has filled his application⁸⁵. Starting from this, the Regulation regulates a series of situations in Chapters II and III. So, when “*the applicant is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present*”⁸⁶. If the asylum seeker has “*a family member, who has been allowed to reside as a refugee in a Member State, that Member State shall be responsible for examining the application for asylum*”⁸⁷. The following provision provides that when “*the asylum seeker is in possession of a valid residence document, the Member State which issued the document shall be responsible for examining the application for asylum.*”⁸⁸ One of the most controversial, as we will see later, Articles of the Regulation is Article 10, according to this when “*an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for asylum*”⁸⁹. In the case that the asylum application was filled “*in an international transit area of an airport of a Member State by a third-country national, that Member State shall be responsible for examining the application.*”⁹⁰ Finally, “*where no Member State responsible for examining the application for asylum can be designated on the basis of the criteria listed in this Regulation, the first Member State with which the application for asylum was lodged shall be responsible for examining it*”⁹¹.

In the next Chapter (IV), we find the so-called “Humanitarian Clause” (Article 15). From this provision it becomes clear that Member-States in some cases can derogate from the hierarchy of criteria as described above. More specifically, “*any Member State, even where it is not responsible under the criteria set out in this Regulation, may bring together family members, as well as other dependent relatives,*

⁸⁴ Council Regulation (EC) No 343/2003 of 18 February 2003, 2003, Article 1.

⁸⁵ Ibid, Article 5(1).

⁸⁶ Ibid, Article 6.

⁸⁷ Ibid, Article 7.

⁸⁸ Ibid, Article 9.

⁸⁹ Ibid, Article 10.

⁹⁰ Ibid, Article 12.

⁹¹ Ibid, Article 13.

on humanitarian grounds based in particular on family or cultural considerations”⁹². In addition, when an asylum seeker depends on others because of “*pregnancy or a newborn child, serious illness, severe handicap or old age*”, Member-States should try to bring relatives together⁹³. Finally, the responsible Member-State should, if it is possible, unite an unaccompanied minor with a relative in another Member-State.⁹⁴

In the following Chapter (Articles 16-20) of the Dublin II Regulation, named “Taking Charge and Taking Back”, further arrangements are found that aim at, mainly, limiting the phenomenon of “asylum shopping”. So, “*where a Member State with which an application for asylum has been lodged considers that another Member State is responsible for examining the application, it may... call upon the other Member State to take charge of the applicant*”⁹⁵.

In the next Chapter (Articles 21-23), called “Administrative Cooperation”, basic details concerning the cooperation on asylum issues between the Member-States are laid down. One provision of special importance for the examination of the Greek case is found in this Chapter, in Article 22. According to this Article: “*Member States shall notify the Commission of the authorities responsible for fulfilling the obligations arising under this Regulation and shall ensure that these authorities have the necessary resources for carrying out their tasks and in particular for replying within the prescribed time limits to requests for information, requests to take charge of and requests to take back asylum seekers*”⁹⁶.

3.2. Article 10 of the Dublin II Regulation and Greece

While analysing the Dublin-II Regulation it is easy to understand that Article 10 poses a series of questions. Basically, it is this provision that has a great impact on the periphery Member-States of the EU and in particular on Greece. Because of this provision, it was obvious from the very beginning of the Dublin system that countries

⁹² Ibid, Article 15(1).

⁹³ Ibid, Article 15(2).

⁹⁴ Ibid, Article 15(4).

⁹⁵ Ibid, Article 17.

⁹⁶ Ibid, Article 22.

on the periphery of the EU would have to bear the burden of examining a disproportionate number of asylum applications⁹⁷.

Trying to put this into a general geopolitical context, we have to say that the 9/11 attacks and the subsequent war in Iraq and Afghanistan as well as the oppressive regimes that reign almost everywhere in the Middle East and North Africa, and of course the endemic poverty of these regions oblige many of the citizens of these States to look for a new life in Europe. Greece, a country situated in South Eastern Europe, having long⁹⁸ and porous borders, is the natural bridge between the Middle East, Africa and Europe. Many desperate asylum seekers try to enter into her territory hoping to find a new home, for even more their aim is to cross the country in order to reach the industrial EU Member-States of North Europe, where they will have more job opportunities, so Greece is a transit country for them. The numbers available are very revealing. According to the “Human Rights Watch” and “The Economist”: *“About 75 percent of the 106,200 irregular migrants entering the EU in 2009 first arrived in Greece; that percentage has risen to 80 percent in the early months of 2010”*⁹⁹. Many of these irregular immigrants are asylum seekers.

In any case, these huge numbers make difficult any Greek attempt to provide the asylum seekers with adequate protection, as it is defined in the 1951 Refugee Convention and in the aforementioned Dublin-II Regulation. The financial crisis that hit Greece in the year 2009, multiplied the problems that asylum seekers have to face during their staying there. Currently, asylum policy seems to be an issue of minor importance compared to the economic problems of the country. So, Greece despite being a Member of the EU since 1981, and one of the signatory parties to both the ECHR and the UDHR, was condemned by the ECHR for violating Articles 3 and 13 of the ECHR in the case of *M.S.S v Belgium and Greece* that was previously analysed.

Moreover, Greece seems to be quite reluctant to provide refugee status to asylum seekers. Amnesty International reports that rejection seems to be the case for every asylum claim made in this country. Indeed, according to Hellenic Action for Human Rights only *“(0.3%) of the total asylum seekers were granted international*

⁹⁷ Panayiotis N. Papadimitriou and Ioannis F. Papageorgiou “The New “Dubliners”: Implementation of European Council Regulation 343/2003 (Dublin II) by the Greek authorities. *Journal of Refugee Studies* Vol. 18, No. 3 2005. Published by Oxford University Press. P. 303.

⁹⁸ Greece has 1170km of land borders and 18.400km of coastline.

⁹⁹ <http://www.unhcr.org/refworld/country,,HRW,,GRC,,4c9846281a,0.html>.

protection in Greece in 2009”¹⁰⁰ So, right now the situation in Greece as it concerns the protection of asylum seekers could be described in two words: a “*humanitarian crisis*”¹⁰¹.

To sum up, Article 10 of the Dublin II-Regulation obliges Greece to handle an excessive burden of asylum applications, ignoring the fact that the periphery countries of the EU are usually not as developed as the rest of the EU Member-States and that these countries (periphery countries) consist the transit area for the majority of the asylum seekers.

3.3. The Eurodac System

The Eurodac system is closely related to the Dublin-II system¹⁰². The Eurodac Regulation was adopted in December 2000, three years before the adoption of the Dublin-II Regulation. The Eurodac Regulation aims at helping the Member-States to identify “*applicants for asylum and persons apprehended in connection with the unlawful crossing of the external borders of the Community.*”¹⁰³ When the 1990 Dublin Convention was replaced by the Dublin-II Regulation the Eurodac continued to be in force¹⁰⁴.

Eurodac consists of “*the Central Unit, a computerised central database in which the data are processed for the purpose of comparing the fingerprint data of applicants for asylum and of the categories of aliens and of means of data transmission between the Member States and the central database*”¹⁰⁵. Every Member-State should take the fingerprints of every asylum seeker over 14 years of age and then, this Member-State should forward this data to the Central Unit¹⁰⁶. All these fingerprints “*shall be immediately recorded in the central database*”¹⁰⁷.

The Eurodac system works like this: “*Fingerprint data transmitted by any Member State, shall be compared by the Central Unit with the fingerprint data*

¹⁰⁰ <http://hellenicaction.blogspot.com/2010/11/stop-sending-asylum-seekers-to-greece.html>

¹⁰¹ http://article.wn.com/view/2011/01/29/Greece_s_Asylum_Crisis_Can_t_Be_Fixed_without_Reforming_Dubl/

¹⁰² Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L 316 , 15/12/2000 P. 0001 - 0010

¹⁰³ Ibid, paragraph 3 of the preamble.

¹⁰⁴ Council Regulation (EC) No 343/2003 of 18 February 2003 Article 24.

¹⁰⁵ Council Regulation (EC) 2725/2000 of 11 December 2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention. OJ L 316/1, 15/12/2000.

¹⁰⁶ Ibid, Article 4(1) for legal border crossing and Article 8(1) for asylum seekers that have illegally crossed the borders

¹⁰⁷ Ibid, Article 4(2).

transmitted by other Member States and already stored in the central database”¹⁰⁸. Then “*The Central Unit shall forthwith transmit the hit or the negative result of the comparison to the Member State of origin*”¹⁰⁹.

The Eurodac system plays an important role in the European Asylum Policy. Thanks to this system, asylum seekers who have lodged multiple applications in different EU Member-States (asylum shopping) can be traced and sent back to the first country where they filled their first asylum application, in accordance with the Dublin II Regulation.

As it concerns Greece, the implementation of the Eurodac Regulation increased the number of asylum seekers that should be returned back to this country¹¹⁰, since in many cases as it has been previously analysed, Greece is the first Member-State that they enter in the EU.

3.4. Directives

Following the Tampere Presidency Conclusions¹¹¹, a number of Directives were adopted. These Directives were designed to give body to the Tampere Presidency Conclusions. Closely related to these Directives is the recent judgement of the ECHR (*M.S.S v Belgium and Greece*) which proves that Greece has failed to provide the asylum seekers that live inside her territory with the adequate protection. In the following paragraphs these Directives will be analysed together with the Greek failure to implement them.

The first Directive, which was adopted after the Tampere Summit and which is a step towards the creation of the CEAS, is the “**Temporary Protection Directive**”¹¹². The purpose of this Directive is “*to establish minimum standards for*

¹⁰⁸ Ibid, Article 4(3).

¹⁰⁹ Ibid, Article 4(5).

¹¹⁰ Panayiotis N. Papadimitriou and Ioannis F. Papageorgiou “The New “Dubliners”: Implementation of European Council Regulation 343/2003 (Dublin II) by the Greek authorities. *Journal of Refugee Studies* Vol. 18, No. 3 2005. Published by Oxford University Press. P. 305.

¹¹¹ Tampere Presidency Conclusions, Paragraph 14. This System should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection.

¹¹² Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212 , 07/08/2001 P. 0012 - 0023

*giving temporary protection in the event of a mass influx of displaced persons from third countries*¹¹³ and secondly *“to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons.”*¹¹⁴. This Directive lays down the obligations of the Member States towards persons enjoying temporary protection¹¹⁵. So, the Member-State should provide these persons with resident permits and visas if necessary¹¹⁶ and information documents¹¹⁷, moreover it should register them¹¹⁸ and readmit them to its territory if they move to another Member-State¹¹⁹. Further, this Directive grants a series of socio-economic rights (employment, housing, accommodation)¹²⁰. Finally, it lays down the return details and the measures to be adopted in case that the temporary protection has ended¹²¹. As it concerns this Directive and its connection with the protection of asylum seekers in Greece, it can be said that it has little effect as it concerns **mass influx** of displaced persons.

The second Directive, that was adopted, was the so-called **“Reception Conditions Directive”**¹²². The purpose of this Directive, as follows from the first Article, *“is to lay down minimum standards for the reception of asylum seekers in Member States”*¹²³. The scope of this Directive applies to *“all third country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State as long as they are allowed to remain on the territory as asylum seekers”*¹²⁴. As it concerns the rights of the asylum seekers that are protected, these are: their right to information¹²⁵, to documentation¹²⁶, to residence and freedom of movement¹²⁷, to family protection¹²⁸, to medical screening¹²⁹, to schooling and education of minors¹³⁰, to employment¹³¹ and to vocational training¹³². The

¹¹³ Ibid, Article 1.

¹¹⁴ Ibid.

¹¹⁵ Ibid, Chapter III.

¹¹⁶ Ibid, Article 8.

¹¹⁷ Ibid, Article 9.

¹¹⁸ Ibid, Article 10.

¹¹⁹ Ibid, Article 11.

¹²⁰ Ibid, Articles 12-14

¹²¹ Ibid, Chapter V.

¹²² Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 031 , 06/02/2003 P. 0018 - 0025

¹²³ Ibid, Article 1.

¹²⁴ Ibid, Article 3.

¹²⁵ Ibid, Article 5.

¹²⁶ Ibid, Article 6.

¹²⁷ Ibid, Article 7.

¹²⁸ Ibid, Article 8.

¹²⁹ Ibid, Article 9.

¹³⁰ Ibid, Article 10.

cooperation between Member-States and the Commission is necessary in order to improve the efficiency of the reception system¹³³. Possible problems that arise from the implementation of this Directive have to do with reception conditions that vary very considerably from Member-State to Member-State.

As it became obvious after the examination of the case of *M.S.S v Belgium and Greece*, the ECtHR found that there was a violation of Article 3 of the ECHR. It is obvious that Greece has not complied with the standards of protection of this Directive. As it has been mentioned in the introduction, *M.S.S* was being held in inhuman detention conditions. According to the same judgement, the Greek detention centres are particularly “*overcrowding, dirt, lack of space, lack of ventilation, little or no possibility of taking a walk, no place to relax, insufficient mattresses, dirty mattresses, no free access to toilets, inadequate sanitary facilities, no privacy, limited access to care. Many of the people interviewed also complained of insults, particularly racist insults, proffered by staff and the use of physical violence by guards*”¹³⁴. *M.S.S* after his release he ended “*sleeping in the streets*”¹³⁵. Many of the asylum seekers face in Greece a “*permanent state of fear*”¹³⁶ and “*depend for their subsistence on civil society, the Red Cross and some religious institutions.*”¹³⁷

In general, the assistance provided to asylum seekers by the Greek authorities is far from being humane and in compliance with the aforementioned “Reception Conditions Directive”. Amnesty International reports also of “*poor conditions in which immigration detainees are held in Greece*”¹³⁸ Human Rights Watch conducted two extensive surveys on this particular issue in late 2008, where the inhuman conditions of detainment and the behaviour of the police and civil servants are described in every detail. In the first one, named “Stuck in a Revolving Door”, it is clear that torture, psychological and physical violence and persecution on behalf of the Greek police towards the illegal immigrants is a common phenomenon and moreover the “*conditions of detention are inhuman and degrading*”¹³⁹. The second

¹³¹ Ibid, Article 11.

¹³² Ibid, Article 12.

¹³³ Ibid, Article 22 reads: “Member States shall regularly inform the Commission on the data concerning the number of persons, broken down by sex and age, covered by reception conditions”.

¹³⁴ ECHR *M.S.S v Belgium and Greece*, 21/1/2011 Application no. 30696/09, par.162.

¹³⁵ Ibid, par. 167

¹³⁶ Ibid, par. 170.

¹³⁷ Ibid, par. 171.

¹³⁸ <http://www.amnesty.org.au/news/comments/9711/>

¹³⁹ Human Rights Watch, “Stuck in a Revolving Door” Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union November 2008, 1-56432-411-7, p. 5

one named “Left to Survive” refers to the Greece’s failure to protect unaccompanied migrant children¹⁴⁰. There are many problems and mistakes related to the identification of the real age of these children. In most of the cases; the Greek police is not very willing to find out the real age of these children¹⁴¹ moreover, violence and ill-treatment on behalf of the police against unaccompanied migrant children is widespread.

The third Directive adopted and which is relevant for the implementation of the CEAS, was the “**Qualification Directive**”¹⁴². Its purpose is “*to lay down minimum standards for the qualification of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.*”¹⁴³ After giving the definition of the related notions¹⁴⁴, the Directive, in Chapter II, lays down the way according to which the Member-States should assess the asylum applications. Moreover, in the next Chapter it describes the conditions to be satisfied to qualify as a refugee and, in Chapter IV, it refers to the granting and revocation of refugee status.

Examining the Greek stance towards this Directive we have to say that Greece transposed the “Qualification Directive” quite recently, in 2010¹⁴⁵. So, right now Greece is in a transitional period. Currently, the Greek government is trying to build a modern asylum system in compliance with the minimum standards of the “Qualification Directive”. It is characteristic that until very recently there was not an Asylum Agency (on 26 January 2011, the law establishing the Asylum Agency and the First Reception Centres, was passed by parliament). The Asylum Agency is envisaged to commence its work in November 2011.¹⁴⁶

The fourth Directive adopted was the “**Asylum Procedures Directive**”¹⁴⁷. Its objective is “*to establish minimum standards on procedures in Member States for*

¹⁴⁰ Human Rights Watch, “Left to Survive”, Systematic Failure to Protect Unaccompanied Migrant Children in Greece, December 2008 1-56432-418-4

¹⁴¹ Ibid p. 20.

¹⁴² Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. OJ L 304, 30/09/2004 P. 0012 – 0023.

¹⁴³ Ibid, Article 1.

¹⁴⁴ Ibid, Article 2.

¹⁴⁵ http://www.yptp.gr/asylo.php?option=ozo_content&perform=view&id=3474&Itemid=465&lang=EN

¹⁴⁶ Ibid.

¹⁴⁷ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status OJ L 326 of 13.12.2005.

granting and withdrawing refugee status”¹⁴⁸. This Directive applies to all asylum application made in the territory of Member-States of the EU¹⁴⁹. The access to the procedures of asylum is guaranteed¹⁵⁰, in addition, several issues are arranged like the rights¹⁵¹ and the obligations of asylum seekers¹⁵² and the interview with the authorities¹⁵³. In the third Chapter the procedures at first instance are regulated, and in the fifth one the appeal procedures.

As it concerns this Directive, the recent judgment of the ECtHR (*M.S.S v Belgium and Greece*) makes obvious that Greece has not complied with its provisions. Greece violated Article 13 of the ECHR. Trying to explain it, we have to admit that Greece lacks efficient asylum procedures that would guarantee the protection of asylum seekers. The access of asylum seekers in asylum procedures is, in many aspects, problematic. Issues like the inadequate information of asylum seekers on behalf of the Greek state over their rights, the inadequacy of interpreters, the absence of efficient communication between asylum seekers and the Greek State, the lack of special education of the Greek civil servants in order to evaluate the asylum applications, the fact that the asylum seekers do not receive any legal aid by the Greek State and the very short deadlines that the Greek authorities pose¹⁵⁴, have made the granting of asylum extremely difficult. Additionally, the vast majority of asylum applications are rejected because they are considered to have been lodged for economic reasons and moreover they are “*worded in a stereotypical manner with no reference whatsoever to information about the countries of origin, no explanation of the facts on which the decision was based and no legal reasoning.*”¹⁵⁵

Indeed, the numbers are very revealing, in 2009 according to Human Rights Watch (HRW), Greece granted a paltry 0.04% of asylum claims in 2009 which is about 11 people out of almost 30,000 applicants¹⁵⁶. For the majority of the asylum seekers whose applications were rejected, there is always the possibility to be sent back to their respective home-counties (risk of refoulement)¹⁵⁷.

¹⁴⁸ Ibid, Article 1.

¹⁴⁹ Ibid, Article 3.

¹⁵⁰ Ibid, Article 6.

¹⁵¹ Ibid, Article 10.

¹⁵² Ibid, Article 11.

¹⁵³ Ibid, Articles 12-14.

¹⁵⁴ ECHR *M.S.S v Belgium and Greece*, 21/1/2011 Application no. 30696/09, Paragraphs 173-188.

¹⁵⁵ Ibid par. 184

¹⁵⁶ <http://news.change.org/stories/tell-greece-that-asylum-reform-cannot-wait>.

¹⁵⁷ ECHR *M.S.S v Belgium and Greece*, 21/1/2011 Application no. 30696/09, Par. 192.

3.5. The European Refugee Fund (ERF)

Moreover, besides the aforementioned legal instruments a financial one was adopted having the same objective of contributing to the establishment of the CEAS. This was the European Refugee Fund (ERF)¹⁵⁸. This instrument was established for the period from 1 January 2008 to 31 December 2013¹⁵⁹ having as general objective to “*support and encourage the efforts made by the Member States in receiving, and in bearing the consequences of receiving, refugees and displaced persons*”¹⁶⁰ and in addition, “*The Fund shall contribute to the financing of technical assistance at the initiative of the Member States or the Commission*”¹⁶¹.

3.6. The challenges that the CEAS has brought to Greece

The Dublin-II and Eurodac Regulations and the Directives (Temporary Protection, Reception Conditions, Qualification and asylum Procedures Directives), that were adopted after the Tampere Summit were steps towards the establishment of the CEAS. Unfortunately, in view of the recent judgment of the ECtHR against Greece, the idea of creating the CEAS is undermined. The difficulties that the creation of the CEAS faces because of the inadequacy of Greece to be complied to the provisions of these documents, consist an urgent call for changes. On the one hand Greece should organize an effective asylum system in compliance with the adopted legislation. On the other hand, the EU should reconsider if the CEAS, as it now stands after the adoption of the aforementioned documents, is workable. So, the aim of the EU, to achieve the CEAS by 2012¹⁶² seems to be very ambitious.

¹⁵⁸ Decision No 573/2007/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flow and repealing Council Decision 2004/ 904/EC. OJ L 144 of 6.6.2007 P. 0001 – 0021.

¹⁵⁹ Ibid, Article 1.

¹⁶⁰ Ibid, Article 2(1).

¹⁶¹ Ibid, Article 2(2).

¹⁶² Council of the European Union (2009): 60

Chapter IV

Evaluating the Dublin System

4.1. The double objective of the Dublin-II Regulation

Evaluating the Dublin system in view of the recent judgement of *M.S.S v Belgium and Greece*, there are a few remarks to make. First of all, we have to keep in mind that the Dublin-II Regulation has a double objective. The first one is to prevent asylum seekers from lodging multiple applications by laying down the criteria determining the Member-State responsible to examine an asylum claim. The second one is to eradicate the phenomenon of “refugees in orbit”¹⁶³. The term “refugee in orbit” signifies a refugee without a country of asylum. This category of refugees, *“although not refouled {returned} to a country where they are liable to persecution are not granted asylum by any State and are shoved from one country after another in a constant quest for asylum”*¹⁶⁴.

As far as the first objective is concerned, it can be said that, the Dublin system laying down an hierarchy of criteria and mechanism to define which Member-State is responsible to examine an asylum application helps to the elimination of the phenomenon of multiple asylum applications (aka asylum shopping). The role of the Eurodac Regulation, thanks to which, asylum seeker that have lodged more multiple asylum applications in various Member-States, become identifiable is very important. We have to admit though that thanks to the Dublin II Regulation, the phenomenon of multiple examinations of one asylum application by several Member-States is eliminated but not, totally, eradicated. This can still take place when a Member-State makes use of its discretionary power to examine an asylum application lodged by a third country National (TCN), even though it is not responsible according to the criteria of the Regulation. In this case this Member-State bears all the obligations of the initially responsible Member-State and it has to inform the other Member-States

¹⁶³ Sylvie Da Lomba, “The Right to seek Refugee Status in the European Union”, Intersentia 2004, p. 131

¹⁶⁴ Paul Weis, *Israel Yearbook on Human Rights*, Volume 10, 1980, page 157. The same page of this Yearbook it is stated that the term “refugee in orbit” was first used by Goran Melander.

concerned¹⁶⁵. In the case that there is no information from the Member-State which uses its discretionary power, it is possible to have the same application examined simultaneously by two States. This is a weakness of the Dublin II Regulation. Another situation that could lead to multiple examinations of an asylum application by more than one Member-State *“can arise as a consequence of the expiry of time limits, whereby the responsibility of a Member-State is ended or where responsibility is assigned to the Member-State on whose territory the asylum seeker is present”*¹⁶⁶. So, in any case, the cooperation among Member-States is crucial for the establishment of the CEAS. Mutual information on asylum issues among the EU Member-States guarantees that there will not be cases of multiple examinations of asylum applications.

As for the second objective of the Dublin II Regulation, the eradication of the phenomenon of “refugees in orbit”, it can be said that the EU legislator has managed to prevent this, albeit only within the EU. According to Article 3(3) of the Dublin II Regulation every Member-State *“shall retain the right to send an asylum seeker to a third country, in compliance with the provisions of the Geneva Convention.”* For this system of returns and readmissions to be reliable, it must be based on *“a workable system of readmission agreements with “safe third countries”*”¹⁶⁷. The problem arise because the Dublin-II Regulation does not define which third countries can be considered as “safe”. At the same time, as it became apparent examining the case *M.S.S v Belgium and Greece*, we can not be sure that all EU Member-States are a priori safe. In a nutshell, the Dublin-II Regulation has arranged several issues that had to be regulated and it was a step towards the establishment of the CEAS, but it needs further measures to be effective and efficient.

¹⁶⁵ E.g. According to Article 3 (2): “Each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation”.

¹⁶⁶ Olga Ferguson Sidorenko “The Common European Asylum System, Background, Current State of Affairs, Future Direction”, The Hague, 2007, p. 53. Trying to explain the last clause, Ferguson-Sidorenko uses the example of Article 10 of the Dublin II Regulation which lays down that “the responsibility of the Member-State whose border was crossed irregularly shall cease 12 months after the date on which the irregular border crossing took place.”

¹⁶⁷ *Ibid*, p. 54.

4.2. The weaknesses of the Dublin System

In its attempt to succeed in the two aforementioned objectives the Dublin-II Regulation made other issues to arise. The most important among them, as it has already mentioned in the analysis of the M.S.S case is the **responsibility-sharing** of examining the asylum applications. More specifically, the distribution of the responsibility among Member-States to examine asylum applications appears to be not balanced, since the Dublin II system imposes a disproportionate “burden” on those Member-States the geographical position of which makes them the first points of arrival of asylum seekers, namely Member-States with southern and eastern external borders, like Greece.¹⁶⁸ So, the current system of intra-EU distribution of asylum seekers seems to be hardly acceptable.¹⁶⁹

At the same time, although the same EU legislation is applicable to every Member-State, as it concerns the minimum standards of protection for asylum seekers, the reception conditions that they face in every EU Member-States vary a lot. In certain Member-States, the reception conditions are the proper ones whereas in others, as it became obvious examining the case of M.S.S v Belgium and Greece, they are far from being sufficient and can even be described as “inhumane”. This phenomenon proves that the relevant legislation concerning the minimum standards of protection of the asylum seekers (particularly the Qualification and the Reception Conditions Directives) has not been applied into the same way in all EU countries. This is of course has to do with the geographic location of every Member-State and it is closely connected with the subsequent distribution of the burden of responsibility between EU Member States.

Moreover, it is true that every EU Member-State grants the refugee status according to its domestic standards and because of this certain EU Member-States grant refugee status very reluctantly (e.g. Greece and Ireland) whereas others grant it in great numbers (e.g. The Netherlands, Sweden and Denmark)¹⁷⁰. It is difficult to talk about creating a “Common System” or “Harmonized System” when there are so big differences among Member-States in granting the “refugee status”.

¹⁶⁸ Sylvie Da Lomba “The Right to seek Refugee Status in the European Union”, Intersentia 2004, p. 137.

¹⁶⁹ Ibid, p. 7.

¹⁷⁰ http://www.emnbelgium.be/sites/default/files/attachments/eurostat_news_release.pdf.

The current economic crisis that hits many EU Member-States and primarily Greece makes the situation even worse. Finally, the latest (spring 2011) rebellions in Northern Africa and the subsequent waves of asylum seekers coming from these countries (mainly Tunisia and Libya) to the EU (mainly Italy) put the whole issue of establishing the “CEAS” under a new perspective.

4.3. Proposals towards a reformed “new CEAS”

For the CEAS to have possibilities of being effective and in accordance with the international standards, it is urgent to find a solution to the aforementioned issues.

The first issue that the EU has to solve is the burden-sharing of the asylum applications. This could be solved with the harmonisation of the asylum legislation of all EU Member-States. In other words, if the Member-States would apply the same EU standards (and not their domestic ones) in order to grant the refugee status, this would have as a consequence for the asylum seekers to accept having their applications examined anywhere within the EU and not showing preference towards certain Member-States which now have high refugee recognising percentage.

Secondly, recognizing the refugee status that another Member-State has granted would be a step toward the right direction. This would permit the free movement of refugees within the EU. Although, there are fears that this recognition would finally lead the refugees to move to other EU countries as economic immigrants, in my opinion recognising someone as a refugee should give him the same rights as the rest of the population, otherwise he will be a kind of second class citizen.

Moreover, since the concept of “safe third countries” and “safe countries of origin” is not clearly defined under the current framework¹⁷¹ it would be useful for the EU to establish a mechanism through which asylum seekers could challenge these concepts¹⁷². In addition, this mechanism could be responsible for examining the

¹⁷¹ Caritas Europa, CCME – Churches' Commission for Migrants in Europe, COMECE – Commission of the Bishops' Conferences of the European Community- Working group on Migration, ICMC – International Catholic Migration Commission, JRS-Europe – Jesuit Refugee Service Europe, QCEA – Quaker Council for European Affairs, Comments on the European Commission's Green Paper on the future Common European Asylum System COM (2007) 301 final. See also the aforementioned comment 97.

¹⁷² European Parliament, Directorate General Internal Policies of the Union, Briefing Note, Policy Department C Citizens' Rights and Constitutional Affairs, “Towards a Common European Asylum System-Assessment and

appeals against the rulings of the national courts, checking each time if EU norms are being respected by the national judge and if every member-State complies with the minimum standards of protection of the asylum seekers within its territory.

Finally, although the current EU legislation is based on the idea of national responsibility for examining asylum applications, the examination of the idea of creating an **exclusively European-administered asylum system**¹⁷³ always in accordance with the EU law should not be dismissed.

Proposals-Elements to be Implemented for the Establishment of an Efficient and Coherent System”. Author: Prof. Dr. h.c. Kay Hailbronner, Konstanz. p. 8

¹⁷³ European Parliament, Directorate General Internal Policies of the Union, Briefing Note, Policy Department C Citizens' Rights and Constitutional Affairs, “Towards a Common European Asylum System-Assessment and Proposals-Elements to be Implemented for the Establishment of an Efficient and Coherent System”. Author: Prof. Dr. h.c. Kay Hailbronner, Konstanz. p. 9.

Chapter V

5.1. Conclusions

The nascent EU CEAS as it now stands, after the adoption of the aforementioned legislation, particularly after the adoption and the implementation of the Dublin-II Regulation, has many weaknesses. The cornerstone of the CEAS, the Dublin-II Regulation, although it determines which Member-State is responsible to examine an asylum claim, in the same time it can have a bad effect on the protection of the human rights of the asylum seekers. Moreover, the Dublin system has been characterized as “**unfair**” for certain EU Member-States¹⁷⁴, especially these of the EU periphery.

Examining the case of *M.S.S v Belgium and Greece*, it became clear that not all the EU countries have the resources or the willingness to implement the minimum standards of protection for the asylum seekers, as they are expressed in the EU legislation (Treaties, Regulations and Directives) and in the European Convention of Human Rights.

As the European Parliament states “unless a satisfactory and consistent level of protection is achieved across the European Union, the “Dublin System” will always produce unsatisfactory results from both the technical and the human viewpoints, and asylum seekers will continue to have valid reasons for wishing to lodge their application in a specific Member State to take advantage of the most favorable national decision-making process”¹⁷⁵.

So, further consultation among the EU institutions, the EU Member-States, the third States, inter-governmental and non-governmental organizations inside and outside the EU appears to be urgent, in order to achieve a working and efficient version of the CEAS.

In the end, the creation of a viable CEAS will have positive impact to the emerging of the EU as a global power, with decisive role in the international framework and being always inspired by its humanistic values.

¹⁷⁴ European Parliament, *Evaluation of the Dublin system (Own Initiative Report)*, INI (2008) 2262, 2 July 2008, Para 2 (‘Own Initiative Report’)

¹⁷⁵ European Parliament, Resolution on the evaluation of the “Dublin System”, INI/2007/2262, 2nd September 2008

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