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EU in the face of migrant crisis: Reasons for ineffective human rights protection☆,☆☆

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ABSTRACT

Despite the fact that EU was acknowledged to ensure human rights protection level equivalent to the one ensured under European Convention on Human Rights (ECHR), it is doubtful if the EU was able to ensure human rights in time of recent migrant crisis. It is argued in the Article that, absence of comprehensive EU-level migrant policy restricted EU's ability to prevent the crisis and to mitigate its consequences as well as human rights violations. In addition, being oriented to ex post rights defense, EU's system was also practically unsuitable to defend the rights of the asylum seekers after the violations actually occurred. It is proposed that EU should address migration issues immediately by introducing major migration policy reform.

1. Introduction

There were several migrant crises in the European history already. 700,000 asylum seekers that Europe had to deal with after the fall of the Iron Curtain (Connor, 2016). Before that, 60 million refugees during and after the WWII (Rothman & Ronk, 2015). Very recently, following the emergence of war initiated by the Russian-backed separatists, 2.6 million of Ukrainian residents were forced to leave their homes in Eastern Ukraine (Gienger, 2015). It appears that migrant crises tend to recur periodically in Europe. Given the historical lessons, after the events in the Middle East emerged, migrant crisis could already be predicted, prepared for, and its consequences (including human rights violations) could be significantly mitigated. Should the European leaders have assembled sometime before the crisis (after the Syrian war began, for instance) and decided on the most important issues concerning migrant policy, the crisis could have been softened significantly. However, although it could have been predicted, crisis has come as a surprise.

While hundreds of thousands of asylum seekers travelled through EU's borders, EU leaders found themselves divided – some of them shouted of the need for extraordinary measures,[1] others threw accusations for not finding a solution at each other.[2] At the same

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☆☆ The term 'migrant' is used purposefully in this article as encompassing two large groups of people who arrived to Europe during the recent migrant crisis, i.e. refugee migrants and economic migrants. People in both of the groups can be referred to as migrants, yet the incentives for their migration differ. Economic migrant chooses whether or not to migrate and decide, based on the constraints set by the receiving countries, what country to migrate to (given the economic benefits of this decision). In turn, refugee migrants are forced to leave their origin countries and request for a refugee status elsewhere due to the unforeseen and immediate events putting their lives at significant danger (Dustmann et al., 2016). Considering that only part of the people coming to Europe seek the refugee status, while others come due to the economic motives, the term 'migrant' should be considered as more accurate when describing the entire group of people entering Europe. It should, however, be noted that in this Article term 'migrant' does not refer to the persons that enter EU using legal means.

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[1] "Extraordinary times demand extraordinary measures," German Chancellor Angela Merkel said" (Chicago Tribune, 2015).

[2] "Till today, it was difficult to find a solution, because a series of countries adopt a stance 'Not in my backyard,' "Tsipras said." (Chicago Tribune, 2015).

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time concerns of human rights protection, asylum and counterterrorism[3] had to be taken into account. Indeed, tensions concerning security had to be managed whereas rumors that terrorists were arriving to EU together with the wave of the asylum seekers escalated. Although no evident connection between asylum seekers and terrorists was discovered (and even though evidence stating the contrary were provided by the representatives of the United Nations[4]) hostile attitudes towards the incoming asylum seekers emerged in the separate Member States leading to the internal division within EU. EU thus struggled to find a cohesive, long term solution (Ernst & Young, 2016, p. 1).

Following complicated negotiations between Member States the Commission only came up with several ad-hoc solutions to cope with the crisis. Among other things, it proposed an emergency relocation of 160,000 refugees from Greece, Hungary and Italy, creation of permanent relocation mechanism for all the Member States, creation of common European list of safe countries of origin,[5] making return policy more effective, addressing the external dimension of the refugee crisis concerning the resolution of the conflicts in Syria, Iraq, and Libya (Press release, 2015).

However, in their content, neither one of the proposals addressed additional safeguards of the rights of the asylum seekers while waiting for the procedures to be completed. On the contrary, part of the solutions was meant to decrease the number of asylum seekers that EU had to deal with (i.e. creation of the list of safe countries of origin, increasing the effectiveness of the return policy). The other solutions concerning relocation were only intended for logistical redistribution of people. By their very nature, these were the short-term solutions primarily aimed for making it easier for EU and the Member States but certainly not for making it easier for the actual asylum seeker.

Afterwards, the communication proposing the reform of Common European Asylum System was adopted by the Commission (Commission, 2016). Based on this communication the reform of Dublin Regulation was proposed. Yet, on December 2016 the reform regulation was still not adopted. Consequently, since the beginning of 2015 until the end of 2016 nothing substantial was done by the EU to defend the rights of the asylum seekers flowing to the EU. Thousands of asylum seekers are still held in the camps often under degrading conditions[6] (Alderman, 2016; Willsher, 2016). In turn, the EU is still stuck in the search for the long-term solution.

Since EU was unable to provide a solution, incoming asylum seekers faced the EU immigration and human rights systems as they are. It is currently undeniable that EU aspires to be an organization protecting human rights. EU managed to achieve such a level of human rights protection, that it was acknowledged internationally, including the European Court of Human Rights (ECtHR) itself (*Bosphorus Hava Yollari Turizm v. Ireland, App. No. 45036/98 (2005)*). Already in 2005, the ECtHR managed to enumerate features of EU legal system allowing it to conclude that protection of fundamental rights by Community law was equivalent to that of the ECHR system.[7] Despite all the positive characteristics implemented over time, EU's human rights protection system seemed to be not effective during the crisis. The purpose of this article is to assess whether the EU human rights system was able to effectively protect the rights of the arriving asylum seekers in recent period of crisis. It is firstly aimed to answer whether human rights violations were or could have been prevented or at least reduced by actions from the side of EU. Secondly, in case actual violations in fact occurred, it is analyzed whether an asylum seeker who consider his rights to be infringed, would be able to use the human rights defense mechanisms in place after the violation happened.

2. Internal disagreements – an impediment for EU to introduce safeguards of the rights of the asylum seekers

EU, bringing together 28 Member States and a population of over 500 million, is certainly one of a few powers in the world that can actually shape global governance. It has always declared its purpose to be seen in the world as a "single voice" (Postolache, 2012). Yet, being a complex organization aligning various interests of its members, EU is always in the process of searching and discovering the common position. However, it is evident that EU met the recent crisis neither having a common position, nor being united. As indicated in the report of Human Rights Watch "*European Union and its member states struggled to develop an effective and principled response to the hundreds of thousands of asylum seekers and migrants who reached Europe. Narrow government interests too often displaced sound policy responses, delaying protection and shelter for vulnerable people and raising questions about the union's purpose and limits*" ('Human Rights Watch World Report, 2016: European Union Events of, 2015').

Since no EU level solution was adopted, Member States took the matter into their own hands. While Germany chose to invite the

[3] It is no secret that following the terror atacks in Paris on November 2015, Brussels on March 2016 and Nice on July 2016, as well as other smaller incidents in various European countries, a considerable fear of terror exist among European population. It is often publicly claimed that by taking advantage of the migrant crisis terrorists easily enter the EU territory (Nabeel & Bhatti, 2016), wherefore the migrants were started to be associated with a thareat to security.

[4] "Mr. Emmerson, showed that "while there is no evidence that migration leads to increased terrorist activity, migration policies that are restrictive or that violate human rights may in fact create conditions conducive to terrorism." ('No evidence of risk', 2016)

[5] I.e. Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey.

[6] According to the European Commission on June 2016 50 000 of asylum seekers were held in camps in Greece only (Commission, 2016);

[7] ECtHR stressed that fundamental rights have become a condition of legality of Community laws, that CJEU referred extensively to the provisions of ECHR and case-law of ECtHR and that the Charter was substantially inspired by the rights protected under ECHR. The attention was drawn to the EU's intention to eventually accede to the Convention (*Bosphorus*, para. 159). It was noted that these substantive guarantees of fundamental rights were also ensured by the mechanisms put in place exactly to ensure their observance (*Bosphorus*, para. 160). First of all by CJEU's jurisdiction concerning the annulment actions and acts against Community (or Member States) for the failure to perform obligations (*Bosphorus*, para. 161). An extremely limited standing of the individuals to initiate direct actions before the CJEU was, however, noted as a drawback. According to the Court, actions initiated before CJEU by Community institutions or Member States constituted an important control of compliance with Community norms to indirect benefit of individual. In addition, the negative impact of the individual's lack of standing were alleviated by remedies awarded by the national courts in connection with the infringements of Community law (*Bosphorus*, para. 162–163). Overall, ECtHR formed a positive attitude to the EU's human rights protection system.

asylum seekers to its territory and offered them a shelter (Hall & Lichfield, 2015), other states chose protectionist approach aimed to limit the numbers of asylum seekers entering their territories as much as possible. Hungary, for instance, built a wall on its border (Browne, 2015) and initiated the referendum to reject the migrant quotas imposed by the EU (Than & Szakacs, 2016). Czech Republic was announced to be performing systemic human rights violations as a product of the official governmental policy designed to deter the asylum seekers. Measures undertaken included: subjecting asylum seekers (including children) to detention for 40 days, or even longer - up to 90 days - in conditions described as degrading, not providing information about free legal aid[8] and restricting access of civil society organizations that work with refugees to detention facilities. Asylum seekers were even strip-searched by the authorities looking to confiscate money in order to pay the 10 US dollars per day each person is charged for their involuntary stay in the detention centers ("Zeid urges Czech Republic to stop detention of migrants & refugees, ", 2015). Consequently, respective asylum seekers were deprived of their rights to freedom of movement,[9] liberty,[10] right to family life,[11] access to justice,[12] education,[13] employment,[14] etc. There were similar restrictive measures applied in other Member States as well (Shields & Preisinger, 2015). Respective violations were also documented by the European Union Agency for Fundamental Rights (FRA) which reported on the issues of children separated from their parents ("Current migration situation in the EU: separated children - December 2016," 2016), delays, overcrowding and lack of information that impinge on the rights of migrants ("Fine-tuning EU's migration approach to better safeguard rights," 2016).

Could human rights violations be prevented before they happened or mitigated by the EU? Could human rights protection be ensured *ex ante* by adopting EU measures anticipating the instruments to deal with the upcoming stream of migrants or reacting to the emerging crisis?

Considering that EU did not have a comprehensive policy comprising and balancing migration, security, counterterrorism, external border protection, free movement of workers and other important issues, disagreements and division among politicians with regard to most of these issues seems to be a natural outcome. EU disregarded historical lessons (which clearly indicate that lingering armed conflicts results in massive displacement of people) as well as the most recent experiences (i.e. war in Ukraine) and did not invest sufficient effort into developing policy or action plan to deal with the cases of excessive migration. Making prompt and decisive decisions in a "single voice" requires from the Member States to be at least in agreement as regards the questions of principle, for instance, a common understanding that policies deterring asylum seekers from entering their countries were not to be considered consistent with the values of EU. Migrant crisis can therefore be considered as migrant policy crisis whereas the absence of comprehensive policy and the efforts invested into coping with internal disagreements concerning the next steps between the Member States determined that prevention of human rights violations became an issue of secondary importance.

Yet, even though a comprehensive policy was not in place when the crisis struck, EU could still undertake active actions mitigating the violations of the asylum seekers' rights as it was demonstrated on individual occasions. For instance, the activities of the FRA surely had positive effect on the development of the crisis. In response to the human rights violations FRA's representatives were sent by the Commission to observe the respective camps where the asylum seekers were detained. Problematic issues, such as initial registration and asylum applications, with particular attention to the situation of vulnerable people, child protection, access to healthcare, racist incidents, are observed and overviewed on the weekly basis by the FRA providing useful information about the nature of the rights violations asylum seekers experience in the EU ("FRA monthly reports on the migration situation," 2016, "Regular overviews of migration-related fundamental rights concerns," 2016). Moreover, FRA is actively involved in the capacity building and training of the staff working closely with the migrants and that way is making sure that the staff is at least aware of the rights asylum seekers are entitled to ("FRA holds capacity-building workshop for migration hotspot staff in Greece," 2017). Indeed, as far as managing crises goes, the role of FRA and other agencies (as well as coordination of the national police forces) should be reconsidered as they could perform essential functions in mitigating the consequences (as demonstrated by FRA). They could, for example, provide the asylum seekers with the initial information concerning the rights they are entitled to and the following moves they could undertake that way providing an alternative for the information given by human smugglers and social media (Heijer, Rijpma, & Spijkerboer, 2016, This p. 2). Clear definition of their respective functions would certainly contribute to softening of the crisis and creation of a more effective human rights protection system.

Considering the fact that there were already three major migrant crises in a less than a hundred years, it is time for EU to have a plan how to handle migration in the future. There are plenty of signs already showing that active migration towards Europe would not end with the current flow. We still do not know when the current hot spots in Syria would be stabilized meaning that the flows of current intensity could continue for several years. Moreover, the population of Africa is predicted to increase from 1.11 billion in 2013 to 2.8 billion over the next 45 years. Combined with slow economic development, political disturbances, climate conditions it would most likely determine an increase of the migration to Europe (Dustmann et al., 2016; Hatton, 2016). As the recent crisis demonstrated migration problem can only be effectively solved if addressed in advance. Consequently, EU must find a consensus on a comprehensive migration policy and its possible solutions.

[8] Commissioner Zeid indicated that those migrants and refugees who have challenged their detention in court have prevailed, but most were not in a position to go to court either because of the lack of information or assistance ("Zeid urges Czech Republic to stop detention of migrants & refugees, ", 2015).

[9] Article 45 of the Charter and Article 2 of the Protocol No 2 to the ECHR.

[10] Article 6 of the Charter and Article 5 of the ECHR.

[11] Article 7 of the Charter and Article 8 of the ECHR.

[12] Article 47 of the Charter and Article 6 of the ECHR.

[13] Article 14 of the Charter and Article 2 of the Protocol of the ECHR.

[14] Article 15 of the Charter.

Suggestions for a new regulatory framework to replace current outdated coordination attempts should be welcomed as a part of new migration policy. As proposed by some authors, a reform should be based on two pillars. Firstly, a policy should be developed aiming to secure European outer borders so that the flows of the asylum seekers could be controlled. Secondly, it is suggested that asylum claims should be dealt with before asylum seekers have (illegally) crossed into Europe. In addition, more equitable allocation mechanism than the one anticipated under Dublin Regulation should be created (Dustmann et al., 2016). Moreover, a clear and explicit understanding between Member States and EU should be achieved concerning the scope of their humanitarian responsibilities, basic legal concepts and interpretation of their duties under Geneva Convention for Refugees (Hatton, 2016).

As the recent chapter has shown EU was not prepared to address and prevent the current migrant crisis since its actions were hindered by the internal divisions and absence of comprehensive policy. Yet, EU has all the levers in its hands to get the migration system ready for accepting the future waves of the asylum seekers. Introduction of the reform described in the previous paragraphs could serve as a good starting point.

3. Ex post human rights defense system – hardly accessible for an asylum seeker

The second aspect that needs to be addressed in this article is the question whether an asylum seeker who considers his rights to be infringed, would be able to use the human rights defense mechanisms in place after the violation happened. As already determined in the previous chapter, various human rights entrenched in the Charter of Fundamental Rights (Charter) were potentially breached once the crisis emerged. Could the asylum seekers successfully use the Charter or the national procedures to defend their rights? And whom should these violations be attributed to – EU or the Member States?

The question of attribution of responsibility under EU law is mainly determined by the scope of the application of the Charter. Charter is applicable to the Member States as far as they are implementing EU law (Charter of Fundamental Rights of the European Union, 2010, Article 51). Indeed, during the migrant crisis most of the actions that allegedly infringed the rights of asylum seekers were performed by the Member States. It was the Member States that detained asylum seekers, prevented them from entering their respective territories, did not provide sufficient information or ensure due process for their rights defense. Yet, most of these actions were performed acting in accordance with Dublin Regulation requiring to perform administrative procedures concerning the admission and examination of asylum applications. In order to implement the requirements of EU law Member States had no other choice but to detain the asylum seekers until the necessary procedures were finalized. Consequently, in principle, it is possible to attempt proving that the Member States infringed the Charter rights in the process of execution of EU law.

On the other hand, it is quite hard to prove that any of the infringements were performed by the EU itself. Dublin Regulation should not be considered as infringing fundamental rights just because it was not adjusted for the time of crisis and was useless in dealing with greater numbers of asylum seekers. However, even if any of the alleged Charter infringements were attributable to the EU, asylum seekers could not defend their rights due to the internal rules of the EU applicable to the individuals. EU human rights protection mechanism was created for a calm and peaceful world, and was certainly not adapted to cope with the international cataclysms or adjusted somehow for the asylum seekers.

Therefore, an excessively limited right to refer to CJEU on the basis of Article 263 TFEU to challenge EU law would be applicable to the asylum seekers as individuals. Limited standing of the individuals to refer directly to CJEU results in the situation where they are prevented from invoking the Charter against the acts of EU institutions. Not being able to challenge the EU laws directly, they are practically deprived from the only effective tool of rights protection. In truth, it is naïve to expect that a separate individual (especially, if it is a natural person) would win a dispute against an international organization not being able to go to the single court competent to annul the rights-infringing laws. Why is so difficult for an individuals, including asylum seekers, to defend their rights under EU system?

In theory, Charter should protect individuals and legal entities against actions of the EU institutions that infringe their fundamental rights. However, the primary addressees of the Charter were always, first of all, EU institutions that must adhere to its requirements when legislating (Commission, 2015, p. 20). Following the amendments brought by the Lisbon Treaty, Article 6 of TEU granted the Charter the same legal power as the Treaties (*Treaty on European Union, 2016 O J. C 202/1*). Hence, as a source of EU primary law, Charter became directly applicable legal instrument as was acknowledged in Van Gend en Loos (*Case 26/62, Van Gend & Loos, 1963*). As a tool of primary law it can thus be used to challenge the legality of secondary laws due to the infringement of the Treaties or of any rule of law relating to their application, as provided for in Article 263 of TFEU (*Treaty on the Functioning of the European Union, 2016 O J. C 202/1*).

There are primarily two parties that are concerned with the effective implementation of the Charter. Firstly, it is the European Commission that mainly oversees that the Charter is implemented and may initiate an infringement procedure in case the Member State infringes it.[15] Another party concerned – an individual whose rights are actually at stake in a particular situation. Where individuals or businesses consider that an act of the EU institution directly affecting them violates their fundamental rights as enshrined in the Charter, they can bring their case before CJEU, which, subject to certain conditions, has the power to annul the act in question (Commission, 2015, p. 21).

Yet, these conditions referred to in Article 263(4) of TFEU have been interpreted by CJEU in an extremely strict manner and,

[15] European Commission may initiate infringement procedure, for instancce, if Member States EU law in a way contrary to the fundamental rights, public authority applies EU law in a way contrary to human rights or final decision of the national court of the last instance provides for an interpretation of EU law in such a way that is contrary to the human right (Commission, 2015, p. 21).

therefore, difficult to fulfill for an individual.[16] The situation is less complex if the individual is an addressee of the act in question. It is evident in such case that the person is in fact affected by the legal act. On the other hand, if the act is of general application (regulation, for instance), an individual must prove that the act is of direct and individual concern for him. That is where all the practical issues lies. As established by the case-law of CJEU, an individual seeking to challenge an EU act directly before CJEU would have to demonstrate that the legal act in question affected him by reason of certain attributes which are peculiar to him or by reason of circumstances in which he is differentiated from all the other persons and by virtue of these factors distinguishes him individually just as in the case of the person addressed (*Case C-25/62 Plaumann & Co. v. Commission [1963] ECR-95*). The Plaumann-test has been interpreted and applied by CJEU so strictly over the years so that the majority of claims brought by non-addressees could be ruled out for lack of standing (Franklin, 2011, p. 147).

Having regard to the requirements of case-law of CJEU, an individual seeking to defend its rights infringed by the EU act of general application would have to prove several points. Firstly, of course, that the act was not compatible with the Charter. Secondly, prior to the point when it is allowed to deal with an issue of the existence of infringement, an individual would have to prove his legal standing and demonstrate that the act concerned him directly and individually. Should the situation not fall under the restrictive interpretation of these concepts, individual would be prevented from defending his rights before CJEU on the ground of infringement of the Charter by the EU secondary laws. Even in case where the actual damage to the Charter protected rights occurred. It is hard to imagine an asylum seeker, whose rights were infringed by EU legislation, applying successfully to CJEU and substantiating his right to appear before court. Even multimillion companies, designating extensive financial and human resources to defend their interests, are unable to do so.

Whilst it has been stated fourteen years ago by CJEU itself, it seems that the following is as relevant today as before: "< … > *according to the system for judicial review of legality established by the Treaty, a natural or legal person can bring an action challenging a regulation only if it is concerned both directly and individually. Although this last condition must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually* < … > *such an interpretation cannot have the effect of setting aside the condition in question* < … > *. While it is, admittedly, possible to envisage a system of judicial review of the legality of Community measures of general application different from that established by the founding Treaty and never amended as to its principles, it is for the Member States, if necessary* < … > *to reform the system currently in force.*[17]".

Although there were at least two possibilities (Nice and Lisbon[18] treaties) to implement such an amendments and make it easier for individuals to prove their standing before CJEU, no such amendment was ever adopted. Despite the official position of the EU (entrenched in the Treaties as well as in the case-law of CJEU), Member States are reluctant, or lack of political will, to empower individuals with the actual leverage for human rights protection. Plaumann doctrine is still applicable today and results in the situation where the asylum seekers, as well as businesses, NGOs and other EU's residents are very unlikely to prove their standing necessary to challenge rights-infringing acts of EU institutions in judicial review procedures at the EU level (Pallemaerts, 2013, p. 33). Consequently, asylum seekers who consider their Charter rights to have been infringed by EU act, are very unlikely to defend their rights *ex post* before CJEU. It is thus advisable for the Member States to reconsider EU regulative rules concerning individual's standing before CJEU by making it easier for an individuals to access the court.[19]

As far as procedures under national laws are concerned, it is rather promising way of rights defense. As was indicated in the human rights commissioner's Zeid's report concerning the violations in Czech Republic, those asylum seekers and refugees who have challenged their detention in court received decisions in favor. However, it was stressed that most of the detainees were not in a position to go to court because of the lack of information about the fact that a free of charge legal assistance was available or because civil society organizations that worked with refugees were receiving very restricted access to detention facilities ("Zeid urges Czech Republic to stop detention of migrants & refugees, ", 2015). Indeed, most of the arriving asylum seekers lack information concerning the legal systems of the accepting Member States and the rights they are entitled to. Moreover, a language barrier exists in many cases that could also impede the asylum seekers from defending their respective rights. Although asylum seekers are entitled to translation, qualified on-site translation is hard to get even on normal 'non-crisis' circumstances. And even if they had the necessary information, lacking financial resources (as is the case with regard to majority of detainees) and not being able to receive free legal aid, they would still be unable to initiate their rights defense. Consequently, although national human rights defense mechanisms could potentially be used quite effectively, many obstacles prevent the asylum seekers from using it.

Even so, if the violations of asylum seekers rights were considered attributable (under Charter, national law or ECHR) to the respective Member States, the possibility to initiate the collective action by the groups of asylum seekers whose rights were infringed could be theoretically implemented before the courts of certain Member States and before ECtHR. Such a method of rights defense could serve as a solution allowing to overcome limited financial resources and to represent the interests of larger groups of the asylum seekers.

[16] The question of standing of the individual to initiate direct action before CJEU is not a new problem among the EU-law scholars. It was as relevant 50 years ago, as it is today (Angulo & Dawson, 1967, p. 608). Yet, an issue of individual's standing before CJEU was never solved.

[17] Emphasis added by the author.

[18] Even though the concept of "*regulatory act which is of direct concern* < … > *and does not entail implementing measures*" was introduced in Treaty of Lisbon with a purpose of making it easier for the individuals to defend their rights directly, the concept of such regulatory act was not clear up until recently. In its judgement in *Inuit Tapiriit Kanatim* General Court clarified that 'regulatory acts' must be understood as covering all acts of general application apart from legislative acts (*Case T-18/10 Inuit Tapiriit Kanatami [2011] ECR 11–75*). Such interpretation was confirmed by the Court of Justice in 2013 (*Case C-583/11P Inuit Tapiriit Kanatami [2013] ECLI: EU:C:2013:625, para. 60*).

[19] In addition, from the theoretical point of view, a possibility to invoke Article 265 TFEU (by claiming an omission on part of EU for not enacting timely measures to terminate human rights violations) seems to be an interesting alternative way of asylum seeker's rights defense that could potentially be further considered.

4. Conclusions

Absence of comprehensive migrant policy at the EU level determined that EU welcomed the crisis being divided and indecisive, despite the fact that having regard to the historical experience crisis could be anticipated and most of the human rights violations avoided. Although most of the infringements of the asylum seekers' rights should probably be attributed to the Member States, due to the internal disagreements EU did not do much to mitigate the violations as well. As far as managing crises goes, the role of FRA and other EU agencies (as well as coordination of the national police forces) should be reconsidered and clearly defined as these institutions could perform essential functions in ensuring human rights protection in time of crisis. It is suggested in the Article that upcoming crises concerning migration could only be prevented and mitigated by addressing the issue of migration policy immediately. Securing European outer borders, reforming asylum claims processing system so that they would be dealt with before the person arrives to the EU, reaching explicit understanding between Member States and EU concerning the scope of their humanitarian responsibilities should be among the pillars of the migration policy reform. Finally, it is suggested that the conditions necessary to prove the standing of the individuals before CJEU should be reconsidered and alleviated to make human rights protection more accessible.

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