

**COMPLYING WITH INTERNATIONAL AND
REGIONAL LAW DURING THE PANDEMIC –
ASYLUM SEEKERS AND COVID-19 EMERGENCY
MEASURES IN EU MEMBER STATES GERMANY
AND GREECE**

Danni Reches

danni.hcges@gmail.com

Affiliati Haifa Center for German and European Studies
(HCGES), University of Haifa

Working on Europe Paper Series, paper number: 4/2021

ISSN: 2589-2398

**Working on Europe Paper
Series (WEPS)**

By: Maastricht Working
on Europe (MWOE)
& Centre for European Research in
Maastricht (CERiM)



About the Working on Europe Paper Series (WEPS)

The Working on Europe Paper Series is a joint project of the Maastricht Working on Europe (MWOE) research programme and the Centre for European Research in Maastricht (CERiM) at Maastricht University. This series publishes new research on a wide range of topics in European affairs, stimulating theoretical and empirical interdisciplinary academic debate, as well as promoting dialogue with policymakers, stakeholders and citizens from Europe and beyond.

About Maastricht Working on Europe (MWOE) / Studio Europa Maastricht (SEM)

Studio Europa Maastricht is a centre for Europe-related debate and research and was set up at the partners of the Maastricht, Working on Europe programme in 2018: Maastricht University, the Province of Limburg and the municipality of Maastricht. With our broad expertise and wide-ranging activities programme, we aim to encourage the public debate and create a focal point where know-how and skills meet and where vision can be developed. We try to find the best answers for the issues which challenge today's Europe, in collaboration with academics, entrepreneurs, NGOs, policymakers, journalists, cartoonists, students, schools and any other interested parties. Our mission is to stimulate active, critical debate with citizen engagement at its core.

About the Centre for European Research in Maastricht (CERiM)

CERiM is a Jean Monnet Centre of Excellence and an interdisciplinary research venue creating synergies and stimulating joint projects and events in the fields of European law, governance, and their respective history. It brings together researchers from the Faculty of Arts and Social Sciences (FASoS), the Faculty of Law (FL), and the University College Maastricht of Maastricht University (UCM). CERiM links the FASoS research programme Politics and Culture in Europe with the Maastricht Centre for European Law (FL), and the Montesquieu Institute Maastricht (FL with participation of FASoS). At the same time it bundles individual efforts to increase international outreach and to give a substantial input to the Maastricht University's strategic research theme Europe and a Globalising World. CERiM is one of several centres at Maastricht that bring together researchers from the Faculty of Law, FASoS, and UCM. Other such centres are MACIMIDE, a centre that focuses on migration, mobility, citizenship, development and family life, and ITEM, a centre that seeks to facilitate Euregional cross-border mobility and cooperation. CERiM collaborates closely with both centres in the form of common events and funding applications.

WEPS editors:

Mathieu Segers (Faculty of Arts and Social Sciences / Studio Europa, Maastricht University)

– Editor-in-chief

Merijn Chamon (Faculty of Law / CERiM, Maastricht University) – Managing Editor

Neculai-Cristian Surubaru (Studio Europa, Maastricht University) – Managing Editor

Miriam Urlings (Studio Europa, Maastricht University) – Managing Editor

Contact email: papers@maastrichteurope.nl



Abstract

This paper analyzes measures taken by EU Member States Greece and Germany during the first stages of the COVID-19 pandemic with regard to asylum seekers. Following the analysis, the measures are first compared to international and regional law on asylum, and secondly the implications of the measures for the affected asylum seekers are assessed. For both Member States, while restricting movement of asylum seekers within state borders, suspending asylum processes and quarantining persons exposed to the virus were in line with regulations, asylum seekers were left more vulnerable than host country nationals due to residence in (over)crowded reception centers and ongoing insecurity about their refugee status. In addition, it can be concluded that Germany's measures went beyond complying with international and regional laws. Remarkably, while not necessary during the pandemic, resettlement programs were halted. This step signals a turning point in German decision-making. In contrast, Greece suspended the right to seek asylum, violated the principle of non-refoulement and detained asylum seekers already prior to the pandemic. The Member State continued to do so during the pandemic using the Coronavirus as an excuse. Without a strong condemnation of the EU, the implications for asylum seekers will be major as Member States face no deterrence in foregoing internationally recognized human rights.

Keywords: European Union; Greece; Germany; COVID-19; Migration

**Complying with international and regional law during the pandemic - Asylum seekers and COVID-19
emergency measures in EU member states Germany and Greece**

Table of Contents

Introduction	5
I. Research design	7
II. Germany	8
a. The Communication.....	9
b. The Guidance	11
c. Asylum seekers in Germany	12
III. Greece	15
a. A new ‘migration crisis’	16
b. The opening of borders coinciding with the arrival of COVID-19	18
c. Measures affecting asylum seekers	19
Discussion and conclusion	21
References	24

Introduction

When the Coronavirus or the COVID-19 pandemic hit the European continent, it came to a standstill. Almost literally, as national borders were closed, airplanes were grounded, and mobility was severely restricted. Nevertheless, persecution and conflict continued in areas around Europe and persons remained on the move to a safer destination. The United Nations High Commissioner for Refugees (UNHCR) estimated that in June 2019 there were 70.8 million forcibly displaced persons worldwide. These were the highest levels of displacement ever recorded (UNHCR, 2019) and have to be taken into consideration when measures are taken to stop a global pandemic.

The 27 Member States of the European Union (EU) have received regular influxes of asylum seekers since World War II. All Member States are parties to the 1951 Convention and 1967 Protocol relating to the Status of Refugees, and the right to asylum is recognized by the Charter of Fundamental Rights of the EU. Article 18 of this Charter even refers to the Convention and the Protocol (Gil-Bazo, 2008, p. 34). In the last 30 years, the highest peaks of incoming asylum seekers occurred in the 1990s following conflict in former Yugoslavia and in 2015 following civil war in Libya and Syria (Connor, 2016).

As asylum policy gathered momentum, in 1990, Member States agreed upon establishing the Dublin Convention in order to prevent asylum shopping through having the first country of entry assess the asylum claim, which became binding in 1997. More formal harmonization of asylum policy started in 1999 with the Treaty of Amsterdam. The European Commission (EC) was given the right to propose legislation in 2002 when asylum policy was transferred to the first pillar of the EU. A few stages of a Common European Asylum System (CEAS) – through the Tampere, Hague and Stockholm Programmes – followed, establishing common standards for reception conditions and processing of asylum applications. The point of the CEAS is that asylum seekers go through the same procedures and are received in the same way, no matter in what Member State they ask for protection. However, until today its implementation is uneven across the EU. This is partially due to some regulations and directives of the CEAS being minimum standards, giving states the option to provide more than that (Hatton, 2015, p. 612-614).

The failure of the CEAS and how it should be adjusted has been intensely debated by academics, especially during the so-called 'refugee crisis' that peaked in 2015. Chetail (2016) explains that even if all 1.2 million new applicants were granted protection in 2015, they would form only 0.2% of the entire EU population. He therefore claims that the situation was not a crisis of numbers, but a policy crisis that highlights the continuing failure of the

CEAS. Bauböck (2018) views the crisis as more of a European integration crisis rather than a policy crisis. He argues that in addition to the duty of admitting refugees, Member States have duties towards each other including co-operation and a commitment to keeping internal borders open. Failure to accept these duties in 2015 triggered a crisis of European integration through the building of fences, internal border controls, and a decline of co-operation. Bauböck's theory comes close to what is often referred to as the European crisis of solidarity. For example by Marin et al. (2020), who assert that solidarity between Member States is a core element of policies on asylum and external border controls, and has legal relevance. They stress that the principle of solidarity is in a deep crisis. Tensions and conflicts have erupted at many levels, both between Member States and between states and the EU.

The EU was still dealing with the consequences of what is called the 'refugee crisis' - which was actually a policy, integration and solidarity crisis – when the unprecedented Corona-pandemic hit in 2020 and thus went from crisis to crisis. Having the former crisis in mind and understanding that closing borders and curbing mobility were prioritized to stop COVID-19 from spreading, questions regarding the situation of asylum seekers on their way to and already within the EU arise. The question that this article explores therefore is: How did European Union Member States Germany and Greece initially react to the Corona-pandemic with regard to asylum and a) was this response in line with regional and international law? and b) what were the implications of these reactions for the affected asylum seekers?

The first part of this paper elaborates on how this question is attempted to be answered and provides the research design of the study. The second part focuses on the case of Germany, and the third on Greece. The analysis reveals that in both countries asylum seekers were left more vulnerable due to residence in (over)crowded reception centers and ongoing insecurity about their refugee status. In addition, Germany halted resettlement programs, while not necessary during the pandemic. This signals a turning point in German decision-making. Finally, Greece suspended the right to seek asylum, violated the principle of non-refoulement and detained asylum seekers already prior to the pandemic and continued doing so using COVID-19 as an excuse. It is imperative that the international community condemns the EU Member State, otherwise others will face no deterrence in foregoing internationally recognized human rights. In the conclusion and discussion the implications of these findings for the academic debate and policy recommendations are presented.

I. Research design

The EU is the focus of this research because its Member States are party to international treaties related to asylum and EU law referring to those treaties. What this article does not attempt to determine is whether responses infringe upon more general rights to freedom, assembly, etc. that apply to the entire population. The research focuses only on measures with regard to asylum seekers specifically. An asylum seeker is understood in most Member States as an applicant for international protection following the adoption of the Recast Qualification Directive (Directive 2011/95/EU) and the Recast Asylum Procedures Directive (Directive 2013/32/EU). Exceptionally in Germany, the term asylum seeker is used to additionally include those of national legislation (Article 16a, Basic Law) (European Commission, 2020a).

In order to answer the research question, both general measures that were implemented to diminish the spread of the virus and measures specifically with regard to asylum are discussed. These measures are analyzed and compared to international law relevant to asylum. Next, they are compared to regional law. This project focuses on the first weeks of the pandemic through April 30, 2020. To conduct a thorough legal analysis it is necessary to focus on a limited period of time, with the aim to properly examine within the scope of an academic article. Moreover, it was in this initial stage of the pandemic that the EC responded to the crisis by publishing recommendations for its Member States on how to conduct national and regional border policies. Therefore, not only COVID-19 itself, but also the EU at this stage pressured states into reviewing their border, immigration and asylum policies. Analyzing what happened at this particular time helps map the initial reactions of states to the crisis situation.

The case studies selected are Greece and Germany, based on similar justifications others have used in comparative studies of these countries when it comes to migration and crises (Brändle, Eisele & Trenz, 2019; Fotopoulos & Kaimaklioti, 2016). Both case studies are Member States of the EU, and as such, are relevant for comparison as they should comply to the same regional and international regulations. Moreover, these states were selected based on criteria relating to their geographical location, as well as their political and economic conditions. These conditions are exceedingly different in each case and therefore this research follows the most-different method of case selection (Seawright & Gerring, 2008, p. 306). While analysts usually consider this research design to be weaker than the most-similar method, the selected case studies here are also representative of the EU as a whole, e.g. representing the northern (the Netherlands, Denmark and Sweden) and southern (Italy and Spain) Member States.

Their geographical position makes their border and asylum policies focus on different aspects. Greece is an external-border Member State, while Germany lies at the heart of the EU. Thus the country sample is divided into a first-entry country for asylum seekers and a destination country. This division extends to the economic field. Germany has a stable economy and a high standard of living, which attracts migration. Greece however, has been hit hard by the financial crisis of 2008. Therefore, even though many asylum seekers enter the EU through this Member State, it has mostly been a transit country. From a political point of view, both states are members of the EU for at least 40 years. While Germany is regarded as one of the drivers of European integration, Greece, as a struggling transit country, has raised demands for more solidarity when it comes to burden-sharing of immigrants between Member States.

The first part of this article focuses on Germany. Measures that affected asylum seekers are discussed and compared to regional and international regulations on the matter. The second part analyzes Greece and its response to the pandemic. Even though this paper was written in the midst of the crisis and the long-term consequences have yet to become clear, some early conclusions can be made based on the analysis in this research. This is done in the discussion and conclusion section.

II. Germany

The World Health Organization characterized the Coronavirus as a pandemic on March 11, 2020 (WHO, 2020). An early measure Germany took to contain the spread of the virus followed the advice of the EC. On March 16, the Commission recommended to apply a temporary 30-day restriction of non-essential travel from third countries into the EU. On April 8, the EC invited Member States to extend restrictions until May 15 (European Commission, 2020b).

Following travel restrictions, the German government implemented a set of national measures on March 22. The measures included reducing social contact to the absolutely necessary and keeping distance from others of at least 1.5 meters. In public, it was only allowed to meet with one person other than members of the same household. Necessary undertakings, such as travelling to work and healthcare facilities, and shopping and exercising individually outside remained possible. Restaurants and cafes were closed, while food delivery and pick-up was allowed. Service providers such as hairdressers and tattoo studios where a 1.5 meter distance was not possible, were closed as well. Hygiene regulations had to be implemented in all workplaces for staff and visitors. These measures were to remain in place for two weeks (Die Bundeskanzlerin, 2020a).

On April 1, Chancellor Angela Merkel announced an extension of these measures until April 19. That was the last day of spring break, which in Germany coincides with Easter. During a press conference the phrase ‘*Das Coronavirus kennt keine Feiertage*’ (The Coronavirus knows no holidays) was used, urging German residents not to travel. The reason for the extension was the continuing rising numbers of infected persons. The aim of the measures was to reduce the amount of infections and to not overburden the healthcare system (Die Bundeskanzlerin, 2020b). Two weeks later, the measures were updated again. Provided that ‘social distancing’ of 1.5 meters from others was upheld and strict protective measures observed, on April 20, small retailers were allowed to open. Schools were announced to slowly re-open as well as hair salons on May 4. Another update was planned for April 30 (Die Bundeskanzlerin, 2020c).

a. The Communication

One of the first measures taken by Germany was the implementation of travel restrictions, as recommended by the EC. In the document ‘Communication’ the EC addressed the scope of the restrictions. They did not apply to EU citizens, citizens of non-EU Schengen countries (Iceland, Norway, Switzerland and Liechtenstein), and long-term non-EU national residents for the purpose of returning home. Additionally, it stated that persons with either an essential function or need should be allowed to travel. The Communication listed the expected healthcare professionals, health researchers, and elderly care providers as those with an essential function. Also included were frontier workers, transport personnel, diplomats, staff of international organizations, humanitarian aid workers, and military personnel. The need-based groups of persons allowed to travel were mentioned last. These were passengers in transit, passengers travelling for imperative family reasons, and persons in need of international protection or for other humanitarian reasons (EUR-lex, 2020a). The Communication thus included asylum seekers as persons who were not to be refused entry at the external borders of the EU, because they had an essential need to travel.

An opposing approach was taken by United Nations (UN) institutions UNHCR and the International Organization for Migration. They stopped refugee resettlement procedures on March 17 out of concern that international travel could increase the exposure of refugees to the virus. As resettlement remained a life-saving tool, the organizations urged states to continue movements for emergency cases (UNHCR, 2020a). The German government decided on March 18 to follow the example of the UN instead of considering how to best implement continued entry of third-country nationals as the Communication allowed. The Interior Ministry announced it

halted all resettlement programs and would no longer accept refugees from any country. Through resettlement schemes, Germany had taken in around 5000 refugees a year since 2012 (Tageschau, 2020).

Even though no crisis is like another - the pandemic being a health crisis and the so-called 'refugee crisis' a very different one - those researching the field of Migration Studies focusing on Europe would notice this act and consider it a turning point in German asylum policy and decision making. The approach was very different than that taken by Germany in 2015. Then, Merkel's statement that people fleeing war and political persecution were welcome in Germany was labeled an 'open-door policy'. The Chancellor hinted at Syrian refugees (Reiners & Tekin, 2020, p. 118) - most first time asylum applications in the EU were made by holders of Syrian citizenship (Eurostat, 2020a).

Leaders like Donald Tusk, former President of the European Council, viewed the increase of asylum seekers as an existential challenge for the EU (European Council, 2016). Nevertheless, only a minority of political parties within Member States called for a complete halt of immigration. There were four Member States, known as the Visegrád Group consisting of the Czech Republic, Hungary, Poland and Slovakia, that were very much against taking in refugees. Even though the four of them rejected a refugee relocation scheme proposed by the EC, only Poland and Hungary, out of 28 Member States, ended up not taking in any (Duszczuk, Podgórska & Pszczółkowska, 2019, p. 5-7). Germany and Hungary embodied opposing asylum policies during the crisis. The German decision to stop taking in refugees in 2020 was therefore, if not surprising, at least a drastic measure and turning point.

The Interior Ministry did not only implement measures when it came to incoming persons, but also regarding those leaving the country. The Ministry stated on March 18 that there would be a general suspension of deportations from Germany. At the time, there were more than 24,300 Afghans in Germany who were required to leave the host country because their asylum applications had been rejected. A deportation flight to Kabul would be preceded by a larger logistical effort. The persons affected had to be brought together from various German states to the airport the flight would leave from. This required intensive travel, which during the pandemic was not considered sustainable (Petersmann, 2020). Another process that involved such logistical planning was imbedded in the Dublin Convention, that has the first country of entry process the asylum claim. It has been updated repeatedly, resulting in Dublin III (EUR-lex, 2013). Following the pandemic, the government suspended transfers to and from Germany under the Dublin Convention until further notice (BAMF, 2020a).

The next step is to assess whether the described measures are considered in line with regional and international law. Despite the fact that the regional Dublin Convention is binding for Member States, the suspension of transfers conform to the regulation. Article 29 of Dublin III states that transfers *'shall be carried out in accordance with the national law of the requesting Member State, after consultation between the Member States concerned, as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge or to take back the person concerned'* (EUR-lex, 2013). Relevant is the part *'in accordance with the national law'*. Due to the pandemic, some Member States closed their borders. This was made possible by Article 28 of the Schengen Borders Code. The Article allows states to reintroduce internal EU border control in response to a threat. In this framework, Germany closed borders with Austria, Switzerland, France, Luxembourg, Denmark, Italy, and Spain from March 16 to May 5 (European Commission, 2020c). Therefore, transferring persons from Germany to these countries would not be in accordance with the national law of the requesting Member State, e.g. deemed not necessary by Dublin III. In addition, the EC's Communication could be interpreted as such, that states do not have to take in Dublin transfers as these third-country nationals residing in other Member States are not in urgent need of protection and therefore not exempt from travel restrictions.

Deportation of those denied refugee status was a lawful practice before the pandemic, but never an obligation by international law. Thus, not deporting persons from Germany during the pandemic was not against regulations. The same goes for refugee resettlement programs. Although international institutions urged states to share the burden of taking in refugees, resettlement is not required. Halting these programs therefore, does not break any laws. What should be mentioned however, is that there is also no obligation to stop resettlement in the Communication. It was the EC itself that announced an initiative to relocate unaccompanied children from Greek reception centers to other Member States in early March. Ten Member States took part, including Germany (European Commission, 2020d), where 47 minors landed on April 18 (dpa, 2020).

b. The Guidance

13 days after the publication of the Communication, on March 30, the EC announced guidelines for the implementation of the travel restrictions (European Commission, 2020e). The guidelines described in the *'Guidance'* were of importance, as they were meant to help Member States deal with the unprecedented situation and to give them a chance to look into and, if necessary, change their approach to the restrictions.

The Guidance provided more information than the Communication did. For instance, two groups of persons were added to the list of those who held essential functions. Seasonal workers in agriculture and civil protection personnel were also allowed to travel (European Commission, 2020e). Interestingly, more details were added to the Guidance to the section where asylum seekers were mentioned as an exception to the travel restrictions. While the Communication spoke of *‘Persons in need of international protection or for other humanitarian reasons’* (EUR-lex, 2020a), the Guidance added to that exact sentence *‘respecting the principle of non-refoulement’*. The norm of non-refoulement imposes an obligation on states not to return asylum seekers to countries in which their lives or freedom would be threatened (Musalo, Moore & Boswell, 2002, p. 4). Therefore, the Guidance did not only provide that seeking protection is a need that allows travel, but also urged that the principle of non-refoulement be respected.

The Guidance provided three articles of the Schengen Borders Code that justified refusing entry of non-resident third-country nationals when showing symptoms or were exposed to risk of infection, therefore considered to be a threat to public health. Following these articles, a provision is given *‘Any decision on refusal of entry needs to be proportionate, non-discriminatory and implemented in a way that ensures full respect of the human dignity of the persons concerned’* (European Commission, 2020e). Such non-discriminatory guidelines were kept in mind, which is shown in the recommendation later on that *‘Member States can, however, take appropriate measures such as requiring non-nationals entering their territory to undergo self-isolation or similar measures upon return from an area affected by COVID-19, provided they impose the same requirements on their own nationals’* (European Commission, 2020e).

The Guidance, just like the Communication, did not make it mandatory for Germany to stop taking in refugees. It provided that asylum seekers were to be exempt from travel restrictions and that they should be treated equally when it comes to isolation as nationals of the host country. Thus, the same arguments fit here as those mentioned earlier. While the German government did not go against any regulations by halting refugee resettlement programs, the Guidance did not restrict Germany to continue them either. Additional proof that the Guidance did not demand ceasing resettlement programs is the continuation of such programs by the EC for unaccompanied minors from Greek reception centers, in which Germany took part.

c. Asylum seekers in Germany

When asylum seekers made it to Germany, despite the measures taken during the pandemic, they had to apply for asylum. In March 2020, 7,120 asylum applications were filed (compared to 13,290 in January and 10,130 in

February) (Eurostat, 2020b). This was done through the responsible office, the German Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge* - BAMF). The BAMF did not take any in-person asylum applications in order to avoid contact and the spread of COVID-19. The BAMF only accepted applications in writing. This written application was not the written asylum application as described in Section 14 of the Asylum Act (*Asylgesetz*) intended for unaccompanied minors and applicants in detention or hospital. The written application operationalized during the pandemic continued as an in-person application with a form-request. Upon receipt, the BAMF issued a temporary residence permit. This allowed the asylum seeker to stay in the district of the reception center. In-person hearings on the individual reasons for flight and further processing of asylum applications were not held while measures taken during the pandemic were in place. Regarding special cases, related to security for example, hearings continued through mobile teams. Asylum applications already submitted, the BAMF continued to process. Notifications were sent by post (BAMF, 2020b; 2020c).

Through providing asylum seekers with temporary residence permits and urging them to stay within their initial reception center, the government kept an overview of persons within the borders. It also provided asylum seekers with a place to stay during the pandemic, during which measures were aimed at restricting movement. Thus the measures assured control over social distancing and movement of asylum seekers. The way in which this was done did not include changing any regulations. Persons were still able to exercise their right to seek asylum, thus these measures were in line with international law.

By not holding in-person hearings on the individual reasons for flight, which are crucial to determining whether a person receives refugee status or not, the BAMF started piling up the work for months to come. The result of this delay will be that the asylum applicant would need the temporary residence permit to be extended time and again until the hearing takes place. That person is, while the emergency measures last, restricted to the initial reception center and not able to seek work, start a German language course, initiate the process of family reunification, or any other meaningful undertakings. While regional and international legislation do not provide for these endeavors, a delay could affect the normal process asylum seekers in Germany were to go through before the pandemic. For example, most asylum seekers with a temporary residence permit were obliged to take part in an integration course, consisting of a language course (generally 600 times 45 minutes of teaching) and an orientation course (100 times 45 minutes). Failing to participate could result in a reduction of the person's social benefits (BAMF, 2019).

Another concern lay in the fact that most initial reception centers had quite a few people living together. The makeup of these centers made them a potential target of a Coronavirus outbreak. On March 11, a 48-year-old asylum seeker from China tested positive for the virus in a center in Heidelberg. The patient was moved to a prepared quarantine building on the premises (Meisner, 2020). This center was located in the former living quarters of the US military (Deutsches Rotes Kreuz, 2020) and hosted about 1,300 asylum seekers (Lenz, 2020). Another case was found in a center in Suhl in the state Thüringen. The more than 500 asylum seekers there were able to move freely within the building, but were not allowed to leave the center. Some residents disagreed with this restriction, leading up to the police having to step in and remove 20 trouble-makers. The spokesperson of the UNHCR in Germany said that it was reasonable to believe that there were more infections amongst asylum seekers. The total number was difficult to identify, as there was no central recording due to the German federal system (Meisner, 2020).

Despite concern of the spread of COVID-19 in reception centers, the decision to quarantine them upon confirmation of infections among residents can be viewed as the result of measures that also applied to non-asylum seekers. Social distancing, leaving the residence only when necessary, and quarantine of persons who recently crossed borders applied equally to German nationals and others, and were thus non-discriminatory measures. Therefore, Germany complied with regional (Article 2, Treaty on EU) and international (Article 7, Universal Declaration of Human Rights) regulations that protect minorities from being singled out. Suspending in-person asylum applications and hearings by the BAMF due to the risk these meetings posed to the health of both applicants and employees, was in line with existing laws for the same reason.

In summary, the German government implemented a set of measures to stop the pandemic beginning in March. Measures such as keeping distance and limiting movement affected asylum and non-asylum seekers alike. The government thus respected non-discriminatory laws on the regional and international level, while these measures did leave asylum seekers more vulnerable than others. Following an analysis of measures aimed at border control and asylum, Germany also complied with relevant regulations. As asylum seekers were considered exempt from the EC's travel restrictions, pre-existing and new regional regulations were complied with. By halting resettlement programs, deportations and Dublin transfers, Germany did not go against regulations either. However, movement was restricted more than necessary. This was a break with the open-door approach during the 'refugee crisis'.

III. Greece

The second case study is Greece. Greece is an appropriate case, as it forms an outer border of the EU and thus an entry point for many who seek protection in it. This became very clear during the ‘refugee crisis’, when over a million asylum seekers entered the EU. The sudden increase of arrivals was harder for some Member States to deal with than for others. Greece by far had to deal with the largest number of arrivals - 856,723 persons reached Greece over sea and another 4,907 by land in 2015. This was a major increase compared to 2014, when 41,038 and 2,280 persons came respectively (UNHCR, 2020b).

In addition to being a key entry point, Greece also struggled as a holding and processing area due to the Dublin Convention for the vast majority of the new arrivals (Greenhill, 2016, p. 319). Most arrivals aimed to move to Member States with higher living standards (Reiners & Tekin, 2020, p. 118). What Greece and persons involved preferred however, did not matter. Whereas some relocation agreements and financial aid were proposed by the EC, it was difficult for the Greek government to find solidarity among Member States (especially the Visegrád Group) to share the burden of taking in of asylum seekers (Börzel, 2016, p. 12).

An important step taken by the EU that helped curb the influx of asylum seekers to the Greek borders was what has become known as the EU-Turkey deal. Though called the EU-Turkey deal, scholars agree that in 2015 and 2016 Germany was an important and driving actor in EU migration policy and EU-Turkey affairs (Reiners & Tekin, 2020, p. 126). The deal expanded upon an agreement reached in late 2015, and was concluded on March 18, 2016. It aimed to lower the number of incoming asylum seekers, prevent unchecked arrivals, and alleviate strains on Schengen and the broader European political and economic projects. It included permitting Greece to return to Turkey irregular migrants arriving after March 20. In exchange, the EU agreed to assist Turkey with more than six billion Euros meant for handling the around three million refugees residing within Turkey. For every one asylum seeker that was sent back to Turkey (with a limit of 72,000 persons), Member States took in one Syrian refugee from Turkey. Member States also agreed to accelerate visa liberalization for Turkish nationals and to look into restarting talks on Turkish EU membership. This was of importance for Turkey, because the state had tried to move on with its bid for membership for over a decade.

The deal was not only triggered by hardship Greece faced, but also followed threats made by Turkish officials to open the door for asylum seekers to leave Turkey – in the direction of Europe. Negotiations took place knowing that if the EU would not concede to Turkey’s demands, it would face the consequences of an even larger than the already great amount of arrivals. As mentioned earlier, European leaders viewed this influx as an existential

crisis. This problematic position the EU was in, Greenhill (2016, p. 327-328) argues, prompted the EU to recognize Turkey as a safe country of return for asylum seekers, despite increasing human rights violations by its government.

a. A new 'migration crisis'

Three years later, in March 2019, 27 camps on the mainland in Greece created as temporary facilities were still in use. In a number of these, conditions remained poor. Overcrowding, insufficient provision of services, violence, lack of security and of requisite legal base were reported. Despite the increase of the capacity of mainland camps in 2018, overcrowding worsened. The situation on Greek islands was worse. Reception conditions in the facilities may have reached the level of inhumane or degrading treatment in certain cases. On December 31, 2018, 11,683 persons were in facilities on the islands with a capacity of 6,438 places (ECRE, 2019).

The situation became more dire when a new rise in the number of arrivals was measured by the end of 2019. Whereas 32,494 arrivals by sea were registered in 2018, in 2019 59,726 were counted (UNHCR, 2020b). In response, on February 26, 2020, the Greek Parliament voted to suspend access to asylum to all persons arriving between March 1 and 31, which could possibly be extended (ECRE, 2020a). Prime Minister Kyriákos Mitsotákis announced that he was invoking Article 78.3 of the Treaty on the Functioning of the European Union (TFEU) when Parliament suspended asylum. This particular article of the Treaty states the following *'In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament'*. Mr. Mitsotákis overlooked the part that requires a proposal from the Commission that is agreed by Member States in order to make his government's decision legal. Following the vote, Ylva Johansson, EU Commissioner for Home Affairs and in charge of EU migration policy, said the Commission did not plan to invoke this clause of the TFEU. She continued: *'Individuals in the EU have the right to apply for asylum. This is in the treaty, this is in international law'* (Rankin, 2020).

The Greek decision was criticized by many others too, including 121 organizations such as the European Council on Refugees and Exiles (ECRE), Human Rights Watch (HRW), and Oxfam (ECRE, 2020b). They argued that the decision led to three important issues. The first was that the requests for protection were not registered. The second was that of asylum seekers held in detention. The third that they were eventually deported (Oxfam, 2020).

The first issue regards the right to asylum. The term asylum is applied differently in different contexts. Here it means protection offered to an alien on account of a threat abroad, by a state within its territory (Battjes, 2006, p. 6). International documents that regard the right to asylum are, amongst others, the Universal Declaration of Human Rights of 1948 (Art. 14), the Convention relating to the Status of Refugees of Geneva in 1951 and the subsequent Protocol of 1967. The common interpretation of these documents is that while a person has the right to seek asylum, the right of asylum itself is not explicitly stated. Nevertheless, most recognize that there are other obligations to protect asylum seekers, such as non-refoulement and humanitarian duties (Kennedy, 2004, p. 222). EU-Commissioner Johansson was thus correct when she stated that individuals in the EU have the right to apply for asylum (Art. 78.1, TFEU). Hence, Greece violated the right to seek asylum.

The second issue with the decision was that of detaining asylum seekers. Article 31.1 of the Geneva Convention prohibits host countries from punishing refugees on the account of their illegal entry or presence, when they present themselves to the authorities without delay and prove to have good reason for their entry. When an asylum applicant complied with the requirements of the refugee determination procedure, detention constitutes a penalty unless defined as necessary (O'Nions, 2008, p. 155-156). The UNHCR developed guidelines on alternatives to detention, referring to the Geneva Convention (Refworld, 1999). However, EU law sets more stringent standards. Asylum seekers who fall under this law, including those in Greece, are vulnerable to detention as irregular entrants when they are in transit in search of protection, and if they become deportable under the Dublin Convention (Costello & Mouzourakis, 2016, p. 1). Whether Greece had and continues to break international law while following EU law by detaining asylum seekers in some cases is therefore open to debate. Nevertheless, detaining every new arrival for the reason of having entered Greek territory is not in line with Directive 2013/33/EU, which lays down standards for the reception of applicants for international protection in the EU. Article 15 of the Directive stipulates that *'Applicants may be detained only under very clearly defined exceptional circumstances laid down in this Directive and subject to the principle of necessity and proportionality with regard to both to the manner and the purpose of such detention.'* Thus, detaining all new arrivals goes against both international and regional law.

The third issue with the Greek decision was that of deportation of asylum seekers. Article 33 of the Geneva Convention prohibits the expulsion of refugees, also referred to as refoulement. The article mentions that no state shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened. Although there are exceptions, scholars insist that the principle of non-refoulement has become binding as a matter of both treaty and customary law (Kennedy, 2004, p. 225). If Greece deports all arrivals

without checking whether they could be recognized as refugees back to the territory they fled from, Greece violates the principle of non-refoulement. As mentioned earlier, the EC's Guidance that followed the Communication on temporary travel restrictions states that the principle of non-refoulement has to be respected by Member States – even during the pandemic. It should be kept in mind that the Parliament's decision was made before the Coronavirus was characterized as a pandemic.

b. The opening of borders coinciding with the arrival of COVID-19

Interesting developments occurred around the same time of the asylum suspension in Greece on the eve of the pandemic. It was exactly on that same February 26, that the first case of the Coronavirus was confirmed. The patient was a Greek woman who recently returned from northern Italy (Maltezou et al, 2020). One day later, on February 27, the Turkish government announced it would no longer stop asylum seekers from leaving Turkey to reach the EU. At the time, Turkey hosted 3.6 million Syrian refugees. Since December 2019, hundreds of thousands more fled towards the Turkish border with Syria, where conflict was ongoing. The Turkish government said it could not cope with the increasing numbers of asylum seekers on its territory (Weise, 2020). Following the announcement, thousands travelled to the Greece-Turkey border. In response, the Greek government reinforced its border with police and army. As a result, thousands were stranded in no-man's land on the border (HRW, 2020a), and the EU-Turkey deal was breached.

Reports on the Greek response to the opening of the Turkish part of the border included pushbacks - stopping asylum seekers at borders and forcing them to return to the country they came from. Footage showed Greek coast guards firing into the sea near a small rubber boat, shoving it around, and attempting to force it back to Turkey (BBC, 2020). A grey area is entered when Greece engages in pushbacks. On the one hand, the European Court of Human Rights ruled in 2012 that Italy's pushback policy on boat refugees coming from Libya breached international law. The argumentation followed a similar line as that in the debate on the principle of non-refoulement (Refworld, 2012). On the other hand, the EU regards Turkey since the signing of the EU-Turkey deal as a safe country for asylum seekers – although scholars have voiced strong concern about Turkey being defined as such.

News coverage of the situation on the border was soon overlooked as a result of the global spread of COVID-19. Greece started implementing nation-wide measures to prevent more infections. On March 11, educational establishments were shut down for a two-week period (Georgiopoulos & Heinrich, 2020). Public

gatherings were restricted to ten people, causing museums, restaurants, retail businesses, etc. to close (Kambas, Heinrich & Elgood, 2020). Additional measures included a mandatory 14-day self-quarantine on all international arrivals. Two days after the Communication on travel restrictions was announced, land borders with Albania and North-Macedonia were closed. Air travel between Italy, Spain, Turkey, and the UK (later also Germany and the Netherlands) was suspended. On March 19, hotels were ordered to close until April 30. The most drastic measure was the curfew throughout Greece from March 23 to April 27. Violators were fined 150 Euros (U.S. Embassy, 2020). On April 23, the curfew was extended to May 4 (Kambas, Heinrich & Elgood, 2020).

c. Measures affecting asylum seekers

Measures especially affecting asylum seekers were first announced on March 17 by the Ministry of Immigration and Asylum. Reception centers were placed under additional measures in order to protect their residents and those working there from the virus. These included the suspension of visitors, minimizing movement outside of the center to the absolute necessary, and the closure of school units and other group indoor activities (Notis Mitarakis, 2020a). Even though Human Rights Watch condemned this lockdown, which according to them trapped thousands of asylum seekers without good reason (HRW, 2020b), the measure was not different from those that applied to non-asylum seekers. Therefore, the lockdown of reception centers was a non-discriminatory regulation. In this case, Greece complied with regulations that protect minorities from discrimination (Treaty on EU; Universal Declaration of Human Rights).

On April 1, the month-long suspension of asylum implemented in response to a renewed influx of arrivals and justified by the Greek government with Article 78.3 of the TFEU, came to an end. However, as the controversial suspension ended, access to asylum was affected by the suspension of the Greek Asylum Service's activities until at least April 10, this time justified by the pandemic (ECRE 2020c; 2020d). The decision to suspend asylum from March 1 to 31 was not in accordance with international law for three reasons: it went against the right to seek asylum, against the prohibition of keeping asylum seekers in detention unless absolutely necessary, and against the principle of non-refoulement. Although this decision was made before the pandemic, Greek lawmakers considered the influx of new arrivals an emergency when they voted for suspension. Neither the Geneva Convention nor EU law provides any legal basis for the suspension of the reception of asylum applications - even during an emergency, whether related to an influx of asylum seekers or a pandemic. The TFEU evoked by Greece during the first suspension of asylum allows only for provisional measures, not a complete halt of asylum. It cannot

suspend the internationally recognized right to seek asylum and the principle of non-refoulement, emphasized in EU regulation. Additionally, persons entering the territory of a state irregularly should not be punished if they present themselves without delay to authorities. Thus, the suspension of asylum cannot be justified with the emergency situation created by COVID-19.

The next day, April 2, the first infections were confirmed among residents of Greek reception centers. The Ritsona center was placed under quarantine for two weeks, after 20 residents tested positive (Maltezou & Papadimas, 2020). On April 5, a person in reception center Malakasa tested positive. Also Malakasa was quarantined (Notis Mitarakis, 2020b). The overcrowded centers in Greece are potential areas of disease outbreaks. Since keeping distance from others is almost impossible and lack of hygiene in most centers (due to the limited amount of toilets and showers), a virus is bound to spread rapidly. Keeping asylum seekers inside the centers might be the same as measures affecting non-asylum seekers and non-discriminatory, but anyone in these centers is more vulnerable to the Coronavirus than others.

A solution does not lie in quarantine only, but in a combination with resettlement programs to relieve the pressure of overcrowded places. In addressing the EU Parliament's Home Affairs Committee following the quarantine of Ritsona, Greece's migration minister Notis Mitarachi stated that Europe should do more to help. Greece, he said, cannot resolve this crisis instantly and alone (Smith, 2020). The resettlement scheme proposed by the EC regarding unaccompanied minors resulted in Member States pledging 1,600 places was a good start, but should be increased in order to protect not only children, but all asylum seekers and the larger Greek population from the virus. The analysis in this research has shown that this is possible and in accordance with international and regional law.

On April 10, the government extended the suspension of asylum services until May 15, including registrations, interviews, and appeals. The validity of certificates and residence permits that would expire prior to May 15 were extended (Greek Ministry of Immigration and Asylum, 2020). When it came to administrative tasks regarding those who already applied for asylum, a suspension could be considered in line with existing regulations, especially when residence permits were extended. However, the services included the registration of asylum applications and thus formed an extension of the suspension of asylum. Therefore, it did go against international law as argued earlier.

To sum up, measures taken by the Greek government during the pandemic that affected asylum seekers cannot be viewed and assessed separately from preceding events. The 'refugee crisis' and the break-down of the

EU-Turkey deal heavily influenced decision making regarding asylum during the pandemic. Access to seeking asylum was already denied by the government two weeks before pandemic measures were implemented. This first decision regarded the period from March 1 to 31, following an influx of new arrivals. This was the first time Greece took this extreme measure of suspending asylum. Even during the preceding 'refugee crisis' asylum policy was not this strict. The suspension was extended to May 15 due to the Coronavirus emergency situation. The pandemic gave the Greek government a (seemingly) terribly convenient reason to extend their new policy. However, there is no regional nor international law that allows for the suspension of the right to seek asylum. Therefore, Greece was in violation of various regulations and should be urged, especially by EU institutions and Member States, to reverse the decision immediately. Lastly, the analysis of Greece has shown that lockdown measures implemented applied to both asylum and non-asylum seekers. They can therefore be viewed as a non-discriminatory measure. Nevertheless, because of the overpopulation of the centers, asylum seekers face a higher risk than others to become ill.

Discussion and conclusion

This research analyzed measures taken by EU Member States during the initial stages of the Corona-pandemic. The question this study answers is twofold: a) were those measures in line with regional and international law? and b) what were the implications of these reactions for the affected asylum seekers?

It is not surprising that Greece and Germany took similar general measures, such as social distancing and travel restrictions, though they did to a different extent. More interesting is that they implemented seemingly similar regulations regarding asylum. Both restricted movement of asylum seekers within their borders. This was in line with measures affecting non-asylum seekers as well. Both suspended in-person meetings necessary for asylum processes, though extended resident permits for those processed until these meetings could resume. This was in compliance with regulations. Nevertheless, the results of these measures, e.g. these suspensions and quarantine within (over)crowded reception centers, did make asylum seekers more vulnerable to COVID-19 and their asylum process ongoing and futures insecure.

Also, both states restricted travelling of non-nationals. This however, was done in very different ways. Germany halted most projects that required traveling in and out of the country, while persons were not stopped from seeking asylum. It can be concluded that Germany's measures to contain the virus were in compliance with international law and regulation. Even though not part of answering the research question, an interesting finding

that this study revealed is that Germany restricted movement of asylum seekers and refugees more than it was obliged to and implemented its strictest asylum policy to date. This was a shift from the open-door policy that Germany became known for during the ‘refugee crisis’ and a turn to a stricter asylum approach. According to Crawford (2020, p. 503), Germany has taken the lead in attempting to create an EU refugee resettlement regime following the crisis in 2015, and Merkel went even further when she coerced acceptance of a compulsory program of resettlement to be imposed on European Member States. In demanding too much solidarity, Germany weakened European unity and faced criticism. More research needs to be done to determine whether following the Corona-pandemic the decision to halt resettlement programs was made to appease domestic and Member State opposition to immigration, as the academic debate has pointed at, or purely an attempt to stop the spread of the virus. This turning point implies a stricter asylum policy trend, which helps scholars envision a future outlook.

Greece blatantly went against internationally agreed upon regulations when it suspended the right to seek asylum already before the pandemic hit Europe. Karolewski & Benedikter (2017) and Biermann et al. (2019) explain that issues involving refugees in Europe are highly asymmetric as some EU Member States are target countries (including Germany) and others transit countries (such as Greece), while another few are not really affected at all (for example Estonia). Different Member States therefore have different interests and responses to migratory pressure. This leads less affected states to maintain the status quo and more affected states left aggrieved. As this is Greece’s past experience, the decision of the government to take unilateral action to suspend asylum in the hope to stop the continues flow of new arrivals follows the line of existing academic literature. The virus served as a convenient excuse to extend the suspension. Consequences of the suspension of asylum were refolement, pushbacks and detention of asylum seekers - all of these go against international and regional law. This study’s analysis of the German and Greek cases thus shows that the former European policy, integration and/or solidarity crisis (dubbed the ‘refugee crisis’) is far from over and its issues extend well into the Corona-pandemic.

The deafening silence coming from the EU that followed a Member State breaking not only regional law, but international regulations and recognized human rights policy will have major implications for asylum seekers. Though the Greek government has been warned by the EC that it must uphold the right to asylum, the EC too stands accused of failing to uphold EU law. If Greece can violate human rights before and during a crisis without repercussions, why would it not continue to do so after? Despite and even because of the emergency situation, the international community should condemn Greece’s actions. The repercussions of getting away with it will be lasting, as others with similar intentions will face no deterrence.

As solidarity with Greece was not to be found during the ‘refugee crisis’ when it did follow the rules, it is imperative that this time, the community that claims it is based on the principle of solidarity steps up. An important start could be increasing resettlement programs through which over-burdened Member States and asylum seekers can find relief and protection. Even during a pandemic, such programs are possible to implement.

This research did not receive any specific grant from funding agencies in the public, commercial, or not-for-profit sectors.

References

(2020). 'Aufnahmeprogramm für Flüchtlinge gestoppt', *Tageschau*, 18 March. Available at: <https://www.tagesschau.de/inland/fluechtlinge-2185.html> [accessed 22 April 2020].

Battjes, H. (2006) *European Asylum Law and International Law*. Leiden: M. Nijhoff.

Bauböck, R. (2018) 'Refugee Protection and Burden-Sharing in the European Union', *JCMS* 56 (1), pp. 141-156.

BBC, News, World, Europe, Greek coast guards fire into sea near migrant boat. (2020). Available at: <https://www.bbc.com/news/av/world-europe-51715422/greek-coast-guards-fire-into-sea-near-migrant-boat> [accessed 21 April 2020].

Biermann, F., Guérin, N., Jagdhuber, S., Rittberger, B., & Weiss, M. (2019) 'Political (non-)reform in the euro crisis and the refugee crisis: a liberal intergovernmentalist explanation', *Journal of European Public Policy*, 26 (2), pp. 246-266.

Börzel, T.A. (2016) 'From EU Governance of Crisis to Crisis of EU Governance: Regulatory Failure, Redistributive Conflict and Eurosceptic Publics', *JCMS*. 54, pp. 8-31.

Brändle, V.K., Eisele, O. & Trenz, H. (2019) 'Contesting European Solidarity During the "Refugee Crisis": A Comparative Investigation of Media Claims in Denmark, Germany, Greece and Italy', *Mass Comm. and Society* 22 (6), pp. 708-732.

Bundesamt für Migration und Flüchtlinge (BAMF). (2019). Information sheet on the integration course, KNr. 630.122b (Englisch). Available at: https://www.bamf.de/SharedDocs/Anlagen/EN/Integration/Integrationskurse/Kursteilnehmer/Merkblaetter/630-122_merkblatt-verpflichtung-Integrationskurse_englisch.pdf?__blob=publicationFile&v=2 [accessed 25 April 2020].

Bundesamt für Migration und Flüchtlinge (BAMF). (2020a). Infotek, COVID-19. Available at: <https://www.bamf.de/SharedDocs/Meldungen/EN/2020/20200316-am-covid-19.html?nn=282388> [accessed 22 April 2020].

Bundesamt für Migration und Flüchtlinge (BAMF). (2020b). Themen, Asyl & Flüchtlingsschutz. Available at: <https://www.bamf.de/DE/Themen/AsylFluechtlingsschutz/asylfluechtlingsschutz-node.html> [accessed 19 April 2020].

Bundesamt für Migration und Flüchtlinge (BAMF). (2020c). Infotek, Covid-19: Important information on the application process for asylum seekers. Available at: <https://www.bamf.de/SharedDocs/Anlagen/EN/AsylFluechtlingsschutz/infoblatt-antragstellung->

corona.html.jsessionid=B05F5D6B291A10686A2560B92A303135.internet571?nn=282388 [accessed 25 April 2020].

Chetail, V. (2016) 'Looking Beyond the Rhetoric of the Refugee Crisis: The Failed Reform of the Common European Asylum System', *European J. of Human Rights*, pp. 584-602.

Connor, P. (2016) *Number of Refugees to Europe Surges to Record 1.3 Million in 2015*. Pew Research Center.

Costello, C. & Mouzourakis, M. (2016) 'EU Law and the Detainability of Asylum-Seekers', *Refugee Surv. Q.* 35, pp. 47-73.

Crawford, B. (2020) 'Moral Leadership or Moral Hazard? Germany's Response to the Refugee Crisis and Its Impact on European Solidarity', in M. Riddervold, J. Trondal, A. Newsome (eds), *The Palgrave Handbook of EU Crises*. Palgrave Studies in European Union Politics, Palgrave Macmillan, Cham, pp. 489-506.

Deutsche Presse-Agentur (dpa). (2020). 'Minderjährige Flüchtlinge in Deutschland eingetroffen', *Süddeutsche Zeitung*, 18 April. Available at: <https://www.sueddeutsche.de/politik/migration-minderjaehrige-fluechtlinge-in-deutschland-eingetroffen-dpa.urn-newsml-dpa-com-20090101-200418-99-744047> [Accessed: April 21 2020].

Deutsches Rotes Kreuz. (2020). Integration, Angebote, Ankunftszentrum im PHV für Geflüchtete. Available at: https://www.drk-heidelberg.de/drk_heidelberg/helfen/ankunftszentrum-PHV.php [accessed 20 April 2020].

**COMPLYING WITH INTERNATIONAL AND REGIONAL LAW DURING THE PANDEMIC –
ASYLUM SEEKERS AND COVID-19 EMERGENCY MEASURES IN EU MEMBER STATES
GERMANY AND GREECE**

Danni Reches

danni.hcges@gmail.com

Affiliated Haifa Center for German and European Studies (HCGES), University of Haifa

Working on Europe Paper Series, paper number: 4/2021

[ISSN: 2589-2398]

Website: www.maastrichteuropa.nl/research/working-papers

MWOE / Studio Europa: www.maastrichteuropa.nl

CERiM: <https://cerim.maastrichtuniversity.nl/>

Contact us: papers@maastrichteuropa.nl

Working on Europe Paper Series (WEPS)

