

Refugees Between EU policies and Human Rights Law.

The case of Syrian Refugees on Hungarian Borders

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Declaration form:

The work I have submitted is my own effort. I certify that all the material in the Dissertation that is not my own work, has been identified and acknowledged. No materials are included for which a degree has been previously conferred upon me.

Signed: Suha Nasser Date: 23 May 2016

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Abstract:

The number of refugees heading Europe looking for a safe place is increasing. The violations against those refugees are escalating as well. Thousands of refugees from different nationalities are fleeing their countries because of conflicts and violence. They are entering Europe through the border countries, on their way to apply for asylum in one of EU countries.

The majority of those refugees are Syrian, hence, this research will focus on the situation of Syrian refugees on Hungarian borders. However, this research did not follow the same focuses of the previous literature, which are normally investigating and highlighting one part of the problem. Rather, this paper is aimed firstly, to investigate the situation of Syrian refugees and highlight their experiences in Hungary. That is why the Grounded Theory was the method employed to analyse the data collected from personal interviews carried out with Syrian refugees, whom came through Hungary before applying asylum in Germany.

The analyzing of the primary data showed the violations that have been committed by the Hungarian side against Syrian refugees, according to the refugee's accounts, in terms of the international human rights principles.

Secondly, this paper discusses the factors that led to this refugee crisis in Hungary. The malfunction of the EU asylum regulation represented by Dublin Regulation, seemed to be one of the main factors of this crisis, thus, this paper points out the gabs in this regulation. Furthermore, this study concludes with recommendations and suggestions of further research on the same topic, as this research were carried out with a small number of interviewees and does not express the Hungarian side's point of view regarding this issue.

Keywords: Syrian refugees, Hungary, EU asylum policy, Dublin Regulation, Violation, Human Rights Law

Abbreviations

CRSR Convention Relating to the Status of Refugees

DR Dublin Regulation

ECHR European Convention on Human Rights

ECtHR European Court of Human Rights

ICCPR International Covenant on Civil and Political Rights

UNHCR United Nations High Commissioner for Refugees

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CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

European refugee crisis began to escalate in 2015, where over one million people – refugees, displaced persons and other migrants – have made their way to the EU. Those are either escaping conflict as in Syria or in search of better economic prospects. (European Commission, Humanitarian Aid and Civil Protection, 2016).

Syrian refugees, and other refugees and migrants, have a stopover in Hungary on their way to Western Europe, where they are locked up in the closed detention centres. (Aljazeera.com, 2016). The European Commission brought enforcement action against 23 member states over their failure to respect the standards of the EU common asylum system, including Hungary, which responded to large numbers of arrivals, including Syrian refugees, by erecting fences, detaining, and criminalizing asylum seekers crossing its border without permission. (Weaver, 2015). Furthermore, Human Rights Watch said that refugees were currently being “treated like animals” in detention camps set up at Hungary’s border with Serbia (Human Rights Watch, 2016)

The number of people seeking refugee status in Europe has continued to jump in the first half of 2014, driven by the wars in Syria and Iraq, as well as conflict and instability in Afghanistan, Eritrea and elsewhere (UNHCR-Europe, 2015). The majority with 49% are of Syrian nationality. Syria is the country where the conflict has triggered the world's largest humanitarian crisis since World War II. According to the UN, around 250,000 people have been killed and 13.5 million people are in urgent need of humanitarian assistance inside Syria and more than 50% of Syria’s population is currently displaced (Amnesty, 2016).

However, beside Syrians, there are refugees of other nationalities; Afghans 26% and Iraqis 16%. The dangerous route that refugees follow to reach Europe usually starts from countries like Turkey, Egypt or Libya, and all of those who flee through the Mediterranean Sea heading to Europe, take the EU border countries as their first destination. Accordingly, all the

pressure of handling the arriving of this number of arrivals is placed mostly on those countries. (The UN Refugee Agency, 2016).

1.2 AIM OF THIS STUDY

This current refugee crisis is considered the gravest in Europe since the Second World War - it is even considered “the decisive issue of 2016” (Squires, 2016). The influx of refugees through Hungary placed new challenges for Human rights standards to handle this situation. The rights of refugees were lying in the middle between the EU asylum policy, and the refugee and human rights law.

Challenges were posed on Hungary to meet the human rights standards in such cases of mass influx, and this issue is worth to investigate. The rights of refugees may be violated for different reasons; thus, it is first important to show the situation of those refugees, then shed the light on those challenges that face the host country (Hungary) to follow human rights law, in the existence of EU asylum policies and exceptional situations like this. Bearing in mind that the situation is current, and there is not much papers about this issue, especially from the perspective of the refugees themselves.

This study aims to investigate the situation of receiving refugees arriving Europe through Hungary in terms of human rights principles in general, and the case of Syrian refugees on the Hungarian border in particular. This was executed by conducting interviews with Syrian refugees who came through Hungary. In this paper, I examine whether the situation of receiving Syrian refugees by Hungary meets the international standards of reception; this examination will be carried out by highlighting the UNHCR’s Detention Guidelines, and UNHCR’s Guidelines on Temporary Protection or Stay Arrangements. Furthermore, this paper will focus on the way Syrian refugees were treated by the Hungarian authorities on the border and in detention centres. It will also explore whether this treatment meets the refugee and human rights law.

The broader context of this dissertation is a discussion about whether EU asylum policies are supporting refugees' rights, or rather the interests of the states, while putting human rights of refugees aside. Another topic will be the power to implement these policies which contravenes the international protection of individuals. Specific articles of Human rights law will be also discussed in detail in terms of the way Hungary treated refugees as perceived by the refugees themselves.

Additionally, this paper will highlight the Dublin regulation complications in detail, especially when it comes to the mass influx of refugees. I will also point out the challenges of the host countries to receive this big number of refugees, and how Hungary's response to these challenges has, however, been hugely problematic.

1.3 RESEARCH QUESTIONS

Based on the aforementioned introduction, this paper will seek to answer the following research questions:

1) According to Syrian refugees' narratives, how have the Hungarian authorities coped with the mass influx of Syrian refugees at their border, and how do Hungarian actions relate to the Human Rights principles?

1.1- According to the refugees' narratives, in what way did Hungary violate the rights of refugees?

1.2 How did the EU asylum policies, especially Dublin Regulation, have impact on the refugee crisis in Hungary?

1.4 OUTLINE

This work is divided into six chapters in order to answer the research questions. The first, introductory chapter outlines the background, sets the aim of this study, and define the research question. This chapter briefly discusses the problem of refugee crisis in Europe.

The second chapter is the Conceptual Description. In its first part, it provides a detailed explanation of the refugees crisis, its origin, and consequences, in Europe generally and Hungary specifically. The second part is a Literature Review of relevant existing literature which provides insight into the general views of the topic. In chapter three, an overview of the methodology is followed to conduct this research, including grounded theory, qualitative interviews and legal research.

The fourth chapter gives an analysis for the interviews and the findings; this chapter gives circumstantial explanation of the condition of refugees in Hungary. Chapter five contains a general discussion about the EU asylum policy (Dublin Regulation) and its consequences. Concluding remarks of this work and recommendations are presented in the Final chapter 6.

CHAPTER 2

CONCEPTUAL DESCRIPTION

This section is divided into two parts; the first is the problem description. Through this part, I will be exposing the severe situation of Syrian refugees on Hungarian borders.

The second part is Literature review. The aim of this part is to consider the published literature in relation to the EU regulations and policies towards the mass influx of refugees, International and Human rights laws in general and its interpretation, and the experiences of refugees in similar refugee crises. This review is split into sections; each one will cover the literature that has been found about the mentioned topics.

2.1 REFUGEE CRISIS

2.1.1 Route to Europe

According to UNHCR, there is an increase in the number of refugees and migrants who take their journey to reach Europe. The vast majority of those attempting this dangerous crossing are in need of international protection because they are fleeing war, violence and persecution in their country. These movements continue to exact a devastating toll on human life every year. The total number of refugees arriving by sea in 2015 was 182,831, while the number in 2016 increased to 1,015,078. Bearing in mind that not all of those can make it to Europe safely, UNHCR reported that the number of dead and missing refugees who followed this route to Europe is 1,261. (UNHCR), 2016)

The conflict in Syria continues to be by far the biggest driver of migration as thousands of Syrian refugees have fled to Europe fleeing war in their country and seeking a safer place to live. The route that most of the Syrian refugees take generally starts from Turkey across Greece, Macedonia, Tabanovce in the northern part of the country, until they reach the Serbian borders with Hungary, where they try to enter Hungary. If they make it to Budapest, they will then travel by train or by car with a smuggler to Austria, Germany, Sweden or other European countries. Hungary moved into second place for asylum applications, as more migrants made the journey overland through Greece and the Western Balkans. It had 177,130 applications by the end of December. (BBC News, 2016)

2.1.2 Situation in Hungary

"Please don't come... It's risky to come. We can't guarantee that you will be accepted," Viktor Orban, the Hungarian prime minister (Aljazeera.com, 2015).

These sixteen words explain perfectly the refugees crisis that happened in Hungary. Those were not just words; Hungary has applied those words into actions. The government has invested more than 100 million euros on razor-wire fencing and border controls to keep refugees and migrants out, triple the amount it spends yearly on receiving asylum seekers. (Amnesty.org, 2015). However, before closing the borders, the situation of the refugees in Hungary was described as a humanitarian crisis, due to the way that the Hungarian authority dealt with the situation of refugees flooding to Europe.

Several human rights organisations related the refugee crisis in Hungary due to the failure by Hungary to commit to its obligations under the international human rights law. Human Rights Watch said it is nearly impossible for asylum seekers to get protection in Hungary, which is a sheer violation of the country's international obligations (2015).

Furthermore, different international news channels and social media have broadcasted videos and pictures of many refugees who were being treated in humiliating and degrading ways on the border of Hungary, and how refugees were pushed back to Serbia. One of the sorrowful cases was the Syrian man Osama Abdul Mohsen, who was tripped up by a Hungarian camerawoman as they fled across the border. Osama was with his seven-year-old son Zaid; they both had endured a difficult journey to Europe, looking forward to meeting with another son, 18-year-old Mohammad, who had already reached Europe by boat. (Bbc.co.uk, 2016).

However, Hungary was not very welcoming to the refugees, according to Amnesty, the Hungarian authorities' pitiful humanitarian response with a complete lack of adequate reception facilities. In the absence of essential supplies such as food and tents, refugees and asylum seekers massed at Budapest's main train stations,... refugees had to rely on support provided largely by volunteers and through donations. (Amnesty.org, 2015).

2.1.3 Hungarian response to the refugee influx

The Hungarian Parliament has been ushering in new laws resulting in an aggressive response that includes flanking its borders with soldiers and police authorized to use rubber bullets,

tear gas grenades and pyrotechnical devices. Armoured vehicles mounted with machine guns, and soldiers armed with Special Forces style firearms have been positioned along the border with Croatia. (Amnesty.org, 2015).

Many abuses against the Syrian refugees have been reported. The briefing, Fenced Out, outlines how Hungary's draconian measures to control its borders have repeatedly violated international law. EU ministers gathered in Luxembourg for high-level meetings to discuss the crisis. Amnesty International is calling on the EU to hold Hungary to account for its human rights failures and to protect people on the move by creating safer, legal routes.....(Amnesty.org, 2015).

2.1.4 EU Asylum policy

Despite the reaction by the government, however, Hungary is still required to receive refugees and examine their asylum applications. According to Dublin regulations, participating states are required to 'promptly' fingerprint all persons over the age of 14 who fall into one of the following three categories:

- applicants for international protection (Art. 9);
- third country nationals or stateless persons crossing the external border irregularly (Art. 14);
- third country nationals or stateless persons found illegally staying in a Member State (Art. 17).

Consequently, the Hungarian authorities have to collect fingerprints from the refugees who were caught by the police, and file them in a European database. Those refugees are then officially processed for asylum status in Hungary. And if the refugees are processed in Hungary, it means other countries can turn them back there.

However, due to the economical situation in Hungary and the way the government dealt with the refugees, German and other European governments decided not to send refugees back to Hungary when they arrive their countries; however, still there are no official regulations to guarantee this action. In short, many refugees expressed that the economic situation in Hungary would never allow them to find jobs, and that is why they do not want to

live in Hungary (International Business Times, 2015). The Hungarian economy, which has been struggling for more than three years, is teetering. The value of the country's currency, the forint, is on the decline, and the unemployment rate is close to 8 percent. (International Business Times, 2015)

Although, Hungary's debt was recently downgraded to junk status, and growth has slowed considerably, (Imf.org, 2016), it is still complied according to Dublin's regulations to be responsible for dealing with all asylum applications of the refugees entering Europe through its territory. This puts excessive pressure on border areas, bearing in mind that it might not be able to provide asylum seekers with support and protection, or they cannot even logistically deal with the flows of refugees; the thing that will eventually lead to put refugees at risk of being returned to unsafe places or being exposed to mistreatment as a reaction of the host state. In other words, this system (Dublin regulations) is creating complication for both refugees and the bordering countries.

Earlier before this problem in Hungary, a similar situation took place in Greece that came under sharp criticism since 2009, about the way it dealt with the situation of the mass influx of refugees; so many violations against refugees by the Greek side were reported. In 2009, The European Court of Human Rights accused the Greek authorities of violating article 3 of the refugee convention for exposing the applicant to conditions of detention and living conditions contrary to article 3. This case was carried by an Afghan refugee who went after leaving Greece to apply for asylum in Belgium, but Belgium returned him to Greece, and that is why Belgium was also accused in the same case of the violations of article 3 both because of having exposed the applicant to risks linked to the deficiencies in the asylum procedure in Greece, and because of having exposed him to detention and living conditions in Greece that were in breach of Article 3; (M.S.S. v. Belgium and Greece, [2011]. 76. V).

However, this judgment by the European Court of Human Rights shows the malfunctioned of the EU regulation system for immigration. The court decision suspended working with the Dublin regulations, by returning refugees to the first EU state they entered and had their fingerprint in. Furthermore, about 48 hours after the European Court of Human Rights fined Greece and Belgium, Greece's six EU partners announced their decisions to stop sending hundreds of asylum seekers back to Greece, despite the European Union regulations demanding that they do so, because of the country's inability to deal with the refugees and guarantee their safety. (Ekathimerini.com, 2011).

Here and after the court decision of Court's Grand Chamber, and the suspending of the Dublin regulations concerning sending back refugees to Greece, the problem is being repeated in a different country. What happened in Greece has so many common factors when comparing it to the situation in Hungary. However, this might show that such events can happen because of the migration system itself more than the ideology of the host countries.

2.2 LITERATURE REVIEW

2.2.1 EU policies towards the mass influx of refugees

Many scholars who wrote about this topic consider that these kind of policies by EU towards refugees have been applied since 1990s; however, the motivations for Goodwin and McAdam behind the policies of host countries are mostly to meet the political interests. (2007). Goodwin and McAdam further discuss that since 1990s when EU countries started tighter migration controls that try to transfer, coupled with the high political profile of illegal migration, the focus away from the border to else-where-boats of asylum seekers, airports, people smugglers and so on-such relatively -and not just absolutely-as a site of control. (2007. p.417).

The international community is likewise entitled to require of individual states, not only that they accord to the refugee the benefit of Non-Refoulement through time, but also an opportunity of finding a lasting solution to their plight. For Goodwin-Gill's and McAdam, "the degree of protection required is that commensurate with the occasion, and given the present level of development of international law". (Goodwin-Gill's and McAdam's 2007. p.416).

They consider that EU's Reception Conditions Directive does not meet the minimum entitlements that give the individual refugees the protection entitled under the Convention refugees. Goodwin-Gill's and McAdam even go further than that to consider that, "[b]y contrast to the aspiration tone of international and regional human rights instruments, the directive is very restrictive and reflects the idea that rights are a privilege, rather than matters of duty on the part of state". (Goodwin-Gill's and McAdam's 2007. p.413).

Similarly, Lise Whitaker shares the same overview with Goodwin-Gill's and McAdam. She also looks at the changing nature of the protection of refugees, as it has been started in the mid-1990s. She states "it was reprehensive of a broader international trend toward more restrictive refugee policies and declining protection standards" (2003. p. 142). Furthermore, she considers that the argument that looks at this shift as it has only recently started to be affected by political consideration is totally wrong. The violation against refugees, by closing the borders, selecting the desired refugees and this complex situation are inherently political, and refugees policies are "governed more often than not by politics and ideology, rather than ethics" (2003. p. 144)

Western countries no longer perceive refugees as victims of conflict, but instead as active participants in the conflicts. This is what Whitaker argued.(2003. p. 145). For Whitaker, those countries fear a massive influx of refugees, and they assume that anyone seeking asylum was doing primarily for economics, rather than political, reasons or fleeing conflicts.

Accordingly, as this attitude towards refugees started, discussions about their protection were no longer farmed solely in the language of Human rights. "Instead various other political and regional security considerations are being taken into account." (2003. p. 145). Steiner sees the formulation of refugee policy involves a complex interplay of domestic and international factors at the policy-making level. "A moral, legal or humanitarian obligation to offer protection to refugee will, in practice, always be balanced against the political and economic interests and concerns of potential asylum states" ((2003. p. 181).

However, for Gammeltoft, this EU policy, by controlling their borders and trying to close them to refugees, looks to be effective but in reality this remains illusory. Because such behaviour may expose the states to a further caught in an impossible endeavour where each expansion of control, when its consequences will likely to "spawn an answering loss of control as more migrants and asylum seekers are driven to seek entry clandestinely, the profitability of human smuggling is driven up and new migratory routes open". (Gammeltoft-Hansen, 2009. p. 53-54)

Dublin regulations for Nykanen, is the most significant product of this restrictive policies, because criteria entailed in it are unable to guarantee fair sharing of the responsibility among the member states (2012). Goodwin-Gill's and McAdam share the same concern, especially when it comes to the mass influx of refugees, they believe that states try to get rid of this

responsibility and transfer it to the state that is responsible according to Dublin regulation (2007).

Those states are the ones on borders, and there is no consideration of their logistical or economical capacities of receiving this big number of refugees. But even more than that, as they know that these countries usually cannot handle the situation of mass influx alone, there is no movement either by the EU law makers or other states members to prerequisite for temporary protection in that region (Goodwin-Gill's and McAdam's 2007). Moreover, the consequences of these regulations also reflect the situation of refugees. since the recognition rates are much higher elsewhere, clearly many who would be recognized as refugees in other countries are being turned into 'illegal migrants' (Schuster, 2011).

States that get the whole responsibility to absorb a mass influx of asylum seekers also avoid responsibility by classifying refugees/asylum seekers as prohibited or illegal immigrants. Justifying this behaviour by all responsible parts (EU law makers, states members, responsible states), and forgetting or ignoring the reality that "[r]efugees who flee will frequently have no time for immigration formalities, and are in any case likely to be ineligible for visas sought through official migration channels" (Goodwin-Gill's and McAdam 2007. p.340)

Moreover, Non-arrival policies, such as restrictive visa requirements, carrier sanctions, and other mechanisms that have the effect of "blocking the access of third countries nationals, including asylum seekers, to the territory of the member states, and towards guaranteeing the unwanted individuals are removed from here."(Goodwin-Gill's and McAdam 2012. p.67-68). Nykanen argues that the restriction of the secondary movements among the EU countries, when the asylum seeker tries to move towards another state member, lacks justification, especially when considering the differences between the national standards of different member states. (Nykanen 2012. p.76).

Also, Steiner points out that, although globalisation and the rise of international human rights regime are constraining states' abilities to control their borders the way they want it, they will still abandon this principle of asylum, and will continue to tighten their asylum national laws.(2003). They will even use their own definition interoperation of refugees. He further argues that they will "coordinate new international norms to make access to the asylum process tougher; they will not declare themselves unwilling to grant asylum to refugees".

(2003. p. 195). In other words, "loosening asylum on the one hand and national interests tightening it on the other" (Steiner, 2003. p. 181).

2.2.2 Review of Similar Cases

These violations against migrants and refugees who are fleeing their home countries trying to find safety or a better life in Europe have been reported in different cases throughout the history. Some media, articles, and Human rights organisations have talked about them, especially in the countries that are taken as a main entry to Europe like Greece.

Amnesty reported that in the last few years, Greece has invested millions of euros in keeping migrants out. The behaviour by the Greek side also shows that the way in which such push-back operations are carried out by the Greek border guard or coastguard is putting refugees and asylum seekers' lives at risk (Amnesty.org, 2013)

Refugees also who go through Greece suffer from different kinds of violations. They were being kept in the territory without any legal document, which the government has to issue. For Schuster, what refugees face by such states is not only the impossibility of being recognized as a refugee, the thing that makes people move deeper into Europe, it is also the daily experience of living without rights. Without a secure status, people are at the mercy of criminals and of the police. (2011). He, further, points out the experiences of those different Afghan refugees who spent three months in a prison in Greece without having once been allowed out of their cell, where they had to share it with thirteen others, beside being abused and exposed to physical beatings inside the detention centre.

For instance, stories from refugees who were in Greece told about being run over by a police car, suffering a broken leg and a broken ankle; another had been picked up and put in cells three times in ten days; another fourteen-aged person had been kept in a cell for three days, and imprisonment for three months is not uncommon (Schuster 2012).

However, for some authors like Papadimitriou (2005), it would be wrong to put the blame on individuals, in this case the Greek competent authorities are to be blamed for what is also a logistical problem. Especially in the recent years when Greece has faced a substantial

increase in asylum applications, which should be the responsibility for Greece to examine their applications, but at the same time, it does not have this capacity. Moreover, Schuster sees that the struggling of refugees leaves them with one option, which is the reliance on smugglers who finally make decisions on destinations. (Schuster 2012).

Apart from the situation of Greece, also in Australia, that is known as a place of entry for migrants and asylum seekers who take the sea, has come under criticism about its immigration policy and detention in remote offshore processing centres. Australia, to deter boat arrivals of unauthorized migrants, has continued its harsh policy of transferring all asylum seekers who arrive by boat. "The United Nations Refugee Agency (UNHCR) has criticized Australia's offshore detention policy as "return-oriented." The detention centres are overcrowded and dirty. Asylum claims are not processed in a fair, transparent, or expedient manner, with significant cost to detainees' physical and mental health" (Human Rights Watch, 2015).

Moreover, The UN Human Rights Committee stated that the government's indefinite detention of those refugees was unlawful, and that their treatment by Australia was cruel, inhuman or degrading. Viewing the conditions of detention holistically, the Committee said that the arbitrary and indefinite nature of the detention, the difficult physical and psychological conditions, and the government's refusal to provide the refugees with information and procedural rights together inflicted 'serious psychological harm' upon them in violation of international human rights law. (McAdam, J. 2013)

However, this malfunction of the EU policies and regulations for migration are not the main reason for all scholars; some authors described the motive of the behaviour of the host countries towards refugees differently. Different literatures have different assumed factors to the reason to such behaviour. This next section will highlight some of those views:

2.2.3 Theories and motive behind host countries behaviour

The reasons behind this kind of behaviour were justified from different scholars according to different factors. Mestheneos in her article in (2002) relates these actions by individuals to reasons like ignorance and racism. She further argues that it is a comfortable assumption of superiority, which can be traceable to the colonial pasts and continuous economic dominance of some of the European countries; for examples, the thing that can be reflected of the

locals' behaviour in their relationships with refugees (especially who are coming from poorer or less developed countries).

Mestheneos sees this due racism, which is for her the most overwhelming obstacles that face refugees, and the causes of this kind of refusing them in the EU countries (2002). Similarly, Poynting and Mason in their article **The Resistible Rise of Islamophobia** (2007) assert that the main problem behind this action is anti-Arab racism and Islamophobia.

Poynting and Mason relate the reason in some points to the media and how it presents Arabs and Muslims as terrorists especially after 11 September 2001(2007). Cohen even goes further to see that these policies by European governments are kind of throwing up the barricades to pre-vent asylum seekers of non-European origin from entering their countries (Cohen, 2006)

Considering the literature existing on the similar cases, this study is more aiming to look more on the perception of the refugees themselves, before giving the final explanation of this kind of situations. The previous literature, explained the motives of the host countries' actions towards refugees. However, in my research, the starting point is to show the situation from the accounts of the refugees themselves, as well as to tell about their experience with the Hungarian authorities. This study will be different because it will explore the situation from a firsthand source, in order to give as much realistic explanation of the situation as possible.

Furthermore, since this situation is contemporary, this research, hence, will add new factors and clarification to the previous literature. Also, most of the existing literature highlights one side of the situation, but this work will focus on both the situation of the refugees, and discuss the factors that led to this problem.

CHAPTER 3

METHODOLOGY

This chapter maps the research design chosen for addressing the research topic including the techniques for data collection and analysis. It will give a closer insight into the procedure that was followed to conduct this research. The qualitative research is the strategy used to do this research, and grounded theory was the framework for the project.

3.1 GROUNDED THEORY

Since 1967, Glaser and Strauss worked out a methodology that combined their mutual sociological background with their diverse, but complementary, approaches of doing research..., this methodology that they developed became known as grounded theory. (Corbin and Strauss, n.d., p.6). Although, almost 50 years after grounded theory was first described, for many scholars like Oktay, it is still valuable especially when the social work professions these days need to ensure the highest quality of their work (2012).

Grounded theory was designed to create theories that were empirically derived from real world situations, just exactly the situation that this paper examine. And because of that, grounded theory has the potential to produce theories that can be applied in practice situations. (Oktay, 2012, p.4,5). It is one of the best known methods of the qualitative research methods, both within and outside the social work. (Oktay, 2012, p.3).

What make grounded theory unique from other forms of qualitative research are the concepts from which the theory is derived; it is derived from data collected during research process, (which is the interviews with the refugees in the case of my research). Moreover, the theory is not chosen prior to beginning the research. (Strauss and Corbin, 1998, p.7).

The advantage of using Grounded Theory is the fact that it is not limited to a specific field, discipline or any type of data (Glaser 1992). It has informed different areas and has demonstrated a wide range of applicability (El Hussein et al., 2014). Myers ... argues that GT

has an “intuitive appeal” (p. 111) for new investigators because it permits them to get “immersed” (p. 111) deeply within the data. (El Hussein et al., 2014).

For many pragmatic researchers, GT is very useful; it can give answers to their questions and enlighten their thinking. Furthermore, it provides them with reassurance, whenever there are hesitations during the research process. (El Hussein et al., 2014). The procedures used in this methodology are based on the analytic process that requires ample time to explore the data, where the theory begins with data collection and generate theory out of that data (Oktay, 2012, p.17)

For the aforementioned reasons, and the case of my project that needed investigations before I could come out with the results and findings of the research, I chose to use Grounded theory as the methodological framework of my project. As Charmaz and Bryant argued, [g]rounded theory is a method of theory construction in which researchers systematically develop a theory from collected data. This method is the most widely claimed qualitative method" (2011: 291).

When I decided to do this research, I had no certain knowledge about what is happening with refugees in Hungary, and about the motive of the Hungarian side to react the way it showed in the media and HR reports. I, thus, began to disassociate myself from traditional theories; instead, I chose to collect my primary data by interviewing the Syrian refugees who went through the experience in Hungary, to tell about all the unpublished stories and information. As there were not much literature about this current case, interviewing the refugees was the best option to get the information about what is happening in Hungary from a first-hand source; the thing that gives the opportunity to consider different explanations and offer ideas for shaping them to enhance theory construction. (Charmaz and Bryant, 2011: 291).

Afterwards, I started with the literature review, checked the different theories about the EU policies, and the reaction of the host countries towards migrants and refugees; the thing that asserts the need of using the legal research to study the EU regulations and laws in more depth. This theory helped me to develop inductive theoretical analysis from the collected data, and subsequently gather further data to check these analyses. Hence, this method, rather than narrowing my research by fitting it in existing theories, helped to develop a theory from the collected data., (Charmaz and Bryant, 2011: 292)

Bearing in mind the fact that as a researcher at the beginning of carrying out their research, I had some assumptions about the reasons and motives behind the actions of the host countries towards refugees. However, after analyzing the primary data, I noticed that my assumption was not correct. In another words, using grounded theory as a methodological strategies broadens my ideas without accepting the epistemological assumption of earlier versions of methods.. (Charmaz and Bryant, 2011, p. 293). As Corbin and Strauss state "[a] researcher does not begin a project with a preconceived theory in mind(unless his or her purpose is to elaborate and extend existing theory). Rather, the researcher begins with an area of study and allows the theory to emerge from the data. (Strauss and Corbin, 1998, p.12)

However, this does not mean that I kept myself apart from all previous studies and literature about this topic. Rather, it is a methodology that has some built-in checks and balances, and while these do not eliminate the intrusion of biases or negate assumption, they can help control for them. (Corbin and Strauss, n.d., p.47) It certainly helps to emerge during study as data collection, analysis, and the theory development occur in parallel (Charmaz and Bryant, 2011: 295).

It is important to mention that "Grounded theory methodology has been around for a long time, and the procedure used in this method enables researchers to examine topics and related behaviours from many different angels-thus developing comprehensive explanation. (Corbin and Strauss, n.d., p.11). Researchers used it in the area where the topic is in need of investigations, so the researcher uncovers the beliefs and meanings that underlie actions... and to demonstrate how logic and emotion combine to influence how persons respond to events or handle problems through actions and interactions. (Corbin and Strauss, n.d., p.11)

3.2 QUALITATIVE RESEARCH

The strategy employed in conducting this study is qualitative, which, I believe, fits the topic of my research and the way I wanted to do it. Qualitative research is usually concerned with qualitative phenomena, i.e. phenomena relating to or involving quality or kind. For example, a researcher can be interested in investigating the reasons for, or motives behind, certain human behaviour, (Vibhute and Aynale m, 2009 ; 17), which is the case of this project, where

I am interested in investigating the humanitarian situation of refugees in Hungary, and learning about the motives behind the government reaction and the way it dealt with the situation.

Using qualitative research will help me to get the opportunity to connect with the research participants, and to see the world from their points of view. (Corbin and Strauss, n.d.). Unlike quantitative analysis that usually answers the simple questions, qualitative methods seek to identify and understand the meaning, processes and context. Its nature necessarily requires a focus on a small number of units of analysis. (Corbin and Strauss, n.d.) The group targeted in this project is the Syrian refugees whom I interviewed and listened to their experiences in Hungary, and that enabled me to understand more clearly the situation that they went through, and listen to their perceptions about it, trying to get an overview about the situation in general. By listening to the stories of the refugees, I can highlight the situation of the refugees from human rights standards perspective, and hence I can show how the policies of the host countries affect the welfare of the refugees.

3.3 QUALITATIVE INTERVIEWS

Gathering data needs a flexible tool that facilitates a direct contact with participants, hence, when this tool is well used, it could be a very strong way to extract specific personnel information, which cannot be found or gathered from a different source. Especially in this case where there is not much information and data about the situation of the refugees in Hungary. Interview method looked the most effective and useful method that be used to get this information and understand the situation in Hungary.

Additionally, another advantage of conducting interviews with refugees is that the refugees experience in Hungary is recent; they can still remember the details of their journey through Hungary and the hardships they went through there. The interview method is usually criticised on the grounds that events can be forgotten and participants cannot remember important details; however, the disadvantages of using interviews as a source of collecting data did not apply on this case.

Interviews with 16 Syrian refugees were conducted during January-February. All interviewed refugees came through Hungary before applying for asylum in Germany. The interviews were carried out in three German cities (Schwerin, Hamburg and Berlin). Some refugees were already granted their asylum, and others were still waiting for the decision on their

applications. Germany was selected as the country of my field work, because most of the refugees who fingerprinted in Hungary were mostly accepted there, since Germany suspended the Dublin regulation regarding the principle of the first entry country that states that people should apply for asylum in the first EU country they entered. Accordingly, a big population of Syrians are living now in Germany, comparing with other European countries.

I visited the three cities to conduct face-to-face interviews. Despite the time-consuming process, the results, as recommended by most scholars, are worth it. For example, Salkind explained that "the response rate for face-to-face interviews is approximately 80% to 85%, whereas for telephone interviews, it is approximately 60% (2010. p.9).

Moreover, this method is still one of the best tools that can be used as 'a preliminary stage' for understanding the problem, which also fits perfectly with my research project, especially that the situation under research is complex and all circumstances and the portrait of what is happening was not well identified. Furthermore, the phenomenon is so current and there is not so much literature that has been published about this case. Accordingly, interviewing is the best tool that will keep the door open for new and undercover information, and give me the opportunity to better know the situation from a first-hand source.

The length of each interview varied between 45 to 60 minutes. It is also important to mention that building the trust with the interviewees was not an issue in my case. All the refugees whom I interviewed agreed to participate after I explained to them the purpose of this research, and that it will not be misused. However, there was one case that a refugee refused to give an account about his experience, because he said it was painful, and he had not overcome it yet.

The type of interviews I conducted is semi-structured interviews, this type gives the researchers flexibility to add anything to the interview after they finish the questions on the list. (Corbin and Strauss, n.d., p.39). The thing that helped me to discuss related important issues with the refugees was that I had not had it on my list before listening to their accounts. This further allowed me to add additional questions that helped to clarify certain points or to delve further into a topic. (Corbin and Strauss, n.d., p.39). However, I decided to stop conducting more interviews, when the interviews no longer produced any new information or

knowledge, according to Bryant and Charmaz, reaching that saturation point implies that sampling is done, and researcher can start with the next stage of the research. (2007: 161,162)

In fact, one of the most important advantages of using interviews as primary data is the language. Speaking the same language helped me to have a better communication and putting the interviewees in a friendly situation, where they share all details without hesitating. But at the same time, that was challenging when it comes to the stage of analyzing the interviews. I had to translate them from Arabic to English before writing the transcripts. Afterwards, I divided the related topics into themes under different categories. The themes and categories were used after listening to the interviews; in other words, the themes were taken out from the interviews.

3.4 LEGAL RESEARCH

After analyzing the data collected, I got the results that showed me that the main reasons of the crisis, and the mistreatment by the Hungarian side towards Syrians was caused mostly because of the gaps in the EU regulations and misapplication of the laws. The main discussion in this part will be about the Dublin regulation: How it was implemented by the Hungarian government, and how applying those regulations affects the rights of refugees under refugee and human rights laws.

Many violations towards refugees were addressed after analyzing the primary data (interviews with Syrian refugees). The rights granted for refugees in International and European laws (Refugee Convention, ECHR, Geneva Convention, ICCPR and European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) were violated by Hungary according to refugees' accounts.

These violations were firstly caused by the problems and weakness of the asylum policies and regulations. Accordingly, the necessity and importance of using the legal research method, as Vibhute and Aynalem (2009) explained in their teaching material about legal research is:

1) For ascertainment of law on a given topic or subject, will be in my research the Dublin Regulation that has been published primarily for identifying the Member State responsible for the examination of an asylum claim in Europe.

The importance of this part is to examine whether the aim of DR of preventing the submission of applications in multiple Member States was achieved, and the consequences of applying this regulation on both refugees and Hungarian sides. Furthermore, I will investigate whether this regulation meets the requirements and the changes of the current migrants and refugees flows.

Accordingly, carrying out a legal research in this research is also:

2) important to highlight ambiguities and inbuilt weaknesses of law that may lead to conflicts and problems in application. Under the Dublin regulation, the responsible Member State is entitled to examine the applications of the asylum applications, and this will be the state through which the asylum seeker first entered the EU.

In this case, Hungary is the responsible Member State which Syrian refugees first entered, and here lies the first problem. Most of Syrian refugees that enter Hungary do not stay there, and rather try to reach the richer countries of Europe like Germany. By forcing them to remain in the bordering states, which is in this case Hungary, the first point. And Hungary does not want refugees, and economically is not prepared to accept this big number of them. This will condemn them immediately to an uncertain future, and will be a reason for future conflict and violations of their rights. The thing that will be explained and highlighted in details later in the finding chapter.

3) Furthermore, in this research, another contradictory policy to the Dublin regulation is important to be addressed. This is crucial to critically examine legal provisions, principles, policy or doctrines with a view to see consistency, coherence and stability of law and its underlying policy. Vibhute and Aynalem (2009). In the case of this research, contradictory policy to the Dublin regulations is policy by the German government that suspended DR and stopped deporting Syrian asylum-seekers back to Hungary.

To see how this contradicts the Dublin regulation, in the aim of protecting refugees, is important to examine why these kinds of policies will appear in such crises, if the law is protecting the rights of refugees and states. Moreover, it is necessary to understand whether this policy has solved the problems or caused other kinds of complications. For example, the problem of wasting money because of double spends on the same application (which was the

first aim of the Dublin regulation, or delaying in the process of the examining, when the countries found another fingerprint in another country).

The aim of this part is first, to show why this particular regulation has been used to be critically analyzed. In another words, through systematic analysis, I will be highlighting these gaps and weaknesses of the regulation or its implication. Therefore, an empirical investigation will be the way in my research to assess the impact of the law and reveal the gap between legal idealism and social reality. As Vibhute and Aynal em (2009). As Vibhute and Aynal em (2009) state, this kind of investigation can be done by perceiving the idea of law as a social phenomenon, in the way that the researcher can explore the social, political, economic and cultural dimensions or implications of law. In this case, different sources will be used to make this investigation, such as: examples of previous cases, HR reports, news, courts judgment and scholars articles.

3.5 ETHICAL CONSIDERATION

Here it is important to mention that ethical issues were considered; as refugees are a vulnerable group, and their accounts might affect some parties (like Hungarian government or the regime in Syria), especially if this information was distributed or published, and this might expose them to inconvenient or dangerous situation in the future.

I prepared a letter of consent to be signed by the participants where I explained the aim of this project, the place where the research will be published; however, I explained the paper verbally to the participants to avoid any misunderstanding. Furthermore, the participants were asked whether they prefer to reveal their identity, by mentioning their names or, for those who preferred not to only letter used to refer to them in the analysis.

Moreover, no data was collected from the participants until I received the approval on the project from the Norwegian Social Science Data Services (NSD). After the organisation approved the consent letter and the project, I started conducting the interviews. In another words, all steps to protect their anonymities and identities were considered.

CHAPTER 4

INTERVIEW ANALYZING AND FINDINGS

INTRODUCTION

This section followed the fieldwork in Germany in the form of interviews with Syrian refugees. Hence, this section introduces the outcomes of the analysis of the interviews. In the first part, I present the results of primary research. As Grounded theory was the methodological framework of this research, no assumption, thus, was carried before finishing the analysis. Deep analysis of the refugees experiences in Hungary was made in order to come up with all possible explanations of the situation. This Chapter highlights the violations towards refugees in terms of human rights law. This was based on the accounts of the refugees that were explained according to their information.

4.1 BORDER RECEPTION

Up until the closure of the border with Serbia on 15 September, Röszke, a village at the border with Serbia, had been the first point of entry for thousands of refugees and migrants entering Hungary on a daily basis. While about 1,000 people were arriving every day in June, their numbers had risen to 2,000 to 3,000 a day by early September (FENCED OUT HUNGARY'S VIOLATIONS OF THE RIGHTS OF REFUGEES AND MIGRANTS, 2016)

In June 2015, Hungary was already struggling to provide adequate reception for the large numbers of refugees and asylum-seekers entering the country. "We cannot give them blankets and beds. We have even run out of tents," Lajos Kosa, vice president of the ruling party Fidesz declared. 38 (Reuters, 26 June 2015, "Hungary sounds the alarm about new front in EU's migrant crisis".)

Instead, Hungary focused all its efforts on preventing the arriving of refugees and asylum-seekers and expediting their expulsion. Interviewing refugees who came through Hungary gave me the details of their experience and the difficulties on Hungarian borders.

As the refugees claimed, in the absence of adequate reception facilities, most of refugees tried to cross the borders in illegal ways; however, most refugees would fail to cross the borders without being caught by the police. After that, refugees and asylum-seekers were been taken to a place where they kept illegal travellers. This place, as refugees whom I interviewed

explained to me, is a big courtyard with big marquees. According to them, they were distributed in different tents there, where there were only dirty blankets and not enough beds for everyone.

They told me that they had to tolerate the rough sleeping on the floor and the lack of food and drinking water. However, according to the (UNHCR's Guidelines on Temporary Protection or Stay Arrangements, 2014), that has been created for situations like:

- (i) large-scale influxes of asylum-seekers or other similar humanitarian crises;
- (ii) complex or mixed cross-border population movements, including boat arrivals and rescue at sea scenarios;
- (iii) fluid or transitional contexts; and
- (iv) other exceptional and temporary conditions in the country of origin necessitating international protection and which prevent return in safety and dignity.

Which is the case of the situation in Hungary, the arrangements for this situation include:

- addressing the immediate needs of new arrivals, e.g., medical treatment, shelter, food, family tracing
- counseling, provision of information and advice to new arrivals.

Moreover, two of the minimum standards of treatment that recommended in UNHCR's guidelines are:

- protection against arbitrary or prolonged detention
- non-discriminatory, humane and dignified treatment, including guarantees of shelter/housing, access to health and other basic services and education.

Based on the accounts of the refugees I interviewed, none of these standards or arrangements was followed by Hungary. For example Elias, when he was talking about the way Hungarian police treated them he said

"...they kept us in the police station until the next day. We slept on the floor, we were with families and children, they gave no information about the time and the date that they will release us....they were bringing more people and let them out, while we were there, and having no idea about what is waiting for us". (Elias. 28.01.2016)

Refugees said that people tried to avoid dealing with the police, and preferred to hide from the police and find their way to Europe without dealing with the Hungarian police, because Hungary failed to follow an adequate reception system. Ali who came through Hungary in

June 2015 said: *"We waited in the forest before crossing the Hungarian borders. It was so cold, but we couldn't use fire to warm up, because the police may see us and send their dogs to attack us"*. (Ali 05.02.16)

Also Ahmad N, who could not make it without being caught by the police, suffered from ill-treatment by the Hungarian police. He told me that he had expected this way of ill-treatment, because everyone told him about the anti-migration policy of Hungary. After he got caught, the police kept them in the police car for three hours, he said *"...there were children and women with us.... we were thirsty and we could hardly breathe, because it was so packed inside the police car"*. (Ahmad N 27.01.16)

4.2 THE USE OF FORCE TO REPEL REFUGEES ON THE BORDERS

According to the refugees accounts, it seems that the police treated the refugees in an inhuman and degrading way. Salma from Damascus told me that when she was trying to cross the border to enter Hungary, the policeman who was standing with other colleagues trying to prevent refugees from crossing the border, pushed her back and she fell down and broke her leg. She had to suffer from extreme pain for the next three days, she said, she could not find any medical assessment or help. (Salma 27.01.16)

If the situation is as Salma explained, this shows not only the degrading treatment by the police, but also the prevention of refugees from entering a country where they can apply for asylum, and being returned to a country where they may face serious danger; to be sent back to the country that they may face persecution or death. The situation, according to refugees accounts, is considered a breach of the right to apply for asylum under the 1951 UN Convention and Protocol relating to the Status of Refugees, and Protocol 4 to the European Convention on Human Rights (ECHR).

Those conventions state that all countries are obliged to examine the each individual situation for applicants arriving on their territory, and grant the right to challenge any decision to deport them, before any deportation or expulsion can be lawfully carried out.

4.3 MISTREATMENT

Refugees said that they were afraid of being arrested by the Hungarian police that used violence against refugees, the thing that made the asylum seekers and refugees use illegal

ways to enter the country. But the ones who crossed the borders and finally reached Hungary were subject to further violations of their rights. Some of them were beaten or humiliated and several others told me that they were subject to strip-searches.

Assem told me *"...They made us take off our clothes and they started to inspect our belongings. I hate to say it, but we took off everything"* (Assem 04.02.16)

Also, the police officers, did not take any consideration of the situation of the refugees.

"...In our trip back to the borders, one of us started to laugh loudly; in fact, he ran mad because he heard that his family was killed upon bombarding their home, so he started to laugh and he was really pitiful. The Hungarian policemen did not care about that and they did not subject him to psychological support. One of the policemen wanted to stop him but he was downtrodden so he resisted. So, the policeman slapped him and we rushed to settle the matter. " (Maher from Tartus 04.02.16)

If the stories of the refugees are true, and if Hungary used this policy towards refugees, that means Hungary had violated the international laws that protect people from any kind of Inhuman or Degrading Treatment. These acts violate the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture); moreover, the article 3 of the ECHR states:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. States have a responsibility to prevent cruel, inhuman or degrading treatment, and are obliged to fully investigate all allegations of such treatment, irrespective of a person's migration or other status

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment

However, according to the refugees accounts, none of these articles were respected by the Hungarian side. The government did not prevent or protect any of the rights of refugees; they were rather a part of these actions against the refugees.

4.4 CRIMINALISE THE ILLEGAL ENTRY

The refugees whom I interviewed told me that all refugees who were caught by the Hungarian police were given two choices, either to fingerprint as asylum seekers, or they would be sent to jail, and afterwards back to Serbia. Refugees, who were sent to prison, were informed that they entered the country in an illegal way, so they should be criminalised for this action. Sarab 28 years old told me that

"... I was sentenced to prison, and when I asked why, they answered me that this was the Hungarian Penal Code and it applied to all illegal refugees. I accepted that because I had to" (Sarab 28 Yrs 07.02.16)

Sarab told me that he stayed in prison 20 days, and afterwards he was sent to Serbia

Also Elias told me that he felt humiliated when they arrested him, he said

"... I fingerprinted as an illegal traveller, ...after five days, we were taken to the court...we were tied one to another and taken to the court like criminals" (Elias 28.01.16)

This action of criminalisation of refugees and asylum-seekers contradicts the 1951 Refugee Convention that bans imposition of penalties upon refugees for entering a country irregularly. Article 31 of this convention provides the principle of immunity from prosecution of asylum-seekers for irregular entry and stay, provided they immediately apply for asylum and provide a valid explanation for their irregular entry or residence.(see appendix)

Maher stayed 12 days in prison, after that he was taken to a court session that took place in the same prison, in the kitchen as he claimed, he said *"...I was sentenced 15 days in the 12th day, we started a hunger strike inside the prison"* (Maher 07.02.16)

Moreover, it is also a breach of the prohibition (a) on imposing penalties on refugees who unlawfully enter the Hungarian territory. (a) Article 31 of the Geneva Convention. The war in Syria has displaced nine million Syrians since 2011, and for the majority of them, there was no safe and legal routes, most of the refugees had no other choice rather than to enter the EU irregularly.

Accordingly, asylum seekers and refugees must not be subjected to criminal sanctions or otherwise penalized for the irregular entry. Furthermore, the legal based deportation orders should not be issued by police officers, but are authorized by a court in accordance with

procedures set out in law, the thing that did not happen with many refugee, who were pushed back by the police officers in the borders without examining the individual case of everyone.

4.5 DETENTION

Under Article 5.1 ECHR, everyone has a right to liberty and security, which means that every person has the right to be protected against arbitrary detention. In *Saadi v. the United Kingdom* (Asylumlawdatabase.eu, 2008), ECtHR recalls that any deprivation of liberty must be “lawful”, implementing the local legislation should be with respect to the requirements of Article 5.1 ECHR to protect individuals from arbitrariness. (Ktistakis, 2013). Also the ECtHR indicates what is expected from states in order to comply with the ECHR in the case of *M.S.S. v Belgium and Greece*:

"To avoid being branded as arbitrary, therefore, such detention must be carried out in good faith; it must be closely connected to the purpose of preventing unauthorised entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that "the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country"(ECtHR - M.S.S. v Belgium and Greece [GC], [2008])

However, according to the accounts of the refugees who were arrested in Hungary, the detention was carried out randomly because of their illegal entry, not taking into consideration the vulnerability of migrants, and the purpose of their action. Furthermore, the stories tell that the treatment was not in compliance with the minimum fundamental principle of human dignity. Mahmoud from Aleppo, 31 years old told me,

"...they put us in a room or a large cage, not even suitable for animals....we were 50 persons in that cage; we were men, women, and children...they gave us 10 bottles of water for all of us". (Mahmoud, Aleppo 10.02.16)

However, According to (UNHCR’s Detention Guidelines, 2012) , Guideline 4.1:

"Detention is an exceptional measure and can only be justified for a legitimate purpose"

Detention is an exceptional measure that should be applied only where it is necessary, reasonable and proportionate in the individual case (Refugees, 2016)

The ECtHR stresses that the specificities of the detention of migrants and makes a distinction with the detention of individuals who have or are suspected to have committed criminal offences. It requires authorities to carry out any detention of migrants in good faith, for the purpose of preventing persons to enter the territory illegally, and explains that the conditions of detention should fit this purpose taking into consideration the vulnerability of migrants. (Ktistakis, 2013).

However, if the accounts of the refugees were accurate, that would mean that Hungary had failed to follow the international detention standards. L, who is a mother to 3 years old girl, was arrested on the Serbian-Hungarian border with her daughter, sister and brother. She said they were taken to a police station; they stayed there for two days. (L. 29.01.16)

During this time, they were sleeping on the floor; there were not enough mattresses for everyone. She said,

"...my sister was helping me to look after my daughter because we were so exhausted from the long trip; however, the police sent my sister to a different room because she was complaining about the situation, so I had to stay alone with my daughter". (L. 29.01.16)

Under international standards, detention should be used only as a last resort, where it can be justified, in each individual case, that it is necessary and proportionate. In the Guideline 9.2, children, including unaccompanied minors should never be detained, as it is never in their best interests. (UNHCR's Detention Guidelines, 2012) (see appendix)

According to the Hungarian Helsinki Committee, in April 2014 that over 40% of adult male first-time asylum-seekers were detained while they claimed asylum. Furthermore, detention decisions lacked reasoning on the proportionality and lawfulness of detention, and failed to consider the individual's circumstances. The judicial review of detention, made after 60 days, was found to be automatic, and thus ineffective. (HHC,2014)

4.6 LACK OF INFORMATION/MISLEADING INFORMATION

The right to be informed of the reasons for detention is expressly provided for under Article 5.2 ECHR, which states that:

"[e]veryone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him".

However, all the refugees who were interviewed claimed that they lacked information about their rights, the asylum procedure, and about the EU asylum system. None of either the Hungarian police that arrested them at the border or the authority that interviewed them in the police station gave them any details about their legal status.

All interviewees informed me that they feared the registration process and fingerprinting in Hungary. Most refugees whom I interviewed reported that the police used force against them when they resisted the fingerprinting process. M said that in the police station, the translator told him that:

"...If you refuse to give fingerprints, the police will beat you up, or you will be sent back to Serbia, and I saw people who were before me, how they were beaten". (M 03.01.16)

The Hungarian authority did not explain the legal consequences of refusing giving fingerprint in Hungary; even more, refugees told me that there was misleading information from their side. Assem told me that

"...they provided us with a translator, whose role was only to give misleading information.....the translator told us if we do not fingerprint, we will be arrested for an unknown period of time.... he advised us, if we wanted to continue to Germany, to fingerprint and then head to Germany afterwards" . (Assem 04.02.16)

Listening to the accounts of the refugee, it seems that at the beginning Hungary would not give adequate explanation to refugees about their legal status. However, some of them told me that they would force them fingerprint anyway, giving explanation that this fingerprint will not be uploaded on asylum seekers database; their fingerprint is for the illegal entry to the country. Yanal said

"...until now none of the people who came through Hungary could figure out what the difference between illegal traveller fingerprint and asylum fingerprint. ...the translator gave two choices, whether I fingerprint or they send me back to Serbia" (Yanal 30.01.16)

4.7 PROVIDING BASIC NEEDS

Hungary provided food and water to refugees who were caught at the borders. However, refugees were claiming that the food was not enough or proper; they lacked water especially

when there were families among them. Furthermore, some refugees were offended by the way Hungarian police was distributing the food and water in a humiliating way.

Some interviewees said that they got a quick medical check after they were sent to prison. However, the others said that they suffered from allergic or injuries that happened to them during their trip to reach Hungary, but no medical aid or assessment was provided.

B told me that

"In the first prison, there were no beds; we had to sleep on the ground... there were few dirty mattresses; even animals would not accept to sleep there! they were stinky and full of dirt and insects... there was one whose arm was broken and they brought him to the prison instead of taking him to a hospital." (B 05.02.16)

Also Ali who suffered from allergic because he stayed for three days in the forest between Serbian-Hungarian borders, waiting the right moment to cross the borders, he said

"...They kept me in the car for almost an hour. I was about to die. I had very bad allergy. After staying in the forest for three days, all my body was red...when we arrived to the camp, I asked for medical assessment. I was so sick and my face was red and swollen; however, they refused to give any medical aid or to provide medicine" (Ali 06.01.16)

4.8 RIGHT TO FREE LEGAL ASSESSMENT UNDER THE HUNGARIAN NATIONAL LAW

As refugees claimed, none of the refugees who were interviewed was offered a legal assessment, not even being told about this right. Some of them, as they explained, were sent to jail without being presented in hearing to defend their state. If these stories were right, that means this procedure contradicts, not only the international laws, but also the Hungarian national law.

According to the Asylum (Act LXXX of 2003), all asylum-seekers in Hungary, including detainees, have the right to free legal assistance under a state-funded legal aid system

Section 1.

(1) The State shall, within the framework of providing legal aid, provide assisted persons (hereinafter referred to as the "party") extrajudicially with the right to have recourse to legal aid as provided for herein (for the purposes of this Chapter, hereinafter referred to as "aid"). Section 4 (b)

Section 4

b) the party is requesting legal aid in connection with obtaining a visa, obtaining authority to reside or permanent resident status, or in a naturalization case, if the party's ascendant is or has previously been a Hungarian citizen, furthermore, if the party is engaged in repatriation or an asylum procedure,

Section 5

d) a party who is a refugee or temporarily protected person, or a person seeking refugee status or temporarily protection or stateless status and, on the basis of their statement regarding their income and financial situation, is entitled to the care and benefits they have been granted,

In practice, however, asylum-seekers are not made aware of this system; instead, the procedure lacks sufficient lawyers with appropriate expertise to provide free legal assistance, or exercise their right to appeal against detention. (ECRE & HHC, Country Report: Hungary, 2014, pp.16-18.)

Interviewees who were sentenced to prison told me that decisions on continued detention or sentence were all made in abbreviated administrative proceedings and without a lawyer.

Wessam told me:

"The judge, through the translator, just asked about our personal details and education and then he sentenced us depending on the given details...the families were sentenced for a month and the youths were sentenced for two months ... a judge will view my state and sentence me" (Wessam, 25.01.16)

4.9 ENFORCE FINGERPRINT

Several interviewees told me that police used force against them when they resisted during the fingerprinting process. However, by taking refugees' fingerprint, Hungary implemented the Dublin regulation, but according to the refugees accounts, it was in the way that it violated other human rights of the refugees and asylum seekers.

If this is the way to implement the international law by following Dublin regulation, so where is the protection of other human rights of the refugees. Moreover, Refugees informed me that, If this is the way to implement the international law by following Dublin regulation, so where is the protection of other human rights of the refugees? Moreover, Refugees informed me

regarding the unwelcome behaviour of Hungary towards them, where they felt insecure to apply for asylum in Hungary and stay there. M from Aleppo, Syria said "*...All of us had to fingerprint... the officer held my fingers and made me fingerprint. I did not really resist because they were so violent with the one who was questioned before me*". (M, Aleppo 05.02.16)

4.10 SEND BACK TO SERBIA

Article 33-Prohibition of expulsion or return ("refoulement") of the (Protocol Relating to the Status of Refugees, 1976)

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Some of the refugees who were interviewed told me that after staying in prison for a period of time varied among persons, they were sent back to Serbia where they will be without access to asylum. Also many of them, issued with deportation orders by Serbian police, were pushed back from the border or formally deported from Hungary and found themselves ending up in a state of nowhere to go. Those, whose money and luck have run out, found themselves trapped between the EU's borders with Hungary and Greece; they were afraid of being sent back finally to Syria. That is why the principle of non-refoulement is not only applied for refugees' home country, but also to any state where they could face a threat, or a risk to be sent to a third place where they might face what is called a chain refoulement.(which is in this case Serbia).

All the interviewees who were sentenced to prison were sent to Serbia after they finished their period of imprisonment; they were handed over to the Serbian police. However, in Serbia the police would give them three days to leave the country. So they have no other choice than trying to cross the borders again.

Furthermore, in March 2015, the Hungarian Prime Minister Viktor Orbán announced a plan to introduce a legislation which would enable the authorities to immediately detain and return all migrants and asylum-seekers irregularly entering Hungary; accelerate asylum procedures so that decisions could be taken within a few days; and oblige irregular migrants and asylum-seekers to work to cover the costs incurred while in Hungary Locals perceptions on refugees. (Magyar Helsinki Bizottság, 2015)

4.11 HOW HUNGARIAN POLICY FACILITATES SMUGGLER BUSINESS

All refugees whom I interviewed informed me that most Syrian refugees preferred to contact smugglers in order to be able to cross the borders than being caught by the Hungarian Police. "Hungary was the worst part of their trip", they said. Interpol and Europol reported that People smugglers made over \$5 billion from the wave of migration into southern Europe last year, a report by international crime-fighting agencies. (NBC News, 2016)

As interviewees claimed, all refugees were afraid of dealing with the Hungarian policy, because of the stories they heard and watched on media. Some of them had to pay a lot of money just to reach Budapest, and then another amount of money to go to another country. They also paid to stay in hotels where illegal, undocumented travellers and refugees stay.

"...I do believe that the police are cooperating with the smuggler. The hotel that refugees stay in is known to everyone... the smuggler receives refugees in his house every day before sending them to Vienna or Germany! How come the police do not know about it? " (Muhammad, 07.02.16)

4.12 ISLAM-PHOBIC

The theory of Islam-phobia was one of the first assumed reasons of the Hungarian policy towards refugees. However, this was not found when collecting data by interviewing the refugees who came through Hungary. Moreover, there was only one case when one of the refugees was treated differently because the police assumed that he is Christian.

"The police was treating us in a very bad way, they were pushing and shouting at us, however, when one of them found a Christian refugee crossing with one of my friends, he changed his treatment, he smiled at us. When my friend told him that our group is all Christians, the policeman came closer and told us that they are becoming afraid of Muslims and they do not want them here" (Ahmad N 27.01.16)

Accordingly, the theory of Islam-phobia was on media and the official statements by the Hungarian government; however, it was not the main issue when it comes to the interviews.

4.13 AMENDING LAW

On 12 June, in advance of talks with the Serbian authorities, Prime Minister Orbán threatened to close the border with Serbia to refugees, stating that they should be stopped in Serbia; then, on 17 June, Foreign Minister Peter Szijjarto announced plans to build a 4m high fence along 175 kms of Hungary's border with Serbia. (B92.net, 2015) (Reuters, 2016)

On 19 June, draft amendments to the Law on Asylum were published by the Ministry of Interior: amongst other measures, they would introduce an accelerated asylum procedure, and a number of new grounds for the dismissal of applications, including that the applicant had passed through a safe country. The amendment, passed on 30 June, gave the government power to determine a list of safe countries, which is likely to include Serbia. (Parlament.hu, 2016)

If Hungary adopted amendments and implemented these measures, it means closing the route to the EU through Hungary, and would violate Hungary's human rights obligations under international and European law, particularly the principle of non-refoulement. So what is then the point of having international law when states can easily violate it when it comes to a specific group of people? Is the main target of creating international law just to protect some people, with specific ethnic and nationality background? Is international law applied selectively?

4.14 WRONG IMPLEMENTATION OF THE LAW

It seems, as noticed in the analysis of interviews based on the refugees' accounts, that Hungary violated other human rights of the refugees in order to implement the EU regulation.

The article 9 (2) (4) of the International Covenant on Civil and Political Rights

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

These above articles show that the liberty of any person should not be arbitrary denied, and when this action is needed, the refugees and asylum seekers should be well informed about the reason and the time of detention. Interviewees told me that they did not know where or for how long they were taken; neither the police nor the translator gave any information about their legal status.

Moreover, according to Dublin regulation, the responsible Member State will be the state through which the asylum seeker first entered the EU. And that is where the first problem lies. Immigrants that enter one state do not necessarily want to stay there, and rather are trying to reach the richer countries of Europe. By forcing them to remain in the bordering states, which in many cases are also "peripheral" economies, you condemn them immediately to an uncertain future.

For example, Like most Syrians, Mahmoud wanted to end his journey in Sweden, where his brother is, and he knows that there is a reasonable prospect of asylum, and a welcome policy for migrants and support from established relatives or community members. However, the vast majority of illegal immigrants or asylum seekers enter Europe through small countries (Malta) or economically weak (Greece) to deal with the big numbers of immigrants. As refugees perceived about Hungary, it does not also have the capacity to accept refugees and migrants. Muhammad Zafar told me the reason for not applying asylum in Hungary:

"...We didn't want to give fingerprint in Hungary, we are not coming here to take benefits and stay home, we want to be affective citizens, we want to work... Hungarians are travelling to other European countries to look for jobs, Hungary is a poor country and has already and unemployment issue" . (Muhammad Zafar, 27.01.16)

Also Yanal who left Syria aiming to go to Germany, said *"...I do not want to stay in Hungary. It is dead! I would not be able to find a job or do higher level of education; its people are leaving the country! They cannot handle more people coming to their country"*(Yanal 30.01.16)

However, this regulation makes it very difficult for countries on the borders of Europe (like Hungary) to deal with the problem, plus they probably lead them to implement this law in a way that violates other refugees rights. These border countries usually use anti-migration policy to protect their borders, or reduce the big waves of migrants and refugees.

The main purpose of Dublin Regulation is to prevent an applicant from submitting applications in multiple Member States. It also aims to reduce the number of "orbiting" asylum seekers, who are shuttled from member state to member state. In terms of the situation in Hungary, the implementing of this law gives more complication for both refugees and member states.

As many European states suspended Dublin regulations by accepting the refugees who already had their fingerprint in Hungary, the aim of this law did not work. Furthermore, this situation caused double spend on the same application, delay in the process of the examining, and waste of time to check with the other member state. On one side, this caused inconvenience to the state; on the other, the refugees were the first victim of the bad implementation of the law.

Salma whose friend has got her application rejected told me:

"there is a friend who came at the same time with me to Germany, but she gave her fingerprint in Hungary. Her asylum application was rejected because Hungary asked to send her back. She spent money on travelling and settling down in Germany, but at the end she was sent back to Hungary. "(Salma 27.01.16)

Muhammad Zafer said:

"I was so afraid to fingerprint in Hungary, he said " Although Germany has suspended Dublin regulations, when people apply for asylum in Germany they do not send them back to Hungary only if Hungary asked for them. But this process takes so much time and efforts until Hungary replies. Sometimes applications are rejected because of being arrested in Hungary and forced to sign papers that we do not understand. It sometimes can be an accusation for something we didn't do" (Muhammad Zafar, 27.01.16)

In most interviewees' cases, the Hungarian police forced refugees to fingerprint, either physically or by threaten them, in order to implement the law. Furthermore, some of them got their asylum rejected by Germany or other countries because they fingerprinted in Hungary, and their fingerprints entered into the EURODAC database. Accordingly, they may end up back in Hungary without an examination of their asylum claim, where they are not always able to access an asylum procedure. If their claim is rejected, they are then at risk of deportation to Serbia, and possibly onward to Macedonia and/or Greece, and this puts people at risk of being returned to persecution of chain refoulement.

Some of the refugees interviewed suspected that Hungary is using force to make people fingerprint in its territory, because their fingerprints will be entered into the EURODAC database, so Hungary will be able to get aids from the UN according to the number of refugees it accepted. S said:

"Well, they told us that if we fingerprinted as illegal travellers, our fingerprints won't pass to the European Union, but I think that was all lying. I think our fingerprints were passed." (S 28.01.16)

Also Yanal has the same suspicions, he said

"Hungary takes refugees' fingerprints, because they want to get aids from the UN. As soon as we give our fingerprints, we will be registered on the asylum database. However, the government knows now that no one will stay in Hungary" (Yanal 30.01.16)

CHAPTER 5

DISCUSSION

This chapter is a critical analysis of the EU policies, represented by Dublin regulation. This will be based on the analysis, and then the assumption that came up after the analyzing of the primary data, that showed the policy as a main part of the problem. In addition, this chapter includes a discussion about the malfunction of this policy and, what dilemmas it caused in other countries as well. This discussion will be supported with information reports and scholar's views.

5.1 MALFUNCTION OF DUBLIN REGUALTION

Based on the experiences of the refugees, and by using other sources such as secondary studies and HR reports addressing that problem, I believe that Dublin regulation is one of the EU regulations that does not contain any mechanism to ensure that responsibilities are shared in a balanced or equitable manner, particularly with the case of the illegal borders which place a disproportionate responsibility on States at the external borders of the Union” (internationalrefugeelaw, 2013).

Ignoring that the host states might lack the capacity of receiving and providing a proper protection for those vulnerable groups of refugees who already suffered in both their home countries and on their way seeking the international protection, this arises, however, another dilemma, especially when discussing the distribution of asylum-seekers among the countries in the Euro area.

The root of the problem is the lack of sharing responsibilities in countries like Hungary. As Boswell sees countries like Hungary, which already hosted a high number of asylum seekers, and which argues in favour of a fairer system that it is important to that states that already hosted a high number of asylum-seekers; argues in favour of fairer system, rather than such system whose mechanisms place pressure on countries to host more asylum-seeker as they already did. In other words, the lack of cooperation between the countries is the root of the problem (2003).

It seems from all the factors that have been discussed and reviewed in this paper that the EU policies are rather looking for shifting responsibilities to the countries on the external borders of the EU, no matter what consequences they might have on the welfare and the rights of the refugees. All the examples mentioned in this paper showed the failure of this system to guarantee the refugees the protection they were seeking when they fled their home countries. In the countries where people are suffering from the conflicts, violence, and extreme abuse of the Human rights, the situation, however, does not look much better when asylum seekers arrive to Europe.

This system is, rather than looking for an equal distribution that considers the economical and geographical situation of each state, is putting pressure on the bordering countries of EU. As Langford states, this system will provoke and “develop[s] anti-immigration policies that are fundamentally at odds with the European fundamental human rights regime” (Langford 2013. p.219).

Furthermore, those boarding states suffer under these criteria since many asylum-seekers are sent back and are hence stuck in these countries. This results in a general overcrowding of detention centres, administrative buildings and homeless shelter (Langford 2013).

A similar problem happened in 2003 when Greece started fully operating Eurodac system; it was requested to take charge on the basis of the Dublin Convention. The number of refugees and asylum seekers was increasing, and the country had to examine a greater number of asylum applications than before. However, in the years following the implementation of the Decree, it appeared that the authorities were unable to put the accelerated procedure into practice. (Papadimitriou, 2005).

Due to the lack of capacity of Greece, many violations against refugees have been reported, especially after the final decision of the European Court of Human Rights in the case the *MSS v Belgium & Greece* ruling the European Court of Human Rights (ECtHR) that I mentioned earlier. After this judgment, [r]eturns of asylum seekers from another Member State to Greece under the Dublin Regulation are still frozen. (Asylumineurope.org, 2016). Nothing has been changed; the problem still continues, but in different countries, I think this crisis somehow has been shifted from Greece to Hungary.

As the briefing report of UCL university points out, one of the most important problems in the European asylum policy that is well-illustrated in responses to the Syrian crisis, is the lack

of sharing responsibilities among the member states. There were no equitable mechanisms to manage the mass influx of asylum seekers who are fleeing Syria. The burden falls disproportionately on certain states that are unable to manage it, thus offering inadequate human rights protection to entrants. (Ucl.ac.uk, 2016)

However, no actions have been taken to solve this problem and save refugees from this kind of abuses of their human rights and the humiliating way they were treated with. And now refugees are suffering and being mistreated on the borders and territory of Hungary without any serious action by the EU to change or amend this system; that is what caused massive violations of human rights for many refugees, migrants and asylum seekers.

It is important to address another crucial issue here, which is also makes this policy is biased when it comes to deal with the refugees. The differences in the rates of recognition of refugee status in different countries also make it unfair for refugees to be resettled in the first country that they enter, when they already know that the recognitions of their rights will be more respected in another European country. In this case, most of the refugees, whom I interviewed, told me that their aim is to be effective members in the host society; the majority was seeking higher education or jobs to build their career.

Hungary cannot offer good job opportunities to the refugees because the employment rate in Hungary, especially among youth, is very low, as stated in the Eurofound reports; in fact, it is one of the lowest in Europe. This rate has decreased since 1998 parallel to their economic activity rate. The intensity of the decrease has slowed down somewhat at the time of the EU accession (2003-2006) but the economic crisis has increased the tendencies again. (Eurofound.europa.eu, 2013).

Adding to this, as some of the interviewees explained to me, is the fact that they were afraid to stay in Hungary after the humiliating and degrading treatment from the Hungarian side. Hence, one of the main principles of the Dublin regulation is that applications for asylum must be made at the point of first entry, irrespective of the intended final destination of the refugees (Ucl.ac.uk, 2016), no matter if this will be the best for the refugees or not.

5.2 GOVERNMENT SPEECH

However, One cannot ignore the hate speech by the government of Hungary, which was presented by its prime minister **Orban**: "*If somebody takes masses of non-registered*

immigrants from the Middle East into a country, this also means importing terrorism, criminalism anti-Semitism and homophobia." (Business Insider, 2016)

This kind of speech can find a proper environment to spread and rise up. The pressure on the Hungarian borders, and the failing by the government to absorb it, gave the excuses for the racist speech to appear. Bearing in mind that it will be systematically spread by media all over the countries and it will certainly find listeners and supporters. According to the policy briefing by the UCL university.

"One of the most disconcerting developments in recent years in Europe is the increasing support for nationalist and racist movements, as well as the establishment of a culture of xenophobia." " Finally, the language of EU law is problematic - racism is embedded in EU legislation and policy and, particularly, in the term 'irregular migration', which is routinely used to refer to non-EU migrants entering the EU without express permission, even if they seek asylum."
(Ucl.ac.uk, 2016)

Watching the heart-breaking news of refugees on the media and news every day, listening to the depressing accounts of the Syrian refugees who went through Hungary, all together posts a warning that there are some changes, and action plan should be carried soon. This paper highlights only the stories of Syrian refugees, whereas there are thousands of other refugees from different nationalities who have probably suffered from the same abuses.

5.3 CURRENT SOLUTIONS MAY PROMOTE NEW PROBLEMS

Orban: *"The fact that Brussels tolerates and promotes a culture of breaching treaties. The Maastricht criteria, Schengen, Dublin – nothing applies any longer"*(Business Insider, 2016)

The question here is the following, should those rules be really respected or amended? And if protecting refugees is issued by breaching treaties, so also one wonders, why those treaties exist from the beginning without considering the interest of refugees and their rights under international human rights law?

However, what Germany did to protect refugees, by suspending Dublin rules, can be a solution in one hand, but it poses new problems in the other. Refugees, because of this policy, would rather resort to smugglers who get a lot of money just to transfer the asylum seekers from countries like Hungary, which cannot provide them with an adequate protection, to

another European country, in which they will find a welcoming environment and a better treatment, like Germany.

For instance, a lot of questions have been raised after this policy adopted by Germany, even from the Germans themselves; Germany, as the Union's flagship - taking the right steps... do the politicians have any idea of how to deal with the issue? (RT International, 2015). Alternative for Germany Member of the European Parliament Marcus Pretzell said " It doesn't scare me, but I think that the German government doesn't have any idea for the solution of the problem, because, it will be one million, maybe even more, maybe 1.2 million people" (RT International, 2015). Adding to this, the money that will be spent on the same asylum applications in both Hungary and Germany. One of the main aims of Dublin regulation is to control the spending on the same applications, that is why should the examining of the applications must be handled by the first entry country. So this another failure of this regulation to achieve its aims.

Consequently, things that should be taken into consideration are the consequences of this policy on both Germany itself and the refugees who chose to go to Germany just because they were offered a welcoming atmosphere.

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

6.1 CONCLUSION

Although the refugees have suffered a lot throughout the history, and this is not a new situation, it is still worth to look at the situation much closer, and study the circumstances in depth. Research and literature about refugee crisis through history exist; however, research on this current case of this refugee crisis is almost non-existent. Furthermore, when the reports and studies on this current case exist, they mostly discuss a part of the problem. In other words, they either show the general violations of refugees rights or discuss the policies of the EU countries of receiving refugees. The theoretical implication of my study helps to bring illumination and to broaden the scope of the situation, where I discussed different factors of the problem, rather than focusing on putting the blame on only the host country.

However, violations against refugees are still going on, and are still repeated but with different actors. Conflicts in the world are spreading and increasing, and this makes more people in risk to leave their home. Keep blaming the host countries for not providing protection for refugees arriving in their territory, and sticking to the same theories about racism and xenophobia, is not the way to solve the problem. Although those theories exist, there should be efforts to examine the situation in more depth to find solutions. This research gives a close look at the refugee crisis on the EU borders, specifically the case of Syrian refugees on the Hungarian border. Most literature founded is addressing points of view about the factors which cause such a situation. However, few are those who have considered the perception of the refugees, or their experiences on borders before applying for asylum. This paper aims to address the difficulties that refugees have faced on the border trying to seek asylum in Europe.

The data collected have showed cases of people suffering directly from the anti-migration policies; it further showed the difficulties and the humanitarian situation of real people. Rather than looking at the situation only on media and reports. The analysis of the primary data in the form of interviews with the refugees showed the behaviour by the host countries towards refugees. However, individual stories were very similar when explaining the

behaviour of the Hungarian authority. Thus, analysing this data led to an overview about the general policy. It was important to show the violations of refugee and human rights law, for the policy-maker to consider the welfare of refugees, and respect their rights before adopting any policies that might risk people lives.

However, Based on the findings, and if the refugees accounts were accurate, different violations from the Hungarian side were committed against the Syrian refugees either on the entry point to Hungary, or during the process of seeking asylum. Refugee and Human Rights Law, where not implemented, is quite the contrary, so many rights have been extremely violated. For instance, the necessity of using detention for refugees was not taken into consideration, on the contrary, according to refugees, all asylum seekers were put in detention.

Consequently, arresting refugees was a violation of the article 5.1 ECHR. Furthermore, the right of refugees to be informed about the reason of detention under article 5.2 ECHR, was also violated. Bearing in mind that children, according to refugees accounts, were arrested with adults and going through the same process like everyone, whereas in the UNHCR's Detention Guidelines 9.2, minors should never be detained, as it is never in their best interests.

Pulling together all the refugees experiences on the Hungarian Borders, the results show that Hungary did not respect the UNHCR's Guidelines on Temporary Protection or Stay Arrangements when receiving mass influx of refugees. Furthermore, the analysis of the results shows that even when Hungarian authorities aimed to apply the law, they used force against refugees and treated them in a degrading way; and this contradicts all human rights principles and breaches international law, specifically the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Moreover, some refugees were pushed back when they were trying to enter the country, or even were sent back to Serbia after detention. This action, if it really happened, is so dangerous as it violates the main principle of non-refoulement that protected under UNHCR and Protocol relating to the Status of Refugees Protocol Relating to the Status of Refugees article 33. This may risk people's lives when they face what is called chain refoulement that may end up in the country they fled because they feared death or persecution. Beside different other factors, where refugees rights were abused, just like amending asylum law by Hungary, to recognise Serbia as a safe third world countries, where they can send refugees to.

Nevertheless, examining the situation in Hungary during doing this research, the results showed that this behaviour by Hungary is not an ideology used specifically by Hungary. Despite the hate and anti-migration speech by the government, one can see that this is not the main problem. Taking into consideration legal reports, pervious cases, and the relevant literature, this research highlights other crucial factors that caused this crisis. The EU asylum policies, mainly Dublin Regulation, played a role to expose this kind of crisis.

Dublin Regulation, which aims to determine the Member State responsible for processing an asylum claim lodged in the European Union, firstly failed to achieve its key target in this case. As so many refugees have entered Europe through Hungary, they were granted asylum afterwards in another EU country like Germany, which suspended Dublin Regulation. Secondly, this policy does not consider the significant differences in protection and reception standards among the EU countries. Thus, it failed to give the asylum seekers fair choice and treatment. Additionally, it is putting the asylum systems of these countries of first entry under immense pressure. This causes unfair distribution of responsibility, plus it may lead the host country in the entry point to use violent and inhuman treatment against asylum seekers and migrants to avoid this responsibility.

Suspending this system in the sake of protecting refugees, as some states like Germany claimed, may expose other problems. The secondary movements of refugees, to go to those countries, create imbalances in the distribution of asylum seekers and place disproportionate pressure on the favoured destination countries.

6.2 RECOMMENDATIONS AND FUTURE RESEARCH

In this work, the refugee and human rights violations were pointed out. However, this was based on mainly interviews with 16 refugees. Although, secondary data has been used to provide more information, still this is not enough to explain "humanitarian crisis" as it was described from different human rights bodies. Therefore, I suggest to conduct further research, to address the crisis superiorly, by gathering more data about the situation and interviewing more refugees, not only in Germany but also in other countries.

This paper highlights only the stories of Syrian refugees, whereas there are thousands of other refugees from different nationalities who have probably suffered from the same abuses.

Hence, the focus of further research must also consider all refugees from different nationalities.

Also, further research to be conducted by taking into consideration the Hungarian side perception, that will be useful to understand the situation clearly. This might also be by visiting the detention centres and police stations, and observing the process that refugees normally go through.

Finally, It is important to legally examine the effectiveness of the Dublin regulation, and its impacts on both refugees and host countries. Amendments on this system will be vital to ensure equal sharing of responsibility among EU countries.

Finally, action plan by Human Rights bodies and International Human Rights organisations, to ensure a fair trial to refugees, and represent those whose rights were violated in Hungary before The European Court of Human Rights.

Word count: 16,381

I Conventions

UNHCR United Nations High Commissioner for Refugees

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984

Convention Relating to the Status of Refugees 1951

International Covenant on Civil and Political Rights 1966

Protocol Relating to the Status of Refugees 1967

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III APPENDICES

III.i Appendix 1 : Letter of Consent

This document is a contract to participate in a master research project about the Humanitarian crisis in Hungary and the role of international community to intervene. This project is Tromsø University is the legal responsible data handler.

The date of submission this project is in May 2016, and latest in December 2016.

Your Participation:

This interview will require about 30 to 60 minutes of your time. During this time, you will be interviewed about your experience in Hungary before applying for the refugee status application in Germany.

Your Rights as a Participant:

Your participation in this research is voluntary, you may leave the study for any reason, at any time, up until a week after your interview. If you choose to leave this study, your information will be deleted and destroyed. If you decide to continue, I will be carefully protect your identity and privacy. The information collected from these interviews will be used only for the aim of this project.

Please choose below whether you want your information to be mentioned in the thesis or not:

	Name of the participant
Yes	
No	
	Information about the participant like (age and gender)
Yes	
No	

If your answer is no for the two previous options, several steps will be taken to protect your anonymity and identity:

- All the information will be anonymous in the thesis by 31 December 2016
- The typed interviews will not contain any mention of your name, age, gender or any other details that can identify yourself.
- The typed interviews will also be kept in a private computer protected with a password and being kept in a locked room.
- All collected data will be deleted by the end of this project by 31 December 2016.

Study results:

The results of this research will be used to do my thesis of the master program Human rights Policy and Practice. This Master program is collaboration between Roehampton University UK, University of Gothenburg Sweden, and Tromsø University Norway.

If you have any further questions about this project, please contact me (Suha Nasser) on suha.nasser@gmail.com or my supervisor Dr. Jennifer Hays on jennifer.hays@uit.no

Your signature on this letter assure that you

1- understand and satisfied about the information given to you about your participation in this research

2- agree to participate as a research subject

By signing this letter, I agree to participate in this research project.

Participant's Name: _____

Participant's Signature: _____

Date: _____

III.ii Appendix 3 : UN Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention Guideline 9.2

Children General principles relating to detention outlined in these Guidelines apply a fortiori to children,¹⁰² who should in principle not be detained at all. The United Nations Convention on the Rights of the Child (CRC) provides specific international legal obligations in relation to children and sets out a number of guiding principles regarding the protection of children:

- The best interests of the child shall be a primary consideration in all actions affecting children, including asylum-seeking and refugee children (Article 3 in conjunction with Article 22, CRC).

III.iii Appendix 4: 1951 Refugee Convention Article 31

Article 31: refugees unlawfully in the country of refuge A. Introduction Article 31 of the 1951 Convention Relating to the Status of Refugees¹ provides as follows:

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence