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**Mercedes Yela Uceda**

Criminology Applied To Migration Policies:  
Returns Agreements And European Borders  
As Spaces Without Human Rights By  
The New Migration Pact 2024



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# CRIMINOLOGY APPLIED TO MIGRATION POLICIES: RETURNS AGREEMENTS AND EUROPEAN BORDERS AS SPACES WITHOUT HUMAN RIGHTS BY THE NEW MIGRATION PACT 2024

MERCEDES YELA UCEDA<sup>1</sup>

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## ABSTRACT

In recent years, the European Union has encountered significant challenges in managing migration policies that threaten human rights. On 14 May 2024, the Council of the EU approved the New Pact on Migration and Asylum, which introduced several notable innovations. These include the use of artificial intelligence-powered biometric systems for identification and border control, modifications to the return procedure, adjustments in immigrant detection processes, and the implementation of a new solidarity mechanism between member states.

In light of these recent developments, the number of arrivals to the European Union continues to rise, as do the associated needs. This paper will analyse the primary threats to human rights protection posed by the New Migration and Asylum Pact, employing an exploratory documentary methodology, a common approach in Criminology. The aim is to explore the weaknesses of

migration policies in the effective management of human rights protection.

## KEYWORDS

Borders; Human Rights; European Union, Criminology, Migration Policies.

## 1. INTRODUCTION OF BORDER'S PHENOMENON

Historically, migratory flows have always occurred, fostered by globalisation and other phenomena such as armed conflicts, rebellions, new employment opportunities, or the pursuit of a better future. Population movements can occur for various reasons and may fall under different legal frameworks, including tourism, temporary stays, education, or employment. These types of migratory movements are governed by the immigration regime (administrative law), which sets the

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<sup>1</sup> Mercedes Yela Uceda, is an Assistant PhD Professor of Criminal Law and Criminology at the Universidad Rey Juan Carlos, Spain, Email: mercedes.yela@urjc.es ORCID: 0000-0002-3121-797X.

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conditions under which states allow entry into their territory. Additionally, there are international protection mechanisms, supported by human rights law rather than administrative law, that apply to asylum, refuge, and other exceptional situations such as residency for humanitarian reasons. This distinction highlights that international human rights law, which all states are obligated to uphold, governs cases of international protection. In contrast, administrative or immigration law applies when a person is not subject to international protection, allowing states to determine entry requirements for purposes such as study, work, or tourism visas.

In legal terms, migratory movements involve individuals crossing borders from one state to another. This concept excludes internal displacements, which refer to movements within the territory of the same state. Such internal displacements are excluded from international protection because crossing an international border is a necessary condition for the application of the aforementioned legal framework<sup>2</sup>. In migration policies concerning individuals crossing European borders, three distinct legal situations may arise. First, the irregular migrant, who violates immigration laws; second, the regular migrant, who complies with the established legal requirements; and third, the asylum seeker or refugee applicant. Additionally, other exceptional circumstances may apply, such as subsidiary protection or temporary residence on humanitarian grounds, both of which are linked to human rights and the provisions of the 1951 Convention, both national and international.

In this paper, we contend that current migration management policies are insufficient to safeguard individuals' rights. To substantiate this claim, we will examine various threats to migrants' human rights, including political challenges, discrimination, xenophobia, and human rights violations.

To contextualise the phenomenon, it is essential to highlight the various challenges and threats confronting migration policies. Firstly, the politicisation of migration, along with the criminalisation of migrants and beneficiaries of international protection, has been exploited as a tool, a social weapon, in electoral and social discourse. Secondly, the politicisation of migration results in several adverse consequences, including barriers to integration, the rise of xenophobic and hateful sentiments, and, ultimately, the criminalisation of refugees.

The reality is that migration policies, both at the national and European levels, are caught between the exclusion of immigrants, on the one hand, and the need for their integration, on the other. The current challenge lies in managing and controlling borders while ensuring the protection of migrants' rights. We will analyse the number of migrant arrivals in the European Union, focusing on the cases of Portugal and Spain, to monitor population movements into the EU while safeguarding human rights.

In the analysis of migration policies, it is important to address several key issues, including the exclusion of foreign citizens from society, the rise of hate speech, and the criminalisation of foreigners. These topics, which will be examined in this study, have significantly influenced migration policies at both the national and EU levels over time. Additionally, the study will explore the impact of restrictive or prohibitive migration policies on the recognition of refugee status.

To initiate the analysis of migration policies, it is necessary to examine how states exert control over this phenomenon. In this context, we will explore the three primary factors employed as mechanisms for controlling migration policies: border control, the construction of the criminalisation of

2 GOODWIN-GILL Guy, MCADAM Jane and DUNLOP Emna, *The refugee in international law*. Oxford University Press, 2021.

migration, and the economic factors that underpin political instruments either to repress or to promote migration.

Daunis Rodríguez identifies a key method of immigration control applicable to any state: border control, enforced through police repression, which hinders access to the destination state. This border control relies on biometric identification and poses challenges in recognising certain needs of migrants seeking entry to the EU, particularly through personal interviews.

In border control, coordination between member states is essential. Some states aim to fortify their borders, attempting to shape Europe into a fortress through political measures designed to prevent immigration. These measures, often involving police repression, include the Schengen Information System, which has applied the second-generation system (SIS II) since 2013. FRONTEX also works to establish entry ban systems to detect individuals who may pose a security threat. SIS II is regulated by Regulation 2018/1862, dated 28 November 2018, and Council Decision 2007/533/JHA, dated 12 June 2007. It uses biometric techniques as a method for identifying individuals at border control.

Since 2024, the new European Union Pact on Migration and Asylum, introduced on 14 May 2024, has implemented new measures for identifying migrants upon arrival at EU borders. This includes the control of migrants entering the EU through the collection of biometric data at the border. Each individual's personal information is recorded in a biometric data registry upon their arrival in Eurodac<sup>3</sup> and a preliminary vulnerability examination is also conducted. Once the biometric identification system and preliminary interview are completed, the 2024 Pact on Migration and Asylum outlines two possibilities for the individual: they

may be subjected to a return border procedure, or, if they request asylum, an international protection procedure is initiated. This procedure may be accelerated at the border or processed through the ordinary channel, where refugees will await the decision in a designated refugee centre.

Artificial intelligence systems can also produce discriminatory biases. According to Protocol 12 of the ECHR, discrimination is prohibited, and positive discrimination measures may only be implemented to alleviate discrimination. Therefore, measures aimed at preventing discrimination based on disability or gender, as well as mechanisms for integrating diverse cultural identities, do not constitute discriminatory preferential treatment or exemptions from general legal obligations. For example, there are measures aimed at protecting vulnerable groups through positive discrimination, such as individuals with disabilities, minors, or victims of gender violence. The state must ensure non-discrimination and implement integration measures, as our freedom ends where another's begins. Therefore, the boundary between rights and obligations among minorities will be defined by the principle of equality, which asserts that "in conditions of equality, we must apply the same treatment".

In the development of the phenomenon of criminalisation, political measures employed as mechanisms to control migratory movements by states include the criminalization of migrants and the relevance of criminology in this context. The criminalisation of migrants can be defined as a method for regulating migration at national borders<sup>4</sup>. It refers to a phenomenon that designates the immigrants as foreigners, constructing a concept of the "other" as fundamentally distinct from the native population, and falsely

3 Eurodac, which is a European Union (EU)-wide biometric database containing fingerprints of asylum seekers and nationals from outside the EU or the European Economic Area (EEA) for comparison between EU Member States.

4 GUIA, María João. *Crimigración securitización y la criminalización de los migrantes en el sistema penal*. 2012. pp.1-2.

associates them with criminal behaviour, including involvement in acts of terrorism.

In light of this, the process of criminalisation involves labelling the immigrant as an enemy or a threat, which is a direct result of discourses that advocate for restrictive or prohibitive policies that adversely impact immigrants. This misrepresentation of immigrants has been perpetuated by certain political and social movements, falsely associating them with violence and crime – the criminalisation of migrants. Such narratives uphold the inaccurate stereotype that immigrants commit crimes at higher rates than national citizens. Theories on cultural conflict from the 1940s suggest that the differences in the norms, social patterns, and cultural factors of foreign citizens, which may conflict with those of the host state, underpin the perceived relationship between crime and immigration<sup>5</sup>. In other words, the cultural conflict with our patterns, habits, and traditions causes us to perceive differences as foreign, unfamiliar, and potentially harmful, something to be feared. This perception is exploited by restrictive or prohibitive policies, which use such narratives to associate foreign citizens with criminality. There is no evidence to support a connection between immigration and crime. In recent years, the United States has investigated whether an increase in crime could be linked to the annual influx of immigrants. The findings of this study demonstrate that a rise in the immigrant population does not necessarily lead to a corresponding increase in crime

in host countries<sup>6</sup>. In the categorisation of criminalisation as immigrants, DÍEZ RIPOLLÉS determines that migrants are perceived as a problem, threat or social dysfunction<sup>7</sup>. This societal perception of migrants has severe consequences for their inclusion in the host State, as it creates significant barriers to their integration, further complicating their ability to assimilate into the broader community and contributing to their marginalization in isolated areas, hence favouring their exclusion in ghettos. Cultural differences and language barriers also limit immigrants' access to certain opportunities, making education and training crucial to their social integration. Stigma and labelling reinforce these myths and prejudices, leading to an expansion of criminal law to address social dysfunctions. This is often done through emergency legislation that blatantly undermines the principle of minimal intervention.

The economic condition of each country is a crucial factor in the formulation of migration policies. It is important to highlight the connection between immigration and the economic motivations of migrants seeking improved opportunities, as well as refugees escaping persecution in their home countries. Migration policies are closely linked to the economy and the labour market, with each influencing the other<sup>8</sup>, therefore, when there is a demand for workers, migration policies tend to become more flexible to fill these job vacancies. Conversely, in times of job scarcity, migration policies become more restrictive<sup>9</sup>. In general, it can

5 GARCÍA ESPAÑA, Elisa. “Más inmigración, menos delincuencia.” *Revista Crítica Penal y Poder*, n°18, 2019, pp.197-198. Available in: <https://revistes.ub.edu/index.php/CriticaPenalPoder/article/view/30493>

6 In this study published by the Times New Yorker on March 30, 2018, it is stated that “between 1980 and 2016, when the undocumented immigrant population reached historic levels, the crime rate decreased not only nationally, but especially in cities and regions with a high concentration of immigrants” in *Ibidem*.

7 RIPOLLÉS DÍEZ, José Luis Díez; LUIS, José. El nuevo modelo penal de la seguridad ciudadana. *Revista Electrónica de Ciencia Penal y Criminología*, 2004, vol. 6, no 3, pp.32-34.

8 FANJUL, Gonzalo; GÁLVEZ-INIESTA, Ismael. Extranjeros, sin papeles e imprescindibles: Una fotografía de la inmigración irregular en España. *Madrid. Por Causa*, 2020, pp.2-3.

9 *Ibidem*.

be established that immigration is associated with poverty and the demand for economic assistance and social policies.

Prohibitionist or restrictive policies use this approach when the host country's situation is not prosperous and nurtures social tension. On one side are those who believe that offering protection to newly arrived migrants will reduce the help available to vulnerable national groups due to limited economic resources. This idea supports a claim of supremacy over national resources for those with a regular legal status.

Notwithstanding, if we follow the principle that states have to protect human rights when they are at risk, and the principle of equality before the law, migration policies must respect these fundamental pillars. While it is true that resources are scarce, providing assistance or developing social policies to support irregular immigrants does not and should not imply neglecting other groups.

## 2. CHALLENGES OF MIGRATION POLICIES.

### 2.1 ANALYSIS OF THE DATA AND AGREEMENTS OF MIGRATION AND INTERNATIONAL PROTECTION: THE CASES OF PORTUGAL AND SPAIN

We will first examine the data on applications for international protection in recent years, focusing on the EU, as well as Spain and Portugal. The arrival figures for 2015 and 2016 are particularly notable due to the humanitarian crisis at the EU's borders during that period.

Due to the unprecedented humanitarian crisis experienced by the European Union in 2015 and 2016, with asylum and refugee applications exceeding one million per year, asylum and refugee policy has become a key legislative priority.

The sharp increase in arrivals in the European Union in 2015 and 2016 highlighted the failure to manage this serious humanitarian crisis. While the EU received over one million asylum applications during this period, Spain and Portugal saw progressive increases, though with significant differences between them. In 2015 and 2016, Portugal received 870 and 710 applications, whereas Spain received 14,600 and 15,570 applications for the same years.

As an initial response, the EU introduced urgent measures through a relocation plan aimed at transferring asylum seekers and refugees from Greece and Italy to other member states<sup>10</sup>.

Secondly, the EU established an agreement with Turkey, which stipulated that for every Syrian refugee or asylum seeker returned from the Greek islands to Turkey, the EU would accept one Syrian asylum seeker or refugee from Turkey. In return, the EU would provide financial assistance to Turkey as part of the agreement<sup>11</sup>. Hence, The EU-Turkey statement of 18 March 2016 was used as a tool for filtering and externalising borders. In exchange for financial compensation, asylum seekers were prevented from reaching the EU to seek international protection, effectively turning Turkey into a buffer state<sup>12</sup>.

Both response mechanisms took place in parallel with a process of criminalisation of refugees in the European

10 PAYERO LÓPEZ, Lucía. "La gestión de la crisis de los refugiados en Europa: algunas reflexiones". *Actas del III Coloquio Binacional México-España*, 2017, pp.119-133. Available in: <https://dialnet.unirioja.es/servlet/articulo?codigo=6196163>

11 EU, EU-Turkey Agreement European Council Statement of 18 March 2016.. Available in: <https://www.consilium.europa.eu/es/press/press-releases/2016/03/18/eu-turkey-statement/>

12 DE LUCAS Javier. "Refugiados: ¿bienes o derechos? sobre el Acuerdo UE-Turquía, de 18 de marzo de 2016". Instituto de Derechos Humanos, Universidad de Valencia. Available in: [https://www.jstor.org/stable/26562128?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/26562128?seq=1#metadata_info_tab_contents)

Union, attempting to provide a solution to the refugee crisis that occurred in 2015 and 2016. The so-called refugee crisis<sup>13</sup> revealed the collapse and overload of the countries on the external borders of the European Union, so it was necessary to introduce new mechanisms that would lead to a more effective management of the refugee crisis.

It is interesting to pinpoint that both the relocation scheme and the EU-Turkey statement of 18 March 2016 are examples of restrictive asylum and refugee policies. At the same time, they have intensified political and social opposition to the reception and subsequent integration of refugees.

Populist and discriminatory movements have influenced asylum and refugee policies, intensifying a migration discourse focused on security. This has resulted in the criminalisation of refugees<sup>14</sup>. Border management should not be structured in a way that prevents individuals from seeking refuge in the European Union. In other words, no barriers should be placed to stop those in need of international protection from reaching Europe, as this would violate Article 14 of the UDHR, which grants the right to “seek asylum,” as well as the 1951 Convention relating to the Status of Refugees.

This issue persists today, as certain political and social movements continue to uphold discriminatory and exclusionary attitudes, prioritising security concerns over the principles of recognition and hospitality. On one hand, the recognition of refugee status is a fundamental right, as the institution of asylum is activated upon verification of persecution that threatens the applicant’s rights, rendering them unable or unwilling to return to their country of origin or residence. From this perspective, there is a clear connection between human rights and the institution of asylum, as

the 1951 Convention also enshrines the principle of non-refoulement. This reinforces the obligation to respect this principle and the role of states as protectors against potential human rights violations that refugees may face.

Conversely, the rise in discriminatory behaviour, along with increasing xenophobia and racism, and the erroneous portrayal of refugees as a threat to the security of the European Union and its Member States, has led to the criminalisation of asylum seekers. The number of asylum applications in the EU has declined since 2018 due to the imposition of barriers to entry into the European Union, with a further decrease to a total of 417,070 in 2020 as a result of the health crisis caused by COVID-19.

In this context, the significant reduction in asylum applications in 2020 is notable, not because of a diminished need for refuge, but due to the closure of borders, the suspension of international protection procedures, and the overcrowding of refugee camps as a result of the COVID-19 health crisis. For instance, the Moira refugee camp housed 13,000 individuals in a space designed to accommodate only 2,500 people. In the aftermath of the health crisis, asylum applications in the European Union increased, as indicated by the statistics referenced in this analysis. In 2020, a total of 417,070 applications were registered in the EU, rising to 537,355 in 2021<sup>15</sup>.

In the case of Spain, the number of international protection applications amounted to 86,380 in 2020 and 62,050 in 2021, whereas in Portugal, there were 900 applications in 2020 and 1,350 in 2021. As observed, there remains a significant disparity in the number of applications, which may contribute to the backlog, delays, and insufficient resources

13 DE LUCAS, Javier; NAÏR, Sami. *Mediterráneo: el naufragio de Europa*. Valencia: Tirant Humanidades, 2015, p.35.

14 GOODWIN-GILL Guy, MCADAM Jane and DUNLOP Emna, *The refugee in international law*. Oxford University Press, 2021.

15 EUROSTAT. Asylum statistics, 2024. Available in: [https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr\\_asyappctza&lang=en](https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_asyappctza&lang=en)

in processing asylum and refugee cases in Spain, given the considerably higher volume of requests<sup>16</sup>.

Despite this, there is clear evidence of restrictive migration policies and the stance of certain countries that prioritise the sovereignty principle over shared responsibility in matters of asylum and refuge. A notable example is Hungary, where the UNHCR has expressed concern over legislative developments, particularly the adoption of Law LVIII in 2020, alongside transitional regulations and measures for epidemiological preparedness, which were designed to obstruct access to the country. In this context, the UNHCR criticised the approval of Law LVIII on Hungary's Transitional Regime and Epidemiological Preparedness, linked to the cessation of the state of emergency declared in response to the COVID-19 health crisis. In the words of UNHCR:

*“This law further undermines effective access to territory and asylum for people fleeing wars and persecution, which have been severely restricted before. Under the new legislation, people who arrive at the Hungarian border with the desire to apply for asylum will be turned away and will have to declare their intention to a designated Hungarian embassy. This may expose asylum-seekers to the risk of refoulement, which would constitute a violation of the 1951 Convention relating to the Status of Refugees and other international and regional human rights instruments to which Hungary is a party”<sup>17</sup>.*

In 2020, following the collapse of refugee camps, the suspension of international protection procedures, border closures, and the erosion of asylum seekers' rights, the

creation of the New Pact on Migration and Asylum on 23 September became essential. Consequently, the formulation of new objectives within the 2020 New Pact on Migration and Asylum was driven by the significant challenges emerging in the areas of refuge and asylum, affirming the need for comprehensive reform, stating:

*“significant shortcomings and the complexity of managing a situation that affects different Member States and in different ways”<sup>18</sup>.*

The European Union acknowledges that the existing system for protecting refugees' rights has been ineffective in responding to the health crisis, resulting in numerous violations of those rights. Specifically, the New Pact, though well-intentioned, seeks to address the deficiencies in asylum and refuge mechanisms and prevent the breakdown of the principle of solidarity<sup>19</sup>.

The 2020 New Pact on Migration and Asylum sets out the following objectives as themes for work:

*“Rigorous and fair management of the external borders, including identity, health and security checks; fair and effective asylum rules, simplifying asylum and return procedures; a new solidarity mechanism for search and rescue, pressure and crisis situations; improving crisis forecasting, preparedness and response; an effective return policy and a coordinated EU approach to return; comprehensive governance at EU level for better management and implementation of asylum and migration policies; mutually beneficial partnerships with key third countries of origin and transit; the development of sustainable legal pathways for people in need of protection and to*

16 Ibidem.

17 UNHCR, “Access to asylum is still at stake in Hungary,” News, 29 June 2020. Available in: <https://www.acnur.org/noticias/press/2020/6/5efa39b74/acnur-el-acceso-al-asilo-esta-aun-en-juego-en-hungria.html>

18 EU, Communication from the European Commission on the New Pact on Migration and Asylum of 23 September 2020. Available in: [https://ec.europa.eu/info/sites/info/files/new-pact-on-migration-and-asylum-package\\_1.pdf](https://ec.europa.eu/info/sites/info/files/new-pact-on-migration-and-asylum-package_1.pdf)

19 MORGADES GIL, Silvia. “Refugee”. *Eunomia: Revista en Cultura de la Legalidad*, n°10, April-September 2016, pp.235-240. Available in: <https://e-revistas.uc3m.es/index.php/EUNOM/article/view/3061>



*attract talent to the EU; and support for effective integration policies*<sup>20</sup>.

Regrettably, the lack of consensus and opposition to the obligation of protecting refugees' rights continues to make headlines today. A relevant example is the challenge by Hungary and Slovakia against the relocation of migrants, which was linked to the temporary aid measures for Italy and Greece. This challenge was ultimately rejected by the Court of Justice of the European Union (CJEU)<sup>21</sup>.

It also highlights Hungary's infringement, which includes penalising assistance to asylum seekers, as noted by the Court of Justice of the European Union (CJEU) in its judgment of 16 November 2021, case C-821/19, *European Commission v. Hungary*. In this case, there is a violation of Article 33 of Directive 2013/32, as Hungarian law criminalises the submission of an asylum application alongside a declaration of inadmissibility, thereby contravening the stipulations of that directive<sup>22</sup>.

UNHCR's position on the protection of refugees' rights in Hungary is clear and states:

*“The legislative development in Hungary allows for the direct expulsion of asylum seekers, expresses concern about the legislative development in Hungary, the adoption of Act LVIII on transitional rules and epidemiological preparedness related to the cessation of the state of danger in response to the COVID-19 situation. This law further undermines effective access to territory and asylum for those fleeing wars and persecutions, which had already been severely restricted before. Under the new legislation, people who arrive at the Hungarian border with the desire to apply for asylum will be turned away and will have to declare their intention to a designated Hungarian embassy”*<sup>23</sup>.

In 2021, in contrast to the over one million applications for international protection received in 2015 and 2016, the directive for the urgent reception of refugees from Ukraine was unanimously adopted. This directive, approved by all EU Member States as a protective measure, will apply to:

*In this regard, this protection will apply to “Ukrainians, as well as third-country nationals or stateless persons granted international protection in Ukraine, and their family members will be*

20 EU, Communication from the European Commission on the New Pact on Migration and Asylum of 23 September 2020. Available in: [https://ec.europa.eu/info/sites/info/files/new-pact-on-migration-and-asylum-package\\_1.pdf](https://ec.europa.eu/info/sites/info/files/new-pact-on-migration-and-asylum-package_1.pdf)

21 As an example, is the challenge by Hungary and Slovakia in Joined Cases C-643/15 and C-647/15, *Slovakia and Hungary v. Council of the EU*. In the judgment of the CJEU of 6 September 2017. Available in: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=194081&pageIndex=0&doclang=ES&mode=lst&dir=&occ=first&part=1&cid=300155>

22 The Court of Justice ruled: “Declares that Hungary has failed to fulfil its obligations under Article 33(2) of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection by allowing the refusal of an application for international protection on the ground that the applicant arrived on its territory through a State in which he or she is not exposed to persecution or risk of serious harm or in which an adequate level of protection is ensured; Articles 8(2) and 22(1) of Directive 2013/32 and Article 10(4) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, by providing for criminal penalties in their domestic law for the conduct of any person who, as the case may be: in the course of an organizational activity, assist in making or making a claim for refugee protection in its territory, where it can be shown beyond a reasonable doubt that it knew that the claim could not succeed under that Act. In the EU, CJEU judgment of 16 November 2021, Case C-821/19, *European Commission v. Hungary*. Available in: <https://curia.europa.eu/juris/liste.jsf?language=ES&num=C-821/19>

23 Asylum-seekers may therefore be exposed to the risk of refoulement which would constitute a violation of the 1951 Convention relating to the Status of Refugees and other international and regional human rights instruments to which Hungary is a party”, because the denial of access to the territory jeopardizes the right to asylum. “Because of these fundamental concerns, we urge the Hungarian government to call for the law to be withdrawn and to review its asylum system to bring it into line with international refugee and human rights law, as well as EU law,” said Gillian Triggs. In UNHCR, “Access to asylum is still at stake in Hungary,” News, 29 June 2020. Available in: <https://www.acnur.org/noticias/press/2020/6/5efa39b74/acnur-el-acceso-al-asilo-esta-aun-en-juego-en-hungria.html>

*granted temporary protection if they resided in Ukraine before 24 February 2022. For third-country nationals who resided in Ukraine before 24 February with a permanent residence permit and are unable to return to their country safely, member states apply for temporary protection or adequate protection under their national law. Member States will also be able to apply this Decision to other persons, including third-country nationals legally residing in Ukraine who are unable to return safely to their country of origin, as well as to Ukrainians who fled shortly before 24 February or who were in the territory of the Union just before that date. For example, for professional or holiday reasons.*<sup>24</sup>

According to the European Asylum Agency, the following individuals have benefited from this protection measure:

*“Around 4 million people fleeing Ukraine as a result of the Russian invasion were granted temporary protection at the end of 2022, while another 966,000 people applied for asylum during the year”*<sup>25</sup>.

In the context of Ukraine, the Council of the European Union activated the Temporary Protection Directive, which was specifically established for such circumstances and was promptly enacted by national authorities. This directive enabled individuals fleeing Ukraine to receive temporary protection without undergoing the standard asylum procedure<sup>26</sup>.

A key feature of this procedure is the unanimous agreement among all EU Member States in response to the crisis in Ukraine, along with their commitment to providing immediate temporary protection without requiring

any waiting period for procedural processes. This approach stands in stark contrast to the disagreements surrounding the protection of the numerous waves of refugees fleeing the conflict in Syria.

On the other hand, we will examine data concerning migration to the EU, particularly concerning Spain and Portugal, in contrast to the previous statistics on applications for international protection. As observed in the context of international protection, migration from abroad declined in 2020 and 2021 due to the border closures implemented in response to the COVID-19 pandemic. Specifically, in the EU, there were a total of 2,294,305 and 2,933,148 arrivals classified as regular in 2020 and 2021, respectively. Regarding irregular arrivals, the figures were 126,310 in 2020 and a total of 199,898 in 2021<sup>27</sup>.

In recent years, arrivals to the EU have seen a significant increase. In 2022, the number of regular arrivals reached 3,454,684, while irregular arrivals totalled 326,217. Although data on regular arrivals for 2023 are still forthcoming, irregular arrivals have already reached 385,445<sup>28</sup>. Hence, there is a discernible upward trend in both immigration and applications for international protection.

Based on the analysis conducted and the data presented, it is evident that there are several challenges to address. These include the rise in arrivals and the growing need for international protection, the obligation of states to ensure the protection of human rights, the implementation of restrictive migration policies, the establishment of regulatory

24 Council of the EU, “Ukraine: Council unanimously introduces temporary protection for people fleeing war”. Press release, 4 March 2022. Available in: <https://www.consilium.europa.eu/es/press/press-releases/2022/03/04/ukraine-council-introduces-temporary-protection-for-persons-fleeing-the-war/>

25 EU, European Asylum Agency, Annual Trends, 2022. Available in: <https://euaa.europa.eu/latest-asylum-trends-annual-overview-2022>

26 Ibidem.

27 UE, COMMISSION EUROPA, Data asylum, 2024. Available in: [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-of-life/statistics-migration-europe\\_es](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-of-life/statistics-migration-europe_es)

28 Ibidem.

instruments that hinder access to the EU, the criminalisation of immigrants, and the questioning of fundamental principles of the EU, such as the principle of solidarity, which we will examine in the following section.

## 2.2 THE NEW MIGRATION AND ASYLUM PACT OF 14 MAY 2024 AND THE PRINCIPLE OF SOLIDARITY

Recently, the new Pact on Migration and Asylum was established, having been adopted by the Council of the EU on 14 May 2024. This Pact introduces significant advancements in the management of migration policies and implements important changes that will have implications in the near future<sup>29</sup>.

Article 80 of the TFEU encompasses the principle of solidarity alongside the principle of shared responsibility, which applies to EU asylum and refugee policies. The management of the refugee crisis has tested the EU's principles, revealing ongoing disagreements in migration management. Recent years have demonstrated a persistent lack of consensus, with the notable exception of the unanimously approved urgent measures for temporary protection in response to the conflict in Ukraine, which have placed a burden on neighbouring countries. This situation arises because countries at the external borders receive a substantial number of applications for international protection, and in emergency circumstances, they often become overwhelmed. In particular, Greece,

Italy, and Spain have been significantly affected by the influx of refugees and the exponential increase in arrivals, primarily due to their geographical positions.

As FILIPPO GRANDI advocates, it is essential to combat xenophobia because it undermines the rights of refugees and undermines the institution of refuge, stating in this regard “*the right to asylum, and the values of tolerance and solidarity that are its foundations, are undermined by xenophobia, nationalist rhetoric and political discourse that associates refugees with security concerns and terrorism*”<sup>30</sup>.

In all instances, the formulation of asylum and refugee policies must adhere to EU values and principles. As established, the principles of the EU are delineated in Article 2 of the Treaty on the Functioning of the European Union (TFEU):

*‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society characterised by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men’*<sup>31</sup>.

At the same time, Article 80 TFEU recalls the application of the principle of solidarity and equitable distribution:

*‘The Union policies referred to in this Chapter and their implementation shall be governed by the principle of solidarity and equitable sharing of responsibilities between Member States, including financial responsibilities. Whenever necessary, Union acts adopted pursuant to this Chapter shall contain appropriate measures for the implementation of that principle’*<sup>32</sup>.

29 CEAR, informe sobre el Pacto de Migración y Asilo de 14 de mayo de 2024. Available in : <https://www.cear.es/wp-content/uploads/2024/04/Pacto-Europeo-de-Migracion-y-Asilo-retos-y-amenazas.pdf>

30 Elimination of racism, racial discrimination, xenophobia and related intolerance: full implementation of and follow-up to the Durban Declaration and Programme of Action, combating racism, racial discrimination, xenophobia and related intolerance, full implementation of and follow-up to the Durban Declaration and Programme of Action, A/71/288 of 2016. Available in: [https://ap.ohchr.org/documents/dpage\\_s.aspx?si=A/71/288](https://ap.ohchr.org/documents/dpage_s.aspx?si=A/71/288)

31 EU, Treaty on European Union of 7 February 1992, signed in Maastricht. 2016 consolidated version. Available in: <https://www.boe.es/doi/2010/083/Z00013-00046.pdf>

32 Ibidem.

In 2011, the EU issued an urgent call for solidarity in the area of asylum and refuge, recognising it as a crucial component of the Common European Asylum System (CEAS), determining:

*“Solidarity has been recognised from the outset as an essential component of the Common European Asylum System (CEAS). The need to translate solidarity into concrete actions stems from practical realities, given that the asylum systems of all Member States are interdependent. An overloaded or faulty system in one Member State has a clear impact on all the others, even through secondary movements. Asylum flows are not constant and are not evenly distributed across the EU. They have fallen from a peak of 425,000 applications for EU-27 Member States in 2001 to less than 200,000 in 2006, with a sharp increase expected this year. The increase in asylum flows risks weakening the ability of some Member States to cope with them. It is the responsibility of the Union to assist those Member States, in particular in upholding the Union’s common values and fundamental rights, by ensuring adequate reception of asylum seekers and refugees and access to protection”<sup>33</sup>.*

A new feature of the recent Migration and Asylum Pact, adopted on 14 May 2024, is the establishment of a solidarity mechanism to address humanitarian crises resulting from mass arrivals that overwhelm and collapse international protection procedures<sup>34</sup>. While this solidarity mechanism is primarily intended for countries at the EU’s external borders – specifically Italy, Spain, and Greece, which receive the majority of applications – it can also be applied, if necessary, to any Member State.

This solidarity mechanism, although it aims to address the need for international protection, presents a challenge as it relies on relocation agreements with third states<sup>35</sup>. Such agreements may undermine individual protections and threaten their rights, particularly if individuals are sent to countries where the safeguarding of rights cannot be assured. Consequently, relocation agreements are interconnected with the externalisation of borders, always adhering to the criteria established by the Dublin I and II Regulations, which stipulate that the state responsible for examining an application for international protection must be the first country through which the individual enters the territory<sup>36</sup>.

The new Pact also preserves the requirement for personal interviews, indicating a need for additional training for those conducting interviews with applicants for international protection. It is essential to adequately address the needs of individuals and to identify potential victims of issues such as human trafficking or gender-based violence.

### 3. CONCLUSIONS

In recent years, the European Union’s concern regarding the criminalisation of foreigners, including refugees, merits particular attention. Through the development of standard-setting instruments, the objective is to eliminate the barriers that refugees may face in host Member States, which impede their integration process.

33 EU, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on greater solidarity within the EU in the field of asylum An EU agenda for better responsibility-sharing and mutual trust /\* COM/2011/0835 final \*/ Available in: <https://eur-lex.europa.eu/legal-content/ES/TXT/HTML/?uri=CELEX:52011DC0835&from=EN>

34 CEAR, informe sobre el Pacto de Migración y Asilo de 14 de mayo de 2024. Available in : <https://www.cear.es/wp-content/uploads/2024/04/Pacto-Europeo-de-Migracion-y-Asilo-retos-y-amenazas.pdf>

35 SOLANES CORELLA, Ángeles. “Protección y principio de non-refoulement en la Unión Europea”, *SCIO*, 2020.

36 Ibidem.

In summary, given the rising number of applications and the effects of various regulatory instruments, it is acknowledged that the institution of asylum and the management of the refugee crisis by the European Union is again faltering in light of the increasing demand for protection. It is crucial to emphasise the importance of the principle of solidarity, which should apply to all significant groups in need of international protection, irrespective of their country of origin, as their fundamental rights, such as life, security, and health, are at risk.

Consequently, it is essential to raise awareness of the connection and role of criminology and criminal law in migration crises. From the legal-criminal perspective on migration policies, it is important to highlight the dangers associated with the ongoing criminalisation of refugees, who are incorrectly portrayed as criminals and threats to public security. Restrictive or prohibitive migration policies are often influenced by xenophobic, hostile, and criminalising narratives directed at foreigners, including immigrants and refugees.

Certain social trends advocate for restrictive migration policies centred on control and security, which, alongside the criminalisation of foreigners, tend to prioritise border defence and closure. This criminalisation of foreigners may even serve to justify the use of criminal law as a migratory tool. However, it is crucial to avoid this error, as it would contravene fundamental principles, such as the principle of minimum intervention.

Nevertheless, the resolution of the refugee crisis is intricate, and no singular solution exists, as it relies on the international commitment of states, international cooperation, and the collective efforts of the global community.

In summary, numerous actions must be taken to ensure the protection of migrants' rights, which necessitates the implementation of more humanitarian migration policies that offer greater guarantees, while moving away from

utilitarianism and significantly reducing the criminalisation of immigrants.

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