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Human Rights Defenders in the Mediterranean countries and the Refugee crisis

A research analysis of their risks and the
usage of regional instruments for their protection

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“The human instinct, the European and global instinct, will always aid people who may die. It is one of our values that we need to accept, migration exists, it existed since the beginning of the time. We should control it with the creation of safe pathways” (Moraes et al.,2019).

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Thank you,

Author,

Andriana Karaouli

TABLE OF ABBREVIATIONS	
CEAS	Common European Asylum System
CEDAW	Committee of the Elimination of Discrimination Against Women
CFSP	Common Foreign and Security Policy
CoE	Council of Europe
CSOs	Civil Society Organizations
EC	European Commission
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
ENNHRI	European Network of National Human Rights
EP	European Parliament
ESRC	Economic and Social Research Council
EU	European Union
EU Council	Council of the European Union
FOE	Freedom of Expression
FRA	European Union Agency for Fundamental Rights
HR	Human Rights
HRD	Human Rights Defender
HRDN	Human Rights and Democracy Network
HRW	Human Rights Watch
IMO	International Maritime Organisation
IOM	International Organisation of Migration
ISHR	International Service for Human Rights
MS	Member States
MSF	Médecins Sans Frontières
NHRIS	National Human Rights Institutions
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
PACE	Parliamentary Assembly of the Council of Europe
RSF	Reporters Without Borders
SAR	Search and Rescue Operations
SOLAS	International Convention for the Safety of Life at Sea

UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	The UN Refugee Agency
UNHRC	United Nations Human Rights Council
UNSRHRD	UN Special Rapporteur on the situation of Human Rights Defenders
WHRD	Women Human Rights Defender
WRC	Women's Refugee Commission

Abstract

The aim of this paper is to examine the case study of the defenders assisting refugees and migrants that arriving in the Mediterranean countries. This research draws evidence from the international, regional and national legal texts related to the migration policies and is further assisted from interviews and the results of investigations conducted in the relevant zone. The supporting guideline is the UN Declaration on Human Rights Defenders that later incorporated in the EU Guidelines on HRDs. As the term is vast without a binding character neither a specifically defined group under protection, the attention emphasizing on the transnational humanitarian movement developed in the area in order to provide help to the moving population towards Europe.

After an analysis of the European migration policies during 2015-2020, the findings ended up to a systematic criminalization of this movement and disproportionate restrictions over the civil society space, justified by the EU plan for reducing the arrivals to its territory. Following my interests regarding humanitarianism during the refugee crisis, the paper will scrutinize the way HRDs targeted for their solidarity to the people seeking international protection.

In a second examination, the research suggests the regional democratic mechanisms as a means of incorporating the defenders in the migration programs for ensuring better protection for them. The issue is unfolded right now and emerges the EU to recall its democratic values and establish a system that will respond to the defenders' needs and will fulfill its obligations under the international HR standards.

Keywords: migration, European policies, HRDs, criminalization, protection mechanism

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Introduction

The present study is analyzing the term human rights defender specified in a restricted geographical area and related to the immediately expressed humanitarian assistance corresponding to the European migration crisis during 2015-2020. Admittedly, the issue of migration is closely related to the refugee crisis because of the mixed migrant flows arriving together with refugees over the last years in Europe. Consequently, the paper incorporating both migrants and refugees to the moving population. By examining the humanitarian support provided to those people, came up, the need to define the defenders operating in the Mediterranean countries. The research locates a pattern of violations occurring against the people defending HR in the sea and land European borders which, will be critically examined throughout this paper.

More specifically, since the outburst of the refugee crisis, civil society actors, activists and NGOs supported the incoming flows in different ways. They developed a transnational movement that,

“flourished in the last decade while it was trying to make sense of the increasing use of humanitarian narratives by policy-makers, as well as the increasing involvement of humanitarian agencies in activities related to migration and border management” (Cuttitta, 2019, p. 16).

It expressed across Europe in different aspects including *“participation in negotiations during state-led policy-making events and secondly, contribution on the ground of services directly supporting the incoming population”* (Desvachez, 2015). The research will analyze the systematic targeting of this humanitarian wave through the European and the member states’ migration policies.

In fact, the Union, *“focused its border governance outside the jurisdiction of EU ms in border zones and, within EU neighborhood countries formalized as extraterritorial arrangements between the EU and third countries”* (Palm, 2020, p. 10). The impacts of those policies affected directly the defenders’ operations by exposing them to stigmatization for their assistance. They face accusations for participating in smuggling networks or facilitating the illegal entrance of the people. On the one hand, there was created a conflicting environment where the defenders prioritize the security of the people and conversely, the EU agencies, *the Libyan and European coast guards attempted several pushbacks to the countries of origin and endanger the defenders’ operations* (PACE, 2019 a). On the other hand, similar policies of migrants’ exclusion followed in the European internal by *recalling even older legislation that enabled a new wave of anti-migrant laws* (Meko, Sharma, 2016). Moreover, the research will further address, many laws that shrunken the civil society space and equally, designed to restrict the possibilities of assisting the moving population.

Analytically, the topic of the refugee crisis had a central role in the public discourse and presented in Europe through a mixed media culture which *differed widely in terms of the predominant media coverage and revealed a different understanding of the issue across the EU ms and especially, of those who were more affected by the new arrivals* (Berry, Blanco, and Moore, 2016, p. 96). The lack of a common European perception of the crisis and the mixed migrant and refugee population led to stricter security measures. The

effectiveness of those policies is illustrated in the statistics of the previous year as *during January of 2019 noticed the lowest number of migrants and refugees arriving in several ms through different land and sea routes* (IOM, 2020 b, p. 33). However, this approach fails to acknowledge, as reported by the UNHCR's Director of the Bureau for Europe, Pascale Moreau "*The Mediterranean is one of the world's deadliest sea crossings*" (UN News, 2018 a).

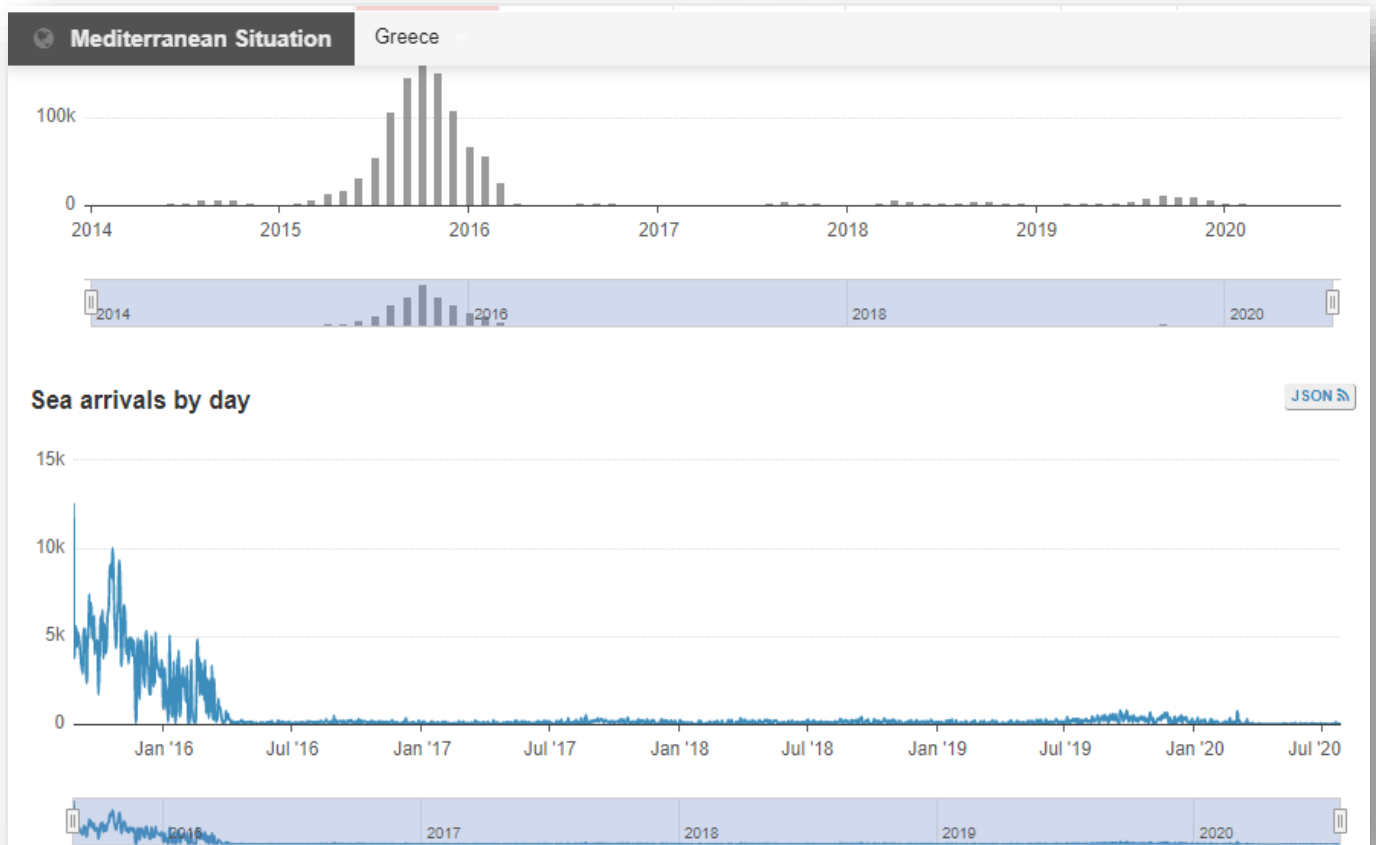


Figure 1: The lowest rates recorded in January 2019 (UN, n.d., b)

Only the defenders captured the hidden risks occurring in the area. They developed a new model of humanitarian services operating by land and sea, which targeted and criminalized through the anti-migrant EU practices.

Following this pattern, the research noted the abstention of an effective document or legal norm that could protect the defenders' humanitarian efforts. The findings ended up to the "*Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*" namely, *UN Declaration for the protection of HRDs* that later incorporated in the European Union Guidelines on HRDs (UNGA, 1999). The problem of its non-binding character and its invisibility from the international HR' culture reveals the need for amendments and a productive mechanism that will ensure the security of the defenders. Having the Declaration as a starting point the research will emphasize on the case of the defenders providing humanitarian assistance in the

Mediterranean. By projecting both the risks and the developments that happening in the area, the purpose is to show the emergency of a new system. This will bridge the ambiguity regarding the place of the defenders in the contemporary European migration crisis.

Chapter 1. The UN Declaration on the protection of HRDs

1.1. The HRDs' rights enshrined in the Declaration

The term HRD has only been part of the humanitarian science terminology for the last twenty years. It was adopted by the General Assembly's Resolution A/53/144 (UNGA, 1999). After years of prosecutions against the defenders, the document provides the space for "*the necessary connection between the abstract deliberations of governments and the practical needs and wishes for their citizens*" (Cohen, 1990, p. 137). It follows that, it created a greater possibility for involving the defenders in the decision-making and ameliorating their relations with the governmental national and international bodies. Furthermore, the adoption of such a document created the potential for restricting states' arbitrariness occurring against the defenders and ending the impunity for non-state actors. The latter consists of a group *that has already been indicated for the various forms it takes in the global scene as a threat for the defenders and for its indirect attacks that are hardly visible* (UNGA, 2010 a).

Both state and non-state factors affected the operations of the defenders in the Mediterranean. This thesis main concern is related to the systematic exclusion of the defenders from the sea rescue operations (SAR) and the procedures followed to suspend the daily support in the migration/refugee centers. On the one hand, states targeted the NGOs and the individuals through laws that restricted *the right to assembly* in an attempt to decrease the action of civil units who provided help to the incoming populations (TANEA Team, 2020). Equally, threatening practices against the defenders recorded in Italy where adopted legislation that *forbidding the entrance to the Italian ports for migrants saved by boats run by non-governmental organizations* (Maccanico, 2019, pp.1-2). On the other hand, the non-state actors' response to migration is also obvious in the research. It expressed intensively in Greece where it took the form of the far right-wing populist party which expressed by the neo-Nazi political party Golden Dawn. They *shaped paramilitary units operating violently against the defenders' infrastructures* (Anon., 2020 a). Hence, even if the Declaration refers to *all humans who can potentially complete a role as HRDs*, the defenders remain exposed to dangers and their principal freedoms challenged.

The chapter will examine the rights that are enshrined in the Declaration providing this way the legal background that justify the defenders' actions in the Mediterranean. Most importantly, proves the recognition of the right to defend HR. Additionally, the text will review the states' responsibilities concerning the defenders and their protection.

At first, it should be clarified that the *Declaration does not establish new rights but revising the already existing ones applied in the case of HRDs* (OHCHR, 1999). It is a wide-ranging legal artifact, which firstly underlines the *responsibilities of the states to protect HRDs* (art. 2). This implies that the state needs to take all the necessary measures to secure their safety and also to do not interfere arbitrarily in their operations. Thus, the document introduces the incorporation of HRDs in the regional and international level without

though specifically defining the unique characteristics that differentiate them from other groups and urging their protection. The present case will underline the gaps that superficially approached to the Declaration and the inability of the ms to comply with the international standards of HR and support the defenders in the Mediterranean.

Analytically, article one indicates that *“everyone’s right to act individually or in association with others to promote and protect HR and fundamental freedoms in both national and international level”*. The article is expounding and further justifying their rights per articles five to thirteen. These explain the conditions under which the defenders can operate. In terms of promoting HR,

“Everyone has the right to form, join and participate in governmental and non-governmental organizations associations or groups and also communicate with them (art.5). Moreover, everyone has the right, individually and in association with others, to have effective access, on a nondiscriminatory basis, to participation in the government of his or her country and in the conduct of public affairs” (art. 8).

The Declaration further refers to the right of the defenders *“to know, seek, obtain, receive and hold information about all HR and fundamental freedoms, including having access to information” (art.6)* as well as, *“to develop and discuss new HR ideas and principles and to advocate their acceptance” (art.7)*. On the other hand, it is clearly enshrined the right *“to participate in peaceful activities against violations of HR” (art. 12).*

The last part regarding the rights of HRDs articulates their status in the judicial system. To be more specific, the Declaration fully embodies the principle of *a fair representation and protection under the law* in cases of violating the rights mentioned above (art 9(2)). In addition, *“everyone has the right individually or in association with others to be benefited with an effective remedy and also be protected in cases of a risk or danger” (art.9(1)).*

At the basis of the right for a fair trial, persons or groups of people whose freedoms of protecting HR disregarded, have furthermore,

“the right to complain about the policies and actions of individual officials and governmental bodies by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities...of the State” (art.9(3a)).

Finally, it is clearly underlined that HRDs have the right to use any *“resources which would be helpful for promoting, protecting and preventing from HR violations” (art.13)*, always in accordance with the national and international standards of using peaceful and legitimate means.

Keeping up with the defenders’ rights, the above analysis indicates that the legislators prioritize specific rights, which conceive a particular meaning in the case of this research. In fact, *since the 2014 the defenders in the Mediterranean developed a transnational network of several humanitarian organizations supporting the incoming flows that inserted the humanitarian clause in the “deployment of moral sentiments in*

contemporary politics” (Cuttitta, 2018, p. 635). However, this movement targeted exactly because of this multilayered structure and through restrictions of the rights to intercommunicate or form assemblies for organizing effective mechanisms for the moving population. Additionally, the aspect of gaining access to resources has a central role in the paper. On the one hand, it was a core condition for conducting rescue operations while, on the other hand, *it was not clarified that the defenders without a profit-making motive for transferring people could not be criminalized or punished* (Ryngbeck, 2017, p. 1). Finally, the right to a fair representation conceives an important meaning in the research. At first, it enabled the drawing of a specific pattern of violations and courts’ procedures that followed against this particular group. Secondly, the fact that the regional bodies noticed this criminalization and proposed security measures for them is used in the research as a mechanism of protection of the defenders in the Mediterranean countries.

The second part of the Declaration (onto article 18) demonstrates the responsibilities of the States. Indicatively, states should promote and protect the defenders’ rights. What emerges from these instructions is the creation of a legal administrative environment that would enable the defenders to enjoy their rights. Hence, among these duties are enshrined that,

“The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction” (art. 9(5)).

Not only that but also states will play an important role in promoting HR through the establishment of *national institutions and the resource allocation in relevant sectors* (art. 16,13). Consequently, the Declaration specifically recognizes the state as an important actor for safeguarding HRDs’ freedoms.

Finally, some general aspects sourcing from the document regarding the issue of professionalism. To be more specific, it *“is more attached in jobs such as lawyers, judges and journalists or professors who are working in relevant organizations and institutions, therefore they get paid due to their work by the private or the public sector”* (OHCHR, 1999). Except the professionals in the term are included many HRDs who participate in NGOs or associations and they act for the promotion and the protection of *HR without any financial gain*. Equally, people who *are not organized in HR bodies, through their work can assist in securing HR* (OHCHR, 1999). For example, in this case, the photo-reporters not only provided upgraded material for the conditions in the close camps but also were targets for many non-state actors. Hence, what matters to define is their field of work and whether or not it is related with the empowerment and development of fundamental freedoms and the ideals of HR. In the end, many organizations *are incorporated in national and international projects and participate in the decision-making processes*. Specifically, they can be part of *advisory or supervisory groups regarding governmental policies* and decisions or, on the other hand, can persuade governments in meeting their obligations in safeguarding HR the rule of law and democracy (CoE,

2007 a, p.27). Therefore, it is obvious that there are no specific requirements for becoming a HRD but it could be argued that a minimum standard is accepting the principles of HR and working for their promotion.

Concluding Remarks

The interpretation of the Assembly's document can be used in defining "*who is an HRD and what (s)he does by articulating existing HR in a way that makes it easier to apply them in their situation*" (ISHR, 2013). Therefore, in line with the terminology of the Declaration, a HRD could be any person who operates individually or in association with others and aiming to protect and promote HR. They could be easily *identified by their actions when these contribute to the promotion of fundamental freedoms or the expression of acts of impunity for HR' violations* (UNSRHRD, n.d.). They can claim for all the recognized rights enshrined in the international covenants of civil and political rights as well as the economic, cultural and social one. There is no geographic limit in their operation, and they participate in regional or intergovernmental organizations. Finally, the UN Declaration for HRDs supports an international and formal institutional framework with great potentials for individuals and non-governmental groups to be active in promoting HR. However, the research showed that the document *lacks visibility in the humanitarian agenda while there have not created essential changes for promoting the place of the defenders around the globe* (OHCHR, 2018).

1.2.Considerations Regarding the Declaration

In the examination of the term HRD under the UN Declaration on HRDs, everyone could possibly be an HRD, if s/he acts in promoting and protecting HR. The term is extremely broad without setting specific criteria for the person who needs protection under law with the status of being an HRD. More specifically, the definition, as articulated, in the document includes multiple and different actors incorporated in diverge groups like NGOs, associations, civil society spaces or even individuals who often do not meet common characteristics. The complexity of this actor and the controversies arising from the involvement of such differentiated partners cause many issues considering their protection and characterization in the international community.

At first, the Declaration enshrines "*the universally accepted rights that describe a common standard for HR applied to all people and all nations*" (Bantekas , Lutz, 2020, p. 36). However, there is no clear relation to these rights with the person who actually fulfills the competences as an HRD. As a result, the defenders can claim a violation against them based on the traditionally accepted legal norms of HR and not under the auspices of being a defender. The drafters of the Declaration collected and ascribed to the defenders already existing rights without though creating a stable context that recognizes and separates them from different groups who seek protection under law. The lack of "*a standardized procedure for determining the status of a HRD leaving this open to interpretation while also set limits in the explanation for the stakeholders themselves*" (Nah *et al.*, 2013, p. 403).

More specifically, the research did not find any case that explicitly refers to the status of an HRD. Instead, the investigation found cases of people operating individually for HR or associations and NGOs, interested in several HR issues. The findings illustrate that even the defenders themselves have not yet familiarized with the document. On the other hand, the people who represent them usually in the courts do not acknowledge the paper's importance in their argumentation which, *"should always describe the individual as HRD and refer to relevant wording within the Declaration and the EU guidelines"* (FIDH, 2016, p. 2). Surprisingly, the right to protect the established and fundamental HR values marginalized and usually excluded from the judicial spaces. The lack of integration in the structure of justice indicates the stability in the evolution of the term and the abstention of provisions for protecting HRDs in cases of violations against them.

Another problematic point of the Declaration is the character that conceives in the legal agenda. In particular, the document is a statement that frames the term HRD and amends it in the UN HR' field without having a legally binding role that makes the states accountable. Under international HR law and the creation of the treaties:

"Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. Therefore, the treaties provide the principal legal protection of HR guaranteed under international law" (UN, n.d., a).

The fact that states do not have any obligations under international law regarding the situation of HRDs led to a denial of responsibilities for the protection of the defenders. As a result, even if nowadays, the societies shifted to the embodiment of CSOs who can participate in a state or in the international community *as advocates who democratically represent the interests of particular groups and better engage in the decision making*, controversially in that case the defenders approached as enemies who risk Europe's integrity by getting engaged in illegal networks (Diale, Richter, 2018, p. 96).

As long as there is not a binding document that makes states accountable for their responsibilities, the defenders will be under threat. According to this paper, states not only did not create a safe environment for the defenders' operations but also proceeded to interventions of various forms that disrupted the humanitarian work in the countries of the Southern Mediterranean. Undoubtedly, this case manifests the abstention of the term from the governmental planning and the constant undermining of the defenders' purpose: *"to prevent and alleviate human suffering wherever it may be found"* (Saez, 2019). Similarly, it has been noticed a generally emerging environment for them around the globe. The UN Special Representative on the situation of HRDs sent warning letters to several countries as China, Brazil and Afghanistan reporting daily abuses such as

“repression of protest and democracy, impunity for excessive use of force by police, the alleged use of chemical agents against protesters, the sexual harassment and assault of the population, and collective repression of religious and ethnic minorities” (OHCHR, 2020).

The repeating violations against the defenders and the lack of protection mechanisms specifically designed for the defenders, origins from the unclear settlement of the term and the ambiguous obligations enshrined in the Declaration. Thus, a crucial issue is states’ denial to implement their commitments and *ensure the enjoyment of HR* as it provided in the UNDHR (UNGA, 1948). Despite the rights in the UDHR, there are no more provisions that could apply distinctly in the case of the defenders. The document needs to proceed to a more limited perspective of HR that will specifically be in line with the right to defend HR. A final point related to the Declaration of HRDs and the insufficient protection of its subject found in the absence of the term from the public discourse. Intentionally or not, the international, regional, and national bodies systematically avoid integrating the Declaration’s principles in their constitutions and practices. One aspect of omitting the Declaration could be the nature of the document as a non-binding instrument. Consequently, states and the international bodies did not proceed in further actions for establishing their status in the concept of HR. A different aspect of the development and the ignorance related to HRDs is the nature of their action and the possible outcomes on a political, social, and economic level. They conceived a role and, particularly the legally recognized organizations, *“as substitutes or supplements to international legal operating systems that have a positive influence on contemporary codes and norms and such as the social and economic rights and the participatory democracy”* (Cáceres, 2012, p. 81). As a result, their existence as a HR guardian could pose obstacles to the states’ decision-making and thus, the latter avoid to grant further freedoms.

Because of that, after twenty years of the adoption of the Declaration, the outcomes underline the demand for re-examining the term HRD as it is enshrined in the document. Even if the Declaration was supposed to create a safe environment for the people who daily participate in the advocacy of HR and the embracement of the fundamental values, the incidents came to contradict those expectations. The global scene already counting an alarming increase in the violations against people who demand the securing of HR. As the Special Rapporteur on the situation of HRDs, Michel Forst, comments: *“The Declaration has become a milestone in the HR’ project, but I am more concerned than ever”* (Yakupitiyage, 2018). Moreover, in a number of cases even the states themselves are the main perpetrators against defenders. In accordance to that, the Amnesty’s International Secretary General, Kumi Naidoo, noticed that *“everyday ordinary people are threatened, tortured imprisoned and killed for what they fight or simply for what they are”* (Yakupitiyage, 2018). This is maybe the key answer in the public discourse around HRDs, as the research will focus on the criminal and stigmatized load that the term carries on.

Considering everything, the way the Declaration is articulated as an international document could be characterized as weak and maybe has an opposite effect on the HRDs. It has not yet reached a point, which

would enable HRDs to fully enjoy their rights. After research and as it will be obvious in the following analysis, there has been a gap related to the state and in general, the global actors' commitment in consideration of whom could possibly be an HRD and how s/he could be protected. It is of great importance to understand why this category is crucial in the field of HR. Through their efforts to achieve better humanitarian goals for the society by demanding better humanitarian conditions, "*they have a central role in the realization of HR*" (Soohoo, Hortsch, 2011, p. 984). Thus, the global coalition should reinforce measures that will include them in future HR projects.

Chapter 2. Defining the defenders in the Mediterranean

Introduction: European framework for HRDs

At first, due to the vagueness of the Declaration's definition, the research will analyze and specifically characterize who is recognized as a defender in this paper. Taking into consideration, the characteristics that addressed in the document I will attempt to implement its principles in the case of the defenders in the Mediterranean zone. The purpose is, to allocate them some distinct elements and eliminate the vast definition provided by the international instruments. By applying those standards and investigating, the relevant provisions it could be defined a specific concept of HRDs. Secondly, by exposing the risks in this particularly located context it could be revealed the weak nature that both the defenders and HR have in the Mediterranean. As a result, a limited and adequate definition of HRDs in the European high seas that incorporates their daily risks could be a counter-argument for those threatening their operations and the ones who deny them protection.

Since there is not a standardized procedure to define an HRD, the research will focus on the case of HRDs who provide humanitarian aid to the moving populations arriving in the Mediterranean countries. The paper will compose a pattern of systematic violations regarding their work that will further reveal their marginalized position during the migration/refugee crisis. The identification of the repeated European policies, which directly affected the defenders' operations, shows the gap between the theoretically adopted Declaration and the actual measures against the defenders. Thus, the outcomes of the research, indicating a new era for the rights of HRDs. They need something more than a declaration that will provide them a safe zone to conduct their mission.

In accordance with the developments for the defenders provided by the Declaration, Europe adopted similar documents for their incorporation in the HR' field. At first, the EU established the *European Union Guidelines on HRDs* in 2004 that updated in 2008 (EU, 2004). The document is incorporating the defenders

in CFSP¹ and emphasizing in supporting and protecting HRDs in non-EU countries (EU, 2017). Except of the major points enshrined in the Declaration among others, the European guidelines amend the importance of creating contacts with third countries in order to promote and respect the right to defend HR (EU 2004). Furthermore, in 2017 proposed a plan for further inclusion of the HRDs in the European Agenda. It prescribes the establishment of contacts with the HRDs, public statements, raising of concerning HRDs' stories, dialogue with the countries in concern, periodic reporting and support to the UN Representative on the situation of HRDs (EP, 2017 a). Not only that but also the EU took progressive financial measures to uphold the defenders' operations. In particular, the Reg. (EU) No 235/2014 highlights the allocation of funding for "urgent protection needs of HRDs and democracy activists" (EU, 2014 a). Finally, the platform PROTECTDEFENDERS.EU designed within the EU and is consisted of different organizations and individuals who manage the site in order to monitor the situation of HRDs worldwide (EU, 2015 a).

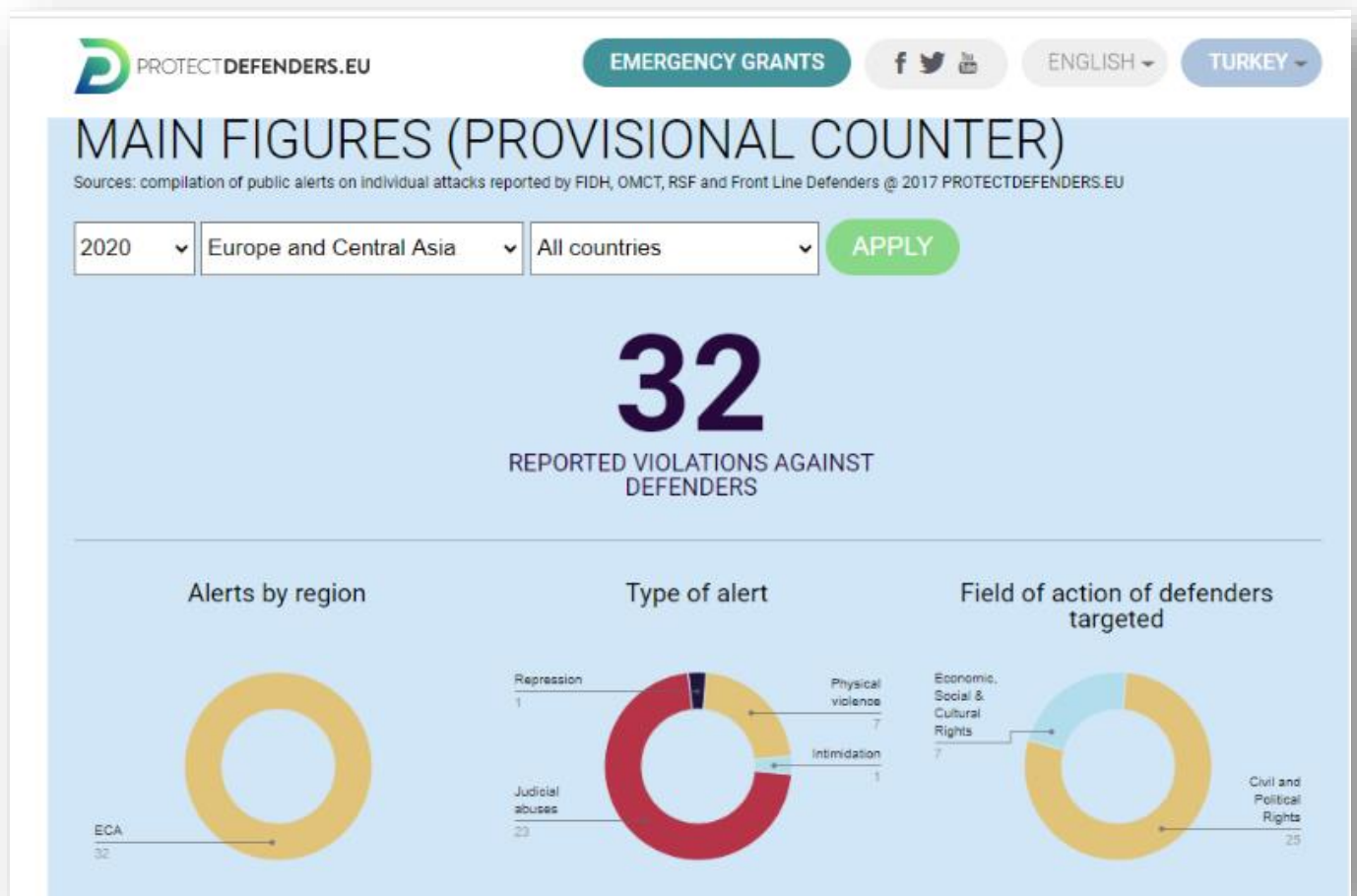


Figure 2: Searching the defenders in the European Platform for HRDs (EU, 2015 a).

¹ The EU's CFSP was established in 1993 under the Maastricht Treaty. It seeks to preserve peace, reinforce international security and promote international cooperation with respect to HR. For more details see: https://eur-lex.europa.eu/summary/glossary/foreign_security_policy.html (EUR-Lex, 1993).

The EU projects about the defenders seem promising with a strong commitment to the defenders' vision but there is no reference to the Mediterranean case. The latter despite their active presence remain in the margin. More specifically, the last EU Action Plan on HR and Democracy does not allude to them and refers explicitly to:

“HRDs in risk including acts of dialogues and missions, addressing the incidents of impunity and increasing the importance of burden sharing and coordination between EU Delegations. Also embodies the rights of the LGBTI community and prioritizes the women defenders” (EU, 2015 b).

Equally, the EU Special Representative on HR who monitors the implementation of the European HR' standards concentrated so far the *attention to countries after transition* without actually capturing the ongoing problems facing the defenders (EU External Action, 2019).

In the end, in 2014 OSCE adopted the *“Guidelines on the protection of HRDs”* which underlines the legitimate role of HRDs in promoting HR (OSCE, 2014). OSCE focuses the attention in their relationship with NHRIs. The institutions can be essential *for receiving the defenders' complaints, publicizing their issues and advocating their activities in a conducive working environment* (OSCE, 2017, p. 124). Despite the innovations related to the HRDs in the European context, the official instruments keep repeating the demand for protecting the defenders in high risk and ignoring urgent issues occurring right now in the territory. Specifically, HR in Europe move towards an external policy that strengthens the *EU's HR engagement with strategic partners who have an important regional and multilateral presence* (Mogherini, 2016, p. 6). The impacts of those policies revealed a year after with an obvious shrinking of the civil society space. Indicatively, the problem took such dimensions that led the EU instruments to publish documents that emphasizing on the importance of CSOs who *“are both actors of governance and development, acting in their own right”* (EU, 2018, p. 19).

To sum up, the HR concept is not static, *“debates over their nature, their boundaries, and the appropriate enforcement mechanisms have always been a problem”* (Seldon, Kierans, 1994, p. 119). As the mechanism constantly change, the new group emerging for protection is the defenders operating in the Mediterranean borderlines. Despite the fact that *now more than ever the humanity can address HR violations and face them, on the contrary*, an atmosphere of impunity prevails while defenders are fighting for the maintenance of fundamental principles in the European land and sea borders (Vitaliev, 2007, pp. 14-24).

2.1.The defenders in the Mediterranean under the scope of the Commentary Declaration

In 2000 the Commission of Human Rights requested by the Secretary General to establish a mandate in the situation of HRDs. The mandate among others underlies the main roles of the Special Rapporteur in the situation of HRDs: *“to seek, receive, examine, and respond to the information of HRDs, establish cooperation and, conduct dialogue with governments and other actors in the promotion and effective implementation of the Declaration”* (OHCHR, 2011, p. 2). For the mandate holders, Margaret Sekaggya, Hina Jilani even if

“efforts made to adopt laws that are in line with international standards their inefficient implementation in practice remains a problem” (OHCHR, 2011, p. 5). In addition, identified that

“secondary laws have subsequently restricted rights that are pivotal for the full implementation of the Declaration while States have used these domestic laws to legitimate violations of HR and seriously impair the work of HRDs” (OHCHR, 2011, p. 4).

After the completion of their research, the OHCHR adopted the Commentary Declaration in an attempt to improve the understanding of the responsibilities for both the governments and the holders of the rights. The commentary after revising the principles addressed in the Declaration of HRDs proceed in the analysis of certain rights that usually violated. Besides, the issues that arisen remain the same and illustrated in the European case. In the further analysis, it will be obvious why their actions are legitimate and seek for protection.

At first, the Commentary revises the *“right to be protected”*. (OHCHR, 2011, Chapter 1). In that case, states have the obligation to: *“prevent and refrain from all acts of reprisal against defenders and ensure adequate protection as well as access for defenders to the UN representatives and mechanisms”*. Despite the existence of these provisions, during the period 2015-2019, in Europe reported many incidents against the defenders. The literature proven that either they were refused to police protection or they were not properly protected. For instance, in Greece incidents *of the police violations against the protesters recorded almost every month*. (Tsoukala, 2017). Alternatively, issues came up in relation to *privatization* as many NGOs were subjected *“to investigations based on the accusations of handling a large amount of money from unknown origin”* (Ventrella, 2017, p. 1).

Furthermore, the Commentary addresses the right *“to develop and discuss new HR’ ideas”* (art.7). For the defenders as the Rapporteur underlies the problem arising when this principle is conceived as *“challenging the socio-cultural norms”* (OHCHR, 2011, p. 15). In the research this phenomenon translated with the perception of the defenders as enemies of the European values despite the fact that they acted in accordance with the principles of the EU. These are enshrined in the EU Charter of Fundamental Rights that have a binding character for the states and prioritize the ideas of *human dignity, the right to life and the integrity* of the person while oblige the ms to take the relevant measures for their protection (EU Charter, 2012, (art. 1-3)). On the contrary, the states themselves challenged these points as *“the right to life undermined by the ceasing and disruption of the SAR operations and the criminalization of assistance to asylum seekers while human dignity was clearly absent in the conditions refugees and migrants find themselves in Europe”* (Gozdziak, 2020, pp. 5,6).

The right to develop HR ideas and considering or suggesting new models is obvious in the research as the defenders attempted to present a humanitarian model that would incorporate the moving population in the European context. At first this solution seems necessary for Europe as the *unstable conditions in Syria and*

the dangerous environment in the African countries will not be solved soon (WPR, 2020). In accordance to that, IOM also pointed out the *moving population's contribution to the destination countries by providing their expertise* (IOM, 2020 a, p. 196).

The commentary revises furthermore, the rights to freedom of opinion and expression, which are closely attached to the work of HRDs as they can publicize issues and sensitize the society in relevant occasions. However, it *“does not have a single justification but comprises a complex system of many layers attached to freedom of the individual and the community at the same time”* (Barak, 1990, 4e). It is an expression of liberty for every opinion in every public means of information. Therefore, as it includes such a vast context of interpretation states are allowed to *limit it if it meets the legal order, it is posed proportionately and serves a necessary for the society purpose* (Mendel, 2010). By using these restrictions, the paper will address incidents of prosecutions against journalists who accused for defaming politicians for embezzlement of migration funds.

Another point, which revises the document, is the right to *an effective remedy* (art.9(1)). The reflections of the gaps related to this right are found at many levels. At first, a worrying matter closely attached to defenders is the lack of *prompt and impartial investigation* (art9(5)). This reveals the continuous risk situations of HRDs as well as the apathy that prevails in the police investigations. This paper will refer to a pattern of violations against them. Indicatively, in the island of Lesbos during February to March 2020 *documented more than fifteen attacks or threatens* to humanitarian organizations present in the island (RSA, 2020). The latter already expressed their concerns regarding the pressuring situation while the police has not yet taken action to eliminate these incidents. It is essential to stop the impunity to acts of violence against the defenders and engage policies that confronting the perpetrators. The work of the defenders is an integral part of the HR' field, by ignoring or consenting to those crimes states and authorities are being a conniver in the same crime.

At the next level, there will be examined a group of rights: the right to freedom of assembly, freedom of association, and the right to protest. Undoubtedly, the benefits of coming into association with individuals or groups of people is crucial for the promotion of HR. In addition, the right to protest is the only tool, which can effectively and on time press the government as it has the dynamic of *“a collective action that presupposes the coordination and the expression of collective choices”* (Porta, 2015, p. 213). These possibilities for claiming a right has a dual meaning in this research. First of all, until today *protests are unfolded in terms of preventing the construction of close detention centers* (Fallon, 2020). Secondly, the moving flows also organized into associations and proceeded to protests requesting better living conditions. The main problem of these liberties is their fragility as they are subject to easy restrictions. Consequently, the governments that examined in the research, by using explanations such as social security limited those rights.

In other cases, the findings reveal *disproportionate use of force by the authorities* even when the demonstrations are held peacefully. Over the last years in similar instances, there have been *severe incidents*

and even deaths during the demonstrations (Koreth, Lartey, 2020). Undeniably, the police is responsible for *enforcing the law and balancing negative and positive rights always under its discretion in liberal democracies* (Lint, 2014, p. 218). However, it is essential when restricting a right to be consistent with the relevant responsibilities under law. At this point, the Rapporteur recalls the right of HRDs to freely participate in assemblies and associations and recommend to states to adopt laws and take measures that protect those rights. Finally, a point that should be raised is the element of violence during protests. Many times governments use this argument for restricting relevant gatherings. But, acts of violence are inevitable especially, *when societies are experiencing economic hardship or political repression* (Trascasas, Maslen, 2014, p. 7).

The defenders also facing obstacles regarding the formation of organizations. To be more specific, in some incidents defenders had to face penalties because their organizations were *not registered in the national records, or in other cases states have strict laws that make it extremely difficult for them to be an official part of the state system* (Anon., 2019 a). However, the issue of mandatory registration applies only in the cases that an organization *asks for a legal personality and differently is not equated as breaching the right to freedom of association* (Venice Commission, 2014, §43). Consequently, raising punishing measures consists a disproportionate sanction. Despite that, the analysis will pose specific examples of certain legislation that adopted for eliminating the rescue operations in the Mediterranean. For example, Greece forbid the missions of unregistered NGOs.

As it pointed out, the issue of funding of NGOs and in general organizations is really problematic. In the research the defenders faced accusations of getting engaged in criminal activities or illegal trade systems. Governments in that way, argued that they participate in smuggling networks and criminalize their efforts to promote HR. Except for that, a reason why defenders do not easily have access to economic sources is the lack of efficient state-funded programs that would provide adequate financial support to the organizations. For those reasons, the commentary recognizes their right to *“access finding individually/in association with others for the purpose of promoting and protecting HR under Art. 13 of the Declaration”*. Additionally, amends that states have to refrain from insert limitations *in traveling procedures of the defenders* and embrace international cooperation for the promotion of HR (OHCHR, 2011, p.52). This aspect is crucial as *HRDs are able to travel locally and abroad to help in creating a conducive environment for all*” (Coalition D., 2017). Once again, these violations are not omitted from the research as the defenders were detained and denied to exit the country based on accusations for supporting the entrance of migrants.

Summing up, the Commentary underlined the gaps sourcing from the Declaration and the defenders’ rights that are mostly violated. The research supports this claim and exposes similar violations that happened in the Mediterranean. These violations should be critically examined and be part of the contemporary HR’ issues. It is already highlighted in the IOMs’ global report that

“migration is becoming a political topic. The politicization of migration evidenced by a series of developments which still haven’t been incorporated in the international agendas. All these indicate close links between economic-social-political issues, on the one hand, and mobility on the other” (IOM, 2020 a, p. 8).

Even if the issue came up with dynamics and potential in the international community, still has not incorporated provisions for the research’s objects. The abstention of the defenders from the humanitarian discourse remains a problem. The defenders’ movement in the Mediterranean calls for embracement of the term and protection of the people who provide humanitarian assistance to the moving population.

2.2. Defining the Defenders in This Research

The research will nominate the defenders and designate the risks they daily face. The scope over the defenders will concentrate the attention in the case of the European migration/refugee crisis and the people providing humanitarian assistance in the Mediterranean countries. They already underlined the terrible living conditions of the refugee camps, which are captured in the Moria refugee center, in Lesvos. They characterize the place as the *“worst place for someone to leave there,”* underlying like this the importance of a collective assistance to the reception centers (Interviewee A, 2016).

It follows that it is important to define who the defenders in this text are. By understanding, what rights they try to protect it will be justified why the research asks the establishment of a specific HR approach to be planned by the relevant stakeholders. As a background, the definition will help the reader to recognize the concept of their work and the environment they operate. Equally, the analysis will reveal the multiple actors who participate in terms of forming the definition and their relation of interdependence. Below it will be analyzed their profile aiming to prove their importance in securing safe living conditions for the moving flows. Their interconnection and the complexity of their relations define their activities and shape their demands.

2.2.1. The Moving Population

The first who are entitled with the status of an HRD are the people who belong themselves in the incoming flows. Their contribution as defenders to the global scene is of great importance. Initially, many of them prosecuted and carried to the countries of acceptance a different and more holistic opinion regarding the war. In particular, the global report on the situation of HRDs mentions:

“The Syrian Arabic Republic is a state of emergency regarding the violations against defenders. There are notes about arbitrary arrests in peaceful demonstrations about democratic reforms, ill-treatment in police under custody and involvement of security forces in torturing and deaths” (Forst, 2018 a, pp. 375-380).

It follows that, some refugees used their previous experiences in order to support the new arrivals and prevent the tragedies they also faced during their journey to approach Europe. Some of them *joined organizations across Europe* and contribute in the rescue operations in the seas (Interviewee B, 2016). An indicative example is the case of the Syrian women Sarah and Yusra Mardini who trained as professional swimmers and gained refugee protection. After a year, Sarah *“returned to the island of Lesvos as a volunteer*

lifeguard in a Greek, non-profit humanitarian organization that assists refugees in distress” (Karas, Zavallis, 2016).

Not only the Syrian refugees but in general, the people who were claiming for international protection defend their rights for the fundamental principles of human dignity and the right to life. Analytically, the people had to surpass awful conditions including coexistence *of 20,000 people in a camp designed for 3,000 without adequate medical support* (Basay E., 2020). Under these conditions, they started movements and claim for essential needs and inalienable rights of the human beings. However, during 2020 the demonstrations and the protests *“have been intensified especially when the Greek government approved laws which are in hard-right line on asylum issues, temporarily transferring the Migration’s Ministry mandate to police and army authorities”* (Fotiadis, 2020). They also participated in demonstrations organized by locals or the present organizations. In some cases, they had a central role in the organization of the major claims of the people in the move. On the contrary, the police authorities suppressed these actions by targeting both the locals and the third country nationals who confronted with *“fired flash-bang grenades and tear gas at the marching crowd including also children”* (Squires, 2020).

At this point, it is necessary to address that the term defender in the research also embodies migrants for two reasons. Primarily because they participated in actions which highly risked their claims for asylum. In Greece, this is of high importance as the Minister of Migration *suggested a new law specifically designed for suspending asylum procedures for “delinquent behavior”* (Greece. L4636/2019, 2019). In the meantime, *established a special police unit for investigating the offenders who are “possibly related to Muslim terrorist networks”* (Pazianou, 2019). Secondly, due to the fact that *they proceeded even in last resort solutions like hunger strikes joined by a few asylum seekers in terms of demanding the optimization of detention conditions* (Ahmetasevic, 2017). In conclusion, the UN definition presupposes as a minimum standard for fulfilling the criteria of being a defender the promotion of HR. Those people can be entitled as defenders because even in cases of illegal entrance in the EU territory they prioritize the defense of basic freedoms by endangering their potentials for a residence permit.

It should be underlined that both categories are claiming for their legitimate right to international protection that is enshrined in the European and international law. More specifically, per article 14 of the UDHR:

“Everyone has the right to seek and enjoy in other countries asylum from persecution. The right may be not invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the UN” (UNGA, 1948).

According to that, the Syrian refugees lawfully demand protection as their country of origin is in a war situation. After the threat of chemical weapons and *the refusal of the UN to intervene, there should not be any further thoughts in the question of the refugee arrivals* (UN News, 2018 b). Additionally, migrants who are

detained in Libya, “*are subjected to inhuman living conditions including forced labor, physical abuse, sexual violence, lack of food and clear water while the survivors are victims of the local smugglers for years*” and therefore need to be protected (Leghtas, 2018, p. 3).

Summing up, this group organized in different ways claiming for better living conditions with adequate food health care provisions and most importantly respect to human dignity. They often had to face a number of obstacles also counting a systematic marginalization from the relevant authorities and constant threats from local people *who conceived their arrival as threatening* (Qiblawi *et al.*, 2020). Taking into account these acts, they meet the standards addressed in the HRDs’ Declaration. By recognizing their efforts and providing them the relevant safeguards, they will have easier access to the judiciary system as in places like Libya “*civilian and also military courts underperformed or are completely shut down*” (HRW, 2019, p. 359). The HRDs’ space located in Mediterranean is complex including many different actors that influenced by deeply political decision-making progress. These interactions occurring simultaneously and except of the moving population calls other humanitarian bodies to intervene.

2.2.2. The NGOs

General considerations regarding the transparency of the NGOs operations

The next participant as an HRD in the migration zone considered the non-governmental organizations. The latter constitutes an internationally recognized actor in the protection of HR. Nonetheless, the complicated and multilayered character they have is a point of ambiguity and mistrust. As there are many, questions regarding the legitimacy and accountability methods of these instruments the research will frame the operational environment of the NGOs in confrontation to the general doubts related to their function. Secondly, the focus will emphasize on the NGOs acting in the Mediterranean.

In particular, the NGOs were legally established in the humanitarian *community during the 90s as supplementary instruments, which gradually came into the public sphere and participated in the national and international decision-making* (Grigorescu, 2015, p. 217). In the UN Charter, there is an explicit reference to them as a consulting body during the forming of policies of the Economic and Social Council:

“The Economic and Social Council may make suitable arrangements for consultation with nongovernmental organizations... such arrangements may be made with international organizations and, where appropriate, with national organizations...” (UN Charter, 1945, (art.71)).

More specifically, the NGOs in the research embody different types of organizations which are defined as a:

“non-governmental organization (NGO), a voluntary group of individuals or organizations, usually not affiliated with any government that is formed to provide services or to advocate a public policy. Although some NGOs are for-profit corporations, the vast majorities are nonprofit organizations” (Karns, 2020).

The presence of the NGOs in the Mediterranean portrays the contemporary and diverges NGOs construction around the globe that includes an alloy of *neoliberal, socially democratic, anarchist, and self-autonomous organizations*. (Gautney, 2010, pp. 102-134) The first two categories are closely cooperating with the political institutions and engaging in the public sphere. They are going beyond the traditional norms of protesting and towards the development of social and political alternatives to neoliberal globalization. In that case, they are active participants in society and undertake projects of public interest. Similarly, they can provide to states their expertise and collaborate with them as external actors to achieve their purposes and promote their policies.

The formality provided by these activities can contribute to the recognition of “*an authority with institutionalized expertise advanced from being suspicious outsiders to governments to being frequently welcomed to negotiation tables and institutional decision-making processes*” (Lang, 2013, p. 71). Controversially, the discussion becomes more complicated regarding the legitimacy and transparency of the NGOs that conduct transnational operations as it happens in this research. In particular, concerns arising when their geographical flexibility at a multinational level, facilitates partnerships all over the world. In that case, “*the organizations consist a formation of international networks which organizing themselves into coalitions that apply political pressure*” (Gautney, 2010, p. 93). They can work with a region-specific focus and communicate with the locals to foster the implementation of the HR’ documents. Nevertheless, usually their burden with accusations regarding their fundings. Despite this, their dynamics increased when they consisted of different actors that presupposes better organization and consequently, more effective accountability mechanisms.

In accordance to the literature if they, fulfill certain criteria it is easier to be considered as more trustworthy, accountable and effective. At first, they *need transparency*, an element, indicated by the production of public reports including the distribution of their financial resources and their missions around the globe. Secondly, a dynamic public appeal can facilitate access to more sources, and consequently possibilities for greater *independence* from governments and other powerful actors. Presupposing the existence of those elements the other three standards is their responsiveness, participation, and inclusion in the decision-making. Analytically, *their responsiveness “is active when democratic legitimacy requires the interests voiced by citizens and reflects them adequately enough in the political executive actions”*. In the end, *taking part in the procedures ensures the promotion of HR under core democratic values and without a radical declaration of their beliefs* (Steffek ,Hahn , 2010, pp. 101-115). Additionally, it seems that the globalization procedures enable the NGOs to create international networks and be established in the international community as actors who globally protect and promote HR. Therefore, there have been many innovations in this aspect with the only problem that even though they challenge the political power they do not consolidate it.

On the other hand, the paper also includes autonomous, self –organized and anarchist groups whom action was highly condemned during the period 2015-2020. In accordance with their system usually:

“the tradition of productive protest is masked by the association of anarchism with the conspiratorial violence often depicted in fiction. However, anarchy involves contesting systems built on alienation, domination, and greed, while promoting solidarity and sympathy instead.” (Kinna, 2019, p. 4).

Moreover, their actions except for protests and self-organized structures include direct nonviolent and violent incidents, which usually driven through illegal means of expression. They are targeting high-profile politicians or in general, people who are perpetrating violations of HR and these acts have hidden symbolic meanings that condemn the relevant breaches of law and ethics. However,

“as the history of the international movement show, anarchism needs to be understood as a distinctive and coherent tradition of political theory and practice. This may help its own proponents to reflect on the adverse consequences of violent action, and it may persuade the wider public to take its actions more seriously as a significant alternative approach to social change” (Goodway, 2012).

To sum up, even if anarchist and autonomous organizations not respond in the normative NGOs term still they participated in the humanitarian movement and responded to the demands of the incoming people in a unique sense that actually captured their true needs.

Achieving greater legitimacy and accountability for the NGOs can be difficult. Initially because of incorporating such different actors with various ideological and structural foundations. Except for this fussy point, another factor that prevents legislators from adopting a strong legal mechanism, which would make possible a more accountable system for NGOs, is the field of their activities. Analytically, different types of NGOs focus on independent and sometimes contrasting rights. For instance, an organization could claim the labor rights of workers in a carbon factory and another could fight against its function for environmental reasons. HR are so interdependent it is hard to identify the criteria that could possibly limit the NGOs’ actions and subject them to an audit procedure that at the same time could be an indicator of their validity as actors who promote HR.

In conclusion, the world social reform brought together people from a broad variety of social and ideological backgrounds. Besides, the forming of such organizations and their inclusion in the decision-making further promote HR around the globe. The oppositions that derive from the lack of an effective mechanism to control them can be easily explained based on the above analysis. More specifically, as legitimacy is used in *“a normative form that refers to the conditions under which powers rightfully exercised and the conditions under which persons or institutions in power manage to gain acceptance and support from the people they rule over”* (Steffek, Hahn, 2010, p.7).

It is really difficult to implement those principals in the multi-dynamic and multidimensional aspects that NGOs include. So if the states achieve accountability up to a point for the function of the NGOs they will

have to provide them an adequate legitimate status for their operations. Additionally, another counter-argument suggests that the NGOs because of their work are framed in an ethical concept that contradicts the idea of legitimacy. *“Under the perspective that the legitimacy on NGOs derives primarily from altruistic and progressive goals and their contribution to the common good”* it is the first indicator that legitimates the activity of an organization (Steffek, Hahn, 2010, p.10). Finally, there is the issue of the constituency which supports that *the more members or supporters an NGO enlists the more legitimate and its political activities.”* (Steffek, Hahn, 2010, p.10).

The extensive analysis of the NGOs operational environment and the questions regarding their legitimacy are of great importance in the research. The arguments regarding the lack of transparency and legitimacy of their operations in the high seas extended a way that targeted the defenders with a final purpose: to restrict their rescue actions in the migration routes. As the paper attempts to indicate them as capable defenders who need protection under international law it is crucial to shake down the generally accepted doubts regarding their work. Undoubtedly, there are gaps in a relation of their multiple functions and fields of expertise, but because of their nature, it is hard to implement a traditional norm that could incorporate effectively each aspect of the term. Maybe the greater possibility for more legitimate actions is an extended inclusion in the global policies, which would correspond to their needs. The NGOs consist of one of the most powerful components in the protection of HR, instead of criminalizing their action, it is important to highlight their efforts in the Mediterranean and place them under a protection regime from states and non-state actors who keep threatening them.

NGOs and the refugee crisis

It is the first time that Europe is witnessing such a coordinated work from the NGOs. They corresponded to the refugee crisis effectively by addressing all the deficiencies in the field and preparing an adequate environment that exceeded the national and international scarcities. Admittedly, the governmental actors focused more on safeguarding Europe borders by promoting

“a new European Border and Coast Guard agency, systematic checks against relevant databases on all persons crossing the external borders, a new entry-exit system for non-EU nationals, the European travel information and authorization system (ETIAS), new rules to make EU databases more interoperable” (EU Council, n.d.).

In particular, the European Agencies and the coast guard either *“refusing to respond to distress calls or ignoring them in order to prevent migrant boats from reaching European shores”* (MIGREUROP, 2020). On the contrary, the NGOs were saving lives by land and sea proving the inefficiency of the European confrontation of the migration crisis.

Analytically, from 2017 until 2019 various NGOs rescue ships in the Mediterranean took part in a speed race with the authorities in terms of preventing the refoulement of the refugee/migrant boats back to

Libya or Turkey. As reported the international NGO SOS Méditerranée “*a dozen NGOs were taking turns aiding people in distress at sea, but also acting as the eyes and ears of European citizens. Today, none of them are left*” (Anon, 2019 b.). This statement implies the obstacles the NGOs faced in the area and the repeated pressure for their operations. The systematic targeting of the rescue operations led the EP to adopt a resolution which embodied “*the exception clause for ensuring that prosecution is not pursued against individuals and civil society organizations assisting migrants for humanitarian reasons*” (EP, 2018).

Except for the sea operations, their contribution proven essential also in the land refugee centers. On the one hand, the formally and internationally established NGOs assisted in smoothing the difficult existing conditions. Namely, organizations such as Médecins Sans Frontières contribute with workforces for multiple activities as interpreters, psychologists, doctors, and administrators who are managing different aspects of life in the islands. As the people in Lesvos highlighted “*life without them would be impossible, they are contribution is touching*” (MSF, 2015). In other cases, their help attached in the efforts they made to communicate problems in the migration zones and call for local and international help. Indicatively, *organizations such as the International Rescue Committee published multiple reports for the problematic settlement of the incoming people* (IRC, n.d.). The multilayer approach in the examination of the camps’ conditions reveals that the NGOs did not approach superficially the incoming people. On the contrary, they deepen into their needs even by expressing the worries of health issues related to the issue of the *mental injuries that the European strict policies of close hotspots create* (CoE, 2019 a).

Equally important is the presence of the local NGOs that mobilized volunteers and civilians as well as provided qualified people for supporting the incoming flows. Lawyers, psychologists, social workers, and people who wanted to help this unprecedented situation arrive at the camps and work for surpassing the daily obstacles. For instance, improvised playgrounds created for children who were almost imprisoned, gender-based teams established to help single mothers or abused women who arrived in the Mediterranean. Moreover, interpreters participate in the asylum claim procedures to facilitate the process for refugees or in reunification cases, as states did not transfer language specialists to assist the people (Interviewee C, 2019). In many NGO’ cases, the available resources were almost nonexistent but due to the well-organized structure of the present organizations in each factor: health, food, gender, age, legal activities, etc. the resources were equally attributed and ready to face the problems.

Finally, mobilization came from deeply political organizations. The left motivated organizations took part in the settlement procedure by using different means. They proceed to distinct individual or collective actions, which further promoted the rights of the refugees and the migrants. Surprisingly, they achieve to create assemblies with participants from all the local elements of the islands. More specifically, representatives of the people of the camps, the activists, NGOs, and the inhabitants occasionally gathered and discussed the problems occurring in the area. Following these procedures claims from all the actors that mentioned above,

raised in terms of optimizing the situation for the incoming people. As these multiple sectors were interacting, first they develop a system of solidarity and a safe zone of communication that interrelate all the relevant factors. It is interesting that especially in the islands with the worst living conditions through these procedures and in general, the elements structure a completed community composed of multiple actors that have a specific function in it. Secondly, reveal the level of interdependence that they have in terms of realizing and demanding HR that meet the people's needs. Largely, these structures chosen more radical tools for the promotion of HR. They proceed in protests declaring the lack of adequate food, water, and shelter in the area.

Another point that should not be omitted is similar activities in places except for the islands. In the mainland of Greece, for example, also started remarkable initiatives. For instance, NGOs provided special units for sheltering unaccompanied minors (ARSIS, 2017). Other political anarchist organizations form spaces for homeless families with free disposal of food (Metanastwn, n.d.). Finally, more extremist organizations proceed to nontraditional actions to protect the refugees and migrants. In some cases, they occupy unusable spaces to welcome the populations. Even *if these practices are not legitimately correct*, undoubtedly, they ensure a safest environment for refugees by getting benefits from unusable buildings (Greece. L4495/2017 (art.23)). Those people when they transferred to the mainland, they faced poverty, discrimination and exploitation, so these tactics actually save them from those dangers. In that case, while the state was not prepared, on the one hand, to provide them accommodation and, on the other hand, to prevent illegal activities and networks that endangered them, these solutions could be considered as necessary.

In conclusion, the NGOs proved a core body of the rescue operations that fulfilled organic gaps by providing the expertise, the knowledge, the equipment, and the workforce they had. Even if they were multiple organizations with different dynamics, political or nonpolitical basis they achieve to design organized communities and a solid basis for their demands. Finally, the collaboration they had is a catalytic factor for creating a strong appeal in the international community. The inclusion of such multiple actors with different audiences makes possible to communicate the incidents happening in the migration zones and pressure global factors to assist in the situation. As a result, the term HRDF definitely applies in this case.

2.2.3. Civil Society Actors

The civil society shouldn't be equated with the NGOs, *"It is a broader concept that encompassing all the organizations and associations that exist outside of the state. Similarly, an active diverse society often does play a valuable role in helping advance democracy"* (Carothers, Barndtm, 2000, pp. 19, 21)

For this reason, the CSOs immediate response to the crisis will be examined separately. This civilian movement characterized by a collective European-humanitarian reaction. In the research, it is located specifically in Greece because it serves a completed sample of the humanitarian assistance provided by CSOS in the Mediterranean. Even if the impacts of the economic crisis were still obvious, the civilians provide food, medicines, and general assistance where it was necessary. It is of great importance to recognize the efforts

made by individuals who did not participate to any organization as this contribution consists part of a new type of social movement in Europe.

In particular, the development of this civilian movement of solidarity characterized as *pioneering and defers from the previous social movements*. First, the civilian networks that created *did not provide help only to the refugee gathering points but also to the third countries of origin*. It is a case of a transnational humanitarian reaction that except the solidarity motives that boost the cooperation of the people included *also reasonable claims supported by international law* (Pries, 2018, p. 59). So, the argument of an active and solid legitimacy for the protection of the defenders is further enhanced by the legal and political character of the movement. It is a movement, with a clear political message: “*support our Muslim Brothers and sisters! We are here now!*” (Pries, 2018, p 57). Specifically, it is noticed that European citizens from countries *that abstain from the migration support, developed special networks in the refugee routes to help the safe refugee transition* (Pries, 2018, p.61).

Another reason why the focus should be distinct to the civilians is the multilayer platform of their activities. Citizens from almost all the parts of Europe arrived in the Mediterranean refugee zones, providing legal assistance, house feeding, psychological and medical help, social-religious care, structures, and activities. Finally, a vast network of communication created after the “*increasing borderless nature of activism sourcing from the revolution in information and telecommunication*” (Reimann, 2006, p. 46). By using these tools, the establishment of the transnational movement was facilitated and made possible the coordination of collective actions even if the administrators were in different countries. Moreover, the local actors, participate actively in this movement and push, even more, the national and European instruments for assistance. As the ESRC highlights: “*civil society represents examples of good practice in refugee reception including mechanisms to coordinate international help and promotion of a climate of inclusion and welcome towards new refugee/migrant arrivals*” (ESRC, 2017).

These aspects of humanistic harmony illustrated in the case of “City Plaza”. This hotel is located in the center of Athens, and it was abandoned for more than seven years until activists occupy it. Gradually, *it attracted actors from all around Europe with whom it was created an autonomous refugee community isolated from the conservative idea of a close hotspot* (Plaza, 2016). This example reveals the levels of European cooperation, the refugee inclusion in the center of a European city, and a vital and innovative policy for the management of the crisis. As it is recorded, similar initiatives took place in many refugee arrivals points, and prove that “*in high-risk contexts, the emergence of sustained collective action is activated*” (Loveman, 1998, p.478) However, the local authorities and the European policies not even deny to take the responsibility for the crisis and support an advanced assistance program but, proceed to prosecutions of those activities and stigmatization of the defenders.

More specifically, journalists and photographers are in the first line of protection. The journalists, on the one hand, acted immediately in the crisis-information mainstreaming. The practices that follow should be mentioned as an example of journalism as “*they provided material about the new arrivals and the framework of these events as a crisis*” (Georgiou, Zaborowski, 2017, p. 6). The defenders promote representation of the human mobility crisis *by taking into account ethnic minorities and by understanding their rights and their identities* (Georgiou, Zaborowski, 2017, p. 7). Equally, the photographers assist to the construction of albums that portrayed refugees as “*they are people in need by providing detailed insights, their living conditions and their motives which called the attention to a humanitarian stance in asylum policy*” (Greussing, Boomgaarden, 2017, p. 1753). Their work on migration is important not only as delivering media coverage of the facts but also because it provided images and information for de-criminating the incoming people as terrorists or illegal migrants.

In the meantime, citizens also contribute as professionals by the coverage of incidents in the migration zone via social media, giving like this the opportunity to the public discourse to reconsider the media’s responsibility in the refugee crisis. Once again, the right to *FOE is restricted under international law when it is legally executed, necessary in a democratic society, and proportionate to the aim of the restriction* (ECHR, (art.10 (2)). However, it will be obvious in the research that these means usually used in terms of defamation, and as a result “*the responsibility of action was shifted in the practice of forgetting*” (Chouliaraki, Stolic, 2017, p. 1168). At the end, even if their work resumes the basic substance of the discussion related to the refugee crisis, with proves of the hard an inhuman condition that people daily face. They were treated as provocateurs who were often attacked by locals and far-right parties.

The last actors of the CSOs in the Mediterranean, which have to be mentioned individually, are the one who belongs in the health system. The first, had to surpass numerous obstacles. The weakness in the health care systems, especially in Greece, noticed from the beginning. There was not only a *lack of medical material but also the incoming refugee/ migrant populations were treated as foreigners with inadequate access to the hospitals and the health center systems while the medical presence in the camps was far too limited* (MSF, 2018). Based on witnesses, people had access only in emergencies and with their police papers. Besides, the doctors keep *demanding better health conditions in the camps*. (Anon., 2020 b). The latter, *further targeted from locals when they provided help to those people* (Anon., 2020 c).

Summarizing the Term

As a concluding point, the gaps in the definition of HRDs leave an open space for interpretation and examination of the term. This research provides a limited definition that emphasizing in the defenders acting in the Mediterranean and safeguarding the lives and the rights of the people reaching Europe due to the current refugee/migration crisis. The defenders present some common characteristics which allow a similar approach to their needs. Specifically, all the elements of the definition as a defender sourcing from the location where

they operate. In addition, independently from their status activities, they share the same purpose: the creation of better conditions in the reception centers. They created a transnational movement aiming to communicate a better understanding of the refugee crisis. The European defenders as well as the incoming people deal with numerous threats and attacks, which endanger their lives. They often approached in the public discourse as a threat to Europe. Even if the defined term, in an early examination, seems controversial with different actors, unrelated to each other in its substance, at the end, includes separate actors who communicate though as they deal with the similar obstacles, for the promotion of the same purpose.

The case of the defenders in southern Europe is an interesting example because proves the active existence of the people who represent the term HRD and the emergency of enacting laws for their protection. Furthermore, it incorporates threats and problems that are obvious and have the potentials to be confronted. They do not consist of an example with hidden and enormous violations that cannot be surpassed as happens in the developing countries or in authoritarian regimes. Hence, there should be a policy that recognizes their efforts and implement the Declaration of HRDs.

This already noticed from several European instruments that emphasized to these threats and emerged their protection. For instance, CoE underlined *the importance of bridging the protection gap for refugees and migrants through coordinated actions of both the coast guard authorities and the NGOs in the rescue operations and recommend as guiding principle the security of human lives* (CoE, 2019 b). In accordance to that, the next chapters will analyze the risks mentioned above and the measures undertaken for their protection. As the situation, getting worst the conclusions will suggest a mechanism that incorporates the defenders' efforts in the area.

Chapter 3. Criminalizing HRDs for providing humanitarian assistance to the incoming population

Introduction: European migration policies.

The humanitarian movement in Europe corresponded to the migration phenomenon immediately and, proceeded to various actions for enabling a safe and viable environment for the refugees and the migrants. However, the research will emphasize to a conscious exclusion of these practices as well as a systematic targeting of their efforts in the Mediterranean countries. The paper investigates a pattern of violations occurring within Europe and highly relating new migration policies with the restriction of the civil society's actions for supporting a secure passage to the moving population. At first, the topic will be examined at a European level and secondly, will focus on the impacts of those initiatives at the national level.

The starting point is the establishment of a Common European Asylum mechanism that prepared for sharing the asylum procedures among the ms. On the contrary, the countries *opposed deeply to this kind of solidarity mechanism to avoid an increasing burden-sharing of the crisis* (Zaun, 2019). For this reason, the

southern European countries were far more burden than the northern ones. Correspondingly, they developed national policies for restricting the entrance of the moving flows and equally, limiting the assistance that facilitated entry into their territory.

Analytically, the idea of European cooperation introduced in the Union's agenda in article 63(2) (art. 61 of the consolidated version) of the *Treaty on the European Community with the "solidarity clause"* (EU, 1957). The provision focuses the attention in practical and collaborative cooperation amongst the ms that aiming to handle the information coming from the countries of origin and addressing common policies related to the asylum seekers. Steadily, the Union adopted the Common *European Asylum System* (CEAS), *established in 1999 that promoted a shared system for the incoming flows in its territory* (EC, 1999). This plan amended and transformed the recent years in an attempt to reduce as much as possible the incoming flows in the EU.

For instance, an interesting point regarding the CEAS adopted in The Hague Program, that in paragraph 1.6.3 prioritizes the cooperation with countries and regions of transit, including,

"The need for intensified cooperation and capacity building, both on the southern and the eastern borders of the EU, to enable these countries better to manage migration and to provide adequate protection for refugees. Support for capacity-building in national asylum systems, border control and wider cooperation on migration issues" (EU, 2005).

For the first time, the EU is emphasizing *"on the capacity-building of third-country asylum systems that makes them responsible for taking partial responsibility for managing migratory flows"* (Chetail Bruycker, Maiani, 2016, p. 480). This provision should be underlined as it posed numerous problems to the rescue operations and in general, to the way HR were perceived in the European migration context. More specifically, the EU proceeded to agreements in an attempt to prevent the moving flows from passing through the Mediterranean or other Balkan routes to its territory. For instance, the partnership with Libya endanger both the people in need along with the defenders. The Libyan authorities undertook to secure the EU-African borders and prevent migrant boats from reaching Europe. The main concern related to this deal is the threatening behavior they presented against the defenders when they had to block rescue operations occurring by the humanitarian organizations. The research recorded concerning behaviors with threatening *fire shots in the air against the humanitarian safe ships* (Anon., 2019 c). In parallel, *"the Libyan authorities were claiming that they demand more cooperation with the state of Libya and asking for more respect of the Libyan sovereignty"* (Henley, Giuffrida, 2017). Undeniably, the deal extended beyond the concept of sharing the migration responsibilities to a political game where the Libyan authorities did not hesitate to risk the defenders lives for transacting the agreement's provisions.

In addition, the need of an enhanced cooperation is enshrined in article 67.2 of TFEU:

“It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between MS, which is fair towards third-country nationals” (EU, 2012).

In parallel, the pillars of solidarity translated into financial terms from the beginning of the procedures as in 2000 the Council authorized the European Refugee Fund that could further relieve the European burden-migrant zones (EU Council, 2000). Except for funding the European ms the Union empowered economically other countries *“like the recent financial support offered to Africa to promote stability in the third countries”* (EUAuditors, 2018). The financial support regarding the migration crisis is a core element of the EU-Turkey deal that provided *more than six billion European funds, from both institutions and individual states, to improve the humanitarian situation for Syrian refugees in Turkey* (Long, 2018). This agreement proves that the EU prioritized the economic support to a country that is highly disputed for its democratic principles instead of promoting an effective migration mechanism.

Since the adoption of the EU-Turkey deal, the humanitarian discourse refers to an officially accepted violation of HR. The deal's first purpose is the returns from Greece to Turkey by sacrificing basic rules of the asylum procedures. Namely, it incorporates *“discrimination on grounds of nationality, lower asylum recognition rates while the hotspot approach forces return on asylum seekers, and the insufficient HR monitoring puts refugees at risk of deportation”* (Alpes, Tunaboğlu, Liempt., 2017, pp. 3-7). On the one hand, the deal challenges the EU's legitimacy in respect of HR due to the procedures followed in Turkey including illegal deportations of Syrian refugees and inability of an effective protection of the asylum seekers. On the other hand, the fact that the Greek reception facilities transformed to detention centers and enhanced by stricter border controls changed the attitude of the local community towards both the defenders and the incoming people:

“public perception and attitude towards NGOs working with refugees and migrants in Greece has shifted over time, reflecting the authorities' changing approach to migration policies, from welcoming HRDs and the assistance they provided to people seeking safety in Greece, to an increasing suspicion and hostility” (Amnesty International, 2020 a, p. 48).

To sum up, the recent years Europe strengthen its asylum policies by conducting external agreements without though focusing to the essential problem the of asylum gaps in its territory. The procedures remained on its substance unsolved and till recently lead the asylum seekers to risky routes where at the EU external borders, *hundreds of refugees and migrants continue to report having been beaten and sent back across borders* (UNHCR, 2019, p. 7). Even if EU achieved to reduce the migration rates in the islands and kept supporting the Turkish-refugee infrastructures, the issue of HR will remain alive and calls the defenders to respond to its needs (EC, 2019) .

The main problem is located in the adoption of the third Dublin Regulation regarding the asylum seeker policies, which entered into force in 2013 and still is ongoing. It “*established the criteria and the mechanisms for determining the responsible ms for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person*” (EU, 2013 a). According to the Regulation, the asylum procedures allocated to only a single ms, in order to prevent multiple asylum applications by an asylum seeker. However, the regulation takes as granted the mutual trust among states “*without considering the divergences between the national (states) systems*” (Goudappel Flora A.N.J., 2011, p. 14).

Even if the Dublin Regulation is the cornerstone of the CEAS, it constructed in a way that leads to a long-term strategy of discouraging multiple applications in EU territory and “*was not designed to deal with situations of disproportionate pressure*” (Sorana, 2019). Therefore, even if the EU standards extended the European law for common procedures also indicated the inability of the ms to interpret them in a humanitarian sense outside of the sovereignty regime. Notably, the ms constantly rejected the asylum claims from Greece and Italy, a fact that proves the reluctance of cooperating and collectively response to the migration crisis.

Thus, there are multiple issues arising from these measures concerning their full compliance with the standards required under international law. For instance, as it is highlighted in the commentary of ECRE, *these practices in reality are implemented completely different across Europe and resulting different asylum procedures in each ms* (ECRE, 2015) Furthermore, as the refugee policies are interrelated with nation-state sovereignty “*the borders of state sovereignty defining the status of international law entitlements and rights*” (Velluti, 2014, p.6). So, states interpret the Dublin regulation in a way that illustrates the limited humanitarian approach in the asylum policies as they are the one who still decide the persons allowed to enter and stay in its territory.

As a result, states responded to these criteria with detention measures and the Dublin System “*end up by undermining the situation of the vulnerable people in a political game where governments tried to minimize their responsibilities and maximize others*” (Chetail Bruycker, Maiani, 2016, p. 113). The impacts of those policies underlined through the almost doubled practices of detention in the Mediterranean in 2017 (Velluti, 2014, p. 41). Finally, gaps also existed in the confrontation of the illegal entries as even if the Procedure Directive under article 12(1) obliges EU ms to accept *all applicants made on its territory*, the Mediterranean governments reacted with massive pushbacks (EU, 2013 b). Moreover, it should be noted that according to EU law and based on the Qualification Directive of the Dublin system even *if people are not entitled with the refugee status they can still claim for subsidiary protection when for several reasons they cannot return back to their countries of origin* (EU, 2011). Therefore, as issues of safety and dignity appeared, the Parliamentary Assembly recommend to the Southern countries to preserve the procedures under international law that explicitly prohibits the collective expulsion of aliens (PACE, 2019 b). Summing up, in many cases the

interpretation of the provisions undermined the procedures of international protection as it followed by *detention without complying with EU law that requires this measure as a last resort solution when it is necessary and in respect with other fundamental rights* (FRA, 2014 a, p.144).

The EU policies regarding migration are highly disputed. From a humanitarian aspect, they expose the incoming people in detention and violate the international principle of non-refoulement². This principle is highly binding for EU ms under the European Law, the international HR' law and the refugee law that prohibit:

“the transfer of a person from one authority to another when there are substantial grounds for believing that there is a real risk of being subjected to persecution, torture, inhuman or degrading treatment or any other HR' violation” according to *C. K. and Others v Republika Slovenia* (2017).

The main concept that should be examined is that both Libya and Turkey do not consist safe third countries for sending people who are claiming for European protection. In Turkey *decisions of collective expulsion to countries like Syria prevail while in Libya the detention conditions counting numerous models of smuggling, trafficking, and sometimes forced labor* (MSF, 2019 a). These policies only promote underdeveloped asylum procedures without respect to human dignity and HR. In this context, as the defenders already noted, *“It is our duty as humans to protect human lives. After numbers of recorded statements in our ships counting slave markets and deprivation of liberty we cannot consent to such torturing conditions that disgrace the human existence”* (Interviewee D, 2019). At the end, the response to the hidden dangers of the asylum policies can be considered as necessary and justify the defenders' actions. The next case studies will indicate the way the humanitarian movement shrunk and criminalized instead of getting recognition for promoting HR.

3.1.Impacts of the EU Migration Policies to the Defenders

The way the defenders affected from these policies vary. Initially, the generated pushbacks and the awful conditions in the detention centers trigger their reaction. The research will analyze their movement against the EU migration plan and their constant efforts to ameliorate the living conditions of the moving population. However, this response restricted via different measures. The European dialogue now emerges the creation of a protection mechanism for the defenders as it has been noticed a concerning shrinking of the civil society space. In particular, the policies regarding migration crisis and *in Europe activated protests opposing to the close detention centers and the policies against the incoming people* (Anon., 2020 d). By underlining the concerning criminal sanctioning of the demonstrations around EU, CoE revises that, *“The unnecessary or disproportionately harsh penalties imposed for acts committed during assemblies or peaceful demonstrations constitute violations of the right to freedom of assembly”* (CoE, 2019 c).

² The principle of non-refoulement: *“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion”* (UNHCR, 1997).

Except the limitations on the right to assembly, the issue of threatening the defenders' work extended even more regarding the rescue operations occurring in the migration zones. In that case not only the third countries' authorities intimidate the defenders but also the organized legislation adopted by the EU. More specifically, the enactment of the Facilitation Directive targeted them directly. The general concept provides that, *"A Member State shall adopt appropriate sanctions on any person who intentionally assists a person who is not a national of a MS to enter, or transit across, the territory of a ms in breach of the laws of the State concerned on the entry or transit of aliens"* (EU, 2002).

The implications of this document led to an exclusion of the humanitarian organizations in the Mediterranean and a number of prosecutions across the area that raise the reactions of many European institutions. Even if the document clarifies that criminal penalties could be imposed in cases that include financial gain the research proven different results. In particular, the financial clause *as a reason of criminally prosecuting a person who transferred another person* is found to the UN Protocol against Smuggling of Migrants (UNGA, 2000, (art.3(a))). However, the main gap between the two documents is that *"the Facilitators Package lack of a clearly specified 'financial or other material benefit' requirement for classifying 'migrant smuggling' as a crime"* (Vosyliute, Conte, 2019, p. 6). Consequently, many organizations subjected to criminal investigations and suspension of their activities even if the authorities did not detect any material profit. Furthermore, the document embodies the *'humanitarian clause'* (art. 1(2)) that *forbids criminal penalties when the facilitation of the entrance aiming to provide humanitarian assistance to the person concerned*.

To clarify, the first aim of the document was the reduction of smuggling in the Mediterranean through stricter penalties to the perpetrators. Despite that, the defenders fall into the scope of the Directive's interpretation and face systematic prosecutions for assisting the safe passage of the people.

In parallel, the anti-smuggling policy further boosted by the creation of the EU agencies that monitored the borderlines. Frontex, the European Border and Coast Guard Agency settled in the area with a double purpose, to prevent smuggling as well as facilitating the security of the people crossing the Mediterranean or the Aegean. It established in the territory with the *operation Triton in Italy and similarly, the operation Poseidon in Greece* (Frontex, n.d.). These projects mentioned in the research because initially attacked against the defenders by claiming their involvement in smuggling networks. Secondly, the inefficiency of their work made the defenders' presence in the area vital. Specifically, the EU Agencies prioritize the security of the European borders, while the defenders tried to save as many lives as possible. The following cases will analyze the way the policies mentioned above targeted the defenders and banned them from their humanitarian missions.

3.2. The examples of Italy and Greece proving the problematic implementation of the European migration policies at the national level.

This chapter will examine the way the policies mentioned above implemented at the national level of the European ms. More specifically, the next examples indicate that the freedom of interpretation of the European migration measures by the Dublin states had a direct impact to the defenders. Specifically, the ability of the Mediterranean countries to adopt stricter laws, justified by the need of implementing the regulations and programs related to the EU migration plan targeted and restricted in multiple ways the humanitarian movement of this research.

3.2.1. Case study: Italy

The case of Italy is a characteristic example of the way the states represent and implement the European migration policies against the defenders. The analysis indicates that the possibility for each ms to implement the documents based on its discretion accompanied by a number of measures that criminalized and prevented the defenders work.

More specifically, the Italian model *composed by the SAR operations* that initially included the Italian coast-guard authorities as well as the EU agencies and the humanitarian organizations vessels (EU, 2014 b). In this context, the humanitarian organizations had an active role in saving lives across the Mediterranean. Some of them like *SOS Méditerranée, MSF and MOAS were rescuing migrants and transporting them usually to the Italian Maritime Rescue Center and others like Sea Watch and Sea Eye focused on providing to migrants found helpless in international waters with lifejackets and only temporarily hosting them until they are transferred in official asylum seekers structures* (Cusumano, 2017, p. 389). The efficiency of their operations depicted in the following tables.

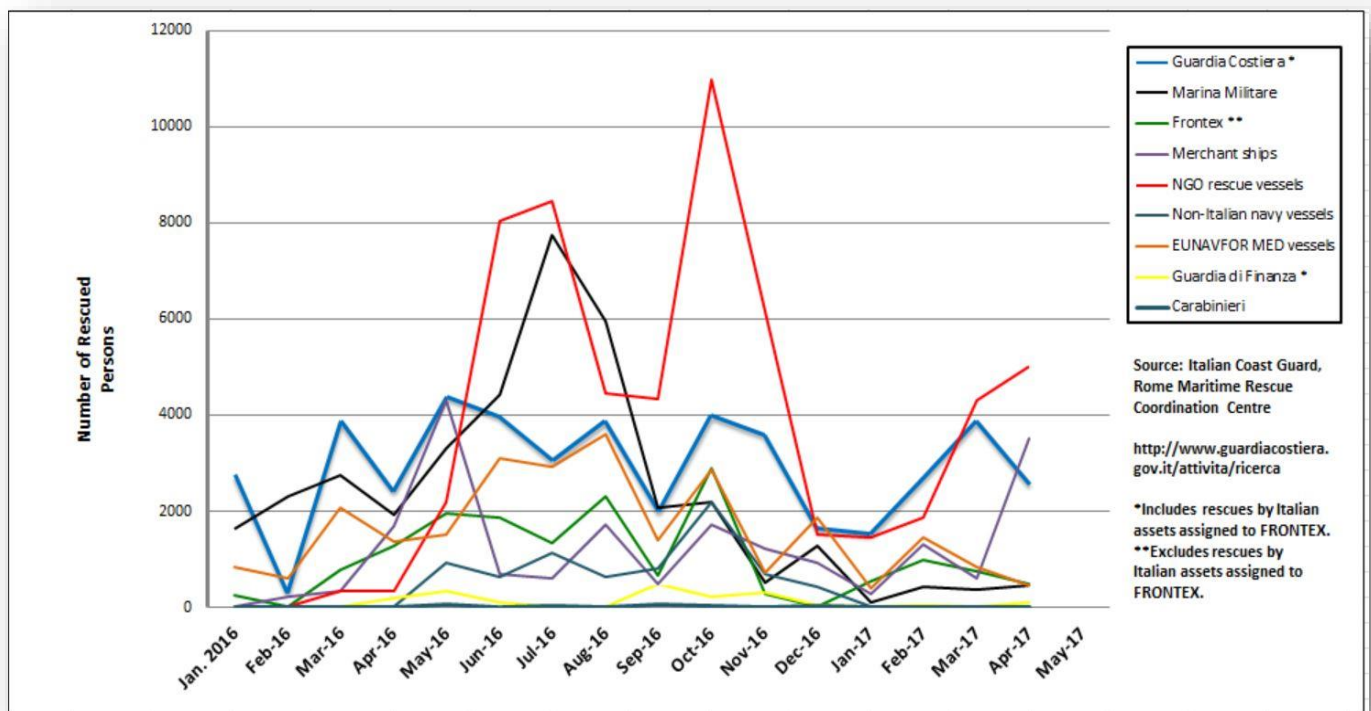


Figure 3: NGOs presented higher rescue rates in the Mediterranean in comparison to the European Agencies rescue vessels during 2016-2017 (Barastegui, 2019, p.32)

The defenders' contribution to the migration crisis is remarkable. The rates of rescues prove the importance of their work and the only purpose of their operations, to save the people in danger in the sea. Despite the evidence provided, the defenders objected to criminal investigations and prosecutions that resulted to a few rescue ships that still acting in the area. Notably,

*“The Italian authorities impounded migrant rescue boats, such as the *Iuventa*, from German NGO *Jugend Rettet*. Activists who volunteered on search and rescue missions, such as Sarah Mardini, were detained and face baseless accusations. At the end, the only organizations who operate in the area are the MSF and SOS Méditerranée vessels”* (Galaski, 2018).

The main concern regarding the situation of the defenders participating in rescue operations is the consistency and continuity of their criminalization. The public discourse refers to a concerning crackdown of the NGOs and recalls the ms to take their responsibilities and respect their contribution. In compliance with that, the Parliamentary Assembly recalled the *Resolution 2096* that highlights *the important role of a dynamic civil society for the good functioning of democracy and pays tribute to all the NGOs whose work has strengthened HR, democracy and the rule of law in their states* (PACE, 2016).

On the contrary, the European migration policies do not seem so effective. The ban in the humanitarian organizations and the increasing deaths in the Mediterranean in parallel with the reduction of the migrant flows in the area, *indicates that EU prioritize the borders' control than the human lives* (Vosyliute, 2018).

Specifically, “EUNAVFOR MED Operation Sophia was launched on 2015 with a mandate to contribute to the EU's work to disrupt the business model of migrant smugglers Southern Central Mediterranean” (EU Council, 2019).

The Sophia project extended until 2020 even if during its operations it recorded the highest level of deaths in the Mediterranean (see figure 4). The information that came from the rescue operations *revealed few successes in the field of humanitarian interventions while the reducing of illegal crossing remains questionable* (Cusumano, Patison, 2018, p. 70). Moreover, this paradox underlines the complex role of the EU Agencies in the high seas, as both guardians of the EU borders as well as rescuers of the people in need.

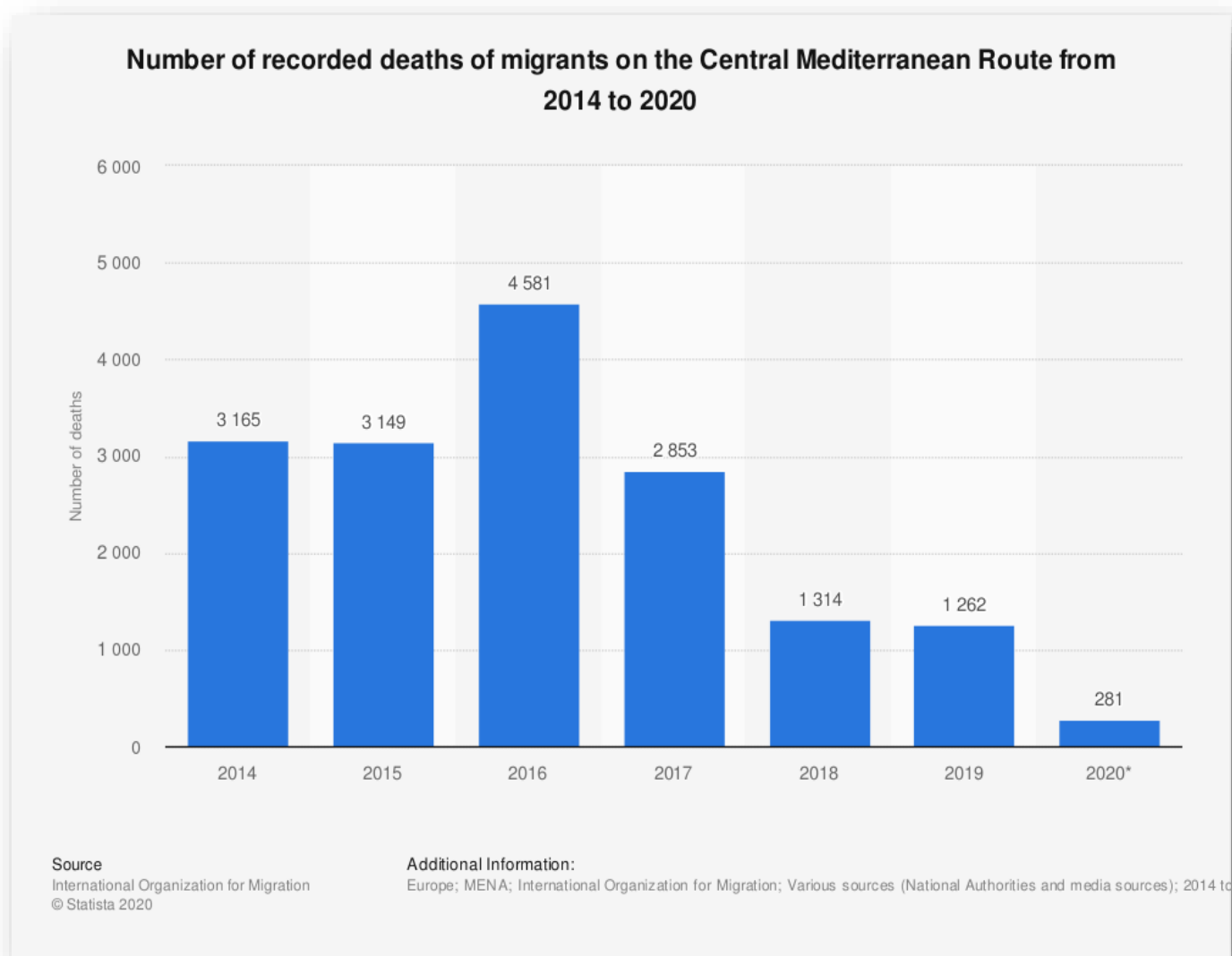


Figure 4: Increasing of deaths in the Mediterranean during the Sophia Project (Varella, 2020)

For instance, the complicated character of these agencies and the contradictions with the humanitarian movement was obvious when Frontex *accused the humanitarian organizations publicly for collaborating with smugglers* (Anon., 2019 d). To be more specific, the Agency published a report regarding the operations occurring in the Mediterranean that directly attacked to the defenders. It highlights that “*all parties involved in*

SAR operations in the Central Mediterranean unintentionally help criminals achieve their objectives at minimum cost, strengthen their business model by increasing the chances of success” (Frontex, 2017, p.34). In other cases, the immediate crackdown on them occurred by the government that constantly denied access to rescue vessels in the Italian ports. The most known incident that released in the media and triggered international reactions is the case of Carole Rackete, a German captain of the Sea-Watch 3 rescue vessel who entered in the port of Lampedusa with forty migrants. *The accusations were based on entering illegally in the Italian port and endanger the lives of five Italian serviceman* (Balmer, 2019). As a result, the woman temporally arrested. This episode emerged a series of violations related to the marine law, the international HR’ law, and the situation of the HRDs. The research is trying to prove that despite their systematic exclusion from the rescue operations, breaches of the law are also found on their legitimate presence in the rescue missions.

The issue of the high seas consists of a legal field that impose legal obligations to the states, and specifically assists to migrants and others in distress at the sea. In particular, under art. 98b of the UN Convention of the Law of the Sea:

“Every State shall require the master of a ship to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him as he can do so without serious danger to the ship, the crew or the passengers” (UNCLOS, 1982).

In addition, the International Convention on Maritime Search and Rescue provides that:

“Parties shall participate in the development of search and rescue services to ensure that assistance is rendered to any person in distress at sea (art.9). While they will establish rescue co-ordination centers for their services and such rescue sub-centers as they consider appropriate” (SAR Convention, 1979).

Finally, under the International Convention for the Safety of Life at Sea:

“The master of a ship at sea which is in a position to be able to provide assistance on receiving information from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so. This obligation to provide assistance applies regardless of the nationality or status of such persons or the circumstances in which they are found” (SOLAS Regulation V/33, 2004, (§ 1.1)).

These documents prepare the ground for the defense of the rescue operations in the Mediterranean. The priority of securing human lives at sea is the guiding axon per international law and justifies their actions. However, this aspect completely ignored from the authorities’ discourse. Not only the successful results of their operations bypassed but also states found new legal exits to defame these purposes. Except the continuous accusations for smuggling by ministries, they proceed to moves that targeted specifically, their operations. The culmination of these acts is found on the proposal of the Code of Conduct for NGOs in the Mediterranean. The document clearly suspends the defender’s actions and subject them to state control:

“Under that code, NGOs are banned from entering Libyan waters to rescue migrants, are obliged to accept the deployment of Italian vessels with armed police on board to investigate people trafficking in Libyan waters in cooperation with the Libyan authorities, and are not permitted to transfer people who have been rescued to other vessels at sea, with rescue crews being required to return to port for disembarkation” (EP, 2017 b).

At the end, some of the NGOs reformed and signed the relevant document in order to continue the rescue missions. They underlined that the purpose of this agreement *is found on the cultivation of a collaborative conduction of SAR operations and the termination of the general mistrust between organizations and institutions* (Sea-Eye *et al.*, 2017, p.6). Nonetheless, this act is highly concerning and challenging many issues. On the one hand, includes the banning of transferring rescued people and the acceptance of the police officers’ embarkation on rescue vessels. On the other hand, *it is undermining the organizations’ neutrality by engaging the state-authorities in the functioning of non-governmental bodies* (Howden, Bode, 2017, p.1). Finally, the EU by providing power to the Libyan authorities in the Mediterranean limited the rights of the moving population and increased their exposure to risk.

In specific, the Italian government in cooperation with the European agencies *“proceeded to the improvement of the capability of the Libyan Coast Guard and to discourage several nongovernmental organizations from operating migrant rescue boats off the Libyan coast”* (Kingsley, 2017, p. 2). The prevention and the return of the migrants to the Libyan territory raises serious humanitarian concerns. In most of the cases, the living conditions are horrible while there is no respect to human dignity and human rights. The cruelty of the circumstances in Libya did not remain silent. The International Criminal Court in 2017,

“expressed its considerations regarding the inhuman living conditions in Libya and announced the possibility of opening an investigation against the country while, the UN Migration Agency said that more than 1,000 migrants have been reported dead or missing in the Mediterranean this year, while an unknown number perish in the desert” (Zitouny, 2017).

Summing up, even if the defenders are the only category that presents a moral model that contributes to the rescue missions *with modern equipment of detecting persons in the sea such as boats, monitors and drones* were exposed to a systematic targeting (Roberts, 2015). The Italian case illustrates that the use of the facilitation directive interpreted in a way that excludes the humanitarian vessels from the rescue operations. It follows that, even though refugee and HR’ law *“has woven a net that should provide protections including everyone who is in risk, now find themselves no longer caught in it and consequently out of legality”* (Hansen, Aalberts, 2010, p. 28). These incidents reported and commented by the FRA agency. In October 2018, it published *a catalogue including NGOs in rescue missions who accused under national law and were involved in criminal investigations for their operations in the high seas* (FRA, 2018 a). The note points out the

systematic criminalization of either international NGOs or private actors and the concerns regarding those policies.

3.2.2. Case Study: Greece

The situation of the defenders remains alarming not only in the sea space of the Mediterranean but also in the land places of the area. In a first examination, the way the European instruments implemented, provided the minimum possible assurance for the incoming people. The *hotspot approach is a key element in the broad range of measures taken*, especially during the outbreak of the migration crisis (EASO, 2018, p. 31). Moreover, those policies counted *measures of screening, fingerprinting and recording information of the third country nationals that facilitated checking and deportation procedures, by easily excluding asylum seekers from second instance claims*³ (O'Reilly, 2020, p. 33).

In addition, per article 60(4) it was adopted a special mechanism in the Eastern Aegean Islands, known as 'fast-track procedures' which is still active in the territory (Greece. L4375/2016). These tactics provide a two-week examination of asylum applications, including the appeal stage. The speed of the procedures "*means that people have little chance of a fair asylum procedure, and even families with children are regularly detained in inhumane conditions*" (Anon., 2020 e).

The measure of detention used broadly in Greece even if there is a clear provision that protects the persons from arbitrary detention in agreement with *art 2 of the ECHR and Convention against Torture when there is a high risk of the human life including also cases of illegal entrance* (FRA, 2014 b, p. 165). Furthermore, the Greek authorities are not trained enough and sharing responsibilities of border-control and administration of the asylum mechanisms without though taking into account the specific vulnerabilities of these people. The Amnesty International *after visiting the detention centers in Greece recommended following its report on alternatives to immigration-detention concerning the alarming situation in the area* (Amnesty International, 2009, p. 19). Finally, *after the EU-Turkey deal recorded generated pushbacks in the area of Evros as well as detention upon arrivals* (Matevžič, 2019, pp. 17-19)

Once again, the defenders participated actively in the situation. At first, *they expressed their concerns regarding the applications of the Dublin-related provisions* (EASO, 2018, p. 80). On the other hand, they created spots that provided safe sheltering to the people who were facing dangers of detention. Additionally, journalists recorded daily the situation and the demands of the defenders for ameliorating the people's conditions in the hotspots. Even if the humanitarian movement reacted immediately, the state responded hostilely with restricting measures against the defenders. The Greek government proceeded to laws that

³ REGULATION (EU) No 603/2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Recast Dublin Regulation III. For more details, see: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0603&from=en> (EUR-Lex, 2020).

limited the NGOs actions while at the same time began evacuations of refugee' self-organized accommodation.

More specifically, the most recent meter adopted by the Parliament is related to the *official registration of the national NGOs for controlling their transparency* (FEK, 2020). However, this law imposes disproportionate burdens on them and directly targets the assistance to refugees and migrants in distress. It is proclaiming the legal registration of both Greek and foreign NGOs in order to cooperate with the authorities and act in the territory, without though estimating the implications created for them. Initially, as it noted in the first chapter⁴, *this goes against the Declaration of HRDs, which explicitly states that an official registration is not required for the operations of national or international NGOs*. Secondly, the demanding of annual reports and taxation forms complicate even more the already difficult conditions of the organizations. These preconditions not only establish

“onerous requirements for the NGOs and their natural persons but also, constitute of disproportionate interference with the right to privacy and the right of the associations to be free from state interference” (National Greek Union on NGOs, 2020).

In the end, these procedures are too long and presuppose a lot of bureaucratic stages that instead of supporting the NGOs only perplex their tasks and prevent them from taking action in the field.

In a more analytical examination of the situation, the practice of this systematic targeting, enacted dynamically over the last two years. In the 2018 report on the situation of HRDs there is an extended reference on the oppressive measures that the government undertook to eliminate the actions of the people who were supporting an open European environment for those who needed international protection. More specifically, *it is observed that in Greece the defenders are mostly people “on the move” who operate via active assemblies, protests or radical actions for achieving better HR’ conditions in the country* (Forst, 2018, p. 459). However, in 2018 restrictions implemented on the right to freedom of peacefully forming assemblies, strike and form associations. Consequently, the defenders who were closely related to movements of minority rights were criminalized either by law or in the media as actors of unlawfulness who are trying to disrupt the public order. The Special Rapporteur also referred *to the reports he received concerning the “legal attacks” against the political organizations* (Forst, 2018, p. 462).

In parallel with that, in 2020 the Greek government approved a new law that put into governmental control the conduction of protests. Surprisingly, this law, *“aims to replace a 1971 junta decree restricting rallies, a fact that unionists emphasized”* (Alevizatos, 2020). These legal initiatives are interrelated with the general shrinking of the civil society’s space that mentioned above. The only way in restricting the activities of the people on the move is limiting their protests as it happens in Greece. Except for the generated pattern

⁴ For more information, see Venice Commission, 2014.

related to the right of assembly and association these incidents usually followed by extreme police violence. The police arbitrariness against the defenders was obvious in autumn of 2019 when the government proceeded to an organized plan of evictions of political spaces or occupations where refugees and migrants hosted.

For instance, the case of the 5th public school located in Exarcheia was hosting 143 refugees including children who participated in courses with Greek students with the support of the local community. *The project was coordinated by local and European activists until the building violently evacuated and lead the people in detention centers and illegal immigration structures in Athens* (Kolidas, 2019). The incident is important as it represents the deliberate attempts of the government to keep excluded the migrants/refugees from the civil society in close hotspots. On the other hand, the creation of a special police unit aiming to shut down any relevant accommodation shows the organized attempt to reduce any assistance provided by the defenders even with force, as the authorities did not hesitate to use violence against the defenders and the inhabitants.

The evacuation followed by the arrest of the Greek photographer Alexandros Stamatiou who was covering the intervention of the authorities in the spot. The latter accused him for “*disturbing the domestic peace*”. After the *reactions of the civil society for disproportionate penalties he was released* (Anon., 2019 e). The problematic nature of these facts is multi layered. One aspect of the phenomenon is the lack of training of the authorities who keep violating the rights of the defenders either when they proceed to unfounded accusations against them or in cases that present extreme violence to suppress their operations regarding HR. From another angle, the impunity of these incidents consists the norm of such cases. As a result, the defenders usually released but there is no penalty to the responsible bodies for the behaviors of cruelty. The issue of impunity highlighted by the Amnesty’s International report after the detention of two activists from Amnesty in Greece that observed:

“there is a long list of reported cases of ill-treatment or excessive use of force by police since the end of last year against protesters journalists and refugees and migrants, individuals during their arrest/or detention” (Amnesty International, 2020 b,).

Another case relating to the right to freedom of speech is related to an article released *in the Greek newspaper Fileleftheros, whom publisher, photographers and journalist were detained with the suspicion of defamation because they claim of misuse of the European fundings by the minister of defense who started the procedures against them* (RSF, 2018).

Except of restrictions to the people on the move, Greece similarly to Italy proceeded to criminal investigations against rescue missions in the Aegean Sea. An interesting case is the one of the legally registered NGO Emergency Response Center International (ERCI). Its *founder Panos Moraitis was accused for illegally transferring migrants from Turkey to Greece. In addition, members of the organization together with Syrian and German defenders were under custody as partners of a criminal network of smuggling* (MacGregor,

2018). The case attracted a lot of attention in the Greek media and took the form of generally targeting the NGOs in the islands for promoting smuggling.

Moreover, limitations against the defenders took place concerning their *right to freedom of movement, stigmatization in the public discourse, judicial harassment threats and surveillance* (Forst, 2018 d, p. 458). The case of ECRI as well as the one of Salam Kamal-Aldeen represents such incidents. In the first one, the defenders could not exit the country for months and held in detention while in the second one the defender was forced to leave the country and denied to return for the next three years. In particular, Salam Kamal-Aldeen joined the NGO Team Humanity, that provides assistance by land and sea to the migrants and refugees in the Greek island of Lesbos. Not only was he arbitrarily arrested but even worst upon his arrest,

“He discovered that he had been registered on the National List of Undesired Aliens in August 2019 and had been banned from entering Greece until 8 October 2022, despite being a legal resident in the country. He was also informed that he had to leave the Greek territory within 30 days because he provided humanitarian assistance to people in need” (Frontline, 2020).

Summing up, the inefficiency of the Dublin Regulation burden disproportionately the country of Greece. The need to reduce the incoming flows, on the one hand, further boosted detention measures and, on the other hand, enacted laws in order to prevent the defenders' work. The way the latter targeted gave space to acts of violence also by non-state actors. More specifically, *even the police authorities proceeded to ill-treatment of detainees that trigger the reactions of the High Commissioner for HR who noted the alarming information of similar cases. He sent a letter to the Greek government expressing the issue of a long-standing and systematic problem of law enforcement with excessive violence the territory, without though receiving any comments back* (CoE, 2017). By cultivating such a hostile environment for the defenders and by legitimizing their criminalization an atmosphere of impunity prevails. As a result, in many cases reports revealing threats including beating up of journalists and people who participate in the reception facilities. In particular, the international journalists' coalition commented that,

“After the announcement of the construction of new migrant reception centers on five Aegean islands to replace the existing, overcrowded ones, residents opposed and clashed violently with riot police. Journalists covering the clashes have themselves been targeted” (RSF, 2020).

Additionally, the extremely burden with refugee's countryside is triggering constantly unreported violent acts. The locals are acting with every mean they have *by burning the structures and opposing to every measure or person that aiming to ameliorate the living conditions of the moving population* (Anon., 2020 f). In other cases, the assistants of the refugee units have been attacked and robbed as a means of terrorism for protecting the third country nationals or were under threat for providing them shelters in their homes.

Finally, the most recent case, is related to the criminal investigation against Nazi parties who came into Greece and specifically to the northern part of Evros, - the location consists the meeting point of Greece and

Turkey – to stop the entrance of asylum seekers. Scenes of extreme violence unfolded “*with the extremists playing the role of informal militia, badgering and chasing down migrants, NGO employees and journalists*” (Mandrou, 2020).

Conclusion

In conclusion, the CEAS system creates a solid basis for a common European asylum policy concerning the incoming populations in its territory. The ambitious plan of a share responsibility regime once again reveals that the neoliberal EU model which practices

“a vague open-ended space including legal resolutions, exceptional and emergency norms delegating vast discretionary power to executive and administrative bodies without though solving the problems” (White, 2015, p. 66).

This policy did not promote an environment of cooperation but instead, developed amendments that provided the minimum provisions related to the right to international protection. The possibility of a discreet interpretation of the CEAS by each ms followed by massive deportations and extensive detention measures. Except the humanitarian gaps sourcing from the regulation, the incompliance of the ms with the idea of cooperation created many problems to the more burden -from migration- countries. The latter in their attempt to reduce the incoming flows implement laws to restrict any possible assistance provided to refugees and migrants.

As a result, either by using the Facilitation Directive or by restricting the right to assembly and association they posed even criminal sanctions to the solidarity movement. It has been noticed an organized pattern of accusations including prosecutions to the people that facilitate a safe passage to the moving population. Not only that but also the conduction of agreements with third countries and the anti-migrant line in the European policies had indirect impacts to the defenders. In particular, over the last years the reactions of the locals and in general, the non-state actors have been intensified and calls for the defenders’ protection.

This situation has been noticed over the last years and triggered the reaction of several international institutions. Their collective response to this phenomenon of criminalization suggests better opportunities for the defenders’ inclusion in the future migration policies.

Chapter 4. Incorporating HRDs in the global agenda: The European institutions, an actor who can protect HRDs

4.1. Developing HRDs protection via international mechanisms

The Declaration for HRDs consists of a keystone for the protection of individuals and the organizations related to the promotion of fundamental freedoms of the people. In parallel, “*the globalization process boosted the development of social movements which in turn responded to and shape the development of globalization*” (Flesher, 2014, p. 27). The humanitarian movements differentiated from the traditional norms

of the organization and shaped institutionalized characteristics. In particular, *incorporated institutionalized structural practices and methods that increased their legitimacy* that enable them to participate in the global scene as an appreciable actor, present in multiple social, economic, cultural, and political topics (Zyla, 2020, p. 117). This social progress gave the opportunity to the community as a whole or individually to take an advanced role in forming or changing practices that infringe HR. Moreover, *the technological growth and the facilities provided by the easy and fast communications empower and facilitate the expansion of “a modern transnational movement” of HR* (Pries L., 2018, p. 56).

These possibilities of collective responses to humanitarian crises are easily illustrated to the European humanistic contribution regarding the refugee emergency. The organic and formative changes compassing the social movements and organizations could not be any more ignored by the international community. This chapter will focus on the mechanisms that created for the protection of HRDs at the international and the European level. In a second analysis, the paper will demonstrate that despite the anti-migration policies that targeted the defenders’ operations in the Mediterranean, another actor, the European institutions and agencies detected their dangerous situation and proceeded to acts for their protection.

At first, the recognition and the incorporation of HRDs as global actors should be examined at the international level. More specifically, the Declaration acknowledges the right of the people to defend their freedoms and be protected for this action. Even if the document has not a legally binding character still, it settled the basis for securing a category that stands against the state’s arbitrariness. Thus, the acceptance of the term, the sourcing obligations for the states, and the international instruments boosted the establishment of long-standing mechanisms, practices and, procedures that safeguard the defenders and the environment they operate.

In particular, the formation of the position of the UN Special Representative on HRDs issues engage the defenders in the *UPR system*, a space that enables them to communicate their problems and seek for solutions (ISHR, 2020). Analytically, the UN Treaty bodies provide an important monitoring tool that allows *the examination of complaints* (UNHRC, 2020). The potential of submitting incidents of brutality against the defenders can assist in protecting them when they are under threat. Except for that, the Representative *is reporting the situation of HRDs globally and, supervises if the states act in compliance with the Declaration. The submission of annual or thematic reports make states accountable and further forms patterns of violations and contemporary issues that should be addressed. Finally, yet importantly, he does country visits and checks the situation of the defenders* (UNHRC, 2020).

Over the last twenty years, the Special Representative on the defenders proceeded to many resolutions and reports promoting the rights of HRDs. A crucial document that released in 2004 is the Fact Sheet No. 29. Its importance is found on the need to provide more details about the defenders’ violations as well as the Declaration that remains internationally ignored. Specifically, *there is a clear obligation for the defenders’*

protection including remedying programs in cases of violations against them. It also highlights the importance of conducting proper investigations regarding violations and avoiding restricting disproportionately their rights (OHCHR, 2004, pp.17, 28).

Nonetheless, the international community is more focused on the defenders at high-risk as *by increasing their visibility, equally they increase the political cost of aggression against them*. However, *in reality, by its nature international accompaniment exposes them to risk*. (Nah et al., 2013, p. 418). A similar case consists the one examined in the paper. Even if the defenders do not face a high-risk situation, the re-marking of the Mediterranean as an international space of operations and agreements challenged their security and threaten their work. The insufficient protection of the defenders demands new amendments that will meet the present-day problems occurring in the area.

In other cases, progress *regarding the defenders made in specific issues such as the shrinking of civil society through anti-terrorism laws* (UNHRC, 2019 a). In that case, the UN not only realized their alarming situation but also emerged the attention of the states linked with the oppressive measures that impose on civilians. The last claim can also apply in the case of the Mediterranean as many governments by using the claim of terrorism expedited with the migration flows, enact anti-terroristic laws, which restricted the operations of the defenders. However, it is argued that these practices not only did not reduce the terrorism incidents but *“on the other hand constraining the civil society resources, lowering their legitimacy and separating from the local community”* (Jeong-Woo Koo, Murdie A., 2018, p. 3). In the end, these measures undermining the civil society actors, the key pillar of democratic societies, and, prevent them from their operations.

4.2. Initiatives with a Region-specific Focus

At the European level, *“the engagement with regional and international HR mechanisms is one of the most effective of creating recognition of a right and even requiring duty-bearing stakeholders to officially respond”* (Blazevic, 2012, p. 6). The research will be concentrated at the European context and the way the relevant institutions incorporated the defenders of the research in the humanitarian agenda. The importance of this chapter is related to the recognition of the dangerous situation they are. The European institutions have already tracked down the patterns of violations occurring in the Mediterranean countries and proceeded to actions for their defense. The officially recognized shrinking of the civil society in Europe urges for protection as well as calling for mechanisms that will support the humanitarian movement that is examined in the research.

The major document protecting HRDS is the EU Guidelines on Human Rights Defenders, adopted in 2004 and republished in 2008 following Article 2 of the Treaty on European Union and states:

“that the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for HR. The guidelines establish the EU’s approach to supporting and protecting

HRDs in 'non-EU countries, with a view to enable them to operate freely'. These guidelines apply within the context of the common foreign and security policy (EU,1993).

As it pointed out, the document is emphasizing too much to the protection of the defenders outside of its territory and interrelating their security with diplomats and contacts with third countries. Despite the focus on high-risk situations still, it recognizes their importance *in documenting violations, searching remedies for the victims or other support and, combating cultures of impunity, which serve systematic and repeated violations of HR* (EU,2004, III (4)). Furthermore, it mentions *the cooperation with the UPR procedures and the support to the Special Representative on HRDs*. Finally, it presents a *commitment to the defenders' incorporation in funding programs* (EU,2004, IV (12)). Amnesty International, commented positively on the guidelines and specifically on the multiple tools for HRDs security. However, the conclusion is antithetical by underlining that *"the existing methods are not working and new ways have to be developed, the challenge for the EU is to escalate and diversify responses to achieve protection for HRDs and ensure transparency and accountability"* (Amnesty International, 2008, p. 17).

The inefficiency of the European mechanisms for the protection of the defenders manifested by their exclusion from European migration policies and consequently, their exposure to imminent danger. In particular, the defenders operated under the Guidelines' criteria by promoting HR. However, their efforts targeted in different ways by counting incidents of journalists who were recording the shameful reception conditions in the islands. In other cases, NGOs and activists collectively or individually supported materially and psychologically the people in need. In contrast, the EU did not comply with its obligations under the EU Guidelines. The movement not only did not gain support for promoting its work but instead, faced accusations of participating in smuggling networks or disturbing the public order. Additionally, the fundamental rights of freedom of association and assembly restricted variously and disabled the defenders' operations. Even if the EU failed to fulfill its duties, the European institutions noticed the alarming situation and pressured the European community to take action and stop criminalizing the defenders assisting migrants/refugees. Thus, the latter as monitoring bodies can contribute to an effective safeguarding of the defenders who act in the Mediterranean.

For instance, the Council of Europe contributed a lot to the framing of the risks facing the defenders. Initially, adopted the *Declaration of the Committee of Ministers* to improve the protection of HRDs and provide equivalent guidelines to the UN document (CoE, 2008). It invokes the obstacles the defenders face in their work including *"issues of financial, administrative or legal nature and ensuring the integration of the Declaration and rights of the defenders in the EU policies"* (CoE, n.d.). On the other hand, CoE attempted many times to incorporate civil society in its practices, including NGOs, activists and, general citizens. More specifically, CoE proceeded to meetings with the defenders to consult them. After almost fifteen years since the Declaration was released, CoE organized the first Round Table with the Defenders, in Strasbourg. The

outcomes had great valid as attached a list of issues and possible solutions regarding the defenders' situation. Among others, referred to *the gap between the active European policies and the weak national measures that fails to protect them*. The key point was the need for *broader solidarity within the HR community targeting, accuracy of information, preparedness and coordination among the different mandate holders* (CoE, 2012, p. 13). The last and most recent meeting was in Helsinki in 2018. Once again, their imperative role in the CoE policies addressed, while the Council referred to its duty on supporting them and enabling a safe environment for their work.

These advanced procedures are important as they have a European specific focus and prove that the defenders have a voice at a regional level. The Commissioner of HR after the discussion with them published a final report, which *points to the disproportionate use of force and the restriction on the right of assembly* (CoE, 2018 a, p.5). Another point arisen from *the document refers to the worrying administrative and judicial harassment with unlawful arrests, detention, and criminal prosecutions faced by the defenders* (CoE, 2018 a, p.3). The most concerning issue though is *"the systematic and increasingly attempt to silent punish or dissuade HRDs"*. In parallel, *the report refers to similar practices in Greece where it has been noticed provocation to several lawyers placed under investigation through their participation in pushbacks in the Northern borders of the country* (CoE, 2018 a, p.15). In relation to that, she expressed her concerns for defenders related to refugees in countries like Italy and Germany. The participants *acknowledge the criminalization of their colleagues in the Mediterranean, which is against the CoE principles of preserving human life and dignity* (CoE, 2018 a, p.15, p.6). The recommendations emerged *the protection of the defenders and called the stakeholders to keep on their obligations by providing both adequate remedies to them and proper investigations without intervening to their operations* (CoE, 2018 a, p.15).

4.3. Protection and Institutions in the EU

The center of attention regarding HRDs is the National Human Rights Institutions (NHRIs) as a passage for promoting and protecting HR via formal or informal education and awareness, that raising efforts undertaken by state bodies (OSCE, 2006, p.2). Equally, to the UDHR that sets an abstract of non-binding norms and sentiments, similarly the Declaration on HRDs:

"challenging the sovereignty and transforming relations among the states, this transformation includes the creation and development of a diverse array of institutions concerned with HR' monitoring compliance and increasingly enforcement" (Goodhart, 2013, p. 2).

Therefore, HR perceives a major position in all the political, economic and, legal decisions and set institutionalized moral demands. NHRIs participate, at first, as actors of accountability for states' authorities and secondly, as monitoring instruments which expressing problems concerning HRDs. Furthermore, they have an important role as they can receive submitted complaints, evaluate and investigate them properly.

In this case, “CoE established several institutions to enforce and monitor the Conventions’ provisions while the EU Commission settled to perform both an investigatory and conciliatory role” (Loveland, 2018, p. 479). For instance, ENNHRI as a HR watchdog published a specific report related to the HRDs. The main obligations are related to *monitoring and reporting, making visible vulnerable situations, observing public demonstrations, recommending executive measures, promoting a culture of rights and, facilitating cooperation among actors* (ENNHRI, 2018, pp. 8-11). The institutions should always comply with the Paris Principles that define the mandate of NHRIs to promote and protect HR. The document underlines the importance of “*combating all forms of discrimination and prioritizing the fundamental role of civil society actors, including their incorporation in economic and social development and the protection of particularly vulnerable groups*” (UNGA, 1993).

To illustrate the active role of the institutions there will be attached some details of their initiatives related to the humanitarian movement that targeted for providing assistance to the incoming flows. A recent document published by the Venice Commission regarding the emergency of funding associations (Venice Commission, 2019). The report released in 2019 and examined the funding procedures of NGOs applied in CoE’s ms. Indicatively, it marks *the interrelation of the right to association and the ability to seek financial and material resources for this purpose*. This liberty according to the Commission is highly related to article 22 of the ICCPR and article thirteen of the HRDs’ Declaration, which highlights the importance of funding for carrying out its activities (ICCPR, 1966).

Finally, the International Courts consists also supportive bodies for the advancement of HR. The Commission added the case of *Sidiropoulos et al., vs Greece*, commenting that according to the Court the ability to

“form a legal entity in order to act collectively in a field of mutual interest is the most important aspect of the right to freedom of association, it can have collective dimension and the state has positive obligations to protect it” (*Sidiropoulos and Others v. Greece*, 1998).

Not only that, but also the ICC has contributed to the legal promotion of HR, and in particular to the area of the Mediterranean. The Court started prosecutions aiming to *achieve punitive measures against the European migration policies and the EU ms* (Bowcott, 2019). International lawyers started procedures against them claiming for crimes against humanity after the Triton Program, because it created “the worlds’ deadliest route in the area” (Bathke, 2019).

In the end, the embodiment of HRDs in the European humanitarian space is illustrated in the Marrakesh Declaration. The latter, adopted by the ENNHRI in February 2019 and express the regional European Plan about HRDs related to the national or European institutions. It is an “*organized project designed to protect and enable a democratic space finalized following participative process for the defenders*” (ENNHRI, 2019). As the table shows, the institutions set the basis for a true incorporation of the defenders at the international

and the national level. By implementing the directions addressed in the program, it is possible to integrate the defenders of the research in the national policies and construct an interactive collaboration between them and the authorities. As long as the analysis will show that the dangers facing the defenders in this paper have been recognized from the European institutions, it is possible to start an initiative with both the Italian and Greek authorities. The latter could embody them either in the decision-making or in the national organized rescue and security operations regarding the incoming flows. This plan can proceed to a bridge building between the governments and the defenders in terms of controlling the sanctions imposed to the humanitarian movement and terminating the continuous attempts to restrict the civil society space.

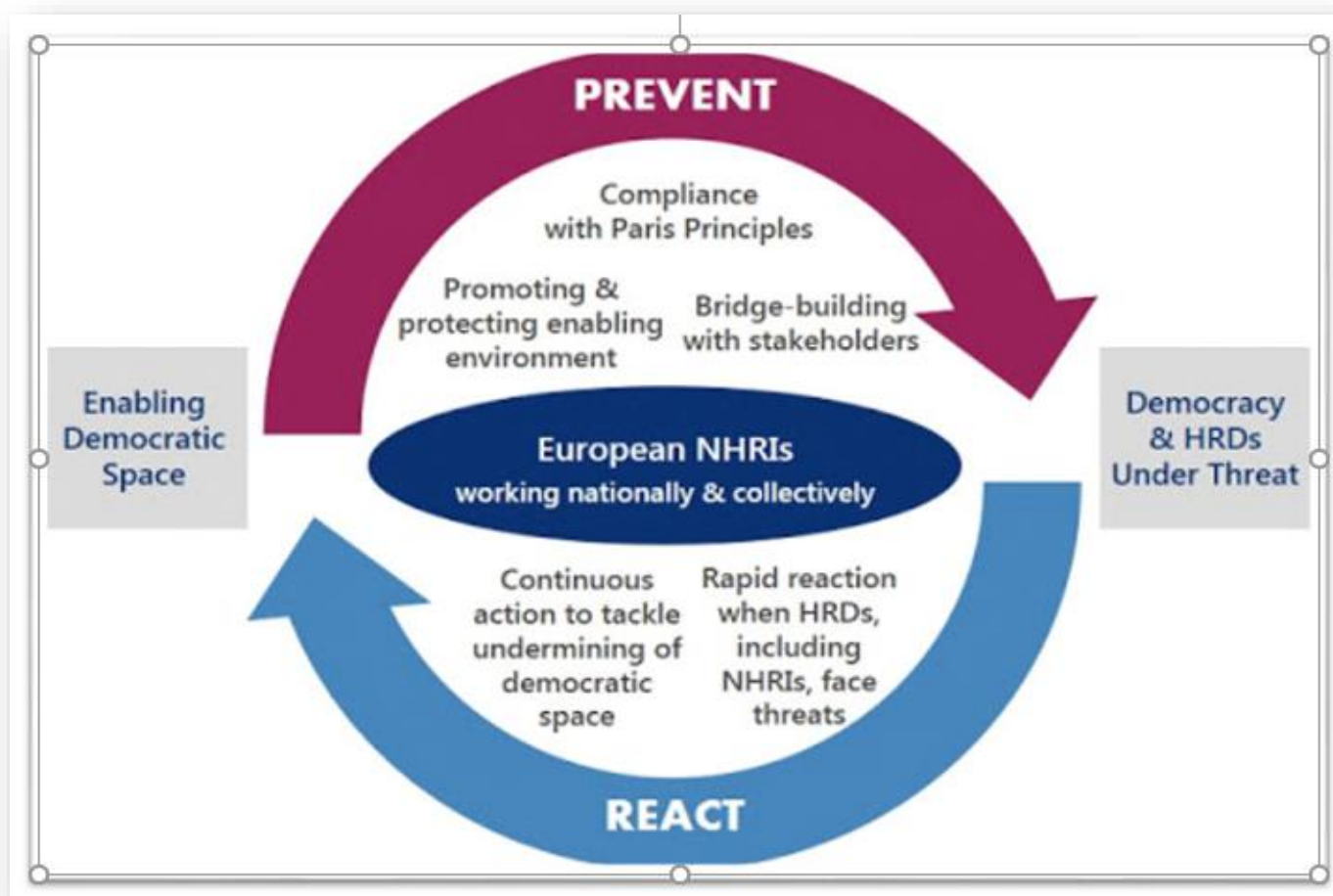


Figure 5: The European Institutions inserting the defenders in their policies (ENNHRI, 2019)

To sum up, the term HRD entered dynamically in both the international and the European level. It is incorporated in many texts while the defenders developed structural characteristics that enable them to engage with NHRIs and communicate the risks they daily face. However, the issue of the Mediterranean remains crucial and seek for protection. At an international level, there has been little progress to the issue while the special Rapporteur focused on restrictions facing the defenders specifically, in Greece regarding to the right of assembly as well as the concerning police violence used during demonstrations. On the contrary, the next session will analyze the way the European institutions reacted to the dangerous situation facing the defenders

and their constant criminalization in the Mediterranean. At the end, the point is to proceed to an effective mechanism that evaluates the institutions' considerations and responses to the defenders' claims.

4.4. The response of the institutions to the defenders' claims, local focus: Mediterranean

Over the years, it is observed an increase of consultation of CSOs in the decision-making and a line towards the promotion of HR. It is impressive that NGOs and civilian populations have a better understanding of their rights and they are claiming constantly for their maintenance. After research, the findings reveal a lot of reports and handbooks mostly published by prominent organizations that are covering almost any aspect of the HR' space. Admittedly, the need for protection of the defenders in several contexts leads them to publish guidelines for their defense and security. Hence, the interest will focus on the defender's attempts to communicate their issues, as well as the response of the European institutions to these claims.

At first, an actor that should be pointed out is the Frontline Defenders, an organization founded in 2001 and represents one of the most respectful and active organizations related to the defenders' issues. Its main projects concerning *the support to at-risk defenders, resource materials, and most importantly training packages on behalf of the defenders* (Frontline, 2011). It has published many assisting tools like *a manual that could help the defenders understand when they are in danger and how they can prevent possible attacks, protect their families, and providing a network of psychological and medical services* (Frontline, 2007, p. 15). Also, the organization published an exceptional book giving a range of information related to digital work providing advice for security and privacy. It is an advanced guidance, crucial for the defenders as *"they are increasingly using computers and the Internet"* (Vitaliev, 2007, p. 7). It is so detailed that includes instructions for the software, how to get safe and strong passwords and encryption tools. Surprisingly, there are provisions even for the safety of the working environment of the defenders such as his/her workspace, colleagues and, the public framework they operate.

In this context, the defender's claims always formulated according to contemporary problems. They are the ones who stand between the state and the ordinary people when the uncontrolled rhythm of capitalism challenges recently defined rights. In correspondence to similar allegations, Michel Forst in 2017 published a thematic report indicating that *"business enterprises can have a significant impact on the enjoyment of HR"* (UNGA, 2017). Thus, HRDs not only fighting for established liberties but also are always present when new issues challenging the integrity of HR. In parallel, the previous note from the special Representative indicates that they gained recognition by the international instruments.

Similarly, the issue investigated in this research consists a contemporary problem that recently revealed the aspect of the defenders in relation to the migration crisis. Analytically, the organizations proceeded to collective and cooperative action in the Mediterranean that attracted the humanitarian institutions' attention. Except for the practical support to the moving populations, they contribute with many reports and claims regarding the situation. These practices provided adequate sources of information related to the conditions in

the refugee/migrant spots and further, pressured the international community to make changes without excluding the humanitarian factor when adopting new migration measures. Thus, the position of the defenders in the migration policies gradually shifted. Their active presence and the demand for participation in the rescue operations or the amelioration of the detention centers' conditions followed by criminalization and expulsion from the procedures.

For instance, the HRW published in 2019 a global report related to the events happened in 2018. The report indicating the EU as an irresponsible actor who disregarded HR in order to prevent the increase of the migration flows in its territory. Specifically, HRW condemns *the EU-Libya agreement due to the "overwhelming evidence of pervasive and routine brutality against asylum seekers and other migrants arbitrarily detained by those authorities, or otherwise deprived of their liberty"*. (HRW, 2018, p.227). On the other hand, the global analysis of the Frontline emphasized on the case of the defenders regarding the migration policies. In particular, the organization addressed *many collective or individual complaints that referring to physical attacks against the defenders around the globe and specifically to the high seas and the Balkan European routes* (Frontline, 2019, p.23). All of them referring to an organized stigmatization of human solidarity, and to an organized attempt to restrict the humanitarian aid through limitations of the rights of assembly and association. The issues raised from the organizations commented several times from the European institutions that demanded the respect of the fundamental European values.

At first, the Council of the EU reacted to the restrictions posed to the right of assembly/association as well as the right to FOE. By denying to them the opportunity to have an active role in the decision-making and expressing their demands at the end, these limitations targeting directly the civil society actors and contribute to the shrinking of its place into the European community. Since 2014, it published the *Guidelines on FOE with a specific reference to attacks against journalists. The document repeats the need to investigate relevant crimes and most importantly highlights "that protection should not be limited to those recognized as such but also should cover citizens, bloggers, activists, etc."* (EU Council, 2014, (§1. A.5)). Moreover, it addresses the right of *opinion and all forms of it* without any state interference and recognizing their contribution in the decision-making (EU Council, 2014, (§ C.13)). Finally, it refers to *the end of impunity for crimes against journalists and the need to revise the defamation laws in to avoid disproportionate civil society sanctions* (EU Council, 2014, (§ C.57))

This document is important for the research. Namely, incidents of violations against journalists reported extensively. People who recorded inhuman prosecutions of migrants and refugees or citizens who publicly asked for better living conditions in the detention centers faced criminal sanctioning and disproportionate penalties for their legitimate to right to FOE. Therefore, states should always protect them and do not leave acts of violence unpunished. In the same way, CoE commented on the absence of migrants in the media coverage in the early stages of the refugee crisis. Specifically, *"the coverage in 2015*

characterized by a significant diversity overall where new arrivals were seen either as vulnerable or dangerous outsiders” (Georgiou, Zaborowski, 2017, p. 5). In the end, those practices promote a stereotyping approach of the incoming people and *“offered limited opportunities to migrants to speak”* (Georgiou, Zaborowski, 2017, p. 5).

Additionally, CoE send a recommendation to ms for strengthening the civil society space. It recalls restrictions specifically to HRDs and recognizing the *“legitimate aims of the right to freedom of association”* while reminds the necessity of a national legal framework and a public environment to protect and promote them (CoE, 2018 b). Initiatives also started with the Expert Council on NGO Law in the conference conducted with the defenders. The outcomes raised issues of combating racist associations, *an actor that constantly threatens the defenders in the migration zones* (McBride, 2018, p. 30). The most recently released document is the Guidelines on Protecting NGOs’ work in supporting of refugees and other migrants as: *“their activities are an essential contribution to securing the HR of refugees and other migrants including the rights to be treated with dignity and respect for their humanity”* (Ferstman, 2019, p. 13).

Moreover, the institutions focused on the severe sanctions to the defenders via anti-smuggling laws and anti-terrorism provisions. In particular, UNGA adopted in 2019 a resolution that express concerns related to counter-terrorism measures affecting negatively the defenders since 2005. It should be highlighted that these practices *“by characterizing them as factors contributing to terrorism implying that they are a threat to national security and as a result contributing to the perception that they are legitimate targets for abuse by state and non-state actors”* (UNGA, 2019 a, § III(I)). It follows that in Europe the terrorist attacks were perceived to be connected to the migration flows and as a result, the defenders many times consider to be complicit. Except for the protection of the defenders against these projects, there has been a collective institutionalized response in relation to the laws and the restrictions that affected directly the people that provide humanitarian assistance to migrants/refugees who are crossing the European- Mediterranean borders.

Subsequently, the EP since 2015 tried to engage NGOs in the adaptation of rules against money laundering. The procedures enable the organizations to express themselves and formulate along with the European authorities *“fair binding rules of transparency that will allowed them access to financial resources”* (EP, 2015, p.3). Also, the research focused on assisting particularly the organizations in the Mediterranean. In 2020 in communication with INGOs, the Expert Council on NGOs *found illegal the restrictions that posed on the humanitarian organizations who provided assistance to the incoming flows*. This decision is of a great importance as, on the one hand, an officially recognized European body acknowledges both the legitimate presence of the organizations on the rescue operations and the disproportionate sanctioning imposed on them. On the other hand, *recommends to the ms to stop preventing NGOs from helping people in need approaching EU from land or sea* (INGO-OING, 2020, p. 2).

It is undeniable that the constructive relationship between states and NGOs or CSOs *has shifted because of the practice of the state to enact legislation, which determines particular acts to be criminal offenses* (Caritas Europa, 2019 pp. 2-4). The research refers to criminal sanctions through laws that specifically targeting advocates working in solidarity with migrants and refugees. The main issue arising is the way the more burden countries implemented the European policies. The priority of reducing migration flows and equally restricting the assistance offered to them followed by sanctions provided in the legal documents for smugglers that in reality imposed to the defenders. For example, the interpretation of the Facilitation Directive paraphrased in many cases.

The European actors like the EU Policy Department reacted by underlining that *“it provides criminal sanctions for a broad range of behaviors that cover a continuum, from people smuggling at one, to extreme assistance at the other”* (Carrera *et al.*, 2016, p.12). Following that, FRA also expressed its considerations regarding the hostile practices against the defenders. The latter published a report that indicates the criminalization not only of migrants but also of the defenders by letting state’s scrutiny to impose sanctions when the irregular entry is facilitated for humanitarian purposes (FRA, 2014 b, p.8). In a second publication, the agency expressed its concerns regarding the negative smear campaigns and the impact those have on the defender’s work (FRA, 2018 b, p.9).

In conclusion, the defenders themselves have gained an essential role in decision-making and keep publishing their issues in order to destabilize unfair laws and circumvented rights. In Europe specifically, the issue of human security including migrants has a major role. However, assimilating migrants and the relevant policies in the future European plans is complicated and includes many different actors. This research supports that, the measures adopted so far not only undermine the internationally accepted HR of the people seeking international protection but also shows hidden risks that call for protection. In particular, HRDs either as civilians and organizations or as migrants have been in the center of attention. Their efforts to facilitate the living conditions in the countries of acceptance and the rescue operations occurring in the Mediterranean criminalized through different means. Even if the EU policies targeted indirectly this movement of solidarity, still the EU institutions monitored effectively their alarming situation and condemn the systematic prosecutions the defenders face. The inefficiency of the migration policies revealed the risks regarding the defenders in the Mediterranean countries. In contrast, the active contribution of the EU institutions that officially recognizes the threats facing the European civil society indicates the need of a new mechanism that will secure their presence in relation to the migration context. The next chapter will investigate a potential alternative for the objects observed in this paper.

4.5. Gender Perspective

Gender perspective entered dynamically in the world of HR and established in the global scene as an appreciable factor of decision-making in the political, economic and cultural policies. Many organizations

publishing reports and communicate their issues. The most recent reference is related to the LGBTI community, an HR 'category that steadily adopts its characteristics and claims in the field of HR (Kirven, Eguren and Cavaj 2010). In the case of refugee crisis, gender has a double meaning. Initially, the crisis as a reality, challenged a lot the deeply rooted patriarchal norms and shifted the research to the gender-based characteristics of migration in Europe. In the same way, humanitarian assistance approached the issue since the early outburst of the Syrian war and revealed the role of defenders who are fighting for issues with a gender focus to HR. For this reason, the analysis will examine the initiatives achieved from the defenders occupied with gender through the examination of the refugee crisis. To clarify, based on the definition of Special Rapporteur on HRDs, "*women human rights defenders are both female human rights defenders, and any other HRDs who work in the defense of women's rights or on gender issues*" (UNGA, 2010 b) The Resolution adopted in 2010, recognizing officially the term and introducing a gender perspective in the area of the defenders.

4.5.1. Gender and the Refugee crisis

The context of the Syrian conflict illustrates many issues in this approach. At first the discussion is related to the morals' background of the migration flows, and the fact that they are coming from a conservative society. Based on testimonials, *women were feeling more stressed without their husbands as they were unsure about their economic future and the lack of safety in the camps* (UNHCR, 2014, p.12). However, except for this expected reaction there was also the feeling of *emancipation expressed by some women who felt free to move independently*. However, the problem during conflicts' analysis is the intention to create a pattern that focuses the attention, "*to the link between making a sexual stereotyping and increasing the vulnerability of women in post-conflict societies*" without though understanding and responding to their needs (F. Ní Aoláin and C. Turner, 2007, p.262). This issue is related to this case as either the defenders focused more on incidents of rape, instead of capturing practical needs as women's privacy and incidents of domestic violence, or the problem of trafficking incorporated in smuggling laws and further targeted the people's operations in the Mediterranean. Of course, incidents of exploitation remain dominate under war situations. But, this shouldn't be the only indicator of approaching women arriving from dangerous environments. There are recorded *networks of sexual workers in the camps and smuggling or abusive behaviors against women and specifically the ones without male companions* (Freedman, 2016, p.21).

Moreover, it is obvious that the refugee crisis shifted in relation to the migrant flows. In particular, based on the evidence provided by IOM women are increasingly crossing borders for "*purposes of protection but also work, family reunification and other social, political and cultural reasons*" (F. Ní Aoláin et al., 2017, p. 116). Usually, "*Syrian and Afghan women are accompanied by their husbands and the Eritrean and Ethiopian are coming alone while the Pakistani include mostly men*" (IOM, n.d.). The latter should not be omitted in a gender discussion as they also have to face the hierarchical norms' destabilization and as happened

in the camps they *“remained discouraged by their inability to fully provide for and protect their families”* (OXFAM, 2016, p.5). In both cases, it is reasonable that war escalates the violence incidents and, brutalities are occurring in a daily rhythm. However, it is noticed that the majority of displaced people consisted by women. Except for the usually accepted approach that emphasizing on incidents of sexual exploitation, particularly of women, feminists’ scholars comment that *“it is demanding to move beyond these unnecessary gender stereotypes that victimize women, and centralize the women’s needs”* (F. Ní Aoláin, Haynes, Cahn, 2011, p. 14)

More specifically, issues risen from the first point of arrivals as even if the gender and deaths can be similar in Mediterranean *still these deaths incorporate gender specific risks because the capacities and the physical appearance of both genders differ* (Pickering, 2013, pp.1-2). Secondly, the lack of gender approach is found on the living conditions in the reception centers. The adhesion to sexual abuses related to migrant women undermined the actual issues they have to face. For instance, the repeatedly known issues concerning gender-violence incidents remain uncovered. In the most cases, women *do not report abuses, as they are afraid of being sent back for exposing their husbands*. (Freedman, Kivilcim and Baklacioğlu 2017, p.14). In parallel, in pre-conflict Syria were not allowed even to leave the country alone so on the contrary, admitting such a crime is impossible because most of them are afraid of being stigmatized. Additionally, gaps existed inside the camps regarding lack of privacy and security that further indicates the lack of an organized gender specific approach. Women mentioned that *mixed camps and open showers discourage them from using these facilities, or they did not have space for cooking and alternatively many times they slept outside in the fields, as they were anxious about being attacked at night* (Freedman, Kivilcim and Baklacioğlu 2017, 144-145). The defenders did not ignore these difficulties and tried to contribute and ameliorate these conditions.

4.5.2. WHRD and the Refugee Crisis

The space of WHRDs is a challenging issue as there are still people (in particular in developing societies) who believe that they do not have equal rights, so their work is usually doubted on its basis. The 2019 report on WHRDs underlined that *“they are often targeted because they challenge the traditional notions of family and gender roles in society and also stigmatized by community leaders and faith-based groups”* (UNGA, 2019 b, p.6). The international community urged for international mechanisms for the protection of WHRDs working in post/conflict that need to be developed and strengthen. Even if the European community is more familiarized with issues of gender violence and sexual harassment, nonetheless, the most organizations in the case of the refugee crisis failed to capture similar hidden acts and eliminated their work into a superficial gender approach. This means that the defenders in the reception centers focused more on women victims of sexual exploitation than women who were facing daily problems like the ones mentioned above. Consequently, they created supporting teams for those women without responding to the ongoing gender issues occurring in the camps.

According to article 1 of the Declaration on the Elimination of Violence against Women, as an act of gender-based violence considers to be the one *“that results in physical, sexual or psychological harm/suffering of women including threats of such acts or arbitrary deprivation of liberty”* (UNGA, 1994). The CoE proposed a draft resolution for protecting specifically women from incidents of gender-based violence, however, these provisions never implemented in depth in the refugee camps (PACE, 2017). The lack of training and the invisibility of women as there is no gender-specific policies for them affected the weak approaches of the refugee population.

More specifically, the WHRDs provided humanitarian assistance from the beginning of the war. The Women’s Refugee Commission in cooperation with Women NGOs and activists respond immediately to the Syrian women’s needs in Jordan. They *organized advanced programs by integrating the local community and assigning to Syrian women leading roles*. The project included *gender equality and women’s’ empowerment topics without though being able to correspond to the gaps of urgent needs such as abstention of facilities and services specifically designed for women* (WRC, 2014, pp.11,18). Equally, in the refugee camps in Greece and Italy women’s networks supported the incoming population but their contribution limited to sheltering and first aid services without a deeper focus to gender violence issues. Even if the defenders locate similar incidents, they did not deepen to the cases. This inadequate gender approach is not only related to the defenders but also to the women themselves who were afraid to reveal relevant incidents. On the other hand, the UN, *adopted in 2003 guidelines for prevention and response to sexual and gender-based violence against Refugees, Returnees and internally displaced persons* which reveals the acknowledge of the problem that still is not incorporated in the refugee HR agenda (UNHCR, 2003).

The guidelines indicate the state as the responsible actor for the prevention of those actions. In particular, highlights the need to *“specify the location of the crime, and the demand of a comprehensive response plan that focus on the roles and the needs of men and women and how they can become both agents of change”* (Lubbers, 2003, p.20). Once again, the research calls for a monitoring mechanism which takes into consideration the defenders claims and do not leave open spaces for gender-based abuses.

To sum up, WHRD are now an essential part of the HR field that incorporated in the international policies. However, there is a place for improvement related to invisible gender abuses that WHRDs have to face. The international community should focus the attention to *“a sustainable and well-financed protection program enacting security measures and specifying the profile of gender ethnic affiliation and leadership positions”* (OHCHR, 2011, p111). Finally, *judicial and quasi-judicial instruments should surpass the gender-discriminatory legislation and provide effective remedies for specific groups such as women asylum seekers* (CEDAW, 2015, p. 4). The example of the refugee situation refers to the issue of specific problems of women, and *“a specific focus exactly because of their gender”* (Abeysekera S., et. al., 2007, p. 18). HR, are indeed,

equal for all independently from their gender but this does not mean that women do not have specific needs and different cultural backgrounds that cannot be omitted anymore from the refugee European policies.

Chapter 5. Conclusion

5.1. Summarizing the implementation gap between the EU and national migration policies

The case of the European migration-refugee crisis revealed many issues regarding the protection of HR in the area. Although the EU has, a long history related to the protection of HR and the rule of law, this time reacted with practices that targeted the incoming flows as well as the defenders. The main purpose of these methods was the exclusion of people in need and the maintenance of borders control without though calculating the humanitarian impacts. On the contrary, since 2014 Europe's civil society space responded immediately to the urgent situation. For the first time, the discourse highlights the existence of a transnational movement including individuals, NGOs, and in general, civil society groups that cooperate for the protection of the asylum seekers. Except for the unprecedented coordinated participation of such groups, the movement provided tools in the conflict area, while also contribute with high-tech equipment in the rescue operations. Additionally, migrants and refugees participated in these efforts in order to ameliorate the living conditions in the camps. This model of humanitarian assistance that created in the Mediterranean was targeted in a very dangerous way that arises questions related to the legitimacy of both the actions taken to restrict their operations as well as the systematic procedures that hasten the closure of civil society space.

The European Union followed a strategic plan in its external policies, which focused on bilateral agreements with third countries aiming to prevent asylum seekers to approach its territory. In the meantime, similar policies implemented internally and interpreted in a way that denying access to the people in need. Thus, the measures in both levels affect the defender's operations in multiple ways. At first, the research referred to the agreements conducted with Turkey and Libya. The latter indicates the Libyan coast guard vessels as guardians of the sea borders who block the passage for asylum seekers. These policies resulted in threatening behaviors of the Libyan authorities against the defenders and also to the refoulement of asylum seekers to Libya where inhuman detention conditions prevail. Equally, EU-Turkey deal exposes the returned population in dreadful risks.

In particular, violations regarding the principle of non-refoulement are confirmed while also the procedures lack of respect for the rights of the people. Incidents of torture reported to the officials while *"access to communication and information is limited"* (Tunaboylu, Alpes, 2017, p. 86). All in all, the EU presented these practices as a successful model of cooperation but the

"humanitarianism which should by nature be a universal principle has now been constricted with distinctions made between us and them through a broader political culture ensuring that human solidarity ends at the European gateway" (Fekete, Webber, and Pettit, 2017, p. 8).

These attempts to restrict access to international protection trigger a lot of reactions especially when the discussion involved infringements of international law. Up to a point, the EU in terms of shielding its sovereignty submitted asylum seekers into danger. The perception of Libya and Turkey as safe countries exposed them to *inhuman treating and high possibilities of a return to unsafe countries like Syria* ((Amnesty International, 2019, p.12). More specifically,

“by declaring Libya a safe country EU oversees the return of asylum seekers to rape and torture in detention centers while the politicians claimed that avoidable deaths are required for the defense of the European values” (Binder, 2019).

At first, these procedures are against the refugee law as EU exposed people who legitimately fall into the scope of being refugees to return in a war country followed by the procedures of the collective pushbacks to Turkey. Additionally, the right to subsidiary protection as it is provided in the Qualification Directive of the Dublin Regulation, in cases that a person needs protection but does not meet the criteria of the asylum/refugee applicants, undermined by the fast-track procedures and the policies that intended to deny access for international protection. Finally, there is a general consideration regarding the EU ms’ stakeholders and their obligations to the civil society as the research noticed a systematic restriction of their freedoms. Namely, the right to freedom of assembly and association and, most importantly the right to defend HR. Even if the latter has not yet a binding character still, it is opposed to the proclamations of the EU for protecting the defenders across Europe.

At the beginning, the research emphasized on the lack of cooperation among the ms. This aspect is important because the Mediterranean countries were far more burden than the ones who were not directly affected by migration. Analytically, the Common European Asylum System and the sourcing obligations proven problematic in their implementation. The interest centered the attention to the Dublin Regulation III. As an overall summarize, the Dublin regulation reflects the principle that *those asking international protection should seek asylum in the first country they reach, and enabling the transfer of an asylum applicant once responsibility among ms has been agreed* (Office, H., 2020, p. 6).

The document encompasses the *“sovereignty clause”* in article 17(1) which allows to a ms to examine an application even if it is not the responsible one for the claim where there is a substantial reason for protection. This mechanism could provide proportionate organization of asylum claims among the Dublin states. Nonetheless, the outcomes of the ineffective implementation of Dublin III are projected in ECRE’s 2018 report that highlights that, the majority of the ms by applying the Dublin Regulation

“made a conscious policy choice to subject both asylum seekers and their own administration to lengthy Dublin procedures which end up in no transfer usually to non-compliance with the time limits for carrying out the transfer” (ECRE, 2019, p. 9).

As a result, many countries were rejecting asylum claims without contributing to an equal sharing of responsibilities regarding the crisis. A characteristic example is Greece as in 2018 had over 70% of its outgoing requests relating to family reunification. However, countries receiving requests from Greece continue to impose excessive evidentiary requirements such as translation and authentication of documents proving family ties, or even DNA tests for children (ECRE, 2019, p. 10).

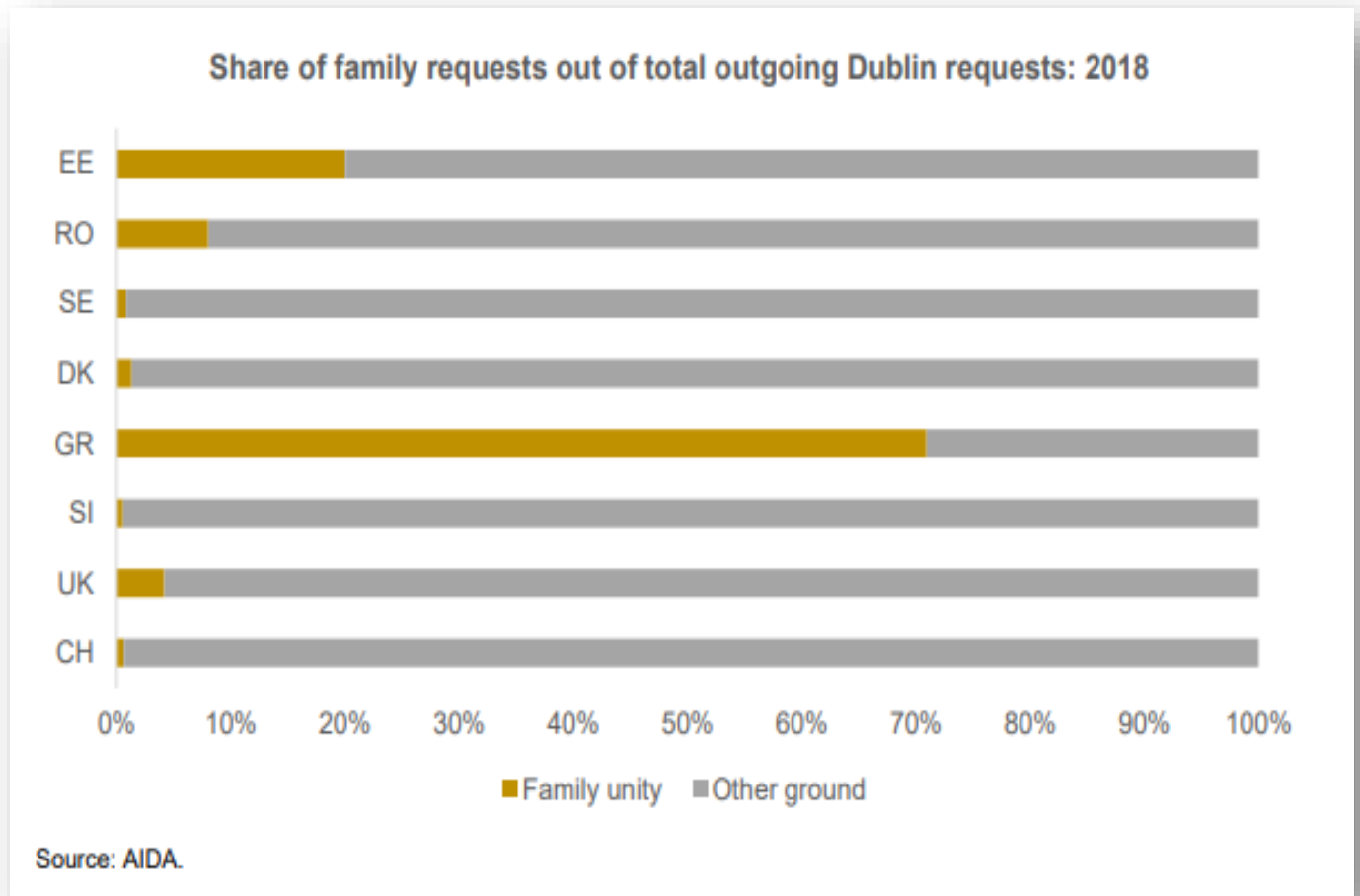


Figure 6: Dublin Requests (ECRE, 2019, p. 10)

On the other hand, the possibility for each Dublin ms to interpret and implement the regulation created an open space for mistakes and violations regarding the asylum seekers and the defenders. More specifically, in Greece, the fast-track procedures were broadly enforced and ignored serious claims for international protection which followed by collective deportations further boosted by the EU-Turkey deal that enabled easy returnee decisions. The defenders reacted intensively to these methods. For example, *MSF announced the rejection of all funding from the EU and its countries in protest of the EU-Turkey agreement on limiting the influx of migrants and refugees* (Miles, 2016). Until today, the country proceeded to massive refugee/immigrants pushbacks, suspension of humanitarian missions and annunciations of collective returns to the countries of origin.

In parallel, there has been “*a strictly transatlantic security perspective with NATO as a military cornerstone*” (Brattberg E., Valášek T., 2019, p. 14). This migration policy in the internal projected with the strengthening of the police forces, for supporting the EU defense. For example, in Greece implemented the program *Xenios Zeus including search over tens of thousands of people presumed to be undocumented migrants and subjected to searches on the streets, and hours-long detention at police stations* (Cossé, 2013). The states by using EU’s integrity as the basic argument kept interfering in the defenders’ operations and even worst, exposing them to dangers with the violent police interferences in their missions.

To sum up, the major concerns regarding the Dublin regulation is the implementation gap of its provisions. Instead of promoting long-standing cooperation among the ms and a sharing of responsibility between the Dublin states, on the contrary, followed by a transfer of authorities and duties. The lack of solidarity led the far more burden countries to adopt laws that aiming to reduce the moving population into their territory. As a result, the research pointed out several laws that restricted the operations of the NGOs as well as the activists’ ones who engage with the transfer or allocation of the moving population into the country. Thus, the states by incorporating the EU legal provisions regarding asylum at the end targeted directly the defenders.

The research revealed how the EU practices and its extensions at a domestic level allowed systematic practices of intimidation. To be more specific, Italy and Greece represent an example of different implementation policies of the EU migration guidelines, which finally indicates the moving people as a pawn in a political game of state sovereignty. The case study of Italy illustrates how state’s interpretation of the CEAS left the capacity to the government to sanction the humanitarian assistance in the high seas by getting involved in a cooperative operation with the EU agencies that “*could intervene –when necessary- in SAR activities*” (Marrone, Nones and Ungaro 2016, p. 119). On the contrary, the example of Greece revealed the discretion of a ms to enforce independently its actions and justify them under the scope of the EU legislation regarding asylum. Specifically, the implementation of migration policies facilitated indirect attack to the defenders. The repeated legal amendments and the police activities against the people on the move also enable non-state actors to get involved in the situation and incommode almost under state approval the defenders’ operations. In each country, the defenders were under threat and even if humanitarian organizations alarmed the EU for the risks they daily face, they remain in the margin and facing numerous risks. These practices reveal a general aspect of shrinking the civil society actors and criminalizing humanitarian efforts in the Mediterranean.

For example, the Italian policies framed according to the EU Migration Action Plan that promote the elimination of smuggling and trafficking with basic areas of interest:

“the enhancement of police and judicial response, improving the gathering and sharing of information, enhancement of prevention of smuggling and assistance to vulnerable migrants and seeking of stronger cooperation with the third countries” (EP, 2020).

In the meantime, these plans provided to the state the legal ground for criminally sanctioning the defenders who operate in the Mediterranean. Additionally, the states ignored the *“exception clause”* that excludes humanitarian purposes from these penalties. Despite the measures launched for combating these illegal and inhuman networks, at the end, their implementation targeted the rescue vessels operating mostly in the Italian coastal waters. The outcomes of such policies not only didn’t reduce the smuggling/trafficking cases which increased due to the stringency of EU practices but led people to illegal labor. As they were unable to afford smugglers, *“they turned even to selling sex to fund their journeys”* (Taylor, 2017).

The gaps of the implementation of specific documents like the Facilitation Directive expedite the investigations conducted against the defenders. In particular,

“the so-called humanitarian exemption clause has a very narrow scope while the facilitation of entry, transit, of people for non-profit reasons isn’t defined exhaustively to secure NGOs and volunteers who provide SAR operations and assist migrants in the borders. Consequently, this implementation gaps may undermine the goal of creating a safe space for humanitarian operations” (Conte, Binder, 2019, p. 9).

Finally, this plan excludes the most important actor, the people who need protection and increase the dangers facing during their attempts to access Europe.

5.2. Articulating the arguments supporting the humanitarian presence in the countries of Mediterranean

Over the last five years, it has been noticed a systematic investigation of humanitarian vessels with the accusation of participating in smuggling networks. Many cases ended up to the domestic courts⁵ or even highlighted by the European institutions for violations against the defenders. In the meantime, except for the official investigations into SAR NGOs, space created for other actors as far-right parties. Particularly, *“their extremist members, developed networks of harassment and sometimes physically assaulted humanitarian workers”* (Fekete, Webber and Pettit, 2017, p.38). On the other hand, the collaboration with the Libyan authorities who “preferred” more aggressive means in the high seas trigger *the reactions of many NGOs who clarified that they were not able to keep operating under this regime of terror and suspended the rescue missions* (MSF, 2019 b). At that point, it is essential to refine that the rescue missions did not violate any legal restrictions as

⁵ For more information, see appendix II, p.109.

“Search and rescue areas are not areas where the coastal state exercises sovereignty or has jurisdiction, but areas forming part of high seas where foreign military assets have every right to investigate any illegal activity departing from their coast” (ReutersMalta, 2019).

As the space is *out of states’ jurisdiction*, the Libyan authorities couldn’t proceed to such *disproportionate sanctions* by intervening in the defenders’ operations (Howden, 2017, p. 4).

Moreover, based on the *“Guidelines on the Treatment of Persons Rescued at Sea”*, the defenders acted under their humanitarian obligations without surpassing the law. In short, the document combines the legal obligations related to the Law of Sea, which further indicates,

“the need to understand the humanitarian duties for peoples in distress at sea and the obligation for the ship owners to ensure that survivors cannot be disembarked to a place where their safety would be further jeopardized” (§ 5.1 (6), IMO, 2004, p.6).

To sum up, the rescue vessels should sail in the waters with the flag of the dominant state in the relevant areas and cooperate with the government and the authorities of the first safe harbor they reach where they can disembark the rescued people. These provisions are enshrined in the international marine law, and the resolution on *“Combating Unsafe Practices Associated with Trafficking/Transport of Migrants by Sea”*, and are in parallel with the refugee Convention (IMO, 1997). This is, a strong argument that acquits humanitarian operations in the Mediterranean while up to an extend indicates the EU’s incompatibility with the European and international legal norms.

Not only that but also the core documents of the EU introduced criminal penalties for the people assisting irregular migrants. For instance, *“the Act no. 40/1998 indirectly referred to agreements such as the Schengen Acquis ...to impose financial penalties to those gaining financial advantages from relevant activities...”* while article 34 of the TEU refers to *“action against trafficking that it is found on the intersections of criminal and immigration laws”* (Guild, Niessen, 2002, p. 148). Given the above, criminal justice will never be an adequate factor in combating trafficking and smuggling. It is undeniable, that all of these practices except for complicating the defenders’ work also devalues the HR approach concerning the vulnerability of the moving people. There is no provision for the restoration of the victims while it is easy, especially in emergencies like those that described in the research, to criminalize the people aiding in the area.

Under these conditions, *“the issue of facilitating the entry, transit and, stay of irregular migrants has been politicized at the EU’s external borders and, renewed EU policy efforts to address the issue of irregular migration and people smuggling in the scope of EU Agenda on Migration”* (Carrera et al., 2016 b, p.12).

However, by stigmatizing such efforts the EU and the public discourse omit some important characteristics of the humanitarian presence in the Mediterranean. For example, the importance of the missions in the area is found on the results of the rescues: *“Of the nearly 180,000 people rescued between North Africa and Europe during 2016, 46,796 were saved by NGOs. That was 10,000 more than either the Italian navy or*

coast guard” (Howden, 2017, p. 5). It is clear so, that the operations can be characterized as successful and necessary for safeguarding the lives of those people. These numbers illustrate the inadequacy of both Italian and Libyan authorities in the area while rendering essential the non-governmental assistance.

Another point that invoked in terms of legalizing and securing the defenders in the area is related to the basic principles and inalienable rights of the incoming people. The main right that those people defend except for the right to life, integrity and prevention of inhuman treatment or torture is *the right to right to leave a country, including one's own, guaranteed in Article 2 of Protocol No. 4 to the ECHR* (CoE, 1963). Based on the issue paper of the CoE the *relevant European ECtHR' case law concerning travel bans and the immigration laws of foreign countries while “it is highly embodied to the right to seek asylum and enjoy asylum”* (CoE, 2013, pp. 4, 25). For this purpose, the defenders by signing the Code of Conduct, they referred to their intention to cooperate with the authorities and leave space to the police to board for occasional controls. Those actions reveal their motive to sacrifice their independency in order to participate in the rescue procedures and collaborate with the states for securing fewer deaths in the Mediterranean.

The last argument that emerges their protection is the impacts of these practices in the defenders' work. These accusations and the constantly targeting methods used against them generated a behavior of mistrust towards the solidarity movement. The outcomes were fatal, as on the one side, usually, they did not have the support of the locals despite the fact that at the begging reinforce their efforts. On the other side, this systematic pressure over humanitarian organizations is interrelated with a holistic marginalization and shrinking of civil society actors. Instead of conceptualizing defenders as criminals, it should be taken into account the fact that 40% of rescues are conducted by NGOs, *“a number that making it impossible for the latter to check the origins of the migrants and if they were previously subjected to smuggling networks”* (Wintour, 2017).

The defenders' priority is the minimum possible losses in the seas while the responsibility for detecting criminal networks of trafficking/smuggling is attached to the state obligations for securing human safety and integrity. Following the previous, the victims are under state protection as long as they are found in each country's jurisdiction. Particularly, *the coastal state is obliged to coordinate the disembarkation of the survivors to a place of safety as required by SAR Convention* (Button, 2017, p. 31). In parallel, as the Myria Independent Center for Trafficking and Smuggling highlighted in its 2016 report *“the lack of harmonization between the data from different stakeholders is not sufficient as a basis to construct effective policies and develop relevant practices”* (MYRIA, 2016, p. 6). So, it should be promoted a plan of coordination in the SAR operations than the exclusion of the humanitarian organizations.

Except for these prevalent conditions another aspect of the EU policies, which was highly noticed in the Greek case, is the intensive and violent police activity under the justification of the refugee crisis. This mechanism is attached to the general European approach against trafficking/smuggling within the migrant

flows. The European Commission in 2017 comment on the Facilitators Package and the ongoing Common Security and Defense Policy and analyzed the project, which is connected with:

“a military operation to disrupt the business model of smugglers by identifying, capturing and disposing of vessels used/being used by them as well as train the Libyan coastguards and navy for contributing to the implementation of the UN embargo of the high seas off the coast of Libya” (EC, 2017, p.5).

Thus, it is impressive that the EU confrontation of the crisis was operated by army forces that many times had the opposite interests from the humanitarian missions, a fact that endangered and prevented their operations. Likewise, in Greece, the methods included police officials’ activities that ended up to prosecutions against the defenders.

Analytically, the observatory for the protection of HRDs belonging to the World Organization Network Against Torture, since 2016 is reporting *“abuses based on judicial harassment, restrictions to freedom of association and disproportionate use of force against the defenders”* (OBS, 2016, p.1) After receiving the relevant information, the organization called for intervention. On the one hand, *incidents disclosed in the Northern Greek borders where defenders from different countries were verbally harassed and threatened to be arrested* (OBS, 2016, p.2). On the other hand, it has been followed a systematic pattern of evacuations of buildings sheltering migrants and refugees. The procedures conducted with violence targeting the people on the move including journalists and photo-reporters who legally recorded the incidents. In parallel, these governmental directions executed by police officers allowed non-state actors to attack to both migrants and the defenders without punishment.

The atmosphere of impunity is empowered by amendments of the Greek legislation concerning the right of assembly and association and the functioning of the NGOs and civil society’s groups. The government proceeded to registration requirements including exhausting details of their operations *“without respecting that the organizations cannot be subjected to direction by public authorities”* (Statewatch Observatory, 2016, p.2). This provision is enshrined in paragraph one of the CoE’s recommendation regarding the legal status of NGOs in Europe and underlines that the definition incorporates:

“self-governed organizations rather than under the direction of public authorities and that their principal objectives are not to generate profits from their activities. The term, furthermore, includes a range of subjects such as associations, charities, foundations and non-profit corporations” (CoE 2007 b, (I §1.18)).

In the end, the decision to restrain all the humanitarian rescues by unregistered NGOs acting in the Mediterranean and allow police controls revealed the ultimate goal: the pause of humanitarian aid for the people asking international protection.

5.3. Challenging legal norms and incorporating the defenders in HR practices

The risks faced the defenders in the Mediterranean have not been excluded from the humanitarian Agenda. Many organizations responded to the emergency and asked for their protection. Since 2015 and

despite the multiple policies adopted for the confrontation of migration, the situation is getting worst and the humanitarian institutions urge a political response. The UNHCR pressures Greece to investigate pushback allegations at both sea and land borders: *“We have continuously addressed our concerns with the Greek government on reports which have increased since March”* (UNHCR, 2020). As there is, still, an unstable ground for both the defenders and the incoming flows the solution could derive from the available legal tools that protect similar procedures. By using these bodies, it is possible to establish the mechanisms that will promote and further secure the operations of the defenders in the Mediterranean.

In particular, the problems of those policies were obvious from the first outburst of the refugee crisis. Several actors commented that

“after Kaddafi’s death there will be much more uncertainty in the area while warnings came from IOM predicting an increase of peoples crossing the sea and calling EU to step up a strong search and rescue mechanism in order to save lives” (Anon., 2015). Equally, 2018 Frontline’s report emphasized to the:

“Systematic and relentless push to equate NGOs with foreign interference dominated in the public discourse. The defenders presented as ‘grant-eaters’ in parallel with the promotion of anti-foreign funding legislation and defamation campaigns opposing to them” (Frontline, 2018, p. 22).

More specifically, several cases brought to the domestic courts regarding the legitimacy of the defenders’ actions. The example of Carola Rackete is the best known:

“as the Judge Alessandra Vella ruled that Rackete shouldn’t be held in a state of detention while prosecutors investigate whether there is sufficient evidence to formally charge and send the 31-year-old German woman to trial” (Povoledo, 2019).

It follows that in the Mediterranean presented a specific pattern under justice that calls for reformations and redefinition of the place given to the defenders. The main point is the formation of a mechanism that bridges the risks they daily face in combination with the documents related to their protection. Because of the frequency of similar incidents in the European policies and the reactions of humanitarian organizations and individuals it is time to clearly determine a status to those people. It will guarantee their protection and define the limits of their presence in conducting SAR operations and providing help to asylum seekers.

For this reason, it should be underlined the *“struggle regarding what legitimacy means because usually, it is a normative concept”* (Brummer, 2015, p185). In this context, the term HRDs has not yet reached a legally binding character and does not secure specific rights for this particular group. Conversely, it includes and incorporates already guaranteed rights that subjected to traditional legal norms enshrined in all the national, regional, and international covenants. These documents ensure the state’s accountability and restrict its arbitrariness. As a result, in the case of the defenders, it is essential to challenge this normative construction and reinforce their presence in the international community. Nonetheless, the term adopted recently in the HR space so, the best way to claim for better conditions and developments is by exposing their risks. The HRDs

“carry out the vital work of protecting everyone’s rights. Protection of such defenders therefore takes on singular importance” (Tsonga, 2007, p. 7). Based on that, the defenders in the European area are an alarming example of defending HR, which highlights the shrinking of civil society and the marginalization of basic legal principles in terms of excluding asylum seekers and humanitarian assistance in the EU.

It is true that *“international lawmaking has grown pluralized and moved from a state-centric model of law to the inclusion of non-state actors who are now qualified to participate in these procedures”* (D'Aspremont J., 2016, p. 32). This opening to civil society space allowed NGOs and the CSOs to contribute to the decision-making and take action on crucial matters. Even if they gained space in the international community, facts like intimidation, physical harassment, administrative and legal restrictions and *“application of pressure on institutionalized forms of interaction and dialogue between governments and civil society groups”* still exist (Terwindt, Borgh 2012, pp. 1071-1074). Justice and the political system are now moving to a different direction while new methods can lead to the protection of the defenders. In particular,

“Liberalism these days requires the protection of fundamental rights through the courts. There is no fixed constitutional culture to each country but a tension between the transnational search to protect rights and the local understandings and practices” (Bell, 2016, pp. 409,410).

As far as the national policies did not capture the defenders’ risks and implemented policies that directly affected them negatively, it is important to use the courts as an indicator for their protection. Equally, by using the courts’ decisions as a guidance for the local understandings of HR in the migration context, the chances for incorporating the defenders in the European policies increasing.

The cases brought to the ECtHR revealed the lack of comprehensive measures and the need for initiatives to ensure their protection. For example, a characteristic case recently submitted in the Strasbourg Court is *Kamal-Aldeen vs Greece*, the defender who was working in the non-profit organization Team Humanity and applied to the Strasbourg Court to

“Challenge Greece’s crackdown on NGOs rescuing refugees at sea. He furthermore referred to illegal means of the Greek authorities against the defenders who assisting persons in distress at sea and highlighted Greece’s abuse of power to arbitrary prosecution” (GLAN, 2019).

Notably, similar cases submitted to the Court including also refugee claims over the last five years. The interrelated points of those cases indicate at first, the risks the defenders exposed to and secondly, up to what extends the Courts’ jurisdiction can ameliorate their position. The basic argument for the ECtHR as a supporting actor for the defenders is its ability of law interpretation case by case. Especially, the ECtHR:

“Has developed the most interpretative practices in the history of international dispute settlement and thus an extensive jurisprudence. Equally, the legal practice of interpretation of the treaties has gained significance and is the core stone of their implementation” (Popa, 2018, p. 29).

The importance of this claim is because by noticing and analyzing similar cases of HRDs the Court can capture the general pattern and assist in their protection.

Admittedly, the international courts “develop their legitimization in three levels: the legal, political and, societal one” (Björgvinsson, 2016, p. 330). Because of that, the decisions they made characterized by a strong interrelation with other courts, politicians and, of course, the CSOs. Therefore, the ECtHR shapes opinions influenced by those actors that create a multilayered scope highly disputing about the Court’s jurisdiction. A first, the problem of the Courts’ jurisdiction lies on the fact that provides a “*minimum standard*” of the interpretation of the ECHR and its application in order to avoid conflicts between the Convention and the national constitutions (Breuer, 2019, p. 34). Additionally, it includes the “*margin of appreciation clause that leaves the relationship between rights and democracy on the moot both in the abstract and the Convention System*” (Sweeney, 2013, p. 149). Specifically, leaves to the ms the discretion to interpret these decisions. The problem of this practice is the limited implementation of the Court’s comments under the principle of state sovereignty. Consequently, the states prioritize the non-interference to the national constitution.

However, “*fundamental rights are superior to the law of the sovereign state. The ECtHR introduced the most advanced and effective HR system with the European Commission monitoring the compliance of the high contracting parties to the ECHR*” (Popa, 2018, p. 239).

Given the above and as pointed out in the third chapter the Court and the Commission have noticed the gap created in the Mediterranean and proceed to announcements related to the violations against them. Indicatively, the case *M.S.S. v. Belgium and Greece* shows that “*given the underwhelming reforms of the Dublin Regulation the Court undertook to remedy HR violations suffered by refugees and made progress in refugee protection.*” (Murphy, 2012). Similarly, according to *Bundesrepublik Deutschland v. Aziz Hasan* (2018), a shift in ECJs’ scope noticed, including cases related to the Dublin Regulation. It seems that the defenders have now a ground to present their dangers and claim for the safest environment.

5.4.A new mechanism

The last two chapters examine the response of the European actors to the systematic targeting of the defenders who assist the moving population. Moreover, the research presented logical arguments that justified the presence of the defenders in the area. Not only the defenders condemned the European migration policies by pressuring the governments through the international mechanisms but also agencies such as FRA and the Amnesty international have already emerged the dangerous operations occurring in the area for both the defenders and the incoming people. The support provided from both the European Institutions as well as from the European Agencies for the protection of the defenders can boost the creation of a mechanism that will enable the defenders operate for rescuing people in distress.

The need for a binding mechanism that will provide legal protection for the defenders already pointed out by the ISHR, with the proposal of a Model Law, specifically designed for the defenders. Among others, underlines the importance of legally recognizing their status for authorizing a safe working environment for them. Additionally, such a document will actually hold the states accountable for any restrictions or violations against the defenders. Finally, provides to both States and defenders *with a tool against which to measure and assess the coverage and effectiveness of existing laws and policies*. (ISHR, 2017, p.3). Undeniably, adapting a relevant document would be important for the defenders around the globe. However, in the European case these procedures would be far too long while the immediate response to the crisis is necessary.

At this point, the reaction of the European bodies to the disproportionate sanctioning of the humanitarian movement acting in the European countries can be very helpful in order to continue their operations. Indicatively, under international law, states have specific obligations, as long the states violating them, bodies like the latter work as watchdogs who protect fundamental rights and freedoms. More specifically, *different solutions suggested to the ECtHR even by the defenders themselves, who asked from the Court the approval of interim measures to assist migrants on board* (FRA, 2019). Even if this is just a proposal, regarding the ongoing refugee crisis still demonstrates the alarming incidents in the Mediterranean. In accordance with the Rule 39, the Court *can establish interim measures where there is an immediate risk of irreparable harm. Later the measures are indicated in the respondent government and their application can be interrupted at any time by the Courts' decision* (ECtHR, 2020, pp. 1-3). However, this practice is used rarely, in cases *that risk the right to life or exposing a person to torture, otherwise when the right to a fair trial or the right to respect for private and family life are under threat* ((art. 2, 3, 6, 8, ECHR, 1950).

Since the case of the defenders do not encompass direct violations of these rights, the EU can use the existing tools for their recognition and protection, and create a strong system that incorporates them.

The paper suggests the creation of a directive that could be amended to the existing migration legislation and will protect those people. The directive will incorporate the defenders operating by land and sea in the European territory. Taking into account the Marrakesh Declaration as well as the comments posed by the relevant humanitarian institutions it is urging to protect the civil society space that criminalized for the operations conducted in the Mediterranean countries for supporting the incoming migrant and refugee flows. The procedures for drafting such a document should ensure the participation of both the legislators as well as the governments and the organizations/ activists who participate in the research. The first element that should be amended concerning the mandatory inclusion of the humanitarian clause (so far it is up to the states' discretion its inclusion) that will separate the people who provide humanitarian assistance from criminal sanctions of smuggling.

Secondly, the obscurity regarding what is *financial gain has created a gap because does not contain specific provisions or recitals clarifying the concept of humanitarian assistance* (EC, 2017, p. 10). Moreover,

for some countries like *Greece, the interpretation of the Facilitators package included criminal sanctions without even requiring any financial/material gain for the offense to be constituted* (EC, 2017, p.17). As a result, it is necessary to define what the humanitarian assistance is and under which conditions is contradictory to the element of the financial gain. Finally, these people cannot be excluded from the rescue operations. There should be defined the criteria that enable the organizations and the defenders to participate legally without interventions in any actions that assist the living conditions of the incoming flows. Consequently, by setting administration criteria for the NGOs and activists without disproportionate and unbearable terms it is possible to embody also the civil society actors in the migration policies and bridge the gap between the states and the people.

At the end, this collaborative project could omit the suspicions regarding the transparency of the humanitarian networks and exclude the state's constant interference. On the other hand, it could promote a model of cooperation between the defenders, the governments, and the authorities aiming to prioritize the security of human lives without restricting humanitarian operations in the high seas. Namely, Barbara Molinario, public information associate of the U.N. refugee agency has already stressed, *"the vital importance of SAR operations undertaken by all actors"* (Howden, Bode, 2017, p.1). Finally, the defenders themselves in 2015 forum underlined the need *"to move from individuals to organizations and associations"*, because by supporting such a tool the defenders' work will not be limited to domestic jurisdiction while state's accountability will be submitted to an international control (HRDN, 2015, p.7). As a result, such programming can incorporate all the actors participating in the migration/refugee crisis and express collectively the defenders' needs.

5.5. Concluding Remarks

All over the world, there have been developed instruments for the promotion of the concept of HRDs and the facilitation of their working environment. However, the term has not yet been clearly defined and does not have a binding character that could create state obligations ties. Due to this fact, the research defined the term HRDs under the scope of the European refugee crisis. The phenomenon of the migration outbreak was treated with stricter European policies in order to reduce the people arriving to its territory. Especially because of the mixed incoming flows including migrants seeking international protection, the EU presented an organized security model for the exclusion of the arriving population by land and sea. Nevertheless, these measures had direct and indirect impacts to the defenders of the Mediterranean countries who provided humanitarian assistance to the moving population. By analyzing the common risks and the practices that have been used, it arose a specific pattern of dangers carried out by both state and non-state actors. The alarming situation of this group has been analyzed over the last years by the European regional instruments and the European agencies. As a result, the paper suggests a new mechanism that could protect the defenders acting

for the support of migrants and refugees, by addressing the risks and demands that came up through this analysis.

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Appendix B: Analytical catalogue of legal proceedings against the humanitarian individuals and organizations providing assistance to the moving population (FRA, 2018 a, pp.2-6).

Legal proceedings against humanitarian vessels in Italy: facts and court decisions.

NGO vessel concerned	Authorities/courts involved	Type of measures/legal actions	Actions against crew members	Court decision
ITALY				
'luventa' (operated by <i>Jugend Rettet</i>)	<ul style="list-style-type: none"> - Public prosecutor in Trapani (Sicily) - Tribunal of Trapani (Sicily) - Supreme Court of Cassation (Rome) 	<p>Ordering the ship to the port of Lampedusa (August 2017)</p> <p>Preventive seizure of the ship initiated by the prosecutor (August 2017)</p> <p>Preventive seizure confirmed by the</p>	<p>Yes</p> <p>(since July 2018 – against 10 former crew members, on account of facilitating irregular migration)</p>	<p>On the seizure of the ship = Yes (seizure confirmed)</p> <p>On the criminal responsibility of the crew members = case pending</p>

NGO vessel concerned	Authorities/courts involved	Type of measures/legal actions	Actions against crew members	Court decision
		<p>Tribunal of Trapani (Sicily)</p> <p>Supreme Court of Cassation rejected the objection to the seizure of the ship (April 2018)</p> <p>Investigations extended to individual (former) crew members by the public prosecutor (July 2018)</p>		
'Open Arms' (operated by ProActiva Open Arms)	<ul style="list-style-type: none"> - Public prosecutor in Catania (Sicily) - Tribunal of Ragusa (Sicily) - Criminal Court of Ragusa (Sicily) 	<p>Pre-trial seizure of the ship in the port of Pozzallo (Sicily) by the prosecutor – because of the violation of the IT Code of Conduct & jeopardising migrants' lives (March 2018)</p> <p>Ship released following an order of the pre-trial judge at the Tribunal of Ragusa (April 2018)</p> <p>The Criminal Court of Ragusa rejected the prosecutor's appeal and confirmed the release of the ship (May 2018)</p>	<p>Yes</p> <p>(against the captain & mission coordinator – on counts of "criminal association" and "facilitation of irregular migration")</p>	<p>On the lifting of the seizure of the ship = Yes (ship released)</p> <p>On the criminal responsibility of crew members = No</p> <p>(charges under investigation)</p>
'Golfo Azzurro' (operated by ProActiva Open Arms)	<ul style="list-style-type: none"> - Public prosecutor of Palermo (Sicily) - Tribunal of Palermo (Sicily) 	<p>Criminal investigations against unknown persons involved in migrant smuggling initiated by the public prosecutor</p> <p>Investigation discontinued by the Tribunal of Palermo (June 2018)</p>	<p>Yes</p>	<p>Yes</p> <p>(investigation discontinued)</p>
'Vos Hestia' (operated by Save the Children)	<ul style="list-style-type: none"> - Police - Public prosecutor in Trapani (Sicily) 	<p>Search on board after an undercover agent worked on the ship (October 2017)</p>	<p>No</p> <p>(investigations discontinued)</p>	<p>No</p> <p>(investigations discontinued)</p>

NGO vessel concerned	Authorities/courts involved	Type of measures/legal actions	Actions against crew members	Court decision
		Captain interviewed by the Deputy Prosecutor of Trapani		
<i>Médecins Sans Frontières</i> (no vessel, only staff subject to investigations)	- Public prosecutor in Trapani (Sicily)	Investigations against MSF staff (without specifying the details)	Yes (for aiding irregular migration)	No (investigations ongoing)
Sea Watch (no vessel concerned, only NGO staff subject to investigations)	- Public prosecutor in Palermo (Sicily)	Investigations for alleged conspiracy and migrant smuggling	Yes	Yes (investigations discontinued – June 2018)

Legal proceedings against humanitarian vessels in Greece: facts and court decisions.

GREECE				
Volunteers working for the NGO 'PROEMAID' (no vessel seized)	- Public prosecutor of Mytilene (island of Lesbos) - Local court of Mytilene (island of Lesbos)	Arrest and detention of three volunteers (Spanish firefighters) (January 2016) → criminal charges and indictment (2017) Court in Mytilene (Lesvos) acquitted the	Yes (for migrant smuggling)	<u>Yes</u> (all three accused NGO volunteers acquitted)

NGO vessel concerned	Authorities/courts involved	Type of measures/legal actions	Actions against crew members	Court decision
		accused volunteers (May 2018)		
A German pensioner couple (private individuals, not associated with any NGO)	<ul style="list-style-type: none"> - Local court on the island of Symi (Aegean Sea) - Court of Appeal of the Dodecanese 	<p>Boat (a recreational craft) confiscated</p> <p>Couple convicted for migrant smuggling to 16,5 years of imprisonment each by the local court in Symi</p> <p>Court of Appeal acquitted the wife and reduced the husband's prison sentence to 3,5 years (March 2017)</p>	Yes (for migrant smuggling)	Yes (final judgment)
Emergency Response Centre International (no vessel seized)	<ul style="list-style-type: none"> - Police in Mytilene (island of Lesbos) 	Three NGO staff members arrested and criminal investigations started (August 2018)	Yes (for migrant smuggling)	No (investigations ongoing)