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Association for the Study of the World Refugee Problem
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EDITORIAL

From Management to Prevention: The EU Pact on Migration and Asylum Being Passed, Political Debate Shifts to the Exterior, Compliance and Technicalities[1]

Ralf Roßkopf[2]

And yet it moves (Galileo Galilei). On 14 May 2024, the EU Pact on Migration and Asylum took the last hurdle through formal adoption by the Council of the EU. No less than nine crucial acts were newly introduced, transformed or recast. Multiple more were amended. After a decade of fierce debate on national and European levels, with migration politics being a mega topic for the electorate, the EU managed to sign the Pact not even a month before the European election votes were casted on 11 June 2024 (see for more details in this issue Roßkopf, 2024).

Did efforts pay off? The answer, of course, depends on the political perspective. Effects on the ground remain to be seen after the legislation comes into effect in July 2026. Yet, the immediate effect is doubtful as, nevertheless, we visited a swing to right-wing parties as an outcome of the election in major Member States like France, Italy and Germany (European Parliament, 2024).

Even before the Ministers of the Interior of 15 Member States stopped any possible enthusiasm already on 15 May 2024, the very day after the Pact's adoption. In a joint letter to the Commissioner of Home Affairs Ylva Johannson and others, the Ministers requested new solutions to address irregular migration. While acknowledging "[t]he new Pact on Migration and Asylum will equip EU Member States with a stronger legal framework for *managing* the various aspects of migration, the Ministers called "to identify, elaborate and propose new ways and solutions to *prevent* irregular migration to Europe (Ministers, 2024; emphasis added).

This call is not new at all– however it gets louder. The focus is on "durable partnerships with key partner countries along the migratory routes" and "predetermined places of safety in a partner country outside the EU"; "returning those not in need of international protection" and extraterritorialised "return hub mechanisms, where returnees could be transferred to while awaiting their final removal"; returns to safe third country alternatives and the "review of the safe country concept in 2025"; "a comprehensive response to the threats posed by the instrumentalisation of migrants at the EU's external borders" and to "intensify the fight against migrant smuggling, including by reaching agreement on the legislative proposals on combating migrant smuggling"; and finally "visa policy, as many asylum applications in the EU are made by persons from visa-exempt countries or persons

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[1] This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License and was accepted for publication on 14/06/2024.
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with a Schengen visa." While the U.K.-Ruanda Agreement is not expressly mentioned, the Italy-Albania Protocol sure is (Ministers, 2024).

Yet, another day later, on 16 May 2024, the prospective Dutch government led by Geert Wilders' right-wing party PVV announced in its government plan to aim at opting out of European asylum and migration policies. In a swift the Commission responded by stressing that the Pact had been voted upon, was confirmed and will be applied with the Commission playing its role to ensure it (Meijer, 2024).

The meaning of this was underscored by the European Court of Justice not a month later on 13 June 2024 in view of Hungary (Judgement, European Commission v Hungary, C-123/22). The Court ordered Hungary to pay the European Commission 200 mio. Euro and a penalty payment of 900,000 Euro respectively 100,000 Euro per day from the day of delivery of the present judgement until the day of compliance with its former judgement of 17 December 2020. It then ruled that Hungary had failed to fulfil several of its obligations with respect to the current migration and asylum acquis.

It is obvious, the passing of the Pact is not the end of discussion. It is likely to add new layers that so far only experts had been aware of and were debating. The Pact continues to further exploit migrants' data for the sake of securitization. It introduces screening at the border and develops Eurodac into a full-fledged migration database connecting it to the European search portal making it interoperable with the European Travel Information and Authorization System (ETIAS) and the Visa Information System (VIS) (Roßkopf, 2024).

The relevance of this data processing and interoperability is heightened by the Council of Europe's parallel adopting of the EU Artificial Intelligence Act on 21 May 2024 (Council of the European Union, 2024). What is a progress with respect to protecting Union citizens' rights, is not so true for third-country nationals, when looking to limitations with respect to untouched competences in the field of national security, international collaboration in the area of law enforcement and judicial cooperation, loopholes for high risk systems in the area of migration, asylum and border control management, or applications sold to third countries but utilized in a framework of extraterritorialised migration management.

The more emotional, technical and extraterritorial it gets, the more important becomes research, awareness and advocacy.

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RESEARCH ARTICLES

Educational Needs and Educational Deprivation of Syrian Refugee Children in Jordanian 'Random Camps': 'It's Hard to Think about the Future of Tomorrow, if We Don't Have Enough to Eat Today'[1]

Christine Huth Hildebrandt[2], Ali Al'Ali[3] and Bader Al-Madi[4]

Abstract

When thousands of Syrian families seeking help fled to Jordan at the beginning of the Syrian Crisis in March 2011, the Jordanian government set up camps to accommodate the displaced people. Some of the Syrian refugees are supported by humanitarian organizations, some have since received work permits. On the other hand, others are trying to find work in the informal sector, particularly in agriculture. Thus, numerous settlements, so-called random camps, have sprung up on the outskirts of the farms in rural Jordan, where Syrian families are housed during the harvest season (Perosino, 2023). The following article deals with such settlements. More specifically, it deals with the following: school dropouts from Syrian agricultural worker families, the needs and problems of the school-age children living there, gaps in the Jordanian education system, and answers as to how these children can continue to be enabled to attend school regularly.

Thus, an ethnographic study was conducted in rural areas. Focus group discussions were held with parents from two irregular settlements, and qualitative interviews were conducted with experts from the Ministry of Education and Humanitarian Organizations. The study concludes that school dropouts among Syrian children of agricultural workers cannot be explained solely by poverty and child labor, but must be considered through the rural school and educational system that does not correspond to the mobile way of life of the Syrian agricultural worker families. This inevitably leads to the exclusion of children from school attendance.

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Key Words:

Syrian refugees' families, Jordan, agricultural areas, random camps, education, school dropouts

1 Introduction

Since the beginning of the violent clashes in Syria, a total of 6.5 million people left the country and hundreds of thousands have fled to safety in neighboring Jordan. Many came from the Idlib District or the south of the country, where the uprising began in mid-March 2011. As the war spread, people also fled from other parts of the country: from the area around the capital Damascus, the area around the cities of Homs and Hama and from Aleppo (Bank, 2016). Upon their arrival in Jordan, not everyone was registered as a refugee in Jordan, and the number of people formally recognized as refugees by UNHCR is surprisingly low. In March 2023, almost 90% of the 740,000 people registered as refugees in Jordan came from Syria (UNHCR, 2023), although the government officially assumes that there are more than 1.3 million Syrian refugees in Jordan (Hamarneh, 2021). The number of people who have entered the country is therefore presumably much higher, as around 700,000 people who are said to have entered Jordan do not even appear in the refugee statistics (Turner, 2023).

The Jordanian government has made great efforts to accommodate the Syrian refugees' arrival, and at the same time, alleviate the burden on the Jordanian local population in the communities. Jordan is not a wealthy country and has only been able to cope with hosting such large number of refugees with the help of international organizations, which continue to provide much of the humanitarian aid to this day (Potocky & Naseh, 2020). Camps have been set up in the north of the country to accommodate those arrivals. However, most of the Syrian population now lives outside these camps. It is estimated that around 85% of the families have settled in various parts of Jordan, including the districts of Amman, Irbid, Mafraq and Zarqa (Alzouabi et al., 2021). Due to cross-border family ties between Jordan and Syria, many families were taken in by their relatives, especially in the north of the country. Still, illegal camps were set up on the outskirts of the major cities and in rural areas.

The article focuses on Syrian families in such illegal camps, who are barely registered and barely visible. As they have no permanent residence, they pitch their tents in so-called random camps on the outskirts of farms and move from one harvest season to the next through the agricultural regions of the country. As a consequence, they are leaving their children with limited opportunities for continuous schooling.

A study group of future social workers at the German Jordanian University (GJU) in Amman looked at the living conditions of these school-age children to find out in more detail what additional measures might need to be established to better counter school dropout in these rural regions. After providing insights into the development of the school situation from the beginning of the displacement and flight from Syria, an overview of the development of the random camps in the rural regions of the country is presented, along with the empirical results of the study project. This is done with a particular focus on the socio-spatial observation of such camps, in order to identify the special conditions that prevent school-age children from reintegrating into the official school system.

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2 School Development in Jordan

Refugees who are forced to live outside their home country for years or even decades are referred to as experiencing 'protracted displacement' (Zetter, 2011). In Jordan, this applies to 8% of Syrian refugees who have been in the country for ten years or longer. As it is mainly families who have entered the country, the number of children and young people among the displaced is high and steadily increasing. They now make up around 48% of the total number of Syrian refugees in Jordan (Children of Jordan, 2021).

A comparison with neighboring countries shows that Jordan has responded very quickly to the educational needs of children from arriving Syrian families. This has enabled them to be fully integrated into the school system (Khater, 2023).

Table 1: Children out of school in Jordan, Lebanon & Turkey

Syrian children in and out of school in Jordan, Lebanon & Turkey, December 2014			
School-age Children	Jordan	Lebanon	Turkey
Registered	213,432	383,898	531,071
In formal education	127,857	8,043	187,000
In non-formal education	54,301	109,503	26,140
Out of school	*31,274*	*266,352*	*317,931*

Source: Beste 2015, own compilation

However, Jordan also faced challenges regarding educational integration, as schools were already overloaded before the start of the crisis in Syria due to the rapidly growing Jordanian local population. Nevertheless, Jordan decided to include all Syrian children in the state school system. Since April 2012, they have been offered primary and secondary education free of charge. Whenever the available places were not sufficient, double shifts were set up, and UNICEF established its own educational infrastructure in the official refugee camps (Culbertson, 2015, 2016). However, all these measures are still inadequate today, although the retention rate of children in Jordanian schools appears to be comparable to or even higher than in Syrian schools prior to the conflict (Krafft et al., 2022). In addition, more than 215,000 refugee children have been born in Jordan since 2011 and are now entitled to be integrated into the school system when they are old enough to attend (Kabir et al., 2020).

3 Complementary Non-formal Education Programs

Despite all the efforts of the Jordanian school authorities, Syrian children dropping out of school remains a particular challenge to this day. According to a national survey by the International Labour Organization (ILO) (International Labour Organization, 2017), Syrian refugee children still had the lowest school attendance rate in Jordan in 2016. Compared to the 95%school attendance rate of Jordanian children aged 5 to 17, the proportion of Syrian children in this age group was 72.5%, and more than 60% of Syrian children aged 15 to 17 were not attending school at that time (International Labour Organization, 2017).

Due to Jordan's regulations, dropouts who have not attended school for more than a year cannot simply return to formal education programs. If they have then exceeded the average age, it is no longer possible for them to be integrated into public schools (UNESCO, 2023). The Jordanian Ministry of Education has therefore developed extracurricular programs together with NGOs to enable children to reintegrate as quickly as possible. This is also to prevent further dropouts (Khater, 2023), such as through UNICEF's dropout or

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catch-up programs (UNICEF 2020, 2022). These initiatives are certified and officially accredited. They have been integrated into the existing school structures or focus their services on the official camps and community centers in the country's regions (Majthoub, 2021).

4 School Integration Assistance in Agricultural Areas

Poverty is seen as one of the main reasons for Syrian children dropping out of school. 83% of Syrian refugees outside the official camps live below the poverty line (NRC, 2023), and 90% of refugee families must reduce spending on their daily needs. This is not without consequences for the education of school-age children. Many heads of household try to improve their families' income through child labor, or they marry off their daughters very early in the hopes that this will provide them with better care (ACAPS, 2023).

Child labor is considered a particularly central problem in Jordanian agriculture and has increased significantly in recent years. According to Insaf Nizam, ILO consultant on child labor in Jordan,

> *"We know that many children do not go to school ... and so we are looking at ways to improve services to support children and their families to get children out of the fields and back into the classroom"* (International Labour Organization, 2018).

To this end, the ILO has established local committees and centers and conducts awareness-raising campaigns in rural areas, working closely with agricultural workers' families. It also addresses the problem from a legal perspective, focusing on laws and regulations to reduce child labor in agriculture and reporting known cases to the relevant authorities, as Jordan is a signatory to both ILO conventions No. 138 and No. 182 against child labor. This dual mandate of assistance and monitoring fulfills both the mandate to focus on the well-being and reality of families with children, and to act on behalf of society to ensure compliance with child labor laws.

The ILO has achieved initial successes through this work. In Mafraq and the Jordan Valley, for example, 450 children were assisted in giving up their work in agriculture, and return to school, by enabling them to access the local education centers. They were accompanied by a case management service and received psychosocial support along with their families. Many children have not only lost years of schooling due to displacement but are also traumatized and struggle with mental health issues. This means that attending school alone is not enough to simply continue as well as successfully complete their education (Human Rights Watch 2016, 2020).

Looking at the real numbers of school dropouts in rural areas, there is still a long way to go before this concept can show success across the board. In a joint report by the Jordanian Ministry of Education and UNICEF, it was estimated that more than 50,640 Syrian children were out of school in 2020 (UNICEF, 2020). Cooperation between international humanitarian organizations, and the Jordanian government in the registration of school-age children is therefore still of great importance in order to reduce the number of school dropouts in rural areas and to encourage their return to school (Turner, 2023).

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5 Social Space Exploration for School Dropouts in Random Camps

Spatial models are an important instrument for recording the Syrian population engaged in agricultural work. In such instances, the mobilities caused by harvest times become visible throughout the year (Harvey, 2005). Since developments in a society and space as a social space cannot be separated from one another, they also open a view of the differences between random camps in agricultural regions that are close to the city, and those that are more inaccessible.

A group of prospective social workers from the German Jordanian University (GJU) examined the living conditions of school-age children in rural areas as part of their ethnographic studies. General observations were made and following the exemplary construction of the area in the sense of an agricultural mapping, an in-depth analysis was carried out based on two randomly selected camps. The presentation was qualitatively supplemented by focus group discussions with parents from these camps and with the help of expert interviews. Finally, the geographical and social dimensions were correlated in order to gain a better understanding of the social processes that lead to numerous school dropouts in rural regions (cf. Macher, 2007).

5.1 Random Camps

Random camps, also known as 'vulnerable out-of-reach communities', are informal tent settlements in Jordan. These camps are unorganized, mostly spontaneously planned and unstable shelters. UNHCR officially classifies these as 'makeshift camps', set up to provide temporary accommodation. They are particularly common in cultivated regions (Perosino, 2023), and serve as accommodation for Syrian agricultural worker families who are employed in harvesting, irrigation, or other agricultural and livestock activities.

The term 'random camps' is not an accurate description of these camps, as UN-Habitat defines randoms as unplanned settlements that do not comply with building regulations (Moor, 2001; Elfouly, 2017). The camps in Jordan are characterized less by their unstable construction than by their mobility, as these camps frequently change their location, and the residents move with them in search of new job opportunities to secure their families' livelihoods. Due to the informal and temporary nature of the camps, there are also no legal regulations to protect their residents. They are excluded from most state services and receive hardly any support from the municipalities. There is a lack of water, electricity, and basic sanitary facilities. Consequently, people are dependent on neighborly help and volunteers. Though some camps are permanent, others are set up depending on the harvest seasons in the specific regions. These camps always take in new Syrian families when they look for work elsewhere at the end of a season. As the families move together from one camp to the next, numerous children of all ages living in these shelters, have little opportunity to integrate into the normal daily routine of a school year due to the constant mobility.

Following agreements with most farmers and plantation owners, the camps are grouped around a central person who has taken on the role of mediator between the owners of the farms and the Syrian families. The accommodations usually house 20 to 50 families. Occasionally, up to 100 families live in one of these camps. They are settled in the Jordan Valley, in the regions around the cities of Irbid and Mafraq, as well as in other agricultural areas in northern and central Jordan. Here is an example of the distribution of such camps

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in Mafraq governorate, north of the country and east of Za'atari Camp, along the border with Syria.

Figure 1: Camps in Mafraq area

Source: Courtesy of 2022 Child Care Charity Association, created in 2022.

During the period studied by the Child Charity Association in 2022, 1,593 households were counted, in which 7,911 people lived. These were comprised of 2,141 boys and 2,022 girls under the age of 18, meaning more than half of the children living in these camps were under the age of 18.

Random camps are not only scattered and found in all agricultural regions, but their numbers are also steadily increasing. They have become a default option for those Syrian refugee families who do not live in official camps and cannot afford regular solutions in host communities (Tiltnes et al., 2019). These are the most vulnerable and impoverished Syrian households in Jordan. They have little access to mainstream refugee assistance, since relief efforts are mainly focused on those living in official camps or host communities and are difficult to register due to their mobility. Families living in these unofficial camps not only struggle to make a living, but also face numerous obstacles in enabling their children to attend school.

As part of the ethnographic field research, a study group visited these irregular camps that had pitched their tents on the outskirts of farms. The camps housed 20-30 families with children of all ages, depending on harvest requirements, and the size of the associated plantations.

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Figure 2: Tents of the families with 'green houses' of the plantation in the background.

Source: Christine Huth-Hildebrandt

Some of the agricultural camps in or near urban areas could be reached by car and are therefore easily accessible for school buses. It was more difficult to visit the more hidden settlements in the Jordan Valley, some of which could only be visited with the help of staff from the International Labour Organization (ILO), since they could not be reached without special knowledge of their location (Zuhair, 2022).

5.2 A-Lubban and Al-Jama'an Al-Aoun Camp

Two of these camps are described below, in which focus group discussions were held with parents of the children living there. Al-Lubban camp is in Amman governorate, the most urbanized governorate in Jordan, close to the capital. In this camp, the residents only experience a short period of stability. Due to the agricultural production conditions, which are mostly organized in huge greenhouse farms, and due to the differentiated cultivation with different harvest times, these residents must keep changing camps from one harvest season time to another.

Figures 3, 4 & 5: Construction of 'green houses' at planting time - during the growing season with rainwater storage

Source: Christine Huth-Hildebrandt

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The second camp, Al-Jama'an Al-Aoun, is in the governorate of Mafraq, a very sparsely populated region in the north. Compared to the Amman governorate, this camp is stable. Not only are vegetables grown in Mafraq, but the region is also the largest livestock farm in the country. A constant need for labor explains the stability of the camp.

Figures 6 & 7: Livestock market

Source: Christine Huth-Hildebrandt

5.2.1 A-Lubban Camp

The Al-Lubban Camp is located near the small town of Al-Lubban, east-south of the capital Amman. The residents of the camp, around 50 people in 30 tents, left Syria between 2012 and 2013. They mainly come from the surrounding areas of Homs and Hama. Since then, they have moved around and worked in many agricultural areas from the north to the south of Jordan.

Their tents are placed close together and form a living unit. Some of them have been replaced by traditional tents made from cattle hair, made by the women of the camp themselves, to provide better protection from the heat or cold.

Figure 8: Residential unit

Source: Ali Al'Ali

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A space was kept free in the middle to create a round village.

Figure 9: Free space

Source: Ali Al'Ali

Most basic necessities are lacking. Although the camp is supplied with water by the farm owners, drinking water must be bought by the residents in the surrounding villages. There is no permanent access to electricity. The people obtain their electricity informally by tapping into the lines of nearby electricity pylons, or they get it from the farm owner's generators, which are powered by solar panels.

Figure 10: Tapped power line

Source: Ali Al'Ali

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Figure 11: Solar systems on the farm

Source: Ali Al'Ali

The proximity of the tents to the workplaces on the surrounding farms is important for the residents. Daily working hours can be better optimized as they are paid by the hour and wages are very low.

Figure 12: Plantation with camp in the background

Source: Ali Al'Ali

The livelihood must be earned day by day, so the families do not have a stable income. It fluctuates from week to week, and from season to season, depending on the needs of the farm owners. During harvest time, everyone must help, including the women and children to save some money for the winter. There are few work opportunities for them during this time. All this has consequences for the children''s education. On the one hand, it is hardly possible to attend a public school from the camp if no transport is organized and provided

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by NGOs. On the other hand, children are required to work full-time to generate a minimum level of food security for their families (International Labour Organization, 2014).

5.2.2 Al-Jama'an Al-Aoun Camp

The Al-Jama'an Al-Aoun Camp is in the Mafraq governorate in the north of the country, south of the village of Al-Dafianah. The region is 60% rural and has the highest poverty rate. The camp is surrounded by a large farm. Summer and winter crops are grown there, and livestock farming is practiced. This has allowed the families to develop relative stability, as they are not only needed for one harvest season a year.

The camp is considered one of the largest refugee camps in Jordan. Around 100 Syrian families from different regions of Syria currently live there. The income of the people in this camp is also difficult to determine, as it varies depending on the number of family members, their daily working hours and agricultural yields. According to the residents, it is barely enough for them, so more than half of the households in this camp receive state food aid.

Figure 13: Camp view

Source: Ali Al'Ali

Here, too, the row of tents forms a circular unit. Roses entwine everywhere around the tents and refer to a geographical location of planned permanent presence. "It's these roses that remind me of Syria and what I left behind there," said one of the farm workers, explaining their plantings.

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Figure 14: Camp view

Source: Ali Al’Ali

Some families have been living in this camp for several years, especially those who care for the elderly and have school-age children. They are tired of moving around and have settled in this place, where they make do with the bare necessities of life. The inhabitants have brought their dialect, religion, their customs, and their social norms with them and hold on to these traditions. Their permanent settlement has enabled them to build relationships with their neighbors, and good communication has developed within the local communities. With the help of donations, the residents were able to set up a small school equipped with the most necessary school materials. From time to time, educational programs are offered by volunteers, but without continuity.

6 The Camp Residents and their Children

Focus group discussions were held with the residents from both camps, Al-Lubban and Al-Jama’an Al-Aoun Camp. Most of the residents in both camps had experience in agriculture and livestock farming, with few also working in other professions. They came from Hama, Aleppo, Homs, Dair Al Zour and Al-Hasakah. Their length of stay in these camps varied. Most of them had been living in different camps since 2012. For each group, 10 parents with children between the ages of 6 and 17 were approached, presented with the background to the study and given permission to use the results of the interviews. One group consisted of parents with children who had gone to school but had dropped out. Two further group interviews were conducted with parents whose children were not enrolled in any school. The family composition in these groups varied, with most of the children being between 6 and 15 years old at the time of the survey.

6.1 Mobility and Dropping out of School

Specifically, 15 of the 30 participants stated that their children did not participate in any formal or informal education program. 12 parents mentioned that their children had attended school in the past but had then dropped out. The reasons for dropping out of school or deciding not to attend school at all were similar in both camps. Parents cited their frequent moves as the reason for dropping out of school. As harvest times do not coincide with the school year cycle, the amount of time missed per move – which in some

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cases had to take place several times a year - was often so great that it could not be made up without help. In addition, children in Jordan are only admitted at the beginning of the school year. As a result, there were always new absences and delays, which led to frustration and often to children dropping out of school altogether.

6.2 Accessibility of Public Schools

According to parents, attending school for the children is difficult, even if they have settled permanently in a camp. The distances from the camp to the schools are too great. They cannot be reached on foot and there is usually no or only expensive transportation for the children. One participant explained: "There is no school in the camp itself and we cannot afford to send our children to schools outside the camp." The transportation costs alone make school attendance unaffordable if a family has several school-age children. "I have five children for whom I need 70 JOD per month for transportation. I am the only breadwinner in my family. It is impossible to send them all to a state school," is how one father describes his situation.

6.3 Supplementary Educational Opportunities outside the Camps

According to parents, the educational opportunities offered to children outside the camps are of poor quality and completely inadequate. "My children used to go to school, but they dropped out because the lessons were not good and the teacher was often absent, so they went for nothing", complained another father.

There would only be a two-hour afternoon school for the children, which the families felt was a waste of time because of the travel involved, and the family income was reduced by this loss of time, as the children were absent as workers at this time. In addition, the children were left alone to do the after-work. This meant that only children who were particularly keen to learn made progress. The parents themselves did not find the time to supervise their children's schoolwork after fieldwork. Or they did not feel able to do so due to their own educational deficits.

6.4 Child Labor

In many families, there is an urgent need for the children to work to secure the family income. "My son used to go to school, but he dropped out. He must work to support our family", is how one father describes his family situation. In some cases, the children's work was even the only source of income, as the head of the family was unable to work himself. Most children over the age of twelve worked together with their families, but younger children also helped in the fields. This work takes priority over education and, according to one of the participants, "education can only be important once basic needs have been met. Bread has priority over education."

6.5 Bullying and Violence

Some parents expressed concern about the well-being and safety of their children, as they were repeatedly exposed to violence and bullying in schools. One participant explained: "What happened in Syria is still a terrible nightmare for all members of my family." They would not expose their children, who had fled the violence, to a situation in which they would be frightened or discriminated against again. One father described how his son "was exposed to many embarrassing situations when he attended remedial classes. He was ashamed because he was much older than his classmates at school." According to

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most of the panelists, for them it would be easier to teach the children the basics in the camp than in the overcrowded state schools.

6.6 Educational Offerings in the Camps

In the opinion of the parents, the camps need their own offerings. The different levels of education in small groups within the camp could also be better considered in this way.

> "In the remedial classes, no distinction is made between school dropouts and non-school dropouts, so six-year-olds have to learn together with thirteen-year-olds, which leads to tensions. There is a reason why this is not possible in public schools. And then suddenly this is supposed to work in afternoon classes?"

According to the parents, this is a double standard that is illogical from a learning perspective and is only to be understood from a quantitative perspective to include all camp children in the learning programs.

6.7 Self-help and Parents' Initiatives

Not all parents have come to terms with the lack of educational prospects for their children and have tried to contribute to providing their children with a minimum level of education. So far, this has been done on a completely uncoordinated and voluntary basis in both camps. There have been some initiatives by parents, such as setting up an education tent or hiring a trained person to teach the children. Some parents try to teach their children to read and write themselves. Others hired teachers. "We parents funded a teacher for the camp to teach our children, but that didn't work for long." However, such projects always encounter difficulties, "as there is a lack of funding and support to cover the basic needs for such activities."

6.8 Future Prospects for Camp Children

Some parents from both camps emphasized their generally negative attitude towards educational opportunities for their children in Jordan. Some even rejected any outside interference and initiative, fearing that they could get into trouble without a work permit if the NGOs passed on information from the camps to official authorities.

The parents did not believe that schooling would improve their children's prospects, as the regulations meant that they would have no chance of vocational training after leaving school and could therefore only expect employment opportunities as agricultural workers or unskilled laborers in the future.

Facing an uncertain future and being aware of the fact that they are likely to remain displaced from Syria, schooling is considered a waste of time and money for some, so they will make no effort to improve their children's educational situation. Under the current circumstances, it is unfortunately enough to learn reading, writing and arithmetic in the camp itself. But even this cannot be guaranteed to the children due to their mobile lifestyle.

7 Assessments from the Expert Panel

Following the discussions with the parents, expert panels were held with ministerial education experts and representatives of humanitarian organizations who are familiar with the situation of Syrian refugee children in general, and specifically with the situation in the rural refugee camps. All participants equally emphasized that the situation of

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children in the camps remains a major challenge and requires far more interventions to reach all children in the agricultural regions in the first place.

One participant on the panel explained that the educational initiatives offered by humanitarian organizations have so far covered at most 30-40% of the needs in the random camps. Additionally, these initiatives are more likely to be accepted by children living in the urban environment or in the official camps (UNICEF, 2021). Some of the initiatives therefore work with education platforms such as Microsoft Teams to ensure that the services also reach children in the informal camps. Nevertheless, it is admitted that "a large number of children of all ages in the camps are still completely out of school", according to a representative of the ministry. Nevertheless, there are concepts and initiatives for voluntary work. These educational initiatives are predominantly informal, without opportunities for the children to acquire formal qualifications for school-leaving certificates, and therefore do not represent lasting solutions. In addition, many initiatives exist side by side in an uncoordinated manner and it is rather random which children are reached by these offers.

The way in which teaching can take place in the camps is also a problem. One of the providers said:

> "Our program is aimed specifically at students who attend public school. They are taught online and assigned a tutor outside of public schools who monitors their progress and teaches them."

However, this is only possible if the children attend an official school and stay in the same camp permanently. If they move away, contact with them is lost. Although some organizations have tried to develop holistic education concepts for the camps, these have failed due to the mobility of the families. Due to the influx and outflow of people, permeable and flexible concepts are therefore required so that no new gaps in education arise for the children during a school year. However, the providers have so far been unable to cope with this and have not developed or planned any mobile concepts.

The representatives of the Jordanian authorities agreed to a statement of a spokesperson for the Ministry of Education who outlined,

> "there is an urgent need to first identify the need for educational programs for the random children and assess the results of the existing educational provision in some areas to determine whether the work can be done on a larger scale, more comprehensively and more accurately."

Strategies to comprehensively reach the individual camps where tens of thousands of children are currently growing up to provide them with education and special qualifications in a non-formal way have not yet been developed. This is due to the situation of family mobility described above, and thus it should not be so much of a conceptual challenge for the providers, but rather a logistical one.

8 Mobile School Concepts for Random Camps

Jordan is not the only country where families are not settled, and considerations have had to be made to ensure that their children receive an education. There are models for children whose families move, who are forced to work due to poverty or for whom there is no public school nearby.

Corresponding concepts have been developed in some African countries, India, Pakistan and Iran (Schaller & Würzle, 2020). The 'Moving School Unit' in Berhampur, in the Indian

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state of Orissa, offers children a flexible education. Instead of placing them in an institutional setting, the project works in the children's own environment. A team of teachers travels with the teaching materials to the slums, but also to factories and train stations, where small groups of children can take part in learning activities. In Senegal, mobile schools have been built as well. When the herders leave a place, the school follows them. The teacher thus becomes a "nomad teacher", has a "nomad classroom" and teaches in a "nomad school". Additionally, such mobile schools can be found in Mali. They can be set up, dismantled and transported at any time and thus correspond exactly to the living habits of the nomads. In other words: in these models, the school system is adapted to the needs of the target group and not the target group to the school system.

Strategies for children in the random camps may be developed from these concepts. However, determining the current support needs of the children in the flexible camps is no easy task, as it must be constantly updated depending on the region, and harvest time so that the children of the families are not overlooked, and the activities do not come to nothing.

This all seems to be less a question of money, and more a question of developing a concept for a mobile school system. It is initially a logistical challenge to develop and install a system that considers the flexibility of the families – a system that 'moves' with the families' children and thus considers the changing needs in the individual camps.

This would mean registering the camps and their inhabitants with the school needs of their children in the agricultural regions, and subsequently working with them to install a system that documents the onward migration and passes on the changes in needs in the individual camps to the education providers so that no child is left alone. At the same time, a mobile school concept may be developed, like the one-class schools, the so-called 'dwarf schools', in which children of different age groups are taught by one teacher at the same time, with the aim of achieving as many school-leaving qualifications as possible.

Such an overall concept is certainly a challenge. On the one hand it is challenging to develop the logistics of overall schooling in the irregular camps, and on the other hand it is difficult to set up a model of flexible classrooms and develop a training concept for teachers who are willing to set off to teach as flexible teachers in a mobile 'dwarf school' in the respective random camps.

Given today's technical possibilities and logistical capabilities in a country that has a well-developed mobile network, where concepts for non-formal education have already been developed and where concepts and plans for online education have been in place since COVID-19, mobile schools would be a rewarding task, as materials for all classes have been produced for online schooling, so that basic material exists and can be integrated in an logistic concept for the mobile schools. Although complicated, it does not seem unfeasible through concerted action. Jordan could thus play a pioneering role in the development of educational concepts for mobile families in the region, by taking a further step towards 'education for all', regardless of where the children and their families are currently located.

9 Results and Conclusion

Progress in the education of children of mobile Syrian agricultural worker families in state schools can only be achieved across the board if the education system is structured more

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flexibly in the future. One needs to rethink some of its rigid regulations, for example by allowing lateral entrants to take part in lessons during the school year after a transfer.

On the other hand, extracurricular education providers should develop holistic concepts that enable children, regardless of where they live during the harvest period, so that they can start individually at the level of education they have achieved and take the next step from there.

Mobile schools and a standardized education concept in the form of an online modular system with flexible, individualized examination options could help motivate parents and school dropouts to not refuse schooling altogether.

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QRP

Repatriating Afghan Refugees from Pakistan: Background, Implications, and Consequences for Bilateral Relations and Regional Dynamics[1]

Sumaira Bibi[2]

Abstract

This study aims to provide a comprehensive analysis of the Pakistani government's current policy regarding the repatriation of Afghan refugees from Pakistan. This comes amidst opposition from the Afghan Taliban government, humanitarian and human rights organizations, and activists. In October 2023, the Pakistani government announced a massive repatriation initiative, targeting over 1.7 million undocumented Afghan refugees. After escalating attacks on Pakistani security forces within its borders and a perceived reluctance to address the threat posed by the Tehrik-e-Taliban Pakistan (TTP), this was later extended to all refugees. These developments have significantly heightened tensions along the Afghan border – the Durand Line – and have witnessed Pakistani jet fighters making incursions into Afghanistan to target suspected safe havens. The primary objective of this research is to explain the factors contributing to the deteriorating situation along the 2,640km border, and its implications for trade and bilateral relations between the two countries of Afghanistan and Pakistan. Furthermore, this study not only examines Pakistan's strategy of pressuring the Afghan Taliban government through policies of apprehension, incarceration, and forced expulsion but also analyzes the concerns of international humanitarian bodies, questions of demography, human rights organizations, and human rights activists opposing the expulsion of refugees in light of the deteriorating economic and human rights situation in Afghanistan after the Taliban takeover and the withdrawal of Coalition forces from Afghanistan, which occurred as of August 15, 2021. The forced repatriation of Afghan refugees is a crucial issue that demands comprehensive research. In addition, the socio-economic burdens on Pakistan's vulnerable economy are considerable. The research also covers the historical context of refugee movements in the region, the role of international organizations, and the principles guiding the repatriation processes. In such a scenario, what would be the socio-political and economic impacts of the forced repatriation of Afghan refugees on Pakistan-Afghan bilateral relations and the broader regional stability in South Asia? To address this, the study incorporates the perceptions of Afghans who fled to Pakistan after the Taliban takeover in 2021 as well as the political imperatives of Pakistan's government behind 2023 exodus.

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Key Words:

repatriation, demography, Pakistan, Afghan expulsion, terrorism, human rights

1 Introduction

Pakistan has been pursuing a need based 'geo-political' Afghanistan policy since its creation in 1947 (Ahmed & Bhatnagar, 2007). The policy aimed to maintain political harmony between Pakistan and Afghanistan to restrain Indian influence (Baqai & Wasi, 2021). However, Afghanistan and Pakistan's bilateral relations underwent turbulent phases. Amid socio-political and economic crises and wars, Afghan migration to Pakistan was influenced by a host of internal and external factors. The phenomenon of Afghan migration towards Pakistan remained a focal point in political discourse. The migration of Afghans to Pakistan occurred in several waves, involving both inflow and outflow (Amnesty International, 2023). The key internal and external events, including the Soviet–Afghan War (1979–1989), the Afghan Civil War (1992–96), the Taliban Rule (1996–2001), as well as the war in Afghanistan, i.e. the US-led coalition occupation during the War on Terror (2001–2021). Henceforth, the Soviet invasion 1979 led to a protracted conflict that compelled Afghans towards widespread displacement. After the withdrawal of the Soviet Union in 1989, refugees continued to come to Pakistan in the 1990s. Consequently, Afghanistan indulged into a civil war characterized by factional fighting among various Mujahideen groups, leading to the rise of the Taliban in the mid-1990s.

Over time, Afghan migration manifested an upward trajectory. The Taliban takeover of Kabul in 1996 further exacerbated the refugee crisis. This prompted another wave of Afghans to move to Pakistan. During this period, Pakistan faced significant challenges in managing the influx of Afghan refugees, including strained resources, security concerns, and social tensions. Despite these challenges, Pakistan remains a key host country for Afghan refugees, with the support of international humanitarian organizations such as the United Nations High Commissioner for Refugees (UNHCR). The situation continued to evolve in the early 2000s following the U.S.-led invasion of Afghanistan in 2001, which toppled the Taliban regime and led to the establishment of a new government (Goldstein, 2012). After the fall of the first Taliban government in 2002, about 1.5 million Afghans returned, and by 2012, the number rose to 2.7 million (Petrucci, 1996). While some Afghan refugees returned to their homeland during this period, many opted to remain in Pakistan because of ongoing insecurity, economic hardships, and lack of opportunities in Afghanistan. In recent days, the majority of Afghan flees have taken place after the revival of the Taliban rule in 2021. Since then, about 0.6 million Afghans once again sought refuge in Pakistan. The historic evidence of the Afghan exodus to Pakistan manifested decades of displacement and the complicated interplay of internal and external geopolitical factors (Zaidi, 2011).

In 2023, the caretaker government of Pakistan adopted a novel narrative for repatriation, which was based on maintaining peace within the country and bringing economic stability. Conversely, the narrative was built outside the Pakistan parliament. Therefore, the narrative was based on the deteriorating economic situation and rising terrorism activities, for which the refugees from Afghanistan who arrived in the country following the Soviet invasion were solely blamed for. In fact, due to the worsened relations with the insurgent Tehreek-e-Taliban Pakistan (TTP) and their parallel attacks, Pakistan's state authorities decided to use forced repatriation to put pressure on the Taliban led government for

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possible support. Therefore, the forced repatriation is primarily revolving around geopolitics, external relations and the non- fulfilment of prevailed expectatiosn of Pakistan's government. As a result, Afghan migrants experience themselves as subjects to imprisonment, harassment and forced eviction from Pakistan (Khan, 2003). Due to political dynamics, Pakistan's attitude towards the Afghan's migrants had been converted from hospitality to hostility.

From a historical context, multiple wars and socio-economic instability led Afghans fleeing to Pakistan to secure their lives, protection, and well-being. Ordinary Afghans were in search of a place providing safety from war. Pertaining to the treatment of refugees, Pakistan is bound by several principles of international law, for instance through the 1993 Cooperation Agreement with the UNHCR. Based on this agreement, Pakistani is bound by the principle of non-refoulment which prohibits the forced return of refugees to a country where they are at risk of persecution (Adam, 2021; Rashid, 2021).

2 Literature Review

Pakistan's claim that Afghan refugees are responsible for numerous societal issues is based on the current deteriorating relations with the TTP and the Taliban led government. It outlines the apparent effects of the Afghan refugee presence in Pakistan, including a damage of economic resources, social conflict, and threats to internal security and political stability. Similarly, Borthakur (2017) highlights the negative effect of the Afghan conflict on Pakistan's domestic security conditions, with the influx of migrants contributing to demographic and security problems. Jehangir (2023) further demonstrates how media coverage in Pakistan, prejudiced by the political perspective of the state, often framed Afghan refugees in a negative light. The media associated them with terror campaigns and ethnonationalism. These examples mutually indicate that Afghan migrants have been scapegoated for a range of troubles in Pakistan. However, it is important to note that this sequence of events is not universally accepted or supported by concrete evidence. For instance, Suleman (1988) challenges the notion that Afghan refugees have exacerbated the malaria burden in Pakistan, suggesting instead that the refugees' susceptibility to malaria is due to their own low herd immunity and not because they brought the disease from Afghanistan. This indicates that while there may be a tendency to blame Afghan refugees for certain issues, such claims should be critically examined and not taken at face value (Suleman, 1988). Thus, it is crucial to approach such assertions with a critical lens and consider the broader context and evidence available.

Since the current situation of Afghan refugees in Pakistan is a direct result of the ongoing political climate, many more Afghan refugees are suffering from poverty and unemployment. Therefore, this study is relevant to highlight issues revolving around the fall of Kabul 2021 resulting in Afghan migration as well as the outcomes of current repartition efforts by the Pakistani government.

3 Methodology

The methodology explores this complex phenomenon from a variety of angles, employing a comprehensive approach through analyzing socio-economic impacts, security concerns, and regional implications by using secondary sources. It incorporates a historical and policy analysis and is concluding with policy recommendations. This methodology pays tribute to the complexity of the repatriation process and its broad implications for the

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bilateral relations between Afghanistan and Pakistan, as well as the wider regional dynamics. The study underscores the importance of considering economic, social, political, and security factors in addressing the challenges of repatriation.

4 The Expulsion of Afghan Refugees

4.1 The 2021 Kabul Crisis, the Taliban Regime's Resumption, and their Implications on the Liberal Segment of the Society of Afghanistan

Pakistan is considered as a refugee-host country, as it hosted Afghan refugees for more than four decades. The most recent migration took place after the establishment of the Taliban government in August 2021 However, the Pakistani government did not register migrants who came to Pakistan amidst the Kabul crisis in 2021. A particular segment of the Afghan society immediately sought refuge there in light of resentment and insecurity, especially when religious believes and socio-political opinions clashed with those of the Taliban (International Crisis Group, 2022).

Especially those who feared that women's education and liberty might be threatened under the Taliban-led government, sought asylum in Pakistan (Jackson, 2022). Indeed, after the Taliban came to power, several decrees have been issued regarding women, in which the end of mixed education, mandatory presence of *Maharam* male guardians and wearing of cloak have been declared mandatory. Women's education and employment in Afghanistan has been banned (Hadid, 2022). Therefore, the Afghan citizens preferred to stay in Pakistan for the well-being of their children (Bhatti, 2023).

The mass migration of Afghans following the fall of Kabul and the Taliban's reestablishment can be attributed to a convergence of ideological factors deeply embedded in the Taliban's temperament of governance. The key factors are:

a. *Repressive Social Policies*:

   The Taliban's interpretation of Islamic law has been notorious for its severe restraints, especially concerning women's rights and personal freedoms. During their rule in the 1990s, the Taliban enforced strict codes dictating women's roles, education, and dressing, raising fears of a return to such oppressive measures in 2021 (Rasmussen, 2022).

b. *Ethnic and Religious Minorities*:

   The Taliban's fundamentalist Sunni Islamic ideology has often marginalized religious and ethnic minorities in Afghanistan. Communities like the Hazaras, Tajiks, and Uzbeks faced persecution and discrimination under Taliban rule, heightening concerns about their safety and rights.

c. *Civil Liberties and Human Rights*:

   Reports of human rights abuses, including extrajudicial killings and restrictions on the freedom of speech and assembly, under previous Taliban regimes have instilled fear among Afghans. The prospect of living under such conditions again, prompted many to seek refuge elsewhere.

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d. *Fear of Retribution*:

Afghans who worked with the government, foreign organizations, or military forces, as well as those who openly opposed the Taliban, feared reprisals and retaliation. The Taliban's history of targeting perceived collaborators contributed to this fear (Byrd, 2022).

The withdrawal of the U.S. and NATO created a vacuum and encouraged the Taliban to resume rule. The collapse of Afghan security forces faltered due to ineffective leadership and low morale. Furthermore, infighting political stakeholders and former elites has weakened government performance in different spheres. However, some local officials negotiated surrender agreements with the Taliban to safeguard their future residence and life on spot and to avoid migration towards Pakistan. Afghanistan is currently under dictatorial and unelected Taliban rule (Watkins, 2022). Thus, the free will of many Afghan citizens, such as the transgender community, Hazara and Christian community, human rights defenders, lawyers, journalists, artists, folk musicians, and female employees of the former Afghan government, were marginalized. In this scenario, women no longer had the right to work or study in Afghanistan. Thus, their involuntary eviction exposes them to gross human rights violations.

4.2 Residency, Citizenship and Expulsion

Claiming citizenship is a complicated matter that involves socio-political and legal considerations. The issue needs insights into the protracted character of the refugee crisis, the role of international organizations and Pakistan as a host country, that is already entangled in multiple internal problems. Due to its deteriorating economic conditions and law and order situation, Pakistan started blaming Afghan migrants to responsible for all the prevailing malaise (Bahiss, 2023).

In this context, obtaining citizenship of Afghan refugees in Pakistan has been crucial for those living in Pakistan for decades. International media organizations and human rights organizations are running stories almost daily in favor of Afghan refugees. The United Nation High Commissioner for Refugees issued a statement not oppossing the return of Afghan refugees to their country but requiring only they should not be "forcibly" sent to their country (Amnesty International, 2023).

The Pakistan state authorities did not adopt systematic coherent policies in this regard. Before 2006, Afghan refugees did not need any legal identity documents to remain in Pakistan. In the 1980s, the government issued a passbook (identity card), which was their only way to identify themselves (Ahmed, 2023). As for the detailed census of Afghan refugees in Pakistan in 2005, which was conducted supported by UNHCR, Afghan's were registered through Proof of Registration Cards (POR). In August 2017, Pakistan started issuing Afghan Citizen Cards (ACC) to those with Afghan citizenship who did not have a POR. According to UNHCR, the number of Afghan citizens in Pakistan with ACC was about 840,000 by January 2022. When owning such a card Afghans were able to stay in Pakistan and were protected from deportation, detention, and imprisonment. Afghani's born in Pakistan are entitled to citizenship and any Afghani marrying a Pakistani citizen is also entitled to citizenship under the Citizenship Act 1951 (Sidique & Shah, 2023).

Pakistan's new government's (formed after the 2024 general elections) decision to continue displacing hundreds of thousands of people (who have made Pakistan their

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home and country), is not only unconstitutional but also violates numerous international laws. These Afghan individuals have sought refuge from multiple wars and totalitarian regimes. The matter of illegal deportation was brought before the Supreme Court of Pakistan under Article 184(3) of the Constitution in November 2023, in Senator Farhatullah Babar and others vs Federation of Pakistan, and in Uzair Kayani and others vs Federation of Pakistan. Both petitions claimed, "[t]hat with its policy of expelling refugees, the then Caretaker Government Pakistan was not only acting against its constitutional mandate but also against the fundamental rights granted by the Constitution of Pakistan and the international law obligations. The petitions sought interim relief, requesting that the government halt its actions until the court had made a final decision on the matter" (Bhatti, 2023).

Despite the fact that the matter was pending before the Provincial High Courts of Sind and Supreme Court of Pakistan, the Government and Provincial Governments expelled 500,000 undocumented Afghan Refugees in a most degrading and inhumane way. The Courts clearly failed to comply with their constitutional duty to prevent the violation of fundamental rights that the Constitution extends to everyone in Pakistan. Interim relief, if granted by the courts on time, could have prevented many such expulsions and deportations (Reayat, 2023). To make the forced eviction successful the state authorities of Pakistan adopted harsh attitudes as they do not see any responsibility to protect Afghan refugees in Pakistan due to the changing regional political dynamics (Siddique & Shah, 2023). Law enforcement officials seized and destroyed many Afghans' POR, ACC, and Computerised National Identity Cards (CNIC) in a bid to intimidate and illegally detain individuals and families. The state opened multiple detention centers where refugees, migrants, and citizens were refused their right to legal counselling and spiritual support. Journalists, lawyers or activitsts were barred from entering detention centers (Human Right Watch, 2021).

It is widely recognized that the Constitution of Pakistan guarantees the right to a fair and impartial trial (Art. 10-A Constitution), the prohibition of torture (Art. 14 para. 2 Constitution), and the protection of children's rights (Art. 25 para. 3). Additionally, the Constitution mandates that any form of compulsory measures must be humane and in accordance with human dignity (Bhatti, 2023). However, the government that was formed following the 2024 general elections in Pakistan has continued to carry out state-sanctioned persecution, resulting in a situation where citizens of Afghanistan and Pakistan have been deprived of their voice and their freedom. Therefore, implementation of Article 10-A remains a necessity to ensure the rights of individuals, such as the prohibition of rape, the protection of children from abduction and trafficking, and the prevention of torture.

4.3 International Policies in the Wake of Forced Evictions of Afghan Refugees

There are ambiguities in Pakistani laws regarding the status of refugees. Pakistan is neither a signatory of the 1951 Convention related to the Status of Refugee nor its 1967 New York Protocol, in which the refugee definition, protection of rights and legal obligations of refugees are clarified (Rashid, 2021). Therefore, Pakistan is not bound by conventional international refugee law to keep refugees on its territory. Pakistan has been giving shelter to Afghan refugees based on being an ally of the West. In return for supporting the Western allies in the Afghan wars, Pakistan has received military and economic aid (Weinbaum, 1991). The Foreigners Act of 1946, the Naturalization Act of

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1926, the Pakistan Citizens Act of 1951, and the Citizenship Rules of 1952 have been resorted to for the regulation of entry and residence of people from other countries. Still, it is not entirely clear who is regarded a foreign national and who is a refugee, and how long foreigners can stay in the country, or when they could obtained citizenship. It was not until 2021, that Pakistan' policy gave more considerations to the principles set by UNHCR for refugees.

In 1980, the Ministry of States and Frontier Regions (SAFRON) was formed by the central government in view of the first wave of Afghan refugees in Pakistan (CCAR, 2021). Under this ministry, the Chief Commissioner of Afghan Refugees was appointed in the four provinces. His purpose was to support those working to assist Afghan refugees. Amidst the Soviet-Afghan war, Afghans first started registering as refugees in Pakistan. It was an (unannounced) prerequisite that they were to belong to one of the seven Mujahideen groups that were involved in fighting against the Soviet Union in Afghanistan. These Afghan Mujahideen were supported by Pakistan. The main reason for this was to support the Mujahideen fighting against the Soviet Union. But as soon as the Soviet Union withdrew from Afghanistan in 1989, Pakistan stopped registering Afghan refugees. In 1992, the repatriation of Afghan refugees started. Afghan refugee camps were closed. Anyhow, in 2017, with the support of UNHCR, 840,000 Afghans were given Afghan citizenship cards (Ahmed, 2023).

In 2002, Pakistan had signed an agreement with UNHCR under which Afghan refugees could be sent back to their homeland. Moreover, because of Pakistan's shifting repatriation policy, 200,000 Afghan refugees were sent back to their homeland during 2016. (Masudi, 2023). This repatriation can be understood within the larger context of regional and international responses to Afghan displacement. The European Union, too, refused to grant refugee protection to Afghans. According to records, at least 350,000 Afghans applied for political asylum in various European countries, but their applications were mainly rejected (Human Rights Watch, 2021). Amnesty International has urged Pakistan to stop expelling thousands of Afghan men, women, and children to the neighboring country Afghanistan, stating that, "[t]he deportation of Afghan refugees from Pakistan will put women and girls at unique risk" (Hussain, 2023). Therefore, the repatriation of Afghan refugees is not an isolated phenomenon. It can be seen as ever evolving Pakistan's refugee policy. Considering the internal, external and regional conflicts, the policy has oscillated from hospitality to hostility over the years.

4.4 Deteriorated Bilateral Relations between Pakistan and Afghanistan

Pakistan's recent narrative about the Afghan refugees needs a nuanced analysis in light of the perception of "being the largest migrant-host state" (Khan & Niami, 2023). The main reason for the present haphazard exodus is the non-existence of a coherent policy on illegal immigrants in Pakistan. There is also no law in Pakistan that defines the term *Mohajerani* or "illegal immigrants" or explicitly talks about their rights. The government of Pakistan adopted a fresh justification for the eviction of Afghan refugees claiming that there is no war situation anymore in Afghanistan. Pakistan is of the view that the country itself is currently facing severe financial difficulties. Pakistan is of the view that the country itself is currently facing severe financial difficulties.

The deteriorating ties between Afghanistan and Pakistan can be traced back to the Taliban's return to power in 2021. Pakistan's decision to deport thousands of Afghan

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immigrants has also strained the bilateral relations. The situation remains tense, with both countries exchanging accusations against each other on the matter of TTP insurgencies and forces eviction of Afghan migrants. Contrary to the initial expectations, Pakistan eventually realized that the Afghan Taliban's resurgence has emboldened the TTP and provided it with safe heavens (International Crises Group, 2023).

Besides the above-mentioned factors, Pakistan's policies promoting hardline Sunni Islam in northern and western Pakistan as well as in Afghanistan, helped create the Taliban in the 1980s. While Pakistan's armed forces have had considerable successes fighting the TTP, the Taliban regime in Afghanistan has seemingly strengthened the TTP, showing more loyalty to the militant faction than to the Pakistan state.

It is these bilateral tensions and background against which Pakistan's government decided to deport thousands of Afghan refugees by referring to their alleged involvement in street crimes and militant attacks.

4.5 Surge in Terror Incidents

Pakistan has experienced a momentous increase in terror activities, particularly in Khyber Pakhtunkhwa (KP) and Baluchistan. It was followed by the Taliban's takeover of Kabul in 2021 and the TTP's decision to end its ceasefire with the government in November 2022. In this context, Baluchistan and the Khyber Pakhtunkhwa (KP) provinces of Pakistan have been the epicenter of violence. These provinces have seen a surge in terrorism-related activities. It includes attacks on military forces and collateral civilian damages. Airstrikes by the Pakistan Airforce inside Afghanistan signaled a hazardous escalation in the conflict between Pakistan and Afghanistan. The situation remains fluid, with both countries exchanging heated rhetoric and accusations (Hussain, 2023). As a consequence, migrants are paying the price, as they are forcibly evicted due to the ongoing worsened bilateral situation of Afghanistan and Pakistan (Fahrney, 2023).

4.6 Terrible Human Tragedy Resulting from Repatriation

During November 2023, Pakistan's government issued orders to deport Afghan refugees. Since then, Afghan refugees have been facing police brutality. Thousands of Afghan laborers have been arrested across the country. Pakistani owners were asked to immediately vacate their houses and shops etc. occupied by Afghan refugees (International Crisis Group, 2022).

In the guise of this operation, the police also confiscated the little savings they seized from Afghan workers. 70, 80-year-old elderly as well as 10-15-year-old children were imprisoned, and even women were not spared. Many incidents of violence and inhumane treatment were reported. Afghan workers continue to hide in fear of the police. Thousands of Afghan women are also kept in detention centers. There is fear of heinous crimes as human rights activists and lawyers cannot access these centers. Henceforth, the process of returning Afghan migrants has started, heart-wrenching pictures and videos are shared on social media. Violation of basic human rights also occur in the border areas. Many of these refugees have been living in Pakistan for decades or have migrated after the 2021 fall of Kabul to seek a safe heaven. On their return, they are likely to face oppression, homelessness and alienation in their own land.

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Related to these brutal state actions, the Pakistani government propagates that the situation in Afghanistan is now much better. Complete peace had been established and the country was on the path of prosperity, indicating that there was no longer any justification for these refugees to stay in Pakistan (Asif, 2023). However, the real situation is quite the opposite. The Taliban regime is an appalling and heinous dictatorship where the people are heavily oppressed. The majority of basic human rights are not guaranteed. Women's education and employment etc. are banned and many women who raise their voice against these policies are facing hardships of imprisonment. Employment opportunities are scarce and according to a report of Human Rights Watch (2023), about 97 percent of the population is already undernourished. Judging on the scale of international standards, about 90 percent of the people are living below the poverty line, the prosperity of Afghanistan is entirely being destroyed, while large populations of the cities and most of the rural areas are forced to live an inhumane life. There have been reports of families selling their teenage boys and girls (Soofi, 2023).

In such a situation, the return of thousands of people will lead to increased scarcity of necessities, and psychological and social tensions will reach its extremes. If anger and agitation against such conditions and oppression do not find political expression, they can become pawns for fundamentalism, reactionary ideas, and vengeful sentiments.

It is also observed that during this forced eviction, no agreement of any kind has been reached between the Pakistani state, the Taliban government, and the international community regarding the protection of the basic human rights of these refugees (even if there was, it would be a formal act of imperial hypocrisy). Thus, this hasty forced repatriation is illegal and inhumane, and all steps taken by the state to implement it are illegal (Soofi, 2023).

4.7 The Impetus of the War on Terror on the Current Repatriation Measures

The policy of forced eviction of Afghan refugees living in Pakistan started in November 2023. The government had given an ultimatum to the Afghan refugees till 31st of October 2023, but the state agencies i.e. the police had already been mobilized, and the roundup of the refugees had started. This policy of the Pakistani state reflects the frustration of the policy makers due to the continuously shrinking role of the Pakistani government in the changing situation of the region. However, the current problem can also be investigated in the light of the past three decades of developments. It was the logical outcome of the state's double game implemented during Pervez Musharraf's tenure (1998-2007) when Pakistan was facing severe 'diplomatic isolation'. In this double game, fake operations were carried out in the Pashtun areas of Afghanistan in the name of the war against terrorism, in which billions of dollars were collected from the United States by selling the bodies of ordinary Pashtuns and keeping the 'good' Taliban under state protection (Zaidi, 2017).

4.8 Pakistan's Shifting Internal Priorities and Implications for Afghan Migrants

Forced repatriation is undoubtedly a serious decision taken by the government of Pakistan. However, this decision was prompted by the TTP's repeated attacks in Northern areas of Pakistan (Siddique & Baber, 2023). Pakistan's internal dynamics and expectations from the Taliban-led government influenced its approach towards Afghan refugees. Pakistan was hoping that the Taliban government in Afghanistan would support Pakistan against the TTP and would be pivotal in securing Pakistan's interests (Ahmed,

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2023). But contrary to the assumptions of Pakistan's government when the Taliban-led Afghan government refused to extend this support, Pakistan reportedly started began with the forced eviction of Afghan refugees.

Pakistan's shifting priorities, driven by its internal politics and regional dynamics, have drastic implications for the Afghan refugee population within Pakistan. This suggests a thorough examination of the factors behind Pakistan's decisions regarding Afghan refugees in the context of the changing political landscape in the region.

4.8.1 External Factors

For the Pakistani state, China was seen as an alternative to the United States as an emerging economic force to cooperate closely with, and for a time, Chinese aid and investment continued to satisfy the state elite's lust for commissions and plunder, but this made the economy conditions worse than before (International Crisis Group, 2022). Parallel to this, the Taliban-led government of Afghanistan has also rejected the Pakistani state's middleman role and is now pursuing a policy of direct 'dialogue' and 'transaction' with Western powers, China, Russia, and India. Many supporters and sympathizers of Pakistan among the Taliban regime may exist in the present Afghan government, but their role and control over the overall situation is no longer the same (Maizland,2023).

4.8.2 Pressure Tactics

In the post-2021 era, hold of Taliban-led Afghanistan government on TTP has weakened, and a new wave of terrorism has been born in Pakistan (Fahrney, 2023). Masses are facing historic inflation and unemployment due to the harsh terms of the deal with the International Monetary Fund (IMF). International analysts have warned that the tolerance of the Pakistani people is about to be exhausted, and the Pakistani state may face a popular uprising like Sudan and Sri Lanka. The political crisis and the internal strife of the state institutions are also on the rise (USIP, 2023). On the other hand, there is increasing pressure from the IMF to reduce unproductive spending, but the state's ruling class is not ready to give up their privileges in any way, leaving the entire burden of the crisis on the migrants (Human Rights Watch, 2023).

Under these circumstances, the state finds itself at an impasse. Therefore, instant Afghan repatriation holding Afghans responsible for the socio-economic situation aims distract the attention of the masses. Pakistan's state authorities are trying to make the people believe that Afghan migrants are solely responsible for the bankruptcy of the country's economy and the terrorism (Ahmed, 2023). Thus, Pakistani government is creating a scapegoat by putting all the debris of its own failures and all the crimes on the Afghan refugees. And at the same time, it is using the imperialist policy of 'divide and rule' which it learned from colonial powers. It is fueling ethnic, linguistic, and sectarian prejudices in the country redirecting public anger towards these issues hoping that the revolutionary progress of public consciousness and uprising against the prevailing system might be suspended. The forced eviction of Afghan refugees needs to be seen and understood against the background of these motivations. Moreover, to restore their influence in the region, state authorities of Pakistan intended to enter into new agreements with the Taliban-led government of Afghanistan based on their own terms. Failing to gain Afghan cooperation in this regard, Pakistan state's authorities have desperately started Afghans expulsion (International Crises Group, 2022).

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4.9 Understanding the Complexities of Afghan Expulsion and Rising Terrorism

During the recent era, a connection between migration and terrorism has developed. It is accepted that these Afghan refugees did not come to Pakistan by fighting, but naturally, in the event of a major war, regime change or due to other human tragedy (Kugelman, 2023). Therefore, they sought asylum in the neighboring country Pakistan. Blaming the entire Afghan nation based on a few terrorists and criminals is unjustifiable both morally and politically. Pakistan's state adopted a recent narrative that the drugs, terrorism, and insecurity in the country are also caused by Afghan refugees It takes Afghan refugees as an excuse to absolve itself of all its internal issues. In parallel, this should be called systematic Afghan phobia (Soofi, 2023). While it is observed that numerous Afghan refugees have been exploited for terrorism and drug trade, branding an entire nation as a terrorist is unfounded. Based on biased thinking, Afghan refugees are being declared as the biggest burden on the country's economy. In fact, 80-90 percent of Afghan refugees are employed as wage labor, working across various sectors including factories, restaurants, farms, markets, hotels, workshops, construction, transportation, and other service industries. They operate rickshaws, taxis, and other forms of transportation, such as carriage services. They are not a burden on the economy, but they have done all the hard work and dedication that no other laborer would be willing to do (Hussain, 2023).

At the same time, the terrorist industry and black economy have become so powerful and pervasive in the overall economy of Pakistan that even if the Afghan workforce was to disappear from it, the failing economic situation would not improve. The deteriorating economy needs a concrete agenda instead of haphazard decisions of Afghans' exodus (Ahmed, 2023).

4.10 The Question of Demography

Demography became a significant factor in public migration discourses. People who have fallen into the abyss of right-wing nationalism argue against immigrants that 'this way the natives will become a minority' (Joppke, 1996). This debate is relatable with the rising concerns in the Sindh province. Concerns have been raised there with respect to alleged unlimited purchase of lands and established businesses by Afghan migrants. Considering this context, skilled workers in Pakistan are attracted to the labor markets of Europe, America, Canada, and Australia. Similarly, for laborers in Afghanistan, Pakistan's labor market also emerges as the most readily available option. In certain circumstances, due to the ravages of war, it also emerges as the only option.

In terms of the distribution of registered Afghan refugees based on the demographics, approximately 52% (0.7 million) reside in Khyber Pakhtunkwa, which constitutes only 2% of its population. There are 321,677 registered Afghan refugees in Baluchistan, constituting 24% of the total of Afghan refugees in Pakistan and 2.7% of the total population of Baluchistan. 0.2 million Afghan refugees are living in Punjab, which is 14% of the total of Afghan refugees and 0.14% of the population of Punjab. Another 41,520 refugees reside in Islamabad, which is 3% of the total of Afghan refugees and only 4.15 percent of the local population. 4,352 Afghan refugees have settled in Kashmir, which is 0.3% of the total of Afghan refugees and 0.1% of the local population, whereas Sindh has 73,798 registered Afghan refugees, which is 5.5% of the total refugees and 0.15% of the population of Sindh. These numbers show, that the largest concentration of Afghan refugees resides in the Khyber-Pakhtunkhwa Province. However, even there they are still

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constituting only a small fraction of the local population, meaning there is no imminent risk of the local population becoming a minority.

5 Discussion

Pakistan's Illegal Foreigners Repatriation Plan creates risks for international peace and security, while running the afoul of humanitarian principles and raising concerns under international law. The principle of non-refoulement in international law restricts the forcible return of migrants who might face persecution upon return. It is true that Pakistan is not a party to the 1951 Refugee Convention; however, it is a signatory to the UN Convention against Torture. Additionally, the principle of non-refoulement is applicable as a principle of international customary law.

From a legal or humanitarian viewpoint, the violent return of vulnerable groups (especially women who foresee that their basic rights would be unprotected under the Taliban-led government) and the confiscation of the returnees' belongings are troubling. Human activists and people from different walk of life have challenged the repatriation plan in Pakistan's courts by highlighting that it is to be seen as a contradiction to a 45-year old state policy (Amnesty International, 2023).

Despite the crisis driven global agenda, with wars in Gaza and Ukraine topping the headlines, international actors should devote more attention to this brewing crisis in Pakistan and the region. Foreign governments with influence in Islamabad, such as the U.S., should urge to stop the implementation of Pakistan's Illegal Foreigners' Repatriation Plan. In this context, Afghanistan and Pakistan should work simultaneously with humanitarian agencies to determine the future prospects for returnees. International donors support is also mandatory for financial and technical assistance. In this regard, Afghanistan, Pakistan, and the UNHCR should unanimously formulate an agreement to facilitate the refugee status. Additionally, a resettlement plan for the refugees to other countries may be implementable with the help of United States, European Union Member States, Canada, and other Western countries.

Otherwise, repatriation might have devastating effects with returnees being homeless on their native lands. In desperate attempts, they might become part of future terrorist activities. As former Senator Afrasiab Khattak has already pointed out, forcing Afghan refugees back to their country, which is under the repressive regime of the Taliban and offers no hope for survival, ultimately results in instability for the entire region. When millions of refugees return to Afghanistan, they will be forced to join terrorist organizations. Pakistan has stressed that the international community must not abandon Afghans, as it did in the past, which resulted in the nourishment and emboldening of terrorism in the mid-1990s, ultimately leading to events such as 9/11 (International Crisis Group, 2022).

Forcible evictions of Afghan refugees from Pakistan may pose serious security risks to both countries. The Taliban government is likely to be overwhelmed by an influx of jobless and homeless repatriates who are desperate for work. Therefore, for the sustenance of their extended families, returnees may be enticed into criminal activities or could join the armed opposition to the Taliban's rule. Conversely, one of the benevolent winners within this chaos might become TTP. Arguably, TTP fighters might be found among the repatriates as they are well acquainted with Pakistan's sensitive locations they could be instrumentalized for future attacks.

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Therefore, Afghanistan and Pakistan should foresee possible outcomes of this displacement. The ongoing economic crises has Pakistan firmly in its grip. Coping with it, requires long-term tangible reforms and economic planning, instead of holding Afghan refugees responsible for the present malaise using them as scapegoats. A peaceful agreement or arrangement for those Afghan refugees at least who have lived in Pakistan for more than a decade is suggested (Bahiss, 2023).

6 Conclusion

Pakistan's policy regarding TTP and Afghan refugees after the withdrawal of the U.S.-led coalition forces is full of contradictions. Afghan refugees are blamed for the deteriorating economy as well as legal and law & order situation. Repeated invasions from world powers like the U.S.S.R. and the U.S.-led coalition resulted in terrorism, the rise of the Taliban and a complex situation where uncertainty and instability have forced hundreds of thousands to flee from war, terrorism, insecurity, death, and misery. Since the return of Afghan refugees is not voluntary and the government of Afghanistan is ill-prepared for their repatriation, refugees may die due to hunger and cold. Therefore, repatriation must adhere to the principles of voluntariness and dignity as stipulated by international law. A solution necessitates the involvement of three parties: Pakistan, Afghanistan and the international community. Additionally, for individuals unable to return due to unresolved challenges, the second component of the solution entails resettlement to other countries. Numerous Afghan refugees are eligible for Pakistani citizenship, but the Pakistani government has been denying it on several grounds. Former Prime Minister, Imran Khan, declared that the government would be granting them citizenship. But unfortunately, it was not implemented. The problem will not be solved without resorting to these three components in accordance with international humanitarian rights.

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QRP

SCIENTIFIC REVIEW

Navigating Diet and Nutrition: An Analysis of Programs Targeting Newcomer Populations[1]

Geneveave Barbo[2], Anissa Jeeroburkhan[3]

Abstract

This integrative review examines the effectiveness of programs promoting healthy eating habits among newcomers in high-income countries. Given the rising incidence of non-communicable diseases (NCDs) such as cardiovascular disease, diabetes mellitus, and cancer, largely influenced by lifestyle choices, this review identifies dietary habits as a crucial, modifiable risk factor. Utilizing a methodological framework that incorporates searches across academic databases, hand-searching of references, and grey literature examination, this review aims to aggregate evidence on community-based programs tailored for adult newcomers without pre-existing medical conditions. Out of 413 articles screened, six met the inclusion criteria, showcasing diverse methodologies and outcomes but uniformly pointing towards the positive impact of nutritional education and community gardening on improving health outcomes. The interventions reviewed varied from educational programs focusing on nutritional knowledge to practical initiatives like community gardening, all aiming to facilitate healthy dietary practices among newcomers. Notably, the review highlights the importance of culturally sensitive approaches, as most effective programs are those that consider the unique cultural backgrounds and socio-economic conditions of the newcomer populations. These programs not only improved participants' dietary habits and nutritional knowledge but also fostered social integration and mental well-being, showcasing the multifactorial benefits of well-designed health promotion interventions. Despite the promising outcomes, the review identifies significant gaps in the literature, notably the lack of detailed program descriptions and outcomes, which hampers the ability to replicate and scale these interventions effectively. Furthermore, while educational content forms the core of most interventions, the pervasive issue of food insecurity among newcomers underscores the need for programs that also address access to nutritious food. In conclusion, this integrative review underscores the critical role of dietary interventions in improving the health outcomes of newcomers, highlighting the need for culturally tailored, comprehensive programs that go

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beyond education to address broader determinants of health, such as food security. Future research should focus on detailed program evaluation and the development of scalable, replicable models that can address the complex health promotion needs of newcomer populations, thereby contributing to the global effort in reducing the burden of NCDs.

Key Words:

Non-communicable diseases, chronic diseases, risk factors, lifestyle, immigrants, refugees

1 Introduction

Non-communicable diseases are a major health problem worldwide. They have been heavily attributed to the global burden of diseases, accounting for millions of deaths and disabilities annually (Ngom et al., 2016). The primary non-communicable disease that causes most deaths worldwide is cardiovascular disease (CVD), followed by diabetes mellitus (DM), and cancer (Ngom et al., 2016). Canada is no exception, with approximately 25% of Canadians affected by hypertension (HTN) and about 90% chance of developing it during one's lifetime (Leung et al., 2019). The Public Health Agency of Canada also indicated that an estimated 2.4 million Canadians (6.8% of the population) were diagnosed with DM in 2011 (Tenkorang, 2017). This percentage is estimated to increase to as close as 50% from 2015 to 2025 (Hosseini et al., 2019). Additionally, about 90 to 95% of Canadians who have diabetes have type 2 diabetes mellitus, "a condition largely influenced by individual lifestyle choices" (Public Health Agency of Canada, 2011: 8). While an estimated two out of five Canadians are at risk of being diagnosed with cancer in their lifetime and about 25% will die from it (Public Health Agency of Canada, 2021).

Non-communicable diseases have been characterized as long-term chronic diseases, resulting from the combination of genetic, physiological, environmental and behavioral factors (World Health Organization, 2023). Nevertheless, accumulating evidence has identified certain factors that have been associated with a greater risk of acquiring the diagnosis of CVD, DM, and/or cancer (Leung et al., 2019; Weisman et al., 2018). These include older age, women, certain ethnic groups, and low socioeconomic status. For instance, previous studies have reported that the prevalence of DM and HTN increases significantly in older age (Leung et al., 2019; Weisman et al., 2018). Women were also found to be more susceptible to HTN (Leung et al., 2019). Additionally, ethnic minority groups have the greatest risk of developing DM, and CVD (Liu et al., 2010; Weisman et al., 2018). With Canada having the highest percentage of foreign-born citizens than of any other G8 country, this is particularly concerning (Houlden, 2018). South Asians, Southeast Asians, East Asians, West Asians, Arabs, Latin Americans, and Blacks respondents were shown to demonstrate a significantly higher prevalence of DM, and HTN than white participants (Leung et al., 2019; Weisman et al., 2018). South Asians living in Canada also have a greater incidence and earlier onset of CVD and DM despite lower body mass index (Liu et al., 2010).

Besides ethnicity, an individuals' socioeconomic status also contributes to the risk of acquiring DM, CVD, and/or cancer. According to a longitudinal National Population Health Survey, people with low-to-middle income are more likely to develop DM (Hosseini et al., 2019). Individuals in the low-income group were 77% more likely to develop type 2

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diabetes mellitus than those in the highest-income group (Houlden, 2018). Indeed, this has also been revealed in the Canadian Community Health Survey where the prevalence of type 2 diabetes mellitus for the lowest income group was 4.14 times greater than that of the highest income group (Houlden, 2018). Individuals with low-income also experience the worst prognosis as they are more likely to acquire myocardial infarction, stroke, all-cause mortality, avoidable hospitalization, amputations, and end-stage renal disease (Weisman et al., 2018).

Newcomers, including immigrants, refugees, and asylum seekers, face significant challenges related to non-communicable diseases (Tan et al., 2021). They are at heightened risk for non-communicable diseases due to a blend of genetic predispositions, lifestyle choices, and socio-economic factors, all influenced by the stressors of migration and acculturation (Tan et al., 2021). This demographic's susceptibility is further compounded by barriers to healthcare access, and the adoption of healthy behaviors (Anderson et al., 2022; Kilbride, 2014; Rousseau & Frounfelker, 2019). Given this context, there is an urgent need for comprehensive research focused on identifying and mitigating preventable lifestyle-related risk factors for chronic diseases among newcomers.

Such research was a key component of a broader project aimed at examining preventable lifestyle-related risk factors among newcomers in Montreal, Quebec. The project's objective was to develop a community-driven program that is culturally adapted to encourage healthy living practices. The results, which will be detailed in a forthcoming publication, identified dietary and eating habits as the primary preventable lifestyle-related risk factor. Consequently, this integrative review contributes to a larger initiative by identifying and aggregating existing and proposed programs designed to improve dietary and eating habits among newcomers.

2 Integrative Review Methodology

Using the framework detailed by Coughlan et al. (2013), Toronto and Remington (2020), and Whittemore and Knafl (2005), this review was conducted according to the following search strategy: (a) running a search in academic databases: CINAHL, OVID MEDLINE, and Web of Science (see Table 1); (b) hand-searching reference lists of all included full-text articles; and (c) seeking out grey literature in pertinent reports and organizational websites (e.g., Health Canada; Cochrane Library; and Immigrant & Refugee Services Association). Articles were included if they were published in English or French and included healthy eating community-based programs tailored specifically at adult newcomers (i.e., immigrants, refugees, asylum seekers, and international students) who did not have any pre-existing medical conditions and resided in high-income countries. However, programs designed for newcomers who are considered elderly, pregnant, children, and infants were excluded (as well as family interventions since these populations were not targeted in the larger project). Additionally, articles focusing on the general racialized population (i.e., not specific to newcomers) were also excluded. Nevertheless, to ensure the inclusion of a wide breadth of literature, there were no restrictions applied on the publication year and type.

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Table 1: Academic Databases' Search Strategy

	Key concepts	Search terms
1	Newcomers	newcomer* OR migrant OR immigrant* OR refugee* OR asylum seeker* OR forced displacement OR "refugee identity" OR "refugee background"
2	Dietary habits	dietary habit* OR diet OR nutrition OR food OR nourishment or food intake OR eating OR eating behaviour
3	Community health promotion programs	community health promotion program* OR culturally based programs OR community health promotion initiative*

Note. Search terms 4 = 1 AND 2 AND 3; search terms 5 = Filter: English and French.

Regarding data selection, titles and abstracts of identified articles were screened based on the inclusion criteria. Once potentially eligible articles were identified, their full texts were retrieved and reviewed in detail. Reasons for exclusion were noted and the selection process was reported in PRISMA (Preferred Reporting Items for Systematic Reviews and Meta-Analyses) flow chart (Page et al., 2021). All eligible articles were examined, and relevant data were gathered from the articles. Collected data were narratively analysed and then presented in tabular and narrative form.

3 Integrative Review Findings

After screening 413 articles from academic databases and grey literature, a total of six articles met the eligibility criteria of this review (for the detailed data selection process refer to Figure 1). Among the included articles, two applied quantitative methodology, one qualitative, and two mixed methods; one article was also a protocol paper aiming to use a mixed methods approach. Furthermore, three out of six studies focused on newcomers who resettled in the United States of America (USA), one was related to Canada, one to Switzerland, and one to Spain. Sample populations included newcomers from Bhutan, Burma (or Myanmar), Cambodia, Congo, Former Yugoslavia (Bosnia-Herzegovina or Kosovo), the Philippines, and Syria as well as Spanish-speaking immigrants. Table 2 presents more detail on each of the included articles.

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Figure 1. PRISMA 2020 Flow Diagram

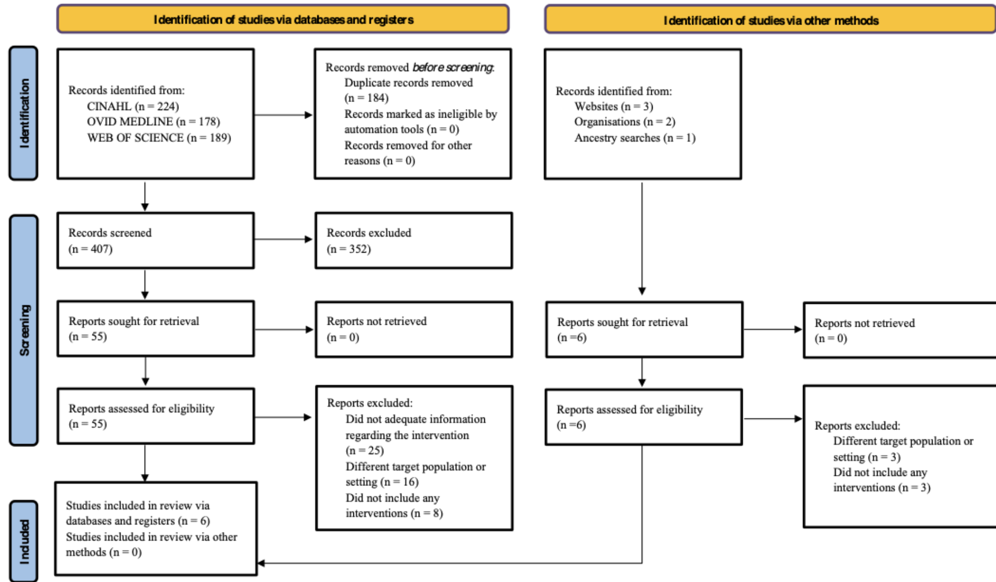

Table 2. Summary of Included Studies

	Objectives	Intervention	Outcomes
Berkson et al. (2018) Quantitative research USA (Minnesota) Adult Cambodian who are survivors of torture (n =126)	Provide health promotion program focused on nutrition, physical activity, stress management, sleep hygiene, and health care practitioner-patient communication	• Session 1: Introduction of the health promotion program and building rapport with participants • Session 2: Basic principles of nutrition and disease prevention while considering traditional Cambodian foods and diet • Session 3: Guidelines on physical activity, health benefits, and examples of low impact exercises • Session 4: Stress and depression normalization and management as well as basic guidelines for sleep hygiene • Session 5: Preparation for doctors' visit	• Reduction in depressive symptoms from 52.8% to 44.0% • Self-reported health status "poor" declined from 20.0% to 7.2% • 80.8% of participants expressed exercising at least 120 minutes per week post-intervention

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	Objectives	Intervention	Outcomes
Hartwig and Mason (2016) Mixed methods research USA (Minnesota) Adult refugee and immigrant populations from Karen, Bhutanese, Lisu, and Hmong ethnic backgrounds. Countries of origin include Bhutan, Burma (or Myanmar), and Thailand (n = 214)	Evaluate refugee gardening project hosted by churches	Due to limited community garden plots, a partnership was established between Karen Organization of Minnesota, the Bhutanese Community of Minnesota, CAPI1, and Minnesota churches to establish community gardens for immigrant and refugee populations in the area. This study is based on the 2014 gardening season.	• Increased vegetable intake • Participants expressed appreciation for the fresh vegetables, physical activity, mental health benefits, and the opportunity of being outside as a result of the community gardens
Henderson and Slater (2019) Qualitative research Canada (Winnipeg, Manitoba) Adult newcomers from Burma, Congo, Philippines, and Syria who self-identify as having a predominant role in household food work (n = 22)	Improve knowledge and skills of newcomers to eat healthily in the Canadian context; assist newcomers find a healthy balance between familiar foods and 'Canadian' foods; and encourage traditional food practices	Focused on healthy preparation methods, food safety, whole foods vs packaged foods, label/package reading, healthy school lunch ideas, sugar, plant foods and a grocery store tour • Module 1: Course introduction & food safety • Module 2: Healthy eating • Module 3: Plant foods • Module 4: Packaged food and label reading • Module 5: Sugar • Module 6: Healthy eating on a budget • Module 7: Grocery store tour • Module 8: Celebration day and nutrition trivia	Four themes emerged from the evaluation of the program, demonstrating changes in participants' attitudes, knowledge, and behaviours; these include: • Healthy adaptation to the Canadian foodscape • Enhanced nutrition knowledge and behaviours • Marginal improvements to food security for some participants • Additional benefits such as cross-cultural understanding and enhanced social networks

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	Objectives	Intervention	Outcomes
Khare et al. (2014) Quantitative research USA (Illinois) Spanish-speaking adult immigrants (n = 180)	Address the disproportionate cardiovascular disease risks of the target population	Focused on healthy eating and physical activity. Curriculum of the enhanced intervention is as follows: • Orientation week: Research study overview; curriculum overview - Identifying participants' health needs and concerns (consciousness raising; self-re-evaluation) • Week 1: Illinois WISEWOMAN program nutrition and physical activity philosophies - Determining global and personal health benefits of eating healthy and being physically active (consciousness raising; dramatic relief; environmental re-evaluation; self-re-evaluation) • Week 2: The Food Guide Pyramid - Identifying small ways to improve eating and physical activity behaviours (consciousness raising; counter conditioning; increasing; self-efficacy; social liberation) • Week 3: The Physical Activity Pyramid - Identifying and problem-solving barriers to eating healthy and being physically active (increasing self-efficacy; social liberation) • Week 4: Food labels; dietary fat - Setting good goals (self-liberation; stimulus control) • Week 5: Physical activity log; step counter - Self-monitoring and setting rewards (reinforcement management; self-liberation; stimulus control) • Week 6: Food log; portions vs. servings - Self-monitoring (self-liberation; stimulus control) • Week 7: Shopping strategies; fiber - Recognizing environmental constraints and supports and creating a facilitative environment (consciousness raising; counter conditioning; reciprocal determinism; self-liberation; social liberation; stimulus control) • Week 8: Strength exercises - Identifying, recruiting, and rewarding helpers (helping relationships) • Week 9: Healthy eating away from home - Identifying and planning ahead for situations that trigger unhealthy eating or sedentary behaviors (counter conditioning; self-liberation; social liberation)	• Participants of the enhanced intervention demonstrated positive changes in diet and physical activity after participating in the intervention • Increased fiber intake and improved BMI levels as well as considerable improvement in fat and fiber summary scale scores were also noted at 1-year post intervention

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	Objectives	Intervention	Outcomes
		• Week 10: Stretching and balance exercises - Recognizing the effect of stress on the body and healthy choices and managing stress (consciousness raising; counter conditioning; dramatic relief; emotional coping responses; self-liberation; social liberation) • Week 11: Popular diets; healthy weight loss - Recognizing the effects of negative thoughts and turning negative thoughts into positive thoughts • Week 12: Healthy cooking strategies - Staying on track with healthy eating and physical activity behaviors (relapse prevention) (Khare et al., 2009: 413)	
Kruseman et al. (2003) Mixed methods research Switzerland (Geneva) Adult refugees from the Former Yugoslavia (Bosnia-Herzegovina or Kosovo) (n = 32)	Reduce oil use/content of traditional dishes consumed by the target population	• Workshop 1: - Preparation of the participants' dish of choice while being observed by facilitators - Oil bottles were weighed in the beginning and end of the cooking session - Group tasting session was then held after the preparation of meals. Topics of discussion include sensorial analysis, personal beliefs about dishes, health problems associated with excess fat intake • Workshop 2: - Group discussions were held based on barriers and benefits of cooking with less oil, and methods in reducing oil use - Examples and demonstrations on the techniques to reduce oil use while cooking was shown • Workshop 3: - Participants were asked to prepare the same dish they have prepared in the first workshop and encouraged the techniques they have learned in the second workshop - A group tasting session was again held along with a discussion about the differences between the taste of the meals prepared in Workshop 1 compared to Workshop 3. - The amount of oil used by each participant in Workshop 1 and 3 was also shown to the participants.	• On average, participants reduced their oil use per recipe by 58% • Reduction of oil use varied from 9 to 93% among each participants • Majority of participants reported their skepticism about changing their cooking habits in the beginning of the program • Reported benefits of the intervention include weight loss, lowering of blood pressure, and monetary savings

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	Objectives	Intervention	Outcomes
Mohamed-Bibi et al. (2022) Protocol paper for a mixed method research Spain (Barcelona) Pakistani women (n = 137)	Evaluate the efficacy of the food education program	• Session 1: Most common health problems of Pakistani population • Session 2: Food myths and beliefs • Session 3: Basics of healthy diet • Session 4: Strengths and weaknesses of traditional diet • Session 5: Small changes to eat better • Session 6: Small changes to eat better continuation • Session 7: Small changes to eat better continuation • Session 8: Weekly food purchase planning • Session 9: Planning of a balanced menu • Session 10: Photovoice on healthy dish or snack	Not available at this time

3.1. Intervention Descriptions

The majority of the interventions evaluated in the included articles were composed of teaching curricula aimed to educate newcomers on healthy eating habits except for Hartwig and Mason (2016) who solely focused on examining community gardens. In this study, community gardens established in churches in Minnesota, USA, were evaluated for their health benefits to Karen, Bhutanese, Lisu, and Hmong newcomers during the 2014 gardening season (Hartwig & Mason, 2016). Orientation and training were provided to the church staff and community members (Hartwig & Mason, 2016); however, the details about these were not shared in the article.

Comparatively, the other five articles primarily focused on providing educational content to newcomers. Two articles out of the five (Berkson et al., 2018; Khare et al., 2014) relied on passive learning of nutritional education, where the facilitators shared teaching materials through verbal lectures and the participants listened and passively absorbed the knowledge. Whereas the three remaining studies incorporated practical activities within their educational sessions (e.g., creating weekly menus, interpreting labels of nutritional products, and cooking) (Henderson & Slater, 2019; Kruseman et al., 2003; Mohamed-Bibi et al., 2022).

Khare et al. (2014) focused their 12-week curriculum on healthy eating and physical activity, specifically covering the following topics: Food Guide Pyramid; food labels; dietary fat; food log; food portions and servings; shopping strategies; fiber; healthy eating away from home; popular diets; healthy weight loss; healthy cooking strategies; Physical Activity Pyramid; physical activity log; step counter; strength exercises; stretching; and balance exercises, details of which can be accessed through Khare et al. (2009). Berkson et al. (2018) provided five sessions surrounding the topics of nutrition, physical activity, stress management, sleep hygiene, and practitioner-patient communication.

As for the interactive programs, all three studies focused entirely on healthy eating habits. Mohamed-Bibi et al. (2022) described a mixed method protocol that encompasses ten theoretical-practical sessions that emphasized on balanced diet as well as Pakistani culture and linguistic considerations. An example of this is the incorporation of photovoice in which the participants will be encouraged to bring photos of healthy dishes and snacks

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in Pakistani cuisine (Mohamed-Bibi et al., 2022). Group discussions about the meaning of such foods in their culture will then be conducted (Mohamed-Bibi et al., 2022). In comparison, Henderson and Slater (2019) described the integration of cooking and providing nutritional information within their program. This study took place in a kitchen where participants prepared healthy Canadian meals while alternative cooking methods, ingredients, and recipes were explained (Henderson & Slater, 2019). Similarly, the study presented by Kruseman et al. (2003) was also held in a fully equipped kitchen, with all the ingredients available to the participants, in conjunction with educational materials. This program, however, specifically focused on the reduction of oil use by the participants when preparing their traditional dishes (Kruseman et al., 2003). At the same time as participants were cooking the dish of their choice, the facilitators (i.e., experienced dietician, trained cook, and dietician trainee) were explaining the benefits of reducing oil intake and offered technical suggestions on achieving this goal (Kruseman et al., 2003).

3.2. Intervention Outcomes

All included studies except for Mohamed-Bibi et al. (2022), as this is a protocol paper, shared their program outcomes. These studies demonstrate a consistent trend towards positive health outcomes resulting from nutritional interventions and community gardening initiatives. Berkson et al. (2018) observed significant improvements in health status, though they did not specify the results of nutritional outcomes. In contrast, Hartwig and Mason (2016) explicitly linked participation in community gardens to increased vegetable intake and highlighted additional benefits such as enhanced mental health, physical activity, and social opportunities. This theme of improved dietary habits is further supported by Henderson and Slater (2019), where participants identified changes in attitudes, knowledge, and behaviors towards food, noting healthy adaptations, increased food security, and benefits extending to social networks and cross-cultural understanding. Moreover, participants in Khare et al. (2014) demonstrated increased fiber intake, improved BMI levels, and better fat and fiber summary scale scores post-intervention. Similarly, Kruseman et al. (2003) detailed a significant reduction in oil use among participants, with varied individual results but overall positive health impacts, including weight loss and reduced blood pressure. Across these studies, the narrative points to the effectiveness of such programs in not only enhancing nutritional knowledge and intake but also fostering broader social and health benefits.

4 Discussion

This review identified effective programs for promoting healthy diet and eating habits for newcomers. Educational interventions and community gardens emerged as impactful initiatives, improving dietary habits, increasing vegetable intake, and providing social and health benefits. These findings stress the importance of culturally sensitive and practical approaches to health promotion among newcomer populations. Furthermore, most of the interventions identified focused on providing educational content to newcomers. Though crucial, education does not address the pressing issue of inaccessibility to safe and nutritious food (Chevrier et al., 2023; Davison & Gondara, 2021; Jefferies et al., 2022). Programs must also target problems relating to food insecurity, that is the “inadequate access to safe and nutritious food to meet dietary needs and food preferences for an active and healthy life” (Davison & Gondara, 2021: 110).

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According to the recent study conducted by Bhawra et al. (2021) based on a national cohort study participants from Toronto, Montreal, Vancouver, Edmonton, and Halifax, Canada, nearly 30% of survey participants resided in households experiencing food insecurity, with 19% facing moderate levels of food insecurity and 10% encountering severe conditions. Individuals identifying as Black or Indigenous were at a higher risk of being in moderate to severe food-insecure situations than those of mixed or other ethnic backgrounds (Bhawra et al., 2021). Participants who reported extreme difficulty in managing their finances were more prone to moderate and severe levels of food insecurity (Bhawra et al., 2021). Additionally, those categorized as having a "normal" or overweight status were less frequently found in moderate food-insecure conditions compared to individuals dealing with obesity (Bhawra et al., 2021). Poor health, diet quality, and mental health conditions were more commonly linked to severe food insecurity, especially when contrasted with those reporting very good or excellent well-being in these areas (Bhawra et al., 2021).

It is therefore evident that dietary habits are crucial in impacting preventable lifestyle-related risk factors and that they offer considerable opportunities for intervention. Unlike stress levels or cultural attitudes towards smoking and alcohol, which can be more challenging to alter, eating habits are often more amenable to change through targeted interventions. Educational initiatives, community-based programs, and personalized dietary plans can be effectively implemented to promote healthier eating habits. Additionally, improving diet and eating habits can lead to broader health benefits. A well-balanced diet enhances overall energy levels, mental health, and quality of life, contributing to a more holistic approach to health.

While physical activity, smoking, alcohol consumption, and stress levels are undoubtedly important in the context of chronic illness prevention, addressing diet and eating habits presents a more direct and actionable pathway for reducing chronic disease risks. Focusing on this area can yield immediate and long-lasting benefits for the health of the participants, making it a priority for program implementation and intervention.

4.1. Recommendations

Based on the relevant literature, a culturally tailored program for newcomers targeting healthy eating and food insecurity is critical in reducing newcomers' preventable lifestyle risk factors. Since all six articles identified in the integrative review demonstrated promising results, these programs could be adapted and improved to meet the health needs of newcomers in Montreal, Quebec. For instance, a collaboration with local community organizations can be established to acquire access to community garden lots where newcomers could be allowed to plant and harvest vegetables and fruits, and a kitchen where educational workshops can be held while cooking healthy meals. These workshops would consist of the adapted curriculum from the five included articles in the integrative review – i.e., Berkson et al. (2018), Henderson and Slater (2019), Khare et al. (2014), Kruseman et al. (2003), and Mohamed-Bibi et al. (2022) – with added topics on the link between a balanced diet and eating habits.

Also, long-term health-related endpoints, such as cardiovascular morbidity and cancer-related outcomes, must be incorporated within these programs to ensure comprehensiveness and generalizability, particularly if they were to be implemented on a national level. In so doing, programs may have a broader impact to produce significant

health benefits over time and the potential to be sustainable. However, such initiatives would certainly require substantial financial support and resources.

4.2. Strengths and Limitations

This review, however, emphasized a pervasive issue in the literature concerning the scarcity of detailed interventions on diet and eating habits tailored to adult newcomers – impeding the ability to learn from and replicate effective health promotion strategies. This gap highlights the necessity for funding agencies to mandate comprehensive descriptions of interventions, aiming to not only facilitate knowledge transfer and innovation in this field but also support the development of evidence-based programs that can be replicated and scaled to benefit a wider segment of the population. Furthermore, although the integrative review was limited by being conducted by a single reviewer, raising concerns about potential bias, it importantly signals the urgent need for systematic reviews and interventions tailored to the health promotion needs of newcomers, paving the way for future research directions with increased rigor and inclusivity.

5 Conclusion

This integrative review explored the process and outcome of various programs aimed at promoting healthy diet and eating habits among newcomers, particularly in high-income countries like Canada. With non-communicable diseases posing significant health risks globally, the focus on preventative lifestyle changes, such as diet and nutrition, is critical. The findings from the review demonstrate a positive trend towards improving health outcomes through nutritional interventions and community gardening projects, highlighting the importance of culturally sensitive and practical approaches in health promotion strategies for newcomers. This review paves the way for future research and program development, aiming to enhance the health outcomes of newcomers through focused, practical, and inclusive health promotion strategies.

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JURISDICTION

Fundamental (Human) Rights versus Emergency Measures: Excerpts from the Case-law of the CJEU and ECtHR[1]

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Abstract

The response of States to the outbreak of a COVID-19 pandemic in the European Region from spring 2020, such as curfews, limited opening hours, restrictions on activities, the use of masks and possible vaccination requirements to prevent further spread and mitigate consequences, may raise a number of human rights issues. The role of the Court of Justice of the European Union (CJEU) is to ensure that the EU law is observed in the interpretation and application of the Treaties and to work together with the national courts to ensure the uniform interpretation and application of EU law. The European Court of Human Rights (ECtHR) is the principal guardian of the European system of human rights protection, based on the European Convention on Human Rights. It is therefore not difficult to see that, in this unique period since the outbreak of the pandemic, the role of the courts has been even more decisive in a number of cases dealing with the fundamental and human rights aspects of the (restrictive) state measures taken in the wake of the COVID-19 epidemic. The paper selects cases from the CJEU and the ECtHR relating to the COVID-19 epidemic. The purpose of this paper is to analyse the approaches and judgments of the two courts, with a focus on providing the reader with a comprehensive overview of the role of the courts in interpreting the law in times of public health emergencies. In addition, the presentation of the cases provides an insight into the measures or procedures used by each Member State to deal with the pandemic.

Key Words:

fundamental (human) rights, COVID-19, emergency measures, CJEU, ECtHR

1 Introduction

Early 2020, the global COVID-19 pandemic unexpectedly exploded around the world, affecting the lives of citizens and the functioning of public institutions. Consequently, countries took a variety of measures to manage the epidemic and prevent further spread.

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The effectiveness of the instruments and procedures used has been analysed extensively. What they all have in common is that they can impact fundamental human rights in various areas such as mobility, privacy, personal data, employment, social security, transport and travel. Following the epidemic, the EU Member States implemented individual, uncoordinated, and sometimes conflicting national responses based on their respective risk assessment frameworks (Alemanno, 2020). A key aspect of the responses was to encourage individuals to limit their contacts and mobility.

The Court of Justice of the European Union (CJEU) has the role of ensuring that the law is respected in the interpretation and application of the Treaties and also works together with the courts of the Member States to ensure the uniform interpretation and application of EU law (Art. 19 TFEU)[4]. The European Court of Human Rights (ECtHR) is the main guardian of the European system of human rights protection, and is based on the European Convention on Human Rights (ECtHR)[5]. Both courts have dealt with the human rights aspects of the (restrictive) measures taken by the State in the wake of the COVID-19 epidemic in a number of cases since 2020. The role of these courts has become even more crucial in this unique period: Judges acted as guardians of rights and freedoms, striking new balances in light of the rule of law and of general principles such as proportionality, effectiveness, precaution, and solidarity (Iamiceli & Cafaggi, 2024).

The paper selects cases from the CJEU and the ECtHR relating to the COVID-19 epidemic. The purpose of this paper is to analyse the approaches and judgements of the two courts with the focus on providing the reader with a comprehensive overview of the role of the courts in interpreting the law in times of public health emergencies. Moreover, the presentation of the cases provides insight into the measures used by Member States to deal with the epidemic.

Because of their different nature, the ECtHR cases are based on the suspension of the application of the European Convention on Human Rights, as well as issues of inadmissibility and fundamental rights. Conversely, the ECJ cases related to free movement and mobility will be presented through the request for a preliminary ruling, the procedure for failure to fulfil obligations, and the application for annulment.

2 Excerpts from Relevant CJEU Case Law

The global spread of the coronavirus (COVID-19) has created a novel situation for all. The virus has spread rapidly from a limited area, developing into a pandemic in a relatively short period of time. In response, unprecedented protection measures have been introduced worldwide, with negative impacts on many rights. Although the role of health emergency preparedness, monitoring and coordination in the European Union has increased over the last two decades, the Member States' responses to the first wave of the epidemic were surprisingly uncoordinated. This resulted in national measures limiting the EU's effectiveness in combating the disease and jeopardising the proper functioning of the single market and the Schengen area (Beaussier & Cabane, 2020).

[4] Consolidated Version of the Treaty on European Union, OJ C 202, 7/6/2016, pp. 13-45.
[5] Act XXXI of 1993 on the Promulgation of the Convention on the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and the related eight Additional Protocols.

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Art. 3 para. 2 TEU, Art. 20 and 21 TFEU and Art. 45 of the Charter of Fundamental Rights of the European Union (CFR)[6] constitute the fundamental elements of the right of every citizen of the Union to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and the provisions adopted for their implementation. But according to Art. 168 TFEU, public health is a shared competence between the European Union and the Member States. EU action is intended to complement national policies, with the primary objective being to provide support to Member States in the form of monitoring, early warning and combating serious cross-border threats to health. Member States coordinate their policies and programmes in areas covered by EU action, such as public health. The CJEU is responsible for reviewing the legality of acts of the EU institutions, ensuring that Member States fulfil their obligations under the Treaties and interpreting EU law at the request of national courts. In the following, these two basic aspects determining the measures of Member States will be analysed through a selection of cases.

2.1 Request for Preliminary Ruling

The requests for preliminary ruling encompassed a range of topics, including the processing of personal data (CJEU, Judgement of 5/10/2023, RK v Ministerstvo zdravotnictví, C-659/22; Advocate General, Opinion of 6/6/2024, National Authority for Data Protection and Freedom of Information, Hungary, v UC, C-169/23), labour (CJEU, Judgement of 16/11/2023, NC and Others v BA and Others, C-583/21-586/21), international protection (CJEU, Judgement of 22/9/2022, Bundesrepublik Deutschland v MA and Others, C-245/21 and C-248/21; Judgement of 22/9/2022, GM v National Directorate-General for Aliens Policing, Constitution Protection Office, Counter Terrorism Centre, C-159/21) and even freedom of movement. The latter will be discussed in greater detail below.

2.1.1 Free Movement between Member States: Border Control

Guaranteeing border security as a response to external threats has guided the response of numerous Member States to the global pandemic, and border policy has also been used previously in the context of crisis, such as during migration flows or terrorist attacks (Kenwick & Simmons, 2020). The Schengen Borders Code (SBC)[7] contains the rules on the control of persons at the external borders, the conditions of entry and the conditions for the temporary reintroduction of border controls at the internal borders of the Schengen area. Therefore, Art. 25, 28 and 29 SBC permit Member States to reintroduce temporary border controls at internal borders in the event of a serious threat to public policy or internal security. Moreover, under Article 25 para. 4 of the Code, checks may be reintroduced at internal borders between Member States.

During the period of the COVID-19 pandemic, numerous Member States repeatedly extended border controls. However, questions were raised as to whether these national measures were compatible with EU law. The cases of *NW v Landespolizeidirektion Steiermark* and *NW v Bezirkshauptmannschaft Leibnitz* (CJEU, Judgement of 26/4/2022, C-368/20 and C-369/20) concerned internal border controls within the Schengen area

[6] OJ C 364, 18.12.2000, pp. 1-22.
[7] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification), OJ L 77, 23/3/2016, pp. 1–52.

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where the applicants were subject to reintroduced border controls on arrival in Austria from Slovenia. Applicants claimed that these controls were contrary to EU law. The Regional Administrative Court of Styria referred questions to the CJEU, asking, inter alia, about the compatibility of the national legislation with EU law as the former allowed the reintroduction of border controls beyond the period laid down in Art. 25 and 29 SBC without a corresponding Council implementing decision. The Court emphasised that, when interpreting a provision of EU law, it is necessary to consider not only the wording of the provision itself but also the context in which it is set and the objectives of the legislation in question.

As stated in Recital 27 of the Code, exceptions and derogations to free movement must be interpreted strictly. Furthermore, on the basis of Recitals 21 and 23 and Art. 3 TEU, the reintroduction of internal border controls remains exceptional and should only be used as a last resort. It is crucial to emphasise that the CJEU has highlighted that the Code forms part of the general framework of the area of freedom, security and justice. This framework aims to achieve a fair balance between the free movement of persons and the necessity to safeguard public policy and internal security within the territory of the country. Consequently, the objective pursued by the maximum period of six months set out in Art. 25 para. 4 can be seen as a continuation of this general objective. Austria also failed to demonstrate the existence of any new threat that would justify the imposition of new time limits and the possibility of control measures; thus Art. 25 para. 4 had to be interpreted as precluding the temporary reintroduction of border control at internal borders where the duration of the measure exceeded the maximum overall duration of six months and there was no new threat justifying the reintroduction of the time limits. Furthermore, the Court stated that national legislation that requires individuals to present a passport or identity card upon entering the territory of a Member State at the internal border under penalty of a fine is incompatible with the provisions of the SBC.

2.1.2 Free Movement between Member States: Entry Ban

There is no explicit ban on entry in the SBC, only on persons crossing the external borders of the Union and the way in which checkpoints are operated. According to the SBC, external borders are the land borders of the Member States, including those crossing inland or river waters, maritime borders and airports, river, sea and lake ports, provided that they are not internal borders. Border controls may be reintroduced on grounds of public policy or internal security, which clearly does not include public health, but in the context of the current pandemic, public policy must be interpreted broadly to include public health. The SBC stipulates that entry may be denied in the event that an individual fails to meet the criteria set forth in Art. 6. This includes instances where the individual poses a threat to public policy, internal security, public health, or the international relations of Member States. Additionally, the individual must not be the subject of an alert in the national databases of Member States for the same reasons. According to the SBC, a threat to public health is any disease with epidemic potential as defined in the International Health Regulations of the World Health Organisation (WHO), as well as other communicable diseases or contagious parasitic diseases if they are covered by the protection provisions applicable to nationals of Member States (Art. 2 SBC).

In the case of *Nordic Info BV v Belgian Staat* (CJEU, Judgement of 5/12/2023, C-128/22), after the WHO (2020) declared the COVID-19 epidemic a “pandemic”, Belgium banned non-essential travel to or from countries classified as red zones because of the health

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situation there. In addition, travellers from these countries had to undergo screening and remain in quarantine. In July 2020, the Belgian authorities also briefly designated Sweden as a "red zone". Following the classification, the Scandinavian travel agency Nordic Info cancelled all planned trips between Belgium and Sweden and claimed compensation for the loss caused. The Belgian court referred the case to the Court, asking whether the Belgian rules were contrary to EU law. The CJEU ruled that a Member State may ban non-essential travel to or from other Member States classified as red zones in order to combat a pandemic such as COVID-19. It can also impose screening and quarantine on people entering its territory. Measures restricting freedom of movement within the EU may be laid down in legislation of general application, but they must be justified, contain clear and precise rules and be foreseeable for citizens. They should also be non-discriminatory and open to challenge in judicial or administrative review procedures. Restrictions on free movement must be appropriate to achieve the public health objective pursued. Also, they must be limited to what is strictly necessary and must not be disproportionate to that objective, which means, in particular, weighing up the importance of the objective and the seriousness of the interference with the rights and freedoms of the persons concerned. The Court has therefore upheld certain entry bans, testing and quarantine obligations in the event of the health crisis.

2.1.3 Free Movement within a Member State

The issue of freedom of movement concerned not only the movement between Member States but also within Member States as Member States used, among other measures, quarantine, to control the spread of the disease. In the context of labour law, social security, and the freedom of movement of workers, case *TF v Sparkasse Südpfalz* (CJEU, Judgement of 14/12/2023, C-206/22) concerned a worker who agreed with his employer, *Sparkasse Südpfalz* (Germany), to take paid annual leave from 3-11 December 2020. Because of his contact with a person who tested positive for COVID-19, the competent German authority quarantined the worker during the same period. The employee asked *Sparkasse* to allow him to carry over these days as paid leave to next year. Following *Sparkasse*'s refusal to do so, the applicant brought an action before the competent labour court, claiming that this refusal was contrary to EU law, namely the Working Time Directive. According to the courts, national law only allows to carry over paid leave if the employee can certify that the incapacity occurred during the paid leave. However, German courts had determined that the mere quarantine does not constitute incapacity for work. The labour court requested a preliminary decision whether EU law requires that paid leave coinciding with a quarantine period should be carried over.

According to the CJEU's interpretation of EU law, the days of paid annual leave when the employee is not ill but falls within the period of quarantine should not be carried over. The purpose of paid annual leave is to permit employees to cease their obligatory work duties and engage in a period of rest and recuperation. Unlike illness, the duration of quarantine does not in itself prevent the achievement of these objectives. Thus, employers are not obliged to compensate for the disadvantages resulting from unforeseen events, such as a quarantine, which can prevent employees from exercising their right to paid annual leave entirely and in a manner they wish.

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2.2 Infringement Procedure

Border policy influenced the functioning of the asylum and the reception systems. This could be observed at the beginning of the pandemic with the closure of the EU's external borders in 2020. The public health situation has also been used in public debates on migration when countries had introduced states of emergency. Hungary was a good example of this, but the European Commission, acting in its role as guardian of the Treaties, launched infringement proceedings against the country.

The European Commission v Hungary case (CJEU, Judgement of 22/6/2023, C-823/21) concerns the suspension of the entry of asylum seekers into border transit zones due to the risks associated with the spread of COVID-19 (Magyarország Kormánya, 2020). In response to the outbreak of the COVID-19 epidemic, *Act LVIII of 2020 on the Transitional Rules and Epidemological Preapredness related to the Cessation of the State of Danger* (2020), promulgated in the National Gazette on 17 June 2020 and entered into force on 18 June 2020, was enacted, stipulating that in the event of an epidemic risk, third-country nationals must declare their intentions in person at the Hungarian Embassy in Belgrade or Kyiv before they can commence the asylum procedure in the country. The declaration of intention is then assessed by the National Directorate-General for Aliens Policing. It follows from the applicable provisions of the Act that if third-country nationals residing in Hungary, including at the borders, express their intention to seek international protection, the Hungarian authorities do not consider this declaration as an application for international protection within the meaning of Directive 2013/32. The application is not registered and the person does not enjoy the rights of an applicant. Instead, in order to file an application, the person must leave Hungary, return to a third country and first go through a procedure at the Hungarian embassy of Kyiv or Belgrade.

The European Commission launched infringement proceedings against Hungary, arguing, among other things, that while it recognises the need to take measures to limit the spread of the virus in the wake of the COVID-19 pandemic, Member States can only take necessary and proportionate measures to protect public health. Therefore, such measures should not prevent access to the international protection procedure

According to the Commission, the new Hungarian asylum procedure was incompatible with Art. 6 of Directive 2013/32 on common procedures in Member States for granting and withdrawing international protection (Procedure Directive), interpreted in the light of Art. 18 CFR. The right of access to the procedure guaranteed by Art. 6 of the Directive means, first and foremost, that third-country nationals residing in the territory of a Member State, including at its borders, may lodge an application for international protection. The CJEU determined that the recently enacted legislation effectively denies third-country nationals or stateless persons the ability to exercise their right to apply for asylum and is not justified by Hungary's objective of protecting public health. The measure constitutes a disproportionate interference with the rights of applicants for international protection. Furthermore, the obligation to move third-country nationals or stateless persons potentially exposes them to the risk of contracting a disease that they could later spread in Hungary. The requirements for submitting a so-called declaration of intent[8] and obtaining travel documents are not set out in Art. 6 of the EU Directive, and contravene

[8] See for the declaration http://www.bmbah.hu/images/sz%C3%A1nd%C3%A9knyilatkozat_angol_4.pdf

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the Directive's objective of ensuring effective, easy and rapid access to the procedure for granting international protection.

Moreover, the authorities did not demonstrate that no other proportionate measure could have been adopted. Hungary invoked a general threat to public policy and internal security in order to justify the compatibility of its legislation with EU law, without demonstrating the need for a specific derogation from the requirements of Art. 6 of the Directive.

2.3 Action for Annulment

The EU Digital COVID Regulation (EU) 2021/953[9] (the original validity period was scheduled to conclude on 30 June 2022. However, in consideration of the prevailing epidemiological circumstances, the period was subsequently extended to 30 June 2023) permitted the issuance, cross-border verification, and acceptance of three types of digital ID cards: the vaccination card, the test certificate, and the medical certificate. In addition to facilitating the movement of individuals across borders, the EU digital COVID certificate could also be used for other purposes, such as participation in cultural, sporting and social events, or access to public institutions. This has been regulated in the Member States on the basis of national law, taking into account EU law on free movement, in line with the principles of non-discrimination and proportionality.

In *Roos and Others v European Parliament* (CJEU, Judgement of 27/4/2022, T-710/21, T-722/21 and T-723/21), the joint cases focused on the legality of certain restrictions imposed by the EU institutions in the context of the COVID-19 pandemic, in particular to protect the health of their staff. This follows the introduction of the exceptional health and safety rules by the Bureau of the European Parliament on 27 October 2021, regarding the access to three buildings where the Parliament works. This decision essentially made entry to these buildings subject to the presentation of a digital COVID-19 vaccination card, a test certificate and a medical or equivalent certificate until 31 January 2022.

The CJEU dismissed the action brought by the MEPs and held that the Parliament may require the presentation of a valid COVID certificate for access to its buildings. Furthermore, it ruled that the Parliament may require anyone wishing to enter its buildings to present a valid EU digital COVID-19 certificate. The Parliament was not required to obtain the express authorisation of the EU legislator in order to adopt the contested decision. Since the decision was intended to restrict access to Parliament's premises to holders of a valid COVID card, it falls within the Parliament's competence to adopt rules governing its own internal organisation and that apply only to the Parliament's premises.

Furthermore, it was observed that the aforementioned action did not constitute a disproportionate or unreasonable interference with the free and independent exercise of a Member's mandate. The decision served a legitimate purpose in that it sought to achieve a balance between two competing interests at the time of a pandemic, namely the continuity of the Parliament's activities and the health of the occupants of its buildings. The contested decision did not infringe or disproportionately infringe the right to physical

[9] Regulation (EU) 2022/1034 of the European Parliament and of the Council of 29 June 2022 amending Regulation (EU) 2021/953 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic (Text with EEA relevance) PE/27/2022/REV/1, OJ L 173, 30.6.2022, p. 37-45.

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integrity, the principles of equal treatment and non-discrimination, the right to free and informed consent to medical treatment, the right to liberty and, finally, the right to privacy and the protection of personal data.

Furthermore, it was considered that, in light of the epidemic situation and current scientific knowledge, the measures in question were necessary and appropriate at the time they were adopted. The contested decision also took into account the general Europe-wide epidemic situation and the specific situation of the Parliament, in particular the frequency of international travels by individuals entering the Parliament's buildings. Moreover, the measures in question were time-limited and regularly reviewed.

3 Excerpts from Relevant ECtHR Case Law

The human rights protection mechanism under the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: Convention) under the auspices of the Council of Europe has also been invoked on several occasions by applicants in relation to the COVID-19 pandemic (Kirchner, 2021). Given that several Council of Europe Member States introduced a number of restrictions in their domestic laws that fundamentally affect human interaction after the declaration of a health emergency or similar special legal orders after the outburst of the COVID-19 pandemic, it is not surprising that a large number of cases were eventually brought before the ECtHR (For a very extensive analysis of this topic, see McQuigg, 2024). The restrictions imposed by a series of state actions following the declaration of an epidemic ultimately led to applicants claiming violations of rights under the Convention and some of its additional Protocols.

While a number of judicial procedures are still pending and ongoing (ECtHR, 2024), certain conclusions can already be drawn from the case law of the Strasbourg-based ECtHR. Given that the procedural rules of the ECtHR require that all domestic remedies shall be exhausted first, it is probable that a considerable number of cases will arise in the future as a result of legislative measures taken by Member States in the wake of the COVID-19 pandemic. Indeed, many cases are certainly still pending before domestic fora with domestic remedy just a few years after the end of the pandemic. At the conclusion of these procedures, applicants may consider bringing the matter to the ECtHR. It is also important to note that, thus far, it is not clear whether challenges to the human rights aspects of state restrictions imposed as a result of the pandemic have been successful before certain judicial bodies, such as the ECtHR.

3.1 A Derogation of Application of the Convention and Certain Issues of Inadmissibility

The legal response to the global pandemic in the European region, which, since the outbreak of the COVID-19 pandemic in Fall 2020, has included the imposition of curfews, restrictions on opening hours, operation limitations, requirements to wear face masks, and potential vaccination requirements, among other measures, may raise a number of human rights concerns. It is of paramount importance to ascertain whether the measures implemented by State Parties to the Convention in the wake of the COVID-19 pandemic (e.g. the health emergency in Hungary) may result in the derogation of the Convention or only of certain sections thereof. In this context, Art. 15 of the Convention (derogation in time of emergency) is relevant, but only applicable "in time of war or other public emergency threatening the life of the nation".

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Although the COVID-19 pandemic cannot be considered a war by definition, some States have indicated that the epidemic situation may justify invoking another state of emergency threatening the life or existence of the nation. This would be in accordance with the derogation of the Convention under Art. 15, which has been invoked by several States during the epidemic situation. In the early spring of 2020, Albania (Permanent Representation of the Republic of Albania to the Council of Europe, 2020), North Macedonia (Permanent Representation of the Republic of North Macedonia to the Council of Europe, 2020), Estonia (Permanent Representation of Estonia to the Council of Europe, 2020), Georgia (Permanent Representation of Georgia to the Council of Europe, 2020), Latvia (Permanent Representation of Latvia to the Council of Europe, 2020), Moldova (Permanent Representation of the Republic of Moldova to the Council of Europe, 2020), Armenia (Permanent Representation of the Republic of Armenia to the Council of Europe, 2020), Romania (Permanent Representation of Romania to the Council of Europe, 2020), San Marino (Permanent Representation of San Marino to the Council of Europe, 2020) and Serbia (Permanent Representation of Serbia to the Council of Europe, 2020) informed the Secretary General of the Council of Europe of their intention to apply Art. 15 of the Convention, which allows for the proportional and legitimate derogation of certain obligations in relation to human rights, in the context of the COVID-19 pandemic. Subsequently, other States, including the United Kingdom, France, Greece, Ireland and Turkey, have subsequently made notifications in a similar manner (ECtHR, 2022; see also Molloy, 2020).

However, for the other States, the rights set out in the Convention and its Protocols remained in force throughout the pandemic. The States sending the note verbale indicated their intention to derogate from these rights in accordance with Art. 15, to the extent and for the duration required by necessity. However, there are exceptions to Art. 15, and in such cases, these rights shall continue to apply. First and foremost, these rights include the right to life and the prohibition of torture. The most significant derogations of rights pertained to the right to liberty and security (Art. 5), the right to a fair trial (Art. 6), the right to respect for private and family life (Art. 8), the freedom of thought, conscience and religion (Art. 9), the freedom of expression (Art. 10) and the freedom of assembly and association (Art. 11). Furthermore, the First Protocol to the Convention also protects right to property (Art. 1) and the right to education (Art. 2).

In the context of the Convention, it is also important to consider the admissibility criteria set out in Art. 34 and 35. These criteria inevitably arise in most cases involving state action in relation to the COVID-19 pandemic. It is noteworthy that the Strasbourg court has pointed out their absence in a number of cases. With regard to individual applications, Art. 35, in addition to Art. 34, sets out the detailed rules, which are of particular relevance to the subject under examination. This is because in many of the cases examined below, the ECtHR will refer to the lack of jurisdiction based upon the problem of inadmissibility. The problem of inadmissibility typically arises from the failure to exhaust domestic remedies, incompatibility with the Convention and the Protocol (i.e. the applicant invokes a right of the person concerned which is not covered by the Convention or its Protocol), and the absence of significant disadvantage or substantial prejudice.

3.2 The Most Relevant COVID-19 related Cases before the ECtHR to Date

The right to life (Art. 2 of the Convention) has remained applicable despite the derogation, and it was invoked in one of the first cases (November 2020) in which the ECtHR ruled

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inadmissibility, in the *Le Mailloux v. France* case (ECtHR, Decision of 5/11/2020, No. 18108/20). The ECtHR contended the applicant's claim that the State had failed to fulfil its obligations to protect the life and physical integrity of persons within its jurisdiction by restricting access to diagnostic tests, preventive measures and certain treatments during the epidemic did not constitute a violation of the right to life. The ECtHR thus declared the application inadmissible under Art. 34 and 35 of the Convention. The Court ruled that the applicant could not prove that he was the victim of the violation in question as he was not directly concerned (the harm required by Art. 34 was not suffered by the applicant himself) and that the applicant had not even exhausted local remedies.

Similarly, the ECtHR found the claim inadmissible in the case of *Riela v Italy* (ECtHR, Judgement of 9/11/2023, No. 17378/20). In this instance, the Court found the arguments of the applicant who was allegedly exposed to serious health risks (such as type 2 diabetes, severe obesity and sleep deprivation as well as sleep disturbance), unconvincing under Art. 2. The applicant asserted that he had not received adequate medical care for his condition during his detention in an epidemic situation that had placed his life in jeopardy. Nevertheless, the ECtHR determined that the applicant had not substantiated his claims with sufficient evidence, thereby negating any potential violation of the right to life under Art. 2.

In relation to the prohibition of torture (Art. 3), the ECtHR has issued a number of divergent decisions. In the *Feilazoo v Malta* (ECtHR, Judgement of 11/3/2021, No. 6865/19) case, the Nigerian national's invocation of Art. 3 of the Convention was upheld on the grounds that the conditions of the applicant's immigration detention and quarantine met the requirements of the prohibition of inhuman and degrading treatment.

In contrast to the previously mentioned case, in the cases of *Hafeez v United Kingdom* (ECtHR, Decision of 20/4/2023, No. 14198/20) and *Rus v Romania* (ECtHR, Judgement of 1/6/2023, No. 2621/21), the ECtHR ruled that the detainees' requests were inadmissible, as in the case of Hafeez the extradition of the detainee to the United States during a public health emergency did not in itself violate the requirement of the prohibition of torture, while in the case of Rus the applicant failed to exhaust domestic remedies in relation to his claim that he had contracted the coronavirus, which was particularly dangerous to his health, because of the poor conditions of detention.

Among the cases falling within the scope of the right to liberty and security under Art. 5 of the Convention, the case of *Fenech v Malta* (ECtHR, Judgement of 1/6/2022, No. 19090/20) has attracted significant attention. In that specific case in question, the applicant was allegedly subjected to significant harm due to delayed procedural actions suspended as a result of the epidemic situation during his pre-trial detention. For instance, the applicant was unable to post bail for a long time and the trial was delayed during the detention due to the emergency instructions enacted by the state. The ECtHR ruled the application inadmissible because the State had enacted the margin of appreciation relating to the public health risk situation, despite the due care and attention that had been exercised by the State.

A comparable argument for inadmissibility can be found in *Bah v The Netherlands* (ECtHR, Decision of 22/6/2021, No. 22842/04) where the applicant argued that the pandemic constituted an impediment to the conduct of immigration detention proceedings.

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In the case of *Terheș v Romania* (ECtHR, Decision of 20/6/2021, No. 49933/20) a member of the European Parliament complained that the measure imposed in an epidemic situation, namely the restriction on his freedom to leave his place of residence, constituted a deprivation of liberty. Nevertheless, the ECtHR accepted Romania's argument that the measure could not in any event be considered as house arrest and that the restriction on the applicant's freedom of movement was not such (or at least the applicant could not justify it before the Court) as to constitute a substantial restriction of the rights. However, in the case of *Khokhlov v. Cyprus* (ECtHR, Judgement of 13/9/2023, No. 53114/20) the ECtHR ruled a judgment in favour of the applicant when it pointed out that the applicant, who was serving his prison sentence in Cyprus and awaiting extradition to Russia, had been detained for a disproportionate and unlawful period of time during the epidemic situation. This was because the Court found that the applicant's appeals in Cyprus had been pursued for a disproportionate period of time.

In the context of the right to a fair trial (Art. 6), the ECtHR did not accept the argument of the applicant in the case of *Makovetskyy v Ukraine* (ECtHR, Decision of 15/9/2022, No. 50824/21) that the fine imposed on him for breaching the mask-wearing rules in a supermarket would be arbitrary and unlawful, and thus would have been contrary to Art. 6 of the Convention. The ECtHR ruled that the application was inadmissible, stating that the fine had been imposed in accordance with the law and that the complainant had been afforded the opportunity to challenge the procedure in a lawful manner within Ukraine. However, a violation of the right to a fair trial was found by the Court in the case of *Q and R v. Slovenia* (ECtHR, Judgement of 20/6/2022, No. 19938/20). In this case, the applicants submitted that the procedure for appointing them as guardians of their grandchildren (since, they argued, the children's mother, i.e. the applicants' daughter, had been killed by her own husband, namely by the children's father) had taken an unreasonably long time, not least because of the restrictions imposed by the epidemic. The ECtHR accepted the argument and observed that, as the children were minors in need of care, the State should have taken particular care (including through procedural measures such as an accelerated procedure) to ensure that the reasonable time requirement was met, which it failed to do.

In the context of the right to respect for private and family life under Art. 8 of the Convention, the case of *Narbutas v Lithuania* (Judgement of 19/12/2023, No. 14139/21) saw the applicant raise the issue that he was a subject of news reports which made him easily identifiable and discredited his activities. This was due to his involvement in the procurement of large quantities of COVID-19 tests through state bodies in the course of his work. The applicant asserted that his reputation and thus his right to respect for his private life under Art. 8 had been violated, as he contended that a number of his personal data had been disclosed in a negative context. The ECtHR accepted the argument and found that the information about the applicant had been published to an unnecessary extent and that this was liable to infringe his reputation, thereby violating his right to respect for private life. The applicant was not a public figure and therefore had no public interest in the disclosure of this information.

In the context of the right to freedom of thought, conscience and religion (Art. 9), the case of *Constantin-Lucian Spînu v Romania* (ECtHR, Judgement of 11/10/2022, No. 29443/20) concerned the restriction of the applicants' (at the time of detention: prisoners') right to take part in religious services in the context of the situation created by

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the epidemic. The ECtHR, however, held that the applicant's right under Art. 9 of the Convention had not been violated because the State had ensured the exercise of his religion. However, this was done on the condition that the place of worship was within the prison grounds. Furthermore, the State was exercising its discretion and margin of appreciation within reasonable limits.

With regard to the freedom of expression (Art. 10) and the right of assembly and association (Art. 11), a number of cases are currently before the ECtHR. In these cases, several applicants have invoked these articles in relation to curfews and certain services linked to vaccination (Vinceti, 2021; ECtHR, Communicated Case, Petrova v. Bulgaria, No. 938/21; ECtHR, Communicated Case, Jámbor v. Hungary, No. 50723/21). One of the most notable cases was that of *CGAS v. Switzerland* (ECtHR, Judgement of 15/3/2022, No. 21881/20), in which the applicant's legal entity challenged the general ban on demonstrations due to the restrictive legislation introduced as a result of the epidemic situation. The ECtHR ultimately upheld the complaint and determined that the applicant's right had been violated by the State.

However, it is inaccurate to suggest that, in the absence of knowledge of the domestic legal systems of the States, all restrictions of the same kind are equally taken into consideration before the ECtHR. It is not possible to make a general finding without knowing all the relevant circumstances of the violation of rights in the applications. For example, the application of the right to demonstrate and assemble is contingent upon the constitutional arrangements, traditions, and attitudes of the population of the state in question. Consequently, the same restriction may be more detrimental to a Swiss citizen than to a natural person residing in another state. Nevertheless, the majority of cases remain unresolved, as domestic remedy procedures may take several years to conclude under domestic law. This therefore represents the exhaustion of domestic remedies, following which the ECtHR can proceed to handle the case. It seems inevitable that the Strasbourg court will issue a number of high-profile judgments in the near future concerning the freedom of expression (Art. 10) and the right of assembly and association (Art. 11).

The right to property (Art. 1) of the First Protocol has also been invoked in several cases before the Strasbourg court. Additionally, there are a number of significant cases that are currently pending on the basis of the right to education (Art. 2 of the First Protocol), which relate to the school closures and educational restrictions that were implemented during the epidemic (e.g. ECtHR, Communicated Case, M. C. K. and M. H. K.-B. v. Germany, No. 26657/22).

It is evident from the aforementioned that a significant number of cases remain pending. However, it is also apparent that the restrictive measures implemented by the State in response to an epidemic situation do not invariably result in human rights violations. In general, States have exercised their margin of appreciation to impose restrictions that are, for the most part, lawful and proportionate, with the aim of preventing public health risks. It is important to note that in *Vavřička and others v. the Czech Republic* (ECtHR, Judgement of 8/4/2021, No. 47621/13) the ECtHR reinforced this idea when it held that the right to decide on public health matters falls within the (wide) margin of appreciation of the States.

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4 Conclusion

Art. 15 of the Convention provides that restrictions on the exercise of rights may be imposed in the event of war or other public emergency threatening the life of the nation. Art. 52 CFR provides that restrictions on the exercise of rights and freedoms may be imposed in order to protect objectives of general interest recognised by the EU or the rights and freedoms of others.

To date, the practice of the ECtHR in assessing cases related to the rights of individuals during the COVID-19 pandemic has been characterised by a lack of legal coherence. Furthermore, a significant number of cases remain ongoing. On the one hand, a number of States have requested derogation under Art. 15 of the Convention during the epidemic situation. On the other hand, epidemic-induced measures, such as public health restrictions, tend to fall within the margin of appreciation of States. This is evidenced by the decision in the case of *Vavřička and others v Czech Republic*: Even in the absence of the COVID-19 pandemic, a very serious violation, disproportionality and a close causal link would be required for the ECtHR to deliver a decision on a human rights violation. In a number of instances, however, the reason for rejecting the application was also the applicant's failure to exhaust the domestic remedies system or a lack of demonstration of personal concern and significant disadvantage.

Public health is an area of shared competence between the European Union and the Member States, with EU action complementing national policies and the EU's primary intention being to support Member States' actions, such as surveillance, early warning and response to serious cross-border health threats. Member States were unprepared for the transformation of an outbreak into a pandemic and, with no precedent for this type of crisis management, mistakes were bound to be made. The initial, almost hasty, restrictive measures taken by Member States have also been referred to the CJEU for review of compliance with the principles of legality, necessity and proportionality, as well as for review of Member States' discretionary powers. We shall emphasise that a significant number of requests for preliminary rulings have been made, seeking guidance on measures taken in such an unpresented public health situation. However, it is clear that more cases are likely to be decided in the near future, as the pandemic wanes and the underlying public restrictive measures fade into the past.

It is challenging to make a meaningful comparison between the effectiveness of the two analysed courts (CJEU and ECtHR) regarding the so-called COVID-cases, given the significant differences in their legal basis, the ratione personae as well as the domain of margin of appreciation by the States. The law of the European Union and the human rights enlisted in the Convention give noticeably different margin of discretion for the states, based on the distinct contours of EU law and human rights law. It is noteworthy that the unprecedented and unusual nature of the global pandemic presented a challenge to the jurisdiction of both courts. This was evident from the outset, given that the foundation of the courts and the adoption of their legal basis coincided with the emergence of the COVID-19 pandemic, which was the first such global challenge to test the applicability of the rules. The common element is that both courts are willing to apply their rules for pandemic-related cases. However, the applicability of such rules is determined by the narrower margin of appreciation of States (in the case of the ECtHR) in comparison with the wider margin of discretion of Member States (CJEU) with regard to legality, necessity, and proportionality.

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NEWS & NOTES

The EU Pact on Migration and Asylum: An Overview[1]

Ralf Roßkopf[2]

Abstract

Less than a month before the approaching European elections, the Council managed to adopt the EU's Pact on Migration and Asylum on May 14, 2024, which has been published by now in the Official Journal of the European Union. The Pact was not only meant to put a provisional end to the most controverse, decade long, fierce debate at the European political level, but also to deliver and calm down the even more heated public discourses at the Member States' level in view of election day. The Pact is meant to "establis[h] a set of rules that will help to manage arrivals in an orderly way, create efficient and uniform procedures and ensure fair burden sharing between member states" (European Council, 2024). It is nothing less than an entire reform of the EU's asylum and migration system that will become effective in 2026. Some familiar pillars remain but are amended (Eurodac Regulation; Asylum Reception Conditions Directive), while others are also transformed in their legal character (Asylum Procedure Regulation, Qualification Regulation). Additionally, some regulations are newly introduced (Management Regulation; Resettlement Framework Regulation; Return Border Procedure Regulation; Crisis and Force Majeure Regulation; Screening Regulation). This article is neither a legal nor a political evaluation of the Pact. It therefore refrains from referring to publications in this respect – especially as most of them do still not relate to the final texts of the legal instruments now put into force. Instead, it gives an overview of genesis (2.), structure (3.) and key elements (4.) of the new framework to foster guidance for an initial understanding and accessibility to the ongoing legal and political controversy – now based on a new legal framework in status of implementation.

Key Words:

European Union; pact; migration; asylum; reform; regulation; directive; law

1. Introduction and Genesis

The *genesis* of the EU Pact on Migration and Asylum can be traced to the year 2016. Back then, the European Commission proposed a reform of the Common European Asylum System (CEAS) and argued for opening legal avenues to Europe. It then assessed the situation as such:

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> "The large-scale, uncontrolled arrival of migrants and asylum seekers in 2015 has put a strain not only on many Member States' asylum systems, but also on the Common European Asylum System as a whole. […] The crisis has exposed weaknesses in the design and implementation of the system, and of the 'Dublin' arrangements in particular" (European Commission, 2016: 3).

It adopted two packages of proposals for a CEAS reform with the following initiatives:

- a regulation to reform the Dublin system;
- a regulation to amend Eurodac;
- a regulation to establish an EU Asylum Agency which is to replace the European Asylum Support Office (EASO);
- a new regulation to replace the Procedures Directive;
- a new regulation to replace the Qualification Directive;
- targeted modifications of the Reception Directive.

As no consensus was found among the Member States and calls for ever more restrictive migration management penetrated, the Commission took a restart and introduced what it called a New Pact on Migration and Asylum. It sums up the motivation behind as such:

> The New Pact recognises that no Member State should shoulder a disproportionate responsibility and that all Member States should contribute to solidarity on a constant basis.
>
> It provides a comprehensive approach, bringing together policy in the areas of migration, asylum, integration and border management, recognising that the overall effectiveness depends on progress on all fronts. It creates faster, seamless migration processes and stronger governance of migration and borders policies, supported by modern IT systems and more effective agencies. It aims to reduce unsafe and irregular routes and promote sustainable and safe legal pathways for those in need of protection. It reflects the reality that most migrants come to the EU through legal channels, which should be better matched to EU labour market needs. And it will foster trust in EU policies by closing the existing implementation gap.
>
> This common response needs to include the EU's relationships with third countries, as the internal and external dimensions of migration are inextricably linked" (European Commission, 2020: 2).

The Commission proposed an added set of key actions to their prior initiatives, i. a. legislation on an "Asylum and Migration Management Regulation, including a new solidarity mechanism", a "screening procedure at the external border", "amendments to "the proposal for a new Asylum Procedures Regulation to include a new border procedure and make asylum procedures more effective" as well as amendments to "the Eurodac Regulation proposal to meet the data needs" (European Commission, 2020, para. 9).

While the revised EU Blue Card Directive was adopted in October 2021, the EU Agency for Asylum was agreed upon in December 2021 and the Voluntary Solidarity Mechanism was launched in June 2022. It took controverse discussions within and between the EU bodies and Member States to reach the final adoption of the Pact in May 2024 (European Commission, 2024).

2 Structure

The Commission summarizes the targeted policy areas as such:

> "1. **Secure external borders:** Robust screening, Eurodac asylum and migration database, [b]order procedure and returns, [c]risis protocols and action against instrumentalisation.

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> 2. **Fast and efficient procedures**: Clear asylum rules, [g]uaranteeing people's rights, EU standards for refugee status qualification, [p]reventing abuses.
>
> 3. **Effective system of solidarity and responsibility**: Permanent solidarity framework, [o]perational and financial support, [c]learer rules on responsibility for asylum applications, [p]reventing secondary movements.
>
> 4. **Embedding migration in international partnerships**: Preventing irregular departures, [f]ighting migrant smuggling, [c]ooperation on readmission, [p]romoting legal pathways" (European Commission, 2024).

As signalled by its terminology, the "Pact" is not a single act but a package of recasts and newly introduced ones. The key elements are:

- Management Regulation (EU) 2024/1351 (see 3.1)
- Procedure Regulation (EU) 2024/1348 (see 3.2)
- Screening Regulation 2024/1352 (see 3.3)
- Return Border Procedure Regulation (EU) 2024/1349 (see 3.4)
- Crisis and Force Majeure Regulation (EU) 2024/1359 (see 3.5)
- Eurodac Regulation (EU) 2024/1358 (see 3.6)
- Qualification Regulation (EU) 2024/1347 (see 3.7)
- Reception Directive (EU) 2024/1346 (see 3.8)
- Resettlement Framework Regulation (EU) 2024/1350 (see 3.9)

3 Key Elements

The following outline summarizes key elements of the reform in order to give a first overview, ease understanding and raise accessibility without claiming to be exhaustive. It specifically focuses on the novelties introduced compared to the current acquis, while neglecting well-established further provisions.

3.1 Management Regulation (EU) 2024/1351

The Asylum and Migration Management Regulation replaces the Dublin III Regulation (EU) No 604/2013 but builds upon it.

The well-known *Dublin criteria* and mechanisms are now to be found in Part III of the Regulation (Art. 16-55), and basically follow the system known from its predecessor. They guarantee the examination of an application for international protection by a single Member State determined on the bases of established criteria (Art. 24-33) and clauses on dependent persons (Art. 34) and discretion (Art. 35). The criteria have only been amended slightly, but now include having family members who legally reside in a Member State on the basis of a long-term residence permit (Art. 26) and the possession of diplomas or other qualifications issued by an educational institution established in a Member State (Art. 30). While the point-of-first-entry criteria (Art. 33) in practice will remain the most relevant, the criteria of visa-waived entry (Art. 31) and application in an international transit area of an airport (Art. 32) are given formal priority. The subsidiary responsibility in case no criteria apply (Art. 16, para. 2) is now without prejudice to the solidarity mechanism established in Part IV. Impossibility to transfer an applicant to the Member State primarily designated in the future requires "a real risk of violation of the applicant's fundamental rights that amounts to inhuman or degrading treatment within the meaning of Article 4 of the Charter"; this, at the same time, raises and lowers the

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threshold requiring a "real risk" (instead of a "risk") but not necessarily a systemic flaw in the asylum procedure and in the reception conditions anymore.

The Regulation introduces *obligations of the applicants*, requires their cooperation with the competent authorities (Art. 17), sanctions non-compliance by denying entitlement to the reception conditions set out in Art. 17-20 Reception Directive (Art. 18, para. 1) and only conditionally takes into regard relevant elements and information submitted after expiry of the time limit (Art. 18 para. 2). In turn, the *right to information* (Art. 19, 20) has been added by a *right to limited legal counselling* (Art. 21), while free legal counselling

> "shall be provided by legal advisers or other counsellors admitted or permitted under national law to counsel, assist or represent applicants or by non-governmental organisations accredited under national law to provide legal services or representation to applicants" (Art. 21).

The *deadlines* for take charge requests have been cut to two months (instead of three) or one month (instead of two) in case of a VIS hit (Art. 39 para. 1); those for replying to a take charge request have also been reduced to one month (instead of two) or 14 days in case of a VIS hit (instead of one month) (Art. 40 para. 1). The take back procedure, too, has been accelerated by cutting the deadlines for a take back notification to one month (instead of two or three) and for the response to 14 days (instead of one month) (Art. 41 para. 1, 3), while the transfer decision shall be taken within two weeks (instead of one month) of the acceptance or confirmation (Art. 42). Even shorter time limits apply for detained applicants (Art. 45), while the threshold for detention has been levelled from a significant risk to a risk (Art. 44 para. 1).

Procedures including minors (Art. 23 para. 1) or involving the criteria of unaccompanied minors (Art. 25), family procedures (Art. 28) or dependants (Art. 34) shall be treated with *priority* (Art. 39 para. 1, Art .40 para. 1, Art. 46 para. 1 subpara. 2).

However, the Management Regulation aims at a more comprehensive approach to *asylum and migration management* (Art. 3) than the former Dublin III Regulation, based on the principle of solidarity and fair sharing of responsibility (Art. 6). It, therefore, establishes internal (Art. 4) and external components (Art. 5). Apart from cooperation obligations (Art. Art. 6 para. 2), a Permanent EU Migration Support Toolbox offers a range of compulsory services (Art. 6 para. 3). A mechanism to set up coordinated and assisted national strategies to manage asylum and migration is implemented (Art. 7). Building upon these, the Commission is tasked to draw up a long-term European Asylum and Migration Management Strategy (Art. 8).

The Management Regulation foresees three *new institutions*, specifically the

- High-Level EU Solidarity Forum with representatives of the Member States and decision-making power (Art. 13);
- Technical-Level EU Solidarity Forum with representatives of the relevant authorities of the Member States (Art. 14);
- EU Solidarity Coordinator, appointed by the Commission to coordinate at technical level the implementation of the solidarity mechanism (Art. 15)

An *annual migration management cycle* is institutionalised in terms of a

> "European Annual Asylum and Migration Report on an annual basis assessing the asylum, reception and migratory situation over the previous 12-month period and any possible developments, and providing a strategic situational picture of the area of migration and asylum

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> that also serves as an early warning and awareness tool for the Union" (Art. 9 para. 1).

The report is to serve one basis for the Commissions assessment of the overall migratory situation or whether a Member State is under migratory pressure (Art. 10 para. 1) as well as for the related implementing decision

> "provided those arrivals are of such a scale that they create disproportionate obligations on even the well-prepared asylum, reception and migration system of the Member State concerned" (Art. 11 para. 3).

On October 15 each year, the Commission non-publicly proposes to the Council an implementing act establishing the *Annual Solidarity Pool* (Art. 56), identifying the required relocations (at least 30,000; see for the procedure of those Art. 67-68) and financial contributions (see Art. 64; at least €600 million; alternative solidarity measures might be counted, Art. 65), indicating each Member State's contribution and the indicative percentage of the Pool to be made available to Member States under migratory pressure (Art. 12). The individual contributions are to be calculated using the formula set out in Annex I and are based on the size of the population and the total GDP (each with a 50% weighting; Art. 66).

The Council may adopt or amend the proposal by qualified majority (Art. 57 para. 1), while Member States would keep "full discretion in choosing between the types of solidarity measures listed in Article 56(2), or a combination thereof" (Art. 57 para. 4). The EU Technical Level Forum is responsible for the operationalisation of those, while the EU Solidarity Coordinator would coordinate the operationalisation (Art. 60). Deductions of Member States' pledged contributions are allowed in cases of migratory pressure (Art. 61) or significant migratory situations (Art. 62). Responsibility offsets in terms of taking responsibility for examining applications for international protection for which the benefitting Member State has been determined can be initiated by benefitting (Art. 63 para. 1) or contributing Member States (Art. 63 para. 2) along the procedure set out in Art. 69. Under certain circumstances, an obligation for contributing Member States to take such a responsibility might arise (Art. 63 para. 3-7).

3.2 Procedure Regulation (EU) 2024/1348

Having developed its legal character from a directive into a regulation, the Procedure Regulation *aims* at truly establishing one common procedure for granting and withdrawing international protection (Art. 1). As it builds on the former Procedure Directive 2013/32/EU this overview will focus on the main novelties.

The Regulation sets up general *guarantees* (information, interpreter, communication with UNHCR, access to country information, written notice of decisions, leaflets; Art. 8) and a *right to remain* during the administrative procedure (Art. 10; possible exception in subsequent applications: Art. 56) as well as *special guarantees* for those in need of special procedural guarantees (Art. 20, 21), minors (Art. 22) and unaccompanied minors (Art. 23) (see for the related medical and age assessment Art. 24, 25). It not only grants the right to legal *counselling*, legal assistance and representation (Art. 15) but also free legal counselling (for the scope, see Art. 18) in the administrative (Art. 16) and appeal procedure (Art. 17), both on conditioned (Art. 19) and limited bases. However, it also establishes *obligations* of applicants, i. a. related to the Member State where the application has to be lodged; data, explanations, information to be provided; availability; handing over documents; attendance; and searches (Art. 9).

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Access to the procedure, including registration and application and related time-limits, is regulated in Art. 26-33. Any *examination* shall be concluded as soon as possible, however, generally the latest within two months regarding admissibility, within three months regarding accelerated examination procedures, and within six months from the date on which the application is lodged (Art. 35). Applicants shall be given the opportunity for a personal admissibility *interview* (Art. 11) and a substantive interview (Art. 12) (see for requirements, reporting and recording Art. 13, 14). *Decisions* on applications are regulated in Art. 36-41.

The scope for *accelerated procedures* has widened, including for applicants from countries for which the proportion of positive decisions is 20% or lower (Art. 42).

An *optional asylum border procedure* has been introduced, not allowing applicants to enter the territory of a Member State (Art. 43 para. 2), that may take place (Art. 43 para. 1):

> "(a) following an application made at an external border crossing point or in a transit zone;
> (b) following apprehension in connection with an unauthorised crossing of the external border;
> (c) following disembarkation in the territory of a Member State after a search and rescue operation;
> (d) following relocation in accordance with Article 67(11) of Regulation (EU) 2024/1351 [Management Directive]."

Decisions taken in the border procedure may be on inadmissibility or under certain circumstances (i. a. almost all indications for an accelerated procedure) on the merits (Art. 44 para. 1).

In contrast, a *mandatory asylum border procedure* is requested (Art. 45 para. 1), in the above-mentioned cases if the applicant is

- considered to have misled the authorities or, in bad faith, has destroyed or disposed an identity or travel document (Art. 42 para. 1 lit. c),
- considered to be a danger to the national security or public order or had been forcibly expelled for serious reasons of national security or public order (Art. 42 para. 1 lit. f),
- is from a country for which the proportion of positive decisions is 20% or lower (Art. 42 para. 1 lit. j).

The Commission is tasked to break down the adequate capacity at Union level of 30,000 to the adequate capacity for each Member State (Art. 47 para 1 subpara. 1, para. 3) and to calculate the maximum number of applications to be examined in the asylum border procedure per year (Art. 47 para. 2). Member States are not required to carry out asylum border procedures in cases referred to

- in Art. 42 para. 1 lit. f when the adequate capacity is reached (Art. 47 para. 2, Art. 48 para. 2-4; notification of the Commission according to Art. 48 para. 1, Art. 49)
- in Art. 42 para. 1 lit. c or j when it has examined the maximum number of applications (Art. 47 para. 3; notification of the Commission according to Art. 50).

When the asylum border procedure is applicable, shortened deadlines apply. Applications shall be lodged within five days (Art. 51 para. 1). The maximum duration shall not exceed 12 respectively 16 weeks, after which the applicant shall in general be authorised to enter

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the Member State's territory (Art. 51 para. 2). The procedure includes the determination of the Member State responsible for examining the application according to the Management Regulation (Art. 52 para.1). Upon transferral to the Member State responsible, another border procedure may be applied without prejudice to the aforementioned deadline (Art. 52 para. 2). Asylum border procedures are to be carried out in proximity to external borders or transit zones or in other designated locations (Art. 54).

Applicability for border procedures is limited for unaccompanied minors (Art. 53 para. 1) and not given (Art. 53 para. 2) when the maximum duration of 12 or 16 weeks (Art. 51 para. 2) is exceeded (and no exceptions apply, Art. 51 para. 3) or one of the following constellations applies (Art. 53 para. 2):

> "(a) the determining authority considers that the grounds for rejecting an application as inadmissible or for applying the accelerated examination procedure are not applicable or no longer applicable;
> (b) the necessary support cannot be provided to applicants with special reception needs, including minors, in accordance with Chapter IV of Directive (EU) 2024/1346, at the locations referred to in Article 54;
> (c) the necessary support cannot be provided to applicants in need of special procedural guarantees at the locations referred to in Article 54;
> (d) there are relevant medical reasons for not applying the border procedure, including mental health reasons;
> (e) the guarantees and conditions for detention laid down in Articles 10 to 13 of Directive (EU) 2024/1346 are not met or no longer met and the border procedure cannot be applied to the applicant without the use of detention."

Subsequent applications (Art. 55 para. 1, 2) are subject to a preliminary examination to establish whether new elements have arisen or have been presented (Art. 55 para. 3-5). Only then the application shall be examined on its merits (Art. 55 para. 6), otherwise it is rejected as inadmissible (Art. 55 para. 7).

Art. 57-64 deal with *safe country concepts* and include first countries of asylum (Art. 58), safe third countries (Art. 59; additional for Union level: Art. 60) and safe countries of origin (Art. 61; additional for Union level: Art. 62, 63; for national level: Art. 64). As a commonality for the former two, the crucial criteria of effective protection are considered fulfilled when a third country has ratified and respects the 1951 Convention related to the Status of Refugees (1951 Convention) or meets the following criteria: at minimum a right to remain, access to means of sufficient subsistence, access to healthcare and essential treatment under general conditions, access to education under general conditions and effective protection until a durable solution can be found (Art. 57).

3.3 Screening Regulation (EU) 2024/1356

The Screening Regulation establishes a *uniform screening mechanism* (Art. 1 subpara. 1) at the external borders in case of irregular border crossings, applications for international protection, or disembarkation after a search and rescue operation (Art. 5, 6, 8 para. 1, 3), and within the territory of Member States for irregular migrants who probably did not undergo screening at the external borders (Art. 7, 8 para. 2, 4). *Aims* are tightened control, identification, and detecting security risks as well as vulnerabilities (Art. 1 subpara. 2).

The following *elements* are comprised (Art. 8 para. 5):

- preliminary health check (Art. 12)

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- preliminary vulnerability check (Art. 12)
- identification or verification of identity (Art. 14, 16)
- registration of biometric data (Art. 15, 22, 24 Eurodac Regulation) to the extent that it has not yet occurred;
- security checks (Art. 15, 16)
- filling out of a screening form (Art. 17)
- referral to the appropriate procedure (Art. 18).

Detention rules set out in the Return Directive shall apply during the screening in respect of third-country nationals who have not made an application for international protection.

Refugee and Human Rights standards are to be obeyed (Art. 3, 8 para. 8-9), compliance to be monitored (Art. 10), adequate information to be given (Art. 11) and guarantees for minors upheld (Art. 13).

3.4 Return Border Procedure Regulation (EU) 2024/1349

The Procedure Regulation and its provisions on the asylum border procedure (Art. 43-54 Procedure Regulation) are added by a new Return Border Procedure Regulation. Those whose application have been rejected in the context of the asylum border procedure in general are not authorised to enter the territory of the Member State concerned (Art. 4 para. 1). Instead, they are obliged to *reside* for a period generally not exceeding 12 weeks in locations at or in proximity to the external border or transit zone (Art. 4 para. 2). If a return decision cannot be enforced in time, the return procedure continues in accordance with the Return Directive 2008/115/EC. A period for voluntary departure of maximum 15 days shall be given on request (Art. 4 para. 5).

Detention is foreseen for those who have been in detention during the asylum border procedure (Art. 5 para. 2) or if there is a risk of absconding, if they hamper the preparation of return or the removal process, or if they pose a risk to public policy, public security or national security (Art. 5 para. 3). It should be a measure of last resort (Art. 5 para. 1) and maintained for as short a period as possible (Art. 5 para. 4).

Derogations in a situation of crisis can be requested according to the procedure outlined in Art. 7 with respect to the maximum period to reside at or in proximity to the border (Art. 6 para. 1 lit. a) or for detention (Art. 6 para. 2 lib. b).

3.5 Crisis and Force Majeure Regulation (EU) 2024/1359

The Crisis and Force Majeure Regulation aims at addressing exceptional situations of crisis, including instrumentalization, and force majeure, in the field of migration an asylum (Art. 1 para. 1).

A *crisis* is defined as

> "an exceptional situation of mass arrivals of third-country nationals or stateless persons in a Member State by land, air or sea, including of persons that have been disembarked following search and rescue operations, of such a scale and nature, taking into account, inter alia, the population, GDP and geographical specificities of the Member State, including the size of the territory, that it renders the Member State's well-prepared asylum, reception, including child protection services, or return system non-functional, including as a result of a situation at local or regional level, such that there could be serious consequences for the functioning of the Common European Asylum System" (Art. 1 para. 4 lit. a).

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A *situation of instrumentalization* is seen as

> "a situation of instrumentalisation where a third country or a hostile non-state actor encourages or facilitates the movement of third-country nationals or stateless persons to the external borders or to a Member State, with the aim of destabilising the Union or a Member State, and where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security" (Art. 1 para. 4 lit. b).

Force-majeure refers to

> "abnormal and unforeseeable circumstances outside a Member State's control, the consequences of which could not have been avoided notwithstanding the exercise of all due care, which prevent that Member State from complying with obligations"

of the Management Regulation and the Procedure Regulation (Art. 1 para. 5).

Under such circumstances, the affected Member State may submit a reasoned request to the Commission also indicating necessary *solidarity measures* (Art. 2). Upon positive assessment by the Commission, it would adopt an implementing decision according to Art. 3 para. 8 determining whether the requesting Member State is in a situation of crisis or force majeure or a recommendation for an expedited procedure according to Art. 14 (Art. 3 para. 1, 2). Simultaneously, it would make a proposal for a Council implementing decision (Art. 4 para. 1) which would set up a Solidarity Response Plan, including the applicable solidarity measures (Art. 4 para 3), and would eventually adopt a recommendation on the application for an expedited procedure (Art. 4para. 4).

These implementation measures would be limited to a period of three months, extendable once by three more months, renewable after for up to three months, extendable for up to yet another three months (Art. 5). Meanwhile Commission and Council have to monitor the situation in a mechanism for repeal, amendment or extension (Art. 6).

In consequence of implementing decisions, the Regulation differentiates between the following exceptional measures:

1. *Solidarity measures applicable in a situation of crisis (Chapter III):*

   Requested solidarity and support measures from other Member States could be relocations (Art. 68, 69 Management Regulation), financial contributions (Art. 64 Management Regulation) or alternative solidarity measures focusing on operational support, capacity building, services, staff support, facilities and technical equipment (Art. 56, 65 Management Regulation) or responsibility offsets of up to 100% of the relocation needs according to the Council's Solidarity Response Plan. In case of insufficiency, to cover the relocation needs, the High-Level EU Solidarity Forum shall be reconvened to amend the Annual Solidarity Pool (Art. 13 para. 4 and Art. 57 Management Regulation). Additionally, the affected Member State could request to take responsibility for applications (Art. 9 para. 3). Any contribution above the fair share would be compensated with respect to future solidarity contributions (Art. 9 para. 4-5). In case of insufficiency of the measures, again, the High-Level EU Solidarity Forum shall reconvene (Art. 9 para. 6).

2. *Derogations (Chapter IV)*

   In a situation of crisis or force majeure, affected Member States are allowed to derogate from Art. 28 Asylum Procedure Regulation and registering applications for

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up to four weeks (see Art. 10); from specific regulations of the border procedure (maximum duration, requirement to examine applicants form countries with low recognition rate, from restrictions for taking decisions on the merits of an application) (see Art. 11); from time limits for take charge requests, take back notifications and transfers (see Art. 12); and from the obligation to take back an applicant (see Art. 13).

3. *Expedited procedure (Chapter V)*

The Commission may adopt a recommendation for the application of an expedited procedure where groups of applicants from a specific (part of a) country of origin or of former habitual residence, or on the basis of the criteria set out in the Qualification Regulation could be well-founded (see Art. 14).

3.6 Eurodac Regulation (EU) 2024/1358

The recast of the Eurodac Regulation develops the former asylum database into a *migration database*. Its structure consists of

- a Central System (Central Unit and business continuity plan and system)
- a Communication Infrastructure between the Central System and Member States
- the Common Identity Repository (CIR)
- the infrastructure between the Central System and the central infrastructures of the European search portal respectively the CIR.

The *management* is with the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA; Art. 4). Each Member State, as well as Europol, have a single access point (Art. 3 para. 4). The latter designates the authorities for law enforcement authorised to request comparisons with Eurodac data (Art. 5), and one single authority as the verifying authority (Art. 6). Similarly, Europol designates one or more of its operational units and a single specialised unit as verifying authority (Art. 7).

From July 12, 2026, Eurodac will be connected to the European search portal according to Art. 6 Interoperability Regulation (EU) 2019/818 allowing *interoperability* with the European Travel Information and Authorization System (ETIAS) in accordance with the related ETIAS Regulation 2018/1240 (Art. 8), with ETIAS National Units receiving read-only access (Art. 9). Similarly, interoperability is facilitated with the Visa Information System (VIS) in accordance with the VIS Regulation (EC) 767/2008. Data will also be used for statistics (Art. 12).

Accordingly, Member States are obliged to take *biometric data* (Art. 13) with due respect for the dignity and physical integrity of the persons affected (Art. 13 para. 2) and the special provisions for minors (Art. 14). For each of the following categories of persons biometric data will be collected, transmitted and eventually linked, while the relevant data is exclusively listed:

- every applicant for international protection of at least six years of age (Art. 15-17);
- persons registered for the purpose of conducting an admission procedure under the union resettlement and humanitarian admission framework (Art. 18, 19);
- persons admitted in accordance with a national resettlement scheme (Art. 20, 21);

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- third-country nationals or stateless persons apprehended in connection with the irregular crossing of an external border (Art. 22, 23)
- third-country nationals or stateless persons disembarked following a search and rescue operation (Art. 24)
- beneficiaries of temporary protection (Art. 26).

In general, transmitted biometric data is *automatically compared* with the database and hit or negative results are automatically transmitted (Art. 27). Where a comparison of fingertips is not suitable, it is done on the basis of facial image data (Art. 28). The procedure specifically for comparison and data transmission for law enforcement purposes is outlined in Art. 32-35.

Chapter XII (Art. 36-52) further regulates details on *data* processing, data protection and liability.

3.7 Qualification Regulation (EU) 2024/1347

Taking Directive 2011/95/EU as a starting point, the new Qualification Regulation determines standards for the qualification of beneficiaries of international protection, and establishes a uniform standard and its legal content. Due to its new character and the *uniform standard* established, greater convergence in the application by Member States is expected. At the same time, more favourable national standards currently accepted under Art. 3 Directive 2011/95/EU will generally become obsolete and will have to be levelled in the future.

The known definition of *international protection* (Art. 3 para. 3) by refugee status (Art. 3 para. 1, 5, Art. 12) and subsidiary protection status (Art. 3 para. 2, 6, Art. 15, Art. 17 para. 1, 2) remains.

Authorities may refuse to grant international protection if the *need arises sur place* based on circumstances which the applicant has created since leaving the country of origin if this was for the sole or main purpose of creating the necessary conditions for applying for international protection and would neither violate the 1951 Convention and its 1967 Protocol, nor the European Convention on Human Rights or the Charter of Fundamental Rights of the European Union (Art. 5 para. 2).

The assessment whether stable, established non-State authorities, including international organisations, control a State or a substantial part of its territory and provide sufficient protection, thus being considered an *actor of protection*, shall now be taken into account more concisely than before and

> "up-to-date information on countries of origin obtained from relevant and available national, Union and international sources and, where available, the common analysis on the situation in specific countries of origin and the guidance notes referred to in Article 11 of [EUAA] Regulation (EU) 2021/2303" (Art. 7 para. 3),

The latter refers to the common analysis on the situation in countries of origin and the guidance notes developed by the Member States under coordination by the European Union Agency for Asylum (EUAA).

The *internal protection alternative* is now in general limited to cases where the State or agents of the State are not the actors of persecution or serious harm (Art. 8 para. 1), while the State or agents of the State are the actors of persecution or serious harm,

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> "where it is clearly established that the risk of persecution or serious harm stems from an actor whose power is clearly limited to a specific geographical area or where the State itself only has control over certain parts of the country" (Art. 8 para. 2).

The burden of proof for an internal protection alternative is now expressly with the State (Art. 8 para. 3). Again, the means of relevant information to be taken into consideration for evaluating the situation are further defined and include the common analysis and guidance referred to in Art. 11 EUAA Regulation (Art. 8 para. 4). General and personal circumstances as well as whether the applicant would be able to cater for his or her own basic needs are to be taken into consideration (Art. 8 para. 5, 6).

When it comes to *qualification for refugee protection*, the definition of persecution (Art. 9) has not changed in substance, some slight amendments have been introduced to the provision on persecution grounds. Membership of a particular social group shall now "include" those characterized by the known and unchanged criteria (Art. 10 para. 1 subpara. 1 lit. d), while previously these determined the ground "in particular"; the wording, thus, remains open for wider interpretation. Considering sexual orientation as a basis for a particular social group must now be seen as binding (while before it "might" be); however, the condition was upheld that this depends "on the circumstances in the country of origin" (Art. 10 para. 1 subpara. 2). It is now expressly mentioned that the applicant cannot be expected

> "to adapt or change his or her behaviour, convictions or identity, or to abstain from certain practices, where such behaviour, convictions or practices are inherent to his or her identity, to avoid the risk of persecution in his or her country of origin" (Art. 10 para. 3).

Assessment of the *cessation ground "changed circumstances"* (Art. 11 para. 1 lit. e, f) i. a. has to expressly take into regard the common analysis and guidance referred to in Art. 11 EUAA Regulation where available (Art. 11 para. 2 lit. a).

Where *exclusion grounds* have been established, no proportionality assessment must be carried out (Art. 12 para. 4). When a minor's case is assessed, the capacity to be considered responsible has to be taken into account (Art. 12 para. 5).

Withdrawal of the refugee status is now compulsory (Art. 14 para. 1) if

> "(d) there are reasonable grounds for regarding that third-country national or stateless person as a danger to the security of the Member State in which that third-country national or stateless person is present;"
> (e) that third-country national or stateless person is convicted by a final judgment of a particularly serious crime and constitutes a danger to the community of the Member State in which that third-country national or stateless person is present".

The burden of proof for establishing the grounds for withdrawal lies with the authorities (Art. 14 para. 4).

Qualification of subsidiary protection is limited to the established definition of *serious harm* (Art. 15). Assessment of the "*changed circumstances*" that would lead to cessation (Art. 16, para. 1), among others, has to, again, take into regard the common analysis and guidance referred to in Art. 11 EUAA Regulation where available (Art. 16 para. 2 lit. a).

An additional reason for *exclusion* is introduced as such (Art. 17 para. 3):

> "A third-country national or a stateless person may be excluded from being eligible for subsidiary protection where that third-country national or stateless person, prior to being admitted to the

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> Member State concerned, has committed one or more crimes outside the scope of points (a), (b) and (c) of paragraph 1 which would be punishable by imprisonment had they been committed in the Member State concerned, and if that third-country national or stateless person left the country of origin solely in order to avoid sanctions resulting from those crimes."

Using the term "may" instead of "shall" (as used in Art. 17 para. 1) indicates discretion that seems to create a contradiction with the prohibition of performing a proportionality assessment linked to the fear of serious harm (Art. 17 para. 4). This can only be resolved by allowing a proportionality test related to other circumstances but the fear of serious harm. When a minor's case is assessed, the capacity to be considered responsible has to be taken into account (Art. 17 para. 5).

Related to the *content of the international protection rights*, the Member States have to ensure effective access to these if the residence permit in not issued within 15 days of the granting of international protection (Art. 20 para. 3). The protection from refoulement is now unconditioned as long as the beneficiary has refugee status (Art. 21). Maintaining family unit is connected to the issuance of residence permits for the family members (Art. 23 para. 1), unless there are indications that the sole purpose of a marriage was for enabling to reside in the Member State (Art. 23 para. 4). The expiry date shall be the same as for the beneficiary (Art. 23 para. 2). The initial period in this regard is at least three years for beneficiaries of refugee status and at least one year for beneficiaries of subsidiary protection, while extension for refugees will be granted for at least three years and at least two years for beneficiaries of subsidiary protection (Art. 24 para. 4).

Freedom of movement is granted within the Member State that granted protection similarly to other third-country nationals legally resident under generally the same circumstances (Art. 26). However, as a rule, no right to reside in another Member State is granted (Art. 27).

Several *rights related to integration* are guaranteed. Regarding access to employment, it is now specified further that beneficiaries of international protection shall enjoy equal treatment with nationals related to

> "(a) terms of employment, including the minimum working age, and working conditions, including pay and dismissal, working hours, leave and holidays, and health and safety requirements at the workplace;
> (b) freedom of association and affiliation, and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the rights and benefits conferred by such organisations;
> (c) employment-related educational opportunities for adults, vocational training, including training courses for upgrading skills and practical workplace experience;
> (d) information and counselling services offered by employment offices."

Access to education for adults is now continued for the completion of secondary education (Art. 29 para. 1). Regarding the general education system and further training or retraining (not necessarily related to grants and loans), access is raised to the level of equal treatment with nationals, while before it was related to third-country nationals residing legally (Art. 29 para. 2). Equal treatment with nationals with respect to social security and social assistance may be conditional on "effective participation" in accessible, free but compulsory integration measures (Art. 31 para. 1). The core benefits beneficiaries of subsidiary protection can be limited to are now defined as at least minimum income support, assistance in the case of illness or pregnancy, parental assistance (including

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child-care assistance, and housing benefits; Art. 31 para. 2). Requirements for guardians of unaccompanied minors, their tasks and supervision are now regulated in further detail (Art. 33 para. 1-4). Regarding access to (further) integration measures, the wording points at discretion of the Member States to provide or facilitate them. In general, they should be free of charge, and beneficiaries are obliged to participate (Art. 35).

3.8 Reception Conditions Directive (EU) 2024/1346

Respecting the diversity of related national structures and regulations, reception conditions for applicants for international protection remain regulated in a *directive*. Accordingly, more favourable but compatible provisions may be introduced or retained (Art. 4).

As before, Member States are obliged to provide applicants with *relevant information* related to the reception conditions. However, the recast asks for using a template to be developed by EUAA showing i.a. information on persons or organisations providing legal assistance and representation free of charge as well as the organisations consulting on reception conditions. It has to be provided within three days from applying or within the timeframe of its registration (Art. 5 para. 1). Oral or visual provision is only allowed when written provision is not possible in a timely manner due to language factors, and provided that the applicant can confirm understanding (see for more details Art. 5 para. 2).

Member States have significant discretion to organise their reception system in accordance with the Directive. While applicants in general are guaranteed *freedom of movement* within the Member State, they might be allocated to accommodation, and material reception conditions made subject to residence there (Art. 7). Subject to exceptions (Art. 8 para. 5), their free movement might be restricted to an assigned geographical area to ensure swift, efficient and effective processing (Art. 8 para. 1). However, access to “necessary public infrastructure” and an “unalienable sphere of private life” must be allowed (Art. 8 para. 3). Leaving such an area without permission shall not lead to penalties other than those provided for under the Directive (Art. 8 para. 5subpara. 2; see for the penalty Art. 23 para. 2 lit. a, para. 3). Subject to conditions (Art. 9 para. 5) and exemptions (see Art. 9 para. 3), freedom of movement can be further restricted to *residence* in a specific place that is only adapted for housing applicants for reasons of public order to effectively prevent absconding (Art. 9 para. 1). Material reception conditions are subject to residing there.

Detention grounds now include to ensure compliance with Art. 9 para. 1 ”where the applicant has not complied with such obligations and there continues to be a risk of absconding” (Art. 10 para. 4 lit. c). Any decision for detention has to assess special reception needs (Art. 10 para. 3). The detention order also has to demonstrate “why less coercive alternative measures cannot be applied effectively” (Art. 11 para. 2, Art. 10 para. 2). Detention by administrative order remains subject to judicial review (ex officio or on request) within 15 (exceptionally 21) days (Art. 11 para. 3). Applicants with special reception needs, shall not be detained where it would put their physical and mental health at serious risk (Art. 13 para. 1 subpara. 2). Detention rules have been improved with respect to minors, unaccompanied minors, and families with minors (see Art. 13 para. 2-6).

As a general rule, *schooling and education* of minors shall be integrated with that of a Member State’s own nationals and be of the same quality (Art. 16 para. 2 cl. 2), limiting

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the current general discretion of Member States to provide education in accommodation centres (Art. 14 Directive 2013/33/EU) to exceptional circumstances, e.g. where preparatory classes (including language classes) are needed (Art. 16 para. 2 subpara. 2). Access shall be granted as soon as possible and no later than two months (previously three months) from lodging the application (Art. 16 para. 2).

Access to the labour market is now generally guaranteed no later than six months (previously nine months) from registering the application (Art. 17 para. 1 subpara. 1). Access may be subject to priorities given to nationals, Union citizens or third-country nationals and stateless persons lawfully residing in the concerned Member State (Art. 17 para. 2 subpara. 2), and shall be denied in case of an accelerated procedure according to Art. 42 para. 1 lit. a-f Procedure Regulation (Art. 17 para. 1 subpara. 2). Further conditions and equal treatment with nationals are outlined in Art. 17 para. 3-9.

Whereas access to *training* was previously limited to vocational training at the discretion of the Member States and dependent on access to the labour market (Art. 16 Directive 2013/33/EU), access is now widened to include language and civic education courses. These are compulsory despite a vast discretion of the Member States regarding the offerings and is irrespective of access to the labour market (Art. 18 para. 1).

Female applicants housed in accommodation centres shall be provided separate sanitary facilities and a safe place in such centres for them and their minor children (Art. 20 para. 5). Allowances for voluntary work may also be granted outside the accommodation (Art. 20 para. 9 cl. 2).

Access to health care is widened to include not only emergency health care and essential treatment of illnesses and serious mental disorders but also “sexual and reproductive health care which is essential in addressing a serious physical condition” (Art. 22 para. 1). Minors receive privileged access (Art. 22 para. 2):

> “Member States shall ensure that the minor children of applicants and applicants who are minors receive the same type of health care as provided to their own nationals who are minors. Member States shall ensure that specific treatment provided in accordance with this Article which started before the minor reached the age of majority and is considered to be necessary, is received without interruption or delay after the minor reaches the age of majority.”

Reduction or withdrawal of material reception conditions is tiered, generally concerning the daily expense allowance only, while any reduction or withdrawal of material reception conditions must be “duly justified and proportionate” (Art. 23 para. 1). Reduction or withdrawal grounds have been amended and extended by three alternatives (Art. 23 para. 2), and now include cases where an applicant

> (a) abandons a geographical area within which the applicant is able to move freely in accordance with Article 8 or the residence in a specific place designated by the competent authority in accordance with Article 9 without permission, or absconds;
> (b) does not cooperate with the competent authorities, or does not comply with the procedural requirements established by them;
> (c) has lodged a subsequent application as defined in Article 3, point (19), of Regulation (EU) 2024/1348;
> (d) has concealed financial resources, and has therefore unduly benefitted from material reception conditions;
> (e) has seriously or repeatedly breached the rules of the accommodation centre or has behaved in a violent or threatening manner in the accommodation centre; or

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(f) fails to participate in compulsory integration measures, where provided or facilitated by the Member State, unless there are circumstances beyond the applicant's control."

Chapter IV avoids the formerly used term "vulnerable persons" but rather directly talks about "*applicants with special reception needs*". Art. 24 asks to "take into account the specific situation of applicants with special reception needs" and lists examples of categories of applicants that are (not automatically but) more likely to have special reception needs, adding a new category in lit. f:

"(a) minors;
(b) unaccompanied minors;
(c) persons with disabilities;
(d) elderly persons;
(e) pregnant women;
(f) lesbian, gay, bisexual, trans and intersex persons;
(g) single parents with minor children;
(h) victims of trafficking in human beings;
(i) persons with serious illnesses;
(j) persons with mental disorders including post-traumatic stress disorder;
(k) persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, for example victims of gender-based violence, of female genital mutilation, of child or forced marriage, or violence committed with a sexual, gender, racist or religious motive."

The *assessment* shall be done as early as possible after an application for international protection is made and must be completed within 30 days from that date, or if integrated into the assessment of the need for special procedural guarantees, in accordance with Art. 20 of the Procedure Directive within the timeframe determined there (Art. 25 para. 1). This suggests that processing should be initiated as early as possible after an application is made, and must be concluded as soon as possible, latest within 30 days. The assessing staff need to be continuously trained, to include relevant information in the applicants' files and to refer to medical practitioners or psychologists for further assess where mental or physical health could effect reception needs (Art. 25 para. 2).

Specifically, concerning *minors*, the existing standards are supplemented by criteria for the persons working with minors, including representatives and persons suitable to provisionally act as representatives (Art. 26 para. 6). In the case of an *unaccompanied minor*, such a person has to be appointed where an application is made by someone "who claims to be a minor" (except where the person is without any doubt above the age of 18) or "in relation to whom there are objective grounds to believe that that person is a minor". A representative needs to be appointed as soon as possible, but no later than 15 working days from the date of application. Deficiencies in the implementation of the related measures in the contingency plans have to be reported to the Commission (Art. 27 para. 1; see for more details related to appointment, tasking and supervision Art. 27 paras. 2-8).

Such a *contingency plan* to ensure an adequate reception of applicants where confronted with a disproportionate number of applicants, including unaccompanied minors, is now required from each Member State and supervised by the EUAA (Art. 32).

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3.9 Resettlement Framework Regulation (EU) 2024/1350

The new Resettlement Framework Regulation establishes a framework for granting international or national protection through resettlement and humanitarian admission and related rules for admission (Art. 1 para. 1, Art. 3, Art. 4), without establishing a respective right (Art. 1 para. 2) or obligation to admission (Art. 1 para. 3). Instead, contributions by Member States remain voluntary (Art. 1 para. 4).

Resettlement is defined as (Art. 2 para. 1):

> "the admission to the territory of a Member State, following a referral from the United Nations High Commissioner for Refugees (UNHCR), of a third-country national or a stateless person, from a third country to which that person has been displaced, who:
> (a) is eligible for admission pursuant to Article 5(1);
> (b) does not fall under the grounds for refusal set out in Article 6; and
> (c) is granted international protection in accordance with Union and national law and has access to a durable solution".

Humanitarian admission is defined as (Art. 2 para. 3):

> "the admission to the territory of a Member State, following, where requested by a Member State, a referral from the European Union Agency for Asylum (the 'Asylum Agency'), from the UNHCR, or from another relevant international body, of a third-country national or a stateless person from a third country to which that person has been forcibly displaced and, at least on the basis of an initial evaluation, who:
>
> (a) is eligible for admission pursuant to Article 5(2);
>
> (b) does not fall under the grounds for refusal set out in Article 6; and
>
> (c) is granted international protection in accordance with Article 9(17) of this Regulation or humanitarian status under national law, which provides for rights and obligations equivalent to those established in Article 20 to 26 and 28 to 35 of Regulation (EU) 2024/1347 for beneficiaries of subsidiary protection".

In both cases, *eligibility* requires that the third-country national meets the criteria for international protection; this includes Palestinian refugees for which the inclusion clause of Art. 1 D para. 2 1951 Convention applies (Art. 5 para. 1, 2). Additionally, eligibility for resettlement requires falling into one of the categories as outlined in Art. 5 para. 3 lit. a, while eligibility for humanitarian admission requires falling in one of the categories as outlined in Art. 5 para. 3 lit. a or b, which reads as:

> "(a) vulnerable persons, comprising:
> (i) women and girls at risk;
> (ii) minors, including unaccompanied minors;
> (iii) survivors of violence or torture, including on the basis of gender or sexual orientation;
> (iv) persons with legal and/or physical protection needs, including as regards protection from refoulement;
> (v) persons with medical needs, including where life-saving treatment is unavailable in the country to which they have been forcibly displaced;
> (vi) persons with disabilities;
> (vii) persons who lack a foreseeable alternative durable solution, in particular those in a protracted refugee situation;
> (b) in the case of humanitarian admission, the family members, as referred to in paragraph 4, of third-country nationals or stateless persons legally residing in a Member State, or of Union citizens."

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The *family members* considered are the spouse or unmarried partner, minor children, parents or adults responsible for an unmarried minor, the siblings and dependants (see for details Art. 5 para. 4).

The *refusal grounds* are divided into two categories: Compulsory refusal grounds relate to the subsidiarity of resettlement or humanitarian admission in view of existing protection, unworthiness, or security threats (see for details Art. 6 para. 1). Discretionary refusal grounds refer to security risks considered less severe, contradictory actions on behalf of the concerned person, or inability of a Member State to provide the adequate support needed on the basis of the concerned person's vulnerability (see for details Art. 6 para. 2).

Third-party nationals have to *consent* to the procedure. Failing to provide essential and available data or non-attendance to the personal interview is in general regarded as a withdrawal of consent (see for details Art. 7).

A two-year *Union Resettlement and Humanitarian Admission Plan* (Union Plan) shall be proposed by the Commission and adopted (Art. 8 para. 1), respectively amended by the Council (Art. 8 para. 6) taking into regard the outcome of meetings of the High-Level Resettlemend and Humanitarian Admission Committee and the UNHCR Projected Global Resettlement Needs (Art. 8 para. 2). The content of the Plan is defined in Art. 8 para. 3 and 4:

> "3. The Union Plan shall include:
> (a) the total number of persons to be admitted to the territory of the Member States, indicating, respectively, the proportion of persons who are to be subject to resettlement, to humanitarian admission and to emergency admission, the proportion of persons subject to resettlement being not less than approximately 60 % of the total number of persons to be admitted;
> (b) details about the participation of the Member States and their contributions to the total number of persons to be admitted and the proportion of the persons who are to be subject to resettlement, to humanitarian admission and to emergency admission in accordance with point (a) of this paragraph, fully respecting the indications made by Member States at the High-Level Resettlement and Humanitarian Admission Committee established pursuant to Article 11;
> (c) a specification of the regions or third countries from which resettlement or humanitarian admission is to occur pursuant to Article 4.
> 4. The Union Plan may, where necessary, include:
> (a) a description of the specific group or groups of third-country nationals or stateless persons to whom the Union Plan is to apply;
> (b) local coordination, as well as practical cooperation arrangements among Member States, supported by the Asylum Agency in accordance with Article 10, and with third countries, the UNHCR and other relevant partners."

Regarding the *admission procedure*, the Member States would ask for referrals (see for details Art. 9 para. 1), assess whether the referred persons fall under the scope of the Union plan with a discretion related to family or social links, as well as particular protection needs or vulnerabilities (Art. 9 para. 2), and register (Art. 9 para. 3) and inform the person concerned (Art. 9 para. 4, 5). The Member State would then conduct an eligibility assessment (Art. 9 para. 6) by involving UNHCR (Art. 9 para. 7, 8) and reaching a conclusion as soon as possible, but no later than seven months (extendable by up to three months owing complexity; in case of an emergency admission – for the definition see Art. 2 para. 4 – latest within one month, Art. 9 para. 10) from the date of registration (Art. 9 para. 9). Where it is negative, the person shall not be admitted to that Member State (Art.

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9 para. 13). Where it is positive, the following shall apply before or after entry to the Member States' territories (Art. 9 para. 14):

- decision to grant refugee or subsidiary protection status, including (eventually permanent) residence status (Art. 9 para. 15);
- in case of humanitarian admission, a decision to grant international or national protection (Art. 9 para. 17);
- decision to grant residence status to family members not qualifying for international protection, maintaining family unit in accordance with Art. 23 para. 1 Procedure Directive (Art. 9 para. 16, 18);
- notification of the persons concerned for any decisions pursuant to Art. 9 para. 15 and 17 (Art. 9 para. 19);
- efforts to ensure entry to the Member State's territory as soon as possible and no later than 12 months from the date of conclusion (Art. 9 para. 20);
- offer of travel arrangements and transfer (Art. 9 para. 21);
- offer of pre-departure orientation programmes (Art. 9 para. 22).

While the required operational cooperation is outlined in Art. 10, an advisory *High-Level Resettlement and Humanitarian Admission Committee*, composed of representatives of the European Parliament, the Council, the Commission and the Member States and with EUAA, UNHCR and IOM as guests, shall be established in accordance with Art. 11. Following its meetings' outcome, the Commission

> "shall invite Member States to indicate the details of their participation and of their contribution on a voluntary basis to the total number of persons to be admitted including the type of admission and the regions or third countries from which admission shall take place" (Art. 11 para. 5).

Financial support for the implementing Member States shall be implemented in accordance with the revised Regulation (EU) 2021/1147 establishing the Asylum, Migration and Integration Fund (AMIF) pursuant to the following scheme (Art. 19 AMIF Regulation):

- for each resettled person: €10,000
- for each admitted person:
  - in general €6,000;
  - if belonging to one or more of the following vulnerable groups €8,000:
    - women and children at risk;
    - unaccompanied minors;
    - persons having medical needs that can be addressed only through humanitarian admission;
    - persons in need of humanitarian admission for legal or physical protection needs, including victims of violence or torture.

4 Conclusions

This outline demonstrates a truly ambitious and comprehensive reform of the CEAS. The intense national and European discourses related to migration management and reform proposals have proven that such a reform is inevitable to sustain social cohesion and the future of the CEAS – if not the European Union as we know it as such. Finally, Member States and EU institutions overcame remaining reservations to prove their capacity to act

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and function – less than one month before the European elections, the outcome of which was feared to be heavily influenced by these discourses and could have led to a discontinuity of the envisioned reform programme. A decision has been taken. It's impact on the election results will be analysed.

As effects on the ground will not materialize before the implementation of the Pact in 2026, the discourses will continue. They will now shift to interpretation, compliance with EU primary law, implementation and – once implemented – to the question whether the EU Migration Pact will actually succeed to reduce migration pressure. They will continue to be superimposed by even more far-reaching calls for extraterritorial migration management including extraterritorial asylum procedures.

Thus, while legislation has been passed, its subject will remain at the top of the European and national political agendas.

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