

# **Liberty, Equality, Fraternity**

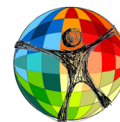
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# **Restriction, Unfairness, Hostility**

## **The Restraint to the Right of Asylum: A Deviation from the Founding Principle of France**

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# ABSTRACT

In 2018, France adopted a law reforming the immigration and asylum systems. This reform appears perfectly in line with the policies adopted at the EU levels over the past decades, i.e. (*id est*) intensified border control and limited immigration. The adoption of this law can be explained in part by the multidimensional crisis France is facing (politics, economics, social inequalities, migration flows, nationalism and extremism). Nonetheless, this 2018 law, which has drastically restricted the right to asylum, illustrates the French deterrent approach to migration. France, who claims to be the land of human rights, has clearly tarnished its ethos and founding principles of liberty, equality, and fraternity.

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## Introduction

*« Mais nous devons accueillir des réfugiés car c'est notre tradition et notre honneur. Et je le redis ici, les réfugiés ne sont pas n'importe quels migrants. Ce ne sont pas les migrants économiques, ce sont des femmes et des hommes qui fuient leur pays pour leur liberté ou parce qu'ils sont en guerre ou pour leurs choix politiques. Nous devons ainsi faire preuve de solidarité [...]. »*

France's geographical position has always favored migration movements in and out of the territory. While land frontiers have mostly encouraged migration within Europe, maritime boundaries, namely the Mediterranean, have generated migration movements beyond European borders. Located between three major lands – Europe, North Africa and the Middle East – the Mediterranean Sea appears to be an important crossroads favoring the development of a multidirectional migratory environment.<sup>1</sup> Known as the sea “between the lands”,<sup>2</sup> the Mediterranean Sea has been the cradle of numerous civilizations and has been shaped by migration. As France is a Member State of the European Union (EU), it is necessary to shortly address the History of Europe in order to understand the reality of migration in France.

Following the 20<sup>th</sup> century's world wars, economic migration became essential to rebuild the continent;<sup>3</sup> labor migration – which was typically represented by males – was fully part of the economic development process. For instance, the Treaty of Rome of 1957 established a common market and free circulation of workers<sup>4</sup> to enhance economic development. Yet, the 1973-74 Oil Crisis led to an increase of the oil prices, to an economic slowdown, and, *a fortiori*, to a shift in the migration policy: low-skilled migrant workers were no longer recruited,

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<sup>1</sup> Sylviane De Wangen & Pedro Vianna, « Les migrations en Méditerranée : l'acuité d'une question » [2013], L'Harmattan, 4:87 Confluences Méditerranée 9 at 9.

<sup>2</sup> Mostafa Salah & Baruch Boxer, “Mediterranean Sea”, *Encyclopaedia Britannica* (Encyclopaedia Britannica, inc., 16 May 2018), online: *Encyclopaedia Britannica* <<https://www.britannica.com/place/Mediterranean-Sea>>

<sup>3</sup> Stephen Castels & Nicholas Van Hear, “Root Causes” in Alexander Betts, ed, *Global Migration Governance* (Oxford: Oxford University Press, 2018) 287 at 289.

<sup>4</sup> EC, *Treaty establishing the European Economic Community*, 25 March 1957, 11957E (1 January 1958) [*Treaty of Rome*].

unlike high-skilled immigrants; with family migration, high-skilled migration became the main form of immigration to Europe.<sup>5</sup> In the 1980s, the Schengen Agreement<sup>6</sup> – which abolished internal border controls, reinforced external border controls, and more generally created the Schengen area. The Single European Act (SEA)<sup>7</sup> furthered the free movement of workers and the single market. In other words, while immigration started to be restricted, Europe remained relatively accessible to immigrants.

In the aftermath of the Cold War, and with the conflict erupting in the former Yugoslavia, a ‘wave’ of refugees reached Occidental Europe.<sup>8</sup> Building on their fear to lose control over immigration, Member States called for common (European) measures<sup>9</sup> to limit immigration and control their external borders.<sup>10</sup> Luedtke noted that harmonization of immigration and border control at the EU level was essential to the political stability of the EU and to protect national sovereignty.<sup>11</sup> ‘Managing

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<sup>5</sup> Andrew Geddes & Peter Scholten, *The Politics of Migration and Immigration in Europe*, (London: SAGE Publications, 2016) at 8.

<sup>6</sup> EC, *The Schengen acquis - Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders*, [2000] OJ, L 239/13 [Schengen Agreement].

*The Schengen Agreement was implemented by the Schengen Convention of 1990. EC, The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders*, [2000] OJ, L 239/19 [Schengen Convention].

<sup>7</sup> EC, *Single European Act* [1987] OJ, L 169/1 [SEA].

<sup>8</sup> Geddes & Scholten, *supra* note 16 at 8.

See also: Lisa Heschl, *Protecting the Rights of Refugees Beyond European Borders: Establishing Extraterritorial Legal Responsibilities* (Cambridge: Intersentia, 2018) at 17; Agnieszka Weina, Saskia Bonjour & Lyubov Zhyznomirska, “Introduction: The case for regional approach to study politics of migration” in Agnieszka Weina, Saskia Bonjour & Lyubov Zhyznomirska, eds, *The Routledge Handbook of the Politics of Migration in Europe* (Oxon: Routledge, 2019) 1 at 6.

<sup>9</sup> Heschl, *supra* note 9 at 17.

<sup>10</sup> Castels & Van Hear, *supra* note 4 at 289.

See also: Weina, Bonjour & Zhyznomirska, *supra* note 9 at 6.

<sup>11</sup> Adam Luedtke, “Migration Governance In Europe: A Historical Perspective” in Agnieszka Weina, Saskia Bonjour & Lyubov Zhyznomirska, eds, *The Routledge Handbook of the Politics of Migration in Europe* (Oxon: Routledge, 2019) 15 at 17.

See also: Mark Mitchell & Dave Russel, “Immigration, Citizenship and the Nation-State in the New Europe” in Brian Jenkins & Spyros Sofos, eds, *Nation and Identity in Contemporary Europe* (London: Routledge, 1996) 54.

migration' subsequently became the watchwords of the EU for a period of time.<sup>12</sup>

This willpower and desire to cooperate in the creation of a common EU did not last very long. Recent events – the Arab Springs, the Syrian War, and the conflicts and instabilities in Africa<sup>13</sup> – resulted in mass migration movements towards Europe.<sup>14</sup> In 2015, the number of asylum applications in the EU “had grown to crisis proportion.”<sup>15</sup> While it has steadily increased since 2008,<sup>16</sup> there was a peak in 2015 and 2016, with 1,322.8 thousands and 1,260.9 thousand asylum applications respectively.<sup>17</sup> The EU’s answer was simple: barricades on legal, security and political basis.<sup>18</sup> Yet, as a result of the failure to ‘manage’ the “crisis”, communitarization appeared to have reached a breaking point.<sup>19</sup> Various Member States started turning their back on the EU. For instance, Hungary built border fence with neighboring Serbia and Croatia,<sup>20</sup> while Italy, unable

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<sup>12</sup> Castels & Van Hear, *supra* note 4 at 292.

<sup>13</sup> In the past decades, Africa has been struggling with economic instability, governance failure, and a social crisis for lack of basic dignity and security. See e.g. Peace Research Institute Oslo (PRIO), “Conflict Trends in Africa, 1989-2017” (2018), online (pdf): PRIO <<https://reliefweb.int/sites/reliefweb.int/files/resources/Conflict%20Trends%20in%20Africa%2C%201946%E2%80%932017%2C%20Conflict%20Trends%20Report.pdf>>

<sup>14</sup> Luedtke, *supra* note 12 at 22.

<sup>15</sup> *Ibid.*

<sup>16</sup> In 2008, there were 225.3 thousands application. In 2013, there were 431.1 thousands application. In 2014, there were 627 thousands application. See: Eurostat, “Asylum Quarterly Report” (2019), online: Eurostat <[https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics)>.

<sup>17</sup> See: Eurostat, *supra* note 60.

<sup>18</sup> De Wangen, *supra* note 2 at 10.

<sup>19</sup> Luedtke, *supra* note 12 at 23.

See also: Randall Hansen & Shalini Randeria, “Tensions of refugee politics in Europe” (2016) 353:6303 Science 994; Timothy Hatton, “Refugees and asylum seekers, the crisis in Europe and the future of policy” (2017) 32:91 Economic Policy 447.

<sup>20</sup> Annastiina Kallius, Daniel Monterescu, & Prem Kumar Rajaram, “Immobilizing mobility: Border ethnography, illiberal democracy, and the politics of the “refugee crisis” in Hungary” (2016) 43:1 American Ethnologist 25 at 27.

For a more general idea, see: Catherine Wihtol de Wenden, « Frontières, nationalisme, et identité politique » [2018] 165 Pouvoirs 39.



to process the numerous asylum applications, developed bilateral agreement with non-EU states (such as Libya).<sup>21</sup>

Although the EU has adopted restrictive immigration policies through the adoption of legal tools, the 'failed' management of migration has given rise to a political crisis within Europe. Taking into consideration (1) the high unemployment and stagnation of income,<sup>22</sup> (2) the increased fears of terrorism,<sup>23</sup> (3) the rise in far-right national and European voting,<sup>24</sup> (4) Brexit, and (5) the intensification of securitization of migration policy,<sup>25</sup> the multidimensional crisis the EU is facing casts doubts on the viability of the EU's migration and asylum policy.<sup>26</sup> Various Member States have decided to reject the EU scheme by closing their borders with sovereign right. Others have adopted immigration reforms in order to 'prevent' migrants from claiming asylum. This is the case of France.

The main steps towards an international refugee law (IRL) were taken in the inter-war period. For instance, Fridjof Nansen, the first High Commissioner for Refugee, introduced the 'Nansen Passports' to grant refugees a legal status.<sup>27</sup> Yet, IRL substantially developed post-World War II (WWII). 40 million of individuals

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<sup>21</sup> Luedtke, *supra* note 12 at 23.

<sup>22</sup> See Toute l'Europe, « Le taux de chômage en Europe » [2019], online: Toute l'Europe < <https://www.touteleurope.eu/actualite/le-taux-de-chomage-en-europe.html> >

<sup>23</sup> In the recent years, Europe has been hit by numerous violent terrorist attacks. For example: France in 2015 with the Charlie Hebdo and Bataclan; Belgium with the bombings in the Airport and metro station of Brussels; the UK with the Manchester Arena bombing, etc.

<sup>24</sup> See Jean-Yves Camus & Nicolas Lebourg, *Far-Right Politics in Europe* (Cambridge: Harvard University Press, 2017).

<sup>25</sup> Ariane Chebel d'Appollonia, "Xenophobia, Racism and the Securitization of Immigration" in Philippe Bourbeau, ed, *Handbook on Migration and Security* (Cheltenham: Elgar, 2017).

<sup>26</sup> Luedtke, *supra* note 12 at 23.

See also: Willemijn Tiekstra, "State of Play in the Debate on Migration Management in Europe" (2018) European migration management – lessons learned, online: Clingendael < <https://www.clingendael.org/publication/state-play-debate-migration-management-europe> >

<sup>27</sup> Phil Orchard, "The Historical Development of Refugee Protection In Europe" in Agnieszka Weina, Saskia Bonjour & Lyubov Zhyznomirska, eds, *The Routledge Handbook of the Politics of Migration in Europe* (Oxon: Routledge, 2019) 283 at 285.

In 1921, Gustav Ador, President of the International Committee of the Red Crosses, who pressed the League of Nations to contemplate the creation of the first High Commissioner for Refugee. See: Gustav Ador, "The Question of the Russian Refugees" (1921) 2:2 League of Nations Official J 225 at 227.

forcibly displaced as a result of the war need to be resettled. Thus, the international community agreed to create the United Nations High Commissioner for Refugee (UNHCR) in 1950 to guarantee the protection and well-being of refugees,<sup>28</sup> and to draft the Convention Relating the Status of Refugee in 1951 (hereafter the Refugee Convention).<sup>29</sup> State parties to the latter Convention have the obligation to welcome any individuals who seek refuge from persecutions in their home nation. Bem noted that European states initially favored a “broad definition of the term of ‘refugee’, without any temporal or geographical limitations,”<sup>30</sup> but later agreed on a narrower definition in order to get the United States (US) on board.

Under Article 1A(2), a refugee is considered to be any human being who, as a result of a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”<sup>31</sup> In application of the principle of *non-refoulement*, Contracting States are prohibited from removing any refugee falling under the definition.<sup>32</sup>

As one of the 145 States who have ratified the 1951 Refugee Convention,<sup>33</sup> France has to abide under all stated principles. Additionally, as a European country, France must abide by EU legislation. Yet, France remains free to organize its own legal system regarding the application of conventional and

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<sup>28</sup> “History of UNHCR”, online: UNHCR | USA: <<https://www.unhcr.org/en-us/history-of-unhcr.html>>

<sup>29</sup> *Convention relating to the Status of Refugees*, 28 July 1951, 189 UNTS 137 (22 April 1954) [Refugee Convention].

The Convention was supplemented with an additional Protocol. See *Protocol relating to the Status of Refugees*, 31 January 1967, 606 UNTS 267 (4 October 1967).

<sup>30</sup> Kazimierz Bem, “The Coming of a ‘Blank Cheque’ – Europe, the 1951 Convention, and the 1967 Protocol” (2004) 16/4 *Intl J Refugee L* 609 at 617.

<sup>31</sup> Article 1(a)(c), *Refugee Convention*, *supra* note 30.

<sup>32</sup> Article 33, *Refugee Convention*, *supra* note 30.

<sup>33</sup> UNHCR, “States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol”, online: UNHCR <<https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>>

European laws within its national borders, considering France respects all its legal obligations under international and European laws. Be as it may, following EU's hostile attitude towards migrant and refugees, France has, over the years, reformed its immigration and refugee laws to limit the access to asylum within its territory.<sup>34</sup> In this paper, I will have a critical approach in regard to France asylum policies, especially concerning the rights of those seeking asylum.

Although France is said to be a country defending human rights, I argue in this paper that it has adopted, over the years, a dissuasive approach to migration. The most recent illustration is the 2018 immigration and refugee law (hereinafter referred to the 2018 law; the 2018 immigration and refugee law; the 2018 refugee law; the 2018 immigration law),<sup>35</sup> which has, as I explain below, restricted the right to international protection. The aim of this research is to establish the deterrent approach France has towards refugees in light of the 2018 law. I also contend that France, by failing to protect individuals in need of protections, is acting in complete disregard of its humanitarian ethics.

Various NGOs (e.g. La Cimade, Gisti, France-Terre-d'Asile, Forum réfugiés-Cosi) have deplored the adoption of the immigration and refugee law of 2018, depicting it as a downturn of rights and infringement to humanitarian principles. In this paper, I contend that this legal reform has drastically downgraded the rights of migrants, mostly asylum seekers and rejected asylum seekers, who find themselves in precarious situations. Furthermore, I argue that the 2018 immigration law is opposing France's human rights ethos and founding principles.

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<sup>34</sup> See [Loi n° 2015-925 du 29 juillet 2015 relative à la réforme du droit d'asile](#), JO, 30 July 2015, n°0174; [Loi n° 2012-1560 du 31 décembre 2012 relative à la retenue pour vérification du droit au séjour et modifiant le délit d'aide au séjour irrégulier pour en exclure les actions humanitaires et désintéressées](#), JO, 1<sup>st</sup> January 2013, n°0001; [Loi n° 2011-672 du 16 juin 2011 relative à l'immigration, à l'intégration et à la nationalité](#), JO, 17 June 2011, n° 0139; [Loi n° 2007-1631 du 20 novembre 2007 relative à la maîtrise de l'immigration, à l'intégration et à l'asile](#), JO, 21 November 2007, n°270; [Loi n° 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration](#), JO, 25 July 2006, n° 170; [Loi n° 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité](#), JO, 26 November 2003, n° 274.

<sup>35</sup> [Loi n° 2018-778 du 10 septembre 2018 pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie](#), JO, 10 September 2018, n°0209 [Loi 2018].

The withdrawal of France's policies on migration seems to be aligned with the evolving hostile discourse on refugees and asylum. To better understand the transition on migration governance in France – particularly considering its membership and role in the EU – it is necessary to have an overview of both EU migration regulations applicable in every member-State and French migration regulations prior to addressing restrictive legal patterns in France with regard to asylum.

### **Asylum: A Complex Right in Constant Evolution**

There is a distinction between asylum seekers, refugees and rejected asylum seekers. The term “asylum” comes from the Latin *asylum* and the Greek *asylon*, both meaning inviolable place, therefore referring to sanctuaries and religious places that one cannot pillage. Today, asylum is an international legal protection granted by States to individuals seeking refuge from unlawful persecutions (i.e. based on race, nationality, religion, membership to a particular social group, or political opinion).<sup>36</sup>

Asylum seekers are individuals who, after leaving their country, have reached another state where they request protection. They are called asylum seekers until a decision has been made. Refugees are individuals who have obtained protection by a state other than their country of origin, whereas rejected asylum seekers are those who have not obtained such protection. As mentioned above, the UN Refugee Convention of 1951 and the UN New York Protocol Relating to the Status of Refugee of 1967 form the basis of international refugee law, and all state parties must abide under their principles. EU States must thus follow both IRL and EU law (A), which is to be supplemented by national law (B).

*EU's Asylum Policies: The Construction of a 'Protective' Wall, or the Balance between the de jure Obligations and the de facto Realities*

After World War II, the European population aspired for peace, and migrant workers became central to economic reconstruction.<sup>37</sup> To overcome past rivalry among States, Europeanist movements started to emerge. For instance, as stated above, the Treaty of Rome of 1957 introduced the principle of

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<sup>36</sup> Article 1(a)(c), *Refugee Convention*, *supra* note 10.

<sup>37</sup> Geddes & Scholten, *supra* note 16 at 8.

freedom of movements for workers in the EU.<sup>38</sup> While migration was an important economic growth factor, the EU soon shifted its policies towards a 'managed' approach of migration flows. In the late 1980s and early 1990s, legislation was adopted to enhance the control of arriving migrants and asylum seekers: (1) the aforementioned Schengen Agreement of 1985<sup>39</sup> led to the abolishment of internal border controls to reinforce external border controls; (2) the first Dublin Convention (Dublin I)<sup>40</sup> established the different criteria and mechanisms determining the Member State responsible for examining an asylum application; (3) the treaty of Maastricht created a common framework for entering conditions, circulation and stay within the EU;<sup>41</sup> and (4) the Treaty of Amsterdam<sup>42</sup> marked a transition in the communitarization of migration laws by incorporating into EU treaties the Refugee Convention and the European Convention on Human Rights (ECHR)<sup>43</sup> and transferring the competencies in migration and asylum from Member States to the EU.<sup>44</sup>

Through these laws – and their consolidated versions – the EU has restricted the movement of asylum seekers; individuals who intend to claim asylum in Europe are only allowed to request the international protection in one Member State. Therefore, if individuals see their claims rejected in one European State, they will not be able to request EU international protections.

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<sup>38</sup> Treaty of Rome, *supra* note 5.

<sup>39</sup> EC, *The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders*, [2000] OJ, L 239/19 [Schengen Convention].

<sup>40</sup> EC, *Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention*, [1997] OJ, C 254/1 [Dublin I].

<sup>41</sup> EC, *Treaty on European Union*, [1992] OJ, C 191/1 [TEU].

<sup>42</sup> EC, *Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts*, [1997] OJ, C 340/1 [Treaty of Amsterdam].

<sup>43</sup> *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, 213 UNTS 221 at 223 (entered into force 3 September 1953) [ECHR].

<sup>44</sup> Petra Bendel, "Contemporary Politics Of International Protection In Europe: From Protection To Prevention" in Agnieszka Weina, Saskia Bonjour & Lyubov Zhyznomirska, eds, *The Routledge Handbook of the Politics of Migration in Europe* (Oxon: Routledge, 2019) 293 at 294.

See also: Heschl, *supra* note 9 at 18.

In 2000, the EU created the “Eurodac” system<sup>45</sup> to facilitate the applicability of the Dublin I.<sup>46</sup>

Be that as it may, one cannot deny the growing protectionism of European asylum policies. Member States have progressively hardened their asylum proceedings and closed their national borders. Some authors have argued that the restrictive migration and asylum policies adopted by the EU have resulted in an increase in smuggling and a degradation of human rights.<sup>47</sup>

As such, there has been a progressive harmonization of European migration and asylum laws; Member States came to understanding that an effective response to managing migration requires a common answer.<sup>48</sup> In the 2000S, the EU adopted the first generations of European regulations and directives: (1) the asylum procedures directive;<sup>49</sup> (2) the reception conditions directive;<sup>50</sup> (3) the qualification directive;<sup>51</sup> (4) the Schengen

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<sup>45</sup> EC, Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention, [2000] OJ, L 316/1 [Eurodac].

<sup>46</sup> “Eurodac” gives access to a digital fingerprints file, which allows for the comparison of fingerprints of asylum seekers between all EU States. However, the creation of such file has brought about various issues as regards refugees; for instance, to circumvent the Dublin process, numerous individuals burnt their fingerprints to be untraceable.

<sup>47</sup> Elena Sanchez-Monijano & Albert F. Arcarons, “Southern Europe” in A. Triandafyllidou & M.L. McAuliffe, eds, *Migrant Smuggling Data and Research: A global review of the emerging evidence base*, vol. 2 (Geneva, IOM, 2014) at 109 & 112-113.

<sup>48</sup> See EC, *Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions: A European Agenda On Migration*, [2015] OJ, COM(2015) 240 [EAM].

<sup>49</sup> EC, Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, [2005] OJ, L 326/13.

<sup>50</sup> EC, Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, [2003] OJ, L 31/18.

<sup>51</sup> EC, Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, [2004] OJ, L 304/12.

Border Code (SBC);<sup>52</sup> (5) the regulation creating Frontex<sup>53</sup> to increase border security and restrictive immigration measures, progressively developing a common asylum system; and (6) the Treaty of Lisbon, which fully supranationalized immigration policy into the realm of EU laws and finalized the advent of the Common European Asylum System (CEAS).<sup>54</sup> This legislation introduced pioneering concepts, namely the subsidiary protection that allows to fill the void of the Refugee Convention as regards the limited refugee status, the notion of 'safe third country' (STC) that subjectively allows States to deem inadmissible an asylum claim and to send refugees back to the first safe country they have reached, and the notion of 'safe country of origin' (SCO) that allows States to place claimants in accelerated proceeding based on the unfounded characteristic of an asylum claim.

Another set of directives and regulations, often referred to as the 'Asylum Packet', was adopted in the 2010s: (1) the

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<sup>52</sup> EC, Regulation [562/2006](#) of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), [2006] OJ, L 105/1 [SBC].

This code was meant to complement the Schengen Acquis. It also includes rules on the measures and powers of authorities controlling the movement of persons at the external borders of the EU. See Evelien Brouwer, "Extraterritorial Migration Control and Human Rights: Preserving the responsibility of the EU and its Member States" in Bernard Ryan & Valsamis Mitsilegas, eds, *Extraterritorial Immigration Control: Legal Challenges*, (Leiden: Martinus Nijhoff Publishers, 2010) 199 at 205.

<sup>53</sup> EC, Council Regulation of 26 October 2004 No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, [2004] OJ, L349/1.

In 2016, Frontex became a fully-fledged European Border and Coast Guard Agency (its mandate was extended). See: EC, Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, [2016] OJ, L 251/1.

<sup>54</sup> Luedtke, *supra* note 12 at 22.

See also: Geddes & Scholten, *supra* note 6 at 153; Christophe Pouly, « L'eupéanisation du droit d'asile : 2003-2016 » [2016] 165 *Migration Société* 106 at 111.

qualification directive;<sup>55</sup> (2) the procedure directive;<sup>56</sup> (3) the reception directive;<sup>57</sup> and (4) the Dublin III regulation.<sup>58</sup> The latter regulation was supposedly the keystone of the CEAS, directed at controlling the flow of asylum seekers and refugees within the EU. Yet, this regulation has caused numerous tensions and conflicts for being unequal in nature. The Dublin procedure requires asylum seekers to claim asylum in the first EU country they have reached. States at the borders are swamped with asylum applications. For instance, Italy reported in 2012 that 4,665 asylum seekers were transferred back to its territory in application of the Dublin Convention while only 14 were resettled – a ratio of 1: 333.<sup>59</sup>

As I mentioned above, asylum seekers entering the EU have to claim asylum in the first country they reached, i.e. they cannot freely choose where to request asylum. In application of Dublin III, individuals who have already claimed asylum in the first country they have reached, and nonetheless continued their journey to request asylum in another Member States, have to be sent back there within 6 months.<sup>60</sup> If a claimant is considered on the run, the time transfer can be prolonged to 12 additional months.<sup>61</sup> In such a case, at the end of the 18 months, individuals are allowed to claim asylum in a “new” country. For instance, let us assume an individual enters the EU through State A, where he

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<sup>55</sup> EC, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, [2011] OJ, L 337/9.

<sup>56</sup> EC, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, [2013] OJ, L 180/60.

<sup>57</sup> EC, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, [2013] OJ, L 180/96.

<sup>58</sup> EC, Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, [2013] OJ, L 180/31.

<sup>59</sup> Jöhrh Monar, “Justice and Home Affairs” (2013) 51:S1 J Common Market Studies 124 at 125.

<sup>60</sup> “Dublin III: Calcul des délais, opportunité du recours contre le transfert, et notion de « fuite »” (2017) at 1, online (pdf) : La Cimade <<https://www.lacimade.org/wp-content/uploads/2017/12/d%C3%A9lais-et-opportunit%C3%A9-du-recours-nov-2017.pdf>>[Délai Dublin III].

<sup>61</sup> *Ibid.*



will claim asylum at the border (and so will be registered in the Eurodac System), but continues his journey to State B, where he will claim asylum once again. In application of Dublin III, State B has 6 months to send the individual back to State A, where the asylum claim has to be processed. If the individual does not report to authorities in State B for his transfer to State A, State B will be allowed to declare the individual on the run. State B will then have an additional 12 months to transfer the individual to State A (which is equivalent to a total of 18 months). Past the 18 months, the asylum claim in State A will be dropped and the individual will be allowed to claim asylum in State B.

One could argue that asylum seekers within the EU have a certain degree of 'choice' as to where they claim asylum, once they pass the 18 months period. Yet, the situation in which they find themselves during those 18 months is far from convenient and is rather precarious and uncertain.

#### France's asylum policies: The Emphasis of a Dissuasive Attitude

The right to claim asylum in France was possible even before the adoption of the Refugee Convention by France in 1952.<sup>62</sup> In an attempt 'to make France with foreigners,'<sup>63</sup> France historically positively encouraged immigration to remedy the low levels of population growth<sup>64</sup> and protected refugees fleeing persecutions. Already in the Constitution of 1793, the right of asylum was recognized and protected in Article 120: *Le peuple français donne l'asile aux étrangers bannis de leur patrie pour la cause de la liberté. Il le refuse aux tyrans.*<sup>65</sup> Although this document was never applied due to internal tensions, the idea of

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<sup>62</sup> OFPRA, « Histoire de l'asile » [2018], online: <<https://www.ofpra.gouv.fr/fr/histoire-archives/histoire-de-l-asile>> [OFPRA, "Histoire de l'Asile"].

<sup>63</sup> Catherine Wihtol de Wenden, "France" in Anna Triandafyllidou & Ruby Gropas, eds, *European Immigration: A Source Book* (Farnham: Ashgate, 2014) at 135 [Wihtol de Wenden, "France"].

<sup>64</sup> Geddes & Scholten, *supra* note 6 at 51.

<sup>65</sup> Meaning: *The French people give asylum to foreigners banished from their homeland for the cause of liberty. He refuses it to tyrants.*  
See OFPRA, "Histoire de l'Asile", *supra* note 63.

asylum was instituted in the Preamble of the Constitution of 1946,<sup>66</sup> to which the Preamble of the Constitution of 1958 refers.<sup>67</sup>

By a law of 1952,<sup>68</sup> France adopted a national system in charge of examining asylum claims. On the one hand, the *Office Français de Protection des Réfugiés et des Apatrides* (OFPRA, French Office for the Protection of Refugees and Stateless Persons) was created as a public administrative institution in charge of processing asylum claims, and on the other hand, the *Commission des Recours des Réfugiés* (CRR, Commission of Appeal for Refugees). The latter was reformed by a law of 2007.<sup>69</sup> The CRR became the *Cour National du Droit d'Asile* (CNDA, National Court of Asylum Law), a full administrative jurisdiction in charge of every plea against an OFPRA decision. Today, the core asylum of French asylum law is engraved in the *Code de l'Entrée et du Séjour des Étrangers et du Droit d'Asile* (CESEDA, Code of Entry and Residence of Aliens and the Right to Asylum).

It is interesting to note that until the 1980s, most asylum claims were granted. In 1976, 95% of claimants were granted the status of refugees, which represents about 15,500 refugees.<sup>70</sup> However, in the 1980-90s, a shift in policies was made as institutions proceeding asylum claims became congested.<sup>71</sup> Progressively, restrictions were taken in order to reduce the number of claimants granted the status of refugees and measures were adopted to reduce the time inquiry of claims. As such, asylum seekers lost their automatic authorization to work as well as housing benefits, consequently putting asylum seekers in precarious situations. Nevertheless, the *Centres d'Accueil des Demandeurs d'Asile* (CADA, Reception Center for Asylum

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<sup>66</sup> *Tout homme persécuté en raison de son action en faveur de la liberté a droit d'asile sur les territoires de la République.* See France, Assemblée nationale constituante, *Constitution de la République Française*, 27 October 1946, Preamble. Meaning: Anyone persecuted because of his/her action for freedom has a right to asylum on all territories of the Republic [of France].

<sup>67</sup> OFPRA, "Histoire de l'Asile", *supra* note 63.

<sup>68</sup> Loi n° 52-893 du 25 juillet 1952 portant création d'un office français de protection des réfugiés apatrides, JO, 25 July 1952, 7642.

<sup>69</sup> [Loi n° 2007-1631 du 20 novembre 2007 relative à la maîtrise de l'immigration, à l'intégration et à l'asile](#), JO, 21 November 2007, n° 270.

<sup>70</sup> "Gisti, « Droit d'asile : ça se durcit d'année en année »" [2017], online : <https://www.revue-ballast.fr/gisti-lasile/> [Gisti Droit d'Asile]. See also: Basma Ben Mansour et al, « L'asile en chiffres » [2005], 65-66 : 2-3 *Plein Droit* 53 at 53 ; Jean-Pierre Alaux, « L'asile dans le pot commun de l'immigration » [2004], 59-60 *Plein Droit*.

<sup>71</sup> *Gisti Droit d'Asile*, *supra* note 71.

Seekers) were created to receive asylum seekers during the whole time of the proceedings. France has gradually confined itself to a dissuasive system, as evidenced by a drop of the number of asylum claims and refugees.

Today, the journey to claim asylum in France is full of pitfalls and is rather confusing. It is therefore necessary to have a brief overview of such proceedings.<sup>72</sup> Upon arriving on French soil, asylum seekers have to contact a pre-reception association that will set up an appointment at the *guichet unique* (unique counter) in the next few days (3 to 10 days). At the *guichet unique*, individuals will register for asylum application at the *Préfecture*, which will determine whether Dublin III is applicable and what procedures to follow (normal or accelerated tracks), and an officer from the *Office Français de l'Immigration et de l'Intégration* (OFII, Office of Immigration and Integration) will evaluate the personal situation of asylum seekers to determinate their need of housing. While the OFII is responsible for the reception scheme, the *Préfecture* serves as gatekeeper to the asylum procedure<sup>73</sup>. However, to better apply Dublin III the *Préfecture* (Prefecture) has the power to place foreigners under house arrest until the responsible Member State has been determined. The asylum claim must then be sent to the OFPRA within 21 days following the registration at the *Préfecture* for review of the merits of the asylum application under both procedures.<sup>74</sup> Asylum seekers who have claimed asylum in France will not be allowed to work within 6 months of the date of asylum application.<sup>75</sup> Under certain conditions, asylum seekers can

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<sup>72</sup> Forum Réfugiés, « La procédure de demande d'asile expliquée » [2018], online: Forum Réfugiés / Così <<http://www.forumrefugies.org/s-informer/procedure-de-demande-d-asile-en-france>>; OFPRA, « Guide des Procédures à l'OFPRA » [2015], online (pdf): OFPRA <[https://www.ofpra.gouv.fr/sites/default/files/atoms/files/guide\\_de\\_procedure\\_ext\\_web\\_10-11-2015\\_vd.pdf](https://www.ofpra.gouv.fr/sites/default/files/atoms/files/guide_de_procedure_ext_web_10-11-2015_vd.pdf)> [Guide OFPRA].

<sup>73</sup> Rita Haverkamp, "Immigration of Refugees into Northwest Europe: Austria, Belgium, France, Germany, the Netherlands, and the United Kingdom" in Helmut Kury & Slawomir Redo, eds, *Refugees and Migrants in Law and Policy* (Cham: Springer, 2018) 37 at 52.

<sup>74</sup> *Ibid.*

<sup>75</sup> Art. L744-11, R742-1 – R742-5, *Code de l'Entrée et du Séjour des Étrangers et du Droit d'Asile* [CESEDA]; EC, *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection*, [2013] OJ, L 180/96.

request the *allocation pour demandeur d'asile* (ADA, allowance for asylum seekers).<sup>76</sup>

There are two types of proceedings: the normal track and the accelerated track.<sup>77</sup> The normal proceeding imposes on the OFPRA to give a decision within 6 months of the asylum registration, with a possibility to extend the time up 21 months under certain circumstances.<sup>78</sup> The accelerated proceeding implies that the OFPRA will give its decision in a relatively short time; there are various reasons why claimants can be placed in such tracks (for example, if the claimant comes from a SCO). At the end of the any proceeding, the claimants will get a decision: they are either granted the status of refugee or rejected. If rejected, claimants have the right to form an appeal before the CNDA within one month of the rejection notification of the OFPRA. Under the normal track, the Court must rule on the appeal within five months, whereas under accelerated track, the length is of five weeks. If the decision is favorable, the claimant will be afforded the status of refugee. If the decision is unfavorable, the claimant will be rejected from asylum and will be asked to leave the country. The rejected asylum seekers can appeal the decision of the CNDA before the *Conseil d'Etat* (CE, State Council) within two months. It is important to note two things however: first, the appeal does not give the claimant the right to stay, and, second, only legal rules (procedural, jurisdiction, error in the interpretation of asylum legislations, or statement of reasons of the decision) will be examined by the CE.

To keep in line with the protectionist approach, the French Government under President Macron – that is, the Macron Government – has proposed a reform on asylum and immigration laws, which has further led to the adoption of a new law on September 10, 2018, in favor of a controlled immigration, an effective asylum law and a successful integration (*loi asile et immigration*, asylum and immigration law).<sup>79</sup> This new law has

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<sup>76</sup> Art. L744-9 & L744-10, D744-17 – D744-30, D744-31 – D744-40, CESEDA.

<sup>77</sup> *Guide OFPRA*, *supra* note 73.

<sup>78</sup> See Service Public, « Demande d'asile : instruction par l'OFPRA » [2017], online: Service-Public.fr < <https://www.service-public.fr/particuliers/vosdroits/F15376> >

<sup>79</sup> Loi 2018, *supra* note 15.

restricted the right to asylum, criminalized irregular migration, encouraged and facilitated the economic migration.<sup>80</sup>

When the bill was put to the vote by the *Conseil des Ministres* (Council of Ministers) on February 21, 2018, numerous associations defending the rights of refugees had expressed their concerns and indignation.<sup>81</sup> Although profuse modifications in the margin were made on the initial bill, the very essence has been maintained in the final version. Notwithstanding some positive changes, such as the multi-year residence card or the right to request a resident permit alongside the asylum claim, the core principle of the reform has led to an increase of restrictions, controls and limits to asylum application procedures.

For instance, the Government has advocated for a reduction of the procedure time. Asylum seekers now have 90 days (60 in Guyana), instead of 120,<sup>82</sup> to apply for asylum from the day they have entered in France. One could consider it a good proposition in the sense that the decision would be made faster; and yet, in reducing the procedure time, claimants, who do not necessarily speak French or English, become even more vulnerable to the complex French administrative system. If the 90-day limit is passed, claimants will still be able to apply for asylum but will automatically undertake the accelerated track,<sup>83</sup> considerably reducing their chances of being granted asylum. The initial project aimed at reducing the appeal deadline from 30 to 15 days, but the *Sénat* (Senate) voted to maintain the 30-day deadline.<sup>84</sup> However, claimants will only be able to apply for legal aid within the 15 days following the OFPRA decision. In this amount of time, claimants have to file their request, find a lawyer and sometimes an interpreter, in addition to the everyday struggle of 'living' in a foreign country. The shortening of the procedure time illustrates France's intention to control refugee flows in

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<sup>80</sup> See La Cimade, « Décryptage du projet de loi asile et immigration » [2018], online: *La Cimade* <<https://www.lacimade.org/decryptage-projet-de-loi-asile-immigration/>> [La Cimade, « Décryptage du projet de loi »].

<sup>81</sup> See Gisti, « Genèse de la loi Collomb du 10 septembre 2018 « pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie » », online: *Gisti* <<http://www.gisti.org/spip.php?article5841#som>>

<sup>82</sup> Art. 6, Loi 2018 *supra* note 36.

<sup>83</sup> *Ibid.*

<sup>84</sup> François Vignal, « Asile : le Sénat maintient à 30 jours, contre 15, le délai de recours pour les demandeurs » [2018], online : *Public Sénat* <<https://www.publicsenat.fr/article/politique/asile-le-senat-maintient-a-30-jours-contre-15-le-delai-de-recours-pour-les>>

limiting and preventing claimants from forming a valid and well-constructed asylum application.

Another element regarding the 2018 reform is the reinforcement of the removal policies for rejected-asylum seekers in doubling the maximum time in administrative retention (from 45 to 90 days),<sup>85</sup> without even mentioning the case of minors. In that regard, the European Court of Human Rights (ECtHR) has sentenced France six times for “inhumane and degrading treatment.”<sup>86</sup> The High Commission for Refugees (HCR) has emphasized that the revocation of liberty can never be in the best interest of the child,<sup>87</sup> and yet, living conditions in detention centers are more than modest and individuals’ rights are reduced,<sup>88</sup> notwithstanding the fact that those individuals are not criminals. In acting so, the revocation of liberty over individuals appears completely disproportionate to what is at stake for the government – if one considers the control of refugee flow a stake.

Overall, the 2018 immigration and refugee reform brought by the Macron Government illustrate a decline in the effectiveness of the right to asylum and a deterioration of the rights asylum seekers are entitled to. Asylum seekers and rejected-asylum seekers become *persona non grata* and are put in a vulnerable position. While positive economic migration, i.e. mostly talented migrants or investors, is highly encouraged and favored, humanitarian migration is increasingly deterrent. Consequently, some individuals in need of protection, namely asylum seekers and rejected-asylum seekers, find themselves in a precarious situation with limited rights. The latter rights will be further explained in the following section.

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<sup>85</sup> Art.29, Loi 2018, supra note 36.

<sup>86</sup> *Popov v France*, No °39472/07 et 39474/07, ECHR 2012 (19 January 2012); *A.B and others v France*, No 11593/12, ECHR 2016 (12 July 2016); *R.C. et V.C v France*, No 76491/14, ECHR 2016 (12 July 2016); *R.K. and others v France*, No 68264/14, ECHR 2016 (12 July 2016); *R.M and others v France*, No 33201/11, ECHR 2016 (12 July 2016); *A.M and others v France*, No 24587/12, ECHR 2016 (12 July 2016).

<sup>87</sup> High Commissioner for Refugees, “Note du HCR sur le projet de loi pour une immigration maîtrisée et un droit d’asile effectif” (5 March 2018), online (pdf): UNHCR – UN High Commissioner for Refugees <[https://www.ecoi.net/en/file/local/1427109/1930\\_1521535338\\_5aabdf4a4.pdf](https://www.ecoi.net/en/file/local/1427109/1930_1521535338_5aabdf4a4.pdf)>

<sup>88</sup> La Cimade, « Décryptage du projet de loi »

## **Asylum: A Not So Guaranteed Fundamental Human Right**

*“Liberté, Égalité, Fraternité”* (Liberty, Equality, Fraternity). These three words are proof of the history; three words that carry a heavy meaning; three words that have a particular moral; three words that represent fundamental values. These three words are the founding principles of the French Republic, they are the witnesses of the Human Rights Homeland that France is. As major protagonist of the Universal Declaration of Human Rights (UDHR),<sup>89</sup> France has always given great importance to fundamental human rights, such as dignity, liberty, equality, life, and non-discrimination, without jeopardizing its development.

In 2017, President Macron promised “a France at the rendezvous of the development challenge.”<sup>90</sup> Yet, the question of refugees became object of division within the EU, especially considering the massive influx of migrants and refugees since 2015, in addition to the fear of extremism and terrorism, negative economic context, increase of nationalism, and loss of national identity. France put forward one justification of the migration and asylum reforms: the necessity to manage the influx of migrants and refugees. As explained above, France has thus, consolidated its institutions, leading to a decrease in the recognition of the refugee status. According to the French government, access to asylum has been restricted for administrative efficiency.<sup>91</sup>

In the current atmosphere, I argue that an emphasis is made on the distinction between economic migrants – that come to France to take advantage of the social regime – and refugees – that are fleeing war and persecution, and who therefore are entitled to the international protection.<sup>92</sup>

The situation of France as of today is rather unstable and not suitable for a positive immigration policy. There clearly is an

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<sup>89</sup> *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.

<sup>90</sup> Emmanuel Macron, « Le discours de Ouagadougou d’Emmanuel Macron » [2017] online: *Le Monde* <[https://www.lemonde.fr/afrique/article/2017/11/29/le-discours-de-ouagadougou-d-emmanuel-macron\\_5222245\\_3212.html](https://www.lemonde.fr/afrique/article/2017/11/29/le-discours-de-ouagadougou-d-emmanuel-macron_5222245_3212.html) >

<sup>91</sup> Didier Fassin & Caroline Kobelinsky, “How Asylum Claims Are Adjudicated: The Institution as a Moral Agent” (2012) 53: 4 *Revue française de sociologie* 444 at 450 & 451.

<sup>92</sup> Antoine Paumard, “L’accueil des migrants en France : Les associations en conflit avec l’Etat” [2018] 4 *Etudes* 33 at 35.

economic paradigm at stake. On the one hand, the population is unhappy with social realities, as demonstrated by the “Gilets jaunes” movement,<sup>93</sup> and, on the other hand, citizens have other priorities that welcoming migrants and refugees. The weariness of the people led to a ‘crisis of integration’ and the rise of the far-right political party, the *Front National* (FN).<sup>94</sup>

The premise is that the Macron Government has other priorities: the social instability within France, the precarious situation of the EU, the rise of nationalisms, the fight against terrorism, and the continuous security issue.<sup>95</sup> Migrants and refugees are not on the top of Macron’s agenda, and their situation is everything but of interest. However, studies have demonstrated that migrants do participate in the economic development of countries.<sup>96</sup> Yet, a categorization can become pernicious when leading to a classification of refugees according to different criteria, such as national origin without fair consideration of their personal situation.

The 2018 reforms, as pointed out, is evidence of a selective policy with utilitarian and discriminatory basis. What then of the fundamental principles France always claims to be defending and putting forward? What to say about the motherland of human rights that does not even respect its own founding principles and ethos in human rights when restricting the access to asylum (A) or increase the rejection from the said right (B)?

### *Access to Asylum Restrictions*

The right to asylum is a fundamental right protected at various levels; at the international level, the Refugee Convention of 1951 is the founding text that is to be prioritized over national

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<sup>93</sup> See: “« Gilets jaunes » : le gouvernement face à la mobilisation”, online: *Le Figaro* <<http://www.lefigaro.fr/actualite-france/dossier/hausse-des-carburants-manifestation-des-gilets-jaunes>>

<sup>94</sup> Geddes & Scholten, *supra* note 6 at 53.

The *Front National* became the *Rassemblement National* in 2018.

See also: Ulrike Schuerkens, “France” in Anna Triandafyllidou, ed, *European Immigration: A Sourcebook* (London: Routledge, 2017) 113 at 114.

<sup>95</sup> See EM !, « Le programme d’Emmanuel Macron », online: EM ! <<https://en-marche.fr/emmanuel-macron/le-programme>>

<sup>96</sup> Frédéric Cherbonnier, « Pourquoi la France doit s’ouvrir aux migrants », [2018], online: *Les Échos* <<https://www.lesechos.fr/idees-debats/cercle/0301329085770-pourquoi-la-france-doit-souvrir-aux-migrants-2155442.php>>



laws; at the European level, the European Convention on Human Rights<sup>97</sup> and the Charter of Fundamental Rights of the European Union<sup>98</sup> both consecrate the fundamental right to asylum; at the national level, the Constitution of 1958<sup>99</sup> announces the constitutional characteristic of the right to asylum. That being said, the right to asylum is strongly protected by numerous legal mechanisms. Yet, in reality, accessing asylum in France appears to be quite complicated.

One of the most important core principles of the Republic of France is equality. Before anything else, a distinction must be made between *l'Etat de droit* (rule of law) and *l'Etat nation* (nation state). On the one hand, *l'Etat de droit*<sup>100</sup> implies supremacy of the law, founded on the principle of respect of the judicial norms, which applies to all, individuals and public authority. *L'Etat de droit*, in that sense, indicates a universal recognition of human rights. On the other hand, *l'Etat nation*<sup>101</sup> conveys the idea of a national identity of a legitimate population on a national territory; the notion is rather political, characteristic of an authority whose sovereignty is directly emanating from its citizens. In that sense, *l'Etat nation* indicates the possible limits on the recognition of human rights to the nation of a state.

Coming back to the principle of equality,<sup>102</sup> it supposes that all individuals are equal, i.e. they must be treated in the same way, with full dignity, and they must have the same rights and duties. In the case of asylum, the principle of equality mainly refers to the prohibition of discrimination and arbitrariness, the access to justice and the respect of the right of defense, and the guarantee of equal chances between claimants. Thus, it means that all asylum seekers must (and should) have the same chances in obtaining asylum, without prejudices and distinctions. It brings about the

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<sup>97</sup> ECHR, *supra* note 44.

<sup>98</sup> EC, *Charter of Fundamental Rights of the European Union* [2012] OJ, C 326/391.

<sup>99</sup> France, référendum, *Constitution du 4 octobre 1958 instituant la Ve République française*, 4 octobre 1958.

<sup>100</sup> See « Qu'est ce que l'Etat de droit ? » [2018], online: Vie-publique <<http://www.vie-publique.fr/decouverte-institutions/institutions/approfondissements/qu-est-ce-que-etat-droit.html>>

<sup>101</sup> See « Etat-nation », online: UNESCO <<http://www.unesco.org/new/fr/social-and-human-sciences/themes/international-migration/glossary/nation-state/>>

<sup>102</sup> See « Principe d'égalité et droit de la non-discrimination » [2015], online: Conseil d'Etat <<http://www.conseil-etat.fr/Actualites/Discours-Interventions/Principe-d-egalite-et-droit-de-la-non-discrimination>>

notion of objectivity when adjudicating an asylum claim. Yet, is asylum not entirely based on subjectivity? In the judicial system, the presumption of innocence is an essential feature. One is deemed innocent until proven otherwise. However, the logic has been reversed in the case of asylum seekers; there is a forever increasing logic of suspicion towards claimants who are deemed potential irregular migrants rather than asylum seekers with a valid claim.<sup>103</sup>

Regarding the notion of equality, I want to apprehend two notions: the accessibility means to asylum and the safe country of origin categorization. To guarantee the means to access asylum, national systems need to give significant means to claimants to share their fears and the reasons they are or will be persecuted. It therefore implies understanding the procedures, not fearing to be prematurely sent back, being able to talk in one's own language, and so on.

I shall highlight one reform of the 2018 law: the systematization of videoconference without the claimant's consent.<sup>104</sup> The justification put forward by the Government is the dignity of individuals who had to be brought before courts. However, technical difficulties are still encountered when using videoconferencing<sup>105</sup>, such as brief power cuts or interval between the questions and the answers. Moreover, with regard to the exchange between the claimant and the officer, the corporal language is an important element to take into consideration. Yet, the banalization of videoconferencing jeopardizes the chances of claimants to properly convince the judge by putting an unnecessary and prejudicial distance, which can lead to a loss of emotion, yet strongly present in any asylum claim, and a dehumanization of debate. The trivialization of videoconferencing therefore impinges on the right to access justice.

Secondly, individuals originating from countries regarded as safe automatically fall under the accelerated procedure,

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<sup>103</sup> « Asile et preuve : de la suspicion à la conviction » [2014], online (pdf): *Espoir d'asile*

<<http://www.espoirdasile.org/images/uploaded/ASILE%20ET%20PREUVE%203%20MARS%202014.pdf>>

<sup>104</sup> Art. 6, 9, 12 & 16, Loi 2018, *supra* note 36.

<sup>105</sup> Christian Licoppe, « L'asile par visioconférence » [2016] 110: 3 *Plein droit* 20 at 21.

meaning the OFPRA has 15 days to pronounce its decision<sup>106</sup> (versus 6 months in regular procedure).<sup>107</sup> The asylum claim of individuals coming from SCO is therefore presumed manifestly unfounded on the simple assumption of national origin. Asylum is an individual right everyone is entitled to, without discrimination; yet, in assuming individuals coming from SCO do not have a valid claim and hence placing them in accelerated procedure, is the French government not violating the principle of equality by not providing with the same access to justice to all claimants and not guaranteeing them the same chances of obtaining asylum by openly discriminating them based on their national origin? Additionally, when filing an appeal before the CNDA, the claim will be adjudicated by a single judge – unlike the collegial formation of the regular procedure – within 5 weeks<sup>108</sup> – against 5 months in regular procedure.<sup>109</sup> Now let me ask, how are these differences of time and adjudication witnesses of treatment of equality? Besides, SCO claimants do not have the right to remain on the French territory – as the appeal is non-suspensive<sup>110</sup> – meaning the case follow-up will be complicated, if not impossible, for those individuals who appear to be deprived from equal protection before the law. After developing how asylum seekers appear to be *persona non grata*, elaborating on the issue of rejected asylum seekers promise to be a debatable issue.

### *The Rejection of Dismissed Asylum Seekers*

When claimants have used all remedies possible against negative decisions from both the OFPRA and the CNDA, they become rejected asylum seekers. Asylum dismissal is often times

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<sup>106</sup> L'Asile en France, « La procédure dite "accélérée" », online: L'Asile en France <[http://asile-en-france.com/index.php?option=com\\_content&view=article&id=27&Itemid=183](http://asile-en-france.com/index.php?option=com_content&view=article&id=27&Itemid=183)>[Procédure Accélérée].

<sup>107</sup> L'Asile en France, « La procédure dite "normale" », online: L'Asile en France <[http://asile-en-france.com/index.php?option=com\\_content&view=article&id=26&Itemid=182](http://asile-en-france.com/index.php?option=com_content&view=article&id=26&Itemid=182)>[Procédure Normale].

<sup>108</sup> Procédure Accélérée, *supra* note 107.

<sup>109</sup> Procédure Normale, *supra* note 108.

<sup>110</sup> Procédure Accélérée, *supra* note 107.

A non-suspensif appeal means that the previous decision is not suspended, i.e. the appeal does not temporarily revoke the execution of the previous judgment. In the case of asylum, it means that, even if the claimant appeals the decision of the court to reject his asylum claim (which goes along an obligation to leave the territory), the obligation to leave the French territory will not be suspended, and so the claimants will have to leave France.

accompanied by an *obligation de quitter le territoire français* (OQTF, obligation to leave the French territory), meaning they become irregular migrants obligated to leave the French territory. In 2016, the estimated annual number of rejected asylum seekers in France was of 40,000.<sup>111</sup> In its Refugee Guide of 2015, the OFPRA specifies that dismissed asylum seekers will be taken to the frontier by the police, with a possible prior placement in administrative retention<sup>112</sup> or house arrest.

Before going any further, the notions of retention or house arrest bring about the issue of liberty. Liberty is to be understood as a state of non-dependence and non-constraint, hence a state of autonomy and freedom of individuals. Individual liberty is the right to which all human beings are entitled to act freely, without discrimination and discriminatory measures, and that any restriction on such right must be proportionate and not detrimental to dignity. According to the principle of liberty, prior to placing someone in detention, the decision of deprivation of liberty must be taken without a judicial decision. In the case of rejected asylum seekers, it means the decision to place someone in retention or under house arrest has to be taken by the *juge des libertés et de la detention* (JLD, Judge of freedoms and detention). However, in practice, it is evident that rejected asylum seekers are placed under house arrest or in retention following their dismissal, without a judicial decision beforehand.

I want to apprehend two notions attached to the concept of liberty: the placement in house arrest or administrative retention and the removal of migrants. Yet, first, it is important to understand the situation in which some individuals can find themselves in at that moment of the procedure; because the asylum claim can be a long process for certain individual and sometimes precarious, some claimants often work without a permit, which nevertheless illustrates some willingness of integration. None has been said in the 2018 law as regards regularization of undocumented workers; the only existent regulations in that regard is the Ministerial circular Valls of 2012<sup>113</sup> that provides for exceptional,

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<sup>111</sup> Amandine Rebourg, « Loi Asile et Immigration : déboutés du droit d’asile, et après ? » [2018], online: LCI <<https://www.lci.fr/societe/deboutes-du-droit-d-asile-et-apres-2075502.html>>

<sup>112</sup> Direction générale des étrangers en France, « Guide du Demandeur d’Asile en France » [2015], online (pdf): Ministère de l’Intérieur <[file:///C:/Users/User/Downloads/Guide-du-demandeur-asile\\_nov2015.pdf](file:///C:/Users/User/Downloads/Guide-du-demandeur-asile_nov2015.pdf)>

<sup>113</sup> France, ministère de l’Intérieur, *Circulaire n° NOR INTK129185C*, relative aux conditions d’examen des demandes d’admission au séjour déposées par

and rather unrealistic, regularization of migrant workers at the discretion of the prefect. In other words, such regularization seems highly unlikely for migrant workers. Asylum seekers have the opportunity to apply for a residence permit in parallel to their asylum claim,<sup>114</sup> but this request is *de facto* complicated to formulate.

When claimants are dismissed from asylum, they are served with an OQTF and can therefore be placed in retention or under house arrest until either they leave the territory or their status has been adjudicated legal; at the end of the retention, individuals can thus be sent back to their country or released. In that regard, the 2018 law has increased the duration of retention from 45 to 90 days.<sup>115</sup> The lengthening of retention could make one wonder of the intention behind it. And what could possibly be its justification? Placing individuals in retention center without a judicial decision violates the principle of liberty, more even when knowing that irregular stay has been depenalized by the Court of Justice of the EU (CJEU).<sup>116</sup> So, although being in an irregular situation can no longer be penalized, the France government nevertheless places rejected asylum seekers in retention, without a judicial decision beforehand. Thus, the fundamental principle of liberty, proudly defended by France, seems to be strictly limited to citizens; irregular migrants, in that sense, are no more than second-class individuals accountable before the law, deemed unworthy of this fundamental right. Being irregular is not a crime; yet, criminals appear to have more rights than irregular migrants under French law.

In addition to being placed in retention without a judicial decision, rejected asylum seekers can *de facto* be removed from France even prior to the intervention of the JLD. Indeed, the 2018 law has pushed back the time referral to the JLD to 48 hours,<sup>117</sup> meaning that irregular migrants can be placed in retention, without a judicial decision, up to 48 hours prior to referring their case to the JLD. Passed the 48 hours, the *Prefecture* must refer to the JLD prior to lengthening the retention time. It nevertheless

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des ressortissants étrangers en situation irrégulière dans le cadre des dispositions du code de l'entrée et du séjour des étrangers et du droit d'asile (28 Novembre 2012).

<sup>114</sup> Décryptage projet de loi, *supra* note 81.

<sup>115</sup> *Ibid.*

<sup>116</sup> *Hassen El Dridi alias Soufi Karim*, C-61/11, ECJ (28 April 2011); *Achighbabian*, C-329/11, ECJ (6 December 2011).

<sup>117</sup> Décryptage projet loi, *supra* note 81.

means that during those 48 hours, the removal of irregular migrants can be done free of any judicial decision. The role of the JLD is simply to control the procedure of the retention and adjudicate in favor or not of the extension of the retention.<sup>118</sup> In the case the judge esteems the placement in retention was illegal or that the procedure was illegally followed, then the concerned migrant will be released.<sup>119</sup> By lengthening the period prior to the JLD referral, the government has opened a door to removals without procedural controls, thus without a fair trial. In this situation, irregular migrants find themselves deprived of their right to defend their case, and so more generally deprived from accessing justice.

## Conclusion

“Liberté, Égalité, Fraternité”. Wonderful words, powerful words, meaningful words. Yet, France has unfortunately demonstrated what these words signify in the context of asylum and immigration—not much when it comes to asylum seekers and dismissed asylum seekers who appear to be second-class human beings in the eyes of the French government.

The increase in the number of migrants arriving in France since 2015 has favored the growing of hostilities in immigration and refugee policies; in managing the influxes, France has progressively assimilated refugees with migrants, as illustrated by the growing logic of suspicion of asylum seekers as being ‘bad’ economic migrants who do not have a valid claim of persecution but simply seek to take advantage of the French social system; doing so, one could wonder whether asylum seekers are not transformed into irregular migrants without intention on their behalf. Consequently, there has been a significant growth in the restriction on immigration and refugee policies; as the number of asylum seekers increases, the number of asylum status granted decreases.

Liberty and equality have been besmirched by hostile refugee and immigration policies. As for fraternity, an effort has been made on the side of the *Conseil Constitutionnel*

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<sup>118</sup> France Terre d’Asile, « La rétention administrative », online : *France Terre d’Asile* <<http://www.france-terre-asile.org/assistance-juridique-en-cra/flexicontent/que-faisons-nous/lintervention-en-retention-de-france-terre-dasile>>

<sup>119</sup> *Ibid.*

(Constitutional Council) who has tightly linked fraternity to solidarity, raising this notion to a normative principle with constitutional value. Indeed, the *Conseil Constitutionnel* has consecrated the principle of fraternity, by its decision on July 6, 2018.<sup>120</sup> France has long criminalized the offense of solidarity, i.e. helping and assisting irregular migrants; the *Conseil Constitutionnel* judged that such offense was unconstitutional if the individual assisting or helping irregular migrants did so without pecuniary interest. By establishing the principle of solidarity, the *Conseil Constitutionnel* has defended the notions of living together and common humanity. Yet, it appears fraternity is only applicable towards French citizens; when fraternity is to be expressed to foreigners in need of help and protection, it seems this principle no longer exists, and rather become the principle of hostility.

As for now, “the humanity, generosity and pragmatism”<sup>121</sup> promised by Macron are still missing in the implemented immigration and refugee policies. There is only hope France will stand by the principles it proudly defends and cherishes; there is only hope France will become the motherland of human rights it once was.

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<sup>120</sup> Cons const, 6 July 2018, Q.P.C., No2018 – 717/718.

<sup>121</sup> Emmanuel Macron, « Discours d’Emmanuel Macron à la cérémonie de naturalisation à la préfecture du Loiret » [2017], online: *Elysée* <<https://www.elysee.fr/emmanuel-macron/2018/01/09/discours-d-emmanuel-macron-a-la-ceremonie-de-naturalisation-a-la-prefecture-du-loiret>>

## **Bibliography**

### LEGISLATION

#### *European Union*

EC, *Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions: A European Agenda On Migration*, [2015] OJ, COM (2015) 240.

EC, *Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention*, [1997] OJ, C 254/1.

EC, *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*, [2003] OJ, L 31/18.

EC, *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*, [2004] OJ, L 304/12.

EC, *Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status*, [2005] OJ, L 326/13.

EC, *Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention*, [2000] OJ, L 316/1.

EC, *Council Regulation of 26 October 2004 No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*, [2004] OJ, L349/1.

EC, *Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for*



refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, [2011] OJ, L 337/9.

EC, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, [2013] OJ, L 180/60.

EC, Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, [2013] OJ, L 180/96.

EC, Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, [2013] OJ, L 180/31.

EC, Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, [2013] OJ, L 180/1.

EC, Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, [2011] OJ, L 304/1.

EC, Regulation [562/2006](#) of the European Parliament and of the Council of 15 March 2006 establishing a Community

*Code on the rules governing the movement of persons across borders (Schengen Borders Code), [2006] OJ, L 105/1.*

*EC, Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, [2016] OJ, L 251/1.*

*EC, Single European Act [1987] OJ, L 169/1.*

*EC, The Schengen acquis - Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, [2000] OJ, L 239/13.*

*EC, The Schengen acquis - Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, [2000] OJ, L 239/19.*

*EC, Treaty establishing the European Economic Community, 25 March 1957, 11957E (1 January 1958).*

*EC, Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, [1997] OJ, C 340/1.*

*EC, Treaty on European Union, [1992] OJ, C 191/1.*

#### *France*

*Code de l'Entrée et du Séjour des Étrangers et du Droit d'Asile [CESEDA], online: Légifrance<<https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158>>*

*Loi n° 2018-778 du 10 septembre 2018 pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie, JO, 10 September 2018, 0209.*

*Loi n° 2015-925 du 29 juillet 2015 relative à la réforme du droit d'asile*, JO, 30 July 2015, 0174.

*Loi n° 2012-1560 du 31 décembre 2012 relative à la retenue pour vérification du droit au séjour et modifiant le délit d'aide au séjour irrégulier pour en exclure les actions humanitaires et désintéressées*, JO, 1<sup>st</sup> January 2013, n° 0001.

*Loi n° 2011-672 du 16 juin 2011 relative à l'immigration, à l'intégration et à la nationalité*, JO, 17 June 2011, n° 0139;  
*Loi n° 2007-1631 du 20 novembre 2007 relative à la maîtrise de l'immigration, à l'intégration et à l'asile*, JO, 21 November 2007, n° 270.

*Loi n° 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration*, JO, 25 July 2006, n° 170; *Loi n° 2003-1119 du 26 novembre 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité*, JO, 26 November 2003, n° 274.

*Loi n° 52-893 du 25 juillet 1952 portant création d'un office français de protection des réfugiés apatrides*, JO, 25 July 1952, 7642.

*Loi n° 2007-1631 du 20 novembre 2007 relative à la maîtrise de l'immigration, à l'intégration et à l'asile*, JO, 21 November 2007, n° 270

## JURISPRUDENCE

### Europe

*A.B and others v France*, No 11593/12, ECHR 2016 (12 July 2016).

*A.M and others v France*, No 24587/12, ECHR 2016 (12 July 2016).

*Hassen El Dridi alias Soufi Karim*, C-61/11, ECJ (28 April 2011); *Achighbabian*, C-329/11, ECJ (6 December 2011).

*Popov v France*, No °39472/07 et 39474/07, ECHR 2012 (19 January 2012).

*R.C. et V.C v France*, No 76491/14, ECHR 2016 (12 July 2016).

*R.K. and others v France*, No 68264/14, ECHR 2016 (12 July 2016).

*R.M and others v France*, No 33201/11, ECHR 2016 (12 July 2016).

France

Cons const, 6 July 2018, Q.P.C., No2018 – 717/718.

## SECONDARY MATERIAL

### *Monographs*

Ghosh, Bimal, *Refugee and Mixed Migration Flows: Managing a Looming Humanitarian and Economic Crisis* (Cham: Palgrave Macmillan, 2018).

Mungiany, Roberta, *Frontext and Non-Refoulement: The International Responsibility of the EU*, Cambridge Studies in European Law and Policy (Cambridge: Cambridge University Press, 2016).

### *Books*

Camus, Jean-Yves & Nicolas Lebourg, *Far-Right Politics in Europe* (Cambridge: Harvard University Press, 2017).

Castels, Stephen & Nicholas Van Hear, "Root Causes" in Alexander Betts, ed, *Global Migration Governance* (Oxford: Oxford University Press, 2018) 287.

Geddes, Andrew & Peter Scholten, *The Politics of Migration and Immigration in Europe*, (London: SAGE Publications, 2016)

Haverkamp, Rita, "Immigration of Refugees into Northwest Europe: Austria, Belgium, France, Germany, the Netherlands, and the United Kingdom" in Helmut Kury & Slawomir Redo, eds, *Refugees and Migrants in Law and Policy* (Cham: Springer, 2018) 37.

Heschl, Lisa, *Protecting the Rights of Refugees Beyond European Borders: Establishing Extraterritorial Legal Responsibilities* (Cambridge: Intersentia, 2018).

Sanchez-Monijano, Elena & Albert F. Arcarons, « Southern Europe » in A. Triandafyllidou & M.L. McAuliffe, eds, *Migrant Smuggling Data and Research: A global review of the emerging evidence base*, vol. 2 (Geneva, IOM, 2014)

### Essays

Bendel, Petra, "Contemporary Politics Of International Protection In Europe: From Protection To Prevention" in Agnieszka Weina, Saskia Bonjour & Lyubov Zhyznomirska, eds, *The Routledge Handbook of the Politics of Migration in Europe* (Oxon: Routledge, 2019) 293.

Brouwer, Evelien, "Extraterritorial Migration Control and Human Rights: Preserving the responsibility of the EU and its Member States" in Bernard Ryan & Valsamis Mitsilegas, eds, *Extraterritorial Immigration Control: Legal Challenges*, (Leiden: Martinus Nijhoff Publishers, 2010) 199.

Chebel d'Appollonia, Ariane, "Xenophobia, Racism and the Securitization of Immigration" in Philippe Bourbeau, ed, *Handbook on Migration and Security* (Cheltenham: Elgar, 2017).

Haverkamp, Rita, "Immigration of Refugees into Northwest Europe: Austria, Belgium, France, Germany, the Netherlands, and the United Kingdom" in Helmut Kury & Slawomir Redo, eds, *Refugees and Migrants in Law and Policy* (Cham: Springer, 2018) 37.

Luedtke, Adam, "Migration Governance In Europe: A Historical Perspective" in Agnieszka Weina, Saskia Bonjour & Lyubov Zhyznomirska, eds, *The Routledge Handbook of the Politics of Migration in Europe* (Oxon: Routledge, 2019) 15.

Mitchell, Mark & Dave Russel, "Immigration, Citizenship and the Nation-State in the New Europe" in Brian Jenkins & Spyros Sofos, eds, *Nation and Identity in Contemporary Europe* (London: Routledge, 1996) 54.

Orchard, Phil, "The Historical Development of Refugee Protection In Europe" in Agnieszka Weina, Saskia Bonjour & Lyubov Zhyznomirska, eds, *The Routledge Handbook of the Politics of Migration in Europe* (Oxon: Routledge, 2019) 283.

Sanchez-Monijano, Elena & Albert F. Arcarons, "Southern Europe" in A. Triandafyllidou & M.L. McAuliffe, eds, *Migrant Smuggling Data and Research: A global review of the emerging evidence base*, vol. 2 (Geneva: IOM, 2014).

Weina, Agnieszka, Saskia Bonjour & Lyubov Zhyznomirska, "Introduction: The case for regional approach to study politics of migration" in Agnieszka Weina, Saskia Bonjour & Lyubov Zhyznomirska, eds, *The Routledge Handbook of the Politics of Migration in Europe* (Oxon: Routledge, 2019) 1.

Wihtol de Wenden, Catherine, "France" in Anna Triandafyllidou & Ruby Gropas, eds, *European Immigration: A Source Book* (Farnham: Ashgate, 2014).

#### *Legal Journals (English)*

Ador, Gustav, "The Question of the Russian Refugees" (1921) 2:2 League of Nations Official J 225.

Angeloni, Silvia, "Asylum Seekers in Europe, Issues and Solutions" (2018) 19: 2 J Intl Migration & Integration 473.

Bem, Kazimierz, "The Coming of a 'Blank Cheque' – Europe, the 1951 Convention, and the 1967 Protocol" (2004) 16/4 Intl J Refugee L 609.

Castels, Stephen & Nicholas Van Hear, "Root Causes" in Alexander Betts, ed, *Global Migration Governance* (Oxford: Oxford University Press, 2018) 287.

Duguet, Anne-Marie & Bénédicte Bévière, "Access to Health Care for Illegal Immigrants: A Specific Organisation in France" (2011), 18 Eur J Health L 27.

Hansen, Randal & Shalini Randeria, "Tensions of refugee politics in Europe" (2016) 353:6303 Science 994.

Hatton, Timothy, "Refugees and asylum seekers, the crisis in Europe and the future of policy" (2017) 32:91 Economic Policy 447.

Kallius, Annastiina, Daniel Monterescu, & Prem Kumar Rajaram, "Immobilizing mobility: Border ethnography, illiberal democracy, and the politics of the "refugee crisis" in Hungary" (2016) 43:1 American Ethnologist 25.

Lavanex, Sandra, "'Failing Forward' Towards Which Europe? Organized Hypocrisy in the Common European Asylum System" (2018) 56: 5 J Common Market Studies 1195.

Monar, Jörh, "Justice and Home Affairs" (2013) 51:S1 J Common Market Studies 124.

Zadikian, Myriam, "Psychotraumatisme et demande d'asile – enquête au sein de la afda (2015-2016) " (2018) 9 La revue de médecine légale 18.

Schuerkens, Ulrike, "France" in Anna Triandafyllidou, ed, *European Immigration: A Sourcebook* (London: Routledge, 2017) 113

Wihtol de Wenden, Catherine, « Frontières, nationalisme, et identité politique » [2018] 165 Pouvoirs 39.

*Legal Journals (French)*

Alaux, Jean-Pierre, « L'asile dans le pot commun de l'immigration » [2004], 59-60 Plein Droit. Ben Mansour, Basma, et al, « L'asile en chiffres » [2005], 65-66 : 2-3 Plein Droit 53.

Brun, François, « Le traitement des immigrés en France : un continuum depuis 1945 » [2013], L'Harmattan , 4 : 87 Confluences Méditerranée 121.

De Wangen, Sylviane & Pedro Vianna, « Les migrations en Méditerranée : l'acuité d'une question » [2013], L'Harmattan, 4 : 87 Confluences Méditerranée 9.

Didier Fassin & Caroline Kobelinsky, "How Asylum Claims Are Adjudicated: The Institution as a Moral Agent\*" (2012) 53: 4 Revue française de sociologie 444 at 450 & 451.

Gunes, Cihan, « La santé mentale des migrants, l'affaire de qui? » [2017], Orspere-Samdarra – Observatoire Santé mentale Vulnérabilités et Sociétés, 63 Cahiers de Rihizome 100.

Licoppe, Christian, "L'asile par visioconférence" [2016] 110: 3 Plein droit 20.

Morice, Alain & Claire Rodier, « Politiques de Migration et d'Asile de l'Union Européenne en Méditerranée » [2013], L'Harmattan, 4 : 87 Confluence Méditerranée 109.

Paumard, Antoine, « L'accueil des migrants en France : Les associations en conflit avec l'Etat » [2018], 4 Etudes 33.

Christophe Pouly, "L'européanisation du droit d'asile : 2003-2016" [2016] 165 Migration Société 106.

Prost, Yannick, « Migrations : l'impasse européenne » [2018] 3 Politique Etrangère 157.

Sureau, François, "La Politique de l'Asile en Danger" (2012) 416 : 3 Etudes 331.

Wihtol de Wenden, Catherine, « Frontières et Migrations » [2017] HS Revue d'éthique et de théologie morale 15.

### *Encyclopedias*

Salah, Mostafa & Baruch Boxer, "Mediterranean Sea", *Encyclopaedia Britannica* (Encyclopaedia Britannica, inc., 16 May 2018), online: *Encyclopaedia Britannica*<<https://www.britannica.com/place/Mediterranean-Sea>>

### *International Documents*

*Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950, ETS No.005 (3 September 1953).

*Convention relating to the Status of Refugees*, 28 July 28 1951, I-2545 (22 April 1954).

*Protocol relating to the Status of Refugees*, 31 January 3, I-8791 (4 October 1967).

*New York Declaration for Refugees and Migrants*, GA/11820, GA, 71<sup>st</sup> Sess 2016, Supp No 13 & 17, A/RES/71/1.

*Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71.



### *French Constitution*

France, Assemblée nationale constituante, *Constitution de la République Française*, 27 October 1946.

France, référendum, *Constitution du 4 octobre 1958 instituant la Ve République française*, 4 octobre 1958.

### *Non-Parliamentary Documents (France)*

France, ministère de l'Intérieur, *Circulaire n° NOR INTK129185C*, relative aux conditions d'examen des demandes d'admission au séjour déposées par des ressortissants étrangers en situation irrégulière dans le cadre des dispositions du code de l'entrée et du séjour des étrangers et du droit d'asile (28 Novembre 2012).

### *Online Sources*

Cherbonnier, Frédéric, « Pourquoi la France doit s'ouvrir aux migrants », [2018], online: Les Échos <<https://www.lesechos.fr/idees-debats/cercle/0301329085770-pourquoi-la-france-doit-souvrir-aux-migrants-2155442.php>>

Direction générale des étrangers en France, « Guide du Demandeur d'Asile en France » [2015], online (pdf): Ministère de l'Intérieur <[file:///C:/Users/User/Downloads/Guide-du-demandeur-asile\\_nov2015.pdf](file:///C:/Users/User/Downloads/Guide-du-demandeur-asile_nov2015.pdf)>

Emmanuel Macron, « Discours d'Emmanuel Macron à la cérémonie de naturalisation à la préfecture du Loiret » [2017], online: Elysée <<https://www.elysee.fr/emmanuel-macron/2018/01/09/discours-d-emmanuel-macron-a-la-cereemonie-de-naturalisation-a-la-prefecture-du-loiret>>

Eurostat, "Asylum Quarterly Report" (2019), online: Eurostat <[https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics)>

L'Asile en France, « La procédure dite "accélérée" », online: L'Asile en France <[http://asile-en-france.com/index.php?option=com\\_content&view=article&id=27&Itemid=183](http://asile-en-france.com/index.php?option=com_content&view=article&id=27&Itemid=183)>

L'Asile en France, « La procédure dite "normale" », online: L'Asile en France <[http://asile-en-france.com/index.php?option=com\\_content&view=article&id=26&Itemid=182](http://asile-en-france.com/index.php?option=com_content&view=article&id=26&Itemid=182)>

La Cimade, « Décryptage du projet de loi asile et immigration » [2018], online: La Cimade <<https://www.lacimade.org/decryptage-projet-de-loi-asile-immigration/>>

La Cimade, « Dublin III: Calcul des délais, opportunité du recours contre le transfert, et notion de « fuite » » [2017] online (pdf) : La Cimade <<https://www.lacimade.org/wp-content/uploads/2017/12/d%C3%A9lais-et-opportunit%C3%A9-du-recours-nov-2017.pdf>>

EM !, « Le programme d'Emmanuel Macron », online: EM ! <<https://en-marche.fr/emmanuel-macron/le-programme>>

Espoir d'Asile, « Asile et preuve : de la suspicion à la conviction » [2014], online (pdf): Espoir d'asile <<http://www.espoirdasile.org/images/uploaded/ASILE%20ET%20PREUVE%203%20MARS%202014.pdf>>

Forum Réfugiés, « La procédure de demande d'asile expliquée » [2018], online: Forum Réfugiés / Così <<http://www.forumrefugies.org/s-informer/procedure-de-demande-d-asile-en-france>>

France Terre d'Asile, « La rétention administrative », online: France Terre d'Asile <<http://www.france-terre-asile.org/assistance-juridique-en-cra/flexicontent/que-faisons-nous/l'intervention-en-retention-de-france-terre-dasile>>

Gisti, « Droit d'asile : ça se durcit d'année en année » [2017], online: Ballast <<https://www.revue-ballast.fr/gisti-lasile/>>

Gisti, « Genèse de la loi Collomb du 10 septembre 2018 « pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie » », online: Gisti <<http://www.gisti.org/spip.php?article5841#som>>

High Commissioner for Refugees, "Note du HCR sur le projet de loi pour une immigration maîtrisée et un droit d'asile

effectif" (5 March 2018), online (pdf): UNHCR – UN High Commissioner for Refugees <[https://www.ecoi.net/en/file/local/1427109/19301521535338\\_5aabdf4a4.pdf](https://www.ecoi.net/en/file/local/1427109/19301521535338_5aabdf4a4.pdf)>

OFPPA, « Guide des Procédures à l'OFPPA » [2015], online (pdf): OFPPA <[https://www.ofppa.gouv.fr/sites/default/files/atoms/files/guide\\_de\\_procedure-ext\\_web\\_10-11-2015\\_vd.pdf](https://www.ofppa.gouv.fr/sites/default/files/atoms/files/guide_de_procedure-ext_web_10-11-2015_vd.pdf)>

OFPPA, « Histoire de l'asile » [2018], online: <<https://www.ofppa.gouv.fr/fr/histoire-archives/histoire-de-l-asile>>

Peace Research Institute Oslo (PRIO), "Conflict Trends in Africa, 1989-2017" (2018), online (pdf): PRIO <<https://reliefweb.int/sites/reliefweb.int/files/resources/Conflict%20Trends%20in%20Africa%20C%201946%E2%80%932017%20C%20Conflict%20Trends%20Report.pdf>>

Rebourg, Amandine, « Loi Asile et Immigration : déboutés du droit d'asile, et après ? » [2018], online: LCI <<https://www.lci.fr/societe/deboutes-du-droit-d-asile-et-apres-2075502.html>>

Salignat, Claire, "Country Report: France" (2017), online (pdf): European Council on Refugees and Exiles <[file:///C:/Users/User/Downloads/aida\\_fr\\_2017update.pdf](file:///C:/Users/User/Downloads/aida_fr_2017update.pdf)>

Service Public, « Demande d'asile : instruction par l'OFPPA » [2017], online: Service-Public.fr <<https://www.service-public.fr/particuliers/vosdroits/F15376>>

Tiekstra, Willemijn, "State of Play in the Debate on Migration Management in Europe" (2018) European migration management – lessons learned, online: Clingendael <<https://www.clingendael.org/publication/state-play-debate-migration-management-europe>>

Toute l'Europe, « Le taux de chômage en Europe » [2019], online: Toute l'Europe <<https://www.touteurope.eu/actualite/le-taux-de-chomage-en-europe.html>>

UNHCR, "History of UNHCR", online: UNHCR | USA:  
<<https://www.unhcr.org/en-us/history-of-unhcr.html>>

UNHCR, "States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol", online: UNHCR  
< <https://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>>

Vignal, François, « Asile : le Sénat maintient à 30 jours, contre 15, le délai de recours pour les demandeurs » [2018], online : *Public Sénat*  
<<https://www.publicsenat.fr/article/politique/asile-le-senat-maintient-a-30-jours-contre-15-le-delai-de-recours-pour-les>>

#### Online Sources

"Accompagnement et Hébergement en CADA", online: France Terre d'Asile<<http://www.france-terre-asile.org/centre-d-accueil-pour-demandeurs-d-asile/flexicontent/que-faisons-nous/accompagnement-et-hebergement-en-cada>>

Etat-nation", online: UNESCO  
<<http://www.unesco.org/new/fr/social-and-human-sciences/themes/international-migration/glossary/nation-state/>>

« Gilets jaunes » : le gouvernement face à la mobilisation", online: Le Figaro<<http://www.lefigaro.fr/actualite-france/dossier/hausse-des-carburants-manifestation-des-gilets-jaunes>>

"Principe d'égalité et droit de la non-discrimination" (5 October 2015), online: Conseil d'Etat <<http://www.conseil-etat.fr/Actualites/Discours-Interventions/Principe-d-egalite-et-droit-de-la-non-discrimination>>

"Qu'est ce que l'Etat de droit ?" (30 June 2018), online: Vie-publique <<http://www.vie-publique.fr/decouverte-institutions/institutions/approfondissements/qu-est-ce-que-etat-droit.html>>

#### Organizations

AEDH/EuroMed Droits/FIDH, « Pays 'sûrs' : un déni du droit d'asile » [2016].

Commission Nationale Consultative des Droits de l'Homme, « Avis sur le 'Concept de Pays Tiers Sûr' » [2017].

Gisti, « Nous accusons l'UE et les Etats-membres » [2018] 3 Plein droit 7.

France Terre d'Asile, « Identifier et soigner les psychotraumas » [2017] 80 Lettre de l'asile et de l'intégration.

### *Official Speeches*

Conférence de presse conjointe d'Emmanuel Macron et d'Angela Merkel au Conseil Européen, 9 janvier 2018.

Emmanuel Macron, "Discours d'Emmanuel Macron à la cérémonie de naturalisation à la préfecture du Loiret" (27 juillet 2017), online: Elysée< <https://www.elysee.fr/emmanuel-macron/2018/01/09/discours-d-emmanuel-macron-a-la-cereemonie-de-naturalisation-a-la-prefecture-du-loiret>>

Emmanuel Macron, "Le discours de Ouagadougou d'Emmanuel Macron", Le Monde (2017), online: <[https://www.lemonde.fr/afrique/article/2017/11/29/le-discours-de-ouagadougou-d-emmanuel-macron\\_5222245\\_3212.html](https://www.lemonde.fr/afrique/article/2017/11/29/le-discours-de-ouagadougou-d-emmanuel-macron_5222245_3212.html)>