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Abstract

In recent history, the countries along the Western Balkan route faced several refugee crises. In the 1990s refugee crises were the result of the conflicts after the disintegration of the former Socialist Federative Republic of Yugoslavia (SFRY). Between the summer of 2015 and early 2016, the European continent faced another refugee crisis due to the ongoing civil war in Syria. During the 2015/16 refugee crisis, different political leaders, especially in the post-Yugoslav space, claimed that their humanitarian approach towards refugees was based on their previous experience with refugee crises from the 1990s. This paper explores and compares legal and political responses to different refugee crises in the in-between countries along the Western Balkan route: three European Union (EU) Member States (Austria, Slovenia and Croatia) and two EU candidate countries (Serbia and the Republic of Macedonia). In the first part, the paper looks at the impact of the refugee crisis on EU law. It shows how EU law was developed due to the post-Yugoslav refugee crisis (Temporary Protection Directive), but then faced ambivalent application during the 2015/16 refugee crisis. Second, it studies the transformation of national legislation during both refugee crises in the chosen countries. On the basis of the socio-legal analysis of these transformations, the main argument is that there has been a major shift in the 'management' of the refugee crises in the countries along the Western Balkan route: while the main approach adopted during the post-Yugoslav refugee crisis was temporary protection, this approach was replaced with a 'transit migration' approach during the 2015/16 refugee crisis.

Keywords

"We Slovenians are known for our solidarity, which we demonstrated during natural disasters and the war in Bosnia and Herzegovina. Here it is expected that we will provide for these people in these hours they are with us, before they go to their final destinations, which is not Slovenia."

(Marko Maučič, Mayor of Podlehnik welcoming a new reception centre in his municipality in October 2015)[1]

Introduction[*]

After approximately two decades after the armed conflicts in South East Europe, the states established on the territory of the former Socialist Federative Republic of Yugoslavia (SFRY) were again faced with a major influx of refugees. This was later labelled as a refugee crisis in public discourses all around Europe. In the first half of 2015, the major influx of refugees, predominantly from Syria, Afghanistan and Iraq, profoundly affected two European Union (EU) candidate countries besides EU Member States: Serbia and the former Yugoslav Republic of Macedonia (henceforth: the Republic of Macedonia)[2]. However, when Hungary in the summer decided to close its south border with Serbia and subsequently with Croatia, two other post-Yugoslav countries, now EU Member States, were affected by the influx of refugees: Slovenia and Croatia. This paper analyses, contextualizes, and compares the responses to the post-Yugoslav refugee crisis with the responses to the 2015/16 refugee crisis in the *in-between* states along the Western Balkan route: EU Member States Austria, Slovenia and Croatia, as well as EU candidate countries Serbia and the Republic of Macedonia. It argues that there has been a major shift in the responses: while in the 1990s the main approach adopted was temporary protection of post-Yugoslav refugees, during the 2015/16 refugee crisis the states in question facilitated transit migration of refugees towards other destinations in the EU, predominantly Germany.

In July 2015, the Government of the Republic of Slovenia elaborated the Contingency Plan[3] for accommodation and care in the case of an increasing number of people seeking international protection. The Contingency Plan characterized Slovenia as a *transit state:*

> "The Republic of Slovenia is an EU Member State located in a very **important transit area**, which is connecting states in the Balkans with other EU Member States, and it is also handling procedures for **protecting the Southeast part of the Schengen border**. Important migration flows are passing through Slovenia, both of illegal immigrants as well as asylum seekers. (…) Up until now Slovenia has mostly been a **transit country**, but most certainly this has been slowly changing".

According to this plan, Slovenia strengthened its capacities so it could accommodate around 1000 asylum seekers compared to its previous capacity of 200. However, in the summer of 2015, the coalition of NGOs working on asylum and forced migration raised an alert that the government was preparing for the wrong kind of scenario. Despite expectations underlined in the Contingency Plan, the number of asylum seekers in Slovenia did not increase in 2015. The Slovenian government indeed faced a different reality for which it was not prepared (Kukavica and Plesničar 2015). According to the

official data of the Ministry of the Interior, Slovenia did not record an increased number of asylum applications in 2015 as was the case with Hungary[4]. After Hungary had fenced down its border with Serbia and Croatia, the data of the Ministry of the Interior revealed that 477,791 migrants *illegally* crossed[5] the border with Slovenia in the period between 18 September 2015 and 9 March 2016. Despite the fact that Slovenian authorities considered their border crossing as illegal, they did not return them to Croatia. Additionally, most people passing through Slovenia during this period did not seek asylum there, but continued on their way to Austria. According to the available data, similar trends could be observed in three other post-Yugoslav countries through which refugees and migrants from Syria and other countries were passing. The European Union Agency for Fundamental Rights (FRA) reported that in the period from 16 September to 20 November 2015 alone, 432,000 migrants and refugees entered Croatia[6]. Yet in the entire year of 2015, according to Eurostat (2016) only 140 sought asylum. Similar data was available for two other post-Yugoslav countries. According to the 2015 AIDA report, 577,995 people expressed their intention to apply for asylum that year, but only 583 people actually sought asylum in Serbia[7]. Similarly, since June 2015, 388,233 people expressed their intent to seek asylum in the Republic of Macedonia[8], but in reality only 89 of them applied for asylum in that period.

The 2015/16 refugee crisis presented an evident change in the approach towards forced migrants in the states in question in comparison to how they have approached the refugee crisis in the 1990s. For example, Slovenia hosted 70,000 Bosnia and Herzegovina war refugees (Dragoš, 2016: 39). Yet in the case of the 2015/16 refugee crisis, the Contingency Plan prepared by the Slovenian government anticipated a much lower increase in the number of asylum seekers. The anticipated number of 1000 asylum seekers was relatively low in comparison to the number of refugees hosted during the post-Yugoslav refugee crisis. Nevertheless, the number of people transiting through the Western Balkan route was much greater than anything that Slovenia had faced before.

This paper offers a socio-legal analysis of how such large-scale transit of third-country nationals was even possible in all the post-Yugoslav states and Austria while the Western Balkan route was semi-officially open (between September 2015 and March 2016). The post-Yugoslav refugee crisis leading to the establishment of temporary protection regimes (Thorburn 1995, Koser and Black 1999, Fitzpatrick 2000, Van Selm 2001, Durieux 2014) was a legal innovation in refugee protection in order to respond to a large influx of people in need of protection. Some scholars argued that it also meant watering down the previous refugee protection system (Zetter 2007). The response during the 2015/16 refugee crisis was an innovation similarly as the Temporary protection regimes beforehand. Yet the 2015/16 response to the refugee crisis was substantially different from the temporary protection offered to those who were fleeing the conflicts during the disintegration of the SFRY.

One of the main distinctive features connected to the management of the Western Balkan route was the discourse on transit migration. Different scholars have previously scrutinized the concept of transit migration (Düvell 2010, Collyer and De Haas 2010, Düvell, Molodikova, Collyer 2014, Oelgemoller 2010, Dimitriadi 2016). The question remains whether these theories could be applied for the analysis of the events around the 2015/16 refugee crisis and the Western Balkan route. As Franck Düvell (2010) points out, many previous policy papers, as well as scholarly literature on transit migration, focused on the migrants' agency. This paper acknowledges the importance of migrants' agency for the establishment of the Western Balkan route, but it highlights what Dimitriadi (2016) calls the *process*

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[4] According to Eurostat data (2016), Hungary had a 323% increase in first-time asylum applications in 2015 in comparison to 2014.

[5] Despite the fact that these border crossings were facilitated by the states, official data still recorded them as illegal (see: http://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2015/December2015.pdf)

[6] See: http://fra.europa.eu/en/theme/asylum-migration-borders/overviews

[7] See: http://www.asylumineurope.org/sites/default/files/report-download/aida_sr_2016update.pdf

[8] See: https://www.amnesty.org/en/countries/europe-and-central-asia/macedonia/report-macedonia/

of transit migration and the "political position of states in the migratory journey (transit states vs. destinations)" (Dimitriadi 2016: 341). It aims to show that different state officials referred to migrants' agency when it coincided with their political position. In the case of post-Yugoslav countries, I argue that they did not only observe migrants and refugees passing through their territory, but facilitated their transit by claiming they did not have requisite facilities to accommodate such a large number of asylum seekers. Besides facilitating transit by offering different modes of transport, the post-Yugoslav countries along the Western Balkan route also introduced new national legislation and reinterpreted EU legislation in a way that also facilitated transit migration until the closure of the Western Balkan route.

Although the Slovenian police recorded the transit of these migrants as 'illegal border crossings'[9], this paper claims that, especially during the period from September 2015 to March 2016, the countries introduced a variety of semi-regular legal statuses, thereby officially allowing refugees/migrants to transit towards the most desirable destinations, such as Germany. By analysing the legislation that made such semi-regular statuses possible, I argue that these statuses were fluid, but also hyper-temporary, and existed only until the states decided to terminate the Western Balkan route. Hyper-temporariness is the feature of new forced migrant statuses compared to those under the temporary migration regime. I claim that due to such semi-regular statuses, these states categorized individuals using the Western Balkan route as transient migrants. This paper also highlights the effects of such hyper-temporary transit migration: it shows that after the closure of the Western Balkan route, new pieces of legislation were introduced that strongly curtailed the rights of asylum seekers and mostly applied only minimum standards for the inclusion of refugees into their societies.

Theoretical background, methodological approaches and ethical reconsiderations

Theoretical enquiry

In terms of theoretical perspectives, this paper deals with four interrelated questions. First, it addresses the concept of the refugee crisis. The International Organization for Migration (IOM) labelled the 2015/16 refugee crisis as the biggest in Europe since the Second World War (WWII) (IOM, 2016). While the notion of the migrant or refugee crisis is not new in refugee studies (Zolberg, Suhrke and Aguayo 1992, Loescher 1996), it lacks a firm analytical definition. It was previously used to describe a major inflow (of irregular migrants) such as in the case of the refugee crisis after WWII (Malkki 1995), but also in the case of the forced displacement during the post(-Yugoslav) Kosovo conflict (Barutciski and Suhrke 2001, Huysmans 2002). All of the periods labelled as refugee crises had certain features in common. They showed the necessity for cooperation between different countries: "In this respect, 'migration crisis' (whether real or perceived) played a central role by highlighting the limits of unilateral state interventions and the necessity of governments to cooperate to achieve their goals" (Geiger and Pecoud, 2013:870)[10].

While the term 'refugee crisis' is widely accepted in media discourse and in public policy, it cannot be left unchallenged as an analytical term because it has certain connotations. This was especially visible in the case of the refugee influx to the European Union in 2015/16. Nicholas Genova and his colleagues (2015) commented that in public discourse "the refugee crisis" was often presented as a crisis caused by refugees. Yet in reality, the number of refugees in Europe remained (and remains)

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[9] See: http://www.policija.si/index.php/statistika/mejna-problematika/622

[10] During the summer of 2015, different media outlets predominantly used the term migrant crisis. They perceived that the people fleeing to Europe decided to do so because they were facing economic hardship rather than persecution. The discourse shifted in September 2015 when a 3-year old refugee child Alan Kurdi was found dead on a Turkish shore after the failed attempt of his boat to reach Europe. From then on refugee crisis became a predominant term used in the public discourse in general.

relatively low in comparison to the number of refugees hosted in the countries neighbouring Syria. While refugees account for 0.0049% of Germany's population, they represent 38.5% of the population in Jordan (Dragoš 2016: 40). As Bridget Anderson puts it: "The crisis is ultimately not about refugees and migrants. It is a crisis that has come about because of a European Union with human rights policies built on sand. To put it simply, what the world is witnessing is not the refugee crisis facing Europe, but the European crisis facing refugees" (Anderson 2016).

Nevertheless, since the refugee crisis was such a prominent term in the public discourse, it is almost impossible to avoid it. To refer to Giorgio Agamben, using the term crisis is an "instrument of power" (Agamben 2013) employed to legitimize certain practices that would not be acceptable outside the "state of emergency" (Agamben 2013). This paper subscribes to Anderson's and Agamben's view: when it uses the term 'refugee crisis' it is used as a *category of practice* rather than a *category of analysis* (Brubaker 2004). However, the paper still employs the term 'refugee crisis' and interprets it as a *discursive practice* (Laclau and Mouffe 1985): the discourse of the refugee crisis was used as a state of emergency to justify why the states along the Western Balkan route started introducing new legislation, and often cooperated outside the conventional framework of EU law.

Second, different refugee crises offered a fertile ground for new approaches towards people in need of international protection. During refugee crises and a major influx of asylum seekers host states have questioned whether they should grant them refugee status or an alternative form of protection. The question, on one hand, was how to offer protection to those in need of international protection immediately, without lengthy administrative procedures. On the other hand, from the point of view of states, the idea was to alleviate political pressure created in case of forced migrants staying on their territory indefinitely. It still remains to be explored how the legal statuses of forced migrants are transforming due to refugee crises. According to Roger Zetter (2007), the turn of the millennium brought a new trend with regard to the governance of refugee statuses. He observed a proliferation of forced migrant statuses, which offered less substantive and usually more temporary protection than the one granted to refugees (Zetter 2007). He continues with a claim that another important shift occurred with national governments becoming the main actors in labelling refugees and politicising their status. While Zetter is describing the reality that followed the post-Yugoslav wars, this paper argues that the trend continued in the deconstruction of the temporary protection system. New statuses established during the period the Western Balkan route was opened did not offer new forms of temporary protection, but the hyper-temporary possibility of transit.

Third, different scholars extensively discussed the creation of the European temporary protection approach during the post-Yugoslav wars (Thorburn 1995, Koser and Black 1999, Fitzpatrick 2000, Van Selm 2001, Durieux 2014). This paper emphasizes the checks and balances of temporary protection and looks into their (non-)application during the 2015/16 refugee crisis (Akkaya 2015, Ineli Ciger 2017).

Fourth, this paper focuses on transit since this was the approach towards forced migrants in the *in-between* countries along the Western Balkan route. Different scholars argued that transit migration (and with it the concept of 'transit country') is a "blurred concept" (Düvell, 2012) or at least a "contested concept" (Dimitriadi 2016). Düvell explores how it is used by policy makers to create the politics of fear by accentuating the possibility of mass migration towards Europe and outsourcing migration control to countries outside the European Union (to those countries that are designated as transit countries). Collyer and Haas (2012) claim these policies are centred on the perceived migrant agency, i.e. the migrants who are 'stuck' in transit states really want to continue their journey to more developed countries. Collyer and de Hass as well as Düvell show that there is no sufficient evidence to support such a claim. I argue that the 2015/16 refugee crisis brought about a significant change in the understanding of transit migration. In this case, different national representatives started labelling their countries as transit even within the European Union. Such a labelling was once again based on the perceived migrant agency. But at the same time such understanding was enhanced by the states themselves with the transformations of their legislation.

Methodological approaches

The main findings presented in this paper are taken from interdisciplinary research based on a socio-legal analysis. The research focused on law as a social phenomenon (Cowney and Bradney 2013: 35). It followed a premise that, albeit law consists of abstracted norms, it is not created in a vacuum, but is in fact a battlefield moulded in a particular context (Wheeler and Thomas 2000). It mainly builds upon what Kim Lane Scheppele calls *constitutional ethnography* (Scheppele, 2004) so as to understand the transformations in law occurring in a certain political context: "Constitutional ethnography does not ask about the big correlations between the specifics of constitutional design and the effectiveness of the specific institution, but instead looks to the logics of particular context as a way of illuminating complex interrelationships among political, legal, historical, economic and cultural elements" (Scheppele, 2004: 390). Scheppele defines constitutional ethnography in the following way: "Constitutional ethnography is the study of central legal elements of polities using methods that are capable of recovering the lived details of the political landscape" (Scheppele, 2004: 395). The research on which the paper is based used such methods to analyse changes in legislation and couple them with media narratives and political discourses as revealed in statements in semi-structured interviews. I conducted 30 semi-structured interviews with elite respondents, who were representatives of national governments, international organizations and NGOs that were directly or indirectly involved in managing or monitoring the passage of people taking the Western Balkan route. The interviewees were from Turkey, Greece, the Republic of Macedonia, Serbia, Hungary, Croatia, Slovenia and Austria. The majority of interviews (except for Turkey and Greece) were completely or partially conducted in local languages (Slovenian, Croatian/Serbian, German, Hungarian, etc.) rather than in English. It discusses that while most countries along the Western Balkan route had previous experience with the post-Yugoslav refugee crises, this was in no way similar to their experience of the 2015/16 refugee crisis since then they were a refugee receiving country and now they turned into merely transit countries. This paper aims to show that with the establishment of the Western Balkan route the understanding of transit migration as well as transit countries (as for example offered by Franck Düvell) was transformed, since certain EU Member States and candidate countries also became transit countries. These countries were actively involved in the transit and even transport of migrants, and can hence be labelled as transport countries. At the same time this raises a question of what legal status and rights people taking the Western Balkan route had in countries where they did not seek asylum. Here the paper argues that the establishment of the Western Balkan route also created a new diversity of legal statuses, which can be described by the new concept of semi-regular transient migrants. As some scholars previously argued (Triandafyllidou 2017), this paper also acknowledges the importance of migrants' agency. But in relation to some previous work, it focuses on how different countries interpret migrants' agency in order to reaffirm their political position and policies.

Ethical considerations

During my research, I made a conscious decision to interview only those individuals who 'governed' the route refugees, migrants and asylum seekers were taking. This decision was made for two reasons. First, *practically* most refugees and migrants taking the Western Balkan route did not stay in the *in-between* countries, but continued their journey. Even those who were conducting research while the Western Balkan route was still open, found it difficult to access refugees for long enough periods to conduct meaningful interviews (Bužinkić and Hameršak, 2017). In addition to that, these researchers reported that during the period the Western Balkan route was open, all their communications were carefully monitored by state representatives, who occasionally obstructed their access to potential interviewees. Second, interviewing a group of refugees with extremely precarious and hyper-temporary legal status can be ethically problematic (Düvell, Triandafillydou and Vollmer 2010) to the extent that the risks of their in-between irregular/regular status outweigh the benefits of the research. In addition, many other researchers conducted interviews with people taking the Western Balkan route at their final destinations (McMahon and Sigona 2016). Despite the fact that refugees were not

interviewed in this research, it did not diminish the importance of the migrant/refugee agency. It did recognize the central role of the migrant/refugee agency in the semi-official establishment of the Western Balkan route, but it highlighted how this migrant/refugee agency was understood by those who governed the Western Balkan route (representatives of national governments, international organizations and civil society). I argue that primarily, state actors used the migrant/refugee agency to legitimize their own actions while the Western Balkan route was open, but also afterwards. Here I note that the migrant/refugee agency was only taken into account when it subscribed to the views national authorities already had. Alternative or opposing voices were marginalized.

Post-Yugoslav and 2015/2016 refugee crises: backgrounds

The Post-Yugoslav Refugee Crisis

The disintegration of the former SFRY in the 1990s was accompanied by several overlapping as well as subsequent armed conflicts, which contributed to a great number of refugees and internally displaced persons. Different data sources estimate that in the conflicts between 1991 and 1995 around 3.3 million people became forcedly displaced, which amounted to more than half of the population of Bosnia and Herzegovina (Young 2001) and around 20 per cent of the population from Croatia, that is 700,000 people (Živić, 1999). In addition to its own displaced populations, by 1992 Croatia also accepted 324,000 refugees from Bosnia and Herzegovina (Thorburn, 1995: 473). In Slovenia there were 70,000 refugees from the Bosnian war (Dragoš, 2016: 39). According to the data from 1996, Serbia had accepted 266,279 refugees from Bosnia and Herzegovina and 330,123 from Croatia (Lukic and Nikitovic, 2004: 94). The EU Member states accepted 584,017 forcedly displaced: 342,500 and 88,609 in Germany and Austria alone (Koser and Black, 1999: 539). Most of the displaced people received a temporary protection status, instead of a refugee status: the idea was that the temporary protection would be followed by repatriation after the conflicts had been concluded. Yet in certain cases this solution was implausible:

> "One of the most important lessons from the Bosnian experience is that it does not make sense to orientate towards a single solution. Return after the Dayton Peace accord had proved to be difficult for many, while local integration for certain parts of the population has proved to be relatively easy. The range of often unexpected outcomes lies as a salutary warning as Europe again responds to mass exodus from the Balkans" (Koser and Black, 1999: 536).

Another major forced displacement occurred during the Kosovo conflict in 1998-1999, when 600,000 Kosovar Albanians became refugees and 400,000 were internally displaced. 92,000 Kosovar refugees were accepted in 29 different countries through the Humanitarian Evacuation Programme (Barutciski and Suhrke 2001: 101). Most of the refugees from Kosovo ended up seeking refuge in the post-Yugoslav region: for example, after the initial reluctance and the closing of borders (Williams and Zeager 2004) due to its internal politics (Babuna 2000), the Republic of Macedonia accepted 344,500 Kosovars on a temporary basis (Donev, Ončeva and Gligorov, 2002:184). Many refugees from the Bosnian conflict did receive temporary protection outside the former Yugoslav region. However, in the case of Kosovo, the argument was that most Kosovars should remain in the region. This was also to counter possible ethnic cleansing that had occurred before in Bosnia (Durieux 2014). Most of the Kosovar Albanians returned to their previous homes, while around 200,000 Kosovo Serbs remained internally displaced within other parts of Serbia (Djordjević 2015). Yet in 2015 the position of Kosovar citizens became one of the crucial triggers for the migration governance in Europe to start significantly transforming: a more intensive debate about the Western Balkan route started in the beginning of 2015, when around ten thousand Kosovars irregularly crossed the Hungarian border with Serbia.[11]

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[11]   See: http://frontex.europa.eu/trends-and-routes/western-balkan-route/

The Western Balkan route and the 2015/16 Refugee crisis

According to UNHCR data (2017), 11 million Syrian citizens became displaced due to the ongoing civil war in Syria. In April 2017, UNCHR reported a number of 5 million Syrian refugees: more than 4 million are displaced in the neighbouring countries, while approximately a million are in the European Union. The biggest proportion of Syrian refugees arrived to Europe while the countries along the Western Balkan route decided to create a corridor and allowed them to pass. This section discusses the context in which the Western Balkan route became a corridor controlled by the states along it.

The creation of a corridor along the Western Balkan route needs to be contextualized within broader migration governance in Europe before its establishment. On 31st October 2014, the Italian maritime operation called Mare Nostrum ended since the EU did not approve additional funding. The UK opposed the EU funding of Mare Nostrum since it interpreted the "search and rescue" operation as a "pull factor" for migrants, encouraging them to take a dangerous trip across the Mediterranean to reach the shores of Europe. The operation was superseded by the Frontex operation Triton, which had a significantly smaller "search and rescue" aim focusing on border monitoring[12]. In April 2015, around 700 migrants drowned near Lampedusa while trying to reach Italy and consequently the EU via the Mediterranean route[13]. As a response, the European Council agreed to form the EU Military operation EUNAVFOR Med in order to disrupt human smuggling networks in the Mediterranean[14]. At the same time, the European Commission introduced the EU Action Plan against Migrant Smuggling (2015-2020)[15]. Earlier that year, around 10,000 Kosovars crossed the Serbian border with Hungary, where they sought asylum. Hungary classified them as economic migrants fleeing a bad socio-economic situation in Kosovo rather than as political persecution. The Hungarian media widely accepted this categorization despite the fact that Kosovo has not been independent for more than a decade and is still undergoing state reconsolidation after a war conflict and a refugee crisis that was a cause of displacement of more than a million Albanian Kosovars and many Serbians remaining so until the present day (Krasniqi 2015). In August 2015, 70 dead bodies were found in a truck on the Austrian-Hungarian border[16]. It was later established that these were the bodies of refugees and migrants from Syria and other places, which signalled that a different forced migration route was already operational. The route itself was not new (Mavris 2002), having had already been used by human smugglers. However, something new and significant characterized the route since the summer of 2015: the states predominantly took over the control of the transport of migrants and refugees taking the route.

In the summer of 2015 different factors contributed to a significant divergence of the path that refugees and other migrants were taking to reach the European Union (EU), which led to the creation of a corridor along the Western Balkan route. One of the most highlighted factors in the public discourse was Germany's decision to apply the discretionary clause in the Dublin III Regulation (604/2013/EU), according to which it decided to examine asylum applications of those third-country nationals whose first point of entry was not Germany. Yet this paper offers a socio-legal analysis that shows that what was perceived as a 'German invitation' to predominantly Syrian refugees was not the first legal transformation affecting the creation of the Western Balkan route. By analyzing changes of national legislation and its application, it shows that the countries along the Western Balkan route started positioning themselves as 'transit countries' even before Angela Merkel's speech in September

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[12] See: http://www.bbc.co.uk/news/uk-29799473

[13] See: https://www.theguardian.com/world/2015/apr/19/700-migrants-feared-dead-mediterranean-shipwreck-worst-yet

  http://www.reuters.com/article/us-kosovo-eu-migrants-idUSKBN0L811120150204

[14] EUNAVFOR   Med   http://www.consilium.europa.eu/en/press/press-releases/2015/05/18-council-establishes-naval-operations-disrupt-human-smugglers-mediterannean/

[15] http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/eu_action_plan_against_migrant_smuggling_en.pdf

[16] http://www.rtvslo.si/svet/foto-madzarska-policija-se-je-na-meji-s-srbijo-spopadla-s-prebezniki/374150
  http://www.rtvslo.si/svet/avstrija-zrtve-v-najdenem-tovornjaku-mrtve-ze-najmanj-en-dan/372618).

2015 as refugees and migrants were already passing through them. The role of transit countries and their *ad hoc* cooperation strengthened after Germany applied Article 17 of the Dublin III Regulation, but they positioned themselves as transit countries even before Angela Merkel's speech. Yet the cooperation between the transit countries was *de facto* taking place outside the formal framework of EU law since the Temporary Protection Directive (2001/55/EC) was not applied in this case and the Dublin III Regulation does not define how other EU Member States should act in case one decides to use the above-mentioned discretionary clause. Therefore, within a certain time period (September 2015 - March 2016), post-Yugoslav countries, including both EU Member States as well as candidate countries, in cooperation with Austria formed a forced migration corridor for asylum seekers towards Germany – the country transit states considered to be their most desirable destination. The positioning of transit states was relational. In the first instance, they positioned themselves in relation to 'destination' and other 'transit' states, on one hand. On the other hand, these states reaffirmed their transit position based on the discourse interpreting the agency of refugees by reiterating: 'they do not want to stay anyway'. The creation of the forced migration corridor towards Germany was not only marked by changes in legislation, but also by the fact that the transit states provided transport for refugees and migrants through their territories so they could seek asylum somewhere else: these two practices went hand in hand.

Refugee Crises and the EU Law

Developing temporary protection during Post-Yugoslav refugee crises

Most of the Bosnian forced migrants were given temporary protection, which has "emerged as a set of specific responses to the outbreak of war in the former Yugoslavia, involving compromises between states' desires to restrict asylum on the one hand, but meet demand from public opinion and international organization to offer protection on the other." (Koser and Black, 1999: 521). In the case of the influx of refugees from Bosnia and Herzegovina and later on Kosovo, the EU Member States as well as many other states took the approach of *ad hoc* temporary protection for many different reasons. At the time the national asylum legislation was not developed as there was no clear stand at the EU level on how to act in the case of mass influx or refugee crisis. For the EU Member States it was the first time, when the question of burden sharing in asylum policies arose (Suhrke 1998). This subsequently led to the creation of the Temporary Protection Directive (2001/55/EC) which in its preamble states:

> "In the conclusions relating to the persons displaced by the conflict in the former Yugoslavia adopted by the ministers responsible for immigration at their meetings in London on 30 November and 1 December 1992 and Copenhagen on 1 and 2 June 1993, the Member States and the Community institutions expressed their concern at the situation of displaced persons. […]. On 27 May the Council adopted conclusions on displaced persons from Kosovo. These conclusions call on the Commission and the Member States to learn the lessons of their response to the Kosovo Crisis in order to establish the measures in accordance with the Treaty".

While at the time of the Yugoslav refugee crises, this seemed like a politically sound solution, many scholars have been critical to this solution, especially from a legal perspective (Fitzpatrick 2000, Durieux 2015). Joan Fitzpatrick commented that temporary protection was an *ad hoc* solution both with "progressive and retrogressive impulses" (Fitzpatrick 2000: 305). While temporary protection should be an intermediate solution, she questioned whether repatriation is a durable solution in all cases of mass displacement:

> "While some data suggest that internal armed conflicts in the latter half of the twentieth century are generally brief (e.g. lasting five years), many conflicts persist for decades. Repatriation to postconflict societies poses severe challenges, owing to damaged infrastructure, pervasive violence, lack of economic opportunity, and distrust or lingering hatred between communities" (Fitzpatrick 2000: 299).

The question of how to deal with mass displacements, and whether repatriation is a solution, remains to the present day (Durieux 2015). In addition, the 2015/16 refugee crisis showed that the application of EU law in general can also be unfeasible.

In the period of the Western Balkan route and after

The so-called 2015/16 refugee crisis offered a testing ground for how EU legislation will be applied in the countries along the Western Balkan route. Elspeth Guild writes that one of the new priorities in the Lisbon Treaties in relation to migration was to establish "a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in all Member States, and the prevention of and enhanced measures to combat illegal immigration and trafficking in human beings (Article 79 TFEU)" (Guild 2013: 44). From this perspective, this section analyses the approaches towards EU legislation taken by the EU Member States (Austria, Hungary, Slovenia, Croatia) as well as by EU candidate countries (Serbia, the Republic of Macedonia) to position themselves as transit countries along the Western Balkan route. It focuses on the Temporary Protection Directive, the Dublin III Regulation, the EURODAC Regulation, the Asylum Procedures Directive and the Reception Directive.

Many legal experts claimed that in the case of a large number of arrivals of potential asylum seekers, such as the one we witnessed during the 2015/16 refugee crisis, the Temporary Protection Directive (2001/55/EC) should have been applied (Akkaya 2015, Mitrovic 2015, Ineli-Ciger 2016). The Temporary Protection Directive was designed on the basis of the experience from the post-Yugoslav refugee crisis, where different EU countries reached an *ad hoc* agreement on burden sharing by offering temporary protection to the people who were fleeing the war in Bosnia and later in Kosovo. This protection was temporary, as they were not granted permanent residence, but only for the duration of the conflicts, which was the reason for criticism of the civil society. Indeed, when reading Article 2 (1) of the Temporary Protection Directive it seems as it was designed for a situation such as the 2015/16 refugee crisis:

> "temporary protection' means a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons concerned and other persons requesting protection."[17]

However, the Temporary Protection Directive is triggered by the EU Council acting upon a proposal of a Member State, which, as Kate Akkaya commented, did not happen: "As of this time, no Member State has submitted such a proposal to the Council, the Council has not proposed the solution itself, and therefore no Council decision has been voted on or adopted. Thus Temporary Protection, despite its relevance, is not automatically applicable, and European states are fully able to ignore it if they choose" (Akkaya, 2015). Olga Mitrovic commented that at the time of the 2015/16 refugee crisis it was not the lack of legal mechanisms for common burden sharing that posed the challenge, but finding a way to apply them:

> "The comparison of the current refugee crisis with that of the two Balkan crises reveals a great paradox. In the 1990s when there was no common system, member states managed to provide ad-hoc adequate protection responses. Nowadays, when the EU has elaborate legal, institutional and financial infrastructure it is failing to produce a solution, partially because it is not even considering its very own rules that were made for dealing with such a crisis" (Mitrovic, 2015).

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[17] See: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF

Instead of a clear agreement on common burden sharing between the EU Member States, some of them, for example the Visegrad Group, explicitly opposed this idea[18]. According to Eurostat, the number of first time asylum applications in Hungary increased by more than 300% in 2015. This was stated as one of the reasons why the Hungarian authorities started building a fence and closed their border with Serbia (15th September) and the border with Croatia (15th October). One of the justifications was that Hungary is not only defending its borders, but also the Schengen regime. However, when Austria started returning asylum seekers to Hungary as the first country of entry according to the Dublin III Regulation (Article 2), Hungary suspended the application of the Regulation and did not accept these asylum seekers back to its territory. At this point, the famous German welcome stand occurred[19]. In legal terms, Germany applied the discretionary clauses under Article 17, which state:

> "By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation"[20]

With Germany's decision to examine the asylum claims that should have been assessed by other EU Member States, a new challenge appeared: how should other countries react in response? Article 17 of the Dublin III Regulation was clearly designed for the examination of individual asylum applications, while in this case the number of asylum seekers was very high and affected all the countries leading towards Germany. With regard to the Dublin III Regulation, two things remained unclear considering the discretionary clause: (1) the timespan during which this discretionary clause was in force and (2) the obligations of the transit states through which migrants and refugees were passing towards the country applying the discretionary clause.

In the next section, I will describe which new laws were applied in order to establish the position of a transit country. Here, I highlight what existing legislation was used or ignored. The post-Yugoslav countries along the Western Balkan route and Austria decided to comply with the discretionary clause that Germany applied and through their cooperation created a *de facto* forced migration corridor towards Germany, also by transporting migrants and refugees across their territory. At the time when the Western Balkan route was open, states officially supported regularized transport. This cooperation partly resulted from the pressure of NGOs advocating that such cooperation in the form of a corridor should be established so refugees could reach their desired destination (Kogovšek 2016, Bužinkić and Hameršak 2017). However, this was also in the self-interest of the states in question because none of them wanted a large number of refugees 'stranded' on their territory. In October 2015 Slovenian President Borut Pahor commented on the situation: "Slovenia cannot become a pocket country in which refugees would be stuck, if the Austrian and German border close, because the country could not handle that" (The Slovenia Times 2015). In order to prevent that, they used different methods of registration of refugees. For example, while Slovenia was registering refugees, who were passing through their territory, it did not give them permission to reside. Slovenia used Article 73 (1) of the Aliens Act according to which they registered refugees with the temporary permission to stay: "a stay in the country means permission granted to an alien who must be deported to remain temporarily in the Republic of Slovenia"[21]. The reason why such registration was provided was to prevent the possibility of these refugees being returned to Slovenia later via potential Dublin transfers.

Croatia took a different approach. They aimed to maximize the efficiency of transport with trains from the Serbian to Slovenian border without stopping anywhere on the Croatian territory and without

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[18] See: http://www.independent.co.uk/news/world/europe/refugee-crisis-eastern-europe-opposes-angela-merkel-s-policy-on-asylum-seekers-a6877916.html

[19] See: http://fra.europa.eu/en/theme/asylum-migration-borders/overviews

[20] See: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF

[21] See: http://www.infotujci.si/gfx/slike/dokumenti/Zakon_o_tujcih_Ztuj-2_ENGLISH_edited_jan_2012.pdf

registering refugees as required by the EURODAC Regulation. Croatia was criticized for this decision on several occasions: "Croatia, which was affected by a massive flow of people after Hungary erected a fence along its Serbian border in September, saw 340,000 people arriving since 16th September and only registered 575 in Eurodac"[22] (EUObserver, 2015).

However, Ranko Ostojić, the Croatian Minister of the Interior at the time, stated: "The Dublin Regulation was created for another time and other circumstances. The fact that almost half a million people have passed through Croatia and more than likely that just as many passed through Hungary, certainly does not facilitate the implementation of the Dublin Regulation in its current form"[23]. As one of the interviewees stated, one of the reasons for Croatia not abiding by the EU legislation of registering people was also the fear of Dublin transfers. Once Germany would have decided to no longer examine the claims of asylum seekers according to Article 17, the rest of them would be transferred back to Croatia as the first country of entry. However, for such transfer to occur, they needed proof that the refugee in question did in fact cross Croatia as the first country of entry.

During the period in which the Western Balkan route was open, it was unclear whether the two EU Directives on Asylum Procedures and Reception Conditions applied for the people passing through the territory of the countries in question since they were, legally speaking, not asylum seekers. Another question that emerged was the question of who is responsible for the migrants/refugees, who were left "stranded" after the Western Balkan Route was closed. According to Article 27 of the Dublin III Regulation, Austria started transferring these refugees back to Slovenia and Croatia. However, the decision of forced returns was suspended after Slovenia submitted a request to the Court of Justice of the European Union on the legality of forced returns and subsequently whether the Dublin III Regulation applied or not[24]. The Austrian Supreme Court halted forced returns and the Welcome Initiative also urged Croatia to do the same, while the Court of Justice of the European Union is still deciding whether or not the Dublin III Regulation was in fact applicable during the refugee crisis.

Transforming national legislation along the Western Balkan route

Post-Yugoslav refugee crises

During the period from September 2015 to March 2016, transit countries, their authorities, and the civil society took a temporary humanitarian approach towards refugees passing through their territories. In September, when one of the reception centers was opened for refugees in Slovenia in the municipality of Podlehnik (a border town with Croatia), its mayor stated: "We Slovenians are known for our solidarity, which we demonstrated during natural disasters and the war in Bosnia and Herzegovina. Here it is expected that we will provide for these people in those hours they are with us, before they go to their final destinations, which is not Slovenia" (Marko Maučič, Mayor of Podlehnik)[25]. Many different media outlets, as well as prominent political representatives of transit countries, emphasized the humanitarian nature of their transit-ness, which was based on the previous experience these countries had during the Yugoslav wars. Yet if we compare the legislative framework, we can observe that in Austria, as well as in the post-Yugoslav countries, refugees from the Yugoslav wars (particularly Bosnia and Kosovo) only received temporary protection as in most of these countries asylum legislation had not been developed yet, on one hand. On the other hand, Fitzpatrick comments that it was only Germany, Austria and the post-Yugoslav countries who took an

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[22] See: https://euobserver.com/migration/131479

[23] See: https://about.hr/news/croatia/ostojic-dublin-regulation-created-other-circumstances-3471

[24] See http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62016CN0490&from=EN

[25] See: https://www.rtvslo.si/lokalne-novice/sprejemni-center-za-begunce-bo-v-podlehniku/374233 (my translation)

extensive part in the burden sharing since they accommodated the biggest proportion of those forcedly displaced from the Yugoslav conflicts:

> "The procedures of refugee status determination were hardly overwhelmed in the majority of states responding to the Bosnian crisis. The number of refugees receiving temporary protection during the mid 1990s was quite modest in many European states. Only Germany and Austria (as well as the states that emerged from the breakup of Yugoslavia) could fairly plead that they had experienced the mass influx. (Fitzpatrick, 200: 279).

Indeed, Germany granted temporary protection, either in the form of *Duldung* and *Aufenhaltsbefugnis* (temporary protection from deportation to be exact)*,* to 220,000 Bosnian refugees. Austria took a different approach to temporary protection. While most EU Member States at the time imposed visa restrictions on Bosnian citizens, a large number of Bosnian refugees were simply granted temporary residence on the basis of the 1965 bilateral agreement between Yugoslavia and Austria, which was coined for the program of temporary migrant workers. As Franz (2003) showed, Bosnian refugees continued to obtain temporary residence on the basis of the 1992 Residence Act, on one hand. On the other hand, two thirds of those who sought asylum on the basis of the 1968 Asylum Law were refused, as according to the Austrian authorities they could not prove direct prosecution. In addition, there was a condition in the Asylum Law that an asylum seeker needs to make an application within a week of his/her entry, which prevented most Bosnian citizens from applying. These visa requirements were introduced for Bosnian citizens only in 1995, when the conflict was coming to an end (Franz 2003: 8-10).

In Slovenia, the first Asylum Act was adopted in 1999, after the post-Yugoslav wars had already been concluded. Also in the case of Slovenia, most Bosnian and Croatian citizens were not granted asylum, but temporary protection and it was initially based on "*ad hoc* measures" (Vrečer, 2010: 492). Later, most refugees from different former Yugoslav countries were given protection on the basis of the Temporary Protection Act adopted in 1997. However, as Vrečer argued, this act had two major obstacles for the integration of post-Yugoslav refugees: while they had an access to the health care and education systems, they were not allowed to work and only had the right to temporary residence (Vrečer 2010: 294).

Asylum legislation in Croatia was also poorly developed during the Yugoslav wars: in this period Croatia regularized forced displacements mostly through citizenship legislation and privileged ethnic majority in these policies (Koska 2012). Asylum legislation in Croatia started to develop only during EU accession negotiations (Baričević 2013, 97). Similarly, this was also the case with Serbia and the Republic of Macedonia, which are at present EU candidate countries and started developing asylum legislation in the context of the *aquis communitaire* (Kogovšek 2016). In the 1990s, the refugees in Serbia coming from Bosnia or Croatia were labelled as *expelled* and the expectation was that they would return to their previous countries of residence. Their access to citizenship was impeded and they ended up being used as a 'bargaining chip': they would have facilitated access to citizenship, if they were to settle in Kosovo, where Serbians formed a minority population (Vasiljević 2012: 327). Since there was no asylum law in place at the time in the Republic of Macedonia, under the pressure of UNHCR the Government of Macedonia granted Kosovar refugees a status of "Temporary Humanitarian Assisted Persons" (Donev, Ončeva and Gligorov 2002: 184, Spaskovska 2010: 11). The Republic of Macedonia received a great number of donations for hosting such a large number of refugees.

2015/16 Refugee Crisis

The countries along the Western Balkan route started appropriating their national legislation to confirm their position as *transit countries* before Germany decided to apply the discretionary clause under Article 17 of the Dublin III Regulation. One of the first significant transformations was introduced in the Republic of Macedonia. In June 2015, the Macedonian parliament passed an

amendment to the Law on Asylum and Temporary Protection: according to this amendment, refugees and migrants could apply for a travel document that would give them permission to stay in the Macedonian territory for 72 hours. In this period, they could file their application for asylum or continue on their way towards Serbia. This change was introduced because of pressure by the civil society, as in April 2015 a number of refugees, who were considered to be illegal immigrants in Macedonia, were killed while walking on the tracks. The Macedonian Minister of the Interior stated the following when the legislation was changed:

> "We are aware that Macedonia is not their primary goal. But it is our duty to help them. It is impossible to close off hermetically the borderline, especially the southern border with Greece. The cooperation between the border patrols is not at the sufficient level and needs to be improved. Also, Macedonia, due to its position, has been and still is on the main migrant routes leading to Western Europe".[26]

Serbia adopted a similar stance on a 72-hour temporary period in which potential asylum seekers could enter the state and express their intention to seek asylum. However, similar to Macedonia, in 2015 most people who were passing through the territory of Serbia expressed their intention to seek asylum, but then did not fill in their claim. Thus they continued on their way towards Hungary and Croatia after Hungary had closed its border and also introduced a package of laws according to which an illegal border crossing was not anymore only a minor misdemeanour, but a criminal offence[27]. Hungary did not simply build a fence to be removed from the list of destination or transit countries, but it modified its legislation in this way as well.

In July 2015, Croatia introduced a new Law on International and Temporary Protection. Yet this law was in the pipeline for a longer time in order to harmonize Croatian law with EU legislation (Asylum Procedures Directive and Reception Conditions Directive) and it was not directly linked to the Western Balkan route and the 2015/16 refugee crisis. However, during the 2015/16 refugee crisis, Croatia did not apply this law, but was working on the most efficient way of how to transport people through the territory of Croatia. As Zoran Milanović, the former Prime Minister of Croatia stated: "You are welcome to Croatia and you can pass through Croatia, (…) But continue. Not because we don't like you, but because this is not your final destination". The Slovenian Secretary of the Ministry of the Interior even accused Croatia that it was acting like a "transport company": "If the migrants waited in front of the Slovenian border, Croatia will have to take care of them. They are aware of that, that is why they are acting as a transport company. They are sending migrants to Slovenia as a conveyor: they are putting them on trains in Šid, Serbia and at least some of them are sent directly to Dobova".[28]

In October 2015, Slovenia introduced amendments to the Defence Act, which gave additional powers to the army so it could help police patrol the border. Some civil society representatives opposed these amendments since they saw them as the militarization of the border and migration control. However, the amendments passed by the parliament in the accelerated procedure and the constitutional court forbade the collection of signatures for a referendum against these amendments. Other major changes in national legislation occurred after the closure of the Western Balkan route. In October 2015, Austria introduced the Constitutional Law on Accommodation and Distribution of Aliens in Need of Aid and Protection, which gave the rights to the parliament to redistribute people in need of protection without prior approval by the regions. While the Western Balkan route was open, the Austrian parliament started debating the introduction of the new Asylum Law, which was later accepted. Before adopting the new Asylum Law, the Austrian government introduced amendments to the old one, where it put a time limit on the asylum status and imposed restrictions on family reunification. By the end of 2015, the Austrian government decided that they would accept 37,500

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[26] See: http://news.xinhuanet.com/english/2015-06/20/c_134342177.htm

[27] See: http://fra.europa.eu/en/theme/asylum-migration-borders/overviews

[28] See: https://www.dnevnik.si/1042724723/slovenija/bostjan-sefic-hrvati-se-gredo-transportno-podjetje. (my translation).

asylum seekers and send others back. Another important change was introduced by Germany in October 2015 through the Asylum Acceleration Procedures Act by adding new safe countries where asylum seekers could be returned, which also included all Western Balkan countries such as Albania, Kosovo and Montenegro in addition to the previous ones (Serbia, Macedonia and Bosnia & Herzegovina).

Just as the Western Balkan route was closing, Austria passed the new Asylum Law according to which it does not have to examine the asylum claim of individuals who would pose a threat to national security or public order, but could return them to other countries. In January 2017, Slovenia introduced similar amendments to its Aliens Act. Both of these new pieces of legislation were fiercely criticized for failing to comply with international human rights law since they do not give the right to seek asylum. NGOs involved in the inclusion of refugees warned that different countries started restricting their asylum legislation due to the refugee crisis, rather than introducing positive plans for the inclusion of refugees. All the transit countries in question mostly brought their legislation in line with the minimum standards of reception for refugees or people with other international protection. This gave refugees similar or equal rights as citizens. However, as NGOs reported, having equal rights is far from ensuring possibilities for the inclusion of refugees. For example, when I interviewed them, representatives of different NGOs in Slovenia reported that those who have received international protection in Slovenia have difficulties finding proper accommodation and work. Without special programs for such populations, employment is virtually impossible. In Croatia, most refugees get work through *ad hoc* activities of civil society, which is not enough to support all the refugees. After the Western Balkan route was closed, the Serbian government started dealing with 'stranded migrants', who wanted to continue their path, but were prevented from doing so. At the same time, they did not seek asylum in Serbia, which is now in search of a legal solution for these people currently categorized as illegal migrants.

In *Lieu* of Conclusion: Transforming Transit Migration - Hyper-temporariness, transport countries and transient forced migrants

Angeliki Dimitriadi argues that "transit migration cannot, therefore, be discussed or examined outside the systemic context in which it takes place, meaning we cannot understand the journey, its length and progress, as well as the change in destinations without incorporating in our analysis the migration and asylum control policies. Staying in transit is predominantly a result of the existing management of irregular migration" (Dimitriadi, 2016: 344). Similarly, Düvell argues that transit migration is always a politicized and even Europocentric concept, in many cases emphasizing the fear of mass migration rather than mass migration itself (Düvell 2010). Most of the literature on transit migration and transit countries is critical of the usage of these terms as they claim they have been used in policy discourse to justify the externalization of EU migration policies (Oelgemoller 2010, Coyller and Haas 2010, Düvell 2010, Dimitriadi 2016). The concept itself rather blurs the realities of migrants' trajectories, which signalized fragmented migration (Coyller and Hass 2010) and legitimized the securitization of external EU borders, as transit countries were usually those who were positioned just on the border of the EU (Düvell 2010). Düvell showed that many countries have not been labelled as transit countries (for example Austria), although they should have been labelled so.

Yet with the 2015/16 refugee crisis a new discourse emerged according to which many EU countries were positioned and labelled themselves as transit countries. Labelling of transit countries was changed as those who labelled themselves as transit countries saw an advantage as being labelled as such. Using this advantage of being labelled as a transit country was previously noticed by Oelgemoller in the case of Turkey:

> "The above elaboration has shown that the term 'transit country' seems to be attractive to the *labelling* entity – the European Union. Yet, it can also be attractive to the *labelled* entity – the transit country itself. (…). On these grounds, I argue, that 'transit country' is a politically

constructed space, which fulfils a convenient labelling function in various ways. The consequence, however, is that it is not a neutral analytical concept through which to understand the particular situation of a person who finds him/herself in such a country" (Oelgemoller 2010: 415).

While this paper follows the argument of a politically constructed space, it argues that the politics of labelling has shifted. Here it is not the European Union who was primarily labelling the countries along the Western Balkan route as transit countries, but the countries themselves. They have used such labelling not only to abide by what they perceived was migrant agency, but also to prevent larger numbers of potential asylum seekers settling on their territory (and not taking responsibility for them). This was not only visible through their coordinated transport, but also in the way they used legislation to reaffirm their position as transit countries.

The status of migrants who were passing through the territory of the countries on the Western Balkan route was semi-legal (Kubal 2013). On the one hand, it was not clear how they could transit in accordance with EU law. On the other hand, these gaps were usually filled by the national law, which regularized their status so their passage was possible as they had an ephemeral right to stay, but without the rights to reside While their status was formalized and their passage controlled, in most cases the states on the Western Balkan route still considered the entry to their country as illegal.

In the case of the post-Yugoslav refugee crises, forcedly displaced persons received temporary protection. Many refugee studies scholars criticized this approach as it seemed to be watering down the refugee status (Fitzpatrick 2000, Zetter 2007). Yet in the case of the 2015/16 refugee crisis, transit countries did not reach an agreement even for temporary protection. They have all agreed on transit though, while the Western Balkan route was open. The statuses of forced migrants were controlled in such a way that transit/transport countries did not afford them protection even on a temporary basis. Their position in these states was hyper-temporary as they were considered as transient migrants, who need to proceed as soon as possible before the "rules of the game" change, when Germany stops accepting their asylum claims. In my perspective, the 2015/16 refugee crisis also introduced a precedent, similar to the post-Yugoslav refugee crisis beforehand: that is granting of hyper-temporary protection only to those who are transiting, but not settling in the transit states not even on the temporary basis (protection while in transit, but no right to reside).

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