



## **University of Macedonia**

Department of Balkan, Slavic and Oriental studies

Department of International and European studies

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Professor: Tsitselikis Konstantinos

### **The impact of fear on law-making process. Analysis of governmental decisions regarding Covid-19 restrictions in migration policies**

Samara Tania

Student ID: MHR20016

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## **Abstract**

Law-making is not a neutral process since it is shaped on the basis of the ideological system, principles, values, beliefs and interests of the party/parties with a parliamentary majority. Also, the governing majority sets the agenda issues, indicating its priorities.

However, Law cannot be solely based on the above, since it contains core values such as the Constitution, human rights, respect for the person, the protection especially of those who are the most vulnerable, those who do not have the opportunity to have their voice heard. Notwithstanding, in times of crisis many of these values are considered as secondary to the need to solve the arising problems, and an “emergency” legislation is formed. Thus, as the rhetoric of fear expands and strengthens politically and socially, as a climate of non-recognition that the “other” is human and deserves respect, as the “other” is reduced to a vector of infectious diseases, a transmitter of the virus, then law, as a concept and moral content, is being replaced by a utilitarian law-making, and the legislation is replaced by a state of exception.

The main aim of this study is to investigate how the changes in the legislative framework regarding the management of migratory flows in Greece, especially during the period of the first Covid-19 pandemic, are shaped in relation to the governmental measures regarding the management of migration. The study shows that even before the outbreak of the coronavirus pandemic in the Greek state there was a discourse of fear of the “other”, with decisions of detention instead of integration; however, with the pandemic the legislator turned to full containment measures, considering migrants/refugees/asylum seekers as carriers of the virus, in need of complete isolation from the natives. With this legislation, what is recorded is a complete reversal of perspective: instead of focusing on the health of refugees/asylum seekers who are the ones with increased health needs, they are actually referred to as a risk and their movement is completely prohibited, as they are presented as a public danger. This is a xenophobic perception, which is masked behind the discourse of fear and this fear penetrated the law-making process.

**Keywords:** Migrants, Refugees, Law-making, State of emergency, Covid-19 pandemic.

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## **Abbreviations**

ECHR	European Convention on Human Rights
ILO	International Labor Organization
IOM	International Organization for Migration
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
WHO	World Health Organization
ECDC	European Centre for Disease Prevention and Control

## **Chapter 1. Introduction**

### **1.1 Problem statement**

One of the most important issues that societies are currently facing is migration. Of course, population movement is a phenomenon that has been recorded since ancient times and has never ceased at any historical moment (Fisher, 2014), and indeed the relocation to another country and the coexistence of natives with foreigners is one of the key points in the formation of modernity (Cresswell, 2012). However, especially from the late 1980s to the present day, migration flows have increased significantly, especially to Western countries (IOM, 2021), without always having the necessary legal entry into a country. The issue of irregular entry into a country can be considered under many different prisms, often completely contradictory to each other. A key aspect is the management of migration flows in terms of the dignity of the individual. Another key aspect is the safeguarding of public health. This second aspect has taken on particular importance since the outbreak of the pandemic, as governments have taken - and are taking - measures to limit its spread.

The combination of these two issues - that is, safeguarding the dignity of the individual and ensuring public health - is the field with which this paper is concerned. In particular, the main area of concern of the study concerns how the public agenda is shaped on the basis of a rhetoric that invokes fear and that justifies any policy and legal decisions as a result of specific circumstances. Hence, the subject of the present essay is the impact of fear on the law-making function and in particular how the discourse of fear affected the law-making of the Greek State concerning refugees and migrants, during the first period of the Sars-Cov-II virus pandemic.

Behind this choice, there are specific thoughts and needs, which acquire interest if examined from the point of view of the legislative process and also the sociology of law. This disease, a pandemic that occurred approximately a century after the last similar pandemic, the so-called Spanish flu (Toutounzidou, 2021), redefined both the everyday life of ordinary people, as well as the legislative and social functioning of states, depending on the regime of each state. Moreover, course was its influence were at it's strongest in the first period of the pandemic when the scientific community was still trying to understand the virus, the mechanics behind its transmission, to determine the ways of prophylaxis, and to take emergency measures, under the rule of fear for

public health. The result of this is that legislation during this period was and still is a very useful and revealing subject of study.

It should also be emphasized here that Greece is a state with many particularities, both geographically and socially – politically, as will be analyzed below, in the main part of this essay. This specificity will develop in the main part, so there will be no extensive reference here, only the reminder that Greece is a state that has an extensive border with countries that are not members of the EU, and that it has been - and still is - one of the main gateways to the EU for migrants and refugees. At the same time, it comes from a period of economic prosperity, which was followed by a period of a very intense economic crisis and hosts a quite socially conservative population. Therefore, the migration and refugee flows of a foreign population, which does not share the same religion or even has no common origins with most of Greece's population, has often been seen as a threat to Greek citizens. That provided the necessary ground for the Greek government, in order to institute a special type of laws. The above are referred to here, in the very first part of the paper, so as better to understand the choice of the subject and to underline that the intersection between the refugee/migration legislation and the legislation on the health crisis is the best place to control the effect of fear on the legislative function.

## **1.2 Significance of the study**

The significance of the study is that it examines how politics, legislation, and the functioning of the state are shaped in conditions where fear is the dominant thematic of the agenda and where crisis is invoked to declare a state of exception, with reference to those who have no voice, who are not represented, who cannot voice their objections and formulate the justice of their demands. It is very important to ascertain whether the enactment of laws is now of an entirely utilitarian nature, aimed solely at settling the issues on the agenda and invoking the “common good”, or, on the contrary, whether it is founded on the concepts on which the Constitution and the rule of law have been formed. Demonstrating which of the two is true will be crucial in helping to document how a modern European state understands the law in an age when the rhetoric of fear shapes what is defined as normality.

### **1.3 Aim and objectives**

The main aim of this study is to investigate how the changes in the legislative framework regarding the management of migratory flows in Greece, especially during the period of the first Covid-19 pandemic, are shaped in relation to the governmental measures regarding the management of migration.

For a more in-depth analysis on this issue, reference is made to the progression of the migratory influx to Greece, in relation to the formulation of a rhetoric of hostility, fear, and aggression, in terms of opposition to the “foreigner” and terms of the war against the “virus” and its carriers. In this way, it is investigated whether these changes constitute an isolated, random phenomenon or a wider one, regarding the way the country's legal framework is institutionalized.

In particular, the objectives of the study can be summarized as follows:

- To determine whether Greece's legal framework regarding the management of migrants entering the country has changed during the period of the first outbreak of the coronavirus and if so, in what direction (expansion or contraction of social rights)?
- What are the consequences of the change in the legislative framework?

Along these axes, the objectives of the study, as derived from the stated aims, are developed at three levels:

- The first level concerns the investigation of the evolution of the rule of law, the rule of law, and human rights, both in terms of the conceptual framework and the content of these terms.
- The second level concerns the conceptual framework of migration and migrants, as well as the theoretical and legal framework for the management of migration flows.
- The third level concerns the areas of hate speech and fear and the way in which the agenda of the issues on which countries' legislative and regulatory frameworks are shaped, in line, convergence, or divergence with the fundamental principles of law.

#### **1.4 Methodology**

For the purposes of this study, the method of bibliographic research was followed. The author turned to books, monographs, articles, and court decisions, while journalistic sources and interviews were used to understand a situation with a strong scent of current affairs and, moreover, very close to us. However, the main part of the work is based precisely on the legislative texts and ministerial decisions of the period in question, which concern the protection measures against Covid-19 and were intended to be applied in the Reception and Identification Centers and the Long Term Accommodation Centers in Greece. Given that the issue also belongs to the field of sociology of law, it is considered necessary to emphasize that as manuals of sociology of law were used the following: (a) *Institutions, Law and Society: Critical intersections in the light of an experiential View*, Papazisi Publications Athens 2018, b AUTH. Professor Aspasia Tsaousi and (b) *Sociology of Law. Introduction to a realistic legal science. Interdisciplinary approach to the legal phenomenon*, Second edition, Sakkoulas Publications Athens – Thessaloniki 2012, by AUTH. Professor Emeritus Nikolaos Intzesiloglou. For bibliographic references, it was used the Harvard citation system, as detailed in the template given by the academic report website Mendeley.

#### **1.5 Structure of the thesis**

This paper will first analyze the psychological and emotional influence of fear on legislation, both in general and in the field of public health. Next, the context of the migration and refugee flows in the examined period of time will be analyzed, as well as the connection of the whole problem with xenophobia, both positively, that is, how it was used to make the measures taken acceptable to society, as well as negatively, that is, how this targeting led to negative emotions and to further control of society and the tightening of the legislative framework for refugees and migrants. Then an attempt will be made to follow an analysis of the medical problem, to the extent that the refugee and migrant flows have some particular characteristics. Finally, the decisions of the Greek government on this issue will be approached, in order to determine whether or not the laws that have been decided perceived and treated refugees and migrants as a risk for public health.



## **Chapter 2. Theory of law and emotions**

### **2.1 Implications of the emotion of fear in law-making process**

Fear, as a practice used by the state authority, dates back to the ancient years of the very early societies. Records for this fact are the landmarks and Style of the pharaohs, who were trying to instill in the hearts of their subjects the fear of their authority and power. Another record exists in Homer's *Odyssey*: Again and again, the exhortation is heard to the future kings to use fear and violence to impose themselves, since Odysseus, who did not use them, but was a kind and considerate governor was forgotten by his people (for example, Homer's *Odyssey*, Rhapsody e, col. 7-12).

In recent years, we see fear being a tool of the state, and therefore of the legislative power, in order for the citizens to ratify the social contract offered by the state. So, for example, in *The Classic Leviathan* work by Thomas Hobbes, the dominant reason behind his ideas is fear. Living in a time of civil war, while death and danger dominated the whole society, Hobbes believes that ideals such as freedom and equality are of little value because they are left to the mercy of the strongest. Thus, under the rule of this fear, he considers it legitimate for the citizens to escape from this situation by transferring all their powers to a king, who will be a guarantor against the fear that pervades them. In other words, in the face of the fear of lawlessness and anarchy, which is encompassed by the natural -according to Thomas Hobbes- state of man, the answer is the structured, centralized and strong -and thus oppressive- state power (Intzesiloglou, 2012). Similar perceptions exist in later texts, even of popular fighters – forerunners of the revolution, as appears in Rigas Velestinlis, even in his *Thourios*: “... For anarchy, too, resembles slavery, living like lawless beasts, means suffering from a harsher fire...” (Rigas Velenstinlis, *Thourios* v. 27-28). Finally, it is characteristic that even younger thinkers, when envisioning their Utopian societies, often reserve to the state the protection of citizens from violence and theft, i.e. essentially the prevention of fear (Tsaousi, 2018).

Nevertheless, it should be understood that fear is driven and fueled, not only by the skillful use of immigrants for political reasons but also by news events, often resulting in a self-fulfilling prophecy. In particular, incidents of racist or religious violence, even in different countries, cause a chain reaction of violence and racism. In turn, these reactions often result in the strengthening of totalitarian nationalist parties, which thus

infiltrate society and push for legislation that takes into account their positions, and the fear they spread in society. Besides, according to Durkheim, the collective consciousness of a society is not something unified but broken down into many individual components. One of them is fear, which leads to the transformation of society (Tsaousi, 2018; Tsitselikis, 2012; Poulakidakos, 2018).

## **2.2 Cases over the year**

As it was mentioned in the introduction of this dissertation, this chapter aims to explore the relevant theory of law-making coupled with the implications of emotions, like fear during the process. As Abrams and Keren (2010, p. 2050) support, laws can be used as “vehicles for influencing the emotions”. Emotions like fear, are a result of language, public discourse, and the opinions of experts such as health professionals, legislators or/and politicians, etc. As correctly Bianchi and Saab (2019, p. 351) note “international law rules and doctrines are often adopted –if not overtly justified– on the basis of fear and other emotions” and it is quite safe to conclude that the same is true at domestic level. Abrams and Keren (2010) enumerate a series of legal interventions that engage emotions through expression of society’s collective response, through containment, management, modification, script, manipulation, prevention, and destruction of them. One last example of the relation of legal interventions and emotions is the act of cultivation (Abrams and Keren, 2010). In particular, laws, doctrines, and governmental policies can be used to cultivate emotions such as hope or fear and shame (Abrams and Keren, 2010).

A timeline of use of fear by laws through some notable examples from the past it would be quite enlightening in this point of the study. These examples should be enough to justify the influence of emotions, in our case the emotion of fear, on law-making procedures. An example of intentional cultivation of fear by law is the case of restriction laws (known as Nuremberg laws of 15th of September 1935: “Reich Citizenship Law” and “Law for the Protection of German Blood and German Honor”) affecting Jews in the early years of Nazi regime (United States Holocaust Memorial Museum). These restrictions promoted an atmosphere of fear and feelings of risk for the non-Jewish, stigmatizing Jewish population (Abrams and Keren, 2010). Another notable example that defined the theory of politics of fear for the 21st century is the terrorist suicide attacks on the towers of the World Trade Center in New York City, the Pentagon, and

the airplane crash into the fields of Pennsylvania (Bianchi and Saab, 2019). A few days later, when the dominant emotion was fear, UN Security Council's and Congress's resolutions were implemented to counter-terrorism, permitting military interventions (Bianchi and Saab, 2019) and causing an anti-terrorist atmosphere in the rest of the world (Human Rights Watch, 2012). In the name of security "these post-September 11 laws, when viewed as a whole, represent a broad and dangerous expansion of government powers to investigate, arrest, detain, and prosecute individuals at the expense of due process, judicial oversight, and public transparency" (Human Rights Watch, 2012). It is clear enough that the effects of counterterrorism laws are followed by segments of anti-migration aspects.

Another example that Bianchi and Saab (2019) refer to is the representation of environmental hazard that influences the modern world and has a major impact on law-making process in several ways. As Bianchi and Saab (2019, p. 353) mention the international legal policies on environment impose that climate change is "a serious, imminent threat or danger" that it is always coupled with risk and catastrophic repercussions for the planet in the public discourse. Fear had a close relation to law and policies shaping in the field of food safety as well. Bianchi and Saab (2019) refer to Mad Cow Disease and the measures that were taken to limit human deaths caused by the disease that created an atmosphere of fear and panic in the world.

A more recent example that incorporates fear and law-making is the EU – Turkey Agreement which came into being on 20 March 2016. This Agreement came as an outcome of securitization needs and the presentation of migrants as a threat to society. The main purpose of the Statement between the EU and Turkey was the prevention of irregular migration and even if it was reasoned as "a temporary measure for an emergency situation in Greece may become the blueprint for EU asylum policy elsewhere and a model for the future" (Lovett, Whelan and Rendón, 2017, p. 7-8).

Proceeding to the most recent example, which is the core subject of this essay, an approach of the relation between fear due to the emergency of the outbreak of Covid-19 as a health threat and the following proposal and implementation of legal decisions will be attempted. The focus of this essay will be given on the legal decisions concerning the operation of Covid-19 in migrant populations in Greece during the first months of the pandemic outbreak. As it was mentioned in the introduction, in the last

chapter of this dissertation, a more detailed refer and comment on Greece's domestic laws and ministerial decisions regarding Covid-19 and its impact on migrants have been attempted. Since the first months of 2020, the pandemic of Covid-19 has disrupted lives across the planet, challenging the governments of all countries and driving the world to a truly unprecedented crisis. This was the situation in Greece as well. The coronavirus outbreak forced World Health Organization (WHO) to declare it as a public health emergency of international concern (PHEIC) on January 30, 2020 (WHO). On March 11, 2020, WHO (2021) characterized Covid-19 as a pandemic. Following this emergency situation, a series of international and domestic regulations were adopted and a wide range of measures regarding public health, economy, employment and social policy, human rights, etc. were activated (EUR-Lex).

### **2.3 Fear of the “other” as a threat to public health**

Regarding the fear of the “other” for public health, a clarification should be made that this investigation, too, has three parameters. The first parameter is our knowledge of the “other”, and whether this knowledge is accurate, the second parameter is the conditions in which the “other” lives, while the third parameter is the type of risk involved.

Before all this, however, we should define the concept of the “other” for the purposes of this dissertation. “Other”, therefore, for the needs of this essay, which concerns the legislation on Covid-19 and the phenomenon of immigration and refugees, can only be either the refugee or the migrant – or even both. However, it would be a lack of the present essay not to mention that Greek society treats as “other” and the Roma, as well as people who do not differ in origin, but only in their choices, such as people being homosexuals or users addicted in certain substances (Kranidiotis, 2016).

One element which influences the parameter “other” is the knowledge we possess of the “other”. This knowledge, however, is also influenced by the socio-political conditions of each society. The knowledge of the “other” is different in a multicultural society, where the various cultures live together in harmony and different in an essentially closed group society, where it's members share basically a common background. It should therefore first of all be investigated in which case Greece belongs.

Here it should be noted that even today, the data of the last census, that is the census conducted in the year 2021, have not yet been released. As a result, we are, of necessity, relying on older data, but there are no fundamental differences between them. According to the data that ELSTAT (Hellenic Statistical Authority) has given for 2017, out of a total population of about 11,000,000 inhabitants, foreigners are only 810,034. (ELSTAT, cited in EACEA, 2021). This poses a huge problem because such a homogeneous population cannot have come into contact with the “other” in general so that they know how to manage or understand them. At the same time, this means that it is more difficult for a group of immigrants to maintain their social identity without ghettoizing or resorting to violence (Tsaousi, 2018), which gives rise to fear, as already mentioned in chapter 2.1. Indeed, this problem is exacerbated by the fact that in no case has there been a systematic preparation of Greek society for its contact with the “other”. Even in education, efforts have been exhausted, until very recently, in the establishment of some intercultural schools, so that the children of those who differ, could be integrated into Greek society – and part of these children, perhaps the largest, concerned Roma populations and not immigrants or refugees of a completely different culture. However, no preparation had been made, through education, to prepare the general population to accept the diversity of different cultures and civilizations (Koloutsou, 2018). Without such preparation, diversity necessarily breeds fear. Also, it is characteristic that the racist discourse of both politicians and citizens frequently, but not exclusively, focuses on the characterization “unwashed”, which is directly related to hygiene (Kranidiotis, 2016).

The second element which plays an important role in whether the “other” is considered to be a threat to public health is his living conditions. At this point, it should be noted that the Greek population, although has no recent experience of being refugees themselves, do has such memories, dating back not much earlier, not mere than three generations behind, during the Asia Minor Catastrophe in 1922 (Koumantos, 2021). Also, a large part of the Greek population has emigrated in the past, temporarily or permanently, to foreign countries in search of employment. In other words, Greek society has at least some receptive performance for the situation in which the refugees or the migrants live by when they come to another country (Machaira, 1999; Fotiadi, 2010).

This means that in Greece it was easy to identify and understand the conditions that can lead migrants and refugees to become a problem for public health, and how these very conditions affect the very population that lives in them. The fact that these conditions exist in a group of “other” people and not at the core of the community magnifies the problem. The living and suffering conditions of refugees and migrants had made them more susceptible to communicable diseases, even before the outbreak of the SARS-CoV-II virus, which causes the Covid-19 disease. In addition to the poor condition, they arrive in, migrants and refugees face lockdowns in closed facilities (Tsitselikis, 2018), suffer from overcrowding in the same facilities, as well as they have limited access to social and health services, food, good quality water, and sanitation (Papadatos – Anagnostopoulos et al., 2020).

As long as to the type of risk, it should be pointed out that the risk for public health, by transferring a transmitted disease primarily depends on the contact that exists between the “other” and the indigenous population. However, contact refers not only to the obvious contact, that is, the involvement of the “other” in social life, but also the contact that is not so obvious, that is, the contact of the “other” with professionals, whether in health or refugee flows management department, who then, of course, come into contact with the indigenous population to which after all they normally belong.

As has already been said above, the conditions in which refugees and immigrants live in Greece, due to the radical conservative policies of the current government, increase the vulnerability of these populations to communicable diseases, and the indigenous population is already aware of this, which means that the “others”, whether refugees or immigrants are treated as a potential danger by the natives, even if they are not. Truly, not every “other” represents potential health risks – some of them, even if they are refugees or migrants, are located in areas where the Sites are well organized and are not overcrowded, or others live in houses in urban areas, where normally they have the ability to take care of their personal hygiene – (IOM, 2020). This causes fear by itself, and the fear is also increased by the rhetoric already mentioned above, which often focuses on sanitation issues. Indeed, it should be emphasized here that this rhetoric, many times ignores inherent characteristics of the “other”: for example, a Muslim or a Sikh, undoubtedly an “other” for the Greek population, and even a hostile “other”,

especially in the case of a Muslim, will not choose to abstain from cleanliness, since it is assumed as a sacred obligation they have (Eldin, 2015).

This kind of rhetoric is usually boosted by the real fact that in most reception centers the shortages in personnel and infrastructure are so great that they reach a state of humanitarian crisis. This way, however, it is the policies of managing the problem themselves create the risk, in order to create fear of the “other”, whose fear afterward will be exploited so that the security measures regarding the “other” can be tightened up (Tsitselikis, 2018), which in turn will lead to greater risks and even greater fear, in which case a vicious circle arises. This effect is magnified also by the fact that not all concentration centers have a doctor, but even those that have often suffered from overcrowding, that the neighboring hospitals are burdened for every disease or health problem faced by the “other” or even the possibility of one. This however cannot elude the native population of citizens, who then often come to believe that they lose their rights in their own country, in benefit of the “other” (RSA 2019).

#### **2.4 Analysis of public discourse on fear against the “other” in the case of Greece during Covid-19 pandemic**

The first point to note regarding public discourse on immigration (as an issue) and migrants (as a response) is that, for several years now, there has been a very large expansion of xenophobic and far-right discourse in the public sphere. Therefore, first of all, it is necessary to outline some structural characteristics of the groups that articulate this discourse.

Scholars who have dealt with the rise of Nazism in Germany and fascism in Italy, have come to speak of four different grouped aspects of the far right. The first focuses on the general stable characteristics of the voters of these factions, specifically moral values and character elements (Adorno, 1998). The second is the existing social fragmentation, which is characterized by the breakdown of social norms, feelings of anxiety, anger, and isolation due to social change. Thus, according to this approach, suffering individuals, seek strong leaders with absolute ideologies (Parsons, 1942). The third is designed on theories of social psychology. In this case, conflicts between groups are the root of the success of the far right. At the same time, the classic theories of using a scapegoat (Dollard et al, 1939) are used, in which minorities in societies, as weak, are targets for blame to be laid by frustrated individuals. In relation to other considerations,

the one that mentions ethnic conflicts with instrumentalized purposes, such as xenophobia, conflict, and division between immigrants and lower-class natives, and racist stereotypes, finds direct application in a similar way. The fourth group is made up of ethnic antagonism, political classes, subtle, modern or symbolic racism (in its various manifestations: from subtle to overt), and social identity (Belanger and Pinard 1991; Kinder and Sears 1981; Tajfel et al, 1971).

The parties of the far right, like their voters, all move along a common axis of values. For starters, they are driven by nationalist ideals, xenophobia, populism, anti-establishment and socio-cultural authoritarianism (Rydgren, 2007; 2008). Parties that now project such views are recognized as radical right-wing populist parties. Their aim is to return power to the hands of the people (Akkerman et al, 2016; Rooduijn, 2018). Based on the definition of populism, in society there are two groups: the pure and innocent citizens and the corrupt elite, with political issues that should be an expression of the interests of the state. These parties according to this train of thought, are protectors of the will of the people against the individual interests of the corrupt elite, they are protectors of the will of the people replacing human rights and constitutional guarantees (Mudde, 2009). Referendums, therefore, play the role of undermining the arbitrary action of those in power. To begin with, distrust of representative principles and demonization of globalisation are common features on the far right. The societal alterations from it, massification, and migration have created winners and losers from this phenomenon (Kriesi et al, 2008). Immigrants and foreign companies compete with the natives for access to limited resources and the state institutions do not do anything to ensure security against this. Finally, they mention the confluence of parties on many economic, political and social issues, in order to show that “they are all the same” (Kitschelt, 1995).

Second, the theory of elitism describes the removal of citizens from their ability to co-decision, while institutional organizations/authorities appear selfish, apathetic, and corrupt (Canovan, 2002), in order to show that there is a large differentiation between what the people want and what governments carry out.

Third, this discourse claims that a major impact of opening borders, in the context of globalization, is migration. In this matter, the far right argues, that every nation should



consist of only people of the same nation and not of different origins while every new idea and influence is met with hostility (Mudde, 2010).

Looking at the rhetoric emitted by Greek society and Greece in general, during the pandemic, regarding the “other”, we should start taking into consideration certain assumptions, but also, we should meditate on certain events that were not caused or influenced by Greece. We must therefore bear in mind that a new government was in power, which had come to power, as we have already said, taking advantage of rhetorical fear, nationalism, and an attack on diversity. In fact, various of its ministers, as well as high-ranking members of the – still today – ruling party, had passed through the space of the alternative right and nationalism, and their origins are of course evident both in their speech and in their policies (Demetis, 2021; Kalantzi, 2017). In this context, their rhetoric over time refers almost exclusively to the “other” with the term smuggled immigrant, regardless of whether he is an immigrant or whether he meets the conditions to be awarded refugee status (Kalantzi, 2017).

Another assumption that needs to be made here is that Greece did not face its first wave of refugees during the coronavirus crisis but has been facing continuous refugee and immigration flows at least since 2015. In addition, these flows came to a homogeneous, and therefore xenophobic, population, and even to a state that had neither the means nor the infrastructure to manage them (Poulakidakos, 2018). This aggravated the whole situation, because these shortcomings had already helped in spreading the rhetoric of fear, but also because there was already fatigue in Greek society from the refugees and migrants’ flow. Finally, at the beginning of the health crisis, just before the SARS-CoV-II virus arrived in Greece, there has been another massive attempt by migrants and refugees to enter the country, not from the sea but from its land borders, namely Evros.

Having said that, it is only logical that the prevailing rhetoric linked the health crisis to the entry of refugees and migrants into Greek territory. These speeches of course disregarded the fact that the main sources of transmission of the SARS-CoV-II virus in the Greek territory were not immigrants and refugees, nor generally the “others”, but people who were Greeks and even belonged to the core that this faction, who spreads the fear for the “other”, investing in xenophobic rhetoric, recognizes as Greek, since they had gone to Israel for Orthodox Cristian religious tourism reasons (Angelidis et al., 2020).

In this context, statements made by the official lips, in the sector in question, mainly concerned the connection of migrants and refugees with the pandemic. The whole situation with the SARS-CoV-II virus, which causes the disease that became known as Covid-19, helped the current Greek government to invest in the rhetoric of security. In other words, using the issue of health security as a Trojan horse, Greek government was able to instrumentalize the refugee and migration flows, but also to transform them from an issue of international legitimacy and humanitarian aid into a national, but also a hygienic, security problem, to an extent that has not been attempted before.

It is true that in the past, the same attempt was made, namely, to transform immigration in general into a security problem (Tsitselikis, 2018), by invoking risks to public health. The relevant rhetoric goes back to the past, many years before the pandemic and with a government that did not belong to the same political sphere as the present one, but rather to the exact opposite (Kalantzi, 2017). However, without an active and present health hazard, this rhetoric did fail to acquire a particular audience, although it had the secondary action to addict Greeks, as a society, to accept that hearings, with their constant repetition.

This has changed rapidly during the period of the current pandemic. This was due not only to the utterance of this public discourse by increasingly important people, from an institutional point of view, but also to the fear that the disease had already provoked to the population. Another factor was the measures taken to counter the spread of the disease, including the implementation of a very harsh lockdown, the like of which the Greek citizens had never experienced before. Thus, the prime minister's invocation, to a people who saw on their television screens the effects of the virus in neighboring Bergamo, that refugees come from areas infested by the disease and need to be intercepted at Greece's border, acquired special weight and was effectively persuasive.

As we have already said above, turning migration and refugee themes into security policy was part of the basic ideology of the current government (Angelidis et al., 2020). The outbreak of the pandemic therefore simply helped in an already determined policy. Thus, the Greek government constantly linked the flows of coronavirus cases with the flows of the "others" and was trying to pass on the responsibility for the health adequacy of the closed concentration Sites of refugees and migrants to the people already confined there (Angelidis et al., 2020). In fact, there was even talk of a deliberate

attempt by Turkey to introduce coronavirus patients into Greece through the flows of refugees and migrants, in order to harm Greece (Koumoutsakos, cited in Angelidis et al., 2020). Prime Minister also tried to demonstrate that humanism was coming into conflict with public health and safety (Mitsotakis, 2020, cited in Angelidis et al., 2020, p. 16).

Of course, it was not only Greece's government that used such rhetoric, nor only the political world. A large portion of the media also followed. It should be emphasized here, of course, that, at that time, the government, through subsidies, had managed to gain influence in an alarmingly large part of the mass media of the Greek scene, to the extent that they become its mouthpieces and promote only specific views (Angelidis et al., 2020). As a result, many publications were identifying the refugees and immigrants, that is to say, the "other" of this essay, with the health crisis, and indeed, again, with the responsibility lying on the "other" and not on the state that has accepted him and had the legal obligation for that (Kanelis 2020, cited in Angelidis et al., 2020).

It would be a mistake, and an omission of this essay, not to point out that this tendency was not exclusively Greek, but also appeared in other countries, mainly by politicians in the radical conservative sphere. Of course, this essay is limited to Greece, as far as its subject is concerned, but the presentation of the "other" as a danger to public health during the pandemic was not exclusively a Greek phenomenon, but rather it belongs to a specific political sphere (Angelidis et al., 2020, p. 9).

Things changed somewhat, but certainly not radically, after the first period of the Coronavirus crisis. The cessation of the pressure of refugee and migrant flow, and also the rise of cases changed a bit the rhetoric of the government. That doesn't mean that the Greek government changed its position, e.g. referring to the "other" as a security problem and risk. Still, the government could no longer invoke the external threat as a parameter of the problem. That argument was the lack of closed structures, which did not allow the exclusion of contact between refugees, migrants, and Greek society (Angelidis et al., 2020). Ironically, during the second period of the coronavirus crisis, we had an uprising that ended with a fire at the Moria camp, which was totally destroyed afterward. The uprising stemmed from the government's inability to take measures to ensure the housing and work of people who were granted refugee status and were sent away from the camps. One of them returned from Athens to Moria, and transmitted the

coronavirus to the camp, a camp that was already subject to a six-month period of strict restrictions on movements and the ability to contact anybody. The decision to re-impose strict restrictions to the camp was the fuse that led to the aforementioned rebellion and fire, which in turn burned down the infrastructures of the camp (BBC, 2020; Markham, 2022). Equally targeted also was the “other”, both in general and in the sense of the present essay, for the spread of the disease and the increase of sick cases in the second wave of the pandemic by constant statements and stories in the mass media. This rhetoric led to xenophobic reactions, which expanded even to denying children’ food supplies, an act committed by a local population that, under the rule of fear and subject to that rhetoric constantly, had eventually lost the ability to think logically or to take into consideration the scientific facts.

## **Chapter 3: Impact of Covid-19 pandemic on the law-making regarding migrants in Greece**

### **3.1 Conceptualization, working definitions, and legal basis of terms on migration**

International migration is the movement of people from one country of origin to another. This international movement may be characterized by several individual or combined features, such as the reason for leaving the country of origin, the reason for choosing the destination, the length of stay, and the lawfulness of residence (Bilborrow et al., 1997; Koser, 2016). In its general conception, a “migrant” is a person who moves, at a given time, from one particular part of the earth to another. A “migrant worker”, according to Article 11§1 of ILO Convention 97, is a person who moves from one country to another for the purpose of working and refers to any person who is legally admitted to a country with the status of dependent or other employment.

The concept of migrant is different from that of alien. According to Art. 1 of N 3386/2005 and the corresponding part of the Immigration Code (Law 4251/2014). This status of a foreigner differentiates him/her from a national, i.e. from a natural person who has Greek citizenship. Thus, the distinction between a foreigner and a Greek citizen is based on the person's nationality vis-à-vis a particular state, i.e. the person's legal link to a certain state to whose people he or she belongs. Persons who have several nationalities, one of which is Greek, are considered nationals (Article 2(2) of L. 3386/2005).

In this context, the Law on Aliens includes all the provisions that regulate the legal status of entry, residence, employment, integration, health, public order, etc. in Greece of persons who do not have Greek citizenship or Greek nationality. However, the term “alien” refers to a number of distinct legal categories, such as a stateless person, citizen of the Union, citizen of a third country, and refugee.

According to Article 1 of L. 3386/2005 the equivalent of the Immigration Code (Law 4251/2014), a “stateless person” is a natural person who fulfills the requirements of the 1954 New York Convention “on the Status of Stateless Persons”, which has been ratified by L. 139/1975. A stateless person is a person who lacks nationality and is therefore not considered a citizen of any state according to its law.

An alien citizen of the Union is any person who holds the nationality of a Member State of the Union within the meaning of Article 17(1) of the Treaty establishing the European Community. That Article establishes citizenship of the Union. Every person holding the nationality of a Member State is considered to be a citizen of the EU. Citizenship of the Union complements national citizenship and defines the rights of nationals of EU Member States as provided for in the Treaty.

A third-country national is a natural person who does not have Greek nationality or the nationality of another Member State of the European Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union.

Also, a refugee is a foreigner who declares orally or in writing before any Greek authority, at the points of entry into the Greek territory or within it, that he or she is seeking asylum in the country, or a foreigner who in any way requests not to be deported to a country because of persecution on account of his or her race, religion, nationality, social class or political opinion. Such an alien is considered as an “asylum seeker” under the 1951 Geneva Convention and may not be removed from the country in any way until the final determination of his or her claim. Also, a foreigner who enters Greek territory pursuant to the Dublin Convention of 1990 (Law 1996/1991) is considered an asylum seeker. Finally, a beneficiary of international protection is a foreigner or a stateless person who has been granted refugee or beneficiary of subsidiary protection status by the competent Greek authority. A beneficiary of subsidiary protection is a foreigner or stateless person who does not meet the conditions for being recognized as a refugee, but who has substantial grounds for believing that if he or she returns to his or her country of origin or, in the case of a stateless person, to the country of his or her previous habitual residence, he or she would be in danger of suffering serious harm within the meaning of Article 15 of the Greek law on subsidiary protection. Decree No 141/2013 and who cannot, or because of that risk does not wish to, place himself or herself under the protection of that country.

“Irregular migrants” are defined as those who arrive or reside in a country without legal authorization, those whose applications for asylum are unsuccessful, and those who bypass migration controls by irregular means, such as fraudulent weddings and adoptions, falsified documentation, etc. It should be highlighted that only a handful of countries' laws define what constitutes illegal entry and/or residence (Guild, 2004).

### **3.2 Short overview of migration in Greece (2015 – today)**

However, before we dwell on the other issues of work, there should be made brief historical retrospection of the current, until today, a wave of migration and refugee flows, which the Greek state has faced and is facing. After all, part of this wave is the subject of this dissertation.

The Greek state, due to its particular geographical and political position, has always had flows of immigrants, as well as refugees. Characteristic cases after all, such as that of Manolada (Kapsalis et al., 2021) and Kurdish political refugees (Abdelradhim, 2018), are much older than the current crisis of migration and refugee flows.

Due to its geographical position, Greece was the first entry in the EU for refugees fleeing the war in Syria in 2015 and beyond. In fact, these flows were unprecedentedly dense (Clayton, 2016). The then new Greek government, entangled in various economic needs and facing an also very dense political time, did not have the required time to deal with the issue, thus calling on private initiative to fill the gap. After some months though, when some of the rest, neighboring and not, countries, closed their borders to the passers-by from Greece, this attitude of the then Greek government changed. That had the side-effect that the migration and refugee flows began to be seen as a threat to security and culture, and those entering were often forced to stay in shelters and detention centers. At the same time, the voices that invested in fear, diversity, and racism were growing exponentially, creating the impression that the migration and refugee flows, themselves, are a danger to Greek society. In fact, the then main opposition party, which governs today, adopted this rhetoric and later, after the elections, when it came to govern, hardened even more the official stance of the Greek state against foreigners, whether they are refugees or immigrants. In this context, restrictions and tough border controls, closed reception centers, and additional restrictions on Migrant Facilities in Greece were established and imposed.

According to the UNHCR and the International Organization for Migration, the influx of refugees and migrants in Greece increased rapidly in 2015. The majority of them come from war-torn regions, such as Syria, Afghanistan, and Iraq, or countries with economic instability and totalitarian regimes, such as Pakistan and Nigeria. According to UNHCR, one-third of refugees and migrants are hosted by neighboring countries, some of which are among the poorest countries in the world, while only 16% of the

world's refugee population is hosted by more developed countries, such as those in Europe. In 2018, although the number of people arriving in Europe decreased by 86% compared to 2015, and although most refugees and migrants wish and try to arrive and be hosted in countries such as Germany and France, 11% of all asylum seekers in Europe sought asylum in Greece, which is a “host country” for refugees and migrants, as it is the first country they arrive in (European Commission, 2022).

### **3.3 Crisis, fear, and state of emergency in the law-making process: two key paradigms**

In our study, the case of the crisis has two aspects: the one regarding the “health crisis” and the second is the one that is referred as “the refugee crisis”. Regarding the “health crisis”, the outbreak of Covid-19 forced WHO to declare a Public Health Emergency of International Concern on 30.1.2020, and, on 11.3.2020, to recognize the spread of the virus as a pandemic (WHO, 2020). A public health emergency is defined as the occurrence or threat of a disease or health condition due to bioterrorism, an epidemic or pandemic, or a new highly lethal infectious agent [that] increases the risk of a significant number of deaths, cases, and permanent or long-term disability. The declaration of a state of emergency allows the governor to suspend state regulations and change the operation of state agencies. The direction and content of these changes, and their potential impact on the health of refugees and migrants, will be exposed below.

“Crisis”, as a term, is associated with something unusual, unexpected, or rather abnormal (Ernst, 2007) that comes to disrupt the normal flow of reality and unexpectedly introduces a new non-normality (Lange, 2022). The main characteristic of the crisis is the overthrow of the existing state of affairs in any aspect of the term, including treaties, conditions, and arrangements<sup>1</sup>. The term “crisis” refers to a critical point, which also contains an element of threat (Johnson, 2018). In this line, according to the European Commission:

“‘crisis situation’ means a circumstance, event, incident or emergency (or a succession or combination thereof) posing a major or an immediate threat to security (...) regardless of its origin” (European Commission, 2015, p. 2).

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<sup>1</sup> In fact, Pikrammenos defines crisis as “the abrupt and intense occurrence of a deep deregulation” (Pikrammenos, 2013, as cited in Drossos, 2020, p. 369).



We speak of a crisis when a community of people, an organization, a city, a nation, perceives an urgent threat to fundamental values or vital functions that must be addressed under conditions of uncertainty (Kalbassi, 2016). According to Hermann (1972), a crisis is characterized by the element of surprise, and threat to key elements of the organization, and the need for immediate response.

A crisis, defined as an event that is “big”, unplanned and unexpected, is perceived as to have a negative outcome and creates a problem for the livelihood and survival of an organization. We can link the concept of crisis and the concept of disaster since a disaster is a crisis with an unfavourable outcome. And although not every crisis develops into a disaster, every disaster meets the requirements of a crisis. Of course, on the other hand, the crisis, defined as a point of rupture with the existing normality, i.e. as a rupture with the “past”, can be seen as a new normality. Also, it should be mentioned that, while for some the crisis is a disaster, for others is a chance and can be followed by development. In this light, regarding economic crises, Schumpeter (1942/2003) developed the theory of the creative destruction, under which crises are a necessity in order for non-competitive markets to close and be replaced by innovative and efficient ones (Caballero, 2006; Caballero and Hammour, 1996), while Cuny (1983), referring to natural disasters, provides multiple examples on how a disaster can -and should- lead to development.

At the policymaking level, crisis is associated with a serious threat to the basic structures or fundamental values and rules of a system, which under time pressure and conditions of high uncertainty requires crucial decisions (Rosenthal et al, 1989). This is precisely the point where there should be a specific focus and analysis: decision-making means that since in crisis conditions the normal does not apply, therefore, accordingly, a new legal framework, specific to the crisis situation, should be institutionalized. Thus, what needs to be examined in depth is whether the occurrence of a crisis functions as a situation of exception, i.e. a situation where the “normal” laws do not apply, or at least do not apply in full.

In everyday discourse, public or private, political or otherwise, the term “crisis” seems to encompass and explain, in a one-word way, all the legal and political episodes of recent years, while it is imposed as the starting point of any discussion, as a prerequisite

for the description and understanding of reality. In fact, no person can speak from outside the crisis, because then they will be judged and placed out of the realm of reality.

This has resulted in not only a functional understanding of the crisis -that is, how the crisis has brought about key changes in the way of life, habits, behaviors, and general functioning of individuals (Kolokotroni et al., 2021; van der Werf et al., 2021)- but also a legal understanding, of where the crisis has shaped a new legal culture, a new way of constituting the legal framework. However, as much as we are fascinated by the relevant terminology, the correspondence and, even more so, the identification of the functional and the legal discourse is neither automatic nor self-evident. Law, as an institution and as a function, cannot have as its axis the serving of the interests of the sovereign who has the power to dictate the law: instead, it has at its heart emblematic concepts such as “sovereignty” and “the Constitution”, “the public interest”, “the common good” whose institutionalization cannot be dependent on the content given to these terms by political power (Holcombe, 2001).

This does not mean that there is not a law of crisis: of course, there is, as it should be. But it does mean that when a law of crisis is equated with a controversial law of the state of exception, then it is obvious that the law itself as a whole cannot but be in crisis.

In the above working hypothesis, which assumes the devaluation of law over politics, it is additionally implied that fundamental legal concepts no longer correspond to their ideal content, to the high idea we have of them. In other words, the Constitution or sovereignty no longer meets the essential criteria of constitutionality or sovereignty (Wenham, Eccleston-Turner and Voss, 2022). Consequently, the legal provisions at issue -such as, in this case, the detention of persons against whom no conviction is pending- are contrary to the essence of the constitutional rules, as if the latter were words that carry within them a true and inviolable meaning, which cannot be betrayed by the provisions that specify them. In other words, as if our constitutional proposals had static content, which cannot be changed except within a specific interpretative framework (Marinelli, 2021). Thus, the law of crisis is, in several cases, characterized as unconstitutional and the legislative measures or the parliamentary procedures that give rise to them are called by legal doctrine as glaring deviations from legality.

However, the legal and, in particular, the constitutional conception of the law of the exception, that which arises when ordinary law is suspended or abolished, is not amenable, at least from a positivist point of view to broad interpretations and divergences (Ferejohn and Pasquino, 2004). The legal definition of crisis refers restrictively to specific factual and legal events. Thus, when the constitutional legislature itself regulates the situation of necessity/crisis/exception, it is exactly in order to prevent its ambitious interpreter from misreading and misapplying the provision at issue.

Thus, not coincidentally, the defense of the measures by another part of the theory, but -and this is more important- by the judges, does not invoke the law of exception, but refers to their necessity (Karavokyris, 2021; OHCHR, 2020). In other words, the enactment of provisions restricting fundamental rights, which are in fact based on the Constitution, is in the final analysis an absolutely compulsory choice of the legislator, an action that is factually and legally unavoidable under the pressure of circumstances.

By introducing the concept of necessity in the process of production of the legal norm, we attempt to justify it. One realizes that in this perspective, too, the legal rule tracks the political event as it occurs as a necessary and, consequently, an inevitable event. At the same time, the registration of measures in necessity implies their exceptionality, in other words, it distinguishes between necessary and non-necessary legal rules (Contiades and Fotiadou, 2015).

The concept of necessity is closely intertwined with that of a state of emergency, where an exceptional circumstance makes it legitimate for the State to resort to certain legal means and measures. As an exceptional situation, we must understand that of a State whose internal order has been seriously disturbed or threatened by an agent (external invasion, internal subversion, or even natural disaster), the elimination of which requires recourse to exceptional means that go beyond its normal scope of action (Gross, 2011).

Thus, the State of Emergency is defined both negatively, as provisions that allow the components of the rule of law, namely the separation of powers and the guarantee of rights, to be infringed by the concentration of powers and the restriction of freedoms, and positively, as exceptionality prevails in emergencies, as perceived in the

circumstances that underpin them (i.e. the existence of an unusual situation), in the methods used (an exception to the rule) and in the purposes for which they are used (Mabon, 2022). In particular, the law of emergency is usually understood legally in two ways for many it constitutes a moment when the rules of law established for normal periods are negated or violated in order to avoid a major danger with two main consequences, the concentration of power in the executive and the broad restriction or even suspension of constitutional rights. However, Agamben (2005) argues that the law of necessity has in recent years been elevated to an enduring paradigm of governance, as emergency measures on the occasion of preventing and suppressing late dangers and disasters, capture in essence the nature of the political and legal system in which they apply.

The transition of a legal order to the regime of the law of necessity constitutes a form of violation or rather an abrogation of the law itself and appears as contrary to the foundations and principles of a constitutional democracy. This is because from the outset it seems absurd to many that a legal regulation, such as the exception regime, should entail the suspension of the application of the law, and the abrogation of basic constitutional provisions.

However, from a different perspective, it is the state of exception that guarantees the existence of the Constitution, that is, the preservation in life of what is completely contrary to what it enunciates. In fact, the law of necessity serves the logic of the democracy to which it is opposed. This paradoxical statement is perhaps justified by the inherent inability of democracy itself to defend itself against a serious threat compared to the corresponding means available to an authoritarian regime. Perhaps, again, because by definition democratic tolerance of any viewpoint, even one that challenges it constitutionally, exposes the constitution to more and more frequent dangers, external or internal.

With all of the above in mind, two specific manifestations of law-making policy will be examined. The first manifestation concerns measures on coronavirus and the second manifestation concerns measures on migrants/refugees/asylum seekers.

### **3.4 Covid-19 pandemic and the law of the exception**

Beyond its health dimension, the Covid-19 pandemic has brought to the fore extremely critical issues for constitutional democracy in Greece and Europe. Governments, in order to stem the spread of the disease, concentrated the exercise of legislative power in their own hands and took measures that dealt serious blows to the system of freedoms and rights (Grez Hidalgo, de Londras and Lock, 2022; Kondylis, 2020; Villarreal, 2020). It is true that the functioning of the representative bodies was not suspended, but it was nevertheless substantially weakened, adapting to the exceptional health conditions, while the pre-existing trend towards the erosion of democracy was reinforced, with the deterioration of one of its fundamental elements, in particular, autonomy: On the occasion of the health emergency, critical decisions were once again delegated to technocrats, with the result that law no longer has primacy in the regulation of socio-political life and the rules that frame our coexistence derive from the authority of experts (Kakolyris, 2020).

The political management of the pandemic is therefore of intense constitutional interest, which is not limited to an evaluation of the measures and governmental manipulations during the period of the ban decisions. Crises such as that of Covid-19 and, more generally, situations that assume dramatic characteristics for society or the state, affect the constitution's nature: the normality to which all members of society wish to return and which those in power proclaim is never the same as the one broken by the exceptional circumstances (Agamben, 2005). Whether the legal framework for exceptional circumstances is invoked or the crisis is dealt with under the rules of common law, the regulations imposed during the crisis encapsulate the rule of law and weaken representative democracy. The most recent example is that of France, where, following the deadly events of November 2015, not only did the law on the state of emergency remain in force, with constant extensions, for more than two years, but it also provided the inspiration for the reform of the common law, into which several of its regulations were incorporated (Vauchez, 2018; Fredette, 2017).

Protection against the risks to public health, the health of citizens, and the mechanisms supporting the welfare state is currently carried out by milder means, but even these affect the enjoyment of constitutional rights and the functioning of parliamentarianism. The indefinite extension of administrative policing -even if only partial- seems to be

justified by the importance of the goods at stake, but at the same time, it also ensnares the members of society in a regime that restricts their personal and collective autonomy (Houlihan and Underwood, 2021).

The upheavals in socio-economic life brought about by the Covid-19 pandemic at a global level are undoubtedly dramatic. This explains, first of all, the choice of political and media personnel, including social media, to emphasize its exceptional nature, but it does not justify their tendency to present an unusual and unpredictable event as unique in history, as neither the spread of the virus nor its deadly consequences are unprecedented events.

In the field of constitutional law, the view of the pandemic as a novel, unique event has influenced the attitude of important representatives of the scientific community and built a contradiction: The supreme need to save the people from the pandemic, which was not disputed by any actor in public life, seemed to legitimize the evaluation of legislative measures to deal with the crisis without any reference to our constitutional history or to the experience of related legal orders. Thus, the affirmation of wholly exceptional circumstances did not lead to the obvious conclusion that the country was in a state of emergency and that the law appropriate to it -that is, defined by the unprecedented circumstances and of a temporary nature- should be applied. The assessment of the rules of the pandemic period sought to integrate them into the system of rights and freedoms and to ensure their harmonious integration into it by “normalizing” regulations that cause breaches in the constitution and undermine its functions (Karavokyris, 2021).

This vision was formulated in the name of the Constitution and to preserve its formal and substantive force: The possibility that the pandemic rules might evolve into a law of necessity founded per se on unforeseen and novel realities that go beyond the predictions of the legal order favoured the search for methods of reconciling them with the constitutional framework. However, in order to keep the Constitution alive in the midst of a pandemic, one of the components of its meaning is sacrificed and one of its legal functions is drastically shrunk: Confirming the constitutionality of at least some of the measures taken requires an interpretative adaptation of the Constitution and its fundamental principles to reality, making it “flexible” and shaking its guaranteed function, based on the notion of the proportionality (Tsakyrakis, 2009).

The intensity of the risks threatening human health and life is the justification for the views that try to show that measures to address the Covid-19 crisis do not depart from the current constitutional framework. Hence, the argument is developed that the imperative need to protect these two fundamental social goods and rights justifies the legislator to introduce any restriction on the other constitutional rights. On the premise that State law exists to serve the individual, not the other way around, when human dignity and health are at stake, the flexing of important constitutional guarantees is also required or at least justified. The priority that the treaties have given to the preservation of these goods is transformed into a restriction of the corresponding rights.

Of course, it was generally accepted that prolonging the validity of the pandemic laws for a sufficient period of time would undermine their constitutionality. However, this assumption overshadows the fact that their adoption has started the process of “restructuring” the system of freedoms and rights and that the possibility of a mutation of key features of the constitution is now considered likely: The right to life and the right to health claim to define the scope of protection of other constitutional freedoms and dictate an extensive administrative policing in order for the state to effectively perform its role as a guarantor of security in the risk society.

The above reasoning provided the government with extensive powers. In order to preserve the health and life of citizens, the governors can enact restrictions that effectively abrogate the powers that the charter confers on subjects. There is the question of the role and competence of the judge, as it is, he or she who will ultimately judge the unconstitutionality of the regulations, assessing their content in light of the principle of proportionality. It is emphatically stated that restrictions on freedoms and rights will be assessed in relation to the State's obligation to take all necessary and appropriate measures to protect the health and life of citizens and the above balance will determine their constitutionality (Flitzanis, 2020).

However, measures cannot have a one-dimensional objective: they must prevent the death of citizens, but at the same time they must also prevent the risk of a complete disintegration of the social fabric. The difficulty of applying the principle of proportionality is obvious: restrictive regulations are decided by the government on the basis of the findings of a group of experts whose judgments cannot be checked, while the rules of reason dictate that fundamental rights must be protected. Finally, it is worth

considering the view put forward by the “strongest” argument, namely that the pandemic measures are constitutionally tolerable because they constitute fulfilment of the fundamental obligation of the State to prevent diverse and unforeseeable risks, which often have a dramatic impact on the rights and interests of citizens. According to this concept, the rule of law retains its guaranteed function if it becomes a preventive state and develops policies that safeguard the rights of citizens, as recognized and protected by the legal order (Rethimiotaki, 2020).

The pandemic, by elevating the precautionary principle as being the supreme principle, predetermines the methods of action of those in power and influences the content of political decisions: the duty to preserve the right to life and health seems to force governments to formulate their policies according to the assessments of a group of experts and statistics. At the same time, citizens are called upon to adapt their social behavior, their very exercise of their rights, to the findings of the technocrats, as they are translated into the dictates of political power. The upgrading of “individual responsibility” on the occasion of the pandemic is evidence of the change in relations between the state and the citizen. In this sense, Esposito notes that the condition during the expansion of the pandemic “has more the character of a breakdown of public authorities than that of a dramatic totalitarian grip” (Esposito, 2020, p. 29).

### **3.5 Covid-19 pandemic and policies regarding refugees/migrants**

In the period of the anti-terrorist narrative (Aradau and van Munster, 2009) and the security ideologies that follow from the 1990s onwards, the “enemy” is atypical, invisible, asymmetrical, and not directly identifiable, it is everyone or even societies themselves. Thus, the particular “crowd” that constitutes a “threat” to sovereignty - immigrants, subordinate classes, social movements, the inhabitants of an entire region, etc.- also becomes the target of repressive doctrines and designs (Walker, 2006). Such a displacement has privileged wars that -despite their ferocity and the totalitarian tendency- are taking place in urban landscapes either outside any conventional sense or informally and undeclared: “securing order and peace”, “wars against drugs” and “crime” in metropolises or entire states as in the USA or Colombia, “disaster management” as in Hurricane Katrina in New Orleans, “wars against epidemics” as in the Covid-19 case in almost every known city in the world. The means of warfare, once largely outward-looking, are now turning inward to penetrate more deeply and with



ever-increasing duration the various aspects of everyday life. Thus, practices such as the control of public and private space, the tools of social and individual mapping, the expanding surveillance of individuals and groups, and so on, are being extended (Foucault, 2004). Beyond any “aggressiveness”, it is now the ambiguity of the definition of the “enemy” that legitimizes more and more “extraordinary measures”: the more fluid the threat, the less concrete its agent, the more extensive the repression, the war and the means of its conduct. In this context, the faltering distinction between war and peace becomes a structural confusion in favour of an uninterrupted war process.

Not only the association but also the attribution of all the above to the “invisible” enemy of the SARS-CoV-2 coronavirus is obvious. The human organism may not be existentially conceived without billions of viruses, but the viruses are visualized as “foreign invaders” and “porters” who “fight” with the “immune system” and the human body is transformed into a field of “battle”, “destruction” and “war” - in correspondence with social resistance against power. But what turns this particular “enemy” into something so “special” is its potential embeddedness in everyone. The enemy is at once materially “invisible” but symbolically more visible and familiar than ever (the human body and indeed our own or our familiar persons), while ideologically it is embedded in liberal references: the free individuality of man moving in a dangerous world. In this sense, Covid-19 is, in fact, a political virus, a virus that spreads certain political messages of fear and hate (Vaki, 2020).

The war proclamations of the heads of state who declared war on the Coronavirus spread a series of identical “emergency measures”, which are neither spontaneous plans nor ideologically neutral scientific conclusions. The question then is not whether sovereignty's measures correspond to the proper fight against the “danger” in question, but whether sovereignty today could take any other measures of a different philosophy from the one it has been organizing anyway for decades for any “danger” (Mitsopoulou, 2020). The philosophy of quarantine and self-enclosure in the home and of abandoning the “political” public sphere.

In the initial phase of the security doctrines, it was the sanctity of safety that was to substitute that of freedom, now it is the famous “public health” that becomes the necessary node even for the so-called “popular sovereignty”: until now, the sovereignty

of the state and popular sovereignty overlap and support each other, with the “people of the citizens” being able to achieve its particular existence as a political body and as a source of legitimacy, in its unity with the state power, and vice versa. From now on, “public health” becomes that basic biopolitical point of production of consensus but also of hierarchies, divisions, and segmentations: the “people of health” derives its legitimacy and its unity from the unity of state and scientific power. Central to this process is the re-establishment of the concept of “individual responsibility”, with the simultaneous incorporation of the concept of “social responsibility” and of rallying to the national/state effort to “end the war with the invisible enemy” (Royal, 2011; Pion—Berlin, 1988). All of the foregoing is the health aspect of “emergency measures” taken so far, such as the evacuation of entire areas against the will of their inhabitants (e.g. New Orleans after Hurricane Katrina), curfews after or in anticipation of “terrorist” attacks in European cities, the social exclusion, and ghettoization in closed Sites of immigrants, the presence of police on the streets in the role of social obedience.

Even before the coronavirus pandemic, the reaction of the legislator and the state to migratory flows had two axes: prevention of entry and containment.

The European Convention on Human Rights (ECHR), which was schematically put into “effective” application in Greece in 1985, guarantees the right to personal liberty and security in Article 5. Specifically, Article 5§1 states that everyone has the right to liberty and security and no person shall be deprived of his or her liberty except in specific cases and in accordance with due process of law. The *Bozano case* (*Bozano v. France*, 1986) clarified that each Member State must protect the security and personal liberty of the individual from any arbitrary interference by a public authority, which varies from time to time according to the type of detention. In the *Saadi case* (*Saadi v. The United Kingdom*, 2008), it is noted that acts of arbitrariness violate certain principles which are established in case law, such as whether there is an element of bad faith or deception on the part of the authorities, whether there is no connection between the reason, place, and conditions of detention, whether the justification for the detention decision constitutes an assessment of arbitrariness, whether the detention and its duration are sufficient to achieve the stated purpose.

The conditions for deprivation of liberty, according to Article 5§1 ECHR, are limited to the grounds listed (Art.5§1a-f), of which paragraph 1d defines the detention of a

minor either for the supervision of his or her upbringing, i.e. in a reformatory or clinic, or to be brought before the competent authority. However, in *Mayeka and Mitunga's* case (*Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2007) it is stated that Article 5§1d does not exhaust the scope of those cases which allow for the detention of minors. The detention of a minor explicitly requires an order, which may be judicial or even triggered by an administrative authority, taking into account the best interests of the child (*Rahimi v. Greece*, 2011).

Vulnerability refers to those groups of the population who are at risk and in immediate need of a protective framework of safeguards, such as children, persons with disabilities, persons with different sexual orientations and identities, pregnant women, elderly persons, those suffering from mental disorders, serious illnesses or who have been abused. At this point, a brief reference should be made to *Popov's* case (*Popov v. France*, 2012), in which it is recorded that the authorities are obliged to take appropriate protection measures for all children, as vulnerability is not limited to those who are identified as unaccompanied but also to those who are accompanied by their parents or adult persons having responsibility for them.

Whereas, therefore, the status of restriction in detention centers existed before the coronavirus, with the outbreak of the pandemic and the adoption of “emergency measures”, there was a “wave” of measures concerning migrants/refugees/asylum seekers.

First, deportations intensified, since, according to the Press Release of the Ministry of Migration and Asylum:

‘in the first half of 2020 the total number of people returned to their countries of origin or relocated to EU countries was 3,621. This total corresponds to 36.7% of the number of arrivals in the first half of this year. For the corresponding first half of 2019, the ratio of arrivals-returns was 35.6 %. It should be noted that last year the entry-exit restrictions that were in place this year due to Covid - 19 were not in force last year. Also, this year in the period from January to June, returns to Turkey increased by 75.95%. That is, this year there were 139 returns, compared to 79 returns in the same period last year’ (*Ministry of Migration and Asylum*, 2019). Hence, in 2020 the number of asylum seekers residing in all types of structures now stands at 64,756, compared to 92,383 in

December 2019, which is a 30% decrease of 28,000 residents (Ministry of Migration and Asylum, 2021).

Also, the measures became even more strict. According to the Article 5 of the Act of Legislative Content of March 30, 2020:

‘In order to reduce the risk of spreading the COVID-19 coronavirus, it is possible, by joint decision of the Ministers of Citizen Protection, Health and Immigration and Asylum, following the opinion of the National Committee for the Protection of Public Health against the COVID-19 coronavirus, to set, restrictive measures on the movement of persons residing in any type of accommodation facility for migrants, as well as on entry and exit from such facilities, and to take the necessary related measures to protect public health, while respecting the principle of proportionality. The provisions of Articles 5 and 6 of Article 1 of the Legislative Act of 25.2.2020 shall apply accordingly’ (Government Gazette, 2020a).

The Joint Ministerial Decision of 2020, Article 1 declared:

1. ‘The temporary restriction of traffic from 24.4.2020 until 7.5. 2020<sup>2</sup> of third country residents in the accommodation facilities of Ritsona (Regional Road Chalkida-Tives of the Municipality of Chalkideon), Malakassa (Camp “Gerakini” of the Municipality of Oropos) and Koutsochero Larissa (Camp “EYTHYMIOPOULOU” of the Municipality of Larissa), strictly within the respective perimeter to be implemented by the Greek Police (EL. AS.), in accordance with its operational planning. During the same period of time, the entrance to the above accommodation structures of third persons is prohibited, with the exception of their employees, police and military authorities, employees of the Civil Protection and the Public Health Authority.

2. The administrations of the above accommodation facilities are obliged to inform the third-country nationals staying in the facilities by means of written and audio (loudspeaker) messages or by any other appropriate means in all languages they understand, as well as all bodies operating in and around the facilities, of the reasons for the application of the above traffic restriction and the need for its strict observance’.

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<sup>2</sup> Successive extensions of the Decision were subsequently enacted.

Since the detainees in the camps themselves have no voice to be heard, any objections come from civil society. One of the biggest efforts the government has made is to limit the intervention of civil society organizations in relation to detention and deportation centres for migrants. Civil society essentially represents the radical reduction of the role of politicians in society by expanding the free market and individual freedoms. The roots of civil society can be found in the Greek word “polis”, in Kantian thinking about a universal moral community, and in Roepke's (1996) term “civitas humana”. For Giddens (1984, 2001) civil society is the missing link for the success of social democracy, while both Rifkin (1995) and Eberly (1998) suggest that civil society is the viable alternative that exists between an authoritarian regime that oppresses citizens with violence and a free market that oppresses the weak with poverty.

Civil society is a point of reference in the attempt to address issues such as the nature of the good society, the rights and obligations of citizens, the practice of politics and government, how to live together peacefully while reconciling autonomy and collective needs, the balance of freedom and its limits, and the relationship between pluralism and conformity in order for societies to be able to function adequately and justly (Anheier, 2004; Foley and Hodgkinson, 2002; Salamon and Anheier, 1999; White, 1994).

It should be noted that in classical thought, civil society and the state were one entity, while the concept of “civil” was considered a form of society, hence the term “civility”, which was a prerequisite for a good civil society (Davetian, 2009). During the Middle Ages, civil society was associated with the politically organized commonwealth and was characterized as a powerful type of civilization since people lived in communities and obeyed laws supervised by the state (Ehrenberg, 1999). The Enlightenment put the individual at the centre of society, establishing an antithetical relationship between the individual and the state. Thus, Hobbes, referring to civil society, stresses, among other things, that it is a kind of defense of the individual against the interference of the state in his individual rights, organized through voluntary associations, the foundation that keeps the democratic state stable and the main obstacle of anti-democratic forces (Cohen and Arato, 1992). Collective action is organized in three ways in societies: through rules or laws imposed by the coercive power of the state; through the unintended consequences of individual decisions in the marketplace; and through social

mechanisms embedded in voluntary action, discussion, and agreement (Edwards, 2004).

According to Edwards (2004), civil society plays a triple role, since its activities span the economic, political, and social spheres:

- With regard to the economic sphere, it secures the lives of citizens, provides services that the state and the market cannot guarantee, and develops social values, networks, and institutions that underpin successful market economies.
- With regard to the social sphere, it is a reservoir of care, civic life, and innovation, learning civic skills and cultivating a collection of positive social norms that promote stability and which are collected under social capital. Note that the latter is a vital ingredient in promoting collective action for the common good, creating and maintaining the social bonds necessary for citizens to function effectively in modern economies.
- The political role of civil society acts as an important counterweight to the power of the state and corporations and as a pillar that promotes transparency, accountability, and other aspects of good governance. Specifically, if civil rights are not respected in a state, society provides the channel so that the violation is known, protected, promoted, and empowered.

The contribution of Habermas (1989) on public sphere theory to civil society is great. This theory is the basis for participatory democracy and civil society is united in the public sphere, providing the antidote to depoliticization and fatalism, phenomena that have become more common in western societies over the years. In this light, civil society can be considered as a non-legislated, supra-judicial public space where social differences, problems, popular politics, government action, community issues, and cultural identity are developed and put up for debate (Boje, 2021).

### **3.6 Are the migrants a threat to public health?**

The central point of policy regarding immigrants in the Covid-19 period was the internment rather than the provision of health services.

The challenges of meeting the public health and care needs of vulnerable and fragile social groups, such as the homeless, the unemployed, migrants, and refugees, are

enormous and present in all periods: growth and recession, absence or presence of crises and epidemics (Bhopal, 2020; Braveman and Tarimo, 2002; Burnett and Peel, 2001; Walker and Jaranson, 1999)

In past pandemics, determinants of socio-economic determinants of health disproportionately affected the health of vulnerable and susceptible social groups (Hutchins et al, 2009). During a pandemic when no vaccine or available treatment is available, coupled with the uncertainty of population immunity to the virus, health systems are under strong pressure to ensure population health. When controlling the health impact of the virus, it is important to identify and protect groups that are particularly vulnerable (Clark et al, 2020).

Refugees and migrants are a heterogeneous population that may have different health needs and face barriers to health care depending on the type of migration and stage of their migration journey (Greenway et al, 2020). Many of them reside in countries with problematic health systems and are forced to live in poor conditions in highly crowded reception and accommodation centres (Hargreaves et al, 2020). Also, a significant number of migrants are unskilled workers with low levels of education, who reside in conditions that raise concerns of social overcrowding while living in unsatisfactory sanitary conditions. While their housing conditions have generally improved over the years, living conditions are not considered ideal during a crisis such as the Covid-19 pandemic (Ralli et al., 2020).

In Europe, thousands of migrants and refugees reside in densely populated reception and hosting centres along the Mediterranean, with inadequate medical and nursing staff and substandard infrastructure (WHO, 2022). The conditions in these centres are often conducive to the outbreak of infectious diseases. With few shared toilets and reduced access to running water, basic hygiene to prevent spread is difficult. With excessive crowding, physical distance is impossible. Without a specific plan for governments to respond to the Covid-19 pandemic, NGOs in the summer of 2020 called for the evacuation of 42,000 asylum seekers from the Greek islands to find suitable shelter (The Lancet, 2020).

These individuals are also at greater risk of contracting the virus, as they often find it difficult to comply with public health guidelines and, if exposed to the virus, may be

more susceptible to illness or death due to the higher prevalence of underlying physical and mental health problems of comorbidity compared to the general population (Vieira et al, 2020). Furthermore, vulnerable populations may have limited access to basic diagnostic tests and treatments, with the result that Covid-19 disease, as it is not addressed with appropriate care and supportive treatment, may progress to more severe forms of the disease (Ralli et al, 2020). The pandemic has exacerbated health inequalities among these groups due to complex socioeconomic and health determinants and long-standing structural inequalities (Liem et al, 2020).

Thus, the UNHCR reports that 34 refugee-hosting countries have identified local transmission of Covid-19 (UNHCR, 2020), and according to the European Centre for Disease Prevention and Control (ECDC), cases have been recorded in refugee shelters in several countries in Europe. The higher incidence of outbreaks results in a proportionally higher number of deaths. Thus, a large proportion of refugees also died in Sweden due to Covid-19 infection, which was also noted in the study by Elisabeth et al. (2020), while in the UK, a disproportionately higher number of patients from ethnic minority groups ended up during the first wave, accounting for 15.5% of all deaths by June 2020 (Larry, 2020).

Also, the study by Greenway et al. (2020) in the same country found that immigrants from the African continent and Asia were more likely to die from Covid-19 infection compared to those from the white race, even after adjusting for age and underlying comorbidities. On these findings, we note that inequality in access to care cannot explain these figures, both because significant barriers to access for vulnerable groups in the national system in England pre-dated the pandemic and because during the pandemic period health services face unprecedented pressure (Germain and Yong, 2020). In addition, in the USA, it was found that people of the black race were disproportionately affected compared to whites (Maroko et al, 2020; Tai et al, 2020).

An important aspect for the acceptance of protection measures is the understanding of the cultural background of migrants/refugees/asylum seekers because this aspect has a significant impact on the attitude of individuals towards the measures. In the context of a multicultural society, it is often observed that individuals of the dominant population group do not know or have no experience of the different cultures with which they coexist (Bernstein et al, 2000). Bennet (1993) states that individuals of the dominant



group defend themselves against the “threat” of diversity by evaluating the “others” according to the personal values and frame of reference of the natives. Thus, health workers will need to understand the individuals from different cultural backgrounds in order to reach them effectively and persuade them to have a positive attitude towards vaccination.

Particular attention should be paid to the issue of religion, as each religion may have a different approach to the management of the human body and health issues. We consider that terms such as individual and collective identity, culture, and civilization, which the academic community simply approaches by failing to define, have extremely complex parameters and dynamics, which may, on occasion, trigger inclusions when they are considered to be superior to others. In any case, an integral element of them is religiosity.

Cox (2010) in his treatise on the phenomenology of religion, demonstrates that the study of religion entails religion as an expression of human culture. Thus, religion is expressed clothed in cultural norms, and, consequently, attempting to understand religion entails the study of human culture. According to Cox (2010), the mutual interaction between culture and religion must be recognized: religion is determined by culture, but religion also influences culture. The fate of religion and culture is therefore intertwined. In modernity, where individual religious identification within the framework of a religion is increasingly expanding, almost every quasi-religious identity that has been shaped by theories of absolutes and supremacy, and thus has potential conflict dynamics, at the individual level is susceptible to change on the basis of institutional interventions by societies, through an education focused on universal values and universal goods.

Another important aspect that necessitates a personalized approach to each individual in order for them to have a positive attitude towards health education and vaccination is the issue of stereotypes, especially those embodied by the most vulnerable. An example of the incorporation of stereotypes in the targeted groups is cited in Flecha and Soler-Gallart (2013) who give the example of the Roma, who do not consider it essential to receive schooling, believing that school performance does not ensure social and economic success and that, due to stereotypical perceptions of them, they will not be able to progress socially and professionally, since no employer will hire them. It is

precisely in this dimension that migrants/refugees are likely to embody the stereotype of the “pariah”, the “dangerous” created by the xenophobic citizens of the country, and thus refuse to embolism in order to prove the validity of these stereotypes.

Therefore, it is not the migrants who are a health risk, but the policies applied to them: confined in institutions, with unhygienic conditions, overcrowding, lack of individualized approach, prevalence of stereotypes. While the implementation of the measures on physical distance is necessary, this necessity holds under the inviolable condition that it does not reproduce/expand social inequalities and that the democratic accountability of government decisions is ensured. In this sense, the measures are necessary and might be perceived as inevitable, but, as Athanasiou highlights:

‘what is not inevitable is the lack of social justice and social solidarity (...) what is not inevitable is the racist discourse that stigmatises and targets specific social groups through polemical stereotypes in the name of the 'health threat'’ (Athanasiou, 2020, p. 37).

#### **Chapter 4. Conclusion and discussion**

What has been documented in the paper is that the rhetoric of fear has shaped an agenda in which the pandemic situation has been framed as a situation of exception, with the removal of certain fundamental rights. However, for those without a voice, for those who are “others”, the rhetoric of fear of the pandemic was fused with the rhetoric of fear of strangers. The combination of the two has led to the formation of a legal framework that now considers it absolutely necessary to be confined in detention centres, even if there is no reason to do so. This is a major setback in the recognition of human rights and the rule of law.

We should, in any case, remember that the rule of law is the face of liberal democracy. European democracy, constitutional democracy, is liberal, with law at its heart. If its liberal element is removed, that is, if the rule of law is removed from democracy, European democracy ceases to exist. It is thus one of the fundamental values of the European Union as well as a reflection of our common identity and our common constitutional traditions. The rule of law is the backbone of modern constitutional democracies and ensures that all public authorities act within the limits set by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts.

This is the basis of the democratic system and is an essential element in ensuring the protection of fundamental rights. According to Article 2 of the Treaty on European Union:

‘the European Union (EU) is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities. These values are common to the EU Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men prevail’

These core values are the foundations of the Union's legal order and have the status of constitutional principles. Yet, what has been documented in the paper is that an exemption regime has been established and migrants, while requiring special health care, are treated as “the disease” and confined to detention facilities.

The law has the tools to deal with exceptional circumstances so that the regulations adopted in their context are not assimilated into the legal order and the alteration of the constitution is avoided. Greek jurisprudence has bequeathed to us the tool of the emergency situation, which allows for a brief and limited deviation from constitutional requirements without altering the foundation of political power or leading to a relaxation of the limits that the law imposes on its agents. The law also includes provisions that allow rulers to systematically organize to contain threats and prevent risks that are constantly multiplying and diversifying. The constant fulfillment of the obligations imposed on the State by the Constitution, in particular by guaranteeing social rights, enables the State to protect the livelihood of the members of society, to provide security, and at the same time to ensure respect for freedoms and rights.

The social state under the rule of law envisaged in our Constitution must ensure that everyone has equal freedom and equal access to social goods, building the unity of the social whole through a firm reference to precepts with a clear normative outline and to rules of democratic origin. The detachment from constitutional rules allows the installation of a modern oligarchy and changes the terms of the institution of modern states: the downgrading of equality and social justice as constitutional principles makes fear to be the foundation of social cohesion.

The legal status of foreigners living in Greece, as well as the immigration policy of the Greek State, has become of particular importance in recent years. The global nature of the phenomenon of migration, the major geopolitical changes that have taken place since the 1980s in the countries of Central and Eastern Europe, as well as the increase in migration flows to the countries of the economically developed world, have created new conditions for the exercise of public policy. Immigration policy is now an integral part of Community policy, while the legal status of aliens is directly influenced by the harmonized principles and options of European law.

At the national level, Aliens' law has followed the trajectory of Greece's transformation from a sending country to a receiving country for migrants and has developed in parallel with the difficult social perception of coexistence with the "other". In late modernity, the concepts of multiculturalism, open society, and respect for diversity have been identified with a discontinuous and still incomplete path of transition towards a new field of rights. Traditional notions of ethnic and cultural homogeneity, the functioning

of the state and the protection of the rule of law continue to be challenged by the context of social reality and the need for everyone to coexist equally within the same political community. The development of Aliens' law -which, in fact, is a Law of Otherness (Rancière, 2004; Lyotard, 1994)- reflects structural social changes and illustrates, at least since the 1990s and beyond, the search for this suspended position of immigrants, between there and here, the part and the whole, the national and the “foreign”, fair and equal treatment. Rights articulations, concepts, and policies that move between past, present, and future and shape, through progressively evolving and sometimes contradictory or irreconcilable choices, the living conditions and rights of the “other”.

Although Aliens' law is nowadays gradually moving in the direction of securing the guarantees and equal opportunities that must govern a pluralistic and open society, the resistances are many and the reform projects of contemporary Greek immigration policy are not always successful. The development of Aliens' law, both at national and European level, inevitably raises a twofold problem: the re-recognition of the foreigner as a subject of law and her full integration into the guaranteeing and protective functions of the social rule of law. The constitution of this subject and its legal safeguarding refers to the transformation of traditional systems of classification of nation, order, and rights and constitutes an element of constant negotiation for our legal culture until the Law of the “other” becomes a Law of social and political inclusion.

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