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Dynamics and Social Impact of Migration

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DYNAMICS AND SOCIAL IMPACT OF MIGRATION

Edited by
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The work was created in commission of the National University of Public Service under the priority project PACSDOP-2.1.2-CCHOP-15-2016-00001 entitled “Public Service Development Establishing Good Governance”.

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Foreword

The background of the project PACSDOP-2.1.2-CCHOP-15-2016-00001 entitled "Public Service Development Establishing Good Governance" is the fact that the proper functioning of public administration and public services is a decisive need of modern European societies, and of the public service implementing public interest, respectively.

Good and strong governance must be built on up-to-date scientific knowledge and college or university education. This research, whose local research centre is at the National University of Public Service, Faculty of Law Enforcement, Department of Immigration and Nationality, focusing on migration dynamics as well as the social impacts in the background of migration and related public responsibilities properly meets these requirements.

The clearly defined objective of this research is to develop migration administration together with making recommendations that are directly connected to supporting the migration-related (administrative matters related to aliens as well as asylum policies) tasks of public service and public administration in accordance with the international and European Union requirements. The research in the above-indicated subject stems from the preliminary hypothesis that migration, considering its current trend and dynamics, is an evolving phenomenon affecting individual states, societies and the development of migration-related regulations. Both desirable and undesirable manifestations of human migration simultaneously represent challenges for the countries of origin, as well as for the transit and host countries.

During the research the following are considered: historical overview of migration and asylum policies, as well as migration and asylum policies in conjunction with criminal law, European public law or law on nationality. Additionally, certain parts of the research (studies by the members of the research group) allow scope for investigating current migration phenomena, the evaluation of subjective feelings of (in)security and criminal impacts caused by migration and, last but not least, the necessity to forecast asylum policies.

In addition to fulfilling the above mission, the studies published herein pay particular attention to migration-related issues and situations, especially to those that can be implemented by the cooperation of the so-called Visegrád countries. Nevertheless, the main goal of the publication is to serve as a source for evaluating the current migration situations and, at the same time, to be relevant literature for those readers who wish to learn about the social effects resulting from human migration with academic professionalism. Hoping the above, I wish you a productive time reading it,

The Editor

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Part I.
Impact of Migration

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Characteristics and Dynamics of the Historical Times of International Migration

Ilona Szuhai

Introduction

The superficial phenomena of migratory movements in contemporary history are deeply rooted in historical processes. The dynamics of those movements can be influenced in longer terms.[1] Revealing the dynamics of migration in the historical times helps in understanding current and future changes of migratory patterns. The fact that about 258 million people participate in international migration[2] marks its importance. The Research Team has stated in the Research Plan that the places of forced migration and the persons in need of international protection should be found, as well as, the demographic, economic and cultural impacts of mass migratory movements should be revealed and analysed in the present migratory environment.[3] After the recent turbulent years of international migration in the interconnected and interdependent world – no wonder – it is easy to forget how the whole migration phenomenon started. In what way has the natural process of migration become a complex, dynamic and multifaceted movement?

Evolution of humans is in close connection with moving from one place to another and with the adaptation to the new circumstances. The theoretical starting point of this chapter is Russell King's thesis that "humans are a migratory species" which statement is still valid today.[4] His work on history is fundamental in migration research. In his book *The History of Human Migration* King has outlined a trajectory of human mobility from prehistoric age to contemporary times. Katharine Donato and Douglas S. Massey have noted that "humans spread across the world and no other organism has moved through space and time so widely or quickly than human beings". Taking into consideration a contemporary aspect, they stated that migration is widely used to adapt to the unequal distribution of risks or political, economic, legal and cultural opportunities.[5]

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[1] Cseresnyés Ferenc (2005): *Migráció az ezredfordulón.* [Migration at the Turn of the Millennium.] Budapest–Pécs, Dialóg Campus. 40.

[2] UN DESA (2017): Population Facts. 2017/5. 1.

[3] Research Plan of the Research Team on the *Dynamics and social impacts of migration.* 2016/227/NKE RTK. Széchenyi 2020.

[4] King, Russell (2008): *Vándorló emberiség.* [Humans in Motion.] Budapest, Geographia. 8.

[5] Donato, Katharine – Massey, Douglas S. (2016): Twenty-First Century Globalization and Illegal Migration. *ANNALS, AAPSS,* Vol. 666, No. 1. 8.

According to Russell King, migration is the world history itself. In recent migration processes, we can find their historical parallelisms. In King's example, the cases of Africans, who risk their lives today by crossing the Mediterranean by vessels in order to get to Italy or Spain have deep roots in history, they repeat their ancestors' more-million-year journeys from North Africa to the North, to Europe.[6] In other words, history holds a mirror to our contemporary world but we should not overlook the lessons of the past. Modern or contemporary migration differs from the movements in the past. Therefore, some people may claim that migration is a new challenge.[7] However, new challenges have often existed long before, but those featuring the 21st century are accelerating and they appear more intensely than previous problems. That is why they may look like new.[8] The same happened to migration in the past decades. Despite its historical continuance, migration has speeded up and become more diverse. Mass migration is neither a new phenomenon nor exceptional historical event. Moreover, spatial mobility is the characteristic of modern societies.[9] In this recent accelerated global world, distribution of information takes place in real-time by satellites and the internet. Transportation is faster and cheaper than before which enables faster and prevalent movements.[10] Despite development, the rise of nation-states and economic concentration throughout history made migration a tool of economic and political measures. Although, the *freedom of migration* remained only an illusion[11] for many people because the economic, political, human rights and demographic inequalities divide the world.[12]

This essay highlights the characteristics and dynamics of international migration in most important historical times. Although, we will never be able to measure the complex dynamics of global migration as a whole[13] – according to the International Organization for Migration (IOM) –, the second half of the essay introduces the current trends in international migration, based on the United Nations Department of Economic and Social Affairs' (UN DESA), and the IOM's latest migration reports.

Historical Characteristics of Migration

Migration in response to demographic growth, economic needs, lack of health or educational opportunities or climatic change has always been a part of human history.[14] Due to the dynamic relationship between migration and history, they influence each other. Migration has made history, and history has promoted various forms of migration.[15] As scholars sug-

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6 King (2008): *op. cit.* 8.

7 Ibid.

8 Rada Péter (2006): *Átalakuló biztonsági kihívások.* [Transforming Security Challenges.] Grotius. 1.

9 Cseresnyés (2005): *op. cit.* 64.

10 King (2008): *op. cit.* 8.

11 Ibid.

12 Papademetriou, Demetrios G. (2003): Managing Rapid and Deep Change in the Newest Age of Migration. *The Political Quarterly,* Vol. 74, No. 1. 57.

13 IOM (2017): *World Migration Report 2018.* Geneva, IOM. 2.

14 Castles, Stephen (2000): International migration at the beginning of the twenty-first century: global trends and issues. UNESCO. *Global Trends and Issues,* Vol. 52, No. 165. 273.

15 IOM (2004): *Essentials of Migration Management – A Guide for Policy Makers and Practitioners.* Migration Management Foundations, IOM. Vol. 1. 3.

gest, in order to understand recent migratory processes, we can find parallel movements in history. Therefore, it is worth studying the characteristics and dynamics of migration in significant historical times. First, it is important to make a distinction between the terms of migration and international migration. The Treaty of Westphalia is the line of separation. Human migration has been existing since prehistoric times, though, "international migration has been occurring since the establishment of the world system of states, the Treaty of Westphalia of 1648".[16] However, the European integration, the single European space altered the concept of international migration, according to Russell King.[17] Stephen Castles and Mark J. Miller have noted that international migration has become significant since 1945.[18] As Demetrios G. Papademetriou has pointed out, recorded human history is "full of ages of migration from the Greek colonies and Roman military conquests through the Byzantine and Ottoman empires, and from the European colonisations to the great migrations of the 19th and early 20th centuries".[19]

Barbara Lüthi has stressed that it is necessary to distinguish between the various forms and geographies of mobility[20] as the geography of international migration has changed in recent decades. There are several ways for periodization of human history. I follow the periodization of Cohen,[21] Donato and Massey,[22] Lüthi,[23] McKeown[24] and the IOM[25] in summarising migration periods and events. Besides, I separate the details of migratory patterns and trends of the early 21st century.

- Prehistoric migration
- Conquests, invasions, and population transfers
- Migration within Europe, Africa and Asia
- The age of exploration and permanent settlement in the colonies
- Slavery and indentured labour
- Migration to the New World
- Migration in the 20th century

Prehistoric migration

Prehistoric migration is the period before recorded history, before the invention of writing. Migratory history of humans goes back to seven million years, to the birth of humankind when our first simian ancestors evolved from the African woods and populated the savannah. The cavemen lived in the temperate zone grasslands of East Africa for some 5 million

[16] Teitelbaum, Michael S. (2009): The Global Commission on International Migration: Challenges and Paradoxes. *The Center for Migration Studies Special Issues,* Vol. 22. No. 1. 116.
[17] King (2008): *op. cit.* 9.
[18] Castles, Stephen – Miller, Mark J. (2003): *The Age of Migration. International Population Movements in the Modern World.* Third edition. New York, Palgrave Macmillan. 4.
[19] Papademetriou (2003): *op. cit.* 39.
[20] Lüthi, Barbara (2010): *Migration and Migration History.* 3.
[21] Cohen, Robin (1995): *The Cambridge Survey of World Migration.* Cambridge, Cambridge University Press.
[22] Donato–Massey (2016): *op. cit.*
[23] Lüthi (2010): *op. cit.*
[24] McKeown, Adam (2004): Global Migration. *Journal of World History,* Vol. 15, No. 2. 155–190.
[25] IOM (2004): *op. cit.*

years then another hominid appeared which dared to go farther. Homo erectus populated the whole of Africa, moreover they started off to discover the globe. Long after its extinction, finally Homo sapiens evolved in the same East African cradle.[26] Homo sapiens emerged in East Africa about 150,000 years ago and through migration settled the entire globe within a very short span of geological time, reaching East Asia and Australia about 50,000 years ago, Northern Europe about 40,000 years ago, the Americas about 12,000 years ago, and the most distant Pacific islands about 2,000 years ago.[27]

According to historians, even in prehistoric times, climatic shifts have already played a key role in inducing large-scale migratory flows. In Europe, there must have been movements southward and northward before and after glaciation, to escape the spread of ice sheets. The American continent received migrants from Asia in various waves via the Bering Strait.[28]

Conquests, invasions, and population transfers

Population movements have played an important role in the history of every nation. Recorded history shows "complex population exchanges in response to survival needs, or demographic change, political circumstances, or military strategy. In many cases, migration was a consequence of military conquests".[29] In the medieval period there were large-scale movements of peoples. "The Vikings raided all over Europe from the 8th century and settled in many places, including Normandy, the north of England, Scotland, and Ireland. The Normans later conquered the Saxon Kingdom of England, most of Ireland, southern Italy and Sicily. Muslim Arabs, Berbers, and Moors invaded Iberia in the 8th century, founding new Kingdoms such as al Andalus. European Christian armies conquered Palestine for a time during the Crusades from the 11th to the 13th centuries, founding three Christian kingdoms and settling them with Christian Knights and their families. In the 14th century, German military colonists settled the Baltic region, becoming the ruling elite. At the end of the Middle Ages, the Roma arrived in Europe (to Iberia and the Balkans) from the Middle East, originating from the Indus River. Internal European migration increased in the Early Modern Period. Major migration within Europe included the recruiting by monarchs of landless labourers to settle depopulated or uncultivated regions and a series of forced migration caused by religious persecution. This phenomenon includes mass migration of Protestants from the Spanish Netherlands to the Dutch Republic after the 1580s, the expelling of Jews and Moriscos from Spain in the 1590s, and the expulsion of the Huguenots from France in the 1680s."[30]

The Ottoman Empire had a long migratory history, including emigration, immigration, and forced migration. Groups of Ashkenazim Jews migrated to the Ottoman Empire from Bavaria during the 14th century. Larger movements took place in 1492 when nearly 100,000 Sephardim Jews were fleeing the Spanish Inquisition and found protection in the

[26] King (2008): *op. cit.* 15.
[27] Donato–Massey (2016): *op. cit.* 7.
[28] IOM (2004): *op. cit.* 8.
[29] IOM (2004): *op. cit.* 9.
[30] New World Encyclopedia.

Ottoman Empire.[31] Starting from the 14th century, the Serbs began leaving the areas of their medieval Kingdom and Empire that was overrun by the Ottoman Turks and migrated to north, to the lands of today's Vojvodina (northern Serbia), which was ruled by the King of Hungary at that time.[32]

Migration within Europe, Africa and Asia (from the 17th century onwards)

Circular migration, which has been deemed recently to be a new pattern of migration movements, was a common feature in Europe, Africa and Asia during the 17th and 18th centuries. Circular migration represents an *age-old pattern of mobility,* which can be *rural-urban* or *cross-border.* Circular migration is also called "repeat, rotating, multiple, seasonal, cyclical, shuttling, or circuit-based migration."[33]

In the modern times of history, which was the period between the 15th and the late 18th century, mobility was stimulated by multifaceted motives: religious reasons, when religious groups like the Jews and the Huguenots were persecuted; economic reason, when farmers tried to find work in newly emerging industries. Seasonal or circular migration was a routine for workers.[34]

"Africa also has a rich history of population movement that pre-dates the colonial period. This included seasonal or circular migration for hunting, agriculture or pastoralism."[35] People migrated to find security and better life conditions, as well as, to escape natural disasters and warfare. In Asia, trade has always played an important role in the mobility of people. "Arab and Chinese traders travelled across well-established sea routes to the Malay Peninsula and the Indonesian and Philippine archipelagos. There were also well-established trade routes between India, the Arabian Peninsula and West Africa. Circular migration was a common feature of working life for blacksmiths, and acrobats and singers who travelled in small social groups within South Asia."[36]

The age of exploration and permanent settlement in the colonies (from the 1500s to the mid-19th century)

In the history of migration, the discovery of *new worlds* such as the Americas and Asia was a turning point. Trade and strategic aspects like colonization influenced transoceanic migration. "All major European economic and political powers competed for access to supplies of much sought after commodities and control of strategic locations."[37] The development of the European nation-states systems, colonialism and industrialisation resulted in large-scale

[31] Kirisci, Kemal (2003): *Turkey: A Transformation from Emigration to Immigration.* 1.
[32] New World Encyclopedia.
[33] Vertovec, Steven (2007): *Circular migration: the way forward in global policy?* IMI Working Papers No. 4. 5.
[34] *A History of Migration*. Available: www.striking-women.org/module/migration/history-migration (Accessed: 10.04.2018)
[35] Ibid.
[36] Ibid.
[37] IOM (2004): *op. cit.* 10.

migration movements.[38] On the other hand, technical developments: detailed and reliable geographical knowledge, accurate maps, technologies, navigational instruments, and larger, safer, and faster seagoing vessels, first under sail, later powered by steam fuelled mass transoceanic migration movements.[39]

In line with Katharine Donato and Douglas S. Massey, this was one of the eras of mass human migration of modern times, each associated with global economic change. The first era was the European colonialization from 1500 to 1800 when European powers colonized the Americas, Africa, and Asia and created a global mercantile economy. Consequently, there was an increasing need for management to handle the political and economic affairs.[40] "Britain, Spain, Portugal, Germany, the Netherlands and France promoted the settlement of their nationals abroad. This migration helped to establish the dominion of Europe over large parts of the world."[41]

Slavery and indentured labour

As production needs increased in the new colonies, this gave way to the development of an entirely new kind of international migration: the slave trade met labour shortages. Some researchers confirm that modern labour migration started at that point.[42] "Slave trade was one of the largest mass migrations of labour, as well as, the largest forced migration in human history. The first slave ship sailed from Africa to the West Indies in 1550. It is estimated that over 10 million Africans were forcibly taken from mainly Western Africa to the Americas as slaves. Today, it is estimated that around 40 million people in the Americas and the Caribbean are descended from slaves. Large-scale slave trading in Africa ceased towards the end of the 19th century. Through the 19th century, all forms of slavery were abolished through legislation in different countries in Europe, Americas and the colonies."[43]

Following the abolition of the slave trade in the 19th century, another system of labour migration emerged, the contracted labour, called indentured labour. Indentured labourers were free male and female workers who had accepted a contract to work for a specific period overseas. In practice, their conditions sometimes were worse than of slaves. Wages were meagre, work discipline harshly enforced, and general living standards very poor.[44] "Indentured labourers came primarily from India and China. From 1834 to the end of the First World War, Britain had transported about two million Indian indentured workers to 19 colonies including Fiji, Mauritius, the Caribbean islands, parts of South America, Sri Lanka and South East Asia. Chinese indentured labourers were transported to the Americas, Philippines and the Caribbean islands. Similarly to slaves during transportation, indentured

[38] Castles (2000): *op. cit*. 273.
[39] IOM (2004): *op. cit.* 10.
[40] Donato–Massey (2016): *op. cit.* 8.
[41] *A History of Migration*. Available: www.striking-women.org/module/migration/history-migration (Accessed: 10.04.2018)
[42] IOM (2004): *op. cit.* 10.
[43] *A History of Migration*. Available: www.striking-women.org/module/migration/history-migration (Accessed: 10.04.2018)
[44] IOM (2004): *op. cit.* 11.

workers died during the period of contract. Political opposition to the indentured labour system by the Indian nationalist movement grew from the end of the 18th century. Mahatma Gandhi, the leader of the Indian independence movement, successfully drew attention to the oppression and exploitation of Indian indentured labourers in South Africa. The British Government officially ended the indenture system in their colonies in 1917."[45]

Ulbe Bosma has pointed out that major migration movements probably started in the indentured labour system. America, Canada, Australia, Algeria, Siberia, or Manchuria had initial phases of *state-engineered migration systems.* Australia and Siberia are examples of colonies that were created by the deportation of convicts followed by state-assisted migration. As Bosma noted, it was a universal phenomenon to outsource indenture-ships to *private recruitment agencies*.[46]

Migration to the New World (1800s–1930)

The indenture labour system was gradually terminated from the end of the 19th century, but the wealth accumulated in Western Europe through colonial exploitation provided the foundation for an industrial revolution.[47] Industrial revolution opened a new chapter in the history of migration in the 19th century, and resulted in mass international migration and the beginning of urbanization.[48] Industrialization in Europe featured the second stage of mass migration between 1800 and 1929.[49] This was also the first era of global capitalism, when nearly 50 million people emigrated from the densely populated industrializing nations of Europe to sparsely populated industrializing nations in the Americas and Oceania. Nearly 60% of the emigrants went to the United States and the rest scattered mainly among Canada, Argentina, Brazil, Australia, and New Zealand.[50] From the 50 million, around 8 million people migrated from the British Isles. This was partly because Britain was one of the first countries to feel the impact of the industrial revolution, and because large numbers left Ireland following the potato famine of 1845–1847. From Germany around 3.5 million emigrants left poverty behind. The peak of migration was around the turn of the century. Over the whole period, – from 1846 to 1939 (age of mass migration) – over 50 million people left Europe. "Major destinations were the United States (38 million), Canada (7 million), Argentina (7 million), Brazil (4.6 million), Australia, New Zealand and South Africa (2.5 million)."[51] This phase of international migration is linked to the rise of the United States of America as an industrial power and the industrialisation of Australia and New Zealand. "Migrants

[45] *A History of Migration*. Available: www.striking-women.org/module/migration/history-migration (Accessed: 10.04.2018)

[46] Bosma, Ulbe (2007): Beyond the Atlantic: Connecting Migration and World History in the Age of Imperialism, 1840–1940. *IRSH,* Vol. 52, No. 1. 121.

[47] IOM (2004): *op. cit.* 11.

[48] Castles, Stephen – Haas, Hein de – Miller, Mark J. (2014): *The Age of Migration International Population Movements in the Modern World.* Fifth Edition. 5.

[49] O'Rourke, Kevin – Williamson, Jeffrey G. (1999): *Globalization and History: The Evolution of a Nineteenth-Century Atlantic Economy.* Cambridge, MA, MIT Press. Cited by: Donato–Massey (2016): *op. cit.* 8.

[50] Massey, Douglas S. (1988): International migration and economic development in comparative perspective. *Population and Development Review,* Vol. 14, No. 3. 383–414. Cited by: Donato–Massey (2016): *op. cit.* 8.

[51] IOM (2004): *op. cit.* 12.

sought to escape poverty and the politically repressive regimes in their home countries in Europe, and were motivated by the prospect of economic opportunity settled in the Americas and the former colonies in the New World."[52] Nevertheless, "migration to Southeast Asia and lands around the Indian Ocean and South Pacific consisted of over 29 million Indians and over 19 million Chinese. Most migration from India was to colonies throughout the British Empire."[53]

Over the period from 1846 to 1939, there was a considerable migration within Europe. "While larger numbers were leaving Europe, others were arriving in search of work or asylum. While a majority of Irish migrants went to the USA or Australia, some 700,000 went to England, Wales, or Scotland to find employment in the factories or construction. Between 1875 and 1914, 120,000 Jews fled the pogroms of Russia and found asylum in Britain. Significant migrant flows, notably from Poland and Ukraine were recorded in Germany, where they worked as agricultural workers to take the place of local farmhands who had found more remunerative employment in the heavy industries of the Ruhr valley. Many of these migrants worked under strictly enforced time-limited contracts, precursors to a later generation of guest workers. The foundation for modern immigration legal and administrative frameworks was laid during this period."[54]

Long-distance and transoceanic migration had been increasing gradually around the world since at least the 1820s, though, transoceanic migration accounts for only a portion of global migration. "Much migration was temporary or permanent movement to nearby cities, towns, factories, mines, and plantations."[55] "The Middle East and ex-Ottoman lands were also at the interstices of the main long-distance flows. Much of the movement in this region was the kind of labour migration that predominated in much of the rest of the world."[56]

"Migration rates increased dramatically around the world in the last quarter of the 19th century. After the depression of the early 1870s, transatlantic migration boomed and clearly surpassed Asian migration for the first time in the late 1870s, although migration to Southeast Asia soon picked up in the 1880s. Migration to North Asia followed suit in the 1890s."[57] "Transatlantic migration reached a spectacular peak of over 2.1 million in 1913, and migration to Southeast and North Asia reached unprecedented peaks of nearly 1.1 million per year from 1911 to 1913. Transatlantic migration recovered after the First World War to 1.2 million migrants in 1924, after which immigration quotas in the United States severely curtailed immigration from Southern and Eastern Europe. Asian migration also reached new peaks in the 1920s, with 1.25 million migrants to Southeast Asia in 1927 and 1.5 million to North Asia in 1929."[58]

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[52] *A History of Migration*. Available: www.striking-women.org/module/migration/history-migration (Accessed: 10.04.2018)
[53] McKeown (2004): *op. cit.* 157.
[54] IOM (2004): *op. cit.* 12.
[55] McKeown (2004): *op. cit.* 160.
[56] McKeon (2004): *op. cit.* 162.
[57] McKeon (2004): *op. cit.* 166.
[58] McKeon (2004): *op. cit.* 167.

Migration in the 20th century

The First World War closed the period of mass migration in the first era of global capitalism in August 1914. The war destroyed massive amounts of land, labour, and capital and left the international order in tatters. Nevertheless, the market crash of 1929 ended with economic growth.[59] Adam McKeown has explained that "world migration reached new peaks in the 1920s, and the immigration restrictions were part of much longer trends of regulations, border control, and nationalism that had grown concurrently with migration since the middle of the 19th century."[60] An example for this is that the first general immigration statute of the United States was passed by Congress in 1882 and reflected a clear desire to identify those who could and those who could not enter the country. The Act specifically prohibited the entry of convicts, insane persons, and persons likely to become a public burden. Australia and Canada promulgated similar legislations.[61]

Millions of Christians and Muslims became displaced from their Ottoman homelands from the late 19th to early 20th century due to the gradual shrinking of the Ottoman Empire and the emergence of new states. Those displaced were "Armenians from eastern Anatolia and Greeks from central and Western Anatolia, as well as Muslim Albanians, Bosnians, Pomaks, Tatars, and Turks from the Balkans."[62] "The dissolution of the Ottoman Empire and wars with Russia led to an exchange of 4 to 6 million people, with Muslims moving south from the Balkans, Greece, and Russia into Turkey, and Christians moving in the other direction. Around 1 million Armenians were expelled from Turkey to points around the world, and nearly 400,000 Jews moved to Palestine in the early 20th century."[63]

Human migration became more complex and diversified during the 20th century. "Parallel to disintegration of the multi-ethnic Habsburg, Ottoman, and Romanov empires, nation-states reached their apogee in the late 19th and early 20th centuries." New pattern of migration, the refugee movement became significant as "during the first half of the 20th century, the Balkan Wars and the First and Second World Wars triggered refugee movements in unforeseen numbers."[64] Muslims moved from the Balkans to Turkey, while Christians moved the other way during the collapse of the Ottoman Empire. 400,000 Jews moved to Palestine in the early 20th century. The Russian Civil War caused some 3 million Russians, Poles, and Germans to migrate out of the Soviet Union.[65]

"Whereas the First World War itself generated millions of refugees, the new post-war nation-states introduced programs of *unmixing* peoples or *ethnic cleansing.* Under the nation-state regimes, as states successfully usurped the *monopoly of the legitimate means of movement,* and with the introduction of citizenship and identity documentation, entry regulations became more restrictive and demands for military service and loyalty to the nation increased. By the end of the First World War, most states of the North Atlantic world

[59] Kershaw, Ian (2015): *To Hell and Back: Europe 1914–1949.* New York, NY, Viking. Cited by: Donato–Massey (2016): *op. cit.* 8.
[60] McKeown (2004): *op. cit.* 155.
[61] IOM (2004): *op. cit.* 12.
[62] Kirisci (2003): *op. cit.* 2.
[63] McKeon (2004): *op. cit.* 163.
[64] Lüthi (2010): *op. cit.* 3.
[65] New World Encyclopedia.

no longer required additional industrial workers, thus ending the prevalence of labour migrants across the globe; wars and national expansion themselves were destroying the lives of millions of people.[66] Forced migration was not only an effect of wars but also harsh labour regimentation following the seizure of power in the Soviet Union, particularly in the 1930s. Following the coerced collectivization of agriculture there was a collapse in production that led to famine-induced mass migrations."[67]

Due to the economic stagnation, political turmoil, the general uncertainty and insecurity, international migrations were reduced in the interwar period. "In the depression of the 1930s, migrant workers were seen as competitors for scarce jobs, and levels of hostility toward them rose. Governments of destination countries responded by introducing legislation authorizing tighter control of entry procedures, restricting employment possibilities for foreigners, and introducing strict penalties against the employment of irregular migrants."[68] However, the interwar period and the Second World War itself were marked by the mobility of millions of *displaced persons,*[69] refugees and people fleeing from the new communist regimes in Central and Eastern Europe, another of its hallmarks was colonization and those empires, which served as a foundation for contemporary global migration.[70] Stephen Castles has noted that "international migration emerged as one of the main factors in social transformation and development throughout the world in the second half of the 20th century."[71]

Post WWII migration (late 1940s to 1960s)

"The Second World War is often identified as another important watershed in migration history. The devastation created in Europe by the war contributed directly or indirectly to the displacement within the continent of between one and two million persons. Many of these people were refugees who had been victims of persecution or had had to flee persecution. Some found a new place of residence in Europe. Immediately after the Second World War, for example, the British Government offered work permits to 90,000 workers from refugee camps in various locations. Others moved to Belgium, France, and the Netherlands."[72] "This period of migration took place when labour was needed in the post-war reconstruction efforts in Europe and during the economic boom in Europe, North America and Australia. Migrants from former colonies in the Caribbean and South Asia came to find work in Britain, migrants from Turkey went to Germany and those from former French colonies in North Africa went to France."[73]

The traditional host countries, like the United States, Canada and Australia launched *migration programmes* for a large number of displaced persons after the Second World

[66] Lüthi (2010): *op. cit.* 3.
[67] Lüthi (2010): *op. cit.* 4.
[68] IOM (2004): *op. cit.* 14.
[69] See the chapter on *Displacement*.
[70] Lüthi (2010): *op. cit.* 4.
[71] Castles (2000): *op. cit*. 269.
[72] IOM (2004): *op. cit.* 14.
[73] *A History of Migration*. Available: www.striking-women.org/module/migration/history-migration (Accessed: 10.04.2018)

War. Those countries used migration as a *state-engineering* tool to enlarge their population. They increased their workforce capabilities at a time when these countries wished to take full advantage of the post-war economic boom. *Populate or perish* was one of the slogans commonly used by migration programme proponents to launch major infrastructure development projects, for example, dams, hydroelectric plants, and irrigation systems.[74] For at least two decades after the end of the war, these large-scale immigration programmes relied almost exclusively on the willingness of Europeans to detach themselves from their war-effected surroundings and start new lives abroad. Legislation and programme criteria were specifically formulated to enable migration from Europe and to restrict migration from other parts of the world.[75] "The Australian Government, in its nation-building efforts, paid a grant of £10 to each migrant (hence known as *ten pound poms*). Many other groups of migrants, such as migrants from Turkey to Germany were given temporary visas as *guest workers.* Many of these labour migrants, including South Asian migrants to the UK, went on to settle in the receiving country."[76]

At this time of the history of migration, permanent settlement was the primary goal of migrant workers. Later they brought their family members through family reunification into the host country. The case of the Turkish guest workers in Germany is an excellent example to monitor how the migration process has been transformed from permanent settlement through family reunification and return migration to circular migration by the 2000s. As Nermin Abadan-Unat defined the transformation of Turks in Europe in her book,[77] they turned from guest workers to transnational citizens.

"After the end of the Second World War, decolonization and unequal global terms of trade imposed on the southern hemisphere by the global *North* shifted refugee and labour migrations to the global *South.* The Western countries, which had formerly sent their people abroad, now, became the destination of often desperately poor migrants, and, to date, highly militarized border controls have mostly proven ineffective. Peoples in the colonies of Asia as well as North and Sub-Saharan Africa began wars of independence. By the 1960s, the countries of Britain, France, the Netherlands, Italy and Belgium were forced to abandon most of their colonies and – mainly because of this decolonization – major refugee populations were spawned in Africa. In the 1970s, because of the Vietnam War and conflicts elsewhere in Indochina, the geographical focus of these refugee movements shifted to southern and South-eastern Asia."[78]

The definition of the term *refugee* is laid down in the UN Convention Relating to the Status of Refugees. According to the Convention, a refugee is a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former

[74] IOM (2004): *op. cit.* 14

[75] IOM (2004): *op. cit.* 15.

[76] *A History of Migration*. Available: www.striking-women.org/module/migration/history-migration (Accessed: 10.04.2018)

[77] Abadan-Unat, Nermin (2011): *Turks in Europe. From Guest Worker to Transnational Citizen*. New York and Oxford, Berghahn Books. 1.

[78] Lüthi (2010): *op. cit.* 4.

habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."[79]

"In addition to the refugee movements induced by decolonization, three major types of migration ensued:

- *reverse migrations* that brought colonizers and their personnel back home,
- *displacement migrations* as a result of the reordering of societies within the newly independent states, and
- income-generating labour migrations abroad to compensate for the disruptions in the daily lives of the people and the lack of long-term prospects in the newly independent states.
- An emerging global North-South divide institutionalized through unequal terms of trades that disadvantaged the South, served to continue earlier forms of more direct exploitation and caused continuing migrations. Ever more people – with or without official documents – attempted to reach the wealthy job-providing North."[80]

This phenomenon is in connection with irregular migration. According to the definition of the IOM, "irregular migration is a movement that takes place outside the regulatory norms of the sending, transit and receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries, it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international border without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country. There is, however, a tendency to restrict the use of the term *illegal migration* to cases of smuggling of migrants and trafficking in persons."[81]

Returning to the post-war situation, Stephen Castles and Mark J. Miller have summarized that for centuries Europeans have been moving outward to conquer, colonize, and settle foreign lands elsewhere; these patterns were reversed after the Second World War. From a prime source of emigration, Europe has been transformed into a major global migration destination. As part of the same pattern, Europeans represent a declining share of immigrants in classical immigration countries such as the USA, Canada, Australia and New Zealand, along with an increase of *South–North* migration. This also coincided with the appearance of a new global pole of attraction for migrant workers in the Gulf region.[82] Within the 20th century, there was a significant shift in the composition of international migrants. Before 1925, 85% of all international migrants originated in Europe, but since 1960, the number of European emigrants has reduced.[83]

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[79] UN Convention Relating to the Status of Refugees. (1951) Article 1.A.(2).

[80] Lüthi (2010): *op. cit.* 4.

[81] IOM: Key Migration Terms. www.iom.int/key-migration-terms

[82] Castles–Miller (2003): *op. cit.* 7.

[83] Massey, Douglas (1999): Why Does Immigration Occur? A Theoretical Synthesis. In Hirschman Charles et al. eds.: *The Handbook of International Migration: The American Experience.* New York, Russell Sage Foundation. 35. Cited by: McKeon (2004): *op. cit.* 169.

Regional systems

The significance of migration as a major factor in societal change lies in the fact that it is concentrated in certain countries and regions.[84] Over the course of the history of migration, the relationships widened among continents. Although, migration is a long historical process, it shows considerable variances in every continent. The globalization of migration means that if control becomes stricter in certain points in the world, it has significant impact on other hosting regions, as well.[85]

Barbara Lüthi has summarized the regional systems. "Several overlapping macro-regional migration systems emerged after the Second World War, two South–North systems in Europe and North America supplementing the Atlantic migration system. In the 1950s and 1960s, post-war reconstruction and economic growth first created a demand for labour from Southern to Western and Northern Europe, then expanding into North Africa. The North American labour market and the U.S. capital investments transforming their societies attracted Mexican and other Latin American and Caribbean migrants."[86] The largest volume migration in the world trends toward the U.S. from Mexico.[87]

"Regional migration systems also developed in the Caribbean and Central and South America. Supported by U.S. administrations, right-wing governments triggered large refugee movements in certain Latin American countries. Venezuela, Brazil and Argentina have become magnets for migrant groups during different times, and political refugees from the former military dictatorships are in part, returning to their former countries."[88] Within Latin America, financial crises and political persecution often induce mass migratory processes.[89]

"In Asia, the fast-growing economies of South Korea, Singapore and Malaysia formed a new migration system. After the end of colonial rule, Chinese diaspora in Southeast Asia were often singled out as scapegoats during times of economic crisis; hundreds of thousands were forced to flee. By contrast, the intra-Asian system was supplemented by a new phase of the Pacific migration system, which evolved after the end of the race-based exclusion in North America. Migrants from China, India, the Philippines and Southeast Asia moved mainly to the U.S. and Canada."[90] 60% of the world's population live in Asia. Urbanisation is the main characteristic of the inner migration. The number of the Chinese and Indian diaspora is growing. The biggest labour exporter of Asia is the Philippines. There was a shift from labour-force offer to labour-force demand. Return migration can be observed.[91]

"The Persian Gulf region attracted experts from the Western world as well as male labour from the Maghreb and the Indian Ocean region, whereas female domestic labour was specifically recruited from Asian societies. Sub-Saharan Africa developed another system in temporarily expanding economies such as Kenya, Somalia and – since the end

[84] Castles (2000): *op. cit.* 275.
[85] Rédei Mária (2007): *Mozgásban a világ. A nemzetközi migráció földrajza.* [The World in Motion. The Geography of International Migration.] Budapest, ELTE Eötvös. 204.
[86] Lüthi (2010): *op. cit.* 4.
[87] Rédei (2007): *op. cit.* 206.
[88] Lüthi (2010): *op. cit.* 5.
[89] Rédei (2007): *op. cit.* 207.
[90] Lüthi (2010): *op. cit.* 5.
[91] Rédei (2007): *op. cit.* 207.

of Apartheid – South Africa. Nevertheless, obstacles in development due to dysfunctional economies as well as disruptive World Bank-imposed cuts in social services triggered internal rural-urban moves as well as out-migration to former colonizer countries."[92] The Middle East is a big host region of the foreign work-force. After the Gulf war a new period started in reception policy. A *renationalization program* was launched in connection with domestic developments. This narrowed the opportunities of foreigners in the economy.[93]

North Africa is traditionally in close connection with France. Due to its geopolitical situation emigration is permanent. The Sub-Saharan region is the territory of transit migration. In Western Africa and in South Africa both outward and inward migration can be observed. The middle part of Africa is the scene of refugee movements and it is a critical area.[94]

"Finally, socialist Eastern Bloc countries have shown singular migration patterns. Collectivization, uneven rural-urban development, economic growth in Hungary and Yugoslavia and in parts of the USSR as well as investments in southern Siberia resulted in interregional and interstate mobility. A ban on emigration separated this macro-region from all other migration regions. New east-to-west migrations occurred, and centres such as Moscow and Prague attracted internal, Chinese and Western migrants only at the collapse of the system in 1989."[95]

Post 1970s migration

By the mid-1970s, migration programme objectives had been adjusted to focus less on the ethnic origin of the applicants and more on their qualifications, skills, and work experience.[96] "Since the 1970s, the variety of sending and destination countries has grown phenomenally. In addition to the traditional immigration receiving countries in the Americas, Western Europe and Australia and New Zealand, a range of other countries attract a growing population of migrants. These include countries that have historically been nations of emigration such as Italy, Spain and Portugal. Additionally, the escalation of oil prices and the resulting economic boom in the Gulf region has led to a massive immigration to these countries to meet the demand for labour, though most of this is not permanent migration. There has also been a rise in labour migration to newly industrialised countries in Asia such as Thailand, Malaysia, Hong Kong and Singapore from poorer countries in Asia such as Burma and Bangladesh. Unlike earlier phases when migration was more likely to end in permanent settlement, temporary and circular migration is again becoming more important. People are more likely than in earlier periods to migrate more than once in their lives, to different countries, and to return to their original country."[97]

"Both the demographic makeup and the social composition of the receiving societies were substantially transformed. It is also certain that lifestyles and values underwent sig-

[92] Lüthi (2010): *op. cit.* 5.
[93] Rédei (2007): *op. cit.* 208.
[94] Rédei (2007): *op. cit.* 209.
[95] Lüthi (2010): *op. cit.* 5.
[96] IOM (2004): *op. cit.* 15.
[97] *A History of Migration.* Available: www.striking-women.org/module/migration/history-migration (Accessed: 10.04.2018)

nificant change. The highly industrialized countries of Western Europe turned to temporary labour to a lesser or greater extent between 1945 and 1973. European economies, after a sluggish start, found their way back to solid economic growth. The first consequence of that was a slowing down of the flow of emigrants out of Europe and toward the traditional countries of destination, and encouragement of active relocation within the European region of workers seeking to take advantage of rapid job creation in countries such as Germany, France, Belgium, and Switzerland."[98] Various international and transnational movements characterized the second half of the 20th century. Some of those still feature the recent migratory movements like persecutions and returns as consequences of the Second World War, de-colonialization, post-colonial migration, labour migration and movements of refugees.[99]

In connection with the post-1970 period, it is important to make clear the concept of temporary labour migration. "Temporary labour migration is a phenomenon of the workers migrating on the basis of temporary work authorizations, which attach the legal status of workers to particular employers and/or particular positions of employment. Temporary labour migration schemes take on various forms from bilateral and regional agreements for the exchange of labour between states to changes in national legislation allowing employers easy and accelerated access to temporary migrant workers for varying time periods, to provisions in multilateral trade agreements. What is new in the post-1970 period of restructuring in the world capitalist economy is the increased use of temporary migrant labour by employers around the world."[100]

Migration at the Beginning of the 21st Century

We are currently in the midst of a second era of capitalist globalization.[101] "Its foundations were laid in the ashes of the Second World War, when the great global powers joined to create a new set of multilateral institutions that could maintain peace while promoting global trade and investment. The United Nations was created to defuse conflicts and prevent world war, the World Bank to finance economic development, the International Monetary Fund to guarantee international liquidity, and the General Agreement on Tariffs and Trade (GATT) to lower barriers to cross-border commerce."[102] Over the course of successive rounds of the GATT, negotiations gradually removed obstacles to trade and investment, culminating in the creation of the World Trade Organization in 1995.[103] "This current wave of globalization proceeded slowly at first, as the economies of Europe and Japan were rebuilt after the war; but the pace of change accelerated after 1970 when the digital revolution advanced to create a new, knowledge based economy. With China's turn toward the market in 1979 and

[98] IOM (2004): *op. cit.* 15.

[99] Cseresnyés (2005): *op. cit.* 66.

[100] Valiani, Salimah (2013): Temporary migrant workers, globalization, 20th century to present. In Ness, Immanuel ed.: *The Encyclopedia of Global Human Migration.* First Edition. Blackwell. 2922.

[101] Williamson, Jeffrey G. (2004): *Migration and economic growth: A study of Great Britain and the Atlantic economy.* Washington, D.C., AEI Press. Cited by Donato–Massey (2016): *op. cit.* 8.

[102] Donato–Massey (2016): *op. cit.* 8.

[103] Stiglitz, Joseph E. (2002): *Globalization and Its Discontents.* New York, NY, W.W. Norton. Cited by Donato–Massey (2016): *op. cit.* 9.

the collapse of the Soviet Union in 1991, a truly global economy emerged and was firmly established by the beginning of the new century."[104] Barbara Lüthi has indicated other characteristics of the 21st century, "the religious fundamentalism, increasing xenophobia in many countries, and so-called homeland security barriers are threatening the migrants' freedom of movement. At the same time, the demand for migrant labour (increasingly also for domestic work or old-age care in affluent countries) is growing, just as migrants themselves are desperately searching for entry into societies that permit sustainable lives. Research data indicate growing disparities between the northern and southern hemispheres due to the imposition of tariff barriers and unequal terms of trade by the powerful North."[105]

Unlike the first era of globalization, contradictions characterize the second era.[106] Russell King has defined four contradictions which show societal inequalities. One of them is that despite the technological advances, people can migrate less freely than a hundred years ago. In connection with this, the second contradiction is that the free movement of capital, goods and the idea of Western culture does not go together with unobstructed motion in the globalized world. The third contradiction is that reach countries' citizens have more freedom to migrate than poorer countries' citizens. Despite strict regulations, people find ways to avoid those obstacles. They move *illegally* often with help of paid smugglers, crossing borders irregularly[107] or they arrive legally with tourist visa, but later they do not leave the country. The governments who are ready to exploit the benefits of cheap immigrant labour force play a double game. On the one hand, they emphasize the necessity of strict immigration rules in order to silence those inhabitants who fear the incompatibleness of different cultures. On the other hand, they overlook illegal border-crossings as streaming cheap immigrant labour force increase the competitiveness of certain industries and economies.[108]

Massey's paradox of the 21th century

Going further along the contradictions, Douglas S. Massey has defined the paradox of the 21st century globalization. "Today, all nations impose restrictions on international migration, thus constrain the globalization of markets for labour and human capital. Nations seek to create and participate in a global market in which only some factors of production are mobile. This is the fundamental contradiction of post-industrial globalism."[109] We can see parallels in the past regarding migrants' movements "along pathways well established by a shared colonial past, prior guest worker treaties, and ongoing relations of trade, investment, and exchange. The difference today is that immigrant flows are restricted and unable to equilibrate international labour markets because national leaders want to create a global economy with selective factor mobility, a core contradiction finessed by the imposition

[104] Donato–Massey (2016): *op. cit.* 9.
[105] Lüthi (2010): *op. cit.* 5.
[106] Donato–Massey (2016): *op. cit.* 9.
[107] See more on illegal-irregular migration: Hautzinger Zoltán (2016): *Szemelvények a migráció szabályozásáról*. [Compilation on the Regulations of Migration.] Pécs, AndAnn.
[108] King (2008): *op. cit.* 8.
[109] Donato–Massey (2016): *op. cit.* 9.

of ever more repressive controls on the international movement of people".[110] According to Douglas S. Massey, illegal migration is built into the structure of contemporary global economy; therefore, irregular migration is increasing.[111]

Besides illegal migration and irregular forms of migration, the paradox of the 21st century globalization increases inequality among migrants, since in an irregular situation they cannot exercise their rights and they can be exploited. This disadvantageous situation negatively influences their integration.[112]

Current trends of international migration

International movement is becoming more feasible, partly owing to the digital revolution, distance-shrinking technology and reductions in travel costs.[113] Globalization profoundly affects migration processes. It fundamentally involves interactions that span multiple geographic places, transcending nation-states. These interactions involve ideas, capital, goods, services and information, as well as people who virtually and actually connect with others across boundaries.[114] "Globalization processes are altering aspects of daily life in the modern era. Recent advances in transportation and telecommunications technology have heralded massive changes in how we access information and interact globally in real time. Increasing transnational connectivity is shaping how people move internationally in ways that were not previously possible."[115]

Migration patterns have not been uniform. Even though innovations in transport and telecommunications technology have increased interconnectivity and facilitated movement, they have not always resulted in more migration.[116] The revolution in telecommunications is enabling the creation of unregulated migratory pathways that are fast and affordable for an increasing number of people. Telecommunications helped shape the size, composition, speed and geography of the migratory flows. Real-time coverage of movements and operations enable migrants – refugees, asylum-seekers and others – to access useful information on where, when and how to travel. Real-time connectivity enables information to be sourced, and verified, particularly where migrants are likely to undertake unsafe journeys or rely on smugglers.[117] The complex interactions between greater interconnectedness and international migration processes have growing importance. While the drivers of migration may remain largely unchanged, the circumstances in which people are considering and making decisions about their migration options have changed considerably.[118] Factors underpinning migration are numerous, relating to economic prosperity, inequality, demography, violence and conflict, and environmental change.[119]

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[110] Donato−Massey (2016): *op. cit.* 14.
[111] Ibid.
[112] Donato−Massey (2016): *op. cit.* 24.
[113] IOM (2017): *op. cit.* 13.
[114] IOM (2017): *op. cit.* 150.
[115] IOM (2017): *op. cit.* 168.
[116] IOM (2017): *op. cit.* 155.
[117] IOM (2017): *op. cit.* 158.
[118] IOM (2017): *op. cit.* 168.
[119] IOM (2017): *op. cit.* 13.

Russell King has explained the two sides of the *migration coin*.[120] One side is migration, the other side is immobility. One side of the migration coin shows the "fundamental historical role of migration as part of human experience from the past to the present and on into the future".[121] However, Stephen Castles and Mark Miller called the end of 20th century the *Age of Migration* mainly due to growing political salience of migration. They identified certain general tendencies besides of politicization of international migration, it has "globalised, accelerated, diversified and feminised".[122] From the aspect of this side of the migration coin, the latest population facts of the United Nations Department of Economic and Social Affairs (UN DESA)[123] has actual numbers and some main characteristics of international migrant populations.

The current global estimate is that there were around 258 million international migrants in the world in 2017, which means that 3.4% of the global population lived in a country other than their country of birth.[124] The estimated number of international migrants has increased over the past 47 years.

Table 1.
International migrants, 1970–2017[125]

Year	Number of migrants	Migrants as a % of the world's population	World's population* (billion)
1970	84,460,125	2.3	3.7
1975	90,368,010	2.2	4.0
1980	101,983,149	2.3	4.5
1985	113,206,691	2.3	4.9
1990	152,563,212	2.9	5.3
1995	160,801,752	2.8	5.7
2000	172,703,309	2.8	6.1
2005	191,269,100	2.9	6.5
2010	221,714,243	3.2	7.0
2015	243,700,236	3.3	7.4
2017	258,000,000	3.4	7.5

* World Population Clock.

Source: Compiled by the Author from the IOM (2017) World Migration Report; the UN DESA (2017): Population Facts; the World Population Clock

[120] King, Russell (2012): *Theories and Typologies of Migration: An Overview and a Primer.* Malmö, Malmö University. Willy Brandt Series of Working Papers in International Migration and Ethnic Relations. 3/12. 4.
[121] McNeill, William H. – Adams, Ruth S. eds. (1978): *Human Migration: Patterns and Policies.* Bloomington, Indiana University Press. Cited by King (2012): *op. cit.* 4.
[122] Castles–Miller (2003): *op. cit.* 7–9. Cited by King (2012): *op. cit.* 4.
[123] UN DESA (2017): *op. cit.* 1.
[124] Ibid.
[125] IOM (2017): *op. cit.* 15.

From 1970 till 1980, the world's population and the number of international migrants gradually grew, while the percentage of the migrants was relatively stable compared to the growing of the world's population. From the second half of the 1980s, the world's population further grew gradually, but the number of international migrants grew faster than in the previous five-year-periods due to political events in the world history. At the same time, there was a peak in the percentage. This increasing character has been continuing till 2017, while the percentage and the worlds' population remained gradual.

Since 2000, the number of international migrants increased by almost 50%. The number of international migrants is growing faster than the global population. In 2017, the proportion of international migrants was 3.4% of the world's population, compared to 2.8% in the year 2000. Comparing the numbers of the continents, the UN DESA data show that the number of international migrants grew the fastest in Africa. Since 2000, the number of international migrants in Africa has increased by 67%. Between 2000 and 2017, their number increased from 15 million to 25 million. As a result, the percentage of all international migrants residing in Africa increased from 9% in 2000 to 10% in 2017. The second largest increase in the number of international migrants was recorded in Asia (62%), followed by Oceania (56%), Latin America and the Caribbean (44%), Northern America (43%) and Europe (38%).[126]

Comparing the global *North* to the global *South,* significant difference can be observed. In the North, almost 12 of every 100 inhabitants are international migrants; at the same time, in the South, only two of every 100 inhabitants are international migrants. Looking at the data on the global *South-South* and *South-North* migration, the UN DESA has published that in 2017, 38% of all international migrants were born in a country of the less developed regions and were residing in another developing country *(South-South migration),* while 35% were born in the South but residing in the North *(South-North migration).* In connection with the global *North-North* and *North-South* migration, data show that about one in five international migrants were born and stay in the North *(North-North migration),* while six percent were born in the North but residing in the South *(North-South migration).*[127]

The other side of the migration coin reflects Gunnar Malmberg's *immobility paradox.* The 258 million international migrants in the world in 2017 represented only 3.4% of the world's population. 97% of the world's population stays in the country in which they were born so they do not participate in cross-border migration.[128] An estimation is available from 2009, according to which there are about 740 million internal migrants in the world who migrate within countries.[129] The *immobility paradox* means that despite of the various economic theories and models which explain the causes of international migration, based on *push* and *pull* factors, the vast majority of people do not migrate.[130]

[126] UN DESA (2017): *op. cit.* 1.

[127] Ibid.

[128] Malmberg, Gunnar (1997): Time and Space in International Migration. In Hammar, Thomas – Brochmann, Grete – Tamas, Kristof – Faist, Thomas eds.: *International Migration, Immobility and Development. Multidisciplinary Perspectives.* Oxford, Berg. 21. Cyted by: King (2012): *op. cit.* 5.

[129] IOM (2017): *op. cit.* 2.

[130] King (2012): *op. cit.* 5.

Further characteristics of international migration

The dynamics of international migration is quite complex. On the one hand, it concentrates in certain regions. On the other hand, the UN DESA has observed important differences across regions and sub-regions. In Asia, migration has been mainly intraregional. Nevertheless, in Africa, intraregional migration has always been and remains important, but recently, the number of African international migrants has been almost the same as the number of intraregional African migrants. In contrast, in Latin America and the Caribbean, emigration is the main pattern of migration, especially toward North America. Intraregional migration plays a relatively limited role.[131] In this context, Stephen Castles, Hein de Haas and Mark J. Miller have pointed out that the old dichotomy of migrant-sending and migrant-receiving countries has been eroded. Most countries experience both emigration and immigration.[132] In this regard, the IOM has pointed out the complexity of migration dynamics as several countries are sending (emigration) and receiving (immigration) countries at the same time. Those countries experience large immigration and emigration flows, often driven by two-way flows of labour migrants, family migrants and students. It is similar in the case of refugees, in some countries, like Sudan, South Sudan, the Democratic Republic of the Congo and Iraq.[133]

Continuing the characteristics of the regions, similarly to previous years, today Asia and Europe host the largest numbers of international migrants. "Six of every ten international migrants reside in Asia or Europe. In 2017, Asia hosted the largest number of international migrants (80 million), followed by Europe (78 million) and Northern America (58 million), Africa (25 million), Latin America and the Caribbean (10 million) and Oceania (8 million) combined hosted around 43 million, or 17% of the global number. Between 2000 and 2017, the global share of international migrants residing in Asia increased from 29 to 31%, while in Europe the number declined from 33 to 30%."[134]

Analysing the rate of male and female international migrants, the UN DESA has observed that in 2017, the proportion of male international migrants was slightly bigger (52%) than the number of females (48%). In the last 17 years, the percentage of female migrants increased in all regions except Asia. According to the UN DESA, this increasing in most regions may be the result of population ageing and the greater female life expectancy. "The declining share of female migrants in Asia reflects a sharp rise in the demand for migrant workers in construction and related sectors in Western Asia." As regards the age of international migrants, seven of every ten international migrants are adults of working age. Both in the developed and the developing regions, about 70% of all international migrants are between 20 and 59 years of age. From the point of view of age, there are also differences between the *North* and the *South*. "Older migrants outnumber younger migrants in the North, whereas younger migrants outnumber older migrants in the South. In the South, 21% of all international migrants are under the age of 20, which is more than double the share of migrants aged 60 or over (10%). In contrast, the fraction

[131] IOM (2017): *op. cit*. 92.
[132] Castles–Haas–Miller (2014): *op. cit*. 14.
[133] IOM (2017): *op. cit*. 92. See Castles–Haas–Miller (2014): *op. cit*. 14.
[134] UN DESA (2017): *op. cit.* 1.

of the migrant population aged 60 or over in the North (21%) is more than double the share of migrants under the age of 20 (9%)."[135]

In the case of intraregional mobility of international migrants, it can be observed that most migration takes place between countries in the same region. "Two thirds of all European-born international migrants reside in Europe. In 2017, of the 61 million international migrants born in Europe, 41 million resided in Europe. The second largest intraregional mobility (60%) took place in Asia, followed by Oceania (58%), and Africa (53%)." There is a difference in the case of Northern America (27%), Latin America and the Caribbean (16%), as those are the only regions where a majority of emigrants reside in another region.[136]

Displacement

Displacement with complex drivers has become an emblematic phenomenon of the 21st century. It is in close connection with two potential drivers of migration which is typical of the 21st century: "the climate change and civil violence" as Katharine Donato and Douglas S. Massey have noted.[137] The environmental change, underdevelopment, state fragility, protracted wars, unsolved conflicts, crises and disasters causing displacement in the world put a heavy burden on national economies.[138] Data on displacement underpin Donato and Massey's forecast. Every year a significant increasing is recorded in displacement. In 2016, there were 31.1 million new cases of internal displacement by conflict, violence and disasters which represents an increase of 3.3 million from 2015. It is the equivalent of one person displaced every second.[139]

First, it is important to define internally displaced persons, and what separates them from refugees and international migrants. Almost twenty years ago, the UN Commission on Human Rights (UN CHR) defined internally displaced persons in 1998, in the Guiding Principles on Internal Displacement as follows: "internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border."[140] Before the adoption of the Guiding Principles, forcibly displaced people within their own countries did not have specific protection. Roger Zetter calls this a protection gap, which stimulated the UN General Assembly to adopt this document, which reinforce the principle that "national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction."[141]

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[135] UN DESA (2017): *op. cit.* 4.
[136] UN DESA (2017): *op. cit.* 2.
[137] Donato–Massey (2016): *op. cit.* 7.
[138] IDMC (2017): *Global Report on Internal Displacement, Grid 2017.* IDMC, NRC.
[139] IDMC (2017): *op. cit.* 10.
[140] UN CHR (1998): *Guiding Principles on Internal Displacement.* 5.
[141] Zetter, Roger (2015): *Protection in Crisis: Forced Migration and Protection in a Global Era.* Washington, D.C., Migration Policy Institute. 5.

Regarding the relationship between internally displaced persons, refugees and migrants, the Internal Displacement Monitoring Centre (IDMC) outlined a possible circulation among them as internal and cross-border movements are connected.[142] An internally displaced person (IDP) may become a refuge when he/she crosses the border and seeks international protection, particularly when the IDP cannot find safety any more within the country. If they return but cannot integrate, they may become IDPs again.[143] IDPs may become international migrants, as well when crossing the border. Roger Zetter defined the relationship between displacement and *circular mobility.* According to Zetter, displacement is "no longer a one-way movement" as IDPs can cross the border and regularly return to their country of origin or from the internal alternative safe place within their own country they return to their place of origin.[144]

The IDMC distinguishes between conflict-related and disaster-related displacement, as well as new cases and total numbers. The number of conflict-related new displacements was 6.9 million of which 6.6 million – more than 95% – took place in high-risk contexts, most of them in Sub-Saharan Africa. The total number of conflict-related internally displaced people was 40.3 million in the world at the end of 2016.[145] According to the IOM, since 2003, there has been an average of 5.3 million new displacements due to conflicts and violence yearly. "About 15,000 men, women and children are forced to leave their homes every day. Between 2000 and 2015, the average was even higher, 7.6 million per year or more than 20,000 people per day. The 2016 6.9 million new displacements falls between the two averages, reflecting an overall rising trend since 2003."[146] Many of the top source countries of refugees also host high numbers of IDPs, like Afghanistan, Colombia, DRC, South Sudan, Sudan and Syria.[147] In Syria, more than 800,000, in Iraq, almost 680,000, in Yemen, nearly 478,000 new displacements were recorded.[148]

The number of disaster-related new displacements was 24.2 in 2016. A majority of these displacements took place in South and East Asia, China, the Philippines and India. The total number of disaster-related internally displaced persons is unknown.[149] Therefore, it can be summarized that in 2016, there were 40.3 million[150] internally displaced persons due to various conflicts and violence and 22.5 million refugees worldwide. Even the number of refugees is nearly half of the IDPs', much attention is paid to refugees, though only in 2016, there were 31.1 million new cases of internal displacements due to conflict, violence and disasters.[151]

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[142] IDMC (2017): *op. cit.* 7.
[143] IDMC (2017): *op. cit.* 60.
[144] Zetter (2015): *op. cit.* 11.
[145] IDMC (2017): *op. cit.* 10.
[146] IOM (2017): *op. cit.* 37.
[147] IDMC (2017): *op. cit.* 50.
[148] IDMC (2017): *op. cit.* 10.
[149] IOM (2017): *op. cit.* 37. According to available data, there have been 227.6 million displacements due to disasters since 2008.
[150] IOM (2017): *op. cit.* 37. The number was 40.8 million in 2015, the highest on record since 1998. The total number of IDPs by conflicts and generalized violence has almost doubled since 2000, and has risen sharply since 2010.
[151] IDMC (2017): *op. cit.* 10.

Refugees and asylum seekers

According to the UN DESA data, refugees and asylum seekers constitute about 10% of all international migrants. In the last 17 years, the number of refugees and asylum seekers increased from 16 to 26 million, and their share of the total number of international migrants increased from 9 to 10%. Four of every five refugees or asylum seekers are hosted by countries in the developing regions. In 2017, countries of the global *South* hosted 21 million refugees or asylum seekers, representing 83% of the global number. Asia hosted the largest refugee population (14.7 million), followed by Africa (6.3 million), Europe (3.5 million), Northern America (970,000), Latin America and the Caribbean (420,000) and Oceania (70,000). The top 10 countries of asylum host more than half of the world's refugees. The 10 leading countries of asylum hosted 62% of the global refugee population, with the largest numbers in Turkey (3.1 million), Jordan (2.9 million) and the State of Palestine (2.2 million).

In 2017, refugees accounted for just 3% of all international migrants in the global *North.* In the *South,* however, almost a fifth of international migrants are refugees (19%), and in the least developed countries, refugees constitute more than a third of all international migrants (36%). One in every 300 persons worldwide is a refugee. In 2017, about 0.3% of the world's population was a refugee. As a fraction of the total population, Africa hosts the largest number of refugees (0.5%), while Latin America and the Caribbean host the smallest number (0.06%). In 2017, the countries with the highest percentage of refugees in the total population included the State of Palestine (44%), Jordan (30%) and Lebanon (26%).[152]

The conflict in the Syrian Arab Republic has been continuing. The number of refugees from Syria reaches approximately 5.5 million. Another major source country of refugees is Afghanistan where instability and violence have continued for over 30 years. The country is the second top country of origin in the world with 2.5 million refugees. The number slightly decreased compared to the 2015 figures (2.7 million), mainly because many Afghans have returned from Pakistan. Due to large-scale violence that erupted in South Sudan in the middle of 2016, the country has become the third largest country of origin for refugees, with over 1.4 million at the end of the year. Refugees from Afghanistan, South Sudan and the Syrian Arab Republic comprised 55% of the refugees under the UNHCR's mandate.[153]

Conclusion

For future perspectives, Stephen Castles, Hein de Haas and Mark J. Miller have stated that international migration is one of the most important factors in global change and have mentioned some reasons why the age of migration is expected to continue. First, due to the economic inequalities between countries, the *aspiration of migration* will increase and people will search better living standards. Second, *political or ethnic conflicts* worldwide will result in mass migration and will increase the number of people seeking international

[152] UN DESA (2017): *op. cit.* 3.
[153] IOM (2017): *op. cit.* 33.

protection. Third, in connection with labour, *new free trade areas will facilitate* labour migration.[154]

Migration is a fundamental means of human adaptation to avoid risks and access opportunities as Katharine Donato and Douglas S. Massey have summarized.[155] People's movements provide states and migrants with opportunities.[156] Consequently, seeking better opportunities was the main characteristic of mobility in the final decades of the 20th century and the first decade of the 21st century. According to Douglas S. Massey, we can expect change in the motives and trends of international migration due to climate change and rising civil violence. In the course of adaptation, instead of seeking better opportunities, people will escape from immediate threats like "civil violence, crime, warfare, family violence, natural disasters, political upheavals, and economic catastrophe."[157] These expectations were underpinned by the data of international organisations and drew attention to the importance of the drivers of displacement like poverty, inequality, underdevelopment, state fragility, conflicts, violence, human rights violations and disasters.

Despite the fact that the world's population will further increase, significant percentage of people will not leave the country where they were born, while the share of international migrants will grow. Nevertheless, mobility marks our contemporary history. New forms of international migration, like temporary or circular migration are not quite new; we can find their parallels in the historical times of international migration.

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[154] Castles–Haas–Miller (2013): *op. cit.* 7.
[155] Donato−Massey (2016): *op. cit.* 7.
[156] IOM (2017): *op. cit.* 13.
[157] Donato−Massey (2016): *op. cit.* 15.

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Factors of Migration from North Africa

Andrea Crisán

"If wealth does not go where people are,
people naturally go where wealth is."
(Alfred Sauvy)

Introduction

The purpose of the study is to provide a deeper analysis of the migration patterns of the North African region (especially Morocco, Algeria, Tunisia) and an overview about the key factors behind the contemporary migration flows. In particular, it seeks to:

- examine the principal factors determining the decision of North African citizens to leave their country (push factors)
- examine the factors which affect their choice of destination country (pull factors)
- describe supporting elements and additional factors to migration
- show the migration profile of North African citizens emigrated

I analyse the recent migration histories of North African countries and show how they are related to underlying political and economic factors. It is important to relate current migration patterns to historical trends by analysing continuities and discontinuities.

Making predictions about future migration trends is difficult both in the start-and-mid-term level and relatively unreliable, as well: most influential factors are well-known and stable, whereas many other assumptions remain speculative in the respective countries concerning economic, political and social development. This is especially true for countries that experience profound transformational processes or even political crises, such as several countries in North Africa.

This complex situation needs elaborated analytical approach and should take into consideration the fact that simplification or oversimplification of the migration movement is a mistake. We should never forget the migrants' life stories and personal circumstances; however, this study aims to summarize the general push and pull factors behind migration patterns, as well.

General Overview

The *Jasmine Revolution* in Tunisia provoked a wave of uprising for democracy in North Africa, and it was followed by the ousting of President Mubarak in Egypt. Also, Libyans, Algerians and Moroccans were clearly expressing their will for political change. Millions of North Africans make strong demands for more democracy and political participation. Although the historical experience of North Africans widely differs, they are all facing similar problems and challenges. Why did not we see the upheavals coming? – asked Ann Lesch in her study.[1]

In her opinion one reason was that we overestimated the robustness of some of the authoritarian regimes, and underestimated the demands for a better life, measured partly in human rights term. We failed to see how quickly it could ignite into a region wide revolt that is, a struggle for dignity.[2]

The *Arab Spring* transformed the political landscape of an entire region, but the democratic reforms in the countries were accompanied by some negative impacts. "During their early stages, the protests raised hopes of a new wave of democratisation, but these hopes were quickly dashed, and the Spring, it seemed, was lost."[3] The events of the *Arab Spring* have affected the countries of the region to different extents. While the uprising in Tunisia and Morocco remained relatively peaceful, the violent conflicts in Libya and Syria generated large flows of refugees, most of whom went to neighbouring countries such as Tunisia and Egypt in case of Libyans and Turkey, Lebanon, Jordan and even Libya for Syrians. Nevertheless, the *Arab Spring* has not radically transformed long-term migration patterns in the Mediterranean. Mass flight has been largely confined to Libya and Syria, and there has been no major increase of emigration from other North African or Middle Eastern countries.[4]

"Countries in North Africa tend to experience both inflows and outflows of irregular migrants due to their geographical position" – wrote Browne in her study. Egypt, Morocco and Tunisia are primarily countries of origin which rely on labour out-migration to help ease unemployment pressure at home and for the economic benefits of remittances.[5]

North Africa is also a destination region, especially Libya, mainly for Sub-Saharan migrants. Some other North African countries have become destination countries by accident, when migrants have been moving north and have stranded, for instance in Morocco. Besides this all North African countries are transition countries for migrants who wish to reach Europe to some extent.

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1 Lesch, Anne M. (s. a.): Egypt's Spring: Causes of the Revolution. *Middle East Policy Council,* Vol. 18, No. 3.
2 Ibid.
3 Leech, Philip (2017): Debunking the Myth of the Arab World. *Stratfor,* May 19, 2017.
4 Bommes, Michael – Fassmann, Heine – Sievers, Wiebke eds. (2014): *Migration from the Middle East and North Africa to Europe.* Amsterdam, Amsterdam University Press.
5 Browne, Evie (2015): *Drivers of irregular migration in North Africa*. Birmingham, GSDRC, University of Birmingham. 3.

Push Factors of Migration Flow from North Africa

This chapter analyses the conditions and elements that play a strong role in the decision to migrate. "Push factors in North Africa include a mix of *proximate* causes (the outbreak of violence, loss of livelihood or death of a family member) and *root* causes (such as political instability, economic uncertainty or prolonged unemployment)."[6]

The push factors in different North African countries show similar patterns. All countries examined are experiencing serious challenges after the events of the *Arab Spring.* It should be noted that motivations may also change over time and the complex combination of factors influence the decision to leave. The principal push factors may be categorized in the following points:

- Political push factors – this section focuses on the political situation, political crises and instability, domestic or community violence and unsatisfactory situation of human rights since 2011.
- Economic push factors – this section demonstrates prolonged unemployment, the lack of accession to the labour market, economic stagnation and failure of a business as main push elements.
- Ecological push factors – this section deals with climate changes and increased population pressure on natural resources. In this study these are just mentioned without further details.

Some authors emphasise the importance of the demographic push factor and the *culture of migration.* In my opinion these elements themselves cannot be push factors, but can be considered supporting or considerable elements behind migration. Therefore, they are discussed in the *Additional Factors to Migration* chapter.

Political Push Factors

In this section the motives for migration on political and security grounds are discussed. Generally, in North Africa main factors are the deficient governance, relative political instability and the unsatisfactory situation of human rights.

Obviously the *Arab Spring* has quite drastically changed the outlook for Arab countries, although the extent to which the uprisings have led to real democratisation and increased civil liberties varies across countries. The political transformations in North African countries after the "mass protests of 2011 have not yet resulted in the institutionalisation of democratic systems" or the creation of effective mechanism for preventing domestic conflicts.[7]

While Tunisia has turned from one of the most repressive regimes to a nascent democracy in a very short period, the progress has been slower and more uncertain in Egypt. Morocco remained invariably authoritarian as the king enacted constitutional reforms but

[6] Ibid.

[7] Bommes–Fassmann–Sievers (2014): *op. cit.* 185.

the central positions of power have remained largely unaffected.[8] While a popular armed uprising in 2011 deposed the long-time dictator Mu'ammar al-Qadhafi, Libya is now wracked by political, security and economic crises. The plan designed to bring the rivalling administration together in a unity government has failed to come to fruition. Algeria has been an immovable anchor in a region struggling to find stability after waves of change.

Now we take a look at the present political stability and political violence in the countries discussed in this study. Concerning the political push factors this part is also touching on the area of human rights.

Algeria

"Algeria is one of North Africa's most quietly influential countries."[9] The government of President Bouteflika survived the events of the Arab Spring, but it remains highly dependent on oil revenue for its income.[10]

Political affairs are dominated by a closed elite based in the military and the ruling party, the National Liberation Front (FLN). President Bouteflika has been in office since 1999 and the elections are characterised by fraud and different forms of manipulation.[11]

The rule of law is severely challenged with bandits operating in the south, terrorists present in the north and civil unrest posing a concern in key cities, particularly in the Kabylie region. However the government enjoys the backing of the military.[12]

"There is a high risk of terrorism mainly from Islamic militants associated with al-Qaeda in the Islamic Maghreb (AQIM). The potential destabilizing effect on the country has increased with concerns of weapons proliferation in the context of the Libyan civil war" – wrote AKE in its assessment.[13] Some attacks by terrorist groups has led to rethinking of the country's traditional non-interventionism, prompting a more proactive approach to combating terrorism in the region and increased security cooperation with its neighbours and the West. An important fact is that the Algerian security forces have demonstrated their capacity in carrying out successful military operations.[14]

Concerning the human rights situation, the Amnesty International (AI) Report 2016/17 indicated that the main human rights problems are the "restriction of the right to freedom of expression, association, assembly and religion and prosecution of peaceful critics including human right defenders in unfair trials. Impunity for past serious abuses continued to prevail".[15]

The US State Department's human rights report emphasised the lack of judicial independence and impartiality.[16]

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[8] Ibid.
[9] Global IntAKE (AKE), *Algeria, Overview, 2017.*
[10] Ibid.
[11] Freedom House (FH), *Freedom in the World 2016, Algeria,* 14 July 2016.
[12] Global IntAKE (AKE), *Algeria, Politics and Economics, 2017.*
[13] Ibid.
[14] Ibid.
[15] Amnesty International (AI), *Amnesty International Report 2016/17 – Algeria,* 22 February 2017.
[16] United States Department of State (USDOS), *2016 Country Reports on Human Rights Practices – Algeria,* 3 March 2017.

Morocco

Morocco is a largely stable country, but there are several notable threats to its stability. Firstly, it remains a monarchy and the king retains significant powers in the political sphere. The country holds regular multiparty elections for Parliament and reforms. It also shifted formally some power from the monarchy to the elected legislature in 2011, but King Mohammed VI maintains dominance both in a formal and informal way, and the concentration of power with one individual is inherently unstable.[17]

There is a risk of political instability in the disputed territory of Western Sahara. The Moroccan Government controls all trade and economic activities in the region, it has angered the Polisario Front (dominant pro-independency militant group). The referendum on the determination of Western Sahara's fate has been put off continuously over disputes concerning voter eligibility, as well as Morocco's opposition to the referendum for the last ten years.[18]

Terrorism poses moderately low concern, although radical Islamist groups have demonstrated the ability to attack targets, particularly those affiliated with foreigners in recent years.[19]

Concerning the human rights situation, the Amnesty International (AI) Report 2016/17 indicated that the authorities restrict rights to freedom of expression, association and assembly, prosecuting journalists and forcibly dispersing protests.

Women face discrimination in law and practice. The LGBT group is subject of the widespread discrimination and harassment and consensual same-sex sexual relations remain still criminalized.[20]

Besides these continuing human rights problems, corruption has a significant role in disregard for the rule of law by security forces.[21]

Tunisia

"Since ousting of the long-time autocrat from power in 2011, Tunisia has transitioned to a functioning, if precarious democracy in which citizens enjoy unprecedented political rights and civil liberties" – stated FH in its annual report on Tunisia.[22]

Successful parliamentary and presidential elections held in 2014 marked the end of Tunisia's transition period. There is a low risk of further political instability in response to political developments or major security incidents.[23] There is a potential for further political disputes between Islamists and secular liberals and leftists over political and moral issues,

[17] Global IntAKE (AKE), *Morocco, Overview, 2017.*
[18] Global IntAKE (AKE), *Morocco, Politics and Economics, 2017.*
[19] Ibid.
[20] Amnesty International (AI), *Amnesty International Report 2016/17 – Morocco/Western Sahara,* 22 February 2017.
[21] United States Department of State (USDOS), *2016 Country Reports on Human Rights Practices – Morocco,* 3 March 2017.
[22] Freedom House (FH), *Freedom in the World 2016, Morocco,* 29 June 2016.
[23] Global IntAKE (AKE), *Tunisia, Overview, 2017.*

although both sides have demonstrated the ability to reach a consensus on major political issues (e.g. finalising of the constitution and electoral law).[24]

The main political risk concern is civil unrest. The vast majority of demonstrations are non-violent, but there is a risk of sporadic clashes. Furthermore, terrorism is a concern and there is also an increasing tension on the porous border with Libya. However, the terrorist incidents remain infrequent and there have been no mass-casualty incidents in recent years.[25]

The most significant human rights problems are not only the restriction of the rights to freedom of expression and assembly, but also "using emergency powers and anti-terrorism laws to impose arbitrary restrictions on liberty and freedom of movement".[26] Furthermore, women remain subject to discrimination in law and practice. Same-sex sexual relations are still criminalised, and LGBT people face arrest and imprisonment.[27]

The 'Safe Country of Origin' Concept

At this stage of the study the safe country of origin concept should be mentioned which has been created a long-term debate at the migration agenda in the EU. The Geneva Convention and the asylum laws define the safe country of origin.

According to the Hungarian Asylum Act: "safe country of origin: the country included in the shared minimum list of third countries regarded as safe countries of origin approved by the Council of the European Union or in the national list stipulated by a Government Decree or part of these countries; the presence of the country of origin on any of such lists is a rebuttable presumption with regard to the applicant according to which no persecution is experienced in general and systematically in that country or in a part of that country, there is no threat of generalised violence in the context of international or national conflict situations, no torture, cruel, inhuman or degrading treatment or punishment is applied, and an efficient system of legal remedy is in place to address any injury of such rights or freedoms."[28]

If an asylum seeker comes from such country, the asylum is normally not granted, although the individual assess and burden of proof is maintained in his/her application. The European Commission has been planning to prepare a common safe countries list; however, there is no general agreement on the content of this list among EU Member States.

The preparation of safe countries list is criticised by nongovernmental organisations and some opposition politicians in different EU countries, saying that this list could be used as an automatic tool during the refugee status determination process.

In the recent past years there were some initiatives to classify Algeria, Morocco and Tunisia as safe countries.

In Austria there is a governmental order of safe countries. Preparing this list the existence or absence of state persecution, protection from persecution by non-state actors and

[24] Global IntAKE (AKE), *Tunisia, Politics and Economics, 2017.*
[25] Ibid.
[26] Amnesty International (AI), *Amnesty International Report 2016/17 – Tunisia,* 22 February 2017.
[27] Ibid.
[28] Act LXXX of 2007 on Asylum (2016) [Hungary], 1 January 2008.

legal protection against human rights violations has been primarily taken into account.[29] As per the latest version of the safe countries list, Algeria, Morocco and Tunisia are on it.[30]

In Germany the Constitution defines as safe countries of origin the countries "in which, on the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists".[31] In April 2016 a draft law was introduced by the Government with the aim of putting Algeria, Morocco and Tunisia on the list of safe countries of origin. The draft was approved by the Bundestag, however on March 2017 the Second Chamber of Parliament (Bundesrat) rejected the designation of these countries[32] referring to the situation of the LGBT groups and other human rights violations.

The list of safe countries of origin of the Netherlands contains Algeria, Morocco and Tunisia, although some regional courts have ruled that Algeria and Morocco as safe countries of origin have not been well-founded by the Secretary of State.[33]

Summarizing the political and security country of origin information on Algeria, Morocco and Tunisia, these countries can be considered as safe countries of origin with the exception of LGBT groups. These countries are largely stable with sporadic violent incidents. They demonstrate the capability for fighting against terrorist groups and maintaining public order. Progressive steps were taken towards the implementation of political, economic and judicial reforms. In addition, in the above discussed countries, the authorities have taken some measures to improve the human rights situation. Nevertheless, the LGBT groups are harassed by the oppressive regulatory environment and face discrimination and ostracism by the society.

Economic Push Factors

Political and economic factors have exerted a significant influence on shaping contemporary migration patterns. Such structural political-economic forces have often been more important in determining migration than migration policy. "The only exception is labour recruitment, which has played an important role in establishing new migration patterns by linking specific origin countries and regions to particular destinations."[34]

Economic reasons are the primary motivations for migration in this region by far. This phenomenon is broader than just the experience of living in poverty, but also includes a lack of high-skill job opportunities, unemployment, youth bulges, visible inequality and low wages in home countries. Limited access or complete lack of access to the labour market leads to lower financial status and ultimately poverty, affecting the existence and prospects of an individual at a very basic level. The economic situation of North African countries discussed in the study will be described as follows.

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[29] Asylum Information Database (AIDA), *Country Report – Austria,* 2018 update.
[30] Ibid.
[31] Asylum Information Database (AIDA), *Country Report – Germany,* 2017 update.
[32] Ibid.
[33] Asylum Information Database (AIDA), *Country Report – The Netherlands, 2016 update.*
[34] Bommes–Fassmann–Sievers (2014): *op. cit.* 49.

Algeria

"The economy is confronted with the challenge of social discontent, slow structural transformation, low decentralisation, low female labour force participation, and the management of the newly adopted non-conventional monetary policy."[35]

In Algeria the energy sector accounts for around 30% of the country's GDP directly and the country's dependency on hydrocarbons is particularly worrying, since crude oil capacity has decreased and gas production has declined steadily over the last decade.[36] The Government has begun to introduce subsidy reforms as part of reconsidering the economic climate in the light of low oil prices, although it continues publicly to deny the urgent need to have a sharp change in policy.

Moreover, many Algerians may be sceptical of the Government's new five-year plan, having already experienced the side effects of economic reforms. When the current budget year began in January, new taxes on a variety of goods coincided with a 14% cut in government spending, sparking weeks of protests in urban centres throughout the country.[37]

In the assessment report of the World Bank "the unemployment rate increased by almost 2 percentage points, linked to sluggish non-hydrocarbon growth. It stood at 12.3% in the 6 months to April 2017 and remains particularly high among youth and women. The high level of unemployment among the young is partly explained by mismatches between labour market demand and supply, and to the inability of the economy to sufficiently create jobs and promote entrepreneurship. The rise in unemployment undermines impressive poverty reduction. 10% of the population is considered vulnerable to fall back into poverty and important regional disparities persist with some regions double (Sahara) or triple (Steppe) the national rate."[38]

Morocco

The AKE is assessing the economic risks in Morocco in its prognosis and states that "Morocco is relatively stable, with solid if not spectacular growth, low inflation, a large reserve of foreign exchange, and moderate foreign debt. Although the country has performed well in economic terms over the past few years, it still faces structural problems, including a heavy reliance on agriculture. Despite increased government spending on salaries and the resulting increase in private sector spending a poor cereal harvest can have a major impact on growth. Agriculture makes up between 12 to 15% of GDP and with an estimated 55% drop in cereal output due to bad weather, growth has slowed and domestic consumption will be the main driver of growth in Morocco."[39]

[35] The World Bank, *Algeria's Economic Outlook – October 2017.*
[36] Global IntAKE (AKE), *Algeria, Politics and Economics, 2017.*
[37] Algeria Goes It Alone. *Stratfor,* October 19, 2017.
[38] The World Bank, *Algeria's Economic Outlook – October 2017.*
[39] Global IntAKE (AKE), *Morocco, Politics and Economics, 2017.*

Morocco's economy is dependent on international remittances, especially on European states. Therefore it is linked to growth in Europe. Tourism and exports are also at risk of falling in the European markets if the EU economic crisis worsens.[40]

The unemployment rate rose to 9.3% in the second quarter of 2017, especially prevalent among the young (23.5%) and educated (17%).[41] On the other hand the average inflation remained low due to the decline in food prices. Although, delays in implementing key reforms including fiscal and structural reforms could increase social discontent and adversely impact the external sector.[42]

Tunisia

Despite the difficulties of the transition, Tunisia is performing better than any other country in this region after the regime change, after or during the Arab Spring. However, growth could be challenged if the Eurozone crisis worsens, or in case of renewed internal instability.

Tunisia's economy is reasonably well diversified. Both tourism and agriculture contribute in excess of 10% to the GDP; the export-orientated manufacturing sector contributes around 20% to the GDP and the service sector is growing.[43] "Many of these sectors are in a good position to expand due to the country's educated population, in addition to well-developed infrastructure in northern and coastal areas."[44] However, the tourism industry is struggling following a series of terrorist attacks.[45]

The country's phosphate sector is a potential growth driver, but the operations of phosphate mines in the southern parts of Tunisia have been subject to disruption stemming from strikes and political unrest.[46]

Unemployment has declined from its peak of 19% in 2011 to 15.5% in 2016 despite a low labour force participation, at about 50%, mainly due to a very weak participation of women (26%).[47] "Most of the unemployed are low-skilled workers, but university graduates have the highest unemployment rate, which increased from 15% in 2005 to 23% in 2010 and 31.6% in 2016 (31.2% in 2017-Q2), while female graduate unemployment reached 40.4%. Unemployment rates are also much higher in the hinterland compared to coastal regions" – stated the World Bank in its assessment report on Tunisia.[48]

[40] Ibid.
[41] The World Bank, *Morocco's Economic Outlook – October 2017.*
[42] Ibid.
[43] Global IntAKE (AKE), *Tunisia, Politics and Economics, 2017.*
[44] Ibid.
[45] Ibid.
[46] Ibid.
[47] The World Bank, *Tunisia's Economic Outlook – October 2017.*
[48] Ibid.

Pull Factors of Migration Flow from North Africa

In this chapter the main relevant pull factors regarding North Africa are presented. It should be noted that in some cases the factors occur in mixed ways.

It is not difficult to understand why Western European countries have continued to attract migrants. This cannot be exclusively explained by chain migration, but persistent economic growth and changing structure of the labour market have generated a greater demand for low-and-high-skilled migrant labour in specific sectors.[49]

The principal factors determining the choice of destination country are mainly economic in nature. The possibilities to find legal or illegal work are the main pull factors and depend on the profile of migrants.

Political stability in the European Union is also an important pull factor, however, the migration policy in Europe may discourage skilled migrants from moving to the EU.

The influence of the diaspora is a crucial element in the facilitation and promotion of migration. The diaspora often provides advice or financial support and shows a visible success story for prospective migrants.[50]

Furthermore, the diaspora, the supporting migrant network ties are also determinant of destination choice. Social networks and returnees provide knowledge about migration and often influence the decision to leave.

In some cases, migration is due to the allure of moving abroad for adventure, the opportunities for financial and material success, and the idea of living a different lifestyle. The aspirations of accessing employment opportunities are combined with a diffuse dream of prospects to be found in Europe. In this regard migration becomes an uncertain, but hopeful path to fulfilling own potentials.

An interesting question is, whether the pursuit of a better quality of life is rather a pull or push, or even an additional factor to migration. In my view, it is not a classical pull factor, it is rather an important element of the personal decision to migrate.

Finally, the impact of media and social technologies should be mentioned, as well. The television, internet and social media have led to an increasingly globalised outlook among young people in sending regions, together with an acute awareness of the inequalities between their own countries and the developed countries in Europe.[51]

Additional Factors to Migration

In addition to the classical push and pull factors, we should take into consideration other elements of migration having significant effect on moving. As I mentioned at the beginning of this study, the demographic factor cannot be seen as a push factor itself, although the crucial combination of highest population growth within an insufficient frame for economy and governmental action are important push elements.

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[49] Bommes–Fassmann–Sievers (2014): *op. cit.*

[50] Browne (2015): *op. cit.*

[51] Ibid.

Neither emigration from North Africa nor immigration into Europe can be adequately explained by the demographic theory. For instance, high natural population growth in the Arab Gulf countries has not coincided with increased emigration.[52]

Nevertheless, a look at the demographic indicators is necessary. North Africa shows a significant population growth. The rate of natural increase is at 1.6%, the total fertility rate lies at 2.6 children per woman. Furthermore, North Africa has, in general, a very young age structure: 32% of the population is younger than 15 years old, 20% are between 15 and 24 years old. Until 2050, the North African population will grow from 209 million (2010) to 322 million, until 2100 the region will count 344 million people.[53]

For some decades, Western policymakers considered North African states stabilised and reliable partners in the future. But quite early, sociologists and demographers diagnosed an impaired situation in these countries, where population growth and economic progress are not in tune.[54]

However, the absolute number of persons is not the major factor: the key factor is the distribution of the population in the available areas. While considering other factors and possibilities of the region, governments must create jobs and provide education/training compatible with demands of the labour market. These aspects greatly influence the scale and social consequences of the inordinate population growth.[55]

The crucial issue here is that the non-economic dimension also tends to increase the aspirations to migrate, as people would like to improve their lives. A feeling of inequality is often more influential, than the absolute need in the decision to migrate, which is why many migrants on the Western Mediterranean route were not the worst-off in their home countries.[56]

Some authors pointed out a phenomenon that is a bit controversial: an improvement of living conditions in the countries of origin can paradoxically rise the migration pressure, because the number of persons being willing and able to migrate increases in better times.[57]

For other migrants the tipping point comes, when they observe returnees who come back in a better situation or when friends who returned from abroad decide to migrate again and offer to take them along. Risk information does not seem to change the decision to migrate, as the perceived opportunity abroad continues to outweigh the risks and the most trusted information comes from social networks, not government sources.[58]

Another factor is the lowered price for reaching Europe. IOM explained that before the Syrian crisis the price that emigrants paid to smugglers to go to Europe was estimated approximately 3,500 to 4,000 EUR. At the time of the mass migrant flow in 2015, prices had drastically gone down to approximately 1,000 EUR.[59]

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[52] Bommes–Fassmann–Sievers (2014): *op. cit.*
[53] Schmid, Susanne (s. a.): *Migration Potential from North Africa to Europe.*
[54] Browne (2015): *op. cit.*
[55] Bommes–Fassmann–Sievers (2014): *op. cit.*
[56] Browne (2015): *op. cit.*
[57] Ibid.
[58] Browne (2015): *op. cit.*
[59] Danish Immigration Service, (DIS), *Morocco: Situation of Unaccompanied Minors,* 2/2017.

The brief analysis by BAMF also noted that "over time, the financial costs and duration of travel to Germany have fallen".[60] During the first six months of 2013 the refugees spent an average of € 7,229 to reach Germany, those who left their country of origin or transit countries in the first six months of 2015 spent around € 6,900. By the second half of 2015 the average costs had been already reduced to € 5,232.[61]

Mobility and the *culture of migration* can play a role in perpetuating migration from North African countries and the pressure to support parents and relatives can distribute the decision to leave. The flow back of *social remittances,* consisting of ideas, behaviours, positive outlook on Europe are also likely to stimulate subsequent migration patterns along established pathways.[62]

Finally, the liberal migration laws and regular legalisation campaigns should be mentioned as additional factors, as well. The stricter entry requirements and border controls have also affected the choice of the destination country.

In my point of view, the present migration flow and patterns have complicated the well-known push factors. It is really difficult to identify the main factor behind the individual cases. As I mentioned in the *Preface* many speculative elements make it difficult to prepare a reliable analysis on the present situation. Therefore, we have to devote more attention to the additional factors of migration.

Migration Profiles (Algeria, Morocco, Tunisia)

Algeria

"There was no mass emigration from Algeria, neither labour-driven, despite constant unemployment, nor forced, notwithstanding the tragic events in that country in the 1990's in the last three decades."[63] In that period, French family-reunification caused some migration movement. A new wave of Algerian labour emigration has been observed since 2000 as a consequence of the gradual liberalisation of the Algerian economy. However, there still has been high unemployment, especially among the highly-skilled workforce.[64]

According to the MPC Migration profile in 2012, 961,850 Algerian migrants resided abroad, that is 2.6% of the population residing in Algeria.[65] "The majority lived in France (75%) and Spain (6.4%) and in *other countries* (7.6%), particularly in Canada (3.5%)."[66]

In OECD countries Algerians are more likely to have a low level of education (51.9%) and an intermediate occupational profile (30.7% are employed as technicians or professionals, 24.4% as craft and related trade workers or as service and market sale workers and 14.1% in elementary occupations).[67]

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[60] BAMF Brief Analysis 05/2016.
[61] Ibid.
[62] Bommes–Fassmann–Sievers (2014): *op. cit.*
[63] European University Institute, Migration Policy Centre (MPC), *Migration Profile: Algeria, 2013.*
[64] Ibid.
[65] Ibid.
[66] Ibid.
[67] Ibid.

Most recent data on outward flows confirm an upsurge in Algerian emigration in the 2000s. Growing numbers are found in Algerian flows directed to Spain, France and Canada. The phenomenon of harragas[68] is on the rise, meaning that increasing numbers of Algerians are being exposed in the Mediterranean. They risk not only death, bit also risk the collapse of their health en route or jail and exploitation on arrival.[69]

Morocco

According to the statistical data from September 2014 only 0.2% of the total Moroccan population (33,848,242) were foreign immigrants. First generation, Morocco-born migrants residing abroad stood at 2.8 million and were in Europe as of 2011. *Moroccans Residing Abroad* (first generation, born-abroad second and third generations) are estimated between 4 and 4.5 million.[70] In comparison with other North African countries Morocco has the highest share of its population living abroad.

Emigration flows to Europe have been continuous. The first labour migration to Western Europe was in the mid-1970s, and Moroccan workers went mainly to France. At that time Morocco pursued an active policy of labour export and control of expatriates. "From the 1980s to the late 2000s the profiles and destinations of Moroccan migration flows diversified."[71] Established Moroccan communities increased through family reunification. The accession of Spain to the European Union in 1986 and the development of labour-intensive activities through the 1990s attracted large flows of low-skilled, often irregular Moroccans either to Spain or to Italy. Tertiary-educated students and highly-skilled workers have mainly migrated to the United States and Canada.[72] This migration pattern is similar to the other North African countries.

In addition to this, Morocco has been an immigration country since the 1990s and even more, it has become a *transit country* for Sub-Saharan African migrants stranded at its border or territory of Morocco.

Morocco was put under pressure to control irregular migration to the EU; on the other hand it faced the need to facilitate mobility for its citizens, so Morocco signed the Mobility Partnership as the first Mediterranean country with the EU and nine Member States in June 2013. The Partnership covers migration question such as: mobility facilitation of Moroccan nationals; support of Moroccan diaspora, cooperation in the field of human trafficking and asylum.[73]

As to the migration profile, more than half of Moroccan citizenship holders live in France (57%) and Spain. Beside these large communities in Europe, small communities of Moroccan expatriates are also formed in North America and in the Gulf States. Most Moroccan migrants are males (54%) and 46% belong to the working age group; still, there

[68] Harragas are North African migrants who attempt to illegally migrate to Europe or to European-controlled islands in makeshift boats. The word *harraga* derives from Algerian Arabic, designating *those who burn.*

[69] European University Institute, Migration Policy Centre (MPC), *Migration Profile: Algeria, 2013.*

[70] European University Institute, Migration Policy Centre (MPC), *Migration Profile: Morocco, 2016.*

[71] Ibid.

[72] Ibid.

[73] Ibid.

are some differences among destination countries. France hosts older age groups: 55% of the Morocco-born are 45 and above. "The second typical profile is found in Italy and Spain with male predominance and an above-average share in working age groups (50 and 52% in the age group of 25 to 44)."[74] The third profile of Moroccan migrants can be found in Canada. Migrant gender distribution is more balanced and age group distribution suggests some degree of family reunion.[75]

As regards education levels, Moroccan migrants have mostly low education (59% of those aged 15 and above). Only 17% of them are highly educated.

An interesting fact is that Moroccans in Spain and Italy are less educated than non-migrant Moroccans in the same age group. The vast majority, meanwhile, of the 58,000 Moroccans in Canada are highly educated and unsurprisingly, they perform highly-skilled professions in general.[76]

Concerning flows, it can be stated that the propensity to migrate remains high in Morocco: in 2011–2012, 42% of the population between 18 and 50 expressed the intention to migrate. Among young people aged 18 to 29 years, 69% desired to migrate.[77]

Tunisia

According to the statistical data from April 2014 only 0.5% of the total Tunisian population (10,982,754) were foreign immigrants. "First-generation, Tunisia-born migrants residing abroad stood at around 543,000, of whom 81% were to be found in Europe that year."[78] The first-generation migrants and born-abroad second and third generation Tunisians numbered about 1.2 million, therefore the country is primarily an emigration country.[79]

Tunisian migrants in Europe, mostly originating from the urban coastal region, rapidly integrated to local trade facilities and services. In addition, as oil exploitation was taking off in Libya, it emerged as a major destination for Tunisian migrant workers. In the mid-1980s 85,000 Tunisians worked in Libya; they originated mostly from the border areas and from the poor, steppe regions in west-central Tunisia (Gafsa, Sidi Bouzid, Kasserine, Kairouan). They were overwhelmingly employed in construction, infrastructure development and agriculture.[80]

In the 1980s Italy became a new outlet for Tunisian workers, due to its geographical proximity to Tunisia and to new opportunities in the country's informal economy. From the time Europe restricted its visa regime and strengthened border controls in the 1990s, irregular entry and overstaying increased among Tunisian migrants in addition to permanent settlement. "Tunisian migration destinations further diversified towards the Gulf states, after bilateral agreements for technical cooperation were signed with Saudi Arabia, Qatar

[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] Ibid.
[78] European University Institute, Migration Policy Centre (MPC), *Migration Profile: Morocco, 2016.*
[79] Ibid.
[80] Ibid.

and UAE."[81] Tunisians are mostly skilled and highly skilled (e.g. teachers, engineers). More recently, new flows of students and tertiary-educated, highly-skilled Tunisians found new outlets in Germany and North America.[82]

Tunisia's migration policy under the presidency of Bourguiba and Ben Ali (ousted in January 2011) had two principles: encourage migration and monitor the migrants. The Tunisian governments rapidly acknowledged that the economy was unable to absorb all the available labour force and that remittances from abroad were an indispensable source of foreign currencies.[83]

In the 2000s the socio-economic and political tensions grew. The younger Tunisian generation have benefitted from the generalisation of higher education, but the employment venues drastically decreased, especially in the government sector, a traditional employer of university graduates. In addition to it the wage stagnation and predominantly low skilled, low value-added activities on offer were becoming less attractive for educated youth. In Tunisia in 2010, 23% of graduates were unemployed; as of 2012–13 ILO estimated that around 32% of Tunisia's youth aged 15–29 were neither in employment nor in education or training.[84]

The 2008 financial crisis further reduced both job prospects at home and legal migration opportunities for youth in Europe.[85] The start of the Arab uprising, in December 2010, spurred an immediate but moderate emigration from Tunisia through irregular channels. However, an accelerated repatriation agreement signed between Italy and Tunisia at the time curbed the Tunisian emigration to the European Union by 92% in 2012.[86]

As to the migration profile, most migrants are males; 77% are in working age groups (15 to 65 years and 32% in the 25 to 44 age category). However, these aggregated figures cover the Tunisian migrants' diverse demographic and socio-economic profiles by the country of destination.[87]

Summarizing the migration profiles of Algeria, Morocco and Tunisia, it can be established that they show similarity. Taking advantages of the geographic proximity, the low-skilled migrants emigrate to South Europe and high-skilled persons mostly settle down in North America. The other common point is that the remittances create an important source of revenues.

Conclusion

In the North African region, migration is partly driven by fleeing from political conflicts and crises, and partly by the demand for labour and search for livelihoods, jobs, and better opportunities. Furthermore, natural disasters and environmental degradation are the other factors of migration, while the high level of population growth and socio-economic

[81] Ibid.
[82] Ibid.
[83] Ibid.
[84] Ibid.
[85] Ibid.
[86] Ibid.
[87] Ibid.

shortages might further increase the migration potential, as well. Moreover, the next new, educated and aspiring generation being frustrated by mass unemployment, dictatorial rules and corruption has also increased both emigration and the revolutionary potential of the Arab societies.

North African countries are a region from which international and domestic conflicts trigger migration and refugee movements currently and in the foreseeable future, as well. Therefore, the governments of the North African states must deal with the political, economic, social and cultural factors of migration. Persistent reforms and measures for the North African development need to be implemented in an efficient way, since only a developmental policy can open future opportunities for the youth and would be the only reasonable alternative to emigration. However, successful political and economic reforms will not lead immediately to the downturn of emigration.

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Integrated EU Migration Management in the Frontline – From the Asylum Perspective[1]

István Ördög

Triggering Operationalization

On 19 April 2015, a deadly accident in the Mediterranean[2] made the headlines of all European media: a fishing boat capsized during a rescue attempt, leaving 800 persons drowned. The testimonies of the 28 survivors shed light on the inhuman conditions of the perilous journey to Europe from the African coast. The public outcry demanded a high level EU institutional response, pushing the migration agenda to high level discussion in Brussels. The legal basis of a common action has already been there, since the adoption of the Lisbon Treaty: "In the event of one or more Member States being confronted with an *emergency* situation characterised by *a sudden inflow of nationals of third countries,* the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament."[3] (Emphasis added).This has always been a sensitive subject, since controlling the external borders is one of the key sovereign areas of the state. While Member States have been benefitting of the Schengen free travel zone, the ultimate responsibility of border control has always been kept under national competence. This, as it will be presented later, resulted in a deadlock situation where Member States under migratory pressure demanded solidarity and assistance while not willing to delegate the control of border management. Due to the already stretched and limited capacity of these frontline Member States, the absorption of external help became a challenge and the impact of the assistance was lowered significantly. All eyes were on Brussels to come up with an ambitious, but at the same time, realistic agenda to address the challenges.

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[1] Disclaimer: The views set out in this study are those of the author and do not reflect the opinion of EASO. Neither EASO nor any person acting on its behalf may be held responsible for the statements presented below.

[2] James Reynolds, BBC homepage, 21 April 2015. www.bbc.com/news/world-europe-32399433

[3] The Lisbon Treaty.

European Agenda on Migration[4]

Less than a month after the deadly incident at the Mediterranean Sea, on 13 May 2015 the European Commission presented a communication. The main focus was on the reinforcement of existing rescue operations in order to save lives, stepping up against criminal smuggling networks, relocation, resettlement, third country cooperation and new EU tools (hotspots, emergency funding). "First, the Commission will set up a new 'Hotspot' approach, where the European Asylum Support Office, Frontex and Europol will work on the ground with frontline Member States to swiftly *identify, register* and *fingerprint* incoming migrants. The work of the agencies will be complementary to one another. Those claiming asylum will be immediately channelled into an asylum procedure where EASO support teams will help to process asylum cases as quickly as possible."[5] (Emphasis added). The document foresaw EU solidarity (deployments, technical assistance) channelled through the relevant EU agencies to the frontline states. The impact therefore depended on various factors: the amount of assistance offered (through a voluntary (!) contribution system) by Member States not affected directly by the crisis, the capacity of EU agencies to manage the submitted resources and the absorption capacity of the frontline states themselves. Should one of the links of the chain be compromised, the whole operation would be in jeopardy.

Hotspots

On 29 September 2015, the European Commission presented a description of the hotspot approach.[6] "A 'hotspot' is an area at the external border that is confronted with disproportionate migratory pressure. Examples are Sicily and Lampedusa in Italy or Lesbos and Kos in Greece. It is in these 'hotspots' where most migrants enter the Union. It is here where the EU needs to provide operational support to ensure that arriving migrants are registered, and *to avoid that they move on to other Member States in an uncontrolled way.* It is through the EU Agencies Frontex, the European Asylum Support Office and Europol that the Union provides operational support to Member States, *under the full control of the host Member State.* The approach is an operational concept to maximise the added value of this support through Migration Management Support Teams (…) The Support Team does not operate reception centres (…) *the host Member State has to provide well-functioning (...) first reception and pre-removal centres.* The existence of sufficient reception facilities is also a necessary precondition for relocation, and the EU provides substantial financial support to Member States to build this infrastructure."[7] (Emphasis added.) Special attention should be given to the section, where the EU support is connected to a prerequisite that the persons' movement is under control. This in practice could ultimately result in detention, since the frontline Member States are usually reluctant towards the arriving migrants. In

[4] The European Agenda on Migration, European Commission website.

[5] Idem. 6.

[6] Communication from the Commission to the European Parliament, the European Council and the Council: *Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration.*

[7] Idem. 3.

an ideal world, it would have meant that the persons are swiftly identified and channelled into a procedure, which results either in relocation or return. However, the overall responsibility for accommodation and control of movement lies with the host Member State and there was nothing concrete on where the applicants should stay during the assessment period. This would later be criticised by various institutions and stakeholders. There was also an important element, which made a distinction and clarified the relation between relocation and hotspots, frequently erroneously presented in the media: "The approach will also facilitate the implementation of the Decisions to relocate persons in clear need of international protection from Italy and Greece. The identification, registration and fingerprinting of migrants upon arrival is a *precondition for relocation* to work, and the approach provides the necessary support for this. However, *the approach functions independently from relocation,* and the Commission is ready to apply it in additional Member States that face disproportionate migratory pressure at its borders."[8] (Emphasis added.) This means there can be further hotspots established in other countries without relocation connected to them. This makes sense, when the migratory pressure consists of persons coming from countries of origin, which are normally not in need of international protection, therefore there is a need for identification and registration only.

Relocation

In 2008, the EU adopted a mechanism to enable a joint EU response in cases where a Member State's particular geographic or demographic situation comes under migratory pressure resulting in disproportionate pressure. In these cases, the mechanism would allow for the physical transfer of beneficiaries of international protection to another Member State via a process known as *intra-EU relocation*.[9] Under the European Refugee Fund (ERF) Community Actions, in 2010–2011 an *EU Pilot Project on Intra-EU Relocation from Malta* (EUREMA) was implemented which resulted in the transfer of 227 persons from Malta to six EU Member States. On the verge of the migration crisis in 2015, the European Agenda on Migration announced the triggering of this mechanism to tackle the migration crisis and show solidarity towards frontline Member States. The pilot was to be expanded from 227 to 160,000 persons.

There were already some bitter lessons learned during the implementation of the pilot and it's follow-up (EUREMA II.), which were clearly not taken into consideration. Namely, the persons eligible for relocation refused to be transferred to Eastern European states and showed clear preference towards Western European countries. In September 2015, two decisions were adopted by the European Council: Council Decision (EU) 2015/1601 and (EU) 2015/1523. The decisions constitute the legal and financial framework of the emergency temporary relocation mechanism: scope, number of persons to be relocated (40,000 + 120,000), prioritization of vulnerable persons especially unaccompanied minors (UAMs), eligibility: 75% recognition rate based on quarterly EUROSTAT data, 6,000 EUR lump sum for the Member State of relocation and 500 EUR for the host Member State, for the travel

[8] Idem. 3.

[9] European Resettlement Network.

costs. There are particular elements, which later on became the bottlenecks of the implementation, namely: "(32) National security and public order should be taken into consideration throughout the relocation procedure, until the transfer of the applicant is implemented. In full respect of the fundamental rights of the applicant, including the relevant rules on data protection, where a Member State has reasonable grounds for regarding an applicant as a danger to its national security or public order, it should inform the other Member States thereof." The idea was that national security and public order clearance will be the only exceptional ground for rejecting a submitted relocation case. In reality, the reports on the implementation of relocation presented by the European Commission would paint a different picture, as we will soon see. "(34) The integration of applicants in clear need of international protection into the host society is the cornerstone of a properly functioning Common European Asylum System (…) specific account should be given to the specific qualifications and characteristics of the applicants concerned, such as their language skills and other individual indications based on demonstrated family, cultural or social ties which could facilitate their integration into the Member State of relocation (…) consideration should be given to the capacity of the Member State of relocation to provide adequate support to those applicants and to the necessity of ensuring a fair distribution of those applicants among Member States. With due respect for the principle of non-discrimination, Member States of relocation may indicate their preferences for applicants based on the above information on the basis of which Italy and Greece, in consultation with EASO and, where applicable, liaison officers, may compile lists of possible applicants identified for relocation to that Member State."[10] This provision has opened up Pandora's box, Member States came up with unrealistic and sometimes discriminative expectations (Christian religion, university diploma etc.). "(10) The relocation procedure provided for in this Article shall be completed as swiftly as possible and not later than *2 months* (…)."[11] (Emphasis added.) From the very beginning, there were significant delays in the implementation of the relocation decisions. First on the side of the host Member States (Italy and Greece), since it took a long time to build up a pool of prepared cases for submission for relocation. Later the delay was due to the low number of pledges from the relocation states. The logistics (organising transfer flights) also became a serious bottleneck. Here are two quotes from the *Thirteenth report on relocation and resettlement*[12] dated on *13 June 2017, almost 2 years after the relocation started and just 3 months before it's expiry (sic!):* "Despite repeated recommendations in previous reports and several bilateral exchanges on various levels, Slovakia continues with its policy of strict preferences leading to disproportionately high rejection rates. Such a policy is not in conformity with the Council Decisions on relocation, which allow rejections on grounds related to national security or public order. It is imperative that this is now changed. *All Member States should avoid excluding vulnerable applicants from their preferences since they are to be relocated as a priority. It is also vital that Member States create the capacity to accommodate particularly vulnerable applicants.* All Member States should be ready to welcome all types of asylum seekers (large families, single male applicants) and their fair share of vulnerable applicants, including unaccompanied minors

[10] Ibid. 84.

[11] Ibid. 84.

[12] European Commission: *Thirteenth report on relocation and resettlement.*

and persons with significant health problems. Estonia and Ireland have not relocated from Italy yet because of Italy's strict policy regarding *additional security interviews by Member States of relocation,* while Bulgaria and Slovakia have not relocated from Italy, given their very strict preference policies (…) In order to ensure relocation of all the eligible applicants in the coming months, a solution on *organising additional security interviews by Member States of relocation* should be found."[13] (Emphasis added.) The report provides a glimpse into the operational reality of relocation: 20 months after the start there are still a lot of open questions, lack of commitment from Member States and different approaches towards security interviews by Italy and Greece.

"Mene, mene, tekel, ufarsin"[14] – The Assessment of the Hotspot Concept

European Council for Refugees and Exiles (ECRE)15

One year ago, in December 2016, ECRE published a study on the implementation of the hotspot approach in Italy and Greece. The overall assessment of the situation is more or less objective, the challenges enlisted are based on facts and field visits (lack of information for migrants, need for more interpreters), however, the conclusions fail to provide a full diagnose down to the level of stakeholders. The study remains only an echo of complaints and reservations that NGOs have been repeating for years. One example is questioning the use of coercive measures to take fingerprints, which has been and still is the only effective tool against asylum shopping.[16] Another example is ECRE's condemning of the earlier screening of asylum applicants in comparison to other migrants. Similarly, making an initial assessment based on nationality, is considered by ECRE as a discriminatory method. In fact, filtering the cases is the most basic tool of prioritization of certain categories (e.g. vulnerable Syrians), which in the operational reality of a mass influx ensures fast access to the asylum procedure. Taking each case in order of arrival would result in a violation of the rights of persons with special needs. It is true, that case-filtering and prioritization means that the cases of certain categories are postponed, however, this does not mean denial of access for asylum. Similarly to a hospital emergency room, certain cases need to be fast tracked. When in certain days 5–10,000 persons have arrived to one hotspot, the idealistic approach of individual case assessment and immediate access for all, remains a floating idea, detached from reality. Specially, that none of the recommendations of the study provides an alternative solution (unless the alternative is to deploy thousands of case-workers in each hotspot…). "The hotspots, as implemented today, *are a pilot model of a more permanent registration and identification mechanism* at the points of arrival that selects between those seeking asylum and those to be returned. Yet, the hotspots currently apply certain practices and

[13] Ibid. 4.

[14] "You have been weighed on the scales and found deficient."

[15] European Council for Refugees and Exiles (ECRE): *The implementation of the hotspots in Italy and Greece.*

[16] The phenomenon where an asylum seeker applies for asylum in more than one EU State or chooses one EU State in preference to others on the basis of a perceived higher standard of reception conditions or social security assistance.

standards that are either inadequate or contrary to the EU asylum and immigration acquis. As this is a *hybrid EU-Member States tool,* responsibility for human rights protection and safeguards relates to both levels. The hotspots have certainly not helped in relieving the pressure from Italy and Greece as was their stated objective: instead, they have led to an increase in the number of asylum applicants waiting in Italy and Greece, consolidating the challenges and shortcomings already inherent in the Dublin system. The hotspots approach has also led to more repressive measures, often disrespecting fundamental rights, which are applied by national authorities as a result of EU pressure to control the arrivals; yet *despite EU pressure, it is the Member States that are held ultimately responsible for this implementation.* The implementation of the EU-Turkey deal is a prime example of this EU pressure shifting responsibilities to the national level."[17] (Emphasis added.) It is not clear yet if the hotspot approach will indeed evolve into a permanent mechanism. In general, the feedback is positive from the perspective of the national authorities of Member States, since the number of unregistered persons involved in secondary movements has been significantly decreased. However, the fact that during relocation Member States keep insisting on conducting national security interviews with people already screened by frontline Member States shows that the trust is limited at best. This is a dimension, which could reshape the whole approach. The positive impact of the ECRE study is that it recommends certain improvements of the hotspot concept, which are reinforced in other reports of different stakeholders: monitoring, guardianship, adequate reception facilities. Unfortunately, the recommendations do not tackle the real challenges, and they do not provide a better concept or viable alternative solutions.

European Parliament

In May 2016, the LIBE Committee of the European Parliament published a study *On the frontline: the hotspot approach to managing migration*[18] which concluded with several recommendations, including on future legislative actions. "The main overall challenge was stated to lie in the *uneven implementation rate* among participating countries, with some countries pledging regularly and in proportion to their allocation, while others pledge irregularly or not at all. This resulted in a slower than desired rate of implementation of the mechanism. While relocation of vulnerable applicants is a priority clearly indicated in the relocation decisions, there were several difficulties impeding the process, related to *selective pledges* made by some countries who declared no availability for vulnerable applicants, such as married minors, the need to put in place solutions regarding *guardianship arrangements,* and the assessment of the best interest of the child in the case of unaccompanied minors. Other challenges included *incorrect use of preferences* by Member States (asking for relocation candidates only from certain nationalities or profiles or otherwise refusing certain candidates in an unfounded way), *lengthy response time* to relocation requests, and *unjustified rejections* of candidates for arbitrary reasons. In Italy, challenges were noted regarding facilitating *additional security checks."* (Emphasis added.) The above statements

[17] Ibid. 4.

[18] European Parliament: *On the frontline: the hotspot approach to managing migration.*

describe merely the symptoms and not the root causes for the painfully slow implementation of relocation. There has been a vocal resistance towards the relocation initiative by the Visegrád Four from the very beginning. This lead to the challenging of the European Council decisions before the European Court of Justice by Hungary and Slovakia. Meanwhile, Greece and Italy were not able to process a sufficient number of cases to fulfil the open pledges, Austria and Sweden asked for temporary suspension of their obligations due to the high number of cases in their asylum systems, and Germany was struggling with a backlog of a hundred-thousand of cases. The difficulties connected to the lack of reception and legal representation capacities with regard to unaccompanied minors had already existed both in Greece and Italy. The incapability of both countries to prioritize the cases only pushed the gaps into the spotlight. "By providing a *binary choice between protection or return,* the hotspot approach over-simplifies the complexities involved in status determination, disregarding basic guarantees, and with the potential to hamper access to asylum. The *coexistence of the relocation scheme with Dublin transfers is internally inconsistent and structurally flawed.* It leads to perverse outcomes, with incoming Dublin transfers outnumbering relocation figures, wasting resources and compounding strain on beneficiary Member States."[19] (Emphasis added.) Indeed, the relocation decisions were another desperate attempt to mechanically intervene and set up a kind of an artificial balance in an already chaotic setting. Without overwriting the Dublin procedure's logic, already bleeding from multiple wounds, they simply forced another formula, which was far away from reality. In a set up where there is de facto free movement of persons (Schengen zone) the expectation that newly arriving migrants will patiently wait for their status determination at overcrowded facilities, sometimes spending 6 to 9 months without interviews while their family members had already reached their destination (Germany and Sweden in most cases) was unfoundedly optimistic. Another twist came up with the temporary re-establishment of the intra-Schengen border controls which further worsened the situation[20] at the Brenner pass where the Austrian border police started returning migrants to Italy, sometimes the same person multiple times, on the same day. The relocation decisions did not tackle the issue that Italy and Greece as large Member States how many refugees should accept in their national system, outside of relocation? In 2017 the main countries of origin of arrivals to Italy (Nigeria, Ghana, Cameroon, Ivory Coast) consisted of nationals, not eligible for relocation. "A centralised organisation of the overall Dublin regime, including through the collection of applications at Union level and a *central distribution of responsibility by EASO* (or its successor Asylum Agency) would contribute to the rationalisation of the system, *reducing bureaucratisation, duplication of efforts, and waste of procedural and material resources. Pre-Dublin admissibility and security checks could them be eliminated, with direct allocations of responsibility according to predetermined distribution rates.* This would concretise relocation as an *ex ante element of responsibility allocation, rather than as an ex post, emergency-driven, corrective tool* as currently designed, diminishing the odds of a crisis developing and addressing the structural unfairness inbuilt in the 'first-country-of-entry-rule' system – whereby responsibility attaches to geographical proximity to the

[19] Ibid. 60.

[20] Europe migrants: Austria builds Brenner border centre despite criticism. *BBC,* 12 April 2016. Available: www.bbc.com/news/world-europe-36022914 (Accessed: 20.12.2017)

external borders of the EU – in far better alignment with Article 80 TFEU."[21] (Emphasis added.) The above statements portray relocation as an overly-bureaucratic, resource-wasting procedure. In November 2017, the Commission presented a staff working document[22] on *Best practices on the implementation of the hotspot approach.* None of the recommendations were new, no structural change in the concept was foreseen. This would not only mean a major investment into building detention capacity, but would also entail the observation of a number of procedural aspects. Most importantly, the host Member State would need to fulfil its obligations under the EU *acquis* on restriction of movement of asylum seekers (until their claim is rejected by a final instance) while at the same time complying with the standards of the European Convention on Human Rights. This would mean a massive burden on administrative and judicial bodies.

The Vivisection of Relocation

The relocation workflow shows a clear and simple logic, but unfortunately it was poorly implemented. Or maybe, the reason of failure was imbedded in the solution itself? Could it be that the proposed solution was too simple for a complex situation? As stated in the introduction of this study, there was a presumption that all stakeholders would diligently perform their tasks and cooperate in goodwill. To summarize, the overall expectations were:

- *Host Member States* (Italy and Greece) were expected to open and equip hotspots on a timely manner; have clear Standard Operating Procedures; be able to absorb deployed experts of FRONTEX and EASO; prioritize UAMs. Reading the reports of the European Commission, none of the conditions were fulfilled, even after years of implementation.
- *Relocation Member States* were expected to deploy sufficient number of experts to the EU Agencies; continuously pledge for relocation places; pledge for vulnerable places including UAMs; act in goodwill (not having unrealistic expectations/ not rejecting persons for reasons other than national security). Relocation became a highly politicised subject. Member States, who have not been affected by migration related challenges since years, suddenly found themselves in the frontline due to an obligation to relocate applicants for international protection. For Member State governments (in many cases based on coalitions of political parties with different agendas) there was an immanent risk of losing popularity due to rising xenophobia fuelled by terrorist attacks in Europe. This had a significant impact on the general attitude towards the implementation of relocation and led to over-securitization of the process. *The migrants* were expected to wait for their processes to be concluded, to avoid illegal secondary movement. The relocation concept was based on a rather idealistic then realistic scenario, following the same virtual reality, like the Dublin concept. In a *post M.S.S. vs Belgium era* we already know that a chain is as strong, as its weakest link. It might be an interesting, albeit purely academic experiment to build a hypothesis on what would be the critical number of persons under which

[21] European Parliament: *On the frontline: the hotspot approach to managing migration.*
[22] European Commission: *Best practices on the implementation of the hotspot approach.* 15 November 2017.

the system would still function properly. However, managing thousands of arrivals per day, would clearly be out of the question. The main problem with the relocation concept was that it was a bad compromise: neither soft, nor hard enough. Since identification and registration was a pre-requisite of the transfers under relocation, this already constituted an obligation of a personal interview. Additional questions on family ties in the EU, reasons of flight, vulnerability and integration skills turned it into a quasi in-merit interview, with all of its time consuming elements. At the same time, it did not result in a full refugee status determination: upon arrival to the Member State of relocation, the asylum procedure started anew. Duplication and a waste of time and resources, as the EP rightfully puts it. Either of the two alternative solutions would have been better:

1. A *fully fledged asylum interview* performed by experts of the Member State of relocation (analogic to resettlement selection missions in third countries). It is time consuming, but reduces security concerns and also ensures adequate case processing capacity.

2. A *very basic registration,* perhaps limited to country of origin credibility tests and immediate transfer to Member State of relocation. This would have ensured a fast response and would have avoided hold-ups at the preparation for submission of cases.

The way suggested above by the EP LIBE Committee (permanent relocation mechanism) would not solve the real issues. Even if a political consensus is reached on a permanent allocation mechanism (which does not seem to have had any progress in the last 2 years), the new concept is still based on a presumption that the persons arriving, would not take the first chance at secondary movement. There are various ways of controlling the movement of persons:

A. Re-introducing border control. One of the greatest achievements of the EU project is the free movement area and completely giving this up would be a political suicide. Even having a full traceability of the movement of persons enjoying international protection would not change the picture. In the area of free-movement once you are in, you are in. Unless full border control is re-established (which does not seem to be working well in Calais), and physical borders are built up, there would be no way of controlling people's movement. Even doing so, what would be the sanction for a refugee who tries to change his or her residence without permission? If he/she is transported back, they can easily take the next bus/train/car etc. Attempts at unauthorised secondary movement do not affect the legal status of the persons; he or she will not be deported to the country of origin. Finally, the financial implications of reintroducing systematic border controls go without saying.

B. Establishing reporting obligations (e.g. once a week at a police station). Reporting obligations would be a stigmatizing and counterproductive practice in the integration process. And again: the lack of consequences – no Member State authority would issue an arrest warrant for a Syrian unaccompanied minor who has failed to report. The administrative burden on police forces to follow all reporting and alert all Member States for a *fugitive* are disproportionate.

C. Sanctions (economic and administrative). Sanctions of an administrative or economical nature can only be effective to the extent that they impose a clear disadvantage on the refugee, which would effectively trigger him or her to seek ways to avoid them. At present, the sanctions are limited to granting access to social benefits in one single Member State (of relocation) and denying them in all others (see European Council decisions on relocation). If beneficiaries of international protection are placed against their will in a Member State where economic opportunities are lower than in their preferred Member State of destination, where they have no family ties or friends, nor a migrant community, where a language barrier exists, these sanctions will eventually fail. The carrot-stick approach would not bring any results. The intra-EU mobility driving force, which brings EU citizens to seek better economical options in other Member States is even stronger with people who have no roots in any of the EU Member States. Family and language will always overwrite an administrative decision for people coming from failed states and – on many occasions – persecution of state authorities. Their mentality will not change overnight, trust towards state institutions will build slowly. To deter them from unauthorised secondary movement, there would need to be no access to the state benefits and the labour market outside the country of relocation, including to the illegal labour market. This would mean state control increased to a level beyond the capacity of authorities in all Member States. The same applies for all social services: children not having access to school, no access to medical care etc. Even if this would be implemented with utmost strictness, its effect is questionable. People would still follow their preferences and struggle in the limbo. We would build up a marginalized group of people who would rather be homeless in their chosen country and create a perfect cradle for first and second generation extremism in the heart of Europe. There are many ways to influence the movement of persons. Most of the above discussed require a disproportionate financial and administrative investment which is the opposite of the desired cost-effective approach, and in the long run would not provide for a rational solution.

D. Granting free movement within time (e.g. residence in their country of destination in 3 years). The idea of establishing a certain deadline for settling down and attending integration courses in the Member State of relocation, after which secondary movement is legal and the acquired benefits are kept and transformed in a new country of residence, can be an idea to explore on the long run. However, without proper sanctions, which can actually deter irregular movement incentives, this would still not be a game changer. The short term benefits of leaving the relocation country must be very low. Experience shows that many people would even take the risk of homelessness to reach their destination, therefore much bigger effort is needed for objective information provision to this target group. Solution is to be found in those cases where beneficiaries would eventually return to the Member State of relocation after seeing that there is no Canaan waiting for them in their countries of desire.

E. Financial incentives. Financial incentives are to be considered an effective tool if certain conditions are met. If the persons granted international protection are forced to leave the accommodation centres without enough financial means to manage their own accommodation and sustain their living, there will be no successful integration and it will only lead to secondary movement. But how to determine the necessary financial means? How can it be ensured that the state subsidy will not actually keep people back from finding a job?

This balance is very difficult to achieve. There are significant differences already in the economic opportunities within certain regions of a Member State, and on an even higher scale, among the Member States themselves. The financial driven intra-EU migration flow does not only affect the EU citizens. If one can buy a bus ticket for EUR 50 and cross a few borders in order to gain a salary 5 times higher, many would take the opportunity. This is rational enough. And as it has been already mentioned above, for beneficiaries of international protection who have zero ties with the country of relocation (neither family ties, nor language, nor cultural ties), there is no anchor to keep them from moving on. The possibility of ending up in limbo, the risk of homelessness and extremely low quality of life is relative for someone running from war and persecution, and in some cases already vegetating for years in refugee camps. This needs to be balanced with a positive element: providing a realistic, sustainable opportunity to start a new life. In the Member States where there is no significant migrant community, this task is even harder. Trust is much easier gained if one has a mentor of the same cultural background who already *made it,* and became an example of successful integration. The best chance for a pilot project is to have a critical number of people of the same origin (e.g. Eritreans tend to move together in the perilous journey through Libya and they keep a strong cohesion even upon arrival to Europe), settled within a close geographical space to ensure stability and networking, while keeping enough proximity to ensure that interaction with the local population is speeding up the integration. Similarly to the experience with humanitarian aid projects, careful assessment should be given to the fact, that positive discrimination and financial aid channelled only to beneficiaries of international protection is usually fuelling tension in the local community. Therefore, priority should be given to mixed enterprises, small businesses which improve the economical situation of all local residents including citizens of the Member State of relocation. Naturally, since these projects would target economically less competitive regions, they would be very resource- demanding. The debate on how to tackle migration, which has been dividing European States seems to be solely focused on how to stop and manage migration outside, or at the border. However, there seems to be an agreement on the necessity to integrate the beneficiaries of international protection. Should the political debate shift from the current deadlock, this might create the necessary momentum to launch these pilot projects in those countries, where at the moment discussion is limited to apocalyptic visions of Europe running into suicide. We should not forget the positive examples of integration. Since the people who have protection status will stay with us, we have no other option but to include them into our communities and make sure that their potential is fully utilized. This is in their best interest, and also in ours, since the alternative is the creation of parallel societies. However, this also means that the political short-sightedness needs to be overcome and the scenario to maintain a hostile *anti-refugee* environment at home in order to make people leave and then watch from the side-lines how other Member States struggle with integration challenges needs to end. The public, and therefore governments will only be ready to embrace these ideas, once they feel involved in the process and once assurances are given that the number of arrivals will be manageable, and not a distant ivory tower forcing quotas without upper limitations. Success stories with small numbers are desperately needed first to regain public trust in the capabilities of the European melting pot (in a good sense), without the *sword of Damocles* (repetition of the influx in 2015) hanging in the air.

Conclusions

Hotspots and relocation were an immediate answer to a pressing issue, the migration crisis. The European institutions were under pressure to relieve the burden on frontline states and channel financial and administrative assistance. Two years in the migratory crisis, Europe is more divided than ever in the last decade. The position of Member States on solidarity seems to be detached from the migration management. The communication on the *Delivery of the European Agenda on Migration*[23] presented by the European Commission in September 2017, does not foresee major revision of neither the hotspot approach, nor the relocation concept. There are ongoing initiatives on revising the mandate of the European Border and Coast Guard and the European Asylum Support Office; however, the host Member States will remain in control, ultimately they would still be the ones *running the show.* Time will tell if the contributions of Member States will reach to a level where enough experts would be available for deployments, or it will remain a painful exercise to maintain presence in sufficient numbers at all operation locations. One of the positive effects of the crisis was that it speeded up the evolution of joint operations in the field of asylum. Joint processing of asylum cases, which was a highly debated subject and seemed like a futuristic approach in 2014, nowadays has become a standard practice. This helps streamlining procedures and harmonising the approach of Member States at the operational, non-academic level. It has also an impact of building trust within the community of case-workers, and this effect cannot be praised enough. With the EU Turkey Statement and the cooperation with the Libyan Coastguards, the European Union bought some time to figure out how to handle the next – inevitable – influx of migrants to its external borders. In the current legislative environment, Europe has limited room for manoeuvre. Should someone arrive to the EU external border asking for international protection, access to procedure has to be given. While the procedure is pending, the person will be accommodated at the hotspots, inside the country, in a transit zone at the border, at a detention or an open centre. At the end, if a protection need is established, the person must receive access to the territory and there is no upper limit above which access would be denied. This is the ultimate challenge since no matter how high scale of an investment is made into the border guard staff and the asylum processing capacity, there are millions of people who are eligible for protection and will eventually knock on the doors of Europe. It seems that Europe has trouble dealing with even a relatively small number of persons to be integrated, while still facing the risk of a new influx and crisis. No deals with third countries can solve this on the long run. The European model on international protection is generous and the standards are very high. This however can only work in an environment where European citizens feel safe and in control. Otherwise, it will fall victim of far-right populism and we would step back a hundred years in time. The hotspot concept should not be judged solely on the results: one can only take out from it as much as has been invested. Each hotspot must have the necessary basic working conditions, gear and staff. Even then, there is always a breaking point: none of the hotspots are designed/capable to manage the constant arrival of persons on a scale of thousands per day. In addition, hotspots cannot be opened and made operational in days.

[23] European Commission: *Communication on the Delivery of the European Agenda on Migration.* 27 September 2017.

The logistics in moving people between hotspots is a major task, and needs a permanent crisis activated response team at EU level as well as regular drills. The complexity of the asylum procedure and the time-constraints of exhausting appeals can easily delay the procedures beyond a year. Potential capacity of a hundred-thousand spaces and management is not on the horizon. The hotspots are definitely no magic solution. The relocation initiative follows the worst traditions of the Dublin procedure, in that it seems detached from reality: trying to manage persons against their will in an open space of free movement. Refugees arriving to Country A, with a clear preference towards Country B, artificially transferred to Country C. Nothing stops them to move to Country B. As a consequence, resources of the states are spent on transfers (sometimes back and forth), resources of the refugees are spent on travelling, instead of on integration, the end result being that they become marginalized and a burden on society. There must be a better way of expressing solidarity to frontline Member States… Otherwise relocation remains as it is: a pointless, frustrating logistical nightmare that should be called *Operation Sisyphus.*

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How to Interpret the European Migration Crisis Response with the Help of Science

Ágnes Töttős

Introduction

"The EU needs an asylum system which is both effective and protective, based on common rules, solidarity and a fair sharing of responsibilities. The proposed reforms will make sure that persons in genuine need of international protection get it quickly, but also that those who do not have the right to receive protection in the EU can be returned swiftly."[24] In line with this purpose, several short and long-term responses have been given or proposed so far as regards the EU's migration crisis.

Such recent developments regarding the Common European Asylum System (CEAS) provide an excellent opportunity to examine the legislative and policy-making procedures whether they could be authentically explained by scientific theories on the characteristics of European governance. It is also worth to examine whether we can predict the preferences of which Member States will dominate when concluding the reforms and whose interests will dictate the content of the future legal acts. Even more, it is interesting to see, whether after the unsuccessful lobbying of the Central European Member States when immediate responses were adopted at EU level, there is a larger potential to make a greater impact on the future of the CEAS.

In order to find the answer to such questions, the EU's short and long-term responses as well as two broad theoretical frameworks, namely intergovernmentalism and the supranational approach will be described, which will be followed by the examination of the EU's responses to the migration crisis from a legislative perspective, and secondly from a policy-making perspective. The study will finally discuss the importance of regional cooperation, including the Visegrád Group. In its conclusions, the study aims to shed light on the future prospects of negotiations on the asylum reforms.

[24] Speech by First Vice-President of the European Commission, Frans Timmermans. Available: http://europa.eu/rapid/press-release_IP-16-2433_en.htm (Accessed: 30.11.2017)

European Migration Crisis Response

Programme setting

In its conclusions of 26–27 June 2014, the European Council defined the strategic guidelines for legislative and operational planning within the area of freedom, security and justice. The so-called Ypres Guidelines succeeded the Tampere conclusions (1999), The Hague programme (2004) and the Stockholm programme (2009) with which the European Council laid down the foundations and indicated the main directions for the development of the Area of Freedom, Security and Justice. Nevertheless, the new Guidelines received many critics,[25] as they lacked real ambition to propose further reforms at the major policy areas.[26]

Several Member States were confronted with a significant increase in the total number of migrants, including applicants for international protection, arriving on their territories in 2014 and 2015. When Member States of the EU faced a massive inflow of migrants, it was evident that not only national, but also EU level response was needed. Member States committed to taking rapid action to save lives and to step up EU action in the field of migration in a European Council statement of 23 April 2015. The European Council decided, inter alia, to reinforce internal solidarity and responsibility and committed itself in particular to increasing emergency assistance to frontline Member States and to considering options for organising emergency relocation between Member States on a voluntary basis, as well as to deploying European Asylum Support Office teams in frontline Member States for the joint processing of applications for international protection, including registration and fingerprinting.

The European Commission was of the opinion that the 2014 Strategic Guidelines did not contain elements that could provide effective response to the migration crisis, therefore, breaking the tradition of proposing an Action Plan based upon the political JHA programmes of the European Council, the Commission itself acted on its own by setting out a new political and legislative programme regarding migration and asylum policy of the EU. The European Agenda on Migration[27] adopted by the European Commission on 13 May 2015 sets out a European response, combining internal and external policies, making the best use of EU agencies and tools, and involving all actors. The European Agenda on Migration proposes both immediate actions and long-term reforms.

[25] See e.g. EPC or MPI evaluations on the document.

[26] See De Bruycker, Philippe (2014): The Missed Opportunity of the "Ypres Guidelines" of the European Council Regarding Immigration and Asylum. *MPC Blog,* 29 July 2014. Available: https://blogs.eui.eu/migrationpolicycentre/the-missed-opportunity-of-the-ypres-guidelines-of-the-european-council-regarding-immigration-and-asylum/ (Accessed: 30.11.2017)

[27] Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions; A European Agenda on Migration, Brussels, 13.5.2015, COM(2015) 240 final.

Immediate actions

As regards urgent matters, already two weeks after the publication of the European Agenda on Migration, the Commission set out the immediate response to the emergency situation in the Mediterranean. Among the Member States witnessing situations of considerable pressure and in light of the recent tragic events in the Mediterranean, Italy and Greece in particular experienced unprecedented flows of migrants, including applicants for international protection who were in clear need of international protection.

On 27 May 2015, the Commission, in order to assist Italy and Greece, proposed to use the emergency response mechanism under Article 78(3) of the Treaty on the Functioning of the European Union (TFEU). This provision, which was activated for the first time, envisioned the relocation of 40,000 asylum seekers[28] in clear need of international protection from Italy and Greece to other EU Member States over a two-year period. Although the Commission suggested the share of relocation among Member States to be calculated based on a distribution key, the adopted Council Decision (EU) 2015/1523[29] of 14 September 2015, in line with the April 2015 European Council conclusions, set out that relocation was to be carried out on a voluntary basis by Member States making their pledges.

The first relocation decision was soon followed by the proposal for another relocation decision after the sharp increase in illegal border crossings in the Central and Eastern Mediterranean, but also on the Western Balkans route. On 9 September 2015, the Commission proposed the setting up of another emergency relocation for 120,000 asylum-seekers in clear need of international protection from Italy (15,600), Greece (50,400) and Hungary (54,000). Hungary, on the other hand, expressed its wish not to become a beneficial state within the framework of relocation, as a result of which Hungary – contrary to its explicit objection[30] – became obligated according to the adopted Council Decision 2015/1601 of 22 September 2015[31] to compulsorily relocate a certain number of persons (quotas) calculated according to a distribution key. The annulment of this second relocation decision was sought by Hungary and Slovakia,[32] yet its validity was confirmed by the Court of Justice of the EU in its 6 September 2017 ruling.[33]

Apart from reacting to the crisis caused by the massive flows reaching the EU, in order to share the burden of the countries hosting the biggest share of refugees, on 8 June 2015 the Commission also launched a proposal asking Member States to resettle 20,000 people from outside the EU, in clear need of international protection as identified by the United Nations High Commissioner for Refugees (UNHCR) over 2 years from third countries,

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[28] According to Recital (21) of Council Decision 2015/1523 this number corresponds to approximately 40% of the total number of third-country nationals in clear need of international protection who have entered irregularly in Italy or Greece in 2014.

[29] Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece (OJ L 239, 15.9.2015. 146).

[30] The decision was adopted by the Council by a qualified majority, with the Czech Republic, Hungary, Romania and the Slovak Republic voting against and Finland abstaining.

[31] Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ L 248, 24.9.2015. 80–94.)

[32] Joined Cases C-643/15 and C-647/15 Slovak Republic and Hungary v Council of the European Union.

[33] Judgment of the Court (Grand Chamber) of 6 September 2017 Slovak Republic and Hungary v Council of the European Union, Joined Cases C-643/15 and C-647/15.

namely North Africa, the Middle East and the Horn of Africa. The proposed resettlement scheme used a distribution key based on the same criteria as the emergency relocation scheme. The Commission's proposal was followed by an agreement among the Member States of 20 July 2015 to resettle, on a voluntary basis, 22,504 persons in clear need of international protection.[34]

Long-term reforms

"The overall objective is to move from a system which by design or poor implementation places a disproportionate responsibility on certain Member States and encourages uncontrolled and irregular migratory flows to a fairer system which provides orderly and safe pathways to the EU for third country nationals in need of protection or who can contribute to the EU's economic development. (…) For it to work, this system must be comprehensive, and grounded on the principles of responsibility and solidarity."[35]

In this context, the Commission in its Communication *Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe*[36] considered that there are five priority areas where the CEAS should be structurally improved: establishing a sustainable and fair system for determining the Member State responsible for asylum seekers; reinforcing the Eurodac system; achieving greater convergence in the EU asylum system; preventing secondary movements within the EU; and a new mandate for the EU's Asylum Agency.

In order to make the CEAS more crisis proof in the future, the Commission presented two packages of altogether seven reform proposals in 2016. The first asylum package launched on 4 May 2016 includes the reform of the Dublin system by making it more transparent and enhancing its effectiveness, while providing a mechanism to deal with situations of disproportionate pressure on the asylum systems of the Member States;[37] transforming the existing EASO into a fully-fledged EU Agency for Asylum to reflect its enhanced role in the new system;[38] reinforcing of the EU's fingerprinting database, Eurodac, in order to better manage the asylum system and to help tackle irregular migration.[39]

On 13 July 2016, the European Commission presented further proposals to complete the reform of the CEAS in order to move towards a fully efficient, fair and humane asylum policy – one which can function effectively both in times of normal circumstances and in times of high migratory pressure. To this end, in order to achieve a common and harmonised set of rules at EU level, the Commission proposed the creation of a common procedure for international protection by turning the existing Asylum Procedure Directive into a regula-

[34] www.consilium.europa.eu/en/meetings/jha/2015/07/20/ (Accessed: 30.11.2017)

[35] Communication from the Commission to the European Parliament and the Council, Towards a reform of the Common European Asylum System and Enhancing Legal Avenues to Europe, COM(2016) 197 final.

[36] Ibid.

[37] Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), COM(2016) 270 final.

[38] Regulation on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, COM(2016) 271 final.

[39] Regulation on the establishment of EURODAC (recast), COM(2016) 272 final.

tion,[40] uniform standards for qualification as beneficiaries of international protection and rights granted to them by turning the existing Qualifications Directive into a regulation[41] and the further harmonisation of reception conditions in the EU.[42] Overall, these proposals aim at simplifying and shortening the asylum procedure and the decision-making, discouraging secondary movements of asylum seekers and increasing integration prospects of those that are entitled to international protection. On the same day and as a fourth element of the second asylum reform package the European Commission proposed an EU Resettlement Framework[43] to establish a common European policy on resettlement to ensure orderly and safe pathways to Europe for persons in need of international protection.

Given the different nature and sensitivity of the seven legislative proposals, the negotiations of the files within and between the co-legislators, namely the Council of Ministers and the European Parliament, are going in different pace and showing various degrees of progress. On 27 September 2017 the Commission reviewed the progress on the 2015 European Agenda on Migration and set out the next steps to put in place the missing elements of a stronger, fairer and more effective EU migration and asylum policy.[44] In order to urge further progress and ahead of the EU leader' thematic debate on migration held on 14 December 2017, the Commission proposed a political roadmap[45] to reach a comprehensive agreement by June 2018 on how to pursue a sustainable migration and asylum policy. The Commission's view is that the discussions on the reform proposals to overhaul the CEAS have progressed very slowly, so it is essential that the European Council unblocks the debate and endorses a revision of the Dublin regulation as part of a wider agreement on all the reforms proposed by June 2018.

Theories

Given the fact that although many reforms have taken place since the start of the migration crisis, the finalisation of the long-term reforms is still ahead of us, it is worth examining whether we can predict whose preferences will dominate when concluding the reforms and whether we can foresee, whose interests will dictate the content of the future legal acts. Even more it is interesting to see, whether after the unsuccessful lobbying of certain Central

[40] Proposal for a Regulation of the European Parliament and the Council establishing a common procedure in the Union and repealing Directive 2013/32/EU, COM(2016) 467 final.

[41] Proposal for a Regulation of the European Parliament and Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, COM(2016) 466 final.

[42] Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast), COM(2016) 465 final.

[43] Regulation establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council, COM(2016) 468 final.

[44] Communication on the delivery of the European Agenda on Migration, COM(2017) 558 final.

[45] Communication: Commission contribution to the EU Leaders' thematic debate on a way forward on the external and the internal dimension of migration policy, COM(2017) 820 final.

European Member States when immediate responses were adopted at EU level, there is a larger potential to make a greater impact on the future of the CEAS.

In the book entitled *The Political System of the European Union*[46] two broad theoretical frameworks are introduced for understanding EU politics.[47] The first theoretical framework described is known as intergovernmentalism and is represented mainly by Hoffman and Moravcsik.[48] Its core assumption is that EU politics is dominated by the governments of the *big* Member States, such as Germany and France. They have clear preferences about what they wish to achieve at the European level in each of the main policy areas of the EU, although Moravcsik also states that the preferences of Member States can vary over policy areas and over time.[49] Big Member States are also in an advantageous situation because they have sufficient resources and information at their disposal, so they can at an early stage of policy-making use such information to influence the political and legislative decisions. Delegation of powers and tasks to EU institutions is therefore a careful and conscious process, and at the end of the day, the supranational institutions are practically *agents* of the dominating Member States. "Bargaining outcomes reflect the relative distribution of power in the Council and can thus hardly result in outcomes detrimental to the preferences formed domestically by the larger and more influential Member States."[50]

Contrary to intergovernmentalism, according to the supranational politics approach, represented among others by Kohler-Koch, Eising and Stone Sweet, individual governments are not so powerful. Their research aimed to show that intergovernmentalist theories of European integration – which emphasized the centrality of state officials and their preferences, and downplayed transnational and supranational actors – were seriously flawed, failing to explain many of the most important market and political developments.[51] They claim that there is, increasingly, a transfer of decision-making authority from the national level to the more complex system of European multi-level governance. In such a complex system, apart from governments of Member States EU institutions and private interest groups also play a major role in shaping the EU policy agenda. As regards European legislative procedures, because of the rules governing decision-making such as the rules of co-decision and qualified majority voting, the outcome cannot always be predicted by dominating Member States. Consequently, EU policy outcomes can be different from the original intentions of the governments.

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[46] Hix, Simon – Høyland, Bjørn (2011): *The Political System of the European Union.* Palgrave Macmillian.

[47] Ibid. 16–18.

[48] Stanley Hoffman first presented his theory of intergovernmentalism in *The State of War: Essays on the Theory and Practice of International Politics,* which was later built upon by Andrew Moravcsik with his theory of Liberal Intergovernmentalism. See Bache, Ian – George, Stephen (2006): *Politics in the European Union.* 2nd edition, Oxford, Oxford University Press.

[49] Moravcsik's *liberal intergovernmentalism* is a three-step model, which merges, firstly, the liberal theory of national preference formation with, secondly, an intergovernmental model of EU-level bargaining, and thirdly, a model of institutional choice underlining the role of international institutions in providing *credible commitments* for member governments.

[50] Tsarouhas, Dimitris (2009): *The Open Method of Coordination and integration theory: are there lessons to be learned?* The 11th European Union Studies Association Biennial Conference, Los Angeles, California, 23–25 April 2009. 4. Available: http://aei.pitt.edu/33149/1/tsarouhas._dimitris.pdf (Accessed: 30.11.2017)

[51] Sandholtz, Wayne – Stone Sweet, Alec eds. (1998): *European Integration and Supranational Governance.* Oxford–New York, Oxford University Press.

Both broad theoretical frameworks have the potential to authentically explain European policy-making and legislative processes in certain policy areas, the question is which one describes more genuinely the EU's actions as regards the short and long-term responses given to the migration crisis. In order to find the answer to this question, the responses are examined firstly from a legislative perspective, and secondly from a policy-making perspective.

Legislative Perspective

Many times politicians, but even researchers urge the reforms to be carried out in a quick pace, forgetting or just not willing to acknowledge that reforms take place in the form of legislation that has its special framework within the EU. In order to genuinely understand why the adoption of legislative reforms take so much time and why their content many times shows compromise to a great extent, we need to be familiar with the legal framework of legislative processes in the EU. The latest modification of the Treaties, the Treaty of Lisbon, has brought prominent changes including the move from unanimity to qualified majority voting in at least 45 policy areas in the Council, a change in calculating such a majority to a new double majority, and a more powerful European Parliament forming a bicameral legislature alongside the Council under the ordinary legislative procedure.

The Treaty of Lisbon broadened the competences of the EU in asylum issues. According to Article 78 of the TFEU, a common policy on asylum is developed:

"1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system (…).

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament."[52]

The Lisbon Treaty therefore brought several changes as regards harmonising legislation in the field of asylum. Firstly, there is no mentioning of minimum standards as before, which sets the aim to provide convergence. Secondly, such further harmonisation of asylum rules shall no longer be carried out by the Council solely, instead the European Parliament has an equal voice during the legislative procedure. As a result, any reform taking place after the entry into force of the Lisbon Treaty means that the EP will have a real influence on EU asylum rules for the first time and therefore it is expected that the European Parliament

[52] Article 78 of the Treaty on the Functioning of the European Union.

would definitely demand major reforms pushing for further emphasis on human rights and solidarity.

Thirdly, the qualified majority voting (QMV) in the Council is introduced instead of unanimity, together with co-decision with the European Parliament, and at the same time, the newest form of QMV was defined by the Treaty of Lisbon. Previously, "unanimity not only made discussions in the Council much more difficult and lengthy, but also diminished the level of ambition in the search for a common (often low) denominator among Member States."[53] The *old* QMV system,[54] which was also replaced in late 2014, but was available on request by Member States until well into 2017, was a triple majority system, having been more complex and prone to logjams. Since 1 November 2014, QMV is no longer based on weighted votes attributed to each Member State, as had been the case since 1957, instead there is a new system to determine if a vote in the Council of the EU will pass or fail under the QMV rules. Article 16(4) of the Treaty on the European Union (TEU) sets out the following provisions: "As from 1 November 2014, a qualified majority shall be defined as at least 55% of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65% of the population of the Union. A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained."[55]

"In the original EC of six Member States in 1957, the system of weighted votes in the Council was based implicitly on a rough balance of demographic, economic and political elements. (…) This was done for political reasons, to show that the building of a reconciled Europe was a common endeavour, based in particular on the equal weight given to Germany and to France within the European institutions."[56] Nevertheless, the population criterion became a contentious issue during the Treaty reforms. "These issues are indeed at the heart of the sui generis nature of the EU, between classic international organisations – which tend to recognise, as a principle, the equality of Member States – and a federation of states, where the democratic principle of the equality of citizens plays a bigger role".[57] The new QMV rules based on double majority clearly reflect this sui generis nature of the EU.

A clear consequence of the new rules on legislations is that due to the new voting according to qualified majority in the Council medium-sized and smaller Member States now have less weight in the Council, while larger Member States are seen as the main beneficiaries of the change.[58] It is because the previous triple majority voting weight threshold raised at least two problems, according to Frank Häge: "At the level of individual member states, the allocation of a particular voting weight is not linked to any objective or neutral

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[53] Piris, Jean-Claude (2010): *The Lisbon Treaty. A Legal and Political Analysis.* Cambridge Studies in European Law and Policy, Cambridge University Press. 175.

[54] In brief, the thresholds in the old system are 74% of Member States' weighted votes, and a majority of Member States. Additionally, Member States could request tallying the percentage of the population to be part of the criteria, in which case there was a minimum of 62% of the population of the EU. This latter clause, however, has never been evoked.

[55] Article 16(4) of the Treaty on the European Union.

[56] Piris, Jean-Claude (2010): *op. cit.* 215.

[57] Ibid. 217.

[58] Changed rules for qualified majority voting in the Council of the EU, December 2014. 1. Available: www.europarl.europa.eu/RegData/etudes/ATAG/2014/545697/EPRS_ATA%282014%29545697_REV1_EN.pdf (Accessed: 30.11.2017)

criterion, which raises equality and fairness issues. At the collective level, the high majority threshold makes it hard to reach decisions, potentially leading to gridlock and inefficient decision-making processes."[59] Therefore, the aim of the new double majority was to speed up the negotiation process, since fewer Member States will need to be persuaded to create a de facto majority during the bargaining process. Nevertheless, the result of the comparison of voting weights according to the old and new voting systems is definitely in favour of the larger Member States.[60]

German think tank Centrum für Europäische Politik called the new system less democratic and less efficient, compared to the previous one. It increases the relative disadvantage of countries with a higher population, most notably Germany.[61] Furthermore, Stephanie Novak notes that QMV creates a reluctance of ministers to be caught in an already-defeated minority position, and they are therefore more likely to compromise during the negotiation process, and to simply join the majority when the vote goes through.[62]

Policy-making Perspective

After making it clear that the present rules on legislation favour larger Member States, it should also be examined whether apart from legislation, other policy-making steps provide a more balanced role for various Member States, or the same tendency could be observed there, as well. For such an examination, the 2017 crisis along the Central Mediterranean route and the answers to this could provide a good basis.

On 30 June, the Italian Minister of the Interior, Marco Minniti addressed a letter to the President of the Council of Ministers, the Estonian Minister of the Interior, Andres Anvelt and to the Commissioner for Home Affairs and Migration, Dimitris Avramopoulos, warning that the situation in Italy[63] would soon no longer be sustainable.[64] After the sending out of this urgent request for help on Friday, two days later on Sunday, the Ministers of the Interior of France, Germany and Italy, and the European Commissioner for Migration and Home Affairs met in Paris on 2 July 2017 to discuss the challenges posed by the increasing migratory flow on the Central Mediterranean route.

The small group of leaders expressed strong solidarity with Italy, which faced rising numbers of arrivals, and in order to provide increased support to Italy and contribute to stem

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[59] Available: www.consilium.europa.eu/en/library-blog/posts/new-council-qualified-majority-voting-rules-in-effect/ (Accessed: 30.11.2017)

[60] Changed rules for qualified majority voting in the Council of the EU, December 2014. 2.

[61] Available: www.consilium.europa.eu/en/library-blog/posts/new-council-qualified-majority-voting-rules-in-effect/ (Accessed : 30.11.2017)

[62] Novak, Stéphanie – Elster, Jon eds. (2014): *Majority Decisions: Principles and Practices.* New York, Cambridge University Press.

[63] In 2017 until July: 85,183 arrivals in Italy, more than 2,000 lives lost in the Mediterranean, main country of departure: Libya (95%), top five nationalities: Nigeria, Bangladesh, Guinea, Côte d'Ivoire, The Gambia. Central Mediterranean route: Commission Action Plan to support Italy and stem migration flows, July 2017. Available: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170704_factsheet_-_central_mediterranean_route_commission_action_plan_to_support_italy_and_stem_flows_en.pdf (Accessed: 30.11.2017)

[64] Available: http://europa.eu/rapid/press-release_IP-17-1882_en.htm (Accessed: 30.11.2017)

the migratory flow, they agreed on the following measures: 1. Work on a code of conduct for NGOs, to be drafted and presented by Italy, in order to improve coordination with NGOs operating in the Mediterranean Sea; 2. Enhance support to the Libyan coast-guard by increasing training activities and providing additional financial support; 3. Provide additional support to the IOM and UNHCR to allow facilities in Libya to reach international standards in terms of living conditions and human rights; 4. Encourage the examination of possible concrete options to reinforce border controls at the Southern border of Libya; 5. Reinforce the EU strategy on returns as well as of the agreed coordinated reassessing of visa policy toward third countries in order to enhance readmission rates; 6. Accelerate the agreed EU relocation scheme in order to strengthen relocation of persons in need of protection.[65]

Another two days later, on 4 July 2017 the Commission presented its *Action plan on measures to support Italy, reduce pressure along the Central Mediterranean route and increase solidarity.*[66] Not surprisingly, the Action Plan set out recommendations along the lines determined by France, Germany and Italy a couple of days before. The issue of migration in the Central Mediterranean was on the agenda of the informal meeting of the Ministers of Justice and Home Affairs of 6 and 7 July 2017. The discussion of the Ministers of the Interior was then based on the Commission's Action Plan developed along the lines set out by the large Member States in order to allow swift progress in support of Italy.

Regional Forms of Cooperation

Both the legislative and the policy-making perspective showed that large Member States dominate in EU decision-making. Given this context, the primary task of small or medium-sized Member States is to find out how they can find a way to influence European trends, and secondarily, if the processes take a direction not preferred by them, how to block the forming result of a legislative process. The rules on legislation specifically identify the criteria for blocking minority, which requires a certain percentage of the population of the EU and the cooperation of at least four Member States. All these provisions result in the necessity to form alliances.

Several forms of cooperation, whether formal or informal, are visible throughout these processes. A German–French alliance is dominating in basically all the processes, the Scandinavian states tend to prefer similar solutions, the Mediterranean states face similar challenges as regards migration and therefore enforce their claims together, the Benelux countries already had established cooperation before the EU, while the Baltic states also tend to have similar systems and preferences. The tendency of subregionalism, or simply said, overlapping of regional integrations can therefore be especially observed in the European Union.[67]

Given these existing alliances, it was high time that the Central European countries also revived their cooperation and make it more visible in the field if migration and asylum,

[65] Available: http://europa.eu/rapid/press-release_STATEMENT-17-1876_en.htm (Accessed: 30.11.2017)

[66] Action plan on measures to support Italy, reduce pressure along the Central Mediterranean route and increase solidarity, Brussels, 4.7.2017 SEC(2017) 339.

[67] Cihelková, Eva – Hnát, Pavel (2006): Subregionalism Within the EU with Special Regard to the Groupings of which the Check Republic is a Member. *Prague Economic Papers,* No. 1. 50.

as well. The Visegrád Group (also known as the "Visegrád Four" or simply "V4") reflects the efforts of the countries of the Central European region to work together in a number of fields of common interest within the all-European integration. "Czechia, Hungary, Poland and Slovakia have always been part of a single civilization sharing cultural and intellectual values (…). The V4 was not created as an alternative to the all-European integration efforts, nor does it try to compete with the existing functional Central European structures. Its activities are in no way aimed at isolation or the weakening of ties with the other countries. On the contrary the Group aims at encouraging optimum cooperation with all countries."[68]

The theories on regional cooperation and integration can, among others, be classified according to whether the main drivers of region-building lie within (endogenous) or outside (exogenous) the region, although many consider both and do not systematically distinguish between the two.[69] The migration crisis and the European response have provided both endogenous and exogenous challenges for the V4. Hungary and Poland, protecting a huge share of external Schengen borders, faced a massive inflow of migrants in 2015 and their asylum system was under a huge pressure. The admission of asylum-seekers in an uncontrolled way, as well as the compulsory relocation from Italy and Greece set out by the second relocation decision were considered a threat to national security and, for example by the Hungarian Government, contradictory to the Hungarian constitutional identity.[70]

Forming regional alliances to balance powerful states instead of going with the flow and accepting their dominant role in European policy-making and legislation regarding migration and asylum policy has therefore become a new area for cooperation for the Visegrád states.[71] Since the negotiations on the long-term reforms of the CEAS is still ongoing, the V4 should aim at maintaining its cooperation in this field in order to provide a greater influence even if the V4 alone cannot establish a blocking minority due to its low demographic weight, and should make the voice of this part of Europe also heard.

Conclusions and Future Prospects

As it could be clearly seen by examining the present legislative and policy-making processes, there has been a tendency to push for urgent asylum reforms by outspokenly leaving some behind, which the legal provisions of the qualified majority voting in the Council explicitly

[68] Available: www.visegradgroup.eu/about (Accessed: 30.11.2017)

[69] Börzel, Tanja A. – Risse, Thomas eds. (2016): *Theorizing Regionalism: Cooperation, Integration and Governance.* The Oxford Handbook of Comparative Regionalism. 4–5. Available: http://aei.pitt.edu/78876/1/Borzel.pdf (Accessed: 30.11.2017)

[70] The Constitutional Court declared in its decision No. 22/2016. (XII.6.) AB that Hungary's constitutional identity is rooted in its alleged *historical constitution* and is "a fundamental value not created by the Fundamental Law – it is merely acknowledged by the Fundamental Law." See in this regard Nagy-Nádasdi, Anita Rozália – Kőhalmi, Barbara (2017): Hungarian Constitutional Identity and the ECJ Decision on Refugee Quota. *Verfassungsblog on Matters Constitutional,* 8 September 2017. Available: http://verfassungsblog.de/hungarian-constitutional-identity-and-the-ecj-decision-on-refugee-quota/ (Accessed: 30.11.2017)

[71] As a recent evaluation regarding the Visegrád Four in the EU see Dostál, Vít – Végh, Zsuzsanna (2017): Trends of Visegrad European Policy. *Association for International Affairs, (AMO),* 23.11.2017. Available: www.amo.cz/en/trends-of-visegrad-european-policy/trends-of-visegrad-european-policy-203/ (Accessed: 30.11.2017)

allows. The question is therefore, whether even in such a legal framework the Member States will still try to seek consensus in order to have a higher willingness as regards implementation of EU rules. In this regard, the theory of intergovernmentalism describes more authentically how the response to the European migration crisis has so far been adopted, nevertheless some major elements of the reform of the CEAS is still ahead of us.

The motto of the EU, *unity in diversity* therefore raises the question whether diversity will still be kept in order to reach a higher level of unity or not. The V4 could therefore bring more diversity in the perspectives that need to be taken into account when adopting new asylum reforms. Even if providing counterweight to mainstream European asylum policy has not always been successful due to the European legislative provisions, the fact that the V4 is already considered a regional cooperation to consult when major reforms are planned is already a great achievement in itself.

The issue of migration and asylum, with a special focus on the necessary reforms, has recently been in the focus of the meetings of the European Council. On its meeting on 22–23 June 2017 the European Council reaffirmed its previous conclusions on the reform of CEAS and stated that "there is a common understanding that the reformed CEAS needs to strike the right balance between responsibility and solidarity and that it needs to ensure resilience to future crises. The system has to be efficient, be able to withstand migratory pressure, eliminate pull factors as well as secondary movements, in compliance with international law, fight abuse and provide adequate support to the most affected Member States."[72] The European Council once again reiterated this call in its conclusions on 19 October 2017, and also set a clear plan by stating that it "will return to this matter at its meeting in December, and will seek to reach a consensus during the first half of 2018." [73]

It is interesting to see that although no unanimity would legally be required by the Treaties to adopt future reforms of the CEAS, Member States still commit themselves to seek consensus. This clearly shows the fact that the immediate actions adopted in 2015 not having been supported by some of the Member States could not produce the results the majority of Member States aimed at. This would even be more so in the case of long-term reforms, consequently, since effective implementation of the reforms is a key aspect, the widest support should be a common interest of the Member States for the reforms during their adoption.

EU leaders held a debate on the external and internal dimensions of the EU migration policy on 14 December 2017. They assessed what has and has not worked in the past two years, and discussed how to strengthen the policy. The debate was based on a note circulated by President Tusk ahead of the summit,[74] which had an unusually honest tone and stated that "the issue of mandatory quotas has proven to be highly divisive and the approach has received disproportionate attention in light of its impact on the ground; in this sense it has turned out to be ineffective."[75] The discussion aimed, amongst others, to pave the way towards an agreement on the reform of the asylum system by June 2018. President Tusk, in his remarks after the meeting of the European Council also focused on the most controver-

[72] Available: www.consilium.europa.eu/media/23985/22-23-euco-final-conclusions.pdf (Accessed: 30.11.2017)
[73] Available: www.consilium.europa.eu/media/21620/19-euco-final-conclusions-en.pdf (Accessed: 30.11.2017)
[74] Available: www.consilium.europa.eu//media/32083/en_leaders-agenda-note-on-migration_.pdf (Accessed: 20.12.2017)
[75] Ibid.

sial element of the reforms of the CEAS: "Mandatory quotas remain a contentious issue, although its temperature has decreased significantly. If only for this reason, it was worth raising this topic. Will a compromise be possible? It appears very hard. But we have to try our very best."[76]

This confirms that Member States shall first and foremost seek consensus, because a reform of the CEAS that only bears the support of a qualified majority of states according to the preference of the larger member ones cannot provide a result that will effectively be followed and implemented by all Member States, especially in case the reforms are contradicting their constitutional identity.

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[76] President Tusk's remarks following the European Council meetings on 14 and 15 December 2017.

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Institutional Framework of Regulating International Migration in the European Union with Special Focus on the Migration Crisis in 2015

Ferenc Urbán

Introduction

This study has various aims, firstly, to clarify whether symptoms of the irregular migration movements arriving in the European Union, could be really defined as migration crisis based on their volume, and secondly, to define the major components of this crisis. Furthermore, it aims to find the answer for the question whether the institutions of the European Union responsible for border control, asylum affairs and criminal cooperation were able to tackle the crisis, and if not what the reasons for the failed crisis management were?

Finally, some recommendations will be formulated about how to ensure better management of the wide range of international irregular migration movements by the European institutions. Throughout the study, the word migrant will be used in the global context as "a person who is outside the territory of the State of which they are nationals or citizens and who has resided in a foreign country for more than one year irrespective of the causes, voluntary or involuntary, and the means, regular or irregular, used to migrate."[1]

The common European framework of managing the international migration crisis situations is quite limited, although there has been a significant improvement in the European Union in the field of Justice and Home Affairs cooperation in the past few years, some fields of cooperation have deepened and the institutional cooperation has improved too.

For the security of the citizens of the European Union and for the control of its external borders the Tampere Programme constituted an important step, which aimed at synchronising the common policy areas of border control, asylum affairs and visa policy. The implementation of the Tampere Programme was realized in 2004, but in the same year a decision was taken in order to achieve the new elements of cooperation. In the frame of the cooperation of the Hague Programme the need of the establishment of the European Border Control Agency (hereinafter FRONTEX)[2] has taken shape.

One could observe the improvement of the Common European Asylum Policy[3] in recent years, the directives defining the basis of the asylum system have been adopted but the

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[1] European Migration Network 2014. 187.

[2] Official name: European Border and Coast Guard Agency.

[3] CEAS – Factsheet 2014. 3.

creation of the common asylum policy has not yet been implemented. It can be seen that the European Union focuses on the operative support of the Member States (hereinafter MSs) partly with strengthening and forming of the European Asylum Support Office (hereinafter EASO) from an office to a European agency, instead of establishing a common European asylum procedure, which would mean also an advanced level of cooperation between the MSs and also the shifting of the responsibilities from the MSs to a higher level, to the agency. The common asylum procedure would mean on the one hand a unified decision-making procedure but on the other hand, this common system should find a solution for the share of persons taken under international protection.

Statistics on the Migration Crisis

Although a deep scientific study should be written on the reasons for the events showing symptoms of a crisis situation, first it has to be made clear that the number of irregular migrants reaching Europe in 2015–16 was unexpected and unprecedented.

According to the statistical data of FRONTEX,[4] the number of persons apprehended because of illegal border crossing at the external border of the European Union increased significantly, twenty-five times between 2012 and 2016, whereas in 2012 there were 72 thousand irregular migrants apprehended, in the peak of the migration crisis year, there were already 1.8 million irregular migrants apprehended at the external borders of the European Union. The tendency of the increase turned to decrease in 2016.

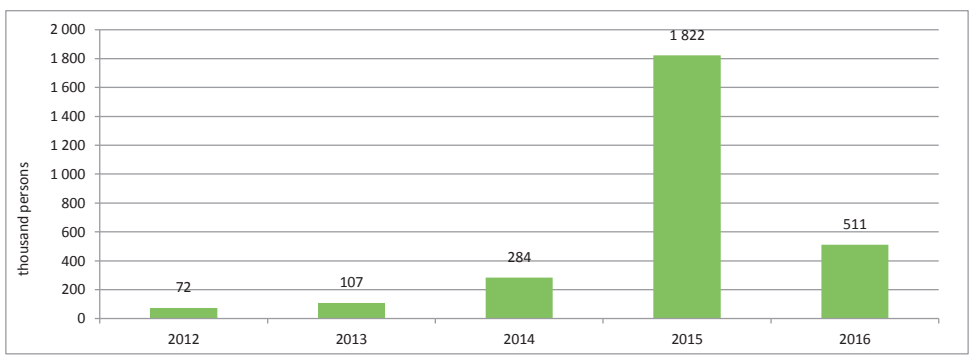

Figure 1.

Number of persons apprehended for illegal border crossing at the external borders of the European Union 2012–2016

Source: Edited by the author based on the data of FRONTEX, FRONTEX 2016 (A)

The statistical data show that in the field of international migration the main characteristics of the year 2015 is that it significantly differs from the previous, but also from the subsequent years.

[4] FRONTEX 2016 (A) 8.

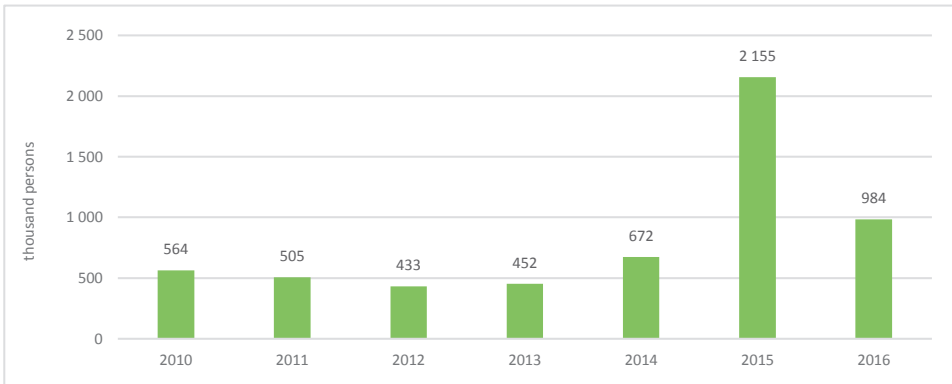

Figure 2.

Number of persons found to be illegally present on the territory of the European Union 2010–2016

Source: Edited by the author based on the Eurostat database, Eurostat 2017

The number of persons found to be illegally present on the territory of the MSs shows a powerful four times increase after a slight decrease in the examined period of 2010–2016.[5] We can draw the conclusion that due to the high volume of irregular migration, the institutions responsible for border control and criminal cooperation of the MSs and the European Union were affected by an unexpected increase of workload.

Obviously, there is a correlation between the record number of irregular migrants (persons found to be illegally present) and the number of asylum applications but it can be stated that not every irregular migrant lodged an asylum application in the examined period.

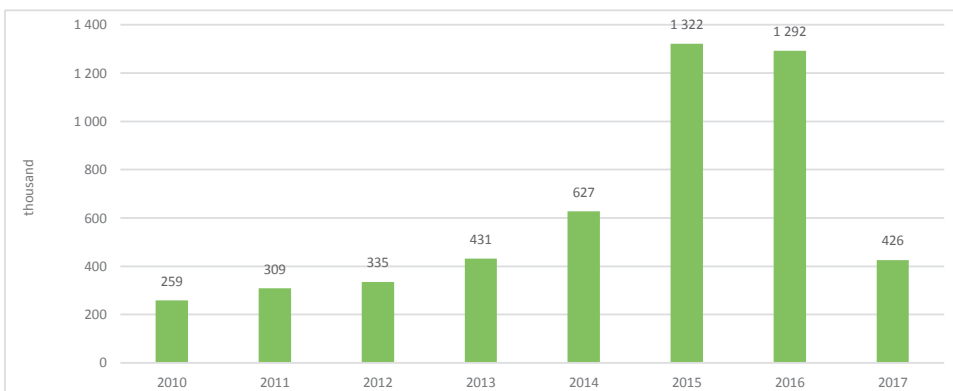

Figure 3.

Number of asylum applications lodged in the European Union, 2010 January–September 2017

Source: Edited by the author based on the Eurostat database, Eurostat 2017

[5] Eurostat database 2017.

The number of asylum applications lodged in the MSs of the European Union quintupled between 2010 and 2015, while there were approximately 260 thousand asylum applications registered in the Union in 2010, the number of applications reached 1.3 million in the peak year of 2015. In 2016 the decrease of asylum applications was not significant but in the period from January to September 2017, the number of applications fell, due to the coherence of some political and law-enforcement factors, and the number of applications decreased to 426 thousand.[6]

Statistical evidence suggests that in the two main years (2015 and 2016) characterised by the crisis, the extremely high number of asylum applications caused an unexpected extent of workload for the MSs, the whole European Union and for its institutions responsible for asylum affairs and border control. These institutions had to face challenges in a situation when their main structure had not changed effectively in the previous years. Although one of the main paths of improvement has to be outlined: the European Asylum Support Office was established in 2010 as an operational and methodological support institution.

The year 2015 was affected by an unexpectedly high volume of irregular migration. Definitely this high volume of international migration does not only differ in its extent from that of the previous years, but also in its quality, or rather in the demographic composition and share of different nationalities of the persons taking part in the movement. Previously these movements were fragmented in their composition by nationalities, yet they are characterised by a few distinct nationalities originating from crisis areas.

In conclusion, it can be outlined that based on the main variables: the number of detected irregular migrants at the external borders (in and outbound) of the European Union, persons found to be illegally present in the MSs and the number of asylum applications, definitely the international migration related situation showed a picture of a crisis. In order to find the answer for the question whether the European community faced a real migration crisis in 2015, a further research is needed.

Asylum Affairs, Asylum Related Situation in Other Parts of the World

According to some *hard data,* we have studied the characteristics of the irregular migration related movements in the European Union. In addition to this, it is important to make an outlook to observe the attributes of international migration in other parts of the world in the same period.

[6] Eurostat database, Eurostat 2017.

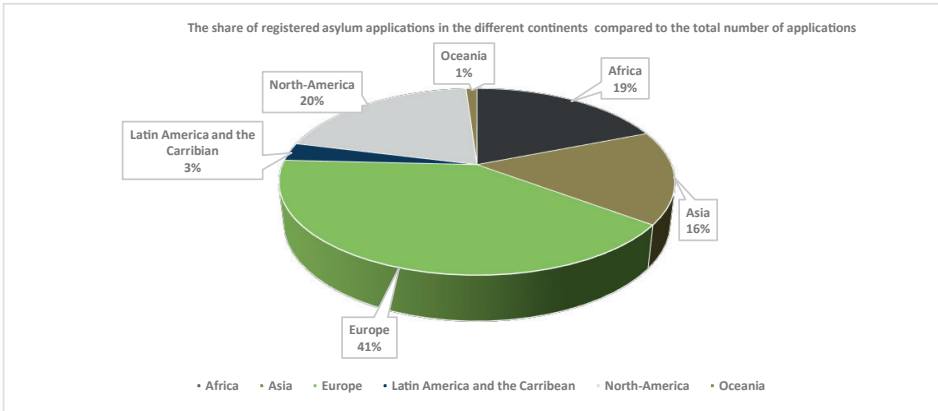

Figure 4.

The ratio of asylum seekers in the different continents in 2016

Source: Edited by the author based on the data of UNHCR Global Trends 2017. 70

In 2016 two-fifth of the total number of asylum applications were registered in Europe. Regarding the number of asylum applications, one of the developed continents of the world was ranked second, where the number of registered applications was merely half of those lodged in Europe; in North-America the total number of asylum applications was one-fifth of the total.

These data were generated in terms of absolute numbers and they show that Europe was affected by an extremely high pressure caused by irregular migration in 2016. It is adequate to examine the ratio between the number of registered asylum applications and the level of economic development of the different continents. To describe the correlation between them, the internationally accepted variable is used, which shows the relationship between one asylum applicant and one USD per capita GDP.

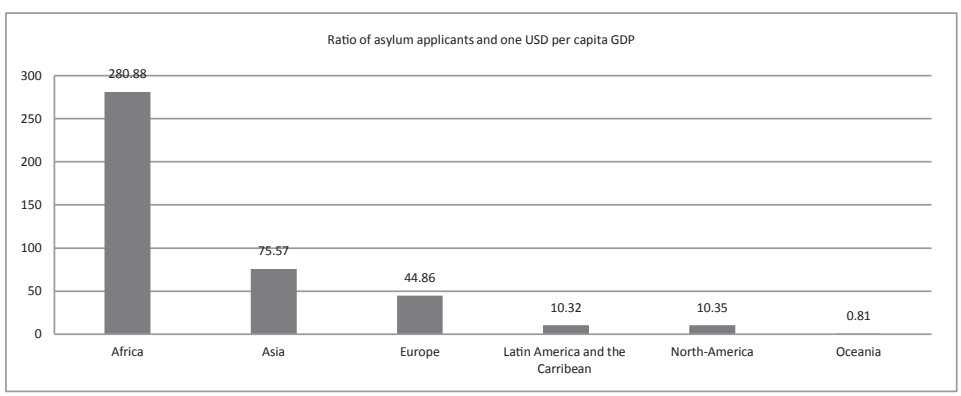

Figure 5.

The ratio between one asylum applicant and one USD per capita GDP in 2016

Source: Edited by the author based on the data of United Nations, National Accounts Main Aggregates Database, 2017

If we take a close look at the ratio of GDP, which stands for the level of economic development of the continent, to the lodged asylum applications, it is already apparent, that although the highest number of asylum applications was submitted in Europe, taking account of the level of economic development, this high number of asylum applicants did not cause as high a pressure for the continent as the number of applicants in Africa or in Asia. Examining the data of the UN, it is visible that while the number of persons taken under refugee status in Europe was 2.3 million persons, this number was in the economically less developed Africa almost 5.5 million persons.[7]

Continuing my examination in the field of irregular migration related movements in 2015, and in the years afterwards, it is clear that the number of lodged asylum applications could cause higher pressure for the reception facilities and institutions in other continents of the world than Europe.

Relying on these findings it can be concluded that the high number of asylum applications does not necessarily explain the crisis, because on the one hand, in other less developed parts of the world the number of asylum applications submitted to the responsible authorities was not so high, on the other hand, the situation did not come to a turning point, where there is no possibility for further existence, whereas the whole system would be doomed for destruction in the original meaning of the word crisis. This is totally true in light of the facts that the population of the whole continent was 741 million in 2015, while the population of the European Union was 508.5 million persons in the same year.[8]

The total per capita GDP was 25,590 USD[9] and in the MSs of the European Union the per capita GDP was 25,700 Euro in 2013. The same data are available for Africa, for the continent with the highest number of asylum applicants in comparison to its level of economic development. The total population of Africa was 2 billion while the per capita GDP was 1,914 USD in 2015, it means that compared to the three times higher population figures, the GDP was just one thirteenth of the total GDP produced in Europe.

According to its population and economic power the registration of the yearly 1–1.3 million asylum applicants would not necessarily mean a crisis for the European Union.

Regarding the number of asylum applications submitted in the European Union the data are not reliable because on the one hand, an applicant can lodge several applications in different MSs of the European Union and the figures published by Eurostat are the cumulative numbers of the applications – the data of 1.3 million asylum applications indeed show the symptoms of over coverage, on the other hand the majority of asylum applicants probably try to leave the territory of the European Union after the situation normalised in their countries of origin.

Summarizing the above listed facts, the asylum situation in the European Union could hardly be called a crisis because in some other parts of the world the phenomenon of asylum related migration causes bigger pressure for the receiving countries. Due to the fact that the term of migration crisis is not necessarily the right word for the phenomenon caused by the irregular migration in 2015–16, it has to be examined what kind of crisis situation we are observing? Is it possible that merely the control and service systems of the Union

[7] UNHCR Global Trends 2017.

[8] United Nations, Population Division 2017.

[9] United Nations, National Accounts Main Aggregates Database 2017.

were affected by the crisis? In order to decide, focus will be laid on the functioning of the asylum related control and service system of the European Union.

Birth of the Common European Asylum System

The establishment of the asylum policy of the European Union *began*[10] with the Treaty on the European Union (hereinafter Treaty),[11] before this, only one statement had been accepted on the asylum policy, which was the interpretation of the definition laid down in the 1951 Geneva Refugee Convention. It is also important to outline the decision of the Council of 20 June 1995 in connection with our theme, on the minimal guarantees of the asylum procedures; albeit none of them was mandatory, and whether they have been transposed in the national legislation depended on the decision of the MSs. The Treaty incorporated two tasks in the Treaty on the Functioning of the European Union:[12]

1. In the short term: harmonisation of the national asylum law with using the complete and exquisite definition of the Geneva Convention, respecting the non-refoulement[13] principle, and
2. in the long term: the establishment of a Common European Asylum System (hereinafter CEAS), and interdiction of the secondary movements of asylum seekers.

The MSs already decided on the establishment of the CEAS with signing the Treaty of Amsterdam and with the agreement of the Programme of Tampere (1999) at the same time. The first step of forming the CEAS was the harmonisation of the asylum procedure, although it is inevitable that the main goals of the process were the establishment of a common European asylum procedure and the initiation of common asylum status Europe-wide. During the evolutionary process of the CEAS it became evident, that the harmonisation of the law itself is not enough to the implementation of this goal, and that is why the Commission of the European Union instead of realizing the legal background of the CEAS, concentrated on the deepening of the operational cooperation, which manifested in the creation of the EASO.[14]

The stakeholders of the European Union recognized that the cooperation in the field of asylum policy has numerous advantages. The improvement of the CEAS has mostly internal reasons, which can be found in the fact that the MSs try to avoid the secondary movement of asylum seekers within the European Union. Certainly the implementation of the CEAS has external reasons as well, for instance the formulation of a common action plan in order to better pursue the foreign policy interests of the Union. Not explicitly, it is also the goal of the think-tanks of the CEAS that there should be regular possibilities for the asylum seekers to submit their applications.

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[10] Kende Tamás (2015): *Introduction to the Policies of the European Union.* Budapest, Wolters Kluver. 530.
[11] Consolidated version of the Treaty on the Functioning of the European Union.
[12] According to Art. 78 of the Treaty on the Functioning of the European Union.
[13] The non-refoulement of persecuted persons.
[14] EASO Regulation 2010.

The Legal Acts of the CEAS

The legal acts of the CEAS incorporate the following five areas:

- The Dublin III Regulation
- The Temporary Protection Directive
- The Reception Directive
- The Qualification Directive
- The Asylum Procedures Directive

The Dublin III Regulation

The Dublin III Regulation[15] is based on the Dublin agreement,[16] which establishes *linkage elements*[17] according to a strict sequence in order to link the asylum applications to a MS (i.e. it defines the MS responsible for the asylum procedure). Due to this the asylum applicant cannot choose his/her country of asylum freely within the EU. The linkage elements defined in the regulation are the following: 1. family contacts; 2. issued residence permit or visa; 3. if none of these linkage elements can define the MS responsible for the asylum procedure, *the countries of first entry* (the state) will take over the responsibility; 4. if these linkage elements do not give a guideline to define the MS responsible for the asylum procedure the procedure has to be conducted in that MS where it was lodged.

The MS which is responsible for the asylum procedure has to be sought as soon as possible, and the MS has to answer this take-over request within two months. If the asylum applicant absconds during the asylum procedure, and seeks for asylum in another MS, either after his/her application being refused or withdrawn, the MS where the procedure is being conducted has to take him/her over. The request should be answered within one month, in case of a Eurodac-hit, within two months. After approval, the asylum applicant should be taken back within six months. The fingerprint registered in the Eurodac-system[18] makes the identification easier for the MS responsible for the asylum procedure.

The Temporary Protection Directive

The Temporary Protection Directive[19] assigns the minimum standards of temporary protection in case of mass influx of asylum seekers and enables the well based balance between the MSs. Mass influx is the situation when from a single third-country or from a single area

[15] Official Journal of the European Union (A).

[16] Intergovernmental agreement between the MSs of the European Union on asylum issues. The agreement was signed in 1990 but came into force in 1997 and was the ancestor of the Dublin Regulation.

[17] Kende (2015): *op. cit.* 531.

[18] The Eurodac system enables the identification of the border-sequence where the entry to the respective state occurred and also enables the identification of the fingerprints of the illegal border crossers and makes possible the comparison of the stored data with the data requested by the national authorities where the person entered the MS.

[19] Official Journal of the European Union (B).

in several third-countries huge number of asylum applicants arrive in the MS. The Council of the European Union should decide whether this condition is relevant. The length of the protection ensured by the Council is one year which can be prolonged twice with six months.

The temporary protection does not replace the individual asylum procedure or the granting of the refugee status according to the Geneva Convention. It enables the overloaded authorities a maximum two years of moratorium to conduct the procedure. The directive ensures the persons taken under subsidiary protection, rights similar to the recognized refugees, they are allowed to access the labour market and the right of family reunification is also possible for them.

The Reception Directive

The Reception Directive[20] regulates the common rules of accommodations of the asylum seekers, after its amendment, it also regulates the conditions of detention of the asylum seekers. If the asylum seekers are not in possession of financial resources or this is what they claim – which is characteristic of most of the asylum procedures, the state should supply them on a minimal level, which means that it should supply them with accommodation, food and in case of minor asylum applicants the access to education should be ensured, as well.

The Qualification Directive

The Qualification Directive[21] contributes to the common understanding of the *refugee* definition of the Geneva Convention and reacts to the achievement of the 21st century that the asylum seeker is not "the typical Eastern-European intellectual, who *»votes with his/her feet« (leaves the country) because of the repression of central state power and flees to the West but those persons became asylum seekers because they fled from civil war, from the war-torn zone of the failed states or from the extremists"*.[22] The category of subsidiary protection was introduced to these categories. Persons can be taken under this category if there is a well-funded danger that they will be persecuted after returning to their home country.

An important component of the directive is, that it describes and formulates some of the main categories of the Geneva Convention, like persecution, persecutor, the reasons of persecution and it defines the rights connected with the refugee status and the subsidiary protection status in the area of family reunification, healthcare, and remunerative activities. Another novelty of the directive is, that it lowers the obligation of the MSs because the granting of international protection can be refused, if a safe area of protection is available within the country, in other words, there is an internal alternative for protection. One of the most important improvements of the directive is that it introduces the category of persecution. In this case the oppression is realized by non-governmental actors, either by an organization or by one's own family. One of the Commission's proposals of 2016 recommends replacing

[20] Official Journal of the European Union (C).
[21] Official Journal of the European Union (D).
[22] Kende (2015): *op. cit.* 531.

the Qualification Directive with a regulation, setting uniform standards for the recognition of people in need of protection and for the rights granted to beneficiaries of international protection.[23]

The Asylum Procedures Directive

The Asylum Procedures Directive[24] specifies the minimal guarantees of the procedure in which a decision is taken on the refugee status; it regulates the procedure of taking the asylum applicant under refugee status or under subsidiary protection. This directive defines the administrative procedure, the juridical phase and the special procedures. The Asylum Procedures Directive reduced the possibilities of accelerated procedures and ensured more guarantees for legal assistance and it enables more considerate procedure for the vulnerable groups.

This directive regulates the withdrawal of statuses, the administrative and juridical procedures against these types of decisions. Among the minimal guarantees it should be outlined that every adult asylum seeker is entitled on his/her right to apply for asylum and the examination of his/her application should be done on an objective and independent way. The asylum applicant should be interviewed personally, and a written, well-grounded decision should be taken in his/her case.

Some types of accelerated procedures can be distinguished from the normal procedure where the minimal guarantees of the procedure apply but the deadlines can be shorter. The directive also describes the cases when the application is *inadmissible,* when for example the applicant has already applied for asylum in another MS, either there is an MS which is the first state of protection or the category of a safe third-country can be applied. The application is also inadmissible if the applicant submits new asylum application without confining himself/herself to new facts or he/she as a dependant relative gives up the right of submitting an application.

The introduction of the category of a safe country of origin excludes the possibility of recognition as refugee while the category of a safe third-country does not doubt this but it passes the right of recognition to another country.

Basic elements of the CEAS

Apparently the CEAS is a well-developed system which ensures protection and it has both legal and political effect to the international asylum protection systems. The MSs strived to have some responsibility areas of their own and improved rules which were not covered by the 1951 Geneva Convention, for instance asylum procedures.

The establishment of the EASO is the proof that the MSs succeeded to build a form of cooperation on a higher level and to set up an institutional framework for the former quite infrequent cooperation and exchange of experience. The MSs tried to strengthen the scope

[23] European Parliament.

[24] Official Journal of the European Union (E).

of their cooperation outside the EU and to enhance the possibility of access to asylum in third-countries, as well.

The EU's efforts are sometimes blocked in the field of asylum policy, because it has not yet been defined adequately what the methodology of equal burden-sharing between the MSs would be. Accordingly, if a MS claims excessive burden, other MSs often criticise it that its demand on more resources is unfounded. Solidarity can be enhanced if the MSs have more confidence in each other.

According to the adopted regulations and directives, the CEAS is already functional and its institutional framework already works. Although the institutions controlling and assessing the irregular migration movements like FRONTEX and Europol are operational, there is no common European asylum procedure. The current asylum system is a fragmented one, which does not necessarily take into account the interests of the MSs and solidarity between them works on a minimum level.

It can be concluded that this irregular migration-related situation is the crisis condition of the European systems which are responsible for the control of migration and due to the deficient control, the institutions dealing with asylum affairs reached a crisis, as well and in a wider sense the EU itself.

This paper argues that the current case is merely the crisis of functionalities of the system. It is doubtful whether the situation which occurred in 2015 and has generally characterised the European asylum policy since then, can be described with one of the criteria which we got to know from the definition of crisis. Does it head towards destruction or is it able to renew and improve from the current situation?

The reason of the dysfunction of the CEAS

The dysfunctionality of the CEAS had already begun in the years before 2015, during the time of the revolutionary movements called the *Arab Spring* when some of the MSs expressed their concern about the potential increase of irregular migration movements from North Africa and from the Middle East. The critical situation occurred in the field of asylum, which raised debates in the French and Italian society already in 2011 when at the border between the two states temporary border control was set up in order to prevent the mass influx of potential asylum seekers to France.[25]

International migration became a determinant of the political campaigns of the countries to a stronger extent in other parts of the World, as well. Just take into account the German and Austrian early elections in 2017. Due to the protest of public opinion and the policy debates,[26] some of the countries indeed changed their asylum and immigration policy, most of these changes hampered immigration and the access to the asylum procedure.

"Moreover, such legislative changes have been accompanied by an increase in the budgets devoted to migration controls in several Member States. Those have invested vast

[25] *The Guardian,* 2011. France and Italy in call to close EU borders in wake of Arab protests. Available: www.theguardian.com/world/2011/apr/26/eu-borders-arab-protests (Accessed: 17.10.2017)

[26] *The Telegraph,* 2011. France and Italy to propose European border reform. Available: www.telegraph.co.uk/news/uknews/immigration/8472417/France-and-Italy-to-propose-European-border-reform.html (Accessed: 17.10.2017)

amounts of money into sophisticated technologies in order to strengthen migration controls. One example is the electronic tagging of asylum-seekers in the UK, which aims to prevent people from *absconding* during the processing of their asylum claim. Nevertheless, the most prominent illustration of this trend is certainly the acquisition of technological devices – including some originating from the military sector – in order to intercept migrants at border sites."[27] As the quotation suggests this was already the tendency in 2002.

Signs of the Crisis

The burden caused by the unexpectedly high influx of asylum seekers in 2015 should not have affected the European Union and to a wider sense the whole continent as unprepared as it did. However, this significant volume of influx caused dysfunctionalities in the institutional framework of the EU and in the relation between the MSs.[28]

This crisis in the system after the crisis of the Euro-area made the biggest interference in the integration processes of the European Union. This turmoil caused by the high number of irregular migrants laid focus on the malfunction of the security systems of the European Union. Seemingly, despite the many policy documents, there is no available common asylum policy or strategy of the Union.

In spite of the common European attempt the MSs tried to consolidate the security turmoil relying upon their own resources. There was no common solution but there is no common sense between the MSs in point of the goals which have to be achieved. The mass influx of irregular migrants on the Western Balkan route in 2015 passed; the EU still does not have an effective and system-wide solution for such a crisis. "If a similar influx occurs again that would mean with high probability the breakup of the Schengen area and the CEAS."[29]

Although in connection with border control and migration management the harmonisation of the legislation was accomplished or at least the scope of the legislation was broadened in previous years, the cooperation on home affairs issues has broken up. This statement is true for making up the core element of home affairs and security cooperation, for the asylum policy and for the visa policy, too. The cooperation in the area of counterterrorism and in information exchange on criminal affairs was not affected to such an extent.

The development of the common asylum policy among the common European policies is outstanding if we take into account how a tiny part builds the migration management issues of the heading No. III, Security and Citizenship in the European Budget.

The total budget of the European Union for payments and expenditure was 286.5 billion Euros while the amount for the heading of Security and Citizenship was just above 4 billion

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[27] Kaunert, Christian – Léonard, Sarah (2012): The European Union Asylum Policy after the Treaty of Lisbon and the Stockholm Programme: Towards Supranational Governance in a Common Area of Protection? *Refugee Survey Quarterly,* Vol. 31, No. 4. 2.

[28] Szacsúri János (2017): The crisis of the Common European Asylum System: Is there a common European answer to the asylum and migration crisis? Migration Research Institute. 1. Available: www.migraciokutato.hu/hu/2017/09/13/a-kozos-europai-menekultugyi-rendszer-valsaga-letezik-e-kozos-unios-valasz-a-menekultugyi-es-migracios-valsagra/ (Accessed: 17.10.2017)

[29] Szacsúri (2017): *op. cit.* 1.

which was 1.4% of the budget.[30] Of this amount, the budget of the Asylum, Migration and Integration Fund made up 403 million Euros. The extent of the amounts signifies the real relevance of the issue of asylum affairs which is otherwise very much highlighted on different European forums.

The budget of FRONTEX, the agency of the European Union responsible for the control of the EU borders, compared to the total budget of the EU is extremely small, the budget planned for operational activities did not exceed 82 million Euros[31] (but the actual amount was a little bit more than 111 million). In the crisis situation the capable actors would have been the law enforcement, border control and asylum authorities of the MSs, extended with the agencies and offices of the European Union, with FRONTEX, EASO and Europol.

Plan for the Management of the Crisis: The European Agenda on Migration[32]

The tragedies occurring on the Mediterranean en route to Europe lead the Council of the European Union to handle the issue of international migration. In the special meeting of the 23rd of April 2015, the heads of the states and governments expressed their initiative to strengthen the solidarity of the MSs to each other and the common burden sharing in the area of migration.

According to the European Agenda on Migration the mid and long term priorities of the European Union can be summed up as follows: migration is both an opportunity and a challenge. The priorities consist of helping the MSs to better manage all aspects of migration, the Agenda is built upon four pillars:[33]

- "Reducing the incentives for irregular migration, dismantling smuggling and trafficking networks and defining actions for the better application of return policies.
- Saving lives and securing the external borders: this involves better management of the external border, in particular through solidarity towards those Member States that are located at the external borders.
- Strengthening the CEAS: with the increases in the flows of asylum seekers, the EU's asylum policies need to be based on solidarity towards those needing international protection as well as among the EU Member States, whose full application of the common rules must be ensured through systematic monitoring.
- Developing a new policy on legal migration: in view of the future demographic challenges the EU is facing, the new policy needs to focus on attracting workers that the EU economy needs, particularly by facilitating entry and the recognition of qualifications."[34]

[30] Budget of the EU 2015.
[31] FRONTEX (C).
[32] Agenda on Migration 2015.
[33] Ibid.
[34] Ibid.

Improvement of the Council's position[35]

At the time of drafting this study (November 2017) the meeting of the Council was held[36] where still the well-formed phrases came to the foreground. The EU leaders agreed that the measures aiming to restore control of the external borders brought results and expressed their support of MSs affected by high migration pressure at the external borders with assistance of the European institutions. They expressed the strong need of cooperation with the countries of origin and transit including Turkey. The heads of the states and governments showed full commitment to the cooperation with Turkey and to the support of the Western Balkans.

The statement[37] emphasises that the EU still handles the situation as the crisis of the Mediterranean and it reiterates the importance of working with the countries of Northern Africa and especially highlights the need of cooperation with Libya. It calls for increased efforts to rapidly establish a permanent EU presence in Libya, taking account of the conditions on the ground.

According to the FRAN-report[38] of FRONTEX, for the first quarter of 2017 it can be established that the crisis situation caused by the high pressure of irregular migration affected the Mediterranean route already in 2016[39] to a larger extent than the Balkan route, because on the Mediterranean route there were 374 thousand illegal border crossings registered by the authorities while on the Balkan route not more than 130 thousand, and this situation has remained unchanged.

The European Agenda on Migration also prioritises the management of the migration crisis in the area of the Mediterranean. The main pillars of the plan are relocation, the European resettlement mechanism and the setting-up of European registration points, hotspots in Italy and Greece.

In the regulation 1624/2016 EU[40] establishing the FRONTEX, stands that, "*hotspot area* means an area in which the host Member State, the Commission, relevant Union agencies and participating Member States cooperate, with the aim of managing an existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external borders". The same legal act regulates the setting-up and utilisation of the hotspots by a MS. "Where a Member State faces disproportionate migratory challenges at particular hotspot areas of its external borders characterised by large inward mixed migratory flows, that Member State may request technical and operational reinforcement by migration management support teams. That Member State shall submit a request for reinforcement and an assessment of its needs to the Agency and other relevant Union agencies, in particular EASO and Europol."[41]

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[35] General Secretariat of the Council 2017.
[36] European Council 19–20.10.2017, Brussels.
[37] European Council 2017, 2.
[38] FRONTEX (D).
[39] According to the data of the FRONTEX more than 1 million persons arrived in Europe on the Mediterranean route while on the Balkan route 764 thousand; the two routes were affected by the crisis to a similar extent.
[40] Official Journal of the European Union (E).
[41] Official Journal of the European Union (F).

In the regulation establishing the EASO, the definition of hotspots cannot be explicitly found, yet Article 3 contains that the MS affected by extremely high pressure of irregular migrants can request support from the Office to deploy asylum support teams.[42]

Outlook: Hotspots in the third-countries

The think-tanks around the European Commission[43] already planned the establishment of the asylum registration centres (hotspot) in the territory of third-countries close to the crisis areas. The initiative would distinguish between two relocation mechanisms of asylum applicants: according to the first version the asylum applicants would be distributed among the states participating in the Dublin III regulation. According to the other approach the decision in the asylum application would be taken already in the hotspot area, in the third-countries and at the end of the procedure the applicants taken under international protection would be shared between the states implementing the Dublin III regulation. The supporters of the initiative argue that the asylum registration centres would be operated either by the EU or by the UNHCR but they may be under control of the International Red Cross, as well.

Despite the disadvantages, these centres would also have some advantages, because the asylum applicants would not be forced to use the Mediterranean route endangering their lives to reach Europe and it would reduce the activity of the human smuggling networks in the area, as well. The asylum registration centres in the third-countries could reduce the financial load of the asylum procedure, although estimates are not available, simply because of the lower expenses of the suppliers. In addition to the cost reducing effects, it has to be taken into account that with the centres operating in the third-countries, a second parallel asylum system would come into existence parallel to the asylum system in the MSs which would presumably increase the expenses of the asylum procedure.

Taking the decision on the asylum applications in the hotspots would lower the expenditure of the return operations because the entry to the EU would be allowed just for persons who have the right to stay in the EU or are entitled to get the right of stay. It can be established that the operation of hotspots in the territory of third-countries incorporates some legal and political bottlenecks which can be the following:

1. "What would be the legal base of setting up these hotspots?
2. Would a bilateral agreement between the EU and the host country for the asylum registration centres be enough to establish hotspots?
3. Which country would be suitable, on the basis of humanitarian and political criteria to operate these centres on its territory? Hotspots can be pull-factors; they can attract even more asylum applicants to their host countries?
4. What would the legal base of the asylum applicants be to stay in the third-countries and what would the responsibility of these countries be towards the applicants?

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[42] Official Journal of the European Union (G). "A Member State or Member States subject to particular pressure may request the Support Office for deployment of an asylum support team. The requesting Member State or Member States shall provide, in particular a description of the situation, indicate the objectives of the request for deployment and specify the estimated deployment requirements, in accordance with Article 18(1)."

[43] Schweizerische Eidgenossenschaft 2015, 11.

Setting up these centres would raise some doubts regarding the sovereignty of the countries, as well.

5. Which countries, and how would they share the burden of the operation of these hotspots?
6. Which institution of the EU would be functionally responsible for these centres? Is it possible that the restructured EASO as an agency of the European Union would manage the operation and control of the CEAS?
7. How would the hotspot system be able to tackle the huge number of applications?
8. How would the asylum applicants whose application was rejected react? Presumably some of them would still try to enter the EU and the third-countries would be obligated to ensure them some kind of right to stay.
9. This type of reception centres with huge capacity would jeopardize the security situation in the host countries too."[44]

It seems obvious that the funding of these asylum registration facilities in the third-countries would raise some questions and it can be stated that solving the crisis based on the hotspot approach is questionable and too idealistic.

Ensuring Solidarity in the MSs

Two types of burden-sharing mechanism can be distinguished in the Union, one is a one-dimensional and the other one is a multidimensional approach. The first one tries to share the burden equally between the MSs based on the number of the asylum applications and this type of burden-sharing could be divided into two sub-methods whether the ground of the burden-sharing is mandatory (legal harmonisation or possible quotas) or voluntary. The scope of the EU covers mostly the one-dimensional burden sharing.

The multidimensional burden-sharing does not only focus on one aspect. The example for a multidimensional burden-sharing can be the establishment of an agency which appoints the quotas or deploys asylum support teams into the transit/destination countries, or countries of origin. The latter solution is reactive because they can be implemented in the case when the situation has already emerged.[45]

Technically the burden-sharing mechanism has three distinctive types: the first one is physical, and it is technically implemented, the sharing of persons, the second one is the harmonisation of legal backgrounds (burden-sharing based on legal acts) and the third one is purely financial (the share of financial resources). Developing the CEAS, the harmonisation of the legal background played an important role, but recently the arguments for the physical burden sharing are quite frequent (see the idea of quotas).

The development of the CEAS based on regulations and directives was time consuming and the irregular migration related events of 2015–16 proved that its concept was partly mis-

[44] Schweizerische Eidgenossenschaft 2015, 18.

[45] Thielemann, Eiko (2008): The Future of the Common European Asylum System. Swedish Institute for European Policy Studies. 3. Available: www.sieps.se/en/publications/2008/the-future-of-the-common-european-asylum-system-20081epa/Sieps_2008_1epa.pdf (Accessed: 18.10.2017)

taken. The professionals dealing with asylum affairs agree that the current system favours the abuse of the right of asylum and *asylum shopping.*[46]

The core element of the CEAS: The Dublin III Regulation

One of the core parts of the CEAS is the Dublin III Regulation, which does not aim at sharing the asylum applications equally, instead it ensures the identification of the country responsible for the asylum procedure and makes it faster. The criteria which help the assignment of the country responsible for the asylum procedure were already touched upon; one of the shortcomings of these linkage elements is that the MS will not be interested in the registration of the applicants if the number of asylum applicants and the workload of the authorities significantly increase.

The Dublin III Regulation assumes that the states participating in the Dublin system (although Switzerland, for instance is not an MS of the EU, but member of the Dublin system and accordingly, the crisis of the EU does not only affect the EU directly) introduce similar asylum procedures and they completely fulfil their obligations rising from the humanitarian rights, too. It would mean, that for the asylum applicant it is irrelevant in which country he/she submits his/her application, because he/she would have the same or comparable opportunity to be recognised as a refugee. These conditions were already not sustainable at the early phase of the Dublin system, a good example of this is the change in the recognition rate of asylum applicants by category of citizenship in the countries of the Dublin-area.

Here are some facts by the European Commission which should be outlined in connection with the malfunction of the Dublin III Regulation:

- "The system is unfair, because it means an extreme burden for the countries affected by mass influx of asylum seekers at the Southern part of the Dublin area.
- Parallel to this, 75% of the asylum procedures are conducted in five MSs: Germany is responsible for the vast majority of the asylum applications, the other main affected countries are France, Italy, Sweden and the United Kingdom, according to the statistical data of 2015.[47]
- Due to the missing fingerprint registration in the Eurodac-system, it is impossible to identify the country responsible for the asylum procedure.
- One of the shortcomings of the system is that in cases where the responsible country can be identified, the rate of the realized Dublin takeover is just 13% of the incoming requests,[48] due to the absconding asylum applicant or because of logistical obstacles.
- In case of some MSs the suspension of the handover was terminated, according to the leading cases of the European Court of Justice or by the European Court of Human Rights."[49]

The unique response of the EU to the crisis was relocation, but after a quite peaceful period in 2016, the Union was not able to deliver an ultimate solution.

[46] Szacsúri (2017): *op. cit.* 6.
[47] Eurostat database.
[48] Ibid.
[49] Szacsúri (2017): *op. cit.* 6.

Initiatives for a reform of the Dublin Regulation

The Council[50] has proposed a new planned automated system allowing the registration of all asylum applications made in the EU, and the monitoring of the number of applications made in each Member State on a daily basis. The new system will automatically be established, when a country is handling a disproportionate number of asylum applications.

If the number of asylum applications made in one of the Member States is above 150%[51] of the reference share, the fairness mechanism is automatically triggered. This reference number is identified on the basis of a key, taking account of the country's population, and the size of its economy. Once the fairness mechanism is triggered, all new applications in the Member State concerned are allocated to other Member States.

A Member State will also have the option to temporarily not take part in the allocation. In that case, it would have to make a financial solidarity contribution of EUR 250,000 to the Member State receiving an applicant for whom it would otherwise have been responsible under the fairness mechanism.

Though CEAS is primarily a system based on regulations and directives, there are institutions in connection with it, which emphasise the operational collaboration, for example EASO or FRONTEX.

Next, the study focuses on showing the effectiveness of the cooperation and on these mentioned European institutions extended in the area of home and justice cooperation, by the agency, Europol.

European Institutions Managing the Crisis Situation Caused by the Irregular Migration

The European Asylum Support Office

In the CEAS, the EASO plays one of the main roles, the idea of its foundation goes back to 1999, when the heads of states and governments decided on it in the council meeting in Tampere, and thereafter in 2004, within the framework of the Hague programme the decision was taken on the establishment of EASO, as the main institution in the area of asylum.

In the first quarter of 2010, the European Parliament and the Council decided on its establishment, the regulation on the operation of the EASO[52] came into power in June 2011, and on 1 February 2011 EASO, as the Office of the European Union, became functional with the headquarters in Valetta, on Malta.

According to the regulation establishing the EASO, the Office was created, "in order to help to improve the implementation of the Common European Asylum System (the CEAS), to strengthen practical cooperation among Member States on asylum and to provide and/

[50] European Parliament (Proposal) 2017.

[51] Ibid.

[52] Official Journal of the European Union vol. 53. L 132 Regulation 439/2010 EU on the Establishment of the European Parliament and of the Council, Establishing a European Asylum Support Office. Available: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2010:132:TOC (Accessed: 21.11.2017)

or coordinate the provision of operational support to Member States subject to particular pressure on their asylum and reception systems".[53]

As one of its main activities, EASO helps MSs in particular pressure, in this case, the first asylum supports were provided to Luxembourg and Sweden in 2012, which were followed by Bulgaria and Italy in 2013, and by Cyprus in 2014. Since 2015 the EASO has played a central role in the implementation of the Migration Agenda on Europe and the hotspot approach in Greece and Italy.

The establishment of the hotspots is, as a matter of fact, a pilot project; this type of asylum registration centres had not been operational in the EU previously, and its development and possibilities for change are still open. The EASO supports the implementation of CEAS by applying a bottom-up approach in order to ensure the decision on asylum applications according to the same principles.

Within the framework of the permanent support, EASO provides common trainings with the help of common training material in order to ensure the common quality of the asylum procedure. Within the special support programme, it provides support in capacity building and in relocations, within the scope of a tailor-made, country specific programme, it delivers quality control tools to the MSs in need, as well.

In the emergency support programme, it organises solidarity for Member States subject to particular pressures by providing assistance to repair or rebuild asylum and reception systems. As part of the permanent asylum support, the EASO follows the tendencies in the field of asylum, and collects data on it. Based on the collected data, it publishes the *Latest Asylum Trends,* analyses on its homepage, but the national authorities responsible for the management of international migration are provided with the extended and confidential version of this publication.

EASO supports the external dimension of the CEAS by collaborating with third countries, to reach common solutions with the help of building regional protection programmes, and coordinating MSs initiatives on resettlement.

This aim of the CEAS was outlined by the Commissioner for Migration, Home Affairs and Citizenship in November 2014 as well, when he mentioned that the Committee should work on a strategy which strengthens the capability of the EU to answer for crisis situations, and especially to support the capability of EASO in cooperation with third-countries.

In the crisis situation caused by the irregular migration, EASO played and still plays an important role in the hotspot approach.[54]

The hotspots support the MSs hosting the asylum support teams to register and process the asylum applications. By creating the hotspots, the EASO ensures the coordination between the participating experts in the Asylum Support Teams and technical means deployed by the Agency in the framework of EASO *Hotspot* Operating Plan. Currently, there are functional hotspots in two MSs: there are five of them in both Italy and Greece. The reception capacity of the hotspots in Italy is 1,600 persons, while in Greece a total of 7,450.[55]

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[53] Official Journal of the European Union (H).

[54] The hotspot approach was initiated by the Council on its meeting in 25–26 June 2015 and afterwards it was supported in the note by the Commissioner for Migration Home Affairs and Citizenship in June 2015.

[55] State of play of the hotspots, 2017.

Beyond the experts of EASO, the staff of FRONTEX, Europol and Eurojust[56] participate in the work of the hotspots in close cooperation with local experts. The staffs of the collaborating institutions with the local experts conduct the registration of the potential asylum applicants, take fingerprints and if needed, they organize the return of the person in question.

If the registered persons apply for asylum, the EASO experts support the smooth conduct of the procedure and for those not eligible for international protection, the FRONTEX organizes their return to the country of origin or to a safe third-country. The Europol and Eurojust staffs cooperate in exploring the human smuggling and trafficking networks.

Table 1.

The capacity and number of staff in Italy as of 23 October 2017, the row EU presence contains the number of experts from EASO (EASO Staff and MS Experts)

Hotspots operating in Italy					
	Lampedusa	**Pozzalo**	**Taranto**	**Trapani**	**Messina**
Capacity	500	300	400	400	
EU presence	5 experts	7 experts	4 experts	9 experts	2 experts
FRONTEX presence	18 experts	24 experts	13 experts	21 experts	

Source: European Commission, State of play of the hotspots, 2017

Table 2.

The capacity and number of staff in Greece as of 23 October 2017, the row EU presence contains the number of experts from EASO (EASO Staff and MS Experts)

Hotspots in Greece					
	Lesvos	**Chios**	**Samos**	**Leros**	**Kos**
Capacity	1500	1100	850	1000	1000
EU presence	143 experts	114 experts	113 experts	50 experts	67 experts
FRONTEX presence	105 experts	63 experts	32 experts	16 experts	17 experts

Source: European Commission, State of play of the hotspots, 2017

The concentration of the hotspots is noticeable in Greece, whose necessity is obviously owing to the geographical situation of the country, and the high number of irregular migrants who disembark there.

The hotspots approach did not manage to successfully solve the crisis situation caused by the mass influx of irregular migrants in view of the following:

1. One of the reasons of the creation of hotspots was the sustainable relocation of the asylum seekers to the EU MSs (and accordingly, to the states of the Dublin area); however, the statistical data indicate that only a small part of the irregular migrants were relocated to another MS: until October 2017, 30 thousand persons were

[56] The European Union's Judicial Cooperation Unit. Available: http://eurojust.europa.eu/Pages/home.aspx (Accessed: 21.11.2017)

relocated:[57] about 21 thousand (asylum seekers) from Greece and slightly above 10 thousand from Italy. The biggest destination countries of the relocated persons so far, are Germany (4,838 persons), France (4,091 persons) and Belgium (1,700 persons). Certainly the success of the relocation programmes widely depends on the cooperation of the receiving countries.

2. The hotspots were also criticised for selecting the asylum applicants based on citizenship categories – although this is one of their responsibilities – and for taking decisions without examining individual cases.
3. It is also outlined by the critics that the role of the EASO is overrepresented in the decision-making process (although apparently the Commission's aim is to strengthen the role of EASO on deciding the admissibility and on the in-merit procedure), while these decisions can only be reached by the authorities of the receiving countries.
4. The operation of the hotspots is not regulated in a single law, but in several different laws; on the one hand, this legal background enables flexibility for them, on the other hand, a single law would ensure a more discrete situation.
5. There are huge differences in the financing of the deployed authorities and the experts seconded by them in the hotspots. This is also true for EASO and FRONTEX, but even truer for Europol and Eurojust. Their role and responsibilities should be defined more thoroughly and the way of cooperation between them should also be regulated better.[58]

The FRONTEX

The other decisive institution in the field of institutional cooperation is FRONTEX, which is also an important part of the hotspot system. FRONTEX was established by the Council with regulation 2007/2004 EC of 26 October 2004, as the agency for the management of operational cooperation at the external borders of the European Union. This regulation was overruled by regulation 1624/2016 EU, which established the European Border and Coast Guard Agency.

The main duties of FRONTEX include monitoring migratory flows and carrying out risk analyses regarding all aspects of the integrated border management; it also carries out vulnerability assessments, including the readiness of the MSs to face threats. It also deploys liaison officers in the MSs who monitor the management of the external borders.

The Agency supports search and rescue operations preventing humanitarian catastrophes. To be able to do this, it can deploy European Border and Coast Guard Teams within the framework of migration management teams, including rapid border intervention teams. It provides operational and technical support for the MSs controlling the external borders of the European Union and assists them fulfilling their return operation. During the joint return operations, it controls the implementation of the returns in cooperation with the return experts and with the staff responsible for implementing the return.

[57] Available: www.easo.europa.eu/easo-relocation (Accessed: 27.10.2017)
[58] European Council on Refugees and Exiles (ECRE) 2016, 51.

In the hotspot areas FRONTEX conducts the first screening, debriefing, identification and fingerprinting of the asylum applicants in cooperation with the EASO and the national authorities. It fights against organised cross-border crime and terrorism at the external borders in cooperation with Europol and Eurojust. Furthermore, it is responsible for the development of the EUROSUR[59] and the interoperability of the system which is a common information-sharing environment. The tasks of FRONTEX also include a strong external dimension, because the Agency's task is the improvement of the cooperation between the MSs and third-countries.

The relation between FRONTEX and the MSs is twofold, because the MSs are obliged to avoid any activity which could endanger the agency's activity, in connection with the responsibilities of FRONTEX, and they also have to inform the agency about any operational actions carried out outside the scope of FRONTEX.

The activity of FRONTEX in practice: Schengen countries are obliged to control the external borders of the Schengen area. The primary responsibility of border control lies with the Schengen countries that have an external border (including land and sea borders and international airports). FRONTEX plays a role in border control when experts and technical equipment are needed at the external border affected by high migration pressure. FRONTEX also supports the capacity of the MSs of controlling the external borders by trainings and sharing the best practices.

FRONTEX joint operations are planned on the basis of FRAN (Annual Risk Analysis Network), which analyses the likely future risk of irregular migration and cross-border crime. The actions of FRONTEX are planned in negotiation with the MSs, during this process, FRONTEX assesses the expert staff and equipment needed. According to the risk assessment, FRONTEX prepares the action plan in which it decides on the type of experts (interviewers, cultural mediators and/or interpreters) needed. The FRONTEX experts work under the command of the hosting country's authorities. The guest officers perform all tasks, and exercise all powers for border checks or border surveillance in accordance with Schengen Borders Code.

Rapid intervention: in case of mass influx of irregular migrants, FRONTEX may deploy European Border Guard Teams (EBGT). The decision to deploy EBGTs for a rapid intervention is made by the Executive Director of FRONTEX, the final decision is preceded by a number of procedural steps. Members of the teams perform tasks under instructions from and in the presence of border guards of the MS requesting assistance. The role of FRONTEX in the hotspots approach of the management of mass influx of irregular migrants was substantial, because FRONTEX performed the following tasks:

- It carried out the fingerprinting and interviewing of the asylum applicants.
- In the management of the crisis caused by the mass inflow of irregular migrants, FRONTEX also deployed intercultural mediators and interpreters.

[59] EUROSUR (European Border Surveillance System) is the information-exchange framework designed to improve the management of Europe's external borders. It aims to support Member States by increasing their situational awareness and reaction capability in combating cross-border crime, tackling irregular migration. The backbone of EUROSUR is a network of National Coordination Centres (NCCs). The EUROSUR was established by 1052/2013 EU regulation. Available: http://frontex.europa.eu/intelligence/eurosur/ (Accessed: 22.11.2017)

- The crisis of the institutions of the European Union managing irregular migration strengthened FRONTEX, its budget increased to a great extent, while in 2015 it could spend 111 million Euro on operational activities, this amount doubled to 209 million Euro in 2016.
- According to the current plans, the number of its staff will be increased to 1,000 persons, which is quite a reasonable plan, taking the current tendencies into account, because one-third of its 488 persons staff was employed during 2016.[60] Evidently, FRONTEX is to be reformed and built into an agency fully responsible for the control of the external borders of the EU (see the speech of Mr. Jean-Claude Juncker, the President of the European Commission on 9 September 2015 in the European Parliament).[61] Obviously, the feasibility of this idea is disputable.
- This plan would result in the establishment of a new law enforcement institution collaborating or extending those of the MSs but it has to be taken into account that the approach highlighting only the law enforcement aspect of irregular migration would not be a sustainable solution of the problem.

The Europol

The other institutional actor of the hotspot approach is the Europol, which plays an active role in the fight against human trafficking and international human smuggling networks. The agreement on the establishment of the Europol was signed on 26 July 1995, after long multilateral negotiations between the MSs. After ratification by the MSs, the agreement came into power on 1 October 1998, and Europol became functional on 1 July 1999 with the headquarters in The Hague.

In the meeting of the Council of the Ministers for Justice and Home Affairs in 2006, a decision was made by the Council to replace the agreement and actually the decision establishing the European Union Agency for Law Enforcement Cooperation (Europol) was adopted in 2009 and accordingly Europol became the budgetary agency of the EU from 1 January 2010.

The task of Europol is to support the MSs in the fight against organized crime, terrorism and in the prevention and fight against dangerous criminal activities affecting two or more MSs. Europol collects different types of operational data on criminal activities and supports the criminal investigation of the MSs by providing assistance to the national units.[62]

Europol's tasks are the requests of the responsible authorities of the MSs for the implementation of investigation, exchange of crime related operational information and providing assistance for the MSs in accordance with high volume international events, and the development of strategic assessment and situational reports.

Each MS establishes a national unit which is an institution liaising between the Europol and the national authorities and the MSs deploy liaison officers to the Europol, who build the national liaison offices at the Europol and work under the national law of the sending MS.

[60] FRONTEX (E), 8.

[61] European Commission 2015.

[62] Nagy Judit (2014): The Europol. In Hollán Miklós: *The EU as the Area of Ensuring Freedom, Security and the Role of Law, Hungary in the European Union 2004–2014.* Budapest, NKE. 139.

Since 2013 the Europol has developed the SOCTA (Serious Organized Crime Threat Assessment), which provides an overall picture about the criminal threats affecting the EU.

The staff of the Europol can participate in common investigation teams, the members of which are entitled to support the investigation and share information with the other members of the team under the law of the hosting country.[63]

In accordance with its activity the Europol also cooperates with many other international organizations and third-countries. The memorandums of cooperation can be distinguished on the basis of the type of information exchange; on the one hand, there are strategic agreements, which enable the exchange of all types of data except personal data, and on the other hand, there are operational agreements which enable the exchange of personal data, as well.

Beyond many agreements with third-countries, the Europol also cooperates with ten institutions of the EU, among others the CEPOL, the OLAF, the Eurojust and the FRONTEX.

The European Migrant Smuggling Centre

"The goal of the European Migrant Smuggling Centre (EMSC) is to support EU Member States in targeting and dismantling the complex and sophisticated criminal networks involved in migrant smuggling."[64]

The Centre was formed in February 2016, in response to the unprecedented increase in the number of irregular migrants arriving in the EU since 2014. The Europol's researches indicate that 90% of this unexpectedly high number of irregular migrants arrived in the EU with the help of human-smuggling networks and indeed that is why the fight against human-smuggling is one of the key priority of the EU.

The EMSC provides help to MSs, to improve the way they exchange information and it facilitates increased collaboration among MSs themselves, and between international organisations. In the Joint Operation Teams (JOT), seven states cooperate within the scope of EMSC, and share important information on human-smuggling networks departing from Turkey, Lybia and North Africa.

As an information centre, the EMSC provides help to the regional action teams in Catania and Pireus, in identifying human-smuggling networks and in asylum related support, with sharing secret information originating from intelligence and participating in criminal investigations. In the fight against human-smuggling, Europol closely cooperates with EASO, FRONTEX and Europol within the framework of this cooperation, it deploys Europol Mobile Investigation Teams and Europol Mobile Assessment Teams to the MSs.

The role of Europol in the hotspot approach

The Europol provides support to the MSs in the criminal investigations and it may deploy JOTs to the hotspots, which implement the following activities:

[63] Nagy (2014): *op. cit.* 139.

[64] Europol 2015.

- They share information with the collaborating authorities to identify criminal activities and prevent human-smuggling, and to prevent secondary movement of migrants.
- It enables direct access to the database of Europol for the cooperating institutions.
- It strengthens the possibility of joint operations with the collaborating institutions.
- In the framework of the hotspot approach the EASO, the FRONTEX, and the Europol work complementing each other, the EASO helps carry out the asylum procedure, FRONTEX identifies the asylum applicants and Europol supports the intelligence of human-smuggling networks and persons in contact with terrorist organizations.

Conclusions

It can be established that the crisis caused by the irregular migration in 2015 and in the following years, cannot be called crisis regarding the volume of the events, because Europe and the European Union with its economic and demographic power (with more than 510 million inhabitants) should be able to manage a yearly inflow of 1–1.4 million irregular migrants or potential asylum seekers.

The collapse of the system (the CEAS and other systems may be listed here) did not take place: it was avoidable due to temporary solutions, and to the sovereign actions introduced by the MSs. The CEAS itself was in crisis, which, as it was stated by many experts, was not able to manage its tasks fully even under quite peaceful circumstances, not to mention the time of the inflow of this extent of irregular migrants.

Speaking of crisis, it was found that the CEAS itself was in crisis and one of its core elements, the Dublin III Regulation because it was adopted to identify the MSs responsible for the asylum procedure and to facilitate the proceeding of the asylum applications. The regulation did not reckon with the possibility, that there might be MSs, lying mainly at the external border of the EU, which simply utilize the policy of *go-through,* and the carrying out of the procedures will place a burden on the MSs in the centre of the EU.

The situation is well characterised by a source close to the Committee, who said that "the asylum acquis as a construction was like an airplane which was constructed for flying in good weather conditions and it should have been strengthened for bad weather, as well".[65] Presumably, this construction of airplane was unable to fly even in good weather. One of the reasons for the crisis was the lack of solidarity from the side of the MSs to each other, and the fact that the MSs use emergency solutions taking only their own interests into account (for instance pushing forward the irregular migrants into other MSs).

There are two possible ways for the EU to develop the CEAS. The first being, to enhance the CEAS, which is a construction of regulations and directives, and it can strengthen the role of the authorities and institutions active in the area of asylum procedure ensuring them more rights. The second is to develop a new and common asylum procedure valid for the whole EU. The latter one does not seem too feasible.

[65] Szacsúri (2015): *op. cit.* 6.

For the functioning of this strengthened system with more rights, it is inevitable to ensure punctual and reliable data and to harmonise the data collection mechanism of the European Union from the definitions through common methods and procedures.

The hotspot approach introduced at the time of the crisis can be seen as a best practice, besides many disadvantages, because within this frame, the different institutions managing international migration cooperate and complement each other. Nevertheless, it is also important to develop a single legal background which regulates the operation of the hotspots. The current situation, the lack of a single regulation on the hotspots enables more flexible operation but a single regulation would obviously have many advantages, as well. Currently, the hotspot approach is a pilot project, and it is to be decided whether the high standards during the asylum procedure are really needed, since it would enable the access to the procedure only for a limited number of applicants and operate a demonstrative system. The extension of the hotspot approach to third-countries is also possible in order to guide the asylum applicants to the procedure already outside the EU.

In my point of view, the turning point of the crisis is manifested in the hotspot approach (beyond the MSs own solutions), which enabled the *survival* of the CEAS. However, to tackle the crisis and improve the asylum procedure sustainably, it is important to recast the CEAS, primarily the Dublin III Regulation, furthermore it is also inevitable to establish a common asylum procedure to ensure equal chances for every asylum applicant to be taken under international protection.

The common system based on the hotspot approach should develop the method of avoiding secondary movements of asylum applicants and a fair burden-sharing method should be developed which shares applicants according to the population figures and economic power of the MSs.

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Escaped from War and on the Border of Asylum Law and Children's Right: Response and Responsibilities of States

Anita Rozália Nagy-Nádasdi

Introduction

As mass influx of migrants arrives to the external border of the EU, the *survival migration*[1] drives thousands into border-crossing and perilous journey; the linkage between climate change, armed conflict and migration is with identifying this case. Thousands of children and youth arrive from persistent conflict zones to Europe yearly and the problem of determining which state is responsible for their interrupted childhood is the main question. There are several responses in different international legal frameworks but in this paper we examine them in order to find responses to how their rights are protected.

The international public law addresses holistically the situation of children who are affected by war. In this paper we are focusing the international treaties, as they are primarily binding contracts between states. We only touch upon the legal instruments of the United Nations regarding children and war. But we need to state here that the UN Security Council has a right under the UN Charter to oblige the States in its resolutions. These legal instruments are the basis of the UN peacekeeping missions and these resolutions alongside with the documents of the General Assembly have a great effect on the international law.

The international humanitarian law is the very first legal framework that tried to give a response to the need of children affected by armed conflict. The Geneva Conventions and its Additional Protocols contains several provisions regarding children[2] but the complete and complex protection they need could not be covered only by one framework.

The widely signed and ratified or accessed Convention on the Right of the Child signed in New York, 1989 (CRC)[3] is the first one that referred back to the international humanitarian law exactly on the issue of children and armed conflict. The Optional Protocol to

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[1] Betts, Alexander (2013): *Survival Migration: Failed Governance and the Crisis of Displacement.* Itacha, Cornell University Press.

[2] Article 51 of Geneva Convention (I) on Wounded and Sick in Armed Forces in the Field, 1949 and its commentary; Article 140 of Geneva Convention (II) on Wounded, Sick and Shipwrecked of Armed Forces at Sea, 1949 and its commentary; Article 85 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977; and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

[3] Convention on the Rights of the Child, New York, 1989. United Nations, *Treaty Series,* Vol. 1577. 3.

the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC)[4] closely links to the Convention and Sates intended to give a protective response by raising the age limit of child soldiering. In this paper we will look into the interpretation of the CRC done by its treaty body, the Committee on the Right of the Child (CRCee) through its comments.

Children often get into life threatening situation by armed conflict, and those who are forced into fleeing, alone or along with family members, are usually entitled to get international protection on the basis of the Convention on the Statues of Refugees (Refugee Convention) signed in Geneva in 1951.[5] Besides the interpretations of the Refugee Convention done by the UN High Commissioner for Refugees (UNHCR) as treaty body, we will examine the European application of the Refugee Convention. The European Union has a great effect on asylum, as it belongs to the shared competency of the states and the Common European Asylum System (CEAS) built on the responses of the Refugee Convention. Although from the aspects of the CRC it is a controversial situation since child soldiers are considered to be not only victims but also offenders because of the crimes they committed or were forced to commit, and for this reason they might be excluded from the subject of the beneficiaries of international protection. However, the protection of children's rights determines that the duty of the States to ensure the exercise of children's rights and the right to integration of such victims of violence – is responsible for the reparation of the children concerned because of their prior human rights violations.

In the final chapter we will show how the only judicial body, the International Criminal Court (ICC) gives responses to the endangerment of children by armed conflict that also provides reparation for the victims under international humanitarian law. The national responses should follow these binding international treaties. In practice this is happening slowly. This phenomenon has several reasons, such as protection of sovereignty and the responsibility for their own citizens. But the fragmented transportations of these international obligations have a societal effect in addition to the legal consequences, especially when the children concerned arrive in European countries as children or young adults.

International Law

Often those children who were involved in armed conflicts are the very same ones who left their country later because of the consequences of the involvement. The question if they became asylum-seekers later is an assumption, but the link between these two groups might exist. According to the data of international organisations, the place of origin of the children

[4] Optional Protocol to the Convention on the Rights of the Child on the Involvement of the Rights of the Child into force Children in Armed Conflicts, adopted on 25 May 2000, G.A. Res. A/RES/54/263 (12 Feb. 2002). It was promulgated by Act CLX of 2009.

[5] Convention relating to the Status of Refugees Geneva, 28 July 1951. United Nations, *Treaty Series,* Vol. 189. 137.; and Protocol relating to the Status of Refugees New York, 31 January 1967. United Nations, *Treaty Series,* Vol. 606. 267.

affected by armed conflict in 2016 converge with the place of origin of the migrant children who reached Europe in 2017.[6]

We assume that they are migrating nationally and internationally and they might have been forced to migrate. They may fall under the scope of the Refugee Convention. There are several thousands of people who do not fulfil the conditions set in Article 1 of the Refugee Convention.[7] These are the people who did not receive proper protection from their states and community.

Understanding the legal situation of these children, more precisely youth, we need to examine those binding international treaties that oblige the signatories to protect them. The international treaties create rights and obligations of those States that have consented to be bound by them (or by one of them), through ratification or accession. They are the source of international law *inter pares,* i.e. treaty law. A certain number of provisions may require action after ratification: measures have to be taken at national level to ensure their implementation as treaty obligations.

We assume that these provisions aim to protect children and create a fabric of law that might not cover as much as they should. By this method we try and hope to raise the *veil of ignorance.* These children are those who lost their childhood and their States; those who were responsible to provide them a secure period, failed them. The international community should provide protection to them in such cases for the sake of all of us.

International Humanitarian Law

Among others, the Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949 (Geneva Convention IV)[8] and the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (Additional Protocol I)[9] determine the child's protection in armed conflict. This was the very first legal instrument that dealt with the issue of children in armed conflict.

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[6] According to the Annual Report of the Special Representative of Security-General for Children and Armed Conflict, the concerned states for at least 4,000 verified violations by government forces and more than 11,500 verified violations by the range of non-State armed groups are Afghanistan, the Central African Republic, Columbia, the Democratic Republic of the Congo, Iraq, Mali, Myanmar, Somalia, Sudan, the Syrian Arab Republic, Yemen in 2016. A/72/361–S/2017/821. Available: https://childrenandarmedconflict.un.org/millions-of-children-caught-in-conflict-victims-and-targets-of-despicable-harm/ (Accessed: 10.04.2018). According to the report of the UNCHR, International Migration Organisation and United Nation Children's Fund (UNICEF) from a total of 16,500 children 11,400 accompanied and unaccompanied children arrived to Europe from Kuwait, the State of Palestine, the Democratic Republic of the Congo, Iraq, Afghanistan, the Syrian Arab Republic, Pakistan, Iran, Nigeria, Eritrea, Bangladesh, The Gambia, Mali, Somalia, Senegal, Cote D'Ivoire, Guinea Conakry, Morocco, Algeria between January and June 2017. Available: https://reliefweb.int/sites/reliefweb.int/files/resources/60348.pdf. (Accessed: 10.04.2018)

[7] According to the UNHCR, there are 803,100 people in 2016 who fall outside the protection of the Refugee Convention. Available: www.unhcr.org/globaltrends2016/ (Accessed: 10.04.2018)

[8] Available: https://ihl-databases.icrc.org/ihl/INTRO/380 (Accessed: 10.04.2018). 196 State Parties came into force on 21.10.1950.

[9] Available: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/470 (Accessed: 10.04.2018). 174 State Parties came into force on 07.12.1978.

Provisions regarding children in the Geneva Conventions and Additional Protocols

In this chapter we will examine the children related provisions of the Geneva Convention IV and Additional Protocol I. These legal instruments were the first after World War II that paid special attention to children affected by armed conflict. These treaties tried to handle their situation with a holistic approach and have a regulation regarding age, access to justice, physical protection, detention, participation in hostilities, identification, education, cultural environment, education, clothing.

It is commonly agreed that major parts of both Protocols are not completely new law but to a varying extent give expression to customary law.[10] Unlike Protocol I, Protocol II[11] on international armed conflict was drafted against the background of a customary law which contained few relevant provisions. Indeed, some States argued that there was no customary law regarding the conduct of internal armed conflicts. This sentiment which followed the ensure that version of the Martens Clause, which appears in the preamble to Protocol II, contains no reference to principles of international law. This, together with the hostile attitude of many States towards the whole Protocol II, has led commentators to argue that none of the provisions of the Protocols can be regarded as reflecting customary law.

The Geneva Convention IV does not offer any common definition of the child. Children under the age of 7 are mentioned not as exclusive bearers of certain rights but only in relation to the rights of their mothers. Neither Additional Protocol I nor Additional Protocol II[12] contains a fixed age limit for a person considered to be a child.[13] The Geneva Conventions and its Additional Protocols contain provisions regarding the question of children's participation in hostilities. Their active involvement in armed conflict not solely as victims but also as participants has possibly the most drastic effects on their childhood and development. At the Diplomatic Conference of 1977, the drafters of the Additional Protocol I were not able to identify a generally accepted rule and the proposal of prohibition of the recruitment of persons below 18 years of age was rejected. The result was a compromise, and it is possible to understand the point of view adopted by the Diplomatic Conference without fully agreeing with it.

Protection of children explicitly laid down in Article 77.

"1. Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.

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[10] Gasser, Hans-Peter (1991): Negotiating the 1977 Additional Protocols: Was it a waste of time? In Delissen, Astrid J. M. – Tanja, Gerard J. eds.: *Humanitarian Law of Armed Conflict: Challenges Ahead: Essays in Honour of Frits Kashoven.* Dordrecht–Boston–London, Martinus Nijhoff Publishers. 85.

[11] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977 (Additional Protocol II).

[12] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977. Available: https://ihl-databases.icrc.org/ihl/INTRO/475?OpenDocument (Accessed: 10.04.2018)

[13] Heintye, Hans Joachim – Lülf, Charlotte (2015): Special Rules on Children. In Claphem, Andrew – Gatea, Paola – Sassoli, Marco eds.: *The 1949 Geneva Convention. A commentary.* Oxford, Oxford University Press. 1293.

2. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavour to give priority to those who are oldest.

3. If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war.

4. If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.

5. The death penalty for an offence related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed."[14]

As stated before, the direct participation raises several questions. Article 77 does not prohibit the form of indirect participation such as support activities; however, children may be involved in transporting of weapons and munition, as well as in the collection in information by reconnaissance missions and these actions are not covered by the Additional Protocols. Such participation includes hostile acts harmful to the enemy without using a weapon, which raises the question of whether it might constitute direct participation in hostilities. Whatever response is given to this question, the guiding principle in each scenario is that the provision of international humanitarian law on child recruitment must be read in conjunction with the international human rights law.[15]

Furthermore, the physical protection of children within the Geneva Conventions is not explicitly addressed. Reference to age is given among others in Article 27(3) Geneva Convention IV,[16] but they are general references to age rather than protection of children or the benefits they enjoy according to their particular needs and vulnerabilities. Identification disc in Article 24(3) Geneva Convention IV[17] was debated due to lack of standardisation

[14] Article 77, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Protection of children. Available: https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8F7D6B2DEE119FBAC12563CD0051E0A2 (Accessed: 10.04.2018)

[15] Heintye–Lülf (2015): *op. cit.* 1302.

[16] "Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war." Article 27(3) of the Geneva Convention IV.

[17] "They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means." Article 24(3) of the Geneva Convention IV.

at that time but it was the sole example of a means of identification. Due to the suggestion of the International Committee of the Red Cross (ICRC), the age limit was lower than 15; it was thought children over the age of 12 were able to clarify their identity themselves.

The broad cultural environment in which a child grows up is emphasised by the Geneva Conventions, including moral, religious and traditional values. Article 24 of the Geneva Convention IV enriches broad protection for the maintenance of children. Being incorporated in Part II, Article 24 applies to children regardless of their nationality. It does not give a detailed instruction on how to implement the obligation; it is left to the discretion of the state to choose the appropriate means. Not only in time of occupation[18] but during detention,[19] it enshrines concrete provisions for internees with regard to religious, intellectual, physical activities, concentrating on the needs of children. The attendance of school outside of the place of internment must also be ensured and special playground shall be placed at the disposal of children and young people so that they can engage in physical exercises, sports, and outdoor games, ab obligation was later renewed in Article 78(2) Additional Protocol I and Article 4(3) a) Additional Protocol II.[20] Disciplinary punishment must take age into account, as well as sex and conditions of health, and may never be inhuman, brutal,

[18] "The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children. The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage. It may not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it. Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education, if possible by persons of their own nationality, language and religion, of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend. A special section of the Bureau set up in accordance with Article 136 shall be responsible for taking all necessary steps to identify children whose identity is in doubt. Particulars of their parents or other near relatives should always be recorded if available. The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war, which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years." Article 50 of the Geneva Convention IV.

[19] "The Detaining Power shall encourage intellectual, educational and recreational pursuits, sports and games amongst internees, whilst leaving them free to take part in them or not. It shall take all practicable measures to ensure the exercise thereof, in particular by providing suitable premises. All possible facilities shall be granted to internees to continue their studies or to take up new subjects. The education of children and young people shall be ensured; they shall be allowed to attend schools either within the place of internment or outside. Internees shall be given opportunities for physical exercise, sports and outdoor games. For this purpose, sufficient open spaces shall be set aside in all places of internment. Special playgrounds shall be reserved for children and young people." Article 94 of the Geneva Convention IV.

[20] Heintye–Lülf (2015): *op. cit.* 1299–1300.

dangerous in accordance with the Geneva Convention III[21] and the Geneva Convention IV.[22] Children are entitled to assistance and care, medicine, food and clothing.[23]

These international instruments have their limits. They were created in 1949 and treated children as protected persons. The drafting procedure of the Additional Protocol and the drafting period of the Convention on the Rights of the Child were made in the 70s. The goal of the Additional Protocol regarding children was prestigious but retrospectively it was too challenging. There were several expectations they failed to meet: the level of measures expected, the age limit and the type of involvement in armed fights. However, we need to identify those provisions that were the starting point of the measures of current international human rights systems.

Critics of international humanitarian law

The measures taken on international level

Although the aims of the Additional Protocols were to codify the already existing customary law, as we saw, this mission was not fully completed. The other reason was that the humanitarian law itself touches upon several different interests. The chevalier attitude of soldiers, the long lasting humanitarian attitude is one practical aspect. The other frequent attitude of contracting states − represented by soldiers − was not to give up too much from those tools that potentially could be useful for winning. Not mentioning the fact that the old cliché might have worked again: one person's terrorist is another person's freedom fighter. The Additional Protocol I applied under international armed conflict, the Additional Protocol II is applicable during internal hostilities, and these self-regulatory will of States was already a great step forward to reduce casualties in armed conflict. All these circumstances were taken into account when contacting parties reached the compromised version of the Additional Protocols.

[21] "The disciplinary punishments applicable to prisoners of war are the following:(1) A fine which shall not exceed 50 per cent of the advances of pay and working pay which the prisoner of war would otherwise receive under the provisions of Articles 60 and 62 during a period of not more than thirty days.(2) Discontinuance of privileges granted over and above the treatment provided for by the present Convention. (3) Fatigue duties not exceeding two hours daily. (4) Confinement. The punishment referred to under (3) shall not be applied to officers. In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war." Article 89 of the Geneva Convention III.

[22] "The disciplinary punishments applicable to internees shall be the following: (1) A fine which shall not exceed 50 per cent of the wages which the internee would otherwise receive under the provisions of Article 95 [Link] during a period of not more than thirty days. (2) Discontinuance of privileges granted over and above the treatment provided for by the present Convention. (3) Fatigue duties, not exceeding two hours daily, in connection with the maintenance of the place of internment. (4) Confinement. In no case shall disciplinary penalties be inhuman, brutal or dangerous for the health of internees. Account shall be taken of the internee's age, sex and state of health. The duration of any single punishment shall in no case exceed a maximum of thirty consecutive days, even if the internee is answerable for several breaches of discipline when his case is dealt with, whether such breaches are connected or not." Article 119 of the Geneva Convention IV.

[23] Article 23, Article 24, Article 38 para 5, Article 85 para 5, Article 70(1), Article 50, Article 91, Article 127 of the Geneva Convention IV and Article 79 of Additional Protocol I.

The Additional Protocols do not put unconditional obligations on parties to a conflict with respect to prohibiting child-participation in hostility. Article 77(2) of Protocol I concerning parties to an international conflict says *take all feasible measures*.[24] It does not say *all necessary measures* which would be a sign of a stronger commitment.

The Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflict (CDHH), the text of Article 77(2) is the result of a compromise reached among the Conference delegations. It was a flat ban on the recruitment of children while omitting any absolute prohibition on voluntary participation by children, as this was felt to be unrealistic, particularly in occupied territories, and in wars of national liberation.[25]

This is a weak provision from the point of view of child-protection: it fails to protect children, who are older than fifteen years; only feasible measures must be taken in order to prevent children from taking a direct part in hostilities, and there is a no ban on the so-called indirect child-participation.

The age limit

The Geneva Convention IV does not set a lower age limit that would define who can be regarded as a child during hostilities. In relation with women there is a reference to children under 7 years old. The Additional Protocol I or Additional Protocol II does not contain a fixed age limit for a person considered to be a child.[26]

The Additional Protocol I set the age limit at 15 years as a ban to use children in direct armed conflict. But the determination of childhood is problematic and the age as the access for protection raises several questions, such as an older but still under 18 years old person is not entitled to protection. On the basis of the International Red Cross' commentaries, it can also be interpreted that persons according to CRC definition (see below) can be considered children.[27]

Direct or voluntary participation

The humanitarian law standards systematically use the expression of *direct* and *active* participation of children, but they do not define the term *direct*.[28] Generally, child soldiers during engagement mainly do not fight i.e. causing personal damages to the enemy. Studies and reports of the Truth Commissions show that children were used in other ways during fights, but they are regarded as child soldiers, *killing machines* by the outside

[24] Delissen, Astrid J. M. (1991): Legal protection of child-combatants after the protocols: reaffirmation, development or a step backwards? In Delissen–Tanja eds.: *op. cit.* 145.
[25] Delissen (1991): *op. cit.* 154.
[26] Heintye–Lülf (2015): *op. cit.* 1295.
[27] Csapó Zsuzsanna (2011): *Fegyverekkel szemben, fegyverekkel kézben.* Budapest, Publikon Kiadó. 50.
[28] Csapó (2011): *op. cit.* 223.

world. The literature is divided[29] by the question that both forms of offenses i.e. voluntary recruitment and enlistment shall be committed; finally the OPAC contains both of them, although it is complicated to decide what other sort of coercive circumstances led to *voluntary* recruitment.[30]

The head of the US delegation, Ambassador G. H. Aldrich stated that "Article 77 of the Protocol (had) a flat ban on the recruitment of armed forces, even when the children volunteer. [against the ICRC Commentary] …the word recruitment in Article 77(2) covers both compulsory and voluntary enrolment, which means that the Parties must also refrain from enrolling children under fifteen years of age who volunteer to join the armed forces."[31]

The humanitarian law is one legal structure in what those who committed international crimes during armed conflict can be punished. It is the law of war that set a ban to protect children even if it is controversial, still it was advanced in its time. One way of the protection of children is to end the impunity of the perpetrators.

In summary, it is hard to evaluate the efficiency of international humanitarian law regarding the protection of children involved in armed conflict. Some said that standing along the Geneva Convention IV cannot provide a sufficient framework, and one supporting evidence of the rising of the age limit became part of the framework of human rights. In that regard it is true that the weak implementation of international humanitarian law is shown by the works of the Committee on the Rights of the Child.[32]

International Human Rights

The CRC and OPAC

CRC was the first international legal instrument that defined a child as any person below the age of 18. CRC has already been signed by every state of the world, except the USA.[33] Determining the age of children involved in armed conflict caused disagreements among

[29] Happold, Matthew (2000): Child Soldiers in International Law: The Legal Regulation of Children's Participation in Hostilities. *Netherlands International Law Review,* Vol. 47, No. 27. 214.

[30] Coomarasawany, Radhika (2010): The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict – Towards Universal Ratification. *The International Journal of Children's Rights,* No. 4. 540.

[31] Delissen (1991): *op. cit.* 156.

[32] Heintye–Lülf (2015): *op. cit.* 1311.

[33] Available: treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en (Accessed: 10.04.2018)

contracting parties already during drafting the CRC, but the signatories had to create the age limit of 15 in Article 38[34] by consensus.

The failure of setting the age limit higher as it was used in the Geneva Conventions and its Additional Protocols led to the drafting of another international treaty, the OPAC.[35] The Committee on the Rights of the Child, which monitors the implementation of CRC, paid attention on the second day of the first meeting to the issue of children involved in armed conflicts, and incorporated it into its procedural rules as an issue that requires regular consideration.[36] The role of NGOs was decisive at the establishment of OPAC, especially the umbrella organisation Coalition to Stop the Use of Child Soldiers (1998), which also had a significant influence on the slowly improving drafting process of OPAC.[37]

In 1995, based on the mandate of the UN Secretary-General (UN SG), Graca Machel wrote a report about the *Impact of Armed Conflict on Children*.[38] As a result of the report, the UN SG created the position of Special Representative of the Secretary-General for Children and Armed Conflict[39] (SRSG CAAC). The SRSG CAAC writes annual reports on the impact of armed conflicts on children and gives recommendations to OPAC States Parties.[40]

The OPAC reflects a compromise between legal cultures because it permits voluntary recruitment below the age of 18, however a binding declaration is required. This would have been a double-edged sword, but practice of ratification showed that most of the parties intended to raise the age limit of recruitment. As the UN Security Council stressed in Resolution 2068(2012), governments have the primary role in providing protection and relief to all children, and all UN action must be designed − only – to support and supplement the already existing protection and rehabilitation roles of national governments.[41]

In sum, the use of children under the age of 15 in armed fights and conflicts is a war crime according to the rules of humanitarian law, and the compulsory or voluntary recruitment and participation in armed conflict of persons under the age of 18 is the violation of human rights.[42] As the prohibition of military recruitment and the use of children under

[34] "1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict." Article 38 of the CRC.

[35] Breen, Claire (2003): The Role of NGOs in the Formulation of and Compliance with the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict. *Human Rights Quarterly,* No. 2. 460.

[36] Breen (2003): *op. cit*. 461.

[37] Coomarasawany (2010): *op. cit*. 537.

[38] Available: www.childrenandarmedconflict.un.org/mandate/the-machel-reports/ (Accessed: 10.04.2018)

[39] Available: www.childrenandarmedconflict.un.org (Accessed: 10.04.2018)

[40] OPAC has been ratified by 166 states. Available: childrenandarmedconflict.un.org/mandate/country-status-2/ (Accessed: 10.04.2018)

[41] Heintye–Lülf (2015): *op. cit*. 1306.

[42] The age limit of voluntary recruitment during armed fights is 16 years but in several countries it was raised over 18 years in their reservation.

the age of 15 became a part of humanitarian law, the ratification of OPAC is forming the prohibition of recruitment and participation in armed conflicts of children under the age of 18 into customary law.[43] Customary law applies in non-international armed conflicts as we saw at the examination of international humanitarian law. State practice establishes the rule that children affected by armed conflicts are entitled to special respect and protection. This rule constitutes a norm of the Committee of International Law (CIL).[44] Although CIL is a pillar that influence international human rights law, CRC was the first treaty to contain IHL law and it was a breakthrough.[45] It has to be reckoned that the original object of CRC has become fulfilled with OPAC, since as a human rights instrument it covers the gaps that humanitarian law could not.[46]

The soft law: Paris Principles and Paris Commitments

During 10 years of drafting procedure the OPAC, the so called Cape Town Principles (1997) were accepted in Africa at a conference organized by UNICEF.[47] The Cape Town Principles has become part of the international customary law, known as Paris Principles and Paris Commitments after its actualization in 2017. Although the instruments contain only normative standards through which they define the subject group in broader sense than the humanitarian law and they are used widely by international organisations, yet they have no binding effect. The main result of the Paris Principles and Paris Commitments is the definition of the children affected by armed conflict.

Children involved in armed forces are handled not only as combatants, but can also complete passive support tasks, for instance guards, porters, spies, cooks, girls or boys forced into the role of *bush wife* who are continuously the victims of sexual and physical abuse.[48] The issue of *active* and *direct* participation was finally synthesized in this concept. The Paris Principles and Paris Commitments used by CRCee during its constructive dialogue with signatories of OPAC served as a guidance for the interpretation of OPAC.

The work of the Committee on the Right of the Child

The CRCee is a UN treaty body which is entrusted with the periodic review of the implementation of the CRC, the OPAC and the other two Optional Protocols of the CRC. Their

[43] Everett, Jennifer C. (2009): The battle continues: Fights for a more child-sensitive approach to asylum for child soldiers. *Journal of International Law,* No. 21.; Coomaraswany (2011): *op. cit.* 539.

[44] Heintye–Lülf (2015): *op. cit*. 1305.

[45] Ibid. 1311.

[46] Breen (2003): *op. cit.* 463.; Csapó (2011): *op. cit.* 20. The Committee of the International Red Cross had the same conclusion by interpreting Article 24 and 89 of the Geneva Convention IV in 1948.

[47] The Paris commitments to protect children from unlawful recruitment or use by armed forces or armed groups. Available: www.unicef.org/protection/files/Paris_Principles_EN.pdf (Accessed: 10.04.2018); and the Paris principles and guidelines on children associated with armed forces or armed groups. Available: www.unicef.org/emerg/files/ParisPrinciples310107English.pdf. (Accessed: 10.04.2018) Both were adopted at the international conference *Free children from war* in Paris, in February 2007.

[48] Paris Principles 2007 1.0.-1.1.

opinion on certain provisions of the treaties is not binding. But their recommendations and comments operate as a *soft law* of the international law and as such, it is part of the texture of the legal framework. It addresses all signatories and newly joining States shall take into consideration these instruments when transforming and implementing the CRC and its optional protocols.

General Comment No. 6 (2005) Treatment of unaccompanied and separated children outside their country of origin

One of the results of the work of the CRCee is to touch upon the issue of children affected by armed conflict form a migratory angle. The objective of the General Comment is to draw attention to the particularly vulnerable situation of unaccompanied and separated children; to outline the multifaceted challenges faced by States and other actors in ensuring that such children are able to access and enjoy their rights; and, to provide guidance on the protection, care and proper treatment of unaccompanied and separated children based on the entire legal framework provided by the Convention on the Rights of the Child.[49]

The General Comment No. 6 of the Committee of the Right of the Child requires that the signatories of CRC shall provide residence permit to the former child soldiers which may not only be entailed by refugee status − or by subsidiary protection in case of an EU Member State − but any other humanitarian legal title, too. The obligation of the state to integrate the victims shall also cover those who were perpetrators and cannot be expelled from the territory of a state next to those who received international protection.

Regarding the former child soldiers in Section 56–57, the integration can be put aside if the children above the age of 15 constitute serious security harm.[50] In that regard the CRCee does not overstep the provisions of international humanitarian law in 2006, 4 years before the OPAC was signed but expressly tried to reconcile the age limit differences explained above by referring back to international human rights law. Furthermore, as an addition to the issue of age, the CRCee expresses its view that each State Party shall develop the age

[49] General Comment No. 6, Section 1.

[50] "Child soldiers should be considered primarily as victims of armed conflict. Former child soldiers who often find themselves unaccompanied or separated at the cessation of the conflict or following defection, shall be given all the necessary support services to enable reintegration into normal life, including necessary psychosocial counselling. Such children shall be identified and demobilized on a priority basis during any identification and separation operation. Child soldiers, in particular, those who are unaccompanied or separated, should not normally be interned, but rather, benefit from special protection and assistance measures, in particular, as regards their demobilization and rehabilitation. Particular efforts must be made to provide support and facilitate the reintegration of girls who have been associated with the military, either as combatants or in any other capacity." Section 56 of General Comments No. 6. "If under certain circumstances, exceptional internment of a child soldier over the age of 15 years is unavoidable and in compliance with international human rights and humanitarian law, for example, where s/he poses a serious security threat, the conditions of such internment should be in conformity with international standards, including article 37 of the Convention and those pertaining to juvenile justice, and should not preclude any tracing efforts and priority participation in rehabilitation programs." Section 57 of General Comments No. 6.

and gender based psychological services to the children involved in armed conflict according to Section 60.[51]

One of the most forward-thinking provision of the General Comments No. 5 is that in Section 88 it states that local integration is a durable solution: "Local integration is the primary option if return to the country of origin is impossible on either legal or factual grounds. Local integration must be based on a secure legal status (including residence status) and be governed by the Convention rights which are fully applicable to all children who remain in the country, irrespective of whether this is due to their recognition as a refugee, other legal obstacles to return, or, whether the best interests-based balancing test has decided against return."[52] That provision determines the long term aims of all signatories; and clearly shows how all State Parties are responsible for providing accurate response for those children who were affected by armed conflict.

Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration

After the General Comment No. 6, as another end of the arch, we examine the latest instrument of the CRCee. The Joint General Comments are the result of a united work of the CRCee and another UN treaty body, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. These instruments were partly a response to the refugee protection crisis Europe faced since 2015, still we cannot forget about its universal nature.

The aim of the Joint General Comment No. 3 is "to provide authoritative guidance on legislative, policy and other appropriate measures that should be taken to ensure full compliance with the obligations under the Conventions to fully protect the rights of children in the context of international migration".[53] The cross-cutting character of the Joint General Comment No. 3 sheds light on the interlinkages between the two international treaties and gives guidance to states in case they face legislative gaps.[54] Its wording makes clear

[51] "States shall develop, where needed, in cooperation with international agencies and NGOs, a comprehensive age appropriate and gender sensitive system of psychological support and assistance for unaccompanied and separated children affected by armed conflict." Section 60 of General Comments No. 6.

[52] General Comment No. 6. 22. Available: http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf (Accessed: 10.04.2018)

[53] Section 7 of the Joint General Comment No. 3.

[54] "The Committees reaffirm the application of articles 41 of the Convention on the Rights of the Child and 81 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and reiterate that the provisions in domestic and international legislation that are the most conducive to the realization of the rights of all children in the context of international migration shall apply in cases where standards differ. Furthermore, a dynamic interpretation of the Conventions based on a child-centred approach is necessary to ensure their effective implementation and the respect, protection and fulfilment of the rights of all children in the context of the increasing number of challenges that migration poses for children." Section 20 of the Joint General Comment No. 3.

the position of the two treaty body on the level of state responsibilities regarding children. "The Committees encourage States parties to ensure that the authorities responsible for children's rights have a leading role, with clear decision-making power, on policies, practices and decisions that affect the rights of children in the context of international migration. Comprehensive child protection systems at the national and local levels should mainstream into their programmes the situation of all children in the context of international migration, including in countries of origin, transit, destination and return. In addition to the mandates of child protection bodies, authorities responsible for migration and other related policies that affect children's rights should also systematically assess and address the impacts on and needs of children in the context of international migration at every stage of policymaking and implementation. States parties should develop policies aimed at fulfilling the rights of all children in the context of international migration, in particular regarding migration management objectives or other administrative or political considerations."[55]

Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on state obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return56

The Joint General Comment No. 4 is a more specific element of the *soft law,* because it addresses only the status of migrant children from the angle of human rights. It is built around the crucial issues of fundamental rights of migrant children such as age-assessment, the right to liberty, due process guarantees and access to justice, right to name, nationality, and family life. The issue of protection from all forms of violence and abuse has a special relevance, because it entails child labour. The International Labor Organization's Convention No. 182 was signed in 1999, a year before OPAC and it stated that the worst form of child labour is child soldiering.[57] It is a widely accepted treaty, 181 countries have already ratified it.

International Refugee Law

Refugee Convention

The right of asylum is historically rooted in an ancient juridical concept according to which persons persecuted by their own country may be protected by another sovereign authority

[55] Section 14–15 of the Joint General Comment No. 3.

[56] Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on state obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 2017, CMW/C/GC/4-CRC/C/GC/2.

[57] The worst Forms of Child Labour Convention, 1999, (No. 182). Available: www.ilo.org/ipec/facts/ILOconventionsonchildlabour/lang–en/index.htm (Accessed: 10.04.2018)

for example a state or a church. Later, the right of sanctuaries was first codified by king Ethelbert of Kent considering the right of sanctuary as being inviolable and under royal protection which transformed into the right to asylum as we know it nowadays. Today, the idea of global protection is a part of customary international law as rendering victims of persecution to their persecutor is a violation of the non-refoulement principle.

The refugee status determination procedure (RSD) in Europe is governed by the Refugee Convention and the *asylum acquis* of the Common European Asylum System (CEAS) and the national legislation. Both the Refugee Convention and the directives and regulations of CEAS contain several regulations regarding children. The CRC principle of best interest of the child should be taken into account in every level of the procedure together with the protection of those rights that intended to facilitate their reception and/or integration into the host society.

This article is about the responses of the responsibilities of state, but because of the direct applicability of the EU law in most European states and the primacy of the EU law over national legislation in certain cases are our reasons to examine the CEAS regulation in this article, because it is an effective response to apply similarly between states; noting as a first step, that the Refugee Convention is the basis of the CEAS. The CEAS is a legal system created in order to facilitate the harmonizing effort of the Member States of the European Community and later the European Union. The asylum is part of an era of freedom, security and justice, and as such it belongs to those with shared competencies in line with Article 4(2) k) of the Treaty on the European Union.[58] There are already two phases of recast of those regulations and directives which are regarded as CEAS. The first phase was the creation of CEAS between 1999–2010 when the national implementation of these *acquis* happened. The first recast of the instrument was an eminent need and based on the feedbacks of the Member States, evaluations of the nation implementation and jurisprudence.

The currently applicable CEAS, namely the Dublin III Regulation,[59] the Eurodac Regulation,[60] EASO Regulation,[61] the Reception Condition Directive,[62] the Asylum

[58] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union – Consolidated version of the Treaty on the Functioning of the European Union – Protocols – Annexes – Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, Official Journal C 326, 26/10/2012 P. 0001 – 0390.

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

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

[61] Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

[62] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

Procedure Directive[63] and the Qualification Directive[64] are under revision since 2016. The response of the EU to the refugee protection crises set out in the European Migration Agenda[65] and as it is envisaged, the CEAS II phase reform has been needed. During this reform one of the major conmen is the better protection of migrant children.

Most of the case the asylum authority, especially in Europeans are the one that meet those victims who residing outside of the country of origin. The enlistment and voluntary recruitment committed against the asylum-seeker children are those sort of war crimes that entail the duty of reporting *ex officio* to the investigatory authorities. But those who committed war crimes themselves – even under duress – are excluded from the procedure.[66] The victims of child soldiering may be persecuted[67] in line with Section 88 of the General Commentary No. 6 of the Committee of the Right of the Child[68] and the suggestion in SR SG CAAC report,[69] providing a compliance with Article 38 of CRC and special guarantees described in Guidelines of the UN Economic and Social Committee (2005),[70] however, it may not interfere with their *status* as victims.[71]

Exclusion clauses

The right to asylum has already been codified by multilateral treaties. Article 14 of the Universal Declaration of Human Rights[72] states that "everyone has the right to seek and to enjoy in other countries asylum from persecution". The Refugee Convention defines the

[63] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

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

[65] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration. Brussels, 13.05.2015 COM(2015) 240 final.

[66] Szép Árpád (2013): A menedékjog mint a büntetőjogi felelősségre vonás akadálya. *Büntetőjogi Szemle,* No. 1–2. 48–58.; Rossi, Elisabeth (2013): Special Track for Former Child Soldiers: Enacting a "Child Soldier Visa" as Alternative to Asylum Protection. *Berkeley Journal of International Law,* No. 2.

[67] Csapó (2011): *op. cit.* 228.

[68] Available: http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf (Accessed: 10.04.2018)

[69] Available: childrenandarmedconflict.un.org/wp-content/uploads/2015/10/15-18739_Children-in-Conflict_FINAL-WEB.pdf (Accessed: 10.04.2018)

[70] UN Guideline on justice for child victims and witnesses of crime. ECOSOC Resolution 2005/20 of 22 July 2005. Doc.E/2005/INF/2/Add.1 of 10 August 2005.

[71] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA OJ L 315, 14.11.2012. 57–73.

[72] UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

elements for eligibility for asylum more precisely, though.[73] The ECtHR has also declared in cases concerning extradition, expulsion or deportation of individuals that Article 3 of the European Convention on Human Rights prohibits in absolute terms expulsion if the person concerned would face a real risk of torture or inhuman or degrading treatment or punishment in the country of destination.

Article 1F of the Refugee Convention provides possibility to States to exclude certain asylum-seekers and refugees from refugee status. By establishing the system of exclusion clauses States had sought to achieve two legitimate goals, namely to protect refugee status from abuse by prohibiting its grant in undeserving cases and to ensure that those who had committed grave crimes in World War II, and other serious non-political crimes or who were guilty of acts contrary to the purposes and principles of the United Nations be punished. Nevertheless, due to the fact that the application Article 1F imposes limitation on a humanitarian provision, it should be interpreted restrictively and be applied only in particular and legally well-based circumstances.

The exclusion clauses[74] from RSD contain the reasons of threat to national security. The practical national application of this clause and the European case law assist us to define if the reason of rejection is in line with the goals of right to international protection. The question of children or youth should be excluded is still not responded due to the special rules of RSD, which will be detailed below.

The legal migration tried to deal with the issue of exclusion of children affected by armed conflict in the USA. They suggested a special track of visa for former child soldiers,[75] but it was controversial. The possible responses of the EU need to be examined thoroughly. The literature is divided whether these children are perpetrators or victims, or both. The international legislation addresses both options and using the principle in the best interest of the child as guiding on in times of collusion.

Soft Law: UNHCR Guideline No.12 Claims for refugee status related to situations of armed conflict and violence under Article 1A (2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions

Such as by the comments of CRCee, the UNHCR is the interpreter of the Refugee Convention. There is no tribunal or judicial body of their own created by the signatories in case of dispute over the regulation of the Refugee Convention. The situation is the same with the CRC. Nevertheless, the European Court of Human Rights which is the responsible

[73] "A refugee is a person who is outside their own country's territory or place of habitual residence in case of stateless persons owing to well-founded fear of persecution on one or more of the protected grounds: race, nationality, religion, political opinion and belonging in any particular social group and is unable or, owing to such fear, is unwilling to avail himself of the protection of the country of nationality or habitual residence and as a result of such events, is unable or, owing to such fear, is unwilling to return to it." Article 1 of the Refugee Convention.

[74] Article 1F of the Refugee Convention and Article 12 of the Qualification Directive.

[75] Rossi (2013): *op. cit.* 392–461.

dispute-solving body over the European Convention of Human Rights frequently cites the Refugee Convention and the Guidelines of the UNHCR.

Guideline No. 12 was created as a response to the refugee protection crisis in Europe in 2015. It is stated that children are entitled to international protection according to the UNHCR Guideline No. 12[76] and the applicant only has to presume the well-founded fear that may amount to the level of persecution.

This is not the Guideline that deals with the case of refugee children, it is only the newest response to the armed conflict. The long lasting armed conflicts are one of the major factors which act as push factors. The intent to deal with that push factor was a response to advise the states how to fulfil their obligations as signatories in line with the objective of the Refugee Conventions. It interprets armed conflict and its long lasting results,[77] and specifies how to take into account the situation of children during the assessment, especially their recruitment.[78]As the RDP reaches its end, the phase when a refugee authority shall establish the facts, the UNHCR Guideline No. 12 does states that it poses significant challenges regarding children and armed conflict, still obtaining reliable and accurate country of origin information is an obligatory task.

[76] Guidelines on International Protection No. 12, 6 December 2016. Available: www.unhcr.org/publications/legal/58359afe7/unhcr-guidelines-international-protection-12-claims-refugee-status-related.html (Accessed: 27.07.2017)

[77] "18. In situations of armed conflict and violence, whole communities may be affected by, and be at risk from, aerial bombardments, the use of cluster munitions, barrel bombs or chemical weapons, artillery or sniper fire, improvised explosive devices, landmines, car bombs or suicide bombers, or siege tactics, for example. The systematic denial of food and medical supplies, the cutting of water supplies and electricity, the destruction of property or the militarization or closure of hospitals and schools may also constitute serious human rights or IHL violations that affect whole communities. Exposure to such actions can amount to persecution within the meaning of Article 1A(2) of the 1951 Convention, either independently or cumulatively.
19. Both the direct and indirect consequences of situations of armed conflict and violence may also constitute persecution, including long-term consequences of these situations, such as demolition of vital infrastructure, insecurity and abject poverty. More specifically, situations of armed conflict and violence may seriously affect the rule of law as well as state and societal structures and support systems. Situations of armed conflict and violence may lead to a full or partial collapse of government institutions and services, political institutions and the police and justice system. Vital services such as water, electricity and sanitation may be disrupted. Increased crime levels; looting and corruption; food insecurity, malnourishment or famine; constraints on access to education and health care; serious economic decline, destruction of livelihoods and poverty may also ensue. These consequences of situations of armed conflict and violence may be sufficiently serious, either independently or cumulatively, to constitute persecution and create a well-founded fear of being persecuted. This is also relevant where the risk of persecution emanates from non-state actors (see paragraphs 28 to 30 of these Guidelines)." Sections 18–19 of UNHCR Guideline No. 12.

[78] "Situations of armed conflict and violence frequently involve exposure to serious human rights violations or other serious harm amounting to persecution. Such persecution could include, but is not limited to, situations of genocide and ethnic cleansing; torture and other forms of inhuman or degrading treatment; rape and other forms of sexual violence; forced recruitment, including of children; arbitrary arrest and detention; hostage taking and enforced or arbitrary disappearances; and a wide range of other forms of serious harm resulting from circumstances mentioned, for example, in paragraphs 18 and 19 of these Guidelines." Section 3 of UNHCR Guideline No. 12.

Access to Justice

The right to justice of the victims is supported by the opinion of UN Human Rights Committee under which if a foreign citizen gains the right to enter the territory of the State Party, from that time they are entitled to enjoy the rights undertaken as an obligation by the State Party.[79] Regarding our subject matter, the children affected by armed conflict are victims of war crimes. War crimes do not lapse; therefore, the current age of the victim is irrelevant, and the only relevant fact is that at the time of the commitment they were children, under the age of 18.

The International Criminal Court is the competent dispute resolution authority that applies international humanitarian law. The court has no jurisdiction over persons who have not reached the age of 19 at the time of the commission of the offence, says Article 26 of the Rome Statute.[80] The prosecution of child soldiers falls under the jurisdiction of the state parties or another international tribunal with jurisdiction over children but not the ICC itself. This is the criminal prosecutorial aspect of the participation of children in armed conflict. The Special Court for Sierra Leone Statue offers through a solution for the complicated relationship between the avoidance of impunity on the one hand and respect for mental and intellectual maturity on the other. The Statue provides the Court with competence to try children or juvenile soldiers between 15–18 years of age. These cases referred to truth and reconciliation mechanism according to Article 15(5) of the Statue of the special court.[81]

The jurisdiction of the ICC is a complementary one in those countries of what the Rome Statute was signed and ratified. The status of the transformation of the Rome Statute raises questions in some country, and Hungary is one of them. Although the status of implementation of the Rome Statute is not examined in this article,[82] for the sake of better understanding the implementation, we look into the national legislation in relation with offenses described in OPAC.

According to Article 3 (2) ac) of the Hungarian Criminal Code Act C of 2012 (CC) the CC shall be applied in such cases when a foreign citizen committed crimes abroad, if the prosecution of such crimes is prescribed by an international treaty promulgated by statute. Hungary is a dualist country from the point of view of international law and the OPAC was promulgated by Act CLX of 2009 of what Article 4 prescribes the age limit of enlistment and voluntary procurement to be 18.

The universal jurisdiction as a legal institution created by the legal necessity[83] and its application has two conditions: double incrimination and the fact that the General Prosecutor orders the commencement of a criminal procedure. If an international treaty prescribes the prosecution of the offense, it means an exception from double incrimination. According to

[79] Csapó (2011): *op. cit.* 64.

[80] Article 26 of the Rome Statute of the International Criminal Court: "Exclusion of jurisdiction over persons under eighteen. The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime." Available: http://legal.un.org/icc/statute/99_corr/cstatute.htm (Accessed: 10.04.2018)

[81] Heintye–Lülf (2015): *op. cit*. 1297.

[82] Ádány Tamás (2010): A Nemzetközi Büntetőbíróság joghatósága és a magyar jog. *Pázmány Law Working Papers,* No. 2.

[83] Varga, Réka (2014): *Challenges of Domestic Prosecution of War Crimes with Special Attention to Criminal Justice Guarantees.* Budapest, Pázmány Press. 61.

some authors the fact that only the General Prosecutor shall order the commencement of the criminal proceeding fulfil the criteria of equity and provides enough guarantee for taking into account the points of the persecutor regardless if there is double incrimination or not.[84]

Accepting that the Hungarian authorities may apply[85] the principle of universal jurisdiction, they are legally obliged to submit the case to the General Prosecutor when a foreign citizen claims or suggests in front of the state authorities that he/she was involved in armed conflict before his/her age of 18, therefore they are under the subject scope of OPAC. Although under the Article 146(3) of CC[86] recruitment is a criminal offense only if it was committed on the territory of Hungary but it is an unnecessary restriction and it is not in line with the general goals of the OPAC.

If this theoretical event would not happen in practice, the ICC may claim the right to involve the victim in the prosecution or start the prosecution. On the other hand if the victim is a perpetrator himself, like it happened in the Ongwen case,[87] the state authority i.e. asylum authority may start the investigation, otherwise the ICC may declare its jurisdiction over the perpetrator.[88] Another issue is the case of those victims who committed a war crime; whether they participate in the criminal procedure as offended or as perpetrators?[89] According to the humanitarian law, after the ending of the fights, they need to be prosecuted for their actions against the law of war but during the decision-making and the implementation of the sentence it has to be taken into consideration that they are victims and survivors of human rights infringement, and they have the right to restart their life and the right to integration.[90]

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[84] Polt Péter ed. (2013): *A Büntető Törvénykönyv Kommentárja.* Budapest, Nemzeti Közszolgálati és Tankönyv Kiadó. 54.

[85] Even though our understanding is that authorities shall examine the applicability of universal jurisdiction in case of suspicion in parallel with the applicability of more frequently used principles, it is clear this is not the practice. Discovering the possible reasons of this practice is not the main topic of this article, but for the sake of the argument, we presume that in certain situations they *may* apply it.

[86] "(1) Any attempt to recruit personnel in the territory of Hungary for military service – other than for any allied forces –, paramilitary service in a foreign armed body, or any mediation of volunteers for such service shall be construed a felony punishable by imprisonment between one to five years. (2) Any Hungarian citizen who voluntarily joins or offers to join any foreign armed body – other than the allied forces – that is involved in an armed conflict (national or international), or who participates in training in such an armed body shall be punishable in accordance with Subsection (1). (3) Any person who recruits or mediates persons under the age of eighteen years in the territory of Hungary for military service, paramilitary service in a foreign armed body, or any mediation of volunteers for such service shall be punishable by imprisonment between two to eight years." Section 146 of the CC, illegal recruitment.

[87] Dominic Ongwen is allegedly responsible for seven counts of crimes allegedly committed on or about 20 May 2004 at the Lukodi IDP Camp in the Gulu District, Uganda, being three counts of crimes against humanity: murder, enslavement, inhumane acts of inflicting serious bodily injury and suffering; and four counts of war crimes: murder, cruel treatment of civilians, intentionally directing an attack against a civilian population, and pillaging. Available: www.icc-cpi.int/uganda/ongwen (Accessed: 10.04.2018)

[88] This is a purely theoretical question, and it stops at this point because of the promulgation of the Rome Statute in Hungary. See more in Ádány (2010): *op. cit.*

[89] Rosen, David M. (2010): The Dilemma of Child Soldiers. How Should International Law Treat Children Engaged in Armed Conflicts? *Insights on Law & Society American Bar Association,* Vol. 10, No. 3. 8.; Everett (2009): *op. cit.* 289.

[90] CRC Article 37.

In line with that the application of alternative approach and legal instruments during the criminal procedure[91] is a strong suggestion on several forums.[92]

War crimes are one of the classic examples of international crimes for which an international control mechanism is said to exist: the four Conventions of 1949 and Protocol I provide for the duty either to extradite or to prosecute suspected or convicted war criminal. On closer scrutiny, however, the system hardly seems to work. Problems exist on two levels, both with respect to extradition (aut dedere) and with respect to prosecution (aut judicare). Here too, Protocol I has failed to remedy the problems. In theory, the deficiencies of the extradition system should be compensated by other parts of the international duty either to extradite or to prosecute, namely the prosecution of alleged war criminals. The provision on universal jurisdiction contained in all four Geneva Conventions and incorporated by Article 85 (1) Protocol I should, theoretically oblige the State to prosecute those offenders whose extradition has been denied.[93] The state parties are also obliged to provide for criminalization of child recruitment under domestic law. However, in the literature some authors argue that this is problematic in many cases.[94]

Nevertheless, the contracting party to that treaty should bring its international legislation in line with its international obligations under that treaty. It is an open question whether a State must ensure that its legislation keeps pace with development in customary international law. The internationally wrongful act of the type under consideration here is a breach of the applicable treaty. Often it will be that the 1969 Vienna Convention on the Law of Treaties terms a *material breach.* Failure to do this is a breach of the treaty, regardless of whether or not any of that State's nationals are charged with a crime of that sort before any competent tribunal. Often the act in question is already a crime under internal law, and the liability of the State to prosecute or extradite an accused person depends on the internal law of that State and its international obligations.[95] Professor Geatano Arangio-Ruiz talked about relationship between the international responsibility of a State for criminal actions committed by individuals and attributed to the State and the international responsibility of that State arising out of that action. When an individual's responsibility is involved, one should simply ascertain whether the prosecution of individual perpetrators by States injured for an international crime can also be properly considered a lawful form of sanction against the wrongdoing State. This might have been the case of exercise of jurisdiction that would otherwise be *inadmissible* with report to an official who was the material perpetrator of conduct that constituted or contributed toward constituting an international crime of State.[96]

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[91] "I call upon Member States to treat children associated with armed groups, including those engaged in violent extremism, as victims entitled to full protection of their human rights and to urgently put in place alternatives to detention and prosecution of children." SRSG report 2016. Available: https://childrenandarmedconflict.un.org/wp-content/uploads/2015/10/15-18739_Children-in-Conflict_FINAL-WEB.pdf (Accessed: 23.07.2017)

[92] Drumbt, Mark A. (2011): Child Pirates: Rehabilitation, Reintegration, and Accountability. *Case Western Reserve Journal of International Law,* No. 46. 256.

[93] Van Den Wyngeart, Christine (1991): The suppression of war crimes under additional Protocol I. In Delissen–Tanja eds.: *op. cit.* 202–203.

[94] Heintye–Lülf (2015): *op. cit.* 1304.

[95] Rosenne, Shabatai (1997): War Crimes and State Responsibility. In Dinstein, Zoram – Tabory, Mala eds.: *War Crimes in International Law.* The Hague, Kluwer Law International. 67.

[96] Rosenne (1997): *op. cit.* 65.

The most significant judgements regarding the use of child soldiers are at the trials of the International Criminal Court, because the judgements stating the responsibility of individuals strengthen the message that involving children into armed conflict does not remain unpunished. Thomas Lubanga Dylo from the Democratic Republic of the Congo was sentenced to 14 years of imprisonment in case no. ICC-01/04-01/06,[97] because of the recruitment and use of children in armed conflicts under the age of 15 years. Unfortunately, similar judgements to the Lubanga case could only happen when both political and strategic aspects luckily met.[98]

The gaps in implementation of international treaties lead to the fact that State Parties rarely initiate procedures because of war crimes, despite the developing international regulation. Beside the monist and dualist systems, doubts can also hinder the referring of each state to the treaty as a legal basis. In addition to these reasons (which according to Francis are mainly the reason of reluctance in the African states) Cassese identifies as the fourth reason that national authorities try to interpret jurisdiction in the narrowest way to avoid applying international standards.[99] Generally the flaws of proper transformation and implementation of the international treaties lead or accumulate to the situation inclined above: the states are reluctant to start a procedure because of war crimes.

Conclusions

The children who are involved in armed conflicts have rights under international humanitarian law, under international human rights law and even under the refugee law for special treatment and care to them. But at times of breach of obligation by State Parties of these treaties, the only response they would get is the decision of the ICC due to the lack of a CRC court of their own and Refuge Convention. In addition to personal reparation, the States are obliged to prove protection and it is an obligation that governs the actions of all State Parties. One of their possible responses regarding responsibility is to implement the examined treaties entirely and shape their legal system. The other possible response is to act according to its provisions and foster international cooperation in a reparative and in a preventive manner.

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[97] Available: www.icc-cpi.int/drc/lubanga (Accessed: 10.04.2018)

[98] An example for that constellation is the Agreement between Sierra Leone and the USA on Article 98, in what the Parties asked each other's consent before they handle the suspect of each other's citizens to the ICC. Francis, David J. (2007): 'Paper Protection' Mechanisms: Child Soldiers and the International Protection of Children in Africa's Conflict Zones. *The Journal of Modern African Studies,* Vol. 45, No. 2. 226.

[99] Francis (2007): *op. cit.* 224.

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

Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

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

Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration. Brussels, 13.5.2015 COM(2015) 240 final.

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Human Rights, Asylum Law and Terrorism[1]

Aranka Lőrincz

Introduction

International law declares the right of asylum which consists of the right of a state to grant asylum and the right of an individual to seek asylum. To date no international instrument or custom settles down the right of an individual to be granted asylum.[2] The principle of *non-refoulement* is understood in international law as the duty of a state not to return a person to a place of persecution.[3] When it comes to terrorism, the question is raised if it is permitted to strike a balance between the national security of a state and the obligation to provide protection against *refoulement*.[4]

In the aftermath of 9/11, governments all around the world have turned their attention to combat the threat of global terrorism. UN Security Council Resolution 1373 (2001) on the threats to international peace and security caused by terrorist acts was the response of the international community to terrorism which made explicit reference to the need to safeguard the system of international refugee protection from abuse by terrorists.[5] The UN Security Council called upon states to deny asylum for those who finance, plan, support, or commit terrorist acts and to prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens; States shall prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents.[6] The UN Security Council thus asked the Member States to exclude terrorists from refugee status. However, as no uniform international definition of

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[1] Any views expressed in this work are those of the author and do not necessarily represent the views of the Office.

[2] On the three faces of the right of asylum see Boed, Roman (1994): The State of the Right of Asylum in International Law. *Duke Journal of Comparative & International Law,* Vol. 5, No. 1. 1–33.

[3] There is a difference in international treaties whether the duty of *non-refoulement* applies to recognized refugees or to all persons. Article 33 of the 1951 UN Refugee Convention protects only those who were granted asylum while Article 3 of the Convention Against Torture and Article 3 of the European Convention on Human Rights apply to all persons regardless their status.

[4] Bruin, Rene – Wouters, Kees (2003): Terrorism and the Non-derogability of Non-refoulement. *International Journal of Refugee Law,* Vol. 15, No. 1. 5–29.

[5] Zard, Monette (2002): Exclusion, terrorism and the Refugee Convention. *Forced Migration Review,* No. 13. 32.

[6] UN Security Council Resolution 1373 (2001), para. 2 (c)-(d), (g).

terrorism exists, it remains the prerogative of the states to decide who is excludable from international protection as a terrorist.[7]

Paragraph 7 (d) of the 1950 UNHCR Statute, Article 1F of the 1951 Convention Relating to the Status of Refugees (hereinafter *Refugee Convention*) and Article 1 (5) of the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa oblige states and UNHCR to deny the benefits of refugee status to certain persons who do not deserve international protection as they committed certain grave acts and to ensure that such guilty persons do not abuse the institution of asylum in order to avoid being held responsible for the crimes they committed. Nevertheless, with special attention to the consequences, the so called Exclusion Clauses enshrined in the Refugee Convention must be assessed with great caution with regard to the individual circumstances of the case.[8]

The European Council also asked the Member States of the European Union in several conclusions to protect security and invited the European Commission to examine the relationship between safeguarding internal security and complying with international protection obligations and instruments.[9] The Working Document of the European Commission entitled *The relationship between safeguarding internal security and complying with international protection obligations and instruments* indicated that the European Commission wants to nullify the non-derogability of Article 3 of the European Convention on Human Rights (ECHR).[10] According to the Commission extradition must be considered legal when it is possible to obtain legal guarantees from the State that it is going to try the person, addressing the concerns connected to the potential violations of the ECHR. Such *guarantees* by third States could for instance relate to the non-application of capital punishment in that particular case, though the law of that State allows for such punishment.[11] However, the Working Document did not mention guarantees against the risk of being subjected to torture, inhuman or degrading treatment or punishment.[12] The obligation of *non-refoulement* under Article 3 of the ECHR is absolute, there are no exceptions or limitations to this right.[13] Considering Article 3 of the ECHR there is no room for adopting a balancing act between the protection needs of the individual and the security interests of the State. This was underlined by the European Court of Human Rights in the *Ahmed v. Austria*[14] and the *Chahal v. United Kingdom*[15] cases where the Court considered that the applicants could not be expelled under Article 3 of ECHR even though Article 33 (2) of the Refugee Convention was applicable

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[7] Since 1963 a number of global and regional treaties have been drafted and adopted in which specific crimes have been defined that are viewed as terrorist acts. Among these terrorist acts are hijacking, kidnapping and bombing. The thin line between fighting for freedom or self-determination and terrorism can be regarded as a reason why no agreement was reached so far on a definition of terrorism. BRUIN–WOUTERS (2003): *op. cit.* 14–15.

[8] UNHCR Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, HCR/GIP/03/05, 4 September 2003. 2.

[9] European Council on Justice and Home Affairs Conclusion SN 3926/6/01 and Report from the Commission, 17 October 2001 (COM [2001] 611).

[10] COM (2001) 743 final, para. 2.3.1. 16. In BRUIN–WOUTERS (2003): *op. cit.* 10.

[11] COM (2001) 743 final, para. 2.3.2.

[12] BRUIN–WOUTERS (2003): *op. cit.* 9.

[13] "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

[14] *Ahmed v. Austria* (17 December 1996), European Court of Human Rights, Appl. no. 25964/94.

[15] *Chahal v. United Kingdom* (15 November 1996), European Court of Human Rights, Appl. no. 22414/93.

and the applicants could not claim protection under the obligation of *refoulement* laid down in Article 33 (1) of the Refugee Convention.

However, it should be noted that Article 21 of the Qualification Directive[16] allows *refoulement* in certain cases which means that the European Commission did not uphold the absolute character of Article 3 of the ECHR. In EU legislation, Articles 12 (2) and (3) of the Qualification Directive are relevant which are formulated in the spirit of Article 1F of the Refugee Convention.

It still remains a question whether the mere membership of a terrorist organization might have the consequence of exclusion from the refugee status. It should be noted that there is no common understanding among the states that which organization should be considered a terrorist organization. As an example, while the United States and Canada have both listed the Tamil opposition group in Sri Lanka, the LTTE, as a terrorist group, the list of the European Union did not mention it.[17]

The Exclusion Clauses of the Refugee Convention

Article 1F of the Refugee Convention says that the Convention shall not apply to any person with respect to whom there are serious reasons for considering the followings: a) he has committed a crime against peace, a war crime, or a crime against humanity as defined in the international instruments drawn up to make provision in respect of such crimes; b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

According to the *travaux préparatoires,* the purpose of Article 1F was twofold: firstly, to deny the benefits of refugee status to those persons who would otherwise qualify as refugees but who do not deserve it because there are serious reasons for considering that they committed heinous acts or serious common crimes; secondly, to ensure that such persons do not misuse the institution of asylum in order to avoid being held legally accountable for their acts.[18] On the question whether inclusion or exclusion has to be established first, the UNHCR has a clear point of view: the inclusion has to be considered before exclusion. It is important to assess if the person has a well-founded fear of persecution and take a proportionality test or to establish if the person may rely on the prohibition of *refoulement*.[19]

There are a number of questions that must be answered when applying Article 1F: are there serious reasons to consider that the asylum seeker may have committed an excludable act; does the act with which the asylum seeker a crime or act as mentioned in Article 1F,

[16] Directive 2004/83 of 29 April 2004 on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted; Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

[17] Even the draft of the UN Comprehensive Convention on International Terrorism does not declare that membership of a terrorist organization might constitute an offence. In Bruin–Wouters (2003): *op. cit.* 7–8.

[18] UNHCR Statement on Article 1F of the 1951 Convention, July 2009, para 2.1.

[19] UNHCR Handbook para. 176–177.

can the asylum seeker be held responsible for the act, are there any grounds for rejecting individual responsibility?[20] The phrase *there are serious grounds* means that no final penal judgement is needed to exclude the asylum seeker when applying Article 1F. It is sufficient that the established facts and circumstances of the case provide serious reasons for considering that the individual committed the act, or in any other way can be held responsible for the act.[21] Article 1F (a) of the Refugee Convention relates to international instruments in general that define the crimes against peace, war crimes and crimes against humanity. From international sources it can be concluded that crimes against peace can be committed in the context of the planning or waging of a war or armed conflict. As wars or armed conflicts can be waged by states or state-like entities, crimes against peace can be committed by individuals who possess very high ranks.[22] Serious violations of international humanitarian law constitute war crimes.[23] War crimes may be committed in times of international or in non-international armed conflicts not only against civilians but military persons, as well. According to the 1998 Rome Statute of the International Criminal Court (ICC Statute) crimes against humanity are fundamentally inhuman acts like murder, extermination, enslavement, and deportation of a population, severe deprivation of physical liberty, and are committed as part of a widespread or systematic attack directed against any civilian population and with the knowledge of the attack.[24] The widespread and systematic attacks against civilian population are the characteristics that make crimes against humanity distinguishable from common crimes. An inhuman act against an individual may constitute a crime against humanity if it is a part of a coherent system or a series of systematic and

[20] Boeles, Pieter – den Heijer, Maarten et al. (2009): International Refugee Protection. In *European Migration Law.* Antwerp–Oxford–Portland, Intersentia. 276. Article 6 of the 1945 Charter of the International Military Tribunal concerning the prosecution of Nazi war criminals defines a crime against peace the "planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing". The United Nations General Assembly resolution 3312 (XXIX), 1974 considers aggression the "use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any manner inconsistent with the Charter of the United Nations". The International Law Commission's Draft Code of Crimes Against the Peace and Security of Mankind in Article 16 on the crime of aggression says that: "an individual, who, as a leader or organizer, actively participates in or orders the planning, preparation, initiation or waging of aggression committed by a State, shall be responsible for a crime of aggression".

[21] Ibid. 277.

[22] Ibid. 278–279.

[23] Article 8 of the Statute of International Criminal Court (ICC) defines war crimes inter alia as "serious violations of the laws and customs applicable in international armed conflict" and "serious violations of the laws and customs applicable in an armed conflict not of an international character". This is reflected in the jurisdiction of the International Tribunal for the Former Yugoslavia and for Rwanda and of the Special Court for Sierra Leone and UNTAET Regulation No. 2000 for East Timor. Article 3 of the Statute of the International Criminal Tribunal on war crimes was interpreted in the Delalic case in 2001 by the Appeals Chamber stating that "laws and customs of war" included all laws and customs beside those listed in the Article. "Serious violation" is to be interpreted according to the military manual and legislation of the States. Available: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule156 (Accessed: 29.10.2017)

[24] ICC Statute Article 7 (1).

repeated acts.[25] The most common crime against humanity is genocide.[26] Crimes against humanity may be committed in peace time, as well as in war times.

According to Article 1F (b) any person with respect to whom there are serious reasons for considering that he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee is excluded from being granted international protection. What constitutes to be a serious crime[27] has different meanings in the national legal systems of the States but according to the UNHCR's Handbook, a serious crime must be a capital crime or a very grave punishable act.[28]

The UNHCR considers that a serious crime should be considered non-political when other motives – such as personal reasons, causing fear and terror or gain – are the predominant feature of the specific crime committed.[29] The predominance test has to be taken into consideration when assessing the non-political nature of a crime. Violent acts as hostage taking of civilians and torture or acts of terrorism always fail the predominance test as they are disproportionate to any political objective. The non-political serious crime must be committed by the individual prior to his admission as a refugee in the country. This means that the crimes should be committed prior to entering and staying as an asylum seeker in the country. The ratio behind this limitation is that a person who commits a serious non-political crime within the country of refuge is subject to the ordinary criminal laws of that country and may be expelled from that country in accordance with Article 32 (2) and 33 (2) of the Refugee Convention.[30]

The meaning of *admission* differs when interpreting the Refugee Convention and the EU Qualification Directive. The drafters of the Refugee Conventions were guided by the general aim that the term *admission* must be understood as referring to the person's physical presence and not his recognition as a refugee. Contrary to this, in the EU Qualification Directive *admission* means the time of granting refugee status. In this sense, the individual can be excluded from international protection for having committed a serious non-political crime also when that crime has been committed while in the country of refuge but prior of being recognized as a refugee.

According to Article 1F (c) acts contrary to the purposes and principles of the United Nations may also constitute a reason for exclusion. The purposes and principles of the United

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[25] Boeles–den Heijer et al. (2009): *op. cit.* 280.

[26] Article 2 of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide defines the crime of genocide as: a) killing members of the group; b) causing serious bodily or mental harm to members of the group; c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; d) imposing measures intended to prevent births within the group; e) forcibly transferring children of the group to another group.

[27] According to UNHCR Background Note on the Application of Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees, HCR/GIP/03/05, 4 September 2003, para. 39 in determining the seriousness of the crime the following factors are relevant:
- the nature of the act;
- the actual harm inflicted;
- the form of procedure used to prosecute the crime;
- the nature of the penalty for such a crime;
- whether most jurisdictions would consider the act in question as a serious crime.

[28] UNHCR Handbook, para. 155.

[29] Ibid. para. 152.

[30] Boeles–den Heijer et al. (2009): *op. cit.* 281.

Nations are laid down in Articles 1 and 2 of the United Nations Charter in a broad way. Neither the drafters nor UNHCR give much guidance on what constitutes those purposes and principles that may be triggered when exclusion from international protection might be examined.[31] As pointed out by Sarah Singer, several UN resolutions might be considered as forerunners of this provision, the Constitution of the International Refugee Constitution also included in its mandate those who had assisted enemy forces in the persecution of civilian populations or operations against the United Nations, and those who had participated in any organization hostile to the government of a member of the United Nations, or participated in any terrorist organization.[32] However, terrorism did not explicitly appear in the wording of the Refugee Convention, later the EU Qualification Directive felt the necessity to make more clear the blurry provision of Article 1F (c): Acts contrary to the purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations Resolutions relating to measures combating terrorism, which declare that "acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations" and that "knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations."[33]

Given the unclear wording of Article 1F (c), it is not surprising that compared to Article 1F (a) and 1F (b), this article is applied very seldom. Article 1F (c) is applied only in extreme circumstances when the act affects the basis of the international community. Crimes capable of affecting international peace, security and peaceful relations between States, as well as serious and sustained violations of human rights would fall under this category. Analysing the United Nations Charter which sets out the acts and principles of the UN, it can be stated that only persons who have been in positions of power in a state or state-like entity would appear capable of committing such acts.[34]

With regard to the consequences of the exclusion, the Refugee Convention does not pose any obligation. The state may choose to allow the excluded individual to stay on its territory on other grounds but obligations under international law may ask the state to criminally prosecute or extradite the individual concerned. However, an excluded person may still be protected against return to a country where he or she is at risk of torture, inhuman or degrading treatment.[35]

Applicability of Article 1F to Terrorism

There is, as yet, no internationally accepted legal definition of terrorism. Negotiations continue on a draft of UN Comprehensive Convention on International Terrorism. Currently

[31] Ibid. 282.

[32] Singer, Sarah (2015): *Terrorism and Exclusion from Refugee Status in the UK.* Queen Mary Studies in International Law. 85.

[33] EU Qualification Directive, Preamble (22).

[34] UNHCR Guidelines on International Protection, para. 5–6.

[35] International instruments that prohibit ill-treatment are: Article 3 of the Convention Against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment, Article 7 of the International Covenant on Civil and Political Rights, Article 3 of the European Convention on Human Rights.

there are some twenty global or regional treaties pertaining to international terrorism which are enumerated in the Annex to the UNHCR Background Note on the Application of Exclusion Clauses. Where an individual has committed terrorist acts as defined within the international instruments mentioned in Annex D of the UNCHR Background Note and a risk of persecution is at issue, the person may be excludable from refugee status.[36] In these circumstances, the basis for exclusion under Article 1F will depend on the act in question and all surrounding circumstances. In each case, individual responsibility must be established. This remains the case even when the membership of the organisation in question is itself unlawful in the country of origin or refuge. The fact that an individual may be on a list of terrorist suspects or associated with a proscribed terrorist organisation should trigger consideration of the exclusion clauses. Depending on the organisation, exclusion may be presumed but it does not mean that exclusion is inevitable.[37] In such cases, it is necessary to examine the individual's role and position in the organisation, his or her own activities, as well as related issues as outlined above.[38]

Although providing funds to *terrorist groups* is generally a criminal offence, such activities may not necessarily reach the gravity required to fall under Article 1F (b). The particulars of the specific crime need to be looked at if the amounts concerned are small and given on a sporadic basis, the offence may not meet the required level of seriousness. On the other hand, a regular contributor of large sums to a terrorist organisation may well be guilty of a serious non-political crime.[39]

Although Article 1F (b) is of most relevance in connection with terrorism, in certain circumstances a terrorist act may fall within Article 1F (a), for example as a crime against humanity. In exceptional circumstances, the leaders of terrorist organisations carrying out particularly heinous acts of international terrorism which involve serious threats to international peace and security may be considered to fall within the scope of Article 1F (c).[40]

In the international community's efforts to combat acts of terrorism, it is important that unwarranted associations between terrorists and refugees/asylum-seekers are avoided.

In reaching a decision on exclusion, it is therefore necessary to weigh up the gravity of the offence for which the individual appears to be responsible against the possible consequences of the person being excluded. If the applicant is likely to face severe persecution, the crime in question must be very serious in order to exclude the applicant. A proportionality analysis would normally not be required in the case of crimes against peace, crimes against humanity, and acts contrary to the purposes and principles of the United Nations, as the acts covered are so heinous that they will tend always to outweigh the degree of persecution feared. However, war crimes and serious non-political crimes cover a wider range of behaviour and exclusion may be considered disproportionate if subsequent return is likely to lead to the individual's torture in his or her country of origin.[41]

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[36] In Annex D of the UNCHR Background Note there are 13 international and 18 regional instruments pertaining to terrorism.

[37] UNHCR Background Note, para. 80.

[38] UNHCR Guidelines on International Protection, para. 26.

[39] Ibid. para. 82.

[40] Ibid. para. 83.

[41] Ibid. para. 78.

Exclusion, Application of Non-refoulement and National Security Interests

There are a number of ways by which States can prohibit the entry of individuals who constitute a danger to the national security. Besides issuing an alert in the joint Schengen Information System, those states that are parties to the Schengen Agreement, can also simply stop the foreign individual from entering the country or refrain from giving access to asylum procedures, for example by strictly applying the concept of safe third countries.[42]

Under Article 1F of the Refugee Convention, states can exclude a person seeking asylum from being acknowledged a refugee. Article 33 (1) of the Refugee Convention stipulates that no contracting state shall expel or return *(refouler)* a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

The prohibition of *refoulement* under Article 33 (1) of the Refugee Convention is not absolute as Article 33 (2) allows for exceptions: "The benefit of Article 33 (1) may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he or she is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country." The application of Article 33 (2) requires an individualized determination by the country in which the refugee is that he or she comes within one of the two categories provided for under Article 33 (2) of the Refugee Convention.[43]

Looking at Article 1F and Article 33 (2) it is clear that the former applies to asylum seekers, while the latter applies to persons who are recognized as refugees. The objective of the Article 33 (2) is the protection of the country of refuge, whereas the objective of Article 1F is to define who should be excluded from the refugee status. Thus, excludable persons cannot claim protection against *refoulement* under Article 33 (2) of the Refugee Convention. It should be noted that the threshold for applying Article 33 (2) is high. The standard of proof is higher than when applying Article 1F. Therefore, the exception needs to be applied restrictively.[44]

Article 33 (2) of the Refugee Convention provides for exception in two cases: where there are reasonable grounds for regarding as a danger to the security of the country in which he or she is, or having been convicted for a particularly serious crime, the refugee constitutes a danger to the community.

When does a refugee constitute a danger to the national security of a country? The wording of Article 33 (2) refers to the danger to the country of refuge. Therefore danger to other states or to the international community falls outside the scope of this paragraph. Bruin and Woters call the attention to the reasoning of the Canadian Supreme Court in the

[42] Bruin–Wouters (2003): *op. cit.* 16.

[43] UNHCR Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 26 January 2007, para. 10.

[44] Bruin–Wouters (2003): *op. cit.* 16–17.

Suresh case.[45] The Supreme Court is of the opinion that the security of one state depends on the security of other states. "It may once have made sense to suggest that terrorism in one country did not necessarily implicate other countries. But after the year 2001 that approach is no longer valid."[46] Bruin and Woters argue that the mere possibility of danger is not enough. The danger needs to be proven and cannot be based on assumptions, *possible adverse repercussions* are insufficient.[47] However, Article 33 (2) of the Refugee Convention does not specify the facts and circumstances that can be considered a danger to the national security and leaves a margin of appreciation for the states, still, the Refugee Convention demands a level of risk to be proven.[48]

The other exception from the obligation of *non-refoulement* is the case when the refugee has been convicted in the country of refuge. According to the text of Article 33 (2) a provable danger to the community of the country of refuge is a condition, too. The mere fact that the refugee has been convicted is not enough to apply this provision. On the one hand, the final judgement should cover particularly serious crimes, on the other hand the assessment of the danger to the community should be for the future. The term *community* is intended to refer to the safety and well-being of the population in general, in contrast to the national security exception that refers to the larger interests of the state.[49]

The Obligation of Non-refoulement and Other International Instruments

Non-refoulement obligations complementing the obligations under the Refugee Convention have also been established under international human rights law. This means that States are obliged not to transfer any individual to another country if this would result in exposing him or her to serious human rights violations, notably arbitrary deprivation of life, or torture or other cruel, inhuman or degrading treatment or punishment. An explicit *non-refoulement* provision is contained in Article 3 of the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which prohibits the removal of a person to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. Obligations under the 1966 Covenant on Civil and Political Rights also encompass the obligation not to extradite, deport, expel or otherwise remove

[45] *Suresh v. Canada* (11 Jan 2002), Supreme Court of Canada, 2002 SCC 1, File no. 27790. The background of the case: Suresh was a Sri Lankan citizen of Tamil descent. In 1990 he entered Canada and asked for asylum which he was granted. In 1991 he asked for immigrant status but his application was not finalized and in 1995 Canada decided to deport him to Sri Lanka based on security grounds. Suresh was a member of the LTTE and is still involved in fundraising for the LTTE. The Canadian authorities acknowledged that he has not committed any acts of violence neither in Canada or Sri Lanka but considered that the mere membership in a terrorist organization was a sufficient ground for deportation. The authorities also confirmed that he might face the risk of being tortured if returned to Sri Lanka but considered the national security of Canada higher. The legal issue was if it is permitted to consider a balancing act between the national security of a state and the human rights of a person.

[46] Cited by Bruin–Wouters (2003): *op. cit.* 17.

[47] Ibid. 18.

[48] Ibid.

[49] Boeles–den Heijer et al. (2009): *op. cit.* 288.

a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.[50] The prohibition of *refoulement* to a risk of serious human rights violations, particularly torture and other forms of ill-treatment is also established under regional human rights treaties, the main source of it being Article 3 of the ECHR. The prohibition of *refoulement* to a country where the person risks torture is non-derogable and applies in all circumstances, including in the context of measures to combat terrorism and during times of armed conflict.

The prohibition of torture and the prohibition of arbitrary deprivation of life is also part of customary international law. It includes the prohibition of *refoulement* to a risk of torture and a cruel, inhuman or degrading treatment or punishment. In this meaning, States must establish, prior to implementing any removal measure, that the person whom it intends to remove from their territory or jurisdiction would not be exposed to a danger of serious human rights violations. If such a risk exists, the State is not allowed to remove the individual concerned.[51]

The Relevant EU Case Law

As regards the European Union, there are two significant resources that should be taken into account: the Refugee Convention and the Qualification Directive as already discussed. *Bundesrepublik Deutschland v. B&D* was one of the first asylum-related judgments of the Court of Justice of the European Union (CJEU) when the Court was asked to interpret the exclusion clauses.[52] In his judgment the CJEU ruled that Article 12 (2) (b) and (c) of the Qualification Directive must be interpreted as meaning that the fact that a person has been a member of an organisation which is on the list forming the Annex to Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and that that person has actively supported the organization does not automatically constitute a serious reason for considering that that person has committed *a serious non-political crime* or *acts contrary to the purposes and principles of the United Nations.* According to the Court, the finding that there are serious reasons for considering that a person has committed such a crime or has been guilty of such acts is conditional on an assessment on a case-by-case basis of the specific facts, with a view to determining whether the acts committed by the organisation concerned meet the conditions laid down in those provisions and whether individual responsibility for carrying out those acts can be attributed to the person concerned. The Court said that exclusion from the refugee status pursuant to Article 12 (2) (b) or (c) of the Qualification Directive is not conditional on the person concerned representing a present danger to the host Member State and the exclusion of a person from the refugee status is not conditional on an assessment of proportionality in relation to the particular

[50] UNHCR Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations, para. 17–20.
[51] Ibid. para. 21–22.
[52] Joined cases *C-57-09 and C-101/09. Bundesrepublik Deutschland v. B and D,* Judgement of the Court, 9 November 2010.

case. According to the Court, Article 3 of the Directive[53] must be interpreted as meaning that Member States may grant a right of asylum under their national law to a person who is excluded from the refugee status pursuant to Article 12 (2) of the Directive, provided that that other kind of protection does not entail a risk of confusion with the refugee status within the meaning of the Directive.

In the *Commissaire general aux refugies et aux apatrides v. Mostafa Lounani* case[54] the CJEU went further in explaining the exclusion clauses. Whereas previously the scope of the exclusion clause for those engaging in terrorist acts was limited to engaging in, conspiring to or planning an actual act of terrorism with an international dimension, the Court has widened the scope to include those who provide logistical support even where no act of terrorism takes place.[55] In its judgment the Court held that according to Article 1F (c) of the Refugee Convention acts contrary to the purposes and principles of the United Nations and in Article 12 (2) (c) of the Qualification Directive cannot be limited to the acts set out in the Security Council Resolutions. The Court referred to Council Framework Decision 2002/475 which lists various forms of conduct which may fall within the scope of the general concept of terrorism and classifies them within four categories of offences: terrorist offences, offences relating to a terrorist group, offences linked to terrorist activities, and, last, inciting, aiding or abetting, or attempting to commit some of those offences.[56] The Court held that Article 12 (2) (c) of the Qualification Directive and Article 1F (c) of the Refugee Convention could not be limited to Article 1 (1) of the Framework Decision. The scope of the exclusion clauses cannot be confined to acts of terrorism but must also extend to the "recruitment, organization, transportation or equipment of individuals who travel to a State other than their States of residence or nationality for the purpose of, inter alia, the perpetration, planning or preparation of terrorist acts."[57] The Court further noted that the test for an individual assessment as laid down in the *B&D* case still applies. The decision whether the conduct falls within the scope of Article 12 of the Qualification Directive is that of the national authorities and courts. The Court ruled that Article 12 (2) (c) and Article 12 (3) of the Qualification Directive must be interpreted as meaning that acts constituting participation in the activities of a terrorist group, may justify exclusion of refugee status, even though it is not established that the person concerned committed, attempted to commit or threatened to commit a terrorist act as defined in the resolutions of the United Nations Security Council.

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[53] Article 3 of the 2004/38 Directive reads as follows: "Member States may introduce or retain more favourable standards for determining who qualifies as a refugee or as a person eligible for subsidiary protection, and for determining the content of international protection, in so far as those standards are compatible with this Directive."

[54] C-573/17, Judgment of the CJEU, 31 January 2017.

[55] Available: www.asylumlawdatabase.eu/en/content/cjeu-c-57315-commissaire-g%C3%A9n%C3%A9ral-aux-r%C3%A9fugi%C3%A9s-et-aux-apatrides-v-mostafa-lounani (Accessed: 15.12.2017)

[56] Judgment of the CJEU, para. 51.

[57] Available: www.asylumlawdatabase.eu/en/content/cjeu-c-57315-commissaire-g%C3%A9n%C3%A9ral-aux-r%C3%A9fugi%C3%A9s-et-aux-apatrides-v-mostafa-lounani (Accessed : 15.12.2017)

Conclusion

This article tried to show the legal background to the situation when an individual asks for asylum and apparently he or she is/was a terrorist or gives/gave assistance to terrorists or simply is/was a member of a group connected to terrorism. At the same time the article made efforts to present the law that affects the obligation of *non-refoulement* when an acknowledged refugee is convicted for terrorist acts as there are international treaties that allow for exceptions while others consider *non-refoulement* as an absolute human right with no exceptions. Considering the complexity of the issue and the many undefined terms that should be a reference point when assessing a case, a lot of questions remain that should be answered for the national authorities and courts to be able to give justified decisions.

The intention of the international community is clearly that those persons who do not deserve it – especially terrorists – are excluded from being provided a safe haven. The main problem in this regard is that to date no internationally accepted definition of terrorism exists. The thin line between fighting for freedom or self-determination and terrorism might drive to the conclusion that terrorism is rather a political term than a legal term. In the light of the recent terrorist attacks in Europe there is an urgent need for clearing the unclear.

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Migratory Impacts on Law Enforcement

Zoltán Hautzinger

Introduction

By the first decades of the 21st century, views on human migration as a social phenomenon have almost completely lost their positive characteristics, especially due to occasionally large-scale, cross-continent migration patterns. Relating to the concept of migration, thoughts in society concerning the concept of migration now primarily focus on negative phenomena, envision harmful consequences on the affected (host or transit) states caused by human displacement, which consequences can only be solved by employing reactive legal instruments.

The basis of reactive regulation is to sanction and prevent uncontrolled migration. From this perspective, migration processes are considered issues to be solved by legal and political measures, which can basically represent solutions to issues of public order and public security.[1] Given that providing a normative framework for human migration is mostly of non-policing nature, when regulating migration, the effects that may represent solutions to dangers and risks arising from migration are felt strongly. These are the policing effects of migration and can be felt in certain areas such as alien policing within alien administration or other policing needs during asylum authority procedures, the implementable policing measures in citizenship administration and, ultimately, certain possibilities to manage migration as criminal proceedings.

Nevertheless, the effects of policing migration do not only take shape in forms of regulation concerning foreigners, they also appear when it comes to regulating human movement. More specifically, they appear when defining the legal possibilities of crossing the state border, or when implementing applicable norms in cases of unlawful exit and entry. These are the limits and prohibitions concerning the state border and border policing and, ultimately, the criminal prosecution initiated due to the violation of such limits and prohibitions.

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[1] Gyeney Laura (2014): *Legális bevándorlás az Európai Unióba, különös tekintettel a családi élet tiszteletben tartásának jogára.* Budapest, Pázmány Press. 39.

The Policing Effects of Rules and Regulations Concerning Foreigners (Alien Law)

Migration and policing

The basis of the conceptual definition of policing foreigners is the general definition of policing. In accordance to the so-called Szamel concept, policing is a state activity aimed at preventing public order disturbances, preventing directly disruptive behaviour, and restoring the disturbed public order.[2]

Policing can be considered professional administration exercising the power vested in the authority, in the scope of which the authority, for the purpose of protecting public security and public order, grants rights to and imposes obligations on hierarchically non-subordinated clients by enforcing them, due to the lack of voluntary compliance, using administrative measures or authority coercion, which includes the monopoly of using legitimate physical violence.[3] Policing is a part of civilian administration, the activities of the authorities and its directness as visible in their measures are clearly present.[4] For the purpose of public interest, the policing authorities, therefore, have the obligation to protect the legally defined public services by upholding the law and, additionally, have the obligation to perform their duties to apply the law, more precisely to provide legal protection. Thus policing as a function is closely tied to the state, it is the instrument to exercise power, and to enforce such power it can apply legitimate coercion.[5]

The above fundamental black letter law mechanism of policing defines the necessity of policing activities related to the entry and stay of foreigners. Within the scope of alien law, the legal provisions related to foreigners is called policing of foreigners, while regulating migration, at present by prescribing the legal consequences of crossing the state border as an inevitable sign of international migration, is called border policing. The common nature of the two types of policing, in addition to their relation to the concept of policing, is that, when applied, they can be carried out at the same location (at the state border or the border area), and we can also find personal overlaps if the addressees of border policing measures are members of the group of persons of foreign nationality (foreigners). An additional common element is that both branches of policing aim, among others, at employing the principles and norms of regulating migration.

In spite of their common goals, alien policing and border policing do not represent the same areas. Especially, it cannot be stated that they are embedded into each other's systems. While alien policing manifests itself, basically from a personal and material scope, in applying authority inspections and measures taken with reference to foreigners' entry and stay – ultimately, using coercive measures to restrict personal freedom – border policing activities mean carrying out guarding services in connection with the maintaining order at the border (border surveillance), checking (cross-border-traffic) and law enforcement activities (maintaining border order). Thus alien policing is related primarily to a well-defined group

[2] Szamel Lajos (1992): Jogállamiság és rendészet. *Rendészeti Szemle,* Vol. 30, No. 3. 8.

[3] Finszter Géza (2012): *A rendőrség joga.* Budapest, Országos Rendőr-főkapitányság. 18.

[4] Patyi András (2013): A rendészeti igazgatás és a rendészeti jog alapjai. In Lapsánszky János szerk.: *Közigazgatási jog. Fejezetek szakigazgatásaink köréből.* I. kötet. Budapest, Complex Kiadó. 138.

[5] Balla Zoltán (2016): *Monográfia a rendészetről.* Budapest, Rejtjel Kiadó. 10.

of persons, the foreigners, and, to a certain extent, to other persons (landlords, transporters, employers); border policing, on the other hand, is related to specific locations, that is the state border, the border area and the border crossing points open to international traffic.

Alien policing

On this basis, the definition of policing, the administration of entry and stay of foreigners can only be of the policing type if it is justified by the unlawful conduct of the person of foreign nationality. From this perspective, alien policing must sharply be separated from legislation necessary to justice because voluntary compliance is not enough in itself. Checking the conditions of entry, issuing certain travel, stay or residence permits refers to the non-policing aspects of administrative alien law, therefore, it would be justified to call such procedures alien law administration or foreigners administration. In addition to procedures granting certain permits, the provisions on administrative issues related to citizenship rights and asylum rights may also constitute a part of alien law administration.

Conducting alien policing procedures, taking alien policing measures, or using coercive measures can be relevant if the alien law does not apply without any fault due to the subject (foreigner) of the particular legal relations. Alien policing as an area of law enforcement carried out by the authorities can only occur in relation to the foreigner's border crossing (basically entry) and/or stay, by committing unlawful activities or creating unlawful situations. Alien policing as an activity of the authorities has an impact on illegal migration routes, by its efficiency indicators it can directly influence the propensity to commit unlawful activities related to entry and stay occurring in the area of the given country.[6]

We can talk about exclusively alien policing measures or procedures if the unlawful activity basically happens in order to facilitate illegal entry or unlawful stay. Alien policing has a supporting role if the foreigner's stay in Hungary is to be terminated and excluded, because the person due to a valid court decision in criminal matter has become persona non grata. In such case punitive, and not administrative, sanctions must be imposed against the foreigner with the purpose that the person not having a Hungarian citizenship, accountable for the crimes committed could officially be restrained from the territory of Hungary.

In alien policing there is competence to apply measures or coercive measures against foreigners either at the state border as a part of checks, or in the territory of the state that is checks in the area of free movement. The purpose of such checks is to terminate the unlawful situation (ordering return, holding, expulsion and deportation) occurring as a result of the entry or stay of the foreign person by violating the rules of entry and stay, or the temporary restriction on personal freedom (applying alien policing custody) in order to ensure the conditions of such termination at a later date.

At the state border alien policing is carried out together with checks by refusing entry and ordering return in cases of non-citizens, mainly third-country national aliens not having the conditions to enter. The interest of alien policing in this special case, in a particular way, prevails over the interest of criminal procedure, since no investigation can be initiated

[6] See Balázs László (2017): Az idegenrendészeti hatóság tevékenysége rendkívüli migrációs helyzetben. *Belügyi Szemle,* Vol. 65, No. 2. 5.

as regards counterfeiting of authentic instruments, provided that no other crime has been committed, if the foreigner uses a false, counterfeit document or uses a genuine travel document issued on another person's name to enter the territory of the country.[7]

The law and order functions of alien policing (preventive and restorative) arise in cases when the prevention of the unlawful situation cannot be carried out by border checks. Checks in the area of free movement no longer serves the purpose of making decisions about foreigners' entry, but rather to establish the legality of their stay. In case of suspicion of unlawful stay, as policing measures restricting personal freedom, the following can be applied: alien policing arrest, holding for unknown identification and citizenship, and custody for the preparation of expulsion or deportation, or alien policing custody. Restricting the personal freedom for a predetermined period by alien policing, however, is not of punitive nature, its policing significance lays that the expulsion of the foreigner unlawfully staying, not applying for asylum or not deserving any asylum could be successful. These measures, due to the restriction of personal freedom, are under strict legal control, each authority decision is subject to judicial review and appeal.

Law enforcement activities closely related to alien policing, such as classic law enforcement that can hardly be distinguished from alien policing by its features, have been found to exist these days in asylum affairs, too. It is present specifically in asylum custody and its replacement measures, which, on the one hand must be separated from alien policing custody, due to their purpose and function,[8] on the other hand, they, in their nature, can be interpreted as measures of the similar kind as they involve applying policing rules concerning foreigners. The strengthening of the policing feature of asylum affairs can be seen from those measures that may insist on having the assessment of the asylum applications to a designated location (hot spot, transit zone, etc.), thus they require the asylum seeker to stay at those locations. The above-mentioned metamorphosis of asylum affairs into law enforcement is a sort of response from the authorities to individual attempts whose goal is to avoid law enforcement carried out by the alien policing authorities due to unlawful entry or stay regarding the asylum application submitted in the absence of a genuine reason for leaving. As a result of this phenomenon, a part of the asylum seekers have limited rights related to asylum (access and right to stay), because the state competent to assess asylum applications keeps striving for identifying ways how asylum procedures should focus on matters brought forth by applicants requiring international protection.

Measures as the result of rescission, or in some countries withdrawal of citizenship may have alien policing consequences. In case of the latter, one should not primarily consider the restoration of the pre-existing situation by withdrawing the fraudulently obtained citizenship, but rather measures that enable the authorities to withdraw *ex lege* the citizenship, without the person's explicit request or consent, of persons that have committed serious criminal acts (especially terrorism-related ones). The withdrawal of citizenship is not prohibited by international law, the prohibition of the arbitrary withdrawal of citizenship must apply in all cases, which prohibition includes the avoidance of statelessness, the prohibition of discrimination, the principles of necessity, reasonableness and proportionality, the prin-

[7] Section 170, subsection (6) of Act XIX of 1998 on Criminal Proceedings.

[8] Klenner Zoltán (2013): *A menekültügyi őrizet és bevezetésének szükségessége.* Pécs, Pécsi Határőr Tudományos Közlemények XIV. 297.

ciple of legality, having legitimate objective and respecting the procedural guarantees.[9] The measures mentioned hereby are not taken against the foreigner but rather the creation of a foreign status, such reaching the possibility to conduct further alien policing procedures.

Border policing

Contrary to alien policing, border policing, as mentioned above, is not related to a well-defined group of persons, but rather to specific locations, that is the state border and its surroundings, the border area. The basis of the border policing activities is the border order. This order established and maintained along the state border is a desired and mutually beneficial condition in which national interests regarding both neighbouring countries can mutually be enforced.[10] As a result, policing activities related to state border cannot be linked to border protection. The latter basically refers to defence activities that are related to the areas of military art.[11] Border protection in Hungary stems from the constitutional obligation that the fundamental task of the Hungarian Defence Forces, as the national defence force of Hungary, is to protect the independence, territorial integrity and state borders by military protection.[12] Thus border protection refers to the military protection of the state borders, while border policing refers to the protection of the sate border order, which is the constitutional obligation of the Police.[13]

In accordance with the Act on Police, this organization provides surveillance at the state border, it prevents, reconnoitres, disrupts the unlawful crossing of the state border, checks the passenger and vehicle traffic crossing the state border, maintains order at the border crossing points, operates the road-crossing points and manages the tasks to maintain and improve them. This organization guides the activities of the Hungarian authorities tasked with inspecting border events, it supervises the works surveying and marking the state border, upgrading the border markers, it takes the necessary measures to handle the conflicts directly threatening the order of the state border or the conflicts arising from mass migration, furthermore it eliminates violent acts directed against the order of the state border.[14]

Neither the act on the police interprets the order of the state border, nor does the Hungarian criminal law interpret certain crimes related to the order of the state border. Regarding the latter idea, Sándor Madai prefers if the legislative power defines the protection of the order of crossing the state border and the order of border traffic stipulated in the

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[9] Lőrincz Aranka (2015): Az állampolgársági jog válasza a terrorizmusra. In Hautzinger Zoltán szerk.: *Migráció és rendészet.* Budapest, Magyar Rendészettudományi Társaság, Migrációs Tagozat. 119.

[10] Varga János – Verhóczki János (2013): *Határrendészet.* Budapest, Nemzeti Közszolgálati Egyetem, Rendészettudományi Kar. 31.

[11] Suba János (2017): Határvédelem a második világháború időszakában, 1938–1944. In Pósán László – Veszprémy László – Boda József – Isaszegi János: *Őrzők, vigyázzatok a határra!* Budapest, Zrínyi Kiadó. 537.

[12] See Section 45, subsection (1) of the Fundamental Law of Hungary.

[13] "The core duties of the police shall be the prevention and investigation of criminal offences, and the protection of public security, public order, and the order of state borders." See Section 46 of The Fundamental Law of Hungary.

[14] Section 1, subsection (2) points 9–13) of Act XXXIV of 1994 on the Police.

relevant legislation.[15] Activities by the authorities related to the before-mentioned serves as the basis of border policing, which concept, as viewed by József Beregnyei, can be approximated to border surveillance,[16] while in accordance with the definition by Gergely Virányi, it goes beyond border surveillance and may include certain state activities which can be integrated into the mission of several authorities, and which can direct towards establishing and maintaining the border order, the prevention of border order disturbances, as well as towards interrupting the behaviour directly disrupting the border order and the restoration of the disrupted border order – or its defence, if need be.[17] Gábor Kovács describes border policing as a legal category, a system of activities and an organization, which can on the whole be related to border surveillance and other activities (criminal investigation and alien policing).[18]

Relating to the referred concepts, it must be mentioned that border policing, as a part of law enforcement, can indeed be related to border control and border order, but it cannot include other independent branches of policing, it can only be linked to them. Law enforcement activities in criminal matters related to the state border or separating alien policing from border policing, however, do not mean that border policing cannot be an instrument when authorities handle migration issues. Moreover, border policing in consideration of the two faces of migration goes beyond alien policing when it comes to checking migration issues, since its personal scope includes everyone, regardless of their citizenship, who crosses (inwards or outwards) the state border at the designated border crossing. Nevertheless, only those safety rules and models can be related to border policing which can be applied at the state border.

Although authority measures launched due to managing migration far from the state borders and the border areas are fit by many[19] into the integrated border management or border control systems, these measures, due to their characteristics of checking foreigners, are not border policing but rather alien policing ones by their nature. Another matter is that behind using the terminology *border policing* there may be organizational reasons, by designating authorities to carry out alien policing checks in the area of free movement, which authorities otherwise carry out their main tasks at the state border as border policing (border control, border safety) authorities.

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[15] Madai Sándor (2016): A „tömeges bevándorlás okozta válsághelyzet" kezelésének büntető anyagi jogi eszközei hazánkban. In Hautzinger Zoltán szerk.: *A migráció bűnügyi hatásai.* Budapest, Magyar Rendészettudományi Társaság, Migrációs Tagozat. 248.

[16] Beregnyei József (2012): *Rendészet, rendvédelem értelmezése, viszonya és kapcsolata a Határőrséghez.* Pécs, Pécsi Határőr Tudományos Közlemények I. 30.

[17] Virányi Gergely (2012): *Gondolatok a rendészettudományhoz.* Pécs, Pécsi Határőr Tudományos Közlemények I. 63.

[18] Kovács Gábor (2012): *A rendészet, határrendészet értelmezése a határőrségi csapaterő feladat- és tevékenységrendszerében.* Pécs, Pécsi Határőr Tudományos Közlemények I. 92.

[19] For more details, see Varga János (2008): A schengeni eszme uniós biztonsági rendszerré válásának kiteljesedése és távlatai. In *Postavenie Schengenkého acquis v systéme politik Európskych spoločenstiev. Zborník z medzinárodnej vedeckej konferencie.* Bratislava, Akadémia Policajného zboru v Bratislave. 80.

The Effects of Migration on Crime and Criminal Law

The social consequences of crimes committed in relation to migration or by foreigners, respectively, are apparently related – they can, however, be basically classified in two different sets. Criminal acts related to human migration, on the one hand, can be related to either emigration and immigration, additionally such acts can be included into this scope whose perpetrators are not necessarily foreigners (another phrasing: the foreigners). Criminal acts perpetrated by foreigners are mostly non-migrational ones (unlawful border crossing, unlawful stay, people smuggling, unlawful employment, etc.), but unlawful conducts that anyone can commit, and among which the gravest crimes (homicide, assault and battery) or offences that have a more limited effect on the general sense of security (defrauding public finances, traffic offences) may occur. Another significant difference is that most of the crimes committed by foreigners do not become known. Some of the possible reasons may be the lack of language proficiency, the lack of knowledge of the culture and legal order of the place of stay, and last but not least the existing solidarity even in cases of crimes committed against each other.[20]

Handling the unlawful acts related to migration can be carried out by legal instruments in the framework of provisions of various branches of law. For the general public and sometimes the profession too, criminal laws seem to be convenient; however, applying them would mean the criminalization of the phenomenon of migration and, on the other hand, it would unduly affect and burden the punitive application of the law and justice. The *ultima ratio* principle of criminal law does not support that unlawful behaviours or unlawful acts relating to irregular migration be punishable by means of criminal law. The Constitutional Court, for instance has expressed that the social function of the criminal law is to serve as the sanctioning keystone of the entirety of the legal system, that is the purpose and role of punishment is to maintain the integrity of the legal and moral norms when no other sanctions by other branches of the law can help.[21] Therefore, in the wide range of legal means and instruments available to combat and prevent unlawful entry or stay, ultimately criminal law may also offer solutions to punish criminal conduct directly related to irregular migration.

The issue of crimmigration

International literature aptly uses the term of *crimmigration* to describe the criminalisation of human migration.[22] In this definition the asymmetric blending of criminal law and migration rules is visible, as it includes the sanctioning of unlawful immigration by the instruments of criminal law, relating criminal behaviour to the coercive measures employed

[20] Haller József (2016): Migránsok agresszivitása az adatok tükrében. In Hautzinger Zoltán szerk.: *A migráció bűnügyi hatásai.* Budapest, MRTT. 89.

[21] Decision 30/1992. (V.26.) of the Constitutional Court.

[22] Stumpf, Juliet (2006): The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power. *American University Law Review,* Vol. 56, No. 2. 368.

in migration (e.g. expulsion) and introducing criminal law instruments (e.g. bail, secure detention) in alien policing procedures, respectively.[23]

The term *crimmigration* has by now become a well-defined concept for international criminal science academia, which concept shows how different countries attempt to control human migration, to make an effect on regulating certain human rights.[24] The term *crimmigration* has only sporadically occurred in the relevant Hungarian literature. Summarizing the findings of international studies in this field, Miklós Lévay, for instance, associates the criminalisation of migration and the criminological examination of its consequences to the concept of *crimmigration.*[25] Examining criminality related to foreigners, however, is not considered a particularly negligible area.[26] Besides, due to criminalising irregular immigration and stay, the works assessing the criminal law means and instruments recently introduced to respond to the acceleration of illegal migration have generated a wider scale of interest within jurisprudence.

When sanctioning unlawful immigration, it is especially interesting to examine the situation regarding the criterion set on judging an act subject to applying criminal law instruments. The European Union, for instance, tries to strengthen the criminal law framework of its fight against unlawful entry and transit, as well as unlawful stay. Thus, in the criminal law systems of certain member states special legislation can be found concerning people smuggling, human trafficking, illegal employment of foreigners unlawfully residing in the member state.[27]

Nevertheless, it can be a subject of examination what acts, in addition to the behaviours related to classical unlawful migration or stay, related directly to irregular migration can reach the level of being sanctioned by criminal law. In Estonia, for instance, the unlawful stay of a foreigner is considered a policing crime. It can be committed by a foreigner who stays in the country without a legal basis at least on two occasions within one year.[28] In Finland crossing the state border unlawfully constitutes a criminal act and unlawful stay in the country is considered a criminal offence.[29] In Italy, the consolidated act on immigration defines the punishable acts related to irregular migration. Among such acts are the following: violating the decision on expulsion or not respecting the obligation to participate in the voluntary return programme in case of third-country nationals or avoiding the obligations arising from the programme.[30] Violating the decision on expulsion as well as unlawful entry

[23] Legomsky, Stephen H. (2007): The new path of immigration law: asymmetric incorporation of criminal justice norms. *Washington and Lee Law Review,* Vol. 64. 476.

[24] Woude, Maartje van der – Barker, Vanessa – Leun, Joanne van der (2017): Crimmigration in Europe. *European Journal of Criminology,* Vol. 14, No. 1. 4.

[25] Several articles on crimmigration were published in 2017 in the *European Journal of Criminology,* Issue 1.

[26] See e.g. Hautzinger (2016): *op. cit.* or Póczik Szilveszter (2017): A jelenkori nemzetközi migráció egyes speciális kriminológiai vonatkozásai. In Sabjanics István szerk.: *Modern kori népvándorlás. A migráció komplex megközelítése.* Budapest, Dialóg Campus Kiadó. 57–70.

[27] Not including those punishable acts, which immigrants commit during their stay but not for the purpose of illegal entry or stay. In this respect, see Alonso-Borrego, César – Garoupa, Nuno – Vázquez, Pablo (2011): *Does Immigration Cause Crime. Evidence from Spain.* Madrid, Universidad Carlos III de Madrid.

[28] Estonian Penal Code (passed 06.06.2001 RT I 2001, 61, 364, entry into force 01.09.2002) Sections 233–234 and 260. Available: www.legislationline.org/documents/section/criminal-codes (Accessed: 10.06.2015)

[29] The Criminal Code of Finland (39/1889, amendments up to 927/2012 included) chapter 17, Section 7, subsection (2). Available: www.legislationline.org/documents/section/criminal-codes (Accessed: 10.06.2015)

[30] Ad-Hoc Query on criminal law. Requested by HU EMN NCP on 23 June 2014. 21.

or stay are also punishable in Luxembourg. Considering the former, not only the illegal entry or the timed-out stay is considered punishable together with misrepresentation before the competent authorities, while considering the latter, expulsion or repeated entry despite the existing prohibition of entry and stay is punishable. The Romanian and Bulgarian penal code had declared illegal border crossing a crime long before the migration wave hit the area in 2015, and presently they sanction the act with deprivation of liberty irrespective of the fact whether or not the applicant has applied for asylum.[31]

Disregarding the above examples, criminalising irregular migration, or basically any form of human migration contrary to the law, has become a current issue for the general public, as well as the people in alien policing, criminology and criminal law. In her analysis concerning the impact of the police and the justice system on the opinion of the general public, Joanna Parkin concludes that authority measures taken against persons of irregular status can easily demonstrate the effectiveness of policing. Additionally, a useful *enemy* figure can be found that may play on public fears and lessen the feeling of security.[32] This is also a reason why no-one today disputes that the effects of criminal law concerning migration show a growing trend generating an additional issue whether migration may become overcriminalised?[33]

Examples of crimmigration in the Hungarian Criminal Code

Since, as set out in the substantive set of rules in the Hungarian legal regulation, there is no crime similar to unlawful stay (infringement of prohibition of entry and stay) that can only be committed by a foreigner, this area may include acts that can typically be carried out in relation to foreigners (third-country nationals).[34] These include, among others, people smuggling, facilitating unlawful stay, abusing family status and unlawful employment of third-country citizens.

Of the above crimes mentioned, people smuggling is considered the most typical migration crime, whose goal is to facilitate the entry of certain persons to the territory of a country different from their country of citizenship without meeting the requirements of lawful entry and stay. This crime was already punishable in the Criminal Code of 1961. At that time, however, the situation did not primarily focus on preventing illegal immigration into the territory of the country, but rather on preventing unauthorised emigration from the country. Concerning the above, at that time the Criminal Code listed crimes such as unauthorised border crossing, refusal to return, or failure to report unauthorised border crossing or people smuggling. Currently people smuggling activity has become an area preferred by organised crime, in which the perpetrators assist persons not having permits

[31] Although asylum application is considered ground for exemption from punishment in Romania and Bulgaria, certain rights organisations consider detention as authorised by criminal law in reference to unlawful border crossing. See Rigo, Enrica (2006): Citizens and Foreigners in the Enlarged Europe. In Sadurski, Wojciech – Czarnota, Adam – Krygier, Martin eds.: *Spreading Democracy and the Rule of Law?* Springer. 111–112.

[32] Parkin, Joanna (2013): The Criminalisation of Migration in Europe. *CEPS Paper in Liberty and Security,* No. 61. 5.

[33] Chacon, Jennifer M. (2012): Overcriminalizing Immigration. *Journal of Criminal Law and Criminology,* Vol. 102, No. 3. 616.

[34] Not including particular offences against or related to foreign officials.

to enter and stay in Hungary (and the area of the European Union) to unlawfully cross the state border. Therefore, people smuggling refers to a criminal situation whose goal is to prevent illegal immigration into Hungary rather than prevent emigration from the country. Although anyone can be the perpetrator and party (mainly instigator) involved, people smuggling activities are usually committed by Hungarian and non-Hungarian citizens by providing assistance in illegal border crossing for third-country citizens.[35]

The new Criminal Code introduced the crime of facilitating of unauthorised residence[36] and the abuse of family ties.[37] The former, quite complex, regulation is essentially the updated version of the crime of unlawful stay as set in the previous Criminal Code. Its perpetrator can be a person lawfully residing in the territory of the country who provides assistance for financial gain to foreign nationals (generally third-country nationals) to reside unlawfully in the territory of Hungary. For similar purposes the new Criminal Code punishes the abuse of family ties too, which can be committed by persons over the age of eighteen who enter into a family relationship for financial gain for the sole purpose of obtaining a document verifying the right of residence or consent to a statement of paternity of full effect. While providing assistance to reside unlawfully punishes the assistance concerning unauthorised residence of persons not having the right of free movement, the abuse of family ties is a deception of a condition by which the third-country national intends to legalise his/her unauthorised residence intellectually.

Even the previous Criminal Code, although by one of its last amendments, regulated the unlawful employment of third-country nationals as a punishable crime.[38] The focus of this crime was the third-country national not having a licence to carry out economic activity, who is nevertheless employed, regardless of his/her legal or illegal stay in Hungary. The primary reason for the factual situation derives from the Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, which requires member states to set penalties in serious cases, as specifically identified in the directive, in their national laws.[39] Thus creating the above crime, it penalises unlawful employment related to migration having regard to the European Union legislation and its implementation in Hungary.

To some extent, the special case of human trafficking[40] may also be considered a traditional act of migration background, since its factual elements contain the conduct of trafficking. In human trafficking, however, border crossing and spatial movement do not constitute the most important elements, since human trafficking can be considered a crime against personal liberty, thus domestic or cross-border migration is only related to it as

[35] In accordance with Section 353 subsection 1 of Act C of 2012 on the Criminal Code: "Any person who provides aid to another person for crossing state borders in violation of the relevant statutory provisions is guilty of a felony punishable by imprisonment not exceeding three years."

[36] Section 354 of the Criminal Code.

[37] Section 355 of the Criminal Code.

[38] Section 356 of the Criminal Code.

[39] Polt Péter ed. (2013): *A Büntető Törvénykönyv Kommentárja.* Budapest, Nemzeti Közszolgálati és Tankönyv Kiadó. 177. The referenced commentary was written by Balázs Gellér.

[40] Section 192 of the Criminal Code.

a secondary, basically not strictly necessary element.[41] The crime itself is not necessarily in migration but in the serious infringement of human rights. Nevertheless, in international cases against human trafficking it is clearly visible that certain international documents put special emphasis on assisting victims with migration background.[42]

Provisions concerning criminal law and procedural law caused by increased migration

In 2015 Hungary was affected by migration activities previously unheard of. The refugees mainly arrived to Europe and Hungary from areas, such as Syria, Afghanistan, Iraq and some Sub-Saharan countries, where the previous polities had collapsed (e.g. Libya, Syria) or where state building had failed (e.g. Afghanistan, Iraq) causing the local populace to face open and prolonged civil wars or serious and long-lasting instability.[43] Nevertheless, almost all third-country nationals unlawfully entering Hungary, apart from the last quarter, arrived with the purpose of travelling further to countries in Western Europe, after they submitted their request for asylum but before their asylum procedure was scheduled. This situation made its effect on legal provisions whose primary goal was not to provide legal support (criminal law or procedural law) as regards actions taken by the authorities against foreigners, but rather to serve the protection of the so-called temporary border barrier aimed at ensuring that the authority procedures concerning persons unlawfully crossing the border could be conducted at locations where the physical conditions were adequate.[44]

As the result of the phenomenon of mass migration, the offences of prohibited crossing of border fence, vandalisation of border fences and disruption of construction works related to the border fence were integrated into the Criminal Code. In the reasoned opinion, it can be read that due to the criminality related to illegal migration, even the strictest means of exercising public authority, i.e. criminal sanctions must be applied to combat serious forms of unlawful conduct.[45] The protected legal interest, however, is not only the protection of the territorial integrity of the country, but also the protection of the installation serving the effective combating against illegal immigration and the protection of the order of the state border. For this purpose, applying the criminal law to such cases is not justified if the persons enter the country by avoiding the temporary border barrier, since the unauthorised border crossing refers to any person who enters the territory of Hungary, in an unauthorised way, through the technical border barrier established on the state border serving to protect

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[41] Windt Szandra (2015): Az emberkereskedelem jelensége és a fellépés nehézségei. In Hautzinger Zoltán szerk.: *Migráció és rendészet.* Budapest, MRTT Migrációs Tagozat. 249.

[42] See Act CII of 2006 on the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime and Act XVIII of 2013 on the Convention of the Council of Europe against Trafficking in Human Beings or Directive 2004/81/EC.

[43] Szuhai Ilona – Tálas Péter (2017): A 2015-ös európai migrációs és menekültválság okairól és hátteréről. In Tálas Péter szerk.: *Magyarország és a 2015-ös európai migrációs válság.* Budapest, Dialóg Campus Kiadó. 27.

[44] Government Decrees of 211 and 213 of 2015 on the temporary border barrier.

[45] Section 27 of Act CXL of 2015 on The Amendment of certain Acts related to the management of mass migration.

the order of the state border.[46] The same legislative consideration is behind the codification of the vandalisation of border fence, as it punishes the perpetrator who destroys or vandalises the technical border barrier planted on the state border to protect the order of the state border insofar as the act did not result in a more serious criminal offence.[47] The disruption of the construction works related to the border fence is similar in character, which offence is committed by any person who disrupts the construction works related to the building and maintenance of the technical border barrier established on the state border to protect the order of the state border.[48] The reasoning for such offence is that if a person's conduct jeopardises the operation, as intended, of the installation serving to protect the order of the state border by disrupting the works, the person's act would entail criminal consequences. Constructing such installation and maintaining its operation is a priority instrument to effectively protect the state border, its uninterrupted operation is of public interest which would entail criminal consequences.[49] An important legislative intent is, however, to state that exercising expulsion, as a punishment, regarding the offences involved cannot be bypassed. In consideration of this, it can be stated that the genuine intent is not to use imprisonment but rather to expulse and deport foreign defendants, basically third-country nationals, from the territory of Hungary. By doing so, subsequent law enforcement requirements are not expected.

Considering the migration crisis, the legislative power formulated a special procedure, considering the unique nature of the crimes committed in relation to the border barrier (fence) with special regards to the prohibited crossing of the border fence, the essence of such procedure, adapted to the spirit of the substantive penal provisions, being the establishment of the possibility that the stay of foreigners who are found guilty and sentenced could be terminated as soon as possible. By such move, a different legal regime has been created based on ensuring the specific procedures regarding unlawful border crossing caused by mass immigration of foreigners during crisis situations.

These specific procedures in relation to the border barrier affect two forms of criminal proceedings that traditionally belong to different procedures in criminal proceedings. Arraigning the perpetrator to court, a stricter procedural deadline was set by enabling the prosecutor to arraign the defendant, within fifteen days from his/her examination as a suspect if the case is simple, the evidences are available and the defendant has admitted the crime. If these conditions exist, arraigning the perpetrator to court can be carried out within eight days from the moment the perpetrator was caught in the act.[50] In this new form, the rules of waiver of the right to trial apply in a particular way. According to it, the procedure must be conducted within fifteen days from the defendant's examination as a suspect and, in an unconventional way, it can be initiated by the defence (defence is mandatory in the procedure). In such cases the examination as a suspect is led by the prosecution, minutes of the examination are taken, and on the basis of same facts and findings, the prosecution indicts, proposes the case to be judged in an open court, and proposes the application of the punishment or measures, their type, extent and content being set in the agreement, additionally, the prosecution indicates the lower and upper limits of the before-mentioned. If

[46] Section 352/A subsection (1) of the Criminal Code.
[47] Section 352/B subsection (1) of the Criminal Code.
[48] Section 352/C subsection (1) of the Criminal Code.
[49] Section 27 of Act CXL of 2015 on The Amendment of certain Acts related to the management of mass migration.
[50] Section 542/K of the Act on Criminal Proceedings.

the court agrees with the facts and findings in the indictment, as well as with the application of the punishment or measures, their type, extent and content being set in the agreement, and the indicated lower and upper limits, the court will then arrange the trial immediately upon the files arrival at the court.[51]

These specific procedural rules in relation to the border barrier have been prolonged in the new act on criminal procedures.[52] The new regulation does not substantively modify and amend the previous criminal procedures, it further offers regulations that affect the jurisdiction and competence of the courts, the implementation of coercive measures, the harmonisation of integration of special procedures, as well as facilitation measures regarding such procedures. Codifying such specific rules brings the message about ensuring the prosecution of perpetrators the easiest way possible, insofar as the act did not result in a more serious criminal offence, in cases of offences committed in connection with the border barrier by participation as a result of illegal migration. From the aspect of a fundamental black letter law mechanism, the above-mentioned, at the same time constitutes the weakness of these procedures. Certain simplifications, on the one hand, may neglect the concept of international or European Union guarantee arrangements regarding fairness in criminal proceedings (including the use of one's own language, rights of the defence) and, on the other hand, may question the genuine function of criminal proceedings, that is the protection of society. If the main function of the criminal proceedings is not to protect society, but rather to create a situation that aims at expulsion of the foreigner who is an unlawful migrant, it may well not be justified to have criminal proceedings authorities involved. It would be enough to apply special policing rules that may guarantee the assumed purpose of punishment in other simpler procedures.

Policing Opportunities Instead of Criminal Law Instruments

As instruments of illegal migration, the conducts of the unlawful or impermissible crossing of the state border or the concealment of unlawful stay, including human trafficking and forgery of official documents in respect of acts of participation in a criminal organisation, usually do not represent a risk to society. It, of course, does not preclude that a state should not proportionately and reasonably respond by its authorities to the infringements committed. Therefore, there may be grounds for finding responses to illegal immigration (entry) or stay applying other (not criminal law) measures.

One solution may be the formulation of certain facts outside the scope of criminal law, but here one can also mention, for reasons of convenience, the assessment of criminal acts in other ways. Applying the administrative criminal law may be an adaptive method, but alien policing law, as a primary legal instrument, may also be taken into consideration due to its efficiency, in particular its primary social interest in remedying the unlawful state resulting from unlawful entry or stay, and which alien policing law, in addition to administrative measures taken to terminate irregular stay, imposes additional public administration sanction (fine) in relation to unlawful entries or employing foreign nationals.

[51] Sections 542/L-542/T of the Act on Criminal Proceedings.

[52] See the general statement of reasons of Act CX of 2017 on criminal proceedings.

Sanctions outside criminal law

The national administrative criminal law assigns quite obvious norms to migration and foreigners. These norms, on the one hand, can be found in the general part of administrative criminal law and, on the other hand, in the facts of offences[53] against human dignity, personal freedom and public order. In case of the former, the foreigner status dominates. Among these the administrative rules must be mentioned that refer to specific registration requirements[54] concerning foreign subjects, or principles that can mainly be interpreted in respect to non-Hungarian citizens. The example of the latter is the right to use one's own language[55] and the request to be assisted by an interpreter,[56] or the obligation of authorities to provide information during custody.[57]

Regarding administrative offences, we can talk about clearly outlined forms. They are, among others, prohibited border crossing or offences relating to travel documents.[58] In two separate sections, two different types of conduct are sanctioned. In the former, the punishable offence is the unauthorised or impermissible crossing, or the attempt of crossing of the state border of Hungary, while in case of the latter it is the infringement of the legal provisions related to travel documents which is in the focus. By acting as above, the legislation expresses that while crossing the state border or staying as a foreigner is undoubtedly part of the freedom of movement, it is subject to certain conditions (valid travel document, valid visa, in certain places crossing the border in scope of border control procedures), and non-compliance with the conditions is subject to sanctions. Another issue is that prohibited border crossing can be sanctioned by administrative criminal law and enforced against the residents of the country only, since regarding third-country nationals, including nationals not having the right to free movement and stay, the above-mentioned alien policing procedure provides a more efficient procedure, provided that no asylum procedure should be concluded. Moreover, in the latter case, until the asylum procedure has been concluded, certain procedural restraints must be taken into account considering the restriction of the Geneva Convention relating to the Status of Refugees.[59] A minor flaw is that the relevant provisions have not been transposed into the national administrative criminal law, although Hungary has been a party to the Geneva Convention since 1989.

Administrative offences relating to policing foreigners[60] is also a fact that is intended to discourage irregular migration. According to this, a person commits an administrative

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[53] Chapter XXIV of Act II of 2012 on Offences, the Procedure in Relation to Offences and the Offence Record System.

[54] In case of foreigners, the content of personal identification data is supplemented by the identification number of the residence card or passport in accordance with Section 151, subsection (2) point (f) of the Act on Offences.

[55] Section 36 of the Act on Offences.

[56] Section 67, subsection (1) of the Act on Offences.

[57] Section 73, subsection (11) of the Act on Offences.

[58] Section 158 of the Act on Offences.

[59] In accordance with the Protocol (Section 31, subsection 1): "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

[60] Section 208 of the Act on Offences.

offence if he/she breaks the regulations regarding the notification on, registration of, or stay of foreigners in the territory of Hungary. Although this offence can be committed regarding either persons having the right to free movement and stay or third-country nationals, irregular migration; however, it exclusively affects those third-country nationals who arrive in the territory of Hungary having a permit (legally), but as regards the regulations on their stay there is negligence either by them or by others (educational institution, landlord). The effectiveness of administrative criminal law, contrary to the previous fact, can be measured in cases of institutions that do not comply with the administrative obligations on foreigners. It is only a theoretical question that such administrative crime is committed by citizens of EEA, since in their cases the duration of stay cannot authentically be determined, while in case of third-country nationals, determining the administrative crime can only make sense of foreigners lawfully staying in the country, and in cases of persons residing without a permit, alien policing law may provide a solution to the arising situation.

In addition to the above two facts, there are several other facts in administrative criminal law that can be related to migration, in particular the administrative offence in border policing, especially one of its sections that describes the punishment in case of breach of prohibitive or restrictive provisions related to the order, surveillance and protection of the state border. Of these conducts, in particular, breach of norms related to border checks can be highlighted, such as the attempts of avoiding checks, ignoring the order related to the check, not complying with the order of the border crossing point, not following the prescribed rules of conduct in case of the refusal of entry and ordering return.[61]

In addition to administrative criminal law, there exist other non-punitive sanctions regarding the phenomena related to irregular migration. Public administration, since its very beginning, has had sanction instruments whose scope, in order to ensure the faster and more effective enforcement, extends to punitive legal sanctions.[62] A good example of such sanctions in the Hungarian alien policing law is the possibility of penalty imposed on carriers or employers in the so-called vested responsibilities. In case of the former, carriers providing travel accommodations to third-country nationals by means of air, water or scheduled road transport shall be required to check the travel document and visa of the planned stay for the period not exceeding 90 days, of their passengers before boarding for travelling to the Republic of Hungary or to another country through the territory of the Republic of Hungary to ensure that they have travel documents required for entry or for transit.[63] For any failure to comply with the obligation, as set out in other specific legislation, a penalty for the protection of public order shall be imposed upon the carrier in question.[64] Employers shall also be required to ascertain not later than the first day of work (before the employment) of a third-country national that the third-country national affected has the permit prescribed in this Act for staying and engaging in gainful employment. Additionally,

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[61] Cserép Attila – Fábián Adrián – Rózsás Eszter (2013): *Kommentár a szabálysértési törvényhez.* Budapest, Wolters Kluwer. 366–367.

[62] Kis Norbert (2015): „Metszéspontok" – rendészettudomány, bűnügyi tudományok, közigazgatás-tudomány és transzdiszciplinaritás. *Magyar Rendészet,* Vol. 15, No. 4. 90.

[63] Section 69, subsection (1) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

[64] Section 69, subsection (4) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

employers are subject to other obligations, as well. Any employer who fails to satisfy the obligation shall be subject to a penalty – specified under other specific legislation – for the protection of public order imposed by the alien policing authority. Relating to the above, the main contractor and all subcontractors together with the subcontractor employer shall jointly and severally be liable for paying the penalty for the protection of public order if they knew, or had reasonable grounds to know that the subcontractor employer employs a third-country national without the permit prescribed for staying.[65]

The increasing migration situation in 2015 that affected Hungary made its effect on legal provisions whose primary goal was not to provide legal support (criminal law or procedural law) as regards actions taken by the authorities against foreigners, but rather to serve the protection of the so-called temporary border barrier aimed at ensuring that the authority procedures concerning persons unlawfully crossing the border could be conducted at locations where the physical conditions were adequate.[66] The purpose of these provisions was, on the one hand, to ensure the protection of the temporary border barrier by applying public administration sanctions and, on the other hand, to ensure the uninterrupted construction of the border barrier. Accordingly, it was stated that in order to protect the temporary border barrier, the person who enters without proper authorization the area of the temporary border barrier during the construction or the maintenance works of the temporary border barrier, or the person who carries out any activity that disrupts the ongoing construction and installation works, and the person who brings in drones or any remote-controlled devices the area of the temporary border barrier during the construction or the maintenance works of the temporary border barrier, respectively, is subject to pay a public administration fine.[67] Additionally, the person who, during the construction or the maintenance works of the temporary border barrier, prevents the authorised official persons or the persons carrying out the work, as well as the official or transport vehicles heading to or leaving the area, from entering or leaving the area of the temporary border barrier is also subject to pay a public administration fine.[68]

Both facts serve to protect the establishment and maintenance of the state-owned premises constructed and installed to protect the order of the state border in order to ensure migration control, but crossing or vandalising the border barrier unlawfully, or disrupting the ongoing works way exceed the scope of imposing a public administration fine, and can be manifested in punitive legal provisions.[69] The purpose of these facts, however, are directly connected to foreign persons with migration background, considering the fact that, in case of non-Hungarian perpetrators of such crimes, in accordance with the Hungarian Criminal Code exercising expulsion, as a punishment, regarding the offences involved cannot be bypassed.[70] In consideration of the cases provided for by the special laws, the question keeps

[65] Section 71, subsections (1)–(7) of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals.

[66] Government Decrees 211 and 213 of 2015 on the temporary border barrier.

[67] See Section 2, subsections (1)–(3) of Government Decrees 211 and 213 of 2015 on the temporary border barrier – protection of border barrier.

[68] Section 3, subsections (1)–(2) of Government Decrees 211 and 213 of 2015 on the temporary border barrier – obstruction.

[69] See Sections 352/A, 352/B, and 352/C of Act C of 2012 on the Criminal Code – crossing or vandalising the border barrier unlawfully, or disrupting the ongoing works.

[70] Section 60, subsection (2) of the Criminal Code.

arising in this paper: Do we necessarily need criminal law sanctions and the procedures leading to imposing such sanctions to remove the unlawfully entering and staying persons from the territory of the country (and of the European Union)?

Applying policing instruments instead of criminal proceedings

Apart from the functional separation between criminal proceedings and policing, and considering the effectiveness of the policing measures, in particular, its use to eliminate or interrupt directly disturbing conduct, or to immediately enforce penalties, the issue may still arise, whether or not policing is suitable for restoring impairment and eliminating unlawful situation instead of governing whether criminal law liability has incurred. The answer in this regard is affirmative. Policing can be called to assist to augment the safety net of criminal law[71] in cases when the incurred impairment is minor or when eliminating the unlawful situation fulfils greater social needs rather than setting criminal liability. In the former case, the substantive criminal law provides ground for extinction, in the latter, we need to mention specific obstacles of criminal proceedings, among which there is a fine example when the perpetrator is a foreign person and commits his/her act from migration considerations.

In the Hungarian criminal procedure, we cannot find an independent subsystem, summarising rules and regulations that differ from the regular procedure, regarding prosecution of non-national persons. While concerning differentiation in prosecution related to the identity of the defendant, we may primarily think of prosecution against juveniles, military prosecution or prosecution against absent defendants or legal persons, respectively, similar specialisation against foreigners has not yet emerged. Due to the increasing phenomenon of migration, and considering the rising trend of crimes against foreigners, in particularly in cases of defendants with alien citizenship or stateless defendants, a number of specific features can be identified (authentic instruments proving citizenship, the right to use one's own language due to the unfamiliarity with the language of the procedure, mandatory defence, the right to communication with consular authorities), it is timely to consider and reflect on compiling such criteria relative to criminal proceedings that differ from the regular ones, similarly to those in cases of juveniles, military personnel and the like. This can be carried out by expanding part 5 of the Act on Criminal Proceedings containing provisions diverging from the general rules with an additional new chapter.

A special obstacle to the system of criminal proceedings against foreigners is reflected in the following: "No investigation may be launched due to the forgery of public deeds (Section 342 of the Criminal Code), if the forged or falsified travel document or the authentic travel document issued to the name of another person is used by a foreign citizen to enter the territory of the country, provided that an immigration control procedure may be instituted. This provision shall not apply, if an investigation must be started against the same foreign citizen for the perpetration of another criminal offence as well."[72] The section

[71] Amberg Erzsébet (2014): *Büntetőjogi változások – rendészeti reakciók.* Pécs, Pécsi Határőr Tudományos Közlemények XV. 125.

[72] Section 170, subsection (6) of the Act on Criminal Proceedings.

quoted here introduces an exception, due to practical considerations, from the principle of proceedings *ex officio,* serving as the theoretical basis of opening proceedings. The intention of the legislation is based on aspects of economic viability, according to which, if the crime committed was directed exclusively towards the entry to Hungary, in this present case in an unlawful way, and it involves alien policing procedures, no investigation may be launched.

The previously mentioned obstacle to investigation can only be applied if other uniform conditions are met. Firstly, we talk about special subjects. The perpetrator of the crime can only be a foreigner against whom prohibition of entry, ordering return at the border crossing or, as a part of alien policing procedures, expulsion can be enforceable. Due to the differentiation of foreigners by criminal law, this may refer to third-country citizens against whom the principle of *non-refoulement* has been taken into consideration or who have not initiated an asylum procedure in Hungary. The second condition stems from this one: the investigation cannot be launched only due to conducting the alien policing procedure. If the alien policing procedure cannot be conducted regarding the foreigner, due to his/her citizenship or asylum request, the investigation must be ordered in accordance with the general rules. Thus, this obstacle cannot usually be applied in case of persons having the right to free movement and stay, as well as their family members; nor can it be applied if the investigation must be initiated against third-country citizens due to whose intent or request for asylum revives the prohibition to return.

The detailed obstacle to investigation is not mentioned, however, in the 2017 Act on Criminal Proceedings. One can only guess its reasons, however, in case investigating criminal matters emerge from detecting forged or falsified travel documents in the future, it is still more effective to take alien policing measures. It is advised to set the legal basis of it in the act on criminal proceedings, but another solution may be, quoting Béla Blaskó's wording on the matter, if the substantial criminal law, considering the issue an obstacle to investigation, has its response to the issue by a solution based on its own guarantee arrangements of its own traditional black letter law mechanism.[73]

Conducting criminal proceedings cannot be prevented by submitting the asylum request. This obstacle, as an international prohibition, stems from Article 31 of the 1951 Refugee Convention (Geneva),[74] which states that the contracting states shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened, enter or are present in their territory without authorization. The condition of the prohibition of penalty as quoted above is that the refugees in question shall present themselves without delay to the authorities and show good cause for their illegal entry or presence. Indirectly from the above, what follows is that the refugees have the obligation to submit their request for asylum where their life or freedom is no longer threatened.[75] Another issue is that this obstacle was not integrated into the Hungarian rules of criminal proceedings, so in cases of persons who later were

[73] Blaskó Béla (2015): Közigazgatás – rendészeti igazgatás – büntetőjog. *Magyar Rendészet,* Vol. 15, No. 4. 52.

[74] In 1989 Hungary acceded by Government Decree 15 of 1989 to the Convention of 28 July 1951 relating to the Status of Refugees, and to the New York Protocol of 31 January 1967 that amended it.

[75] Tóth Norbert (2016): „Államarcú" nemzetközi jog, avagy a 2015 őszén módosított magyar Büntető Törvénykönyv a menekültek jogállásáról szóló 1951. évi genfi egyezmény 31. cikk (1) bekezdése fényében. In Hautzinger: *op. cit.* 243.

acknowledged as refugees during the asylum procedure, the criminality of forgery and falsification of authentic documents was practically excluded.

International provisions on asylum, however, do not exclude the possibility of applying provisions of policing nature against the asylum-seeker during conducting the asylum procedure. One of its institutions is asylum custody (administrative detention), which can basically guarantee the successful conduct of the asylum procedure by guaranteeing the asylum-seekers' personal presence and availability during the entire procedure. However, it cannot be excluded that ordering administrative detention different in nature from alien policing may have an effect of deterrence for persons having their legitimate claim for international protection. It may also compromise the scientific and technical appraisal of asylum custody if, during housing, pronounced cultural and civilizational differences exist (hygiene, dietary customs, practice of religion, etc.) and, when locked up, the excessive period of the assessment of the asylum procedure (essentially, the lack of immediate and favourable decision) may also have adverse effects.[76] Despite all that, this custody may prove to be a necessary coercive measure in cases if the final assessment of the asylum procedure in a large number of cases fail due to the asylum-seekers' leave to unknown destinations.

Instead of assessing crimes committed, as mentioned above, due to the asylum procedures initiated without foundation, the so-called alien policing expulsion can be considered a coercive measure with the purpose of policing. It is ordered by the asylum authority, if it has established that the asylum-seeker is not entitled to international protection, and has no further right to stay in the territory of the country. Similarly to asylum custody, this legal institution may seem *alien* compared to the spirit of asylum, but in principle it cannot be of concern if the authority has the obligation to establish whether or not the asylum and the prohibition of expulsion is founded.[77] Therefore, even in case of an unfavourable ending of the asylum procedure, there is no need to conduct the objective criminal proceedings concerning the crime committed in order to ensure entry or stay prior to applying for asylum or for the purpose of getting an asylum, it is more than enough to simply enforce asylum custody.

Summary

The issue of migration can neatly fit in the area of social safety and security but with one *proviso;* the impacts accompanying this phenomenon will be visible in the long term in the areas of politics, economy or, in extreme cases, the military.[78] As a result, branches of policing that are intended to function to handle and manage the impacts accompanying migration will be given higher priority. This is even more the case as regards the systems intended to protect the borders of nation-states and certain international communities

[76] Regarding the findings of the authorities on carrying out asylum-related detention, see more in Pacsek József (2016): A menekültügyi és az idegenrendészeti őrizet, valamint a kitoloncolás végrehajtása az ügyészi törvényességi felügyeleti tapasztalatok tükrében. In Hautzinger: *op. cit.* 287–297.

[77] Szép Árpád (2017): A 2015-ös migrációs válságra adott menedékjogi válaszok. Jogszabály-módosítással a tömeges beáramlás ellen? In Tálas: *op. cit.* 61.

[78] Vajkai Edina (2014): *A migráció kezelésének térnyerése a biztonságpolitikában.* Pécs, Pécsi Határőr Tudományos Közlemények XV. 254.

(in case of Hungary, it is the European Economic Area), and as regards the alien policing systems encompassing the persons not having the citizenship either of these nation-states or the member states of the international communities.

Though they are apparently synergistic systems, alien policing and border policing have their own characteristics, due to which they can be interpreted by different definitions. While in case of border policing being specific to limited areas it is definitive, in case of alien policing it depends on persons or clients. Border policing produces its effects exclusively at the state border and its area, at the border crossings and the border area in order to maintain the desired lawful situation (order). Alien policing has no geographical limits when it extends to persons not having citizenship at their place of residence, more precisely foreigners, in respect of whom, their entry and stay are to be examined under separate legal frameworks. Therefore, alien policing is present either at the state border or in the area of free movement. Nevertheless, either border policing and alien policing may extend to citizens, that is persons having citizenship at their place of residence. This circle is far broader in case of border policing, since it is not only foreigners that happen to be present in the area of the state border and at the border checks, while alien policing very rarely encounters citizens, on an entirely exceptional basis only, when their legal status, e.g. carriers, employers, hosts requires so.

Delimitation of tasks of border policing and alien policing appears in the establishment of the organisational structure of the authorities. Border policing is basically law enforcement, a set of tasks that may entail, if need be, establishing checkpoints, roadblocks, area closures, increased and more visible police presence. Alien policing, on the contrary, contains the activities of the authorities which, due to its customer-orientation, must be carried out by enforcing individual rights. This should not necessarily require using classical law enforcement measures. So while the authority responsible for the functions of border policing is the law enforcement authority, the primary authority for the functions of alien policing must be an agency (office).[79]

As regards the types of sanctions relating to irregular migration, there are several existing alternatives from practices across countries worldwide and within the member states of the European Union.[80] Basically, the core issue can be narrowed down to the fact whether measures of criminal law or measures outside the criminal law are applied when eliminating and preventing conducts (behaviours) or situations that are, due to uncontrolled human movement, contrary to law and order. The relevant application of the law is not consistent in the Hungarian legal system. The legal consequences of illegal immigration (entry and stay) may derive from norms outside of criminal law, but they are also present in the provisions of the criminal law.

As a result of its effectiveness, in particular its primary social interest in remedying the unlawful state resulting from unlawful entry or stay, alien policing law should be taken into consideration as a primary legal instrument. By imposing expulsion or, if need be, deportation, but not including asylum procedure, alien policing procedure terminates

[79] As of January 1, 2017, this agency in Hungary is the Office of Immigration and Nationality.

[80] A recently published article details the effective regulations existing in the European Union. See *Criminalisation of migrants in an irregular situation and of persons engaging with them.* European Union Agency for Fundamental Rights. Vienna, Austria, 2014.

irregular stay regardless the possibility of applying further sanctions deriving from other legal sanctions of alien policing.

The Hungarian public administration law and the administrative criminal law contain instruments and measures outside the criminal law. The latter refers to facts of offences against human dignity, personal freedom and public order,[81] while those in the public administration law are public administration fines established either as public administration sanctions in the scope of the so-called vested responsibilities[82] required from carriers and employers, or due to the increasing migration situation in 2015 with the purpose of ensuring the protection of the temporary border barrier and ensuring the uninterrupted construction of the border barrier.[83]

There is a wide range of legal means and instruments available to combat and prevent unlawful entry or stay; ultimately criminal law may also offer solutions to punish criminal conduct directly related to irregular migration. It is important to mention here that criminalising irregular migration, or basically any form of human migration contrary to the law, has become a current issue for the general public, as well as the people in alien policing, criminology and criminal law. This is the issue of the so-called *crimmigration* whose concept and scientific interpretation have recently been addressed in more detail.[84] Integrating the institutions of criminal law into migration law, applying punitive sanctions against immigration and the social impacts of immigration, respectively, are now in the focus. Connected with this is the examination whether 1. the increase of *crimmigration* can be justifiable or how inevitable itis in connection with the rising trend of migration; 2. how it can, if at all, provide effective solution to combat and prevent certain phenomena of unlawful migration; and 3. whether the sanctioning system of criminal law can be considered proportionate to the irregular trends of migration.

When considering the classical examples of criminal law prohibitions relating to the unlawful forms of migration (in particular unauthorised entries and stays), the following may be remembered: prohibited crossing of the state border, foreigner's unlawful residence or assisting and supporting prohibited conducts, such as people smuggling, providing assistance for unlawful stay or, perhaps, unlawful employment of foreigners. The classical criminal law sanction in such cases is expulsion, which refers to the removal of the foreigner, *declared persona non grata,* and held liable for his/her intentionally committed crime in the territory of the country by the court.

The before-mentioned norms may be found in the Hungarian criminal law together with the particular facts, that is the technical barrier (temporary border barrier) established due to the increased migration pressure on the country, which barrier became the subject of debates in legal literature.[85] The prosecution by the state, at the same time, can only be

[81] Prohibited border crossing or offences relating to travel documents (Section 158), administrative offences relating to policing foreigners (Section 162), administrative offence in border policing (Section 159) in Chapter XXIV of Act II of 2012 on offences, the procedure in relation to offences and the offence record system.

[82] Section 69, subsection (4) of Act LXXX of 2007 on Asylum.

[83] Section 2, subsections (1)–(3) of Government Decree 213 of 2015 on the temporary border barrier – protection of border barrier.

[84] Regarding the works focusing on the topic, see García Hernández, César Cuauhtémoc (2015): *Crimmigration Law.* ABA Book Publishing. 75–148.

[85] Sections 352/A, 352/B, and 352/C of Act C of 2012 on the Criminal Code – crossing or vandalising the border barrier unlawfully, or disrupting the ongoing works.

possible in the form of substantive, adversarial and contradictory criminal proceedings. However, it does not prevent applying other legal instruments instead of criminal proceedings for practical reasons, in particular when the seriousness and the nature of the committed crime allows for it. A prime example of such move is the separation of military criminal proceedings – initiation of disciplinary proceedings. This method can be applied in military community in particular and is the application of labour law. Diverting the criminal proceedings, that is setting the liability in criminal proceedings of an act committed elsewhere is not found in the criminal proceedings in force. The rules of criminal procedures, however, allow for terminating a situation arising from unlawful stay in the scope of an alien policing procedure instead of establishing culpability. This method, however, is only available if there is but one crime committed, and only if the crime, detecting forged or falsified travel documents in case of foreigners, third-country nationals, is detected at the border crossing point. No alien policing procedure should be concluded if the foreigner, due to his/her status of free movement or stay, or his/her being under prohibition to return due to humanitarian principles.

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Part II.
The Phenomenon and Treatment of Migration in the Visegrád 4 Countries

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The Policies of the Hungarian Government in the Field of Migration within the Framework of the Visegrád Cooperation

Mátyás Hegyaljai

Migration

Migration is a social phenomenon that is as old as human history and is caused by several motives. It has been still discussed if the flow of migration can be stopped or only moderated but we can agree that the style of migration management is always the result of a political decision. This attitude determines the country's approach to the phenomenon. Although migration is examined in a broader context compared to historical periods and situations producing a whole library of literature, now I want to concentrate on the situation of the last couple of years that emerged after the Arab Spring. This problem was brought to Europe by the unexpected big number of migrants, even though a strong African migration has been predicted. This increase was almost exclusively due to higher rates of irregular migration from North Africa during the *Arab Springs,* which led to the largest number of detected illegal border crossing into the European Union of any first quarter in recent years.[1]

The different ideas have led to the lack of common action to this day. The result of the crisis was that the European States have adopted nation state solutions for migration pressure during the past years.[2] In order to control migration, it is essential to analyse the root causes. There are several reasons in the world today for which people decide to leave their homes. Some of them escape from different causes of danger whilst others simply are seeking a better future. The subject of the study is the emerging migration pressure on Hungary and the European Union from 2015 and the powerful governmental policy on migration management which is still being observed today. Whatever we call the situation of residence resulting in the legal or illegal enter, it is true for each concept that behind the legal, regular or documented migration there is a movement that could be controlled by the state while illegal, irregular or undocumented migration covers a group of persons who do not act according to the regulations on entry and/or stay.[3]

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[1] Morehouse, Christel – Blomfield, Michael (2011): *Irregular Migration in Europe.* Migration Policy Institute, Washington, D.C. 5.

[2] Tálas Péter (2017): "The past few years have only been the premonitory signs of the migration crisis." Conference presentation *Boundary Stones: Can the Schengen Zone Be Dismantled by Mistrust?* 20 May 2017.

[3] Hautzinger Zoltán (2016): *Szemelvények a migráció szabályozásáról.* [Excerptions on the Regulation of Migration.] Pécs, AndAnn. 9.

It is especially interesting to focus on the last years because Hungary receives a lot of criticism, so it is worth examining the reasons behind the decision. The V4 countries, especially Hungary and Poland, have a very strong political position which is almost the opposite of the dominant EU approach. The phenomenon of illegal and irregular migration and the intensification of conflicts naturally lead to the revulsion and fear of the local population and the decrease in their tolerance.[4] Seeing the last year's migration flows, this process raises the question again whether the state has the law enforcement forces by which any form of immigration can be managed under real control.[5] There is no disagreement about the complexity of the current migration processes, only about the positions how to find solutions by using different means. Recently more and more experts use regular-irregular classification instead of the legal-illegal definition.[6] "There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country. There is, however, a tendency to restrict the use of the term *illegal migration* to cases of smuggling of migrants and trafficking in persons."[7]

Immigration is treated as a national matter by the Hungarian Government and is not willing to compromise on this issue. European countries, especially European institutions were so surprised by the events of 2015 that they were not able to react consistently, there were no plans on which to effectively control the crisis, thus ideas based solutions were created. It should not be ignored, that other challenges have arisen for the countries of the Balkans and the Mediterranean, for the frontline or the destination countries and those member states that have an external Schengen border. Since no single decision has been taken, therefore countries tried to find solutions in different ways depending on the extent to which they were affected by the mass migration. It is vital to separate the real refugees from economic migrants. Real asylum seekers should be granted the rights of protection but all the others should be returned to their countries of origin as soon as possible. Hungary has also developed its own migration management system which, however, has raised serious criticism by several member states. It has already been declared at the beginning that nobody has the right to enter illegally into the territory of Hungary and the European Union and we are determined to apply the law.

As much as we talk about migration to the European Union, it should not be ignored that this migration is not identical, as it has a different impact on different regions or countries even in our continent. No surprise that the primary destinations are the countries with the best social services and economic potential as the United Kingdom, France, Germany,

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[4] Petőváry Bence (2010): *A paradigmaváltás esélyei a fejlett országok migrációs politikájában.* [The Chances of the Changes of Paradigm in the Migration Policy of the Developed Countries.] PhD dolgozat, Budapest, Corvinus Egyetem, Nemzetközi Kapcsolatok, Doktori Iskola. 62.

[5] Pátyodi Szandra (2017): *Az Európai Unió válaszai a migrációs kihívásokra.* [The Answers of the European Union to the Challenges of Migration.] Pécs, Pécsi Határőr Tudományos Közlemények XIX. 292.

[6] Ritecz György – Sallai János (2016): *A migráció trendjei, okai és kezelésének lehetőségei 2.0.* [Trends, Reasons and the Options for Treatment of Migration 2.0.] Budapest, Hans–Seidel. 18–19.

[7] Available: www.iom.int/key-migration-terms (Accessed: 20.03.2018)

Sweden since they can provide much better treatment. Obviously, factors are also taken into consideration like languages spoken, larger communities in the country, what kind of assistance, integration chances are provided, what education system is available, what job opportunities exist and naturally what is the cost of living. Examining our region, it can be said that there is a very strong cooperation between the Visegrád countries, especially because they represent the same political position of migration even though almost none of the four countries are affected in the same way.

While Hungary represents one of the front doors of the Balkan route to the EU, Poland is facing a challenge on the Ukrainian border, Slovakia and the Czech Republic are in fact no destination countries and the transit routes largely avoid both of them. Nonetheless, they are not indifferent but supportive of the Hungarian and Polish migration policy. When we are talking about the roles of the state, it must be based on tasks characterising the nature of the state but we cannot overlook the current political approach and the obligations arising from the EU and international conventions.

State Tasks

As the European Union was unable to give a unified response to the unexpected, excessive migration phenomenon, Hungary had to make its own decisions. On 13 July 2015, they started to build the temporary border protection system, then on 15 September 2015 the Government declared a state of emergency due to mass migration.[8] On 15 April 2016 Prime Minister Viktor Orbán proposed a ten-point action plan (1. Borders; 2. Identification; 3. Corrections; 4. Outside the European Union; 5. Agreements; 6. Return; 7. Conditionality; 8. Assistance; 9. Safe countries; 10. Volunteering) for protecting the external borders of the European Union and free movement within the EU at the meeting of the Centrist Democrat International (CDI) held in Lisbon. Several European governments argue on different bilateral and multilateral meetings that economic and demographic problems can be solved by immigration but Hungary does not share this view, as it considers that this issue can only be treated by national decisions.

Border Protection

In order to tackle illegal immigration we need stricter border protection than usual. This is also justified by the fact that more than 391,000 people crossed illegally the Hungarian border in 2015[9] but the majority of these people have gone towards Western and North European countries for finding a better life. The Balkan route that time was unlimitedly interoperable because of the lack of the efficient border control mainly at the Greek islands. In addition to illegal immigration, there was another problem, i.e. most of these people were not checked or registered anywhere. During September–October 2015 eight–ten thousand

[8] Government Decree No 269/2015 (IX/15).

[9] Statistics collected by the Hungarian National Police. Available: www.police.hu/hu/hirek-es-informaciok/hatarinfo/elfogott-migransok-szama-lekerdezes (Accessed: 26.03.2018)

people crossed the southern borders of Hungary per day[10] so it is easy to understand that this mass could not have been stopped by police or border guards alone. In order to regain control over the borders a physical border protection system should have been built up at the Schengen external borders. The temporary border protection system was constructed first along the Hungarian–Serbian, then along the Hungarian–Croatian border.

This decision was criticised by some states, except for the V4 countries. They have understood that this kind of protection is not only in defence of our country but the whole European Union. Poland, Slovakia, the Czech Republic have stated that one country alone cannot protect the whole borderline solely with its own police staff, therefore, they decided to provide assistance by sending police forces to the external Schengen borders.[11] Afterwards, more countries decided to send experts for the protection of the borders in the frame of FRONTEX[12] cooperation. At the same time, the national legal system was harmonised to the physical border protection system, so Hungary was able to reduce the number of illegal border crossing, which led to the closure of the Balkan route with other measures such as the EU–Turkey statement. In effect, it has been proved that border protection should be the first step; otherwise all other ideas remain ineffective. Up to now the cost for Hungary is a total of 270 billion forints only from the national budget. The first critical voices have been softened after a certain period of time and more and more stakeholders understood and accepted this solution. Furthermore, we should not forget that the Bulgaria–Macedonia, Greece–Macedonia, Greece–Turkey, Spain–Morocco borderlines are also protected by fences.

Focusing on the sea routes, it is not disputable that human lives should be saved first but the question is where to disembark the migrants saved from the sea. Back to the departure state or to Europe directly. Border operations must not only respect human rights and the refugee law but it must also be in line with the international maritime law. Activities in the high seas are ruled by the UN Convention on the Law of the Sea and the SOLAS[13] and SAR[14] conventions. As required by the international standards, people in trouble at sea must be helped and saved. According to the international law, the rescued people must be transported to the first safe European seaport but some specialists start to think of an alternative solution because this practice is clearly a pull factor and motivate others to choose this dangerous adventure. Italy has already turned back some ships to the seaport of Libya in 2009, then the migrants turned to the European Court of Human Rights.[15]

As far as its function is concerned, in my judgment, the border protection system is primarily responsible for defensive tasks by contributing to the proper control and regulation of people entering the country.[16] I think that Balla and Kui concluded correctly the relationship between cost, construction, and migration that all along with running and

[10] Available: www.police.hu/hu/hirek-es-informaciok/hatarinfo/elfogott-migransok-szama-lekerdezes?created%5Bmin%5D=2018-03-01&created%5Bmax%5D=2018-04-01&created%5Bmin_year%5D=2015&created%5Bmin_month%5D=09 (Accessed: 26.03.2018)

[11] Annual report of the Czech Presidency 2015–2016.

[12] European Border and Coast Guard Agency.

[13] International Convention for the Safety and of Life at Sea.

[14] International Convention on Maritime Search and Rescue.

[15] See the ECtHR – Hirsii Jamaa and others v. Italy (GC), Application No. 27765/09.

[16] Csobolyó Eszter (2017): A határőrizeti célú ideiglenes határzár mint kritikus infrastruktúra. [Temporary Technical Barriers as a Critical Infrastructure.] *Hadtudományi Szemle,* Vol. 10, No. 3. 487.

maintenance costs seems to predict that the temporary border protection is only allegedly temporary, in fact, it must be kept and maintained in a long-term system.[17]

Legal Protection System

In line with the installation of the physical border protection system, the legislation was also improved so these measures are being formed as a unified system. On 15 September 2015 the Government declared the state emergency due to mass migration for two counties,[18] which was extended to four more ones[19] after three days. On 5 September 2016 until 8 March 2017 and then by the decision of 30 August 2017 the Government extended[20] the crisis situation concerning the whole territory of the country until 7 March 2018.

The Parliament introduced[21] three new criminal offenses related to the border guard into the Criminal Code:

- unlawful crossing of border barrier (Section 352/A.)
- damaging of the border barrier (Section 352/B.)
- obstructing the construction of the border barrier (Section 352/C.)

Criminal proceedings related to these acts in times of state of emergency due to mass immigration are being carried out before any other case: in case of admission, within 15 days, in case of flagrante delicto, within 8 days the perpetrator shall be brought to court.

In addition, the Law on the Protection of Children has changed,[22] so foreign unaccompanied children aged 14 to 18 are also placed in the transit zone during the asylum procedure in time of state of emergency due to mass migration. Government responses to mass immigration of foreigners in the current Hungarian legal environment cannot be given – or only with considerable delays. It is therefore appropriate to introduce the concept of *state of emergency due to mass immigration,* which requires some legislative provisions to be amended. A state of emergency can be ordered by a government decree on the initiative of the head of the county police (capital) and the head of the asylum authority on the proposal of the minister.[23] Although the purpose of the physical and legal border protection system is to ensure that migrants with unclear status cannot move freely in the territory of a country or in the European Union, and thus reduce the security risk of migration, many countries and institutions expressed their dissatisfaction.[24] Some of them stated that the rules unjustifiably criminalised refugees, migrants and asylum seekers.

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[17] Balla József – Kui László (2017): A határőrizeti célú biztonsági határzár és határőrizetre gyakorolt hatásai. [The Temporary Technical Barrier at the Border and its Impacts on the Border Surveillance.] *Hadtudományi Szemle,* Vol. 10, No. 1. 228.

[18] Government Decree No 269/2015 (IX/15.).

[19] Government Decree No 270/2015 (IX/18.).

[20] Government Decree No 247/2017 (VIII. 31.).

[21] Act CXL of 2015 on Amending Certain Acts Related to Mass Migration.

[22] Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship.

[23] T/5983. Proposal for laws related to the management of the mass migration, 23 August 2015. 23.

[24] The visit of the CPT (The European Committee for the Prevention of Torture) in Hungary, 21–27 October 2015, Council of Europe CPT/Inf (2016) 27.

Registration

In order to maintain the rule of law, it is necessary that the laws in force be enforced at all times and only legally through legal crossing points of a border to enter Hungary.[25] Hungary will provide access to everyone who wishes to enter the territory of the country with valid documents at the designated border crossing points. However, those who do not meet these conditions need to be checked much more strictly. The check is made difficult by the fact that most migrants do not have any documents. Either they did not have time to get a document while leaving their home or they had lost them or had never had a travel card, but in reality, it is most likely that they throw their papers away to make identification more difficult. This, in addition to showing no good intentions, makes the background of the person completely uncontrollable. A person might be a honest citizen in his home country, but he/she may also have a criminal file or could have committed war crimes. Most of the migrants want to submit a request for refugee status, primarily to some Western EU member state where better life is waiting for them.

The categories of a refugee are defined in Article 1 of the UN Convention of 1951, which is not disputed. However, according to my own assessment, someone can be a refugee until he/she has not arrived in a safe country where he/she is no longer the subject of persecution or danger. If, however, he/she continues to go unlawfully from this safe country onwards, he/she is most likely to become a migrant with the hope to find a better life in some selected countries even though he/she formally has a right to protection. Checking and registering migrants without documents is important not only for identifying them later but also for preventing abuses of the asylum system and also for filtering people who want to misuse the good intent of the receiving countries. Eurodac is the European Union database where each asylum seeker and people already protected by a Member State must be registered in order to make the data comparable later. The applicant's data and fingerprint will be uploaded to the central database for identification in a later stage. It was originally designed to help implement the Union's asylum policy. Today, however, the database is more than it was at its starting point, as it serves not only this purpose but also offers the possibility of crime prevention and detection, moreover law enforcement agencies and Europol have also been granted access to screening terrorists and criminals. Earlier, the majority of countries rejected the Hungarian approach that terrorists could enter the territory of the Union among migrants. Unfortunately, this proved to be a fact since in the course of the migration wave on October 2015, one of the perpetrators of the Paris terrorist attack arrived through Greece–Fyrom–Croatia–Hungary–Austria. He was fingerprinted and registered as asylum seeker with a falsified passport in Leros on 3 October 2015, then he asked protection for asylum in Fyrom and listed in Croatia, as well. The French authorities matched the fingerprints fixed on the scene of the Paris terror attack and identified that person as one of the perpetrators.

[25] Act of 2007 LXXXIX, Section 11. Under international agreements and statutory conditions, if the international treaty or the directly applicable legal act of the European Union does not make an exception, the state border shall be crossed by road, rail, water or air border crossing point or border crossing point open to traffic. Act of 2007 LXXXIX, Section 11/A. In the course of crossing the state border, legal provisions related to crossing the state border and the border crossing point must be respected.

Hotspots, Transit Zones

EU leaders agreed in September 2015 to create hotspots in Greece and Italy to screen incoming refugees and differentiate between bona fide asylum seekers and economic migrants in order to regularly control the migration flow. Fingerprints must be taken and the refugee has to wait the end of the whole procedure. Six hotspots in Italy[26] and five hotspots in Greece[27] were set up. Although the task is a national competence but the European Asylum Support Office (EASO), Frontex and Europol provide support to countries because of the large number of applicants. They cooperate on the hotspot with the most affected Member States for fixing fingerprints, quick identification and registration. Those who are not entitled to asylum or other protection should be returned to either the previous or the home country with the assistance of Frontex. Europol can send investigative teams to assist the authorities of the Member States in tackling and dismantling organized criminal networks for migrant smuggling and other serious and organized crime and in identifying whether these networks are, where appropriate, viewed as terrorist investigations.

One of the key operational measures proposed in the Agenda was to set up a new *hotspot* approach towards managing the large inflow of migrants. The hotspot approach was conceived as an immediate response to a major migratory crisis and had to be implemented under very challenging and changing circumstances. "A hotspot was defined as an area at the EU's external border which faces disproportionate migratory pressure. Most migrants enter the Union at these hotspots and, according to the Commission, it is here that the EU needs to provide operational support to ensure arriving migrants are registered and channelled, as appropriate, into the relevant national follow-up procedures."[28]

Taking into account the hotspot concept our country has created two transit zones in Röszke and Tompa, but this solution did not get a good feedback in most EU countries, institutions[29] and NGOs,[30] as summarized below. The high commissioner of the UNHCR considers the transit zone as a detention and criticizes that only a few people can access the zone per day. Unfortunately, this rejecting position is not affected by the fact that the aim here is not to discourage the asylum seekers from entering the country, but to ensure that refugee applications are regulated in accordance with the law. The European Commission did not accept this solution, therefore stepped up an infringement against Hungary on this national legislation.[31] As regards the asylum procedures, the Hungarian law[32] does not allow the applications to be submitted outside the special transit zones at the borders, and restricts access to these zones, thus failing to provide effective access to asylum procedures within its territory. The border procedures are not in accordance with the conditions of the EU law and the special guarantees for vulnerable individuals are not respected. The reduced time

[26] Taranto, Lampedusa, Pozzallo, Porto Empedocle, Augusta – The decision was taken but the last two ones were not opened.

[27] Lesvos, Kos, Leros, Sámos, Híos.

[28] Special Report EU response to the refugee crisis: the *hotspot* approach (pursuant to Article 287(4), second subparagraph, TFEU) 2017. 14.

[29] Case of Ilias and Ahmed v. Hungary (Application No. 47287/15).

[30] Transparency International, Helsinki Committee.

[31] On 10 December 1995 incompatibility with the Asylum Procedures Directive (Directive 2013/32/EU) and the Directive on the right to interpretation and translation in criminal proceedings (Directive 2010/64/EU).

[32] Act LXXX of 2007 on Asylum.

for appeals violates the fundamental right to an effective remedy. The Hungarian asylum law also falls short of the EU rules on return of illegally staying third country nationals. The Commission is concerned that Hungary is currently returning migrants (including asylum seekers) who cross the border irregularly to Serbia without following the procedures and conditions of the EU law on return and asylum. Individual return decisions are not being issued by Hungary as required.

Finally, the Commission believes that the systematic and indefinite confinement of asylum seekers, including minors over 14, in closed facilities in the transit zone without respecting the required procedural safeguards, such as the right to appeal, leads to systematic detentions, which are in breach of the EU law on reception conditions and the Charter of Fundamental Rights of the EU. The Hungarian law fails to provide the required material reception conditions for asylum applicants, thus violating the EU rules in this respect. The Commission shared its additional concerns regarding the amendments to the Hungarian asylum legislation introduced in March 2017 and organised a series of meetings at expert and political level to support the Hungarian authorities in making the necessary adjustments to bring the new provisions in line with EU standards and rules. The Hungarian Government did not agree with these arguments, however, decided not to modify any of the relevant legal provisions so the European Commission was informed by an official letter.[33] The process is still ongoing and it is not thought that there is any difference between establishing hotspots within the country or accepting applications in the transit zones located along the border with the final decision there. Today more countries have in mind how to set up hotspots outside the EU. In practice, the EU–TR declaration is partially a similar solution,[34] where, for certain benefits and sums,[35] Turkey will not allow migrants to leave but put them in refugee camps in the country and try to return them to the countries of origin. In order to prove that the hotspot concept is the right approach some data should be compared for 2015 and 2017.

In Greece, in July 2016, migrants were being identified, registered and fingerprinted within three days of their arrival on the islands. This is a substantial improvement compared to the 8% registration rate in September 2015. In Italy, the registration and fingerprinting rate have improved significantly from some 60% in the first half of 2015 to an average of 97% for the whole of 2016. All the relevant stakeholders agreed that the hotspot approach had played an important role in improving the situation in Italy, not only by providing adequate infrastructure, but also by establishing standard procedures to be followed and by having a positive influence on practices in general.[36]

Even better results were achieved in the Hungarian transit zones as 120,487 persons were registered in Eurodac in 2015 and 46,505 in 2016.[37] Comparing the applications submitted for asylum in 2015, 177,135, while this figure is in 2016, 29,432 which shows a 83.38%

[33] Available: http://europa.eu/rapid/press-release_IP-17-1285_en.htm (Accessed: 15.11.2017)

[34] Some characteristic elements (territory of third country, registration of asylum seekers) are identical to transit zones.

[35] 3 + 3 billion Euro to Turkey, upgrading customs union, opening other chapters, acceleration of visa liberalisation and EU accession talks.

[36] Special Report EU response to the refugee crisis: the *hotspot* approach (pursuant to Article 287(4), second subparagraph, TFEU) 2017. 38–39.

[37] EU–LISA Eurodac – 2015, 2016 statistics.

reduction.[38] As currently a request for asylum can only be submitted in transit zones, it appears that this system has contributed not only to the reduction of illegal migration but also to the regulated submission of applications.

Preparedness/Unpreparedness of the EU

For such a migration pressure that the European countries faced in 2015 neither the Member States nor the EU was prepared. This proves that the package of measures issued by the European Commission appeared to be rather ideas than comprehensive measures. Since the EU was unable to form a united position, therefore each country tried to solve the problems themselves. That is why fragmentation has now emerged and that is why some Member States perceived that the immigration needs to be strictly controlled and only given a very restricted opportunity to enter, others are more tolerant and more *welcome all and then try to integrate into the society,* and some of them are still watching the phenomenon.

European Migration Agenda

A ten point package was announced on 20 April 2015 in Luxembourg by the European Commission.[39] The European Agenda on Migration[40] was published on 13 May 2015, then three implementation packages were presented in 2015 (May, September, and December). Lots of people lost their lives in the Mediterranean is one of the issues that the Commission had to react. "This Agenda sets out four levels of action for an EU migration policy which is fair, robust and realistic. When implemented, they will provide the EU with a migration policy which respects the right to seek asylum, responds to the humanitarian challenge, provides a clear European framework for a common migration policy, and stands the test of time."[41] The four chapters are: 1. Reducing the incentives for irregular migration; 2. Border management – saving lives and securing external borders; 3. Europe's duty to protect: a strong common asylum policy; 4. A new policy of legal migration.

On 4 May 2016, the Commission adopted the first package of proposals for the Common European Asylum System[42] aimed at better managing the refugee crisis, which includes the following proposals:

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[38] Based on the Hungarian Immigration and Asylum Office 2015–2016.

[39] Available: www.europeansources.info/showDoc?ID=1203414 (Accessed: 25.03.2018)

[40] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European Agenda on Migration, COM(2015) 240 final Brussels, 13.05.2015.

[41] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: European Agenda on Migration, COM (2015) 240 final Brussels, 13.05.2015. 7.

[42] Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, COM (2016) 271 final 2016/0131(COD) Brussels on 04.05.2016.

- a reform to the Dublin system
- the establishment of an EU Asylum Agency which is to replace EASO
- a modification of the Eurodac Regulation
- visa liberalisation measures

On 13 July 2016, the Commission adopted the second package of proposals for the reform of the Common European Asylum System.[43] The package includes:

- a new Regulation to replace the Asylum Procedures Directive
- a new Regulation to replace the Qualification Directive
- targeted modifications of the Reception Conditions Directive
- the Reform of the Reception Directive and Common EU Resettlement Framework

The two packages together include seven elements and aim to establish a common asylum procedure to ensure that asylum seekers are treated equally and properly. In addition tasks and obligations are laid down for asylum seekers in order, inter alia, to eliminate abuses and secondary movements. "At the same time, the solutions offered by the European Agenda on Migration in many cases only give surface treatment instead of solving the problem at its roots. Moreover, in these solutions, serious concerns may arise not only about the violation of the national sovereignty of the Member States but also their compatibility with the European or international law. This includes the mechanism of emergency relocation, which not only contributes to the survival of the predominantly serious disadvantaged Dublin system but also concerns European and international law."[44]

EU–Turkey statement

Due to the unprecedented pressure on the Balkan route, its closure was extremely important. Hungary has a physically reinforced border protection, but this did not correspond to the ideas of European decision-makers. Moreover, they were not in favour of recognizing that a Member State is effectively tackling a situation while the Union itself cannot find an effective solution. On the Balkan route a major entry point towards the EU is Turkey, so it was inevitable that negotiations started. Thus, on March 18, 2016, a seven-point statement[45] was concluded between the EU and Turkey. It was already visible at the moment when the idea emerged that there were some points among the elements, like lifting the visa requirements for Turkish citizens at the latest by the end of June 2016, that could not be easily accomplished, but the Member States finally accepted it for the much-desired compromise.

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[43] Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents, COM (2016) 466 final 2016/0223 (COD) Brussels on 13.07.2016.

[44] Gyeney Laura (2016): Az Európai Unió Migrációs Politikája „Tényleges megoldás egy valós válságra"? *Iustum Aequum Salutare,* Vol. 12, No. 2. 302.

[45] EU–Turkey Statement adopted by the European Council on 18 May 2016.

Relocation–resettlement

Among the ideas that have risen in the EU, the institution of relocation, which was thought to be a solution to the management of the crisis by the distribution of persons already entered into the EU. Hungary has already stated at the beginning[46] not to agree with this approach for several reasons. On the one hand, we do not believe in this instrument, and in our view, we cannot force people to stay at the chosen place of residence, thirdly, it can have some effect on people already inside, but it does not treat newcomers. However, it also means a pull factor that encourages those who are still uncertain to hit the long route and try to enter the territory of the EU and just have to wait for being treated. But in spite of the distribution system, they do not care much about it, since they will not stay in the country where they were relocated, but continue to go on where they originally wanted to go.

After the Committee could not effectively be active against the mass migration, it was also reluctant to strengthen the border control, so the idea of relocation was ultimately abandoned. To this end, two Council decisions were adopted in 2015; at first 40,000 people had to be relocated from the EU frontline countries of Italy and Greece.[47] Here, voluntary commitments were made by Member States to offer the numbers; Hungary committed 0 people. Then, according to the second decision, another 120,000 people[48] from the same countries should have been relocated as mandatory.[49] Those citizens were the subjects of relocation where the rate of recognition of asylum applications reaches 75% of the EU average. Based on the data at that time, those refugees came from Syria, Iraq or Eritrea in 2014 and Syria, Afghanistan and Iraq in 2015.[50] In the *second relocation decision* Hungary was also among the beneficiary countries with 56,000 people, but the political position at that time also indicated that our country disagreed with this solution, so we did not want to be a beneficiary country in this program. According to that decision, 1294 people should have been relocated to our country but Hungary did not agree with that decision and turned to the Court of Justice of the European Union.[51] Even before the decision of the court, the European Commission launched an infringement procedure,[52] for the reason that we did not relocate anybody and did not offer any place for relocation. The court of Justice of the European Union ruled against Hungary in each point for failure of fulfilment of the obligation of relocation.[53] Since Hungary continued to take nobody, the European Commission brought the case to the next stage in the infringement procedure on 7 December 2017, namely the case was submitted to the Court of Justice of the European Union for enforcement.[54]

We can conclude that the concept of refugee distribution ended with a total failure, as 31,469 people were relocated so far.[55] The plan was to redistribute asylum seekers across

[46] The Justice and Home Affairs Council adopted the Decision about the temporary and exceptional relocation mechanism on 22.09.2015. Hungary, Slovakia, the Czech Republic, Romania voted against, Finland abstained.
[47] 2015/1523 Council Decision.
[48] 15,600 from Italy, 50,400 from Greece.
[49] 2015/1601 Council Decision.
[50] Based on Frontex Risk Analysis for 2016.
[51] C-643/15 and C647/15 Slovak Republic and Hungary v. Council of the European Union.
[52] Infringement procedure was launched against Hungary, the Czech Republic and Poland.
[53] Judgement of the Court (Grande Chamber) 6 September 2017.
[54] Available: http://europa.eu/rapid/press-release_IP-17-5023_en.htm (Accessed: 25.03.2018)
[55] Until 15 November 2017.

the EU and simplify the intense pressure on Greece and Italy at the height of the migration crisis. It also became obvious that life will not stop after the relocated migrants as newcomers will become permanent residents. In order to tackle this problem, another idea occurred: asylum seekers from the crisis areas should be officially transported to Europe via a European resettlement system. This is currently operating on a voluntary basis, to which every country can make its own commitments. The commitment of Hungary in the resettlement framework is 0.

The Approach of the V4 Countries

The co-operation of the V4 countries has been very widespread since the beginning, but since 1998 the cooperation has started to intensify, and in recent years it has shown a very spectacular integration character. Combating migration has made the relationship between the four countries even tighter. In this area, it has become clear that the pursuit of interests can only be achieved as a result of close cooperation, as we see that the Western European approach is completely different from our position.

The previously detailed Hungarian standpoint is shared by the representatives of the other three countries. They are focused on defense and security policy even if the migration crisis deepened such a cooperation.[56] However, since the migration pressure is of a different nature in the four countries, it is natural that their own characteristics are also shown. When the migration crisis was on the top in 2015 and 2016 the Czech V4 Presidency paid attention to this problem. During this presidency, the V4 countries declared its support for Hungary and Slovenia by deploying police personnel.[57] In the second half of 2016, the Slovak Presidency of the European Union had the opportunity to define the direction of the European Union. In order to somehow step forward the policy of the EU, the document proposal *Effective Solidarity* was presented in the JHA Council meeting on 18 November 2016. Although constructive ideas could be found in the paper, no breakthroughs and consensus were taken, thus the European Council decided to further work on the Conclusions of 5 December 2016 without giving a deadline. The V4 Polish Presidency announced a deepening cooperation of police and border services on migration and asylum issues and therefore regular political consultations have been introduced not only with the V4 partners but in a V4+ format with Baltic, Nordic, Benelux countries and with neighbouring countries from Central and South-Eastern Europe.[58] "The mandatory allocation of asylum seekers to Member States does not provide a proper and long-term solution to the migration crisis; it only constitutes a strong pull factor and generates secondary movements. For these reasons, the countries of the V4 are not able to support the proposal of an automatic and mandatory relocation mechanism."[59]

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[56] Kobierecka, Anna – Reginia-Zacharski, Jacek – Rulski, Michał (2017): *V4 in the Face of Migration Crisis. Diagnosis and Recommendations.* Policy paper. Łódź, University of Łódź, Faculty of International and Political Studies, Department of Theory of Foreign and Security Policy. 30.

[57] Annual report of the Czech Presidency 2015–2016.

[58] Programme of the Polish Presidency of the Visegrád Group 1 July 2016 – 30 June 2017.

[59] Joint Declaration of the V4 Ministers of the Interior in Budapest on 5 October 2017.

Most of the declarations in the field of combating new threats and migration challenges, however, require joint actions within the European Union. The representatives of the V4 states declare full engagement in such activities, especially concerning practical support for the Balkans region as an important migration route. What is more, after several discussions on migration crisis, a decision was made to establish the joint Migration Crisis Response Mechanism (MCRM) enabling coordination among governmental institutions responsible for migration.[60]

It is our common position concerning the reform of the Common European Asylum System that an asylum system to be developed should be able to flexibly respond to the challenges of the 21st century, and to provide protection to the ones in need of international protection, while acts resolutely against abuses of the asylum system. We must avoid creating a procedure that would only mean an additional pull factor. The solution lies in the mitigation and management of the root causes of crisis situations in the countries of origin.[61]

With regard to the relocation, all V4 countries, without exception, consider that the idea is bad and does not work. The essence of the earlier V4 cooperation can be found in preparing their position. The reform of the Common European Asylum System (CEAS) should be based on responsibility and voluntary contribution. The reform of the CEAS should be coordinated at EU level. The essence of solidarity does not lie in compulsory distribution but in comprehensive measures and in trust.[62] The most determined position is represented by our country, which has opposed the Council's decision from the outset and does not implement it. Moreover, Hungary submitted to the European court its appeal against the decision of the European Commission about the mandatory settlement of people.[63] The quotas or the permanent mechanism of relocation met with opposition from other countries including Poland, the Czech Republic and Slovakia.[64] From the perspective of governance, the policy of the Slovak Government reflected the wider public discourse on the issue and was particularly reactive to outside events and forces. The government was not especially proactive in seeking to outline its own policy. The position before March 2016 included several core components: rejection of any mandatory European redistribution mechanism, strong border protection, and the prioritization of solutions aimed at addressing the root causes of migration.[65] Slovakia, on the other hand, does not reject categorically the performance, in particular, depending on the court's decision. Poland is one of the most homogenous countries in Europe – its population is overwhelmingly Polish and Roman Catholic. The Czech Republic opposed the migration quotas and offered other solutions to the migration crisis, such as more effective protection of the external borders of the EU. It tends to provide more support to the EU countries which face new challenges by the mi-

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[60] Joint Statement of Ministers on establishment of the Migration Crisis Response Mechanism in Warsaw on 21 November 2016.

[61] Visegrád Group Ministerial Meeting, Joint Declaration of Ministers, Budapest, 5 October 2017.

[62] Kisiel, Kamil (2017): *Opportunities for Joint Action by the Visegrád Four in Dealing with the Migration Crisis. Changes in Migration Crisis Management in 2016–2017 in Europe and Hungary.* Scientific Conference on 15–16 June 2017, Budapest. 79.

[63] C-647/15 on 3 December 2015.

[64] Joint Statement of Ministers on establishment of the Migration Crisis Response Mechanism in Warsaw on 21 November 2016.

[65] Dubeci, Martin (2016): Slovakia: Migration Trends and Political Dynamics. 3. Available: www.globsec.org/publications/slovakia-migration-trends-political-dynamics/ (Accessed: 13.07.2018)

gration crisis and find ways to improve the security situation and economic conditions on the ground in the countries of origin in order to mitigate the push factors for migration. The migration pressure is on the Mediterranean Sea and Italy today, therefore, the V4 countries declared to provide 35 million euros to protect the maritime borders of Libya.

In case of safe countries, Hungary, Slovakia and the Czech Republic also set up a list of their own national assessments. For example, Serbia and Hungary are considered safe countries of origin, while Slovakia does not put it on its list. As Brussels and Berlin applied different approaches to managing migration, it was important at international level that co-operation, such as the V4 could effectively express their united position. The EU's draft measures were far behind reality, and Hungary, experiencing migration pressure on a daily basis, was able to articulate its position and enforce its common will together with the other three Visegrád countries.[66]

"The European Court of Justice has made an outrageous and irresponsible political decision in the quota case that would not be with the interests of all European nations. Politics has raped European law and European values, he said, stressing that there is a huge wimping out in the case of quotas, since less than three weeks before the deadline for this decision expired, only 25% achieved the targets. After that, it is an un-European behaviour to say that the quota's failure is based on the four Visegrád countries."[67]

It is in the nature of the European Union's recent system that small countries have practically no opportunity to enforce their interests if they differ from the position of the majority. There are two ways to compensate this. Either they join a big country and try to follow its interest or attempt to make alliances with countries that have a similar position. Such an alliance exists between the Benelux States, the Scandinavian States, the Baltic States and the Mediterranean States, so it would be a completely logical expectation to esteem the alliance of the V4 states, but for some reason, while the aforementioned alliances and common positions are accepted within the EU, the V4 alliance is very often being criticized. I believe that the idea of the Union is based on equality and partnership, so this principle must be valued. Everybody has to accept it and the covenant must be tightened to show that small countries have to be taken seriously and have the right to be respected.

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[67] Press report made by the Hungarian Minister of Foreign Affairs and Trade. Available: http://tiszanews.org.ua/index.php?module=news&&target=get&id=20434 (Accessed: 25.03.2018)

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Migration as the Object in Higher Education in the Field of Law Enforcement

Jozef Balga

Introduction

The rectors of the European Universities in 1988 in Bologna, on the occasion of the 900th anniversary of the founding of the oldest university in Europe, signed the Magna Charta Universitatum.[1] In this document, the Rectors highlighted the irreplaceable role of universities in spreading knowledge among the younger generation and the fact that the cultural, social and economic future of society requires considerable investment, especially in continuing education. They also emphasized that universities must provide future generations of students with education that would teach them, and through them also others, to keep in mind the great harmony of the natural environment and life itself. The basic principles on which the mission of universities needs to continuously rely on are part of the document.

One of the principles highlighted the autonomy of universities as institutions at the heart of companies organized differently, depending on geography and historical heritage. Through research and education, they produce, review, valorise and transmit culture. This also means that their research and education must be morally and intellectually independent of any political or economic power. The fundamental principle of university life is the freedom of research and education. Respect for this basic requirement must be ensured by governments and universities. Universities as guardians of European humanist traditions provide universal knowledge and are evidence of the vital need for mutual understanding and influence of different cultures.

Magna Charta Universitatum also emphasized that, in fulfilling these principles, it is necessary to use effective means corresponding to the present conditions. In order to preserve freedom of research and education, the means of exercising freedom must be available to all members of the universities. The recruitment of teachers and the regulations governing their position must be in line with the principle that research is an integral part of education. Each university – having regard to its specifics – must oversee the freedom of its students and provide students with conditions in which they can acquire a culture and receive training in their own interest. Essential to their continued development of the university, they regard the mutual exchange of information, documentation and numerous joint projects aimed at improving their study. In conclusion, this document highlights the

[1] Magna Charta Universitatum. Bologna, 18 September 1988.

need to promote the mobility of teachers and students, to cope with the equivalence of status, titles, examinations (without prejudice to national diplomas) and scholarship admissions. The Magna Charta Universitatum is one of those documents that, despite the time, have proven their timeliness and the vision of higher education for the 21st century.

The Joint Declaration of European Ministers of Education, adopted on the 19th of June 1999 in Bologna (the Bologna Declaration below), was one of the most important documents that influenced the European higher education area.[2] Among other things, it was inspired by the Sorbonne Declaration of 25 May 1998.[3] The Sorbonne Declaration highlighted the central role of universities in developing European cultural dimensions. It highlighted the support for the creation of a European area of higher education as a key prerequisite for promoting the mobility of citizens and their ability to work in the labour market as well as in the overall development of the continent.

The Bologna Declaration specifically drew attention to increasing the international competitiveness of the European higher education system and increasing the global attractiveness of the European higher education system. The document also includes the primary objectives of creating a European area of higher education and the global support of the European higher education system.

The first objective was to adopt a system of easily readable and comparable academic degrees through the introduction of the Diploma Supplement, in order to promote the opportunities for European citizens to work in the labour market and the international competitiveness of European higher education systems. The second objective was to adopt a system of study based essentially on two main cycles: pregradual and gradual. An access to the second cycle should require a successful completion of the first cycle of study lasting at least three years. The title awarded after the first cycle should be relevant to the European labour market as a suitable level of qualification. The second cycle should lead to the academic rank of Magister (Doctor). The third objective in line was to set up a European Credit Transfer System (ECTS) as an appropriate means of promoting broad student mobility. The content of the penultimate objective is to support mobility and to remove obstacles for free movement with special attention to students (the ability to access learning and teaching), teachers, scientists and administrative staff (recognition and valorisation of the period of study undertaken in the European competitive research, teaching without damaging to their statutory rights). The last objective was to promote European cooperation in quality assurance, with a view to developing comparable criteria and methodologies and promoting the necessary European dimension in higher education, particularly with regards to the preparation of study plans and cooperation between institutions in the field of study and research. The Bologna Declaration initiated the unification of the European higher education area and the beginning of a new enhanced European cooperation in this field.

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[2] The Bologna Declaration of 19 June 1999.

[3] Sorbonne Joint Declaration. Available: www.donau-uni.ac.at/imperia/md/content/io/cop034_sorbonne_declaration.pdf (Accessed: 15.12.2017)

Police Higher Education

Education in state and law development has played an important role, above all, in the implementation of governmental functions of the state. From antiquity to the present, education and specifically school systems have overcome quantitative and qualitative changes. They were mainly related to the social requirements and level of development of the state. The modern state is currently performing an educational function that includes subsystems, such as education, science and research. The interaction of those entities is not possible without the legislative, institutional, financial, personnel and technical support. A particular position in the education system has a high school with its specific environment. Specialized universities include, in addition to military universities, police universities with specific needs related to the preparation of students for the future performance of the profession of police officers. On the other hand, it performs specific tasks aimed at fulfilling the state's protection and security functions. Content fields of study implemented at police universities adapts to the requirements of the police and security services to carry out tasks in the field of public order and state security. An important fact is the specialization of students in the subjects drawn up for individual police services and their specific activities. Police education is an important part of training specialists and managers for state administration specifically for police administration.

The first police universities were, from the beginning of the 70s of the last century, constituted in the former socialist countries that conducted education and research on communist principles which negatively affected the graduates and their practical activity was directed to violation of fundamental human rights and freedoms. The post-communist states began, after the political changes in Central and Eastern Europe in the early 90s of the 20th century, to build a police system of higher education on democratic principles.

The position of police universities today is special because of their subordination to the Ministry of the Interior and the Minister of the Interior or to the Government and its President. In addition to the general tasks set by the higher education act[4] for all higher education institutions, police universities have special roles arising from their status in the system of state schools. Their structure is influenced by the consensus of ministers and the funds allocated by the Ministry of the Interior. The Ministry of the Interior, among other things, approves conditions for admission to study and eligibility criteria for study. It approves the number of admitted students, the number and the structure of the staff. In addition to allocating funds, it checks the legality and cost-effectiveness of using these funds. It also discusses and evaluates the long-term intentions of the police university and their updating. It associates and uses information from the students' registers and provides data to the college registers of police colleagues. The statutory representative of police universities is the Rector or Dean of the faculty. The Rector is accountable to the Minister of the Interior. He is also accountable to the Academic Senate.

Police universities are part of the European area of education and a common European research area. The main mission of these schools is to develop a harmonious personality and contribute to the development of education and science in areas relevant to internal security and public order of the state. Schools cooperate with domestic and foreign univer-

[4] Available: www.slov-lex.sk/právne predpisy/sk/ZZ/2002/131/20160101 (Accessed: 15.12. 2017)

sities and scientific research institutions, government bodies and other legal and natural persons involved in higher education. Reported universities also carry out academic rights and freedoms such as the right to learn, the right to free expression and publication of their views, freedom of teaching various scientific opinions, scientific and research methods and freedom of scientific research, research and other creative activities and publication of their results. The academic rights and freedoms are implemented in accordance with the principles of democracy and the rule of law. Basic activities carried out at police universities include education (pedagogical activity), scientific, development and creative activity (scientific activity).

The study at police universities is carried out on the basis of the approval of the Accreditation Commission in the given study program in the field of study administered by the Ministry of Education. This fact is influenced by the curriculum and the subjects defined therein, while the study takes place in a daily or an external form. Police universities educate professionals especially for police and security services, as well as authorities. In addition to police officers, state and private security services, also civilian students are studying at the universities. On this basis, the police high schools are part of state universities as well as the police administration system. The subject of study at the police high schools at present is the migration of people and their impact on the security of citizens and the state. Education in the field of migration is also influenced by disciplines such as pedagogy, legal science, police science, administrative science, forensic science, criminology and political science.

Important subjects in the education of students in the area of migration of people are the departments. These include mainly the legal and police department. The legal departments dealing with the issue of migration of people from a legal point of view are the Department of Public Disciplines, the Department of Administrative Law or the Department of Criminal Law. Police departments focusing on teaching and research into the migration of people from the point of view of police science include the Department of Foreign and Boarder Police, the Department of Criminal Police, the Department of Investigation, the Department of Forensic Science, and the Department of Immigration and Citizenship. Employees of police departments, research institutions and offices of the Ministry of the Interior are also involved in the education of this area who present application problems of implementation of laws by state authorities, especially in the control of foreigners in the country.

The departments are involved in the training of future police managers, which is necessary for managing the conceptual approach tasks determined by the requirements of the European Union and the community requirements to eliminate the illegal international migration of persons. Their training focuses on management control and specialized functions in the police and security services of the control of the border and alien regime with emphasis on the application of the laws. Students will acquire the knowledge necessary for the operation of the police services, in cooperation with the security authorities of the European Union, in the implementation of the Schengen system. The departments are preparing highly educated professionals for the control of specific forms of international organized crime such as smuggling, human trafficking, drug trafficking, or terrorism, who are able to carry out their professional activities in dynamically changing conditions.

University teachers focus their efforts on students within the compulsory, optional and elective courses in order to acquire knowledge, skills and habits that should have managers and specialist services of the police. Efforts also seek to increase professionalism,

responsibility, reliability, care for subordinates and difficulty to perform the tasks arising from legislation.

The process of acquiring the content of the subject within higher education is to be carried out at the level of relationships that are the driving force behind logic-thinking operations in the minds of students, provided that the learning process is realized on the basis of solving the problem situations resulting from the multilateral relationship between the taken facts. It also means formulating specific issues, addressing these issues in a framework, and verifying the accuracy of the solution achieved. The applicability of the problem method is conditioned, among other things, by the breadth of personal, individual or collectively acquired student experiences which greatly influence the content and style of educational work in individual subjects.[5]

Teachers, as a control system must also respect the properties of the controlled object, the students, the great diversity and variability characteristics and operation disturbance variables. An important factor here is the adaptability of the learning process to changing working conditions. The teacher should find the optimal means of increasing the student's interest in learning, thus ensuring the desirable quality of the learning process.[6] In the educational process, the teacher is not only a source or reproduction of a new information for students, but it is primarily an active driving factor that activates, motivates and modifies the intellectual processes of the students.

In terms of teaching in the system of police training, methods used by university pedagogy are as follows: lectures, seminars, exercises, practical work, group work, problem teaching, mastery learning, integral thematic teaching, legal clinic, group exercises and professional experience. University teachers present, through these methods, their scientific knowledge and research roles in order to clarify processes and phenomena related to the migration of people. This improves the preparation of students for positions of management of police officers or specialists for the various police and security services.

Migration as a Subject of Education and Research at Police Universities

With the increasing migration of people, a number of negative phenomena and processes related to illegal international migration are brought to society, as well. The current causes of migration of people are deeply rooted in global issues that are being addressed by states or clusters of states (such as the European Union). Migration of people directly and immediately causes military conflicts, violations of human rights and freedoms, poverty, climate change or religious hatred. Currently, *the causes of migration* are: *political, socio-economic, legislative, geographic, ethnic, religious, demographic, climatic, ecological, related to the state border regime, related to food security and others.*[7] Examining the processes by teachers influencing the causes of people's migration has an impact on the use of individual forms of education of the police departments.

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[5] Stračár, Emil (1967): *Systém a metódy riadenia učebného procesu.* Bratislava, SPN. 294–295.

[6] Štepanovič, Rudolf (1975): *Základy pedagogiky vysokých škôl.* Bratislava, Univerzita Komenského. 136.

[7] Balga, Jozef (2003): *Teória služby cudzineckej polície.* Bratislava, Akadémia Policajného zboru v Bratislave. 39.

The current migration of people has a negative impact on the security of the citizens of the European Union (EU). International organized crime and terrorism, which becomes a phenomenon of the 21st century threatens public order and public security with its inhumane forms, flexible methods and unique means of implementing terrorist attacks targeting the EU's citizens. Protecting citizens fully relates to the readiness of the state authorities of the Member States to implement preventive measures at the external and internal borders. The use of new technologies to enhance security requires high-quality training of police and security staff at selected secondary schools and universities for the use of active forms of teaching.

The current status of knowledge of migration has enabled the system of subjects to implement migration policy issues of the state, which contain knowledge relevant to the operation of police and security services. Law disciplines as the theory of law, constitutional law, police law, aliens law, the Schengen acquis, asylum law, administrative law, European law and international law and sources governing the movement of persons within the state are an integral part of the educational process. Application of laws is necessary to be taught in the police education system because the police authorities, as state bodies in their activities, implement the principles of legality and legitimacy. Legal subjects also include topics such as the legal status of police authorities, the system of interpretation and the application of legal standards by the administrative authorities. Special attention from the legal sciences deserves a state-scientific view of the migration of people based on the features of the state, especially the personal substrate. Issues related to the implementation of the administrative procedure, asylum procedures, residence and offense proceedings are also important. Themes in the area of the Schengen acquis, visa policy and immigration policy are also interesting. A particular attention is given to the legislative area of freedom, security and justice.

In European law, the area of freedom and security regulates the material and formal sources of law. Among the material sources we include declarations, programs, agendas, reports and resolutions of the EU institutions. Formal sources of law governing the area of freedom and security are the Treaty on the Functioning of the EU, the EU Treaty, regulations, directives, decisions or the Charter of Fundamental Rights of the EU. An important part of the area of freedom and security are bodies carrying out and applying sources of law guaranteeing security and particularly personal safety of EU citizens. Based on the Article 72 of the Treaty on the Functioning of the EU, responsibility for maintaining public order and ensuring internal security lies primarily on the Member States, but at present they are able to address international threats and risks effectively and independently.[8] It is therefore necessary to establish a rational and efficient system of cooperation between the national authorities of the Member States and between the EU State authorities and institutions. EU citizens must be confident that they will feel safe in the EU, regardless of which Member State they are staying in. In this context, it is necessary to ensure a high level of security and freedom through cooperation between police, security and intelligence services.

The fundamental *four freedoms* include the freedom of movement of persons. These freedoms are guaranteed by the primary sources of European law and are the basis of the

[8] Available: https://en.wikisource.org/wiki/Consolidated_version_of_the_Treaty_on_the_Functioning_of_the_European_Union/Title_V:_Area_of_Freedom,_Security_and_Justice#Article_72 (Accessed: 15.12.2017)

education process carried out by the legal departments. Freedom of movement of persons does not only apply to the area of employment, business, service, but its content must be understood in its universal form which also includes the movement of persons for the purposes of tourism, visiting family and friends, study and so on. Freedom, in the context of the free movement of persons within the EU, remains a fundamental objective, to which the support measures relating to the security of persons and the protection of public order must make a significant contribution. Freedom of movement of persons in the area of freedom and security is divided into the freedom of movement of citizens of the Union and the freedom of movement of aliens.

Freedom of movement of persons is regulated in three basic areas, namely in the area of *international law, European law and constitutional law.* From the perspective of the *international-legal* concept it is important to define the content of freedom of movement.

The fundamental international treaties that govern human rights and freedoms and their counterparts are also the EU Member States include, in particular, the *Convention for the Protection of Human Rights and Fundamental Freedoms (the Rome Convention), Protocol No. 4, Art. 2.* The Rome Convention in Protocol No. 4 in Art. 2 reads: "Everyone who is legally resident in the territory of a State has in that territory the right to freedom of movement and freedom to choose a place of residence. Everyone can freely leave any country, even their own. No restrictions may be imposed on the exercise of these rights other than those provided by law and are necessary in a democratic society for the sake of national security, public security, the maintenance of public order, the prevention of crime, the protection of health or morals or the protection of the rights and freedoms of others."[9] Also, the *International Covenant on Civil and Political Rights states in the Article 12* that: "Everyone who is legally resident in the territory of a particular country must have the right to freedom of movement and freedom to choose his place of residence there. Everyone has the right to leave any country, including their own."[10] Those rights may not be subject to any restrictions other than those laid down by law and not necessary for the protection of national security, public order, public health or morals, to protect the rights and freedoms of others and which are consistent with the other rights recognized in this covenant. No one shall be arbitrarily deprived of the right to enter his/her own country.

The common feature of these documents is the guaranteed right to freedom of movement until the person lawfully resides in the territory of the State, limiting the freedom of the person concerned to law, in the interests of national security, public security, public order, prevention of crime, health or morals, or the protection of the rights and freedoms of others.

In the *European-law concept,* the area of freedom of movement of persons is governed by European law. EU law is the area of freedom of movement provided for in the *Article 3 of the EU Treaty* which aims to offer "its citizens an area of freedom and security without internal frontiers in which the free movement of persons is guaranteed, together with appropriate control measures on external borders, asylum, immigration and the prevention of and fight against crime".[11] Following this Article, *Title 5 Treaty on the Functioning of the*

[9] Available: www.echr.coe.int/Documents/Convention_ENG.pdf 35. (Accessed: 15.12.2017)

[10] Available: https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf 176 (Accessed: 15.12.2017)

[11] Available: http://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF 17. (Accessed: 15.12.2017)

EU[12] focuses on the formation of measures allowing remove controls on persons crossing internal borders valid for EU citizens as well as foreigners (people who are not EU citizens).

It should be noted that the current degree of liberalization of the free movement of persons in the territory of the EU is linked to *Article 26 of the Treaty on the Functioning of the EU* [13] which characterizes the internal market as an area without internal borders in which is guaranteed the freedom of movement, and Article 20[14] which guarantees the right of a citizen of the Union to move freely and to reside in the territory of the Member States. *Article 21*[15] *allows for exceptions and limitations* on the implementations of that right, under the conditions laid down by the EU Treaty and the Treaty on the Functioning of the EU, in the light of the measures taken to implement it, in particular as secondary sources of European law. The European Parliament and the Council may, in accordance with the ordinary legislative procedure, adopt rules to facilitate the exercise of those rights.

The legal standards governing the freedom of movement of persons advised the *Charter of Fundamental Rights of the European Union* (the Charter of Rights). *Article 45*[16] *guarantees* every citizen of the Union the right to move and reside freely within the territory of the Member States. Freedom of movement and residence may *be granted* in accordance with the contractual obligations *also to aliens* who are legally resident in the territory of a Member State. It follows that the granting of this right depends on the implementation of the power of state bodies and institutions of the Member States.

The *constitutional law concept* is characterized by the implementation of that freedom from international agreements binding EU Member States. Therefore, in the area of liberties, the role of the legal norms, which is the constitutionally guaranteed freedom of movement of persons, is important. The Constitution defines only the basic boundaries of these freedoms, both in terms of fulfilling freedoms as well as implementing them. At the same time, the Constitution allows, in particular in the form of laws, to specify the freedom of movement of persons within the territory of the particular states. In the Slovak Republic, *the Constitution of Article 23*[17] provides the freedom of movement and residence of persons. The constitutional concept links the sources of the national legal system with laws, regulations and decrees regulating the movement of persons.

Freedom in terms of free movement within the EU remains a fundamental objective to which they must contribute substantially to the accompanying measures related to the concept of security, law and justice. The Treaty of Lisbon, on the other hand, gives the concept of freedom a meaning which goes beyond the free movement of persons between Member States. It is also the freedom to live in a law-enforced environment with the knowledge that the public authorities separately or jointly devote all their efforts to prosecution and punishment of those who deny or abuse that freedom.

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[12] Available: http://eur-lex.europa.eu/resource.html?uri=cellar:41f89a28-1fc6-4c92-b1c8-03327d1b1ecc.0007.02/DOC_1&format=PDF 73–75. (Accessed: 15.12.2017)

[13] Available: http://eur-lex.europa.eu/resource.html?uri=cellar:41f89a28-1fc6-4c92-b1c8-03327d1b1ecc.0007.02/DOC_1&format=PDF 59. (Accessed: 15.12.2017)

[14] Available: http://eur-lex.europa.eu/resource.html?uri=cellar:41f89a28-1fc6-4c92-b1c8-03327d1b1ecc.0007.02/DOC_1&format=PDF 56–57. (Accessed: 15.12.2017)

[15] Available: http://eur-lex.europa.eu/resource.html?uri=cellar:41f89a28-1fc6-4c92-b1c8-03327d1b1ecc.0007.02/DOC_1&format=PDF 57. (Accessed: 15.12.2017)

[16] Available: www.europarl.europa.eu/charter/pdf/text_en.pdf 19. (Accessed: 15.12.2017)

[17] Available: www.prezident.sk/upload-files/46422.pdf (Accessed: 15.12.2018)

An irreplaceable role in the education process of police higher education institutions is covered by the Schengen acquis, which includes topics such as *entry and exit of foreigners* (list of border crossings, setting of minimum data on information boards at border crossing points at external borders, agreements on local border traffic, the methodology for carrying out checks on persons crossing the national border, the establishment of uniform entry and exit stamps, measures to combat illegal immigration, the list of third countries whose nationals must be in possession of visas when crossing the external borders and countries whose nationals are exempt from that requirement at the external borders, issuing visas at the external borders, practical procedures for carrying out border checks), *stay of aliens* (introduction of a harmonized form providing proof of invitation, ensure payment of subsistence and accommodation, establishing a united format for visas, examining visa applications, united format for residence permits for third-country nationals), *granting sanctions for the illegal stay of foreigners* (expulsion, mutual recognition of decisions on the expulsion of third-country nationals), *responsibility of legal entity and natural persons* (obligation of carriers to communicate passenger data and reporting of accommodation by aliens), *international police cooperation* (liaison officers, cross-border surveillance and persecution of persons, immigration liaison officers network, organization of joint flights for the removal of third-country nationals who are subject to individual removal orders from the territory of two or more Member States), *the Schengen Information System* (installation and operation, updating SIRENE, the introduction of some new functions for the SIS, including the fight against terrorism), *the control of the aliens regime* (criminal law framework in the fight against the facilitation of unauthorized entry, crossing or stay) *and the operation of the web-based information and coordination network* for management services migration of Member States.[18] The subject in its content also deals with the territorial, temporal and personnel validity of the Schengen acquis. It follows from this that the Schengen acquis is involved in the application of the freedom of movement of persons within the European Union, which is guaranteed not only as a primary source of European law but also by international treaties. In terms of the system, it has a pragmatic dimension. The special status of the Schengen system in the system of control of persons now has a demonstrative and subsidiary character. The impact of the Schengen acquis on the control of people's migration is weak, resulting in a restriction on the free movement of persons in the area of freedom, security and justice. It is therefore necessary for the teachers to objectively assess the current status and role of the Schengen system in the elimination and control of international illegal migration of people.

A special position in the education of students of police high schools has police subjects, which focus mainly on the activities of foreign police and border police. We share the system of police subjects on special topics that deal directly with people's migration and, in the alternative, focus on crimes related to the migration of persons such as investigation. Police subjects dealing with the migration of persons and their elimination include activities of the foreign police service, activities of the border police service, special activities of the services of foreign and border police, operative and intelligence activities, foreign and border regime, operative and intelligence processes, theory of the Service of Foreign Police and the theory of the border police services. Within these subjects a priority must be given to

[18] Balga, Jozef (2009): *Systém schengenského acquis.* Bratislava, VEDA. 76–77.

the forms, methods and means of actions that implement these services in controlling the migration of persons. The subject deals with the system of activities of police and security services in the implementation of visa policy, asylum policy, immigration policy, control of the foreign regime and police cooperation. In this section, the students are provided with the information they need to solve the problematic situations related to the application of the EU visa regime, the EU visa policy and police cooperation in the area of the transfer of foreigners from the EU territory. On the other hand, police subjects must respond to the fact that the control of movement and residence of aliens in the EU territory has been fully transferred to Member States that are unable to restore old forms and methods of control. At the same time, the current state of migration regulation is inadequate and all forms of migration and residence control of the Member States are not used. Efforts to implement all available forms and methods of migrants' control on the territory of the EU are shifted to internal border controls. In principle, the Member States concerned, in line with the sources of European law, are putting their security at risk. However, the fact is ignored that some responsible Member States, for the protections of the external borders are incompetently carrying out border checks and border surveillance. The presented risks of uncontrolled migration and the impact of migration on the security of EU citizens and their Member States are presented by police department teachers to students with possible solutions to the issue from the perspective of police science and the theory of police activities.

An important part of police subjects is in operational terms the cooperation area. It is important to handle the different forms, methods and means of better *information exchange* from information systems such as the Schengen Information System (SIS), the Interpol database of stolen and lost travel documents (SLTD), the Anti-Fraud Information System (AFIS), automated DNA profile comparison, the fingerprint data system and vehicle registration data provided under the Prüm cooperation. In terms of tracking the movement of criminals and terrorists in particular, the use of Passenger Name Record of air passengers (PNR) has a cardinal importance. A particular mention should be made of the use of the European Criminal Records Information System (ECRIS), which allows the exchange of information on previous judgments of EU citizens. The system does not work effectively in case of persons convicted in the EU, who are nationals of third countries.

Last but not least, the police subjects focused on detection of new forms and methods of committing crime smugglers and traffickers and to fight against them and along the entire route, starting with the source and transit countries and ending in the EU. This crime belongs to the subsystem of crimes related to the migration of persons and the subjects containing the alleged issues focus on theoretical and application level.

In these subjects, the university teachers of the department use, among other teaching methods, the exposure teaching method – problem teaching. The teacher must appropriately consider the expertise and practical knowledge of students to whom the problem situation is addressed in the context of problem teaching. Among the factors influencing this fact, we advise the physical age of the students, the level of knowledge of the students, the type of school terminated, the student's psychic circumstances, the time period of the new study, the material possibilities of using didactic aids, the environment in which the curriculum is taken, professional and practical readiness of the teachers. The teaching of specialized subjects has a special significance in the problematic lecture in those thematic units, where the teacher does not pass the facts and knowledge, but introduces the students to the spe-

cific situation, the application of other legal norms in their own professional problems. The situation not only creates and analyses but also reveals hypotheses, existing solutions to the problem and its final solution. Significantly, problematic teaching can be used more thoroughly in those organizational forms of teaching, where we work with smaller groups of students. The pedagogical practice of higher education proves that a problematic approach is necessary to apply especially to seminars, exercises and practical jobs.[19] The application of problem-based teaching at the departments is an important factor in improving the education of police students in high schools. The application has its own specific features. The key pillars of the subjects are based on the determination and selection of information for students at three levels in the field of human migration and its control by police departments.

The first level is available for students in all forms of study and all fields of study. At this level, we focus on the provisions of the primary and secondary sources of European law governing visa policy, asylum policy, control of the foreign regime and police cooperation and their application by the police and security services of the EU Member States. In this section, the students are provided with the information they need to solve the problem situations related to these areas.

In the second level, the issue is narrowly focused on students who have chosen mandatory subjects that include migration issues based on police practice requirements. After acquiring knowledge, skills, and habits from the first level, students move to the second level. In these subjects, information on tactical procedures used by the police and security services in the field of control of the alien regime and border regime of the Member States is presented in the form of lectures and seminars. Solved problems focus on situations related to the implementation of migration control of persons in the EU Member States. Further attention is paid to the specific police cooperation, as it is used in practice in the control of the border regime and the alien regime. This cooperation is based in particular on the exchange of information on illegal migration at common national borders provided by a joint contact point deployed at border crossing points.

The third level focuses on verification of theoretical knowledge through practical work. These practical jobs are carried out, for example, at a joint contact point deployed to tax-specific police departments, where students can verify acquired theoretical knowledge, correct solutions to the problems assigned to them in the context of problematic lessons at seminars and exercises.

This dichotomous system of the pedagogical approach of education at police universities involves the interconnection of propaedeutic legal subjects with subjects of police focus. Police subjects must be based on the knowledge presented by the police science. There is a clearly visible connection of science and research with education and the use of knowledge of police practice.

From the point of view of the research on the migration of persons, this subject deals with the police science and its subsystem of the theory of foreign police. Among the subjects researching the migration of people, we advise police universities and their police departments, research institutions and police units. In terms of personnel the subjects are, therefore, personnel departments, PhD students, staff of research institutions and personnel

[19] Haládik, Jozef (2001): *Problémové vyučovanie v predmete Teória a prax služby hraničnej polície.* Bratislava, Akadémia Policajného zboru v Bratislave. 28.

of police departments. At present, the areas of research on the migration of persons are legal relations governing the status of foreigners, the causes of migration, the legal status of state bodies and institutions controlling the migration of persons, the activities of foreign police units, forms, methods and means used by foreign police services in the control of migration of persons and legal relations between state authorities and aliens. Last but not least, the research focuses on the processes and phenomena affecting the commission of criminal activity related to the migration of people.

Migration must be regulated both on a national and international level, due to its social importance. The regulation on the migration of people includes in a wider sense all legal norms that concern human migration and the change of the place of residence. Its function is to react efficiently to the current situation of immigration and emigration, and also to be capable of influencing migration tendencies.[20]

Conclusion

European universities have taken the lead and have taken on a major role in creating a European area for higher education and in highlighting the basic principles laid down by the Magna Charta Universitatum. This is considered to be the most important, given that the independence and autonomy of universities ensure the ongoing adaptation of higher education and research systems to the changing needs and requirements of society and to scientific progress. The extended framework for qualifications, the agreed set of European standards and guidelines for quality assurance and recognition of qualifications and periods of study are key characteristics of the structure of the European Higher Education Area.

If police universities want to be attractive locally and globally, they must thoroughly revise study plans in the curriculum of study programs – not only to ensure the best possible academic content but also to respond to changing police and security practise needs. One of the main social tasks of higher education is to integrate university graduates into the working life and thus into society. In addition to professional knowledge, education must also include cross-cutting skills and habits. In teaching and learning, including lifelong learning, full use should be made of the potential of information and communication technologies.

Police high schools fulfil the specific requirements of society such as the training of police managers and specialists and have a special position in the system of higher education and belong to the subsystem of state schools. The departments of these schools develop modern forms, methods and means of police activities aimed at protecting public order and state security. In cooperation with other police universities, they focus on exchanging experience in pedagogical and research activities. An important part of the education process is the teaching of migration issues that negatively affects the security of EU citizens. For this reason, it is necessary to permanently update the content of subjects containing themes related to the migration of persons. The education of police students from the issue of migration of people is a necessity due to the fact that serious crime is related mainly to terrorism with the phenomenon mentioned.

[20] Hautzinger, Zoltán (2016): *Szemelvények a migráció szabályozásáról.* Pécs, AndAnn Kft. 58–59.

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The Current Situation in the Field of Migration in the Czech Republic

Zdeněk Chlupáč

Introduction

Migration is a complex and dynamic phenomenon that has social and economic impacts on each country. The entry, stay and integration of foreign nationals in the territory of the Czech Republic are processed with both potentially positive[1] but also negative[2] consequences for the Czech society. These processes are to a large extent dependent on the active and flexible approach of the Czech Republic. (Migration Policy Strategy of the Czech Republic; MoI) On the one hand, it is in the national interest to tackle this issue responsibly, to promote positive aspects of migration, but on the other hand, it is also desirable to fight against the negative ones.

Since the foundation of the sovereign Czech Republic in 1993, the situation in the field of migration has undergone substantial development. At the beginning of the 1990s, the Czech Republic was mainly a source country from which migrants travelled mostly for work to Western European countries. Later, at the turn of the 21st century, the country experienced a large influx of applicants for international protection and an increasing number of transiting foreign nationals. In recent years, the Czech Republic has become a state that is the final destination for thousands of foreign nationals migrating for work and business reasons who want to settle here on a long-term basis or permanently.

The asylum and migration policy of the Czech Republic is made up of a large amount of sub-topics, such as legal and illegal migration, international protection, integration etc. It is beyond the scope of this work to focus on each specific problematic aspect and describe them entirely. My goal is to present the most significant parts of the Czech asylum and migration policy and provide a comprehensive view of this issue. I would also like to answer the question: in which way does the Czech Republic contribute to solving the current migration crisis and what are its priorities in this context.

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[1] Immigrants can fill the gaps in the labour market; they also contribute to the development of the host culture, since there is an influx of new or revitalised services.

[2] More people increase the pressure on resources and services such as health care systems, there is also the risk of conflicts between immigrants and the majority society. The insufficient integration of the new-coming people is also a big problem.

Migration and Asylum Policy of the Czech Republic

Before 1989, during the era of the rule of the Communist Party, the experience with asylum and migration policy in Czechoslovakia was at a very negligible level. At that time, it was impossible to speak of a systematic approach to this issue, as there were very strict state border controls, especially with the neighbouring Western states, and it was very difficult to both enter and exit the country. No significant number of immigrants into Czechoslovakia was recorded during this period. On the basis of intergovernmental agreements with the *friendly* states, foreigners – for example from Cuba, the Soviet Union, Vietnam and other socialist countries – came to work under the Council for Mutual Economic Assistance programme. However, these figures were also strictly regulated by the state. An exception was the arrival of several thousands of migrants from Greece in the 1950s who left their home country for political reasons. Attempts at illegal emigration from Czechoslovakia to Western countries can be considered quite a rare case of migration and it was indeed severely punished by the Communist regime. The internal migration of the inhabitants of the present Czech Republic and the Slovak Republic was a different phenomenon due to the fact that they migrated freely between the territories of both states. In the light of these facts, it can be stated that Czechoslovakia in the communist era was primarily a source country of migration.

After the fall of Communism in November 1989, asylum and migration policy was something completely new for the Czechoslovakian state. There was a lack of experience and also a lack of experts. It was necessary to create new legislation, organizational structure, migration facilities and much more. In 1993, after the dissolution of Czechoslovakia, the Czech Republic started to form its own asylum and migration policy. Due to the fact that the migration issue is directly related to the area of internal security and state security, it was assigned to the Ministry of the Interior (MoI). The Ministry is in charge of the issues of asylum and migration policy at legislative, conceptual, analytical and implementation level. The Department of Asylum and Migration Policy (DAMP) is primarily responsible for this area. Certain parts of the competencies are also in the agenda of the Police of the Czech Republic, respectively the Alien Police Service and other ministries.[3]

After the Czech Republic joined the European Union (EU) in May 2004, its migration policy started to be shaped by the common policies of the EU to a large extent and its implementation has largely been based on the common legal instruments of the EU. On the one hand, there are specific areas of migration policy that are almost exclusively formed by the common policies of the EU, such as international protection, protection of the EU's external borders or return policy; on the other hand, in some areas, the EU Member States retain a relatively high degree of discretion, like in legal migration and integration of foreigners. In the light of these facts, when making decisions on migration issues, the Czech Republic must take into account not only the specific requirements and possibilities of the state, but also the situation at the level of the EU.

[3] Ministries with competence in the field of migration are the Ministry of Foreign Affairs, Ministry of Industry and Trade, Ministry of Labour and Social Affairs, ministries with associated competence are the Ministry of Education, Youth and Sports, Ministry of Regional Development, Ministry of Finance, Ministry of Justice, Ministry of Health, Ministry of Transport.

Migration policy strategy of the Czech Republic

On the 29th of July 2015, at the peak of the migration crisis, the Czech Government approved a fundamental strategic material for the field of migration, called the *Migration Policy Strategy of the Czech Republic,* which formulates the priorities of the country in the area of migration and international protection.[4] The wording of the individual principles expresses the wish of the country to address the migration policy actively and responsibly, while respecting the obligations arising from international conventions, treaties and recommendations. The priority of national activities in migration is to formulate effective measures which will support controlled legal migration, while minimising illegal migration. (MoI)

The document sets out seven principles that are listed by priority with regard to the security aspects of migration. However, they also represent the basic thematic groups on migration issues: integration of foreign nationals, illegal migration and return policy, international protection (asylum), the external dimension of migration (including the development and humanitarian aspects), free movement of persons within the EU and the Schengen Area, and legal migration and the interconnection with the common policies of the EU. In accordance with these principles, the Czech Republic will:

1. Fulfil the obligation within its migration policy to secure a peaceful coexistence of its citizens and foreign nationals, and – through effective integration – to prevent the emergence of negative social phenomena;
2. secure the safety of its citizens and effective law enforcement in the field of illegal migration, return policy and organized crime associated with people smuggling and human trafficking;
3. meet its commitments in the area of asylum and provide flexible capacity of its system;
4. strengthen its activities in order to provide assistance to refugees abroad and to promote the related prevention of further migration flows, including the support for the development of countries in managing migration crises;
5. promote the maintenance of the benefits of the free movement of persons within the EU and the Schengen Area;
6. support legal migration which is beneficial to the state and its citizens so that the Czech Republic can respond flexibly to the needs of its labour market and reflect the long-term needs of the state;
7. fulfil the international and EU obligations in the field of migration, and actively participate in the all-European debate and search for common solutions. (MoI 2015)

Together with The Migration Strategy, The Communication Strategy was developed as a cross-sectional measure for informing the public and other partners. It addresses all aspects of migration in the Czech Republic, is closely linked to the individual chapters of The Migration Strategy and is presented jointly with it. (MoI 2015)

[4] The Migration Policy Strategy of the Czech Republic from 2015 replaced the Czech Government's Migration Policy Principles, accepted by the Government of the Czech Republic in 2003.

The scope of activities of the Department of Asylum and Migration Policy

The DAMP is a department of the Ministry of the Interior which is responsible for exercising competence in the area of foreigners' entry and residence, international protection, refugees, the process of integration of foreigners into the Czech society and Schengen cooperation. The department is also responsible for the state administration of the Refugee Facilities Administration of the Ministry of the Interior. With more than 1100 employees, the DAMP is the most numerous department of the Ministry of the Interior. It has more than 28 offices in all 14 regions of the Czech Republic. From the wide range of issues that are in gesture of the DAMP, I chose several of the most important ones to analyse in more detail.[5]

Legal migration

Legal migration is a process of state-controlled immigration that occurs through authorised channels. From the point of view of the Czech Republic, it is necessary to approach migration as one of the possible instruments of economic development of the country. One of the main goals of the Czech Government in migration policy is to support controlled legal migration into the country, i.e. to bring qualified foreign workers, who are able to contribute to the development of the economy, and to integrate them into the Czech society permanently, together with their families.

The Czech Republic can regulate migration flows through its visa policy and residence permits. In the context of legal migration, there are three options how to classify foreigners – first, it can be done based on the nationality of the foreigners (EU citizens and their family members or citizens of the third countries), second, based on the purpose of their stay (entry and residence permit is authorized for a specific purpose, such as business, work, family reunion, study, science and research, etc.) and third, based on the length of their stay (short-term stays, temporary stays and permanent stays).

As a part of the migration policy, the Czech Republic creates specific projects to support certain groups of foreigners. These projects are realized through interdepartmental cooperation of central state administration bodies and are an effective tool for supporting the migration of selected target groups of third-country nationals whose entry and residence is in the interest of the state. The objective of these projects is to speed up the migration process by prioritizing the foreigners' applications for residence permits and possibly also for work permits. Foreigners wishing to participate in the projects must meet the eligibility criteria. As an example of these projects, the following ones can be mentioned: projects targeting workers from Ukraine – *The Project Ukraine*[6] and *The Regime Ukraine,*[7] *Fast Track*

[5] Outside the mentioned issues, DAMP also deals with other areas such as European and international cooperation, Schengen cooperation, foreign assistance program, assistance to compatriots, return policy etc.

[6] Project for the employment of highly qualified workers.

[7] The dominant migration tool for the year 2017, which applies to medium and low-skilled workers.

project[8] – accelerated procedure for in-house workers;[9] Welcome Package for Investors,[10] *Accelerated procedure for granting residence permits for foreign students from third countries* (in competence of the Ministry of Education, Youth and Sports) and many others.

International protection

The issue of granting international protection is covered by a number of international treaties and laws of the Czech Republic. The basic national law is Act No. 325/1999 Coll. on Asylum. The administrative procedure for the granting of international protection is carried out by the Ministry of the Interior as a body of the first instance. It is possible to appeal against the decision of the ministry at the competent regional court. A cassation complaint may be filed against the decision of the Regional Court on an appeal against the decision of the ministry on the issue of international protection to the Supreme Administrative Court in Brno. The Ministry of the Interior is conducting the procedure for granting international protection in the relevant asylum centres, through the expert staff of the DAMP. (MoI)

International protection is granted in the form of asylum or subsidiary protection. The foreigners who have been granted asylum acquire a permanent residence in the Czech Republic and have similar rights and obligations as Czech citizens, with several exceptions, such as the impediment to work in security services and the right to vote. Subsidiary protection can be granted if the foreigner does not meet the conditions for being granted asylum, but he/she would face a risk of suffering serious harm if they return to the country of origin.

Integration

Integration policy builds on a legal migration policy and as such should respond to current migration trends. It is a two-way process involving both the foreigners and the majority society. Its goal is to maintain social cohesion and harmonic conflict-free coexistence of all inhabitants of the country. In this respect, the Czech Republic has a well-balanced integration policy which is non-problematic in the long term. Its foundations are formed by consistent monitoring and projects at national and regional levels, including a network of regional integration centres for foreign nationals. (Migration Policy Strategy, MoI)

The basic strategic document of the integration policy of the Czech Republic is *The Policy of Integration of Foreign Nationals,* which was approved by the Government in 2000 and has since then been continually updated. The target group consists of third-country nationals legally residing in the territory of the Czech Republic who are neither applicants for international protection nor persons enjoying international protection. In exceptional cases, the target group may also include EU citizens.

[8] In cooperation with the Ministry of Industry and Trade, the Ministry of Labour and Social Affairs and the Ministry of Foreign Affairs.

[9] Acceleration and improvement of the migration process of statutory bodies, managers and key specialists from third countries assigned to branches located in the Czech Republic.

[10] The project is focused on statutory representatives, managers and key specialists of newly incoming companies.

There is also a special integration program for persons granted international protection, *The State Integration Program,* which aims to facilitate the process of integration of persons who have been granted international protection. The Czech Government approved this programme in November 2015.

Illegal migration

Illegal migration means unauthorized entry into the country, unauthorized residence in the territory or a stay inconsistent with the purpose that the residence permit was issued for. It is a security threat not only because it may often be linked to a cross-border crime, organized crime and even international terrorism, but also because it can pose economic and social risks. Illegal migration may also affect the internal stability of the society, the public's relation to legally settled foreigners and the economic balance of the state.

Within the already mentioned *Migration Policy Strategy,* the Czech Republic has proposed the following procedures to effectively combat illegal migration at national level: effective pre-entry control, effective return policy, cooperation with third countries, fight against human trafficking and consistent detection and punishment of organizers of illegal migration.

The Current Situation in the Field of Migration in the Czech Republic

At the beginning of 1990, only about 35,000 foreigners – about 0.34% of the population – lived in the territory of the present Czech Republic. In 1993, the number of foreigners living in the Czech Republic was more than twice as high (approximately 78,000, i.e. 0.75% of the population).[11] The second half of the 1990s and the beginning of the 21st century can be characterized as a period of rapid growth in the field of migration in the Czech Republic. This situation was further highlighted after the country joined the EU in 2004. According to up-to-date data, more than 516,000 foreigners live legally in the Czech Republic in these days, which represents about 4.8% of the total population.[12] (CSU, 2017)

Residence of foreigners in the territory of the Czech Republic

According to Act No 186/2013 Coll. on the Czech Citizenship, *a foreigner shall mean a person, who is not a citizen of the Czech Republic.* (Act No. 186/2013 Coll.) The stay of foreigners is primarily governed by Act No 326/1999 Coll. on the Residence of Aliens on the Territory of the Czech Republic and, for specific groups of foreigners, also by Act No 325/1999 Coll. on Asylum.

[11] It should be noted that most of them were from Slovakia.

[12] In total, the Czech Republic has 10.57 million inhabitants.

Three basic categories of foreigners staying in the Czech Republic can be identified. First, *nationals of the EU member states, Iceland, Liechtenstein, Norway, Switzerland and their family members,* second, *third-country nationals* (citizens of countries outside the EU) and third, *other foreigners* (regardless of their citizenship – for example applicants for international protection).

The residence of foreigners in the territory of the Czech Republic is divided by the Act on the Residence of Foreigners into categories of temporary stay in the territory and permanent residence in the territory. As of 30 September 2017, a total of 516,983 foreigners with legal residence were registered in the Czech Republic. The long-term development of the number of foreigners residing in the country is shown in the following graph, with the ratio of permanent and long-term stays marked.

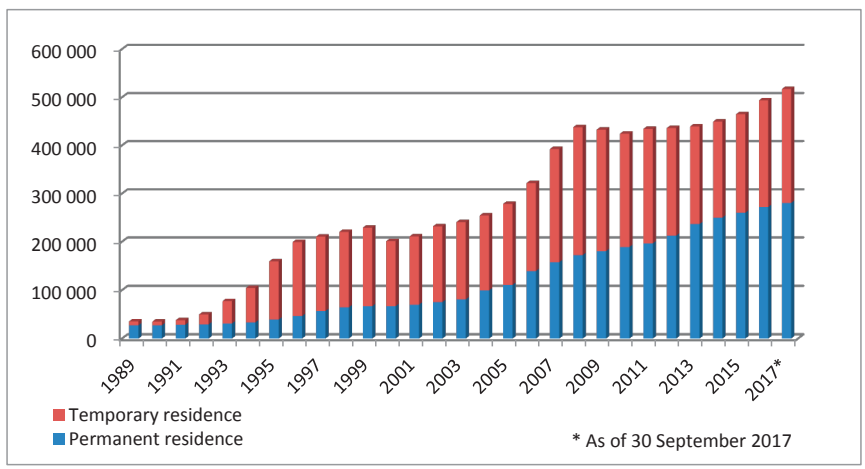

Figure 1.

Foreigners in the Czech Republic by type of residence permits 1989–2017

Source: ŘSCP MoI

Among the foreigners residing in the Czech Republic, third-country nationals prevail. Ukrainians are the largest immigrant community with a legal residence in the territory of the Czech Republic, accounting for 113,397 people i.e. 22.2% of the total number of foreigners residing in the Czech Republic. The second largest group are Slovaks (109,914 people), followed by Vietnamese (59,279 people), Russians (36,343 people) and Germans (21,148 people). More detailed information on the national composition of foreigners in the Czech Republic is presented in Figure 2.

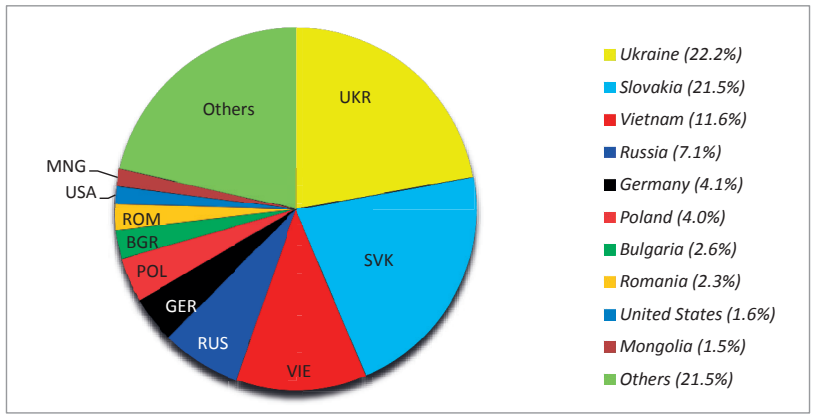

Figure 2.

The national composition of foreigners in the Czech Republic

Source: MoI

Administratively, the Czech Republic is divided into 14 self-governing regions. In the long run, Prague is the region with the highest concentration of foreigners, followed by the Central Bohemian Region, the South Moravian Region and the Ústí nad Labem Region. Contrary to this, the smallest share of foreigners was registered in the Vysočina Region and in the Zlín Region.

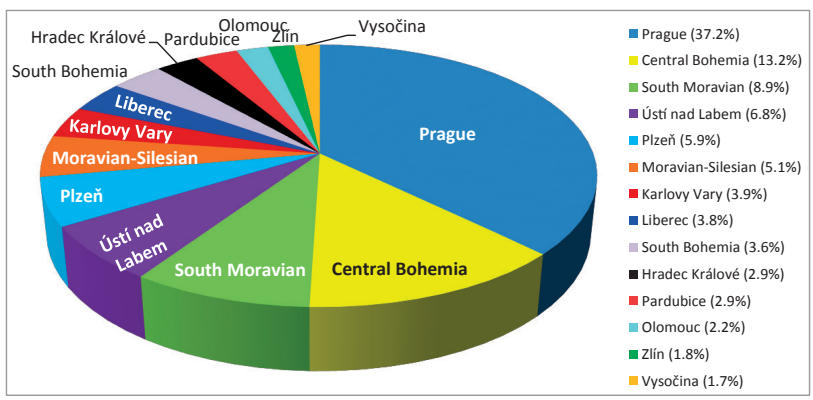

Figure 3.

Territorial distribution of foreigners by region

Source: MoI

As of 31 December 2016, 382,889 foreigners were registered by the regional offices of the Czech Labour Office. Of this number, 284,148 (74.2%) were citizens of the EU/EEA and Switzerland (including their family members), who have free access to the labour market, and 76,046 were third-country nationals (25.8%). The national composition of foreigners officially working in the Czech Republic is shown in the following graph.

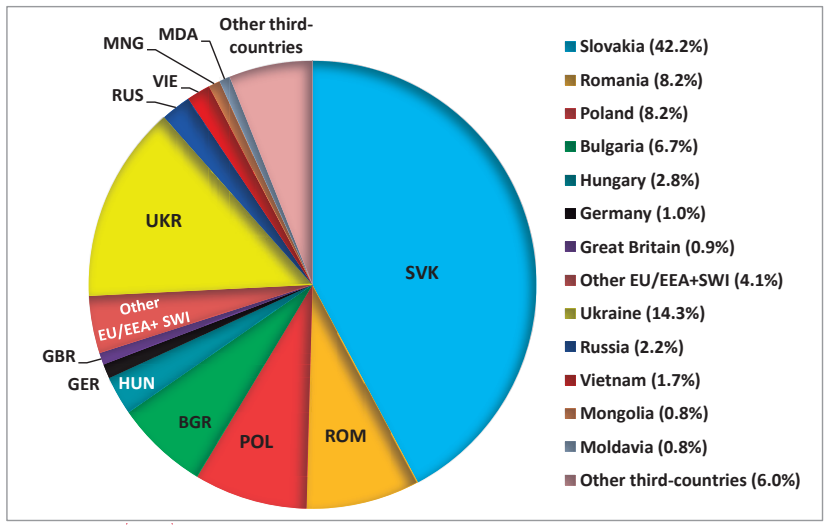

Figure 4.
National composition of officially working foreigners (up to 31.12.2016)

Source: MoI 2016

Trends in international protection

The first asylum seekers came to Czechoslovakia immediately after the collapse of the communist regime in November 1989. They were mainly citizens of post-communist countries, especially Romania, Bulgaria and the former Soviet Union, but also from some of the non-European countries, such as Afghanistan and Iraq. During the 1990s, the situation in the area of international protection in the Czech Republic was relatively stable with the number of applications between 1,000–2,000 per year. At the turn of the 21st century, there was a dramatic increase in the number of applications for international protection. The highest number of asylum seekers, 18,094 was recorded in 2001,[13] but after 2003 the numbers declined steadily. The situation changed at the beginning of 2014 in connection with the Ukrainian crisis. That year, there was a change in the trend of the decreasing number of applications registered in the Czech Republic, when the year-on-year increase was more than 30%. A year later, the number of applications for international protection increased again, but in 2016, this trend stopped (see Figure 5).

[13] The derogation in 2001 was caused by the short-term relaxation of the provisions of the Employment Act (asylum seekers could work in the Czech Republic immediately after submitting their application; this was abused by a huge number of foreigners, mainly citizens of Ukraine and FYROM). An amendment to that law came into force in January 2002, and subsequently the number of applications decreased again.

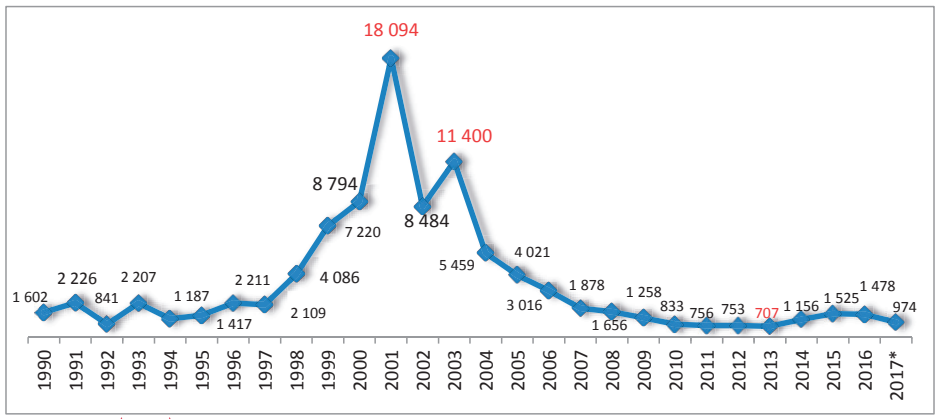

Figure 5.

*Asylum seekers in the Czech Republic (*up to 31.8.2017)*

Source: MoI

The national composition of foreigners applying for international protection in the Czech Republic remains relatively stable in the long term, but several *abnormalities* can be identified. The most frequent applicants for international protection of all nationalities are traditionally citizens of Ukraine.[14] Between 2013 and 2014, in particular, there was a steep increase in the number of their applications. The reason for this change was the outbreak of the crisis in Ukraine. Given that the Czech Republic is a target country for many Ukrainians, this increase was nothing unexpected. It is also interesting to compare the number of asylum seekers from Iraq between 2014 and 2016. In 2014, Iraqi citizens applied for international protection in the Czech Republic 22 times and a year later 38 times, but in 2016, it was suddenly 158 times. This sudden change was caused by the fact that the Czech Government approved a humanitarian admission through which 89 Iraqi Christians from Lebanon and Iraqi Kurdistan were admitted to the country.

Table 1.

Asylum seekers by nationality

2012	2013	2014	2015	2016	2017*
UKR (178)	*UKR (146)*	*UKR (515)*	*UKR (694)*	*UKR (507)*	*UKR (324)*
SYR (67)	*SYR (70)*	*SYR (108)*	*SYR (135)*	*IRQ (158)*	*AZE (92)*
BLR (54)	*RUS (53)*	*VIE (64)*	*CUB (128)*	*CUB (85)*	*GEO (73)*
VIE (51)	*VIE (49)*	*RUS (43)*	*VIE (81)*	*SYR (78)*	*ARM (72)*
RUS (42)	*ARM (43)*	*CUB (42)*	*ARM (44)*	*CHN (68)*	*SYR (60)*

* up to 31.8.2017

Source: MoI

[14] For many Ukrainian citizens, the Czech Republic is the target country and they try to stay there under all circumstances. That is why these people often resort to application for international protection in a situation where they have no other possibility of remaining legally in the territory.

In the last 5 years, the asylum was granted to around 7.8% of all applicants and another 19.4% of applicants got subsidiary protection (see the following figures).

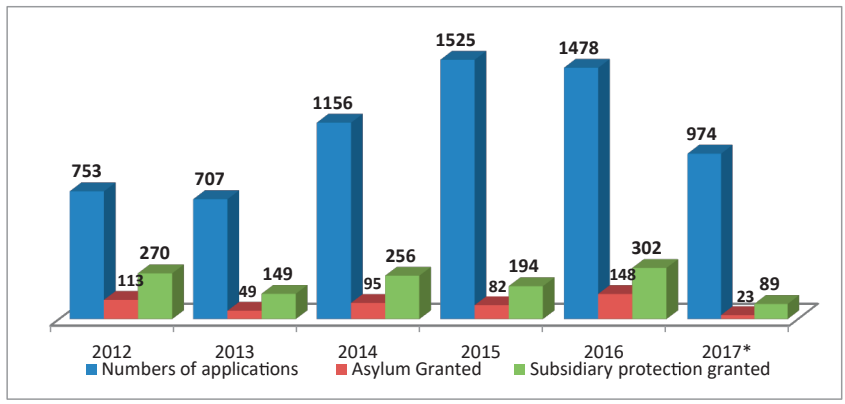

Figure 6.

*The success rate of applicants for international protection in the last 5 years (*up to 31.8.2017)*

Source: MoI

Table 2.

The number of granted asylums/subsidiary protections by nationality

Asylum granted/subsidiary protection granted											
2012		2013		2014		2015		2016		2017*	
BLR		SYR		UKR		UKR		IRQ		SYR	
10	25	4	98	25	119	7	174	101	49	2	21
SYR		BLR		SYR		SYR		SYR		UKR	
0	22	8	68	1	72	29	101	5	88	6	16
UZB		CUB		CUB		CUB		UKR		IRQ	
8	13	3	30	2	28	0	53	5	46	1	12
CUB		MYA		BLR		BLR		CUB		UZB	
1	16	29		6	16	4	12	0	44	0	13
KAZ		IRQ		IRQ		IRQ		AFG		YEM	
3	13	2	13	1	9	4	12	5	16	0	6

* up to 31.8.2017

Source: MoI

From January to mid-September 2017, the EU member states have received almost 500,000 applications for international protection. As of that date, the Czech Republic registered only 1,040 applications, which represented 0.21% of the total. It follows that the Czech Republic has never been one of the target countries for a large number of asylum seekers, unlike other European countries such as Germany, the United Kingdom or the Scandinavian states.

The situation in the field of international protection can be considered stable in the Czech Republic without any significant fluctuations.

Illegal migration in the Czech Republic

Illegal migration can be divided into the following two categories – illegal crossing of the external Schengen border[15] and illegal residence on the territory. Since 2008, when the Czech Republic has become part of the Schengen area, the trend of the rising number of illegal migrants detected in the Czech Republic can be monitored. Between 2013 and 2014, the increase was 17%, but a significant change occurred in 2015, when the year-to-year increase was 78%. The following table documents the development of illegal migration in the Czech Republic in the last five years.

Table 3.
Illegal migration in the Czech Republic 2013–2017

	2013	2014	2015	2016	2017*
illegal residence (also includes transit illegal migration) and top countries of origin	3 974	4 641	8 323	5 039	2 532
	UKR	UKR	SYR	UKR	UKR
	RUS	KWT	UKR	RUS	VNM
	VNM	LBY	KWT	KWT	RUS
illegal crossing of the external Schengen border and top countries of origin	179	181	240	222	113
	RUS	RUS	RUS	refugees**	refugees**
	ALB	UKR	UKR	UKR	ALB
	UKR	AFG	ALB	ALB, AZE	RUS

* up to 31.7.2017
** Holders of a so-called refugee passport, i.e. a *travel passport* marked with the text *Convention of 28 July 1951.*

Source: MoI, Police of the Czech Republic

During 2015, an enormous number of people, mostly from Middle East and Southern Asia or Africa, tried to reach the EU, especially Western and Northern European countries and this state continued in 2016 and 2017 (although it is true that the number of incoming people was lower). On 17 June 2015, in response to the migration situation in the EU, the Czech Government approved the introduction of special measures such as police controls on selected road and train routes, in particular near the state borders, with the aim of minimizing the illegal movement of persons in the territory. Subsequently, in August 2015, the Ministry of the Interior decided to extend the capacity of detention facilities due to the growing number of detained irregular migrants.

[15] Due to the fact, that the Czech Republic is surrounded by EU states, the only external Schengen borders are airports.

In connection with the mentioned migration wave, the rate of illegal migration in the Czech Republic culminated between July and September 2015 (in August 2015, the police detained more than 1,300 people, especially from Syria, Afghanistan and Iraq). In 2015, the rate of illegal migration reached the country's annual historical maximum, but a year later, it declined significantly, by 39%. The lower number of detained irregular migrants in 2016 was caused inter alia by the opening of border crossings between Hungary, Austria and Germany. The final downturn occurred with the closure of the so-called Balkan route.

From the beginning of the enhanced measures announced on 17 June 2015, 3,905 people were detected by the end of September 2017 (see Figure 7). Most irregular migrants were detained in the South-Moravian region (50%), in Prague (15.2 %) and in the Ústí nad Labem region (8.6%).

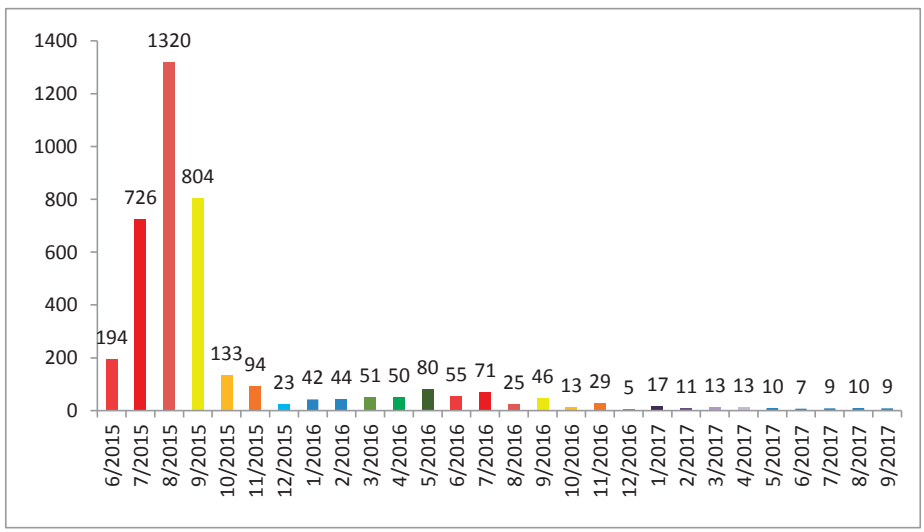

Figure 7.
Transit illegal migration

Source: MoI, Police of the Czech Republic

Although the number of transiting irregular migrants has dropped significantly since 2015, the national composition remains very similar. The graph on the left shows the number of detected irregular migrants from 17 June 2015 until the end of September 2017, the graph on the right shows the same time period but in 2017.

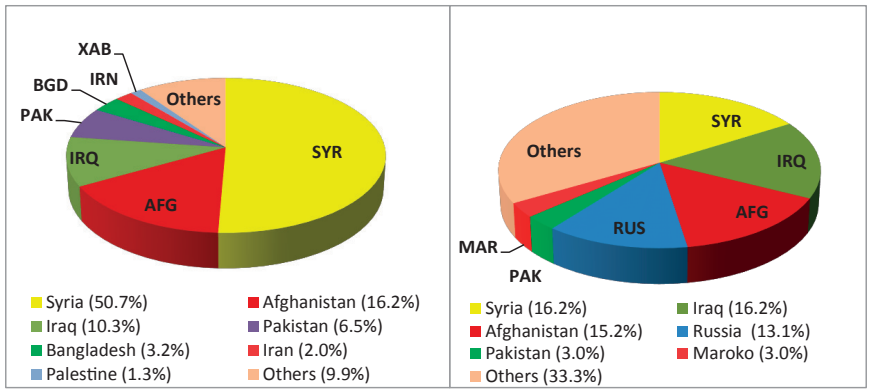

Figure 8.

Comparation of national composition of transit illegal migration

Source: MoI, Police of the Czech Republic

Foreigners who enter and stay illegally in the Czech Republic, with a decision on their expulsion and detention being issued, or persons to be transferred to other EU Member States, are placed in facilities for detention of foreigners. The highest number of illegal immigrants staying in the facilities for detention of foreigners was recorded at the turn of September 2015, with a maximum of 1,202 people on the 2nd of September 2015.

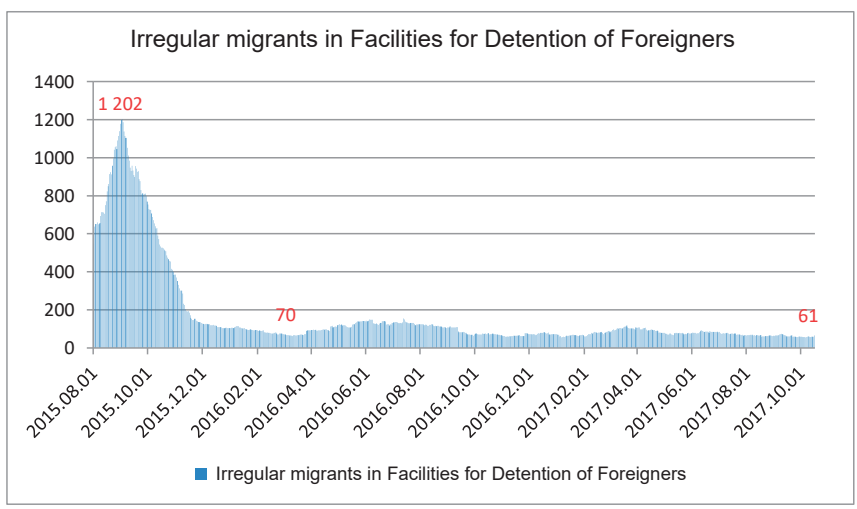

Figure 9.

Number of irregular immigrants staying in Facilities for Detention of Foreigners

Source: MoI, Police of the Czech Republic, SUZ

As of 16 October 2017, a total of 61 people stayed in the Facilities for Detention of Foreigners (ZZC). Among the main nationalities in the Czech detention facilities are currently citizens of Ukraine (26), Moldova (10), Vietnam (6), Iraq (5) and Nigeria (3). It should be noted that

in most cases, these are people detained because of a violation of the residence regime, so they are not primarily transiting migrants.

Currently, the situation in the field of migration in the Czech Republic is stable. Although the Czech Republic has become a destination country for some groups of foreigners in recent years, it remains primary a transit country from a European perspective and is used by foreigners as a transit area for illegal migration, although currently not in a great extent. The continuous migratory influx remains outside the borders of the Czech Republic, where only individuals or small groups of irregular migrants are detected in connection with the migration crisis.

The Migration Crisis from the Point of View of the Czech Republic

More than a million migrants and refugees have come to Europe since the beginning of 2015 to the present days, and others are still coming. Irregular migrants often take a long and dangerous journey to reach the borders of Europe, travelling across the Mediterranean Sea.[16] Most of them come from regions south and east of Europe, including Western and Southern Asia or Africa, and aim to reach one of the Western European states, especially Germany, the United Kingdom or the Scandinavian states. For this situation at the international level, the term European migration crisis is used.

The migration crisis in the Czech Republic was not primarily amplified by a huge number of refugees crossing the national borders or applying for international protection. These numbers were and are disproportionately low, compared to the numbers in other Western EU member states. Despite this fact, the Czech Republic does not ignore the problems associated with the migration crisis and actively participates in their solution. On the following lines, I will present how the Czech Republic contributes to solving the problems related to the migration crisis and outline its priorities in this area.

The Czech Republic as a part of the migration crisis

Since the beginning of the migration crisis, the Czech Republic has been intensively involved in implementing effective measures to mitigate the impact of the crisis and is ready to continue in these endeavours. The country carries out a number of projects within which it provides personnel, material and financial assistance. At this point, I would like to mention a few particular cases.

The Czech Republic considers the concept of hotspots to be an important aspect of the solution to the migration crisis and actively has supported EASO activities both in Italy and Greece. In connection with the functioning of the hotspots, relocations and implementation of the EU–Turkey declaration, a total of 70 missions of Czech experts from the Ministry of the Interior were carried out since 2015 to support the EASO activities (35 in Italy and

[16] Western Mediterranean through Spain, Central Mediterranean through Italy or Eastern Mediterranean through Greece, Bulgaria or Cyprus.

35 in Greece). The Czech Republic has always been one of the most active countries in terms of sending experts to the EASO services operating in hotspots in Italy and Greece. (MoI)

Czech policemen regularly take part in foreign missions to help guard the external Schengen border and prevent the flow of illegal migration. Since 2015, the Czech Republic has deployed more than 350 police officers who have joined the Frontex operations and 700 more police officers who have worked abroad under bilateral agreements. These policemen have mainly worked in countries on the so-called Western Balkan Route such as Greece, Hungary, FYROM, Serbia and Slovenia, generally helping with border surveillance, performing security inspections and searching vehicles.

In connection with the migration crisis, the Ministry of the Interior has established a targeted Refugee Assistance Programme, under which financial aid is provided to the host countries most affected with the refugee crisis such as especially Jordan, Iraq, Turkey, Serbia, Bulgaria and FYROM. Over 2015–2017, more than 15 million euros was allocated under this program. As part of the Refugee Assistance Program, additional ad hoc financial grants and donations are provided. The Ministry of the Interior also coordinates the MEDEVAC programme, a government-run medical humanitarian project that is focused on providing medical care to vulnerable groups of inhabitants in the regions stricken by humanitarian crises or natural disasters or in areas with complicated or no access to specialised healthcare services.[17]

As can be seen from the previous lines, the Czech Republic has taken an active stance towards the current migration crisis and is trying, as far as possible, to minimize its impact. The country is consistently and directly helping in the places of conflicts and neighbouring states. Czech experts support the EASO activities in Greece and Italy, policemen assist in crisis areas and the Czech Republic also provides material and financial assistance to the states in need.

Priorities of the Czech Republic in the context of the migration crisis

The current migration crisis needs an effective solution, which is only possible if the EU focuses primarily on consistent protection of the external Schengen borders, assisting the source and host countries of migration, and on returning those who are not entitled to international protection in the EU, i.e. the prevention of abusing of the European asylum system. In the light of these realities, the Czech Republic defines the following priorities for minimizing the impact of the migration crisis.

It is essential to preserve a functioning national asylum system in all member states of the EU. It is also necessary to exert pressure on consistent compliance with the rules and insist on preserving the concepts of the first safe countries for asylum applications (including safe countries outside the EU) to prevent the so called *asylum shopping.*

The effective aid in the countries of origin and surrounding states affected by the migration crisis is also very important. In addressing the migration crisis, the EU has to

[17] The inception of the MEDEVAC Programme (MEDical EVACuation) dates back to the beginning of the 1990s, to the times of war conflict in Bosnia and Herzegovina. From that time, Czech doctors were deployed for example to Kosovo, Iraq, Pakistan, Afghanistan, Libya, Syria, Ukraine, and Jordan.

focus intensively on helping the most affected states, i.e. at the point of conflict, in the source countries of migration and in transit countries, where the aid is most effective and most needed. Ensuring human dignity in housing, food, health, education and employment requires presence directly in the most affected areas. Assistance is needed not only for refugees but also for local communities, to develop infrastructure. Simultaneously, it is also necessary to provide assistance to the European countries most affected by the migration crisis. In this way, the Czech Republic supports the concept of hotspots, the Mediterranean Sea Operation EUNAVFOR MED Sophia and the development and operational capacity of a Libyan Coast Guard unit.

Another priority of the Czech Republic is to introduce measures that would reduce the flows of illegal migration to the EU and prevent the abuse of asylum procedures for illegal migration. With this in mind, the EU member states must work intensively on the protection of external Schengen borders (with the support of Frontex, which should fully control migration flows to the EU), cooperation with third countries and streamlining of return policy.

Return policy and its instruments have considerable reserves in all European countries and their current form undoubtedly contributes in a major way to maintaining the attractiveness of illegal migration from key source countries to the EU. This situation, where it is not possible to ensure the effective repatriation of undesirable foreigners[18] or to ensure that countries of origin assume their own citizens, is no longer acceptable to the Czech Republic. In order to achieve measurable progress, the EU must link the return policy with other areas, such as putting pressure on non-cooperating third countries through visa policy. Early identification of persons entering the EU illegally with non-asylum motivation and their quick and effective repatriation must remain a key priority if the EU intends to establish a system which aims to deter potential illegal economic migrants and prevent the abuse of the Common European Asylum System.

Last but not least, there is a need for a comprehensive review of the EU asylum policy, as the migration crisis in 2015 has unambiguously demonstrated its shortcomings. The situation is now relatively stabilized due to lower numbers of arrivals, mainly via the eastern Mediterranean route, but the migration system of the EU remains extremely vulnerable and abusive. In this respect, the Czech Republic supports changes that would lead to the improvement of the asylum procedure in the places of first entry in the EU territory, as well as finding methods how to directly return persons without asylum rights from these places.

Conclusions

The migration and asylum policy of the Czech Republic is a coherent concept that can be effectively adapted to possible changes. The Czech Republic devotes increased attention to migration issues and is fully aware of the difficulties that unmanaged migration policy can bring. On the one hand, the country seeks to avoid the negative effects of illegal migration and, on the other hand, to support the positive effects of legal migration. For this purpose, a governmental document called the *Migration Policy Strategy* has been developed, in which the priorities of the countries in this area are clearly formulated.

[18] I.e. persons without residence permit or without the right to international protection.

At present, the migration situation in the Czech Republic is relatively constant and the available information does not indicate that any significant changes should be made in the near future. Although the Czech Republic is not a primary target country for illegal migrants and asylum seekers within the EU, it is to a large extent the target country for the legal migration of certain groups of foreigners, and the number of foreigners in the Czech Republic is growing steadily. The Czech Republic reflects the global migration situation and tries to evolve it. The Czech Republic acts with solidarity and contributes to the minimization of the negative phenomena associated with migration issues.

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Some Practical Aspects of the Training on Migration

Miroslava Vozáryová

Introduction

The Faculty of Law was established in June 1919 together with Comenius University itself. Throughout its almost 90-year-long history, the study at the Faculty changed significantly a number of times. At present, the Faculty provides its students with three degrees of university education organised within the credit system.

The mission of the Faculty is to provide a high quality legal education so that its graduates would later become successful legal practitioners both in Slovakia and in the European Union and be successful in other areas of social life, as well. The aim of the Faculty is to continuously improve the quality of material as well as formal aspects of all three degrees of university education through the permanent growth of the qualification structure of its pedagogical staff along with the introduction of modern methods of pedagogical process.

The Master's degree programme – Master of Laws is a programme offered also as a complete two-year programme in English (including Asylum Law), as one of the few Faculties of Law in Central and Eastern Europe. Unlike other Faculties of Law in the region, our programme is neither only a certified postgraduate programme or life-long education, nor a master degree programme in the non-legal field of study e.g. legal specifics. The graduate of the programme will acquire a full Master Degree in Law that allows him to enrol to any of the professional chambers in Slovakia or to practice any of the legal professions.

The philosophy of the Master's degree programme – Master of Laws is to offer students a broad platform on which to design their own course of study within the parameters set by the Faculty of Law. The Master's degree programme pursues innovations of legal education in accordance with foreign, mainly Western European models. It was implemented as a result of the project Foreign Language Master Degree Programme *Law of European Integration and Globalization,* which was co-financed by the European Union through the European Social Fund within the operational programme Education. The graduate will be able to analytically and synthetically consider all legal fields with a theoretical, philosophical and ethical basis, especially with broad knowledge of the European Union Law and International Law. The graduate will be fully applicable in practice, especially in multinational law offices and multinational business corporations, international governmental and non-governmental organizations, as well as central governmental authorities.

In addition to the introduction of a considerable number of new courses that have been already taught for more than three years and modernization of current teaching methods,

the programme lays emphasis on gaining practical skills through clinical education and moot courts.

The Master's degree programme would like to provide the active and talented students the opportunity to apply their gained theoretical knowledge and skills in the authentic and equally demanding environment of international law competitions in which the best law students from around the world meet as counsels for adversary parties in moot court proceedings. Students thus have a unique opportunity to compare themselves with colleagues from around the globe and present their legal arguments in front of an international panel of distinguished legal practitioners acting as presiding judges. Every student of the Master's degree programme has to participate in one of the moot court courses valued 5 + 5 ECTS credits, either as a regular student or among the most successful ones as the competitor representing the Faculty of Law, Comenius University in Bratislava.

A new experience could be the Czech–Slovak moot court 2018 on asylum and refugee law, held by the Charles University in Prague. The topic is focused on the young man who is afraid from the mandatory service in army and students have to consider his application for international protection.

Teaching Methods of Asylum Law

Asylum law has been registered as a voluntary program some years ago and is a part of the agenda within the Department of International Law and International Relations. Even the legal basis is not only in international public law documents, but also in the EU legal framework; we still have to bear in mind that the CEAS (Common European Asylum System) is based on the principles of the UN Convention on the status of refugees (1951) and its Protocol (1967).

The aim of the course is that the students will acquire knowledge about the central concepts relating to the study of refugees and asylum, the state of the world's refugees and displaced persons, the role of governmental and intergovernmental institutions in national and international refugee work, the relation between international, EU and national asylum law from a historical and a contemporary perspective.

The course comprises studies on the state of the world's refugees, basic concepts, the role of governmental and intergovernmental institutions in refugee work, documents and treaties relating to aspects of refugees and asylum and the relation between international, EU and national asylum law.

Learning outcomes

- Describe and independently analyse the general refugee situation of the world;
- understand basic concepts relating to the study of refugees and asylum;
- understand the role of governmental and intergovernmental institutions in international and national refugee work;
- describe and understand the content, function and historical background of basic international asylum documents, conventions and treaties;

- understand and critically reflect, in dialogue with others, on the reach and limits of international asylum law and the tension between international, EU and national asylum law.

Teaching is principally in the form of lectures, seminars and group work. A major part of the work consists of independent studies where the students are expected to be prepared for each session during the course. The group is collectively responsible to enable for all members to participate and contribute to the group work.

To arrange courses more connected with the practical experiences we invite experts from both state administration and international organisations acting in this field. The main actor in state administration is the Migration Office within the Ministry of the Interior of the Slovak Republic (hereinafter *Ministry of the Interior* or *MoI*).

The Migration Office

MoI implements its agenda in the field of migration and asylum mainly through two bodies – the Migration Office, and the Bureau of the Border and Aliens Police. The Migration Office is the first instance body, which decides on the granting of asylum and subsidiary protection of foreigners in accordance with the provisions of the Act on Asylum No. 480/2002 Coll., which also reflects the Geneva Convention relating to the status of refugees from 1951, the New York Protocol relating to the status of refugees from 1967, as well as relevant EU directives or regulations governing the area of international protection of foreigners. The Migration Office provides basic care for asylum seekers, cooperates with the NGOs regarding the integration of refugees and persons with granted subsidiary protection into society.

It provides also assistance regarding accommodation, employment, language preparation, education, health and social security. The Migration Office is the guarantor of the projects financed by the AMIF and to the recipients of assistance (NGOs), provides the methodological guidance and consultation in this area and cooperates with the Office of the UN High Commissioner for Refugees (UNHCR) and with the IOM International Organization for Migration and participates in the formulation of migration policy for the state. Furthermore, the Migration Office regularly publishes statistical information on asylum in Slovakia.

The International Organization for Migration

Established in 1951, IOM is the leading inter-governmental organization in the field of migration and works closely with governmental, intergovernmental and non-governmental partners. With 166 member states, a further 8 states holding an observer status and offices in over 100 countries, IOM is dedicated to promoting humane and orderly migration for the benefit of all. It does so by providing services and advice to governments and migrants.

IOM works to help ensure the orderly and humane management of migration, to promote international cooperation on migration issues, to assist in the search for practical

solutions to migration problems and to provide humanitarian assistance to migrants in need, including refugees and internally displaced people.

The IOM Constitution recognizes the link between migration and economic, social and cultural development, as well as the right of freedom of movement. IOM works in the four broad areas of migration management:

- Migration and development
- Facilitating migration
- Regulating migration
- Forced migration

IOM activities that cut across these areas include the promotion of international migration law, policy debate and guidance, protection of the migrants' rights, migration health and the gender dimension of migration. IOM has been active in Slovakia since 1996. Among its main activity areas are: assisted voluntary returns, migrant integration, prevention of human trafficking and assistance to trafficked persons, resettlement of refugees and coordination of the European Migration Network. Within these areas IOM implements the following activities:

- Assisted Voluntary Returns and reintegration in the country of origin
- Migrant integration
- Counter-Trafficking in Human Beings
- Resettlement of refugees
- European Migration Network – Coordinator of the National Contact Point for European Migration Network in Slovakia (since 2009)
- Research and capacity building in the field of labour migration and migration and health
- Projects aimed at stabilization of vulnerable communities in Eastern Slovakia (in cooperation with partner intergovernmental organizations)
- Humanitarian and social programmes (in cooperation with selected partner intergovernmental organizations)

All experiences gained in daily work of the Migration Office and IOM are valuable information, which make the theory of asylum/migrant/refugee law much closer and understandable for students.

Contemporary Legal Questions

The right to asylum, the law of refugees and the rights of migrants are very often obscure, incomprehensible to both experts and laics. It seems that the contemporary regulation of the right to asylum offers only a partial answer to multiply challenges, which did not exist at all or which existed but the international law regulation thereof was not adequate in the past 20th century. The national States had strictly based their asylum and refugee policy on an individual basis, i.e. on an individual approach by State authorities with regard to foreigners seeking protection in the last decades of the 20th century. This applies also with respect to the present situation of the EU Member States and we can see that the contemporary legal regulation related to the refugee and asylum problems only partially meets

multiply requirements that have originated in the international relations since the beginning of the 21st century. The current situation does not deprive the academics and experts from opening room for considerations *de lege ferenda* with respect to re-assessing the traditional meaning of the right to asylum. The *right to asylum* remains to be an actual, complicated, complex, multidimensional and multidisciplinary matter of concern that have originated in the current developments in the international relations since the end of the 20th century.

The issue of the *right to asylum* does not refer only to the international and national law context, in which the details of the different legal regulations are thoroughly analysed from the point of view of diverse sources of law, rules and principles, codification, subjects, pacific settlement of disputes, judicial decisions, responsibility, sanctions and coercion. It appears that the international law is only one of many ways how to implement the multiply foreign policy goals by the sovereign States nowadays. In any case, the international law might at least contribute to solutions of urgent problems and challenges. The different extra-legal factors influence the current problems related to the right to asylum, included the general or strategic power politics, military interests, diverse security elements, economic interests, social or cultural elements and so on. Namely, the economic factor is of high importance not only for the persons who look for protection (e.g. economic migrants) but also for the governments, which try to solve the problems related to urgent national deficit in labour force and to secure a transfer of a cheap labour force from abroad.

The asylum issue is a historical category which is constantly under development and has a broad historic background. The asylum law has the same historical development as any other branch of law and historical analyses show that the asylum problems related challenges do not form a static situation. Regardless of the differences, the law always expresses the will of the ruling power which represents the law, international treaty, international customs or any other basic source of law. The asylum law is developing in direct proportion with the development of the material sources of the asylum law. From a historic point of view, the new phenomenon is that the objective right to grant asylum is nowadays related not only to the activities of the sovereign state but also to some of the activities of the international organisations. Special position in this regard has the EU within its adopted rules on admission of refugees, migrants or asylum seekers to the EU Member States.

The term asylum is traditionally used in a number of common meanings. This depends on the fact if it is used in the context of the right to asylum as a subjective right of an individual or as a right to asylum as an objective right of state or other subject of the international law to grant asylum. Actual determination of the common meaning of the right to asylum is done on the basis of available legal interpretation arguments comprised in the general explanatory rule, in the subsidiary rules and language rules of the international treaties and other international documents interpretation. It is questionable if and to what extent the provided interpretation is done in a *bona fide* manner and if the general and broader context and the point and use of legal provision of the asylum law *de lege lata* are taken into account. New phenomena in the area of material sources of international law require still broader usage of the additional rules of interpretation because the usage of general rules of interpretation leaves sometimes the term unclear or contradictory. This concerns mainly the usage of additional means of interpretation such as preparatory materials, circumstances under which the legal texts were adopted, comparison, analogy, argument and coherencies.

The law-making power on the international and internal level following the rapid development of the material sources of law faces sometimes the issue of being a so called *powerless lawmaker.* The existing legislation only partially satisfies the new challenges. Naturally, in such circumstances the traditional content and scope of the usually used terms might be purposefully altered on different levels. In order to have a more coherent legislation it is attempted to solve the problem of insufficient and absent legislation by means of extensive or strict interpretation of the current valid asylum law terms.

This is done in the form interpretation of the older legislation in a transitional period when the old rules are not widely used anymore and the new rules were not yet codified in the form of treaties or they did not arise as an international custom by long-term usage by the states. On the basis of inappropriate usage of the *a fortiori* argument the content and scope of the used terms is sometimes inadequately generalized with the aim to support or weaken the normative quality of the disputed problem. In these situations, the level of bona fide interpretation is very important. It has to take into account the basic strategic function of the international law as a tool to strengthen peace, security and the support to broad international cooperation following the principles of the UN Charter. States are trying by means of additional tools of interpretation of the existing asylum law to promptly answer to current and with adequate lead to upcoming future requirements of the praxis. This is how they contribute to the effort of progressive development of international and European law in the area of asylum. In this regard the states act individually or in groups or together, e.g. in the context of relevant international bodies and organisations of which they are members.

Legal analysis on the *de lege lata* level confirms that many questions of asylum law are regulated by fundamental or supplementary sources of international, European or domestic law. At the same time however, new challenges arise which are related to rapid development in the area of material sources of international, European and domestic law which are not adequately regulated by norms of international law.

Another aspect which has to be considered in relation to the creation of a new collective right to asylum is if at the same time a collective obligation of states to grant the applicants collective asylum arises. We are of the opinion that a certain hint of transition from the application of individual right to asylum of a person to application of right to asylum as a collective right could have been observed in relation to reviewing the legal aspects of refugee and migration crisis in Europe. Collectively understood collective obligation of European Union states to admit a given number of refugees on the basis of official quotas allocated to the Member State from the EU higher authority start to arise. The change in attitude towards refugees on the EU level results from the realisation of the urgent needs in the globalised world. Today strictly persisting on the principle of supreme equality of single states and prohibition of non-interference does not have such a firm place in international relations as it was in the past century. In the 20th century the strict respect for the right to a state's sovereignty and prohibition of interference in internal matters of state created the basis for building the international legal system in the world which was ideologically or otherwise divided by power. Strict respect to these norms creates today an obstacle for the world to face the global challenges of the 21st century in the long term. The survival of human civilization is at stake. Global problems of the world not being solved in the 20th century are today fully showing in the area of environment, utilisation of the world's resources,

decrease in the health quality of the world's population, lack of food and in general in the threat to world peace and security and in other areas. In addition, new global problems start to appear and these have to be solved by using new approaches. Questions related to asylum law and mass transfer of population on international level belong to this category.

In this regard it has to be however stressed, as mentioned already above, that during the recent migration crisis the legal categories of *migrant* and *refugee* where often confused. These legal terms are related to legal consequences. Refugees represent a humanitarian issue with which mankind has experiences, it can be rather precisely defined and an international norm, as well as international institution to help refugees exist. Despite this, mankind is not able to improve their destiny to a civilised level. "The main issue is not that the current regime of human rights is not able to secure a dignified life to these refugees… Important is that the current human rights regime is not able to prevent situations from which the refugees arise…" Their legal status is however defined by the international law in the Geneva Convention on Legal Status of Refugees from 1951 by means of set conditions. By fulfilling them, the person becomes a de facto refugee and by legalizing the status in the state where the person applied for international protection, he/she becomes a refugee de iure. Highlighting the topic of this article, this is always determined on a case by case basis.

Contrary to refugees, the *bona fide* migrants are moving for economic reasons and are looking for better living conditions in the European area. Since the Geneva Convention on the Legal Status of Refugees from 1951 is missing any conditions in this regard, they cannot be considered persons in need of international protection. In the EU or in the countries applying the Schengen acquis, the legislation governing the entry of third country nationals through external border and legal conditions of residence of particular state where the migrants reside are applied in this case.

The move of the asylum issue from the area of first generation human rights into the third-generation human rights field would be a serious step on the path to look for more optimal legal regulation related to the theory, creation, observation and application of asylum law in the 21st century. In this regard the status of asylum seekers would be from a content point of view comparable with other collective rights in international law while the terms of their consideration might be different from the regulation quality perspective.

Relatively extensive but also significant is the case law practice of the European Court of Human Rights even though the asylum law is not directly regulated by the European Convention on Human Rights. As it was already mentioned, some parts of the asylum law are related to the observance of Articles 1, 3, 5, 8 and other Articles of the Convention.

Recently, the so called *Dublin cases* are influencing the situation of asylum applicants in the EU member states. We provide an example that illustrates how ECHR judgements *inconspicuously* intervene in the situation of such a person.

The applicant is an Afghan national who entered the EU via Greece before arriving in Belgium, where he applied for asylum. In accordance with the Dublin II Regulation, the Belgian Aliens Office asked the Greek authorities to take responsibility for the asylum application. The applicant complained in particular about the conditions of his detention and his living conditions in Greece, and alleged that he had no effective remedy in the Greek law in respect of these complaints. He further complained that Belgium had exposed him to the risks arising from the deficiencies in the asylum procedure in Greece and to the poor detention and living conditions to which asylum seekers were subjected there. He

further maintained that there was no effective remedy under Belgian law in respect of those complaints. Regarding in particular the applicant's transfer from Belgium to Greece, the Court held, considering that reports produced by international organisations and bodies all gave similar accounts of the practical difficulties raised by the application of the Dublin system in Greece, and the United Nations High Commissioner for Refugees had warned the Belgian Government about the situation there, that the Belgian authorities must have been aware of the deficiencies in the asylum procedure in Greece when the expulsion order against him had been issued. Belgium had initially ordered the expulsion solely on the basis of a tacit agreement by the Greek authorities, and had proceeded to enforce the measure without the Greek authorities having given any individual guarantee whatsoever, when they could easily have refused the transfer. The Belgian authorities should not simply have assumed that the applicant would be treated in conformity with the Convention standards; they should have verified how the Greek authorities applied their asylum legislation in practice; but they had not done so. There had therefore been a violation by Belgium of Article 3 (prohibition degrading treatment) of the Convention. As far as Belgium is considered, the Court further found a violation of Article 13 (right to an effective remedy) taken together with Article 3 of the Convention because of the lack of an effective remedy against the applicant's expulsion order. In respect of Greece, the Court found a violation of Article 13 taken in conjunction with Article 3 of the Convention because of the deficiencies in the Greek authorities' examination of the applicant's asylum application and the risk he faced of being removed directly or indirectly back to his country of origin without any serious examination of the merits of his application and without having had access to an effective remedy. As far as Greece is concerned, the Court further held that there had been a violation of Article 3 (prohibition of degrading treatment) of the Convention both because of the applicant's detention conditions and because of his living conditions in Greece. Lastly, under Article 46 (binding force and execution of judgments) of the Convention, the Court held that it was incumbent on Greece, without delay, to proceed with an examination of the merits of the applicant's asylum request that met the requirements of the European Convention on Human Rights and, pending the outcome of that examination, to refrain from deporting the applicant. In a Grand Chamber judgment of 21 December 2011, the Court of Justice of the European Union (CJEU) adopted a similar position to that of the European Court of Human Rights (ECtHR), referring explicitly to the judgment in M.S.S. v. Belgium and Greece (see, in particular, paragraphs 88 to 91 of the CJEU judgment)[1].

In this case, the ECtHR also held that the applicant lacked the practical means to pay a lawyer in Greece, where he had been returned; he had not received information concerning access to organisations offering legal advice and guidance. Compounded by the shortage of legal aid lawyers, this had rendered the Greek legal aid system as a whole ineffective in practice. The ECtHR concluded that there had been a violation of Article 13 of the European Convention on Human Rights (ECHR) taken in conjunction with Article 3.

Under the EU law, Article 46 of the Asylum Procedures Directive provides the right to an effective remedy before a court or tribunal. This follows the wording of Article 47 of the EU Charter of Fundamental Rights. The directive requires EU Member States to allow applicants to remain in their territory until the time limit to lodge an appeal has expired as

[1] ECtHR, M.S.S. v. Belgium and Greece [GC], No. 30696/09, 21 January 2011.

well as pending the outcome of an appeal. According to Article 46 (6) there is no automatic right to stay for certain types of unfounded and inadmissible applications, in which case the appeal body must be given the power to rule whether the applicant may remain in the territory during the time required to review the appeal. A similar exception exists for transfer decisions taken under the Dublin Regulation (Regulation [EU] No. 604/2013, Article 27 [2]). Under the ECHR, the Court has held that when an individual appeals against a refusal of his or her asylum claim, the appeal must have an automatic suspensive effect when the implementation of a return measure against him or her might have potentially irreversible effects contrary to Article 3.

For example, in the Gebremedhin [Gaberamadhien] v. France case,[2] the ECtHR considered that the applicant's allegations as to the risk of ill-treatment in Eritrea had been sufficiently credible to make his complaint under Article 3 of the ECHR an *arguable* one. The applicant could therefore rely on Article 13 taken in conjunction with Article 3. The latter provision required that foreign nationals have access to a remedy with suspensive effect, against a decision to remove him or her to a country where there was real reason to believe that he or she ran the risk of being subjected to ill-treatment contrary to Article 3. In the case of asylum seekers who claimed to run such a risk and who had already been granted leave to enter French territory, French law provided for a procedure that met some of these requirements. The procedure did not apply, however, to persons claiming such a risk who turned up at the border upon arrival at an airport. In order to lodge an asylum application, foreign nationals had to be on French territory. If they turned up at the border, they could not make such an application unless they were first given leave to enter the country. If they did not have the necessary papers to that effect, they had to apply for leave to enter on grounds of asylum. They were then held in a *waiting area* while the authorities examined whether their intended asylum application was *manifestly ill-founded.* If the authorities deemed the application to be *manifestly ill-founded,* they refused the person concerned leave to enter the country. He or she was then automatically liable to be removed without having had the opportunity to apply for asylum. While the individual in question could apply to the administrative courts to have the ministerial decision refusing leave to enter set aside, such an application had no suspensive effect and was not subject to any time limits. Admittedly, he or she could apply to the urgent applications judge, as the applicant had done without success. This remedy, however, did not have an automatic suspensive effect either, meaning the person could be removed before the judge had given a decision. Given the importance of Article 3 of the ECHR and the irreversible nature of the harm caused by torture or ill-treatment, it is a requirement under Article 13 that, where a state party has decided to remove a foreign national to a country where there was real reason to believe that he or she ran a risk of torture or ill-treatment, the person concerned must have access to a remedy with automatic suspensive effect. Such an effect *in practice* was not sufficient. As the applicant had not had access to such a remedy while in the *waiting area,* Article 13 of the ECHR, read in conjunction with Article 3, had been breached.

Access to legal assistance is a cornerstone of access to justice. Without access to justice, the rights of individuals cannot be effectively protected. Legal support is particularly important in asylum and return proceedings where language barriers may make it

[2] ECtHR, Gebremedhin [Gaberamadhien] v. France, No. 25389/05, 26 April 2007.

difficult for the persons concerned to understand the often complex or rapidly implemented procedures. Under the ECHR, the right of access to a court is derived from the right to a fair trial – a right which holds a prominent position in any democracy. The right of access to a court, which is one aspect of Article 6 of the ECHR, has been held as inapplicable to asylum and immigration proceedings because the proceedings do not concern the determination of a civil right or obligation, or a criminal charge. It does not follow, however, that the principles of access to court the Court has developed under Article 6 of the ECHR are irrelevant to Article 13. In terms of procedural guarantees, the requirements of Article 13 are less stringent than those of Article 6, but the very essence of a remedy for the purposes of Article 13 is that it should involve an accessible procedure.

In the aforementioned case M.S.S. v. Belgium and Greece, the ECtHR found that Greece had also violated Article 13 of the ECHR in conjunction with Article 3 because of the deficiencies of its authorities in examining the applicant's asylum request, and the risk he faced of being directly or indirectly returned to his country of origin without any serious examination of the merits of his asylum application and without having access to an effective remedy. Additionally, in the Hirsi Jamaa and Others v. Italy case,[3] an Italian ship at sea had intercepted potential asylum seekers. The Italian authorities had led them to believe that they were being taken to Italy and had not informed them of the procedures to take in order to avoid being returned to Libya. The applicants had thus been unable to lodge their complaints under Article 3 of the ECHR or Article 4 of Protocol No. 4 with a competent authority, and to obtain a thorough and rigorous assessment of their requests before the removal measure was enforced. The Court concluded that there had been a violation of Article 13 of the ECHR taken in conjunction with Article 3 and of Article 4 of Protocol No. 4.

In a quite recent Grand Chamber case, the ECtHR considered whether a claim under Article 13 of the ECHR in conjunction with Article 8 also required the domestic remedy to have an automatic suspensive effect.

In the De Souza Ribeiro v. France case,[4] the applicant, a Brazilian national, had resided in French Guiana (a French overseas territory) with his family since the age of seven. Following his administrative detention for failing to show a valid residence permit, the authorities ordered his removal. He was deported the next day, approximately 50 minutes after having lodged his appeal against the removal order. The Grand Chamber of the ECtHR considered that the haste with which the removal order was executed had the effect of rendering the available remedies ineffective in practice and therefore inaccessible. The applicant had not had access in practice to effective remedies in respect of his complaint under Article 8 of the Convention when he was about to be deported. The Court found a violation of Article 13 in conjunction with Article 8.

Under the EU law, Article 31 (8) of the Asylum Procedures Directive lists 10 situations in which accelerated procedures might be applied, such as when an application is considered unfounded because the applicant is from a safe country of origin or when applicants refuse to give their fingerprints. While the basic principles and guarantees set forth in the directive remain applicable, an appeal may not have an automatic suspensive effect such that the right to stay during the appeal procedure must specifically be requested and/or granted on

[3] ECtHR, Hirsi Jamaa and Others v. Italy [GC], No. 27765/09, 23 February 2012, paras. 197–207.

[4] ECtHR, De Souza Ribeiro v. France, No. 22689/07, 13 December 2012.

a case by case basis (see also Section 4.1.3). In practice, accelerated procedures may also have shorter deadlines in which to appeal a negative decision. Under the ECHR, the Court has held that there was a need for independent and rigorous scrutiny of every asylum claim. Where this was not the case, the Court has found breaches of Article 13 of the ECHR taken in conjunction with Article 3.

For example, in the I. M. v. France case,[5] the applicant, who claimed to be at risk of ill-treatment if deported to Sudan, attempted to apply for asylum in France. The authorities had taken the view that his asylum application had been based on *deliberate fraud* or constituted *abuse of the asylum procedure* because it had been submitted after the issuance of his removal order. The first and only examination of his asylum application was therefore automatically processed under an accelerated procedure, which lacked sufficient safeguards. For instance, the time limit for lodging the application had been reduced from 21 to five days. This very short application period imposed particular constraints as the applicant had been expected to submit a comprehensive application in French, with supporting documents, meeting the same application requirements as those submitted under the normal procedure by persons not in detention. While the applicant could have applied to the administrative court to challenge his deportation order, he only had 48 hours to do so as opposed to the two months under the ordinary procedure. The applicant's asylum application was thus rejected without the domestic system, as a whole, offering him a remedy that was effective in practice. Therefore, he had not been able to assert his complaint under Article 3 of the ECHR. The Court found that there had been a violation of Article 13 combined with Article 3 of the ECHR.

Since we are limited by the scope of this article, we are not able to analyse other cases in more depth. In principle however, we can say that the case law of the European Court of Human Rights does not exceed the traditional understanding of human rights as individual rights.

Conclusion

Despite the different situations, the new concept of asylum law is emerging. We can observe this phenomenon on the regional level of the European Union law in relation to current migration and refugee crisis as well as in relation to the decision of the EU to admit large number of refugees who are in need of urgent assistance. The number of partial obstacles for arrival and residence of persons in need of assistance in the European Union would be eliminated if the application of all relevant rights of refugees would happen in the same manner. The process for the preparation of a new legislation on asylum reflecting the needs of the 21st century, not by mistake the 20th century, will be ongoing.

The new development in the area of asylum law creation has its deep justification in material sources of the law. The political circles in Brussels and the majority of the EU Members States are opening themselves for and are inviting the refugees fleeing from conflict zones abroad to the old continent. This can be justified by the strategical economic needs of the European Union in future. On the other hand, it is questionable if EU citizens are ready

[5] ECtHR, I. M. v. France, No. 9152/09, 2 February 2012, paras. 136–160.

enough to accept this scenario which is inevitably linked with the need for coexistence of different cultures and traditions in a space were so far, the domestic culture and traditions dominated. The rise of aggressive racial attitudes towards migrants, even towards the representatives of minorities who for a long time lived in the former colonial metropoles or came to these countries many years ago for work based on an invitation, as well as the rise of extreme rightist political parties and movements in the European countries show that the question of coexistence will be very important in the near future.

Slovakia, a Country Not Directly Touched by the Migration Crisis: What Has Changed since the Summer of 2015

Blanka Timurhan

Introduction

Since the summer of 2015 there is an ongoing discussion in the EU about the migration crisis[1] or refugee crisis;[2] the OECD is using the term humanitarian crisis.[3]

Some recent voices label the 2015 crisis as *the EU political crisis* – considering the impact which the relatively low number of people moving towards the EU in the worldwide context (see figure 1[4]), albeit the highest in numbers of asylum seekers in the EU, had on policy but also on national political setting as well as the public mood.

Regardless the terms, which are used to describe the mass arrival of the migrants to the EU in the summer of 2015, it could be concluded that this migration wave triggered a lot of changes and resulted in the division of the public opinion, including Slovakia – a country, which did not face a direct migration influx.

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1 E.g. in COM (2015) 240 final, Communication from the Commission to the European parliament, the Council, the European economic and social committee and the Committee of the regions – European agenda on migration. Available: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf (Accessed: 15.12.2017)

2 UNHCR: Press Coverage of the Refugee and Migrant Crisis in the EU: A Content Analysis of Five European Countries. Available: www.unhcr.org/protection/operations/56bb5a876/press-coverage-refugee-migrant-crisis-eu-content-analysis-five-european.html?query=refugees%20crises (Accessed: 15.12.2017)

3 OECD (2015): Is this humanitarian migration crisis different? Migration Policy Debates OECD, N° 7. Available: www.oecd.org/migration/Is-this-refugee-crisis-different.pdf (Accessed: 15.12.2017)

4 Source: UNHCR (2015): Figures at a glance. Available: www.unhcr.org/figures-at-a-glance.html (Accessed: 15.12.2017)

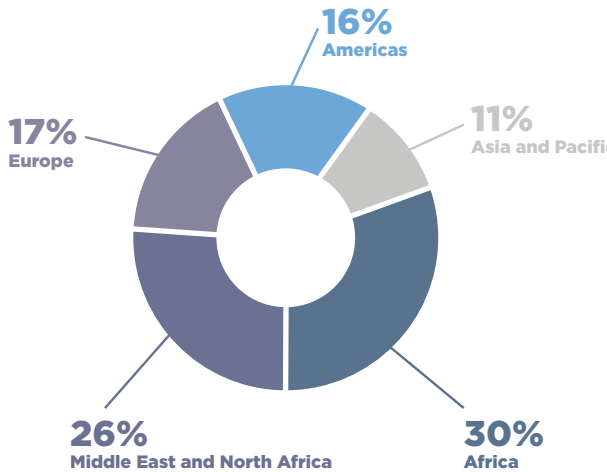

Figure 1.
Where the world's displaced people are being hosted

Source: UNHCR

The fact that migration became a *hot topic* in Slovakia virtually overnight must be seen in the context of at least two circumstances:

1. The power of media and its speed of spreading information and bringing pictures of the massive and uncontrolled waves of people heading to Europe.
2. The slowly starting campaign ahead the parliamentary election which took place in March 2016.

Why Was the Year 2015 so Important? What Was Different?

The surge in the number of refugees and migrants arriving to Europe in 2015 brought the weaknesses of the Common European asylum system but also migration in general to the forefront and caused a collapse. Paradoxically, it seems to be more and more obvious that some negative outcomes could have been limited if the early warning signals had been assessed with more caution.

In the OECD Migration Outlook 2015 it is mentioned that there has been an ongoing increase of permanent entries to the OECD countries already since 2014; this includes e.g. workers, students, family members; but also *migrants from humanitarian reasons*.[5]

FRONTEX already in its Annual Risk analysis report 2014[6] warned EU that the deteriorating situation of Syrian migrants in Turkey may very likely result in a humanitarian crisis.

[5] OECD (2015): International Migration Outlook 2015. OECD Publishing, Paris. Available: http://dx.doi.org/10.1787/migr_outlook-2015-en; http://ifuturo.org/documentacion/InternationalMigrationOutlook.pdf (Accessed: 15.12.2017)

[6] FRONTEX (2014): Annual Risk Analysis 2014. FRONTEX, Warsaw. Available: frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2014.pdf (Accessed: 15.12.2017)

"Among those migrants, Syrians are the most vulnerable and the likelihood of humanitarian crisis at the EU border will remain significant until the situation in Syria improves. The ability to provide consistent and timely measures and actions will be crucial for coping with security and humanitarian risks."[7]

A number of other stakeholders reported similar projections. IOM was highly concerned by the increased arrivals by sea and deaths in the Mediterranean; in 2015 it was estimated that among more than 971 thousand arrivals there were more than 3.6 thousand deaths.[8] UNHCR drew attention to the fact that the number of people seeking refugee status continued to climb in the first half of 2014, driven by the wars in Syria and Iraq, as well as conflict and instability in Afghanistan, Eritrea and elsewhere. "65.3 million people were displaced as of the end of 2015, compared to 59.5 million just 12 months earlier. This is the first time that the threshold of 60 million has been crossed."[9]

Yet, it seems to be the pictures of a drowned three-year-old Syrian boy, Alan Kurdi or tens of thousands of refugees moving through Hungary and Austria to Germany, which finally nailed down the EU to action. Despite the available evidence, the EU was hit with the migrating influx rather unprepared and actually surprised. Though the reaction could be considered swift, the implementation of the actions, e.g. establishment of hotspots was lengthy.

The EU response since the tragic events in the Mediterranean in April 2015 has encompassed a chain of meetings, production of several Communications and legal proposals; among them the most important was *Commission communication on a European agenda for migration,*[10] followed by the implantation packages encompassing relocation, establishment of hotspots, reinforcement of search and rescue operations (SAR) etc.; and later, in 2016 followed by legislative proposals – so called asylum packages.

Situation in the Slovak Republic

The Asylum system in a nutshell

The Slovak Republic provides international protection in accordance with its international obligations, the European Union law and national legislation. Slovakia acceded without reservations to the Convention relating to the Status of Refugees on 24 February 1992 and its Protocol relating to the Status of Refugees on 26 November 1991. The first Act on Refugees[11] in the modern history of the independent Slovak Republic entered into force

[7] Ibid. 64.

[8] IOM (2015): Irregular Migrant, Refugee Arrivals in Europe Top One Million in 2015: IOM. IOM Press release, Switzerland. Available: www.iom.int/news/irregular-migrant-refugee-arrivals-europe-top-one-million-2015-iom (Accessed: 15.12.2017)

[9] UNHCR (2016): UNHCR Global Trends: Forced Displacement in 2015. UNHCR, Switzerland. Available: https://reliefweb.int/report/world/unhcr-global-trends-forced-displacement-2015 (Accessed: 15.12.2017)

[10] EC (2015): Communication from the Commission to the European Parliament, the Council, the European economic and social committee and the Committee of the regions: A European agenda on migration. Available: https://ec.europa.eu/antitrafficking/sites/antitrafficking/files/communication_on_the_european_agenda_on_migration_en.pdf (Accessed: 15.12.2017)

[11] Act No. 283/1995 Coll. of 14 November 1995 (Refugee Act).

on 1 January 1996. Regarding terminology, the Refugee Act was using the term *refugee* instead of *asylum*.

As a part of the negotiations for accession of the Slovak Republic to the European Union, the Slovak Republic had to adopt a new, more comprehensive Act on Asylum[12] to fulfil the expectations of the European Union. It entered into force on 1 January 2003. With a view to harmonise the terminology used in the asylum legislation of the European Union, the term *refugee* was replaced by the term *asylum.*

The Asylum Act is valid although since its entry into force it has been amended several times, mostly due to the transposition of the European Union acquis. According to the Asylum Act, the Slovak Republic grants different protection statuses, namely the refugee status, subsidiary protection and also, the so-called temporary shelter. Furthermore, the Slovak legislation provides for the possibility to grant *asylum on humanitarian grounds.* Requirements for granting asylum on humanitarian grounds are not defined by law. However, according to an internal regulation, it may be granted to rejected applicants for international protection, especially to elderly, traumatized or seriously ill, whose return to the country of origin might lead to a considerable physical or psychological suffering, or even death. Asylum on humanitarian grounds is granted for an indefinite period of time.

Statistics

When the migration crisis was reaching its maximum in the EU, the number of asylum seekers in Slovakia was historically at the lowest level. Since 1993, when the Migration Office was established, different phases can be identified in the development of the number of asylum seekers in the Slovak Republic. Between 1993 and 1998, the number of asylum seekers was minor. Between 1999 and 2000, the numbers started to grow visibly. In 2004 the Slovak Republic experienced its own *migration crisis* with 11,395 asylum applications recorded. Surprisingly this sharp increase remained rather unnoticed and did not stir up media or political attention. Since 2005 up to the present day, the number of asylum seekers in Slovakia is continually decreasing. (See figure 2.)

[12] Act No. 480/2002 Coll. of 20 June 2002 (Asylum Act).

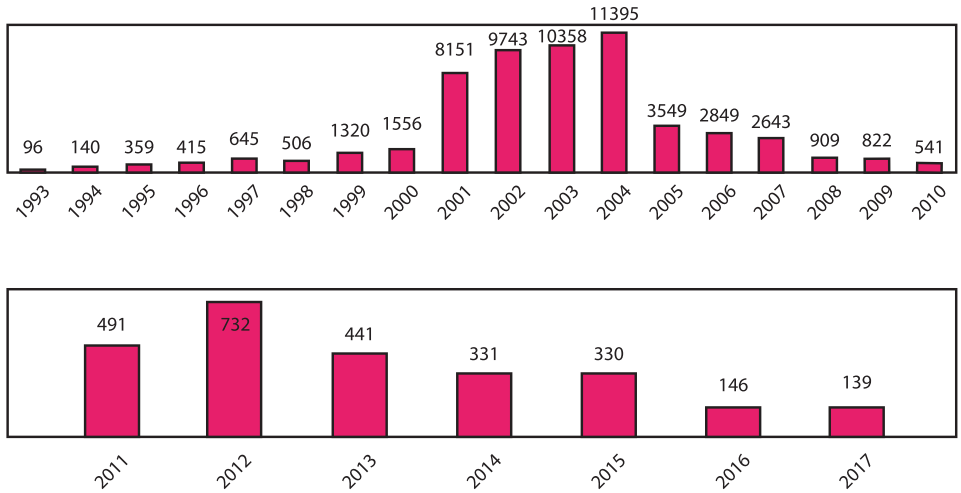

Figure 2.

Asylum applications in Slovakia since the establishment of the Migration Office

Source: Migration Office of the Ministry of the Interior, statistical data available on www.minv.sk/?statistiky-20 (Accessed: 15.12.2017)

Several reasons could be affiliated to the decrease; among them the application of so called Dublin Regulation in Slovakia after the accession to the EU was followed by an increased avoidance to lodge asylum claims – seen by the refugees as a *disadvantage* particularly when Slovakia was not their destination country. However, on the other hand, the apprehended illegal migrants were continuing to apply for asylum in the country, although the original intention of these people was not to stay in the territory of the Slovak Republic. The main reason for such actions was to avoid return or extradition, and to gain time, which enabled them to get prepared and realise the illicit crossing of the Slovak border in the direction of the destination country. Furthermore, the improved effectiveness of the state border protection after joining the Schengen Area became a highly overcoming obstacle to enter the EU. Another given reason is the absence of large foreign communities in the Slovak Republic, also due to its non-colonial history and a less-developed economic environment, compared to the economically more advanced countries of the European Union. "I don't like to hear people saying that refugees leave Slovakia because they are not granted asylum. Simply, many aren't interested in staying in this country. Slovakia doesn't have a living standard that would be attractive for economic migrants." (Director of the Migration Office)

The number of asylum applications that have not been assessed on their merit was relatively high, around 40% in 2015; 148 ceased asylum procedures out of 330 applications; mostly due to run off. However, those numbers are slowly decreasing in the last two years. (See figure 3.)

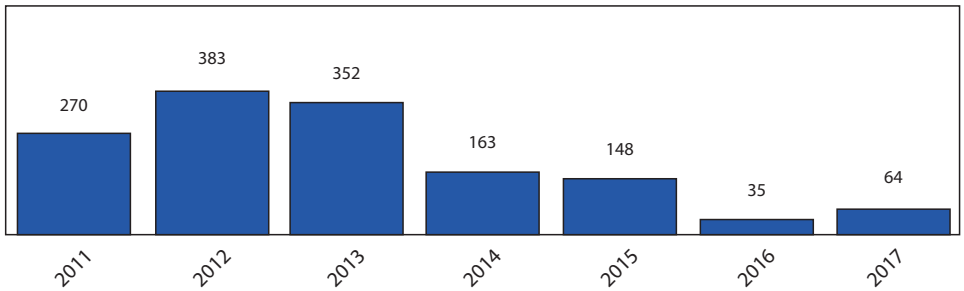

Figure 3.
Ceased asylum procedures in Slovakia (2011–2017)

Source: Migration Office of the Ministry of the Interior. Available: www.minv.sk/?statistiky-20 (Accessed: 15.12.2017)

As regards irregular migration from the border perspective, the number of illegal migrants grew enormously in 2001, when it represented 15,548 people, which was 9,487 more than in 2000. A high number of illegal migrants was also recorded in 2002–2003. This enormous increase of foreigners was also reflected in the increased number of asylum seekers as described above. Though the number of illegal border crossing has again slightly increased in 2015, in comparison to the situation in other Member States, including the neighbouring Hungary, one could not speak about a crisis in Slovakia.

We can speak about a lot of different figures, still migration is not about numbers. It is about people. Just as, for instance, a toolkit for teaching young people about migration and asylum in the European Union, developed in 2009 by UNHCR and IOM with funding provided by the European Commission, says – *Not just the numbers*.[13]

What Has Changed in the Slovak Republic?

Political background in 2015

The August 2015 tragedy in Austrian Parndorf, only about 35 km far from the Slovak border, where 71 migrants were found suffocated in a lorry with a Slovak registration plate,[14] generated a public discussion and also political actions.

Upon the following civil organisation action called *Plea for Humanity,* the Government has adopted two parliamentary decrees:

[13] IOM, UNHCR (2009): Not Just Numbers. IOM/UNHCR, Belgium. Available: www.unhcr.org/574815ca4 (Accessed: 15.12.2017)

[14] Topky.sk (2015): Masová vražda utečencov pri hraniciach: V dodávke smrti vraj zahynulo 10 detí! Available: www.topky.sk/cl/11/1494957/Masova-vrazda-utecencov-pri-hraniciach–V-dodavke-smrti-vraj-zahynulo-10-deti- (Accessed: 15.12.2017)

- *On further steps to tackle the migration crisis*[15] encompassing several solutions for migration crisis, including focus on prevention of international conflicts, emphasis on elimination of migration roots, creation of the so called secure zones in the countries of origin or transit, border protection, returns, etc.;
- *on supporting non-governmental organizations* actions *in humanitarian and integration related activities for refugees*[16] which called for e.g. the creation of a comprehensive integration package for new arrivals and budgetary appropriations to fund them and release funds for activities of NGOs aimed to support refugees.

However, with the rising public actions, both pro-migrants and anti-migrants, the Slovak Prime Minister *voted* against the mandatory quotas,[17] in September 2015 fully supported by the unanimously adopted parliamentary resolution. Moreover the growing fear of terrorism after the tragedies in November 2015 in Paris, and later in January 2016 in Istanbul, with the approaching March parliamentary elections marked by slogans such as *Protecting Slovakia*[18] once again massively influenced the public opinion.

In response to possible threats, already at the end of November 2015, the Slovak Parliament amended the constitution and adopted a package of anti-terrorist laws assigning the police, the law enforcement agencies and the judiciary with more powers.[19]

Finally, by the end of the year 2015, the Slovak Republic appealed against the decision of the European Commission about the mandatory quotas to the Court of Justice of the European Union. Yet, at the same time 149 Assyrian Christians from Iraq have been resettled to Slovakia in December; being a voluntary contribution of Slovakia to resolving the migration crisis.[20]

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[15] The Government of the Slovak Republic: Uznesenie vlády Slovenskej republiky č. č. 498 z 2. septembra 2015 k Návrhu ďalšieho postupu Slovenskej republiky na riešenie migračnej krízy. Available: www.rokovania.sk/File.aspx/ViewDocumentHtml/Uznesenie-15098?prefixFile=u_(Accessed: 15.12.2017)

[16] The Government of the Slovak Republic: Uznesenie vlády Slovenskej republiky č. 568 z 21. októbra 2015 k Informácii o podpore aktivít mimovládnych organizácií pri humanitárnej a integračnej podpore utečencom predložených iniciátormi petície – Výzva k ľudskosti. Available: www.rokovania.sk/File.aspx/ViewDocumentHtml/Uznesenie-15172?prefixFile=u_ (Accessed: 15.12.2017)

[17] EUR-Lex: Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece. Available: http://eur-lex.europa.eu/legal content/EN/TXT/?qid=1513338498852&uri=CELEX:32015D1601 (Accessed: 15.12.2017)

[18] Portal on Elections in the Slovak Republic: Smer mení kampaň, ide chrániť Slovensko. Available: www.vysledkyvolieb.sk/politicke-clanky/403-smer-meni-kampan-ide-chranit-slovensko (Accessed: 15.12.2017)

[19] National Council of the Slovak Republic (2015): Calendar day. Available: www.nrsr.sk/web/Controls/CalendarDay.aspx?date=27.+11.+2015&app=nrcpt&lang (Accessed: 15.12.2017)

[20] The Slovak Spectator (2015): Christian refugees from Iraq arrive in Slovakia. Available: https://spectator.sme.sk/c/20066657/group-of-assyrian-christians-from-iraq-arrives-in-slovakia.html (Accessed: 15.12.2017)

2016 – A new Slovak government and the first Slovak presidency of the Council of the European Union

After the election in March 2016, due to the slowly decreasing number of migrants to the EU and also due to the closure of the Western Balkan route from Turkey, the topic of migration became less *hot.* Still, the new Slovak Government issued a Manifesto, which in part related to the migration states that it is of "key importance to support measures that will contribute to the better management of the external borders of the EU and functioning Schengen Area as a positive achievement of the European integration."[21] Furthermore "constructive solutions for the unprecedented migration crisis should be in line with the specificities and capacities of individual member countries."[22] In the context of security, the Government of the SR declared that special attention will be paid especially to the issues of *"illegal and uncontrollable migration."*[23]

Similarly, a focus on border protection and integrity of the Schengen Area remained a part of the Slovak priorities during the historically first Presidency of the Slovak Republic in the Council of the EU in the second half of 2016. "The Programme of the Slovak Presidency of the Council of the European Union is based on four priorities: an economically strong Europe, a modern single market, a sustainable migration and asylum policies and a globally engaged Europe. Sustainable migration and asylum policy, based on the external EU border protection, integrity of the Schengen Area, cooperation with third countries and solidarity. [...] and the effective cooperation in returns and readmissions."[24]

In line with the *honest broker* strategy, Slovakia, already before the SK PRES, in May 2016 submitted the first relocation pledge to relocate 10 persons from Greece, following a voluntary schema.[25]

The first group of women with children arrived to Slovakia in August 2015 and was granted asylum on humanitarian grounds. This arrival remained without big public notice, though some comments appeared in the social media. It has to be underlined that the Slovak Republic opted to focus on vulnerable groups, mainly single women with children.

Following the same *honest broker strategy* Slovakia introduced at the Bratislava informal summit of Heads of 27 EU Member States in September 2016 the so called *Bratislava Declaration and Roadmap,* which set out the objectives for the coming months. One of the outcomes was a concept of effective (flexible) solidarity presented at the end of the Slovak presidency. The concept is based on the principle that in case of an increased number of

[21] The Government of the Slovak Republic (2016): Manifesto of the Government of the Slovak Republic 2016–2020. Available: www.vlada.gov.sk/data/files/6489.pdf (Accessed: 15.12.2017)

[22] Ibid. 5.

[23] Ibid. 8.

[24] SK EU (2016): Programme of the Slovak presidency of the Council of the European Union 1 July – 31 December 2016. 9. Available: www.eu2016.sk/data/documents/presidency-programme-eng-final5.pdf (Accessed: 15.12.2017)

[25] EUR-lex: Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece. Available: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32015D1523 (Accessed: 15.12.2017)

asylum applications of the arriving migrants, all EU Member States should share the burden of the migration crisis according to the possibilities and capacities of individual member states. This can be done e.g. through deploying of experts to support the asylum procedure or protection of borders; provision of material and technical assistance; or provision of available accommodation capacities (see beneath project ETC).

Public opinion

A research conducted by the University of Sheffield's Visual Social Media Lab, where researchers have been monitoring social media mentions of the terms *refugee* and *migrant* after the pictures of Alan Kurdi were spread in the media, came with an interesting result. Four times as many tweets referring to the issue of the refugee crisis were found in the social media since the tragic September 2015.[26]

Comparably to other EU countries reactions,[27] also in Slovakia, both pro-migrants and anti-immigration marches took place shortly after the escalation of the migration crisis.

To name one: "Saturday, 20 June 2015 – one day after the World Refugee Day – Bratislava experienced a *black* – or rather *brown* – Saturday. Five thousand right-wing extremists, radical nationalists and neo-Nazis marched through the city's streets in an authorised demonstration entitled "Stop the Islamisation of Europe! Together against the dictate of Brussels, for a Europe for Europeans!"[28] Though those neo-Nazis' actions were later criticized by the majority of political parties, including the President, the atmosphere marked by fear and xenophobia was even more deep-rooted.

According to a representative public opinion poll conducted by Polis Slovakia in June 2015, among the 1,469 respondents older than 18 years to the question *"Are you for that Slovakia admits refugees from the Middle East and North Africa based on the quotas proposed by the European Union?"* 70.1% of the Slovak respondents answered *No.* (see table 1) To the question "*Do you think these refugees are a threat to the security of Slovakia and its residents?"* 63.4% of the respondents answered *Yes.* (Table 2.)

[26] Withnal, Adam (2016): Alan Kurdi anniversary: 8 charts that show how the refugee crisis has changed. *The Independent.* Available: www.independent.co.uk/news/world/europe/alan-kurdi-death-anniversary-refugee-crisis-8-charts-how-world-has-changed-a7220741.html (Accessed: 15.12.2017)

[27] Graham, Luke (2015): How Europeans have reacted to migrant crisis. *CNBC.* Available: www.cnbc.com/2015/09/08/how-europeans-have-reacted-to-migrant-crisis.html (Accessed: 15.12.2017)

[28] Mesežnikov, Grigorij (2015): Refugees are not welcome: A brown Saturday in Bratislava. Available: www.ivo.sk/buxus/docs/publicistika/subor/Mesez_Boell_7_7_15.pdf (Accessed: 15.12.2017)

Table 2.

Public opinion poll 2015a

Are you for that Slovakia admits refugees from the Middle East and North Africa based on quotas proposed by the European Union?	
	All the responders
Yes	4.2
Rather yes than no	19.3
Total of the positive replies	**23.5**
Rather no than yes	36.3
No	33.8
Total of the negative replies	**70.1**
I do not know	6.4

Source: SITA/ČTK (2015): Prieskum: Slováci odmietajú prijať utečencov, vidia v nich hrozbu. Pravda. *Source:* https://spravy.pravda.sk/domace/clanok/358731-slovensko-by-nemalo-prijat-utecencov-mysli-si-70-percent-respondentov/. (Accessed: 15.12.2017)

Table 2.

Public opinion poll 2015b

Do you think these refugees are a threat to the security of Slovakia and its residents?	
	All the responders
Yes	20.6
Rather yes than no	42.8
Total of the positive replies	**63.4**
Rather no than yes	20.9
No	3.5
Total of the negative replies	**24.4**
I do not know	12.2

Source: SITA–ČTK 2015

In this context it is interesting to look at the previous public opinion polls. In May 2001 the survey carried out in Slovakia by the Focus agency, in which 1,020 representative sample respondents took part, 67% of respondents thought that Slovakia should help refugees.[29] Likewise, in 1998 polls show, that 78% of Slovaks were supporting help for refugees.[30]

Several actions were made in order to prevent hate speech and to provide objective and accurate information on migration and asylum since 2015. For instance, the Ministry of Labour and Social Affairs and Family on its website created in January 2016, which serves as a comprehensive and up-to-date information source on the integration of foreigners in the SR, provides information about Slovak Integration Policy.

Moreover, in the *Integration of Foreigners in Slovakia* section, foreign nationals but also the public can find basic information on entry to and residence in the territory of the Slovak Republic, on possibilities related to employment, housing and education including

[29] The Slovak Spectator (2001a): Refugee camp defies local opposition. Available: https://spectator.sme.sk/c/20009238/refugee-camp-defies-local-opposition.html (Accessed: 15.12.2017)

[30] The Slovak Spectator (2001b): Refugee camps under strain. Available: https://spectator.sme.sk/c/20007651/refugee-camps-under-strain.html (Accessed: 15.12.2017)

the way on how to proceed in order to recognize their foreign diplomas.[31] More detailed information is also available on the website of the Ministry of the Interior.

Additionally, in the framework of the concept for combating extremism for the years 2015–2019 a focus was put on the supporting activities aimed at effective and targeted prevention of xenophobia, racism, anti-Semitism and other forms of intolerance through educational programs at schools.

Different forms of solidarity

In the field of asylum

The Slovak approach towards refugees used to be very open. For instance, in the 90s the Slovak Government announced its plans to support 500 refugees; furthermore, the Minister of the Interior at that time said that if the need arose, "the number of refugees [in Slovakia] could exceed 1,000".[32] This was at the time of war in ex-Yugoslavia. The Migration Office had consequently experienced hosting around 2,000 Bosnian refugees from October 1992 to August 1997. Even earlier, Slovakia resettled 1,230 citizens of Ukraine of Slovak origin affected by the Chernobyl nuclear accident.

Since 2009 Slovakia has been providing humanitarian transfers of refugees and other persons of concern to UNHCR through the territory of the Slovak Republic to the country of their final resettlement via *Emergency Transit Centre (ETC) in Humenné,* which is situated near the Eastern border.

The capacity of ETC is 250 beds. This project is carried out in cooperation with the UNHCR and IOM and is based on *The Agreement between the Government of the Slovak Republic, the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration concerning Humanitarian Transfer of Refugees in Need of International Protection through the Slovak Republic.*

The Migration Office provides the transiting refugees with accommodation and free time facilities e.g. playroom for children, a prayer room, a computer room, as well as food and elementary hygienic items. UNHCR is responsible for e.g. the list of persons proposed for humanitarian transfer and for provision of weekly situation reports on the situation of the Refugees and Persons of Concern located in the asylum centre. IOM is in charge of transport from the refugee camp to the Slovak Republic, medical examinations for the purpose of resettlement, cultural orientation and/or language courses for the purpose of resettlement, and also for the transportation from the Slovak Republic to the country of resettlement.

[31] Ministry of Labour, Social Affairs and Family of the Slovak Republic (2017): Information for foreigners. Available: www.employment.gov.sk/en/information-foreigners/ (Accessed: 15.12.2017)

[32] The Slovak Spectator (1999): Slovakia awaits Kosovo refugees, wins NATO gratitude. Available: https://spectator.sme.sk/c/20011789/slovakia-awaits-kosovo-refugees-wins-nato-gratitude.html (Accessed: 15.12.2017)

Table 3.
Nationalities under ETC project

Nationalities	
Somalia	591
Afghanistan	233
Palestine	98
Eritrea	37
Ethiopia	36
Sudan	33
Iraq	1
Libya	1

Source: MoI

Since the beginning of the project in 2009, 1,047 refugees from different refugee camps, such as in Eritrea, Iran, Yemen and Lebanon, and of different nationalities (see table 3.) were accommodated in Humenne for up to 6 months, out of them 500 children, 17 were already born in Slovakia.

The continuation of the project is under ongoing negotiation process.

The scope of the destination countries is expected to be enlarged beyond the U.S.A. considering current migration policy in the States.

In the context of the escalating migration crisis in the EU, the Slovak Republic signed with Austria the *Memorandum of understanding*[33] in June 2015. The Memorandum aimed to temporarily house refugees from Austria in the Gabčíkovo camp located not far from the Slovak–Austrian borders. This project had primary intended to support Austria which was under migration pressure.

As of today, SR has provided temporary accommodation for approximately 1,220 asylum seekers whose applications were assessed in Austria.[34] On several occasions and levels, Austria repeatedly appreciated the support provided by Slovakia regarding accommodation for asylum seekers, even though the beginning of the project was not easy. In early August, the townspeople staged a referendum that gathered a nearly 97% vote against allowing refugees to stay at the camp. Hesitations were also on the other side: some Syrians refugees temporary accommodated in Gabcikovo expressed their concerns.

"I want to be in Vienna", says Abdelkarim Alorfi, 26, sitting on the crumbling steps of the main building of the refugee's housing camp. Alorfi was separated from his brother's family when he left Austria. "I don't want to be here. The police are watching."[35]

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[33] Full title: Memorandum of understanding between the Ministry of the Interior of the Slovak Republic and the Federal Ministry of the Interior of the Republic of Austria on the temporary provision of accommodation facilities to applicants for international protection whose applications are being processed by the Republic of Austria.

[34] Topky.sk (2015). Refugees welcome to Slovakia: FOTO Prví utečenci zo Sýrie už sú v Gabčíkove. Available: www.topky.sk/cl/10/1498601/Refugees-welcome-to-Slovakia–FOTO-Prvi-utecenci-zo-Syrie-uz-su-v-Gabcikove (Accessed: 15.12.2017)

[35] SULLIVAN, Meghan Collins (2015): Following Syrian Refugees into an Unwelcoming Slovakia. *National Geographic.* Available: https://news.nationalgeographic.com/2015/09/150923-syrian-refugees-arrive-slovakia-protest/ (Accessed: 15.12.2017)

Regardless of the challenges at the starting point, this project was running without bigger difficulties and surprisingly did not result into secondary movements. Today it is considered an effective alternative in the migration crisis.

To support the Member States on the frontline, the employees of the Migration Office, despite limited human resources, started to actively participate in multiple activities under the auspices of EASO; this included also the deployment to hotspots in Greece and Italy. On the one hand, Slovakia had the opportunity to express its solidarity; on the other hand, it was gaining new and valuable experience.

In the field of irregular migration

In 2015 a new strategical document on managing irregular migration in Slovakia, replacing a previous document from 2007, the *National Border Control Management Plan of the SR for 2015–2018*[36] was adopted. It consists of 95 measurable tasks, among them also training and reinforced cooperation, both on national and international level.

Several operative exercises were held in 2015, 2016 as a part of crisis management training in Slovakia, for example *Zelená vlna 2014, Nový Horizont 2015, Akcia JUH 2015, Nový Horizont 2017.*

Moreover, a new Foreign Police Unit was established in December 2015 aimed to deploy policemen to join operations either under FRONTEX operations or on bilateral agreements, for instance to support Hungary on borders with Serbia or in Slovenia.[37] To name one example, over the course of 2016 activities within the JIT SOKRATES joint investigation team took place. The team was established between Slovakia and Hungary focused on crime within the organized irregular migration via the Western Balkans.

Likewise two conferences of the Visegrad Group at the level of the heads of national departments responsible for combating irregular migration, smuggling, and human trafficking were organized in 2016. The result of joint negotiations was the creation of a working group composed of representatives of the departments of Poland, Slovakia and Hungary in order to cooperate in the detection and investigation of organized irregular migration from the Western Balkan countries to the territory of the involved countries.

[36] The Ministry of the Interior (2015a): Vláda schválila Národný plán riadenia kontroly hraníc SR na roky 2015 až 2018. Available: www.minv.sk/?tlacove-spravy-2&sprava=vlada-schvalila-narodny-plan-riadenia-kontroly-hranic-sr-na-roky-2015-az-2018 (Accessed: 15.12.2017); The Government of the Slovak Republic (2015): National Border Control Management Plan of the SR for 2015–2018. Available: www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=24257 (Accessed: 15.12.2017)

[37] The Ministry of the Interior (2015b): Slovenských policajtov pomáhajúcich chrániť vonkajšiu schengenskú hranicu v Maďarsku po mesiaci vystriedali kolegovia. Available: www.minv.sk/?tlacove-spravy-2&sprava=slovenskych-policajtov-pomahajucich-chranit-vonkajsiu-schengensku-hranicu-v-madarsku-po-mesiaci-vystriedali-kolegovia (Accessed: 15.12.2017); Topky.sk (2015): Hranice v Slovinsku by malo pomôcť strážiť 20 slovenských policajtov. Available: www.topky.sk/cl/10/1506509/Hranice-v-Slovinsku-by-malo-pomoct-strazit-20-slovenskych-policajtov; The Ministry of the Interior (2016): Pražský proces: Slovensko pošle do Srbska 15 policajtov na ochranu hranice. Available: www.minv.sk/?tlacove-spravy&sprava=prazsky-proces-slovensko-posle-do-srbska-15-policajtov-na-ochranu-hranice (Accessed: 15.12.2017)

In the field of development

The Slovak Republic was quite active in mainstreaming of migration in development policies, following up on the legislation changes including e.g. the new Act on Development Cooperation. Throughout 2016, humanitarian activities of the Slovak Republic were aimed at assistance to countries and organisations affected by the migration crisis.

Syria and the neighbouring countries from the Near and Middle East were included among the territorial priorities of the Slovak development cooperation that created a formal precondition for an individual approach to their needs. Following the Resolution, the Slovak Government granted 30 scholarships to Syrian students.[38] Students who had arrived to Slovakia in September 2016 started a Slovak language course in the 2016/2017 academic year and will proceed to study at a public university in a selected branch of studies, after the 10-month language course and vocational preparation. They were granted temporary residence for that purpose.

In the field of administration

Due to the cross-sectional nature of the topic of migration, the Ministry of Foreign and European Affairs established a *Task Force for Migration* and created a position of the *ambassador-et-large* for migration. Within the Ministry of the Interior, the *Štáb* (a special committee for crisis situations) was re-established in 2015.

The Committee on Migration and Integration, chaired by the Director of the Migration Office, created a working group tasked to draft a new State Integration program for people with granted international protection also as a tool to prevent radicalisation. Likewise, the Government Council for Human Rights, National Minorities and Gender Equality set up a new working group on rights for refugees and migrants.

Status Quo in 2017

Current statistics

Currently, the situation in the EU is rather stabilized – according to the latest EASO data, around 60,000 asylum seekers applied for asylum in the EU + countries in October 2017.[39] It means almost three times, twice time less respectively than in the same period of 2015 or 2016.

The situation in Slovakia is equally stable – the number of asylum seekers is historically the lowest since the EU accession. On the other hand, the rate of the positive decisions *(asylum and subsidiary protection)* is the highest – 27% – and thus comparable to the average in

[38] Refugee-Lebanon Organisation (2016): Scholarships for Syrian students from the Slovak Republic. Available: www.refugees-lebanon.org/en/news/116/scholarships-for-syrian-students-from-the-slovak-republic (Accessed: 15.12.2017)

[39] EASO (2017): Latest asylum trends, October 2017. Available: www.easo.europa.eu/sites/default/files/Latest-Asylum-Trends-October-2017.pdf (Accessed: 15.12.2017)

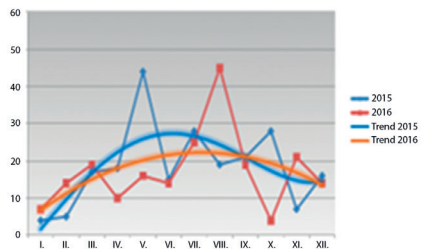
EU countries. It should be also noted that more than 40% of the asylum procedure end by a cessation, mainly because asylum seekers absconded. The total number of illegal border crossing has also decreased compared to 2015 and 2016.[40]

Overview of IBC by individual months in 2015 and 2016

	Total	I.	II.	III.	IV.	V.	VI.	VII.	VIII.	IX.	X.	XI.	XII.
2015	222	4	5	17	18	44	15	28	19	21	28	7	16
2016	208	7	14	19	10	16	14	25	45	19	4	21	14

Overview of IBC by individual months in 2016 and 2017

	Total	I.	II.	III.	IV.	V.	VI.	VII.	VIII.	IX.	X.	XI.	XII.
2016	208	7	14	19	10	16	14	25	45	19	4	21	14
2017	71	10	9	10	13	8	21	–	–	–	–	–	–



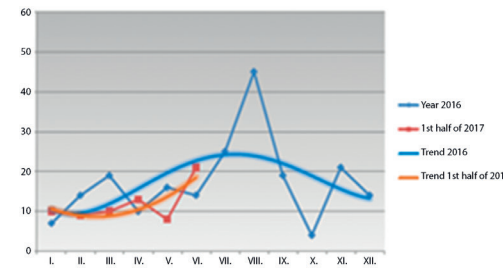


Figure 4.

Illegal Crossing of state border of the Slovak Republic (2015–2016 and 2016–06/2017)

Source: Drawn by the author

The Slovak Republic did not become a destination country in 2017 either; however comparing to the previous year in June 2017, there were about 9,968 more foreigners living in Slovakia than the year before, which means an increase of 11%.[41] Nowadays about 1.8% of the Slovak population are foreigners; and this number is slowly, yet continuously increasing.

Facts & Figures on Migration in Slovakia[42]

97,934: The number of foreigners with residence permits in Slovakia in June 2017.
6: Out of all the EU countries, Slovakia has the sixth lowest proportion of foreigners.
41%: The proportion of the Austrian, Czech, Hungarian, Polish and Ukrainian citizens in the total population of migrants in the SR.
42,387: The number of foreign workers in the SR in 2017.
1,251: The number of foreigners that in the first half of 2017 illegally crossed the borders or illegally resided in the territory of the Slovak Republic.
148: The number of applications for asylum in the SR by November 2017.

[40] Presidium of the Police Force – Bureau of Border and Alien Police (2016–2017): Statistical Overview of Legal and Illegal Migration in the Slovak Republic.

[41] Ibid.

[42] IOM: Migration in Slovakia. Available: www.iom.sk/en/about-migration/migration-in-slovakia (Accessed: 15.12.2017) (Note: data on asylum updated according to the Migration Office figures.)

Current challenges and opportunities

What are the challenges in this relatively stable period, from the point of view of Slovakia?

Even though there are much less migrants arriving to the EU, one cannot say that the crisis is over. Yet, maybe Europe is now better prepared to an eventual future mass influx thanks to different tools which have been established so far. From the Slovak Republic point of view several tools are important:

Border management

Border management was one of the main focuses of the Slovak presidency in the Council of the EU. The effective border protection is also an integral part of today's European Commission's documents, e.g. one of the pillars of the European Agenda on Migration is *Border management – saving lives and securing external borders.* Today it is not a question anymore whether migration flows can be managed without sustainable border protection. The same goes for the role of effective returns of persons who are not entitled to stay in the territory. Sure, this goes hand in hand with providing legal entry options.

Effective returns

For the practical functioning of the Common European Asylum System (hereinafter CEAS), whether a failed asylum applicant is effectively returned to the country of origin is of essential interest, since an inability to return may constitute a major pull factor. Furthermore, a failure in this area could deepen mistrust to the effectiveness of the Common European Asylum System among European citizens. Yet returns are the biggest challenge of today. The Slovak Republic, similarly to other countries, prefers voluntary returns contrary to forced ones. However, even if it looks easy to take a person back to where he or she came from, this view is short-sighted. In this context a thorough cooperation with the countries of origin is crucial.

Cooperation with the countries of origin and transit

The deepening political crisis within the EU has at times overshadowed the immense responsibility carried by transit countries along the migration routes to Europe. It is recognizable that Syria's neighboring countries have been confronted with migrants' influx to a much greater extent and over a longer period of time, with less resources and limited assistance than the EU.

It became evident that international assistance to countries hosting migrants and refugees in the region had to be a key part of the solutions. Furthermore, this cooperation is also vital in order to prevent human tragedies and disappointments upon arrival to the destination countries.

The Migration Office has always been advocating for addressing the problems as close to the countries of origins as possible. There are several reasons why:

- Particularly in a case of economical, *non-forced migration,* human beings can be prevented from tragedies while trying to reach the Europe shores;
- smuggling became one of the most *lucrative* businesses. Many migrants still believe in promises of smugglers. Thus, Slovakia considers the information campaigns in the countries of origin to be extremely important;
- although the Slovak Republic is not the main destination country, the Migration Office, in cooperation with UNHCR, has worked out a handbook that aims to provide real information on life in Slovakia. It is essential to provide factual life information by each Member State.

Improving conditions in countries, so that people do not have to flee should be our common goal. The Slovak Republic via official development assistance programs tries to contribute in this framework.

Of course, the situation is different when people are forced to leave their homes – they run away from war conflicts; it is a forced migration. These days, the EU is discussing the establishment of the so called *safe zones* in African countries. Yet, this is not a new concept as one could believe. The Geneva Convention 1949 *on protection of the civilian population at the time of war* introduced this concept. It was later also used for refugees. Though, not always without mistakes.

The refugees from Syria remain primarily in neighboring countries – Turkey, Lebanon, Jordan. As already mentioned above, the Migration Office is currently working together with the V4 countries on a joint project in Jordan which aimed at capacity building, including the establishment of the so called mobile medical clinics, if there is an interest and need.

One could call those activities *an externalisation of a European problem* or pushing it out from Europe. It has even stronger connotations in the circumstance of a recent report on modern slavery in Libya, which, of course, must be condemned. Yet, only time will tell, if this approach is a right one.

Legal pathways

There is no doubt, that to absolutely prevent the arrival of third-country nationals to the EU is neither possible nor desirable. In this context, the availability of legal pathways is essential; for example, the so called blue cards in case of legal migration or resettlement in case of persons eligible for international protection.

The Slovak Republic has its experience with voluntary resettlement. As mentioned above 149 Assyrian Christians were resettled to Slovakia at the end of the year 2016. It was not without challenges. The correct explanation of the process is therefore crucial; in particular, that the resettlement is a voluntary act on both parts: 1. on the side of the person to be resettled who knows where he or she is going and wants to go – what is the premise of a successful integration process (unlike in cases of relocation); 2. on the side of the host country which is recognizing the coming person. It takes a lot of time and effort. Canada,

which is today considered a perfect example, did not build a resettlement mechanism overnight. It took more than 20 years.

In the meantime, the Slovak Republic is testing its solidarity with humanitarian transit in Humenné (ETC, see above). At this point it is worth mentioning that the ETC has been named as a complementary solution for refugees in the GCR (Global Compact for Refugees) consolations process held in Geneva in November 2017.

Slovakia, together with Romania, are the only countries in the EU to implement such a project. A new tripartite agreement is currently prepared for signature.

Integration

Last but not least, the importance of an effective integration should be underlined. The successful integration, as a two-way process is the key tool to prevent radicalization – a growing threat for the EU citizens.

The Way Forward

A document entitled *Migration Policy of the Slovak Republic with a perspective to 2020* was adopted by the governmental resolution No. 574 at the end of August 2011. It happened at the time when the protests against the regime escalated in Syria and in Libya. Obviously, nobody could assume that those events would affect the situation in the EU to such an extent, a few years later. This document begins by saying: "Due to the fact that migration will objectively affect our future, we must work on the migration."[43]

In other words, "migration has always been a part of our everyday life. Even without our commitment, its importance is steadily growing. If we approach to migration systematically, it could be of benefit. Should we underestimate its importance or ignore it, migration could cause complications in the political, economic and social life of the country."[44]

If this document was published in 2011, it would probably not be a bestseller in Slovakia. Not because it is unreadable; rather because migration was not in the forefront in the given period. However, this document already shows what is being discussed in the EU nowadays:

- Migration is a phenomenon, it has been and it will stay with us;
- we need to know how to manage migration in order to handle it.

The tools to achieve this goal in the Slovak Migration Policy are very similar to those in the European Agenda for Migration:

1. Tackle the root causes of illegal migration
2. Border protection
3. Providing protection to those who are eligible

[43] The Ministry of the Interior (2011): Migration Policy of the Slovak Republic with a perspective to 2020. Available: www.minv.sk/?zamer-migracnej-politiky-slovenskej-republiky (Accessed: 15.12.2017)

[44] Ibid.

4. Enabling legal channels towards the EU

The year 2015 has revealed that the main challenge for the EU was the uncontrolled and unmanaged migration. The Slovak Republic therefore considers that managed migration is paramount for dealing with similar crises. Let us believe that, we, in the EU, can set up rules which will accommodate everyone. Although finding a compromise between 27 MS is already the first challenge. We must not forget that in Europe without internal borders it is virtually impossible for the Member States to implement migration policy in isolation.

We also need to call facts by their real names, and at the same time try to find a kind of balance. Joint actions carefully prepared and wise decisions based on facts and not emotions, could help avoid the chaotic flood and human tragedies which in 2015 turned into a political backlash. Finally, migration is not solely a European challenge but a global one. The answers lie in fruitful cooperation.

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Asylum and Migration Situation in Poland – The Current State, Trends and Future Prospects

Anna Pochylska

Introduction

In 2015 Europe faced a new and as it later turned out long-lasting and very demanding challenge – the refugee crisis. That year over 1 million foreigners arrived by the Mediterranean Sea to the Southern EU Member States[1] and close to 1.4 million foreigners applied for international protection in the European Union.[2] Poland however, has not been directly influenced by the crisis of 2015, as far as its asylum and migration situation is concerned. But at the same time, in the last few years significant changes have been observed in Poland in both of these areas.

The analysis presented in this paper is based on the data from the period of 2014 till the beginning of October 2017. This timeframe was chosen by the author, because 2014 is not only the year of entering into force of the Act on foreigners (1 May 2014), but it was also the moment from which Poland has observed so far the largest influx of foreigners to its territory.[3]

The study is mostly based on data provided by the Office for Foreigners in Poland.[4] The Office is a central authority in Poland established in 2001 in order to ensure comprehensive and professional proceedings concerning granting international protection to foreign nationals residing within the territory of the Republic of Poland, as well as the regularisation of their stay (the Office is, among others, responsible for second instance proceedings in regard to legalisation of stay of all foreigners arriving to Poland).[5] Moreover, the other important sources of statistical data (especially on the subject of the situation in the European Union) are the Eurostat database and materials prepared by the European Asylum Support

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1 Refugee Operational Portal. Available: http://data2.unhcr.org/en/situations/mediterranean (Accessed: 29.11.2017)

2 EASO (2016): The Key findings of EASO's Annual Report on the Situation of Asylum in the EU.Available: https://publications.europa.eu/en/publication-detail/-/publication/2696299c-5d3e-11e7-954d-01aa75ed71a1 (Accessed: 29.11.2017)

3 In comparison to 2013, the number of applications for residence permits lodged by the foreigners (both for temporary and permanent stay in Poland) in 2014 was 54% higher. All statistical data provided by the Office for Foreigners in Poland which were used in this study can be found on the official website of the Office. Available: https://udsc.gov.pl/en/ or https://migracje.gov.pl/en/ (Accessed: 29.11.2017)

4 Data for 2017 show the state on the 1st of October 2017 (unless stated otherwise).

5 Office for Foreigners, Mission. Available: https://udsc.gov.pl/en/urzad/misja-urzedu/ (Accessed: 29.11.2017)

Office (EASO). Due to the thematic scope of the study it was prepared mainly based on official documents and legislation, as well as studies and informative materials prepared by the Polish authorities and statistical data provided by the Office for Foreigners.

Asylum Situation in Poland

Legal basis and international protection in Poland

Protection of foreigners in Poland might be granted based on the following legal regulations:

- The Constitution of the Republic of Poland (2 April 1997);[6]
- Act on granting protection to foreigners within the territory of the Republic of Poland (13 June 2003) – with further amendments;
- Act on foreigners (12 December 2013) – with further amendments.

In Poland, a foreigner might be granted one of the following forms of protection: refugee status and subsidiary protection (international protection as defined by the EU law), asylum,[7] temporary protection and humanitarian/tolerated stay.[8] This analysis, due to its thematic scope and reference to the situation in the European Union as a whole, will focus only on international protection.

The authority responsible for the granting international protection to foreigners in the territory of Poland is the Head of the Office for Foreigners. The Head of the Office might also refuse to grant refugee status or subsidiary protection or (in particular cases) deprive the foreigner one of these forms of protection.[9] The refugee status might be granted to foreigners if due to the justified fear of persecution because of race, religion, nationality, political views or membership in particular social group, one cannot or does not want to use the protection of one's country of origin.[10] Consequently, subsidiary protection is granted to foreigners if one does not meet the criteria to be granted refugee status, but one's return to the country of origin might endanger him or her to the real risk of serious harm by:

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[6] According to Article 56 "1. Foreigners shall have a right of asylum in the Republic of Poland in accordance with principles specified by statute. 2. Foreigners who, in the Republic of Poland, seek protection from persecution, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party". Constitution of the Republic of Poland, 2 April 1997. Available: www.sejm.gov.pl/prawo/konst/angielski/kon1.htm (Accessed: 29.11.2017)

[7] Asylum should be distinguished from the refugee status. According to the Polish legislation, "asylum might be granted to the foreigner on his or her request, if it is necessary to ensure his protection and if it is required by the vital interest of the Republic of Poland". Act on granting protection to foreigners within the territory of the Republic of Poland, 13 June 2013, Article 90. Available: http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf (Accessed: 29.11.2017)

[8] Act on granting protection to foreigners within the territory of the Republic of Poland, 13 June 2013, Article 90.; Act on foreigners, 12 December 2013. Available: http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20130001650/U/D20131650Lj.pdf (Accessed: 29.11.2017)

[9] Act on granting protection to foreigners within the territory of the Republic of Poland, 13 June 2013, Article 90. Available: http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20031281176/U/D20031176Lj.pdf (Accessed: 29.11.2017)

[10] In accordance with the definition of the refugee in Convention Relating to the Status of Refugees, Geneva, 28 July 1951. Available: www.unhcr.org/3b66c2aa10 (Accessed: 29.11.2017)

- Being sentenced to death penalty or performing the execution;
- torture, inhumane or degrading treatment or punishment;
- serious and individualised danger for life or health because of the widespread use of violence against civilians in case of international or internal armed conflict;
- and due to this danger cannot or does not want to use the protection of one's country of origin.[11]

Applications for international protection in Poland in the period 2014–2017

In the period from 2014 to 1 October 2017 37,025 foreigners applied for international protection in Poland. After a substantial increase in the number of lodged applications in 2015 (from 8,195 in 2014 to 12,325 in 2015), in 2016 a similar number of third country nationals applied for one of the forms of international protection as the year before (12,322).[12] However, currently in Poland, there has been observed a decrease in the number of lodged applications. As of 1 October 2017 this figure was 60% lower than the one concerning applications in the analogical period in 2016.[13]

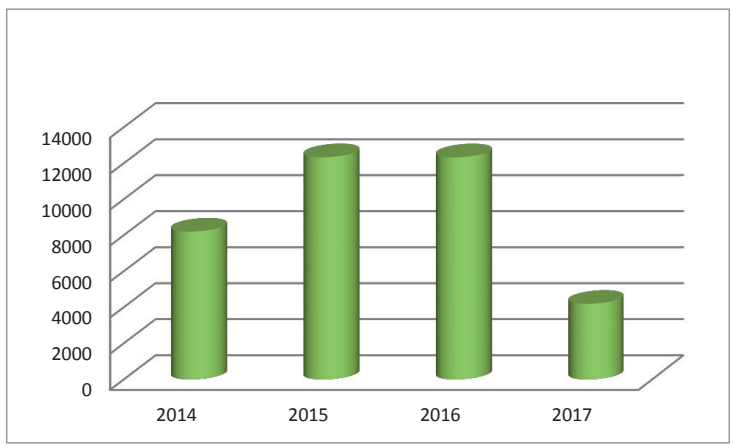

Figure 1.

The number of foreigners applying for internal protection in Poland in the period 2014–2017 (as of 1.10.2017)

Source: Office for Foreigners

It should be underlined that in the analysed period the nationalities of foreigners who most frequently applied for international protection in Poland remained rather unchanged. The

[11] Act on granting protection to foreigners within the territory of the Republic of Poland, 13 June 2013, Art. 13 and 15.

[12] Data provided by the Office for Foreigners.

[13] Office for Foreigners, Biuletyn informacyjny, second quarter, 2017. 3. Available: https://udsc.gov.pl/wp-content/uploads/2017/05/UDSC-kwartalnik-wydanie-2-www.pdf (Accessed: 29.11.2017)

exact structure of foreigners lodging the application for international protection in Poland (as far as their nationality is concerned) within over three years is illustrated on the graph below.

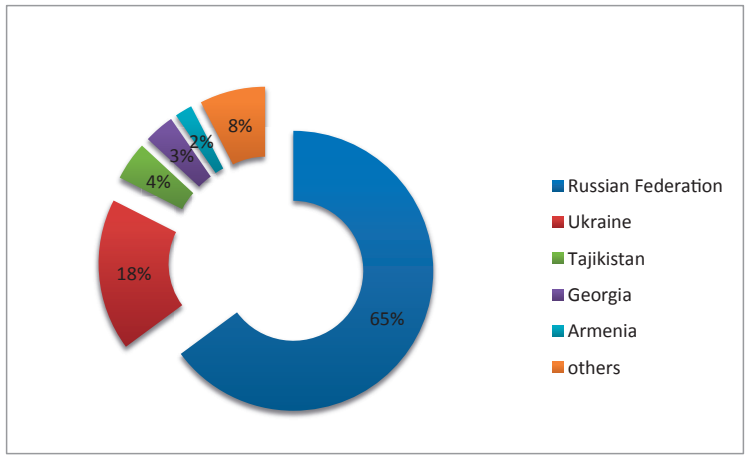

Figure 2.

Applications for international protection by the nationality of the applicants in the period 2014–2017 (as of I st of October 2017)

Source: Office for Foreigners

The data shows that most of the applications for international protection in Poland was lodged by the citizens of the Russian Federation. At the same time, it needs to be underlined that the vast majority of them declares a Chechen origin (89% in 2014, 92% in 2015, 94% in 2016 and 94% as of 1 October 2017). They were followed by the citizens of Ukraine, Tajikistan, Georgia and Armenia.[14] In the first nine months of 2017, this tendency remained mostly the same (with the exception of the citizens of Belarus who were third in the ten top nationalities of applicants). 92% of all applicants came to Poland from the states of the former USSR (Russian Federation, Ukraine, Belarus, Tajikistan, Kirgizstan, Armenia and Georgia).[15] The high number of applicants declaring a Chechen origin is explained by the fact that Poland is the first Member State of the European Union for those willing to come to Europe through Belarus (and, as it will be later presented, the vast majority of them leaves Poland and travels further to Western EU States).[16]

[14] Data provided by the Office for Foreigners.

[15] As of 12 October 2017. Office for Foreigners, Informacja o działalności Urzędu do Spraw Cudzoziemców w okresie 6.10–12.10.2017. Available: https://udsc.gov.pl/statystyki/raporty-okresowe/meldunek-tygodniowy/ (Accessed: 29.11.2017)

[16] Many applicants declare that they do not wish to apply for international protection in Belarus because of its close relations with the Russian Federation. RAFALIK, Norbert (2012): Cudzoziemcy ubiegający się o status uchodźcy w Polsce – teoria a rzeczywistość (praktyka) (stan prawny na dzień 31 grudnia 2011 roku). *CMR Working Papers,* Vol. 55, No. 113. 17. Available: www.migracje.uw.edu.pl/wp-content/uploads/2016/10/WP_55_113__2.pdf (Accessed: 11.03.2018)

Lately however, Poland has observed a decrease in the number of applications for international protection submitted by the citizens of the Russian Federation (mainly by Chechen origin),[17] Tajikistan and Ukraine (as of 1 October 2017 in comparison to the analogical period in 2016, a 45% decrease in the number of applications lodged by the Ukrainian citizens was noted).[18] Moreover, according to the data provided by the Office for Foreigners, applications regarding international protection accounted only for 7% of all applications (including those in regard to the legalisation of stay) submitted by foreigners in Poland (as of 1 October 2017 they constitute 3% of all applications in 2017).[19] As it will be presented in the following part of the study, in Poland it is the migration situation (in regard to legal migration) which seems to be currently more dynamic.

Interestingly, compared to the rest of Europe, in Poland there has been observed the largest share of females (50%) and children (46%) among foreigners seeking international protection within its territory.[20] In comparison, in 2016 the share of male first time applicants in all of the EU Member States was over 65 per cent.[21] This phenomenon derives from the fact, that among many of the applicants who come to Poland are families willing to join their relatives in Poland or (mostly) Western European states. It is well visible in case of citizens of the Russian Federation declaring Chechen origin who, as it was stated before, constitute almost all foreigners applying for international protection in Poland.[22]

To conclude this part of the study, there are three important characteristics of the asylum situation in Poland as far as the applications for international protection are concerned. Firstly, within over the last three years 87% applications were lodged by the citizens of the Russian Federation, Ukraine and Tajikistan (with the majority of them arriving from the Russian Federation). Moreover, the rate of females and children seeking protection in Poland is the highest among all European Union states. Finally, lately in Poland (after the substantial increase in 2015) the number of lodged applications has dropped. Knowing this characteristics of the asylum seekers, one can proceed to further analysis regarding the decisions issued in the refugee proceedings.

Granting international protection in Poland

Within the analysed period, the Head of the Office for Foreigners issued 36,751 decisions related to international protection from which the vast majority was discontinuation of the proceeding (26,001). The decisions granting one form of protection accounted only for 5.5% of all decisions issued between 2014 and 2017 (respectively 8.8% in 2014, 5.2% in 2015, 2.6% in 2016 and 8.4% as of 1 October 2017).[23]

[17] Although they still constitute the majority of applicants (70% as of 30 September 2017).

[18] Data provided by the Office for Foreigners.

[19] Office for Foreigners, Informacja o działalności Urzędu do Spraw Cudzoziemców w okresie 6.10–12.10.2017. Available: https://udsc.gov.pl/statystyki/raporty-okresowe/meldunek-tygodniowy/ (Accessed: 29.11.2017)

[20] Maps and statistics of migrants and Polish migration services. Available: https://migracje.gov.pl/en/ (Accessed: 29.11.2017)

[21] Eurostat, Asylum Statistics. Available: http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics/pl (as of 13 March 2017) (Accessed: 29.11.2017)

[22] See more in Rafalik (2012): *op. cit.* 15–21.

[23] Data provided by the Office for Foreigners.

Although the majority of applicants comes from the Russian Federation, in the period 2014–2017 refugee status was granted firstly to citizens of Syria (372 applicants), Ukraine (90), the Russian Federation (64), stateless persons (47), Iraq (40), Afghanistan (38) and Belarus (37). At the same time, citizens of the Russian Federation received the highest number of decisions on granting them both subsidiary protection (followed by Ukrainians, Iraqis, Syrians and Tajiks) and tolerated stay[24] (in this context the other most numerous nationalities include: Georgia, Armenia, Ukraine, Belarus and Afghanistan).[25]

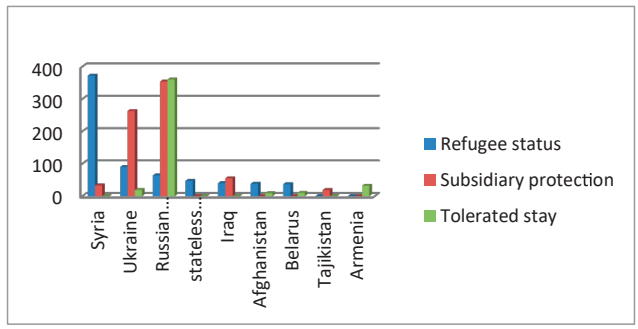

Figure 3.

Decisions concerning international protection proceedings and tolerated stay (2014–2017)

Source: Office for Foreigners

As it has been already mentioned before, the other significant characteristic feature for the asylum situation in Poland is that the majority of international protection proceedings is discontinued.

[24] A foreigner is granted the permit for tolerated stay within the territory of the Republic of Poland if his/her expulsion: 1. may be effected only to a country where, in terms of the Convention on Human Rights and Fundamental Freedoms signed in Rome on the 4th of November 1950, the foreigner's right to life, to freedom and personal safety could be under threat, or he or she could be subjected to tortures or inhuman or degrading treatment or punishment, or could be forced to work or deprived the right to fair trial, or could be punished without any legal grounds – in case when there is a basis to deny the foreigner the permit for humanitarian reasons; 2. is unenforceable for reasons beyond the authority to execute the decision on expulsion or beyond the foreigner; 3. may be effected only to a country to which the extradition is inadmissible on the basis of the court judgment or on the basis of the decision of the Minister of Justice on refusing to extradite the foreigner. The permit for tolerated stay is granted by the Chief of the Border Guard unit or Commanding Officer at the Border Guard Post. Act on foreigners, Art. 351–355.

[25] The data provided by the Office for Foreigners include decisions issued both by the Head of the Office for Foreigners (first instance) and the Refugee Board (second instance).

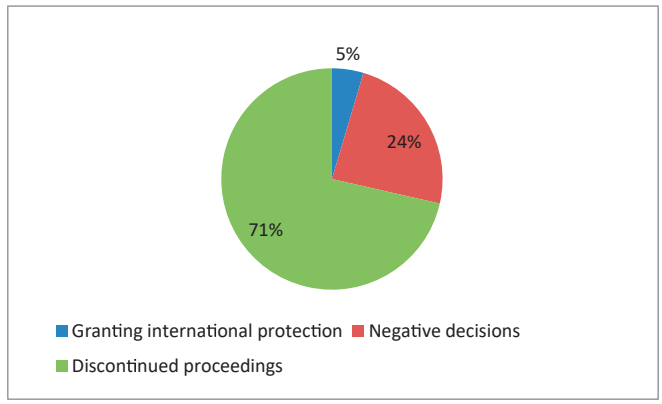

Figure 4.
Decisions issued by the Head of the Office for Foreigners (2014–2017)

Source: Office for Foreigners

As of 12 October 2017 the Head of the Office for Foreigners in 2017 issued 4,400 decisions regarding asylum proceedings. What is interesting is that only 47% of them are decisions in which the Head of the Office granted or denied international protection. The rest (meaning over half of them) are discontinuances related to the foreigner's lack of interest in further proceeding.[26] Moreover, it is worth underlining that in the majority of cases regarding Chechens (citizens of the Russian Federation), citizens of Georgia and Tajikistan (three of five top nationalities applying for international protection in Poland) the procedure for granting international protection is discontinued shortly after lodging the application.[27]

Migration Situation in Poland

Legal basis and legalisation of stay of foreigners in Poland

The procedure of legalisation of stay of foreigners in Poland is based on the following acts:

- Act on foreigners (12 December 2013) – with further amendments;
- Act on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members – along with executive acts (14 July 2006);
- Code of Administrative Procedure (14 June 1960).

[26] Office for Foreigners, Informacja o działalności Urzędu do Spraw Cudzoziemców w okresie 6.10–12.10.2017. Available: https://udsc.gov.pl/statystyki/raporty-okresowe/meldunek-tygodniowy/ (Accessed: 29.11.2017)

[27] Until 12 October 2107, 78% of discontinued proceedings concerned applications submitted by the citizens of the Russian Federation. Ibidem.

Residence permits granted in the territory of the Republic of Poland include temporary residence permits (for a period exceeding three months and maximum 3 years) and permits issued for an indefinite period of time (including both permanent residence permit and residence permit for a long term EU resident).[28]

Legalisation of stay of foreigners in Poland in the period 2014–2017

Since 2014 in Poland there has been observed an increase in the number of applications for the temporary residence permits lodged by foreigners. According to the Office for Foreigners, it has been a result of three main factors. Firstly, it is due to the changes introduced by the new Act on foreigners of 12 December 2013 which simplified the procedures of legalisation of stay. Secondly, it is said that it was the conflict in Eastern Ukraine which has resulted in the increased influx of Ukrainian citizens to Poland (an important factor in this regard is the worsening economic situation in this country – more detailed analysis regarding Ukrainians residing in Poland will be presented in the next paragraph). Lastly, in the analysed period the validation date of permits issued in the framework of the regularisation action in 2012 came to an end. [29]

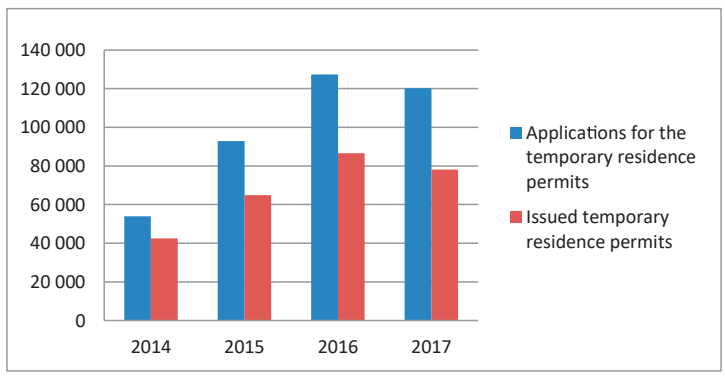

Figure 5.

Applications and decisions of temporary residence permits in the period 2014–2017 (as of 1 October 2017)

Source: Office for Foreigners

[28] Act on foreigners, Art. 351–355. Sections V–VI.

[29] Office for Foreigners, Report on citizens of Ukraine, 5 November 2017. Available: https://udsc.gov.pl/statystyki/raporty-specjalne/biezaca-sytuacja-dotyczaca-ukrainy/ (Accessed: 29.11.2017)

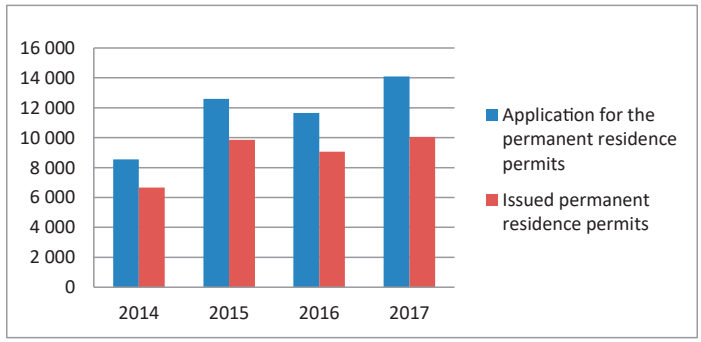

Figure 6.

Applications and decisions of permanent residence permits in the period 2014–2017 (as of 1 October 2017)

Source: Office for Foreigners

As it was mentioned above, the majority of applications for residence permits in Poland was lodged by the citizens of Ukraine. In 2015 we have observed significant influx of foreigners applying for legalisation of stay – 62% of them were submitted by the citizens of Ukraine. Interestingly, the same trend was noticeable in the whole of the European Union where they received slightly over 19% of all residence permits issued in the EU.[30]

This tendency (increased number of Ukrainians arriving to Poland) has continued also in 2016 and 2017. In the first half of 2017 65% of all registered applications for temporary residence permits were submitted by Ukrainian citizens. The increase in interest in legalisation of stay in Poland has also been observed in regard to citizens of Belarus (mainly concerning permanent residence) and India (mostly temporary residence). They were followed by citizens of China and Vietnam.[31]

Ukrainian citizens are also the most numerous among the foreigners with valid document legalising their stay in Poland (43% of all holders). The other main nationalities include: German, Belarusian, Russian, Vietnamese, Italian, Chinese, French, British and Bulgarian (as we can see they consist of both citizens of the EU and third country nationals).[32]

In 2016 Poland was the second state within the EU Members as far as the residence permits issued for the first time to third country nationals are concerned (with the UK being the leader, Germany third, France forth and Italy fifth). 58,600 permits in Poland accounted

[30] Eurostat, Residence permits for non-EU citizens. EU Member States issued a record number of 2.6 million first residence permits in 2015. Main beneficiaries from Ukraine and the United States, Press Release, 27 October 2016. Available: http://ec.europa.eu/eurostat/documents/2995521/7715617/3-27102016-BP-EN.pdf/ca706fa0-14fc-4b71-a2e2-46b2b933f8f8 (Accessed: 29.11.2017)

[31] Office for Foreigners, Legalizacja pobytu w I połowie 2017 roku, 'Biuletyn informacyjny', second quarter, 2017. 12.

[32] Maps and statistics of migrants and Polish migration services. Available: https://migracje.gov.pl/en/ (Accessed: 29.11.2017)

for 17.5% of all permits issued in the EU countries.[33] At the same time, the main reason for issuing permits in Poland was employment (84% in the country and 58% share in all EU). Interestingly, this tendency has also been observed in the whole of the EU where a quarter of all residence permits in 2016 was also issued due to employment-related reasons.[34]

Migration from Ukraine

The conflict in Eastern Ukraine was one of the main factors which led to the increase in the number of foreigners arriving to Poland. It was due to the worsening situation of the Ukrainian economy that many citizens of Ukraine decided to leave their country in order to look for employment abroad. Interestingly, this rapid migration is characteristic almost only to Poland. The reason for that was the new Polish legislation, which entered into force in May 2015 and introduced special rules for the citizens coming from states of the Eastern Partnership.[35] From that moment foreigners from Armenia, Belarus, Georgia, Moldova, the Russian Federation and Ukraine might work in Poland for the period of maximum 6 months (in the next 12 months) if the special declaration of the employer (stating that one is willing to offer a job to the foreigner) is registered in the competent employment office.[36] Therefore, they do not need to hold separate permits to work in Poland. In 2015 763 thousand declarations regarding employment of Ukrainian citizens was registered in Poland. In 2016 their number reached 1.26 million.[37] Although lately the economic situation in Ukraine has improved, with the current economic growth (2% of GDP per year), it will probably not be sufficient enough to radically change the conditions of the labour market. It is then foreseen, that in the upcoming years Ukrainian citizens will most probably continue moving abroad in search for employment.[38] As of 5 November 2017 102,696 citizens of Ukraine lodged applications for residence permits (including temporary and permanent permits, as well as permits for permanent EU resident). In the whole previous year, the respective number was 6,218 lower.[39] It is also worth underlining that Ukrainian citizens who received residence

[33] Eurostat, Residence permits for non-EU citizens. New high in first residence permits issued in the EU Member States in 2016. Main beneficiaries from Ukraine, Syria and the United States, Press Release 174/2017, 16 November 2017. Available: http://ec.europa.eu/eurostat/documents/2995521/8456381/3-16112017-BP-EN.pdf/e690a572-02d2-4530-a416-ab84a7fcbf22 (Accessed: 29.11.2017)

[34] Ibidem.

[35] Jaroszewicz, Marta (2017): *Potencjalne skutki zniesienia reżimu wizowego dla obywateli Ukrainy*, 'Biuletyn informacyjny', second quarter. 6–7.

[36] Rozporządzenie Ministra Pracy i Polityki Społecznej w sprawie przypadków, w których powierzenie wykonywania pracy cudzoziemcowi na terytorium Rzeczypospolitej Polskiej jest dopuszczalne bez konieczności uzyskania zezwolenia na pracę. 29 April 2015. Available: http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20150000588/O/D20150588.pdf (Accessed: 29.11.2017)

[37] Imigracja z Ukrainy. 128 tys. obywateli Ukrainy z długoterminowymi pozwoleniami na pobyt w Polsce, 'Biuletyn informacyjny', second quarter, 2017. 4.

[38] Jaroszewicz (2017): *op. cit.* 6–7.

[39] Office for Foreigners, Report on citizens of Ukraine.

permits in Poland in 2016, accounted for 87% of all Ukrainian holders of residence permits in the European Union.[40]

When it comes to the profile of the Ukrainian citizens arriving to Poland, there are few significant features which need to be underlined. First of all, the majority of Ukrainians who holds resident permits legalising their stay in Poland are men (57%), but women also constitute a large percentage (43%). Moreover, as far as their age is concerned, 60% of the citizens of Ukraine residing in Poland are between 20–39 years old (26% are of 40–59 years and 12% are children below 12 years old). It is also worth noticing that when it comes to the type of residence permits, the vast majority (77%) of Ukrainians holds temporary residence permit.[41]

While applying for temporary residence permits as a reason for legalisation of they stay in Poland, Ukrainian citizens declare mostly employment-related issues (69.6% as of 12 November 2017). Among other frequently declared justifications are studying (starting and continuing – 8.6%) and staying in Poland with foreign (5.6%) and Polish citizen – 3% (different reasons constitute around 10%). Interestingly, a very similar trend was observed in 2016 when nearly 87% of the citizens of Ukraine applied for legalisation of stay due to work-related reason (followed by: studying, *different issues,* staying with foreign and Polish citizen).[42]

On 11 June 2017 the decision of the European Commission (which approved the resolution of the European Parliament of 6 April 2017) entered into force. With this decision Ukraine was added to the list of states whose citizens will not require visas for a short-term stay in the EU. From that moment, the holders of biometric passports will be able to travel to the EU (with the exception of the UK, Ireland, Norway, Iceland, Switzerland and Liechtenstein – associated members of the Schengen zone) for short stays of up to 90 days within a 180 days period.[43] This decision caught the attention of the European Member States (including Poland) as it was expected to have an effect in increased influx of Ukrainian citizens to the EU. So far, the introduction of the non-visa regime has not had a significant impact on migration of Ukrainian citizens to Poland.[44] During almost five months after the new regulation was introduced, according to data provided by the Border Guard, 3,65 million Ukrainian citizens arrived to Poland (only 644 thousand were traveling within the non-visa regime). This number constitutes only a 9% increase in comparison to border crossings in the period from February to May 2017, which is one of the characteristics of the increased

[40] Eurostat, Residence permits for non-EU citizens. New high in first residence permits issued in the EU Member States in 2016. Main beneficiaries from Ukraine, Syria and the United States, Press Release 174/2017, 16 November 2017. Available: http://ec.europa.eu/eurostat/documents/2995521/8456381/3-16112017-BP-EN.pdf/e690a572-02d2-4530-a416-ab84a7fcbf22 (Accessed: 29.11.2017)

[41] Generally, among the foreigners who apply for permanent residence permit are those who have already extended (even for a few times) their stay in Poland. Imigracja z Ukrainy. 128 tys. obywateli Ukrainy z długoterminowymi pozwoleniami na pobyt w Polsce, 'Biuletyn informacyjny', second quarter, 2017, s. 4–5.

[42] Office for Foreigners, Report on citizens of Ukraine.

[43] European Commission, European Commission welcomes the Council adoption of visa liberalisation for the citizens of Ukraine, Press Release, Brussels, 11 May 2017. Available: http://europa.eu/rapid/press-release_STATEMENT-17-1270_en.htm (Accessed: 29.11.2017)

[44] Jaroszewicz (2017): *op. cit.* 6–7.

inflow of Ukrainian citizens to Poland (connected also to seasonal works).[45] Therefore, this widely discussed regulation so far has not have a significant effect on migration trends from Ukraine to Poland.[46] Altogether it is foreseen, that migration from Ukraine to Poland in 2017 will account for 110–140 thousand foreigners.

Impact of the Migration Crisis on the Asylum and Migration Situation in Poland

Contrary to the other EU Member states, Poland has not observed an increased influx of foreigners applying for international protection arriving to Europe from North Africa and the Middle East (especially from states which are still the countries of origin where most of the asylum seekers come to Europe).[47] Although according to the data provided by the Eurostat, Poland is placed at the 13th place among all of the 28 EU Member States and Switzerland, Norway, Iceland and Lichtenstein (as far as the applications for international protection submitted in 2015 and 2016 are concerned).[48] In order to better understand the low (direct) impact of the migration crisis on Poland, one should take a closer look at the nationalities of asylum seekers.

According to data provided by the Eurostat, in 2015 and 2016 the most asylum seekers arriving to EU Member States came from Syria, Afghanistan, Iraq, Pakistan and Nigeria. On the other hand, as it was stated before, among the applicants for international protection in Poland are mostly citizens of the Russian Federation, Ukraine, Tajikistan, Georgia and Armenia. In comparison, in all EU states, citizens of the Russian Federation were placed on the 9th position, Ukraine on the 18,th Georgia on the 29th and Armenia on the 27th among all the asylum seekers in 2015 and 2016. Tajikistan was not individually listed among the top nationalities of foreigners seeking protection in Europe (therefore it should be placed in the remaining non-EU States).[49] As of 12 October 2017 asylum seekers who have so far arrived to Poland in 2017 from the Middle East, Africa and South Asia accounted each for only 1% of all applicants.[50]

[45] Office for Foreigners, Ruch bezwizowy z Ukrainą – brak wyraźnego wzrostu dynamiki migracyjnej. Available: https://udsc.gov.pl/ruch-bezwizowy-z-ukraina-brak-wzrostu-dynamiki-migracyjnej/ (Accessed: 29.11.2017)

[46] More information on this subject can be found: Centre for Eastern Studies: *The abolition of the visa requirement for Ukrainian citizens: possible migration consequences for the European Union.* Summary, 16.10.2017. Available: https://udsc.gov.pl/konsekwencje-migracyjne-zniesienia-obowiazku-wizowego-dla-ob-ukrainy/ (Accessed: 29.11.2017)

[47] In 2016 the asylum seekers arrived to EU+ countries (EU Members, Norway and Switzerland) mostly from Syria, Afghanistan, Iraq, Pakistan, Nigeria and as of September 2017 – Syria, Iraq, Afghanistan, Eritrea and Nigeria. European Asylum Support Office, Latest asylum trends – 2016 an overview. Available: www.easo.europa.eu/sites/default/files/Latest%20Asylum%20Trends%20Overview%202016%20final.pdf; European Asylum Support Office, Latest asylum trends – September 2017. Available: www.easo.europa.eu/sites/default/files/Latest%20Asylum%20Trends%20September_Final.pdf Accessed: 29.11.2017)

[48] Eurostat, Asylum Statistics.

[49] Ibidem.

[50] Data from the Office for Foreigners.

Based on these data, it is visible that the profile of asylum seekers in Poland (as far as their citizenship is concerned) is significantly different than in other EU Member States, including those which were the most affected by the migration crisis.

International cooperation in the area of migration crisis management

Even though, as it was mentioned at the beginning of the study, its asylum and migration situation was not significantly changed by the migration crisis of 2015, Poland still participated in missions (undertaken i.e. by the European Asylum Support Office in Greece and Italy[51]) and international projects at regional level aimed at reducing the effects and challenges which arose as the result of the events of 2015.

One of the examples of international cooperation in the area of migration crisis management is the initiative of the Visegrád Group (V4) Member States – Migration Crisis Response Mechanism (MCRM). On 21 November 2016 at the Meeting of the V4 Ministers of the Interior in Warsaw the *Joint Statement of Ministers on establishing of the Migration Crisis Response Mechanism* was signed by the Ministers of the Interior of the V4. In the light of the increased migration pressure in the European Union, the Ministers called for "enhancing cooperation and delivering result-oriented solutions". The initiative was established with the goal to "create new or enhance existing links between the Participating States" governmental institutions responsible for migration and a framework of coordinating actions, as well as projects undertaken within the MCRM.[52] The MCRM was initiated in the framework of the Polish Presidency in the Visegrád Group and Poland became a coordinating state in this project. According to the abovementioned Statement, the initiative is open for all EU Member States.[53]

Actions which will be undertaken (or has already been launched) are divided into three pillars. First of them is strengthening the intra-EU cooperation aimed at supporting those Member States which were the most influenced by the migration crisis (by preparation of experts from the V4 Member States for participating in activities implemented by the EU Agencies, such as the abovementioned EASO Support missions to Italy and Greece).[54] Moreover, according to the *Joint Statement* from November 2016 the information exchange (which constitutes the second pillar of the MCRM) "should support participating States in identifying their needs and outline priorities for coordinated actions, as well as efficient information sharing, identification and training of experts suitable for common EU activities

[51] In 2016 40 experts from the Office for Foreigners (mainly those who specialise in international protection procedures and social assistance to foreigners) participated in 62 EASO support missions to Greece and Italy. More information regarding this matter can be found: Office for Foreigners, 'Biuletyn informacyjny', I quarter 2017. 4–5. Available: https://udsc.gov.pl/do-pobrania/biuletyn-informacyjny-urzedu/ (Accessed: 29.11.2017)

[52] *Joint Statement of Ministers on establishing of the Migration Crisis Response Mechanism.* Warsaw, 21 November 2016. Available: www.msz.gov.pl/resource/12d5f115-0fe9-42b6-b73d-8deeea23983d:JCR (Accessed: 29.11.2017)

[53] Ibidem.

[54] Office for Foreigners, Spotkanie szefów urzędów migracyjnych V4 i Szwajcarii. Available: https://udsc.gov.pl/spotkanie-szefow-urzedow-migracyjnych-grupy-v4-i-szwajcarii/ (Accessed: 29.11.2017)

(EASO, Frontex) in the EU Members and third countries affected by the crisis".[55] Lastly, the third pillar of cooperation *(external dimension)* is directed toward third countries in the area of migration management, border protection, international protection and dealing with primary sources of migration.[56] Although this initiative is still a relatively new project and it will take some time before we can evaluate its results and effectiveness, it proves that the events of 2015, even after two years, still pose important challenges to the EU Member States.

Conclusion

Based on the analysis presented in this study, it is noticeable that currently, the migration situation in Poland seems to be changing more dynamically than the asylum dimension. Contrary to the other EU states, especially those which were the most influenced by the migration crisis of 2015, the vast majority of asylum seekers arrive to Poland from the neighbouring states, through the Eastern border. The majority of them are citizens of the Russian Federation who declare a Chechen nationality. However, it is important to underline that the number of application for international protection has lately decreased.

At the same time, from 2014 we have observed significant changes in the area of legal migration in Poland. The raising number of application for legalisation of stay (mainly for temporary residence permits) is the result of two internal factors – mainly legislative modifications in Poland and the changes in the situation in the neighbourhood, such as the conflict in Ukraine. The main reason for the increased legal migration of foreigners to Poland is employment. It is visible also in the whole of the European Union, where in 2016 Poland was the main destination as far as the work-related permits were concerned. The data from the first nine months of 2017 shows that this year also, that tendency will remain the same.

A very important group of foreigners arriving to Poland are the citizens of Ukraine. They are still a second nationality as far as the applicants for international protection are concerned, but have significantly outnumbered the foreigners arriving to Poland from other states in regard to legalisation of stay. Data provided by the Office for Foreigners proves that most of the Ukrainian citizens arrive to Poland due to work-related issues. One of the reasons of that phenomenon is the relatively easy access to labour market facilitated by the special legislation regarding the Eastern Partnership states (mainly the system of declarations on employment). Moreover, also a vast majority (over 70%) of temporary residence permits were issued to the Ukrainian citizens due to reasons connected to employment. It is foreseen that, if the economic situation in Ukraine will not radically improve, the increase work-related migration from this country (also and very likely mostly to Poland) will remain unchanged.

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[55] *Joint Statement of Ministers on establishing of the Migration Crisis Response Mechanism.* Warsaw, 21 November 2016. Available: www.msz.gov.pl/resource/12d5f115-0fe9-42b6-b73d-8deeea23983d:JCR (Accessed: 29.11.2017)

[56] Office for Foreigners, Spotkanie szefów urzędów migracyjnych V4 i Szwajcarii. Available: https://udsc.gov.pl/spotkanie-szefow-urzedow-migracyjnych-grupy-v4-i-szwajcarii/ (Accessed: 29.11.2017)

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Office for Foreigners, Mission. Available: https://udsc.gov.pl/en/urzad/misja-urzedu/ (Accessed: 29.11.2017)

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What is Migration Policy? Some Theoretical and Practical Considerations[1]

Magdalena Lesińska

The Term and Scope of Migration Policy

The intensification of mass migration processes (in the sense of outflows, but most of all the inflows of foreigners) in the post-war period Europe resulted in an extremely serious change for the state, understood in the classical sense as a triad of territory, population and the system of power. For last decades there has been a global increase in volume, diversity, and geographical scope of human flows. Some important questions appeared related to the impact of migration on the state and its subsystems: social, legal, economic and political. In a broader aspect, also on state sovereignty and security, institutions, the integrity of society, national identity, access to social and economic resources, participation in national culture. The dynamics of migration processes and their impact on the nation state became the source of the concept of *migration state* "where regulation of international migration is as important as providing for the security of the state and the economic well-being of the citizenry".[2] Moreover, the unpredictability and mass character of mass migration questioned the real possibilities of state control over human mobility.

Migration processes are not limited to the simple flow of people from one country to another. Many different entities make it up and act on the course of migration processes. Migration forms a complex and very dynamic system, in which not only immigrants are involved, but also their immediate surroundings, family and local community in both countries – of origin and of settlement. Also countries, both sending and receiving are active subjects of migration processes, although the degree of their involvement is subject to change. The level of state activity in controlling migratory movements has increased with their intensity, the needs of national economies and labour markets, and with the increasing threats that they may bring for the social and political order. Migration is the most pressing challenge all over the world today whilst emigration from a country is widely regarded as a fundamental human right (at least in democratic countries), the right to immigrate to a country is not.

[1] The text was prepared under the project "IMINTEG – In search for models of relations between immigration and integration policies" (No. 2014/14/E/HS5/00397) funded by the National Science Centre.

[2] Hollifield, James F. (2004): The Emerging Migration State. *International Migration Review,* Vol. 38, No. 3. 885.

What is important to underline: migrants are not one consistent or coherent group.[3] To the contrary, innumerable typologies describing particular migrating groups can be identified in the literature. In order to inject some order into analysing the logic and content of migration policy addressed to foreigners, two main groups of migrants that require action from the state can be identified:

- Potential (expected) migrants, including two different types: desired (those whom the state wants to come) and undesired (those whom the state does not want to come);
- real migrants (who have already come), including two different types: wanted (those whom the state wants to stay) and unwanted (those whom the state does not want to stay).[4]

These two groups require different approaches from states. The first group requires mechanisms of encouragement (such as special entry and recruitment schemes) or discouragement (strict visa policies, restrictive rules of admission to the labour market). A similar set of policies applies to the second group: according to the state's categorisation of who is wanted and who is unwanted, the first type is encouraged to stay, and the second one – to leave the country.

Migration flows and policies are reciprocally related: migration flows create the need for policy makers to manage them, and policies, in return, shape ongoing and future migration flows. In the literature, it is difficult to look for a uniform (universally accepted) definition of migration policy. Traditionally, migration policy is identified with immigration policy (regarding the inflow of foreigners in the territory of a given country, related directly to the admission and residence rules). A broader understanding of this term implies inclusion in its scope of integration policy (related to the rules of adaptation of foreigners to the host society and the dominant culture). The broadest approach to the term migration policy also includes the state's actions concerning citizens of a given country residing permanently or temporarily abroad (emigration policy and diaspora policy), as well as actions aimed at stimulating the return of citizens or their descendants to their country of origin (return policy and repatriation policy).

Without any doubts, migration policy is a multi-phase process, taking place at specific levels and using many legal and political mechanisms. It is not limited only to the territory of the host country, but is closely related to activities at the source of the migration processes – in the sending countries. Grete Brochmann (1999) distinguishes five types of activities that make up migration policy: 1. Actions in the sending countries, which are to lead to the reduction of the waves of potential incomers before they start their journey (for example by information campaigns about the entry criteria for the state and formalities to be met before departure). Increasingly, however, it happens that they are intended to encourage a specific group to come, an example of such activities are recruitment actions among the most wanted professional groups and encouraging them to live and work in a specific country. 2. Measures to control the size of immigrant groups (by visa requirements, residence permit

[3] Avci, Gamze (1999): Immigrant Categories: The Many Sides of One Coin? *European Journal of Migration and Law,* Vol. 1, No. 2. 199–213.

[4] Lesińska, Magdalena (2012): Migration policy matters: A comparative analysis of policy recommendations. In Okólski, Marek ed.: *Europe: The Continent of Immigrants: Trends, Structures and Policy Implications*. Amsterdam, Amsterdam University Press. 240.

system, quota systems, information campaigns). 3. Control at the border of the country. 4. Control of access to the labour market through a system of work permits. 5. Actions for the return of migrants to their homeland (through organizational and financial support for returnees, the so-called *return assistance,* but also deportation of those who do not meet the specific formal requirements of stay).

While a broad understanding of migration policy is adopted, the state's actions will be directed to a wide range of recipients, among them three main groups can be distinguished: 1. foreigners: potential and real ones (already described above); 2. citizens: potential emigrants (planning to travel to another country and real emigrants (already residents of other countries); 3. emigrants or their descendants planning to return or move to a given state (including repatriates). The above distinction of successive groups is aimed at realizing how broad and diverse the subjective scope of activities of the state defined as migration policy is.

The word *migration* gets elided to accommodate the new time-limited forms of mobility rather than migration. Migration implies that the migrants will stay for some time, perhaps for good. Mobility implies that people will not stay but will remain on the move; they will move on or return back home. Especially in temporary Europe, it is an important distinction, taking into account that people's mobility is facilitated by free movement and faster and cheaper travel. Migration, nowadays, more so than in the past, is very diverse, and recognition of this diversity is the first step towards both better understanding of migration processes and formulation of more realistic evidence-based policies.

Migration Policy as Policy of Control

The main mechanisms of control of migration movements by the state authorities are connected with state borders. They perform legal and political functions as well as socio-economic functions. Under international law, any state has the obligation to allow foreigners into its territory, but it has the right to prohibit entry and establish entry conditions. In practice, there is no country that would let freely all foreigners into its territory, but in practice, there is also no one that would not let anyone in. The state defines and classifies population movements, determines their legality or illegality, gives status to the migrating people, tries to control and manage people's movements in accordance with its own interests and needs. The process of formulating migration policy is based on the main assumption that migration flows could be (obviously, to some extent) regulated through political measures.[5]

Thomas Faist (1995) distinguishes four consecutive and interdependent levels through which the nation state controls the access of foreigners to its territory as well as to the polit-

[5] Brochmann, Grete (1999): Controlling Immigration in Europe. In Brochmann, Grete – Hammar, Tomas eds.: *Mechanism of Immigration Control: A Comparative Analysis of European Regulation Policies.* Oxford, Berg Publisher; Boswell, Christina (2007): Theorizing Migration Policy: Is there a Third Way? *International Migration Review,* Vol. 41, No. 1. 75–100; Cornelius, Wayne – Tsuda, Takeyuki – Martin, Philip – Hollifield, James F. eds. (2004): *Controlling Immigration: A Global Perspective.* Stanford, California, Stanford University Press; Hollifield, James F. (2000): The politics of international migration: how can we "bring the state back in"? In Brettell, Caroline B. – Hollifield, James F. eds.: *Migration Theory. Talking across Disciplines.* New York and London, Routledge.

ical, social and economic spheres. In the first stage, the state decides about the (qualitative and often quantitative) criteria of entering its territory, sometimes giving preferences to specific groups of migrants (due to country of origin, family relationships, professional skills and others), while trying to block the influx of other groups by, for example, entering visas or other special entry conditions. The second level concerns the legal status that the state grants to migrants. This level has a key impact for the further process of settlement and integration. The third area distinguished by Faist concerns the remaining dimensions of social life, such as the labour market, education, housing policy and culture, which determine the success of socio-economic integration of migrants. The fourth level concerns political inclusion, reflects the state's response to the permanent migrants' settlement on its territory, concerns the issue of their political empowerment by providing electoral rights and liberal naturalization scheme. Fielding (1993) proposes the following typology of migration control policies, with some European examples: unrestricted entry (free movement between countries in the Schengen area), promotional entry (*guestworker* migration to Germany, 1961–73); permissive entry (managers and professionals of multinational companies); selective entry (family reunion); and prohibited entry (so-called *irregular immigrants*).

In theory, it is up to the state authorities to decide on the permission or entry ban, residence permits and expulsion orders of the foreigners. In practice, however, the state does not have complete freedom of decision here, it is limited by a number of factors, because any state is a fully independent decision-making body, it is part of a larger political and international system. On the one hand, the state in its decisions is limited by various types of political and legal obligations related to human rights, bilateral and international agreements signed, membership in international organizations such as the European Union, which enforces adaptation to certain standards. On the other hand, the place and nature of the state's activities in the structure of migration processes is greatly influenced by national, economic and security interests, historical patterns of human flows, and the attitude of society towards foreigners. The attitude of the given receiving community as an active subject of the migration processes will be the result of all the above-mentioned factors.

State actions in the framework of migration policy as the mechanisms controlling the influx of migrants can be divided into external and internal ones. All of them are diverse at the level of individual states and regional arrangements, they are very often resolved by bilateral or multilateral agreements, the best example of the latter is the European Union or the Nordic countries. Most European countries apply both types of controls simultaneously, although in the era of regional integration and the disappearance of internal borders within the Schengen Area, the focus is on a shared responsibility for the protection of its external borders. The liberal or restrictive face of the state's activities in this area depends mainly on the needs of the national economy and the labor market. History shows that the influx of migrants is subject to strict restrictions in times of economic crises and high unemployment, as was the case in the 1970s, and increases during the liberalization and dynamic development of national economies and growing demand for foreign labour force.

The international relations also have a significant impact on the state migration policy. The migration policy of any country is not created in opposition or without consultation and cooperation with others. Migration processes have been one of the most important factors shaping inter-state relations in contemporary world. Its effectiveness is conditioned to the highest degree from supranational compromises and close cooperation between

states. The state shaping its own migration policy must be aware and take into account the migration processes taking place in the whole region and migration policies of neighboring countries. The dynamic development of a common European policy in the field of border control, harmonization of migration policies and the development of a common asylum policy have a major impact on the policies of all member countries.

The control of one's own borders is one of the basic powers of a sovereign state related to its external and internal security. The migration control policy is dictated by specific objectives, commonly characterized as priorities for the security of the state. The narrative about the protection of the sovereignty of the state and its national interests plays an important role in formulating the goals and principles of migration policy. National interests of the state related to migration processes can be briefly characterized as: 1. national security (maintaining coherence and stability); 2. national economy (maintaining economic development, newcomers absorption into the social and economic system, mainly through the labor market and social security system); 3. demographic (maintaining an optimal age distribution, i.e. the so-called age pyramid of society); 4. social and cultural cohesion (protection of national identity and social integration). In this context, there is a need to control the number of migrants in the interest of preserving economic stability, social unity, cultural cohesion and political stability.[6]

The combination of the above mentioned elements makes up the normative basis for the legitimacy of the migration control policy. Its final shape is influenced by many factors: internal (such as national history and tradition, administrative solutions, political and civic culture, national identity) and external (among others solutions applied by other states, international and bilateral obligations, crisis and conflicts in the region). One should also not forget about the influence of varied institutional entities. Trade unions exert direct and indirect influence by, for example, pressure reducing the inflow of foreign workers or structural closure of access to the labour market; political parties, mainly right-wing parties, postulate restrictive migration policy; NGOs are directly involved in activities to improve the situation of migrants, as well as through actions for an open society, development of tolerance and the fight against discrimination and racism.

Ideal Model of Migration Policy

Migration is an unavoidable and indispensable phenomenon. The formulation of proper and effective migration policy requires, first and foremost, the conceptualisation of a given state's interests related to migration processes. This means submitting a set of key questions and finding a commonly accepted response to at least some of them:

- Does the state need or not need migration (and why or why not)?
- What kind of migration is desired?
- How can the desired inflows be recruited and how can undesired ones be constrained?
- How should the migrants who are already in the country be dealt with?

[6] Brochmann (1999): *op. cit.* 6.

It is important to note in this context that migration policy is directly interdependent with other detailed policies. Migration policy as a public policy was distinguished much later than economic, demographic, foreign or social policy. The latter were treated and are as strategic, which means in practice that decisions directly concerning international migration depend on the guidelines and priorities adopted in such areas as the labor market, economy, demography, international relations, social and cultural cohesion.

In order to improve our understanding of the creative role of the state and its policies, a thorough analysis of the past and present status of migration processes in Europe is needed – one which includes their logic, course and consequences. Every destination country has its own unique characteristics. What distinguishes one from the other is the country's history and tradition of immigration, the qualitative and quantitative characteristics of its inflows, and also the way the state reacts to the entry and settlement of newcomers. There are several commonalities within the logic underlying migration policies in every country, regardless of the level of maturity they may already have reached. All destination countries are necessarily confronted with the same migration-related challenges: they can be broken down into categories of pre- and post-immigration challenges.

The pre-immigration challenges are related to potential immigrants. They most significantly affect the state's interests related to labour market needs, economic development, demographic situations, etc. Policy makers attempt to respond to these challenges by implementing effective mechanisms of admission and recruitment of selected groups, including high-skilled or seasonal workers. The pre-immigration challenges also comprise undesired migration inflows (first and foremost irregular ones) and the state's response via stricter border controls.

Post-immigration challenges arise from the direct and indirect effects of immigrants' inclusion into and functioning within the labour market and social fabric of a given destination country. Integration policies are the key to counteracting the discrimination, marginalisation and social exclusion of newcomers, as well as weak social cohesion, ethnic and cultural tensions, and the irregular employment of immigrants. Following traditional approaches, an ideal policy should be:

- Predictive and well-planned (based on a widely accepted long-term strategy that defines the state's interests and aims to achieve them via migration policy);
- well-organized and coherent (supported by a legal framework that serves as a normative basis and an appropriate bureaucratic structure that ensures successful implementation);
- rational (based on a thorough analysis of all available data and information sources as well as the experiences of other countries), and, the most challenging criterion:
- efficient (there should be a consistency between the intended objectives and final outcomes of a given migration policy).[7]

It is a difficult task (if it is possible at all) to evaluate migration policy according to these *ideal* characteristics. From a more practical point of view, a basic condition seems to be of utmost importance – namely, whether migration policy corresponds well with the actual

[7] Lesińska (2012): *op. cit.*

state of affairs, and whether the demand for state intervention in regulating migration flows is sufficiently met.

The Relations between Migration and Integration Policy

Integration has to be treated as an issue of significant concern. Inflows of foreigners have to be accepted as a permanent process, not as a temporary phenomenon, and one with long-term consequences that very often leads to settlement. Integration as a process has been studied in the social sciences by using different terms, such as absorption, adaptation, race relations cycle, assimilation, acculturation, inclusion, incorporation and, of course, integration.

There are many definitions of integration proposed by different authors. Here are just two examples. Rinus Penninx and Blanca Garcés-Mascareñas (2015) offer a useful short definition of integration as the process of becoming an accepted part of society. More comprehensive definition is proposed by Friedrich Heckmann: "integration as social integration can be defined as a generations lasting process of inclusion and acceptance of migrants in the core institutions, relations and statuses of the receiving society. For the migrants, integration refers to a process of learning a new culture, an acquisition of rights, access to positions and statuses, a building of personal relations to members of the receiving society and a formation of feelings of belonging and identification towards the immigration society. Integration is an interactive process between migrants and the receiving society. The receiving society has to learn new ways of interacting with the newcomers and adapt its institutions to their needs. In this process, however, the receiving society has much more power and prestige." Further, the author underlines that process of integration requires time "because integration is a learning process and learning takes time. For the persons who have migrated themselves, the so-called first generation, integration is a second socialization that takes a lot of intellectual and emotional effort. […] The receiving society as well has to learn new ways of interacting with "foreign" people and adapt its institutions to their needs. For societies who have not experienced migration in their recent history this is more demanding than for immigration societies, whose institutions are prepared for the acceptance of migrants".[8]

Harald Waldrauch and Christoph Hofinger (1997), studying the integration process of migrants in eight selected countries of Western Europe, distinguished three levels of integration. The first is legal integration, when migrants receive a specific legal status, which consists of civil, economic, social, cultural and sometimes a certain range of political rights. The second level is social integration, which refers to their position in the social and economic life of the community. The deficit at this level of integration is measured by the concentration of migrants in low-paid jobs, their spatial *ghettoization,* that is, the concentration of lower-status districts in the cities and proportionally smaller numbers of migrant children at higher levels of the education system. The third level refers to cultural integration, which on the one hand means the adaptation of foreigners to the lifestyle and

[8] Heckmann, Friedrich (2005): *Integration and Integration Policies.* Bamberg, European Forum for Migration Studies. 17.

common values in the dominant society, and on the other, acceptance and even support of the host country for the culture and tradition of migrant groups.

Taking into account this typology, the following barriers to migrants' integration could be pointed out:

- Legal barriers or rules of institutions that limited migrants' participation and membership in the state and its sub-systems (social system, labour market, national culture, etc.) as well as institutional and legal discrimination;
- discriminatory behavior, prejudice and stereotypes fostering unjustified unequal treatment of migrants in social and interpersonal encounters;
- lack of support by the state institutions and host society to support the integration process (structural discrimination).

The integration policy refers in a general sense to the actions of the state whose legal migrants are the subject, and the aim is to include them in the broadly understood social dimension of the community. Integration activities should cover all dimensions of migrants' lives in the new country – the labour market, housing, social and social care, education and language learning. Integration activities are addressed mainly to permanent residents, but also include the reach of recognized refugees, although in their case a formula of *temporary integration with the prospect of return* is often used. Some of the experts and practitioners claim that integration activities should be targeted not only at regular migrants, but also at irregular ones, who are the most vulnerable to social exclusion and marginalisation (that is, irrespectively of their legal status, free access to basic health care services and education for minors should be provided).

It is worth noting that integration policy is focused mainly on the areas of health services, housing, welfare schemes, education and the labour market. It is therefore related to and dependent on the national welfare system – which varies from country to country. Moreover, in federal countries with high levels of decentralisation, as in Germany, Spain or Italy, the regional and even municipal authorities have significant independence in the implementation of particular policies. Overall, it seems to be a positive solution for integration policies, in accordance with the assumption that regional and local authorities typically possess better knowledge about migrants' needs, and are thus better prepared to frame successful plans for social integration and design a more appropriate structure of services.

Thomas Hammar (1990, 2010) in his theoretical considerations assumes that migration policy fundamentally consists of two components: regulation of the inflow of foreigners into the territory of a given state (immigration) and actions undertaken towards migrants residing already in a given country (integration). Therefore, he considers integration policy as a component of migration policy. What is worth to develop are the relations taking place between those two policies and the determinants relevant to integration policy for decisions made by state authorities as regards the regulation of the inflow of foreigners.

The connection between migration and integration policy is strict and direct, especially in the legal dimension. The legal status of a foreigner implies its possibilities, and in the long run also the desire to integrate with the community in every dimension (social, cultural, political). However, the state policy towards newcomers cannot end only on legal aspects, the status of a foreigner and anti-discrimination legislation, but should also include actions for their social, economic and cultural participation in society.

Migration and integration policy is a direct derivative of the legal and political system and traditional solutions implemented by the state in this regard. The open political system, liberal political culture, religious and ethnic tolerance undoubtedly foster the influx of migrants and the finding of their social niche. Will an immigrant join one of many ethnic and religious groups that create a multicultural society, or integrate in society to such an extent that such differences will not play a greater role in public life, or will eventually become a member of one of the marginalized and excluded groups, depends not only on individual preferences and opportunities, but also on political solutions adopted by the state.

Irregular Migration

In many countries, albeit to a different extent, irregular immigration has become a structural feature of migration regimes, and represents one of the most important challenges for national governments. Irregular migrants consist of three main types related to travel, residence and work: 1. those crossing international borders without the requisite documents and permits or using forged documents (illegal entry); 2. those remaining in a country beyond the approved duration of their stay (so called *over stayers*); 3. those working in a country without work permit (or any other necessary form of authorization). Combining these types produces a multiplicity of different situations. A case of maximum irregularity would combine all three above mentioned types: crossing the border without the necessary documents, having no residence status or right to work, and working in the informal sector. Given their hidden status, estimates of the scale of irregular migration are highly approximate. Globally, IOM (2010) has estimated that 10–15% of international migrants are in an irregular situation.

What system factors rooted in the state's regime reinforce irregular migration? A conclusion drawn from the variety of analyses is clear on this point, highlighting the most important, such as: the existence of a shadow economy and a common acceptance of its existence; the lack or excessive restrictiveness of legal entry and recruitment procedures; weak administrative structures; ineffective systems of labour market control; and the lack of transparent regularisation schemes. Moreover, the state policy drifts towards tightening channels of legal migration and pressing down on asylum recognition may well have the effect of increasing flows of irregular migrants. When the dominant perception remains that the only option to arrive is entering the country illegally, more and more migrants will begin to use illegal means of accessing the territory and the labour market.

Special attention should be given here to the role of the informal economy, which serves as a magnet for irregular employment. Its relatively large size and particular structure facilitate migrants' flexibility and *invisibility* in the labour market. The attractive qualities of unregistered employment are reinforced by widespread societal acceptance, relatively high non-salaried costs of work and the time-consuming and complex administration procedures required to register. The size of the shadow economy also corresponds to the weakness of labour market controls. There is a well-known catalogue of state actions taken against migration irregularity. They can be divided into external (border controls, cooperation with countries of origin) and internal (labour market controls, regularisation). Christina Boswell and Andrew Geddes (2011) point out three main policy options which could be

used by the states facing irregular migration: 1. toleration: this may be because the costs of enforcement are too high or because the irregular migrants occur to be useful labour force work (flexible and cheap); 2. regularization: this recognizes post facto the useful presence of irregular migrants and confers some kind of legal status (conditional and limited in time); 3. expulsion: the action of forcing irregular migrants to leave the country, the most draconian and expensive measure.

Europeanisation of Migration Policy

The last several decades have marked a time of building the EU as a legal and political entity. The process commonly called *Europeanisation* refers to the convergence of EU and national approaches in numerous areas. Migration is also one of them, and the process of re-orienting the direction and shape of migration policy into a *European* one is currently taking place. The chance for a real Europeanisation of migration policy is rooted in all states sharing the same basic logic, which is based on a community of interests. As it was already underlined, each state has similar interests and concerns related to migration as well as each state faces the same set of challenges related to human flows.

Undoubtedly, one of the consequences of the whole process of Europeanisation is the creation of a common general legal and political framework, based on an obligatory *acquis* and a collection of recommendations and best practices – which all countries should follow (via an open method of co-ordination introduced by the EU). For the new member states, accession to the EU was a powerful determining impulse and brought about an acceleration in the evolution of national migration policies. Institutions and measures designed by more mature migration countries have been transposed, during the process of harmonisation with the EU, to the newly acceding states.

Among the recent EU documents pertaining to migration, the key one is the European Agenda on Migration. The Agenda emphasizes the broader need to develop well-managed opportunities for legal migration whilst, at the same time, reducing the incentives for irregular migration and improving the effective management of borders. The need for EU-level action was made clear: "No Member State can effectively address migration alone […] we need a new, more European approach. This requires using all policies and tools at our disposal – combining internal and external policies to best effect. All actors: Member States, EU institutions, international organizations, civil society, local authorities and third countries need to work together to make a common European migration policy a reality."[9]

The European Agenda nominates four pillars for a more effective management of migration. The first aim is to reduce the incentives for irregular migration (key objectives here are addressing the root causes of irregular and forced displacement in third countries, cracking down on the smugglers and traffickers of migrants, and encouraging the repatriation of irregular migrants). The second pillar considers border management, the concept of smart borders was introduced which enable a tradeoff between increasing the efficiency of border crossing for legal inflows and, at the same time, strengthening the campaign against irregular migration by better use of IT systems such as Eurodac and the Schengen

[9] EC 2015. 2.

Information System. The third pillar refers to common asylum policy; it requires further development of the Common European Asylum System. The fourth pillar is a new policy for legal migration the aim of which is to move towards the ideal of fostering migrants' integration in Europe and maximizing the benefits of migration.

The European Agenda on Migration is clear in its recognition of the need to strengthen and develop new policies to respond to what are seen as new migratory pressures and challenges, such as more-effective asylum and visa procedures, firmer and more targeted measures for the integration of migrants, and tackling irregular migration, and at the same time strengthening policies on legal migration, including a focus on attracting students and other talented and highly skilled persons.

The European Agenda on Migration makes a brief reference to *effective integration* under its priority action area on legal migration. It is planned that for the current programming period (2014–20), at least one fifth of the European Social Fund resources will be directed to social inclusion, which includes the integration of migrants, with a particular focus on refugees and children.[10] More-detailed specifications on EU actions and policies towards the integration of third-country migrants are provided in three other Commission documents. The foundation statement was included in the Common Agenda for Integration (CEC 2005), which laid out *common basic principles,* which are as follows:

1. Integration is a dynamic two-way process of mutual accommodation by all immigrants and residents of Member States.
2. Integration implies respect for the basic values of the European Union.
3. Employment is a key part of the integration process and is central to the overall participation of immigrants in the host society.
4. Basic knowledge of the host society's language, history and institutions is indispensable for integration.
5. Education is critical for preparing immigrants, and especially their descendants, to be successful and active participants in society.
6. Access for immigrants to institutions, as well as to public and private goods and services, on a basis equal to national citizens and in a non-discriminatory way, is a crucial foundation for integration.
7. Frequent interaction between immigrants and Member State citizens is a fundamental mechanism for integration.
8. The practice of diverse cultures and religions is guaranteed and safeguarded, unless these practices conflict with other inviolable European rights or with the national law.
9. The participation of immigrants in the democratic process and in the formulation of integration policies, especially at local level, supports their integration.
10. Mainstreaming integration policies and measures is an important consideration in public policy formation and implementation.
11. Developing clear goals, indicators and evaluation mechanisms are necessary to adjust policy, evaluate progress on integration and to make the exchange of information more effective.

[10] EC 2015. 16.

Review of the progress of integration six years later, taking on board the experience of new Member States and the general phenomenon of the increasing diversity of European societies, enabled the Commission to identify several ongoing and pressing challenges:[11]

- Low levels of employment among migrants, especially migrant women;
- rising levels of unemployment and high levels of over-qualification of migrants compared to the jobs they do;
- increasing risks of migrants' social exclusion;
- gaps in educational attainment;
- public concerns with the lack of integration of migrants.

From a global perspective, Europe is already a diverse region, due to its considerable migrant and migrant-heritage populations, and is currently facing large-scale flows which could be described as *mixed migration*.[12] It not only means inflows of third country citizens (voluntary and forced migration) but also internal mobility which scale is greater than ever before. The dynamic human movements reinforced by a modern economy and transportation, characterised by post-industrial flexibility and insecurity – will be the greatest challenge for individual destination countries and the EU as such. It requires interstate and regional cooperation to improve currently existed policies related to human mobility in a pragmatic way. New dynamic migration reality requires also a new kind of theoretical thinking and new innovative high-quality research to explain migration processes, their causes, nature and consequences to help policy makers design and implement effective knowledge based migration policy.

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[11] EC 2011. 3.

[12] Hear, Nicholas Van (2010): Theories of Migration and Social Change. *Journal of Ethnic and Migration Studies,* Vol. 36, No. 10. 1535.

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The Security Aspects of Immigration in Central Europe

Edina Vajkai

Introduction

Due to the *immigration crisis* started in 2015, the question of *how dangerous immigration is,* and the security aspects of immigration have been centered, and nowadays, they are also in the main focus of political and public life. However, the consequences and aspects are not the same in each European country, moreover, the effects may also vary within countries of a particular region. It should be added, that the legality of migration may also influence the seriousness and the extent of these aftermaths. For example, not every European country has equally perceived the consequences of the migration crisis that began in 2015: the number of first time asylum applicants in Germany increased from 442,000 in 2015 to 722,000 in 2016, while in Hungary this number fell from 177,135 in 2015 to 29,430, due to the restrictions of the Criminal Code, and the construction of the fence between Serbia and Hungary or Croatia and Hungary. At the same time, the number of asylum applications remained relatively low in other Central European countries which are not affected by major migration routes. (Poland had 12,190 asylum applications in 2015, and 12,305 in 2016; Slovakia received only 330 instances in 2015, and 145 in 2016; and the Czech Republic got 1,515 applications in 2015, and 1,475 in 2016). For this reason, other types of challenges (such as effects on public safety, risks related to their future integration, etc.) need to be taken into account in those countries where there is a high number of asylum seekers (and at the same time the number of people illegally entering and staying in the country is potentially higher) than where this figure is relatively low.[1] In this essay, I will present these different types of security aspects in Central European and V4 countries.

Characteristics of Immigration in the V4 Countries

Due to the historical, geographical and social diversity of these countries, the full, comprehensive comparison seems difficult, so I have chosen to include the most important aspects and events of each state in this essay.

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[1] Asylum and first time asylum applicants by citizenship, age and sex. Annual aggregated data (rounded). Last update: 04.10.2017. *Eurostat.ecc.europa.eu.* Available: http://appsso.eurostat.ec.europa.eu/nui/ show.do?dataset=migr_asyappctza&lang=en (Accessed: 09.12.2017)

Slovakia

Slovakia is not traditionally the final destinations for migrants. Apart from the Treaty of Trianon (at that time Czechoslovakia, and from the 1st of January, 1993 Slovakia), this country was not affected by the dramatic migration changes during the twentieth century, except by the forced emigration of Hungarians after 1920 (as an effect of the Treaty mentioned above) and by the forced emigration of Germans after 1945. Until 1950, almost 12 million had left or been expelled from East-Central Europe – and almost a quarter of these people were from Czechoslovakia.

Slovakia is generally a country of origin for migrants, so Slovakian people leave their home country for different reasons. The Slovakian accession to the EU brought several amounts of changes to the country's migration profile. Since 2004, the illegal immigration and the number of asylum seekers had decreased, and the legal migration has increased a bit more than four times.

In addition to migration based on social reasons, such as family reunification or marriage to a Slovakian citizen, the most significant component of legal migration is currently migration for work and study.[2]

Looking at the statistics, we can see that foreigners possessing a valid residence permit represent a 1,8% of the population, which means that they are 97,937 in the country. This amount experienced a real increase in 2004, when Slovakia became a member of the European Union, because in 2002, this number was only 22,108. According to the latest statistical outcomes, Slovakia has the sixth lowest proportion of foreigners in the European Union (1,2%), following Poland (0,4%), Romania (0,5%), Lithuania (0,6%), Bulgaria and Croatia (both 1,0%). It is interesting to see that 3 of 4 V4 countries are in the top 7, because in Hungary, the proportion of foreigners is only 1,6% (and in addition, the Czech Republic is only the 9th with 4,5%). So, we could say that foreigners are not overrepresented in the V4 countries, but somehow, they represent a great deal of challenges to these countries.[3]

With regards to the purposes of immigration to Slovakia, it can be said that labour migration is one of the main causes, and in an overwhelming part, foreign workers are from the nearby countries (Romania, the Czech Republic, Hungary, Ukraine). Given the fact that the history of Slovakia and the Czech Republic was intertwined, there are still a large number of Czechs living in Slovakia and vica versa.

Considering the effects of the accession to the EU, it is evident that the number of illegal border crossings has decreased significantly: from 10,946 illegal entrances in 2002, to 2,170 in 2016. Another interesting fact: from the overall number of 58,559 applications realized since 1993, asylum was granted to only 838 people, and 702 applicants received a subsidiary protection. From January to June 2017, only 17 asylum procedures had a positive outcome.[4]

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[2] Migration in Slovakia. *Iom.sk.* Available: www.iom.sk/en/about-migration/migration-in-slovakia (Accessed: 15.12.2017)

[3] Eurostat – non-national population by group of citizenship, 1 January, 2016. *Eurostat.* Available: http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Non-national_population_by_group_ of_citizenship,_1_January_2016_(%C2%B9).png (Accessed: 15.12.2017)

[4] Migration in Slovakia. *Iom.sk.* Available: www.iom.sk/en/about-migration/migration-in-slovakia (Accessed: 15.12.2017)

Poland

As regards Poland, we must mention firstly the main migration waves, which had a great impact on today's Polish immigration. The first wave took place in the 18th century due to the loss of independence and shortly after the unsuccessful national uprisings. This time tens of thousands of people emigrated abroad, and many contributed to the freedom of other countries (like general Bem in Hungary). The wave which began after 1830 is usually called *the Great Emigration* as many military leaders, politicians and writers left the country in order to escape from imprisonment or death.

The second most significant wave took place between 1870–1913, when almost 3.5 million people left the Polish territories. In this period, we can talk about economical migration, and the majority tried his luck in the US, in Germany or in France.

The third emigration wave happened between WWI and WWII, when 2.5 million Polish people left the country hoping for a better future or a well-paid job. So, between 1970 and 1938, almost 6 million Polish citizens left their country of origin, which is a really remarkable number, and it also determined Poland's future.

The next important wave was during and shortly after WWII. In this period, many soldiers were sent abroad (in order to fight), and died there, and during the two years of Soviet occupation, over 1.7 million Polish were sent to Siberia and Kazakhstan.

A considerable number of people left Poland after 1956, and their reasons were not as obvious as expected: they left because it was easier to get a passport and to leave abroad; thay did not leave because life was getting more difficult. In 1967–68 the exodus of Polish Jews was also an important moment in history.

Between 1980–1990, 100 thousand people was leaving Poland every year, mainly for economic reasons, but some political activists also had to leave after martial law was enforced, the overwhelming part of these people were good-educated and young, so it caused a serious change in Poland's demographic characteristics.

Some scientists say that the ongoing migration wave started in 2004, when the country joined the European Union. Ever since, Polish people mainly left the country to find a job, and have better prospects for the future, because the unemployment rate was between 14–20%.[5]

The outflow of low- and high-skilled labour from Poland (mainly to the UK and Ireland) is considerable, and remains a question to be solved, as the missing workforce can put the economic sectors in a delicate position. To avoid this, Poland has also begun to look for strategies to attract foreign labour force.

Czech Republic

Given the fact that Slovakia and the Czech Republic used to share on a common history, I disregard the description of the historical aspects of the Czech migration.

According to the census realized in 2011, there were 543,000 legally residing, foreign habitants in the Czech Republic, which means 5% of the total population. As I have

[5] Polish Emigration Abroad – a historical review. *Culture.polish.us.* Available: http://culture.polishsite.us/articles/ art367fr.htm (Accessed: 13.12.2017

mentioned below, this is the highest rate among the V4 countries. The largest group of foreigners are from Ukraine (which means that although it is a country quite close to the Czech Republic, Ukrainians are third country-nationals according to international law). We can find also a considerable number of Asian minorities in the Czech Republic, such as Vietnamese people. Due to a deal concerning the education of Vietnamese people realized under Communism, a lot of Vietnamese people appeared in the Czech Republic in 1956. Their number has been steadily increasing until the fall of Communism. Among those, who arrived within the first generation, many work mostly as businessmen in small markets. Despite this, some of them still does not own a Czech citizenship. Hereafter, a remarkable number of Slovakian (84,000), Russian (36,000), German (21,000) and Polish (18,000) people are living in the country.[6]

One of the most important facts concerning Czech immigration is that although the Czech Republic is member of the Schengen Area, it does not have a Schengen external border, which means that it does not have to face as serious illegal immigration issues as other countries having a Schengen external border.

Since the birth of the Czech Republic, the nature of migration has changed significantly. In the early 1990s, the Czech Republic was mainly a source country, and a large number of incoming of applicants for international protection was typical, and there were also a considerable number of transiting foreign nationals. In recent years, this country has become a country of destination for foreign nationals, whose purposes are mainly connected to business issues and work. They typically want to settle down permanently or for a long term. If we compare the initial situation in 1993, when just below 80,000 foreign nationals were staying in the territory of the Czech Republic with diverse forms of residence statuses to the actual situation, several changes have occurred.[7] According to the data provided by the Czech Ministry of the Interior, on 31 July 2012, there were 437,928 foreigners legally residing in the Czech Republic. This growth of more than 500% is mainly due to the changes realized after the creation of the Czech Republic, and its adhesion to the European Union and NATO. This also means that issues related to international migration have become a really important part of the political and common life.[8]

The Czech Republic believes that the legal migration needs to be approached with adequate openness, because it constitutes a key element towards the development of the country and its economy. For this purpose, a document entitled *The Czech Government's Migration Policy Principles* had been adopted, and within this framework, the following thesis forms one of the basis of the Czech immigration policy: "the national migration policy does not place obstacles to legal migration and supports immigration, which is beneficial for the state and the society in the long run".[9]

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[6] Cesky Statisticky Urad. Available: www.google.com/search?client=firefox-b-d&q=Cesky+Statisticky+Urad (Accessed: 12.12.2017)

[7] Migration policy of the Czech Republic. Ministry of Interior of the Czech Republic. Available: www. mvcr.cz/mvcren/article/migration.aspx (Accessed: 12.12.2017)

[8] Q&A about immigration in the Czech Republic. *Cicpraha.org.* Available: www.cicpraha.org/en/pro-verejnost/zakladni-informace-o-imigraci-v-cr/otazky-a-odpovedi-o-cizincich-v-cr.html (Accessed: 12.12.2017)

[9] Approach of the Czech Republic to Legal Migration. Ministry of Interior of the Czech Republic. Available: www.mvcr.cz/mvcren/article/migration.aspx?q=Y2hudW09Mw%3d%3d (Accessed: 12.12.2017)

Hungary

Hungary's special migration characteristics are based on its eventful history. The country's geographical location placed itself in the path of important European historical events, and it also plays an important role in Hungary's migration profile nowadays.

As it is known, the birth of the country in the 10th century was mainly due to population movements, and it has also played an important role in Hungary's history since its foundation. During the 13th century, many foreign populations appeared in the Carpathian Basin, so the actual authority had to constantly monitor these movements and they did all it needed to properly regulate them. The Tartar invasion was a major juncture in the country's history, and its negative demographic consequences could only be remedied by centrally managed and instigated settlements.[10] From the 16th century, the present-day Central and Eastern European countries (along with some Western European countries) were parts of the Habsburg Empire. It was basically a single administrative and political entity, and population movements between different areas of the Empire was really typical. Later on, during the period of the Austro–Hungarian Monarchy, migration was also a main point in political circles. Till the end of the 19th century, migration in Hungary was mainly characterized by immigration flows, but between 1880 and World War I, emigration became much more important. People left Hungary mainly for economic reasons during this period. World War I – like in any other country – essentially cut short to immigration and emigration movements. As a result, the Treaty of Trianon made several and serious changes and had serious effects on Hungary's life. According to the Treaty, two-third of the country's territory became part of neighboring countries, while the number of inhabitants decreased by almost half. Hungarians became minorities in their new countries, outside the borders of their homeland. That is why new migratory movements (in some cases, they were forced) took place between 1919 and 1923. During this period, about 200,000 Hungarians resettled in Hungary. Word War II, and the situation afterwards significantly modified the ethnic and migration map in Central Europe.

Shortly after the end of World War II, the borders of Hungary were closed, and the state prohibited every form of migration, so unauthorized departure from Hungary and failure of returning home became a crime. In 1956, as a part or result of the uprising, borders opened for a short time, and in just three months, over 200,000 people left the country, and tried to settle down in Austria and in the United States. During the following decades, emigration was only permitted in exceptional cases. Immigration, on its own, was also limited, mainly within the framework of intergovernmental agreements, family reunification and based on political decisions. Concerning family reunification, false marriages were often made, in order to obtain the corresponding papers. The strictly guarded borders, strict conditions to obtain a visa, and also travel restrictions of this period resulted that Hungary was not even a sending, nor a transit country. This situation changed right after the transition: since the mid-1990s, Hungary has become a second country for inhabitants. Lots of Hungarians tried their luck in other countries and Hungary became a destination country for immigrants

[10] Hautzinger Zoltán (2012): *A külföldiekre vonatkozó magyar jogi szabályozás fejlődése és története.* Budapest, Nemzeti Közszolgálati Egyetem. 20.

mainly from the Eastern neighbours and also a transit country.[11] Regarding the actual situation, it is important to identify that in 2017, one of the most popular reasons for residence was labour migration (42%). As a large number of Hungarians are leaving the country in order to work in another state, certain economic sectors are in need of foreign workers (like health care, manual workers).

According to the Hungarian Central Statistical Office, 350,000 Hungarians have left the country since the Regime Change in 1989. After that, Hungary's EU accession was an influencing factor regarding emigration. The period after the economic crisis was also a push factor for leaving the country: 29,400 Hungarians moved abroad in 2016. The main destination countries are Germany, the United Kingdom, Austria, the Netherlands and Belgium.[12]

Illegal Immigration and Asylum in the V4 Countries

As we have seen above, both immigration and emigration played and are playing an important role in the lives of these countries. In order to cover the entire scale of migration, we must mention the illegal aspect of immigration and also the situation concerning asylum issues. The year 2015 brought a big change to Europe's life: the rise of the migratory pressure and the migration crisis have fundamentally changed the thinking of some countries and the EU.

Among the main migration routes (Eastern Mediterranean, Eastern Borders, Eastern Mediterranean, Western Balkans, Western Africa, Western Mediterranean and Central Mediterranean) for Central Europe, the West and East Balkan routes are the most significant ones which need to be taken into consideration.

The record number of migrants arriving in Greece had a direct knock-on effect on the Western Balkan route, as the people who entered the EU in Greece tried to make their way across the former Yugoslav Republic of Macedonia and Serbia into Hungary and Croatia and then towards Western Europe. This led to unprecedented numbers of migrants seeking to re-enter the EU through Hungary's borders with Serbia. After Hungary completed the construction of a fence on its border with Serbia in September, the flow of migrants shifted to Croatia. Throughout 2015, the region recorded 764,000 detections of illegal border crossings by migrants, a 16-fold rise compared to 2014. The top-ranking nationality was Syrian, followed by Iraqis and Afghans.[13]

As the most recent EMN (European Migration Network) data for Poland is from 2014, while for the other V4 countries the latest document is from 2016, I have also called for another source for the portability of the data.

If we take a look at the number of asylum applications in the V4 countries, the figures show that two of the four countries have felt the migration crisis to a greater extent. In Poland, compared to the previous year, the number of applications for asylum has increased almost by one and a half times, and it has the second largest number for asylum applications

[11] Juhász, Judit (2003): *Hungary: Transit Country Between East and West.* Migration Policy Institute. Available: www.migrationpolicy.org/article/hungary-transit-country-between-east-and-west (Accessed: 12.12.2017)

[12] Migration issues in Hungary. IOM. Available: www.iom.hu/migration-issues-hungary (Accessed: 12.12.2017)

[13] FRONTEX – Western Balkan route. *Frontex.europa.eu.* Available: http://frontex.europa.eu/trends-and-routes/western-balkan-route/ (Accessed: 09.12.2017)

within the V4 countries in 2015 with 12,190, but it is still 0.9% of the total applications handed in the EU-28 (and it is almost 37 times more than the data explored in Slovakia). The number of applications in 2016 was approximately the same in 2015.

Most of the asylum applications were submitted in Hungary in 2015, which means 13.34% of the total number of applications of the EU. It is interesting to see that for example in 2012, the Hungarian authorities had to deal with only 2,155 asylum applications, and in the following years, this number increased gradually, but not even steadily. The number of applications doubled from 2013 to 2014, and it became almost four times more from the year 2014 to 2015, when the migration crisis was at its peak. But next year, in 2016, the number of asylum applications dropped to sixth, due to the restrictions made by the Hungarian Criminal Law, and the construction of the fence along the southern border of Hungary.

Table 1.

Number of asylum applications and first-time applications

Country	2012	2013	2014	2015	2016
EU-28	335,290	431,090	626,960	1,322,825	1,260,910
Hungary	2,155	18,895	42,775	177,135	29,430
Poland	10,750	15,240	8,020	12,190	12,305
Czech Republic	740	695	1,145	1,515	1,475
Slovakia	730	440	330	330	145

Source: Eurostat

Table 2.

Hungary – asylum applications: Top five third-country nationalities

2015			2016		
Nationality	**Number**	**%**	**Nationality**	**Number**	**%**
Syria	64,585	36%	Afghanistan	11,050	38%
Afghanistan	46,230	26%	Syria	4,980	17%
Kosovo	24,445	14%	Pakistan	3,875	13%
Pakistan	15,155	9%	Iraq	3,450	12%
Iraq	9,280	5%	Iran	1,285	4%

Source: Country factsheet – Hungary

Table 3.

Poland – asylum applications: Top five third-country nationalities

2015			2016		
nationality	**number**	**%**	**nationality**	**number**	**%**
Russia	7,870	65%	Russia	8,994	73%
Ukraine	2,295	19%	Ukraine	1,306	10%
Tajikistan	540	5%	Tajikistan	882	7%
Armenia	195	1,5%	Armenia	344	2%
Georgia	390	3%	Georgia	124	1%

Source: Eurostat Data Explorer and Statistics – Poland

Table 4.
The Czech Republic – asylum applications: Top five third-country nationalities

2015			2016		
nationality	**number**	**%**	**nationality**	**number**	**%**
Ukraine	695	46%	Ukraine	505	34%
Syria	135	9%	Iraq	155	10%
Cuba	130	9%	Cuba	85	6%
Vietnam	80	5%	Syria	80	5%
Russia	45	3%	China	70	5%

Source: Country factsheet – the Czech Republic

Table 5.
Slovakia – asylum applications: Top five third-country nationalities

2015			2016		
nationality	**number**	**%**	**nationality**	**number**	**%**
Iraq	170	52%	Ukraine	25	17%
Afghanistan	35	11%	Afghanistan	15	10%
Ukraine	25	8%	Pakistan	15	10%
Unknown	15	5%	Iraq	15	10%
Russia, India, Syria	10	3%	Syria	15	10%

Source: Country factsheet – the Slovak Republic

Regarding the applicants' nationality, the scale shows a diverse picture. While the overwhelming majority of applicants in Poland, the Czech Republic and the Slovak Republic are from Ukraine, in Hungary, they are mainly from Afghanistan, Syria and Pakistan. The reason for this is the location of countries along the migration paths mentioned below.

Effects of Immigration in the V4 Countries from Different Aspects

After reviewing the migration characteristics of each V4 country, we need to examine the concrete and possible impacts of migration on the lives of these countries. These effects are largely dependent of the migration characteristics of the countries. If a country is for example a transit country, it has to face different types of challenges compared to a destination or sending country. The challenges also depend on other issues, like the composition, or nationality of the immigrants, or their intention of stay. For example, if an immigrant legally arrived to the country for study purposes and stays there longer than authorized, he or she becomes a person illegally staying in the country, and this case requires a different type of procedure from the part of the acting authority than a person who enters the country in an illegal way.

In order to make it easier to review the challenges of each security aspect, I will analyze them through the *sectorial security concept* of Barry Buzan. Although, Buzan's theory is more complex and it has several more elements (such as securitization – a process

in which a topic is defined as a security question), for this essay I have chosen to use only this approach. In his book, *People, States and Fear. An Agenda for International Security Studies in the Post-Cold War Era,* he outlined the following main elements of his concept. He denied the primacy of military security, and instead of it, he divided the security into five main sectors which plays an important role: the social, environmental, political, economic and military. These cannot be treated completely separately, because each element has an impact on the other.[14]

Political aspects

Regarding the political sector, the political aspect, we should consider the reigning political system as both a push and pull factor, so it can be the reason of immigration and also for emigration. If it is an incentive to immigration, it probably provides better conditions, and in some of the cases, we can talk about asylum-seekers and refugees. If we examine only the number of asylum applications, even we could say that Hungary used to be an attractive country for asylum seekers. But we must add the fact that the overwhelming part of the applicants, shortly after the applications was filed, left the country towards other destinations, towards other countries – like Germany or Sweden. For this reason, the statement above must be re-evaluated, because Hungary is not a destination, but a transit country.

The aim of the reigning political system in the country should be to create and operate institutions, different norms and rules in order to effectively regulate immigration and migration flows. Managing this is not an easy task since it has to take into account not only the legal order of its own country, but it must also have to respect several international obligations.

The nature of each country's immigration policy is also an important issue. If a society, or a country is open-minded and welcomes refugees and immigrants, and it accentuates this in its communication, it can experience lots of various consequences.

Once the respect of international obligations has already been mentioned, we must notice the case of relocation of asylum-seekers, and its political aspects.

In Central Europe, and especially in the V4 countries, the tone of political discourse has changed significantly. For example, Poland and Hungary do not want to participate in the *quota allocation* system within the framework of the European Union, and they will probably do their best to avoid this.

The European Commission, the EU's executive body is to sue Poland, Hungary and the Czech Republic at the European Court of Justice (ECJ) for refusing to take in asylum seekers. The Commission accused these three countries of *"non-compliance with their legal obligations on relocation",* and it seems it could impose heavy fines. However, the aim of this concept was to relieve pressure on Greece and Italy; the Czech Republic accepted only 12 of the asylum-seekers it had been designated, while Poland and Hungary did not receive any of them.[15] Czech Prime Minister Andrej Babis told that the Czech Republic will

[14] Buzan, Barry (1983): *People, States and Fear. An Agenda for International Security Studies int he Post-Cold War Era.* Colchester, United Kingdom, ECPR Press.

[15] EU to sue Poland, Hungary and Czechs for refusing refugee quotas. *bbc.com.* Available: www.bbc. com/news/world-europe-42270239 (Accessed: 13.12.2017)

continue to oppose the relocation plan, and also mentioned that this quota system had fueled anti-migration sentiments. Poland's Deputy Foreign Minister Konrad Szymanski also said his government was *"ready to defend its position in the court"*.

The course mentioned above shows that the political system (in every V4 country) – even if it faces the EU's policy and risks EU procedures – strictly clings to its quota-adhering opinion and influences the public opinion in this direction, as well. This anti-immigration attitude can influence the functioning and also the future and the stability of the political system in the long term. Regarding for exemple Hungary, we must mention the fact that the so-called poster-campaign had a significant influence on the outcome of parliamentary elections in 2018: Fidesz obtained 49.27% of votes, and has now 133 representatives in the Parliament. This fact is probably partially due to this anti-immigration campaign.

In addition, maybe except Hungary, the reports mention a respectable number of anti-immigration protests and demonstrations, which also shows that there are serious security aspects of immigration (and also emigration). Several hundred-people demonstrated in Prague in 2015 against the reception of refugees and asylum-seekers. The protests later reached their goal, as the Czech Republic came out of the EU-agreement on the reception of asylum-seekers.[16] In 2017, several hundreds of protesters have disrupted the Polish Independence Day events as ultra-nationalists and fascist groups marched Saturday, waving flags and burning flares as they marched down the streets of Warsaw.[17]

A protest held in June 2015 in Bratislava, Slovakia against immigration that led to violence against both bystanders and police officers showed for the first time the surprising power of extremists in Slovakia. Protesters were nourished by mass hysteria and fears of Muslim immigrants arriving in Slovakia.[18] These extremists were trying to group as many radicals as possible around one specific topic. Later, in 2016, for a general shock, this far-right party (People's Party–Our Slovakia) took 8% of the votes of the elections, which is almost three times more than polls had predicted.[19] This could also be a danger to security, as the emergence of extremists can trigger processes that are not conductive for the country or the security of society, and it can put countries into difficult positions. Also, as seen above, people intimidated by these extremist points of views can easily put their votes on far-right and far-left parties which can push a country towards more radicalization.

From the other side, emigration can also influence political security. As for emigration, there are two ways to influence the functioning of a political system. People settled down in developed, democratic countries can essentially influence their issuing country's political life in two ways. On the one hand, after experiencing the good functioning of a democratic,

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[16] Poland defends massive far-right protest that called for a 'White Europe'. *The Washington Post.* Available: www.washingtonpost.com/news/worldviews/wp/2017/11/12/pray-for-an-islamic-holocaust-tens-of-thousands-from-europes-far-right-march-in-poland/?utm_term=.8b14d0612f00 (Accessed: 10.12.2017)

[17] Protesters disrupt Poland independence day events. *CNN.* Available: http://edition.cnn.com/2017/11/12/ europe/poland-warsaw-nationalist-march/index.html (Accessed: 09.12.2017)

[18] Brain drain of Slovakia goes on. *The Slovak Spectator.* Available: https://spectator.sme.sk/c/20065888/ brain-drain-of-slovakia-goes-on.html (Accessed: 05.12.2017)

[19] Slovakia in shock over far-right party's election success. *Reuters.* Available: www.reuters.com/article/us-slovakia-election-rightwing/slovakia-in-shock-over-far-right-partys-election-success-idUSKCN0W80UB (Accessed: 30.11.2017)

stabile state in their host country, they can easily make the decision to settle down there permanently. Because of this, they will no longer participate in their country's elections or referendums, which means that the politically active sector of society will probably decrease. Nota bene, in a lot of countries, like for example Hungary, citizens living abroad can also make their votes even in Hungary in the voting district according to their registered Hungarian residence, or at the embassy or consulate of their country of living.

On the other hand, if, after spending a certain time abroad, they decide to come home, they can make a significant contribution to the political development of their country even through more active participation in local, regional or national politics. In addition, they can also encourage their environment to participate in elections, by voting themselves on the basis of the example seen abroad.

It is clear, that the fact that a political leader who pursues a course of studies abroad is not a guarantee for a good-functioning, stable, democratic system. For the V4 countries this is not a security question, but in some African states, and for example in North Korea, the actual leader continued his studies abroad, and after returning home and coming to power, he started to create or continue to operate a dictatorship.

Economic and social aspects

Regarding the economic impacts of migration, we must also separate the elements related to emigration and immigration. Immigration itself has also a double effect on the lives of the countries. Once we talk about immigration, we must take into consideration its positive and negative elements, which can also have a security aspect. Among these consequences, we must mention the effects experienced on the labour market. The most common fear of the public opinion is that the unemployment of immigrants increases the unemployment among the local population. Moreover, in Hungary, a poster campaign was carried on, one of its main message was: "If you come to Hungary, you cannot take Hungarian people's job." Whether this is the reality or not, it is not the task of this study to judge this, but the fact is that this – as the effect of this campaign – became a real fear in the Hungarian society. It should also be noted that among the arriving persons (asylum-seekers) during the crisis, only a few stayed in Hungarian territory for a longer time, and most of the cases, they did not speak the language, so they could hardly find a job.

Regarding the region, it should also be mentioned that the sectors dealing with labour shortages can benefit from the employment of immigrant labour force: if they have the appropriate qualification for the job (in case of positions requiring a higher qualification), or if they are willing to fill the position despite its underestimated nature, the so-called 3D jobs (dirty, dangerous, demeaning).

In Hungary, there is a special type of residency permit, which is called *residency permit issued on national economic interest.* Third-country nationals (non-EEA nationals) can purchase a State Treasury Bond (Special Hungarian Government Bonds) of EUR 300,000, whereupon they can apply for a special residence permit. This is because the country has an economic interest in attracting wealthy investors – so they can enter and stay in the country. The validity of this residence permit is five years, but it can be extended for another five

years.[20] When making the decision on the bond, several foreign examples were taken into account, such as the Portuguese, Greek, Austrian or British ones.[21]

On the other side, from the point of view of the negative consequences, we must mention the negative outcomes of the *brain-drain* phenomenon. Almost every Central European and V4 country face the challenges of the highly qualified workforce leaving the country. In Hungary, mainly the health sector and the IT sector are concerned, as, in most of the cases, employees do not feel that the level of pay or/and the social esteem is satisfying. With its almost 20 million members all over the world, the Polish diaspora is a significant factor. This is probably why the Polish Government launched a program which aims to reverse brain-drain, and in recent years, it has promised huge public investment into local industries, with an emphasis on tech and innovation. The Digital Poland 2014–2020 strategy is spending 10 billion € from the EU-financed Polish Development Fund. The Start in Poland program will help small and medium-sized enterprises with almost 630 million € into small and medium-sized enterprises and start-ups over the next years.[22]

The number of Slovaks working abroad has been increazing, and according to an estimation, more than 300,000 Slovaks work and 30,000 are studying abroad. During recent years, in addition to the Czech Republic, more Slovaks are working in Germany and Austria. It is however concerning that only a low proportion of them consider returning back to Slovakia. In a survey conducted in 2015, only one quarter of the Slovaks studying abroad plan to live in Slovakia. In case of those working, this proportion is more alarming, only 9%. According to the survey, incentives to return home would be higher wages, order and prosperity, improvement of family situation, and the change of the political situation.[23]

The sector most affected by brain-drain and its consequences in the Czech Republic is the health sector. The head of the Czech Medical Council warned in 2016 that a brain-drain of doctors leaving for Western Europe left hospitals in a desperate situation. In 2015, 1000 doctors graduated in the Czech Republic, and by the end of 2016, 209 had already left the country, while their number in Great Britain is increasing. In order to fix this problem, the Czech Government has no choice but to recruit from abroad, i.e. the further east (which causes problems in those sending states).[24]

The nature of economic mechanisms triggered by immigration depends on the social composition of immigrant groups, their qualifications, their family background, the attitude of the host society, etc. In all countries, and thus in the V4 countries, labour immigration can only be useful if the integration of foreign workers into the society, and the society's

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[20] The Hungarian Investment Immigration Programme. Ministry of Foreign Affairs and Trade. Available: www.mfa.gov.hu/NR/rdonlyres/1A5BB49E-75C4-429D-A6E0-0D3E753838BC/0/ program_overview_EN.pdf (Accessed: 03.12.2017)

[21] Válasz a K/18336. számú írásbeli kérdésre: Melyik nemzetközi gyakorlatra hasonlít leginkább a magyar „Letelepedési Államkötvény" konstrukciója? *Parlament.hu.* Available: www.parlament.hu/ irom40/18336/18336-0001.pdf (Accessed: 03.12.2017)

[22] Shehadi, Sebastian (2016): Poland aims to reverse brain drain. *FDi Markets Intelligence.* Available: www.fdiintelligence.com/Locations/Europe/Poland (Accessed: 05.12.2017)

[23] Brain drain of Slovakia goes on. *The Slovak Spectator.* Available: https://spectator.sme.sk/c/20065888/ brain-drain-of-slovakia-goes-on.html (Accessed: 05.12.2017)

[24] Warnings of 'brain-drain' in the Czech Republic as doctors leave for the UK and Germany. *Telegraph.* Available: www.telegraph.co.uk/news/worldnews/europe/czechrepublic/12196147/Warnings-of-brain-drain-in-Czech-Republic-as-doctors-leave-for-UK-and-Germany.html (Accessed: 07.12.2017)

labour market is successful. Returning to the previously mentioned *3D jobs,* we must note that – according to a research realized in 2013 – the high-skilled workers of the host country can benefit from the arriving of the low-skilled workers, because by the decrease of their relative proportion, their significance is growing.[25]

Statistical findings for the year 2016 published by Eurostat show the employment rates of native and foreign-born population. As we can see, the employment rates for native-born are usualy higher than for foreign-born people, and it is corresponding to the EU-average. However, Hungary is one of the 6 countries in the EU (along with Italy, Luxemburg, Malta, Portugal and the United Kingdom) where employment rates among the foreign-born population was higher in 2016 than among the native-born citizens. Among the foreign-bon population, there is a difference between EU and non-EU born citizens: the employment rate of non-EU-born are lower than those born on the territory of the EU. It is interesting to see that employment rates for non-EU-born citizens are higher in Poland, in the Czech Republic and in Slovakia (and, in addition in Slovenia, too) than the data for EU-born people. This rate is however below the EU-average in every V4 country, so we can say the integration of the non-EU citizens into the labour market – according to these data – exceeds the EU-average.[26]

Table 6.
Employment rates of native and foreign-born citizens, 2016

State	Native-born (%)	Foreign-born (%)	of which	
			EU-born (%)	non-EU-born (%)
EU-28	71.8	66	72.6	61.2
Hungary	71.4	75	78.3	68.4
Poland	69.3	65.9	64.8	66.3
Czech Republic	76.8	75.9	74.2	78.3
Slovakia	69.8	65.3	63.6	68.4

Source: Eurostat

Also, a country or society can be dismissive about immigrants because of fears concerning public safety. In almost all European countries this issue was raised right after the migration crisis in 2015, and in connection with the planned quota system. It is obvious that an unusual number of foreign people will raise the awareness of the hosting society, but we must be careful about whether this fear is well founded or not. The V4 countries refusing to accept asylum-seekers and conduct their procedures have at least one reason in common. They are afraid of the raising number of crimes committed by these hosted citizens. They care not only about the crimes against public order, but the fear of terrorism is also an important concern. The North European terror attacks further increase the countries' fear of immigrants: for example, in Slovakia, which – according to the latest statistical findings – is hardly a destination to asylum-seekers, the actual political leadership is playing on fears

[25] Collier, Paul (2013): *Exodus. How migration is changing our world.* Oxford, Oxford University Press.
[26] Eurostat – employment rates for native and foreign-born citizens, 2016. *Eurostat.* Available: http://ec.europa.eu/eurostat/statistics-explained/index.php/Migrant_integration_statistics_%E2%80%93_ labour_market_indicators (Accessed: 01.12.2017)

fueled by the Paris terrorist and sexual assaults in Cologne by gangs of men that included asylum-seekers.[27]

This is the reason for Poland for not accepting any single asylum-seeker. According to Jaroslaw Kaczynsky, *"after recent events connected with acts of terror, Poland will not accept refugees because there is no mechanism to ensure security"*.[28]

Summary

Both immigration and emigration have positive and negative effects on a country's, or a society's life and functioning. As seen above, the V4 countries are in a special position in Europe concerning migration, because of their history, geographic position, and the composition of migrants. The main security aspects of immigration can be discovered in the political, social and economic field. We cannot make a difference between these areas and impacts, since all of them affects security – even if in different ways.

Taking a look at the political aspect, we can summarize that immigration is a much bigger influencing factor than emigration, but the situation is actually perhaps under change, because governments are beginning to realize the risks of emigration (with special regard to the demographic and age composition and the labour market). However, immigration is actually one of the biggest concerns in international and national politics.

From a political point of view, the functioning and the dynamism of the political system is important and can include a security aspect: mainly the arriving of asylum seekers and the number and situation of refugees can have an influence on it. But emigration itself is also a potential source of insecurity: by the leaving young population, the countries' demography and labour market will presumably experience some negative changes in this case.

Also, migration has an economic and social aspect too, as it is in a close contact with society and economy. Questions related to the employment, the economic utility, the integration of immigrants are in the center of interest in each culture. Therefore, immigration always has security aspects which need to be taken into consideration.

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Good and strong governance must be built on up-to-date scientific knowledge and college or university education. This research, whose local research centre is at the National University of Public Service, Faculty of Law Enforcement, Department of Immigration and Nationality, focusing on migration dynamics as well as the social impacts in the background of migration and related public responsibilities properly meets these requirements.

The clearly defined objective of this research is to develop migration administration together with making recommendations that are directly connected to supporting the migration-related (administrative matters related to aliens as well as asylum policies) tasks of public service and public administration in accordance with the international and European Union requirements. The research in the above-indicated subject stems from the preliminary hypothesis that migration, considering its current trend and dynamics, is an evolving phenomenon affecting individual states, societies and the development of migration-related regulations. Both desirable and undesirable manifestations of human migration simultaneously represent challenges for the countries of origin, as well as for the transit and host countries.

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