

THE CHALLENGES OF MIGRATION AND CRITICAL ISSUES

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Abstract. *This article presents a framework of issues of Migration. Migration is a highly charged and contested issue in most destination States. The analysis of current trends in migration leads to the conclusion that this issue will increase in the near future. It means that more people will decide to change their place of living, and every country will become a source or final destination of migration. Migration processes taking place within state borders. Control of national borders is seen as an essential aspect of the sovereign State. States adopt increasingly restrictive rules, same times fuelled by popular hostility to immigrants. The main task, by using content analysis method is to show, that law enforcement officials: the police officials, border officials must constantly monitor the migration process in the context of globalization, analyse the findings and adapt their daily work.*

Keywords: *law and migration processes, border guard, human rights, globalization.*

Introduction

International migrations accompanied humankind from the past, therefore in the different periods of time the issue had a variable intensity.

Immigration to Europe, in one form or another, is a reality and will continue to be so in the future. There are different reasons why people move to the EU. Some come for studies or research, some come for work and some to join their families already living in the EU. Simultaneously, an increasing number of global crises, both man-made and natural, have prompted people to leave their country of origin.

One of the downsides of immigration is that it sometimes happens irregularly. People might arrive legally on a short-stay visa and then overstay. Some might enter and stay in an EU Member State without authorization, sometimes against their will. Human trafficking networks and smugglers can easily exploit undocumented persons. The black labor market also attracts irregular immigration. Irregular immigration in all its forms must be tackled to protect the most vulnerable and to maintain public confidence in immigration policies. In an EU of 28 Member States, where passport controls have been abolished and where people can move freely, migration cannot be managed by one country alone. It is essential that EU Member States cooperate to better manage migration". (Europe 2020: Europe's growth strategy. 2013, Brussels).

The aim of this article is to conduct the theoretical analysis of migration dynamic in the context of globalization, overview of the critical issues related to the migration process, and suggests additional tools to improve the performance of law enforcement common activity.

Methodology of the Research: in order to answer the problem of the subject, the article used to study the methods analogy, analytical, systematic methods, critical, analyses of scientific literature, systematic analysis, statistical analysis, comparative, source content analysis, meta-analysis. The basic method – the study the scientific references, it is a collection of data from the scientific references, International and EU law, official data of IOM, Eurostat, FRONTEX and etc.

Migration in the Context of Globalization

The “Migration to Europe is a longstanding phenomenon”. To seize the opportunities and confront the challenges engendered by this kind of international mobility, the European Union is developing a common approach to migration. Likewise, the EU has developed a common European asylum system to protect those seeking refuge in Europe from persecution or risk of serious harm in their home country. Work in these policy areas also involves closer dialogue and cooperation with non-EU countries.

Globalization, together with more accessible means of transport, has significantly improved the opportunities for mobility.

Globalization is the process of international integration arising from the interchange of world views, products, ideas and other aspects of culture. At the same time the phenomenon of globalization, associated to the freedom of people and goods movement, led to the establishment of priorities for safety, including the need to produce policies, able to unite all the concerns inherent to that phenomena. In this context, we are experiencing one of the deepest pits of modernizing society, materialized through a gradual transformation of our lives that, even the most prepared only have a small glimpse portion. It's not enough to point out that we live in an age of change. It is essential to understand their different dimensions and fit them to the level of effects produced in different human activities and especially to be able to prepare timely responses to different scenarios of evolution, since the systemic character of the time we live in, highly boosted by globalization in different areas brings a very diverse set of alternatives of action against an also diverse scenario of occurrences. (Marenin, Akgul, 2010).

We live in a world of uncertainties in which the probability of risk raises social security concerns to one of this social in a time of profound transition and makes this dynamic produce a very deep impact on the life and behaviour of citizens. The challenge that arises here is clear and is aligned with the nuclear challenge of modern societies that implies to transform our time an era of launching progress, knowing immediately that

progress has always been and will be powered by change and prosperity results from the feeling that each one has objective conditions to materialize a large majority of its more realistic expectations thus giving meaning to the development of societies.

We are naturally the generation of change that is distinguished from the others because it faces and breaks out higher levels of relational complexity in producing changes emphasized by the very cumulative dynamics they contain. We live in a world where self-interest is increasingly dependent on the confluence of collective interests, situation that will produce a constant social concern (real or perceived). (Seniutienė, Oliveira, Goncales, 2013).

The biggest challenge for the knowledge society is to learn to face instability, insecurity and political and social risks arising from them. (Seniutienė, Oliveira, Goncales, 2014/2015).

Migration in the aspect of security from the border guard perspective

“Migration is a human phenomenon. It is not a problem, nor is it a criminal activity. It is as old humanity. Our ancestors moved in search of food and water, hunting and grazing lands and also out of sheer curiosity. Populations movements in history have been both forced and voluntary as people moved in search of opportunity and also in search of protection. Wars and environmental disasters compelled people to move, as did poverty, lack of economic prospects, settlement in colonial territories, and the desire to unite with family members abroad.” (FRONTEX, 2013).

“Immigration to Europe, in one form or another, is a reality and will continue to be so in the future. Globalization, together with more accessible means of transport, has significantly improved the opportunities for mobility. There are different reasons why people move to the EU. Some come for studies or research, some come for work and some to join their families already living in the EU. Simultaneously, an increasing number of global crises, both man-made and natural, have prompted people to leave their country of origin. Of the approximately 500 million people living in the EU, around 20 million are citizens of non-EU countries.” (Eurostat, 2013).

“A total of 3.4 million people immigrated to one of the EU-28 Member States during 2013, while at least 2.8 million emigrants were reported to have left an EU Member State. These total figures do not represent the migration flows to/from the EU as a whole, since they also include flows between different EU Member States. Among these 3.4 million immigrants during 2013 there were an estimated 1.4 million citizens of non-member countries, 1.2 million people with citizenship of a different EU Member State from the one to which they immigrated, around 830 thousand people who migrated to an EU Member State of which they had the citizenship (for example returning

nationals or nationals born abroad), and around 6.1 thousand stateless people. During 2013, there were an estimated 1.7 million immigrants to the EU-28 from non-member countries. In addition, 1.7 million people previously residing in one EU Member State migrated to another Member State. “

“Migration is considered to be one of the defining global issues of the early 21st century, as more and more people are on the move today than at any other point in human history.

Migrants constituted 3,1 % of the world’s population in 2012”. In other words, one out of every 33 persons in the world today is a migrant (whereas in 2000, one out of every 35 persons was a migrant). Migration is now more widely distributed across more countries. Today, the top 10 countries of destination receive a smaller share of all migrants than at 2000. (FRONTEX, 2013).

Global population growth differs between developed and developing countries. Demographic changes affect international migration in two ways: rapid population growth combined with economic difficulties push people to move out of their habitat, and a declining and ageing population pressures countries to accept migrants.

Sustained low fertility in developed countries produces a rapidly ageing population. The ‘smaller and older’ population projected for developed countries over the next 50 years may enhance possibilities for greater mobility of people, in part as the demand for care workers increases.

Migration is difficult to manage without a policy structure established to guide managers. Yet even countries that do have a coherent migration policy backed by legislation often experience serious difficulties in managing migration.

The large-scale movements have not ceased, and irregular migration has become one of the major issues of our time. Migrant smuggling now matches drug trafficking as a major source of income for organised crime. Trafficking in human beings is a significant worldwide concern. Migration has moved up the scale of important issues facing the countries of the developed world to the top of the policy agenda of the G8 countries.

With today’s transportation and telecommunications, more people are able to move. The poor and disadvantaged can now watch live the wide disparity between their standard of living and that of the richer people in the world. They need to provide for their families and understandably seek work to escape poverty. The demand for lower skilled labour is high in many developed countries, which creates pull factors for migrants. (WORLD MIGRATION REPORT, 2015).

When people cross their country’s border, they might not know it yet, but the world no longer sees them as it did before. They have a special label or status now: they are migrants. And because of this, they will often find

themselves in an inferior position to those around them, who hold the passport of the country in which they live.

Whatever the circumstances in which they travel, those who become migrants typically move in a new, unfamiliar, and less secure world. Whether they have entered with an authorisation or they are undocumented, migrants will generally find their rights diminished in comparison with the citizens of their country of residence. The degree to which those rights are violated, and the degree to which migrants are excluded from legal protection or redress, varies widely from jurisdiction to jurisdiction. A “legal” migrant may face workplace violence or sub-standard working conditions and a lack of labour rights protection and be fearful of claiming legal protection because a supervisor threatens dismissal and subsequent loss of a work permit. A refugee may become caught in the complex, long, and often arbitrary maze of a refugee qualification procedure, during which rights are curtailed and the applicant is suspended in a legal limbo without identity. Most vulnerable will be the undocumented migrant. People finding themselves in this situation, while having a nominal entitlement to their human rights, effectively lack, because of their fear of being identified and deported, any opportunity to vindicate those rights, or to access the remedies which should protect them. They risk exposure to economic or physical exploitation, to destitution, and to summary return to their country of origin, where some may face danger to their safety or even to their life. (Migration and International Human Rights Law (2011)).

There is, as will be described, a multitude of reasons to migrate. For irregular migrants however, who enter a country in an undocumented fashion or stay there after expiration of a permit, an almost constant factor is that the motivation not to be sent back to their country of origin is so strong that they are prepared to accept many hardships and denials of rights. Whether someone migrates to escape war, famine, persecution, natural catastrophes, economic depression, or just to find a better chance for a better life, the person often finds the insecurity, restrictions and sometimes destitution of their situation in the country of destination preferable to that at home. Many have no choice but to leave. Those with some limited choice are prepared to risk losing their rights, for a fighting chance of thereafter gaining them. This is the human condition that migration policies and laws struggle with, manage and sometimes exploit. (GMG, 2011).

National political debates on migration or migrants can be a flashpoint for political and social anxieties about security, national identity, social change and economic uncertainty. These political battles are also manifested in national law, which sets the framework within which migrants’ human rights are threatened. States adopt increasingly restrictive rules, often fuelled by popular hostility to immigrants. Such policies and laws, restricting legal

migration, often have the effect of increasing the proportion of undocumented migrants, whose vulnerability to exploitation and abuse is acute. There are therefore essential interests at stake for both the individual and the State.

Human rights, as they are guaranteed in both national and international law, have an essential role in protecting migrants caught up in these powerful forces. The Global Migration Group recently recalled that the “fundamental rights of all persons, regardless of their migration status, include: the right to life, liberty and security of the person and to be free from arbitrary arrest or detention, and the right to seek and enjoy asylum from persecution; the right to be free from discrimination based on race, sex, language, religion, national or social origin, or other status; the right to be protected from abuse and exploitation, to be free from slavery, and from involuntary servitude, and to be free from torture and from cruel, inhuman or degrading treatment or punishment; the right to a fair trial and to legal redress; the right to protection of economic, social and cultural rights, including the right to health, an adequate standard of living, social security, adequate housing, education, and just and favorable conditions of work; and other human rights as guaranteed by the international human rights instruments to which the State is party and by customary international law.” (Migration and International Human Rights Law (2011)).

These rights are human rights to which all persons, without exception, are entitled. Persons do not acquire them because they are citizens, workers, or on the basis of a particular status. No-one may be deprived of their human rights because they have entered or remained in a country in contravention of the domestic immigration rules, just as no-one may be deprived of them because they look like or are “foreigners”, children, women, or do not speak the local language. This principle, the universality of human rights, is a particularly valuable one for migrants. (Migration and International Human Rights Law (2011)).

The reality, however, is that rights are illusory if there is no way to claim their implementation. A national legal system that can provide effective access to justice and remedies for violations of human rights is therefore essential. The whole apparatus of legal standards, lawyers, judges, prosecutors, legal practitioners and activists must operate effectively to provide migrants with legal remedies for violations of their human rights.

Migrants generally – and undocumented migrants especially – do not have easy, if any, access to an effective legal remedy for redressing human rights violations. Most of the time, national legislation will not provide them with a remedy, or will create many obstacles to its access, such as the threat of an automatic expulsion or deportation once the migrant contacts the authorities. In this world, migrants have rights, but no or little way to make use of them or ask for their respect. They are legally voiceless. (GMG, 2011).

International law – and, in particular, international human rights law and international refugee law – may provide an, albeit incomplete, answer to the problem. States' legal systems are becoming increasingly open to the influence of international law. In many countries it is now possible to invoke, in one way or another, international law in domestic courts in order to claim the respect and implementation of human rights, including for migrants. Even in countries where that is not possible, or when the international human rights law claim has failed in the national system, if the country is a party to an international or regional human rights treaty, it is often possible to challenge the State at the international level for its failure to do so. International law can be a powerful tool for change: either for the actual situation of the individual migrant, through redress in domestic courts, or for the advancement of policy or laws that can ameliorate migrants' situation, through claims before international mechanisms. (Migration and International Human Rights Law (2011)).

Border officials have the positive responsibility to process every migrant going through a crossing or entry point. This task requires the border guard to be able to communicate effectively with a wide variety of people, to be familiar with the legal framework involved in this task, and to know the type of assistance people may require and be entitled to and how to proceed. Under international law, border guards have the duty to recognise and respond in a protection-sensitive and rights-based approach to persons who present themselves at the border and who may wish and / or need to seek international protection. In addition, border officials have the responsibility to identify persons with other protection needs (i.e. trafficked persons) and take immediate action in that regard. To this end, it is essential that they build links with national referral institutions, that they know their mandates well and that they have their coordinates at hand". (FRONTEX, 2013).

Conclusions

European countries have been engaged in the creation of common policies on justice and home affairs, pressed by the need for intergovernmental coordination in fighting organized crime, irregular migration, full exploitation of legal migration channels, drug traffic, human traffic, minor's sexual exploitation, child pornography, terrorism, gun's traffic, economic and cybercrime, among others. However, despite a clear commitment by all Member States to move towards common standards in these areas, European countries still have different approaches to cultural and immigration issues, mainly due to national laws.

European countries are faced with the pressure of increased levels of immigration, which are unlikely to diminish in the near future. To be able to

continue offering protection to those people fleeing armed conflict in the future as well, European countries have to take joint action.

Migration is a human phenomenon. It is not a problem, nor is it a criminal activity. However, there is a direct relationship between immigration and insecurity. Crime has no ethnic, national, cultural or religious origin. However, freedom of movement also benefit crime, imposing compensatory measures in terms of safety, i.e., external border control and police and judicial cooperation. Safety is a condition of Freedom, is a basic right for every citizen.

What the future will bring as regards law enforcement authorities' cooperation is difficult to predict. Given that globalization is more likely to increase overall in many areas rather than decrease, there is every reason to assume that the globalization of law enforcement authorities' cooperation will also continue. This will in the first instance involve the expansion and refinement of the existing types of cooperation. This is because the EU Treaty's offers opportunities to organize law enforcement authorities' cooperation not only from a more operation point of view than at present but also to make it mandatory for the Member States.

For lawyers, judges, public officials, human rights defenders, or for migrants themselves, to better understand the international human rights of migrants and the means to claim their respect or implementation at the national and international levels need to have common Guide.

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