
Pandemic overview: Migration problems in the European Union

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ABSTRACT

Migration is a complex demographic, geographic, social, and economic process closely related to the natural movement of the population due to religious, ethnic, political, military, economic, or other reasons. Its complex nature characterizes this process, and the problems associated with it are multilayered and difficult to solve. The following article covers legal and illegal residence issues, respectively legal and illegal migration, international protection, trafficking in human beings, highly skilled employment, human rights, and other related problems. An even bigger problem is created due to the COVID-19 pandemic, which invariably affects the migration flows and movements and the emergence of new types of legal issues and difficulties. The effect of the pandemic of each problem is reviewed and observed through the prism of the pandemic, the new COVID reality, and the adopted measures in that direction.

1. Introduction

The definition of "migration" has Latin origins (L. Migro, pp. -Atus, moves from place to place). The essence of migration is defined as a complex demographic, geographical, social, and economic process closely related to the natural movement of the population and its territorial distribution and redistribution as a result of movement and border crossing to change residence or place of work.¹ Migration

movements are related to religious, ethnic, political, military, economic, or other aspects.

It is essential to look at EU migration policy in two aspects. First, as a manifestation of the fundamental rights and freedoms regulated and protected in the EU legislation, respectively incorporated in the national laws of the individual Member States. What rights and freedoms have in common is that they affect every individual and cannot be taken away completely, but they can be restricted in different cases. The second central aspect is the regulation of the basic principles on the issues of movement, migration processes, integration,

¹ Симова, Т., „Мобилността и миграцията на работната сила – законодателен преглед и нормативна оценка”/ Simova, T., “Labor Mobility and Migration - Legislative Review and Regulatory Assessment”, 2016

protection, and asylum. The basis of the EU immigration policy is based on Art. 78, Art. 79 and Art. Eighty of the Treaty on the Functioning of the European Union (TFEU), and its main objective is to establish a balanced approach to legal and illegal migration. However, emergencies should be managed by the adoption of emergency measures. After the spread of COVID 19, institutions should quickly learn to adapt and be ready to take action daily, if necessary.

Taking into consideration that the EU's general power can be divided mainly into three more specific situations, all those power need to be adapted to the new reality. The first concerns legal migration, in which the EU has the competence to determine the conditions for entry, residence, and exit of third-country nationals, including the entry and the residence in the Member State. The grounds for the legal residence shall be laid down in the laws, regulations, and administrative provisions of the Member States concerned, and the percentage of persons admitted to their territory.² In that direction, a lot of measures have been adopted by the EU as a whole and by the different Member States in their national legislation.

The second aspect is related to the integration that should be promoted; respectively, the individual Member States should be encouraged by the Union. The EU may propose measures to facilitate the integration of legally residing third-country nationals.

² The grounds can be different depending on whether the stay is short-term, prolonged / long-term or permanent. The main prerequisites for obtaining a residence permit are related to employment, investment, commercial representation and family reunification (the list is not exhaustive).

Promotion is provided through assistance in the actions taken by the individual Member States.³

Next, the adoption of an effective policy to combat illegal migration is essential. The aim is to reduce it and prevent it, but with full respect for fundamental human rights. As "illegal migration," we can assume the lack of grounds for residence or the elimination of existing ground, i.e., failure to meet the conditions for entry, presence, or residence in any of the Member States. In connection with the above, the EU has another power: to conclude readmission agreements with third countries. The readmission is in the country of origin or transit of third-country nationals.

The general principles of the EU migration policy are set out in Art. 79 and 80 TFEU. The approach must be balanced, which means that there must be synchronicity in actions on legal migration and the fight against illegal immigration. Proper management of migration flows implies ensuring fair treatment of third-country nationals residing legally in the Member States. The EU aims to harmonize the rights and obligations of legal immigrants, comparable to those of EU citizens. This is clear from paragraph 1 of Art. 79 TFEU: "The Union shall develop a common immigration policy aimed at ensuring, at all stages, the effective management of migratory flows, the fair treatment of third-country nationals residing legally in the Member States and the prevention of illegal immigration and

³ However, there are no explicit provisions on the harmonization of the individual laws of the Member States of the Union.

trafficking in human beings. Intensified fight against these phenomena ”.

Migration problems are increasing when the world was disrupted in 2020. The spread of COVID-19 in Europe leads to emergency measures to address the situation and overcome the consequences.

2. Specific legal issues during a pandemic

2.1. Illegal migration

In an attempt to find the reasons for the existence of illegal migration, we can reveal very deep problems. Illegal entrants and residents are looking for a faster way to reach countries, skipping the many long and difficult procedures, the wait associated with them, and the possibility of being denied access to a particular country. On the other hand, poor conditions, unemployment, lack of good education, health care, and the lack of all other aspects necessary to lead a normal life make people look for ways to escape and use all possible means to do so. In other cases, illegal migration is caused by other phenomena such as wars and armed conflicts, ethnic tensions, systematic human rights violations, and the inability to practice a religion or natural disasters.

The EU has adopted two main pieces of legislation to combat illegal migration: the Directive on the Return of Illegal Immigrants, 2008/115 /EC, which sets common EU standards and procedures for the return of illegally staying third-country nationals. The main areas for further action include ensuring adequate implementation, promoting consistent practices that are compatible with the main

rights, improving cooperation between the Member States, and strengthening the role of Frontex. Ensuring effective return is precisely one of the main tasks of the teams supporting the national authorities in Italy and Greece. On 9 September 2015, the Commission also published a European Union action plan on return, which was approved in October of that year.

In this context, closer cooperation is sought between the relevant EU agencies (The relevant agencies are FRONTEX, EUROPOL, EUROJUST, the European Police College, the European Asylum Support Office, the Fundamental Rights Agency and the European Institute for Gender Equality), which will allow a better exchange of information on migration and organized crime. Member States and the Commission are required to commit to tackling the structural causes of migration through a comprehensive, policy-based approach to development policies that provides policy space so that developing countries can support their sustainable development needs, which is a way to reduce illegal migration by ensuring a decent income, peace, and democracy for the population.

In 2017, Regulation 2017/458 of the European Parliament and of the Council amending the Schengen Borders Code was adopted, which enters into force for the Republic of Bulgaria on 07.04.2017. The legislator considers that conducting checks at the external borders remains one of the primary measures to protect the area without border control at internal borders and contributes significantly to ensuring the long-term security of the Union

and its citizens. The Regulation introduces systematic mandatory checks on persons moving freely at internal borders, which increases waiting times and is likely to lead to crossing difficulties and queues. The obligation to carry out systematic checks at entry and exit applies to the Member States' external borders and the internal borders of the Member States. These are countries for which the verification following the applicable Schengen evaluation procedures has been completed, but the decision to cancel the border checks has not yet been taken.

Considering the danger due to the COVID 19 pandemic, it is essential to note that all those adopted measures won't be sufficient to protect the countries.

It was undoubtedly stated that when carrying out return actions and procedures, the competent authorities in Member States must consider the national health protection measures aimed at preventing and containing the spread of COVID-19 and applying them in a proportionate and non-discriminatory manner to all illegally staying third-country nationals. Particular attention should be paid to the situation and needs of vulnerable people. The specific position in the third country with regard to the national health protection measures and the impact of COVID-19 should also be taken into account.⁴

Also, as a positive measure in that direction could be stated that the Commission encourages Member States not to consider as

illegal stay in the EU the periods of stay of third-country nationals in a Member State caused by COVID-related measures.⁵

2.2. Counteractions to human trafficking

The exploitation of illegal migration not only puts immigrants' lives at significant risk but is often linked to the most severe human rights violations, including slave labor, sexual exploitation, child abuse, and gender-based violence. EU actions to prevent such violations and to protect immigrants must be particularly effective.⁶

EU policy on trafficking in human beings takes a holistic approach: prosecution of criminals and protection of victims. This integrated idea is in line with the approach to human rights and victims, taking into account the perspective of gender equality. The aim is to prevent this crime and to give people who have been subjected to similar conditions to slavery the opportunity to recover and reintegrate into society.⁷

Factors that support the existence of human trafficking are related to the poverty and weak economy of individual countries or regions. Also, there is a complete lack of awareness

⁴ Communication from the Commission COVID-19: Guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement 2020/C 126/02

⁵ Report from 26.05.2020, available at: https://ec.europa.eu/home-affairs/news/20200529_commission-encourages-member-states-not-consider-illegal-stay-eu-third-country-nationals-member-state-caused-covid-related-measures_en

⁶ Report on migration flows related to instability: scope and role of EU foreign policy; (2010/2269 (IND)), examined on 22.03.2011

⁷ "The Global Approach to Migration and Mobility" - COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE / 07 COMMITTEE / 2011 COMMITTEE AND COMMITTEE

among people at risk.⁸ They are characterized by a low level of education, life experience, and a clear view of the problems. The main methods of engaging in trafficking continue to be job offers, education abroad for young people, marriage vows.

There have been positive changes in the legislation in recent years. There is also a positive trend in the number of convicted persons compared to the number of accused. However, challenges in the fight against human trafficking remain. Such are the lack of public awareness and ignorance of the risk of trafficking, the identification of victims, the protection of children, especially those who become victims of re-trafficking. A significant problem is still the gaining of the trust of the victims by the institutions for testifying against the traffickers, in order to be able to conduct adequate investigations and pass sentences appropriate to the gravity of the committed act. In the previous few months, everyone's attention is focused on the spread of the coronavirus and overcoming the consequences. Thus, the problems described above being slightly ignored. Policies aimed at combating illegal migration, in particular trafficking in human beings, should be stepped up. To accelerate development, action plans need to be developed to prevent this phenomenon and to build on existing mechanisms.

Particular attention should be paid to cooperation between the Member States and communication between them by sharing

information. Procedures for detecting, prosecuting, and disclosing data on groups and networks operating illegally and facilitating human trafficking in different countries need improvement.

The administrative capacity of staff directly involved in these procedures should also be strengthened to facilitate the whole process. Consideration should also be given to increasing the collection of information on countries of origin and strengthening the proactive role of diplomatic and consular services in providing information on the situation in the countries concerned.

2.3. Granting asylum

International protection is mainly in the provision of asylum. It is given to people who are fleeing persecution or severe encroachment on their own country. Asylum is an international obligation first recognized in the 1951 Geneva Convention for the Protection of Refugees. As the Member States share the same core values based on open borders and freedom of movement, they must have a common approach to ensure high standards of refugee protection. At the same time, procedures must be accurate, transparent, fair, and effective throughout the EU, with no abuse. Because of these considerations, EU countries have committed themselves to establish a Common European Asylum System (CEAS). Since 1999, the EU has been working to establish the CEAS and to improve the current legislation. The European Asylum Support Office is a regulatory agency - an independent European body that will work closely with

⁸ The most vulnerable groups are young women between the ages of 18 and 30, underage girls and unaccompanied minors and foreigners, men and women of active age for labor exploitation..

national asylum authorities, the European Commission and the UN High Commissioner for Refugees.

The framework for asylum policy and protection capacity in non-EU countries needs to be strengthened. This can be achieved through more active cooperation with non-EU countries, *inter alia* in the framework of regional protection programs (RPPs). The already existing protection program in North Africa, covering Egypt, Tunisia and Libya, is a notable example in this regard. However, regional protection programs need to be continuously improved, as the global situation is constantly changing and this would be necessary for the programs to be fully exploited. This translates into strengthening existing RAPs and proposals and adopting new, additional RAPs. PPPs should continue to focus on capacity building and asylum systems in partner countries and regions.

In addition to relocating people who are already in the EU, the EU is partly responsible for helping displaced people who are clearly in need of international protection. This is a shared responsibility of the international community, with the UN High Commissioner for Refugees (UNHCR) tasked with determining when people cannot remain safe in their own country. UNHCR supports the target of 20,000 resettlement sites per year in the EU by 2020.⁹

⁹ A 2012 campaign by a total of six organizations (the International Organization for Migration (IOM) and five NGOs: Amnesty International, the Commission of the Churches for Migrants in Europe, the European Council on Refugees and Exiles, the International Catholic Commission on Migration and Save me, all those working in the field of refugee protection) to resettle 20,000 people annually by 2020.

At the beginning of 2020, the problems with the spread of coronavirus shifted the focus to the introduction of international protection in the conditions of restrictions and states of emergency. Measures are needed to increase the level and capacity of the administrations, to provide translators and experts, to improve the control over the reception and accommodation of persons. The procedures are difficult in general and also long, full of gaps and omissions, which slows down the process and discourages seeking protection and applying.

On 16 April, the European Commission presented guidance on the implementation of EU rules on asylum, return procedures, and resettlement. The practical advice illustrates how to ensure the continuity of procedures while fully ensuring the protection of people's health and fundamental rights in line with the EU Charter of Fundamental Rights. Reception buildings and centers and preliminary assessments near all internal and external borders will be even more difficult to implement with a view to the new requirements for health and security protection. Measures should be taken to limit social interactions among asylum personnel and applicants, quarantine and isolation measures must be proportionate, reasonable, and non-discriminatory, and the current flexibility provided by the EU rules should be used.

The outbreak of the coronavirus has led to disruptions of resettlement and return operations but preparatory activities should continue so that resettlement operations can smoothly resume. Voluntary returns should be prioritised as they present a lower health and

safety risk. Close cooperation with third countries on the identification, documentation and return of their nationals should be maintained.

2.4. Legal immigration and integration of persons from third countries

Following the difficulties encountered in adopting a common provision covering all labor immigration in the EU, the current approach is to adopt sectoral legislation. It is characterized by the fact that different legislative approaches are applied to the different categories of migrants and a diverse legal framework related to the matter is created. We will look at the two main aspect of the topic, namely grounds and procedures for legal immigration.

Numerous EU and EC Directives have been adopted in order to fully improve legal migration. Directive 2009/50 / EC lays down the conditions of entry and residence of third-country nationals for highly qualified employees and introduces the so-called EU Blue Card. The EU Blue Card Directive is the EU's first direct response to the shortage of highly skilled workers. A fast-track procedure marks this novelty for issuing particular residence and work permits under more attractive conditions for third-country workers in high-skilled employment in the Member States. The requirements for obtaining a "blue card" are many and challenges that both immigrants and individual countries must face. The first report on the implementation of that directive was published in May 2014, after which the Commission proposed a revision of

the regime, which seems to work only in a limited number of Member States.

Another significant achievement is the Directive (2011/98 / EU)¹⁰. It sets out a simplified procedure for third-country nationals applying for a residence and work permit in a Member State, as well as a common set of rights to be granted to illegal immigrants. For the Republic of Bulgaria, it has been in force since 24.12.2013, and the amendments to the Law on Foreigners in the Republic of Bulgaria and the Law on Employment Promotion regarding the introduction of the so-called A single residence and work permit was available.

The conditions of entry and residence of third-country nationals for the purpose of finding work as seasonal workers are governed by Directive 2014/36 / EU, adopted in February 2014. Seasonal immigrant workers have the right of legal temporary residence in the Union for a maximum period of five to nine months (depending on the Member State) to carry out seasonal activities while retaining their principal place of residence in a third country. The directive also clarifies the set of rights granted to immigrant workers.

In practice, due to the economic crisis and unemployment levels, the labor markets of European countries are facing labor shortages and job vacancies. These vacancies cannot be filled by the local workforce in some sectors, such as health, science and technology, computer science and programming. Due to

¹⁰ Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State

the rapid aging of the population in Europe, the ratio between people of working age (20-64) and people aged 65 and over is expected to double over the next fifty years. All indicators show that some of the additional and specific skills in the future will probably only be available outside the EU.¹¹

Contacts between people through education and training, trade and business, cultural exchange, tourism or visits by family members abroad are an important part of the modern world. Good governance of migration and mobility of third-country nationals can bring daily development benefits to millions of people, increase the EU's competitiveness and enrich European societies.

Due to the fact that the pandemic affected all parts of the society, the residents from third countries are also facing problems. In order to be assisted and facilitated in the procedures for obtaining a residence permit, most of the Member States adopted national measures that helped all the third-country residents. Nevertheless, in mid-April 2020, the Member states agreed to allow the cross-border movement of workers in critical sectors and to allow all EU citizens to travel home. Finally, a coordinated global repatriation programme for almost 600,000 European citizens was completed in mid-April. Ten percent of the costs involved¹² were financed directly through the EU Civil Protection Mechanism.

¹¹ European Migration Network (2011) Basic statistics on migration in the EU; Eurostat (2011) Population and social conditions, 38/2011, 34/2011.

¹² Bossong, R., EU border security in a time of pandemic: restoring the Schengen regime in the face of old conflicts and new requirements for public health, . (SWP Comment, 28/2020). Berlin: Stiftung Wissenschaft und Politik - SWP- Deutsches Institut für Internationale Politik und Sicherheit.

2.5. Violation of human rights

Everyone must stand in solidarity with those who are forced to leave their country due to a conflict, persecution, human rights abuses, poverty, or another extraordinary event. There should be deep concerns about the grave human rights violations that many immigrants in many countries are subjected to, emphasizing that immigrants' dignity and human rights must be respected. Article 13 (2) of the Universal Declaration of Human Rights (UDHR) reads as follows: "Everyone has the right to leave any country, including his own" and to "return to his country". This right should not be infringed in any way because of the social status and citizenship of the person concerned and that every individual has the right to a dignified choice for migration.

For the period 2014-2020, the European Instrument for Democracy and Human Rights (EIDHR) supports participants from the civil society that are defending human rights and democracy. This instrument is characterized by one very important feature, namely that the consent of the respective government is not required for its implementation. Other financial instruments relevant to human rights include the Development Cooperation Instrument, the Instrument contributing to stability and peace, the European Neighborhood Instrument, and the European Development Fund. The European Endowment for Democracy is a private law foundation supported by the EU

and its Member States. The budget of EUR 2.3 billion for the period 2014-2020 for the Union's common foreign and security policy is earmarked for various activities, in particular crisis management. Human rights guarantees should be included and improved in all migration agreements, processes and programs concluded with third countries. Any agreement or program should be accompanied by an independent evaluation of human rights and be subject to periodic assessment to make them as appropriate as possible. The EIDHR should continue to fund projects aimed at strengthening the fight against racism and discrimination, xenophobia, and other forms of intolerance, including religious intolerance.

However, many governments face a number of problems that both hamper the integration process and undermine fundamental human rights. Immigrants and refugees are subjected to arbitrary detention and ill-treatment, which must be kept to an absolute minimum and only in cases of extreme necessity.

Instead, the inclusion of freedom of movement and the right to education, health, and labor should be promoted as priorities in the Union's external cooperation funding instruments and calls for the support of developing countries to adopt long-term policies. They were respecting these rights. Other possible options for improving the situation are proposed in the 2016 Report on Human Rights and Migration in Third Countries (2015/2316 (INI)) such as debt relief for poor countries to help them develop public policies, ensuring respect for human rights; Insists on the need to promote

sustainable debt solutions, including responsible borrowing and lending standards, through a multilateral legal framework for sovereign debt restructuring procedures in order to alleviate the debt burden and avoid unsustainable debt, to create the conditions for the protection of human rights in the long term.¹³

In light of the COVID 19 pandemic and to contain the spreading of the COVID 19, the EU authorities decided to restrict some of the peoples' rights. Therefore, on 16.03.2020, the Commission invited all Member States to apply a coordinated restriction on non-essential travel from third countries into the EU for an initial period of 30 days. It was initially until the 15th of May 2020, but it was eventually extended until 30 June 2020. The travel restriction and the invitation to prolong it until 30 June apply to all Schengen Member States (including Bulgaria, Croatia, Cyprus, and Romania) and the 4 Schengen Associated States (Iceland, Liechtenstein, Norway, and Switzerland) – 30 countries in total. The restrictions aim to reduce the number of non-essential travelers and prevent the virus from spreading to other countries.

After 30 June, the restriction should be lifted for countries selected together by the Member States, based on a set of principles and objective criteria including the health situation, the ability to apply containment measures during travel, and reciprocity considerations,

¹³ Report on human rights and migration in third countries (2015/2316 (INI)), Committee on Foreign Affairs, 10.10.2016

taking into account data from relevant sources such as ECDC and WHO.¹⁴

It is important to note that all those restrictions adopted by the Member States on a national level have a wide range of exceptions to avoid the violation of human rights. The prohibitions usually do not apply to nationals of those States and members of their families, as well as to persons having the status of permanent, long-term or long-term residence in the territory of States and members of their families.

3. Conclusion

To reach effective solutions, all EU members must work together and collectively in these challenging times. No EU country can overcome the migration problems alone. Thus, it is necessary to create a well-thought-out and precisely designed set of legal, economic, and social measures aimed at preventing illegal entry, residence, and illegal employment in the EU Member States territory hand.

The open end of the EU entry was accompanied by wide-ranging relaxations within the entire Schengen zone. The reform of the Schengen Borders Code is expected to be relaunched by the end of 2020. De lege fired the communication between the Commission and third countries affected by national measures can be structured more efficiently and made more binding. Also, member states should include the procedures for health-related checks on persons in their dialogue as

well to harmonize the legislation. The European Centre for Disease Prevention and Control (ECDC) could be given more powers, and the same shall be included in the provisions of the EU's Free Movement Directive. The real crisis and situation could thus be used to construct a solid legal framework and to increase the value of the free movement of Union citizens.

Nevertheless, maintaining the established legal framework alone would not be enough. It is also necessary to improve it, fill in the gaps and try to be innovative with the solutions.

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