

MIGRATION. A CHALLENGE TO INTERNATIONAL STABILITY AND RESPECT FOR HUMAN RIGHTS

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ABSTRACT

Remodeling the E.U. migration process and managing migration through a complex and balanced approach are key aspects of the current EU policy; the international stability of E.U. member states, including the E.U. itself, can be achieved mainly through responsibility and solidarity. In this context, the protection of human rights, of the European values and of the European principles of law represents a challenge to European societies in terms of international stability and the need to develop coherent national and European policies. The cooperation for eliminating discrimination, the development in areas such as free movement, education, health, labor law, poverty reduction, human rights, reducing the negative impact on local communities, and considering the phenomenon of migration as an opportunity for some local communities, as well, are challenges that contemporary European societies have to overcome successfully, requiring long-term, efficient solutions, which guaranteeing social cohesion at local and international level.

Keywords: *migration policy, European Union, stability, solidarity, human rights.*

Migration, as defined by the International Organization for Migration (IOM), is a movement of a person or group of persons, either across an international border or within a state, as a form of population mobility, which includes any kind of movement of the population, regardless of duration, purpose or form. This category includes: refugee migration, economic migration, and the migration of people moving for other purposes or under the influence of other factors such as family reunification¹.

At international level, the phenomenon of migration is influenced by a combination of economic, political, social and environmental factors, factors that are also found at the level of the European Union, where the relative economic prosperity and political stability have led to an increase in the interest of migrants in this area.

As the Union motto („unity in diversity”) reflects a commitment to transnational solidarity, combined with respect for national differences, „it is considered that” if

¹ <http://www.oim.ro/ro/resurse/glosar>.

within the community goods, services and European citizens move freely, for those coming from outside (people fleeing war, poverty or instability), the European Union seems rather like a fortress protected by solid legal barriers².

In the analysis of the migration phenomenon³, it is necessary to proceed from the „global approach in the matter of migration and mobility” adopted by the European Commission in 2011, which set the general framework for the Union's relations with third countries in the matter of migration, to continue with the *Strategic Guidelines of Legislative and Operational Planning within the Space of Freedom, Security and Justice*” for the period 2014-2020 period of June 26-27, 2014 (concerning the transposition, application and strengthening of existing legal instruments and measures) and the *European Migration Agenda* of May 2015⁴.

Against the backdrop of recent events at European level, urgent action has been taken to save lives, and the issues of solidarity and shared responsibility have been addressed in the European Migration Agenda. The Agenda established an essential system of EU measures. With a view to achieving a common and coherent migration policy. A new, more European approach has been established as a priority, based on the principles of shared solidarity and responsibility, considered to be the only effective way for the EU to fulfill their international role and ethical obligations towards those who fled persecution and war.

Along with the humanitarian approach, U.E. committed itself to doing everything possible to secure the Union's external borders and the introduction of the final set of emergency measures aimed at correcting the existing legal framework on asylum considered to be dysfunctional when faced with the pressure of mass influxes of refugees. (eg the intra - EU relocation of 40,000 people requiring international protection, people in Italy and Greece, but also the extra - EU resettlement of 20,000 displaced persons with the same need for international protection).

Also, the *Valletta Migration Summit*, held in November 2015, the *Guidelines on the possibilities for reforming the Common European Asylum System and improving the legal migration pathways* of 6 April 2016 and, last but not least, the *Malta Summit of February 3, 2017*, contributed to highlighting the need for the EU policy in terms of migration to be revised.

The main orientations of the policy on migration refer to: the decrease of the factors that encourage clandestine migration, a border management that to have as its objective to save lives and ensure security, the development of a stronger common asylum policy and the establishment of a new legal migration policy.

² Constanța Mătușescu, *Eu Migration Policy And Ethical Values. Short Critical Considerations*, The European Proceedings of Social & Behavioural Sciences EpSBS, Published by the Future Academy, Volume XXVII, 2017, p. 393.

³ http://www.europarl.europa.eu/atyourservice/ro/displayFtu.html?ftuId=FTU_4.2.3.html.

⁴ Communication of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - *A European Migration Agenda*, Brussels, 13.5.2015, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_migration_ro.pdf.

These are important measures in the management of this phenomenon by the EU as well as by states outside the EU (countries of origin and transit of irregular migration flows), and at the same time they stress the need to strengthen the global migration approach started in 2011 through optimal use of legal migration, by effective border management and an as fair as possible distribution of asylum applicants between EU countries, while respecting the fundamental rights of migrants.

Migration and asylum is a multidimensional, complex and continually evolving policy area, both at international level and at EU level, and that requires equally complex and multidimensional structures for its implementation⁵. There is a need to regularly remind the Member States that mobility partnerships are necessary to be implemented in a balanced way, including by placing more emphasis on the actions related to legal migration, human rights and refugee protection⁶.

Proper management of migration policy, which is in a relationship of interdependence with asylum policy, requires the responsibility and solidarity of the Member States to co-exist and to take into account the need to ensure the protection and promotion of fundamental rights, including those relating to personal data. Appropriate management of migration policy is equivalent to the efficient management of the resources allocated to the creation, implementation and enforcement of the specific legal framework as well as of the involved institutions; at the same time, this also implies the prevention of the risks determined by illegal immigration, trafficking in migrants and trafficking in human beings. In practice, all Member States have to provide support and the Member States that are under the strongest pressure must consider as an absolute priority the objective of restoring an orderly process, in order to return to a stable situation.

Decrease of the pace of economic growth and maintaining a high level of unemployment in several Member States, the Brexit referendum that has brought back to the present the identity crisis that has affected the European Union over the last decade, the terrorist attacks and the current migration crisis challenge the European values.

The year 2017 represents for the European Union a year of significant evolutions for the phenomenon of migration, when it was found that current crisis of migration, which is the most serious one so far (accentuated in 2015 and 2016), revealed, on the one hand, the legislative gaps and, on the other hand, the shortcomings of the regulations issued up to now in the European migration policy.

The Malta Declaration of February 3, 2017⁷ stressed the need for a critical review of the EU policy in terms of return, and for an analysis on how national and European instruments are applied.

⁵ The European Court of Auditors' Special Report on EU Expenditure by 2014 in the Eastern and Southern Mediterranean Neighborhood Countries in the External Migration Policy, 2016, p. 60.

⁶ *Ibidem*, p. 19.

⁷ Malta Statement of Members of the European Council on the External Aspects of Migration: Addressing the Central-Mediterranean Route of February 3, 2017.

Also on the eve of the celebration of the 30th anniversary of the Erasmus program, one of the most successful programs of the United Nations, it was announced and launched as early as December 2016, the *European Solidarity Corps*⁸, which offers young people aged between 18 and 30 years the opportunity to take part in a series of solidarity activities throughout the United States.

The President of the European Commission, Jean-Claude Juncker, said: „*More than just a principle, solidarity is an essential state of mind that underlies what the European Union means. The Solidarity Corps embodies this principle*”. He said he was proud of what the Corps represents and expressed his gratitude to all who join the Corps and the organizations that offer placements to young people.

At the same time, in the next phase of the European Solidarity Corps, activities such as solidarity investments (which will allow young people to carry out voluntary activities for up to 12 months), internships (usually for periods of 2-6 months) and placements for jobs (for periods of 2-12 months).

Volunteer teams will allow groups of 10-40 young volunteers from different countries to produce an impact by working together for periods between 2 weeks and 2 months.

It is considered that these actions will provide young people in Europe with new opportunities to engage in practical solidarity activities that will help in the strengthening of the local communities and to the inclusion of the categories of disadvantaged young people in such projects, who may find it difficult to benefit from placements abroad, but who still want to be socially involved.

In May 2017, the Commission wanted to honor its promise made at the launching the European Solidarity Corps to present a proposal for a specific legal basis, while proposing also a budget for the next three years. The independent legal basis provides a single comprehensive financing instrument, with a clear set of objectives, and all these regulations will take the form of a draft regulation that must be adopted by the European Parliament and the Council so as to enter into force on the date proposed by the Commission, namely on January 1, 2018.

In the document of the European Commission entitled *State of the Nation – 2017*⁹, under Priority 8 on a new migration policy, there are provided initiatives that follow to be launched and/or finalized by the end of 2018, such as: the swift adoption of the Common Reformed European Asylum System, based on responsibility and solidarity, including the proposals on the reform of the Dublin system, the establishment of a new asylum agency, the reform of the Eurodac system, the review of the conditions of reception, the conditions that must be met in order to benefit from international protection and the asylum procedure, as well as of the EU resettlement framework.

⁸ https://europa.eu/youth/SOLiDARity_ro.

⁹ Letter of Intent addressed to President Antonio Tajani and to the Prime Minister Jüri Ratas, pp. 9-10, https://ec.europa.eu/commission/sites/beta-political/files/letter-of-intent-2017_ro.pdf.

It is also sought the quick adoption of the proposal regarding the entry and the residence of the third-country nationals for the purposes of highly qualified employment („the Blue Paper Proposal”), a new migration management package, including: mid-term evaluation of the European Migration Program, specific measures to promote a more effective return approach; further promoting legal migration paths by encouraging new commitments on resettlement; reforming the common visa policy and maintaining EU solidarity with Member States facing exceptional migration pressures.

Last but not least, the implementation of a legislative package on the consolidation of the Schengen free movement area is also sought, including a proposal for updating the Schengen Border Code, and ensuring the full integration of Romania and Bulgaria into the Schengen area, as well as the quick implementation of the external investment Plan and the implementation of the partnership framework on migration with the main third countries of origin and transit.

Starting from the statements made by Jean-Claude Juncker, namely that we must work closely together in a spirit of solidarity and that Europe must better manage migration, in all its aspects by ensuring solidarity and fair sharing of responsibilities, it can be said that migration policy must be based on stability, solidarity and respect for human rights, all the aspects of migration having to be taken into account, including: humanitarian obligations, asylum seekers, economic migrants, smuggling and trafficking in human beings, development and stability in non-EU countries, effective return policy and demographic challenges in Europe. As far as return policy is concerned, it must be based on the creation of common standards, which to guarantee a human return and to ensure the existence of fair and effective procedures, while observing the fundamental rights and dignity of each person.

In the last year, problems and responses to the migration situation in the E.U. have directly affected several fundamental rights covered by the Charter of Fundamental Rights of the European Union in areas of interest such as: safety and protection at reception facilities, the impact on local communities, violence and hatred against migrants, the situation of unaccompanied children.

At the same time, the vulnerability of migrants to different forms of violence, exposure to forms of violence of institutional, economic origin, and the intersection of various forms of discrimination call for a human rights broad approach, considering the direct and immediate application of the principle of the universality of human rights as the first mechanism for their protection and promotion.

Strongly criticized for its slowness, but also for the reason of human rights violations, the EU's current migration policy aims to address the real problems of migratory flows in its dual economic and political aspects, trying to bring the laws of the Member States closer together, in order to provide solutions regarding both the asylum and the economic migration. As far as asylum policy is concerned, it must respond to the challenges in the matter of international protection, in order to

ensure a solid link between responsibility and solidarity, on a voluntary basis, in the field of asylum; thus, the Member States must comply with the E.U. *acquis* and to provide support to those Member States which are facing temporary high pressure on their asylum systems.

Respect for the democratic values of the solidarity, dignity and freedom that the European Union has been built on, as enshrined in the Treaty of Lisbon - „respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, the rights of the people belonging to minorities included” and further asserting that „these values are common to the Member States in a society characterized by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men” must go beyond the legislative frontiers and find immediate application to this „crisis of migration” or even „humanitarian crisis”. They must at the same time represent European values, but also universal and national values and the stability of the peoples must be found in the will of solidarity, tolerance and justice.

It is considered to be a crisis, not primarily because of the number of migrants, but rather because it has caused the onset of a deep crisis within the E.U., the so-called crisis of European identity. Among the reproaches addressed to the European Union to avoid the crisis of European identity are the fact that the progress of European construction is hidden behind citizenship and that with respect to the Islamic terrorism a correlation is tried between the Muslim identity and excessive immigration due exactly to the opening of the borders.

In doctrine¹⁰, the idea was promoted that Europe, and especially the European Union (EU), need a new institution, a European Migration Protection Agency, an institution with specific responsibilities, which to collectively meet the individual obligations of the Member States with respect to the refugees and migrants, so as „the system to be truly dedicated to international protection”. In the opinion of some people (Guy S. Goodwin-Gill)¹¹, although a number of EU agencies exist, the European Asylum Support Office (EASO) and the Fundamental Rights Agency (FRA), in charge with the matters related to the protection and migration of refugees, they can play a role in monitoring the various measures proposed by the EU and its Member States, but a more international approach is needed.

However, the creation of the Fundamental Rights Agency of the European Union, which in 2017 has turned 10 years, has demonstrated the existing concern for this area at the level of the European Union, whose objectives for the period 2017-2019 concern the strengthening of cooperation with national partners in order

¹⁰ Elspeth Guild - Does the EU Need a European Migration and Protection Agency?, *International Journal of Refugee Law*, 2016, Vol. 28, No. 4, p. 585.

¹¹ Guy S Goodwin-Gill, 'Regulating "Irregular" Migration: International Obligations and International Responsibilities', Notes for a Presentation, University of Naples 'L'Orientale', 11 May 2015; and Keynote Address to the International Workshop, National and Kapodistrian University of Athens, Faculty of Law, 20 Mar 2015.

to contribute to the political processes of fundamental rights at Member State level and the strengthening of the cooperation with national liaison officers¹². Thus, „in the field of asylum, migration and internal security, the Union's operational agencies in the field of justice and home affairs are increasingly called upon to support the Member States of the Union through action in the field. Operational support is also frequently required in areas sensitive in terms of fundamental rights, such as border surveillance. In this respect, the FRA already has experience in the matter of field research in crisis situations, expressing well-grounded viewpoints, materialized and exploited by several thematic reports¹³”.

As regards *mobility* and the *phenomenon of legal migration*¹⁴, the current approach envisages the adoption of legislative measures for each category of migrants in order to develop a legal migration policy at EU level, as follows:

- *Directive 2003/109/EC of the Council*¹⁵, amended in 2011, regulates the status of third-country nationals who are long-term residents in the European Union and includes in its sphere of application the refugees and other persons enjoying a form of international protection.

- *Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment*¹⁶ (introducing the „European Blue Card”, a fast-track procedure for issuing a special residence and work permit, offering more attractive conditions to third-country workers in order to allow them access to a highly qualified job in the Member States) was taken into consideration by the European Commission (2016) for review, due to the limited number of Member States.

- *Single Residence Permit Directive (2011/98/U.E.)*¹⁷, which establishes a common and simplified procedure for third-country nationals applying for a residence and work permit in a Member State and a common set of rights that have to be granted to legal immigrants.

¹² Irina Moroianu Zlătescu, Human Rights - Present and Future in the European Union, Critical Point magazine no.3/2017, <http://www.punctulcritic.ro/irina-moroianu-zlatescu-drepturile-omului-prezent-si-viitor-in-uniunea-europeana.html>.

¹³ *Ibidem*.

¹⁴ ¹⁴ http://www.europarl.europa.eu/atyourservice/ro/displayFtu.html?ftuId=FTU_4.2.3.html.

¹⁵ Council Directive 2003/109 / EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, published in the Official Journal of the European Union L 16/44 of 23.01.2004, as subsequently amended and supplemented.

¹⁶ Council Directive 2009/50 / EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, published in the Official Journal of the European Union L155 / 17 of 18.06.2009.

¹⁷ Directive 2011/98 / EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals for the purposes of residence and employment within the territory of the Member States and a common set of rights for third- third-country workers legally residing in the territory of a Member State, published in the Official Journal of the European Union L43 of 23.12.2011, pp. 1-9.

- *Directive 2014/36/EC*.¹⁸, which regulates the entry and temporary stay of seasonal workers, facilitating the circular migration and protecting this particularly vulnerable category of workers.

- *Directive 2014/66/EC*.¹⁹ on the conditions of entry and residence of third-country nationals in the context of a transfer within the same company, facilitating the temporary transfer of managers, specialists and trainees of the enterprises and multinational companies to subsidiaries and branches located in the territory of the European Union .

- *Directive (EU) 2016/801*²⁰ on the conditions of entry and residence of third-country nationals for research, education, training, volunteer services, pupil exchange programs or educational projects and au pairs work should be transposed by May 23, 2018, replacing the previous instruments on student and researchers, expanding their sphere and simplifying their application.

Regarding the phenomenon of legal migration, according to the Report released in 2017 by the United Nations Migration Agency (IOM) entitled „*Measuring the Global Migration Potential 2010-2015*”, which analyzes the global population migration intentions for 2010-2015, shows that less than 0.5% of adults around the world (about 23 million) are actively preparing to emigrate across borders²¹. Half of those who want to migrate live in just 20 countries, including Nigeria, India and R.D. Congo, so that West Africa, South Asia and North Africa are the regions with the greatest migration potential. This analysis of migration intentions can contribute to the future development of future migration plans and forecasts.

At the same time, the *UN New Agenda for Sustainable Development 2030*²² is committed to help in eradicating the poverty and achieving sustainable development by 2030. Migration and human mobility are included in four of the 17 sustainable development objectives, acknowledging the positive contribution of migrants and the fundamental role of migration in the durable development process. At the same time, full respect for human rights and human treatment for migrants, regardless of their status, must be ensured. Thus, given that both climate and political changes are factors that favor volunteer mobility on a larger scale and

¹⁸ Directive 2014/36 / EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and residence of third-country nationals for the purposes of employment as seasonal workers, published in the Official Journal of the European Union L94, 28.3.2014, pp. 375-390.

¹⁹ Directive 2014/66 / EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer published in the Official Journal of the European Union L157 of 27.05.2014, pp. 1-22.

²⁰ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for research, education, training, volunteering, pupil exchange programs or educational and work projects au pair, published in the Official Journal of the European Union L132, 21.05.2016, pp. 21-57.

²¹ https://reliefweb.int/sites/reliefweb.int/files/resources/gmdac_data_briefing_series_issue_9.pdf, p. 3.

²² Agenda 2030 for Sustainable Development was adopted by the United Nations on September 25, 2015.

the emergence and development of the phenomenon of forced displacements, a generator of pressure on the external borders, it is imperative for the U.E. to strengthen dialogue and cooperation with countries where these phenomena occur and develop.

This global approach seeks to strengthen the link between migration and development and to focus on an effective migration management to be organized, which reflects the economic needs of the host countries, the development needs of the countries of origin, as well as the rights of migrants²³.

The Agenda is considered to be „the expression of an implicit theory of human well-being, namely that human well-being will be ensured through a holistic agenda of economic, social and environmental goals rather than an agenda limited to just economic growth“, but also an implicit theory of happiness, which includes poverty combating, promoting gender equality, emphasizing decent work for all²⁴. Overall, the right to happiness seems to be a determining factor in the decisions underlying the migration phenomenon.

Ratification by U.E. of the Paris Climate Change Agreement, the measures of which entered into force on 4 November 2016, the Conclusions of the European Council on the Paris Agreement of June 2017, relating to the fact that „the Agreement remains a cornerstone of the efforts made at the world level to effectively combat climate change and can not be renegotiated“ are measures that also affect the migration policy. Thus, the U.E. commitment to quickly and fully implement the Paris Climate Change Agreement highlights the enhanced EU co-operation with its international partners, demonstrating solidarity with the future generations and responsibility for the entire planet.

Last but not least, in terms of legal migration, Europe needs to develop strategies to maximize and streamline legal migration opportunities, based on a dialogue with the business community and the social partners, but also through the implementation of integration policies to promote social cohesion and economic dynamism and to prevent the social exclusion to which immigrants may be exposed²⁵.

Given that cross-border migration is a transnational phenomenon, beyond the state being considered as the main actor entrusted with the protection of human rights, the European Union has the same competence and perhaps even a greater one, and the arbitrary application of certain laws seems to impede the effective enforcement of legislation on human rights.

²³ The European Court of Auditors' Special Report on EU Expenditure by 2014 in the Eastern and Southern Mediterranean Neighborhood Countries in the External Migration Policy, 2016, p. 32.

²⁴ The right to happiness. Fundamental human right. Chapter IV. Happiness and Sustainable Development: Concepts and Evidence, author Jeffrey D. Sachs, I.R.D.O. Publishing House, 2016, p.67-68.

²⁵ See Government Decision no. 780 of 23 September 2015 for the approval of the National Immigration Strategy for the period 2015-2018 and the Action Plan for 2015 for the implementation of the National Strategy on Immigration for the period 2015-2018, published in the Official Gazette of Romania, Part I, no. 789 of 23 October 2015.

People mobility will be an inherent feature of the 21st century, both at European and global level, which implies the need to step up the EU policies in terms of managing migration flows and integration policies for third-country nationals. Certainly, with regard to human rights, there is the possibility of improving performance by identifying more concrete measures to mitigate these flows, notably by strengthening the humanitarian diplomacy and national referral mechanisms.

The next period will be enlightening about considering the policy on migration as a cause of destabilization of the EU and one of the foundations of the European identity crisis, or as a strengthening and streamlining of EU policies on migration, asylum and respect for and promotion at the highest level of protection of human rights and fundamental freedoms of those directly involved and affected by this process, which to be based on the fundamental rights of migrants, on the principles of solidarity, non-discrimination, non-refoulement and fair cooperation between Member States.