

# ILLEGAL MIGRATION-CONCEPTUAL DELIMITATIONS

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## Abstract

*Illegal migration is a mobile phenomenon, which ignores national borders, a threat that originates outside the community and extends to Western societies. This phenomenon is becoming larger and irregular migrants are often in a precarious situation and exposed to the criminals involved in various manifestations of organized crime. The future risk factors of the illegal migration are the demographic bomb, because the population is decreasing in European countries and increasing rapidly in poorer countries, droughts, floods, deforestation, that cause conflicts between climate refugees, extreme poverty, totalitarian regimes, epidemics, can trigger millions of people, the elderly and the working population imbalance which leads to the permanent import of immigrants*

*To combat this phenomenon, states must engage and cooperate with each other. Measures taken by states must balance their integration policy for immigrants, legally residents and asylum policy to comply with international conventions. Also, states must adopt anti-immigrant policies, consisting of subordination visa policy to the interests of international security and exchange of information and, not least, to continue the Schengen process, as a value of humanitarian law applied in the field. The aim of the research is to characterize this dangerous phenomenon for the society and the goal is to identify strategies to combat illegal migration.*

**Key words:** migration, Schengen, European Union, human trafficking, strategy.

## Introduction

The domain of the study „Illegal migration” is that of legal sciences and the branch is public law.

The importance of the study derives from the fact that nowadays, with the liberalization of borders, crime is evolving and its trends are influenced by numerous changes affecting the society, both in time and space. Disappearance of borders and the free movement of persons throughout the Community led to the emergence of clandestine migration issues.

The objective of the study is to discuss general aspects of illegal migration, which, along with economic causes and the ratio of free movement of persons, goods, capital and services, can increase crime in Europe. Crime is an inevitable product of any society and it is therefore necessary to consider the changes that have occurred in the world over the last decades in Europe. I could mention here, as an example, demographic imbalance, economic uncertainty and monetary distortions of rich and poor nations.

There are three factors that have clearly important influence in the development of cross-border crime in Europe: development of means of communication, increased mobility of people, goods and capital and the fall of the communism. Also, we must not forget that the growth of the criminality generally affects the cross-border crime.

The main threat is the illegal migration criminal organizations, such as guides and pimps who controlled directs immigrants and contribute to a demographic imbalance and generating crisis in the European space. That's why European Union should take measures by a strategy for preventing and fighting against illegal migration and human trafficking, so that to equilibrate the integration policy for the legal resident immigrants and the asylum policy in order to comply with the international conventions.

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The Spanish Felipe Vasquez Mateo defined migration as any conscious and voluntary movement of persons from one region or country to another, dictated by different reasons and for employment.<sup>1</sup>

Migration comes from the Latin word “migrare” and it is a term describing the population movement process within the frontiers of a State or beyond the frontier. The term used in order to describe the departure movement from a country in order to establish in other country is “emigration”. Contrarily, when the movement is made in order to enter a country, the term used is “immigration”.

The main characteristic of migration is the workforce exodus to economy attractive areas.

### **Forms of migration**

#### *International/internal*

International migration refers to the movement of persons leaving their origin country in order to get established permanently or temporarily in another country. It implies crossing the State borders.

Internal migration takes place between different administrative units, but within the borders of the same national State.

#### *Voluntary/Forced*

Forced migration appears when the persons’ movement takes place as a result of several external events, such as natural calamities, war etc. or in the context of pressures exerted by persons, institutions.<sup>2</sup>

Voluntary or economic migration has mainly material reasons.

#### *Individual/mass*

Persons’ movement can be individual, when the movement is considered at the individual’s level. It supposes that every person individually takes the migration decision and chooses the migration ways.

#### *Permanent/temporary*

Nations must respect and implement the principles of international law, of conventions they joined and the right to decide on ban of entry, expulsion, return or asylum, the migration control being of national interest and an attribute of sovereignty.

Permanent migration implies the definitive change of the country, while the temporary one implies only a residence present in other country than the country of permanent domicile (not later than 1-2 years or seasonal).

*Uncontrolled or controlled*, as the EEC situation, on a legal framework base.

*Spontaneous/speculative* designates the absence of any preparation form of the migratory process and especially of the integration process.

#### *Masked*

Masked migration means hiding the real aim of the travel in the destination country by misleading the authorities responsible for issuing and controlling the travelling documents and verifying the compliance with the legal terms, followed by the exceeding of the stay legal term.

#### *Intercontinental/intracontinental*

Intercontinental migration, between countries of different continents, for instance migration of the European and Asian countries to USA etc. and the intracontinental migration, between the countries of the same continent, such as migration between the European countries.

#### *Legal/illegal*

In the case of legal migration, the migrants comply with all the legal rigours<sup>3</sup> imposed by the migration process and the different aspects of integration within the societies they immigrate to<sup>4</sup>.

<sup>1</sup> Spanish Institute of Immigration, Introduction al derecho migratorio, Madrid, 1976, p.14.1.

<sup>2</sup> Distinction can be made between the extreme forms of forced migration, slavery, Holocaust, Gulag, war refugees (Sudan, former-Yugoslavia refugees) and economic migrations.

Illegal migration is the migration which does not comply with the legal regulations of the States implied in migration<sup>5</sup>; it is continuously increasing and has no definition because the irregularity of migratory movements may be seen from different angles. This is seen from the destination countries point of view.

#### **Migration factors**

- economic factors, because of starvation, poverty, unemployment etc.

After the Romania integration with the EU, a workforce exodus is noticed, given the much lower standard of living than in the West-European countries, which provide higher work revenues. Work national market cannot keep the necessary workforce, being at a disadvantage in comparison with the EU market.

- demographic factors

The population of the developing countries will try on legal or illegal ways to move to industrialised countries.

- political factors

The political causes of some totalitarian States and regimes, which make several parts of the population to be menaced, migrate to other countries offering them security warranties.

Other factors refer to religious totalitarianism (e.g. Islam), where people's rights and liberties are seriously affected in the name of fundamentalism.

Migration is in the public limelight in the context of political, economic and social changes. The consequences of illegal migration have a negative impact; on one hand they oblige the State to additional costs caused by the social needs of immigrants, affecting the social life and the internal economy, and on the other hand they supply criminality, stimulating under the table work, illegal affairs and enhance transnational criminality. Illegal migration is also the source of conflict between the foreigners' communities with antagonist positions generated by material interests or misunderstandings between ethnic groups, for example between the Iraqi and the Iranians.

European cooperation in penal justice matters extended at present also over migration. Immigration, organised crime and terrorism was the subject of the EU third pillar activity. Since 1 December 2009, police and judicial cooperation in criminal matters (third pillar of the EU) is an area of intergovernmental cooperation, but to elaborate, with pillar (now Community pillar) a supranational domain.

The migrants issue must be approached by all the 27 Member States, both in the common framework and horizontally.

There are four economic theories announcing the main causes of the voluntary migrations:<sup>6</sup>

- classic economy, focusing on the revenues differences and on working conditions between the countries; it concerns a personal decision on the maximum revenue increasing

- new migration economy, highlighting the terms of different tendencies, not only conventions of work; it concerns migration as a decision taken by the family in order to reduce the family revenue related risks

- dual labour market theory does not consider decision evolution at micro-economic level; it connects immigration to structural needs of economies of modern industrial countries. According to this theory, modern economies are aware of a permanent demand of emigrant workers. There are four factors here, as follows: the officials are not disposed to increase the salaries of lower level persons, because the superior qualification workers may expect to increases, it is difficult to motivate

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<sup>3</sup> Passports and visas regime.

<sup>4</sup> Residence and legal integration regime of foreigners on the workforce local markets.

<sup>5</sup> PhD Thesis, Regimul juridic al străinilor și fenomenul migrației în contextul integrării României în Uniunea Europeană, PhD advisor Prof. PhD Dumitru Mazilu, PhD student Florin Viorel Virtici, Bucharest, 2005, p. 86.

<sup>6</sup> US Commission for the Study of International Migration and Cooperative Economic Development (1990). Unauthorized Migration: An Economic Development Response. Washington, DC: Government Printing Office.

the nationals to accept inferior jobs in the hierarchy because of mobility absence on the superior stage, this duality creates permanent well paid jobs in the primary sector and unstable and worse paid jobs in the secondary sector.

- world-systems theory, considering immigration as a natural consequence of globalisation and of markets penetration. According to this theory, modern capitalism penetrated all the world economies and creates mobile workforce, being able to immigrate in order to benefit of the best jobs possibilities.<sup>7</sup>

There are 3 modalities permitting the common consideration of immigration and the asylum right, as follows: the first one is ideological: the European agencies redefined the threats related to internal security; the second one is instrumental, consisting of organised crime and imported terrorism: the ministries of justice and home affairs of the EU Member States negotiated the institution of compensatory measures and of control instruments, for example the visa issuing system, SIS. The third one consists of an institutional fusion; Trevi Group and Ad Hoc Group on Immigration were founded under the auspices of the coordination committee.

One of the most efficient police strategies of criminality prevention and fighting within immigrants was that of reducing the traditional differences between immigrants and refugees, process made by the difference between asylum applicants searching to enter a Member State territory for political reasons and the other arriving here for economic reasons. European Commission estimated that immigrants for economic reasons using the asylum right as alternative emigration source constitute a large category of persons.

The emigration specific crimes – extended stays beyond the dates allowed were very frequent, causing more serious punishments and consequences on the work permit. The criminologists analysing the organised crime phenomenon within the ethnic communities are confronting with a very big dilemma: they are aware of the fact that with no analysis between criminality and migration, their efforts will be incomplete; on the other hand, they would make an analysis between criminality and ethnicity.

The emigrants are very frequently perceived as enemies of social, political and economic stability of industrialised societies.

In a group of nations such as EU, which reunites various languages and cultures, the highlighting of security may act as a unification item against the other one.

In order to explain international organised criminality, there are used several concepts, noticing 5 relationships:

- the first one is the relationship between the origin country and the residence country and between illegal and legal;
- the second relationship is that between profit and investment, the former being realised in the residence country and the latter in the origin country
- the third one relationship is the mobility between the origin country and the residence country, the family relationships being in fact a screen for trafficking
- the fourth one consists in the social and economic integration absence in the residence countries, which provides possibilities for developing extremely profitable criminal activities;
- the fifth one supposes that an organised criminality is facilitates by a sub economy which is not joined by the autochthonous population.

The laws on immigration can be infringed only by foreigners. In some EU Member States, there are statistics showing a disproportioned participation of foreigners to the criminal activities. There are several delicate aspects which are specific only to foreigners:

- the former category includes for example the residence in a country after the expiration of the staying or work permit, the illegitimate complaint of the social benefits received by illegal immigrants, the under the table work or the accommodation of foreigners without valid permit.

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<sup>7</sup> Sassen, S, *Globalization and its Discontents*. New York, New Press, 1998.

- the latter category includes the fraud related crimes of the marital status regime (identity documents, formal marriages)

These two groups of crimes are more and more numerous. The marital status crimes are perceived as connected to the human movements. In 1993, in Germany, it was estimated that 80% of the certificates showing the single status of a person were produced by third world citizens, being false. In the Netherlands, it was estimated that 30% of the marriages where at least one of the spouses was foreigner were fraudulent. Thus, the marital status crimes belong to organised crime, since there were specialised intermediaries in producing false documents or in arranging formal marriages. The third category of human trafficking was registered in the agenda monitored by Europol.

Immigration and crime share three characteristics: they are mobile phenomena, ignoring borders; they are seen as threats coming from outside the community, the third characteristic being their extension to the occidental societies.

EU issued restrictive laws on asylum right, decreasing considerably the number of applicants, but still persists though a crisis feeling. In the field of the judicial and police cooperation, there were institutionalised the legal instruments which do not need approval in the Member States Parliaments. There were enhanced the internal controls and the international control instruments.

The immigrant population within the EU Member States in 2001 goes up to 20.2 million of people. Almost 14.3 million of them were resident of an EU State, but they did not benefit of the citizenship of any EU State, representing 3.8% of the Union's total population at that moment in comparison to the 6 million citizens of one of the Member States and 1.6% residents of another State.<sup>8</sup>

The internal controls suppose the introduction of the identity card and the obligatory identification in certain situations, the introduction of hotel registration liability, enhancement of controls and modern detection equipment, such as heat detectors, night view devices etc., cooperation and information exchange between agencies, and introduction of police charges in the extended internal controls system. International control instruments provide the introduction of digital data systems: SIS and European Information System, taking digital prints, which are stored and centralised in EURODAC, the introduction of penalties to transporters, the cooperation between agencies and Member States in order to fight against illegal immigration, creation of a special police unit for supervising the human traffickers, bimonthly seminars on false documents etc.

Criminal documents, legislation infringement related to foreigners, crime can be used in order to justify an expulsion.

The immigration services, the customs and the frontier controlling agencies, as well as the police are also implied all in order to control immigration, from the first line control, when immigrants enter, to the others, after the arrival of persons in the country. The police officers have an administrative component (of registration) and a cooperation role (enhancing the laws on immigration in the residence area and in the area of workforce use) with the immigration services.

### **UE strategy for preventing and fighting against illegal migration and human trafficking**

The measures taken must equilibrate the integration policy for the legal resident immigrants and the asylum policy in order to comply with the international conventions, especially with the Geneva Convention of 1951.

Future risk factors for illegal migration:

- demographic bomb: population is decreasing in the European countries and is solidly increasing in the poorer countries (for example, India will arrive to send on the work market 335 millions of workers, which means the gathered population of UE and US)

- the droughts, floods, deforestations of the recent years, which determine the increase of the climate refugees

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<sup>8</sup> V. Drăgoi, Corneliu Alexandru, *Migrația și azilul*, Publishing Ministry of Interior, Bucharest, 2004, p. 43.

- conflicts, extreme poverty, totalitarian regimes, epidemic diseases may cause the movement of millions of people

- disequilibrium between old people and active population, which causes the “import” of permanent immigrants

- reception spaces are getting limited

UE action in this area is based on the following principles:<sup>9</sup>

- legitimate aspiration to a better life must be reconcilable with the EU and Member States’ capacity of reception, and immigration must be performed in legal ways; the integration of the emigrants which are legally present on the EU territory supposes both the rights and obligations related to the fundamental rights recognised by the EU, the racism and xenophobia fighting being very important at this point.

- according to the Geneva Convention of 1951, it is important to provide to refugees efficient protection, taking into account the prevention of abuses and insuring that the persons with rejected asylum demands are repatriated as soon as possible.

The return is a complex measure which may be achieved by the cooperation between the destination areas, the transit countries and the origin countries of the migrants, in order not to affect or obstruction the persons’ dignity and takes place when:

- the related persons resided in a State and are found with illegal stay on the territory of other States and in EU

- the stateless persons, the former citizens of another State, if they want to return in that respective State.

The readmission agreements do not solve the more and more acute issues created by the citizens’ immigration of third States from the Central and Eastern Europe. Practically, it is experienced the need of support by the developed countries of the efforts made by the EU newly members in order to share the market economy.

The Commission’s conclusions of June 2003 related to immigration, integration and work indicated the following aspects<sup>10</sup>

- within 2010-2030, it is expected that the number of persons employed to decrease with 20 million of workers in UE, following the demographic regress with direct consequences on the workforce deficit;

- achievement at the EU level of an efficient integration of migrants by enhancing the immigration legal ways;

- enhancing the Commission efforts for achieving a coherent framework in the area of migration at a European level.

**The main measures used by the Community States to harmonise the efforts for fighting against illegal migration are:**

- harmonising the Member States’ regulations by adopting an anti-migratory policy, consisting of subordinating the visas policy to the security interests.

- applying international penalties for human traffickers

- implying the personnel of transport agencies in order to assume specific charges for fighting against illegal migration

- rapid return of all the foreigners who entered illegally or who did not received asylum

- international exchange of information

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<sup>9</sup> Seville Summit, 21-22.06.2002.

<sup>10</sup> PhD Thesis Regimul juridic al străinilor și fenomenul migrației în contextul integrării României în Uniunea Europeană Legal, PhD advisor Prof. PhD Dumitru Mazilu, PhD student Florin Viorel Virtici, Bucharest, 2005, p. 111.

- international collaboration with origin and transit countries
  - enhancing the collaboration with these categories of countries by PHARE Programme (financial support system for fighting against migrants)
  - continuing the Schengen process, as a humanitarian right value applied in this area
- The orientation of the UE immigration policy may be summarised as follows:<sup>11</sup>
- external dimension: partnership with the origin and transit countries (classic readmission agreements, specific dialogues on different subjects)
  - solving the issue of asylum applicants and of their status
  - solving the issue of immigrants found in illegal situation: it is very important to make a clear distinction between the admission policy and the integration policy
  - refining the community acquis and enhancing the democratic legitimacy of its construction and of its decision making system
  - extending to other Non-Member European States
  - confirming a coherent external approach, which may be perceived on the international stage as a specific identity

The population of immigrants within the EU Member States in 2011 was of 20.2 million of people. 14.3 millions out of them were residents of an EU State, but did not beneficiate of the citizenship of any of the EU States, representing 3.8% of the EU total population, in comparison to the 6 million, which are the citizens of one of the Member States and residents of another State.<sup>12</sup>

The highest percentage of immigrants related to the country population is registered in Luxembourg (36.9%), followed with a significant difference by Austria, Germany and Belgium, where the percentage is about 8-9%, then by Greece with 7%. In the other European countries, the percentage is of 3-6%.

Illegal migration is higher and higher and illegal migrants are frequently in precarious situations and at the command of several criminals implied in different forms of organised crime.

### **Conclusions**

It is difficult to conduct a study to compare relevant by the crime properly before and after the fall of communist regime because these regimes were not very willing to recognize the existence of social problems. It is certain that the opening of borders between Eastern and Western Europe led to an increase in crime with international implications. Moreover, economic openness and the development of new laws to promote a market economy have generated serious internal problems.

Some Western observers fear that massive immigration Eastern European criminals would move to Western Europe. To compensate for the suppression of internal borders, it should be equally provision of mechanisms to support mutual assistance between Member States and cooperation between them.

The main risks arising from migration flows are to destabilize the existing markets of labor, the development of organized crime, economic destabilization, destabilization of the population, increasing corruption among public officials, destabilizing economic investments of foreign companies in the country

Attempting to decrease illegal migration through cooperation among states and by enhancing border control, visa policy restrictive candidate countries, legislative codification of them.

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<sup>11</sup> Aurel Vasile Sime, Gabi Esanu, *Migrație și globalizare*, Publishing Detectiv, Bucharest, 2005, p. 171.

<sup>12</sup> V Drăgoi, Corneliu Alexandru, *Migrația și azilul*, Publishing Ministry of Interior, Bucharest, 2004, p.43.

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