



## **Working Paper on MIGRATION**

### **Introduction**

Migration is one of the dimensions of human rights. In accordance with the General Declaration of Human Rights, everybody has a right to move out of any country and to return into the country of his/her citizenship. In the year 2000, the estimated number of international migrants amounted to 150 millions, out of which 31.5 millions were found in broader Europe, which classifies the continent on the second place, immediately after Asia and before North America. In general, the number of migrating people is increasing from year to year and it is possible that in the years to come, the migration flows, whether monitored or not, shall still increase. This fact, with the exception of mass exodus, is not negative at all. Some economic analyses show that migrations are mainly beneficial for all societies. However, nowadays, the phenomenon of international migrations is very often linked to negative perceptions, like abuse of asylum systems, lack of state border controls, threat to national and international security and stability. In many places, domestic population disapproves of immigrations and immigrants; this attitude can be linked to high unemployment rates and to the opinion that immigrants can either become an economic burden or a threat to political and socio-economic stability of the country, whereas some unregistered individuals are very often seen as criminals.

Modern migration flows differ from the past ones in type and geographic patterns. With the implementation of the principals of free movement of people, capital, goods and services, the internal border-free area of the territory of the European Union has changed the borders of regional and daily migrations of people. At the same time, the structure of migrants has changed as well. The phenomenon of the "post-industrial" pattern of migrations is the last one of the third waves of migrations after WWII, which includes three relatively different elements: highly educated working force, asylum seekers and the irregular, "illegal" or "secret" flow of migrants.

While the first element is mainly the "invisible" process, the second one, which consists of refugees and asylum seekers, has been given the most attention in the recent years. Partly, this is due to the progress in the implementation of international conventions, and partly to the increased number of asylum applications first in the countries of the European Union in the end of the 80s and in the beginning of the 90s, and now in the new member countries. The third element has been increasing substantially by irregular entry as well as by residence after the expiry of various short-term permits for entry or residence.

The geographic patterns of migrations have also changed; for example, the countries that some time ago have been the countries of emigration have become the countries of immigration. With the end of the Cold War and mainly because of geo-

political and economic changes, new migration ways between the East and the West of the European continent have appeared. This resulted in exceptionally intensive migration of people, which makes Central and Eastern Europe and in particular the new EU member countries a more and more diversified migration environment. Through these countries, migration flows run from the East to the West, mainly taking illegal ways which have been more and more recognised as smuggling and traffic with human beings.

New dynamics of migration flows is accompanied with new forms of migration management. In the beginning of the 21<sup>st</sup> century, due to the decreased inflow into the active population, bigger demands for workers, in particular highly-educated ones, and in some cases also non-qualified labour ones, big changes are taking place in the developed world, and in particular in Europe. With new directions and regions involved in the process, these changes do not influence only the intensity and quality of migration flows but also the reactions of countries and groups of countries towards the migration phenomena. The increasing trend of migration management and migration policies management on regional levels, where initiatives of the European Union are the most noticeable, although the need for migration policies management on the global level is evident as well, can be seen as a struggle of various interests to redefine migration categories and to codify the areas of legal and illegal migration of people.

The migration that is still typical for new EU member countries is “temporary”, according to the structure mainly male and low qualified immigration. According to the data, the South-Eastern and Eastern European immigration field is noticed, emigration flow to the countries of EU and EFTA as well as a bit of dispersion out of Europe, mainly to North America. In spite of the structure and characteristics of other migration flows that happen under the influence of economic globalisation, in the view of which these countries remain mainly transit countries of the flows directed to the west and to much broader geographical domain, it seems that they have already been incorporated into the Middle-Eastern European migration subsystem. This might be important for the migration flows after the enlargement of the European Union and for the further design of a Common European migration policy.

On the basis of the adopted regulation acts, the following can be said:

- The main part of the legal order in the area of asylum is harmonised within the legal order of the European Union;
- The legal order which determines entry, movement and residence of foreigners in the EU member countries, as well as restitution and deportation of foreigners mainly harmonised with the legal order of the European Union;
- In the area of employment of migrants, the system approach to employment and methods of work has been established; this enables the protection of domestic labour market and regulation of the inflow of the labour force; it must be said that the guidelines of employment and work policy of citizens from third countries in the market of the European Union has been taken into account;
- In the area of border control, the conditions of border crossing, standards of border control, recommendations on the equipment to detect misuse of

- documents at the entry into European Union and the conditions of border control at places other than border crossing points are also harmonised;
- The visa regime within the European Union are fully harmonised;
  - For dealing with visas, national diplomatic consular missions use consular instructions, whose meaning is harmonised with common consular instructions of the countries of the European Union;

It can be deduced that in the political and time framework of the strategy of the accession of new member countries to the European Union, the harmonisation of legislation from this area has been relatively successful. However, for further adaptations to European legal order as well as for its application, certain changes are needed also in the field of legislation. Co-operation with other countries, interstate and supranational structures from this field has developed intensively in the last two years. The policy making and constant upgrading of the migration and asylum policy must not be seen as an application of established constitutional and international legal principles, or in a narrow sense, harmonisation of national legislations from this field with the “*acquis communautaire*”, but as a subject area that is with its own strategy, principles, and ground an integral and flexible entity of demographic, economic, socio-cultural and political developments of EU member countries. In regard to the latter, it can be said that other relevant policies, such as foreign and security policy, employment, investment, education, scientific, social and health care policy, have not been harmonised enough with the principles and goals of the integral migration policy, although some areas are more active and systematic, as for example with national Ministries of Culture.

It can be rightly said that also because of this, some activities were not co-ordinated properly, there were some duplications and even competitions, which lead to negative effects on certain groups of migrants and to criticism about migration management and several categories of migrants – among others, asylum seekers, persons with temporary asylum and illegal migrants or runaways. It is possible that criticism, disapproval and resistance of some citizens or groups of the civil society, domestic and international civil organisations together with the simultaneous increase in the number of asylum seekers and irregular border crossing has lead to the recognition that economic, social and political as well as human price for the country and the society can be bigger than the costs of consistent, integral and co-ordinated migration policy.

Basic principles of migration policy-making do not change and read as follows:

- Principle of solidarity, international division of burden and responsibility, which presupposes obligation to offer protection and first aid to refugees, in the indirect sense also to illegal migrants, and coping with the consequences of the latter;
- Principle of responsibility to citizens and the state, which is linked to regular, relatively free migrations and regulation of naturalisation;
- Principle of respect for law and human rights, which means obligations from international contracts, universally accepted principles and legal order. This principle requires respect of human rights of all people and with certain

exceptions respect for civil rights of all legally present in the country, that is from the protection of personal data and personal freedom;

- Principle of long-term economic benefits which defines relatively free migrations. Under this principle, it is possible to define the criteria of a monitored admission of migrants according to demands on the labour or capital market, with regard to the approximation of the internal market of the European Union and at the same time prevention of illegal migration and employment;
- Principle of historic responsibility, which is built on the concept of the historical continuum and the structure of international relations;
- Principle of equality, freedom and co-operation, which is particularly related to integration policy.

### **Grounds for a Strategy for Common Asylum and Migration Policy in the EU**

In the framework of the European Union, on the basis of the Treaty of Amsterdam and in the context of developing common area of “freedom, security and justice”, the conclusions of the Tampere Summit in October 1999 set the elements for the strategy of common asylum and migration policy. This strategy is seen in the following:

- Efforts to establish partnership and collaboration among the countries of the European Union, countries of origin and countries through which run migration flows; the latter demand the development of a more integral approach to migration, mainly in the political area, particularly better synchronisation of internal and foreign policies of the member countries and the European Union, assurance of respect of human rights and application of necessary (co-)development of the countries of origin, transit and immigration,
- Measures to establish a common European asylum system, which would include a clear definition of the country responsible for screening the application for asylum, common standards of efficient and fair asylum procedures as well as basic or minimal standards of admission, approximation of criteria for recognition and the content of the refugee status with the goal to establish a common asylum procedure of uniformed status for all persons who have been granted asylum in all member countries,
- Measures for fair treatment of nationals from third countries, in particular with a more decisive integration policy and non-discrimination in economic, social and cultural life, for prevention of discrimination, xenophobia and racism, and for approximation of the legal status of immigrants to the status of the citizens of member countries with the possibility to gain citizenship,
- Proposals, which in the context of the new economic and demographic ratios and assessments, that besides admission of persons due to humanitarian reasons, reasons under the Geneva Convention and family reunification also acknowledge the need for legal admission and residence of economic migrants and approximation of national legislation in this area,
- Integral approach to migration flow management, which establishes a dialogue in the relations among countries of origin, transit countries and target countries, in regard to political and development needs of all as well as to the basic human rights. Among others, the key elements in management are: measures for

systematic prevention of illegal migration, smuggling of migrants and human trafficking, development of a common visa policy, restitution policy, establishment of collaboration between juridical and police systems, flow and transparency of information, and help to countries of origin and transit.

## **Foundations of Migration Policy**

The basic principles of migration policy define several goals of the complementary parts of this policy. These are:

- Global solidarity and intensive activity in the area of prevention of causes for mass migrations,
- Active co-operation of EU member countries,
- Active co-operation with neighbouring countries in Central and South-Eastern Europe,
- Protection and aid to refugees and other asylum seekers as well as focus on the possibility of voluntary restitution,
- Immigration regulation,
- Prevention of illegal migrations,
- Constant control of the situation within the EU and around the world.

## **Elements of Migration Policy**

In the view of the context and on these grounds, state policies need to be developed in various areas of migration policy, which should take into account several elements, their relations and other factors, out of which the following are particularly important:

- A system approach, or rather consistency, developed on mutual relations of migration policy that consists of: asylum policy, immigration policy, management of migration flow policy and integration policy or policy to immigrants,
- A system approach, which consists of relations among migration policy and other relevant policies,
- Relevant institutionalisation of the area of migrations in the field of public governance, in the process of the enlargement of the European Union and border administration structure, which in the framework of the legislation enables independent, qualitative and efficient implementation of tasks,
- Establishment of conditions, which make migration processes an incentive for economic and socio-cultural development,
- Enabling scientific research activities as a support to migration policy planning,
- Control of the consistency and efficiency of the adopted measures, harmonisation of goals, mechanisms and effects of the policy with the goal of constant adaptation to circumstances and processes,
- Establishment of professional, social, parliamentary, juridical and international control.

Due to the complexity of the area of migration, the following separate, but connected and complementary parts of policy are defined as:

- Asylum policy, which is linked to the elements and measures related to admission, type and scope of protection as well as type of residence of seekers, applicants and asylum holders, repatriation and migration. It is a part of migration policy, which among others also includes international solutions to refugee problems and its causes;
- Immigration policy in the narrow sense, which is related to immigration regulation, i.e. principles, rules and procedures, which enable foreigners to entry, get employed and /or reside permanently;
- Policy of migration flow management, which is in particular related to prevention of illegal immigration, fight against migrant smuggling, traffic with human beings and protection of victims;
- Integration policy or in a narrower sense immigrant policy to existing and future immigrants, which is related to the measures taken by the state and society that enable advantageous conditions for the quality of life of the immigrants, together with active prevention of discrimination, xenophobia and racism, stimulate integration and enable the immigrants to become responsible participants of the social development of their respective countries.

## **Activities**

Activities, which lead to a uniform and systematic approach in the application of migration policy can take various directions. For these purposes, various instruments and measures can be applied:

- Legal regulation of migrations, which is internationally comparable and harmonised with the legal order of European Union,
- Establishment of co-operation between countries of origin and countries of transit in the frameworks of bilateral or multilateral co-operation,
- Enforcement of asylum policy, which has the following goals: assurance of efficient protection and aid to refugees with constant respect of the right to seek and gain asylum; particular attention should be given to the protection of children, female refugees and other more sensitive categories of refugees; establishment of co-operation with other countries in the periods of mass refugee crises according to the principle of splitting the burden and responsibility, active role in solving refugee problems and elimination of the causes for mass refugee flows with political, economic and moral means.
- Harmonisation of immigration with a regulation of the necessary inflow into the active population of EU member countries, setting up measures and advantage with regard to the interests of EU member countries; development plans and programmes as well as demands of the labour market; enabling family reunification of citizens as well as foreign immigrants in accordance with ratified international contracts; taking into consideration international contracts on free movement of people and other bilateral or multilateral agreements; taking into consideration asylum in accordance with the Geneva Convention on the status of refugees, from humanitarian reasons and reasons under the act of temporary asylum as an integral, although in the content, different type of immigration,

- Prevention of illegal immigrations, which besides international collaboration and pre-accession activities represents:
  - Efficient border control and control of border crossing points, professionally qualified security services to prevent migrant smuggling, human trafficking and detection of forged or stolen passports, detection of foreigners who reside illegally and for their efficient return into the countries of origin or transit;
  - Information links among countries and relevant technical means, which enable the detection of forgeries and abuses, qualified administration structure on the national and regional level, which decides on the entry and residence of foreigners, legal regulation of residence, asylum applications as well as other cases of administration decision-making about immigration affairs;
  - Penalty policy, which diverts individuals and organised groups from committing criminal offences related to migrations, smuggling and human trafficking, in particular with children and women; under this policy, persons who are victims of abuses and exploitations are protected, while offenders are rightly charged;
  - Ensuring efficient co-operation among diplomatic consular missions, Ministries for Internal Affairs, police and administration,
- Enforcement of the integration policy – its goals are founded on the basic principles and values of equality, freedom and mutual collaboration. In this context, equality means assurance of equal social, economic and civil rights; freedom of the right to express cultural identity, while at the same time assuring respect for integrity and dignity of each individual and maintaining his/her own culture in accordance with the law and basic values of individual countries,
- Adoption of measures, which can assure non-discriminatory procedures and attitude towards immigrants in economic, social and cultural life; giving rights and obligations, which, in accordance with the length of residence, will make immigrants entitled to more equal status in relation to the citizens of EU member countries in the direction towards full citizenship.

### **Measures for the Application of Migration Policy**

Among other, measures for an efficient and harmonised application of migration policy include the following:

- Active co-operation in the establishment of an international asylum and migration policy on the global and regional European level, in migration flow management and with individual immigrants, in the elimination of causes for mass migration flows,
- Harmonisation with the European legal order, which among other, due to better efficiency, simplification and rationalisation of procedures to gain various residence addresses and acknowledgements of refugee status, presupposes: modifications and amendments to the Aliens Acts, Asylum Acts and adoption of new Acts on Border Control;
- Analysis of harmonisation of the legal order in the areas of education, social welfare, health care, health insurance, culture, employment and other areas; on this ground, modifications of sector-specific instruments in those parts related to

foreigners and in a way, which will enable the application of the common strategy, should be adopted,

- Enforcement of the grounds of immigration policy, which requires certain legal frameworks and social measures within the general social policy as well as within the programmes focused on several groups of immigrants; the latter will enable integration of immigrants into society, prevent discrimination and social marginality and enable the immigrants to express and develop their own culture and values on the basis of respect for personal integrity,
- Preparation of programmes for objective public communications about various viewpoints, causes and consequences of migration flows, also as means of preventing potential xenophobia and disapproval towards immigrants,
- Establishment of institutions for a functional and rational application of administration acts, for co-ordinated activities of horizontal and vertical levels of state bodies, for managing an integrated migration policy, which also means collaboration with communities of the local self-governance,
- Collaboration with scientific, research and educational institutions and civil organisations, which are active in the area of migrations.

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