

PREVENTING AND COMBATING ILLEGAL MIGRATION

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ABSTRACT:

COOPERATION IN INTERNATIONAL MIGRATION IS EXTREMELY IMPORTANT. ILLEGAL MIGRATION HAS NEGATIVE CONSEQUENCES FOR THE COUNTRIES OF DESTINATION THAT IS WHY THE EU MUST BE CONCERNED WITH PREVENTING AND LARGELY COMBATING THE CONSIDERABLE INCREASE IN THE ACTIVITIES OF ORGANIZED CRIMINAL GROUPS IN ILLEGAL TRAFFICKING OF MIGRANTS AND OTHER RELATED CRIMINAL ACTIVITIES.

COMBATING MIGRANT TRAFFICKING IS A PRIORITY FOR THE ROMANIAN POLICE. THE STRUCTURES FOR COMBATING TRAFFICKING IN PERSONS FROM THE GENERAL INSPECTORATE OF ROMANIAN POLICE PERMANENTLY ACT TO COMBAT THE FORMS IN WHICH HUMAN TRAFFICKING, SEXUAL EXPLOITATION, LABOR EXPLOITATION MANIFEST THEMSELVES. ROMANIAN POLICE CONTINUES TO CARRY OUT A SUSTAINED COOPERATION WITH LAW ENFORCEMENT AUTHORITIES FROM CIRCUMSCRIBED COUNTRIES TO A TRAFFICKING ROUTE, NAMELY THE TRANSIT OR DESTINATION STATE BY IMPLEMENTING PROJECTS AND JOINT OPERATIONS AND MAKING PERMANENT EXCHANGE OF DATA.

KEY WORDS: ORGANIZED CRIME, SANCTION, ILLEGAL TRAFFICKING OF MIGRANTS, MEASURES TO COMBAT ILLEGAL IMMIGRATION.

"Migration is a process to be managed rather than a problem to be solved." National Immigration Strategy for the period 2015-2018.

Illegal migration is a major factor in the development of organized crime, becoming a threat to socio-economic security and stability of states, so the states must fight to combat this practice by severe penalties. Because of criminal networks and the ingenuity of criminals, illegal migration has become an increasingly broader and more difficult to control scourge. Illegal trafficking of migrants is one of the most acute manifestations of cross-border crime with long-term side effects. This often blends with other aspects of organized crime such as drug trafficking or arms trafficking. More and more complex networks of human traffickers, (organized in groups) with close connections worldwide are being found.

The European Union aims to ensure a high level of security, freedom and justice for its citizens by developing common actions among the Member States in the field of police and judicial cooperation. Therefore, steps must be taken to combat the aiding of illegal

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immigration, regardless of the purpose in which they practice it, whether it is illegal border crossing, or supplying the networks of exploitation of persons.

Preventing and combating illegal migration involved EU countries in drafting laws, collaboration and consensus actions. As a result of the policies implemented and the efforts to combat this phenomenon it has been noticed that the number of people who return to their home countries has increased in recent years.

According to Romania's National Strategy for Public Order and Safety 2015-2020, illegal migration is one of the risks and vulnerabilities identified on national level by the Ministry of Internal Affairs, brought to EU level.

„Illegal entry” shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State.²

The European Union has adopted two important pieces of legislation in combating illegal migration:

Return Directive (2008/115 / EC) establishes common European rules and procedures on the return of third -country nationals who are illegally staying. Among the main areas requiring further action are the promotion of practices consistent and compatible with fundamental rights, improving cooperation between Member States and increasing the role of Frontex.³

Ensuring effective returns is one of the key tasks of the teams supporting the national authorities on the " access points " (hotspots) level in Italy and Greece. On the other hand, on 9 September 2015 the European Commission published an action plan of the European Union on returning.

Directive 2009/52/EC specifies sanctions and measures to be implemented by Member States against employers who violate the ban on employing third country nationals who are illegally staying. EU negotiates and concludes readmission agreements with countries of origin and transit for the return of irregular migrants and works with these countries to combat trafficking. Those agreements include reciprocal cooperation commitments between the EU and third country partners . Negotiations with the following countries have led to the entry into force of such agreements : Hong Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Pakistan, Serbia, Moldova, Georgia, Armenia, Azerbaijan and Turkey.⁴

U.E. SANCTIONS APPLICABLE TO PERSONS WHO COMMIT OFFENSES ON ILLEGAL MIGRATION.

Each Member State shall adopt appropriate sanctions applicable to persons who adopt an unlawful conduct , which consciously help a person who is not a national of a Member State to enter the territory of a Member State or transit through that territory, in violation of the state law concerning the entry or transit of foreigners, or to those who knowingly assist in profit, a person who is not a national of a Member State to reside in the territory of a Member State, in violation of its law on the stay of foreigners.

² Council decision, of 24 July 2006, on the conclusion, on behalf of the European community, of the protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations convention against transnational organised crime, article 3, letter b).

³ FRONTEX - European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

⁴ http://www.europarl.europa.eu/ftu/pdf/ro/FTU_5.12.3.pdf

When the behavior explained above aims at giving humanitarian aid to a person, each Member State may decide not to apply sanctions under EU law, applying their laws and practices.⁵

Each Member State shall take the necessary measures to ensure that the infringements referred to above are subject to effective, proportionate and dissuasive sanctions.⁶

Member States shall ensure the implementation of laws, regulations and administrative provisions necessary. Member States shall immediately inform the Commission thereof. Member States shall communicate to the Commission the main provisions of national law which they adopt in the field. The Commission promptly informs the other Member States thereof.⁷

Each Member State shall take the necessary measures to ensure that the infringements are subjected to effective, proportionate and dissuasive criminal sanctions, which may entail extradition.

Where appropriate, criminal sanctions may be accompanied by the following measures: confiscation of the means of transport used to commit the offense; a prohibition on practising directly or through an intermediary the occupational activity in the exercise of which the offense was committed; expulsion.

Each Member State shall take measures to ensure that the infringements, if they are committed for profit, should receive custodial sentences with a maximum which cannot be less than eight years, if committed in one of the following circumstances: offense was committed as an activity of a criminal organization; the offense endangered the lives of people who have been the object of the crime.

To preserve the coherence of the national penalty system in question, the acts listed may be subject to custodial sentences with a maximum which can not be less than six years, provided that it is one of the maximum most severe penalties for crimes of comparable gravity.⁸

Regarding legal persons, each Member State shall take the necessary measures to ensure that legal persons can be held liable for the infringements committed for their benefit by any person acting individually or as part of an organ of the legal person which meets a leading position within the legal person. Liability does not exclude prosecution of individual perpetrators, instigators or accessories in offenses.⁹

Each Member State shall take the necessary measures to ensure that a legal person shall be punishable by effective, proportionate and dissuasive penalties, including criminal or non-criminal fines and may include other penalties such as exclusion from opportunity to receive a public benefit or aid; temporary or permanent disqualification from the practice of commercial activities; placement under judicial supervision; a judicial dissolution.¹⁰

Each Member State from which a national, alleged to have committed one of the infringements in another Member State, originates, which does not extradite that person to

⁵ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, article 3.

⁶ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, article 3.

⁷ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, article 4.

⁸ Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, article 1.

⁹ Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, article 2.

¹⁰ Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, article 3.

that other Member State solely on the ground of nationality, shall notify the authorities responsible for the case in question, for them to begin prosecution as appropriate. The plaintiff Member State is informed of the criminal prosecution and its outcome.¹¹

A national is the natural or legal person of a State, under the protection of another State. Third-country national refers to a person who is not a citizen of the European Union according to the term used in the European legislation.

In the European Union, a number of predisposing factors and vulnerabilities that can be exploited by criminal elements in carrying out illicit activities were identified as follows: the economic crisis, the important nodes of transport, diaspora communities, corruption and legally established entities serving as a means for illegal activities, the attitude and behavior of the public concerning some crimes, the balance between risks and benefits after committing a particular type of crime, the ease crime entities penetrate the markets with, the Internet, electronic commerce, legislation and cross-border opportunities, identity theft, fraud by using forged documents.

Europol cautions that Romania may be affected by these vulnerabilities. After analyzing all the developments in this respect, Europol has identified seven threats current Member States will have to take into account when formulating courses of action in the fight against organized crime, first of them being illegal migration followed by trafficking human beings; counterfeiting of goods or healthcare and pharmaceutical products; economic crimes committed through "ghost" companies - illegal reimbursement of VAT; production and trafficking of synthetic drugs; cybercrime; money laundering.¹²

Transnational organized crime, illegal migration, cybercrime and software piracy have evolved continuously taking advantage of the freedoms and modern technologies offered by the EU internal market.¹³

There are forms of organized illegal migration, encouraged by specialized organizations or criminal groups, aimed at achieving material gains from immigrants that have been developed in order to facilitate the entry or stay of migrants in a specific country in violation of its laws.

Romania is a transit country for migration flows, not the destination country, benefiting from an efficient system of border surveillance which raises problems for those who want to use it as a transit country. However, due to the fact that Romania is crossed by three main routes of migration to Western Europe, namely: the Eastern route, the Eastern Mediterranean route and the Western Balkans route, illegal migration manifests itself in various forms, the most common being the illegal crossing of the green borders between the checkpoints of the transition, the use of passports and forged or counterfeit visas, with the help of collective transit and entry visas obtained for touristic purposes, or motivated by trade purposes and the use of false documents on behalf of renowned multinational companies for a target country or requesting asylum status, followed by staying illegally in the country; using false identity documents; by hiding in auto, rail or barge international transport means; under the pretext of ensuring transport and accommodation for participation in sports competitions; under the cover of religious confessions.¹⁴

Trends and risk factors for illegal immigration mentioned in the National Public Order and Safety focus on groups of organized crime exploiting quickly the various changes made

¹¹ Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, article 5.

¹² National Strategy for Public Order and Safety 2015-2020, Ministry of Internal Affairs, 5.

¹³ National Strategy for Public Order and Safety 2015-2020, Ministry of Internal Affairs, 2.

¹⁴ Sandu Frangulea, *The phenomenon of migration and trafficking*, Romanian Association of Humanitarian Law, <http://www.arduph.ro/domenii/refugiati-persoane-disparute-2/fenomenul-migratiei-si-traficul-de-persoane/>.

to the structures of law enforcement, legislative changes and the opening of new routes or the least financially costly ones as well as the opening of new border crossing points. Organized criminal groups that facilitate illegal migration are characterized by a high degree of flexibility and a greater capacity to collaborate effectively via their networks created across borders. Also, immigrants coming from communities with fundamentalist Islamic guidelines, inserted into smuggling groups, using clandestine route reach the destination countries, may become beneficiaries of some form of protection recognized in countries of transit and destination and asylum seekers. These criminal networks involved in organized forms of illegal migration often extend their work by developing other forms of crime, such as counterfeiting of travel documents, drug trafficking, money laundering, arms trafficking, human trafficking etc. Amplification of illegal migration can have negative effects on the population, both in terms of access to the legal labor market and in socio-economic terms. By analyzing trends, it is predicted that we will have a significant number of cases of illegal crossing at the external land and maritime borders of the European Union, caused by the context of political instability in neighboring countries or the Middle East.¹⁵

The same document, the National Strategy 2015-2020 Public Order and Safety, deals with establishing objectives and courses of action at EU level as a result of analysis within the Standing Committee on Internal Security, the proposals from the Member States and the SOCTA 2013 report, establishing priorities that are part of EU policy cycle 2014-2017, as follows: 1. Illegal migration 2. Organised crime against property 3. Drugs 4. Fire guns 5. Human trafficking 6. Counterfeit goods 7. Cybercrime 8. Fraud in excise duties and value added tax in intra-Community acquisitions.

As we see illegal immigration tops the list. So in terms of illegal migration overall goal number 5 was established: Strengthening state border managing the issues of illegal migration, asylum and integration of foreigners with the following specific objectives: combating illegal migration and development of appropriate return policies as well as the related courses of action:

1. Strengthening the administrative capacity of the structures responsible for combating illegal migration
2. Strengthening cooperation and exchange of information between law enforcement structures with competencies in preventing and combating illegal migration
3. Supporting EU efforts in implementing policies in the field of return and readmission
4. Strengthening the legality of the stay of citizens from third countries in Romania and the implementation of return and restrictive measures
5. Increased cooperation with third countries with migration potential.¹⁶

MEASURES TO COMBAT ILLEGAL IMMIGRATION NATIONWIDE

Police officers within the General Inspectorate for Immigration, according to the integrated cooperation mechanism to combat illegal stay and migrant trafficking, organized specific activities at national level aimed at ensuring order and safety of citizens by exercising permanent control over the observance of legality of foreigners' stay in Romania and combating illegal migration in order to maintain a climate of order and safety among our community.

This year 81 actions and checks were carried out from 1st to 12th February, both through own efforts and in cooperation with structures having competencies in the field of public order and security, in preventing and combating illegal stay of foreign citizens at national level. Following in the action, 92 people were found in illegal circumstances, mostly in Bucharest and across the competence of Timis, Arad and Satu Mare. Of these, three have

¹⁵ National Strategy for Public Order and Safety 2015-2020, 8.

¹⁶ National Strategy for Public Order and Safety 2015-2020, 17-18.

met the conditions required to extend the right of residence, 61 of them received decisions or communications to leave the territory of Romania, 5 of them applied for a form of international protection while other measures were taken for 23 of them. 14 people were escorted to the point of crossing the state border where the measure of interdicting the entry in Romania was issued on their name, according to Emergency Ordinance No. 194/2002 on foreigners in Romania. Police applied 263 warning and fine sanctions on foreigners who have not complied with the legislation on migration, amounting to 63 350 lei.¹⁷

In March this year, trained officers within the General Inspectorate of the Romanian Border Police, the General Inspectorate of the Romanian Police, representatives of the Romanian Road Authority and the Financial Guard organized, across all the crossing points of the border, actions for combating illegal migration of Romanian citizens to the West, the Schengen area, carrying out thorough checks on persons and international tour operators transiting the Romanian border in both directions. Simultaneously, the management of the General Inspectorate of the Border Police has taken re-enforcing steps concerning Westernborder crossings by increasing the number of police officers who were brought here from the Eastern border. The measure was taken in order to implement tight Control rules against Romanian citizens who want to leave the country, or to prevent acts of corruption among workers of the Border Police Directorate in Oradea and Timisoara.

For a more efficient work in this area, similar authorities in the Member States of the European Union cooperate by the effective participation of EU experts in the checks performed at Romanian border control points. Two Spanish officers, two French, one Austrian and one Italian currently work at the control point from Oradea. Here border policemen check the veracity of the declarations of persons leaving the country if they have indeed joined the hotel booking voucher, if the hotel exists, if the foreign citizens who have sent invitations to Romanians really exist etc.¹⁸

These actions to combat illegal immigration nationwide aim at the following objectives:

- verifying whether transportation/ tourism tour-operators comply with the specific legislation with a view to tracking the natural or legal persons who organize such activities without having the necessary authorization as well as taking the required steps against them;
- exposing violators of the financial accounting legislation - by not recording the amounts of money collected from passengers for their services (transport or tourism) , or deliberately making wrong records of it - in order to obtain illegal income;
- following the legal provisions on public roads and road traffic safety;
- field documentation of the number , area of origin and mode of operation of the offenders who are thus facilitating illegal migration of Romanian citizens in the Schengen;
- verification of the fulfillment by all Romanian citizens who intend to travel abroad, of domestic and international legal provisions in force.

Following measures which took place over 9 days in March, of all Romanians present at checkpoints intending to leave the country, Border Police have taken the measure of forbidding a total of 23 416 Romanians to continue their journey, due to the fact that they did not meet the conditions provided by law. The main causes for resorting to the measure of forbidding exit from the country were lack of medical insurance (3,486 people), the fact that they did not have a round trip ticket (1,890 people), they did not have the "Green card" of the

¹⁷"Action to combat illegal immigration at national level", Curierul National, <http://www.curierulnational.ro/Eveniment/2016-02-13/Actiuni+pentru+combaterea+migratiei+ilegale,+la+nivel+national>

¹⁸http://arhiva.gov.ro/actiuni-pentru-combaterea-emigrarii-ilegale-a-cetatenilor-romani-catre-occident__11a47012.html

car (121 persons), no means of support amounts held in foreign currency required by law concerning performing trips abroad (15 608 persons), 4 people had false or forged passports/visas; 2,307 were forbidden to travel for other reasons such as unjustified real purpose of the trip, being suspects of committing illegal acts in Schengen.

Regarding sanctioning individuals or legal entities that carry, without complying with the relevant legislation, Romanian citizens in the Schengen area, to combat illegal migrant trafficking, border policemen sanctioned them by drawing two criminal cases for committing the crime of tax evasion, 60 criminal cases for carrying unlicensed transport or without legal documents ; 89 sanctions were applied, for not following specific legislation in the field, with a sum amounting to over 260 million; the illicit activities of 36 transportation / tourism tour operators or individuals that carry out activities of transport undocumented have been reported to the competent authorities, so that legal measures would be taken.

Romanian Border Police will continue to take firm measures to ensure that all Romanian citizens traveling abroad comply with the regulatory requirements for leaving the country.¹⁹

¹⁹http://arhiva.gov.ro/actiuni-pentru-combaterea-emigrarii-ilegale-a-cetatenilor-romani-catre-occident__11a47012.html

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